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Just War Theory and Explosive Remnants of War

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Just War Theory and Explosive Remnants of War

For centuries, philosophers and political theorists have pondered the ethical considerations of waging war. Just War theory, expounded upon by contemporary thinkers, addresses three ethical components of war-making: the conditions for going to war, acceptable violence during combat, and the eventual resolution and remediation of conflict. These issues and their overlap with humanitarian demining and small arms/light weapons control are examined below.

by Eric Patterson, Ph.D. [Georgetown University]

For the better part of two millennia, churchmen, scholars, jurists, soldiers and statesmen have turned to Just War theory for guidance in making ethical decisions about war. Indeed, Just War concepts permeate international law and the laws of armed conflict; it is from the Just War tradition that we get the principles of proportionality, noncombatant immunity, and the idea that legitimate authorities (i.e., governments) should have a monopoly on the use of force.

As the readers of this journal tend to be concerned with moving beyond the destructiveness of the conflict cycle, it is appropriate to ask: “Does Just War theory have something to say about our efforts to mitigate the threat to human life and property from explosive remnants of war; as well as illicit military-style small arms and light weapons?” The answer is yes. Just War theory informs our views of weapons in or out of the hands of legitimate authorities, about the ethics of how war is conducted and about the post-conflict context.

Essential Just War Theory

In its strict form, Just War theory provides policy and moral guidance on two issues: under what conditions it is moral to go to war (jus ad bellum) and how violence can be morally employed during war (jus in bello). Early Just War theorists, such as Thomas Aquinas, argued that the principal decision to use military force was based on three criteria: just cause, proper authority acting on a just cause with right intent. Over time, new factors—what James Turner Johnson has aptly called “additional prudential criteria”—were added to the trio: likelihood of success, proportionality, and noncombatant immunity. Just War theory begins with the question, “Under what conditions is it just to go to war?” One of the answers provided by Augustine of Hippo (St. Augustine) and Aquinas is that, in general, legitimate authorities—i.e., those governments today—are the only agents that can justifiably use force. Of course, Just War theory has traditionally accepted individual self-defense, as well as communal self-defense in unique cases such as genocide. Nevertheless, generally speaking, for Just War theory, government authorities are the only legitimate authorities—we call them governments today. The Just War tradition that we get the principles of proportionality, noncombatant immunity, and the idea that legitimate authorities should have a monopoly on the use of force. This promise has obvious ramifications for the issues related to conventional weapons and explosives in the developing world, such as stockpiled mines, ordnance, and SA/LW.

A concern that many of us share is the over-abundance of military-style SA/LW and other conventional weapons of war that are either poorly secured or beyond the control of government authorities in developing countries. Of course, we are not talking about such items as sporting or hunting rifles, which citizens legally own in accordance with national laws, but rather the remnants of war such as the millions of Warsaw Pact weapons that made their way to Africa through the gray and black markets during the 1990s or the tons of explosives looted from Saddam Hussein’s arsenal.

These weapons, moving clandestinely across porous borders in the hands of criminals and terrorists, exacerbate conditions of insecurity and hamper good governance by legitimate governments. Likewise, the availability of explosive material, from landmines or other sources, has provided the components for improvised explosive devices. Fragile, post-conflict institutions, which are limited further by poorly trained police, unpaid soldiers, newborn judiciaries and fledgling civilian-government agencies.

The issue of noncombatant immunity. Just War theory asks a second question: “Assuming that the decision to fight a war has been made, how can battle be conducted in a way that is moral?” One element of Just War theory that answers this question is the principle of discrimination—distinguishing authorized military agents from noncombatants. This principle is often called noncombatant immunity, which has historically included women, children, the wounded, the elderly and the like.

