

Is Just War Theory Obsolete?

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Just War Theory can be found in almost all major cultures. But since war was a business that could not be easily stopped, some aimed to constrain it. In its classic form, Just War Theory has been around for several centuries—ever since nationhood in Europe replaced provincial governments. Having made some introductory considerations, I will ask: should Just War Theory be left as it is, changed, or, possibly, be completely abandoned? I will discuss the issue of the theory's logicity first, and then move to the question of how technologies might force us to redo or abandon Just War Theory. Finally, I will discuss how changes in political life might prompt us to change the theory as we in the West have known it for several centuries.

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Background

Just War Theory has a long and broad history. Traces of the theory can be found several centuries BCE. In terms of breadth, it is found in almost all major cultures.² It is easy to understand why this theory has such a history. Humans learned early on how to kill, maim, and enslave large number of other humans. War, it was clear to everyone, was an ugly business. But since it was a business that could not be easily stopped, some, who were especially aware of war's ugliness, aimed to constrain it. War, they thought, should not be started as a result of minor provocations and certainly not when there are other means of settling disputes between peoples.

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2. See Mo Tzu, *Basic Writings*, trans. B. Watson (New York: Columbia University Press, 1963); Mencius, *The Works of Mencius*, ed. J. Legge (Oxford: Oxford University Press, 1894); Manu, *Laws of Manu*, trans. Doniger and Smith (New York: Penguin, 1968); Plato, *The Republic*, trans. Bakewell and Jowett (New York: The Modern Library, 1956).

In the West (i.e., mainly in Europe), and early during the Common Era, Just War Theory was framed within the Christian (mainly Catholic) tradition. Christian thinkers, such as Ambrose, Augustine, Aquinas, Suarez, and de Vitoria, led the way in developing and refining Just War Theory.³ But by the 16th and 17th centuries, as political and economic changes took hold and, as a result, the Church lost much of its influence, versions of the theory were developed outside the Church. A leading thinker who helped bring about this change is Hugo Grotius.⁴ Some religious thinkers still thought, and continue to think, of Just War Theory in religious terms, but many no longer did and do so. Indeed, it is fair to say that today the non-religious approach to Just War Theory dominates Western thinking (now encompassing not only Europe, but all English-speaking nations).

As it evolved in the West, the theory took on a standard form.⁵ Briefly, it looks like this.

1. There are two parts to the theory. The first has to do with when war might start (*jus ad bellum*). This portion is thought to be the responsibility of certain political leaders (e.g., the king, president, dictator, or legislature). It is the job of these leaders to decide if and when a nation or a people should go to war.

The second part of the theory deals with how the war is to be fought once it starts (*jus in bello*). Leaders, especially military ones, have responsibility here too. If they act wisely, only a few lives (on both sides of the war) will be lost. If they fail in this regard, many needless deaths will result. But in this second part of the theory, the fighters themselves have responsibilities as well. They are, for example, not permitted to kill prisoners. Nor are they permitted to attack and harm a large group of persons loosely identified as non-combatants.

2. The first portion of the theory (*jus ad bellum*) presents those leaders with certain standards that they are supposed to meet before they send their military forces into battle. Traditionally, the theory

3. Paul Christopher, *The Ethics of War and Peace an Introduction to Legal and Moral Issues* (Englewood Cliffs, New Jersey, USA: Prentice Hall, 1994). See Chapter 4 where Christopher discusses the views of all these writers and also provides references.

4. Hugo Grotius, *The Laws of War and Peace*, trans. FW Kellsey (Indianapolis, Ind., USA: Bobbs-Merrill 1962). See also Christopher's excellent discussion of Grotius (Chapters 5 and 6).

5. Nicholas Fotion, *War and Ethics: a New Just War Theory* (London and New York: Continuum International Publishing Group, 2007). See Chapter 2.

identifies a set of six standards. (1) *Good reasons (just cause)* must be identified before going to war. Classically, the most common (good) reason given is that one is responding to an aggressive attack from another nation or large group. (2) *Good intentions* is probably a criterion left over from the days of Christian dominance and, at that time, meant that one should not enter a war for selfish reasons. Today, this criterion is expressed less in psychological terms and more in those having to do with actions. Thus a nation's good intentions are most clearly manifested when it withdraws its troops from the land of a nation that it has saved from an aggressor. (3) *Likelihood of success* in repelling an aggressor should be high. For example, if one's meager military cannot even slow a powerful enemy, one should not enter a war. Hopeless wars should be avoided. (4) *Proportionality* should be sought. A war that threatens to do more harm than good should be avoided. (5) *Last resort* tells us never to start a war without first seriously examining other options. War is the most painful way to solve disputes between nations and peoples, so it should not be entered into as a first, second, etc. resort. (6) *Proper authorization* should be sought. This criterion constrains war by allowing only certain people to make decisions here. We do not want just anybody authorizing a war. If, for example, a mayor of a city could precipitate a war, wars would tragically become all too common.

