

Moral Dilemmas of Asymmetric Conflict

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Abstract and Keywords

Contemporary asymmetric war presents democratic regime with significant challenges. First, the status of non-state actors is ambiguous. Terrorists are not entitled to the protection of international law, but guerrillas should enjoy significant privileges that states do not always acknowledge. Second, lack of uniforms endangers the core obligation to distinguish between combatants and non-combatants. Third, active participation by civilians puts non-combatant immunity at risk if such civilians are liable to defensive harming. Fourth, the increasing use of soft or non-kinetic tactics in the form of media, cyber, legal, and economic warfare is not governed by international law, and may offer non-state actors a significant advantage. Finally, the laws and norms that bind guerrillas are a work in progress. Ideally, they should comply fully with the principles of military ethics, but in practice, some leniency is unavoidable.

Keywords: just war theory, guerrilla warfare, asymmetric war, insurgency, civilian immunity, combatant rights, human shields, national liberation, cyber war, non-lethal weapons

LIKE generals, lawyers are ready for the last war. The 1949 Geneva Conventions made a concerted effort to protect partisans just as they faded from the scene, while the 1977 Additional Protocols (API) promulgated new rules for colonial warfare just as the colonies of Britain, France, Portugal, and Belgium were breathing their last. Since the collapse of the Soviet Union, asymmetric warfare has dominated the international scene. These wars engage a variety of non-state actors. Some are international or pan-national terrorist organizations (e.g. al-Qaeda and ISIS). Others represent aggrieved peoples fighting for national liberation (e.g. Kurds and East Timorese), or guerrilla organizations wielding some governmental authority (e.g. Hamas or Hezbollah), or the remnants of a defeated government fighting occupation *and* their own state government (e.g. the Taliban). Elsewhere, the Arab Spring highlighted the demands of people against their own governments where the fight is for self-determination and regime change.

These conflicts are materially, legally, and morally asymmetric. Materially, the state party enjoys a monopoly on sophisticated arms. Guerrillas do not often possess tanks, air defences, or a navy. Legally, sovereign nation-states are the building blocks of the international order and the only legitimate purveyor of armed force. Non-states usually lack international standing. The moral asymmetry of modern armed conflict is glaring. Terrorist groups without any agenda to gain self-determination or ameliorate political and human rights abuses have little moral standing. Many insurgents, on the other hand, aim for these goals precisely. They thereby gain the moral high ground. Fighting for self-determination, they should expect forbearance and support from the international community.

As these struggles play out, the law of armed conflict (LOAC) and international humanitarian law (IHL) should govern state and non-state behaviour in asymmetric war. But guerrilla organizations and state armies often complain that the law of armed conflict ties their hands unjustifiably. The law, they claim, does not meet the reality of the modern battlefield. States defending themselves from terrorism, and guerrillas defending themselves from brutal states, require more latitude, tools the law cannot currently provide. Resolving the (p. 234) tension between the normative demands of law and ethics on one hand and the practice of war on the other is the task of international political theory (see Chapter 17).

Asymmetric War and International Political Theory

The normative demands of law and ethics are clear. The principle of humanity (or humanitarianism) emphasizes the obligation to mitigate suffering and protect human rights (see Chapter 22), and informs the two basic principles of LOAC and IHL:

1. Combatants may not suffer superfluous injury or unnecessary suffering.
2. Non-combatants may not suffer direct harm or disproportionate collateral harm.

Combatants are protected from inhuman weapons (such as blinding lasers), torture, and suffering beyond what is necessary to disable them as fighters. Non-combatants enjoy protection from any form of *direct* harm, having never lost their right to life or freedom from injury and torture. And, recognizing that non-combatants inevitably suffer in war, they enjoy protection from *collateral* death and injury when these harms are not necessary to achieve legitimate military aims or are excessive when compared to the benefits of achieving these same aims.

