

## A MORAL FRAMEWORK FOR WAR IN THE 21<sup>ST</sup> CENTURY

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USAWC STRATEGY RESEARCH PROJECT

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## **ABSTRACT**

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Just War Theory is the predominant moral framework used today to talk about the justness or morality of war. It has its roots firmly embedded in the Westphalian state system. For the strategic operating environment that existed during the Westphalian era, Just War theory was more than adequate to the task. However, in the post WWII era the strategic operating environment has changed dramatically. The most significant indicator of this change is the rise of transnational terrorism and the advent of Weapons of Mass Destruction. The nexus of these two factors constitutes a threat that could not be imagined in the Westphalian era and that Just War theory does not adequately address. A new moral framework for war is necessary to adequately address the justness and morality of war in the 21<sup>st</sup> century.



## A MORAL FRAMEWORK FOR WAR IN THE 21<sup>ST</sup> CENTURY

War is an ugly endeavor. Its essence is death and destruction. It is never conducted without mayhem and significant loss of life. Even when one tries to reduce it to technical terms, the ugliness of it is still very evident. Clausewitz's definition of war as policy continued by violent means does not mask the fact that war does not exist without blood. It is inherently an ugly business. But it does not exist without purpose. It always has an aim in mind. War is "precisely, and ultimately, about governance."<sup>1</sup> In other words, war is about forcing our will on our opponent via the direct and skillful application of violence.

If forcing one's will on an opponent is the focus, then the direct and skillful application of violence becomes the essence or character of war. War is won by inflicting enough pain on the opponent that they will eventually cry "Uncle!" The method of inflicting pain is what makes war ugly. The application of violence implicitly requires death and destruction. It is entirely possible that one side or the other could sacrifice a generation of its warfighting population or could suffer the loss of its national infrastructure. The physical, emotional and psychological damage that can be brought upon the civilian population of a political community can be equally devastating though much more difficult to measure. A close examination of the experience of wars past (trench warfare of WWI, the brutal fighting in the islands of the Pacific in WWII, the complete devastation of Hiroshima and Nagasaki, the fear experienced by the inhabitants of London during the Battle of Britain, the sudden viciousness of the attacks of 9/11) provides ample evidence of the ugliness, brutality, even the bestiality of the conduct of war.

If war is such an ugly thing, then it becomes hard to understand why one would seek that course of action. However there are those who adhere to the words of John Stuart Mills:

But war, in a good cause, is not the greatest evil which a nation can suffer. War is an ugly thing, but not the ugliest of things: the decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war, is worse. When a people are used as mere human instruments for firing cannon or thrusting bayonets, in the service and for the selfish purposes of a master, such war degrades a people. A war to protect other human beings against tyrannical injustice – a war to give victory to their own ideas of right and good, and which is their own war, carried on for an honest purpose by their free choice – is often the means of their regeneration. A man who has nothing which he is willing to fight for, nothing which he cares more about than he does about his personal safety, is a miserable creature who has no chance of being free, unless made and kept so by the exertions of better men than himself. As long as justice and injustice have not terminated their ever-renewing fight for ascendancy in the affairs of mankind, human beings must be willing, when need is, to do battle for the one against the other.”<sup>2</sup>

Mills appears to argue that for the right reason, war is not only justified, it is imperative. If that is the case, then there must be criteria which are used to make decisions about the justification for engaging in armed conflict. In other words, there must be a standard by which a cause is deemed just and worthy of war and its ensuing ugliness. That standard is the moral framework or lens through which we view the ugliness of war and determine it to be necessary, just and moral.

Much of the thinking that has been done about the rightness or wrongness of war, its inherent justice or injustice, and its morality does not fit in today’s strategic environment. The notion of a just war dates back the time of the ancient Greek philosophers and biblical writers. The standard textbook for most college classes teaching Just War Theory today is Micheal Walzer’s Just and Unjust Wars, written over 30 years ago. In that time the strategic landscape has changed dramatically. While

Walzer and most Just War theorists espouse a moral framework that was relevant in the first half of the twentieth century, a new moral framework is necessary for examining war in the twenty first century.

But what does that moral framework look like? To address that question adequately, there must first be a viable definition of war. Then there must be an understanding of how the strategic environment has radically changed from the early part of the 1900s to today. Next, Just War Theory, the most prevalent moral framework used for examining war today, must be understood. Once that is understood, it must be analyzed in light of the current strategic environment to determine if it is still relevant. Finally, if the theory is found to be lacking in relevance, then there is a need to suggest an alternative moral framework for war. Of course, it's important to realize that there may be more questions left than answers as a result of this analysis.

### What is War?

The Clausewitzian definition of war as a violent extension of policy has already been referenced. While that certainly has a great deal of validity to it, it falls short of a definition that allows a look at the nature of war in the 21<sup>st</sup> Century strategic environment. Brian Orend, the Director of International Studies and a professor of philosophy at the University of Waterloo, defines war as the actual, intentional, and widespread armed conflict between political communities.<sup>3</sup> Orend's view of what constitutes political communities is important. In his definition these are "entities which either are states or intend to become states."<sup>4</sup> This is broader than the standard definitions of war put forth by many theorists since it opens up participation in war to a wider range of actors than just the classic Westphalian states. However, it does not

expand the definition to gang conflicts, family feuds, or efforts to eradicate drugs and poverty. Orend does intend for terrorist organizations to be included. He views them as organizations with political purpose that are either seeking statehood or to influence the policies of state actors. Consequently terrorist organizations rise to a higher level than an urban gang or an organized crime family. They are political communities and can be considered a combatant given Orend's definition of war. Since one of the major and most unique foes faced today is transnational terror, this is an important distinction.

