

## **The Death Penalty & Just War**

Let us begin with prayer.

*Lord, our God, we thank You for Your love for us, the love of the Father in sending His Son to be our Savior, the love of our Savior in going to the cross, and the love that the Holy Spirit sheds abroad in our hearts. We pray that we may respond to Your redemptive love in obedience to our Savior's commandment that we love one another as He has loved us. We pray that that truth may penetrate the very depths of our being. We ask that we may be renewed in our spirits that we may serve our Savior effectively. Be with us in this session as we think through the issues that weigh upon us socially, that we may have insight and that we may be faithful disciples whom You have called us to be in our generation. We ask for Jesus' sake, amen.*

The two topics for this session, the death penalty and just war tradition, are under our heading of "The State in God's Design." And these are two issues that not only are perennial, but they are current, and we need to think about them. The modern crusade against the death penalty is traced to a work by Beccaria in 1764. Here is the heart of his argument: "Capital punishment was allowable in times of unrest to prevent a revolution. But in normal peaceful circumstances, it is only justified as deterrence to crime." The argument continues that if we have capital punishment, it is only as a last resort for the protection of society under revolutionary circumstances. But otherwise, since deterrence has not empirically been proven to correlate with the death penalty, the argument is that under peaceful circumstances it should be abolished. That is from a book called *The Churches Speak on: Capital Punishment*. This is a series on various ethical issues and includes *The Churches Speak on: Homosexuality* and *The Churches Speak on: Abortion*. Any of these contemporary issues that have been worked through are very helpfully brought together in this series. You can learn a lot from seeing the churches and the way in which they describe the problem and develop it.

In the United States, the cause for the abolishment of capital punishment was championed by Clarence Darrow on the grounds of social determinism. That has the denial of personal moral responsibility as its correlative. That was his defense in the famous Loeb case, and we reject that social determinist argument. It still crops up from time to time, but there are better arguments in the 1950s and 1960s. They are summarized in the 1968 National Council of Churches position on the abolition of the death penalty. It names 10 reasons for taking the position for abolition of the death penalty, and they are reasons that have to be reckoned with. They are serious reasons that need to be taken into consideration. It still did not lead to its abolition in America, though it has been abolished in Europe.

When I was in Ukraine, Ukraine made a decision to abolish the death penalty, which was a condition for their joining the European Union. They could not be a member of the union unless they abolished the death penalty. I do not have the date, but it has been abolished throughout Europe. There is a kind of prophetic statement in Melton when he says, "As the 1980s draw to a close, the debate over capital punishment in America has waned. Someday in the not too distant future, the debate over capital punishment will be renewed. It awaits only a new incident or a new insight to bring it to the fore. When that occurs, the churches will have an asset they did not have when the Chessman case first effectively raised the issue." That was a man who was convicted of kidnapping in 1948 and executed in 1960, and the churches in that period reviewed the issue of capital punishment. There is a strong consensus among the churches, as we will see, but it did not produce consensus in society. And particularly as the crime wave began to rise in the 1970s, public opinion polls were strongly in favor of the death penalty. Now that the crime wave has gone back down, public opinion polls begin to change also. So we need to look

at it in terms of principle issues, but I think that this is the time where circumstances and developments have forced us to take a look at the death penalty again. I think over the next decade you will see renewed interest in the question of whether the death penalty should be abolished in this country as it has been in Europe.

To look at the Protestant churches, there were many churches in the 1950s and 1960s that went on record as favoring the abolition of the death penalty. There were those who argued for its retention. According to the National Association of Evangelicals' statement, the National Association of Evangelicals held that it ought to be retained for premeditated capital crimes. They did not specify first-degree murder. That would be the capital crime for which the death penalty should be retained, but the basic argument is in the third paragraph of that statement: "If no crime is considered serious enough to warrant capital punishment, then the gravity of the most atrocious crime is diminished accordingly. It follows then that the attitude of criminals will be affected. From a biblical perspective, if capital punishment is eliminated, the value of human life is reduced, and the respect for life is correspondingly eroded." That is the heart of their argument, that unless you have the death penalty for the most atrocious crime, taking of human life—it seems to indicate that that is uniquely deserving of the death penalty—the value of human life is reduced and respect for life eroded. And they are thinking in terms of the effect of that on the mind of the potential criminal. Well, that is the argument, and we need to examine it.

