Old Traditions, New Perspectives

Just War and Asymmetric Warfare

Stephen McGuinness
To my Lord and God, Jesus Christ. A light in the darkness.

To my loving parents and brother, for their support and encouragement.

To my supervisor, Diarmuid, for his unending patience and humour.

To Jamin (may this topic always remain theoretical), Lesly, Beth and Rahmi, Paul, Patrick, David and Pat. Thank you all for your encouragement, help in procrastinating, critique and ideas.
This work is substantially my own, and where any part of this work is not my own, I have indicated this by acknowledging the source of that part or those parts of the work.

Stephen McGuinness

ABSTRACT

This thesis looks at the discord between asymmetric warfare and just war theory. Specifically, it looks at the place of just war theory in political science, and the competing theories that analyse war. Consequently, it looks at the specific problems that face just war theory in an asymmetric warfare context, by looking at the three parts of just war theory. The first is jus ad bellum, the justice of war, and looks at the decision to go to war. The second is jus in bello, the justice in war, and looks at the conduct of war. The final is jus post bellum, and looks at the conclusion of war. By the end of this thesis, I aim to have provided a basis for reconciling asymmetric warfare and just war theory.
# Old Traditions, New Perspectives

*Just War And Asymmetric Warfare*

**Stephen McGuinness**

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The idea for the topic of this thesis came from a number of conversations about the lack of substantial moral political thought, especially in regards to international relations and the waging of war. My Christian standpoint therefore brought me to just war theory, especially the works of the theologians who had written in this area. The chief influence in this regard has been Oliver O’Donovan’s *The Just War Revisited*, a book that has aimed to show how classical Christian just war theory remains relevant in today’s international political environment. Not without its shortcomings, the book has provided me with a deep insight into the way that political science can be analysed from a Christian moral perspective.

This work, therefore, is an attempt to enter into that literature, to fill what I believe is a gap where other authors have only touched briefly. Unfortunately, it cannot and will not fill that gap completely, as there are many issues that I come across that I cannot do justice. This work will not provide an in-depth account of the moral sub-structure that underpins the entire work. In this regard, I sympathise with Michael Walzer who laments the same problem. He comments, “I am not going to expound morality from the ground up…The substructure of the ethical world is a matter of deep and unending controversy. Meanwhile, however, we are living in the superstructure…” (Walzer, M., 2000: xxi). In difference to Walzer, however, I wish to make clear the principles of the substructure that I am basing the following analysis on. While just war theory provides people of different moral systems with a common moral language with which to converse, I believe that the substructure that underpins the assumptions is equally important in the conversation, and needs to be clear.

The first principle is the importance and worth of the individual. Underpinning the just war and the insistence on the limiting of violence and suffering is the fact that the
individual has worth, and that their suffering is undesirable if not completely wrong. In this regard, accounts of war in terms of prudence do not sufficiently explain why there is such an emphasis on limiting war’s effects. Where does the individual gain his worth from, and why is life respected? The Christian worldview provides such a perspective: individuals, men and women, are created in the image of God. It is a description of the way that God made humanity, in the likeness of his character. Anything that harms that creation, like suffering and death, therefore tarnishes the image of God, and is therefore inherently evil (wrong).

Similarly, the importance of the individual means that any account of political science must portray, even in part, the agency of individuals in the international realm. In this way, accounts of war that focus purely on the state (Westphalian sovereignty) neglect the role of the individual. From the outset, just war theory has placed the individual in a position of responsibility, be it the leaders (the prince or the prime minister) or the soldier. The responsibility and accountability of the individual is an assumption that remains at the heart of just war theory, and underpins many of the principles that it espouses. Why is this so? Amongst other things, theologian John Stott explains that God created humanity with the ability to be rational and moral (Stott, J., 2006: 62). How else would they be able to both understand and respond to God’s commands? The implication is that if humanity is both rational and moral, then it is also responsible and accountable. Humans are free to make decisions as they will, and as such, are subject to moral praise and blame. While “the Fall” (the break in the perfect relationship with God and the corruption of sin upon the world) may diminish humanity’s capacity to be perfectly moral or rational, this does not mean that it is not responsible or accountable. Responsibility and accountability may be diminished, but not completely denied. Rather, it is in the context of the Fall that Elshtain makes the comment that war is “tragically necessary” – in a world that is corrupted by sin, the oft-quoted idea of
‘beating swords into plowshares’\(^1\) is eschatological and not of this age, and conflict is something that will continue to be.

This thesis will therefore attempt to analyse a way forward for the restricted exercise of the tragic necessity of war. “Standing on the Shoulders of Giants” places just war theory in the context of political thought as a whole. It will describe asymmetric (counterinsurgency) warfare, which is the more difficult test of just war theory as it places stress on the various principles inherent in the theory, and is the more common type of warfare today. This chapter will also provide a description of war as a means of achieving justice in an anarchic world system. In doing so, this definition will overcome the problems that just war theory has in being applied to asymmetric warfare. The subsequent three chapters will deal with \textit{jus ad bellum}, \textit{jus in bello}, and \textit{jus post bellum} respectively.

“In Good Conscience” will look at how the decision to go to war becomes difficult in an asymmetric context because of the interconnectedness between the “civilian” and the “insurgent”. This means that casualties are going to be proportionally higher than in a conventional context, and therefore the decision to go to war, and the principles that influence that decision, must be placed in this context.\(^2\) As such, I look at four specific problems: that of ‘right intention’, ‘proportionality of ends’, and ‘right authority’.

“Defining the Limits”, which discusses the most difficult discord between the principles of just war theory and counterinsurgency by analysing the puzzle distinction and discrimination between the ‘civilian’ and the ‘insurgent’. Key to this chapter is the definition

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\(^{1}\) He will judge between many peoples, and will settle disputes for strong nations far and wide. They will beat their swords into plowshares, and their spears into pruning hooks. Nation will not take up sword against nation, nor will they train for war anymore. (Micah 4:3)

\(^{2}\) For the moment, this is assumed, yet will be explained in the \textit{Just War Theory - Application to Today: Counterinsurgency warfare} section of Chapter 1.
of guilt as ‘the doing of harm’. Subsequently, I look at three particular puzzles, namely finding the balance between moral restraint and military prudence, the legitimacy of the insurgent and the subsequent use of ‘special measures’ by the counterinsurgent, and the idea of ‘playing by the rules’ when the other side does not.

“All’s Well That Ends Well” looks at the conclusion of war. This particular theme is one that has not received much attention, and in terms of just war theory, is quite a recent development. After first establishing what the principles of *jus post bellum* are, I then look at how themes of discrimination and proportionality remain central to just war theory, and are therefore important in the establishment of a just peace and the development of actor culpability. I look at how ‘guilt’ affects discrimination in post-war settlements, how the call for compensation and rehabilitation will affect post-war order, and whether war-crimes tribunals are appropriate in the context of asymmetric warfare.

By the end of this thesis, I aim to have provided an in-depth discussion of the theory behind the just war tradition, and to show how it can remain relevant to the contemporary security environment. In doing so, I wish to show that just war theory provides a strong analytical and normative framework for the study of war. As such, this thesis will by no means entirely fill the current gap in the just war theory literature, but hopefully will, like the previous works of such authors as Walzer, O’Donovan, and Orend, provide a basis upon which further analysis can be done.
Just War Theory - Defining the Place.

“Is Just War Theory worthy of a place in political science?”

The just war tradition, often referred to as just war theory, is the predominant normative theory that attempts to address the problem of war and peace. The purpose of the just war tradition has been to limit war as far as possible, in light of its persistence, and the responsibility of politicians to the welfare of their constituencies (Bellamy, A. J., 2006: iii). Authors like Bellamy can trace this normative line of thought back to antiquity, with writers like Thucydides describing traditions and practices that limited war, and Plato writing prescriptions for how war should be fought (Bellamy, A. J., 2006: 15-17). The just war tradition has had a significant impact on international law, with concepts like Augustine’s *jus ad bellum*, the justice of war, Aquinas’ *jus in bello*, the justice in war, and more recently Suarez’s *jus post bellum*, the justice after war, being incorporated into positive law, as seen in the UN Charter, and the Geneva Conventions and Protocols (Bellamy, A. J., 2006: 4), (Patterson, E., 2005: 42).

However, there are problems with the just war as a theory from a philosophical position. In terms of semantics, just war theory is not a theory (in the sense that Waltz would use it – explanation of phenomena (Waltz, K. N., 1979: 5-6)), but rather a practical framework: a set of principles that provide governments and individual soldiers alike a moral and ethical structure for the waging and limitation of war (O'Donovan, O., 2003: 6). Simply referring to these principles as the just war tradition seems to overcome this problem, yet fails to address the fundamental question of whether the just war tradition has a rightful place in international political theory. Authors like Shapcott think of international relations as “practical philosophy” (Shapcott, R., 2004: 271). He explains,
A practical philosophy in the classical sense sees theory as a moral and political inquiry involving a body of knowledge and a philosophy of practice engaging in reflection upon the nature of the good life and the means to achieve it (Shapcott, R., 2004: 271).

This links well with just war theory because just war theory is exactly that: it is a “moral and political inquiry” that focuses on the “good life” (the ideal of peace), and the “means to achieve it” (through the limiting of war).

Hedley Bull would disagree with this definition, however (even though Shapcott insists that “practical philosophy” is based on what Bull calls the “classical approach” (Bull, H., 1966: 361)) due to the fact that it is practical, and therefore is “a question of ‘social engineering’…” not of political theory (Bull, H., 1979: 589). ‘Political theory’ is defined as a “reflection about substantive political and moral issues” (Bull, H., 1979: 591). There is a fine line, therefore, to be drawn: balancing on the one hand the necessity to avoid ‘social engineering’ (limiting war “so that it can serve as an instrument of policy”) while at the same time, avoiding becoming too abstract.

The second problem is raised specifically by Bull in regards to the problem with basing a theory of international relations on morality. He argues,

...what deters us from embarking upon serious inquiry into these matters (or, at all events, what deters us from attempting to write books about them) is the feeling that there are no authorities to guide us in this field, that arguments about the morality of war – by contrast with arguments about what causes it, what limits it, what policies it serves or what positive legal rules regulate it – are a matter of mere opinion (Bull, H., 1979: 589).

In situations where there is a common moral reference point, like in medieval Christendom, this is not an issue, because of the common acknowledgement of the divine authority of Christ. As such, Bull notes that it is no surprise that a majority of the literature based on moral foundations is written from a Christian theology (Bull, H., 1979: 590). However, there is no such common moral reference point today and morality therefore seems purely relative. In this sense, morality becomes “a matter of mere opinion”.

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Yet Bull’s observation holds only in situations where morality is based purely on factors that differ across, in this case, religions. Walzer argues that despite differing foundations of morality, the morality of war can be discussed fruitfully because there exists a common moral language (Walzer, M., 2000: xx-xxi). Despite differing conceptions of morality, Thucydides illustrates that the Melians and the Athenians shared a moral vocabulary that enabled them to converse on moral topics. This particular example shows how just war theory has an analytical component. Bellamy argues that it is the just war tradition that provides such a common moral language that allows for the evaluation of the “justness” of acts in war (Bellamy, A. J., 2005: 278).

