Limited Force and the Fight for the Just War Tradition

Braun, Christian Nikolaus

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Targeted Killing

Casuistical Investigation and General Argument

As the previous chapter has provided cases of targeted killings, the book is now in the position to, first, conduct a casuistical investigation, and second, building on this investigation, derive a general argument. The casuistical investigation takes the “official” bin Laden case as the instant case whose morality it seeks to explore. Functioning as the paradigm case is the Hersh account of the bin Laden raid, which is considered as a prototypically unjust targeted killing. In line with the casuistical method, other, less clear cases are employed to reflect on the instant case in order to identify the moral movement the cases impart on each other. These are the Nabhan, al-Awlaki, and Suleimani cases. Having rendered a verdict on the official bin Laden case, the chapter’s second part, elaborating on the casuistical analysis and building on the thought of Aquinas, makes an argument about when this type of limited force can be morally defensible in general. The chapter presents arguments about two forms of targeted killing, its retributive and anticipatory manifestations. Throughout the arguments, the positions of Walzerians and revisionists are brought into conversation with the Thomistic just war.

THE CASUISTICAL INVESTIGATION

As the ground for the casuistical investigation is now prepared, allow me to put on the casuist’s hat and explore the morality of the bin Laden raid.

The Instant Case

The gist of the official account of the bin Laden raid is that bin Laden was killed for the just cause of self-defense. Not only were there preraid intelligence reports that claimed he had continued to plot terrorist attacks; the documents collected
at the compound after his death were said to prove that this had indeed been the case. There may be reason to question how concrete bin Laden’s plans had been, but that debate would have been one about preemptive versus preventive self-defense. Thus, in the official account the contemporary near-consensus on self-defense as the only just cause for war seems to reign. In other words, the idea that “there is no morally justifiable just cause other than self-defense” appears to be the case’s dominant “morals,” its ruling maxim.

However, despite the apparent effort to justify the targeted killing of bin Laden as an act of self-defense, there were certain indicators that retribution also played a role. For example, it was reported that Obama had rejected the notion of a war against terrorism but accepted the idea that the United States was at war “with specific individuals who had attacked the country in the past and posed a continuing threat.” Importantly, while the preceding quotation can be read as an expression of the contemporary near-consensus on self-defense, it also seems to suggest a backward-looking punitive rationale. In addition, it was reported that senior members of the Obama administration alluded to a sense of closure that came with bin Laden’s death, a feeling that, in Obama’s own words, “justice has been done.” Thus, there is reason to explore an aspect of the bin Laden raid that conflicts with the maxim that self-defense is the only just cause for war. One might question whether the conflicting maxim “retribution can be a legitimate just cause for war” should be allowed to rule the bin Laden case, and if so, to what extent. Was it morally justifiable to kill bin Laden for his past wrongdoing, independently from the ongoing threat he posed? If so, was the just cause of retribution properly regulated by a right intention?

Furthermore, despite the general consensus on self-defense, failing to distinguish between preemption and prevention seems morally problematic. There was no evidence that any of bin Laden’s plans had been imminent. It thus seems that his killing was a preventive act of self-defense, or at least the anticipatory standard that was applied exceeded the Caroline standard. However, while the justifiability of preemptive self-defense seems to be relatively uncontroversial, the debate about when anticipatory force against nonimminent threats can be justifiable appears less straightforward. Therefore, the casuistical investigation assesses the maxim of “preventive uses of force are morally indefensible.” Was there just cause to kill bin Laden in anticipatory self-defense? If so, were there charitable or prudential considerations as found in the right intention criterion that advised against taking anticipatory action?

The Paradigm Case

While all cases presented in chapter 7 belong to the type of targeted killing, they are necessarily “alike in some respects and different in others.” Recapitulating
the Hersh account of the bin Laden raid, the mission’s conduct seems so obvi-
ously wrong that it can function as a paradigm for a morally indefensible tar-
geted killing. In essence, the killing of bin Laden, according to Hersh, was “a
premediated murder,” a meticulously planned hit job against an alleged terror-
ist without giving him a chance to surrender and stand trial. The Obama admin-
istration conspired with the Pakistani government to carry out the execution
of a gravely ill prisoner. The United States knew that bin Laden posed neither
an imminent nor a future threat. There was no case to be made to act in self-
defense. Furthermore, the United States was certain that there were no weapons
in the compound and that bin Laden would not be able to defend himself. The
United States had also made plans to hide the truth from the public, and only
by accident did the world learn about the raid. Clearly, killing bin Laden in that
way was morally wrong. Even for those who accept a retributive justification,
bin Laden’s demise will seem morally indefensible. While bin Laden arguably
deserved some sort of punishment for his wrongdoing, killing him as reported
by Hersh was an act of vengeance, not of retribution. Showing a “nonmoral gut
response to grievance” should not determine a legitimate authority’s actions, no
matter how grave the wrongdoer’s culpability.

The Taxonomy: Retributive Targeted Killing

Reflecting on the maxim “there is no morally justifiable just cause other than
self-defense” that seemingly reigns in the instant case, this maxim self-evidently
conflicts with a conceptualization that does not rule out retributive uses of force
from the start. Therefore, in what follows the cases are investigated vis-à-vis the
competing maxim “retribution can be a legitimate just cause for war.” In other
words, as the taxonomy moves away from the paradigm case, the question of
whether retribution, in addition to self-defense, was a just cause for the targeted
killing of bin Laden is answered. And if indeed there was just cause for retribu-
tion, the subsequent question of whether the criterion of right intention was
met is addressed. After all, as has been noted in the sixth chapter, the criterion
of right intention “gives concrete shape to the condition of just cause.”

While most observers will reject killing bin Laden for vengeance’s sake, the
argument that he deserved a form of punishment for his wrongdoing seems
uncontroversial. Thus, the main question that needs to be answered is that of
what punishment should have been inflicted on bin Laden. That said, for those
rejecting the idea of retribution as a just cause for war, considering the employ-
ment of lethal punitive force will be a nonstarter. However, based on the classi-
cal natural law idea of the equilibrium of justice, the Thomistic just war reasons
that wrongdoing of a certain magnitude may warrant the death penalty as a
means of restoring the equilibrium. At the same time, Aquinas rejected the idea
of a lex talionis and was open to charitable concerns in finding the right type of punishment. Now, of course, the moral justifiability of the death penalty in a domestic setting is rejected by the majority of ethicists, including myself. That said, seen from a Thomistic angle, war is only a parallel to the death penalty. Arguably, given that the laws of war and Walzerians permit the targeting of combatants based on group membership, imposing the higher requirements of justification that undergird the death penalty would make the use of force more discriminatory and proportionate. As retribution apparently played a role in the targeting decision, would it not be more appropriate to admit the parallel with the death penalty, rather than simply claim Nabhan, al-Awlaki, and bin Laden were fair game as part of the state of armed conflict between the United States and al Qaeda and associated forces? The Suleimani case seems even more worrisome in this regard, as the United States referred to the legal justification of the 2003 war against Iraq to justify the targeted killing of the Iranian general. Brunstetter also detects a curious mismatch between official and actual rationales behind the use of vis. Although states conduct actions that seem punitive, the language they use to justify their actions differs. While seeking to make a claim that their actions comply with international law, “the notion of punishment lurks beneath.” Going through the cases, all targeted individuals had arguably committed wrongdoing that in principle justified the death penalty to restore the equilibrium of justice on natural law grounds. Nabhan, in addition to his roles regarding the recruitment and financing of terrorism, was directly linked to the terrorist attacks in East Africa in the late 1990s. Al-Awlaki too, after having become operational, had directed plots that killed innocent people and, more generally, had facilitated the rise of AQAP. Likewise, Suleimani was the mastermind of a multitude of attacks that are said to have killed several hundred Americans.