### The 21<sup>st</sup> Century Strategic Environment

Not only is the foe unique, so is the strategic environment in which we confront this foe. The majority of the strategic theory and moral framework that we use to define our approach to war is based on an environment defined by the classic Westphalian state system. In this system the primary actors are states. In fact, the predominance of the state as the primary actor is so overwhelming that non-state actors are practically non-existent. Western Europe is the classic example of this since the state system in place was caused by the Treaty of Westphalia in 1648. The rise of the nation state (the nexus of common culture and language with geographic boundaries) dominated this political landscape. The only significant non-state actor was the Catholic Church. Clausewitzian strategic theory and Just War theory are rooted in this system. They seek to describe the strategic and ethical underpinnings for the interactions between nations in this environment. Much of the way the world is viewed today and the interaction between states is based on theory, both moral and strategic, that was developed during this era.

But a funny thing happened on the way to the 21<sup>st</sup> Century. The world began to change. In the 1800s technology began to advance at a dizzying rate. Advanced weaponry that greatly enabled the ability to inflict pain became widely available. Coupled with the nation state's ability to mobilize its population to fight a war, the potential for death and destruction reached unparalleled heights. Long standing disputes and rivalries were intensified as nationalism began to assert itself. Alliances were formed to offset opponent's strengths. WWI and WWII were the result. These wars were watershed events for the Westphalian system. In fact, they were the beginning of the end.

These wars changed the way people looked at the world and the interaction between nation states. Many recognized that things had changed and that the system needed to change. The League of Nations was an effort to try to change the international system following WWI. However, America's retreat into isolationism and the punishing conditions put on Germany ensured that the League and the peace following the war would both be short lived. Following WWII the nations of the world tried again with the United Nations. The idea for both the UN and the League was that member nations would be unable to wage war against other member nations without consent of the international community. The establishment of a quasi-governmental body that transcended individual nation states radically changed the way state actors related with one another.

Nations' willingness to give up a limited amount of power and sovereignty was also driven by another factor that changed the Westphalian state system forever, the rise of Weapons of Mass Destruction (WMD). While chemical weapons had seen use in

WWI, the bombing of Hiroshima and Nagasaki to hasten the surrender of the Japanese in WWII changed the face of war forever.

Another impact of technology on the Westphalian state system was the rise of globalization. Suddenly the world became much smaller than it had ever been. In the 1873 Jules Verne wrote about circumnavigating the globe in 80 days. In 1962, John Glenn orbited the earth 3 times in a little less than 5 hours. Communications technology made global communications instantaneous. This affected not only the ability to speak with people in other countries around the world, but also greatly facilitated international business. As globalization continued to become more prevalent, nations' economies became more and more interconnected.

The rise of the non-state actor also began to impact the world system. This, coupled with the reigniting of centuries old tensions between the Christian west and the Muslim Middle East, gave birth to what is known today as transnational terrorism. While there are many movements that use terror as a strategy for achieving their stated goals (the Basque Separatists in northern Spain, the Sendero Luminoso in Peru), the transnational nature of what is known by many as the Islamic Totalitarianism<sup>5</sup> movement has changed and influenced this post-Westphalian world order in ways no one has foreseen. One of the most striking differences is that the adversary is not a single entity. Global terrorism is at once both a movement and a strategy. It is by nature transnational, ideological, cultural, and many time religious in its underpinnings. It is adopted by organizations and groups that feel as though the only voice they have is the direct application of terror. It seeks to spread its dogma throughout the world by the use of terror. The movement believes that the world must live under an extremist

dogmatic Islamic regime and that Holy War must be waged against those who refuse to do so.<sup>6</sup> Since the West revels in its freedom, prosperity and pursuit of worldly happiness, this movement sees Western Culture as its first and most obvious target and so they seek its destruction. Never before has the international system faced such a threat.

Left to itself Islamic Totalitarianism would not be able to muster the resources needed to carry out its fight. But it gets support from rogue states that have become state sponsors of terror. While these states are not a new feature of the current strategic environment, transnational terror of any kind could not exist without them. Iran is one of the major leaders in this regard and is seen by the movement as kind of the flagship of Islamic Totalitarianism<sup>7</sup>. The current government, a militant Islamic theocracy, is founded on the principles of the movement and seeks to provide not only material support to different organizations ( Hamas, Hezbollah, and Islamic Jihad) but spiritual and moral inspiration as well. Some states are not rogue at face value. Saudi Arabia is in many ways a close friend and partner of the West, but many of Al Qaeda's recruits are Saudi citizens and much of its financial support originates here<sup>8</sup>.

The last piece of the current strategic environment we need to understand is the failing state. This is also not a new feature on the strategic landscape, but the unique resources that it offers Islamic Totalitarianism are unique to this environment. Since failing states typically don't have the ability to extend governmental control over their entire physical area there are large portions of these countries that are essentially ungoverned. These are ideal locations for training camps for the different organizations that are part of this movement. Because there is a large underprivileged population, the

youth are especially ripe for being swept in by the twisted ideology of the movement, thus providing a large recruiting base. Another attractive feature of a failing state is the existing infrastructure (ports, airports, road networks) that makes it extremely viable as a base of operation. That several failing states also possess nuclear weapons ought to be a chilling thought for those that are concerned about transnational terrorism gaining access to WMD.