3. There are only two standards on the in-the-war (*in bello*) side of the theory. These are *proportionality* having to do with campaigns and battles (not the war as a whole) and *discrimination*. The latter criterion identifies certain people (e.g., soldiers), objects (e.g., warships), and places (e.g., military buildings) that are subject to attack while other people (e.g., children, severely wounded military personnel), objects (e.g., ambulances), and places (e.g., hospitals and holy places) are not.

The logic behind all these standards is that there are certain basic ethical principles that we all agree on that need to be protected. "Don't kill or harm other humans" is the most basic of these principles. We recognize, of course, that at times even this principle has exceptions. But we don't want these exceptions to be too easy to come by. So we naturally ask for justification. We ask those who would kill or maim others to give at least one good reason why making an exception is in order. We also ask: isn't there another way of achieving what you want without making an exception? In effect, asking this question means that one should apply the last resort standard. Similarly, the other standards in the justice of the war portion of just war theory serve to defeat or slow down the process of going to war.

Proposed Changes #1

In its classic form, Just War Theory has been around for several centuries—ever since nationhood in Europe replaced provincial governments. In this form, the theory seems, in principle at least, to constrain wars fought between two or more nations. But after World War II, the political landscape changed. Now, in addition to wars taking place between nations, there are many wars between one nation and at least one non-nation group. With these changes, those who concern themselves with ethical issues pertaining to war wonder whether the classic theory is obsolete, or perhaps obsolescent. Other changes since World War II prompt similar questions. War technologies have changed radically. And they continue to change—probably at an accelerating pace. Still others wonder about the present relevancy of Just War Theory, because recent and careful assessments of the theory have raised issues about whether it ever was stated in a consistent or logical fashion. All three of these considerations, and perhaps others as well, lead a wide variety of thinkers in the West to think that perhaps it is time to re-examine, and challenge, Just War Theory. So in the remainder of this essay that is what I will do. I will ask: should Just War Theory be left as it is, changed or, possibly, be completely abandoned? I will discuss the issue of the theory's logicity first, and then move to the question of how technologies might force us to redo or abandon Just War Theory. Finally, I will discuss how changes in political life might prompt us to change the theory as we in the West have known it for several centuries.

The champion of those who question the logical status of the theory is Professor Jeff McMahan of Rutgers University, USA.⁶ He questions the doctrine built into the traditional version of the theory called the moral equality of combatants. That doctrine claims that the soldiers of an aggressor nation have the same moral status as those soldiers defending themselves against the aggressors. According to the doctrine, soldiers on either side have a right to defend themselves against an attack from the other. McMahan says that that can't be right. He makes an analogy to dramatize his point. You can rightly defend yourself against an intruder in your home, but the intruder cannot rightly defend himself against your efforts to stop him. The intruder has no right to self defense, the way you do. Of course, he may shoot you if you shoot at him. But, in shooting you, he does not have justice on his side. So in war, a nation or people who shoot at the aggressor's military have a right to do so, but the aggressor has no right of any kind to shoot at those who are defending their nation.

6. Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).

There is no moral equality of combatants here at all.

McMahan's alteration to Just War Theory looks as if it leads to major changes in the theory. Presumably when the aggressor nation's troops kill the enemy, they count as murderers. If that is so, then, presumably, they should be punished. One can imagine a surreal scenario here where, when the aggressor loses the war, all the members of its military establishment are either executed for their crimes or enslaved permanently. If that were to happen, that would indeed represent a major change in Just War Theory. It would also represent the way wars were fought thousands of years ago.