Alternatively, the problem of “subjectivity” may be overcome through criticism on its own terms. As Halliday points out,

…the way to overcome this situation, to demonstrate that awareness of morality does not entail a collapse into relativism, and to anchor the debate about ethical choices in international politics within a realistic context, is to produce rigorous work on the ethical issues that pervade the international arena (Halliday, F., 1996: 326).

Subsequently, it is possible to use Walzer’s own methodology (which Bull seems to overlook in his review of the 1977 edition of Walzer’s book), and analyse moral claims by their internal coherence and logic, observe their implementation, and reveal moral hypocrisy (which he claims is the most important form of moral criticism); all of which places the emphasis not the observer, but on the subject (Walzer, M., 2000: xxi).

**Just War Theory - Responding to Critique**

**Realism and the need for prudence**

In contrast to just war theory, which holds that as political decisions are inherently moral (like other calculated and rational social activities), realism argues that nothing should stand in the way of the security of the state. Particularly in the case of war and conflict, in the pursuit of military objectives the primary consideration should be prudence. As Morgenthau
argues, “Realism... considers prudence – the weighing of the consequences of alternative political actions – to be the supreme virtue in politics” (Morgenthau, H. J., et al., 2006: 12). In contrast to just war theory, realism holds that the political and the moral are completely different spheres of thought, and therefore should not overlap. While realism is aware of the “moral significance of political action”, it does not believe that morality should limit action, especially when the state’s survival is at stake (Morgenthau, H. J., Thompson, K. W. and Clinton, W. D., 2006: 12). Furthermore, there is a large divide between the individual and the state, especially in terms of morality. Morgenthau advocates what could be called a dual morality, a public morality – focussing on the state’s responsibility to care for those who live within its borders – and the private morality of the individual.

However, just war theory and realism are not as completely incompatible as one may think. Rather, Bellamy notes that just war theory has “echoes” of realist thought throughout (Bellamy, A. J., 2006: 119). As just war theory is often considered the ‘midpoint’ between the moral extremes of realism and pacifism, it is no surprise that realism has some influence on it, and more than that, realism is an important strand within it. Not all realists hold the position that morality (or at least moral restraint) has no place in international politics; furthermore, realism in just war theory ensures the balance between morality and prudence. Realism also offers an analysis of politics, power and interests that shape judgements about the legitimacy of war (Bellamy, A. J., 2006: 116). Realism’s focus on state security is also important in reminding just war theorists that a state is morally obliged to ensure the welfare of its citizens above those outside its jurisdiction (Bellamy, A. J., 2006: 118).

Pacifism and the need for morality

Pacifism can be described as having two forms, deontological and consequential. Deontological pacifism argues that killing is intrinsically wrong, and “that there are no
situations, real or imaginary, in which resort to war would be the lesser evil” (Bellamy, A. J., 2005: 279-280). This school of thought is often dominated by Christian theologians, who cite the idea of ‘turning the other cheek’ as the fundamental Biblical perspective. Abbott argues that this “passive non-resistance” should be coupled with “impartial arbitration”, the alternative to forceful resolution of conflict (Abbott, L., 2005: 292-294). Bellamy shows that deontological pacifism has evolved into a form of consequentialist pacifism, by arguing that there are situations which could theoretically exist in which war may be permissible, yet “the moral constraints on war are interpreted in such a way as to make it highly unlikely that any war would meet the criteria” (Bellamy, A. J., 2005: 294). More recently, the Christian perspective has moved in this direction, with the US Catholic Bishops (United States Conference of Catholic Bishops, 1983), and the Anglican Archbishop of Canterbury (Williams, R., 2003) both advocating a “presumption against war” or a “presumption against violence”, which argues that the Christian scriptures argue first for a peaceful settlement of disputes, and in “exceptional cases” some use of force is permitted (determined by the principles of just war theory).

The second form of pacifism is consequentialist, which goes a little further than the “presumption against violence” to argue that despite the fact that war may be theoretically permissible, it is only because of the nature of the current forms of warfare that it is wrong. Whereas deontological pacifism (“presumption against violence”) argues that killing is wrong per se, consequential pacifism argues that it is the current form of warfare that is wrong, implying that if the nature of war was to change, then there could exist theoretically, a war that satisfied the moral prerequisites. In contrast to realists or just war theorists, consequential

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[Jesus said] “You have heard that it was said, 'Eye for eye, and tooth for tooth.' But I tell you, Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give to the one who asks you, and do not turn away from the one who wants to borrow from you.” (Matt. 5:38-42)
pacifists have a much higher moral “threshold”, such that war in its current form is unable to be morally justified. Holmes argues that while war may not be morally reprehensible on the theoretical level, it is so in the practical sense. He argues that “the conditions that might theoretically justify war are not met in the actual world; hence that war is impermissible in the world as we know it” (Holmes, R. L., 1989: 14). He blends deontological pacifism (the killing of innocents is inherently wrong) with consequential pacifism (in wars, innocents die, so therefore war is wrong).

**Why Just War Theory Remains**

Yet both realist and pacifist positions are unsatisfying. Realism’s ‘amorality’ fails to allow for restraint, while pacifism’s extreme morality fails to provide any way forward for the moral conduct of war. The main criticism of the predominance of prudence in realism is that in practice, there is little to no room for moral restraint. Often equated with ‘military necessity’, the logic of prudence places military objectives in the name of state survival as being the end objective in war, and demands that these objectives be the highest priority. Therefore, measures that call for moderation or (moral) restraint in war become absurd, as they inhibit the ability for the state to achieve its objectives, and could even cause them to fail (Holmes, R. L., 1989). Pacifism is also a problem. If there is no way that war can be morally justifiable then there is nothing to stop the execution of war becoming ‘amoral’. As Bellamy writes (in reference to the “War on Terror”),

> “An ethics of war that cannot hold an insightful discussion into the actual conduct of war will remain peripheral in wartime. If we simply reject the war on terror as unjust, we risk inadvertently conceding a free hand to those who support the war to execute it free of moral restraints.” (Bellamy, A. J., 2005: 281).
**Just War Theory - Establishing Principles**

**Definition**

Just war theory has been described hitherto as a practical framework for the ethical execution of war. It is a set of principles that aim to provide those who make the decision to go to war, those who fight the war, and those who manage the aftermath, can do so with minimal suffering and impact. Yet it is erroneous to assume that this body of literature is a single coherent voice; rather there are a multitude of variants, each of which emphasise different aspects or are usually based on different assumptions: there are two that stand out as distinctive, and therefore require special attention.

**Christian**

There are a number of ideals that make the Christian just war perspective distinct. Firstly, just war theory can be regarded as a series of exceptions. Just war theory grew out of a historical context in which the use of violence was regarded as an anomaly. As Hauerwas asks, “…why would you even have to come up with a justification for violence if, as a matter of fact, you assumed the priority of non-violence on the part of these people?” (Elshtain, J. B., et al., 2001). Inherent in this is the fact that at an individual level, it is better to accept personal harm than to commit it, yet there is also the justification to use force to protect the innocent; acting out of love for one’s neighbour. On a societal level, violence (and by extension war) is inherently wrong, but the resort to war is “tragically necessary” (Elshtain, J. B., Hauerwas, S. and Johnson, J. T., 2001). It is wrong because of the fact that it causes great harm (destroying the image of God), yet it is necessary because of the need to protect the innocent (those who are incapable of defending themselves) from certain harm (Elshtain, J. B., Hauerwas, S. and Johnson, J. T., 2001). As such, this protection of the innocent, this acting out of love for one’s neighbour, has been institutionalised into the responsibility of government, an body that “is
charged with a solemn responsibility for which there is a divine warrant” (Elshtain, J. B., Hauerwas, S. and Johnson, J. T., 2001).

Legalist

The legalist variant argues is that the principles of just war theory are akin to a checklist that have to be ticked off, and that a war is just only when each of these principles are fulfilled. This has increasingly become the case, as such principles have become codified in international law. This tradition has grown only relatively recently, due to the Enlightenment’s dispute of Christ as the common moral authority, and the abuse of ‘right authority’ and ‘just cause’ by Christian princes during the “holy wars” of Europe in the late 16th and early 17th century. As morality had hitherto been the foundation of just war theory, many scholars looked elsewhere for its basis, and found it in the growing body of international (positive) law. In this context, Westphalian sovereignty precipitated a shift away from the individual to look at the responsibility of the state.

Furthermore, many just war theorists use international law and international institutions for the enforcement of its principles. As such, O'Donovan argues that the authority to go to war lies in a conspicuous right, and “the want of a formal institution to enforce it” (O'Donovan, O., 2003: 25). He continues by saying that at the root of moral authority to make war is a judicial authority” (O'Donovan, O., 2003: 25). In fact, O'Donovan’s “revisiting” of the classical just war theory is depicted almost entirely in legal terms, and enforced by institutions.

Just War Theory - Application to Today: Counterinsurgency warfare

While the post-911 world has been dominated by the discourse of the “War on Terror”, a broader observation shows that there is a decrease in conventional conflict and an increase in asymmetric conflict. Mandelbaum argues that major war is becoming obsolete:
“Major war is not impossible… A major war is unlikely but not unthinkable” (Mandelbaum, M., 1998: 20). This ‘revolution in military affairs’, this idea that countries (powers and aspirants) “will structure their armed forces in similar ways to prepare for some rather standardised encounters”, is not impossible, but increasingly unlikely (Freedman, L., 2006: 49). Coupled with this is the fact that not all ‘players’ can match this level of power, such that the possibility that future wars would be fought conventionally is minimal: even if two great powers, like the US and China, go to war, there is still a great asymmetry of power between the two. As such, there is an increasing resort to alternative strategies, or what Freedman calls asymmetric strategies:

If the promise of precision warfare lies in keeping casualties and economic damage down on both sides and confining them largely to the military sphere, the same logic might lead those seeking to discourage Western military action to adopt tactics and weapons that have exactly the opposite effects (Freedman, L., 2006: 51).

Asymmetric conflict is not a new phenomenon, with guerrilla and insurgency wars being found in numerous historical instances. What is new is the composition and motive of the insurgent, and the reciprocal shift in the state’s strategic thinking to focus on this type of warfare. The Cold War era led to an interpretation of insurgency through the lens of Communism, like the cases of Vietnam and Cuba. Insurgency in this context was still predominately the province of the state. This is no longer the case in the post-911 world. Sub-state actors, which act independent of the state, are now engaging in insurgent conflicts. The case of the most recent war between Israel and Hizbollah in 2006 is the perfect example of this. What makes Hizbollah a peculiar case is the fact that they are an independent organisation, and yet they still have strong links to the state. On the one hand, Hizbollah acts like a service provider for the community, providing such things as health care and education

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4 Interestingly enough, this RMA is based on the increasing importance of “a line of political expectation and of ethical thinking in Western societies, based on the Christian just war tradition and liberal values, with questions of discrimination and proportionality in warfare to the fore.” Freedman, L., (2006), "Asymmetric War", Adelphi Papers, 45:379 49-60. 
in situations where the state itself cannot. Furthermore, it stands for election, and is a genuine part of the Lebanese political system. Yet on the other hand, Hizbollah implements its own “foreign policy”, acting outside the government through its own military forces that stand apart from the conventional Lebanese Army. On the other side of the war, Israel’s actions and tactics in the conflict with Hizbollah provide an interesting study, as this is a situation where a state is ‘taking on’ this newer form of insurgency.

