

Discriminating force: Just war and counterinsurgency

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In the wake of September 11, 2001, it was widely claimed that a new era of warfare was upon us, an era of asymmetrical conflict in which the order of nation-states was confronted with a transnational, decentralized enemy spread around the globe. One consequence of this development was that the relevance of the just war tradition was called into question.

The architects and advocates of this new way of war spoke of conducting “full spectrum” war in which distinctions between war and peace, combatant and noncombatant, were dissolved. Conferences and journals addressed “the failures of just war” and questioned the effectiveness and applicability of the traditional criteria of waging a just war: legitimate authority, right intention, just cause, last resort, reasonable chance of success, discrimination and proportionality.

The retreat of just war was also evident in theological circles as some abandoned “last resort” while others reduced “reasonable chance of success” to a matter of mere “hope” for success. Still others dismissed a rigorous use of discrimination as

undermining the war on terror. The plight of just war in the era of terrorism is perhaps best summed up by a theologian who suggested that we need a new ethic of war because the nature of combat and the weapons used today simply do not fit the old ethic.

Conditions of war in the first decades of the 21st century have indeed pushed the just war ethic into a crisis, but the various solutions proposed—weakening the criteria or calling for a new ethic altogether—are misguided. This is so because the new conditions of war actually match up well with the parameters of just war.

To make sense of our situation, it helps to begin by considering how war has figured in the American imagination. When Americans think of war, their imaginations immediately conjure up images of destruction on an enormous scale. From the special effects of Hollywood to the doctrine of overwhelming force (articulated by Colin Powell when he was chair of the joint chiefs of staff and by Caspar Weinberger when he was Ronald Reagan's secretary of defense) to dreams of home defense with assault rifles and megaround clips, war is usually imagined as unleashing massive firepower in the hope of achieving victory by annihilating the enemy.

A generation ago, ethicist Paul Ramsey described this as the aggressor-defender concept of war. Ramsey noted that Americans define just war with reference to the cause of war. A just war is one that responds to an overt act of aggression, and in response to that aggression, pretty much anything goes. In other words, for Americans just war thinking is more about permission to go to war than about restraining the conduct of war.

Furthermore, the permission granted is permission to destroy enemy forces. We imagine that war fundamentally is about destruction. Of course, restraint is not entirely absent even in this understanding. The focus is on destroying enemy forces while limiting the direct and intentional harm to noncombatants. So we might say that in the American context just war is about focused destruction.

The association of war with destruction of enemy forces extends beyond the popular imagination to encompass the ethos of the U.S. military as well. This can be seen in the military's commitment to being apolitical. The commitment originates in a proper and healthy respect for the subordination of the military to civilian leaders, and it extends to a vision of soldiers and soldiering as fundamentally apolitical. For example, General Dwight D. Eisenhower is often lauded in military circles as the

paradigmatic soldier because he was thoroughly apolitical. While in the service, he did not align himself with a political party or even vote.

The apolitical character of soldiering is also seen in the frequent assertion by soldiers that they are concerned only with (and so only responsible for) the conduct and not the cause of war. After all, cause is a matter of politics, whereas soldiering is about combat. As a popular military tattoo puts it, “Our business is killing.” Indeed, some soldiers absolutely refuse to offer any opinion on the morality of a war’s cause. They say, adapting Tennyson: “Ours is not to reason why; ours is but to do and die.”

In this view, war is apolitical in the sense that it comes after politics. There is politics, and when politics ends, there is war. After politics, destruction. From the time of George Washington through the Vietnam War until the recent and current wars in Iraq and Afghanistan, the U.S. military has consistently viewed war as postpolitical—that is, as a matter of annihilating an enemy after politics has failed.

The vision of war as essentially a matter of annihilating enemy forces can be traced back to Henri Jomini, a French general who served under Napoleon and then in the Russian army. His ideas were taught in U.S. military academies and schools and bore bitter and bloody fruit in the “total war” that characterized the U.S. Civil War as well as the Indian wars of the late 19th century. This idea of war is often mistakenly attributed to Jomini’s much better known contemporary, Carl von Clausewitz.

Clausewitz actually had a more complex view of war, one revealed by the aphorism for which he is best known: “War is the continuation of politics by other means.” Clausewitz recognized that war involves a “trinity” consisting of the people, the army and the government. In this view, war is not reducible to the destruction of the enemy forces. It is not postpolitical. Rather, war involves the intimate interplay of armed forces, the population and the government.

In this regard, it is worth noting that since 9/11 a small but significant number of voices have suggested that the world did not enter a new era of warfare that day. What that day marked instead was a wake-up call regarding the limits of viewing war as a matter of annihilating enemy forces. This wake-up call has reached the upper echelons of the U.S. military, which a few years ago dropped references to “the global war on terror” (GWOT) and replaced it with the notion of a “global counter-insurgency” (global COIN).

For those attuned to the just war tradition, this shift is a good thing. The Bush administration's aspirations to rid the world of evildoers and eliminate terrorism never sat well with the discipline of just war, which makes it clear that just wars are limited wars for reasonably attainable ends. While the goal of ending terrorism is desirable, it is neither limited nor reasonably attainable through military means. Absolute security and the end of evil cannot be brought about by the force of arms.

There is more to this shift than the rhetorical reining in of the goals of war. It signals a change in how the war against al-Qaeda and its affiliates is conceived. It represents a shift from war as annihilation to war as counterinsurgency.

