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Future Technology and Ethics in War

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FUTURE TECHNOLOGY AND ETHICS IN WAR

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The influence of technology on war is overrated. Technology does not win wars. It does not lose wars. It does not even fight wars. People do. New technology is the handmaiden of change, but even technologies that take the human "out of the loop" have a hand behind the handmaiden. New technologies pose far fewer new ethical challenges to warfare than is often supposed. The current wave of technological innovation, which is largely derivative of innovations in data processing and transmission, will not change the traditional relationship between technology and ethics in war very much.

On the other hand, there are enormous challenges to the traditional ethical framework that has been used to judge the use of violence in armed conflict. This tug-of-war is at the root of the contemporary debate over the changing role of weapons in war.

I. JUST WAR AND CURRENT WAR

Foundational to this assessment is the belief that ethics are rooted in culture. In the West, the predominant ethical framework for assessing what is right and wrong is the just war doctrine (also described as just war theory or the just war tradition).[1] This doctrine, deriving from classical and Christian philosophy, is at the root of the Western conception of what constitutes the legitimate use of force by the state.[2]

In applying the ethics of war to technology, the most relevant principle of just war doctrine is the standard of proportionality. "Just war theory, the most widely accepted theory of the morality of war," Professor Thomas Hurka rightly points out, "contains two proportionality conditions that say a war or an act in war is justified only if the damage it causes is not excessive."[3] One set of conditions are the *jus ad bellum.*[4] Before force is used, it must be for a reasonable purpose, employed by a competent authority, and have a reasonable chance of success.[5] In addition, the destructive evil caused by war must not be disproportionate to the relevant good a just war might accomplish.[6] The other set of conditions are the *jus*

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[1] *See* JAMES TURNER JOHNSON, JUST WAR TRADITION AND THE RESTRAINT OF WAR, at xxi (1981).

[2] *See, e.g.*, *id.* at xxiv.

[3] Thomas Hurka, *Proportionality in the Morality of War*, 33 PHIL. & PUB. AFF. 34, 35 (2005).

[4] *Id.*

[5] *Id.*

[6] *Id.*

in bello.[7] Intentionally targeting noncombatants is forbidden, and combatants must make efforts to limit the danger to noncombatants.[8] The use of force must be for a military purpose—in other words not indiscriminate—and the risk to harming innocents cannot be out of proportion to the direct military end that is anticipated.[9] For example, leveling an entire city to take out a sniper would be considered a violation of the proportionality principle. Indeed, such prohibitions are codified in formal rules, such as the Additional Protocols to the Geneva Convention.[10]

Introducing new technologies does not change anything in using the ethical framework of the just war doctrine. As the technology changes and evolves, what is proportional is largely a military-technical question, not an ethical one. As technology gets more destructive, or its application more precise, what could be considered legitimately proportional might change—but that is a question of prudent judgment, not morality.

II. THE TECHNOLOGICAL CONSTANT

It is a mistake to believe the ethical application of technology in war can be determined in absence of a practical understanding of how the technology is applied. A case in point was the development of strategic bombing during World War II, which saw a significant increase in the destructive power of aerial bombing—way out of proportion to the capacity of militaries to more precisely direct that power to limit the danger to innocents. Disconnecting that reality from ethical judgment skews the results. Michael Walzer's *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, however, makes exactly that mistake.[11] Rather than derive theory from history, as his subtitle suggests, Walzer uses historical examples to illustrate a theory of ethical decision making—and he gets it exactly wrong.[12] He has little confidence in the study of facts. Instead, the practice of warfare is considered subjective and vague—primarily a tool for illustrating the complexities of choice rather than a guide for action.

To illustrate the moral challenges of command responsibility, Walzer draws on General Omar Bradley's decision to carpet bomb the area west of St. Lo during the Allied breakout from Normandy in July 1944.[13] During the bombing, Allied

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[7] *Id.* at 36.

[8] Hurka, *supra* note 3, at 36.

[9] *Id.*

[10] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 51(5)(b), *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 3.

[11] MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS (4th ed., 2006).

[12] *Id.* A portion of this Article was derived from James Jay Carafano, The Ethics of Operation Cobra and the Normandy Breakout (January 2000) (unpublished manuscript), *available at* http://isme.tamu.edu/JSCOPE00/Carafano00.html, which was presented to the Joint Services Conference on Professional Ethics.

