

THE JUST WAR TRADITION IN A MODERN LSCO ENVIRONMENT: A MANEUVERIST PERSPECTIVE OF THE RUSSIA-UKRAINE WAR

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Introduction

To beg the question of whether or not the Just War tradition, along with its many principles and criteria, continues to be a viable military ethical construct is an exercise in the study of global military history itself. Philosophers, theologians, and military strategists, among many others, have debated the merits of the Just War tradition's *jus ad bellum* and *jus in bello* principles (as well as the addition of *jus post bellum*) for centuries, from Saints Augustine and Thomas Aquinas, to Francisco de Vitoria and Hugo Grotius, to Paul Ramsey and Michael Walzer, just to mention a few. Acknowledging the long-standing tradition of Just War-oriented debate and the scale and scope of concepts engaged by Just War thinkers, for the purposes of this paper we are dramatically narrowing our scope.

Our intent is to continue the Just War conversation from a tactical-level maneuverist perspective, highlighting the relationship between the Law of Armed Combat (LOAC) principles¹ and *jus in bello* Just War principles. Utilizing the tactical maneuverist perspective and the LOAC/*jus in bello* relationship, we will engage the complexities of the Russia-Ukraine War as a means to determine the continued significance of LOAC and Just War principles in a modern Large Scale Combat Operations (LSCO) environment. Addressing a modern LSCO environment represents a shift in focus from the U.S.'s last 20+ years of military conflict in Afghanistan and Iraq. Such a shift provides all of us the opportunity and encouragement to think more deeply of how we might ethically plan for the future fight.

A Common Language

On a cold, rainy training day at Fort Lewis, Washington, I listened to soldiers talk who had just completed a prisoner of war exercise. One held that the enemy troops should be marched through an area saturated with persistent nerve gas. Another stated that the claymore mine presented the most cost-effective and energy-efficient method of disposing of POWs. His buddy claimed that they were both being wasteful and that POWs could best be used for minefield clearing and reconnaissance for nuclear- and chemical-contaminated areas.²

Stories abound of the field artillery observer sharing the fact that white phosphorous cannot be used against personnel, but materiel in vicinity of said personnel are "fair game," or that during a raid or ambush a unit on patrol could not reasonably be expected to take POWs (*said euphemistically*).³ Even on a much larger scale, the likes of Winston Churchill argued, "it would be a mistake to cast aside our original thought...that the severe, ruthless bombing of Germany on an ever-increasing scale will not only cripple her war effort...but will create conditions

intolerable to the mass of the German population.”⁴ From the suggested mistreatment of POWs to the advocated inducement of population-wide terror bombing by a Prime Minister, the need for a common ethical and moral language, and subsequent legal language, has persisted. While Grossman frames the beginning of his chapter, quoted above, as “The Dark Power of Atrocity,” there is validity in attempting to shape the rules of war to the extent of how war is conducted justly, even if it is a means to mitigate atrocity and war crimes.

As a member of the world community, the United States is rightly an advocate of the just conduct of war, as captured in the *jus in bello* principles of the Just War tradition as well as the principles of the Law of Armed Conflict (LOAC). Without delving into the vast history of the Just War tradition, it is important to note that a shift in focus on the *jus in bello* conduct of war began with the Spanish Dominican philosopher Francisco de Vitoria (c. 1492-1546).⁵ Vitoria’s significance to the Just War conversation cannot be overstated, as he was one of the first philosophers to ask questions of the legitimacy of the killing of innocents in war. Acknowledging the inherent messiness of war, Vitoria noted that it is never lawful to intentionally kill innocents, but that the incidental killing of the innocent may be permitted in certain circumstances.⁶ Vitoria’s question of the killing of innocents has directly informed the two primary *jus in bello* principles of discrimination and proportionality as well as the LOAC principles of military necessity, humanity, proportionality, distinction, and honor. Vitoria further touches on a secondary *jus in bello* principle sometimes referred to as “no means *mala in se*,” or evil means of war should be avoided as well as the evil effects of war should not outweigh the possible benefits.⁷

Drawing on the philosophical and theological development of *jus in bello* within the Just War tradition, broadly understood, discrimination refers to the necessity of a warfighter to differentiate between combatants and non-combatants or civilians and proportionality refers to the means of warfighting is proportionate to the ends.⁸ Anthony Hartle further notes that discrimination is the concept of combatants not specifically targeting noncombatants and proportionality refers to “the amount of force applied must be proportional to the specific objective sought.”⁹ The slight differences in how discrimination and proportionality are defined are informative, as they point to the ways in which Just War thinkers have addressed the practical application of these principles. At the tactical level, it is the moral responsibility of every military leader to conduct themselves and to lead their warfighters by these two core *jus in bello* principles in order to “mitigate the nastiness of war” as well as to limit risk to the innocent.¹⁰