This discussion of the current strategic environment has laid out the differences between it and the strategic environment in which the Westphalian state system existed. With that understanding, it is now time to examine the predominant moral framework for war, Just War Theory, in order to determine its relevance in this new strategic environment.

### Just War Theory

It is safe to say that the shift from the old world Westphalian strategic environment to the new world strategic environment has been a unique one. One observer of an earlier historical shift on the same magnitude was Augustine of Hippo. He watched as the Roman Empire began to fragment and fall apart. He was there to see his world descend into darkness as barbarians and pagan hordes began to dismantle the only civilization he had ever known. Augustine was trying to make sense out of a world gone mad. In midst of the chaos, Augustine saw value in a state that serves as a barrier between its citizens and anarchy.<sup>9</sup> He believed that peace and order was the state of being in which God intended men to exist.<sup>10</sup> So a state that provides for peace and order is a moral state.

The Augustinian argument is really the foundation for the morality of war in the Westphalian system. Emerging out of the ashes of a European continent that was being torn apart by war, the Treaty of Westphalia in 1648 established an new international system based on the twin pillars of national sovereignty and territorial integrity.<sup>11</sup> Those two pillars gave the state the ability to allow for the citizenry to develop a “common life.”<sup>12</sup> This is how Michael Walzer defines the common life in his book Just and Unjust Wars:

Over a long period of time, shared experiences and cooperative activity of many different kinds shape a common life. The protection [of the state] extends not only to the lives and liberties of individuals but also to their shared life and liberty, the independent community they have made, for which individuals are sometimes sacrificed.<sup>13</sup>

A war fought by a state for the purpose of protecting that “common life” can be, and often is, a moral and just war.

In order to really look at the morality of war, there must be a moral framework through which war and its justness is viewed. The choice of framework is most likely driven by belief regarding the purpose of war. For instance, if war has no purpose and nothing worthwhile can be accomplished through war, then pacifism is probably the moral lens through which war is observed. In a very simplistic form, pacifists believe that violence in general, and very specifically war, has no purpose and should never be engaged in. This belief in non-violence has its roots in several religious traditions, most notably Christianity and Hinduism. Insurgencies that have adopted non-violent approaches have been successful in several instances. The Indian independence movement and the American Civil Rights movement are great examples of this.

This moral framework should also answer some very basic questions about the relationship between war and morality and justice. For instance, under what conditions

is fighting a war just? What actions are acceptable during the conduct of a war? What conditions must be met in order for the peace following the war to be just? A framework that answers these questions in a comprehensive way that is reflective of the realities of the strategic environment is a useful guide for state leaders as they struggle to make decisions about taking their nations to war.

Probably the most recognized and significant moral framework for war is Just War Theory. Here, again, is a direct connection between purpose and morality. If war's only purpose is self defense or the defense of others (for various reasons), Just War theory is the framework that fits best. It is firmly rooted in Christian thought. Augustine was one of the earliest writers to address Just War and begin to develop a theory or framework that addressed the morality of war. As he was watching the Roman Empire collapse and the world he knew dissolve into chaos, he was very concerned about the return of Christian persecution and the very survival of Christianity itself. Augustine knew the trials and tribulations that Christianity had been through in its short history. He was well aware of the persecution that took place throughout Rome prior to Constantine becoming a Christian and adopting Christianity as the official religion of the Empire. He feared for the survival of Christianity without the protection of the empire. Just War theory was his attempt to justify the use of violence by Christians to defend the empire and themselves. His writings became the foundation of modern day Just War theory.

A closer look at the theory is warranted at this point. It covers three principal areas: 1) *jus ad bellum*, the justice of going to war; 2) *jus in bello*, the justice of the conduct of war; 3) *jus post bellum*, the justice of the peace following hostilities. It's important to understand each of these and how they impact a nation's actions leading

up to the advent of war through conduct of war and to the cessation of hostilities, including terms imposed upon the loser.

The concept of *jus ad bellum* is applied to the decision process for going to war. Nations try to ensure that their decisions to engage in such extreme action are justifiable and defensible in the international community. There are six generally accepted criteria under the concept of *jus ad bellum*. The first is that wars must be waged for a just cause. Self defense, the defense of others, the protection of innocents, and punishment of egregious violations of international law all fall under the category of just cause. Next, wars must be fought for the right intention meaning only for the sole purpose of the just cause. Another criterion is that war can only be declared by the proper authority for the state engaging in the war. *Jus ad bellum* also maintains that war should only be waged as a last recourse after all other options have been exhausted. Additionally, a political community should only engage in war if it has a reasonable chance of winning. Finally, war should only be waged with the idea that the gains achieved as a result outweigh the damage caused by fighting. This is the concept of proportionality. If these six criteria can be met, then a political community can consider itself justified in going to war against another.<sup>14</sup>

*Jus in bello* is the second major piece of Just War theory. This refers to how the war is fought. There are several considerations that must be followed in order for actions taken during a war to be considered just. Political communities should obey international treaties, especially in regards to prohibited weapons. Non-combatants should be considered off-limits. While collateral damage happens, there is a responsibility to seek to avoid it as much as possible. The concept of proportionality, or

that the force applied should be proportional to the end desired, must be observed.

