

**COLLOQUIUM ON  
ETHICS OF WAR AFTER 9/11 AND IRAQ**  
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**Panel on Global Terrorism and the Just War Tradition**  
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Just war tradition (JWT) applies to the war on terrorism (wot) and is a necessary limitation on conflict, made more important given the 24/7 networks of globalization. But JWT is not sufficient to describe all the ethical parameters of the war on terrorism, as not all that must be done to combat terrorism is war, and public authorities are only some of the actors involved in combating terrorism. Therefore the ethics of war gets us only so far in considering the ethics of our responses to terrorism.<sup>1</sup>

In explaining this thesis, I will make 3 points. **1) I will place the current wot in context, and explain what has not changed, why warfare and the nature of the threat has not utterly transformed since September 11, and therefore why we do not need to radically alter JWT to deal with the wot.** JWT predates sovereign states and is well able to address problems of asymmetric conflict and nonstate actors. This is the “JWT still applies” part of the talk. **2) Some things have changed in the current nature of global terrorism, but these make JWT more necessary, not less.** Terrorists now go global, outsource casualties, and advertise their discontent 24/7 using cheap and easily available global media. Our responses to terrorism are also broadcast instantly and globally as well. This makes our ethical response to terrorism more not less important, both to help attract coalitions and to deny terrorist recruitment tools, as shown in the international fallout from the Abu Ghraib prison scandals,. No terrorist organization has ever felled a democratic state. However, terrorists continually attempt to provoke democracies into overreactions, to bring us down to their level, as a means to attract greater sympathy to their cause. JWT is thus more necessary, not less, to help inoculate authorities from destructive and counterproductive overreactions. And **3) JWT is not sufficient to explaining the ethical landscape of the wot, because war is not the only or even the most effective means of fighting terrorism, and private sector and IGO actors have important roles to play in combating terrorism.** We must remember that right authority does not only refer to sovereignty, an important point when one third of the world’s population live beyond sovereignty in failed or failing states, and when IGOs have critical roles to play in stemming problems that go beyond sovereign borders.

**1. The WOT in Context, and Why JWT Still Applies**

Since September 11<sup>th</sup>, some argue that the nature of warfare has been transformed. As Colin Powell put it, “It’s a different world . . . it’s a new kind of threat.”<sup>2</sup> It’s also an old argument. From the Dreadnaught to the microchip, every age argues the latest technology and the latest war revolutionize conflict and make all that came before obsolete. Assuming warfare has been utterly transformed, many argue that the ethics of war must be also transformed, that just war tradition (JWT) is obsolete or needs to be radically changed to handle terrorism, suicide bombers, holy war, nonstate actors, and especially weapons of mass destruction (WMD). As Michael Ignatieff put it shortly after 911, “The ethics of the war on terror involve a landscape of military action that is completely unfamiliar.”<sup>3</sup>

This is not true. The nature of the threat Americans faced on September 11<sup>th</sup> and since is not new. What is new is the U.S. sense of vulnerability to these persistent and pre-existing threats.

“September 11<sup>th</sup> shows the danger of the combination of terrorism and technology,” is the usual refrain behind the claim that the nature of warfare has fundamentally changed. But the 911 attacks were remarkably low tech attacks, conducted with box cutters! Terrorism is a tactic, a centuries-old tactic of asymmetric warfare.

“Terrorism” first described the reign of terror of the French Revolution in 1793-94. Asymmetric warfare is a much older practice. Suicide bombers are likewise an age-old tool of asymmetric conflict, with soft targets the focus of choice. Islamic extremists in the 11<sup>th</sup> century coined the term “assassins” (after hashshashin, people addicted to hashish) for murdering their victims in mosques “for maximum shock effects.”<sup>4</sup> The greater the superiority of the US military, the more adversaries will not challenge the US military directly, but instead will use asymmetric warfare and target critical infrastructure and civilians. While this is al Qaeda’s strategy, it is also a page from Mao Tse tung or Sun Tzu. Wait and wear down your enemy with patient strikes on underprotected targets. It is also the strategy of the Russian and Chinese governments. Should current cordial relations with the US ever deteriorate and the US become an adversary, it is Russian and Chinese strategy that they would not attempt to challenge the superior US military on the battlefield, but instead would attack US lesser protected civilian critical infrastructure. Holy wars pre-date the Bible. Nonstate actors are the norm in world politics and history. The sovereign state is a newcomer, only around since approximately the Treaty of Westphalia in 1648. Thus nonstate actors are a standard, not new, feature of international politics, pre-existing sovereign states.