That said, while there was arguably just cause to target them all for the sake of retribution, the criterion of right intention still needs to be assessed. This, importantly, is where the charitable and prudential considerations that advise against the domestic use of the death penalty come into play. It marks the consideration where the Thomistic rejection of a lex talionis is most apparent. How do the cases compare in this regard? What is their order in a taxonomy of cases? The case that emerges as the one closest to the paradigm case is the Suleimani case. However, the targeted killing of Suleimani was no execution in the style of Hersh's account of the bin Laden raid. While there are indications that President Trump's decision to target Suleimani was partly informed by emotions, the drone strike was not directed against a gravely ill prisoner. While vengeance may have played a role, the retributive rationale seems to have dominated. Capture, from a moral point of view, would have been the best of options, as Suleimani could have been held accountable for his wrongdoing and no life would have
been lost. Had it been possible to capture him, charitable considerations would have cautioned against the death penalty he arguably deserved on natural law grounds. But how feasible was a capture option? It seems it was unlikely that Suleimani could have been captured alive because his entourage was probably armed and Iraqi security forces would have intervened. If taking him to court was infeasible, was it then morally defensible to kill Suleimani for retribution’s sake? Moreover, another charitable concern appears. Only Suleimani, arguably, deserved the death penalty for his past wrongdoing in principle. Consequently, it seems morally indefensible to put the lives of those in his entourage at risk. Unlike in a case of self-defense, killing Suleimani for retribution did not prevent an ongoing or imminent threat. It seems that only if Suleimani alone could have been targeted should a drone strike not have been ruled out from the start. Furthermore, it seems that the targeted killing of Suleimani was an imprudent act. Given the risk of escalation to war with Iran and the loss of life and destruction that would have caused, it does not seem right to take on such a gamble only to restore the equilibrium of justice. Had Suleimani not been “dual-hatted,” the calculus might have been different, but his role as a leading figure of the Islamic Republic should have cautioned against killing him. Furthermore, it was unclear how the Iraqi government would respond. While there was no danger that killing Suleimani would cause a direct confrontation with Baghdad, the United States still had a troop presence in Iraq as part of its fight against ISIS, which might have been affected.

The issue of being dual-hatted was of no concern in the Nabhan case. Nabhan was a senior member of al Qaeda in Somalia, a prototypical example of a “regime of non-state responsibility.”\textsuperscript{12} The prudential concern of causing a major confrontation following his killing was thus negligible. As in the Suleimani case, the capture question looms large. And in fact, a concrete capture plan had been made. Capture was certainly a more feasible option than in the Suleimani case. Still, what should feasible mean? Given the likelihood that Nabhan would have resisted a capture attempt and would have fought until his death, the risk to US service members needed to be calculated. Not surprisingly, the disaster of Black Hawk Down was on the decision makers’ minds. Importantly, the virtue of charity works both ways. While, if feasible, capturing Nabhan and taking him to court would have been an act of charity’s derivative of mercy, making a capture attempt if the risk to US troops was high would have been a violation of the highest virtue. It was Nabhan who resisted the restoration of the equilibrium of justice. He could have turned himself in to take responsibility for his misdeeds. Risking the just US soldiers’ lives by allowing Nabhan to shoot at them in a capture attempt would have been too much to ask from the just combatants. It thus seems that deciding to kill rather than capture Nabhan for retribution was morally defensible. However, employing a rather indiscriminate helicopter raid to
kill Nabhan was wrong. As was reported, three militants were killed alongside Nabhan. Only if Nabhan alone could have been hit, it seems, would a retributive killing have been justifiable.

The case of al-Awlaki seems less clear than the Nabhan case despite some obvious parallels. Al-Awlaki was heading a nonstate terrorist group in Yemen, a “regime of non-state responsibility” comparable to Somalia. At no time was there a concern that killing al-Awlaki would lead to war between the United States and Yemen. More of a concern were tribal loyalties in Yemen, which may have caused a deterioration in US-Yemeni relations. The Yemeni government had been cooperating with the United States in its fight against AQAP, but an earlier US air strike had already caused significant protests. Thus, acting prudently would have entailed calculating the consequences for the overall “war on terror.” As in the Suleimani and Nabhan cases, it would have been charitable to capture al-Awlaki had it been feasible. Based on what has been reported, capture may have been possible. Still, the same logic that ruled the Nabhan case applied. The only aspect that makes al-Awlaki’s case less morally wrong is that his culpability seems to have exceeded that of Nabhan. His culpability might be taken to inform the decision-making regarding the question of how much risk is acceptable in a capture attempt. It should also be recalled that al-Awlaki had stated that he would not turn himself in and would resist capture. As a result, killing instead of capturing al-Awlaki for retribution was morally defensible. However, the way his killing was carried out made the operation unjust. While al-Awlaki alone was targetable, the drone strike killed several of his companions. This excessive loss of life seems morally indefensible for the sake of pursuing retribution against al-Awlaki.

How does the killing of bin Laden as reported by Bowden fit in this taxonomy? Throughout the account, there are no hints that the Obama administration was driven by illicit motivations. Rather than seeking vengeance, it seems that “doing justice” by meting out a deserved punishment was the objective. In contrast to the Hersh account, the administration had to assume that bin Laden, who was responsible for the deaths of thousands of innocent people, willingly evaded prosecution and would resist capture. In addition, the expectation was that the Pakistani authorities knew bin Laden’s whereabouts and that any leak would result in bin Laden’s trace once more being lost. The administration carefully explored various options of action and, based on the importance given to securely identifying bin Laden and the assessment of the estimated collateral damage, decided against an air strike. The commando raid was meticulously planned but came with a considerable risk to the SEALs, including a possible confrontation with Pakistani authorities that would have damaged US-Pakistani relations. While there was no danger of a war between the United States and Pakistan, Pakistan was only in parts a “regime of non-state responsibility” and
may have used its influence to further trouble the US war effort in neighboring Afghanistan. Overall, it seems the bin Laden case has considerable parallels with the al-Awlaki case, the main difference being the decision to send in the SEALs instead of conducting an air strike.

**The Taxonomy: Anticipatory Targeted Killing**

Seen from a self-defense point of view, clearly Nabhan, al-Awlaki, and Suleimani all posed a threat. While it seems that none of them was an imminent threat in line with the Caroline standard, all of them were linked to future terrorist attacks. Sitting idly by would have risked the lives of many Americans, to be killed at a time of the terrorists’ choosing. Interestingly, the taxonomy for anticipatory targeted killing seems to differ from the one for retribution. In the taxonomy, the Suleimani case emerges as closest to the paradigm case. The US intelligence services warned of future attacks but did not point to any concrete plots, the Trump administration’s initial claims notwithstanding. There was no direct link to ongoing preparations for attack. Thus, the urgency of anticipating his future wrongdoing was less manifest. However, through his role as head of the Quds Force, as well as through his past wrongdoing, he had repeatedly demonstrated his capability of carrying out lethal attacks. In some respects, although the threat he posed seemed less urgent, his role in prior wrongdoing made his future threat seem more profound. It thus seems that there was an anticipatory just cause to target Suleimani as a matter of self-defense.

