



## ФИЛОСОФИЯ ВОЙНЫ



### Теория справедливой войны.

### Этические аспекты



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## Just War Doctrine – Relic or Relevant?

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### **Abstract**

In the article, I examine the relevance of Just War Doctrine to contemporary conflicts. Just War Doctrine, which grew out of Western Christian thinking, presupposes that evil might be confronted with force, if there is no alternative way to restore a just order. But modern trends call into question the certainty and universality of this doctrine. On the one hand, ideas of moral relativism and comparative justice have become more widespread, potentially undermining the use of the notions ‘just’ and ‘justified’ in relation to military conflicts. On the other hand, the nature of war is changing, as warfare is no longer only kinetic in character. I offer examples of how the evolving character of warfare challenges the traditional understanding of Just War Doctrine. For example, there is the growing threat of cyber warfare, but the ethical criteria for its use are not defined. In relation to Just War Doctrine, questions of whether and when pre-emptive cyber attack is permissible arise, what should constitute legitimate targets of cyber warfare and to what degree collateral damage could be acceptable. Another challenge to the traditional understanding of Just of War Doctrine was the putative doctrine of humanitarian intervention. *Prima facie*, humanitarian interventions do not comply with *ius ad bellum* criteria of Just War Doctrine, because of

the absence of a direct military threat to the intervening state. The justification of humanitarian intervention is based on the assertion of an intolerable violation of accepted values. The weakness of such approach, as discussed in the article, is that it implicitly assumes that one protagonist's values are superior to others. A further example of emerging challenges to Just War Doctrine is the phenomenon of hybrid war, a term used to describe a type of conflict that is multi-faceted and in which kinetic warfare is not dominant. The orchestration of several strands of conflict, each designed to be below the threshold to provoke a military response, exploits the absence of legal and ethical norms regulating such activity. I conclude the article by suggesting that, firstly, for Just War Doctrine to remain relevant, it should be expanded to include harms caused by non-kinetic actions, and, secondly, the distinctions between the states of war and peace should be redefined to reflect the changing character of war more accurately.

**Keywords:** military ethics, morality of war, *ius ad bellum*, law of armed conflicts, justice of war, comparative justice, humanitarian intervention, non-kinetic warfare, hybrid warfare.

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### **Доктрина справедливой войны: реликт прошлого или актуальность?**

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### **Аннотация**

В статье рассмотрена проблема актуальности доктрины справедливой войны применительно к современным конфликтам. Доктрина справедливой войны, восходящая к каноническому праву западного христианства, предполагает, что злу можно противостоять силой, если нет альтернативного способа восстановления справедливого порядка. Но современные тенденции ставят под сомнение определенность и универсальность этой доктрины. С одной стороны, идеи морального релятивизма и сравнительной справедливости получили широкое распространение, потенциально пресекая употребление понятий «справедливый» и «оправданный» в отношении военных конфликтов. С другой стороны, природа войны изменяется, поскольку последняя уже не носит только кинетический характер. Автором приведены примеры, на основе которых показано, как эволюционирующий характер войны бросает вызов традиционному пониманию доктрины справедливой войны. В частности, растет угроза кибервойны, но этические критерии ее использования не определены. В отношении доктрины справедливой войны возникают вопросы о том, когда допустима превентивная кибератака, что должно считаться законными целями кибервойны и в какой степени может быть приемлем сопутствующий ущерб. Вызовом традиционному пониманию доктрины справедливой войны является и концепция гуманитарного вмешательства. На первый взгляд, гуманитарные интервенции не соответствуют критериям *ius ad bellum* доктрины справедливой войны из-за отсутствия прямой военной угрозы государству, осуществляющему интервенцию. Оправдание гуманитарного вмешательства базируется на утверждении недопустимого нарушения общепринятых ценностей. Слабость данного подхода, по мнению автора статьи, заключается в предположениях о том, что ценности одних лиц выше других. Примером новых вызовов доктрине справедливой войны служит также феномен гибридной войны, т.е. многосторонний конфликт, в котором кинетическая война не является доминирующей. Организация нескольких направлений конфликта, каждое из которых

призвано быть ниже порога, требующего ответа военной силой, эксплуатирует отсутствие правовых и этических норм, регулирующих эту деятельность. В заключение сделан ряд обоснованных выводов. Во-первых, чтобы доктрина справедливой войны оставалась актуальной, ее следует расширить, включив в нее вред, причиняемый некинетическими действиями. Во-вторых, различия между состояниями войны и мира должны быть пересмотрены, чтобы точнее отразить изменяющийся характер войны.

**Ключевые слова:** военная этика, нравственные проблемы войны, *ius ad bellum*, право вооруженных конфликтов, военное право, сравнительная справедливость, гуманитарная интервенция, некинетическая война, гибридная война.

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### **Introduction: Is Just War Doctrine keeping pace with the changing character of war?**

Until recently, this question would have seemed a strange one to almost all scholars of military ethics. For centuries, Just War Doctrine had been so pervasive that it was, for these students and academics, simply the water in which they swam, the intellectual air they breathed and the permanent backdrop to all theatres of war. However, there has recently been a renewed interest not only in military ethics generally but also in the continued relevance of Just War Doctrine to

contemporary conflicts. Many of these fall short of ‘war’, as previous generations would have understood the word<sup>1</sup>.