But McMahan does not take his revised version of Just War Theory in that direction. Instead, he notes, what most just war theorists note, that the vast majority of military personnel are not ideally situated to judge whether their government is or is not behaving justly. That is, they are not informed, rational and independent agents. Rather, many are ill-educated, ill-informed, subject to their government's constant propaganda, and also subject to coercion from their government, various social groups, their peer group, and even their family. They are, in short, easily manipulated into believing that their government is acting justly even if it is not. Given their confused state of mind, it makes little sense to blame, let alone punish, the vast majority of the aggressor's military personnel.

So, even if we abandon the doctrine of the moral equality of combatants, as McMahan urges us to do, the effects on Just War Theory are meager. Some relabeling might be in order. The doctrine might now be called equal treatment of combatants. Interestingly enough, the equal treatment could be extended. Just as most of the aggressor military personnel cannot be blamed for fighting a "bad" war, so most of the defenders cannot be praised for fighting a "good" war, since they too are likely to be not well-educated, not well-informed, coerced, and so forth. Of course, the good guys will be praised by their people whether they deserve to be praised or not, just as the bad guys will be praised by their side. But all that praising helps to leave the situation as it was before.

Mc Mahan could, and does, claim that the change he recommends in Just War Theory has at least one significant effect. By identifying the objective wrongness of the aggressor nation, some of the more enlightened members of that side will be more encouraged than they might otherwise be to act so as to subvert their nation's aggression. That may be. But it is not as if there have not been efforts to subvert aggression and aggressive policies operating under the misguided flag of the moral equality of combatants. Look, for example, at the many

efforts (although they all failed) to eliminate Adolf Hitler, before and during World War II.

Proposed Changes #2

My argument, then, is that McMahan's efforts to change structure of Just War Theory do not amount to much. So now let's consider changes to that theory that might take place because of changes in war technology. No doubt technological changes have been taking place since the beginning of war. Wooden and stone weapons were replaced by bronze weapons, and these latter weapons by iron and then steel. Sails at sea were replaced by engines that run on steam. Bows and arrows were replaced by weapons using gun powder. At first, these changes came slowly. It took decades and even centuries for gunpowder to have major influence on the battlefield and at sea. But by the 19th and 20th centuries, it became obvious to all that the pace of technological development was increasing. Some of these developments originated from civilian sources. That was so with the train which turned out to be useful for moving troops from place to place in the US Civil War in the 1860s. Similarly, the telegraph in that war was put to use by the military to facilitate communication. Further, mass production in civilian life made it possible to produce mass-produced weapons of war. Now everyone (by the millions) could hold a gun in war. But other technologies of that day were inspired by war itself. The breach-loaded rifle, the repeating rifle, the development of the mine and, eventually, of the cartridge bullet. By the time of World War I, airplanes were put to use in war, as were machine guns, rapid fire artillery, submarines, and even tanks. Chemical weapons found their place in that war as well.

World War II saw the maturation of tanks and airplanes into powerful and quick strike weapons. But that war also saw the development of jet aircraft, aircraft carriers, cruise and "space" missiles, radar and electronic warfare, and, in the end, nuclear weapons. Once that major war was over, it might have been expected that military technology would take a rest. But it did not. The so-called Cold War inspired the development on "bigger and better" nuclear weapons, nuclear submarines, mammoth aircraft carriers, faster-than-the-speed-of-sound jet planes, intercontinental missiles, stealth airplanes and ships, far more sophisticated radars and other "sensor" devices, the use of the computer to perform a variety of military tasks, and the miniaturization of weapons (e.g., so that one person could carry a powerful bomb around his waist). Most recently we have seen the development of robots of all kinds, and also the use of electronics to conduct "war" in cyberspace.

The question now is: have all these changes changed Just War Theory in some basic way(s)? Making a distinction helps answer this question. Changes could take place within the structure of the theory (e.g., as McMahan has argued for) or the changes could be made in the judgments we make by using the theory (as it stands). I think the right answer here is that, mostly, technology does not force major changes to the theory itself, but only to the judgments we make while using the theory.