Although the principles are relatively clear, severe difficulties arise in practice. State armies routinely employ aggressive interrogation techniques and targeted killing, while guerrillas assassinate some enemy soldiers and kidnap others. Distinction—or the obligation to discriminate clearly between combatants and non-combatants—is confounded by guerrillas who fight in mufti, use human shields, and operate from dense, urban areas. Non-combatant immunity—the obligation to refrain from unnecessary, disproportionate,

or direct attacks on non-combatants—runs afoul of the crucial role that civilians play in contemporary armed conflict. No party to an asymmetric conflict can prevail without disabling civilian infrastructures that provide crucial war-sustaining aid. With civilians in the cross-hairs, humanitarianism and non-combatant rights may strain and break.

The Challenges of Contemporary Asymmetric War

Contemporary asymmetric war presents a number of normative challenges to democratic regimes for whom observing the principles of humanitarianism is a core obligation:

1. The nature of asymmetric conflict: Is it war or law enforcement? Are militants terrorists or guerrillas?

(p. 235) 2. Lack of uniforms, human shields and the problem of discrimination: How do state armies identify and protect non-combatants during armed conflict?

3. Civilian participation and the problem of liability: What is the status of civilians who take an active role in the fighting? At what point do civilians lose their immunity?

4. Soft war: Increasingly, belligerents turn to soft war: nonkinetic tactics that include cyber terrorism, economic warfare, and public diplomacy. Does this level the playing field or offer non-state actors an advantage?

5. Guerrilla war: What laws and norms bind guerrillas?

Answering these questions highlights the close connection between the normative theory and empirical investigation. Normative theory prescribes how the parties to asymmetric war *ought* to fight. Empirical data demonstrate how they *can* fight. Relying solely on theory to answer these questions may yield answers that are impracticable; relying solely on practice may yield answers that are ethically unsound. To bridge the gulf between *ought* and *can*, international political theory must rely on both (see Chapter 4).

The Nature of Asymmetric Conflict

Because nation-states usually regarded guerrillas, insurgents, and rebels as little more than criminals, asymmetric wars were typically fought in the shadow of the law. Upon capture, guerrillas faced trial, punishment, and often execution. With the passage of the Additional Protocols to the Geneva Conventions in 1977, guerrillas gained recognition as combatants, provided they fought wars of national liberation against colonial, alien, or racist regimes. It is reasonable, therefore, to speak of two types of asymmetric conflict. The first is the war on terrorism, and directed against groups that perpetuate terrorism in the absence of any national agenda. These groups are international criminals, and subject to the rules of international law enforcement that emphasize interdiction, arrest, trial, and punishment. Terrorists are not eligible for combatant status and therefore not eligible for release when hostilities end.

The second type of asymmetric conflict embraces wars of national self-determination in such places as Israel, Chechnya, East Timor, Eritrea, and Kosovo (Gross 2015). While it is common (and easy) to blur the lines between the two groups, it is crucial to see that the practice of terrorism varies widely. National groups do not use terrorism exclusively and, in fact, most prefer to fight state armies rather than target non-combatants. But this varies considerably. While 68 per cent of Israelis killed by Palestinian guerrillas between 1987 and 2012 were civilians, this number drops to 53 per cent in Northern Ireland and 3 per cent in Chechnya, and virtually disappears in the Western Sahara, East Timor, and Eritrea, where guerrillas disavowed terrorism almost entirely (Guardian Datablog 2010; Gross 2015: 153–4; Hughes 2007: 150). These data question the old saw “one man’s terrorist is another man’s freedom fighter.” Some non-state actors are only terrorists, and warrant arrest and prosecution like any criminal. Others are only freedom fighters, whose organizations abjure terrorism and merit recognition under the laws of war. But many (p. 236) are terrorists *and* freedom fighters, whose organizations utilize terrorism as one tactic among many in the pursuit of national liberation. As such, they are akin to state armies that commit war crimes. Both enjoy the protection of the law but remain liable to prosecution and censure when they violate the norms of humanity. In practice, then, the art of classifying asymmetric conflict as war or law enforcement, and distinguishing between terrorist groups, warlords, and national guerrilla organizations, depends crucially on their war-fighting strategies and tactics *and* on knowing what goals groups strive for, how they constitute their authority, and the nature of their organization and activities.