There is also an ongoing debate between military ethics ‘traditionalists’, who draw heavily on the state based and collectivist theories of Michael Walzer, (as expressed in ‘Just and Unjust Wars [Walzer 1977]) and ‘revisionists’ The traditionalists contend, for example, that war is morally distinctive and that entities, such as armies or states, can be judged collectively. Just War Doctrine is therefore seen as a series of principles which can be interpreted to take account of emerging technologies and types of conflict. However, ‘revisionists’, such as David Rodin, believe that there are no moral principles that are unique to war. Therefore, actions which result in death or harm should not be viewed as part of a separate moral universe from the same actions in peacetime [Frowe 2015].

While the philosophers debate, for many lawyers involved in the Law of Armed Conflict, Just War Doctrine is perhaps an occasionally useful appendix to legal positivism, an imprecise but well-intentioned moral prop to a legal argument. Even the International Committee of the Red Cross (ICRC) in its excellent 2018 Report ‘The Roots of Restraint in War’ makes no specific reference to Just War Doctrine or ethics, although in recognising the importance of ‘values’ [ICRC 2018, 36–38] it does mark a significant departure from the ICRC’s previous study ‘The Roots of Behaviour in War’ [ICRC 2004] which had an even more legalistic focus.

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<sup>1</sup> On the evolving understanding of war see, for example: [Kaldor 2007; Freedman 2017].

### The development of Just War Doctrine

The early evolution<sup>2</sup> of Just War Doctrine is closely associated with Christianity<sup>3</sup>. St Augustine of Hippo (354–430) in *The City of God* recognises that in the City of Man (that is to say, on earth) we cannot attain perfection and will be confronted by disorder and evil. To restore a just order, we might have no alternative but to confront evil with violence. But such violence should be restrained and the minimum necessary to restore order<sup>4</sup>.

The subsequent evolution of Just War Doctrine was a slow process over many centuries, and complicated by religious wars – especially the Crusades – which sanctioned unmitigated violence against non-Christians. In an era where there was often no law, other than the law of brute force, and no independent judiciary, even Augustine's rudimentary principles were often ignored. Things began to change with the emergence of an elementary understanding of natural law, as opposed to religious law. In accordance with this understanding, the persecution and killing of other people, simply because they believed in a different faith, was no longer automatically acceptable. This was the view taken by Francesco de Vitoria (1492–1546) in response to the brutal conquest of South America by the Spanish [Vitoria 1917]. Hugo Grotius (1583–1645) further developed the notion of natural law in his monumental work *On the Law of War and Peace*, in which he drew (very) extensively

<sup>2</sup> For a useful short introduction to the history of Just War Doctrine see: [Evans 2005, 1–6].

<sup>3</sup> There is a separate debate about whether Just War Doctrine can have useful global application. Some argue that its Christian tradition renders it insufficiently global. Others argue that its Greek and Roman antecedents, its contribution to the development of the laws of armed conflict and a high degree of moral commonality with other similar theories make it entirely applicable globally.

<sup>4</sup> In more modern terminology, Just War Doctrine 'has a non-perfectionist quality because it recognises the circumstantial possibility of aggressive war and the consequentialist possibility that pacifist non-resistance would result in the deaths of innocents' [Brunk, Secrest, & Tamashiro 1990, 87].

on religious, classical literature and more contemporary writers. Grotius concludes that ‘there is a common law among nations, which is valid alike for war and in war’ [Grotius 2012, 8].

In the same way that the philosophical underpinnings of Just War Doctrine were evolving, so were the politics of warfare. The Peace of Westphalia which ended the Thirty Years’ War laid out (*inter alia*) the basic principles of national sovereignty and the co-existence of national sovereign states. Its relevance to Just War Doctrine lies in the fact that the notion that states were the only entity which could legally declare war, and on whose behalf wars could be fought, subsequently became embedded in philosophical, political and legal thinking.

It could be argued that the development of military ethics (and therefore Just War Doctrine) was overtaken by legal positivism in the 19<sup>th</sup> century. Legal positivism drew on the theories of Thomas Hobbes (1588–1679) and asserted that the only valid laws were those which had been enacted by a governmental or political institution. It was his contention that, in the absence of a sovereign law, mankind’s state of nature is one of self-preservation, which leads to a state of war. This was a powerful influence on those who followed him. As he regarded the state as sovereign, Hobbes (perhaps unusually) did not envisage any form of overarching inter-state (international) framework.

Nevertheless, the idea that behaviour in war should be bound by international rules and regulations was a powerful one which sowed the seeds for such international frameworks as the Geneva Conventions, the Hague Conventions and even the Nuremberg and Tokyo tribunals after the second world war. However, the ethical problem with legal positivism is at least threefold. The first is that legislation can be enacted in error (or even with malicious intent). Secondly, it can also be

changed, so that what was legal one day becomes illegal the next (or vice versa). The third problem is that even if there is no valid state authority, then that should not of itself permit combatants to act immorally or unethically. Such an absence of state authority might conceivably happen, for example, in a civil war in which the legitimacy of political control might be contested [Moseley 2011].

The period after the Second World War saw a significant increase in thinking about military ethics, partly started by the rejection of the ‘Nuremberg defence’ that ‘I was just following orders’. The ethics of nuclear deterrence then took centre stage for several decades until, in the latter part of the 20<sup>th</sup> century and up to the present time we saw philosophers and military thinkers having to grapple with the ethical complexity of proxy wars, ‘wars amongst the people’ [Smith 2005], international terrorism, non-state actors and a host of other complexities, including non-kinetic forms of aggression.