This keeps nations from resorting to brutal actions that are excessive in regards to their desired endstate. Prisoners of war should be treated with respect and reprisals for violations of *jus in bello* should not be pursued.<sup>15</sup> For many political communities, to act in contradiction to *jus in bello* would be to act outside of their strategic culture. Like the French in Algeria who engaged in the use of torture, reprisals, and the forced resettlement of large portions of the indigenous population, there is a high degree of risk for violating this principle.

The final piece of Just War theory has to do with justice after the war, or *jus post bellum*. This is not an area that has traditionally been an integral part of the Just War tradition.<sup>16</sup> It has never been well addressed by either international law or moral theory.<sup>17</sup> In one sense, this is an advantage for modern day moral theorists because it represents thought that was developed in the context of the current strategic environment and isn't shackled by the constraints of the Westphalian state system. *Jus post bellum* covers the criteria that must be met for the war termination and any conditions imposed on the loser to be just or morally acceptable.

Brian Orend suggests seven criteria to serve as a guideline for *jus post bellum*. The first is proportionality and publicity. In other words, the peace settlement should be reasonable and publicly announced.<sup>18</sup> A peace settlement that is used to punish the vanquished is immoral and can often cause more problems than it solves. Consequently, unconditional surrender is seldom a good idea. This fits with the next two criteria, rights vindication and discrimination. These conditions hold that the basic rights of the vanquished need to be protected in the peace settlement and that a

distinction should be made between the treatment of the leadership, the military and the civilians/citizens of that state.<sup>19</sup> The idea of punishment in the post war environment fall into two categories – punishment of the state’s leadership if the state has acted in a way that blatantly violates basic human rights and punishment of soldiers from all sides who have committed war crimes.<sup>20</sup> The final two criteria speak to the ideas of compensation and rehabilitation. If you are going to extract compensation from your defeated opponent, it should not be excessive or prevent the government from being able to provide basic services for its citizenry.<sup>21</sup> Coupled with this is the idea that the post war period is often the ideal time to rehabilitate corrupt or inefficient governments and institutions.<sup>22</sup> Again, the extent of the rehabilitation must be proportionate to the extent of the depravity of the state.<sup>23</sup> In the end, the idea of *jus post bellum* suggests that leaders spend as much time developing a “ethical exit strategy”<sup>24</sup> as they do developing a military exit strategy.

### Just War Theory in the 21<sup>st</sup> Century

This concept or framework for examining the morality of war worked well prior to the end of World War II. However, there are some difficulties in this that are exposed by the post-Westphalian strategic environment. On its face, the concept of self-defense embodied in *jus ad bellum* requires aggressive action, an attack or invasion, to have already taken place for a state’s violent response to be morally justifiable. If the first purpose of government is to secure the welfare and wellbeing of its citizenry, or to protect the “common life”, then waiting until you have been attacked to take action is not only irresponsible, it is immoral.

*Jus ad bellum* does allow for a preemptive attack<sup>25</sup>. But it is an allowance that is firmly rooted in the Westphalian system. Consider the world as it existed in the late 19<sup>th</sup> and early 20<sup>th</sup> century. When the only way of attacking another state involved land forces invading across an established border, then warning signs were plenty. Imagine a state watching its neighbor amass troops and material along the border. That state has been listening to public statements from its neighbor that have grown increasingly bellicose over time. It is easy to see how that state could feel reasonably sure that it is about to be attacked by its neighbor. Under these circumstances, a preemptive attack to upset the neighbor's plans, disrupt its timetable, and perhaps even completely prevent the attack is entirely justified. At face value, this seems reasonable and gives great peace to a state that it doesn't have to wait until attacked to defend itself. But what this provision of *jus ad bellum* doesn't take into account what might be the most unique dynamic of the current strategic environment – the nexus of transnational terrorism and Weapons of Mass Destruction (WMD). An attack by a terrorist group that has acquired WMD will come without warning or indication. Forces will not be observed massing along a border because it will be a small cell of 2 or 3 people who enter their targeted country legally. The weapon is either put together from components acquired legally on the open market (Boeing 757s or an array of products commonly found on supermarket shelves) or smuggled in any number of ways. To defeat this threat in a preemptive manner requires something more along the line of what Just War theorists call a preventive attack.<sup>26</sup>

A preventive attack or war does not enjoy the same acceptance as a preemptive attack. The argument is that this type of effort is focused on a potential future threat

and claims prescient knowledge of how events will unfold. A state may believe that another state has plans to attack at some point in the future and is working to build just that capability. But that belief is not enough to warrant an attack, particularly if that capability is still years away. Once again, this prohibition is based on the old world order. In today's environment, the capability to develop WMD is available to many. The danger of transnational terrorist organizations that have access to WMD is evident. Given that WMD (especially chemical or biological weapons) can be developed so cheaply and quickly and delivered so surreptitiously, the interval between inspiration and execution is minimal. If a particular terrorist organization has already demonstrated a desire and an ability to attack, then it is not unrealistic to expect them to do so again. Al Qaeda has attacked the United States homeland on two separate occasions and has publicly stated that it desires to do so again. In such a situation, inaction is immoral. These issues show that in the case of *jus ad bellum*, traditional Just War theory has significant difficulties in being relevant to today's strategic environment.