The Lutheran Church, Missouri Synod, in 1976 took the position that capital punishment is right but not mandatory. It is something that the state has authority to do but is not required to do. That depends upon judgment. The Christian Reformed Church in 1981 took the position that it is in exceptional circumstances permissible. I have quoted from the Christian Reformed Journal, page 2: "Capital punishment should not pertain to the routine administration of justice, but only to those exceptional instances of such administration as are called forth by a substantial threat to the foundation and structure of a free and responsible democratic society and thus to the safety and welfare of the people." In other words, although they defend the idea of capital punishment as just, still they are unwilling to apply it except where there is the foundation and structure of a free and responsible democratic society and thus safety and welfare to the people. Although the ground of capital punishment in the Christian Reformed understanding is retributive justice, they do not apply retributive justice except in circumstances of grave threat to the society as a whole. Then it would be justified; otherwise, not. And in that second paragraph, they give their rationale that sometimes it may be divinely sanctioned and in society's best interest. It is not desirable that capital punishment be routinely inflicted upon persons guilty of murder in the first degree; only under exceptional circumstances should the state resort to capital punishment. So it retains the right to capital punishment but would apply it only where the very foundation of society is at stake. They are refusing to give up the penalty altogether, but are going back to the idea that only when it is absolutely necessary for the protection of society do you institute it.

The Roman Catholic Church was moving in that same direction. I think Pope John Paul II went beyond that, but there was a convergence with the Roman Catholic Church and the Christian Reformed position. The catechism of the Catholic Church, 1994, says, "If bloodless means are sufficient to defend human lives against an aggressor and protect public order and safety of person, public authority must limit itself to those means, because they better correspond to the concrete conditions of the common good and are more conforming to the dignity of the human person." "If bloodless means are sufficient," so they leave open the possibility in extreme cases of the death penalty being applied, but only as a last resort measure. In the encyclical *Evangelium Vitae*, "The Gospel of Life," Pope John Paul said, "Punishment ought not to go to the extreme of executing the offender except in cases of absolute necessity." In other words, when it would not be possible otherwise to defend the society. Today, however, as a result of

steady improvements in the organization of the appeal system, such cases are very rare if not practically non-existent. You see the convergence of the Christian Reformed and the Roman Catholic position in that regard.

Then Pope John Paul II took a more absolutist position against capital punishment in a visit to St. Louis. He had been applauded throughout his message. But when he said this, the audience sat on its hands. They were not prepared for it. He said that “the dignity of human life must never be taken away, even in the case of someone who has done great evil.” Notice the absoluteness of that: “The dignity of human life must never be taken away,” and this formed the basis for his call for a consensus to end the death penalty, which is both cruel and unnecessary. Now, some people’s heads went back when the Pope said that, because that went beyond his 1995 encyclical. That certainly goes beyond the catechism of 1994.

My comment is that the Pope thus stated his opposition to the death penalty with an absoluteness formerly reserved for innocent human life. For example, his encyclical *Donum Vitae*, “The Gift of Life,” 1987, says, “God alone is the Lord of life, from its beginning to its end. No one can under any circumstance claim for himself the right directly to destroy an innocent human being.” The catechism of the Catholic Church uses Exodus 23:7 to interpret the commandment “You shall not kill,” and says, “The deliberate murder of an innocent person is gravely contrary to the dignity of a human being.” And on the specific issue of capital punishment, the catechism points out that the traditional teaching the Church has acknowledged as well-founded “The right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding, in cases of extreme gravity, the death penalty.” So the Pope has moved the tradition along. What is authoritative in the Roman Catholic Church is what is revealed in Scripture and tradition as interpreted by the magisterium. And so I wrote to Newhouse, who was here during the Pope’s visit, and asked him about this. And he said this is a development of doctrine, and the catechism of the Catholic Church is in revision on this point. He says it has already been done in the Latin edition. So I think we have seen, just in the 1990s, the Roman Catholic Church changed from its traditional position to a more absolute position on the question of human life. The one thing about Pope John Paul’s statement that is a little bit perplexing is that he says, “The dignity of human life must never be taken away.” Does he mean that human life, which has its intrinsic dignity, must never be taken away? I think that is his point. But in any case, he says the death penalty is cruel and unnecessary. Before, they had said it is legitimate and may still be necessary under extreme cases, but now the Pope has moved the doctrine along, and Archbishop Rigali and others have joined the move to abolish the death penalty on the basis of the Pope’s leadership.