That said, arguing that there was an anticipatory just cause of self-defense to kill him does not seem to answer all of the questions associated with the morality of his targeted killing. Let us consider the kinetics, the moral movement the cases impart on each other. In the paradigm case, clearly bin Laden posed neither an imminent nor a future threat. Thus, there was no just cause of self-defense, and there is no need to reflect on right intention. In contrast, in the Suleimani case, a future threat was identified that gave way to allowing action in anticipatory self-defense. It seems that the Trump administration’s main rationale was to avert the threat posed by Suleimani. Having said that, there are indications that Trump exhibited, to a certain degree, some of the illicit intentions Augustine cautioned against. Reading about the president growing agitated while watching live TV and then, to the surprise of his generals, deciding to take the most aggressive of available options by killing Suleimani, recalls some of those passions. In addition to this seeming disregard of charitable considerations it seems, at least in retrospect, questionable whether killing Suleimani was prudent. Granted, Trump received counsel that killing Suleimani was unlikely to cause a major escalation with Iran, but given the previous tensions
with Tehran, the operation did seem to mark a major gamble that may have caused a war in the Middle East. Overall it seems that while there was just cause to kill Suleimani, it was imprudent to do so, and thus the operation did not meet the right intention criterion.

Relatedly, in the al-Awlaki case, the Obama administration took action against a future threat. Clearly al-Awlaki posed a threat against which there was just cause to act in anticipatory self-defense. That said, there are indications that President Obama’s decision, not unlike Trump’s almost a decade later, was influenced by poorly regulated passions. Remarks such as “‘I want Awlaki’” give grounds to believe that the president’s decision to target al-Awlaki was partly influenced by some of the emotions flagged by the Bishop of Hippo. Relatedly, the kill or capture question reappears. Should al-Awlaki have been killed in anticipatory self-defense if there had also been a capture option? In essence, the answer to that question is the same as that given for the retributive killing of al-Awlaki. The risk US servicemen as just combatants should have taken against al-Awlaki, the unjust combatant, was low. The only difference compared to the retributive scenario is that given the potential gain to be made by capturing him in terms of preventing future wrongdoing, more risk to US troops may have been morally justifiable. Furthermore, killing al-Awlaki in anticipatory self-defense justified a limited amount of collateral damage. In contrast to killing him for retribution, killing him for the sake of anticipatory self-defense should have been governed by the DDE and, thus justified the death of the militants who were with al-Awlaki. All said, on balance the targeted killing of al-Awlaki marks the first case in which the use of anticipatory limited force seems to have been morally justifiable.

The targeted killing of Nabhan seems to have presented the most urgent action, as he was linked to terrorist training camps that produced suicide vests. The Nabhan case is also the one most removed from the paradigm case. Even without concrete intelligence about when and where an attack would take place, there seems to have been a case for acting in anticipatory self-defense. Waiting for this particular threat to become imminent would have entailed too high a risk to innocent life. As far as the criterion of right intention is concerned, the main rationale behind the Nabhan operation seems to have been averting the threat posed by the suicide bombers. There is no hint that the Obama administration, as was possibly the case with al-Awlaki, succumbed to the problematic passions warfare tends to provoke. However, as was the case with al-Awlaki, the kill or capture question constitutes an important concern. The answer to that question is essentially the same as that given in the al-Awlaki case. It is the risk question that matters here. Having said that, killing Nabhan because there was no detention policy, as some accounts have implied, would have been morally indefensible.
Verdict

The instant case has various similarities to the other cases in the taxonomy. Bin Laden had committed grave wrongdoing in the past and was posing a future threat that was not imminent. The overall objective was to avert a threat to innocent people. There was a debate about different military options, including the kill or capture question. As noted earlier, the risk to its own service members in a raid was an important aspect in the deliberations. There are no indications that the Obama administration acted upon illicit motivations in deciding to kill bin Laden. Moreover, prudential concerns such as the role of Pakistan in his hiding and the potential repercussions of kinetic action to the US-Pakistani relationship were deliberated. The major difference from the other cases is that a commando raid instead of an air strike was authorized.

Based on the kinetics of the investigation, killing bin Laden for the sake of retribution was morally wrong. While there was just cause to kill him retributively, his killing violated the criterion of right intention. While there were no prudential reasons that directly spoke against the operation, the consideration of charity makes the raid morally indefensible. For the sake of retribution, only bin Laden would have been targetable. Consequently, both the risk to innocent bystanders present in the compound and the risk of the SEALs being harmed by an unjust terrorist actor were irreconcilable with the highest virtue. The only morally justifiable option for killing bin Laden for the sake of retribution that was discussed by the Obama administration would have been the sniper drone, because it could have hit bin Laden alone.

In contrast, it was morally justifiable to kill bin Laden in anticipatory self-defense. Based on the intelligence about future plots and his demonstrated capability of masterminding successful terrorist attacks, there was just cause to act in anticipatory self-defense. Importantly, the criterion of right intention was also met. In retrospect, it turned out that sending in the SEALs was prudent because, as hoped for, they obtained precious intelligence about future plots. Moreover, asking the SEALs, as just combatants, to risk their lives in an anticipatory operation against an unjust combatant is different from acting retributively. As noted earlier, it would have been against charity to risk the SEALs’ lives for the sake of retribution. The stakes in the anticipatory scenario, however, were different. By killing bin Laden and averting the future threat he posed, the lives of many innocent people were possibly saved. This act of love, that is, putting an end to the threat he posed, justified the risk of the SEALs being harmed by bin Laden, who had no moral right to resist. Furthermore, it seems that had the Obama administration concluded that there was no intelligence to be gained from a raid, an air strike would also have been morally defensible. In contrast to the retributive rationale, the DDE should have been applied, and a limited number
of killed innocent bystanders would have been justifiable. Last but not least, the
Obama administration acted rightly on the capture question. Had bin Laden
clearly indicated that he would surrender, he should have been captured and
taken to court. In the absence of such signals, the SEALs were right to accept
little risk to themselves in their action against an unjust combatant. In conclu-
sion, the casuistical investigation confirms the maxim that retribution can be a
just cause for war and did apply to the retributive targeted killing of bin Laden.
However, it is also true that the operation that killed bin Laden did not meet
the right intention criterion and was therefore morally wrong. Additionally, the
investigation has replaced the maxim that ruled out anticipatory uses of force
with a defense of a limited anticipatory just cause for war. In contrast to killing
bin Laden for retribution’s sake, killing him in anticipatory self-defense was in
line with both just cause and right intention.

THE GENERAL ARGUMENT

Having ruled on the morality of the specific bin Laden case, let me now provide
a general argument about the practice of targeted killing.

Targeted Killing as Retribution

So what does my general argument on targeted killing imagined as a manifesta-
tion of vis look like? In what follows, in contrast to Brunstetter’s conceptualiza-
tion of jus ad vim, the means of carrying out a targeted killing is of secondary
importance only. It seems that seen from a natural law perspective, retribution
or vindication, in addition to self-defense, remains a licit just cause in principle.
As will become apparent, while the argument employs the just war of Aquinas
as a set of counterimages, it does not follow his thought blindly. This should
be read as a testament to the innovating potential of the historical approach,
which, opposed to what its critics hold, does not have to be conservative.