Where *jus in bello* philosophical concepts “grow some teeth” and develop real world warfighting implications is through the *DOD Law of War Manual* and more specifically for Soldiers and Marines through FM 6-27/MCTP 11-10C – *The Commander’s Handbook on the Law of Land Warfare*. In setting forth the general background and principles of LOAC FM 6-27 notes, “*Jus in bello* is that part of international law relating to the conduct of hostilities and the protection of war victims, from combatants who are wounded and out of combat, to prisoners of war and civilians.”¹¹ In linking *jus in bello* principles to international law¹², and not just philosophical principles and theory, Army and Marine Corps doctrine recognizes LOAC principles as legal ethical constructs and guides for the conduct of hostilities between belligerents (that is, not just State vs. State hostilities). Doctrinal writers helpfully identify the fundamental rationale of LOAC as:

- Protecting combatants, noncombatants, and civilians from unnecessary suffering;
- Providing certain fundamental protections for persons who fall into the hands of the enemy, particularly prisoners of war, military wounded and sick, and civilians;
- Facilitating the restoration of peace;
- Assisting the commander in ensuring the disciplined, ethical, and effective use of military force;
- Preserving the professionalism and humanity of combatants; and
- Preventing the degeneration of warfare into savagery or brutality.¹³

These essential aims or purposes provide the direction and motivation for the interdependent principles of LOAC, which are: military necessity, humanity, honor, distinction, and proportionality. The LOAC principles are captured in a highly concise and utilizable table (Table 1-1) in FM 6-27, which provides a helpful summary of each principle, reference paragraphs within the FM, as well as any alternative names or terms linked to the principles.¹⁴

Table 1-1. Application of basic LOAC principles

<i>Principle</i>	<i>Alternate Names</i>	<i>Paragraphs</i>	<i>Summary</i>
Military Necessity		1-23 to 1-27	Justifies the use of all measures required to defeat the enemy as quickly and efficiently as possible that are not prohibited by the law of armed conflict.
Humanity	Humanitarian Principle; Unnecessary Suffering; Superfluous Injury	1-28 to 1-30	Basis of protection for civilians; forbids inflicting suffering, injury, damage, or destruction unnecessary to accomplish a legitimate military purpose.
Honor	Chivalry	1-31 to 1-33	Demands a certain amount of fairness and a certain mutual respect between opposing forces.
Distinction	Discrimination	1-34 to 1-43	Distinguishing between combatants and military objectives on the one hand and civilians and civilian objects on the other in offense and defense.
Proportionality		1-44 to 1-48	Requires commanders to refrain from attacks in which the expected loss or injury to civilians and damage to civilian objects incidental to such attacks would be excessive in relation to the concrete and direct military advantage expected to be gained. It also underlies the requirement to take feasible precautions to reduce the risk of harm to civilians, other protected persons and civilian objects.

LOAC doctrine begins with the principle of military necessity, which is, subjectively speaking, the most abused of all LOAC principles. Any of number highly problematic decisions have been made on the battlefield justifying certain actions as militarily necessary. In looking to the English philosopher Henry Sidgwick, Michael Walzer notes the difficulty of condemning soldiers for trying to win the battle or war they are involved in if they are convinced their actions are necessary for the positive outcome of said battle or war. Thus, “we must grant that soldiers are entitled to try and win the wars they are entitled to fight,” doing whatever they deem necessary to winning.¹⁵ This thought process is tempered by the doctrinal definition’s caveat that what is deemed necessary must not be prohibited by the law of armed conflict. What this means is that “military necessity dictates discrimination, proportionality and the economy of force: that is, don’t attack targets that are not absolutely central to the military objective...and certainly do not gratuitously lay waste to the countryside or kill those not directly implicated in the fighting.”¹⁶ What ethicist George Lucas is driving at in his understanding of military necessity is to aid his readers in seeing the dynamic link between all of the principles of LOAC. In striving for ethical, effective, and efficient means toward a militarily necessary goal during hostilities, warfighters are expected to seek those means avoiding indiscriminate and disproportionate methods; methods that could lead to the unwarranted death and destruction of civilians and civilian infrastructure and culturally significant sites. Additionally, Lucas’s description of military necessity links the principles of humanity and honor, with the understanding that *humanity* leads forces to avoid unnecessary suffering and superfluous injury. The mutual respect and fairness of the principle of *honor* “requires adherence to LOAC regardless of the enemy’s level of compliance” as well as “forbids resorting to means, expedients, or conduct that would constitute a breach of trust”¹⁷ (or in Lucas’s words, “laying waste to the countryside”). To the degree of relative subjectivity in the application of the principles of LOAC that exists, honor and humanity operate as the compelling principles that lead to “maintaining the moral high ground.”

A great deal more time, effort, and spilt “ink to page” could be offered in dissecting the philosophical and doctrinal perspectives on LOAC principles, as many Just War thinkers, ethicists, and military leaders have already done. Suffice it to say that Chapter 1 of FM 6-27 does admirable work in assisting Army and Marine Corps leaders in understanding the expectations tied to LOAC principles. The task at hand, however, is to continue the conversation of the relevance of *jus in bello* Just War principles (and subsequently, LOAC principles) in a modern LSCO environment. A basic LOAC framework provides ample ethical background information to address a few of the many complexities within LSCO.