There are also major issues with the application of *jus in bello* in the current strategic environment. First and foremost is the assertion that the idea of protecting innocents or non-combatants requires a state to protect the lives of civilian citizens of the country it is at war with (or in) by risking the lives of its own soldiers.<sup>27</sup> After all, soldiers are willing members of the military (at least in America and other countries where service is voluntary). They know going into military service that war is a distinct possibility and that soldiers get killed in war. It is the nature of their business. Civilians live under no such expectation and should not be subject to the same risks.

Consequently, they deserve extra protection that soldiers don't to the point that their lives should be valued higher than those of soldiers.

This violates a basic moral contract that a state has with the citizenry it serves to protect the "common life." This protection is a basic service of the state and the essence of the contract between the state and the citizenry. The state must procure the resources and tools necessary to protect and secure that common life. Perhaps the most important tool is the young men and women who agree to take on that extra risk and wear their country's uniform. They are also one of the most precious resources. The number of young men and women, willing to serve or not, is a finite number. To deliberately and needlessly endanger them is to squander a precious resource. A state that would act in that manner is violating the contract with its citizenry and may be acting in an immoral manner.

Care must be taken not to draw the wrong conclusions here. This criticism of the extent to which civilian noncombatants must be protected is not intended to imply that they should not be protected. Of course they should. Walzer rightly points out in his work that the civilian population in a war zone often has no choice in finding itself in close proximity of death and destruction.<sup>28</sup> In general, if they are truly innocent, then they deserve extraordinary measures to protect their safety.

Perhaps the question that should be asked is are there times when the protection granted to these innocents should not be as high? What if they are providing shelter to insurgents? What if insurgents are using them as human shields? How does a field commander respond to enemy fire killing his soldiers and jeopardizing the successful accomplishment of his mission when that fire is coming from a school full of children?

So many of the battlefields encountered in the modern strategic environment include situations similar to this one and the current idea of *jus in bello* seems woefully inadequate for providing useful guidance.

It is difficult to criticize *jus post bellum* along the same lines of thought as the previous areas. It is not rooted in the old Westphalian state strategic environment. The thought put into developing these criteria has been shaped by the realities of today and not of yesterday. In fact, Orend suggests that the concept of regime change, much maligned by so many of the moral theorists of the day but a major factor in the United States strategy in conducting the war on terror, is justified under this notion of *jus post bellum*<sup>29</sup> given the following conditions:

1) the war itself was just and conducted properly; 2) the target regime was illegitimate, thus forfeiting its state rights; 3) the goal of the reconstruction is a minimally just regime; and 4) respect for *jus in bello* and human rights is integral to the transformation process itself.<sup>30</sup>

If these conditions are met then permission is granted because the transformation:

1) violates neither state nor human rights; 2) its expected consequences are very desirable, namely, satisfied human rights for the local population and increased international peace and security for everyone; and 3) the post-war moment is especially promising regarding the possibilities for reform.<sup>31</sup>

The transformation will be successful when there is “1) a stable new regime; 2) run entirely by locals; which is 3) minimally just.”<sup>32</sup>

The fact that *jus post bellum* is so reflective of the current strategic environment makes it incongruous with the *jus ad bellum* and *jus in bello* pieces. This is probably one of the most telling weaknesses of Just War theory. It is not a coherent whole. The three pieces were developed separately over time and continue to be treated as distinct entities with little correlation between them. The just reasons for going to war have no

impact on the requirements for justice in fighting a war. Nor is there a strong connection between the justice of going to war and justice in gaining the peace. There is no thread to follow through the framework from start to finish.

Many just war theorists do suggest a connection between justice in war and justice in peace. They maintain that if the standard conventions for *jus in bello* are strictly adhered to then the conditions have been set which make a just and lasting peace more attainable. For example, if the civilian population is treated with humanity and respect, then they are more likely to accept the peace and remain at peace. If the treatment is brutal and harsh, they will be less likely to accept peace and may desire to continue the struggle.

History may suggest just the opposite. The German population at large was shocked by their sudden surrender at the end of WWI.<sup>33</sup> They had been led to believe that they were winning and saw the surrender as a “stab in the back.”<sup>34</sup> A common theme that had begun to circulate among the population was that the Allied victory was one of propaganda, not of military decisiveness.<sup>35</sup> They saw themselves as a nation that had never truly been defeated on the field of battle. This view, coupled with the very harsh impositions of the Treaty of Versailles, helped to set the stage for the meteoric rise of Adolf Hitler and the rapid march to WWII.<sup>36</sup> *Jus in bello* was observed, much more so than in WWII, yet the seeds for that much larger and more sweeping war had been sewn just the same.

Victory in WWII left no doubt. The bombing campaign against Nazi Germany is an example. The strategic bombing effort, while awful to watch and horrendous in its immediate toll, firmly impressed upon the German people the overwhelming military

might brought to bear by the Allies. This served to cement in their minds that they were defeated, leaving all thoughts of a continued struggle in the ashes of their cities. Post war activities on the part of Germany bear this out.<sup>37</sup> Germany rallied quickly and formed a new democratic government (with the assistance of the United States), and made its way back into the international system as a responsible member in a much shorter time than could have been anticipated in 1944.

A similar argument could be made, perhaps even more persuasively, for the use of atomic weapons against Hiroshima and Nagasaki. The world had already seen what the devotion of the Japanese people to their sense of duty could produce. The battles experienced during the island campaigns in the Pacific were clear evidence of this. Often times the local civilians would join with the military in a last ditch, to the last man fight, even when it was clear that military victory was impossible. The willingness of young men to willingly fly an airplane to certain death as a *kamikaze* pilot was beyond the scope of what the world had experienced before during war. It was necessary that the Japanese people see themselves as thoroughly defeated so that peace could be arranged and Japan begin the journey back to being a responsible member of the international community. The use of two atomic weapons led to just that outcome and today Japan is a valued member of the international community, as well as an economic leader.