[13] WALZER, *supra* note 11, at 317–19.

planes killed and wounded an unknown number of French civilians, as well as hundreds of American soldiers.[14] Walzer suggests that if Bradley had not taken "due care" to make the minimum reasonable effort to minimize civilian casualties or consider reasonable alternatives, his decision to bomb civilians was morally indefensible.[15] But then Walzer admits he lacks the technical expertise and research to fairly judge the General's choice and simply concludes, "There is no sure rule against which to measure the conduct of General Bradley."[16] Walzer misses an opportunity to make an important point: in modern warfare, technical knowledge and expertise are central to the issue of determining command responsibility.

The reality was that as brutal as carpet bombing might have appeared from Walzer's perspective—an academic writing in the late 1970s—he did not know what he was talking about. In his book, Walzer offers several alternative courses of action that Bradley might have used to avoid the carpet bombing.[17] In reality, a careful study shows that none were really practical alternatives and that Bradley's tactical scheme was not only appropriate, but the best option available.[18] In short, Walzer turns a technical judgment into a moral question because he does not know what he is talking about.

Technology in war has come a very long way since World War II. As Charles Williams Maynes pointed out over two decades ago, since World War II we have not become more moral, but we have become more accurate.[19] The spot that required nine thousand bombs to hit accurately in World War II required two hundred in Vietnam and one in the Gulf War.[20] Today, the US military can take out a target with a single bomb or missile.[21] Yet technical issues such as accuracy and lethality are as essential to the calculus of determining moral responsibility today as they were then. For a discussion of ethical conduct to contribute to understanding, the considerations of theory and practice must go hand in hand. Practice is not simply a tool for illuminating theory.

Often discussions of the ethics of modern war—such as the use of armed drones—are not about ethics at all, but are rather a technical-military assessment of the appropriate use of force.

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[14] *Id.* at 318–19.

[15] *Id.* at 319.

[16] *Id.* at 321.

[17] *Id.* at 318 ("Perhaps civilians all along the battlefront could have been warned[,] the attack could have been redirected[, or] the planes, flying low, could have aimed at specific enemy targets . . . .").

[18] *See* JAMES JAY CARAFANO, AFTER D-DAY: OPERATION COBRA AND THE NORMANDY BREAKOUT (2008).

[19] *See* Charles William Maynes, *"Principled" Hegemony*, WORLD POL'Y J., Fall 1997, at 31, 34.

[20] *Id.*

[21] *See id.*; *see also* RAYTHEON, TOMAHAWK: SERVING THE U.S. AND ALLIED WARFIGHTER 1–2 (2012) (detailing recent technical updates and achievements).

Granted, these debates can be maddening. Critics complain that covert operations are, well, covert, and the facts to judge the judgments are not readily available.[22] Even where there are not concerns for operational security, the basic facts and information needed to evaluate military decisionmaking may not be readily available—lost in the fog of war. Some groups create their own facts. Efforts to estimate civilian deaths due to the Iraq War offer a case in point.[23] Lack of basic effort may make evaluations of military decisions difficult for outsiders, but that is not a new problem, and it does not create a new ethical dilemma.

III. THE CHALLENGE OF NEW ETHICS

How we think about technology in war may indeed be changing, but not necessarily because the technology is changing. Our thinking may be changing because our ethics are changing. One particularly important trend to note is the rise of the importance of empathy in Western culture.[24] We may be entering an age where feeling may increasingly trump reason when judging the use of violence.

The Western thinking and the ethics at the foundation of that way of thinking are rooted in two competing intellectual cultures. On the one hand, the Western approach to war derives from a tradition of applying rational decisions to public decisions.[25] On the other hand, we are also products of an older narrative culture, dominated by the oral transmission of ideas in the form of stories that have a beginning and an end, heroes and villains, and lessons to be learned.[26]

The information age has empowered both our rational and narrative cultures. Information technology gives us more data, but it also allows opinion-makers to spin better, more compelling stories faster and to proliferate them more widely.[27] In many areas of modern life the analytical power of the information age dominates, but not in the public sphere where public policies are disputed, including our judgments over what is just in war.[28] While computers expand computational power, they also power e-mail, Facebook, YouTube, Twitter, and

[22] Charles R. Beitz, *Covert Intervention as a Moral Problem*, 3 ETHICS & INT'L AFF. 45, 57–60 (1989).