Most importantly for this study, the fact that in the context of Westphalian sovereignty and statism, the role of sub state actors is neglected. The ability for Hizbollah to act outside the authority of the state (to be a sub-state actor that acts not in an internal conflict but in an external one), and yet still remain “subservient” to it means that the Westphalian model that provides the theoretical basis for just war theory is insufficient: a post-Westphalian model is required that more fully integrates the role of sub-state actors. It is to this development that just war theory now needs to be applied. In this sense, counterinsurgency provides the most striking tension with the principles of just war theory, and therefore as a case study provides the most interesting analysis.

Merom, in addition to providing an analysis of counterinsurgency, also importantly provides a model for the interaction between “civil society” and the political leadership (“the state”) in democratic countries. Drawing on three concepts employed in Merom’s analysis of small wars, it becomes increasingly clear why asymmetric conflict is unique. “Instrumental dependence” is the degree to which the state relies on society to provide resources for national security policies, “normative difference” is the gap between the state and the “liberal” society in regards to the execution of the war in terms of cost and tactics (consisting of the “expedient” dimension – the cost in terms of casualties – and the “moral” dimension – the cost in terms of brutality), and “political relevance” is the influence of society on policy
(Merom, G., 2003: 18-21). Specifically, there is a dialectic between civil society and the state, whereby civil society may influence military strategy, because of the moral dimension of the conflict, through its provision of resources. Meanwhile, the state attempts to avoid this influence by reducing its instrumental dependence “at the risk of increasing the potential size of the moral dimension of normative difference (Merom, G., 2003: 22). Building on this analysis, just war theory provides a more stable basis for the moral dimension of the normative difference as the norms that currently underpin Merom’s analysis arguably ebb and flow depending on the situation, while the just war’s emphasis on morality and the restriction of war seems to have more permanence.

Definition

Insurgency is characterised by the use of small forces which are dependent on the support of the population for supply and shelter, and, due to the decentralised nature of the support, will often act independent of each other (Merom, G., 2003: 34). As Mao’s oft-quoted metaphor describes, “The people are the sea in which the insurgent fish swims and draws strength” (Deady, T. K., 2005: 58). Furthermore, the population has more than support value. As O’Donovan writes, the insurgents,

…sometimes by choice but often by necessity, pursue a strategy of disseminating active armed units invisibly through the civil population. This puts the whole population in the position of a hostage shield, compelling a conventional military response to incur high levels of non-combatant damage (O'Donovan, O., 2003: 64).

Therefore, insurgency warfare, by its very nature, involves the population at both a logistical and strategic level. Earlier, I mentioned that asymmetric warfare has a higher cost. How so?

As we have seen, asymmetric warfare strategies can be defined as those that seek to undermine the RMA and conventional strategies. As a result, the “civil society” becomes tied to the conflict:
New options are also emerging for those anxious to maximise the human cost of war. Though there may be less excuse for crude and indiscriminate modes of war-fighting with the systems associated with the RMA, they do provide opportunities for those who deliberately seek to target civil society.

Logically, if asymmetric warfare ties the insurgent and his civil society together, and also pursues a strategy of maximising human cost, then it is reasonable to assume that asymmetric warfare will have a proportionally higher cost in terms of civilian casualties than conventional conflict.

Because (democratic) states wish to limit their dependence on society (instrumental dependence) through limiting the size and composition of their armies, while at the same time, they wish those same forces to remain effective, and/or reduce the risks to soldiers, “they must rely on higher and less discriminating levels of violence” (Merom, G., 2003: 22). In an asymmetric conflict, the normative difference (the tension between society and its political leaders based on the conflict) is accentuated because small wars are not critical to the existence of the state (Merom, G., 2003: 21). In short, because counterinsurgency is more violent and less existential, the moral dimension of the conflict is exaggerated, and therefore, of particular interest to just war theory.

_A Possible Answer? War as a Means of Achieving Justice_

Framing this problem requires a definition of war. The classic description is provided by Clausewitz, who defines war in terms of politics by other means. From the outset, Clausewitz’s definition of war describes any form of restraint or restriction on war as absurdity. War, therefore, is the “use of physical force to the utmost extent”, and in this “duel” between competitors, any restraint of this force by one will ultimately mean that the other gains superiority. Hence, “as one side dictates the law to the other, there arises a sort of reciprocal action, which logically must lead to an extreme” (von Clausewitz, C., 1982: 103). Clausewitz is adamant that despite how much we may dislike this conception of war, “it is to
no purpose, it is even against one’s own interest, to turn away from the consideration of the real nature of the affair because the horror of its elements excites repugnance” (von Clausewitz, C., 1982: 102). Furthermore, war is a political act, yet more than that, it is “a real political instrument, a continuation of political commerce, a carrying out of the same by other means” (von Clausewitz, C., 1982: 119). Its political aim is that of “compel[ling] our opponent to fulfil our will” (von Clausewitz, C., 1982: 101). In this way, restraint is again an absurdity because it inhibits this political goal: a suspension of action (for example, a truce) is only explicable in that an actor is merely waiting for a more favourable moment for action (von Clausewitz, C., 1982: 111).

This definition is somewhat deficient, though it does provide some important caveats for just war theory. It is deficient because of the political and security environment today. Clausewitz was writing in a period were military engagements were “limited” affairs when compared to the possible conflicts of the Cold War period and today. Specifically, it is in this context that Holmes describes his pacifism. For, on a theoretical level, if a war between two superpowers were to “lead to an extreme”, then the consequence would not be simply the subjugation of one side to another’s will, it would be the annihilation of the entire globe through nuclear holocaust. On this level, Clausewitz’s argument that war leads to an extreme would mean that in the nuclear age, war would no longer be able to fulfil the goals that it was employed to achieve because of its destructive power (Holmes, R. L., 1989: 5-6). On a practical level, the horror and suffering caused by the spiral to extremes in World War Two has led to the gradual diminishing of large-scale war as an instrument that can achieve political ends. While Clausewitz makes a strong case for the political nature of war, describing it as a continuation of legitimate political processes, this gives war a legitimacy that today’s society does not share. For if war were simply a continuation of politics, why
would such institutions like the League of Nations or the United Nations (both products of the world wars) be created to prevent such events from occurring again? If war is political, Clausewitz fails to provide for situations where it is political not to engage in an unrestricted or limited war. In regards to these caveats, Clausewitz reminds us that the military must remain subservient to the political, even in war. These political ends therefore must be achieved, or at least have a possibility of being achieved, else there is no purpose to the war. Furthermore, restraint that causes a war to fall short of its objectives is truly absurd. So what is the alternative?

In O’Donovan’s book, “The Just War Revisited”, war is conceived of as an “extraordinary extension of ordinary acts of judgement” (O'Donovan, O., 2003: 6). In essence, war is the ‘extraordinary’ way that states apply justice in an anarchic international system. It is ‘extraordinary’ in a variety of senses: firstly, it is ‘extraordinary’ in that it is the last resort, when ‘ordinary’ means of judgement have failed; second, it is ‘extraordinary’ in that it is judgement outside the states’ ‘ordinary’ sphere of authority (assuming the Westphalian concept of sovereignty); and thirdly, it is ‘extraordinary’ in that it is justice without recourse to “judicial inquisition” (O'Donovan, O., 2003: 19-20). Such a definition ensures that war remains the “exception” and not the norm, which Clausewitz’s definition fails to do. Furthermore, this definition provides strong limits on the causes and aims of war, also which Clausewitz’s definition fails to achieve.
This chapter consists of three main parts. The first part discusses the theoretical discord between *jus ad bellum* and asymmetric warfare. The second part looks at how war as justice affects *jus ad bellum* in an asymmetric context. This section will therefore aim to reconcile the puzzle of the discord between asymmetric war and just war theory. The final section is a discussion of the implications of such a reconception. Specifically, it will look at how asymmetric warfare will influence ideas like ‘just cause’, ‘proportionality’ and most importantly, ‘right authority’.

**Part 1: Providing the Context**

*Jus Ad Bellum: The Justice of War*

*Jus ad bellum* is one of the most recognisable aspects of just war theory, especially because of its prominence in various international regimes that regulate conflict. The term *jus ad bellum* is attributed to Augustine who, writing in an era where the Christian standpoint was pacifist, realised that there had to be a serious discussion on the use of force in the context of increasing Christian participation in the Roman Empire, especially in its army. *Jus ad bellum* is a set of exceptions that differentiate ‘just war’ from the ‘crime of war’, or what Walzer calls “aggression” (Walzer, M., 2000: 51). Some considerations involved in *jus ad bellum*, like ‘legitimate authority’ and ‘right intention’, have their origins in antiquity, while others like ‘reasonable prospects for success’ are more recent.

*Jus ad bellum* has a twofold approach: a retrospective and a prospective viewpoint. Of the seven criteria that make up *jus ad bellum*, it is interesting to note that only two of these criteria (just cause and right authority) are retrospective, while the majority of the criteria are prospective. This is important, as it means that there is a strong connection between *jus ad
bellum, jus in bello and jus post bellum, and that while these principles are analytically distinct, in practice they will overlap. Furthermore, jus ad bellum ensures that leaders have seriously thought through the decision, not just retrospectively, (whether the war is just because just cause and right authority have been satisfied), but have considered and planned prospectively: essentially forcing decision makers to consider jus in bello and jus post bellum before those principles actually come into effect.5

The retrospective viewpoint analyses the lead up to the conflict. It has two parts: the first asks, “Is the cause just, and is it great enough to justify going to war over it?” The question of just cause looks at the reason for war, the injustice or wrong done, and is usually limited to self-defence, defence of others, restoration of peace, defence of rights or the punishment of wrongdoing (Bellamy, A. J., 2006: 122). Just cause also relates to the magnitude of the ‘wrong’ and whether the resort to war is an appropriate response to that ‘wrong’. This ties closely to ‘proportionality of ends’, discussed below. The second part of the retrospective viewpoint is the question of right authority. Given that the cause is just, and war is the correct response, right authority asks whether the actor is the appropriate one to pursue justice and fight the war. Traditionally, this actor is only one who has no judicial superior, yet of late, more legitimacy has been given to non-state and sub-state actors.

A majority of the jus ad bellum criteria are prospective, i.e., they look at the plans for the execution of the war, and the re-establishment of peace: implying that those who choose war as a means for justice must consider all aspects of the war (its inception, prosecution, and conclusion) before making the initial step. Considerations like ‘last resort’ and ‘proper

5 Another distinction that is made is by Bellamy, who suggests that there are three types of criteria in jus ad bellum: substantive, prudential, and procedural Bellamy, A. J., (2006), Just wars: from Cicero to Iraq, Polity Press: Cambridge.. The substantive criteria are mainly moral criteria, and form the bulk of jus ad bellum. Prudential criteria focus on the cost of the decision, and demonstrate the influence that realism has had on the theory. Finally, procedural criteria focus on the process of the decision, and tend to reflect the legal influences on the tradition.
declaration’ remain similar in both conventional and asymmetric scenarios, and ‘right intention’ is dependent on the definition of war (war as justice). It is ‘proportionality of ends’ and ‘reasonable prospects for success’ that provide the most interesting analysis for asymmetric warfare. Proportionality is tied to just cause, as the magnitude of the cause will determine whether war as a response is proportional. If in an asymmetric scenario civilian casualties are higher, then the cause for war must be greater than in a conventional scenario for it to remain proportional. Reasonable prospects demands that even if a cause be just, and war be a proportional response, a war can still be unjust if it is waged knowing that it cannot be won. It has two parts, looking at the chance of success, as well as the cost of success (Bellamy, A. J., 2006: 123).