However, that correlation of cause and effect between *jus in bello* and *jus post bellum* would not be morally acceptable under traditional Just War theory. In fact, it is not impossible to conceive of a Germany or a Japan where the violence and killing continued far past a peace agreement brokered by a government representing a

population that did not accept that they had been defeated. Such a continued struggle could have delayed or prevented these states from ever achieving the status they enjoy today as respected members of the international community.

In today's strategic environment, Just War theory seems to be less than optimal for determining the correct moral framework for the advent, prosecution and conclusion of war. It's foundation in an archaic international system that continues to exist in name only keeps it from having the relevance that it once did, particularly when used as a framework for examining and responding to the kinds of threats faced in the world today.

### A Better Peace

If it is a struggle to find relevance in Just War theory in the current strategic environment, perhaps it is time to look for a new moral framework to analyze war and actions in war. What would that framework look like? What could it be derived from? Perhaps it is best to look once again at war's purpose. The world has moved into a new strategic environment, some would say into a new world order. Has the purpose of war changed with this new strategic environment? Has this new world order offered new ways to think of the morality of war?

Martin Cook finds a strong foundation for the purpose of war by examining the moral efficacy of military service to the state in this new strategic environment. He recognizes that in the post-Cold War era, the Westphalian justification for military service presents a dilemma. He shows this in two different examples. He lays out the Desert Storm as an example of the quintessential Westphalian war. A state has its sovereignty and territorial integrity brutally violated by an invader. The international

application of military force to expel the invader is justified. But there are those who see darker motives behind an otherwise happy story. Concerns about national interests in oil and economics were really the issue is the argument they make. It is certainly difficult to argue that most nations did not have economic interests connected to the uninterrupted flow Kuwaiti oil. Cook contrasts Kosovo against this experience. He argues that no real crucial US interests were involved in Kosovo. Yet there were those who protested against US involvement in Kosovo for precisely that reason.<sup>38</sup> This is the essence of the conundrum of the new world order, what are the reasons for war?

But what is that order? Cook points to the new world order vision of Nelson Mandela. He offers the following words from Mandela to frame the vision:

As the possibility of nations to become islands, sufficient unto themselves, diminishes and vanishes forever, so will it be that the suffering of the one shall, at the same time, inflict pain upon the other. In an age such as this, when the fissures of the great oceans shall, in the face of human genius, be reduced to the narrowness of a forest path, much revision will have to be done of ideas that have seemed as stable as the rocks, including such concepts as sovereignty and the national interest. If what we say is true, that manifestly, the world is one stage and the actions of all its inhabitants part of the same drama, does it not then follow that each of us...should begin to define the national interest to include the genuine happiness of others, however distant in time and space their domicile might be?<sup>39</sup>

Of course, this vision begs the question which is paramount to the role of the state and military power in this new world order:

...is military power, freed from the fairly artificial and historically abnormal framework of the bipolar superpower world, now at last at liberty to serve the universal moral ends of promoting democracy, supporting human rights, and removing oppressors to the cheers of the oppressed?<sup>40</sup>

The words used by Mandela are sweeping in their scope, maybe too sweeping. But their underlying meaning is valid; the purpose of war in the world today has fundamentally changed. Perhaps B. H. Liddell Hart was the closest when he wrote that

“the object of war is a better state of peace – even if only from your point of view.

Hence it is essential to conduct war with constant regard to the peace you desire.”<sup>41</sup>

Any moral framework to examine the justness of war in today’s world should be focused on how waging war helps to reach the “better state of peace” that is desired.

In this new world order it is natural to assume that most states want to be at peace, at least the states that are conforming members of this world order. If war breaks out, for whatever reason, it is a very strong indicator that the peace which existed prior to the war was less than perfect. It can also be assumed that the conforming members of the new world order want to return to a state of peace as soon as possible. If so, then in fighting the war the conditions must be set to ensure that the peace attained is a better peace than the imperfect one that was broken in the first place.

This idea needs to be fleshed out a little. Let’s go back to Hart and further examine his idea of a better peace. Consider the following statement from Hart regarding war in pursuit of a better peace:

This is the truth underlying Clausewitz’s definition of war as a ‘continuation of policy by other means’ – the prolongation of that policy through the war into the subsequent peace must always be borne in mind.<sup>42</sup>

Hart sees a continuous thread that connects the reason for war, the conduct of war and the peace achieved as a result. There is no separation between any of these phases.

Consider this:

If you concentrate exclusively on victory, with no thought for the after-effect, you may be too exhausted to profit by the peace, while it is almost certain that the peace will be a bad one, containing the germs of another war. This is a lesson supported by abundant experience.<sup>43</sup>

If this is correct, then for any moral framework to adequately address war in the current strategic environment it must provide logical connections between the ideas of *jus ad bellum*, *jus in bello*, and *jus post bellum*. The considerations that a state makes regarding going to war will impact how they conduct themselves during the war and will drive the conditions they set for achieving and maintaining peace after the war.

