

Is the Just War Tradition
Good Enough as a
Framework for Future War?

by

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My colleague Steve is a baseball enthusiast and has particular enthusiasm in being a Kansas City Royals fan. A few years ago, when the Royals went to their first World Series in many years, Steve revealed the club's record of wins corresponded to his record of watching the games while drinking from a certain Royals souvenir cup. My co-workers and I noted that correlation is not causation, and fans for the other teams are drinking from their lucky cups with the same rationale. Furthermore, merely saying something does not make it so, but Steve countered with surprisingly detailed data from his model and its linkage to the success of the Kansas City team. We pointed out the obvious importance of the players' hitting, fielding, running and pitching. Steve readily acknowledged that reality, but maintained the perception that his drinking from his cup had a deep connection to the Royals' success. When the discussion turned to the characteristics of the future dynamics of professional baseball – characterized by more reliance on Sabermetrics, the importance of talent management, salary caps, marketing and advertising, farm systems, and contract negotiations – Steve would smilingly continue to include the influence of his souvenir cup in the conversation.

In a similar way, one can get the impression that the mere assertion that the Just War Tradition (JWT) and its constituent principles account for the success of America's military in modern war, but the assertion does not make it so. Our perception may become more like Steve and his lucky cup. It is possible, even likely, that our opponents view their resistance to the US as "just" according to the light of their own reasoning or tradition. America's astonishing investment in people, equipment and training as well as the determined use of other elements of national power is obviously vital to our military success, yet we still include adherence to the JWT in the conversation. The JWT enjoyed an understandable post-Vietnam revival in the Army's professional military education, and recent USMA, and CGSC graduates have

demonstrated their ability to describe it properly. The question of whether the JWT is an adequate framework is rarely asked. The distinction of a combatant as a uniformed employee of the state, for example, is an assumption imbedded in the framework of the JWT, yet often that is not how the facts on the ground exist in the current operating environment. The current environment includes different characteristics: the prominence of *non*-state actors, passing Authorizations for the Use of Military Force (AUMFs) in lieu of Declarations of War, religious leaders issuing fatwabs, cyber-attacks, non-uniformed combatants fighting in densely populated urban areas, lethal drones both in and outside declared combat zones, the blurring of criminal activity from warfare, and outside intervention in revolutions and civil wars.

These are just some of the characteristics of the environment today. In the next few years, there will be more changes. The US armed forces have accepted that the future concept of warfare includes some aspect of what the US Army has dubbed the Multi-Domain Battle (MDB), a joint combined arms concept of not only land, air, and sea, but also space, and cyberspace – including the electromagnetic spectrum (EMS), the information environment, and the cognitive dimension of war.¹ There will be further ethical considerations for the new characteristics expected for future battle, including nanotechnology, megacities, artificial intelligence (AI), so-called “hactivism”, the right to protect (R2P), weaponized refugee movements, ethnic cleansing, human enhancement of combatant soldiers, narco-terrorism, and more. We readily admit these characteristics are apt to describe future war, yet, as long as the team is winning, it is difficult for JWT advocates to question the perception of a strong linkage between the JWT model and the team’s success. The JWT as a normative model will become an even harder fit for future war and we should recognize its unaltered use threatens to unmoor the profession of arms from its traditional adherence to a morality-based framework of action and restraint.

As a point of clarification, the term “Just War *Theory*” is an acceptable and commonly used expression, but this paper will use JWT as a reference to the term “Just War *Tradition*” instead. Because a *theory* is the result of a contemplative and rational type of abstract or generalized thinking, it connotes a scientific approach – something that can be repeatedly tested and confirmed through observation and experimentation. The word *theory* does not lend itself well to how we wage modern warfare. On the other hand, a *tradition* is a belief or behavior, with origins in the past that is passed down within a group or society with a distinctive meaning or special significance. While both terms are adequate, *tradition* is the better term here.

There was a revitalization of the historical JWT, led in part by the work of Michael Walzer. Certainly, his 1977 book “Just and Unjust War” has been influential in the US Army.² In order to anticipate the role of the JWT in future war, it is helpful to begin by examining its role currently and in the recent past. This paper briefly touches upon the three constituent parts of the JWT – *jus ad bellum* (*JAB*), *jus in bello* (*JIB*), and *jus post bellum* (*JPB*) and examines the adequacy of each part of the JWT in both the current operating environment and for the MDB concept.