The problems we have seen in the post decade that are directly related to illicit SA/LW include rebel armies purchasing arms on the black market, illicit weapons ending up in the hands of child soldiers, and poorly secured national stockpiles being pilfered by criminals. Insidiously, terrorists often target civilians as “soft targets” for
have seen strides toward more just and durable war look like?” Certainly in the past decade, we believe that recent on Just War Theory completed by Bian Orend, Michael Water, and myself, pos-
cal passive, yet deadly disruptor of prosperity.

unsuspecting and unarmed. Sadly, legacy land-
ties and widespread panic. Again, the point is suicide bombings to cause both mass casual-
cure that such issues are seen as regional and
international partnerships with foreign governments or nongovernmental organizations provide no

tion. This process is “ending well,” moving beyond the conditions from which conflict commenced. Furthermore, it is more often the case that such issues are seen as regional and international institutions to peace, so interna-
to promote security around the world. Just War theory underlies many of our
politics. What many do not realize is that
self-interested—and often violent—power
is because it bridges our moral ideals with
the realities of a world characterized by
such issues as Japan, Canada and members of the
European Union have contributed in order to
promote the conditions for such security to
take root.

The reason Just War theory has endured through the vicissitudes of Western history is because it bridges our moral ideals with the realities of a world characterized by self-interested—and often violent—power politics. What many do not realize is that Just War theory underlies many of our assumptions in the West, such as those governing proportionality and noncombatant immunity. Perhaps of equal importance is that it provides a rationale for what we can do to promote security around the world. 

Clearing the Falkland-Malvinas Islands

Under pressure from nations around the world and in compliance with Article 5, the U.K. has committed to

demining the Falkland-Malvinas Islands, despite the potential cost of demining in a relatively mine-free area.

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For additional references for this article, please visit http://tinyurl.com/1xsvon.

PHOTO COURTESY OF MAJOR ROB ATIENZA, U.S. EMBASSY IN DAKAR, SENEGAL

PHOTO COURTESY OF ROBERT KEELEY

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This Falklands-Malvinas Islands minefield is a sanctuary for penguins. The birds’ ground-bearing pressure is insufficient to set off the mines, and their predators are too big to

This article has demonstrated that some of the ways we think about the destructive le-
cacies of war, such as ERW and the proliferation of illicit SA/LW, have roots in vulnerable Just War theory; however, the Just War tradition should not be thought of as merely an academ-
ic exercise. It marshals real-world pragmatism with our hopes for security and justice.

Elsewhere I have argued that we post bellum—post-peaceful conflict, or ending war
well—begins with political order and some-
times moves beyond mere order to justice. In a handful of instances, reconciliation can be the result.1 That is the goal many of us hope for when the hot war ends; however, with-
out a durable sociopolitical order—from ba-
sic safety to confidence that the land can be
tilled and water can be drawn safely to as-
sure that the weapons of war have been safely
stored—such security is but a fantasy. Conse-
sequently, the efforts of major governments and
governmental actors in this regard are critical. For example, the U.S. State Depart-
makes them a delusion.4

With the news of the United Kingdom’s decision, under

global pressure, to begin demining the Falkland-Malvinas Islands does show a commitment to holding countries to
the agreements set up by Article 5 of the Ottawa Conventions,2 the loc-
ation and situation of the landmines in discussion raise the question:

is demanding that the Falkland-Malvinas Islands be cleared a triumph
in international diplomacy or a break with common sense? There are five

These mines pose a minimal threat to the Falkland-Malvinas Islands. There have been no civilian casualties since 1982, and there is little demand for the contaminated land. The Islanders themselves have been very vocal in asking the British government to spend money elsewhere. Mike Summers, a member of the legislative council of the Falk-
lands-Malvinas Islands government, echoes this sentiment, saying,3 “There are a lot of mines in the Falklands, but they are not that intrusive. Clearly there is an issue about clearance, but unless they are cleared 110 percent, we are not going to take the fences down anyway. If that can be done, then
fine. If the British government was to invest money in clearing mines, then we would be more than happy for them to invest it in other countries.

Our needs are not as pressing as other people’s.”

He goes on to say, “That doesn’t mean that in the fullness of time we don’t want it done. But we would feel somewhat awkward if the British government spent money clearing mines in the Falkland if there was an opportunity to spend it in some other territory where there are children and adults at risk.5

While the feasibility study suggests that it is possible to grade
the problem into degrees of complexity, the report does not identi-
fy costs (nor are there significant benefits against which these costs
should be compared). The problem caused by this absolutist position is that we cannot now say that the British government can clear the easiest of these four cases and leave the hardest. To be Article 5-compliant, the British government has to clear them all, thus negating much of the benefit of this useful study.

No Casualties in Over 20 Years

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