*Jus Ad Bellum: A Moral Decision and its Consequences*

The nature of asymmetric warfare ensures that “civilians” are tied to the conflict. For this reason, considerations of “just cause” must factor in the cost to civilians. Furthermore, because the insurgent gains his support from the population, one must consider whether the cause is in fact just. If a war for the purpose of control of a specific area, say in a situation like Vietnam, Northern Ireland or Iraq, is fought against an insurgent who gains considerable support from the people, the ‘cause’ may no longer be just, as it is a war against a people, not against an army. It is therefore a war that *should* not be won because the insurgents have already won over the population, and are therefore the legitimate rulers of the people. Further action on behalf of the counterinsurgent is consequently (in the case of foreign forces) a war of aggression, or (in the case of local forces) a war of tyranny (Walzer, M., 2000: 194-195). However, conquest or control of an area is not always the aim of a counterinsurgency war: the 2006 Israel-Hizbollah War provides an example where the counterinsurgent was not aiming to control an area of land, but rather seeking to influence the actions of an actor. In
this way, just cause must look consequentially at the cost of influencing an actor in relation to the goals that it is trying to obtain to see if the cause is great enough to warrant the cost (in terms of casualties, and damage and destruction caused).

Secondly, if civilian casualties are higher in an asymmetric conflict, then one must consider whether the cost is proportionate to the injustice done. O’Donovan suggests that the question of proportion has two parts, a reflexive, backward-looking perspective (retrospective proportion), and a forward-looking perspective (prospective proportion). Retrospective proportion is tied inextricably to just cause, and demands that a “truthful description of wrong done” be the determinant of the extent of action. ‘Prospective proportion’ is the term that is commonly referred to in this context, usually expressed in terms of the type of justice that it is trying to achieve.

Conversely, counterinsurgency demands that increasing levels of brutality be employed as a means to limit the number of casualties that the counterinsurgent suffers. In a counterinsurgency, the state is reliant on its constituency to provide the resources to fight the war, requiring the acquiescence of the constituency to accept the loss of those resources (namely people). Moreover, the state will attempt to manipulate the “instrumental dependence” in order to limit the number of casualties it suffers through limiting the size of its counterinsurgency forces (Merom, G., 2003: 22). Yet this poses a problem: the state has fewer resources, and yet, is still required to achieve the same goals. The state has both a political and strategic motivation to use less discriminating methods of violence to overcome this problem.

The purpose of counterinsurgency is to deprive the insurgent of their support base (the population), isolating and exposing them. This is achieved through such tactics as propaganda, coercion and fear (Merom, G., 2003: 38) retribution, curfews and other
restrictive measures (Deady, T. K., 2005: 66). The net effect of such tactics is that it becomes much more difficult for such a society to then return to the “normal” state of affairs after the conflict, and make the formal transition from war back to peace. Counterinsurgency aims specifically at achieving military victory, and the political strategies that are employed (the winning of hearts and minds) are designed for situations of occupation, and as such, have in mind pacification of the area and under new control. For example, the classic examples of hearts and minds strategies appear in the Philippines (1899-1902), Afghanistan (1979-1989), and Iraq (2003- ), all of which were situations of an incumbent wishing to gain control of an area under their occupation. This idea contrasts quite clearly with just war theory’s intention of (re-)establishing peace.

Finally, the inherent difficulties and complexities of fighting an asymmetric war demand that the criteria of ‘reasonable prospects for success’ be given serious attention. “Success” is not merely a military term: it means more than ‘victory’, and as such, requires more than just the incapacitation of the adversary’s forces. Rather, it is a political term that is focused on establishing a stable peace. In a conventional scenario, this is theoretically much simpler as ones forces are demobilised, and the state makes the formal transition from war to peace: militarily, economically, and socially. However, in an insurgency context, counterinsurgency tactics involve the ‘civilian’ directly, and the ability to demobilise and return to the state of peace becomes much more difficult. ‘Reasonable prospects for success’ involves analysing, a priori, the tactics and strategy of the action (jus in bello), and the plans for establishing a stable peace (jus post bellum), and attempts to gauge whether this is feasible. Merom demonstrates that as the levels of brutality (arguably, unjust tactics) increase, the casualty levels (of the incumbent) decrease (Merom, G., 2003: 22, 42-43). Therefore, “reasonable prospects for success” will need to take into account the cost to the
incumbent that is required to achieve stable peace, acknowledging the fact that brutality can help manage those costs. Unlike (recent) conventional wars, which are over in a matter of days or even weeks, counterinsurgency wars are a process that takes many years. Consider the aforementioned examples. The Philippines took three years, Afghanistan required ten (and was still unsuccessful), and Iraq is up to four years and still going. It is true that the most recent counterinsurgency war, Israel-Lebanon 2006, lasted only four weeks, but neither was it a success (Israeli Ministry of Foreign Affairs, 2007), nor is either side ready to accept that the conflict is over, or the dispute resolved. As O’Donovan points out:

The tragedy of internal conflicts fought by guerrilla methods is that they are unending. Neither side is capable of inflicting such damage on the other as to create a real and urgent will for settlement. (O'Donovan, O., 2003: 77)

There has been some debate recently (in the post-Cold War period with the rise of many new sovereign entities) over who has the right to be an actor in the international realm. It is a question that challenges the legitimacy of insurgent actors: it asks whether they are to be treated with the same status as conventional soldiers, and whether their actions are acts of war or acts of crime. In a conventional scenario, those who were captured out of uniform were considered spies, and were therefore no longer considered to be protected under the Geneva Convention.

The authority to declare war has always been defined by the classical just war theorists in terms of those who have no judicial superior (hence, extraordinary justice due to lack of judicial inquisition). In the case of sub-state actors, they may have authority to declare war because it is judgement on another’s actions outside the bounds of Westphalian sovereignty (extraordinary justice outside ordinary authority). On the other hand, however, if a sub-state actor is working within the state, then they have a judicial superior, and hence do
not have authority. Sub-state actors that do not have a judicial superior (i.e., “distinct political communities” or “anti-colonial actors”) are therefore not bound by this caveat.

Bellamy defines the influences on the just war tradition as being three sub-traditions (realism, positive law, and natural law), each arguing that ‘right authority’ has different meaning. According to the realist, only the state has this authority. In addition to the state, positive law adds an “anti-colonial non-state actor. In natural law however, it is a “defined political community” that has ‘right authority’ in addition to the state. This broadens the sphere for legitimate action even further than that of positive law, and would therefore include any non-state actor that has some political basis.

**Jus Ad Bellum: The Puzzle Revisited**

While *jus ad bellum* may not be in complete tension with asymmetric warfare, there are certain puzzles that differentiate it from conventional warfare and therefore require reconsideration. Firstly, counterinsurgency aims at producing a military victory, and uses political strategies to achieve such, yet *jus ad bellum* demands that the intention of the action be justice and the re-establishment of peace be the end goal, in essence, that “the military goals be subject to political goals.” (O'Donovan, O., 2003: 59). One could argue that counterinsurgency is not designed to be a political tool, but a military one, and if this is the case, then the principles of *jus ad bellum* are needed as a supplement to, as well as an influence on, strategy.

Similarly, the prospective nature of *jus ad bellum* requires some consideration of the conduct of a counterinsurgency war be part of the decision making process. Counterinsurgency’s reliance on increasing levels of violence in the interest of expediency and home support, in conjunction with the increased ‘civilian’ involvement, means that in comparison to conventional warfare, counterinsurgency is more ‘brutal’, and less ‘moral’. If
this is the nature of a counterinsurgency war (assuming for the sake of simplicity that *jus ad bellum* and *jus in Bello* are independent), then the cause that requires justice must be more severe than in a conventional case if it is to be proportionate.

If the intention is justice, and counterinsurgency is a proportionate response, the nature of counterinsurgency means that the possibility of achieving military victory, obtaining justice, and making the transition back to peace is incredibly difficult. If the military victory cannot be prudently achieved, or if the obtaining of peace has poor prospects, then such a war is inherently unjust. If the authority to declare war is given to those who have no judicial superior, then the legitimacy of sub-state actors is called into question, and *jus ad bellum* arguably ceases to apply.

**Part 2: Formulating a Response**

**Jus Ad Bellum: War as Justice**

As mentioned earlier, defining war as “an extraordinary extension of ordinary means of judgment” provides a better structure for framing the just war in the context of counterinsurgency. In fact, this is precisely what *jus ad bellum* calls for. O’Donovan’s comment that war is extraordinary justice because ordinary means of justice have failed remains constant in the context of either conventional or asymmetric conflicts. However, war as extraordinary in terms of authority provides a useful perspective in the context of asymmetric conflict.

If war is an act of judgement, then it can only be proportionate to the wrong incurred. Thus, the extent of the wrong will determine the extent of the justice. Inherent in the concept of justice are two considerations. Firstly, that there be restorative justice, in that the wrong is righted. In the case of an act of aggression (Hizbollah’s abduction of soldiers), restorative justice ensures that the responding action is restore the status quo (the safe return of abducted
soldiers). This type of justice requires constant re-evaluation, as it involves a retrospective aspect (what is an objective account of the wrong done), and a prospective aspect (are we at the point where we have righted the wrong and restored a state justice). The second type of justice is punitive, in that it ensures that the wrongdoers are punished for their acts, and that they serve as a deterrent for others. In this way, proportion needs to be in regards to the extent that is required to serve as a genuine punishment and deterrent.

If war is an act of judgement, then it must ensure that justice is actually achieved, or seen to be achievable and feasible. Worse than useless, a war that is waged despite the fact that it cannot achieve justice is itself morally reprehensible, no matter how just the cause. A failed war not only means that people have died “in vain”, but the original wrong that caused the war has not been righted, and the resulting “peace” is actually more unjust that the situation before the war. In asymmetric warfare, the difficult and “unending” nature of the war means that the prospects for achieving justice are lower. If war is justice, then the means of justice must be proportionate to the cause, otherwise the means themselves become unjust. Asymmetric warfare’s brutal nature risks becoming a disproportionate response to the original wrong.

Part 3: Exploring the Consequences

Jus Ad Bellum: ‘Proportionality’, ‘Just Cause’ and the Problem of Going to War

There are two problems: firstly, the population of southern Lebanon is invariably tied to Hizbollah, and any action will involve the civil population, as discussed earlier. In the Second Lebanon War, there were at least 1,000 Lebanese killed, a majority of them “civilians” (Myre, G., 2006). The second problem is that if the population of southern Lebanon genuinely support Hizbollah, then the question of just cause is raised. Myre points out that “[Hizbollah]’s military preparations from 2000 till 2006 took place in [civilian] areas.
They were of course done with complete secrecy, but in accordance with the civilians” (Myre, G., 2006). The author of an Israeli report on the use of civilian “human shields” by Hizbollah argues that “Hezbollah was operating inside a supportive population, and cynically used them to further its own goals” (Myre, G., 2006).