Weapons of mass destruction are not new. Chemical and biological weapons have been in use for over a millenia. The ancient Greeks and Assyrians used biological agents in war.<sup>5</sup> “1300 years ago the Greeks used a primitive form of napalm upon their enemies. Cythian archers dipped their spears and arrows in blood and manure to cause illness in those they pierced, and the British gave Indians in America small pox infected blankets,”<sup>6</sup> causing catastrophic destruction of native populations. In WWI the Germans unleashed 168 tons of chlorine gas, to break through the stalemate of trench warfare, beginning the chemical weapons arms race that would lead to the development of mustard gas, nerve gas, and weaponized anthrax. Over the course of the war 91,000 died from chemical weapons out of more than a million who were gassed.<sup>7</sup> Biological weapons were used by the infamous Japanese Unit 731 against Chinese civilians in the late 1930s and early 1940s, including bubonic plague, anthrax, typhus, and tuberculosis, killing more than a quarter million people.<sup>8</sup> And of course, nuclear weapons have been a fact of the political landscape for sixty years, killing over a quarter million in Hiroshima and Nagasaki. Three thousand dead on September 11<sup>th</sup> are horrific, but sadly not unheard of, casualties.

Terrorists using weapons of mass destruction, sadly, is not new. In the early 1980s, the Japanese terrorist group Aum Shinrikyo began its half billion dollar attempt to gain nuclear weapons. Ten years ago, after several earlier trial run biological attacks, they carried out sarin gas attacks on the Tokyo subway. In 1995 Chechen rebels left a radiological device in a Moscow park as a warning to authorities of what they could do. Terrorists capturing commercial airlines and using them as weapons is also not new. In 1994, Algerian terrorists captured a French passenger airline to fly into a populated French landmark. They were prevented by French authorities who stormed the plane. Numerous disrupted millennium attacks in the Pacific and Asia were attempts to hijack commercial airliners and fly them into buildings and landmarks.

JWT has applied from the age of swords and spears, to gunpowder, to machine guns, to mustard gas, air power, and nuclear weapons. JWT has applied to all sorts of actors, and does not require reciprocity. Augustine and Aquinas grappled with the problem of the use of force by armed bands not authorized by public authorities. Vitoria and Suarez discussed the clash of civilizations, and what norms of warfare should apply when conflict occurred between governments and nongovernment groups from different continents and cultures. Hugo Grotius examined how international law and international community should factor in to decisions over the use of force. And contemporary just war theorists have written extensively about JWT's applicability to both WMD and low intensity, asymmetrical conflicts.<sup>9</sup> Those who argue everything is different post-911 would seem to bear the burden of proof. Why would JWT not apply to the very types of problems it has addressed over the centuries?

## **2) What is New: Why JWT is necessary**

Globalization did not create terrorism. But globalization facilitates terrorism. Terrorists and tourists alike use the same global infrastructure. Terrorism today is less connected to a particular piece of land, and therefore, to a particular sovereignty. Why does this matter? Because it allows for greater casualties. Why? Terrorists today "outsource" casualties. Unlike the IRA, or ETA, where increased casualties decreases domestic support, greater casualties of "foreign" citizens on faraway territory may not undercut support, financing, recruits among terrorists' different target audiences elsewhere.

The global and instant nature of today's networked terror present challenges that even the strongest states in the system, the US, cannot respond to alone. Consider the following example:

Australian authorities arrested a Caribbean-born French citizen who was sent by a little-known Pakistani group to scout for possible targets. The group, Lashkar e Taiba, was previously thought to be focused only on the India-Pakistan border struggle in Kashmir, but now is thought to be working with al Qaeda, substituting training camps in Kashmir for those destroyed in Afghanistan. This is a nightmare for state response. Terrorist networks outpace state institutions ability to respond, exploiting capacity and jurisdiction gaps.

Terrorists today are not tied to a particular piece of land, making military responses to terrorism more difficult and less effective. As US forces expertly took out al Qaeda training bases in Afghanistan and scattered al Qaeda operatives from Afghanistan into exile, according to witness Hamid Mir "every second al Qaeda member carried a laptop computer along with his Kalishnikov rifle." Perversely, the bombing of the Afghan camps had the unintended consequence of sending al Qaeda training and recruitment onto the world wide web. Where once recruits had to undergo costly and difficult travel to remote camps in Afghanistan, now all the training materials, videos, and exercises once located at the Afghan camps are all instantly and cheaply available on the Internet, further decentralizing violent jihad.

State jurisdiction is restricted by geography, while terrorists are less constrained by geography. Therefore international cooperation among both states and with the private sector is key to the response to today's terrorists, and it is why JWT is more important than ever, to hold onto our common ethical base as we seek to work together across borders.