[23] Hannah Fischer, *Iraqi Civilian Deaths Estimates*, *in* ECONOMICS AND GEOPOLITICS IN THE MIDDLE EAST 87 (Richard N. Dralonge ed., 2008).

[24] *See* LYNN HUNT, INVENTING HUMAN RIGHTS: A HISTORY 35–69 (2007) (discussing how "new kinds of experiences, from viewing pictures in public exhibitions to reading the hugely popular epistolary novels about love and marriage . . . [have] helped spread the practices of autonomy and empathy").

[25] James Jay Carafano, *Thinking the Future*, WHITEHEAD J. DIPL. & INT'L REL., Summer/Fall 2009, at 27.

[26] *Id.* at 30–31.

[27] ALEX WRIGHT, GLUT: MASTERING INFORMATION THROUGH THE AGES 231–32 (2007).

[28] *See* Carafano, *supra* note 25, at 29.

other social networking tools (often collectively called Web 2.0),[29] which facilitate conversation and storytelling on a global scale.[30]

Narrative culture's emerging dominance may also be attributable in part to the increasing importance of empathy in the contemporary world. Empathy has risen to become a key preferred attribute of Western society.[31] The emotion of caring overwhelms the logic of cold hard facts. Because stories are particularly effective at stirring our empathic impulses, the power of information technology pushes that impulse into overdrive.[32] Historian Lynn Hunt argues, for example, that contemporary concerns over torture and the universal nature of human rights are modern expressions of an increasingly empathic culture.[33]

Another possible candidate for explaining the rising power of the narrative over analysis is the profound transformation in our understandings of the representation of truth and facts that has been driven by postmodern philosophy and literary criticism. "These have led scholars to value 'smart' and 'interesting' work over the 'sound' and 'rigorous' studies that were most praised in earlier decades," suggests sociologist Michéle Lamont.[34] Perhaps these academic attitudes have crossed over to influence the character of the debate in public decisionmaking as well. The emphasis on empathy and feeling over rational judgment makes ethical judgments such as proportionality seem quaint, old fashioned, and out of touch with modern sentiments.

A second challenge to the just war tradition is the increasing use of "lawfare" in international politics.[35] This tactic comprises efforts to thwart U.S. policies by attempting to undermine America's legitimate efforts to exercise sovereignty and act in its own interests as it sees fit.[36] Some analysts define this lawfare as misusing or reinterpreting laws to make American actions appear illegitimate in the eyes of the world.[37]

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[29] *See* George Ritzer & Nathan Jurgenson, *Production, Consumption, Prosumption: The Nature of Capitalism in the Age of the Digital 'Prosumer*,*'* 10 J. CONSUMER CULTURE 13, 14 (2010) (recognizing Facebook, YouTube, and Twitter as Web 2.0).

[30] Carafano, *supra* note 25, at 31 (citing Josef Kolbitsch & Hermann Maurer, *The Transformation of the Web: How Emerging Communities Shape the Information We Consume*, 12 J. UNIVERSAL COMPUTER SCI. 187 (2006)).

[31] *Id.* (citing HUNT, *supra* note 24, at 28–29, 39–40).

[32] *Id.*; *see also* P.J. Manney, *Empathy in the Time of Technology: How Storytelling Is the Key to Technology*, J. EVOLUTION & TECH., Sept. 2008, at 51 (2008), http://jetpress.org/v19/manney.pdf.

[33] HUNT, *supra* note 24, at 28–31.

[34] MICHÈLE LAMONT, HOW PROFESSORS THINK: INSIDE THE CURIOUS WORLD OF ACADEMIC JUDGMENT 73 (2009).

[35] *See* Orde F. Kittrie, *Lawfare and U.S. National Security*, 43 CASE W. RES. J. INT'L L. 393, 394 (2010).

[36] *See id.* at 395–99 (describing forms of lawfare used against the United States).

[37] *See* Lee A. Casey & David B. Rivkin, Jr., *International Law and the Nation-State at the U.N.: A Guide for U.S. Policymakers*, BACKGROUNDER (Heritage Found., Washington, D.C.), Aug. 18, 2006, at 20, *available at* http://www.heritage.org/research/

One particularly egregious exercise of lawfare has been conducted by international human rights activists, including certain "special rapporteurs" operating out of the United Nations Human Rights Council in Geneva.[38] Attacks with U.S. unmanned aerial vehicles (commonly referred to as drones) have been one particular target for these groups.[39] Indeed, U.N. special rapporteur Ben Emmerson of the United Kingdom recently announced a new investigation into the U.S.'s use of drones in various countries.[40]

The problem with lawfare is that it blurs the line between the law and political advocacy. What is rational or legitimate becomes less important than what we want. Such a basis of public decisionmaking is far different from the rules of war derived from the just war tradition.