Why is this so? Well, look at how nuclear weapons changed our judgments about their use. During World War II, one could apply the proportionality principle of Just War Theory and argue that lives on both sides would be saved if the bombs were used. An invasion of Japan, which was scheduled for early 1946, would have been more costly to everyone involved. This argument could be used because only the US had the bomb at that time. But later, after the USSR developed its own bomb, the theory told a different story. Now it said that if one side used the bomb successfully to destroy the other, it too would be destroyed since its enemy's nuclear weapons could easily survive an initial attack against it. So the doctrine of Mutual Assured Destruction was born. But the point is that, once again, the principle of proportionality (along with the principle of discrimination) found within Just War Theory served for some thinkers to convince them that this new doctrine should be adopted. In a somewhat similar fashion, one can use the *jus in bello* principles of Just War Theory to condemn such new weapons as cluster bombs, fuel air bombs, land mines and other new weapons that indiscriminately and massively kill many "innocent" humans and wild animals. On the other side, the theory can be used to praise the use of smart bombs and robots in war. These weapons save lives both on the side being attacked and on the attacker's side as well.

Just War Theory can also be used to help in decisions related to cyber warfare. If one nation attacks another nation's electronic information system (e.g., its internet), it can do real damage. It can keep the attacked nation from transmitting important information from one person or group to another, and it can steal information as well. It can also foul the information-technology system of a nation so that it is now sprinkled with disinformation. Further, it can send signals to damage programs that run a wide variety of machines found within both the military and the civilian sector of society. Cyber warfare can truly represent a form of aggression. As such, it would seem that Just War Theory gives the victim nation a just cause for going to war.

However, there is a problem. Citing just cause assumes that the aggressor can be identified. When enemy tanks cross a nation's border there is no problem in knowing who did the crossing. But in cyber warfare the aggressor's identity is often hidden. Was the virus planted there by another nation, a small group of dissidents in that nation, or by some troublesome individual from some other nation? Clever cyber-warriors can hide their identity for long periods of time; and sometimes forever.

But assuming that most cyber attackers can be identified sooner or later, one has to ask whether the other criteria of Just War Theory have also been met so as to justify a nation or a non-nation group in its decision to go to war. Would, for example, starting a war because of a cyber attack be justified if it precipitated an economic crisis? Wouldn't, one might think, it be better to create an electronic defense so that one could at least mitigate the damage done by that attack? Wouldn't it also be better to limit the damage done in responding to a cyber attack by developing one's own cyber attack program? In effect, what Just War Theory would be telling us is that starting a limited (cyber) war in response to a cyber attack is justified. But what is not justified is starting a general war. Starting a justified cyber war is a bit like starting (or continuing to fight) a "limited" spy war. In the end, this kind of war is fought by all sides. It hardly is a good argument then to accuse the other side of an unjust attack when you yourself are on the attack as well.

What this brief and partial review suggests is that Just War Theory is not challenged by modern military technology. With new technologies, judgments about what should be done changes, but these judgments can be made within the framework of Just War Theory as we know it today.

Proposed Changes #3

But what of the third challenge to the theory? What, if any, change does it mandate? That challenge, recall, has to do with changes in war that make wars between nations, on the one side, and non-nation groups, on the other, more common than before. As noted already, these so called asymmetric wars are somewhat different because of technology. Because one side in such wars has high technology available to it, while the other does not, this leads the non-nation (i.e., the non technology) group to act in more desperate ways. Because it lacks many (most) modern weapons, it is tempting for the non-nation group to excuse itself from many of the standards set by Just War Theory. But, of course, one doesn't just excuse oneself of one's responsibilities. The excusing must be justified.

To see if a justification process can be developed, it is necessary to review Just War Theory but review it now more from the point of view of non-nation groups. I'll start, once again, with the just cause principle.

Non-nation groups, like nations, cannot start a war without having a just cause. Their just cause will be similar to those that apply to nations. Stopping aggression will again be a good reason for going to war. However, aggression will be broader in scope than for nations. For nations it likely has to do with crossing borders. For non-nation groups aggression may involve border crossings, but it may also involve some nation state coercing a people within its own borders. Aggression may have a still broader scope since it might include the systematic exploitation and/or gross discrimination of a people. So the specifics of the just cause principle will change somewhat here, but the just cause principle itself will remain firmly in place.

The last resort principle will also remain in place for non-nation groups. They have no more reason to become engaged in a war, guerrilla or otherwise, than a nation. In its own way, their kind of war is just as horrible as is a war in which two or more nations engage. The same can be said about the proportionality principle. It will apply to non-nation groups as it does to nations. Non-nation groups here need to show that more good (e.g., stopping exploitation) is likely to come from going to war, bloody as it might be, than would come by not going to war.