Even so informed, a neat and dichotomous categorization is not always easy. Where, for example, do civil wars and local insurgencies fall? These are neither wars of national liberation nor terrorism, but violent attempts at regime change. What is the status of the parties to the conflict in Syria or Egypt? Where does a group like ISIS fit in? Its pan-national goal and brutal tactics suggest patent rejection of the international order. On the other hand, ISIS seems to aim for some kind of national organization complete with local institutions, a monopoly on power, and territorial control.

In the final analysis, modern asymmetric war is both war and law enforcement. It is war when guerrillas fight for just cause—national self-determination and a dignified life respectful of fundamental human rights—and when they respect those same rights among their enemy. It is law enforcement when they fight to undermine international peace and security with terrorism and murder.

Given the manifest asymmetry of modern war, questions arise early on about the right of guerrillas to enjoy concessions because of their weaker status. One of the most central is the right to fight without uniforms so that guerrillas are indistinguishable from the civilian population. This concession has led directly to the use of human shields, and has made it difficult to disable militants without harming non-combatants disproportionately.

Lack of Uniforms, Human Shields, and the Problem of Discrimination

How are state armies to identify and protect non-combatants during armed conflict?

Moral Dilemmas of Asymmetric Conflict

Consider the following examples:

- “The deliberate strategy of Hamas to blend in with the civilian population made it difficult for the IDF [Israel Defense Forces] to achieve the objective of the Gaza Operation—reducing the threat of deliberate attacks against Israeli civilians—while also avoiding harm to Palestinian civilians.” (Israel Ministry of Foreign Affairs 2010: 26)
- “[. . .] fixed launching positions [. . .] had been built mostly in the orchards of local farmers who were paid for their assistance by Hezbollah [. . .] The farmers who operated the systems received their instructions by mobile phones.” (Bar Joseph 2007: 589)

(p. 237) Fighting without uniforms offers guerrillas additional protection as they organize, train, and fight. It also puts innocent civilians in danger, as opposing armies cannot easily distinguish between combatants and non-combatants. How did this radical change in legal norms occur?

In one of its more contentious provisions, Protocol I permits fighting without uniforms “where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself” (API 1977: Article 44(3)). The framers of Protocol I had colonial occupation in mind, where the requirement to wear uniforms would make it nearly impossible for guerrillas to organize, train, collect intelligence, or mount an attack.

The right to fight without uniforms confers protection in two ways. First, it renders guerrillas indistinguishable from non-combatants, thereby allowing them to move freely to and from battle. Second, it makes it more difficult for enemy soldiers to target guerrillas for fear of causing disproportionate casualties among the civilian population. Why do guerrillas gain such a right that not only gives them an advantage when they fight uniformed soldiers but also puts their civilian population at great risk? The answer turns on just cause. Guerrillas earn the right to fight when they pursue national self-determination and seek relief from severe human rights abuses. They may shed their uniforms if fighting otherwise would doom them to failure and their people to persecution or genocide.

The right to fight without uniforms poses challenges for all sides. For guerrillas, there are constant temptations to utilize human shields. This is unavoidable, because the right to fight in mufti is intrinsically tied to the presence of human shields. Without the constant presence of civilians to shield guerrillas, shedding uniforms cannot serve its purpose of allowing insurgents to move freely and fight. Still, guerrillas must be very careful about exposing the civilian population to undue risk, and must minimize harm to non-combatants where feasible. This is their obligation under the principle of humanity. Nevertheless, they do not have an absolute moral obligation to refrain from conscripting human shields or from fighting among the civilian population (Gross 2015: 127–50).