The Westphalian model remained the foundation for international relations for several centuries. It is not until the creation of the League of Nations after the horrors of the first world war that we see the emergence of any sort of international (as opposed to national) paradigm for the avoidance and resolution of inter state disputes. Although created with high ideals, the League of Nations was not a success (as the outbreak of the second world war emphatically demonstrated) and was superseded by the United Nations Organisation. But we can see that even in the UN Charter – probably the ultimate expression of how inter-state relationships should be regulated, the Westphalian model was alive and well<sup>5</sup>. As a result, we see

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<sup>5</sup> See UN Charter’s Article 2 (1) ‘The Organization is based on the principle of the sovereign equality of all its Members.’ And Article 2.7 ‘Nothing contained in the present Charter shall authorize the United Nations to intervene in mat-



in the UN Charter that mechanisms were created designed not only to work to avoid armed conflict, but to sanction it where it was deemed lawful and unavoidable (Chapters VI and VII of the Charter).

When we take together the development of Just War Doctrine, advances in military technologies and in civil society, it is baffling at first sight that a Doctrine first postulated in the 5<sup>th</sup> century AD could have any geopolitical significance today. But how much significance and relevance does it in fact really have? There are 3 short examples I would like to suggest to give a flavour of the extent to which Just War Doctrine does (or does not) remain relevant to contemporary conflicts.

### **What exactly is a ‘just’ war**

But before looking at the examples, there is one question we need to address. When we say that a war is ‘just’, what exactly do we mean? ‘Just’ is a relatively imprecise and subjective word meaning ‘fair’ or ‘morally correct’<sup>6</sup>. So why can we not be more precise and speak of a ‘lawful’ or ‘legal’ war when there is a large corpus of International Humanitarian Law and a United Nations Organisation which could vote to make a war ‘legal’? Equally, we do not speak of a ‘justified’ or a ‘justifiable’ war.

This lack of precision is both a help and a hindrance. ‘Just’ is a word like ‘integrity’ or ‘leadership’ which everyone would claim to understand, but which many would find difficult to define precisely. ‘Just’ is also a word which allows the protagonists in a ‘just war’ to feel better about what they are doing, to feel that they are morally upright and acting fairly. But this gives

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ters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII’.

<sup>6</sup> According to the Cambridge English Dictionary.

rise to three immediate problems. Firstly, what happens when both sides feel they are fighting a just war, secondly, exactly whose morality are we talking about and thirdly, is it possible to embark on a just war based entirely on legalistic *realpolitik* in the absence of any morality? The Athenians, in their dialogue with the Melians<sup>7</sup> certainly thought so and many rulers down the ages, who placed the survival of the state as a higher moral good than simple morality (or even legality) thought the same.

Just War Doctrine as we understand it is rooted in (western) Christianity and when initially postulated by Augustine was intended to be applied throughout the world as he knew it. Although we in Europe now live in an age that is arguably even less morally certain than that of Augustine, the need for some sort of morality is rarely questioned. The more usual questions are what do you mean by morality and whose morality takes precedence? Morality has increasingly become an internalised question of personal preference. The Christian morality which underpinned much of modern western society and behaviour is no longer dominant. Fewer people attend churches<sup>8</sup> and religious education in most schools is no longer a matter of presenting children with a single narrative, but rather of presenting them with a smorgasbord of faiths from which they can 'choose'<sup>9</sup>. Europe's Christian heritage was written out of

<sup>7</sup> See: Thucydides, *The Peloponnesian War*, book 5, chapter 84.

<sup>8</sup> In Great Britain, estimated church attendance fell from 11.8% of the population in 1980 to 5% in 2015. Source: British Religion in Numbers 1980-2015 <http://www.brin.ac.uk/figures/church-attendance-in-britain-1980-2015/>

<sup>9</sup> For example *Religious Education in English Schools: Non-statutory Guidance 2010* states: 'The study of religion should be based on the legal requirements and provide an appropriate balance between and within Christianity, other principal religions, and, where appropriate other religious traditions and worldviews, across the key stages as a whole, making appropriate links with other parts of the curriculum and its cross-curricular dimensions.' [Department for Children, School and Families 2010, 23].

the EU's Lisbon Treaty<sup>10</sup>, in favour of the phrase the 'cultural, religious and humanist inheritance of Europe'. (In a move in the other direction, Russia's new constitution now includes a specific reference to God.)

We live in an age of moral relativism, in which large numbers of people believe that there is not (and should not be) a single overarching morality which should guide everyone's actions. Whilst there might be broad agreement on some moral issues, such as a prohibition on murder, it is increasingly the case that individual morality is guided by an individual's interpretation of the morality of an action, such as adultery, or lying. Whilst this might be an interesting phenomenon for us all as citizens of the world and perhaps especially for sociologists and psychologists, there are also implications for Just War Doctrine.

For centuries, the Roman Catholic church has been one of the beacons of moral certainty in matters of theology. But there was an astonishing departure from this position of certainty in 1983 when a Pastoral Letter on nuclear deterrence issued by the US National Conference of Catholic Bishops introduced the concept of comparative justice (note also the re-emergence of the Westphalian 'sovereign state' concept):

93. The category of comparative justice is destined to emphasize the presumption against war which stands at the beginning of just-war teaching. In a world of sovereign states recognizing neither a common moral authority nor a central political authority, comparative justice stresses that no state should act on the basis that it has "absolute justice" on its side. Every party to a conflict should acknowledge the limits of its "just cause" and the consequent requirement to use only limited means in pursuit of its objectives. Far from legitimizing a crusade mentality, comparative justice is designed to relativize absolute claims and to restrain the use of force even in a "justified" conflict. [National Conference of Catholic Bishops 1983, 19].

