INTRODUCTION

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0. Introduction

As an observer of military ethics, four features of post-9/11 warfare and philosophical reflection stand out: willingness to rethink just war theory (JWT) in toto; novel justifications for war; new social arrangements; and new weapons and tactics. This Journal has published many thought-provoking essays on military ethics and I selected interesting and important examples from each of these four areas for this virtual issue of Philosophia. This introduction serves as a brief guide to this virtual issue and the papers it is making available to readers for free. It is followed by a list of papers that Philosophia has published in the field of military ethics.

I. Rethinking the Tradition

One of the most conspicuous and bold shifts in military ethics in recent years has been its willingness to rethink the entire just warfare paradigm despite its deep historical roots and overall fruitfulness in ethical discourse. I have chosen to open this virtual issue of Philosophia with a debate between the most significant philosophers currently defending two streams of just war thinking, one old, one new. Michael Walzer’s “Terrorism and Just War” defends thinking about terrorism as we think of war. He uses traditional concepts from JWT to explain why terrorism is wrong, why noncombatants, as a group, must not be placed at risk while soldiers, collectively, must. Walzer’s essay, and its ensuing discussion, is followed by an article that represents an approach known as “just war revisionism.” Jeff McMahan, the foremost thinker in this tradition, distances himself from thinking about war as a feature of law and politics and instead draws heavily on established moral theory. This conception sees nothing special about war, terrorism, or counterterrorism to warrant its distinct moral status and treats it as violence like any other. McMahan’s “The Ethics of Killing in War” and the subsequent exchange with Walzer is an important revisionist statement and critique of traditionalism.

A classic modern defense of traditional thinking about the ethics of war is Walzer’s 1977 Just and Unjust Wars, a work shaped by the traditional distinction between engaging in an ethical war, jus ad bellum, and engaging in a war ethically, jus in bello. These two components of military ethics each have a set of principles specific and indigenous to military ethics allowing for the case of an ethical or unethical war or just and unjust engagement in a war. Recent accounts, like those found in some of Brian Orend’s works, add jus post bellum, the ethical considerations during the termination phase of war as a significant aspect of JWT.

In “Military Ethics of Fighting Terror: Principles,” the academic and military pair, Asa Kasher and Amos Yadlin further expand the scope of military ethics to include justice in
counterterrorism. The nature of war demands a unique set of ethical principles and so does fighting terrorism. They offer a philosophically careful working definition of “act of terror,” a delineated set of principles of a state’s duty to fight terror, and sets of principles outlining the ethical constraints on the military’s duty to defend against both the physical and psychological effects of terrorism. These principles help bring JWT up-to-date in an age of military counterterrorism.

II. New Justifications for War

Further theoretical changes have emerged in modern warfare, in part with input from politicians, pundits, and religious leaders in the form of new justifications for war. Military operations are now justified on grounds not previously considered legitimate in the West.

The United States, for example, justified Operation Iraqi Freedom (The “Iraq War”) on a host of grounds including the liberation and democratization of the Kurds and Iraqis, long term Middle East stability, a final end to the UN embargo on Iraq, and Iraqi possession and distribution of chemical weapons. Concurrently, however, the war’s detractors insisted that official justifications were merely pretexts (especially when chemical weapons were not found) and the actual reason for the war was to appropriate Iraqi oil. In light of the complexities of modern justification for war, it is worthwhile to explore moral justifications more broadly.

In the course of an intricately argued essay, Saba Bazargan (“Morally Heterogeneous Wars”) argues that sometimes a government’s official articulated position may be rejected. His essay provides a framework for examining wars as morally heterogeneous events instead of as single events to be simply evaluated as just or unjust. A morally heterogeneous war ought not be an object of moral evaluation. Instead the many aims composing a war should be evaluated without aggregating them.

Individual justifications however are still common. In the popular imagination, terrorists, and nations that sponsor religions, often justify their own forays into war on religious grounds. While most contemporary just war theorists see only secular wars as possibly justifiable, in “Shari’a Reasoning and the Justice of Religious War,” Christopher J. Eberle argues that there are conditions under which an antipathy to religious war may not be as warranted as the tradition claims. Eberle distinguishes between religious wars waged to convert others, wars protecting one’s religious hegemony, and wars to protect a religion from, say, conversion by outsiders. While the former seems clearly unjust, Eberle argues that the latter two are less obviously unjustifiable.