In the interest of brevity, the long history of the JWT is beyond the scope of this paper, but there are a few points to keep in mind. One is that the purpose of the JWT has not been simply to justify war, but to limit and restrain war using objective moral principles. Furthermore, for the purpose of this argument, in order to enter into a just war, all criteria for *JAB* must be met. Likewise, in order for conduct during a just war to be considered just, all of the criteria for *JIB* must be met. Similarly, the *JPB* criteria must all be satisfied. The failure to meet any single criterion opens the question of the justness of the entire undertaking.

According to ADP 6-0, the US Army practices the concept of Mission Command to enable disciplined initiative within the commander's intent to empower agile and adaptive leaders in the conduct of unified land operations. This doctrine further requires Army leaders to become critical and creative problem solvers who are agile and able to make decisions in uncertainty, complexity, and change.³ Accordingly, as stewards of the profession of arms, Army leaders must accept the challenge to do the hard work of sorting through the criteria and thinking through the problems wrought by the complexities of modern warfare and the effects of the changes the US Army is bringing to it as we update and refine our warfighting doctrine.

The application of the JWT into law of war after World War II came through primarily as seen in the UN Charter, the Geneva Conventions and the Nürnberg principles later adopted by the UN General Assembly. The current UN Charter forbids "the threat or use of force" except in two circumstances: if authorized by the Security Council, or in "self-defense" against "armed attack" under Article 51 of the Charter until the Security Council acts.⁴ A resort to force under any other circumstances is a war crime, in fact "a supreme offence against international morality", including all the evil that follows, in the words of the Nürnberg tribunal.⁵

This paper uses the criteria for each of the three constituent principles of the JWT discussed by Dr. Brian Orend in his 2006 work "The Morality of War."⁶ It then examines the adequacy of each criterion first in the current environment, and then in light of the Army's new Multi-Domain Battle (MDB) concept, as described in the 24 February 2017 *Multi-Domain Battle: Combined Arms for the 21st Century* white paper.⁷ It is worth noting that the US Army does not consider MDB as a change in direction, but an organic development of the principles of combined arms and the concepts of AirLand Battle that applies capabilities in more advanced ways. Thereby, the aim of this paper is to provide evidence to show the JWT is an impractical

framework for the current operational environment and an even less practical one for future wars fought according to MDB – and to challenge US Army leaders to undertake the difficult task of solving this problem.

Jus Ad Bellum (JAB)

The six criteria for *JAB* include a just cause, a right intention, a public declaration by proper authority, last resort, probability of success, and proportionality – and all of the criteria must be satisfied in order for the demands of *JAB* to be met.⁸ The prototypical example of a “just cause” is the case of self-defense in Article 51 of UN Charter, which on its surface makes an armed attack the condition for its use. However, few of the combat operations since the establishment of the UN have met this central requirement. The US, which has arguably been engaged in more warfare than other nations, has not been invaded by another state. We can see objectively then that one cannot use Article 51 to argue there is a “just cause” for the US to invade Iraq, to invade Afghanistan, to bomb Kosovo, to occupy Bosnia, to liberate Kuwait, and to invade Panama. There is an argument in the JWT for “other defense” as a “just cause” and there are relevant facts to present as evidence in support of such an “other defense” argument. There is also the rarely acknowledged but obvious possibility that both sides have “just cause” and we must study and weigh the competing arguments for each case. Clearly, the matter of a “just cause” will always be a subjective matter requiring a serious debate.