In response to human shields and un-uniformed combatants, state armies face the difficulty of fulfilling the principles of effectiveness, necessity, discrimination, and proportionality. This lexical ordering is important, because there is often a tendency to jump to proportionality before examining whether an operation is effective, necessary, and discriminate. Much of this is publicity-driven. Images of dead and wounded women and children

are always potent, and it is easy to lay charges of excessive harm. Proportionality, however, only comes into play if an operation is effective and necessary. An unsuccessful or unnecessary military operation can never be proportionate. Effectiveness demands some reasonable expectation that an operation will, in fact, accomplish its goal. This is not always the case. Witness Israeli attempts to destroy Hezbollah headquarters in Beirut in 2006 (Gross 2008). Nasrallah's bunkers were just too deep. All the resulting civilian casualties were unnecessary once it was clear, or should have been clear, that attacks were futile. Civilian casualties are also unnecessary when they come as the result of operational errors and accidents, or when less destructive means are available to achieve military goals. Artillery, an area weapon, may (p. 238) be effective but unnecessary if precision-guided weapons are practicable or alternative operational plans feasible. In these cases, the accompanying civilian casualties are unnecessary and cause for condemnation.

Thus, the first rule of war-fighting among civilians is to avoid mistakes, unnecessary harm, and ineffective weaponry and tactics. Only then may one speak of the duty to avoid excessive harm to civilians. But asymmetric war, lack of uniforms, and urban warfare impinge upon these imperatives. The response of state armies to the moral imperative of humanitarianism is both technological and tactical, and includes precision-guided munitions (PGMs), non-lethal warfare, cyber operations, and targeted killing. None of these is without controversy. PGMs are only as precise as the intelligence behind the choice of targets; non-lethal warfare runs afoul of international conventions that regulate chemical warfare; cyber operations often target non-combatants directly; and targeted killing often smacks of extra-judicial execution (see Chapter 19). None is without remedy. All may be permissible in view of the normative duty to mitigate harm to non-combatants and the practical difficulty of battling militants who fight without uniforms and from within the civilian population. This problem is particularly acute in asymmetric war, where, unlike in interstate warfare, belligerents remove their insignia at will and melt away.

Nevertheless, and in spite of the standing obligation to mitigate harm to non-combatants, one must recognize that not all civilians are non-combatants. Traditionally, there are two groups of actors during war: armed and uniformed soldiers who fight, and unarmed and un-uniformed civilians who take no direct role in the fighting. The former are liable to harm, the latter immune. But asymmetric war draws many civilians into the fighting. Not only are civilians outwardly indistinguishable from militants, they are often functionally indistinguishable. Some civilians provide war-fighting aid: active intelligence gathering and weapon's operation. But many others, provide war-sustaining aid without which a guerrilla army or insurgency would certainly collapse. Disabling these targets is essential if state armies are to prevail. The law and ethics of war, however, prohibit direct attacks of any kind against war-sustaining civilian targets. Rethinking the principles of just war in light of the exigencies of asymmetric war, on the other hand, opens the door for permissibly targeting civilians with moderate levels of force. Here, non-lethal and cyber weapons are particularly useful when confronting civilians who help sustain the fighting.

Civilian Participation and Participatory Liability

Guerrilla military organizations are relatively small. Fighting Israel, Hezbollah and Palestinian forces did not exceed 10,000–15,000 fighters (Arkin 2007: 74; Harel and Is-sacharoff 2008; International Institute of Strategic Studies [IISS] 2006). In Afghanistan, the Taliban numbered 8,000–10,000 fighters in 2008 (with 22,000–32,000 part-time guerrillas). A maximum of 18,000 guerrillas fought in Kosovo, 20,000 in East Timor, 5,000 in the Western Sahara, and, among the largest forces, 35,000 guerrillas (p. 239) fought for the Taliban in Afghanistan in 2010, 45,000 guerrillas in Eritrea, and 50,000 militants in Southern Sudan (Perritt 2008: 56–7; Mapping Militant Organizations 2017; Nevins 2005: 29; Pinto and Jardine 1997: 246; Cordesman 2003: 24; Pateman 1990: 81; FAS 2000).