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<sup>10</sup> Treaty of Lisbon Article 1 Preamble 1(a).

The notion that the Roman Catholic church was an advocate of moral relativism (even if only theoretically in the context of nuclear deterrence) could be seen as a dramatic departure from its previous firm belief in moral certainty. The idea of moral relativism will resurface in the (Tony) Blair doctrine of 'humanitarian intervention' in which he interpreted Just War Doctrine through a prism of humanitarianism, justifying a moral imperative to go to war for uniquely moral purposes. But whereas the catholic bishops were implicitly warning of the moral inferiority of a putative case for war, Blair was implicitly stating that his greater morality effectively overrode the normal parameters of *ius ad bellum*.

One of the implicit features of the Just War Doctrine is that wars were essentially kinetic affairs, in which combatants hurled their weapons (or themselves) into pitched battles with an enemy. Until recently, none of the major advances in military technology made much significant change to the paradigm. Whether it was a rock hurled from a trebuchet or a cluster bomb dropped from an aircraft, something very hard and dangerous was fired in your direction with the intention of doing you harm. Even Clausewitz's famous maxim that 'war is the continuation of politics by other means'<sup>11</sup> does not assume that there is an unbroken continuum between war and peace, but rather that peace and war are 2 states that have quite separate characteristics.

We are living in an era in which the distinctions between war and peace are increasingly blurred [Whetham 2016]. This is not simply a potentially rich seam of debate for philosophers, but something which has real world implications for politicians, security forces and populations. For example, killing (in

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<sup>11</sup> 'War is simply a continuation of political intercourse, with the addition of other means' [Clausewitz 2007, 252] is usually expressed as 'War is the continuation of politics by other means'.

certain circumstances) is permitted in times of war, but not in times of peace. The destruction of enemy infrastructure can be permissible in war, but not in peacetime. How do we make a distinction between a crime and a war crime, if the distinction between war and peace is indiscernible? The Rome Statute of the International Criminal Court outlines a legal distinction between acts of aggression and crimes of aggression. However, even this carefully worded document can be of limited value, as the basis of its reasoning is that an act of aggression is ‘...the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State...’ [Rome Statute... 2011, 7]. It goes on to define acts (and crimes) of aggression uniquely in terms of physical actions undertaken principally by the armed forces of a state (but see Article 8 bis (2)(g)). No mention here of cyber warfare or information manipulation, for example. Aggression is defined in uniquely kinetic terms[Einarsen 2012].

So even this high level document does not help us to determine with precision how to define (for example) China’s construction of military bases in the international waters of the South China Sea. In one interpretation, the construction of the bases in international waters might not therefore be an act of aggression, as it is not an act of aggression directly against another state, but paradoxically the warnings China now issues to aircraft and shipping to stay away from these bases might nevertheless be considered such an act.

### **Example 1: The Stuxnet attack on Iran’s nuclear centrifuges in 2007**

Iran’s nuclear programme dates back to the 1950s, when it was an ally of western countries, including the USA. It came to an almost total halt at the time of the Iranian revolution in 1979, due largely to Ayatollah Khomeini’s personal opposition

to nuclear weapons. This led to the majority of the country's nuclear scientists fleeing the country. However, the country's nuclear ambitions did not die completely. Over the decades the country variously sought help from China, Pakistan and Russia in order to resurrect its nuclear programme. In 2003 Iran agreed to suspend its nuclear enrichment programme, but in 2006 resumed operations at its Natanz facility. There are host of different narratives that surround the agreement to cease enrichment and the decision to restart, but these need not concern us here. The operative fact is that enrichment had recommenced.

However, over a period of years, the Natanz centrifuges began to fail, some even exploding. Faulty equipment was initially believed to be the cause, but replacing the machinery produced no improvement. Similarly, no fault could be found with the computers controlling the equipment for what was a precise, but relatively simple operation. Unfortunately for the Iranian engineers, they were looking in the wrong place, as the 'fault' lay within the software the computers were using. Such a source seemed implausible in the view of the Iranians, as none of their equipment was connected to the internet and therefore, at least in theory, not susceptible to a malware attack. It transpired the source of the attack was a piece of software which has become known as Stuxnet. This was a highly sophisticated code that was precisely targeted at the Siemens WinCC/PCS 7 SCADA control software which controlled the centrifuges – and only those centrifuges [Singer 2015]. It was thus effectively harmless in all other situations, but highly effective in the environment for which it was designed.

The attack gives rise to two ethical questions in relation to just war doctrine. The first is whether any *pre-emptive* attack on the centrifuges was permissible. Many nations feared that Iran was intending to produce nuclear weapons but was

probably several years away (at least) from doing so. There was therefore no imminent threat to these nations which would have justified a *preventive* attack. But this attack was of a different nature to any attack which had gone before. Only inanimate machinery – illegally obtained and being used for arguably illicit purposes – was harmed. No human was killed or injured and apart from the centrifuges themselves not even any hardware at the facility was affected. The design of Stuxnet meant that it would only affect computers running the precise Siemens software for the precise number of centrifuges at Natanz, so even though it was subsequently found elsewhere, it was little more than inert coding. It was even pre-programmed to self-destruct in 2012.