Consider the US decision to invade Afghanistan and depose the Taliban government after the Al Qaeda attacks of September 11, 2001. From the American point of view, this is widely accepted as a “just cause” since they constituted attacks on US soil and the government of Afghanistan which was harboring bin Laden and his organizers refused to turn them over. The record of public discussion in the US at the time reveals little evidence that US decision makers

critically analyzed the “just cause” criterion for *JAB* found in the JWT. Still reeling from the catastrophic events of 9-11, the authorities spent little time debating and the press spilled little ink on editorializing relevant facts. The lack of a substantial, credible evidence that Afghanistan’s Taliban government had advanced knowledge of, was involved in the planning for, or provided direct material support to the 9-11 attacks was not held up as a serious consideration. There is little to show an evaluation of whether the obligation felt by Afghanistan’s government to adhere to their deeply held cultural tradition of Pashtunwali, which includes the concept of *melmestia* – or hospitality and offering asylum – was a mitigating factor. The point here is not to say these arguments would have prevailed, nor that OEF is an unjust war, but merely that these arguments were largely absent from decision-making calculus, at least in the public sphere. It is reasonable to conclude that in this instance, the *JAB* criteria of a “just cause” was accepted without a serious debate.

The adoption of the MDB as the construct for future war offers little evidence there will be a more deliberate debate regarding the requirement of a “just cause” under *JAB*. Indeed, under the auspices that our potential enemies will use deception, surprise, and speed while integrating economic, political, technical and informational means against us, it would seem foolish to take time to deliberate whether the criterion of a “just cause” is met, allowing our adversaries precisely the time they require in order to prevail.⁹

Similarly, the criterion of “right intention” is an equally subjective matter and demands that it be approached with an equally serious degree of determination. In the complexities of international relations, a “right intention” may be bound up with one or more bad ones. The points of contention when it comes to a “right intention” may never be clear. Still, it is widely accepted that motives are relevant to the moral quality of an act, and a war unambiguously

waged for *bad* intentions will lead to further problems. The MDB doctrine aims in the direction of preserving the relative advantages of the US to pursue its interests and maintaining order, which is just as ambiguous as our current doctrine when it comes to whether they are a “right intention” at least internationally.

Although a “public declaration by proper authority” is also required criterion, the US Congress – the only proper authority under the US Constitution – has rarely declared war. Usually Congress has instead passed an Authorization for the Use of Military Force (AUMF). While this method of going to war is not in the Constitution, it is an old method of avoiding this straightforward requirement. Congress, in fact, has only declared war in five conflicts: the War of 1812, the Mexican-American War, the Spanish-American War and the two world wars.¹⁰ Since the end of World War II, Congress has accelerated this relinquishment of the power to declare war, formalizing much of it into the War Powers Act, which has a mixed history. America’s recent act of military intervention in Libya in 2011, for example, received no form of Congressional authorization at all. Several ongoing military interventions are instead noted in the President’s semi-annual war powers report to Congress, like the recent one that acknowledged military actions in Yemen and Somalia.¹¹ This certainly appears to fail the criterion. By the same token, anyone taking the JWT seriously must weigh whether a religious leader issuing a fatwah, for example, carries the same moral weight as a “public declaration by a proper authority.”

The future MDB doctrine is silent on the requirement for a “public declaration by a proper authority” Although there seems to be an underlying sense that military operations will not be encumbered by awaiting a “public declaration.” Moreover, since MDB insists that our potential adversaries will target our ability to command and control our joint capabilities, there is

a logical inference that the very communications channels necessary for a public declaration to be promulgated may be suspect. A “public declaration” under a MDB framework is therefore unlikely and indeed is a poor fit.

Next, consider the *JAB* requirement that war may only be a “last resort.” The problem here seems evident in that acts of preventive war such as the 2003 invasion of Iraq or the ongoing lethal drone operations across the globe – especially those outside of declared hostile combat zones – fail to meet this requirement and are therefore apparently unjust. Waging a preventive war would seem unable to meet the requirement of “last resort” because it is simply not possible to wage a *preventive war after* all other options have been exhausted. The decision to wage preventive war, then, appears to be a decision to ignore or dismiss an important part of the JWT. Without ever mentioning “last resort”, the future MDB doctrine does explain the idea of overmatch as the application of capabilities “with the intent to prevent or mitigate opposing forces from using their current or projected equipment or tactics.”¹² We can see then, that this significant departure from the JWT will continue in the future under MDB.

