

The New Millennium: Just War, Outdated Theory

by John C. Rock

“The quickest way to end a war is to lose it.”

George Orwell

Common wisdom states that winning wars requires winning hearts and minds, and as we wage the War on Terror we must be careful not to lose those people who wholeheartedly have thought and decided to support the fight. Ending this war prematurely would mean quitting before we have completely eliminated the terror-making capabilities of the rogue nations and regimes who threaten the *world*. If you think terrorism is only a bane of the West, or perhaps only directed towards Americans, then you do not understand the gravity of the situation. Terrorists are sophisticated, globalized, and networked. They gain support from numerous sources around the globe, and they pick their targets for maximum effect. Things did not start with the World Trade Center attack, terrorists have been killing people worldwide for decades, but with the WTC attack, they showed their seriousness and commitment. Obviously, there is nothing to be gained and much to be lost if we fail to defeat them. Therefore, to win this war we will have to examine how the nature of warfare has been altered and see if Just War Theory has kept pace.

Since September 11th a global war on terrorism has been declared, fought, supported, criticized, and argued against. A focus of both national and international scrutiny, this war has been and *is being* fought like none other in history. Yet, despite this “evolution” in warfare we have seen no correspondingly new thinking in Just War Theory. For proof, try this experiment: using your favorite search engine, search for “Unjust War”, the result is literally thousands of pages, some of which refer to other wars, but many of which criticize the legitimacy and justness of the current War on Terror. I encourage people to evaluate the war, to analyze world events as they unfold and to draw their own conclusions. Yet, when I read most of the criticisms, and allegations of “Unjust War”, I cannot help but think they are using the *wrong standard for measure*. The ideology of Just War Theory was outdated the day the Cold War ended, and certainly should have been buried in the rubble of 9/11.

The era of gentlemanly conflict is dead. It is not that nation states no longer try diplomacy first and then agree to settle their differences on the battlefield; rather it is simply the case that that is no longer the *only* mode of warfare. The idea that wars will be fought battle after battle with troops and tanks clashing with equivalent forces is an outmoded notion. No longer are there only set-piece conflicts with determinate targets, proportionate and reasonable conduct, uniformed soldiers, and clearly delineated national boundaries to limit areas of conflict. War is no longer *simple*, and many chivalric notions regarding the “honor and glory” of battle are now lost, or dead.

What condition constitutes *victory* when there are no factories, no massed troops or pockets of hold-outs, no sole-surviving aircraft carriers or entrenched tank battalions to eliminate? Look at history and we can find the circumstances of V-E Day and V-J Day and we can witness the parades. What are the circumstances for Victory-Terror Day?

In this very raw, very new world we are faced with entirely different adversaries then we are accustomed to. We now face foes who do not “play fair” and who do not suspend combat for tea-time or Christmas Day. We face homicidal suicide hijackers.

Our wars are fought against terrorists who slaughter innocent civilians by crashing jetliners into busy office buildings. We are forced to reconcile ourselves with images of female suicide bombers in Jerusalem, and other “martyrs” who see their suicidal killings as legitimate ways to oppose the public policy decisions of sovereign nations. We must live with the idea that terrorists are targeting America with weapons of *mass destruction*. Weapons intended to kill hundreds of thousands to *millions* of *civilians*. In addition to the “usual” nuclear, chemical and biological weapons, we now face nuclear-tainted “dirty” bombs, anthrax, and worse. Weapons which the terrorist can and *will* use if given the opportunity. Only in today’s world of amazing technology that defines the 21st Century, at the dawn of the new millennia can a *box-cutter* and a fully fueled Boeing carrying *passengers* be considered to be a “legitimate” weapon in the *war of terror*.

Given the current state of affairs, *how* can we stand by outmoded and outdated ideas of Just Warfare? Where in the Geneva Conventions or the UN Charter are box-cutters and airliners prohibited? The old tenets of Just War Theory are not only terribly inadequate, but absurdly naïve. Naivety is dangerous when it undermines the very ability to assess the legitimacy or justness of the current mode of warfare. We need a way to assess *this war*, and with it, assess the support for the war in the hearts and minds of the citizens.

If we are to assess the War on Terror, then we must create a new standard that can account for the radical changes to the means and methods of warfare in this century, changes that define the current conflict. We are faced with **asymmetrical warfare** on a global scale. A theory that can only appraise the unjustness of Hitler’s invasion of Poland, or wrangle with possible appropriate responses to an imminent Soviet invasion into Western Europe, or contemplate the value of Mutually Assured Destruction are now *ineffective*.

Old JWT works only with sovereign nation states as the crucial players. Nations fighting on open but defined tracks of land or ocean with clear objectives and reasonable expectations for behavior by both sides—this is the model JWT proposes, and clearly this theory is no longer sufficient. We need a new theory that can propose reasonable restraints and allowances for the critical issues to follow, questions the old JWT can not answer.