But we must take care not to apply the particular circumstances of this attack too generally, thereby giving a green light to pre-emptive cyber-attacks, simply because the weaponry used is computer code, rather than bombs or bullets. The intention of the attack was to cause harm – ideally permanent harm – to Iran’s nuclear capabilities. Is there therefore a distinction to be made in just war doctrine between an attack which caused no collateral damage – whether to people or infrastructure – and one which might have?<sup>12</sup> And is there a further distinction to be made between an attack (using Stuxnet) targeting a potential weapons development in order to remove it from a potential enemy’s inventory and one designed to steal the design (using Flame malware) [Kushner 2013] in order to develop it for oneself?

We also need to look at the intention and consequences of this attack. A valid argument could be made that the intention

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<sup>12</sup> The question therefore arises whether the Stuxnet attack was different in principle from Israel’s attack on the Iraqi nuclear facility at al-Tuwaitha (Operation Babylon) in 1981 in which Iraqi nuclear reactors were physically destroyed by bombs in a pre-emptive attack.

of the attack was to save the many lives that might have been at risk if Iran had developed nuclear weapons. That risk includes not only the catastrophic effects if such a weapon were used (and retaliation for that) but also the risk of further destabilising one of the most unstable regions in the world. In terms of consequences, the Stuxnet attack was very sophisticated and successful not only in targeting the capability but also in not leaking out into wider cyberspace.

However, the question of intention and consequence is applicable to all cyber-attacks, not just the Stuxnet attack, which many would characterise as justifiable. What if a future attack were less successful in that latter respect, damaging not only a primary military target, but also financial markets or civilian energy or transport control; systems, such as air traffic control? One of the distinguishing features of cyber warfare is that the long term effects cannot always be calculated as precisely in time or space as a kinetic weapon. An assassin's bullet might kill a head of state, or a missile fired from a drone might kill a terrorist, but the weapon from which it is fired does not replicate itself randomly in other locations and at other times, killing or harming other unintended targets.

Cyber-attacks can also be used as acts of revenge, in retaliation for trade sanctions or even criticism of authoritarian regimes. They can also be used to sabotage and steal industrial and state secrets. The intention can therefore be vindictive, rather than the justifiable avoidance of future conflicts.

### **Example 2: Tony Blair's doctrine of humanitarian intervention**

This doctrine emerged in a speech which Tony Blair gave at the Chicago Economic Club in 1999. The speech took place at a time of military upheaval in the Balkans, where an inter-ethnic war was raging. The situation there was desperate, and



Blair was trying to persuade Bill Clinton to commit ground forces. Clinton was reluctant, mainly because he anticipated that most of the troops being put at risk would be Americans, but also because mid-term elections were looming (and because he had the Monica Lewinsky scandal to deal with). After several unsuccessful attempts by UK ministers to change the US administration's mind, Blair resolved to try personally during a pre-planned visit to Washington. During this visit, Blair wanted to give a speech outlining his broad approach to international relations (including politics and economics as well as security) and this was the speech he gave at the Chicago Economic Club.

Several things are striking about this speech. Early on, he said that 'This [Kosovo] is a just war, based not on any territorial ambitions but on values.'. The questions this statement provokes are simple – what values and whose values? The Kosovo campaign had not been sanctioned by the United Nations (where Russia would have vetoed it) nor was it a war of self-defence, a type of war inherently sanctioned by both the United Nations' charter and centuries of customary law. The lawyers in the UK Foreign Office were concerned that the Kosovo campaign was not legal, but Blair and Robin Cook (the UK foreign secretary) decided that 'the war might not be legal, but it had all the international legitimacy it needed' [Kampfner 2003, 41]. Blair then set out his approach to future conflicts.

But now we have to establish a new framework. No longer is our existence as states under threat. Now our actions are guided by a more subtle blend of mutual self-interest and moral purpose in defending the values we cherish. In the end values and interests merge [Blair 1999].

He then set out his 'considerations' before deciding whether to go to war.

They are worth repeating in full:

First, are we sure of our case? War is an imperfect instrument for righting humanitarian distress, but armed force is sometimes the only means of dealing with dictators.

Second, have we exhausted all diplomatic options? We should always give peace every chance, as we have in the case of Kosovo.

Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and prudently undertake?

Fourth, are we prepared for the long term? In past we talked too much of exit strategies. But having made a commitment we cannot simply walk away once the fight is over; better to stay with moderate numbers of troops than return for repeat performances with large numbers.

And finally, do we have national interests involved? [...] I am not suggesting that these are absolute tests. But they are the kind of issues we need to think about in deciding in the future when and whether we will intervene [Blair 1999].

An obvious problem with the Blair approach is that it implicitly assumes that his values and interests are superior to others. That is a relatively easy case to defend, when confronted with atrocities and barbarism, but it is not far removed from the 'civilising' motivations of the European colonialists who conquered most of Africa in the 19<sup>th</sup> century. They too genuinely believed that they were bringing morality (Christianity) to the indigenous peoples and that the self-interests of their home countries were more important than those of African nations. This therefore justified in their minds the wholesale export of precious metals and the wholesale appropriation of property and land. Of course, that is not to say that Blair was motivated by anything other than humanitarian instincts, but it does

serve to demonstrate that values and self-interest (mutual or otherwise) are not in isolation objective criteria.