The next *JAB* criterion is “probability of success” – a just war must not be waged in a futile cause or in a case where disproportionate measures are required in order to achieve success. With this in mind, consider that in 2001, President Bush notably announced a Global War on Terror (GWOT), which envisioned neither an enemy force nor an end state.¹³ In 2007, Army Chief of Staff General George Casey famously used the term “era of persistent conflict” to describe both the current and projected period of protracted confrontation among states, non-states, and individual actors willing to use violence to achieve their political and ideological ends.¹⁴ Again, this vision of war without end does not reconcile easily with the JWT requirement

for a “probability of success.” President Obama then modified GWOT in 2013 to rather “a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.”¹⁵ These persistent efforts still do not fit within the criterion of “probability of success” required by the JWT. The key leadership might have some persuasive argument that meets the JWT criterion in this regard, but if so, they have not yet presented it. Indeed, the MDB white paper on future war expresses its purpose “in order to seize, retain, and exploit the initiative; defeat enemies; and achieve military objectives.”¹⁶ There is no mention of a “probability of success”, winning a final victory, nor achieving an end state. The MDB doctrine thereby gives no indication of meeting this required criterion of the JWT.

Finally, consider the *JAB* criterion of “proportionality” – the expected damage from waging the war cannot exceed the expected damage from avoiding the war. In other words, a just war may not create greater evils than the evils it is being fought to remedy. The 2003 invasion of Iraq fails to meet this standard because a preventive war, while creating certain damage, eliminates only *potential* future damage from developing threats that have not yet been attained. Such a damage comparison will always reveal disproportionate real damage from the war being waged and potential damage having been remedied. The idea of persistent conflict fails on this criterion as well, because the damage from the ongoing war is certain, mounting, not yet complete and potentially will go on indefinitely. Therefore, we can see that both of these examples – preventive war and persistent war – do not adhere to this criterion of the JWT. Moreover, future MDB doctrine states that since US Joint Forces can no longer assume a continuous superiority in any domain, we will create and exploit temporary windows of superiority across multiple domains.¹⁷ This approach eliminates the capacity of the Commander

to escalate and de-escalate the tempo of the battle traditionally used in warfare to ensure the “proportionality” demanded by the JWT.

There appears to be ample evidence then, that the criteria for *JAB* within the JWT is not being met and the future of warfare will continue this failure. Only when all of the *JAB* criteria are met, a just war may be waged only under the conditions of *JIB*.

Jus In Bello (JIB)

A primary *JIB* principle governing just war conduct is that of “distinction” – making the distinction between combatants and non-combatants. In order to be considered just, acts of war should be directed towards enemy combatants, and not towards non-combatants caught in a situation they did not create. The prohibited acts include bombing civilian residential areas that have no legitimate military targets, committing acts of terrorism and reprisal against civilians, and attacking neutral targets. Moreover, combatants are not permitted to attack enemy combatants who have surrendered, been captured, are injured and not presenting an immediate lethal threat, are parachuting from disabled aircraft (except airborne forces), or are shipwrecked. We typically invoke adherence to locally developed rules of engagement, the Law of Armed Conflict (LOAC) and the Geneva Conventions. Even so, the significant amount of non-combatant death and injuries are undeniable. In the current environment estimated counts of so-called collateral damage varies. For example, the civilian casualty ratio in the Iraq War as calculated by the UK-based group “Iraq Body Count” is either 1:2 (civilian) or 3:1 (combatant), depending on whether we include all of the casualties of the war, or strictly the deaths reported as resulting from Coalition actions.¹⁸ The detention and harsh treatment of “enemy combatants” without trial is another area in which the standard is not being met, at least as it is described in the JWT. Either way, the casualty ratio of non-combatants in modern war is much higher than a

strict adherence to the *JIB* principle of “distinction” would set as a goal. The MDB doctrine of the future adds cognitive domains to the physical domains it includes in military operations, and thus widens rather than narrows the variety of areas included in combat operations. Therefore, the large square peg of MDB appears an even worse fit into the clear, round hole of the JWT principle of “distinction.”

Likewise, the JIB criterion of “military necessity” demands that all actions must be intended to help defeat the enemy; they must be on a legitimate military objective, and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated. This principle is meant to limit excessive and unnecessary death and destruction. It requires a very subjective discernment into the balance between the harm imposed by a measure and the advantage of the act. Such external versus internal measures vary widely according to the point of view of the one doing the measuring. Given the obvious difference in the perception in discerning such proportions, meeting this criterion is usually very difficult.

