Mark Tooley has kindly replied to my paper which argued that America’s War for Independence was unjust. His reply, much of which is taken up with a broadly accurate summary of my paper, makes some interesting points. It fails, however, to dent my argument.

Tooley begins and ends by targeting the “Religious Left” for trying to reinterpret the traditional “just war” criteria into “impossibly stratospheric standards, so that no war can ever be moral.” He claims that this “stratospheric standard” seems to afflict my analysis. Not so. Regardless of what the “Religious Left” may or may not think about war, I adopt the traditional just war criteria without gloss. And while those criteria are not “stratospheric” they are strict: a war must satisfy them all, and do so convincingly, if it is to be just. The American War for Independence signally failed to do so.

Tooley notes my conclusion that the colonial uprising may have satisfied two of the seven criteria: “competent authority” and “probability of success.” Of the latter he writes that it seems obvious that it was satisfied because the rebels won. This does not follow: the probability of success must be judged at the beginning, not the end. As David McCullough puts it in his impressive book *1776* the result seemed, to those who had been with George Washington from the beginning of the conflict, “little short of a miracle.” What, then, of Tooley’s response to my conclusion that the war did not satisfy the remaining criteria?

Was war a “last resort”? Tooley comments that the colonial trade embargo was “disrupted by events at Lexington and Concord.” These “events” were, of course, the deliberate resort to lethal violence by rebels in order to retain arms they had stolen from the authorities (clearly with a view to turning them on their lawful owners). Lexington and Concord were evidence, as one military historian has put it, of “planned aggression” by the rebels. Moreover, the response of the Continental Congress to these “events” was not the reigning in of the New England aggressors but an endorsement and escalation of their violence.

To my point that other colonies, like Canada and India, gained independence without resort to arms, Tooley replies that I did not consider fully what effect America’s successful Revolution had on British governance. Not only did I not consider it fully, I did not consider it at all. I did not do so because it has no bearing on whether the American rebels used force as a “last resort.”

As for “right intention,” the rebels failed to meet this criterion not only because they lacked a “just cause” which they could intentionally pursue, but also because they unfairly subjected loyalist Americans to unjust expropriation and exile. Tooley’s speculation that the loyalists were treated better than defeated rebels would have been is but another irrelevance. He mentions the thousands of deaths of rebels on British
prison hulks. This was, indeed, appalling. But deaths from imprisonment, disease and starvation are an obviously foreseeable consequence of wars and serve to reinforce the immorality of waging war unless all the just war criteria are satisfied. The “Patriot” leaders must bear the awesome responsibility for much if not all of the dreadful death and destruction which resulted, on both sides, from the unjust war they prosecuted.

Tooley claims that my “most egregious” charge is that the war surely prolonged slavery, since Britain abolished slavery throughout the Empire in 1833 whereas it would take another 30 years, and a civil war of obscene, fraternal carnage to achieve the same result in America. Would Britain have abolished slavery in 1833, he asks, if it had meant freeing the many slaves in America and compensating their owners? But, as he notes, the British abolished their profitable slave trade in 1807 and, “after decades of humanitarian appeals,” slavery itself. The force of those appeals would surely have applied as much to slavery in America as elsewhere. And why need abolition have involved compensating owners? He may speculate that Britain would not have abolished slavery in its American colonies in 1833. But what we know is that Britain freed its slaves decades before America and without resort to war. The burden is on Tooley to show that, without the Revolution, the British would have maintained slavery in its American colonies (and even were he able to do so it would not justify the Revolution.)

Significantly, only four years before the Revolution an English court had freed an American slave in London on the ground that slavery was “odious” to the common law. This celebrated case may well have encouraged the American colonies, at least the southern colonies, to break with Britain precisely to forestall abolition of slavery by the British. For all the hypocritical rhetoric in the Declaration of Independence (drafted by a man who even enslaved his own children) about all men being created equal, it was the British who abolished slavery first. As Dr. Samuel Johnson so witheringly put it in his brilliant refutation of the rebel cause: “how is it that we hear the loudest yelps for liberty among the drivers of negroes?”

What of the requirement of a “just cause”? Tooley claims that the British “aroused not unjustified suspicions” and that the Founders, many inspired by Calvinist doubts about human nature, feared “any assaults upon liberty, however incremental, as potential steps towards tyranny.” But “suspicions” of “potential steps towards tyranny,” whether inspired by questionable religious beliefs or otherwise, are a long, long way from providing an objectively just cause for war. This is all the more so when those suspicions prove utterly unfounded, for it is accepted that the British had no wish to impose tyranny on the colonies. As a leading source on “just cause” explains, war is permissible only to confront a “real and certain” danger, that is, “to protect innocent life, to preserve conditions necessary for decent human existence, and basic human rights.” As another puts it: “the damage inflicted by the aggressor…must be lasting, grave and certain.” Suspicions of potential future steps toward tyranny, particularly when they are imaginary, simply do not suffice.
What, in any event, were these supposedly “tyrannical” steps? Indiscriminate slaughter? Pillage? Torture? No: steps such as reasonable taxation. That the colonists could not elect members of Parliament is neither here nor there. Many in Britain were taxed, and taxed far higher than the American colonists, but had no right to vote. “Taxation without representation” is a crude slogan, not a rational argument. Why was it unjust (let alone tyrannical) for the mother country to tax its colonies? In particular, why was it unjust when the tax was to help offset the massive cost the mother country had incurred to protect the colonies from the predations of the French? (Had it not been for that enormous expenditure, Americans might well now be eating garlic rather than granola and playing boules rather than baseball.) There is certainly nothing in the just war tradition to support the extravagant claim that taxpayers who (like the author, a resident of D.C.) cannot elect members of the sovereign legislature have a just cause for rebellion.

The other alleged justifications for the rebellion cited by Tooley, which are also answered in my original paper, fare no better. For example, legislation was indeed enacted by Parliament to provide for the quartering of soldiers (though not, contrary to popular myth, in private homes). What did the rebels expect when they engaged in treason by arson, assault, riot and robbery? The British Government in 1776 did no more than the U.S. Federal Government would have done in 1876 if confronted with open rebellion in one of its Territories.

Tooley claims that I blame the repression of the French Revolution on the example of the American Revolution’s ideals of ordered liberty. This is misleading. I merely observed that the financial cost of the war may have helped bankrupt the ancien régime and thereby have precipitated the French Revolution.

In conclusion, America’s War for Independence falls so far short of meeting the just war criteria that it is surprising that anyone who has considered the matter, at least anyone who subscribes to the just war tradition, should think otherwise. Endorsement of the Revolution rests more on emotion and myth than on reason and fact. The war’s blatant injustice may well be why two out of three American colonists did not support it. They were right.