Finally, perhaps the easiest war to justify is one whose primary aim is to protect people. To this end, the United Nations worked out Responsibility to Protect norms which outlined obligations
of the community of sovereign states to protect individuals from their own oppressive governments. The norms are designed to prevent genocide, ethnic cleansing, and other crimes against humanity.

Humanitarian intervention is not identical with the UN’s Responsibility to Protect, and their differences are important. Clarifying their differences requires specifying the fundamental conceptual issues in both. Ned Dobos explores a few core concepts undergirding just armed humanitarian intervention in his “Idealism, Realism, and Success in Armed Humanitarian Intervention.” He looks at the relationship between some standard conditions for just humanitarian intervention - prospect of success, proportionality, and last resort, and morally ideal conditions, as the UN conceives it - disinterest and multilateralism. Dobos argues that the morally ideal conditions rarely lead to the desired humanitarian outcome. We must, therefore, better understand our justifications for humanitarian intervention before committing to one.

III. New Socio-Political Arrangements

Many scholars see the 1648 Treaty of Westphalia as inaugurating the modern system of nation states and solidifying national claims to sovereignty and territorial inviolability. This arrangement makes war philosophically tractable. War is only just when legitimate national powers battle one another. Any other military conflict is either unjust or is not war. But in reality, war only sometimes works like that and theoretical analyses have never been that straightforward. Not every military engagement or ethical analysis fit the mold, certainly not recently.

The experience of twenty-first century warfare is anything but force-on-force conflicts between regular national militaries. If we look to Israel’s 2006 Second Lebanon War, we note that despite the name, Lebanon was not a party to the conflict, rather its location. It was a clash between Israel and Hezbollah, a sub-national group, and the conflict itself is often thought of as a proxy war between Israel and Iran. Similarly, the US’s Operation Enduring Freedom (the “Afghanistan War”) has as its goals the propping up of the central government of Afghanistan and the elimination of Taliban and terrorist forces from Afghanistan and its neighbors. Neither of these fit old models that had clashes of nations as the only reasonable mode of conflict.

Current discourse about war and the wars themselves reflect new socio-political realities in which subnational groups may be the dominant provider of social and protective services for a population and may also conduct their own foreign policy via military and diplomatic corps. This has become an important vector of twenty-first century warfare that employ the kinds of justifications mentioned above. Modern militaries still prepare for classical engagements but increasingly, warfare involves battling the kinds of enemies that the Treaty of Westphalia was supposed to do away with. Military resources are deployed asymmetrically against warlords,
insurgents, terror cells, proxy militias, and an assortment of other sub- and transnational actors like the Taliban and Boko Haram. Sometimes, forces like the Peshmerga fight major conflicts against groups like Daesh (ISIS), in which the former claims Kurdistan, an autonomous region across three countries and the latter at times claiming and holding territory in at least half a dozen sovereign states.

This reorganization of social geography forces us to confront novel ethical questions. Two that our articles deal with are: how much risk should groups assume in order to protect noncombatants trapped in a literal crossfire of counterterror operations caused by these new geopolitical situations and how much should states defer to the sovereignty claims of nations that willingly or unwillingly harbor belligerents?

Walzer’s “The Risk Dilemma” begins a debate with Kasher and Yadlin over a fundamental question of modern warfare: How may a modern state combat terrorist who fight among populations and how much should commanders sacrifice to reduce civilian exposure to risk? Walzer argues that soldiers must assume a measure of personal risk to protect the civilians in their battlespace, even as they are used by terrorists as shields.

Kasher and Yadlin reply in their “Human Life in the War on Terrorism” that soldiers may accept far less risk than Walzer demands. In the context of their reply, they marshal numerous nuanced morally relevant distinctions whose absence is often conspicuous in accounts of counterterror ethics. They distinguish: between wars of self-defense and wars in defense of others; between counter-terror operations in service of propping up a state and military action supporting an “enemy” state; between wars fought with the help of the “host” state and those fought against their wishes; between responding to a terrorist incident and prosecuting an ongoing war against terrorism; between collateral damage and damage necessitated by the context of an attack whose circumstances the attacker cannot control; between the different kinds of efforts made to protect civilians; between soldiers from liberal democracies and soldiers from authoritarian dictatorships; between volunteering to serve in a military and volunteering to serve in a particular capacity in a military, etc. Collectively, their argument amounts to a defense of the state’s obligation to protect its citizens over its citizens’ obligation to assume risk created by the enemy. Here, Walzer is given the last word to tackle some of these distinctions in an exchange pregnant with arguments, positions, and distinctions of the kind that make for fertile philosophical debate.