One other principle will remain the same when wars are fought between nations and non-nation groups. Both must satisfy the good intentions principle. Both will fight up to the point, but not beyond, that they correct the problems (articulated in just cause) that helped to trigger the war in the first place. So for the non-state group, once liberation is achieved, efforts will be made to end that war. Further, the liberators will not seek monetary gain for themselves. Nor will they engage in some sort of power grab or any other selfish or selfish-like move.

Two just-war-theory principles remain. With them, we find significant differences between the standards the nation leads and those that non-nation groups lead. The first of these is the likelihood of success principle. Nations can usually assess whether they have a likelihood of success since they can make comparative judgments of the strengths and weaknesses of each side. With nations we count tanks, airplanes, and so forth, and we assess the quality of these weapons. We can also count, or at least roughly assess, the level of each side's preparedness. Are one's air force personnel well trained

and rested? Is the navy ready for a high-tech war? More often than not, such comparisons are not possible with non-nation groups. Especially when such groups are forming up there is no way to measure what their chances of success are. This is especially so if these groups (rebels) are not unified. One can expect some to fail and so eventually disappear from the scene. Others may persist but fail to flourish. But even if they flourish for a while, it is difficult to measure whether this flourishing will lead to eventual success of their revolution.

After a while, one realizes that the likelihood of success principle differs significantly from the other principles discussed so far (just cause, last resort, proportionality, and good intentions). Likelihood of success is tailored for nation vs. nation wars where each side can, with some difficulty to be sure, assess its resources and chances. But it makes no sense to burden non-nation groups with this principle. Most non-nation groups cannot possibly satisfy the principle. It follows that Just War Theory, the theory itself, needs to be modified so that it becomes asymmetrical. Nation vs. nation wars are symmetrical. Both sides must jump over the same Just War Theory hurdles. In contrast, nations at war with non-nation groups can still be asked to meet likelihood of success standard, but not so with non-nation groups. To go to war justly, non-nation groups need to meet only four of the five *jus ad bellum* principles discussed thus far.

Asymmetry becomes enhanced when we consider the principle (i.e., the hurdle) of proper authorization. Nations have no problem with this criterion. Their laws and customs specify who is and who is not responsible for starting a war. But non-nation groups often are not so well-formed politically so as to be able to identify who or what organization constitutes “the proper authority.” No doubt these groups have leaders. And, no doubt, each leader of each group will claim that he or she represents the people (culture, society). But these claims are just that. They (often) have no official (legal) backing. So more often than not, it is impossible for non-nation groups to satisfy the proper authorization principle. As with the likelihood of success principle, this is not just a failure to satisfy a principle. Rather, we have a principle designed for nations that cannot be applied to non-nation groups.

So far, then, I am proposing two changes to the *jus ad bellum* portion of Just War Theory when nations oppose non-nation groups in war. I will return to these changes shortly. But first it is important to consider whether changes are also needed in the *jus in bello* portion of the theory. For example, why might it be supposed that changes are

needed with the discrimination principle, the most important of the two *in bello* principles? Well, the non-nation groups are likely to argue that they are disadvantaged, and so they should be exempt from following the discrimination principle in the same way that nations are.

In order to assess this non-nation argument, it is helpful to review why the discrimination principle is in place within Just War Theory in the first place. Recall that Just War Theory itself is an exceptions theory. Those who propose going to war are telling us that they are justified making an exception to the no killing and no harm rules. But the theory says that, since killing and maiming are such ugly activities, the exceptions need to be restricted. Only those who are combatants or who directly support combatants can be attacked. No exceptions are allowed for directly attacking non-combatants (or “innocents”).

Now, if the attacking group wants to extend the exceptions so that anybody can be attacked, it must seek additional justification. It is as if that group is starting a new war. If that is a good way of putting it, then the group that wants to attack non-combatants (i.e., the people at large, innocents, etc.) needs to repeat the *jus ad bellum* portion of just war theory to justify its actions. Is there just cause for an attack on non-combatants? Has the group reached last resort after it is worked its way through the other resorts available to it? Can the proportionality principle be satisfied? Are the group’s intentions proper? And so on. The goal here in appealing to the *jus ad bellum* principles need not be to meet each and every principle before one can say that non-combatants have been attacked justly. Rather, it is to challenge those who would attack non-combatants to justify their attack as much as it is possible to do so.