A Maneuverist Perspective

Continuing with our theme of grounding our discussion in a common lexicon, if we intend on discussing the Just War tradition through the lens of a tactical-level maneuverist, we must first define what is considered the tactical-level and what a maneuverist role is in warfare. Through this method, we will be able to discuss the precise complications, difficulties, advantages, and disadvantages that present themselves when conducting warfare at this echelon. Through these discussions, we will better understand how we, as Army leaders, can aid the maneuverist community at large.

The recently published FM 3-0 - *Operations* describes four levels of warfare: the national strategic level, the theater strategic level, the operational level, and, finally the lowest echelon, the tactical level. The four levels link tactical actions to the achievement of national objectives. Further breaking it down, the tactical level itself consists of three tiers: battles, which are typically conducted at the corps and division level and last over the course of days or months; engagements, which are typically conducted at the brigade and below and are executed in minutes or hours; and finally, small unit actions, which are the building blocks of maneuver warfare.¹⁸ These concepts are easily visualized through the lens of World War II. As the United States entered the war, at the national strategic level the objective was clear, defeat the Axis Powers. The theater strategic level decisions focused on individual campaigns and how they would be prioritized. In this case, we will drill down on the Normandy Campaign. Operationally, the U.S. took part in Operation Overlord, which itself consisted of multiple operations and battles within. At the tactical level we can break it down further into the Battle of Omaha Beach, the engagements at Pointe du Hoc, and the small unit actions of scaling cliffs and neutralizing enemy artillery positions. Through this lens we can see each level of warfare defined by Army doctrine, from the planning and execution of the Normandy Campaign all the way down to the scaling of cliffs.¹⁹

Defining a maneuverist is a bit more complicated. The Maneuver Center of Excellence houses the Armor and Infantry Schools, which could lead one to believe that maneuverists consist solely of soldiers from those two branches. However, ADP 3-0 defines the Movement and Maneuver Warfighting Function as the related tasks and systems that move and employ forces to achieve a position of relative advantage over the enemy and other threats. It lists the warfighting functions tasks as the following: move (excluding administrative movements), maneuver, employment of direct fires, occupation of an area, conduct of mobility and countermobility, conduct of reconnaissance and surveillance, and employment of battlefield obscuration.²⁰ When we dissect this, we see that the term maneuverist includes more than the oft thought of infantryman, tanker, and marine, but also the aviator, engineer, scout, and forward observer. In short, the maneuverist is anyone whose primary function at any given time is to close with and destroy the enemy. Adding to the complexity is that at the tactical level this includes the rifleman charging into the trench, all the way up to the corps commander maneuvering brigades and synchronizing effects on the battlefield.

With our scope now narrowed, we may begin to see how the tactical maneuverist and the Just War Tradition intersect and interact. The typical tactical maneuverists wish to live in the realm of *jus in bello*, seeking the just conduct of war, and trusting that their presence on the battlefield indicates that *just ad bellum* principles have been properly applied by the leaders of their nation. Maneuver leaders on the other hand, must understand their nation's justification for going to war (*jus ad bellum*), for it will have a direct impact on how their soldiers view their role in the war and their overall morale. Major Robert J. Rielly wrote of five factors that motivate soldiers to fight: group cohesion, unit allegiance and pride, ideology and patriotism, lack of alternatives, and self-preservation and leadership.²¹ Tactical-level leaders whose nations have put them in the position of fighting a morally bankrupt war (i.e., lacking *jus ad bellum* justification) will struggle to motivate their troopers through ideology and patriotism and be forced to leverage the other factors heavily. We can see clear examples of this today in the Kremlin's use of "barrier troops." Russian troops claim that their military leaders have deployed

troops to their rear with the explicit purpose of executing anyone who attempted to retreat.²² This exemplifies the use of self-preservation and lack of alternatives in lieu of patriotism, ideology, and unit allegiance. Not only does this misuse critical manpower that could have been used to bolster the unit's operations, but it critically undermines the lower leadership's ability to maintain morale and a fighting spirit. These methods may seem wicked and counterproductive, but it highlights the lengths military commanders can be pushed to for their own self-preservation if their nation fails to adhere to Just War principles.

However, it is *jus in bello* where the tactical maneuverist truly meets the crucible. The tactical maneuverists will be the ones who actively discriminate between enemy combatants and civilians on the battlefield. They will determine if the enemy is still fighting or if they should honor his/her surrender, and they will be the ones to take the prisoners of war. When they make contact from a machinegun nest in a building, they will decide if it is of military necessity and proportional to level the building with a barrage of tank rounds or risk sending an infantry squad in to do the same. In LSCO, they will make all these decisions without the benefit of time and with an abundance of emotion. Fear, hate, love, and loss will play heavily on junior leaders as they fight their way forward to their objective. Major Rielly states that, of the five factors that motivate soldiers to fight, unit cohesion, or phrased alternatively as fraternal love, is the strongest driving force. It is the fraternal love between soldiers that will often weigh heaviest on the mind of maneuver leaders.²³ In operations clouded in ambiguity, that level of loyalty may shape the decision between ensuring that their troopers are safe by shelling a building which may or may not contain civilians or allowing the squad on the ground to enter a potential ambush. These decisions are difficult to make when you have years of experience, are surrounded by legal and ethical advisors, and have a team of intel analysts updating you, yet we must trust our junior leaders on the ground to be the ones to make them without any of those benefits, sleep deprived, and when the emotions of the situation are that much more visceral. In line with Rielly, Dubik further notes that the conducting of war, at every echelon, inherently involves the very lives of the soldiers Rielly is talking about. Through a *jus in bello* framework, respecting the moral value of these soldiers if of vital importance in the conduct of war, particularly in the morally relevant relationship they maintain with the local population, one another, their immediate military leadership, and senior military leaders.²⁴