So we are in that situation where we re-examine this question. You might ask how these changes on the Pope’s part fit in with the development of doctrine. I question that this really fits with the development of doctrine theory, because this contradicts something that went before. Development of doctrine traditionally has been expanding on what is there before. It is not in conflict with what is before, but it goes beyond what goes before. If this is a development of doctrine, then also the ordination of women is a development of doctrine and the approval of homosexuality is a development of doctrine. If the church can, in effect, contradict what it said before, then you have a very different understanding of development of doctrine. Now, I am not that familiar with all of this. There was thought to be a precedent in *Humanae Vitae*, which was the encyclical on contraception. The bishops recommended that contraception be allowed. The Pope appointed a commission to study the issue of contraception, and the recommendation of the bishops was that under certain circumstances, not only natural family planning, but also the use of contraceptives that are not abortifacient is allowable. That would have been a change in practice. I do not know that it would have been a change in doctrine. But it would have been a contradiction in terms of practice. And the question is how you regard that. The argument was that the

church has spoken on this and it cannot change it. It will lose its credibility if it speaks on this, so it is the infallibility of the church if it conditioned its approach on that issue. But it has not on the issue of capital punishment. So it somewhat depends upon the issue in terms of the way that this developed. Now, I am not here to lecture the Roman Catholic Church, but we have to pay attention to them, and I think it is important to examine the grounds on which folks argue against the death penalty. Archbishop Rigali basically argued on the basis of the Sermon on the Mount that we should abolish the death penalty. I think that that is a mistake.

Strictly speaking, what is infallible is when the Pope speaks *ex cathedra* in terms of defining dogma, and John Paul only did that about three times, so it is very limited. The Immaculate Conception and the bodily assumption of Mary are doctrines that are defined and are necessary to Catholic belief. When it comes to ethical issues, there is, it is argued, more flexibility than there is with the dogmas. But that is challenged within the Roman Catholic Church. Roman Catholics themselves debate this issue. And so we are observers, but we have to pay attention because of our joint efforts in society, especially pro-life. It is a puzzle as to how they can revise a catechism. I mean, they went with the same Vatican Catechism for nearly 450 years and then they issue this catechism. And now, according to Newhouse, this is under revision. You would think that they would have thought it all through, and if they were going to issue a catechism, which is definitive, that it would have included this new thinking on the death penalty. So I do not know. At the time, I wrote to a local paper to try to set the record straight, but that piece that I wrote was never published. It may be because I titled it "Is the Pope Catholic?" and that probably undercut my credibility. But I had the documentation.

We need to look at the Scripture. So my second point is called "The Biblical Warrant for Capital Punishment." And by the way, in that piece I did express appreciation for John Paul II. He was courageous. He did a lot of things that are laudable, and I do not want to minimize that at all. But on this issue, it did seem to me that there is changing of the tradition. Now, in Genesis 4:13-15 is Cain's complaint, following the murder of Abel by Cain. Cain said to the Lord, "My punishment is more than I can bear. Today you are driving me from the land and I will be hidden from your presence. I will be a restless wanderer on the earth and whoever finds me will kill me. But the Lord said to him, 'Not so. If anyone kills Cain, he will suffer vengeance seven times over.' And the Lord put a mark on Cain so that no one who found him would kill him." In my exegetical insights here, I am dependent on Murray in his *Principles of Conduct*. Murray's comment on this was that "Life is so sacred that even the life of a murderer is to be respected." There is a dignity to human life, even when we give the ultimate punishment and take it away because it has been forfeited by human sin. We recognize that that is a human life. It is holding persons responsible, so even the life of a murderer is to be respected, and you do all you can to bring them to repentance and respect. Even penitent criminals, however, are subject to the death penalty, but their life is not to be wantonly or ruthlessly taken away. Crime is not to be punished by crime. The life of the murderer is not to be taken in the way of violence or thirst for blood after the pattern of the murderer's own crime. You know, this is a sober judicial matter. I think we should keep Gordon Clark's observation in mind. God's dealing with Cain indicates that it is not absolutely necessary to execute every murderer. God did impose exile on Cain and held his life to be sacred so that it was not wantonly to be taken away.