In this connection, it will not be enough for the group that plans to attack non-combatants to say that it has just cause on its side because the people are related by blood to their combatants or because the other side’s non-combatants supply psychological support to their combatants. The trouble with applying these standards to one’s enemy is that the enemy can then apply the same standards to the non-nation group’s non-combatants. This means that ethically non-nation groups cannot complain if their non-combatants (innocents) are attacked while they turn around and attack the non-combatants on the other side. It also means that some other just cause needs to be found to justify attacking any group of non-combatants.

Such a finding is not so easy to come by as one might suppose. One candidate for a just cause that often is heard is that non-

combatants, especially in a democratic society, support their nation's aggression not just psychologically but politically. These people, it is said, vote for leaders who take their nation to war and so are just as responsible for the war as are their leaders and their military personnel.

This argument represents a piece of bad reasoning. Most people don't understand the political issues for which they vote. Often they suffer from a lack of a good education. Further, they are ill-informed because their government has manipulated information to the point that, even if they are educated, they can make rational judgments about what is going on only with great difficulty. Further, their vote often precedes the war which means that the voters might not have approved of the war-making policies of their government. Finally, just voting for war is such a small gesture that it hardly constitutes an action comparable to one performed by a soldier who actively supports the war on a daily basis. In short, it is difficult to implicate non-combatants in the war effort since their involvement in the war is so sporadic and often trivial.

The problems associated with allowing a government or non-governmental group to attack non-combatants by appealing to last resort is as difficult as it is with just cause. It seems easy enough if one listens to the rhetoric of many of those who attack non-combatants. They claim they have reached last resort in that they have attacked the military establishment and have found such attacks do not work. The nation attacked usually has too much technology in hand for the non-national groups to deal with. The argument continues as follows: "We have no choice but to attack non-combatants. It is a matter of military necessity. We either attack non-combatants or we give up our glorious revolution."

This argument is more a matter of rhetoric rather than substance. It is true that non-combatants make for easy targeting. They are found everywhere and do not know how to defend themselves. In part that explains why they are often attacked as a first rather than a last resort. But the attacker (either a nation or a non-nation group) does not want to admit that the ease of targeting is a major reason non-combatants are attacked. So they present the media with the "military necessity" argument when in fact there is no necessity present at all. It is always possible to attack the enemy's combatants either with precision weapons if one is a powerful nation, or with guerrilla tactics if one is a not very powerful. Just saying that military necessity demands that non-combatants must be attacked is not enough. Strong evidence is needed to back the claim.

The trend of my presentation suggests that it may be impossible ever to justify attacking non-combatants. I think that suggestion is not quite right. There are situations where, I would argue, that attack on non-combatants might be justified. Emphasis should be placed here on 'might.' I am not convinced that these situations are such that non-combatant attacks are really justified. But I am not certain that they are not. Here are three scenarios where they might be.

1. A non-nation group finds itself opposing immigration by an enemy nation into lands that it feels belongs to its people (think here of Algerians in the 1960s opposing French immigration into the land that they hope to liberate, or Palestinians opposing Israeli settlements into what they think of as their land, or Tibetans opposing Chinese immigration into Tibet). The non-nation group might argue that it can legitimately attack the "enemy" military establishment but also attack the immigrants. These immigrants, their argument is, are still non-combatants but they are also systematically engaging in activities that directly undermine the non-nation group's purpose.

2. Think now of a situation where if, say, 100,000 non-combatants are killed by an attack but 400,000 will be saved because a further more costly attack will not have to take place. An argument like this is sometimes used to defend that use of the atomic bomb on Japan in 1945. That argument says that if the war were allowed to continue without the use of the bomb, many more Japanese and American lives would have been lost as the result of a land invasion or of starvation due to a blockade.

3. Think now of an enemy that threatens not only to invade a land but to destroy that land's culture completely (including its government and religion) but also threatens to practice extensive genocide once its invasion succeeds. Michael Walzer tells us that that land faces what he calls a supreme emergency.⁷ If it has no other way to defend itself, Walzer tells us, that land is justified in attacking the enemy's non-combatants. The example Walzer gives is Great Britain early in World War II when it expected a Nazi invasion. Later in the war, as Britain, with the aid of the US, gained power, it was no longer justified in attacking non-combatants (although in fact it did).

Even if one takes these situations, and perhaps one or two others, seriously in allowing for attacks on non-combatants, one should

7. John Ray Skates, *The Invasion of Japan: the Alternative to the Bomb* (Columbia, South Carolina: University of South Carolina Press, 1994).

8. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977) 251-68.

realize that they are rare indeed. They are so rare that they form a contrast to the very frequent attacks on non-combatants with which we are all very familiar in one war after another.

Taking now an overall view of wars fought between nations and non-nation groups, it appears that changes in Just War Theory are in order. The basic reason they are is due to the different ways the two sides fight one another. There is an asymmetry between nations that possess organization and technology, and non-nation groups that have a lack in these regards. This asymmetry in fighting potential leads to asymmetry as to how to apply Just War Theory. In turn, this leads to the idea that there is a need for two versions of the theory. The first is the classic version as outlined at the beginning of this article. This one is tailor-made for wars between nations. The second, a new, version is tailor-made for wars between nations and non-nation groups. In many respects, both versions are similar to one another, but then there are differences. Below is a brief account of each just-war-theory principle and how it is modified or not as it relates to wars between nations and non-nation groups.

Jus ad bellum

1. Just Cause. Non-nation groups require just cause as do the nations that engage them in war. There is no reason to suppose asymmetry here.
2. Last Resort. Again there is no reason to suppose there is asymmetry here. Both nations and non-nation groups are urged to comply with this principle
3. Good intentions. No asymmetry here either. Both must comply.
4. Proportionality. No asymmetry seems to be demanded here although some slack may have to be given to the non-nation group, since it is more difficult for it to “compute” the positives and negatives of its actions.
5. Likelihood of success. Asymmetry is present here since the nation involved in war can probably assess its chances of success (e.g., a nation counts its tanks and airplanes and sees that it has an overwhelming advantage over its enemy), but a non-nation group, especially as war begins, looks hopelessly non-competitive.
6. Legitimate Authority. Again there is asymmetry present. Non-nation groups are not required to satisfy this constraint, since they often lack legitimacy. They may know who their leaders are, but these leaders most likely lack legitimacy.

Jus in bello

1. Proportionality. Speaking roughly there is no asymmetry here, although, as with proportionality within the *jus ad bellum* version, non-nation groups may have more difficulty in calculating the benefits and costs of battles and campaigns.
2. Discrimination. It appears initially that there is gross asymmetry between nations and non-nation groups when they go to war. But the argument is that both have to satisfy this principle. Even so, some asymmetry can be found here. (1) Nations with smart weapons are going to be held to a higher degree of compliance with this principle than are non-nation groups; and (2) nations finding themselves in one kind of situation and non-nation groups in another kind may find it necessary to make exceptions to this principle. So again there is a limited form of asymmetry present.

Conclusion

Changes in Just War Theory seem to be in order. Some of these changes seem to be structural while others not. Structural changes have to do with the realization that there is no reason to be committed to just one version of this theory. Ethical theories are instruments that we use to help us think more clearly about whatever issues we face, and there is no necessity that we restrict ourselves to working within the framework of one version of a theory. So the structural changes being recommended here are that we should be prepared with one version of Just War Theory when dealing with wars between nations, and another version with wars between nations and non-nation groups.

When we focus on how war has changed because of technological advantages, no structural changes are recommended. However, one must expect changes within the theory when it comes to applying one or the other criterion of the theory. These changes mean that the principle of discrimination may need to be tightened somewhat, because, for example, smart weapons come into play in one war or another.

Finally, changes recommended by Jeff McMahan do not seem to affect the application of Just War Theory in any serious way. It is true that he has shown that the moral equality of combatants doctrine is flawed. But flawed as it is, Just War Theory still recommends that the aggressor's combatants be treated in a humanitarian way if and when they find themselves on the losing side of a war.

In the end, then, we can conclude that Just War Theory is not dead, dying, or even very sick. It is alive, and well, even if it has morphed somewhat into more modern forms.

9. Two recent books present give readers up-to-date views of what is going on with respect to the topic of war and ethics. The first is by Steven P. Lee (*Ethics and War: An Introduction*. Cambridge, New York: Cambridge University Press, 2012). Lee gives his readers clear accounts of various just-war-theory stances. This is a good reference book. The second is by Stephen Coleman (*Military Ethics: An Introduction with Case Studies*. New York and Oxford: Oxford University Press, 2013). Coleman discusses Just War Theory but ranges beyond. His case studies are both varied and interesting.