A third challenge to the just war framework is the increasing argument in international affairs that sovereignty just does not count anymore. Just war traditions are grounded in the belief that the State is the ultimate arbiter of the use of force in the name of the State.[41] That idea is increasingly coming under question. Human security, for example, is a concept that is being increasingly trumpeted as a collection of rights that trump the sovereign authority of the State when it comes to the legitimate use of force.

Over the years, various groups have stretched the definition of "security" to mean supranational entities intervening ostensibly to protect individuals anywhere and the definition of "rights" to include everything from a right to life to a right to development and resources.[42] For example, the United Nations is pursuing a broad

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reports/2006/08/international-law-and-the-nation-state-at-the-un-a-guide-for-us-policymakers.

[38] *See* News Release, Office of the High Comm'r of Human Rights, Statement by Ben Emmerson, UN Special Rapporteur on Counter-Terrorism and Human Rights Concerning the Launch of an Inquiry into the Civilian Impact, and Human Rights Implications of the use Drones and Other Forms of Targeted Killing for the Purpose of Counter-Terrorism and Counter-Insurgency (Jan. 24, 2013), *available at* http://www.ohchr.org/Documents/Issues/Terrorism/SRCTBenEmmersonQC.24January12.pdf; *UN Counter-Terrorism Expert to Launch Inquiry into the Civilian Impact of Drones and Other Forms of Targeted Killing*, OFFICE U.N. HIGH COMM'R FOR HUMAN RIGHTS (Jan. 22, 2013), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12943&LangID=E.

[39] *See* News Release, Office of the High Comm'r of Human Rights, *supra* note 38, at 2–3.

[40] *See id.*; *UN Counter-Terrorism Expert to Launch Inquiry into the Civilian Impact of Drones and Other Forms of Targeted Killing*, *supra* note 38.

[41] *See, e.g.*, JAMES TURNER JOHNSON, ETHICS AND THE USE OF FORCE: JUST WAR IN HISTORICAL PERSPECTIVE 90 (2011); Alexander Moseley, *Just War Theory*, INTERNET ENCYCLOPEDIA PHILOSOPHY, http://www.iep.utm.edu/justwar/#H2 (last updated Feb. 10, 2009).

[42] James Jay Carafano & Janice A. Smith, *The Muddled Notion of 'Human Security' at the U.N.: A Guide for U.S. Policymakers*, BACKGROUNDER (Heritage Found., Washington, D.C.), Sept. 1, 2006, at 1–2, *available at* http://www.heritage.org/research/reports/2006/09/the-muddled-notion-of-human-security-at-the-un-a-guide-for-us-policymakers.

human security agenda that aims to shift the focus of U.N. and other international activities away from state relations to protecting groups of people based on a plethora of needs and wants.[43] If the responsibility for determining the legitimate use of force shifts from States to international organizations, then the rules may change as well.

A fourth challenge to the just war approach is that wars are increasingly occurring among cultures that do not share the same ethical framework. As James Bowman points out, the concept of "honor" is interpreted differently in different parts of the world.[44] In the West, the notion of honor became equivalent to virtue. Other cultures equate honor with power. So what is honorable in war may be very different to warriors reared in different traditions.

IV. BRAVE NEW WORLD

The modern debate about the ethics of technology in war is not about changes in technology. It is about tensions that are pulling the ethical frameworks we use to evaluate what is just in war in different directions. For example, social science research shows that when intelligence analysts look at the same data using different conceptual structures, they often reach different conclusions on how to interpret the "facts."[45] That same dynamic is affecting the increasingly contentious debate on how to view the legitimate use of technology in modern war.

[43] *Id.* at 2.

[44] *See generally* JAMES BOWMAN, HONOR: A HISTORY (2006) (comparing the notion of "honor" between cultures and across time periods).

[45] *See* Ytzhak Katz & Ygal Vardi, *Strategies for Data Gathering and Evaluation in the Intelligence Community*, 5 INT'L J. INTELLIGENCE & COUNTERINTELLIGENCE 313, 325–27 (1991).