The Army has institutionalized a mission command philosophy, and more specifically the use of a commander's intent. ADP 6-0 – *Mission Command: Command and Control of Army Forces* specifically spells out that a commander's intent includes civil considerations, and that the commander WILL write this himself.²⁵ This is the Army's way of stressing the importance of *jus in bello* and LOAC principles in every mission order that is produced from the company level up. It shows a dedication to *jus in bello* during the heart of the battle, and good commanders will use this to establish the groundwork for *jus post bellum* (justice after war) throughout their operations. By institutionalizing civil considerations into commander's intent, commanders at all echelons are forced to consider how they will integrate the fundamentals of LOAC throughout their operations and help ensure a smooth transition of power back to the rightful government of an area of operation. Of course, the commander's intent only has power if those executing understand that intent, and for the sake of our topic, the Just War tradition through LOAC and the rules of engagement (ROE) as well. Mission command aims to power decision making down to the lowest level and empower subordinates to use disciplined initiative. This

lends further credence to the potential of junior leaders making ethical decisions with wide ramifications. As such, tactical maneuverists must understand the importance of continued ethics training and development down to the lowest level and the need to constantly revise and update ROE to fit the ever-changing landscape of war.

The Russian Way of War

For a little over a year now the global community has watched as Russia's invasion and subsequent war with Ukraine has persisted, to the surprise of some (namely Russia) and the confirmation of many.²⁶ As Russia's invasion and occupation of Ukraine perdures, a consistent string of reports noting some 65,000+ war crimes committed by Russian forces continues to make international headlines. Andriy Kostin, Ukraine's Prosecutor General, has registered the 65,000+ war crimes and atrocities that have occurred in Bucha, Irpin, Mariupol, Iziurm, Kherson, and Kharkiv, to name a few. Of note, Kostin highlights Russia's indiscriminate shelling and rocketing of civilians and civilian structures, the specific targeting of civilians, torture, looting, mass forced civilian displacement, the weaponization of sexual violence, and even the weaponization of winter by destroying key Ukrainian power sources.²⁷ In earlier news reports, Karim Khan, the chief prosecutor of the International Criminal Court in The Hague, told the Associated Press, "Ukraine is a crime scene," in reference to the killings, kidnappings, indiscriminate bombings and sexual assault carried out by Russian forces.²⁸ At this point, a reasonable person might ask why these claimed war crimes and atrocities are happening in the first place, particularly in light of Russia's claim to adherence of international law during war.²⁹

To understand the "why" of Russian force's current conduct in war, it is informative to begin to understand the Russian way of war and their approach to ethics. In *The Russian Way of War*, Lester Grau and Charles Bartles note that Russian military leadership place substantially greater value on an army of the "best and brightest," demonstrating far less concern with the "ethically challenged."³⁰ Ultimately, Russian military leaders value officers who are capable of operating in the grey area between the letter of Russian and international law and what they deem necessary during military conflicts.³¹ The embrace of this ethical grey area results in a fundamentally different perspective on what is morally and legally right to most Russians. As opposed to the differentiation between morality and legality in the West, most Russians consider decisions that are "morally right" as "legally right" as well.³² Such a mentality is all the more apparent when one begins to understand the moral framework for Russia's invasion of Ukraine. In a kind of "handbook" given to deploying Russian soldiers and conscripts, the moral justification for the invasion of Ukraine is founded upon the idea that the Russia-Ukraine War is a continuation of the Great Patriotic War (i.e., World War II).³³

I Live, I Fight, I Win! identifies the West (as well Japan) as nations propping up the "Ukrainian regime" against Russia in an attempt to take revenge on Russia for their purported "great victory" during the Great Patriotic War. The moral argument is further made that the West (specifically identified as the USA, Great Britain, and Israel) are using the Ukrainians to fight Russia, when, as the handbook claims, Ukrainians are really Russians that have become Russophobes since their independence from Russia.³⁴ The remainder of these "rules of life in war" deal with practical means by which to survive military conflict, but moral justification for Russia's war with Ukraine is abundantly clear. This conflict is Russia's Great Patriotic War 2.0, in

which they are fighting the Western ideological influence that has infected Ukraine, and Russia's goal is to purge this influence (hence Russia's claims of de-Nazification, among other things). How this purging and reintegration of Ukraine into Russia takes place is not of particular concern to the Kremlin.