War as justice must overcome this problem: on the one hand, it must acknowledge that in acts of aggression, the injustice must be overcome in order for a just peace to be achieved; on the other hand, the act of achieving justice itself must remain just and to do so, must remain proportionate and discriminate. Asymmetric warfare must therefore change the definition of those who are immune to suit the ‘soldier-civilian’ dynamic. By definition, if the population is connected to the insurgent, and is supportive of it, then this may implicate the “civilian” as being culpable of that same aggression, and civilians would therefore lose their “immune” status. Even so, states still go out of their way to minimise this type of casualty: Israel made sure that numerous steps were taken to ensure that civilians were warned about upcoming attacks, through pamphlets and phone calls to specific houses (Erlich, R., 2006: 272-274).

*Jus Ad Bellum: ‘Right Authority’ and its Extraordinary Extension*

Who has the right to declare war? The case of Hizbollah does not fit neatly into any of the categories provided for in just war theory (state, anti-colonial actor, or defined political community). Despite many claims, Hizbollah is not a separate political entity within Lebanon: specifically, it is not, nor does it attempt to replace, the Lebanese Government. So therefore it is not the state. Neither is it an ‘anti-colonial non-state actor’, as Lebanon is no longer a colony, having gained its independence during the 1940s: the clearest claim for a controlling colonial power in Lebanon would probably be Syria, whom Hizbollah seems to support, or gain support from. Finally, there is the question of whether Hizbollah is a ‘defined
political community’. While Hizbollah is a political actor, in that is has the support of many Shi’a in south Lebanon and fulfils many political responsibilities, the recent war in 2006 was a case of the organisation carrying out its own “foreign policy” without the acquiescence of the Lebanese government (Paraipan, M., 2007b). Yet Hizbollah still acknowledges the state of Lebanon as being judicially superior. As Hizbollah is a political party, and has maintained its stance that it does not wish to replace the existing Lebanese government, the question of Hizbollah’s authority to declare war on Israel is called into question. More specifically, if the Lebanese government is declaring itself the official “resistance against Israel”, as Minister for Information Ghazi Aridi describes it, then the legitimacy for Hizbollah to also be a front against Israel is further weakened (Paraipan, M., 2007a).

The fact that it represents a community is the key to this particular case. Working on the presumption that Lebanon is a weak state that fails to provide many of the functions of a government, especially in the south, Hizbollah’s role as a service provider in the absence of the state means that they are more than a political party. Especially in the case of insurgencies, where the insurgent and the population are interconnected, this provision of services is increasingly important as it means that less coercion is required to gain popular support. Myre, in interviewing a Lebanese General, argues

> You cannot separate the southern society from Hezbollah, because Hezbollah is the society and the society is Hezbollah. Hezbollah is holding this society together through its political, military and economic services. It is providing the welfare for the south. (Myre, G., 2006)

In the aftermath of the 2006 war, Hizbollah members went out through the war-affected area, cataloguing destroyed houses and shops, and subsequently providing rent to those affected: up to $12,000 per family (Abdul-Ahad, G., 2007).

In this context, the support given by the population to Hizbollah means that Hizbollah has some authority in being able to declare war. The “representativeness” of Hizbollah for the
community in southern Lebanon is akin to the “representativeness” of the conventional soldier to the state. Yet there is another incentive for this. Given that Hizbollah is now responsible for the welfare of the people in the southern Lebanon, and the fact that Hizbollah believes that the government of Lebanon is ineffective in its ability to deal with Israel, it is foreseeable that Hizbollah will continue to act “without authority”. This implication is important, as it means that Hizbollah will continue to be treated by others as criminals or terrorists, and will continue to act without being bound by the principles of *jus ad bellum*.

Specifically, right authority has been the mainstay of *jus ad bellum* thinking, and it is only in the modern period that legitimacy in some form has been given to non-state actors. O’Donovan’s conception of war as an extraordinary extension of ordinary means of justice, especially in the sense that it is outside the traditional Westphalian idea of authority, means that non-state actors may have the ability to legitimately make war. Importantly, there are good normative grounds for doing so. By allowing for non-state actors to legitimately make war, i.e. by giving them “right authority”, the demands of *jus ad bellum* become applicable to them. In providing non-state actors “authority” to make war, many may see this as giving them a justification for war, which they previously did not have, however, in a practical sense, this may in fact place more restrictions on their existing actions, making them accountable for their aggression. The “representativeness” of the insurgent group in relation to their population will be tested by their declaration of war, and thus reinforce their legitimacy or remove it. In regards to the war as a whole, by giving non-state actors the authority to make war (which they currently do without such authority) the principles of *jus in bello* and *jus post bellum* come into effect, and further restrict the activity of war.
**Conclusion**

*Jus ad bellum* is one of the oldest principles in just war theory, and has undergone extensive redevelopment over the past two thousand years in an attempt to address various issues. War is defined as justice, specifically as an “extraordinary extension of ordinary means of justice”, and must in its intension seek to right the wrong (that just cause), and restore peace. Consequently, three problems arise specific to asymmetric war. Firstly, the interconnectedness between the insurgent and the population means that a higher proportion of civilian casualties must be considered as part of the decision to go to war. As such, for an asymmetric war to remain as a proportionate end, its cause must be greater than in a conventional war. The difficulty of asymmetric war in general means that the probability of obtaining justice (the prospects for success) is lessened and subsequent actions can compound the problem. War as extraordinary justice means that non-state actors (the insurgent) can actually have the ‘right authority’ accorded to them through their ‘representative’ status vis-à-vis the population.
The first part of this chapter will define the principle of *jus in bello*, and how this conflicts with asymmetric warfare. This part describes *jus in bello* as a principle that aims to limit the conduct of war, by ensuring that it remains proportionate and that it is discriminate: i.e., that the measures that are used are the minimum necessary to achieve its objectives, and that those measures discriminate between those who are targets, and those who are immune. Following is an account of counterinsurgency warfare that shows how the ideas of proportionality and discrimination can be impractical. Section two defines those who are not immune as those who are guilty of “direct material cooperation in the doing of harm”, a definition which builds on O’Donovan’s idea of war as justice as developed in the previous chapter. The final section will then look at three particular issues that are raised in the conduct of counterinsurgency, namely finding the balance between moral restraint and military prudence, the legitimacy of the insurgent and the subsequent use of “special measures” by the counterinsurgent, and the idea of “playing by the rules” when the other side does not.

*Part 1: Providing the Context*

*Jus In Bello: The Justice in War*

The second pillar of modern just war theory is *jus in bello*, the justice in war. While it may seem obvious that one’s conduct in a conflict would reflect on its overall ‘justness’, this was not the case for the early just war thinkers. Early just war writers like Cicero and Augustine predominantly focused on *jus ad bellum*, and criteria like just cause and right authority. While the works of Gratian and especially Aquinas made some progress towards limiting the brutal nature of medieval conflict, it was not until the sixteenth, with the work of
Vitoria and the questioning of the objectivity of justice that *jus in bello* became increasingly prominent. The effect was that if *jus ad bellum* could no longer be defined objectively, then *jus in bello* became especially important. Yet it was not until the modern age that the *jus in bello* principles of discrimination and proportionality were given substance.

Discrimination requires that soldiers in a conflict make realistic attempts to distinguish between those who are legitimate targets and those who are not. Central to this criterion is the concept of non-combatant immunity. One of the earliest statements of this principle was by the “Peace of God” movement of the 11th century, which forbade “all acts of warfare or vengeance against clerics, pilgrims, merchants, Jews, women and peasants…” (Bellamy, A. J., 2006: 31). In the 13th century, Aquinas developed one of the most important aspects of the criterion of discrimination, that of “double effect”. The principle of “double effect” suggests that any act may have two consequences, one intended, and one unintended; even if the intention of the act is ‘good’, there is the possibility that the unintended effect may be ‘bad’. Aquinas argues:

> Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, not from what is beside the intention, since this is accidental…And yet, though preceding from good intention, an act may be rendered unlawful, if it be out of proportion to the end… (Bellamy, A. J., 2006: 38).

This leads to the second criteria of *jus in bello*, that the tactics and methods of the war be in proportion to the ends sought. This criterion asks whether the tactics and military goals of the conflict are required or necessary to achieve the ends of the conflict as a whole. It weighs the consequences of the actions against the aims of that action. The oft-cited example is General Sherman’s siege of Atlanta during the American civil war. Sherman’s defence for his shelling of residential areas was that it was a military necessity (Bellamy, A. J., 2006: 92), (Walzer, M., 2000: 32-33). Yet the question is often asked of whether this tactic was really a
necessity in order to pacify the population of Atlanta, or whether it was just expedient. Within the concept of proportionality (and sometimes referred to as the third criteria of *jus in bello*) is the idea of restriction of specific conduct and weapons. It refers to the banning of weapons which are inherently cruel (weapons that go beyond the minimum means necessary to achieve objectives, like hollow-point bullets), or indiscriminate (like weapons of mass destruction, be they biological, chemical or nuclear), and similar tactics (such as scorched earth policies).

*Jus In Bello: A Moral Conduct*

Within the principle of *jus in bello*, the criterion of discrimination focuses on ‘who is the target in warfare’. While such a statement at first glance seems straightforward, (and those who hold to ‘military necessity’ argue that it is), the definition of targets is difficult to answer, and is the subject of numerous theoretical debates. However, international positive law does provide some guidance on the issue, having codified the definition of civilians in various articles and regimes.

The question of discrimination is not a problem only for insurgency warfare. As Walzer points out, “…soldiers could probably not fight at all, except in the desert and at sea, without endangering nearby civilians” (Walzer, M., 2000: 153). The idea of “double effect” is but one answer to this problem that the just war theorists put forth. However, Walzer argues that merely having ‘good’ intentions is not enough, but there must be a “double

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6 Walzer defines the problem in terms of ‘permissibility’, in that it is a question that defines who may be permissibly targeted, and who should remain immune. This definition, Walzer argues, is a complex process that requires the balance of the pressure of morality against the pressure of ‘military necessity’. Walzer, M., (2000), *Just and unjust wars: a moral argument with historical illustrations*, Basic Books: New York.

intention”: “…first, that the “good” be achieved; second that the foreseeable evil be reduced as far as possible” (Walzer, M., 2000: 155). He elaborates:

The intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil is not one of his ends, and, aware of the evil involved, he seeks to minimise it, accepting costs to himself (Walzer, M., 2000: 155).

In other words, “double intention” seeks more than just proportionality, in that it demands that the actor make a “positive commitment to save civilian lives”, as well as the application of the “proportionality rule and kill no more civilians that is militarily necessary…” (Walzer, M., 2000: 155-6). Often, this is second part of the double intention doctrine is called “due care”, and is a significant part of both Walzer’s and international laws conception of jus in bello.

**Military Necessity and the ‘Special Measures’ of Counter-Insurgency**

Counterinsurgency by way of contrast requires that civilians be targeted in one way or another, hence directly violating the principle of non-combatant immunity. By definition, insurgents overcome the power deficit by disguising themselves as civilians, and hiding their ‘guilt’. Furthermore, insurgents will deliberately place civilians in harm’s way to exploit the propaganda value of civilian casualties (O’Donovan, O., 2003: 64). To use Mao’s metaphor, insurgents are the fish in the sea of the population. In this sense, the civilians are more than the insurgents’ “hostage shield”, they are the insurgents’ support network (Deady, T. K., 2005: 58).