Blair's bold assertion that Kosovo was a just war, implying that to be the case if judged against traditional just war *ad bellum* principles, does not hold water when mapped against those criteria. The Foreign Office legal team were also dismayed by the notion of intervention based solely on the values of the Prime Minister [Kampfner 2003, 53]. UK diplomats subsequently attempted to turn the Blair vision into a proper strategy, but failed after several months of trying. This suggests that the intellectual underpinning of Blair's interventionist approach was flimsy and not as grounded in reality as he imagined. Indeed, it now transpires that Blair himself is having second thoughts, suggesting that 2 further tests are necessary, These are 'if you're going into a country, where there are going to be strong, Islamist influences at play... whose very purpose is to destabilise what you're trying to do... who are prepared to kill and die in pursuit of that'. The second new 'test' has much more to do with domestic politics than the intervention *per se* and Blair expresses it as 'I think it is difficult to do this if it's going to be a long-term project, and your own country is divided about it' [Bloomfield 2019].

One of the things that is striking about Blair's change of emphasis is that the first 5 considerations preceded the war in Iraq and the final two were developed after it. It is therefore tempting to say that these latter tests are a direct result of the chaos which ensued in Iraq in the aftermath of the invasion and the domestic political mauling Blair took for his determination to press ahead with the invasion.

However much one might criticise Blair's approach on humanitarian intervention as naïve, politically expedient or simply misguided, it was at least transparent. (However, the

question of his transparency over the justification for the invasion of Iraq is still a matter of intense debate). But Blair told the world in Chicago the direction he wanted to take. This transparency contrasts with much of the strategy and tactics used in hybrid war, which is much more often characterised by deliberate obfuscation and denial.

### Example 3: Hybrid War

Arguably, ‘hybrid war’ is a modern term for an ancient phenomenon. Wars have often involved (*inter alia*) implicit or explicit coercion, propaganda, economic blockades, subversion and espionage. At various times, the second world war involved all these phenomena, as well as kinetic violence, but we never refer to it as a hybrid war. That is no doubt because the non-kinetic elements of this war were significantly subordinate to the kinetic. It therefore conformed to the idea of a ‘traditional’ war, in which the uniformed armed forces of opposing states fought bloody battles with each other, albeit across a ‘battlefield’ that (in the European theatre) stretched across the whole of mainland Europe and North Africa.

So when trying to define what a hybrid war is, logic points us towards a type of conflict in which the kinetic element does not necessarily play a dominant part. Hybrid war is a rapidly developing phenomenon, and there are multiple definitions of it. That is not surprising for two reasons. The first is simply that as a new and developing phenomenon, there has not been the time for a single settled definition to be adopted. The second reason is much more closely linked to the nature of hybrid war itself, because the absence of a settled definition allows aggressors to contest or deny allegations that they are in any way committing an act of war. Some even contest the very idea of ‘hybrid war’ [Van Puyvelde 2015]. But to avoid

a lengthy analysis here, I have decided to adopt the following definition: hybrid warfare is ‘the synchronized use of multiple instruments of power tailored to specific vulnerabilities across the full spectrum of societal functions to achieve synergistic effects’ [Cullen & Reichborn-Kjennerud 2017, 8].

There are three particularly important concepts in this definition. The first is ‘multiple instruments of power’, the second is ‘vulnerabilities’ and the third is ‘synergistic’. A Multinational Capability Development Campaign study [Cullen & Reichborn-Kjennerud 2017, 9] divides these multiple instruments of power into 5 categories: military, political, economic, civil and information (MPECI) and contends that these instruments can be used with varying intensity and in different proportions over time (what the study calls vertical and horizontal escalation). The key point is that the degree of escalation and de-escalation is neither random nor fortuitous, but the result of conscious planning.

The emphasis on vulnerabilities is also important. In traditional warfare one’s own strengths arguably play a more dominant role than the vulnerabilities of the entity being attacked. In hybrid warfare, this calculus is reversed, and it is these vulnerabilities which become the key determinants of strategy. Vulnerability analysis is no longer confined to the principally military sphere, but can (as indicated above) include economic, political civil and information weaknesses. This provides a very broad front across which to act. It is at this point that ‘synergy’ becomes important, because the combined effect of these actions is intended to be greater than the simple sum of their parts. Ideally, actions should be mutually reinforcing in a way that makes countering them particularly difficult, especially as one of the novel features of hybrid war is to manage each of the 5 MPECI elements, so that

each one individually remains at a level that will not inspire concern or a response, while the overall effect is intended to be destabilising.

‘The fog of war’ is an expression that has been used for generations to describe the difficulty of decision making in wartime. ‘Fog’ is simply shorthand for the confusion and chaos which is the inevitable by-product of armed conflicts. However, this points us towards one of the main – if not the main – differences between hybrid war and traditional war. In hybrid war the ‘fog’, or ambiguity, can become the object of the strategy – not a by-product of it. To put it less colloquially:

Ambiguity has been usefully defined as “hostile actions that are difficult for a state to identify, attribute or publicly define as coercive uses of force.”<sup>13</sup> Ambiguity is used to complicate or undermine the decision-making processes of the opponent. It is tailored to make a military response – or even a political response – difficult. In military terms, it is designed to fall below the threshold of war and to delegitimize (or even render politically irrational) the ability to respond by military force [Cullen & Reichborn-Kjennerud 2016, 2].