Numerous Just War experts and political theorists have identified both *jus ad bellum* and *jus in bello* issues with Russia's justification for war with Ukraine as well as how they have conducted themselves in the midst of fighting. The overtly intentional targeting of civilians and civilian structures (e.g., apartment complexes) as opposed to the shielding of these protected parties, the indiscriminate bombing and shelling of civilian population centers, threats of nuclear strikes, and reliable stories of sexual assault and rape are highlighted by analysts as key violations of the principles of *jus in bello* and LOAC.³⁵

As noted earlier, military leaders can make any number of justifications for targeting particular people or locations under the guise of military necessity, but that necessity must not violate the other principles of LOAC. It is a sobering reminder that *jus in bello* and LOAC establishes warring States or belligerents as ethical equals. Each action taken by either side of a conflict can, in theory, be assessed on *jus in bello* and LOAC grounds for their ethicality, or justness in the conduct of war. That said, Russia's actions in their war with Ukraine are a clear violation of distinction (discrimination), humanity, honor, and proportionality, in direct relation to military necessity. The indiscriminate nature of Russia's bombing and shelling campaigns have already been noted, as has the specific targeting of civilian populations with rocket and missile strikes in clear violation of the principle of proportionality in the excessive damage caused by these strikes. Ukrainian General Prosecutor Kostin claims that some 75,000 buildings, to include homes, apartments, schools, and hospitals have been destroyed.³⁶ LOAC provides enlightening information with regards to distinction and proportionality, observing that there are times when civilians can be militarily engaged as combatants and the destruction of civilian structures may be both militarily necessary and proportional, but the specific targeting of civilians is unwarranted and unlawful.

Branching out from the classic *jus in bello* principles of discrimination (distinction) and proportionality, the concept of not utilizing means *mala in se* (evil means) in relation to LOAC principles further addresses some of Russia's purported war crimes. Jensen and Childs notes concerning *mala in se*, "Soldiers may not use weapons or methods that are inherently evil. These include mass rape campaigns, genocide or ethnic cleansing, using poison or treachery..., and using weapons whose effects cannot be controlled such as biological or other chemical weapons."³⁷ Though Jensen and Childs link no means *mala in se* to the LOAC principle of honor, of which there is a clear connection, no means *mala in se* is inherently connected to humanity, distinction, and proportionality as well. Leaning on the concept of fairness between belligerents, honor seeks to root ethical decisions to core values (such as the Army Values) and requires adherence to LOAC regardless of the enemy's compliance.³⁸ However, the principles of distinction and humanity requires warfighters to avoid targeting civilians and noncombatants and forbids causing unnecessary suffering, injury, or destruction.³⁹ The targeting of civilian power plants during winter months, the kidnapping, sexual assault and rape of civilians, and the intentional targeting of civilian homes is in clear violation of LOAC, but there exists the subjectively evil nature of these actions in freezing civilians during the Ukrainian winter or violating their personal agency through rape and sexual assault.

Owning Our Ethical Failures

In recent military history, US Forces have not been in short supply of our own *jus in bello* and LOAC complications, if not blatant violations. From the My Lai massacre and coverup during the Vietnam War, to prisoner abuse at the Abu Ghraib prison in Iraq, to the “Kandahar Massacre” wherein Staff Sergeant Robert Bales murdered 17 Afghan villagers in their sleep,⁴⁰ US Forces cannot simply assume they are always arguing from the right ethical standpoint, at least not without holding ourselves accountable. One need only mention Jim Frederick’s *Black Hearts* and a fair number of Army officers should be able to call to mind the heartbreaking story of the murder and rape of an Iraqi family perpetrated by Soldiers during the Iraq War,⁴¹ as well as the litany of LPDs conducted at the unit level on how to lead and care for one’s soldiers in an effort to prevent another *Black Hearts* situation. Every single one of these instances of ethical and moral failure should point US military and political leaders, as well as warfighters themselves, to better understand the ethical principles of war we subscribe to. However, each one of the above-mentioned situations are pretty clearly moral failures and violations of LOAC as well as *jus in bello* Just War principles.

What if we chose to wrestle with a more ethically complex conflict, such as World War II? Most military historians, ethicists, etc. have no issue with arguing that the US involvement in World War II met the requisite *jus ad bellum* principles of justifying going to war, in both Pacific and European theaters. However, the indiscriminate nature of Allied bombing campaigns has been called into question by a number of ethicists in recent years. Daniel Maguire notes regarding British campaigns, particularly Dresden, “Churchill, in belated scruple, worried as the war moved on if bombing civilian centers ‘simply for the sake of increasing terror’ was something that should be ‘reviewed.’”⁴² Of greater concern than that of Churchill’s reflective afterthoughts concerning the indiscriminate bombing of German city centers was the US Army Air Corps justification for the fire-bombing of Tokyo, as well as many other Japanese civilian populations.

