A Just War: Examining War Justification In Operation Iraqi Freedom

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I. Introduction

War is an unfortunate, yet unavoidable, facet of American history. America has been involved in over twenty wars since the American Revolutionary War of 1775. War itself and the consequences of war have never been able to be reconciled with the moral principle of peace. It was St. Thomas Aquinas who theorized that the incompatible means of war and Christian-taught pacifism could complement one another in his *Summa Theologica*. Out of these theological postures comes the idea of “just war”.

A just war is a war that is led by moral principles, and because the war is waged within these moral boundaries, the war is considered justified. The just war principles are the foundations for the current laws of armed conflict used by American military forces today. They are the criteria used to determine if a war action is just, or if a war action is a crime against humanity. The principle of *jus ad bellum* (which primarily governs the morality of beginning a war), *jus in bello* (the morality of waging war), and *jus post bellum* (moral action taken after the war concludes) is the bedrock of modern American war-time conduct. The just war theories are prominently carved into international law by the post-World War II Geneva Convention Protocol.
I of 1949. It is this Protocol which details many sub theories of Aquinas’ just war, such as war time distinction, and proportionality.

There is a chasm between modern-day warfare and the philosophical theories governing when and what is justified in a war. Modern theorists argue that it is the principles of *jus ad bellum*, *jus in bello*, and *jus post bellum* that block American forces from obtaining their short term goal of fighting terrorists and neutralizing the insurgency in Iraq.\(^6\) Certainly, throughout history America has chosen when to honor these intangible theories and when to ignore them. If this is true, can it follow that these principles are baseless and even harmful to the American war objective? This argument is supported by examining the history of American war conflicts, the conflicting applications of this theory as demonstrated by American foreign policies and American military troops, and the nature of America’s current enemy in Iraq and Afghanistan as compared to America’s enemy during World War II, when the Geneva Convention Protocol was drafted.

II. *Just War* and the History of American War Conflicts

America has a long history of armed conflict, and by ratifying the Geneva Conventions of 1949, America pronounced a shift in its war-time procedures. From now on, America declared, we will “support the objectives of this [Geneva] Convention.”\(^7\) The Geneva Conventions were founded on the principles of just war; thus, America endorses the just war theories and sub-theories. However, the just war theories have not always been honored by American armed forces.}

\(^6\) The short term goal given by Pres. George W. Bush was: “An Iraq that is making steady progress in fighting terrorists and neutralizing the insurgency, meeting political milestones; building democratic institutions; standing up robust security forces to gather intelligence, destroy terrorist networks, and maintain security; and tackling key economic reforms to lay the foundation for a sound economy.” *Victory in Iraq Defined*, Our National Strategy for Victory in Iraq, November 2005.

forces. Two such instances can be immediately linked to this supposition: the Civil War and World War II.

The Civil War, fought from 1860 to 1865, was the first major war which demonstrated a disregard for philosophical military justifications. Military general and strategist William Sherman knew that wars were won by using a “total war” strategy, or a war strategy which mobilizes any and all available resources and population against one’s enemy. Sherman’s objective was to break the Confederacy’s spirit and infrastructure, and his famed “March to the Sea” did just that. Sherman knew that once the Confederacy felt civil pressure to end the war that their surrender would not be far behind. Any pseudo-historian can easily link the iconic image of the heroine Scarlett O’Hara running from a burning Savannah as the Yankees approach to the just war principles of proportionality and distinction. Sherman rejected the ideas that non-combatants and their property should be afforded protection and that any military means used must be used in proportion with the military advantage of the action. Blindly, Sherman burned down any building in his path and seized any person (civilian or combatant) that stood in his way. The war was able to become tangible to the South, and this left the Confederacy demoralized. Sherman completed his “March to the Sea” on December 21, 1864. The Confederacy surrendered four months later on April 9, 1865.

World War II is a more recent example of the rejection of the just war principles, specifically proportionality and distinction. The bombings of Pearl Harbor pushed the United States into a second global war. Franklin Roosevelt formally declared war on December 8, 1941. Roosevelt’s plea to American and ally military forces centered on using force justly and