Genesis 9:6, of course, is the key biblical text following the flood. We will begin with verse 4. The Lord says, "But you must not eat meat that has its lifeblood still in it. And for your lifeblood I will surely demand an accounting: I will demand an accounting from every animal and from each man, too, I will demand an accounting for the life of his fellow man. Whoever sheds the blood of man, by man shall his blood be shed, for in the image of God has God made man." Now, the flood did not purge the human heart of evil. And protective institutions are erected after the flood to curb the violence to which human

beings are prone, so that the operations of grace can go forward. As Murray notes, the chief emphasis in the passage is on the punitive—that is, on the retributive justice. God holds human beings accountable for the taking of human life, and so it is a matter of justice that the death penalty is imposed in this text. Retribution is a dictate of justice apart from any accessory considerations, or, it goes on to say, “Nevertheless, there is without doubt in this passage the underlying thought of the safeguards by which the life of man is to be protected. The retributive sanctions have the effect of discouraging and inhibiting evasions upon the sanctity of man’s life.” In other words, the ground is not deterrence; the ground is retributive justice. So it is right to do it even if it does not deter. But the underlying assumption is that affirming the respect for human life and holding human beings accountable when they take it has the effect of enhancing the sanctity of life. So retributive justice is right in and of itself, but the reason for retributive justice is the sanctity of life. And by being willing to go to the ultimate punishment, it shows what value that human life has before God.

It is sometimes argued that “by man shall his blood be shed” could be either a statement of fact or a command, so far as the construction in Hebrew is concerned. If it is a statement of fact, the idea is that retribution will ultimately overtake the murderer in the course of events; you sow what you reap; violence breeds violence; all who take the sword will perish by the sword. But I think the context points to it being a command. But this is not just a proverbial saying like those who take the sword will perish by the sword; this is a requirement of accountability through the means God establishes in government for that to be taken. Well, what about the perpetuity of this principle, especially in light of verse 4, which says we are not to eat meat with blood in it? That is frequently used as an argument against taking this as a perpetual commandment, because it is a condition. Well, the ground of prohibition of blood is later given in reference to the atonement. Leviticus 17:11 says, “The life of the flesh is in the blood, and I have given it on the altar for sin.” The blood laws of the Old Testament have reference to the atonement. When the atonement is fulfilled, those ceremonial laws that purvey blood in terms of the diet go the way of all the dietary laws for their symbolic reference, whereas the rationale given for the death penalty is perpetually relevant, and so it has permanent validity. Note the uniqueness here. It is the most extreme crime. We are talking about premeditated murder as in the case of Cain’s murder of Abel. That was premeditated. Cain says to Abel, “Let us go out into the field.” He was not just asking Abel to go with him for a walk. Cain had his murder in mind. It is first-degree murder, premeditated murder, fully responsible and, in the nature of the case, irremediable, so it brings forth that warrant. And the rationale is that man is made in the image of God.

It is this particular crime that distinguishes the death penalty from the other penalties in the Mosaic Law. Those were unique to the theocracy. This is the special discipline of the professed people of God as a nation, whereas this one is before Israel is established as a nation, and it is addressed more generally to humanity as such. So the death penalty for premeditated murder is unique. As a matter of fact, William Penn in The Great Act of 1682 limited the death penalty to premeditated murder. So that was over against multiple death penalties in Britain at the time. Penn limited it to premeditated murder, and I think that you can only make a case for the death penalty biblically in the case of premeditated murder.

Now, Romans 13:4 is the other key text. This establishes who has the right to inflict the death penalty or to exact the death penalty. It is the civil magistrate, “for he is God’s servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing.” Notice, “He is God’s servant, an agent of wrath to bring punishment on the wrongdoer.” So the idea is that capital punishment is just retribution for the crime of premeditated murder. Here is my point. It bears witness to the fact that we live in a moral universe and that man is accountable to God. Who is authorized to act thus in the name of God? It is the civil magistrate who is authorized to act in the name of God. But in so doing, it is a sort of penultimate judgment that shows that we need to take human life seriously, because it belongs to God.