Legitimate Authority

In his rejection of war as punishment, Luban rejects what he calls the “Augus-
tine formula,” which holds that war as punishment can be seen as parallel to “a
father’s loving punishment of his errant son.” A similar argument has been put
forward by Rodin, who refers to it as the “parental model.” Luban objects to the
classical Christian idea of war as punishment that is built around a judicial anal-
ogy that compares waging war to meting out domestic punishment. Reflecting
on the contemporary terrorist threat as encountered in the cases, it should be
noted that the judicial analogy Luban rejects has been a much-debated issue
historically. Vitoria, for example, argued in his *Relectio de Indis* that it would be very difficult indeed for states to arrive at an objective judgment about their own and their opponent’s just cause.\(^{20}\) His solution was to argue for what Johnson has called a state of “simultaneous ostensible justice,”\(^{21}\) which, while acknowledging the difficulty of acting as one’s own judge, implies that both sides could be fighting for what they sincerely believe to be a just cause. They might be wrong about this, but because of nonculpable (invincible) ignorance, they would not thereby be acting wrongly. This realization, in turn, should temper the waging of war and the vindication of one’s rights, according to Vitoria. However, while there might be prudential reasons to deny the, although in principle justified, judicial analogy for state conduct, these considerations do not seem to apply to war between legitimate authorities and private individuals in the same way. That is why the following argument suggests allowing a limited retributive just cause for war against culpable unjust individuals.

Based on the Thomistic understanding, only legitimate authorities could wage just war. Private individuals were denied the use of force, except in self-defense, because they could appeal to their ruler, whose task it was to maintain and reestablish justice. That is part of the reason Aquinas listed the authority criterion in the first place. Applied to terrorists of the provenience presented in the previous chapter, this means that even if terrorists have just cause, they cannot wage just war because they inevitably fail the authority test. They would have to bring their case before the responsible authority rather than taking up the sword themselves. It is here that the “Augustine formula” continues to make sense. It is the state as legitimate authority that, like a father, has the responsibility to punish the wrongdoing of those individuals who commit crimes within the political community entrusted to it. Terrorists operating from within a state’s territory, no matter if they are citizens or not, commit acts of injustice, which the ruling authority is obliged to stop and punish.

Moreover, the judicial analogy continues to be relevant with regard to terrorism. A terrorist, like a criminal who is taken to court for his/her wrongdoing, is expected to take responsibility for the misdeeds committed. Interestingly, Luban seems to agree that the rejection of the “Augustine formula” as well as that of the judicial analogy applies only to conduct between legitimate authorities. He argues that “the punishment theory of just cause” lost relevance as the nation-state system consolidated itself. The reason was that it seemed irreconcilable with the idea of sovereign equality. However, as the sovereignty objection does not apply to nonstate actors, Luban accepts that there is an opening for arguing for a return to the punishment theory of just cause in the so-called war on terror.\(^{22}\) In this regard, Rodin’s argument on punitive war provides a perspective that is more far-reaching than Luban’s. Rodin, an advocate of the revisionist just war, does not deny the morality of what he calls war as law enforcement per
He argues that if there were to be a “genuinely impartial” body that had “a recognized authority to resolve disputes and enforce the law,” military action to prosecute aggressors could be justifiable. However, his “argument for a universal state” starts from the assumption that today’s UN does not resemble such a body. The UN therefore does not have the moral authority to punish. That said, Rodin holds that punitive action sanctioned by the UN would be, relatively speaking, more just than action carried out by individual states or a coalition of states without UN authorization. I wonder whether Rodin’s argument, although his theory is firmly rooted in the just cause of self-defense, should be read as giving at least a nod to the classical conceptualization of just war as a tool of statecraft in the service of order, justice, and peace.

An obvious problem that arises with “bringing terrorists to justice” is the contemporary phenomenon of a “regime of non-state responsibility,” in which states are either unable or unwilling to prosecute terrorists operating within their territory. In the cases considered, neither Somalia, Pakistan, Yemen, nor Iraq rose up to its responsibility. Somalia and Yemen were arguably too weak to act against Nabhan and al-Awlaki, while Pakistan, at least in one account, was unwilling to prosecute bin Laden. Iraq, due to the influence of Iran, was arguably unwilling to act against Suleimani. Does the punishment theory of just cause justify a state that has suffered from a terrorist’s wrongdoing employing retributive force in the country in which he/she is hiding? Luban, as noted earlier, seems to allow for retributive action only if the third country consents. Consequently, the United States would not have been justified in taking action against either individual on retributive grounds without having been granted permission by the country in which the terrorist was hiding or operating. Arguably, given the likelihood that in the bin Laden case the Pakistani government knew about his whereabouts or was actively supporting him, asking for permission would probably have prevented the reestablishment of a state of justice that bin Laden’s past wrongdoing had disrupted. Likewise, had the United States informed the Iraqi government about its intention to target Suleimani, he probably would have been warned and would not have flown to Baghdad.

Crucially, seen from a Thomistic perspective, the consent issue does not conflict with the retributive just cause criterion. As Augustine, on whose thought Aquinas elaborated, puts it in the Questions on the Heptateuch (6.10): “As a rule just wars are defined as those which avenge injuries, if some nation or state against whom one is waging war has neglected to punish a wrong committed by its citizens or to return something that was wrongfully taken.” Not surprisingly, the Augustine scholar Elshtain concluded in the context of a related phenomenon: “The horror of today’s so-called failed states is testament to that basic requirement of the ‘tranquillity of order.’” Augustine’s argument seems perfectly in line with Aquinas’s thinking about the ruler’s responsibility for the
common good. Seen from a Thomistic perspective, in cases where a legitimate authority is unable or unwilling to meet its responsibility to maintain or reestablish a state of justice, its borders, depending on the severity of the injustice committed, should provide no insurmountable protection against outside intervention. Interestingly, Walzer makes essentially the same argument in the context of military reprisals. He argues that in cases where governments are unable to control the people living in their territories and other states are harmed by this inability, “surrogate controlling and policing are clearly permissible.”27 On top of that, Walzer asserts that such action may exceed the boundaries that are commonly acknowledged for reprisals: “At this point, reprisal is like retributive punishment in domestic society: as punishment assumes moral agency, so reprisal assumes political responsibility.”28

**Just Cause and Right Intention**

Importantly, however, any such retributive action, as seen from a natural law perspective, must be proportionate to the terrorist’s wrongdoing. Arguably, given Nabhan’s, bin Laden’s, al-Awlaki’s, and Suleimani’s responsibility for the deaths of many innocent people, any punishment other than the death penalty would seem out of proportion. However, arguing that those individuals deserved the death penalty in principle does not mean that all terrorists become liable to lethal force. Rather, retributive punishment should be measured according to a terrorist’s individual culpability. In order to make this determination, based on the Thomistic conceptualization of the ruler as judge, a trial in absentia could be held in cases where alleged terrorists actively seek to flee from prosecution.29 If the wrongdoers, after having been sentenced and asked to turn them themselves in, continue to hide, they should be considered unwilling to take responsibility for their misdeeds. In a sense, a trial in absentia process for retributive targeted killings would be reminiscent of the nineteenth-century requirement to give the wrongful side a chance to make reparations before an armed reprisal would be justified. The argument made here attempts to find a balance between two conceptions of domestic capital punishment and, building on Aquinas’s parallel between the death penalty and war, applies it to the practice of targeted killing. Bradley Strawser describes these two conceptions as follows:

Most retributivist accounts of capital punishment, of course, hold that persons deserving of death as a punishment for their crimes should receive that punishment only after being found guilty through a legitimate judicial process in a court of law. Some, however, think the necessity of delivering someone his or her “just deserts” can be so weighty in particularly extreme cases (such as, say, Adolph Hitler or UBL), and that in such cases the guilt
It is clear that for the Thomistic just war adopting the idea of a trial in absentia will go beyond what Aquinas would likely have sanctioned during his own days. As discussed in the second part of this book, Thomas put steadfast trust in the role of the ruler as an “avenger of justice,” so the idea of a trial in absentia that is independent from the executive branch of government would probably have raised the bar for using lethal force too high for his taste. Still, given the circumstances of today, the idea of a trial in absentia seems to be a better solution and one that does not stand against the general Thomistic approach. To sum up, the principle of just cause, from a retributive Thomistic point of view, allows for the targeted killing of culpable unjust individuals who seek to evade prosecution. Furthermore, against the Westphalian paradigm, a state’s borders should not function as unbridgeable protection from outside intervention.