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employing the just war principles when selecting aerial bomb targets: [Let them] “affirm [a] determination that [their] armed forces shall in no event, and under no circumstances, undertake the bombardment from the air of civilian populations or of unfortified cities.” The allies ignored this plea and dropped bombs on targeted civilian populations frequently throughout the war. This, of course, is in direct opposition to the theory that only military combatants are legitimate war-time targets and the theory that force should be proportionate to the military objective. It was Royal Air Force leader Hugh Trenchard that perhaps best expressed the ally war strategy, “The effect of bombing civilian targets would be that the German government would be forced to face very considerable and constantly increasing civil pressure which might result in political disintegration.” Trenchard, like Sherman, knew that to eventually obtain a military victory the fight was not between military forces but between a military and the enemy’s civilian population. Subscribing to Trenchard’s military tactics, President Truman assented to the atomic bombing of Japan in March 1945. The targets of these air raids were Japanese factories surrounded by working-class neighborhoods. Even if the full potential of the atomic bomb was not known before the Japanese air raid, rejection of the just war principles at that time was clearly demonstrated. It would have been technologically impossible at the time for American forces to fully discriminate between the legitimate war target of the Japanese factories and the homes of the innocent Japanese citizens while dropping any type of bomb, atomic or not. The bombing and killing of thousands of Japanese non-combatants certainly was not proportionate to the military goal of Japanese surrender. The bombings of Nagasaki and Hiroshima occurred on August 6, 1945. Japanese forces surrendered on September 2, 1945.

10 Appeal of President Franklin D. Roosevelt on Aerial Bombardment of Civilian Populations, September 1, 1939
American military forces seem to pick and choose when to apply just war principles and when to ignore them or claim military necessity as justification for actions conflicting with what is morally acceptable under the just war sub-theories of *proportionality* and *distinction*. Historically, when American forces reject these theories, American military objectives are realized. Thus, the just war theories and their application to American armed conflicts is historically meaningless. The ratification of the Geneva Convention gave America a criterion with which to justify military actions, but the underlying morality of the protocols means nothing if they historically are heralded to the global community yet discarded by the military when inconvenient. American armed forces cannot have its cake and eat it, too.

III. The Modern and Conflicting Application of *Just War*

Though the just war principles have not always been honored in the past, dissidents argue that modern application of the just war principles in America’s conflict in the Middle East is sound and helpful. Unfortunately, this is not always true. The bulk of modern, scholarly just war examinations primarily cover the six *jus ad bellum* principles: just cause, comparative justice, competent authority, right intention, probability of success, and last resort. Each principle can easily be examined and determined sound and helpful in America’s current conflicts, but the *jus in bello* principles of *proportionality* and *distinction* cannot. Each principle concerns war-time actions and justifications balanced by American military objectives. Military foreign policy, local rules of engagement, and direct actions taken by military commanders demonstrate that the *jus in bello* principles are easily discarded and perhaps stop American military forces from obtaining military objectives.
The terrorist attacks of 9/11 were surprising, deadly, and, according to the Bush administration, “…more than acts of terror. They were acts of war.”\textsuperscript{12} By linking terrorism with sounds of preemptive attack, President Bush quickly established the current and slightly vengeful military foreign policy of “…oppos[ing] them with all our power.”\textsuperscript{13} Unlike Roosevelt, Bush made no plea to military forces to act as the just war principles prescribed; rather, he made a point that American forces will not discriminate between the terrorist enemy and those who harbor them.\textsuperscript{14} Those harboring the terrorists, of course, were Iraqi and Afghan populations. While it may be plausible to discriminate between the few who aid our enemy combatants and innocent members of a certain village or town, it becomes remarkably more difficult to discriminate which foreign citizens are aiding the enemy and who are innocent civilians within an entire population. President Bush does not seem to make that distinction. While Bush may not have expressly abolished the just philosophies of distinction and proportionality in his post-9/11 speech, the implied abolition of the principles has stuck to the current military foreign policies regarding Iraq and Afghanistan. These foreign policies are manifested in the local rules of engagement.

The U.S. Rules of Engagement for Iraq appended to orders for Operation Fardh al Qanoon (ROE) was released to military personnel in August 2007.\textsuperscript{15} Rules of engagement by definition are the directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue

\textsuperscript{12} George W Bush, \textit{Remarks by the President in Photo Opportunity with the National Security Team} (The White House, September 12, 2001).
\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} Annex E (Rules of Engagement) to OPORD 07-04 (Operation Fardh al Qanoon), Classified SECRET//REL USA MCFI//20171023.
combat engagement with other forces encountered.\textsuperscript{16} This document gives military forces detailed information regarding what can be a lawful and legitimate military target and who is defined as an enemy combatant in the Iraq operation. All military personnel are bound by these local rules of engagement. Within these rules of engagement are several just war discrepancies that, before this document was leaked to the public\textsuperscript{17}, would never have been known until 2017.\textsuperscript{18}

The theory of proportionality is discussed in the ROE; however, it is immediately followed by, \textquotedblleft(f) (S//REL) Amount of Force. These ROE give commanders the maximum flexibility to use the amount of force required to accomplish the mission.\textquotedblright\textsuperscript{19} To contrast, Article 52 of the Geneva Convention states, \textquotedblleft The incidental (i.e., unintended) harm caused to civilians or civilian property must be proportionate and not excessive in relation to the concrete and direct military advantage anticipated by an attack on a military objective.\textquotedblright\textsuperscript{20} The ROE given is in direct opposition to the theory of proportionality, distinction, and what is prescribed by the same Geneva Convention that United States ratified.