The next JIB principle is the “fair treatment of prisoners of war.” The JWT asserts that enemy combatants who have surrendered or who are captured no longer pose a threat. It is therefore wrong to torture them or otherwise mistreat them. It is less clear how *JIB* deals with combatants who continue to pose a threat and are not uniformed employees of any state. The complexities of the US policy at Guantanamo Bay, Cuba, for example, exceeds the scope of this paper. It is sufficient to point out, however, that this criterion, like the others within the JWT framework, seems based more upon the model of previous conflicts than the current operating environment. The MDB concept does not single out this criterion, but does “describe a future of contested norms” and refers to increasingly powerful adversaries establishing their own set of

rules unfavorable to the US. Whether this continues to obligate us to observe our set of rules may be open to question.¹⁹

The final *JIB* criterion prohibits means which are *malum in se*, or intrinsically evil. Combatants may not use weapons or other methods of warfare that are considered innately evil, such as mass rape, forcing enemy combatants to fight against their own side, or using weapons whose effects cannot be controlled, such as nuclear or biological weapons. The threat of US adversaries using, or threatening to use, nuclear weapons and other weapons of mass destruction has been treated throughout the Cold War and is also beyond this paper's limits. It is worth noting the MDB doctrine also mentions "weapons of mass disruption" as a risk of escalating this threat.²⁰

We continue to realize the demands of the JWT within the *JIB* criteria do not easily match, nor necessarily apply as they were written and have traditionally been interpreted. Finally, we will examine the most recent addition to the JWT, the *JPB* criteria for terminating a war justly.

Jus Post Bellum (JPB)

The first *JPB* criterion is "right intention" which says a state must only terminate a war under agreed upon conditions and revenge is not permitted. The victor state must apply the same level of objectivity and scrutiny into any war crimes that its own armed forces may have committed that it applies to investigating and prosecuting its enemies. The US has a history of demanding unconditional surrender, which violates this principle, but since *JPB* was not an accepted part of the JWT in 1945, let us focus on the current operational environment and the future doctrine of MDB.

The next criterion is a “public declaration and authority” which says the terms of peace must be made by a legitimate authority, and the terms must be accepted by a legitimate authority. While this seems straightforward, the US debate over whether to withdraw forces from Iraq based upon the conditions on the ground or an agreed upon timetable, and the ensuing resurgence of hostilities, is a recent example of the difficulties involved. The MDB idea of “outmaneuvering adversaries in the cognitive dimension” involves using information to confound the enemy’s situational understanding and decision-making, thereby creating an advantage.²¹ This appears on its surface to go against the idea of public disclosure of measured and reasonable terms for settlement.

The next JPB criterion is “discrimination.” This principle says the victor state is to differentiate between political and military leaders, combatants, and civilians. Leaders of the unjust aggressor must face fair and public war crime trials, if necessary. Soldiers from all sides of the conflict must be held accountable for war crimes and atrocities. Civilians must be reasonably immune from punitive measures. This requirement prohibits broad-sweeping social or economic sanctions. Punitive measures are limited to those directly responsible for the conflict. Publicly disclosing the truth and achieving reconciliation may be more important than punishing war crimes. Given the US is not a participant in the International Criminal Court, adherence to war crime aspect of this standard is unclear. The MDB doctrine is silent on this aspect of *JPB*.

The final criterion of *JPB* is “proportionality” that any terms of surrender must be proportional to the rights that were initially violated. Ruthless measures, absolutist campaigns and any attempt at denying the surrendered country the right to participate in the world community are not permitted under this principle. While the MDB is admittedly silent on this

principle as well, the intention of creating windows of dominance for US forces to exploit across many domains of an adversary's society could give one concern whether "proportionality" is a consideration.

Conclusion

Like most analogies, my comparison of the JWT to a friend's souvenir cup seems to break down rather quickly. At this point, it might be best to say what this paper is not. This paper is not an argument against having a JWT at all, leaving us to choose between a Machiavellian realism and some sort of Amish pacifism. A reasonable middle way can and must be available, and it must achieve international acceptance to be effective. The JWT, at its most basic, accepts the need for war within moral and legal boundaries and provides good guidance in several areas. The JWT claims that sometimes war may be justified and preferable to an immoral peace, and if war is to take place, it must be guided by our moral traditions and the most evil aspects of warfare must be muted, limited, or eliminated. The general Law of Armed Conflict and specific Rules of Engagement rest upon the ideas articulated within the *jus in bello* criteria of the JWT.