The “military necessity’ of counterinsurgency involves the targeting of civilians, firstly, by accident (the accidental effect of Aquinas’ “double effect”), but secondly by strategy (in an attempt to get to the insurgent and neutralise him). In the case of the former, the proximity, both physically and strategically, between the civilian and the insurgent means that the counterinsurgent will inevitably target a civilian in an attempt to reach the insurgent.
From a military perspective, this “collateral damage” is simply the reality of war and cannot be helped. The latter, however, is an important part of counterinsurgency, and is arguably part of the analytical distinction between asymmetric and conventional war. The counterinsurgent may specifically target a civilian for one of two reasons. Firstly, if the civilian is directly assisting an insurgent, then targeting may be in the form of direct attack (say, the arrest – and possible execution – of individuals) or more benign methods (like the isolation of the village through curfews occupation or “strategic fortified hamlets”). Direct targeting can also take the form of retribution. The use of terror and coercive tactics in response to cooperation with insurgents is but another way of dissuading the population from cooperation. Secondly, the counterinsurgent may target entire peoples, whether or not they are specifically responsible. Benevolently, this tactic takes the form of ‘hearts and minds’ policies, which aim at gaining the support of the population through propaganda, or less benign methods, like cultural annihilation (Merom, G., 2003: 37).

*Jus In Bello: The Puzzle Revisited*

Herein lies the difficulty: by definition, just war theory demands that discrimination between ‘combatant’ and ‘non-combatant’ be observed, yet at the same time, insurgency demands using the population, even at their expense, and counter-insurgency demands high levels of brutality in order to limit casualties incurred. As O’Donovan explains, “the insurgent makes his [point] by forcing his opponent to slaughter the innocent unintentionally” (O’Donovan, O., 2003: 64). The just war ‘solution’, Walzer’s “double intention”, is insufficient, in that even the example he uses to illustrate his idea is on the conventional battlefield, with soldiers in uniform, and civilians hiding in basements set apart from the combatant. Simply importing Walzer’s development of ‘double effect’ so that it includes ‘double intention’ is untenable, due to the fact that minimising the costs involved to the
counter-insurgent at cost to himself would lead to a militarily impractical solution, and one that will “offer very little by way of restraints on the conduct of war” (Bellamy, A. J., 2005: 281). The aim, therefore, is to provide a way of firstly distinguishing the ‘targets’ in counter-insurgency, and secondly, to identify the scope of actions available to the counter-insurgent.

**Part 2: Formulating a Response**

*Jus In Bello: War as Justice*

By conceiving war as ‘extraordinary judgement’, defining legitimate targets becomes slightly easier, in that it becomes a matter of defining who is ‘guilty’ and who is ‘innocent’. Defining targets in this way overcomes problematic terms such as ‘civilian’ or ‘soldier’, and ‘combatant’ or ‘non-combatant’. O’Donovan defines “guilt” as the “direct material co-operation in the doing of wrong”: in other words, it defines targets based on their “practical engagement in an act that will wrong others” (O'Donovan, O., 2003: 36). As it is the state that is ultimately responsible for the decision to go to war, it is therefore the state that decides who is ‘guilty’ and who is ‘innocent’.

In an insurgency, the use of ‘guilt’ as opposed to ‘combatant’ for defining targets provides a more practical distinction, as a ‘non-combatant’ may still be providing “direct material co-operation in the doing of wrong”. The use of ‘guilt’ is similar, yet broader, to the concept of ‘threat’. Both place the counter-insurgent in some form of danger, yet ‘threat’ places the counter-insurgent in immediate danger (a real and imminent chance of harm), while ‘guilt’ encompasses indirect danger. In this sense, ‘indirect danger’ is a situation that would assist those who would place the counter-insurgent in immediate danger. In an insurgency, the consequences of such a definition are that those who in a conventional sense would be classed as ‘civilians’ (and therefore inviolate), are legitimately targeted. For example, O’Donovan argues that a “mechanic, a politician, a computer operator and a driver”
would all be classed as non-combatants, as they are not immediate threats. However, they may be in positions that can be defined as indirectly dangerous to counter-insurgents, and therefore lose their ‘immune’ status (O'Donovan, O., 2003). However, Walzer makes that point that even thought a target is ‘guilty’ by O’Donovan’s definition, it does not mean that they need to be killed. Acts of restrain in this sense “are acts of kindness… they may be likened to supererogatory acts. Not that they involve doing more than is morally required; they involve doing less than is permitted” (Walzer, M., 2000).

**Jus In Bello: Culpability and Agency**

Classifying ‘targets’ as either “guilty” or “innocent” has problems, due to the use of value-laden terms in the definition. In an anarchic international system, there is no power to arbitrate between the sides, and therefore, no power to assign ‘guilt’ or ‘innocence’ other than the protagonists themselves: for this reason, war is considered an ostensible justice. The definition then, of providing “direct material co-operation in the doing of wrong” is unsatisfactory, in the sense that it is difficult to determine “wrong”, and therefore, no way to define who is ‘guilty’. Furthermore, an insurgency becomes even more difficult to determine “guilt” in situations where there exist insurgents (deliberately disguised as ‘civilians’ to hide their guilt), supporters of the insurgency, and those who are being used as “hostage shields” by the insurgents. This raises the question of collective and individual guilt, as a single person may be specifically guilty of a particular action, yet a community may be collectively guilty as well. Hence, there are different types of guilt as well, and this further complicates the issue.

However, an actors’ ‘culpability’ can be found in the “direct material co-operation” in the *doing of harm*, not the “doing of wrong” as O’Donovan suggests. Adapting O’Donovan’s definition, targets are those who are involved in the ‘practical engagement in an act that will
harm others’. In this sense, harm is value-neutral, and therefore more suitable than “wrong”. Furthermore, harm is a term that has varying levels, and as such, provides a better determinant for cases of individual versus collective guilt. Israel’s strategy of precision strikes on Hamas or Hizbollah ‘bomb-makers’ would arguably be inappropriate if applied to whole villages because of the harm caused. Guilt based on harm provides a better distinction, and therefore better responses.

**Part 3: Exploring the Consequences**

**Jus In Bello: Moral Restraint Or Military Prudence**

The most fundamental problem with counterinsurgency is the ability to balance ‘military prudence’ with ‘moral restraint’; it is a question of the overall limits of action. O’Donovan makes this problem clear when he asks “how [can a] counterinsurgency force… operate effectively while maintaining a respect for discrimination which insurgency does not share?” (O'Donovan, O., 2003: 64). Merom suggests, “violence is not only the primary means of getting the desired results of war. Rather, it is also a way of managing its costs” (Merom, G., 2003: 42). In other words, indiscriminate (and therefore higher levels of) violence is the most militarily expedient option, yet ‘surgical’ violence, (while supposedly more moral) will lead to increased casualties.

In the literature on counterinsurgency, the theme of “isolation” is repeated. In other words, ‘isolation’ is where the counterinsurgent targets the population that supports the insurgency, and aims to isolate them. It involves two dimensions, physical and psychological. Physical isolation is achieved through the depriving the insurgent of access to the population,

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8 The terms “annihilation”, “isolation” and “eradication” are taken from Merom’s book as three analytical strategies that are in practice, often conflated or used successively. In regards to the “isolation” strategy, it is often akin to “winning hearts and minds” Shafer, D. M., (1988), “The Unlearned Lessons of Counterinsurgency”, Political Science Quaterly, 103:1 57-80., or “attraction and chastisement” Deady, T. K., (2005), "Lessons from a Successful Counter-Insurgency: The Philippines, 1899-1902", Parameters, 35:1 53-68.
and hampering their movement (which is key to their military strategy). Psychological isolation aims to drive an ideological wedge between the insurgent and the population such that the population no longer wishes to support the insurgent. Furthermore, isolation can have both benevolent and brutal extremes. At one end of the “spectrum” brutal isolation involves, in the physical dimension, the indiscriminate bombing of villages or ‘civilian’ populations, terror and coercive tactics, and destruction of property as retribution for cooperation, and in the psychological dimension, the destruction of the culture (or the national identity) of the population. At the other end of the “spectrum” benevolent isolation includes the “hearts and minds” policy, usually achieved through propaganda, or what the US currently terms “public diplomacy” (Beehner, L., 2005). Physically, isolation is done through the use of concentration camps (like those used by the British in the Boer War), fortified strategic hamlets (used by the US in Vietnam), and the use of checkpoints, curfews and neighbourhood cordons (Deady, T. K., 2005: 66). It is important to note that these differences are purely analytical, in that physical and psychological isolation are used complementarily, and the ‘brutal’/’benevolent’ divide can be both complementary or sequential (Merom, G., 2003: 38). For example, Deady comments,

Civic action and benevolent treatment alone were unable to win the Philippine campaign. Armed only with good deeds, soldiers were unable to either protect Filipino supporters from retribution or deny support to the insurgents. It was only with the addition of the chastisement tools... that soldiers were able to separate guerrillas from their support. (Deady, T. K., 2005: 66)

While isolation is not necessarily an end in itself, as it should invariably lead to the exposure of the insurgents and therefore to “their destruction, or at least their neutralisation” (Pustay, J. S., 1965: 83), it seems to have problems with the definitions of discrimination. The aim of discrimination is to provide distinction between the “culpable” and the “immune”, yet by definition, isolation involves whole villages, cities, peoples, and is therefore indiscriminate. Walzer suggests that a dual strategy is required. In areas where support for the insurgent is
minimal or moderate, a strategy of “winning hearts and minds” through political and police-
type tactics is preferable. Alternatively, in areas where insurgent support is high, then a more
conventional approach is required, surrounded and attacked in force whereby the principle of
‘double intention’ can be brought into effect (Walzer, M., 2000: 194). In the former situation,
isolation takes the form of an ideological split between insurgents and their supporters, in the
latter, the soldiers (if “properly prepared and equipped”) “need not accept unbearable risks in
fighting… [and] need not inflict indiscriminate destruction” (Walzer, M., 2000: 194). He
points out, however, that the conventional approach needs to be followed by the ‘winning of
hearts and minds’.

*Jus In Bello: Legitimacy and the Use of Special Measures*

Another crucial debate in counterinsurgency has been the status of the insurgent
according to international law. If the insurgent is not a legitimate wielder of coercive power,
(the traditional province of the state), then the insurgent loses his “war rights” under the war
convention, and is therefore subject to the “special measures” of the counterinsurgent
Geneva Convention, it is prohibited to feign a civilian or non-combatant (I.C.R.C, 1977).
Furthermore, Article 44 states that a combatant must carry,

…his arms openly:
(a) during each military engagement, and
(b) during such time as he is visible to the adversary while he is engaged in a military
deployment preceding the launching of an attack in which he is to participate. (I.C.R.C, 1977)

Walzer points out that the use of civilian clothing as a ruse and a disguise is a key moral
problem, in that it violates the “implicit trust upon which the war convention rests: soldiers
must feel safe among civilians if civilians are ever to be safe from soldiers” (Walzer, M.,
2000: 182-183). Accordingly, Walzer argues that in situations where guerrillas use this
deception to attack soldiers, such acts are not acts of war, but acts of assassination. As such,
“…assassins cannot claim the protection of the rules of war; they are engaged in a different activity” (Walzer, M., 2000: 183).

If asymmetric warfare is assassination and not warfare in the strictest sense, how does this affect the actors’ status and treatment? Specifically, does this problem allow the counterinsurgent to employ ‘special measures’, and act outside the Geneva Conventions? It is quite clear that the US, as the case of Guantanamo Bay suggests, does believe that because the combatants were not in uniform, they are not covered under the Geneva Convention (Tully, A., 2006).