Alongside each guerrilla military organization, a political wing provides an extensive range of social services, law enforcement and judicial institutions, telecommunications and transportation infrastructures, and legal, diplomatic, financial, and media facilities to sustain the war effort. In Kosovo, for example, the LDK (Democratic League of Kosovo) emerged as the political and diplomatic force behind the struggle for independence. Financed largely through donations of diaspora Albanians, the LDK operated an entire “parallel structure” that provided for education, medical care, sports, commercial, and diplomatic activities (Clark 2000: 95–121; Judah 2000: 70–2). In the Palestinian territories and southern Lebanon, guerrillas provided a similar range of services while also maintaining sophisticated radio, TV, and print media facilities (Love 2010). In East Timor, a “diplomatic front” and a “clandestine front” operated alongside guerrillas. The former pursued diplomatic initiatives and lobbying, while the latter enlisted civilians to “relay messages, smuggle out reports and photographs to Indonesian and international human rights organizations, and launch a number of daring protests” (Stephan 2006: 61; Weldemichael 2013: 195–217). Elsewhere, insurgent activities put civilians in the middle of the fighting by choice. During the Second Lebanon War (2006), local Lebanese farmers stored, serviced, and operated weapons on a part-time basis (Bar Joseph 2007). Others provided transport, logistical, and intelligence support, donated money, or sheltered guerrillas. Civilians are not only physically close to and outwardly indistinguishable from guerrillas; many civilians perform war-related functions.

How may states respond to these threats? Answering this question depends on the liability of the actors. When states face armed militants in or out of uniform or civilians who participate directly by operating weapons, law and ethics permit a lethal response. Determining combatant liability can be difficult, since many militants are not in uniform. To meet this challenge, states may employ targeted killing. In the absence of uniforms, states turn to intelligence to determine the combatant status of their enemy. Targeted killing is neither assassination nor extra-judicial execution. Rather, a targeted killing is the outcome of an operation that utilizes intelligence data rather than uniforms to establish a person’s affiliation and status as a combatant (Gross 2010: 100–21). The question, of course, is whether such data are reliable. During the Vietnam War, the Americans launched the Phoenix Program to identify and assassinate Viet Cong operatives. But among the more than 10,000 people killed, few were guerrillas (Kalyvas and Kocher

2007). Recent operations by Israel and by the US in Iraq and Afghanistan appear far more discriminating. Although there are still reports of mistaken identity, concerns hinge on collateral harm (Crawford 2013). These concerns are justified but confounded when civilians take a role in the fighting that makes them liable to disabling harm.

While states have legal and moral recourse to lethal force when confronting armed combatants or civilians who take a direct, war-fighting role in the fighting, how may they respond to civilians whose role is indirect but nonetheless essential? One answer is (p. 240) to disable “associated targets,” those war-sustaining facilities associated with a guerrilla organization’s political wing. The United States, for example, permits attacks on “economic objects of the enemy that indirectly but effectively support and sustain the enemy’s war-fighting capability” (US Department of the Navy 2007). Fighting al-Qaeda, the Bush administration targeted “al Qaeda leaders responsible for propaganda, recruitment, [and] religious affairs” (Bush 2010: 218). In its 2006 war with Lebanon, Israel exhausted its range of military targets very early in the fighting and then turned to telecommunication, transportation, media, law enforcement, and educational facilities. The legal justification for such attacks is weak. These are, after all, civilian facilities whose employees do not take a direct part in the fighting. As such, they and the places they work are protected from attack. On the other hand, states understand that it is impossible to prevail against insurgents without disabling war-sustaining infrastructures and the civilians who operate them. Posing a threat, these civilians should be liable to some measure of disabling force. The underlying moral principle that should guide state behaviour under these circumstances is the principle of participatory liability.