Another change to terrorism today is the 24/7 news cycle. If terrorism is a form of advertising discontent, what is new in the last 20 years with satellite television and the internet is that terrorists can now take their message farther afield, globally, instantly. Our responses to terrorism are also broadcast instantly and globally, as shown

in the traction terrorists have gotten out of the Abu Ghraib prison scandals and the ongoing debate about torture and detention in the US. This makes our means more, not less important.

Last month, al-Qaeda broadcast its first television news show, via the Internet. The news anchor had his face covered, with a Koran and rifle at his side. The 16-minute "bulletin" entitled Sout al-Khalifa (the Voice of the Caliphate) included stories on how Hurricane Katrina is the beginning of divine retribution on the US, and broke for an advertisement supporting a new film, Total Jihad.

The wot is primarily a battle of ideas. Al Qaeda fights for the idea of the bankruptcy of modern and secular Islamic states allied with the West, while the US fights for the idea that the tactic of terrorism, of intentionally killing civilians, is impermissible. We cannot effectively fight for a global norm while ignoring normative constraints. We certainly cannot do this with the world watching.

**3) JWT is necessary but insufficient to explaining the ethical landscape of the wot, because war is not the only or even the most effective means of fighting terrorism, and private sector and IGO actors have important roles to play in combating terrorism.**

There is a myth that military means are the most effective to combat terrorism. This would be helpful for the US if it were true, as the US has the world's supreme military by far. If terrorism could be effectively combated by war, the US would not have much difficulty making short work of al Qaeda. But war is not a particularly effective tool of combating decentralized terrorist networks, that are not concentrated in one territory, or primarily sponsored by states or rogue regimes. Al Qaeda's 9/11 attacks were by nonstate actors, using nonmilitary means, against primarily civilian targets. The US responded by going to war against two states, Afghanistan and Iraq. Afghanistan certainly was a sponsor and haven for al Qaeda. Iraq had only the most indirect links to al Qaeda prior to the US invasion; according to CIA testimony to Congress, the US invasion caused rather than cured the al Qaeda presence in Iraq.

War has more capacity against old-style terrorists, land-based groups that are geographically concentrated and have territorial designs (Palestinian nationalism, Basque separatists, the IRA). Even in these cases, military overreactions to terrorists often helped terrorists rather than hurt them, as the British government learned when their Bloody Sunday massacre of Irish civilians breathed new life into the IRA.

Much of the war on terrorism is not war, but is intelligence work; law enforcement; disruption of financial networks; international cooperation and alliance in all of the above; political engagement to address some of the terrorists' grievances in ways that dry up their appeal, through negotiation, foreign or development aid; and engaging the battle of ideas. Our means matter in the battle of ideas. Terrorist groups attend to the Battle for hearts and minds, but as Secretary Rumsfeld and the 9/11 Commission noted, for too long the US has not.

JWT is about war— it is not about the ethical conduct of intelligence or law enforcement. Some of the areas where the ethics of combating terrorism has been most challenged (on the issues of torture and detention) are precisely beyond JWT's purview. JWT is also about the moral responsibilities of *public authorities*, but much of the fight against terrorism falls to *private sector actors*— transportation and shipping authorities charged with protecting critical infrastructure, banks charged with stopping money laundering. Further we are seeing the privatization of war, with private military firms involved in many key aspects of the wot, from providing troops

to safeguard the Afghan President against numerous assassination attempts, to manning checkpoints and interrogating prisoners in Iraq. Many of these actors see their moral imperative as providing profit for their stakeholders.

JWT is also insufficient because it has little to say about jus post bello, just peace, issues that nag the US today in Afghanistan and Iraq. This is an issue that the Catholic Peacebuilding Network is taking on, and one we may hear more about over the course of today.

**In conclusion, if JWT still applies to the wot (is necessary but not sufficient), why then is there so much debate? It is a debate not about whether we are *able* to apply JWT to the wot, but rather whether we are *willing to adhere to moral limitations against an enemy that violates them.*** There is a sense that it is unfair and unwise for the US to adhere to moral limitations against an enemy that violates those very codes, that we are “soft” or offer the enemy a strategic advantage when we refuse to respond in kind against adversaries who fight dirty. This view is mistaken. Our moral codes are not a hindrance, but a help in fighting the wot. Upholding our moral values while combating those who do not: helps to build and retain legitimacy and credibility for our cause at home and abroad; helps build and maintain alliances; gives access to strategic resources we would not have without international cooperation and alliances; helps deny the terrorists’ recruits, credibility, legitimacy, and support and discredits terrorists; assuages negative public opinion of the United States in the Arab and Muslim world; prevents the self-defeating overreactions that terrorists seek to create; retains military ethos and professionalism; and constructs a global prohibitory norm against terrorism.