The term *counterinsurgency* as I am using it here is distinct from what has sometimes gone on under that name. Some forms of counterinsurgency are nothing more than small-scale or covert wars of annihilation, such as those practiced in Central America in the 1980s, featuring death squads, state-sponsored terrorism and torture. The kind of counterinsurgency I refer to is that which turns from an "enemy-centric" to a "population-centric" strategy. It is strategy grounded in Clausewitz instead of Jomini. It recognizes that war is part of a larger political struggle and that military action cannot be the main form of action.

This is the insight behind the assertion that recently has begun to appear in the public discourse on the war against al-Qaeda: "We cannot kill our way out of this." This insight is reflected in the instructions given by a commander in Afghanistan, who told his troops that the conflict is won or lost not by destroying the enemy but by protecting the population. Unlike conventional wars of annihilation, counterinsurgency puts politics and winning hearts and minds at center stage.

What has this to do with just war and its supposed irrelevance? First, it suggests that what is in crisis is not the just war tradition but a particular vision of just war that has been hitched to the idea of war as the annihilation of enemy forces. When war is conceived not as annihilation but as counter-insurgency, the just war tradition is revealed to be not out-dated but crucial.

Consider the criterion of discrimination. Within the war-as-annihilation perspective, the criterion is interpreted loosely: noncombatant deaths that result from the use of overwhelming force and maximum firepower are excused as long as they are not directly intended. But according to counterinsurgency experts, such deaths undermine victory conceived in broader political terms. Once the just war tradition is

unlinked from war as annihilation, the just war tradition can provide a more responsible practice of discrimination suitable to a counter-insurgency context.

The full contours of a more robust vision of just war exceed the scope of this essay, but several features of its role in counterinsurgency can be mentioned. First, when political action is seen as more important than military action in the attainment of victory, then “last resort” and the pursuit of justice through nonmilitary means become key concerns. In this regard, it has been said in the world of counterinsurgency that a physician may be more important than a soldier, cement more important than concertina wire, and civil servants more in demand than infantry.

Second, when we stop thinking of war monolithically as a matter of annihilation of enemy forces, we can recognize that there is a continuum of force, from police action alone on one end to military force alone on the other. Counterinsurgency is a form of war that requires significant coordination with law enforcement and policing. Indeed, police action may have the upper hand insofar as the safety and security of the population, not annihilation of the enemy, is the focus of the mission in population-centric warfare. Such a “hybrid” is entirely at home in just war unlinked from war as annihilating enemy forces. Specifically, judgments regarding the kind and escalation of force are engaged by the criteria of “reasonable chance of success” and “last resort.”

Third, the use of weaponized drones is clarified. Drones have appeal because their remote operation reduces the physical risk to soldiers, and they represent a significant advance in precision over a B-52 bomber or an infantry division. Nevertheless, their use is controversial. Among the issues raised are those traditionally associated with the criteria of “discrimination” and “proportionality.” In the context of viewing war as annihilation, drones are lauded as an advance in discrimination. However, between 14 percent and 98 percent of casualties in drone strikes are civilians, which indicates what a devastating effect drones have on the communities threatened with drone attacks.

In the context of counterinsurgency, drones may actually increase noncombatant risk insofar as they extend the range and opportunities for military strikes to places where otherwise there would be no such threat. In this absence of drone technology, the civilian populations of Waziristan or Yemen, for example, would not be facing any attack. They would not be targeted by an infantry division or by B-52s. In this

context, therefore, drones are decidedly not more discriminating than the alternative—which is no attack at all. When the alternative is not an invasion or carpet bombing, drones increase the risk of harm to noncombatants.

Furthermore, the fact that a weapon may be more discriminating does not mean that it is sufficiently discriminating. The noted military ethicist Martin Cook has suggested that drones may be “tactically smart but strategically dumb.” The clear tactical advantage of being able to reach more bad guys while optimizing force protection is overridden by the damage such weapons do to the political aims of counterinsurgency, which is protecting the population and winning hearts and minds. In just war terms, drones may violate the criterion of “reasonable chance of success” because they undermine the political goals of the war.

The way beyond the deficiencies of war as annihilation exposed by the rise of the drones is not a new ethic but a more rigorous, responsible practice of just war. In marked contrast with the permissive vision of just war as it emerges in war as annihilation, counterinsurgency strategy calls for maximum discrimination and the minimum force necessary. This is because the focal point of counterinsurgency is protection of the population. The insurgent or terrorist is trying to provoke the counterinsurgent into using overwhelming force that inadvertently causes significant harm to noncombatants—with the result that the population turns against the counterinsurgents, thereby making victory more elusive.

A more rigorous vision and practice of just war is particularly well suited to the demands of a counterinsurgency because it recognizes that victory is determined by more than sheer destruction of the enemy. Likewise, it embraces a stricter standard of discrimination and proportionality, thereby increasing the security of the population in accord with the demands of counterinsurgency.

After more than ten years of war against an asymmetric opponent, the permissive vision of just war linked to wars of focused annihilation is in crisis. The context of counterinsurgency calls for more attention to the political dimension of war and thus for a more responsible and discriminating use of force. Far from calling for a new ethic, the context calls for a more robust vision and practice of just war.

The discipline of just war asks that the consolations of overwhelming force and insufficiently discriminating weapons be forgone. It asks that the fortitude to embrace the political dimension of war—the responsibility to protect civilians—replace trust in the force of arms that is central to war as annihilation. It

calls for a people dedicated to the harder right instead of the easier wrong. Are our communities forming such people? That is the real challenge of just war in the aftermath of 9/11.