Having established that in principle the retributive targeted killing of culpable unjust individuals is morally defensible does not yet answer the question of whether such punitive action should be carried out. This is where Aquinas’s rejection of a lex talionis becomes manifest. In particular, prudential considerations seem to caution against retributive targeted killings, such as the likelihood of an outbreak of war between the wronged party and the country on whose territory the operation would take place. While abstaining from the operation would allow for a situation of injustice to continue—namely, that the culpable unjust individual would not be punished—the likely killing and destruction resulting from a war between two legitimate authorities cautions against military action. While my own argument seems more far-reaching, I share Brunstetter’s concern that is encapsulated in his predisposition toward maximal restraint maxim. In this regard, the bin Laden and Suleimani operations provide practical illustrations. Depending on one’s reading, there are two possible interpretations of Pakistan’s behavior with regard to bin Laden. Either Islamabad did not know that bin Laden was hiding in Abbottabad, or it was unwilling to prosecute him. Despite some serious diplomatic irritation in the aftermath of bin Laden’s demise, it seems that there was at no time a danger that the operation would trigger a broader conflict between the United States and Pakistan. The main reason for this seems to have been the fact that bin Laden was an internationally prosecuted, culpable unjust individual rather than, for example, a member of Pakistan’s military or political class. The exact opposite was the case with Suleimani, who was dual-hatted in the sense that he was both a senior figure in the Iranian military and a culpable unjust individual. The operation that killed Suleimani thus came with the risk of triggering a large-scale war between the United States and Iran. While there have been reports that the Trump administration calculated that risk and considered
the likelihood of war to be low, the “Seven Days in January” nonetheless made the world hold its breath. In consequence, deciding on retributive targeted killings in third countries requires a significant amount of prudence from the legitimate authority that entertains an intent to strike. Moreover, while the question of war seems to be the most important one, there are further prudential considerations. Decision makers will have to grapple with before undertaking a retributive targeted killing. A noncomprehensive list of such further prudential tests would include the weakening of alliances and, in countries such as Yemen and Pakistan, tribal loyalties. Moreover, public fear and the possibility of a backlash against the intervening state must be calculated.

Additionally, one issue that immediately arises with such an argument is the objection that Somalia, Pakistan, Yemen, and Iraq were by far lesser military powers than the United States. Some might argue that had those countries been equal to the United States, the threat of war would have loomed larger in the aftermath of the targeted killings. Consequently, retributive action is likely to take place only in third world countries, which cannot afford to take the risk of confronting the great power that carries out punitive military action on their soil. And in fact it seems that the targeted killing of Islamist terrorists has taken place in weak states only. None of the countries in which the United States has carried out targeted killings could have risked going to war with Washington. In this context, Moyn’s account of the humanization of war comes to mind, in which he shows that the attempt to make war more humane, far into the twentieth century, would only apply to conflict between the Western empires, not to their colonial wars. I am aware that the use of retributive force in weak states has a certain neocolonial taste to it. However, this concern needs to be reconciled with the judgment that culpable unjust terrorists who hide in these countries deserve punishment and are either supported by these countries or the countries fail to meet their obligation to bring the terrorists to justice. Consequently, when the danger of war between the intervening party and the host country is remote, it seems reasonable to conclude that allowing for retributive targeted killing in such cases can be morally justifiable. When, however, the targeted killing risks an escalation to large-scale war between the intervening country and a third country, as was the case in the aftermath of the Suleimani operation, it seems prudent not to punish. Again, the latter is a judgment call only those in authority are legitimized to take. That said, of course, the preferable outcome would be that states that fall within the unable or unwilling category rise up to their responsibilities and prosecute hiding terrorists themselves. This argument resonates with Brunstetter, who emphasizes what he calls the “probability of escalation principle.” The gist of his argument is that decision makers should carefully consider the risk of escalation from vis to bellum, speaking of a “presumption against escalation.” In my argument on the second
type of vis this book investigates, I argue that depending on the magnitude of a violation of an important international norm, limited force may be used to escalate. The reason for this is that more is at stake than in carrying out a retributive targeted killing. In other words, the risk of escalation to war may be acceptable in response to a dictator butchering his/her own people, but the practice of retributive targeted killing does not rise to such importance.

In addition to the “sovereignty objection,” Luban identifies the “biased judgment objection,” which he asserts applies regardless of the nature of the adversary. The morally problematic aspect, for Luban, is that the punishing state cannot be trusted to make an impartial judgment about when to punish. Making this argument, Luban could draw support from the nineteenth-century historical record, which shows that the concern that the use of reprisals could be abused to advance national policies featured prominently in the legal discourse at the time. One nineteenth-century example that strikes us as wrong today is what Lauren Benton calls “protection emergencies,” measures short of war carried out by European imperial agents as they saw fit in order to avoid large-scale war. After taking a closer look, however, Luban’s concern can be addressed. Of course he is correct that, in order to arrive at a just verdict, the temptation to give in to “vengeful rage” must be avoided. While the lust for vengeance may be difficult to resist, particularly in light of grave wrongdoing such as terrorist attacks, it nonetheless seems possible with the support of the moral virtues. Besides the prudential concerns that warn against possible negative side effects of retributive targeted killings, the virtue of charity and its derivative mercy also have a role to play in the regulation of this practice. As noted earlier, arguing that retribution can be a legitimate just cause for targeted killing, and that culpable unjust individuals, depending on their guilt, may deserve the death penalty in principle, does not mean that this type of punishment should be administered. Flowing from mercy, whenever it is reasonably possible to capture culpable unjust individuals, doing so should be a matter of first resort. If captured, individuals who on natural law grounds deserve the death penalty should be taken to court and, if sentenced, subjected to life imprisonment. Consequently, in case Hersh’s account of the bin Laden operation is true, bin Laden as an unarmed and gravely ill prisoner of the Pakistani ISI should have been captured, not killed. Likewise, had there been opportunities to capture Nabhan, al-Awlaki, or Suleimani at reasonable risk, as based on some reports may have been the case, that would have been the right choice. The reason for this is that the modern popes are right that the death penalty, while justified in principle, is in tension with the virtue of mercy.