It is wrong to think of ethics as handcuffs in fighting the wot. Ethics versus power politics is a false choice. We are not forced to choose between upholding ethical norms or pragmatically advancing U.S. power. Ethics are an important and underutilized tool of power in the war on terrorism, and must be embraced as such. The “ends justify the means” calculus is wrong because morality matters in combating terrorism and especially in curtailing al Qaeda. Abandoning JWT in the fight against terrorism is not just bad morality; it is bad politics.

As Michael Ignatieff described it shortly after 9/11 in an address to a military audience, “We have to think of ethics as our enabler and multiplier. You are in the legitimacy business—reproducing, building and strengthening the legitimacy of your society here and abroad. If you understand the role of ethics in doing that, you will be doing your job.”<sup>10</sup>

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1. These arguments are drawn from Maryann Cusimano Love, *Beyond Sovereignty: Issues for a Global Agenda*. 3<sup>rd</sup> Edition, Thomson/ Wadsworth, 2006; and Maryann Cusimano Love, *Morality Matters: Ethics and the War on Terrorism*. Cornell University Press, forthcoming.

2. Colin Powell, “Perspectives: Powell Defends a First Strike as Iraq Option,” interview, *New York Times*, September 8, 2002, sec. 1, p. 18.

3. Michael Ignatieff, “Ethics and the New War,” *Canadian Military Journal*, Winter 2001-2002, 5; George Weigel CUA Law School paper.

4. George W. Gawrych, “Jihad, War, and Terrorism,” Fort Leavenworth, KS: U.S. Army Command and General Staff College. Combat Studies Institute, 29 October 2002, 9. <http://www-cgsc.army.mil/csi/research/writing/JihadGawrych.asp>; Washington Post article on the history of suicide bombers, Sunday Outlook section, June 2003.

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5. Joseph Cirincione, *Deadly Arsenals: Tracking Weapons of Mass Destruction*. Washington, D.C.: Carnegie Endowment for International Peace, 2003, 8.
6. PBS Video, Ted Turner and WETA Washington, DC Documentaries. "Silent Killers: Poisons and Plagues," part I of the *Avoiding Armageddon* series, Washington, DC, 2003.
7. PBS Video, Ted Turner and WETA Washington, DC Documentaries. "Silent Killers: Poisons and Plagues," part I of the *Avoiding Armageddon* series, Washington, DC, 2003; Martin Schram, *Avoiding Armageddon: Our Future, Our Choices*. New York: Basic Books, 2003, 125-127.
8. After the second world war, none of the Japanese military or scientists in the Japanese biological weapons program were prosecuted as war criminals, but amnesty was granted to them in return for turning over their documents, records, and findings to the US government's Army biological research program at Ft. Detrick, Maryland. "The deal was struck at the recommendation of General Douglas MacArthur and scientists from Ft. Detrick, Maryland. The chairman of the Joint Chiefs of Staff approved the decision on March 13, 1948...The United States took possession of thousands of pages of information on the effects of the deadly diseases, descriptions of the diseased tissues of victims who were dissected while alive—experiments U.S. scientists could not do on their own. What the U.S. government traded for all that was freedom for the criminals and deniability for the Japanese government, which continued to deny for half a century that Unit 731 even existed...On August 27, 2002 a Japanese court officially admitted that Japan had waged germ warfare on China in World War II. It was the first time a Japanese court had ever acknowledged such a thing had occurred. But the court ruled that Japan had no legal liability and rejected claims for monetary compensation—a decision that has been appealed." Martin Schram, *Avoiding Armageddon: Our Future, Our Choices*. New York: Basic Books, 2003, 184-185. See also, Eric Croddy, *Chemical and Biological Warfare: A Comprehensive Survey for the Concerned Citizen*. New York: Copernicus Books, 2002, 225; Sheldon Harris, *Factories of Death: Japanese Biological Warfare 1932-1945 and the American Coverup*. New York: Routledge, 1994, 114.
9. James Turner Johnson, *Morality and Contemporary Warfare*. New Haven, CT: Yale University Press, 1999; Alberto R. Coll, James S. Ord, and Stephen A. Rose, *Legal and Moral Restraints on Low-Intensity Conflict*. Newport, RI: Naval War College, 1995; Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World*. New York, NY: Basic Books, 2003; Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*. New York: Metropolitan Books, 1998.
10. Michael Ignatieff, "Ethics and the New War," *Canadian Military Journal*, Winter 2001-2002, 5