Finally, many military leaders have been quoted giving orders that directly undermine what little ROE details about justified military actions. Lt. Col. John Charlton of the 1st Battalion, 15th Infantry Regiment is reported as commanding his troops, \textquotedblleft "When we move in, you kill anything that moves"\textsuperscript{21} This command was given hours before Charlton’s troops moved into Baghdad. As the history of the conflict in Baghdad shows, there has always been a disproportionate amount of civilian and insurgent deaths.\textsuperscript{22} "Nobody on the streets in the middle of the night, in the middle of a battle, is an innocent civilian," Capt. Scott Brannon, commander

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\item[17] These rules of engagement were leaked through \textquotedblleft Wikileaks.org\textquotedblright\ on August 17, 2007.
\item[18] This is presumably after the United States had secured its military objectives in Iraq.
\item[20] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
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of the 1-15th scout platoon, is quoted as saying to his troops before a night time patrol of a residential neighborhood in Iraq.\textsuperscript{23} It seems that even if American military strategy and policy had a heavy focus on war-time distinction and proportionality, the practical application of the theories and the moral purpose behind the theories would conflict. Any country or state can morally justify its war-time conduct on paper; however, these morals are irrelevant if they are not followed by those fighting the war.

IV. Just War and the Modern Enemy

Perhaps the most striking evidence of the antiquity and hindrance of the just war principles is an examination of the modern terrorist enemy compared to the enemy combatant of 1945.\textsuperscript{24} To be clear, the modern terrorist is an enemy of proxy. Certainly the men who attacked the World Trade Center on 9/11 were terrorists; however, President Bush declared a war on terrorism. Terrorism is a method, not a tangible enemy. Nonetheless, the terrorist is thought to be a frightening behemoth that plots against national security daily. Therein is the only similarity of the modern terrorist compared to the enemy of World War II. True, both were and are dark, freedom-stealers, but the differences between the two are enough to raise the presumption that perhaps the United States is fighting our modern conflicts with philosophies meant for the pre-Cold War enemy. Terrorists are not linked to any specific state or country. Terrorists are not affected by traditional methods of deterrence. Terrorists do not recognize the just war principles.

The terrorist organization made famous by the 9/11 attacks on the World Trade Center and the Pentagon is known as \textit{Al Qaeda}. \textit{Al Qaeda} is made of Islamic extremists who hypothesize that the Western ideology that is corrupting Islam comes from America. The members of \textit{Al Qaeda} are individuals that make up an independent faction; they are not

\textsuperscript{23} Id. Eberhart \textit{Rules of Engagement}.
\textsuperscript{24} The reference here implies that the enemy of 1945 was the enemy in mind when the Geneva Convention was first drafted.
sponsored or representative of any country or state. This poses a unique problem to the just war theory of *distinction*: If terrorists have no land, state, or country, how can the United States conduct a justifiable war on the land of a state and against its members simply because terrorists reside on that land? It is as though being stateless is as great of a protection to the modern terrorist as their ability to blend into the civilian population. The essence of *distinction* is the separation of enemy combatants and innocent civilians, and this is bastardized when a powerful nation wages war against the “host” state of its enemy; combatants and non-combatants alike are thrown into a metaphorical cauldron and mixed into one, indistinguishable enemy. The quagmire this lack of *distinction* creates is consistent with that of the Vietnam War where the lack of *distinction* led to military mishaps like My Lai.

Compare this to the enemy of World War II. The Nazi troops, for example, were armed military troops from Germany. Their purpose was to defend their land and drive the Allied Forces away from their country. Unlike modern terrorists, Nazi troops arose from the land they resided in; therefore, it became simply a matter of the Allied Forces targeting both the land and its civilians as enemy combatants. The current “hostage-like” situation of the Iraqi land was avoided simply because the enemy could claim a land and state of its own. In this situation, the theory of *distinction* is applied to the country of Germany and moral justifications rule the conflict.