Judging from what has been argued so far, is retributive targeted killing a theoretical option only? The answer is no, although the question cannot be answered easily given the circumstances of capture missions. There is reason to
argue that the risk soldiers should take in capturing individuals such as Nabhan, bin Laden, al-Awlaki, or Suleimani is minimal. If there is credible reason to believe that soldiers, as just combatants, may be harmed, there is no moral obligation for them to take this risk. In other words, if a legitimate authority determines that violent resistance to capture operations is likely, riskless means such as drone strikes present a morally justifiable option. It is here that modern weaponry with its ever-improving precision can address Luban’s concern that war is too blunt an instrument to inflict retribution. Crucially, however, flowing from the moral culpability account, the culpable unjust terrorists alone would be targetable. From a retributive Thomistic perspective, as it is only they whose culpability has been determined, retributive targeted killing would not allow an air strike that might kill or harm other innocent individuals. In cases where it is impossible to strike at the culpable unjust individual without harming others, the use of force cannot be a means of justifiable punishment. Even the grave state of injustice that the terrorists in the previously discussed cases caused through their wrongdoing cannot justify the shedding of innocent blood on retributive grounds. Interestingly, my argument provides an answer to one of the revisionist arguments against punitive war: “To catch innocent people in the net whilst trying to punish the guilty seems morally worse than letting the guilty escape punishment, even when we feel that punishment is richly deserved. If this intuition is right, we can see why punitive wars are generally thought to be unjust. Punishment that will inflict harm not only upon those who deserve it but also upon the innocent cannot be a just cause for war.”40 In consequence, by limiting punitive force to those who deserve it, the Thomistic take can address one of the revisionist concerns vis-à-vis punitive war. Moreover, my argument is more restrictive than what would seem allowed by the DDE, which, as noted in chapter 6, is traced to Aquinas and constitutes a bedrock principle of the legalist paradigm’s jus in bello. Thus again, while grounding my argument in Thomas, I am not following Aquinas in every aspect. Interestingly, Luban seems to accept this strictly circumscribed justification for retributive targeted killing. While he generally rejects war on retributive grounds as indiscriminate, he seems to allow for targeted killing as a discriminating exception to the rule when he states that examples such as the targeted killing of bin Laden constitute an exception in which exclusively a guilty person was killed.41 McMahan, too, accepts the logic of my retributive argument, although he rejects it as morally indefensible.42

Given these very strict limitations for retributive targeted killing, occasions in which such action is morally justifiable will be rare. However, following a retributive reading of Aquinas, retributive targeted killing can be morally justifiable. Interestingly, Brunstetter’s position on retributive force seems to be in between the Walzerian/revisionist rejection of retribution and the Thomistic
case for limited retributive force. Brunstetter makes a distinction between the ideal and nonideal arguments for limited force. The ideal argument does not support retribution as just cause because it fails to satisfy his jus post vim principles. However, when Brunstetter revisits jus post vim in the nonideal setting, he recognizes that punishment is a prominent rationale behind the authorization of limited force in the real world.\footnote{43} Thus, seeking to avoid a disconnect between theory and statesmanship, he argues, although reluctantly, for a “demonstrative retribution principle,” which unlike vengeful retaliation allows for a type of punishment for an action that was taken in the past but that has a demonstrative impact on future action.\footnote{44} Like Luban, Brunstetter points to the bin Laden raid as an example.

In conclusion, upon reflection on the practice of targeted killing as a form of vis, this section argued that, as seen from a Thomistic just war perspective, retribution, at least in principle, remains a licit just cause for war. Importantly, however, whether such wars should actually be fought is a different matter. It has been argued that there are good prudential and charitable reasons to deny retribution as a just cause for war between states. However, the concerns that advise against retributive war between states do not seem to apply to war between states and nonstate actors in the same way. It was argued that retributive targeted killing of culpable unjust individuals can be morally justifiable both in principle and practice. Put differently, such action can be reconciled with the just war criteria of just cause and right intention. Building on a Thomistic virtue approach, the section concluded that, while retributive targeted killings can be morally defensible, such action must be subject to very strict criteria and will thus be justifiable in rare circumstances only.

**Targeted Killing as Prevention**

Not surprisingly, as retribution as just cause for war has been rejected by both Walzerians and revisionists, this rationale has not yet featured prominently in the debate about jus ad vim. As contemporary just war thinkers concentrate on self-defense, jus ad vim has overwhelmingly been reflected upon as a means of defense. However, as discussed in chapter 6, there seems to be no consensus on what exactly constitutes a defensive use of force. On the one hand, Walzerians are willing to go beyond the strict standards of preemptive self-defense as enshrined in the Caroline standard, but they deny the morality of purely preventive war. On the other, revisionists are open to both preemption and prevention as just causes for war. This section develops an argument for anticipatory targeted killing based on the Thomistic just war.\footnote{45} In order to do that, it revisits the account provided by Emery and Brunstetter, which puts forward an elaborated proposal for preventive targeted killing that, crucially, includes a retributive
The thought of Aquinas, it is argued, can be used to complement their suggestion.

At the beginning of their argument, Emery and Brunstetter assert that states’ right to self-defense comes with the right to use limited preventive force. Being aware of the conflicting uses of preemption and prevention, the authors make a distinction between strikes that respond to an imminent attack and strikes against future threats that are not yet imminent. For the latter category, they use the term “‘lagged imminence.’” Striking targets of lagged imminence, for them, constitutes a preventive use of force. Emery and Brunstetter develop the notion of lagged imminence in contradistinction to the controversial interpretation of “perpetual imminence” that was first employed in the Bush administration’s 2002 Security Strategy and was later adopted by the Obama administration as rationale for its targeted killing policy. That conceptualization claims that there is at all times a threat of an attack to occur, although there is uncertainty about when exactly. As a result, the threshold of last resort has been crossed, and taking lethal action is seen as justifiable. In contrast, Emery and Brunstetter hold that only rarely do targeted terrorist suspects pose an immediate threat. They might at one point in the future become an immediate threat, however. The term lagged imminence is meant to describe such threats. Emery and Brunstetter emphasize that their conceptualization is less permissive than the perpetual imminence standard, while at the same time it goes beyond what would be allowed under the Caroline standard.

Importantly, the authors limit their argument for prevention to the setting of regimes of nonstate responsibility. Following Walzer’s initial idea, they imagine preventive targeted killings as part of a hybrid framework of jus ad vim that applies in locations that seem to lie in between the zones of peace and war. Their account would be more permissive than the law enforcement paradigm, which only allows lethal force as a necessary and proportionate response to an imminent threat. Self-evidently, it would also deny the legitimacy of the controversial perpetual imminence standard. At the same time, it would be more restrictive than the war paradigm because it would not allow the targeting of individuals based on the existence of a state of armed conflict. In concrete terms, their blend of law enforcement and war paradigms suggests three criteria of last resort—namely, a transparent process to determine who is being targeted and why, clear evidence about the ongoing threat posed by the suspect, and giving suspects a chance to turn themselves in. Importantly, Emery and Brunstetter affirm that the responsibility to decide when the threshold of last resort has been crossed falls to those in authority.

As discussed in the sixth chapter, there is considerable common ground between the Walzerian, revisionist, and Thomistic understandings of the morality of anticipatory force. All three sides accept the legitimacy of preemptive
self-defense as found in the Caroline standard. In addition, they all accept the justifiability of some anticipatory force that goes beyond the Caroline standard. While Walzer does not engage with the morality of targeted killing within the context of jus ad vim, he has argued that some anticipatory action may be justifiable in the conduct of this particular practice. He builds his argument on the assumption that the so-called war on terror does in fact constitute a conflict to which the war convention applies. Thus, following his argument for anticipatory war sketched in the sixth chapter, he defends a limited use of preventive force against individuals. Walzer argues that individuals who plan, organize, recruit for, or take part in terrorist attacks should be seen as legitimate targets. Capturing them would be preferable, as they could be brought to trial. However, in cases where that seems infeasible, targeting them for death would be morally justifiable.