By law and ethics the status of all those party to a conflict is dichotomous. Individuals are either combatants and liable to harm or non-combatants and immune from harm. Reflecting the practice of asymmetric war, participatory liability challenges this dichotomy with a sliding scale that links participation with liability to harm. The more an individual participates and contributes to armed conflict, the greater force an enemy may utilize to disable that participant. Participation reflects both a civilian’s function within the organization and the magnitude of the threat the civilian poses. Each aspect of participation is usually observable, marked by a person’s occupation and the product or service he or she provides. At one end of the scale are non-combatants who assume no role in any war-related activity. They are not responsible for any threat and, therefore, immune from direct harm. At the other end are full-fledged armed combatants liable to lethal (but not inhuman) harm when necessary to disable their person and disrupt their activities. In the vast middle ground are participating civilians, analogous to those civilians working for a guerrilla organization’s political wing and who provide war-sustaining services. Commensurate with the threat they pose, participating civilians are liable to disabling force.

Understanding participatory liability allows states to modulate force consistent with a target’s liability. While combatants who pose a deadly threat are liable to lethal force, participating civilians are only liable to non-lethal force. There are, then, two components to participatory liability: liability and force. Liability is a function of participation and permissible force is function of liability. While state armies in the US and Israel, for example,

grasp the significance of liability, they often fail to modulate the use of force appropriately. As a result, American and Israeli troops attack many war-sustaining targets with high explosives; and while the Israelis made some attempts to distinguish between physical infrastructures and those who worked there (by targeting empty buildings), casualties remained high in Lebanon and Gaza (HRW 2007; UNHRC 2009). Applying less-than-lethal force requires considerable ingenuity and flexibility on the (p. 241) battlefield and consideration of non-lethal weaponry, cyber warfare, economic sanctions, and other soft war tactics (Gross and Meisels 2017).

Soft War: The Challenge of Unarmed Conflict

Modern asymmetric war is increasingly dependent upon soft or non-kinetic tactics. Non-lethal warfare, cyber operations, and economic warfare address the problem of participatory liability. Public diplomacy or media warfare highlights the role of soft power in contemporary warfare.

Non-lethal Weapons, Cyber Operations, and Economic Warfare

Among non-lethal weapons, calimative agents are chemical substances that depress the central nervous system to incapacitate militants and/or participating civilians. Once disabled, participating civilians might then be detained or deported. Fears of misuse of calimative agents coupled with legal restrictions posed by the Chemical Weapons Convention (1992) have limited the development of nonlethal chemical weapons. More promising are technologies that are not chemically based. Electromagnetic technologies, such as the US active denial system (ADS), emit very low levels of directed energy that causes sufficient transient pain to cause individuals to flee (Koplow 2006). Models designed for urban use offer a means to prevent civilians from entering facilities or removing them without bodily harm, thereby allowing state armies to arrest and detain participating civilians.

Unlike chemical and electromagnetic weapons, cyber weapons target infrastructures not individuals. Cyber operations range from denial of internet service and website overload to identity theft, stolen funds or destroyed data, to the destruction of critical transportation or utility infrastructures (Singer and Friedman 2014). Harm to individuals ranges from inconvenience to hardship to mental suffering, injury, or loss of life (Gross, Canetti, and Vashdi 2017). To date, no cyber attack caused anyone physical harm, yet many attacks have proved capable of disabling war-sustaining facilities or imposing hardship and financial loss upon the civilian population. Civilian facilities and networks are particularly vulnerable and often the target of choice.