The ideas of deterrence and containment have historically fueled most American military strategies. In the Cold War, America sought to deter the spread of Communism and contain any known Communism. These military strategies were based on purely a retaliatory basis and were

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25 Contrary to many Americans’ beliefs, simply because *Al Qaeda* resides in one geographic location does not mean that it is representative of that region. Similarly, the mere fact that *Al Qaeda* members are Islamic does not mean that they are representative of the religion.

in effect for over thirty years. These strategies do not work with terrorists. President Bush agreed and said, “Deterrence, the promise of massive retaliation against nations, means nothing against shadowy terrorist networks with no nation or citizens to defend.” Terrorists are rogue individuals with no fear of martyrdom and nothing possessory to defend. Therefore, any retaliation on behalf of the United States would be futile. Simply put, terrorists seek the unjustified destruction of America. The theory of proportionality and its threatened consequences if not followed means nothing to a group of individuals who would lose nothing of their own in a non-proportional military strike. If the threat of non-distinction and non-proportionality means nothing to the terrorist groups, why does the United States still appear to uphold these principles?

Terrorist factions disregard any form of the just war theories. These moral theories were historically honored by both sides of a conflict. This gave protection not just to the enemy’s soldiers, but to your own soldiers, as they were guaranteed certain war-time rights and treatment. When one side of a conflict does not honor the just war principles, or conversely only one side does honor the just war principles, the value of the principles is diminished. For example, the attacks on the World Trade Center were indiscriminate and disproportionate under the jus in bello theory. However brutal these attacks were to Americans, they were not in violation of any war justification followed by Al Qaeda. These moral justifications belong only to those thirty-two nations that ratified the Geneva Convention. It is idealistic to assume and expect that an Islamic terror organization would follow a similar moral protocol; hence, it is to the United States’ detriment to follow any war-time rule that is rooted in the just war principles. The only reward the United States gains is the self-satisfaction of reporting that it supposedly uses more

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27 George W Bush, Statement by the President in His Address to the Nation [Address] (The White House, September 11, 2001.)
moral war strategies than its enemy. Meanwhile, the terrorist organization, that is acutely aware of the self-limitations the United States places on its troops, takes full advantage of the American just war practices. Lieutenant Commander Randal Shingledecker has seen first-hand the limitations of the just war principles, specifically the *jus in bello* theories. “They [terrorists] are intimately aware of them [*jus in bello* principles] and use them to their advantage all the time.”

Compare this to the enemy of World War II. The just war theories were applicable to another Christian nation (let’s consider Germany again) that could conceptualize a rather similar moral standard as the United States. Specifically, prisoners of war were treated in accordance with the Geneva Convention. The German forces knew that the courtesy of accordance with the Geneva Convention would be reciprocated by the Allied Forces, and in this instance, the just war theories worked as a moral guide for war conduct. If the German forces would not have been a Western nation already in accordance with the just war morality, it is unlikely that they would have recognized any of the principles at all.

The United States cannot deter terrorists, nor can the United States attack terrorist land. It is not only futile for the United States to follow any war-time command rooted in just war principles, it is detrimental to the United States’ military objectives. While a terrorist would bomb an entire American city without regard for *distinction*, American military forces would not bomb a hospital harboring a terrorist organization. A terrorist might blow up several road-side bombs killing many civilians yet just a few American soldiers, but American military forces will not attack any structure deemed to hold more civilians than terrorists. The just war principles worked so long as the enemy was in compliance with the Geneva Convention; the enemy played by the same rules. When the enemy not only disregards your moral, and therefore subjective,

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28 Telephone Interview with Randal Shingledecker, LCDR United States Navy. (Nov. 6, 2011).
29 Unless, of course, you were Jewish.
30 Harris, Justin Michael. ”American Soldiers and POW Killing in the European Theater of World War II”.
principles, but also uses them to your disadvantage, it is to your peril to continue to employ those principles.

X. Conclusion

The theology of Aquinas’ just war is still the current foundation for the Geneva Convention protocols followed by American militaries. While not a baseless set of theories, it is certainly antiquated against America’s modern, terrorist enemy. These theories were meant to be used in a war against a similar enemy that uses similar moral philosophies. The terrorist is not that enemy. The disregard of these theories is not a new concept; American military forces have long been in the habit of rejecting the just war concepts when they no longer suit the American military objective. The American foreign policies regarding the war on terror also seem to disregard the just war theories, and commands from military leaders in express opposition to the theories support the supposition that America fares better in warfare without these principles. Should American military rules and strategies support the overall idea of the Geneva Convention? Sure. Should America find a new foundation for its war-time justifications that allows it to accomplish its military objectives against modern-day terrorism? Absolutely.