A second important question about modern counterterrorism is raised in Hadassa Noorda’s “The Principle of Sovereign Equality with Respect to Wars with Non-State Actors.” This essay sorts out some conceptual issues involved in the description of the modern battlespace, while explaining how a state can be justified in fighting non-state actors (NSAs) without violating state sovereignty. She argues that self-defense against an NSA is allowed if the counterattack complies with a principle of sovereign equality, suitably constrained such as when the territorial
state is complicit in the NSA’s activity, accepting of its foreign incursions, or cannot or will not control its own borders to interdict or otherwise stop the NSA from perpetuating acts of violence. The article charts a course between a view that prioritizes the absolute inviolability of states and one that allows for too broad leeway in responding to an aggression against a state’s sovereignty.

**IV. Novel weapons and tactics**

Military exigency has always spawned innovation whose catalog seems synonymous with some of humanity’s most important technological advances. Current generation warfare (described e.g. in books by Peter W. Singer) has seen advances in technology as ethically pressing as those in previous eras. Modern weapons systems can be artificially intelligent, precise, virtual, and autonomous. Armed unmanned vehicles now patrol borders. Drone aircraft controlled from across the globe kill individuals from the sky. Software viruses destroy nuclear reactors. Social science is increasingly becoming as central to conflict as mechanical engineering.

Throughout the Cold War what seemed like the most ethically urgent threat in war was the fact that it could get dangerous enough to destroy humanity. Nuclear weapons are at one extreme of military lethality. Now, military ethics is looking in the other direction and investigates modern weapons platforms that take almost no life whatsoever.

In “Nonlethal Weapons, Noncombatant Immunity, and Combatant Nonimmunity: A Study of Just War Theory,” John Lango broadens our focus to a topic that military ethics was never designed to handle, in light of a type of weapons no previous army thought to create, such as the US’s Active Denial System. Are noncombatants also immune from being intentionally targeted? In the context of crafting an argument to address this question, Lango probes issues at the foundations of JWT, such as the moral status of noncombatants, the prohibition against targeting them, the permissibility of targeting combatants, the prohibition of causing grievous harm, and the general case against using more force than is necessary for a particular mission.

Similarly, Shlomo Cohen’s “Are There Moral Limits to Military Deception?” focuses on an old but morally underexplored tactic, military deception. Along with military psychological operations, cyber warfare, and other non-kinetic military activities, deception is an important part of warfare. Cohen argues that military deception need not be more constrained except to the extent that it harms those not engaged in committing harm and further, that this wrong is despite its military nature, not because of it.
Conclusion

I hope that the papers I curated for this virtual issue of *Philosophia* promote further exploration of its central themes. Much more work remains to be done to fully understand the ethics surrounding each area covered by our authors. The world is increasingly organized, not by a stable system of nation states, but by the instability caused by overlapping layers of non-governmental organizations, multinational corporations, transnational ethnic groups, separatist factions, radical religious movements, and stateless refugee populations. Weapons of war are now often less lethal, less indiscriminate, and less focused on the enemy soldier. Psychological operations, political warfare, space and cyber warfare all target civilian, civic, and military infrastructure equally. Military ethicists can no longer afford to think about states as the primary organizing principle or unit of analysis any more than they can continue to think of the bullet and mortar as the primary weapons of war. As our social ontology and modes of warfare evolve, so too must our social ethics.

If history is any indication, the way military ethics will change will reflect the military technology available to governments, the social arrangements, and the ethical developments that percolate from the public and academics. All must be given the most careful consideration.

Our ethics may adapt by applying old methods to the new situations or by developing new techniques that can account for new and old situations. But democracies, their presses, and their citizens demand that wars are fought only when justifications are articulated both for military engagements and for the means by which they are prosecuted. By continuing our investigation, we further the important quest for the nature of justice that Socrates began so long ago.