If an integral part of the strategy of hybrid war is to conduct actions which metaphorically pass under the radar of the opponent being attacked, this then returns us to the question of ‘harm’. For example, if State A offers a to build a civil nuclear power station for a knockdown price on the territory of State B, thereby saving State B a great deal of money in the short term, but making it dependent on State A’s technology and expertise in the longer term, is that a potential or actual ‘harm’? The same argument could be applied to the provision of essential components in a 5G communications infrastructure. China’s construction of artificial islands in the South China Sea is an example of a tactic which has provoked disquiet, but

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<sup>13</sup> Andrew Mumford and Jack McDonald, “Ambiguous Warfare”, Report produced for the DCDC, October 2014.

so far no other country has felt that such actions have passed the threshold for a military response over and above a ‘show of force’, presumably because of the absence to date of any actual ‘harm’ to maritime navigation<sup>14</sup>. It has often been said that we live in an ‘information age’, one in which information and data is the most valuable commodity. It is therefore hardly surprising that, just as with other valuable commodities in the past – such as gold, sugar and oil – the (virtual) ground in which information is mined, stored and deployed has become one of the major battlegrounds of hybrid war. Daesh used high quality online output as an effective overt recruiting and propaganda tool. If there was any doubt about the power of social media this was emphatically demonstrated when a smartphone video of a Minneapolis police officer kneeling on the neck of George Floyd precipitated within days a worldwide Black Lives Matter movement. This video was emphatically not ‘fake news’ (nor an act of hybrid war) but it does show how an event in one country can have rapid global implications. Its astonishing worldwide effect will also surely have been noticed by those interested in information manipulation for their own ends.

But no longer does news have to be true or accurate to have an impact. Neetzan Zimmerman was a specialist in high-traffic viral stories. “‘Nowadays it’s not important if a story’s real”, he said in 2014. “The only thing that really matters is whether people click on it.” Facts, he suggested, are over; ‘they are a relic from the age of the printing press, when readers had no choice’. He continued: “If a person is not sharing a news story, it is, at its core, not news” [Viner 2016]. This trend is exacerbated by algorithms which feed news stories to internet users based on their known preferences, which serve to reinforce existing prejudices.

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<sup>14</sup> For a further discussion on harm, see: [Whetham 2016].

The conflict between Russia and Ukraine is frequently quoted as an example of the new type of hybrid warfare. Emphasis is often placed on the so-called ‘little green men’, widely believed to be Russian military forces in uniforms without insignia, who played a decisive role in the conflict. There is little doubt that these anonymised forces did play an important tactical role, but the more interesting part of the hybrid strategy was at the strategic political and economic level.

Ukraine was dependent on Russian gas imports and had very high levels of international debt. Exploitation of and in some cases exacerbation of these fundamental weaknesses<sup>15</sup> by Russia through cheap gas and cheap loans made President Yanukovytch susceptible to Russian pressure not to sign the EU-Ukraine Association agreement. A carrot and stick approach by Russia, raising and lowering gas prices, offering and cancelling loans, exploiting unfavourable price indexation mechanisms and filing a huge arbitration claim for compensation effectively destabilised the Ukraine leadership. These political and economic levers were pulled in concert with more overtly coercive military tactics, ostensibly in defence of ethnic Russians in the disputed area. In accordance with hybrid war ‘best practice’ Russian actions were deliberately kept below the threshold for international intervention and their true motives were often not apparent until after the event.

But the use of hybrid war does not have to be on such a large scale as the annexation of a large part of another country to be successful. In January 2016 a 13-year-old German girl of Russian origin (known only as Lisa F for legal reasons) alleged

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<sup>15</sup> ‘Vulnerabilities inherent to Ukraine: weak macroeconomic fundamentals in Ukraine, high levels of foreign debt in Ukraine. Vulnerabilities created intentionally by Russia: gas supply and transit contracts between Russia and Ukraine, Russian loan structure to Ukraine, high levels of Ukrainian dependency on Russian gas’ [Cullen & Reichborn-Kjennerud 2017, 16].



she had been raped by asylum seekers. The allegation came at a particularly sensitive time for relations between German citizens and asylum seekers. The allegation was quickly proven to be false, after the girl admitted she had simply stayed with a friend and was completely unharmed. However, the Russian Foreign Ministry delivered a strongly worded *note verbale* to the German Embassy in Moscow, demanding that the case be investigated fully and Russian Foreign Minister Sergei Lavrov accused the German authorities of a politically correct cover up. These interventions, in what was essentially a non-story about a young teenage girl committing a small misdemeanour by not telling her parents the truth about where she had been, became an international diplomatic incident. It was widely assumed in the German press that the Russian intervention's primary aim was to destabilise Angela Merkel at a time when she was facing significant domestic political criticism over her asylum policy.

In 2007, the small country of Estonia decided to remove a bronze statue of a Soviet second world war soldier from a square in the centre of the capital to a less prominent location. The Russian minority (26% of the population) in Estonia saw this as an insult and an example of anti-ethnic Russian discrimination. Estonians saw it as a way of reducing the memory of Soviet occupation. Tensions grew and Russia warned of serious consequences if the statue were moved. There then followed the single most concentrated cyber-attack on a country's critical infrastructure which the world has ever seen. This would have been a significant blow to any country, but was especially severe in Estonia, which was probably at the time the most digitised country in the world [Herzog 2011; Grassegger & Krogerus 2017] and therefore the most digitally vulnerable. The scale of the attack was enormous. On day one of the attack 2000 data packets per hour were

using the country's data networks. At the high point of the attack, that figure had risen to four million data packets per second. The attacks only stopped on 19 May when the Estonian government literally pulled the plug on the entire country's computer network.