Napalm is, by its very nature and design, indiscriminate. In his highly accessible look at US bombing strategy during World War II, Malcolm Gladwell offers some insight into the early development of napalm. Gladwell notes that napalm was essentially designed for the destruction of Japanese buildings. Looking to an essay published in *Harper’s Bizarre*, Gladwell points to the authors’ use of Osaka as a test case in how best to retaliate against Japan after the attack on Pearl Harbor. The authors’ highlight that fire would work best in destroying Japanese structures, as Osaka’s streets were narrow, buildings were built of wooden beams and ceilings were made from heavy paper soaked in fish oil. The people slept on straw mats. Japanese cities, they argue, were tinderboxes.⁴³ The US Air Corps Tactical School did not take much convincing with regards to the utility of napalm in the Pacific theater, as their War Plan entailed crushing the entire morale of the people via heavy and sustained bombing of cities.⁴⁴ The strategic foundations had been established for the firebombing of Tokyo and other Japanese cities. Gladwell notes, “After the war, the United States Strategic Bombing Survey concluded the following: ‘Probably more persons lost their lives by fire at Tokyo in a six-hour period than at any time in the history of man.’”⁴⁵ The estimation of civilian lives lost that night was close to

400,000, with upwards of 900,000 civilian deaths in more than 60 Japanese cities and over two million homes destroyed by allied airpower.⁴⁶

The decision to conduct firebombing operations was ultimately made at the strategic level and by Army Air Corps command, not by the “boots on the ground” military leaders conducting island-hopping operations throughout the Pacific. It was, however, the tactical level leadership doing the island-hopping that provided reports and loss assessments to higher echelons that eventually led President Harry Truman to make the decision to use nuclear weapons. Rupert Smith highlights the fact that retreating Japanese forces fought with greater grit and diligence than that of retreating German forces in Europe, with the number of kamikaze attacks increasing daily.⁴⁷ Smith notes, “Every island, every inch of land, had to be paid for with American blood, and the American public was beginning to grow tired of the stream of casualty reports.”⁴⁸ With the assessments provided by ground force commanders and the strategic planners assuming the loss of American troops to be in the hundreds of thousands in looking to invade mainland Japan, Truman opted to drop atomic bombs on Hiroshima and Nagasaki to force Japan to capitulate.⁴⁹ We acknowledge how ethically complex and problematic the use of nuclear weapons on the people of Japan were (and still are), but in this instance the mission was not planned in a vacuum. Tactical level leadership provided information, sometimes in the form of staggering casualty reports, that directly affected the ethical calculus used in determining the use of nuclear force.

Toward the end of his life US Air Force General Curtis LeMay, the individual responsible for the firebombing of much of Japan, was noted to have confided in his then assistant secretary, Robert McNamara, regarding the firebombing of Tokyo, “We’d better damn well win this thing or we’re both going to end up tried and executed as war criminals.”⁵⁰ LeMay never seemed particularly bothered by the utilitarian calculus he employed in deciding to indiscriminately target Japanese civilians, even going as far as saying to a group of Air Force Academy cadets, “All war is immoral, and if you let it bother you, you’re not a good soldier.”⁵¹ McNamara himself begged the “what makes it immoral if you lose and not immoral if you win?” in offering commanders an ethical dilemma with which to wrestle.⁵²

We highlight the firebombing of Tokyo and the rationale underpinning its strategic construct precisely because LOAC and the principles of *jus in bello* are easily employed for dialogue and debate. In every instance of ethical failure mentioned in this section, US Forces failed to maintain the moral high ground that forms the core of Army leadership doctrine as well as the DoD Law of War Manual and the principles of LOAC. We additionally highlight the dropping of the atomic bombs to point out that tactical-level decisions by leaders can and do have operational and strategic-level ethical effects. Wars in Vietnam, Iraq, and Afghanistan were highly complex and generally not perceived as solely LSCO conflicts, whereas World War II embodied the LSCO paradigm. McNamara’s question is a haunting one: did the allied forces fight a moral and ethical war precisely because they won? The firebombing of Tokyo, as well as allied forces indiscriminately bombing in both the Pacific and European theatres of war call into question not the morality of the war itself, but the morality of actions taken in the conduct of war (*jus in bello*). While neither author would venture to hold as equals the allied forces of World War II and the Russian forces of the current Russia-Ukraine War, the principles of *jus in bello* Just War theory and the principles of LOAC are equally applicable to the actions taken by

both forces in the conduct of war. The question that then must be asked is how Russia's LOAC-violating actions in Ukraine ethically inform the conduct of LSCO by US Army maneuverists.

Conclusion

The concept of the "strategic corporal" provides us with the ideal example of the lowest ranking tactical-level leadership where *jus in bello* and LOAC principles are of overwhelming importance. Rye Barcott rightly notes that the modern military experience is characterized by the need to quickly make sound decisions in often autonomous situations.⁵³ The connections between autonomous quick decision making at the smallest tactical level and Mission Command philosophy are fairly clear, but the outcomes of the decisions made can be remarkable, for better or worse. Barcott points out the kind of questions that can have strategic level effects by a tactical-level leader, such as: "What do you say to the Afghani reporter thrusting a camera in your face and asking you, 'Why are you here?'"⁵⁴ The corporal's answer to this question has numerous second and third order effects depending upon his/her response. The same goes for decisions made not in a COIN, but in a LSCO environment, as is seen in the unethical decision making of Russian ground force commanders in Ukraine.