However, such a position does not serve to limit conflict, and can serve to worsen it if the insurgent believes they are not being taken seriously. Walzer suggests “…guerrillas are protected by the civilians among whom they stand” because of their ‘representativeness’. Assuming the popular support is voluntary, just as soldiers acquire “war rights” in the service of their population, so too guerrillas gain those same rights. Therefore, if the support of the population is non-existent, then so too are the guerrilla’s “war rights”, and the insurgent loses his legitimacy (Walzer, M., 2000: 185). In this case, the response by the US would seem justified, as the insurgent becomes little different to a criminal. By way of objection, what if the support of the population is gained through the use of terror and coercion (Merom, G., 2003: 40)? In response, Walzer explains that “if [the] killing of civilians were sufficient to win civilian support, the guerrillas would always be at a disadvantage, for their enemies possess far more fire power than they do” (Walzer, M., 2000: 184-185).

O’Donovan takes a similar line, in that he too sees the problem of conceiving insurgents as criminals, and likewise aims to provide them with some legitimacy. He suggests that providing incentives to insurgents would help to persuade them to observe limits on warfare, especially in regards to discrimination (O'Donovan, O., 2003: 65). He argues that
international law has progressively made changes to the status of “irregular” forces to include insurgents, “with the idea of tempting such movements to sign up to international norms of conduct” (O'Donovan, O., 2003: 66). His solution is to bring insurgency more in line with conventional warfare, and in return, ensure that the rights of insurgents are provided as war prisoners, not criminals.

_**Jus In Bello: Reciprocity and “Playing by the Rules”**_

In O'Donovan’s analysis of just war theory and counterinsurgency, he says there are two questions that arise from the use of the civilian population as a “hostage shield” by the insurgents. The first question of discrimination has already been mentioned at the start of this Part. The second question is “…can the conduct of counterinsurgency be conducted in such a way as to persuade insurgents to abide by the principle of discrimination?” (O'Donovan, O., 2003: 64). This question I cannot answer, but it raises the point: if the insurgent refuses to ‘play by the rules’, what impact does this have on the counterinsurgent?

Thus far, the imperative has been on the counterinsurgent to moderate his conduct, but what happens in situations where the insurgent is fighting the war unjustly? The recent war in Lebanon provides a clear example. The spark that started the war was the abduction of two Israeli soldiers by Hizbollah on July 12, 2006. However, Article 34 of the Fourth Geneva Convention specifically states that the taking of hostages is prohibited (I.C.R.C., 1949). It can be argued that as the soldiers were reservists on patrol on the Israeli side of the Israel-Lebanon border, this is a case of abduction, not the capture of prisoners of war⁹. The point, therefore, is if the other side violates the rules of war (and therefore fights an unjust war), does that give the right for the counterinsurgent to do the same?

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⁹ In light of the little information provided by Hizbollah about the condition of the prisoners, implying that they are not treated as prisoners of war under the Geneva Convention, it is possible to speculate that their situation reflects a hostage situation, not a war prisoner’s situation.
Reciprocity aims for the limiting of war, and is therefore important, even if at times it seems as though one side is played for a ‘sucker’. It is possible that reciprocity could have the opposite effect, as a violation of discrimination could lead to a ‘tit-for-tat’ scenario that worsens a conflict rather than limits it. It is the first step in ensuring restraint on the part of the protagonists, which has been the purpose of the just war tradition. As O’Donovan points out, “… every step towards restraint gains some ground for the civilising of armed conflict” (O’Donovan, O., 2003: 65). Secondly, ignoring the rules invalidates the just war tradition altogether, proving it ineffective and therefore useless, and as a result, removing the moral restraints on war. As Bellamy argues,

…that rule-breaking and unjust behaviour in the name of necessity will encourage our adversaries to use similar tactics and leave us without a common moral language to evaluate the justness or otherwise of such actions. (Bellamy, A. J., 2005: 278)

In short, the result would be either increasing levels in brutality with little or no restraint, or the lack of legitimacy of the counterinsurgent in the eyes of the population. This is difficult to manage, because behind asymmetric military strategies is the great asymmetry of power. However, this is not impossible to achieve, as there will be the gradual move toward peace, and on the part of the insurgent, the move to more ‘moderate’ tactics as a result of compromise with the counterinsurgent.

**Conclusion**

Reiterating the point made earlier in this chapter, the imperative is to limit the conduct of war as far as possible. In the case of asymmetric warfare, it is doubly necessary as the conflict inherently involves a civil population. Particularly, two issues were covered. Firstly, this chapter explored the definition of discrimination in counterinsurgency, highlighting the

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10 The violations of discrimination by the counterinsurgent, while at the same time, their demands for insurgent to observe those same principles have a twofold effect. It means that the counterinsurgent is acting hypocritically, and therefore morally reprehensible, and also, it means that that as a result, the task of isolating the insurgent from the population that much more difficult.
difficulties experienced because of the seemingly opposing natures of counterinsurgency and just war theory. Specifically, defining “culpability” in terms of “direct material co-operation in the doing of harm” is a definition that builds on the work of O’Donovan, but avoids the use of value-laden terms, which make the definition difficult to use in practice. Secondly, it covered three “puzzles” which dominate discussions of how a counterinsurgency is fought. The first puzzle showed that there is a need for balance between strategies of “military prudence” and “moral restraint”, concluding that the balance is found in a mixture of “isolation” and “eradication” techniques that use the principle of “double intention” as described by Walzer. The second puzzle demonstrated that the unique nature of insurgency needs to be considered, and provisions made so as to allow the insurgents legitimate status, and therefore hopefully hold them accountable to the rules of war. The third puzzle demonstrated that despite what seems to be the unjust conduct of the insurgent in the conventional sense, there is a real need to “play by the rules” and force the insurgent to reciprocate.
All’s Well That Ends Well?
Jus Post Bellum and the Conclusion of War

This chapter aims to build upon the previous two by showing that the themes of discrimination and proportionality must be carried through to the end of the war, and the development of a post-war settlement. This chapter will begin with an introduction to *jus post bellum* and the creation of a just peace. Being one of the most recent developments in just war theory, this section is relatively extensive in order to provide an account of what *jus post bellum* is. Following is an analysis of how the effects of asymmetric warfare can inhibit *jus post bellum*. Section two will discuss how war as justice will define guilt and therefore carry through the theme of proportionality and discrimination. Key to this section is the idea that as the insurgent is ‘representative’ of the population that they are connected to, guilt is similarly distributed in a democratic ‘civil society’ because of the behaviour of its leaders. Finally, the implications of this are discussed through attempts to resolve three puzzles: the question of guilt in post-war settlements, the problem of compensation and the establishment of post-war order, and the puzzle of war-crimes tribunals. Specifically, I wish to consider the place of war crimes tribunals in counterinsurgency by asking two main questions: do war crimes tribunal help or hinder the establishment of a just peace in an insurgency scenario, and secondly, are war crimes tribunals a suitable institution to deal with the guilt of a people, as opposed to an individual?

*Part 1: Providing the Context*

*Jus Post Bellum: The Justice After War*

“Three periods must be distinguished with respect to every war: its inception, its prosecution, and the period after victory” writes Francisco Suarez, the sixteenth century Spanish theologian, and one of the most influential writers on international law. The idea of a
“just peace”, of justice after the hostilities of war have ceased, is therefore not new, though it has only been recently that it has been considered as part of the just war tradition. There are two main reasons for this: firstly, the growth of humanitarian intervention and peacekeeping has raised the awareness of returning a state to a stable peace after the conclusion of military operations, the second being the increasing acknowledgement of an individual’s accountability for their actions in conflict.

Yet what is it that \textit{jus post bellum} demands? It is more than just the \textit{status quo ante bellum}, the state of affairs before the conflict. As Walzer points out, “…one ought not to aim for the literal restoration of the \textit{status quo ante bellum} because that situation was precisely what led to war in the first place…” (Orend, B., 2002: 45). When considering this question, the ends of \textit{jus post bellum} stand in relation to the goals sought after by \textit{jus ad bellum}, and in relation to the means (\textit{jus in bello}) required to achieve those goals. Importantly, Walzer argues that the end goal should be a

“…‘better state of peace’. And \textit{better}, within the confines of the argument for justice, means more secure than the \textit{status quo ante bellum}, less vulnerable to territorial expansion, safer for ordinary men and women, and for their domestic self-determinations.” (Walzer, M., 2000: 121-122).

So on the one hand, \textit{jus post bellum} is about ends. It focuses on the condition that the state is in after the conflict. However, \textit{jus post bellum} requires more: it is about responsibility and accountability. In this way, \textit{jus post bellum} demands a two-fold approach to justice, the ‘just peace’ (the post-war condition of the state) and what I call ‘agent culpability’ (the accountability of those responsible for the crime of – or crimes in – war).\textsuperscript{11}

\textsuperscript{11} Orend elaborates on this and puts forth six criteria: ‘proportionality and publicity’, ‘rights vindication’, ‘discrimination’, ‘punishment’, ‘compensation’ and ‘rehabilitation’ Orend, B., (2002), “Justice After War”, \textit{Ethics and International Affairs}, 16:1 43-56. Arguably, these six can be reduced to the two criteria I suggest. Furthermore, only discrimination, punishment, and compensation pose serious challenges to just war theory in an asymmetric context, and therefore I will elaborate these concepts more fully.
‘Just peace’ is a concept that looks at the final position of the combatants at the end of the war. It is a situation that describes the restoration of rights to the actors, the removal of the injustice(s) that initiated the conflict, and the transition from war to peace. Importantly, the means to achieving this (the post-war settlement) must be proportionate to the cause of the conflict (otherwise the post-war settlement itself becomes an injustice) (Orend, B., 2002: 46-47). It must ensure that the original injustice has been righted, and seen to be righted: essentially, the “aggression” has been rolled back. The establishment of a just peace may also involve compensation, the reparations that the aggressor state makes to the victim(s) in order to help repair some of the damage caused by the war. Finally, there must be some guarantee that future aggression does not occur.

‘Agent culpability’ determines responsibility, and is a necessary part in developing the just peace. Essentially, there are two parts: who is responsible for the conflict, and if they are responsible, what should the response (punishment) be? In determining responsibility, one must discriminate between those who are guilty and those who are not. Furthermore, discrimination must also provide for varying levels of guilt, as well as different types of guilt (collective and individual). Having determined the extent of responsibility, it is necessary to develop a response that maintains the justice of the conflict by being proportionate in the exercise of punishment.

*Jus Post Bellum: A Moral Conclusion*

The problem of distinction becomes most apparent in the situation of providing “rehabilitation” and “compensation”. If, as Orend argues, the “victim state” is deserving of some compensation for being wronged, who is going to provide it? Despite the claims Orend makes, that an aggressor nation’s elite has “historically…abused their power internally to accumulate personal fortunes”, it would be difficult to argue that an insurgency organisation
would have the resources to repay a state the larger costs of a counterinsurgency war.

Insurgents are by definition inferior in terms of power when compared to the state, and this means that they are economically inferior as well. As such, demanding compensation from an “aggressor” insurgent force seems problematic. Similarly, insurgent organisations have very little in terms of institutions that can be reformed. It is true that rehabilitation via demilitarisation and disarmament remains crucial in an insurgency context, yet the ideas like “deep structural transformation toward a peaceable liberal democratic society” do not seem as relevant (Orend, B., 2002: 56).