While there has been no revisionist argument on the morality of anticipatory targeted killing within the context of jus ad vim, it seems fair to assume that, based on their account of liability to defensive harm, revisionists would be able to accept Emery and Brunstetter’s concept of lagged imminence. After all, that concept relies on the presence of a “real threat” that is highly likely to materialize at some point in the near future. Arguably, under such circumstances the alleged wrongdoer has made himself/herself liable to anticipatory defensive harm. Revisionists, following their focus on the “deep morality of war,” might well reject elements of the effort made by Emery and Brunstetter to fit their mechanism to the frame of international law, but it seems that they would accept the general idea. McMahan, for one, accepts that one can become liable to be killed preventively:

A person can make himself liable to be killed if he acts in a way that increases the objective probability that he will wrongly kill an innocent person. [...] If the only opportunity to prevent the murder occurs in advance of the time that the potential murderer plans to commit the murder, he can be liable to be killed at that time. For even at that time he has made it the case through his own wrongful action that either he must be killed or his intended victim must remain at high risk of being murdered by him.

It should also be noted that McMahan extends the argument of liability to preventive harm beyond material preparation for wrongdoing. For example, he includes mental acts such as the formation of an intention as a moral basis of preventive defensive harm. That said, of course revisionists would not agree that a distinct moral framework of jus ad vim is needed to govern anticipatory uses of limited force. For them, such force would already be covered by the existing rules, which they hold are the moral rules of everyday life.
Likewise, from the perspective of the Thomistic just war, the mechanism Emery and Brunstetter propose seems promising. Similarly to the revisionist position, the Thomistic just war will reject the need for a distinct moral framework of jus ad vim as, like any use of force by legitimate authority, targeted killings constitute acts of war, or bellum. However, imagined as an adaptation of jus ad bellum in the light of moral problems arising from uses of limited force, their proposal does make sense. That is why the following Thomistic argument will contribute an accentuation of the account provided by Emery and Brunstetter, rather than a distinct new argument. The contribution Thomistic just war can make relies on Aquinas’s account of virtue and is thus especially sensitive to considerations of right intention.

To begin with, while the idea of a trial in absentia would probably have been alien to Aquinas, it seems that such a procedure can function as a safeguard against the vices Thomas warns against in his thought on anticipatory force. Remember that Aquinas is concerned that the ruler’s suspicions may lead him/her to authorize a morally indefensible act. That is why he emphasizes that “blame and merit” should not be allocated based on the potential to act but on the actual act. And in fact, based on the circumstances of the cases considered earlier, it seems that a trial in absentia could have functioned as an effective tool to avoid taking action based on some of the vices identified by Augustine and cited by Aquinas in his “Quaestio de bello.” Few will accuse the Obama and Trump administrations of having acted against Nabhan, bin Laden, al-Awlaki, and Suleimani based on suspicion alone. However, both administrations had to assess the intelligence they received, and they were asked to, in Aquinas’s words, “interpret doubtful matters.”57 When taking a decision to strike or not to strike in an act of anticipation that goes beyond preemption, these decision makers are inevitably in need of military prudence. After all, for Aquinas “Prudence is the knowledge of what to seek and what to avoid.”58 As Reichberg puts it, military prudence requires decision makers “to conjoin reasoned judgment, technical skill, and the appropriate emotional dispositions.”59 Adding a trial in absentia before an anticipatory targeted killing can be carried out would essentially amount to an act of military prudence. It would help ensure that anticipatory action is not taken upon suspicion or upon inappropriate moral dispositions. This is a crucial distinction to make, as anticipatory action, as seen from a Thomistic perspective, requires evidence that there is a real threat, even if that threat is not yet imminent.

Furthermore, it is important to note that the suggestion of a trial in absentia may include a retributivist aspect. As pointed out in the sixth chapter, Aquinas can be read as connecting considerations of postwar justice to anticipatory uses of force. Consequently, evidence of past terrorist activity may partly inform the deliberation process in the trial in absentia. For example, imagine there had
been trials in absentia leading up to the strike decisions against Nabhan, bin Laden, al-Awlaki, and Suleimani. Their previous wrongdoing would have been a testament to their dedication to and capability of carrying out future attacks. In other words, their past crimes would have made the evidence against them regarding their ongoing plots more powerful. There is a difference to be made between ongoing threats that are highly credible and threats that are not as credible. Only the most credible cases may justify targeted killings as anticipatory acts of vis. It will be the judges who decide against whom lethal force may be employed, but grave past wrongdoing may have, and should have, an impact on their decision. Interestingly, this is an argument McMahan is willing to accept when he argues that past terrorist activity reinforces other evidence that the suspect is preparing further attacks.60

When the trial in absentia affirms lethal anticipatory force against an individual, it seems that the moral requirements of anticipatory targeted killing are not the same as those for the retributive variation. In particular, it seems the rules for anticipatory targeted killing should be more permissive than those for retributive targeted killing. Following Emery and Brunstetter, the Thomistic just war insists, as it does for retributive targeted killing, that capture should be the option of first resort. One should remember that the response undertaken goes beyond preemption, and thus there is no imminent threat that requires instantaneous action. There is an opportunity for the legitimate authority to decide when the anticipatory action should be carried out. At times that may mean that an operation should be postponed when the circumstances do not seem right. If and when it is possible to capture the individual at reasonable risk for its service members, it would be both charitable and prudent to do so. If, however, the legitimate authority estimates that the risk of its just combatants being harmed is too high in a capture attempt, targeted killing by riskless means, such as drone strikes, becomes a morally defensible response. In the end, the capture question is a judgment call to be made by the legitimate authority, and the reported controversies in the Nabhan, bin Laden, and al-Awlaki cases are illustrations of its difficulties.

Importantly, if the decision is to employ kinetic action, the proportionality calculus of anticipatory targeted killing would be different compared to the retributive manifestation. As argued earlier, retributive targeted killings are not militarily necessary in the sense that they do not stop a current or future threat but impose a punishment for past wrongdoing. That is why it was argued that for retributive targeted killings to be justified, only the culpable unjust individual may be targeted. If it is impossible to avoid the harming of innocent bystanders, retributive targeted killing seems morally indefensible. What is gained by reestablishing the equilibrium of justice by punishing the wrongdoer does not even come close to compensating for the loss of innocent life. In this
sense, the Thomistic argument aligns with Brunstetter’s jus in vi “predisposition toward maximal restraint,” which holds that vis should be more restrictive than the rules that govern war. With regard to anticipatory action, however, the proportionality calculus is different. Consider a scenario of a threat in which, arguably, the use of lethal force constitutes a response that justifies the unintended death of innocent bystanders as a necessary response to stop a threat to life. Under such circumstances, Aquinas’s DDE should be applied. A person can only be held accountable for the action he/she intends; in other words, killing the imminent threat would be a morally good act irrespective of the unintended death the operation also causes. That said, of course any targeted killing, including preemptive action, must be proportionate to be justifiable.

Due to the imminence of threat in a scenario of preemptive targeted killing, it seems that the proportionality calculus should be different, less restrictive, compared to scenarios of anticipatory targeted killing in which there is no imminent threat involved. In the latter scenario the threat is more distant, and there is no immediate urgency to employ lethal force. In contrast to a scenario of preemption, the legitimate authority can thus wait for an opportunity to arise in which the target can be killed at an acceptable cost of innocent life. Crucially, while it seems that the proportionality calculus should not be the same for preemptive and temporarily more distant targeted killing, it falls to those in authority to make those difficult determinations. There can be no exact numbers of, say, how many innocent bystanders may be killed in an anticipatory targeted killing, as any case is different and requires careful consideration by those who decide on what action to take. For example, consider the aspect of anticipation regarding the targeted killings discussed in this chapter. The future threat of al-Awlaki, who at the time was thought to be the new face of al Qaeda, seems to have been greater than that posed by Nabhan two years earlier. In the operation that killed Nabhan four people were killed, while in the drone strike against al-Awlaki several of his companions died. Whether or not that loss of life was excessive or proportionate to the future threat the two terrorists posed had to be answered by the Obama administration. That task is an unenviable one indeed and, in order to rise to its challenge, decision makers need training in the virtues. There are many considerations to be weighed, which, in order to lead to good action, should be informed by the virtues, especially those of charity and prudence.