If we view warfare as imposing our will on the enemy, then we will tend to emphasize overwhelming, coercive strategies of attrition and annihilation to eliminate resistance. While such a view does not ignore the constraints in war, we should not cling to the claim that it constitutes adherence to the principles of the JWT. The future of Multi-Domain Battle does seem to blur the distinction further between what is, and is not, easily separable from warfighting as the range of potential targets expands. As this distinction blurs, the risk of completely disconnecting our warfighting doctrine from the JWT increases.

The problem is that in order to have a proper implementation and use, JWT must be a relevant, well thought out, comprehensive, and managed solution.

To paraphrase GK Chesterton's quip about Christianity, perhaps the problem is not that the ideals have been tried and found wanting, but rather they have been found very difficult and been left untried.²² There are valid reasons to question the value of the JWT for creating a consensus within a nation among the Clausewitzian paradoxical trinity (*wunderliche dreifaltigkeit*) of the people, the Army, and the government.²³ It no longer has utility for Soldiers to know what kind of conduct to expect in combat and, if captured, what to expect in a POW camp. It is no longer clear how the JWT helps individuals avoid committing war crimes or atrocities.

The most salient idea is that the JWT is a tradition, and as such it has been refined and developed over the centuries and we must continue to do so. It is rooted in "natural law" and its roots predate shoulder-fired weapons, motorized transport, powered flight, and digitized communications. There is reason to expect that its continued refinement can arrive at a satisfactory framework for the future of warfare. Whether it will be refined is an open matter, but one that demands clear-eyed engagement. In order for the framework to be practical, it must be authoritative and accepted. We need to reassert the link to ethical objectivism upon which the international acceptance of the JWT relies.

To be clear, we will need to familiarize ourselves with the thinking of such ethicists as John Lango and his Cosmopolitan Just War Theory, and other contemporary just war thinkers, such as Cecile Fabre, Alexander Leveringhaus, and David Rodin.²⁴ We ought to acknowledge ongoing work of the Pax Christi movement in the Catholic faith tradition, from which much of the JWT has come, in moving away from a JWT to a so-called just peace teaching. Catholic

Church leadership has apparently determined that the JWT is truncated and minimalist. Modern wars have made the JWT obsolete and the objective to discriminate justified from unjustified wars has been rendered null and void by the massive, indiscriminate violence of modern wars causing more casualties among civilians than combatants.²⁵

In closing, a sober professional reflecting on this problem might take time to ponder a few iconic data points. The first is the famously radical work of the highly decorated USMC Brigadier General Smedley Butler, in his outspoken activities against military adventurism and war profiteering, mostly from World War I, and his short 1935 book, *“War is a Racket.”*²⁶ The second is President Dwight Eisenhower’s televised farewell address to the nation on 17 January 1961, in which he cautioned against the unwarranted influence of the military-industrial complex and “the disastrous rise of misplaced power” that could result.²⁷ The third is Secretary of State Madeleine K. Albright in the 1990s, asking then Chairman of the Joint Chiefs of Staff General Colin Powell about Bosnia, “What’s the point of having this superb military that you’re always talking about if we can’t use it?”²⁸ These final points of consideration offer an uncomfortable perspective for a steward of the military profession to question what is guiding America’s behavior in warfighting and whether the JWT is determinant, or just a handy totem to invoke when justifying the use of military force. Such serious issues cannot be examined outside the current context of intense interest in Post-Traumatic Stress, the tragic rates of suicide among military veterans, and the work of Dr. Jonathan Shay and others regarding the concept of moral injury associated with exposure to extreme events which “transgress deeply held moral beliefs and expectations.”²⁹ The JWT in its current configuration is not good enough to decisively affect the nature or outcome of the current situation. With the advent of new Army doctrine on future

warfare, it is vital for military thinkers to recognize the dissonance and do the difficult work in refining and validating a proper model for our moral framework.

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