Through the lens of the tactical maneuverist, we are convinced that the principles within *jus in bello* Just War tradition and LOAC provide a bedrock with which to develop a common ethical lexicon for all soldiers down to the lowest echelons. As such, not only might we share a common ethical language across the force, but we might truly embrace the Mission Command philosophy from an ethical training and development standpoint. Embracing this approach to the importance of the *jus in bello* and LOAC principles (as well as ROE) shapes the total force in an ethically preventative manner, theoretically aiding decision-makers at every echelon, from the "strategic corporal" up to our senior military leaders, in the conduct of war. The prevention of war crimes should ultimately be a positive side effect or outcome of shaping decision makers, at echelon, in the importance and immediate relevance of the principles of the Just War tradition and LOAC.

End Notes

¹ The LOAC principles of note are found in the following primary documents: Office of the General Counsel, Department of Defense, *Department of Defense Law of War Manual* (Washington, D.C.: Office of the General Counsel, Department of Defense, 2016); and Headquarters Department of the Army and Headquarters Department of the Marine Corps, *The Commander's Handbook on the Law of Land Warfare*, FM 6-27/MCTP 11-10C (Washington, D.C.: Department of the Army, 2019).

² Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Revised Ed. (New York: Back Bay Books, 2009), 205.

³ *Ibid.*, 206.

⁴ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fifth Ed. (New York: Basic Books, 2015), 260.

⁵ Alex J. Bellamy, "Francisco de Vitoria (1492-1546)," in *Just War Thinkers: From Cicero to the 21st Century*, ed. Daniel R. Brunstetter and Cian O'Driscoll (New York: Routledge, 2018), 84.

⁶ *Ibid.*, 84-85.

⁷ *Ibid.*, 85. Also, Wollom A. Jensen and James M. Childs, Jr., *Moral Warriors, Moral Wounds: The Ministry of the Christian Ethic* (Eugene: Cascade Books, 2016), 27.

⁸ Jensen and Childs, *Moral Warriors*, 27.

⁹ Anthony E. Hartle, *Moral Issues in Military Decision Making*, Second Ed., Revised (Lawrence: University Press of Kansas, 2004), 97. Hartle's definitions of discrimination and proportionality are similar but not the same as Jensen and Child's. This fact is representative of thinkers within the Just War tradition.

¹⁰ James M. Dubik, *Just War Reconsidered: Strategy, Ethics, and Theory* (Lawrence: University Press of Kentucky, 2018), 49-50.

¹¹ Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-1.

¹² Office of the General Counsel, Department of Defense, *Department of Defense Law of War Manual*, 2.1.1.

¹³ Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-7.

¹⁴ *Ibid.*, Table 1-1.

¹⁵ Walzer, *Just and Unjust Wars*, 129.

¹⁶ George Lucas, *Military Ethics: What Everyone Needs to Know* (Oxford: Oxford University Press, 2016), 61.

¹⁷ Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-31.

¹⁸ Headquarters Department of the Army, *Operations*, FM 3-0 (Washington, D.C.: Department of the Army, 2022), 1-54.

¹⁹ Framework developed by Major Patrick K. O'Keefe, MCoE MCCC Team Chief, for the Multi Domain Operations lesson.

²⁰ Headquarters Department of the Army, *Operations*, ADP 3-0 (Washington, D.C.: Department of the Army, 2019), 5-13.

²¹ Robert J. Rielly, "Confronting the Tiger: Small Unit Cohesion in Battle," *Military Review* (November-December, 2000), 61.

²² Pjotr Sauer, "Russian Soldiers Say Commanders Used 'Barrier Troops' to Stop Them Retreating," *The Guardian*, last modified March 27, 2023, <https://www.theguardian.com/world/2023/mar/27/russian-soldiers-commanders-used-barrier-troops-stop-retreating>.

²³ Rielly, "Confronting the Tiger," 61.

²⁴ Dubik, *Just War Reconsidered*, 50-53.

²⁵ Headquarters Department of the Army, *Mission Command: Command and Control of Army Forces*, ADP 6-0 (Washington, D.C.: Department of the Army, 2019), 1-48, 1-49.

²⁶ Jim Garamone, "Ukraine's Success Was a Surprise Only to the Russians," U.S. Department of Defense, last modified September 13, 2022, <https://www.defense.org/News/News-Stories/Article/Article/3157239/ukraines-success-was-a-surprise-only-to-the-russians/>. Also of note is Rajan Menon's article highlighting that though there have been many surprises throughout the yearlong Russia-Ukraine War, morale and leadership, and lack thereof, have proven decisive qualities for both the Ukrainians and Russians; Rajan Menon, "The war of surprises in Ukraine," *Responsible Statecraft*, last modified March 30, 2023, <https://responsiblestatecraft/2023/03/30/the-war-of-surprises-in-ukraine/>.