And the sword, which here stands for coercion, is more than the forcible restraint of evil; it carries with it that extreme form of the culminating principle of punitive authority. And there are some other verses to take a look at. So I think that within the Scriptures, there is warrant for the death penalty administered by the state in cases of premeditated murder on the grounds of man's creation. The death penalty is a just punishment for the taking of human life, grounded on the fact that human beings are created in the image of God, and it is expressive of God's wrath toward that extreme crime.

Now, we will turn to some thoughts on contemporary application, again quoting Gordon Clark: "God gave the right of capital punishment to human governments. He intended it to be used wisely and justly, but He intended it to be used. I think that the state cannot surrender the right to capital punishment. To simply say that it is cruel and unnecessary and ought to be abolished goes beyond what can be defended biblically." But it is possible to ask, this comes from the Christian Reformed Report, "If punishment is once grounded on the principle of retribution, cannot the kind quality and quantity of it be accommodated to the ends of deterrence, societal protection, and rehabilitation?" In other words, can we not still say that, yes, human beings who willfully take human life are worthy of death; but for these other considerations we mitigate the death penalty according to our circumstances. I think that that is an argument that needs to be taken seriously, but I approach it a different way.

I notice that the Old Testament erected structural safeguards lest innocent blood be shed. That needs to ring in our ears. There is a biblical warrant for the death penalty, but in the Old Testament it is in the context of structural safeguards lest innocent blood be shed. But why? Because that is an absolute contradiction of why you have the death penalty in the first place. The death penalty is when innocent blood has been willfully shed. If you do not have the structural safeguard with respect to the death penalty, you undermine the whole rationale. So it is necessary. Go back to Gordon Clark's statement. God intended it to be used wisely and justly. Christian Reformed are arguing "let us use it wisely" in terms of we may need to have it for the ultimate protection of society, but we can accommodate our actual use of it to those other ends for which government is established. I focus on it needing to be used justly. And one of the structural safeguards of the Old Testament was the cities of refuge in Numbers 35. That was a very important element. Numbers 35 is not the only reference; it appears in Deuteronomy and elsewhere in the Pentateuch. And that gives us a key to the way we need to approach it. I think that justice demands consistency, impartiality, due process, and proof of guilt. If there is biblical warrant for the death penalty on the grounds of retributive justice, unless it is administered justly, you undercut the whole rationale for it. And in contemporary American society, it is not applied consistently. It is a matter of chance as to whether or not the prosecutor will seek the death penalty. It is not administered impartially, and particularly with respect to due process, the kind of adversarial system that we have is unequal. It is out of balance because prosecutors are well trained and highly paid. They are not as highly paid as they would be in private practice, but they are, whereas the defendant characteristically does not have lawyers who are up to that same standard. If we are to have the adversarial system, then the adversaries ought to be equal for there to be due process. Now, Colorado has worked toward that. In Colorado they have a system whereby they pursue the death penalty, and they do but only rarely, but they ensure that there is an equal adversarial relationship. So the prosecutor knows that to pursue the death penalty he or she is going to face the toughest opposition that is available. Now, that is the way it should be. If we cannot balance that, then I think we should abolish the death penalty if we only give people nominal due process.

Fourth is proof of guilt. We do run the risk of executing innocent persons under our American system. Furman versus Georgia was the famous Supreme Court case that forced a re-look at the death penalty, and an extensive study that examined these cases found over 400 wrongful convictions and about two dozen executions of innocent persons. More recently and most disturbingly, just a few years ago, of 25

persons on death row in Illinois, 13 were demonstrated to be innocent by DNA evidence. That is in the land of Lincoln. If there are more innocent people than guilty people on death row, and that is proven, then something is really wrong with the American system. McDuffey was right to call a moratorium until that can be sorted through. So it forces us to a realization. The strongest argument in my mind for the abolition of the death penalty is the liability of innocent people being killed. And there is no recourse when that happens. That is irrevocable. And when we think about it, this is the best system in the world, and we have the best judicial system in the world. And then you have this situation whereby a person on death row a couple of years ago was executed, even though his lawyer was guilty of gross misconduct with respect to him and the man himself was borderline retarded. At least there is a move in Missouri where they do not have the death penalty for persons who are retarded.