Hybrid warfare is very complex and requires both a sophisticated strategy and the resources to implement it over several fronts simultaneously. It also presupposes that a state which wishes to pursue a hybrid war campaign already has sufficient military, political, economic, civil and information influence (actual or potential) to exert pressure on an adversary across this broad front.

To give an entirely hypothetical example, it is very unlikely that the small principality of Andorra in Europe would be capable of conducting a hybrid war against China or the USA. Therefore, for the moment, only the more powerful states would be able to implement the diverse elements of a hybrid strategy in a coordinated and controlled way. This also marks a difference from purely cyber warfare, when smaller, but technologically advanced, states are capable of pursuing both offensive and defensive cyber warfare strategies.

As stated above, the very nature of hybrid warfare can make it difficult to prove. This uncertainty not only makes it possible for aggressors to deny allegations made against them, but it can also allow allegations to be levelled against states which might be innocent of a charge of hybrid warfare, but are undertaking robust (but legal) actions.

### **Conclusion?**

The question mark after 'conclusion' reflects the fact that there is no neat answer to the question whether Just War Doctrine is relevant or becoming a relic. Deciding whether or not to go to war has always been more than a simplistic exercise

of ticking the boxes of *ius ad bellum* just war criteria. Moral imperatives, such as the right to self-defence and not killing innocent parties may be in conflict [Fisher 2011, 24]. However, whereas military leaders are increasingly trained in the laws and ethics of fighting wars (*ius in bello*), it is generally true that political leaders are distressingly untrained in the ethics and legality of going to war (*ius ad bellum*). The momentous decision to go to war in the Gulf in 2003 shows what a serious deficiency this lack of education and training can be.

However, is clear that just war doctrine suffers from a number of obvious deficiencies in relation to modern conflicts, for example in respect of civil wars<sup>16</sup>, to terrorism, (especially if undertaken by a proxy group on behalf of another state), or to non-kinetic attacks which cause (for example) economic or political harm rather than physical harm or injury. We also live in a world where some corporations have more power and influence than many nation states and where powerful ferociously ruthless drug cartels can have the firepower of small armies<sup>17</sup>. It would be ludicrous to assert that companies such as Facebook, Google and Instagram have any hostile intent of their own, but their capacity to transmit information (manipulated or not) to huge numbers of users in a matter of seconds can be important unintentional vectors of influence for those seeking to cause harm<sup>18</sup>. Conversely, the same speed

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<sup>16</sup> The UN estimates that 800,000 people were killed in the Rwanda massacre, and 400,000 in the Syrian civil war alone. These figures do not include injured or displaced people.

<sup>17</sup> The estimated number of deaths since 2006 in Mexico due to organized criminal violence is 150,000 [Beittel 2019, 7]. This is a higher figure than those killed in the (former) Yugoslav wars 1991–2001.

<sup>18</sup> Allegation of Russian interference in the 2016 US Presidential election are widespread and there is extensive literature both for and against the allegation. Warnings have also been issued about TikTok (now more popular in the US with teenagers than Facebook) being used as a back door vehicle for Chinese spyware [Dans 2020].

and flexibility offers a degree of openness that can be perceived as a threat by authoritarian regimes [Sheehan 2018].

But look what happened when Tony Blair, head of government of a G7 nation and permanent member of the UN security council, tried (with apparent good intent) to tinker with the fundamental *ius ad bellum* criteria of just war doctrine. The experiment lasted less than a decade and was found wanting. This suggests that the accumulated wisdom and experience of the centuries is more durable than a single politician's view which is based on his snapshot of the world at a single moment.

Fundamentally, the causes of war and conflict have not changed since time immemorial. Conflict is about seeking to exercise power over an adversary, if not by coercion (as in the Melian dialogue) then by actual harm (as in what happened to the Melians when they refused to be coerced). This basic fact has not changed since being codified and analysed by the greatest of strategic thinkers, such as Sun Tzu, and Clausewitz. Across the entire spectrum of wars, from the traditional, through nuclear, cyber to hybrid, one constant is the intent to cause harm to an adversary and to exert power over that adversary as a result. Increasingly, the harm does not have to be physical damage to infrastructure or people, but it can be no less real for that.

Therefore my primary conclusion is that we do away with Just War Doctrine at our peril. Like democracy, it might be imperfect tool, but it is the best we have. However, unless it can first of all be expanded to include harms caused by non-kinetic means then it risks increasingly becoming a tool to be used as a cover for deniable offensive non-kinetic actions.

Secondly, much closer attention will have to be paid to the increasingly blurred space between war and peace, in order to arrive at workable distinctions between war and peace,

legality and illegality and ethical and unethical statecraft. This has implications not only for international relations but also for defining the boundaries between civil and martial law enforcement within states. Recent conflicts, including in Ukraine and Afghanistan have demonstrated that there is a dangerous vacuum developing in the space between what we once recognised as ‘war and peace’. The vacuum will increasingly be filled by novel and contentious phenomena (such as the unilateral creation of the status of ‘enemy combatant’ and the widespread use of militarised intelligence agencies and private military contractors) if both the law and ethics do not do more to catch up with the changing character of war.

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