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- ²⁷ Amanda Macias, "Russia has committed more than 65,000 war crimes in Ukraine, prosecutor general says," CNBC, last modified February 1, 2023, <https://www.cnbc.com/2023/02/01/ukraine-russia-war-65000-war-crimes-committed-prosecutor-general-says.html>.
- ²⁸ Michael Biesecker, "Evidence of Russian war crimes mounts as invasion of Ukraine drags on," PBS Newshour, last modified December 30, 2022, <https://www.pbs.org/newshour/world/evidence-of-russian-war-crimes-mounts-as-invasion-of-ukraine-drags-on/>.
- ²⁹ Of note is the "Martens Clause," part of the Preamble to Hague IV and associated with the Russian representative Fyodor Martens, which states, "When no specific rule applies, the principles of LOAC form the general guide for conduct during war." Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-18.
- ³⁰ Lester W. Grau and Charles K. Bartles, *The Russian Way of War: Force Structure, Tactics, and Modernization of the Russian Ground Forces* (Fort Leavenworth: Foreign Military Studies Office, 2016), 19.
- ³¹ *Ibid.*, 19.
- ³² *Ibid.*, 19.
- ³³ A.N. Razumov, G.A. Kryukov, and A.N. Kuznetsov, *I Live, I Fight, I Win! Rules of Life in War* (Moscow: Russian Union of Veterans of Afghanistan and Special Military Operations, 2022), 8.
- ³⁴ *Ibid.*, 8-9.
- ³⁵ Hans Gutbrod, "Russia's Recent Invasion of Ukraine: the Just War Perspective," Global Policy, last modified March 21, 2022, <https://www.globalpolicyjournal.com/blog/21/03/2022/russias-recent-invasion-ukraine-just-war-perspective/>; Rob McLaughlin, "Keeping the Ukraine-Russia Jus ad Bellum and Jus in Bello Issues Separate," *Articles of War*, last modified March 7, 2022, <https://lieber.westpoint.edu/keeping-ukraine-russia-jus-ad-bellum-jus-in-bello-issues-separate/>; Michael James Robblee, "The Russian-Ukrainian War and Just War Theory," *Over the Horizon*, last modified July 1, 2022, <https://overthehorizonmdos.wpcomstaging.com/2022/07/01/the-russian-ukrainian-war-and-just-war-theory/>; Michael Walzer, "It's No Crime to Be a Russian Soldier in Ukraine," *Foreign Policy*, last modified December 4, 2022, <https://foreignpolicy.com/2022/12/04/russian-army-conscription-just-war-theory/>.
- ³⁶ Macias, "Russia has committed more than 65,000 war crimes in Ukraine, prosecutor general says."
- ³⁷ Jensen and Childs, *Moral Warriors, Moral Wounds*, 27.
- ³⁸ Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-31.
- ³⁹ Department of the Army, FM 6-27 - *The Commander's Handbook on the Law of Land Warfare*, 1-28, 1-34.
- ⁴⁰ Lucas, *Military Ethics*, 29.
- ⁴¹ Jim Frederick, *Black Hearts: One Platoon's Descent Into Madness in Iraq's Triangle of Death* (New York: Broadway Paperbacks, 2010).
- ⁴² Daniel C. Maguire, *The Horrors We Bless: Rethinking the Just-War Legacy* (Minneapolis: Fortress Press, 2007), 47.
- ⁴³ Malcolm Gladwell, *The Bomber Mafia: A Dream, a Temptation, and the Longest Night of the Second World War* (New York: Little, Brown and Company, 2021), 157.
- ⁴⁴ Joel N. Brown, "Lessons from the Firebombing in World War II's Pacific Theatre," in *Maintaining the High Ground: The Profession and Ethic in Large-Scale Combat Operations*, ed. C. Anthony Pfaff and Keith R. Beurskens (Fort Leavenworth: Army University Press, 2021), 63.
- ⁴⁵ Gladwell, *The Bomber Mafia*, 185.
- ⁴⁶ Brown, "Lessons from the Firebombing in World War II's Pacific Theatre," 64.
- ⁴⁷ Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (London: Penguin Books, 2006), 144.
- ⁴⁸ *Ibid.*, 144-145.
- ⁴⁹ *Ibid.*, 145.
- ⁵⁰ Quote related by McNamara in a documentary directed by Errol Morris, *The Fog of War: Eleven Lessons from the Life of Robert N. McNamara* (2003), quoted in Lucas, *Military Ethics*, 57.
- ⁵¹ Alfred F. Hurley and Robert C. Ehrhart, eds., *Air Power and Warfare: The Proceedings of the 8th Military History Symposium, United States Air Force Academy 18-20 October 1978* (Washington, D.C.: Government Printing Office, 1979), 201, quoted in Brown, "Lessons from the Firebombing in World War II's Pacific Theatre," 68.
- ⁵² *Fog of War*, quoted in Brown, "Lessons from the Firebombing in World War II's Pacific Theatre," 60.
- ⁵³ Rye Barcott, "The Strategic Corporal," *Harvard Business Review*, last modified October 21, 2010, hbr.org/2010/10/the-strategic-corporal.
- ⁵⁴ Barcott, "The Strategic Corporal."