I have a book with the title *Actual Innocence* that goes into these cases. Something is radically wrong with the justice system. I think that it is a scandal, and we have to remember that although there is biblical warrant for the death penalty, it is only warranted when it is justly administered. And I have not fully concluded whether there is a possibility of it being justly administered in America, but clearly it is not justly administered at the present time. And if that cannot be corrected, then I think for the sake of "lest innocent blood be shed," which is the whole point of having the death penalty, we really need to take another look at it and not be so quick to support it because it has biblical warrant. Remember, it is biblically warranted, presupposing or assuming a just administration with at least those four components: consistency, impartiality, due process, and proof of guilt. The Old Testament has a very high standard of proof of guilt. And if you are going to put someone to death, it has to be proven.

I think that we are on the verge of seeing some change here. You have high profile conservatives. Charles Colson has always opposed the death penalty, and he knows more about prisons and the judicial system than most conservatives. And now Pat Robertson has a call for a moratorium on the death penalty. These are significant moves within the National Association of Evangelicals. I think it is time to take another look.

You might ask about the seemingly inconsistent relationship between supporting the death penalty and opposing abortion. It becomes an issue, and it is something that we cannot avoid. And I think that we need to take a good hard look at it. Those of us who are anti-abortion are often accused of being inconsistent with supporting the death penalty. I think that it is not an inconsistency. It is the seamless argument, seamless web of life. The Pope has now lent his support, too. I think we should resist that, but I think that there are other reasons for being opposed to the death penalty. And, you know, I think that there is much more injustice on the side of the number of abortions that we have in this country. If credibility is at stake in terms of being pro-life, then what are we gaining by insisting on the death penalty when there are all these problems with just administration? I think it should not be the issue that is a rallying point for conservatives.

You might ask under whose responsibility just administration would fall. Well, God holds responsible the whole society, I would think, if it is a system that the society tolerates. If we tolerate a system where more people are innocent than guilty that we have convicted, there is something wrong with the structures of our society. When innocent blood is shed in a judicial way, through careless prosecution or inadequate defense, those who are particularly involved in the judicial system have more immediate responsibility, but I think the Lord holds us responsible for the structural safeguards lest innocent blood be shed. It is the same with respect to abortion. We all are involved in that issue. I think that those who protest relieve themselves of culpability, and those who protest the unjust administration of the death penalty and all that, but God holds us responsible. But there are conflicting statistics on deterrence. As a matter of fact, deterrence is impossible to prove, because you do not know who is deterred. You are only

working with a statistical thing. And if the murder rate does not go down, you do not know how high it would have been had there not been capital punishment, so you really cannot prove it empirically one way or the other. That is why I think we should not use deterrence as a part of the argument either way. But I think that the value of human life, which we say the death penalty is for, is undercut by unjust administration, and we would be more affirming of the sanctity of life if we did not have it, as the Christian Reformed Church says, as routine. I do not think the state can ever give it up absolutely. How to work that out in terms of where it is necessary to have it, whether it can be abolished but then when society begins to float out of control reinstitute it, I do not know. I have not thought enough about it, but I know at present moment we have reached a sort of crisis moment in terms of our approach on this issue. We need to take a good hard look at it. And typically, how the death penalty is actually administered falls predictably on the members of minority races. Now, the whole justice system does, so this is not unique to capital punishment. Capital punishment is irrevocable, and we need to look at the whole thing in terms of its relation to minorities.