First, and *most important*, conflict is no longer limited to sovereign nation states battling each other. We are faced with questions of what to do with *quasi*-states like Palestine. Or we need to know how to confront sub-national aggressors, commonly called *terrorists*. And terrorists can be *organizations*, small, scattered groups or perhaps only a single *individual*. And, obviously, these organizations or individuals are not entities with their own national borders. Instead, they are *hiding* in and *using* some sovereign nation as a base of operation. Possibly they are hiding *with the support* of the government, or perhaps without the government *even being aware* that they are hosting the enemy.

By what right and in what capacity and can we wage *war* against these roving aggressors? Can we pursue them across international borders? Do we need permission? What if a sovereign nation denies us access to terrorists within its territory, or across its territory? What if they deny us the use of our military bases? Are we required to limit our war to only internationally-approved strike areas, or using only pre-approved methods or troops? Does JWT *still* require that we declare our intentions beforehand?

How specific must we be? Can we *lie* about our intentions if it benefits us to spread disinformation? What of covert operations—necessary in a modern war on terrorism—must we get international agreement before acting? Can we go anywhere, anytime? What if time is critical? Furthermore, can an *individual* be an *acceptable* target? Can we pursue and eliminate any known member of a terrorist group? Only *selected* groups? How about selected key personnel? Does warfare permit assassination? Are terrorists counted as criminals or soldiers? Do they deserve POW status?

*Second, proportionality was meant to balance the use of force, as well as limit further acts of retribution between states. How do we measure proportionality in asymmetrical conflict? What is the “proper” response to the WTC attack? Do we need set and specific grievances, or can we now—unlike during the Cold War—can we now pursue *ideological* targets and infrastructures that support terrorist activities? Is a dispersed but hostile force that has not *yet* attacked a legitimate target? If they threaten attacks and bombings is that sufficient cause? Must we still wait for imminent threat and *only* respond at the last minute? Is assembling the tools to make weapons of mass destruction part of “imminent threat”? What if they are creating facilities, but are still years away from completion? How pre-emptive can we be? How thorough? Can we act on the *reasonable expectation* of an attack? Just *how proportionate* of a response is acceptable, and by what scale can we measure it?

Third, what are the components of the **success** criteria? What is “a reasonable chance of success” in the War on Terror? Does it apply only to *this action now* or to the war in general? How long do we have before we must decide if we were successful or not?

Fourth, what about codes of military conduct during this new era of warfare? How far do the ends justify the means? Can we separate “detainees” and deny them prisoner status and privileges? Can we use intermediaries to do our “dirty work” for us, and if they do find something can we use that information? What are the limits on “human resource exploitation” (i.e. *torture*)? What if it prevents the loss of hundreds, thousands or literally *millions* of lives? What if it only saves *one* person? What if the torture reveals *nothing useful* at all?

These four components of JWT are no longer philosophical ruminations and speculations on human rights¹, they are now crucial issues to understanding the new requirements of this unprecedented type of global warfare. Together, these four components form the basis for determining **just cause** for war, and **just conduct** in a *war of information, ideology, and secrecy*. A war where we may have only minutes to prevent a nuclear device from detonating in a major US city, and a war where we may have to get our hands dirty to discover *who* is carrying the bomb, *which* city is the target, and *when* is it going to detonate.

Just Cause, Rightful Authority, Just Conduct, Proportionality, Success, Last Resort, Rightful Intention, Public Declaration, these are the terms we have used when we discussed and debated the justness or rightness of wars in the past. Clearly, the old

¹ Arguably JWT was never “merely” idle speculation, but was always intended to be applicable to the various war conventions, etc. However, much of recent pre-September philosophy took on an air of speculation without application. Criticisms of past wars (Vietnam, Gulf War, Just Cause, etc.) dominate the literature, but the discussion is on for philosophers to debate, it does not seem motivated towards affecting political decision making.

definitions and extensions are no longer jointly sufficient, and possibly no longer even necessary conditions for JWT. Pragmatically, many are completely useless when confronting the modern, asymmetrical conflict. The new asymmetrical battleground underlies every international police-action, humanitarian intervention, and terror suppression campaign. Politically correct euphemisms aside, all conflicts involving military troops engaged in deadly combat [at home or] abroad are an aspect of *war*. And befitting the new era we find ourselves in, we need a thorough revamping of Just War Theory to account for and evaluate the new and subtle nuances of conflict in the new millennia.

So, before you attempt to decide if this war is just or unjust, before you believe one of the thousands of arguments out there, and before you post your own criticism of one side or the other, *recognize* that you are engaged in a flawed endeavor. Square pegs and round holes do not fit. The old model of Just War Theory is incapable of the task you are undertaking. It is a new world, and we need a new theory.