Unlike cyber operations, economic warfare is not new. Yet both share a similar goal: to target and squeeze the civilian population. Each targets civilians, often innocent civilians, directly, with the hopes that civilian pressure will compel a government or non-state group to cease fighting. But economic and cyber warfare float in a legal vacuum. They are not a form of armed conflict, so the law of armed conflict is not applicable. Instead, vague references to humanitarian duties oblige belligerents to prevent grave suffering among the civilian population when they impose sanctions. Cyber warfare is less regulat-

ed still. Efforts to find a legal anchor to regulate cyber war remain a work in progress, and leave ample room for states to wreak havoc as they use cyber operations to disable military and civilian facilities. Nevertheless, and despite the fact they are largely unregulated, cyber operations and economic warfare deserve careful consideration as a (p. 242) tool of war. Avoiding physical harm, cyber operations may prove a reasonable and morally permissible method to disable participating civilians and the facilities where they work. Economic sanctions are more problematic. They are indiscriminate by nature and often cause extreme suffering among civilians. In response, smart sanctions that target the financial assets of state/guerrilla/terrorist leaders directly and/or specific technologies (like aviation parts or small arms) are gaining currency (Gordon 2011). They are not without critics, but smart sanctions, like cyber operations and non-lethal weaponry, hold the potential to target participating civilians proportionately and thereby fulfil the principle of participatory liability.

Nevertheless, unarmed tactics remain problematic. Smart sanctions are criticized because they still harm non-liaible civilians. Cyber and non-lethal technologies target civilian infrastructures directly, and therefore violate the principle of non-combatant immunity. But the practice of modern war suggests that the principle of non-combatant immunity is not always inviolable. There is no reason that international law cannot recognize the liability imposed by civilian participation as well as restrictions on the use of lethal force to disable such civilians. Therefore, when civilians are liable to disabling harm *and* when states respond with appropriate force, normative theory should adapt itself to the legitimate interests of all parties and make room to target some civilians directly. Assessing liability, legitimate interests, and appropriate force is an ongoing challenge. After wars conclude, such assessments are often the purview of international governmental organizations such as the United Nations. During war, things are considerably murkier, and these assessments become part of public diplomacy.

Public Diplomacy and Media Warfare

Public diplomacy and media warfare reflect the battle over imagery: who is right, who is wrong, who kills civilians justifiably and who massacres them (Mor 2007). Many fear that while Western powers win the military battles, they lose the media wars to savvy terrorists and guerrillas. While this is an overstatement, the internet and social media have “mediatized” war and levelled a once-asymmetric playing field (Kaempf 2017). Once denied access to sophisticated means of communications from telegraphy to television, weak states and non-states now command effective means to trumpet their cause and denigrate their enemy’s. Sometimes they are truthful, but at other times they fabricate the news from whole cloth.

When guerrillas in Afghanistan, Gaza, and Lebanon manipulate the media to exaggerate civilian casualties by enhancing images, moving bodies around, or staging photo opportunities, states are often left to defend themselves against massacres that never occurred or curtail military operations (Peskowitz 2010). In response, some states resort to censorship. By restricting battlefield access and by blocking images of death and destruction, the United States, for example, produced sterile and antiseptic images of a “near-blood-

less" war. But it proved impossible to control the battlefield: images, real or fabricated, leak out and find ample publicity in internet-based media. States, therefore, intensify media efforts of their own or leverage the soft power of public diplomacy by (p. 243) funding medical care and public works projects in occupied countries (Gross 2015: 213–39). The battle for hearts and minds does not end even when the fighting does.

Public diplomacy, media warfare, cyber operations, and economic sanctions sometimes supplement and sometimes supplant armed force. Largely unaddressed by law and ethics, these practices force normative adjustments, and highlight the synergy of normative theory and empirical investigation in international political theory. Similar considerations also compel us to re-examine the duties of guerrillas and insurgents.

Guerrillas and Insurgents

Often painting them as terrorists, many states decry guerrillas and insurgents as unlawful combatants unworthy of any of the rights due to war fighters. This conclusion is premature. Instead, we can think as cogently about just guerrilla war as we can about just state war, and ascertain the rights and duties of guerrillas accordingly.