On the issue of justifiable warfare, the Westminster Confession, second paragraph of chapter 23, makes the point that “it is lawful for Christians to accept and execute the office of a magistrate,” and, “they may lawfully, now under the New Testament, wage war, upon just and necessary occasion.” So on the basis of Romans 13, we say God has ordained the state for the forcible restraint of evil, even to the extent of the sword, and the necessary defense of innocent life from violent assault. Now, the domestic function of the state in maintaining law and order is more generally accepted than the right of the state to conduct warfare, but the difference is clearly relative, not absolute. If the state is mandated to protect human life with the sword, then in principle, war under certain well-defined conditions is an extension of the police function of the state. So we are looking for what those well-defined conditions are under which warfare may be justifiable. I think a careful reading of Genesis 14, the oldest war narrative in the biblical record, is illuminating. You see where that is developed in the PCA position paper, “Christian Responsibility in the Nuclear Age.” What we observed in that report is that every essential component of the later just war tradition is illustrated in Genesis 14. Just go through it. You will see that it all fits. Of course, we are reading those back into them, having a list that we understand, but you can see that they are. The importance of Genesis 14 is that at the end of this war record, Abraham is blessed by Melchizedek for his conduct, so that there is sanction of divine blessing upon warfare that was limited, for the right purposes, with the right intent, with the right authority, and all of those things. So because Genesis 14 is not just an account, that does not say what God’s attitude is toward it. You have the blessing of Melchizedek on Abraham for his accomplishment with his small standing army, 318 men, and he allied himself with other city-states at that time.

But does the Sermon on the Mount not require Christians to be pacifists? Now, here is the argument that we use both with respect to the state on the death penalty and, when it comes to what is an extension of that, the just war tradition. In the post-Constantinian era beginning with Augustine, theologians distinguish between private citizens whom the Lord commits to non-violence and public authorities, including Christians when they become public authorities, who are authorized to use limited violence. And I think the best argument on this is the correlation between Romans 12:14-21 and Romans 13:1-7. Romans 12:14-21 is expanding upon the principle of love. “Bless those who persecute you. Bless, do not curse. Rejoice with those who rejoice. Mourn with those who mourn. Live in harmony with one another. Do not be proud. Do not repay anyone evil for evil. Be careful to do what is right in the sight of everybody. If it is possible, as far as it depends on you, live at peace with everyone. Do not take revenge, my friends, but leave room for God’s wrath, for it is written, ‘It is mine to avenge. I will repay,’ says the Lord.” Verse 21 says, “Do not be overcome by evil, but overcome evil with good.” Now, that is what I would say is the epistolary supplement to the Sermon on the Mount. That is, you go through that passage and it is an echo of the Sermon on the Mount. The Sermon on the Mount is expounding love,

and so Paul picks up on those and for Christians expands it in the same way. But what he says about giving place to the wrath of God is then picked up in Romans 13. "Vengeance is mine. I will repay, says the Lord." God is the one who avenges wrath. And then you go to Romans 13, and there you find that the state is the avenger. That is what the state is for. So it is the difference between what the Lord requires of us, as His people as individuals and in the church, and what God requires of the civil magistrate, which Christians may be under, if they are called to that office. When we are in the office of the civil magistrate, then we act as Christians in terms of the ordinance that God has given, and the ordinance of the magistrate is to execute wrath for the defense of those who are good and to punish evil. In our capacity as members of the body of Christ, that is not our role. And as private citizens, we are committed to non-violence. But as public authorities, we have the responsibility of limited violence.

So the Christian just war tradition is distinguished not only from the pacifist position but also from the holy war tradition, which does not really need much justification. The holy war tradition led to the crusades. It also led Cromwell into a mistaken conquest of Northern Ireland that to this day is a problematic situation. Christian just war tradition is to be distinguished from blind obedience to authority, from war hysteria, and from militarism. There is a distinct Christian attitude toward war. For Augustine, lawful war was a social form of love for our neighbor. Justice is one of the forms of love. Now, the state is commissioned to do public justice. It is equipped with the power of the sword in order to affect public justice. And when Christians are called to that office, then they have that as their calling. Christians pursue it as the social form of neighbor love. It is love for neighbors threatened by violence, by aggression, or by tyranny. For Augustine, it legitimized the use of military force. When you have to choose between the perpetrator of injustice and the victims of injustice, then you choose to side with the victims, even if to do so requires the use of armed force against the aggressor. Now, that was first developed by Augustine. It was expanded by Thomas Aquinas and various other authors through the 17th century. By the 17th century it is fairly well complete in terms of what just war criteria are. And we distinguish between what in Latin is *jus ad bellum*, what justifies going to war, and *jus in bello*, what is just conduct in war. And there is no standard list, but what I have derived as a comprehensive list represents all components of the tradition as far as I can tell. I would put five items on this side of the conditions for going to war, what is justifiable in going to war. And then there are two additional conditions that have to do with just conduct in war.