Finally, there is one more aspect of anticipatory targeted killing that needs to be grappled with. Emery and Brunstetter limit their defense of preventive drone strikes to the in-between zones of war and peace. Likewise, the Thomistic argument is limited to so-called regimes of nonstate responsibility, whose respective governments are unwilling or unable to take action against the culpable unjust
wrongdoers themselves. It goes without saying that, under the circumstances of anticipatory action, it would be preferable that those governments would take action and thus no need for the future victim state to act would arise. However, if such a need does arise, the prudential tests outlined for retributive targeted killing must also be considered. To recapitulate, those tests include the escalation to war, the weakening of alliances, tribal loyalties, and potential public backlash against the intervening state. Consider, for example, two cases that might be thought of as having been anticipatory in nature. In the official bin Laden case, Obama personally decided that Pakistan would not be informed of the raid beforehand, and in case of confrontation with surprised Pakistani forces, the SEALs would fight their way out. Obama was thus willing to risk a major escalation with Pakistan. Likewise, in the Suleimani case, the Trump administration apparently decided that averting the future threat he posed was worth taking the risk of an escalation to war between the United States and Iran. As is the case with the proportionality calculus, the question of escalation is a delicate judgment call that requires considerable prudence and, if the decision turns out to be wrong, that the legitimate authority must answer for.

CONCLUSION

This chapter has provided an argument about how a particular manifestation of limited force should be regulated. Taking a casuistical investigation of the official narrative of the targeted killing of bin Laden as a jumping-off point, the chapter provided a general argument grounded in the Thomistic just war. The argument made an effort to address the most pressing moral issues that were identified in the casuistical investigation. In particular, it grappled with the question of whether retributive and anticipatory rationales should be allowed to play a role in the targeting decision. The chapter concluded that if certain conditions have been met, both retribution and anticipatory self-defense beyond preemption, in addition to the generally accepted standard of self-defense, can be licit just causes for targeted killing. However, it was argued, that before a legitimate authority can legitimately act upon just cause, the criterion of right intention must be considered. In order to do that, the chapter made a plea for Aquinas's account of virtue informed by charity and military prudence. Regarding the fight for the just war tradition, the chapter's Thomistic contribution was twofold. First, against both Walzerians and revisionists, it affirmed the justifiability of retribution as just cause for uses of limited force. Second, being in agreement with both competing contemporary camps that anticipation can be a licit just cause, it elaborated on Brunstetter's Walzerian proposal.
NOTES

1. I cannot engage with all possible just causes here and therefore concentrate on retribution and anticipation. In chapter 10 I also engage with the deterrence justification.

2. Bowden, Finish, 60.

3. Obama, “Remarks by the President on Osama bin Laden.”


5. Hersh, Killing of Osama bin Laden, 27.


8. Interestingly, Brunstetter makes a similar argument by referring to Grotius’s understanding of meionexia, defined as “demanding less that what one is due.” Regarding vis, Brunstetter argues “that pursuing justice to the letter can be counterproductive,” having in mind the post vim environment. See Brunstetter, Just and Unjust Uses of Limited Force, 83.

9. See chapter 5.

10. See Goodman and Vladeck, “Why the 2002 AUMF Does Not Apply to Iran.”


14. Klaidman, Kill or Capture, 261.

15. Brunstetter treats “drone strikes outside the ‘hot’ battlefield” and the use of special forces as morally distinctive manifestations of limited force. See Brunstetter, Just and Unjust Uses of Limited Force, 8–12.


17. Luban, “War as Punishment,” 308. Parts of the following section draw from Braun, “Morality of Retributive Targeted Killing.”


19. Luban, “War as Punishment,” 310. Frowe, in her revisionist argument against war as punishment, sides with Luban: “This is not to deny that a state might deserve to be punished. But in the absence of a person or body who may rightfully decide upon and impose punishment, it is impermissible for even warranted punishment to be administered. Individuals, and individual states, do not have the right to mete out punishment.” Frowe, Ethics of War and Peace, 85.

20. Vitoria, Relectio de Indis, 85.


24. This is an important distinction that will become relevant again in the later moral argument about the morality of vis to enforce international norms.


26. Elshtain, Just War against Terror, 54.


28. Walzer.

29. I adopt the idea of a trial in absentia from Emery and Brunstetter. However, there is a significant difference between my account and theirs. My retributive argument
looks to the past, while theirs looks to the future. Parts of my argument draw from previous work. See Braun, “Jus ad Vim and Drone Warfare.”

32. While reflecting on the targeted killing of bin Laden from an account of liability to defensive harm, Strawser shares some of my concerns with regard to the question of sovereignty violations. See Strawser, *Killing bin Laden*, chap. 6.
33. The Suleimani case is special in this regard. While the targeted killing took place in Iraq, it was an attack against an Iranian official. A large-scale war with Iran in the Middle East would certainly have been harmful to the United States, arguably more so than wars with lesser military powers in the region, such as Iraq or Yemen.
38. Benton, “Protection Emergencies.”
44. Brunstetter, 249–52.
45. In this chapter, I do not engage with the forward-looking rationale of deterrence. While the question of whether individual terrorists can be deterred has been discussed prominently in the counterterrorism literature, I do not engage with this aspect in greater detail. That said, the moral issue of deterrence features prominently in the chapter on retributive vis to enforce international norms.
46. See also Brunstetter, *Just and Unjust Uses of Limited Force*, 142–46.
47. Emery and Brunstetter, “Restricting the Preventive Use of Force,” 258.
48. Emery and Brunstetter, 259.
49. Emery and Brunstetter, 260.
50. Emery and Brunstetter.
51. For an analysis of this controversial interpretation, see Trenta, “Obama Administration’s Conceptual Change.”
52. Emery and Brunstetter, “Restricting the Preventive Use of Force,” 259.
53. Emery and Brunstetter, 278.
56. See McMahan, “Conditions of Liability to Preventive Attack.”
57. Aquinas, *ST*, II-II, q. 60, a. 4.
58. Aquinas, II-II, q. 47, a. 1.
62. On this point, Brunstetter disagrees. He imagines a “zero collateral damage standard” as “the standard for limited force used in punitive or preventive context.” Brunstetter, 230.
63. Brunstetter, too, emphasizes this hope. In line with his concept of jus post vim, he sees “Special Forces and drone strikes outside the ‘hot’ battlefield” as a contribution toward “reducing spaces of contested and fragmented sovereignty.” See Brunstetter, 159. He thus shares the Thomistic hope that at some point acts of jus ad vim would no longer be needed, as weak states would become capable of (re)establishing justice within their territories themselves. That said, reestablishing the equilibrium of justice, from a Thomistic point of view, is a sufficient just cause to use limited force.

64. Brunstetter, reflecting on his escalation principle, can be read as being in agreement that deciding on taking the risk of escalation is an inherent part of the job description of those in authority, and thus it is impractical to draft specific rules. See Brunstetter, 198.