So what would a moral framework based on the idea of war as a means to achieving a better peace look like? Over all, it would look very similar to Just War theory. After all, there is still the consideration that must be made about whether the war itself is just. Then there must be considerations that help guide actions to ensure that the war is conducted in as moral a fashion as possible. Finally, there must be a guideline for achieving a just peace. A closer look at each of these is appropriate at this point. While it will not be a comprehensive and finished moral framework, it will raise some of the right questions that will spur further thought on the subject.

The first thing to be considered is the moral foundation for going to war. In this version of *jus ad bellum*, there is a subtle but distinct difference from the old Just War version. Previously, the only moral or just war was fought for self-defense or to defend those who couldn't defend themselves. But the unique 21<sup>st</sup> Century threat of transnational terror equipped with WMD opens up the possibility of also conducting preventive wars. Given the easy access to the materials required for WMD and several organizations stated intent and demonstrated willingness to use them, to ignore the possibility and not take actions to prevent such an attack are the actions of an irresponsible and immoral state. Another change is the idea that success in war should lead to a better peace for the international community as a whole. This idea begins the

common thread that weaves through the morality of going to war, the morality of how wars are fought, and the morality of achieving a lasting peace.

There are some additional questions that must be answered to make this practical. How do you demonstrate or validate the tie to a better peace? Who is responsible for defining the better peace? What role does the international community at large play in this process? Perhaps this idea from Donald Kagan gives the start of an answer:

What seems to work best, even though imperfectly, is the possession by those states who wish to preserve the peace of the preponderant power and of the will to accept the burdens and responsibilities required to achieve that purpose. They must understand that no international situation is permanent, that part of their responsibility is to accept and sometimes even assist changes, some of which they will not like, guiding their achievement through peaceful channels, but always prepared to resist, with force if necessary, changes made by threats or violence that threaten the general peace.<sup>44</sup>

Kagan seems to suggest that if states wish to preserve the peace and have the power to do so, they have a responsibility to take action when the peace is threatened. If this is true, it is not a huge leap to the position that holds that those states that desire a better peace and have the power to bring that about have a responsibility to act when an imperfect peace is broken.

The considerations for moral conduct during a war also experience some subtle changes. What is most significant is that in this construct there is a direct connection between the purpose of war and the morality of actions during the war. This is not to suggest a relative, or sliding scale, morality. Certainly innocent noncombatants are innocent and should be accorded special status on the battlefield. However, when dealing with a recalcitrant state that enjoys the support of its population, conditions need to be set which convince the rulers and their citizenry that their defeat is real. Otherwise

the seeds for a highly flawed peace are sewn in the conduct of the war and the better peace desired by all will never be attained. Consequently, *jus in bello* becomes the connecting piece between *jus ad bellum* and *jus post bellum*.

In this construct, *jus post bellum* changes very little. The ideas contained within the criteria we discussed earlier are already very reflective of the notion of a better peace. For instance, an exceptionally belligerent regime with little regard for the welfare of its population that engages in excessively repressive measures to keep that population under control may need to be replaced in order to achieve a better peace that is lasting. Under the conditions discussed previously, *jus post bellum* provides the latitude necessary to bring about real and lasting change that contributes to the better peace.

This is certainly not a comprehensive framework that deals with all of the issues that arise regarding morality and its application to war. But perhaps it is enough of a start that work can begin on determining what the remaining questions are that need to be answered. One way is to take this very rudimentary framework and apply it to an existing scenario and see where the dust settles. For instance, how does the better peace framework cope with the fight against transnational terror? Examining this will probably lead to some unanswered questions and potential gaps.

In the application of the better peace version of *jus ad bellum* to the Global War on Terror, it does appear to address some issues that are inherent in the current strategic environment. For instance, there is little doubt among the international community that the threat posed by transnational terrorists equipped with weapons of mass destruction makes the current peace an imperfect one. Since several leading

nations, including the United States, have already been attacked, a military response against those attackers qualifies as both self-defense and the defense of others. Additionally, the eradication of transnational terrorist organizations, or at least the deterrence of their willingness to use terrorist tactics, would certainly help lead to a substantially better peace.

There are some significant questions that still must be answered. How is war waged against a non-state actor? While this is largely a legal rather than a moral issue, it has significant implications in the requirements for treatment of the combatants of the non-state actor, legal status notwithstanding. Another question goes to the correct or moral way to treat the nations that provide safe haven or aid to these organizations. There needs to be a framework for deciding if and when it is moral or just to take military action against these states. These are questions that will continue to be thorny issues.

If the elimination of transnational terrorism is the required element to achieve a better peace, then what are the implications for *jus in bello*? Here there are probably more questions than answers. It is clear that the cost of using terror as a tactic must be made to outweigh the benefit. However, this will be a difficult message to send since many terrorist organizations have achieved success in influencing the actions of states in this way. How to send this message to a non-state actor being harbored by a failed or failing state may be the most difficult question posed in this area. One issue nearly as difficult are states that sponsor terrorism without providing haven. What is the moral or just way to discourage or prevent these states from providing aid, whether it be arms or money or soldiers?

In the effort to achieve a better peace, *jus post bellum* considerations should help lay a firm foundation for a lasting peace with the absence of transnational terror. Regime change is an option that must necessarily always be on the table. This might be the only alternative that would make some states think twice about their continued support of terrorist organizations. If the cost of utilizing terror as a tactic has been made prohibitive and countries that either sponsor or provide safe haven to terrorists have been put on notice, then the foundational pieces for a lasting peace free of terror have been laid. But again, there are questions that left unanswered. Regime change is not a one size fits all solution. It is at best difficult, costly and time consuming to execute. At worst, it is disastrous and may make the imperfect peace that was the starting point even more imperfect. There must be guidelines to determine when the alternative to regime change is bad enough to warrant taking action.