Let me review these briefly for you. The first of these is legitimate authority. That derives from what we have just been talking about. It is not for individuals to avenge themselves. It is not even for groups of people to band together to avenge themselves. God has ordained authorities. He has ordained magistrates, and the war must be declared or executed by a legitimate authority. That ought to be presupposed in the argument, but we need to express it specifically.

The second component is that it is necessary that your cause for going to war be just. By just cause is meant a cause that is sufficient to warrant war as a proportionate response. I think it is important to put it that way. That is, it is not just any infraction, but it is something that warrants war in response to it. And we ought to divide this between an A and a B. Point A would be as a matter of defense. This is more obvious. When there is armed attack against a peaceful people, really their defense requires no special justification. If you are attacked, you really have no option but to defend yourselves. So there is a difference between the rationale for defensive war, not really so much dealt with in the just war tradition but assumed, except until recently when defense against totalitarian aggression or defense against aggression was thought to be the only justification for war. I think that is a little too simplistic. There is a passage in Judges 18:28 that illustrates the difficulty that people sometimes face. These are the Danites who are on a rampage. They go to this city of Laish, and they attack them with the sword. Verse 28 says, "There is no one to rescue them because they lived a long way from Sidon and had no relationship with

anyone else.” It is a sad situation that they are out there and the Danites just run all over them, plunder them, and kill them. If there had been folks nearby, they could have formed an alliance for that defense. So others may join in the defense of those who are under armed aggression.

I think that we should also think in terms of causes which would justify going on the offense. Mostly, the just war tradition causes developed around this response to various injurious actions, infringements of rights, and so forth. So the idea was, what would justify war for the restoration of rights or avenging evil? Could groups after the event line up to attack the Danites for what they did to Laish, as a matter of avenging Laish? Those kinds of questions get involved. Defensive war is not problematic; it is offensive war that requires more rigorous analysis of the condition.

The third category is right intention. And this is especially important for Christians. There is both an objective and subjective intention. Your objective intention is peace. That is the ultimate reason why you go to war; it is to establish the conditions of justice and peace. In other words, it is peace, not plunder or expanding your borders. The subjective intention is love of justice, not hatred of the enemy. It is not often that war hysteria stirs up passions of hatred against an enemy, but that is not a part of the just war tradition. Then, because war is so horrific in terms of the violence that it produces, it ought to be a last resort when negotiated settlement is impossible, non-deadly force is ineffective, and there is no available alternative. And even with that, you have to consider probable success. We are talking largely about going to war in order to restore rights, infringement of rights or something. When it is a matter of defense from an aggressor, this criterion is not so necessary. You do not have an option. But the idea of probable success is sometimes taken into account. Would it be better to surrender or to fight against all odds? That is a question that you have to ask sometimes. But in terms of the offensive nature of war, this should be the criterion.

You might ask if national interest would be another criterion in just war theory. No. That is something that has developed over time, in terms of what we specified as the criteria in which we will go to war, when our national interest is at stake. And I think we need to question that as a principle, particularly in terms of humanitarian intervention. National interest would be, in my judgment, too limiting a concept for a nation in terms of the traditional just war theory. And we need to talk about that. I will have to come back to that in the next session.

There are two other things in terms of the conduct of war. I will go over these next time, but one is the principle of discrimination; that is, you attack the threat and you spare the innocent. And then there is the principle of proportionality. You do not do more damage than is absolutely necessary to achieve your objective. It is a tactical situation. Well, these are the seven features. They do figure in the way in which Americans debate about war in terms of Congress. I know the Vietnam War was subject to all these criteria, and we looked at them for the Gulf War. I remember listening late into the night to the radio broadcasts of the debate in the House and Senate on that, and it was on these issues. The same is true with respect to Kosovo. There was great agonizing over whether these criteria fit with the war in Kosovo. I want to come back to Kosovo and the idea of humanitarian intervention as a just cause. That is the issue before the nations at the moment, whether humanitarian intervention, after Somalia, Bosnia, Rwanda, and Kosovo, is in all of our national interests. Do we just let Rwanda go, and millions and millions of people? How do we balance this thing? I will have to say something about that next session.