Just guerrilla warfare hinges on the just cause that guerrilla organizations must embrace if they wish to fight. Just cause is not territorial defence but more fundamental: the right to self-determination and the right to a dignified life anchored in respect for basic human rights. The first, self-determination, offers grounds for a territorial nation-state or region of national autonomy within which to realize the second, a dignified life. Denied one or the other by a brutal or occupying regime, a people earn the right to fight. Of course, the right to fight does not allow anyone to fight by any means whatsoever. Political theory makes normative demands upon guerrillas that are consistent with those incumbent on any belligerent. These demands require respect for the principles of humanity outlined at the head of this chapter. Thus, guerrillas incur the very same obligations as state soldiers do.

Nevertheless, there is considerable room to test the normative demands of theory against the empirical demands of asymmetric war. We have already seen how the law of armed conflict has bent the rules of uniformed fighting to give national liberation movements a fighting chance against state armies when their cause is just. The right to fight without uniforms also opens the door to human shielding when militants choose to fight among civilians. Like state actors, guerrillas may invoke the principle of participatory liability and target participating civilians, whether through cyber operations or conventional attacks against war-sustaining facilities following warnings to evacuate (a tactic not uncommon to the IRA in the 1990s, for example: Rogers 2000). Likewise, one may make room for targeted killing, sanctions and boycotts, and concerted media campaigns by guerrilla organizations. If normative theory does not well regulate economic or media warfare (and it does not), then the same leeway accorded to states when they impose blockades or disseminate propaganda should be accorded to guerrillas and insurgents. Provided, of course, that their cause is just.

Just cause also imposes certain obligations on bystander states and the international community. In recent years, there has been growing interest in the responsibility to protect (R2P) (see Chapter 25). R2P is a proactive policy that should benefit an oppressed (p. 244) people. And, indeed, guerrilla armies in East Timor, Kosovo, and Southern Sudan have benefited from international military intervention during the last quarter century. Whether others merit military aid, in Syria for example, remains an open question. But a prior question is more fundamental: when should states avoid placing impediments in the path of a people waging just guerrilla war? One impediment is material. Removing material impediments requires the international community to refrain from arming states on the wrong side of an asymmetric war. Syria, again, is one recent example; Indonesia (in its fight against East Timor) or Ethiopia (in its fight against the Eritreans) are examples from the not too distant past (Weldemichael 2013). There are good grounds for denying these states arms and condemning the states that shipped them. Another impediment is legal. Legal impediments requiring uniforms, or protecting all civilians from all kinds of harm, or laws prohibiting targeted killings might be just as formidable as material obstacles. All may prevent parties from pursuing just cause by force of arms. Obstacles of this sort are not necessarily bad if they force belligerents to re-evaluate recourse to war, but they are problematic if they deny a people the ability to fight tyranny. Sorting through these conflicting rights and constraints is far more than a legal issue. The letter of the law must be sensitive to the normative demands of theory and the practicable requirements of waging an asymmetric war when the weaker party's rights are at risk.

Contemporary warfare, therefore, is seriously confounded by its asymmetry. Asymmetry forces states to look beyond the legally, morally, and materially asymmetric condition of their adversaries and recognize their status when legitimate. And, in the course of just war, the weaker parties may deserve a large measure of forbearance that requires nation-states to reconsider some of the norms governing interstate conflict. In some cases, non-states are nothing but criminals, but in many other instances, non-states pursue just cause and earn the right to fight without uniforms, pursue targeted killing, impose economic sanctions, and wage media warfare as they seek self-determination. In the past, states could brush aside such claims in the name of sovereignty and prosecute these conflicts as internal affairs. Recent changes to the law and practice of war, an increasingly aggressive International Criminal Court and United Nations, and proactive NGOs have put state, and guerrilla, conduct on the front burner and created normative challenges that neither side can ignore.

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