Another question that is a common thread through the whole better peace framework deals with the decision to take action in the first place. In Just War theory, war can only be declared by the appropriate authority. That typically refers to a sovereign nation. Many Just War theorists contend that in the post-Cold War world order, war outside of a UN mandate is not just. In the better peace framework, the UN should be a major player, but not necessarily the ultimate authority. After all, the current state of the UN makes it a slow and cumbersome organization that is incredibly inefficient at times. That inefficiency can be disastrous in the current strategic environment. Therefore, unilateral action is sometimes necessary.

But it's important to remember that action outside of the UN or some other legitimizing international body is always risky. There are ways to mitigate this risk. The

best way to get others to consider actions moral, even when outside the commonly accepted boundaries, is to always take moral actions. After all, it's much easier for a person to be considered a moral leader when they actually live and conduct themselves in a moral way. The same concept applies here. If the day to day dealings of a state are moral and above reproach, it will have the latitude to occasionally step outside of the lines as long as it is focused on achieving the better peace. The stated means and ends will not be seen as inconsistent with previous behavior. If the day to day dealings with other states are not done from a strong moral foundation, then no amount of spin or strategic communications can salvage the action that is outside the norm since every action is outside the norm.

### Conclusion

In the end, there will probably always be a requirement for a strong moral foundation for conducting war. However that requirement is analyzed, most states will find their citizenry unwilling to accept the cost of war without the right underlying foundation. If this is true, then that foundation must be relevant to the strategic environment that defines the international system in which states operate. Just War theory, being rooted in the old Westphalian system, is not relevant to the 21<sup>st</sup> century strategic environment. It does not adequately address the threat of transnational terror, a new and unique force that justifies and conducts war in new and inventive ways that move far outside the boundaries of the current experience base.

In order to address these issues the old ways of viewing the justness or morality of war must grow or evolve or become irrelevant. The shift from seeing the only just purpose of war as self defense or the defense of those who can't defend themselves

(one of the foundational premises of Just War theory) to seeing the purpose of war as the way to gain a better peace is critical. This view provides a more solid foundation for a 21<sup>st</sup> Century moral framework that is relevant to the 21<sup>st</sup> Century strategic environment.

Nations that continue to bring old and outdated ideas into this new operating environment will find they are in great danger. It is tantamount to trying to hold off the German *blitzkrieg* by building another Maginot line. Given the states responsibility to provide the “common life,” nations must adapt or find themselves unable to provide for their own defense. A nation that is incapable of securing the common life for its citizenry because it has chosen to ignore the world in which it operates and hides behind an moral framework that is built on an outdated and irrelevant framework is acting in an unjust and immoral fashion.

### Endnotes

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<sup>5</sup> Yaron Brook and Alex Epstein, “‘Just War Theory’ vs. American Self-Defense,” Spring 2006, <http://www.theobjectivestandard.com/issues/2006-spring/just-war-theory.asp>, (accessed 13 Jan 2009).

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<sup>7</sup> Ibid.

<sup>8</sup> Josh Meyer, “Saudi Arabia is prime source of terror funds, U.S. says,” *Los Angeles Times*, April 2, 2008

<sup>9</sup> Aurelius Augustine, *The City of God*, trans. Rev Marcus Dods (Edinburgh: T & T Clark, 1871), 320.

<sup>10</sup> Ibid, 312.

<sup>11</sup> Martin Cook, "Moral Foundations of Military Service," *Parameters*, Spring 2000, <http://www.carlisle.army.mil/usawc/Parameters/00spring/cook.htm>, (10 Oct 2008).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Brian Orend, "War."

<sup>15</sup> Ibid.

<sup>16</sup> Michael Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004), 21.

<sup>17</sup> Brian Orend, "War."

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Michael Walzer, *Just and Unjust Wars*, (New York, NY: Basic Books, 1977) 74.

<sup>26</sup> Ibid, p75.

<sup>27</sup> Ibid, p136.

<sup>28</sup> Michael Walzer, *Arguing About War*, 26.

<sup>29</sup> Brian Orend, "War."

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Jay Gonen, *The Roots of Nazi Psychology: Hitler's Utopian Barbarism*, (Bowling Green: University Press of Kentucky, 2003), 8.

<sup>34</sup> Ibid.

<sup>35</sup> Wolfgang Schivelbusch and Jefferson Chase, *The Culture of Defeat: On National Trauma, Mourning, and Recovery*, (New York: McMillan, 2004), 215.

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<sup>37</sup> Mark Silverberg, "Beyond Gaza," linked from *Archives: Articles of Mark Silverberg*, <http://jfednepa.org/mark%20silverberg/index.html>, (accessed 24 March 2009)

<sup>38</sup> Martin Cook, "Moral Foundations of Military Service."

<sup>39</sup> US Congress, *Congressional Record*, 103d Cong., 2d sess., 6 October 1994, 140, Part 144, H11008, <http://www.thomas.gov/cgi-bin/query/F?r103:70:./temp/~r103GTiRs5:e0:>,

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<sup>41</sup> B.H. Liddell Hart, *Strategy*, (London: Meridian, 1991), 353.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Robert Kagan, *Origins of War and the Preservation of Peace*, (New York: Anchor, 1996), 570.