Although it is important to call everyone to account for their conduct within a conflict, insurgents and counterinsurgents alike (and war crimes tribunals seem to be a sufficient means for achieving this), the issue of accountability for the “crime of war” is more difficult. In asymmetric warfare, because there are strong ties between the populace and the insurgent, war-crimes tribunals as ‘victor’s justice’ may have the opposite effect. Instead of promoting post-war reconciliation and the transition to peace, it may in fact cause instability and further divisions within society, in that a well supported insurgent leader may be considered guilty of starting an aggressive war that they (and part of the populace) thought just.

*Counter-Insurgency and the Consequences of its Conduct*

In a conventional definition of *jus in bello*, targeting civilians means that the counterinsurgent is guilty of war crimes, and liable for punishment. Consequently, the increasing levels of violence that are required by the insurgent to “manage” their own casualty levels would also fall under war crimes. In short, a counterinsurgency war would not be able to be fought without the soldier being at certain risk of prosecution.

Furthermore, the inability for the counterinsurgent to distinguish between “civilian” and “soldier” within the conflict has implications for the post-war distinction between the
two, and the designation of guilt. The “civilian” disguise does not simply apply to the ‘soldier’, but to the ‘political’ hierarchy as well. How then, can the counterinsurgent after the war achieve justice if it is impossible to distinguish the guilty from the innocent? Similarly, if there was a strong connection between the insurgent and the population, is it possible to punish all involved, and how is it possible to distinguish the varying levels of culpability?

The most noticeable effect of a counterinsurgency campaign is the aftermath of the tactics that are used. Put simply, counterinsurgency tactics and their effects make it difficult to establish the “just peace” and to make the transition from a state of war to peace. Counterinsurgency, in its optimal configuration between benevolence and prudence, still involves dividing communities by isolation to expose the insurgent; it still involves dissuading the populace from supporting the insurgent. As such, distrust, dislike, and fear of other communities may affect the post-war society, long after the reasons for the isolation have passed.

*Jus Post Bellum: The Puzzle Revisited*

In essence, *jus post bellum* requires the principles of discrimination and proportionality be carried through from the beginning to the end of a conflict, and that justice remain the focus. By definition, an insurgent is one the disguises himself as a civilian, deliberately making discrimination difficult. Yet for a post-war settlement to be just, discrimination must be observed. Proportionality is also difficult because in a counterinsurgency war, brutality is a means of casualty management, and “civilians” are tied inherently to the conflict. Yet, if a war becomes necessary, if the cause is so great as to justify a counterinsurgency war, then the use of brutality and “disproportionate” tactics to achieve a “just” end must be tempered by the need for the ability to provide a “just peace”, which is
inhibited by such brutality. Given this paradox, there is a need to discuss how justice can be achieved in a post-counterinsurgency-war situation.

Part 2: Formulating a Response

Jus Post Bellum: War as Justice

War as justice ensures that the end goal of war is precisely that, justice. In this regard, war as justice does not seem unique or innovative; the most substantial discussion of *jus post bellum* has been on war crimes tribunals, which are in and of themselves, predicated on the quest for justice. In this sense, the definition of war as an “extraordinary extension of ordinary means of judgement” will seek to bolster such analyses.

Just as the cause for a counterinsurgent war must be greater than that of a conventional war because of the increased cost to “civilians”, so too is the need for justice after a counterinsurgency war greater than a conventional war for the same reasons. Merom points out that counterinsurgency produces a much more defined normative difference because on the part of the counterinsurgent, because the war cannot be justified in terms of survival of the state (Merom, G., 2003: 21). Counterinsurgency war as justice requires the quest for justice all the way through, even after the cessation of hostilities.

Jus Post Bellum: Culpability and Agency

Counterinsurgency war as justice will therefore invoke the use of terms as guilt and innocence, and this, as mentioned earlier, is central to the obtaining of justice, and the establishment of a just peace. Walzer demands that we “search for guilty men” who are responsible for the crime of war, and *jus post bellum* provides the framework for doing so (Walzer, M., 2000: 109-110). Importantly, guilt is defined by one of two things: violations of *jus ad bellum*, or violations of *jus in bello*. In regards to the former, the Interim Report of the Winograd Commission is a step in this direction. The Interim Report focuses on the
“decisions related to starting the war”, and locates responsibility in the “highest political and military echelons” (Israeli Ministry of Foreign Affairs, 2007: Section 6).

However, the use of guilt and innocence in regards to *jus ad bellum* is problematic. It was suggested in the previous chapter that in an anarchic international system, there is no “judicial superior” to assign guilt, other than the protagonists themselves. Just as it is problematic to determine guilt in a counterinsurgency war, so too is it problematic to declare an actor who makes the decision to go to war “guilty”: such a definition may lead to the claim of “victor’s justice”. Bellamy explains how Grotius approached the problem:

…objective justice was clouded by unavoidable ignorance. Whenever a state acted in good faith believing that it acted justly, it had ostensible subjective justice on its side and committed no wrong. (Bellamy, A. J., 2006: 75)

Yet if justice in terms of *jus ad bellum* can only be subjective, how then can one achieve justice in *jus post bellum*, and therefore establish the just peace?

In the international realm, where there is no international arbiter, and guilt is dependent on an actor who is both judge and prosecutor. By defining guilt not in terms of “wrong” as O’Donovan does for *jus in bello*, but in terms of harm, most of the subjectivity regarding justice is overcome. In regards to war in general, *jus post bellum* aims at achieving justice on the basis of a harm that has been done. Discrimination between “civilians” and “insurgents” is defined by harm caused, i.e. an insurgent is involved in harming others, whereas a civilian is one who is not. Proportionality and punishment become based on the harm that is caused in the *ad bellum* and *in bello* phases of a war. This is important, because the need for justice and the transition to peace is usually based on the perception of harm caused.
**Part 3: Exploring the Consequences**

*Jus Post Bellum: Discrimination, Guilt and the Post-war Settlement*

Just as in *jus ad bellum* and *jus in bello*, *jus post bellum* must distinguish between those who are guilty and those who are not in providing a just post-war settlement. Guilt as culpability in the doing of harm provides an avenue for making this distinction. In this way, those who make the decision to go to war are guilty, in that they have done harm through the act of war itself. The doing of harm should encompass not only direct harm (the going to war), but also the provocation of war. In this sense, while it may seem harsh that a ‘victim’ could be called to be accountable for the decision to go to war, this reflects the original intent of the just war thinkers. Furthermore, guilt as culpability can also encompass not just state or national leaders, but is broad enough to allow for non-state actor leaders as well. Similarly, the population that supports the insurgent in going to war would also have to consider the consequences of being accused of “aggression”. The interconnectedness of the insurgent and the population means that if the insurgent leader is culpable of doing harm, the population shares some of that burden. The caveat lies in determining whether collective or individual guilt is the best approach.

Importantly, in an asymmetric scenario, as the population is tied to the conflict, and are arguably more ‘active’ in the conflict than the population of a state, the idea of guilt and individual responsibility will involve these ‘civilians’. This definition means that discriminating between those who are guilty and those who are not is based on harm caused, and calls individual members of society to account. This does not mean that all of society would have the same level of guilt, but effectively, all would be called to account for their actions. The person who may have provided food and shelter for an insurgent band *in good conscience or under coercion* may be pardoned, the person who houses weapons and
misleads the counterinsurgent may be forced to contribute to the compensation/reparations that the insurgency may or may not be required to pay, while the insurgent leader may tried and gaoled. Orend’s claim that a post-war settlement that places all of society under the financial burden of socioeconomic sanctions is inherently unjust in that it fails to discriminate still holds (Orend, B., 2002: 48). However, in a counterinsurgency, the interconnectedness between the insurgent and the population means that by definition, there is a distribution of guilt (though there be differences in the proportion of guilt) and Walzer’s demand that the costs be distributed amongst society would then seem more discriminate, and in line with Orend’s proposition (Walzer, M., 2000: 297). In this way, levels of culpability are proportionate to the levels of punishment.

So what would this look like in practice? The most common form of response to an injustice by the UN Security Council, and in some respects, the punitive measures taken by the US and its allies after the 1990 Gulf War, is in the form of targeted sanctions. Such sanctions aim to impose direct punishment and culpability upon those who are directly responsible, usually the organisations that fund groups like al-Qaeda. For example, part of the response to the 9/11 attacks was through targeted financial sanctions, in the form of SCRs 1373 (United Nations Security Council, 2001), and 1526(United Nations Security Council, 2004). Targeted financial sanctions, as the name suggests, are the use of financial sanctions, such as the freezing of assets, the withholding of credits and loans, and the denial of foreign assistance, against specific entities or individuals, especially those organisations that fund “terrorist” groups. (Cortright, D., and Lopez, G. A., , 2002b: 94). Targeted financial sanctions are preferred to general sanctions as they “minimise unintended adverse consequences and achieve greater effectiveness” (Cortright, D., and Lopez, G. A., , 2002b: 93). Furthermore, they have been essential to the UNSC’s response to terrorism as they can be directed towards
organisations and individuals, not just to states (Cortright, D., and Lopez, G. A., 2002a: 115). While in the post-9/11 scenario, targeted financial sanctions are used in place of force, it is possible to see how this strategy can be used in a post-war settlement, and therefore provide a punitive measure that discriminates between the ‘guilty’ and the ‘innocent’.

**Jus Post Bellum: Compensation, Rehabilitation and Post-war Order**

There is some debate about the practicality of punishment, compensation, and rehabilitation in the production of a just post-war order. It has been previously discussed that while guilt may be broad enough to encompass all of society, punishment may not affect everyone, and in some cases, it may not even be desirable, becoming a barrier to post-war order. In these cases, does the call for compensation still hold?

Consider the case that Orend raises in regards to the post 9/11 war in Afghanistan. On the contested assumption that the war was in fact just, and that it was fought justly, did the US have the right to call for compensation for the damage caused by the 9/11 attacks? It could be argued that the damage caused to the financial markets as a result of the destruction of the World Trade Centre, as well as the actual cost of the destruction of the buildings themselves and to the surrounding financial district, would have warranted the US’s call that Afghanistan should be held responsible for part of the financial burden (Orend, B., 2002: 49). But the problem lies in again defining who is responsible for the costs. For the sake of the argument, assume that all citizens consented to the Taliban’s support for al-Qaeda’s attack, and as such, all citizens are therefore responsible for the costs. A post-war tax would possibly be Walzer’s demand. However, in a country that is suffering from poverty, the destruction of much of the infrastructure during the ensuing war, or simply the lack infrastructure in the first place, the feasibility of such compensation is poor. Orend points out that the interim Afghani government has in fact asked the US government for financial assistance in post-war
reconstruction (Orend, B., 2002: 49). Such a situation exhibits how punishment and compensation though possibly warranted in one sense, could in fact cause further injustice.

Consider the case of the reparations clause of the Treaty of Versailles. Keynes argues:

The policy of reducing Germany to servitude for a generation, of degrading the lives of millions of human beings, and of depriving a whole nation of happiness should be abhorrent and detestable,—abhorrent and detestable, even if it were possible, even if it enriched ourselves, even if it did not sow the decay of the whole civilized life of Europe. Some preach it in the name of Justice. In the great events of man’s history, in the unwinding of the complex fates of nations Justice is not so simple. And if it were, nations are not authorized, by religion or by natural morals, to visit on the children of their enemies the misdoings of parents or of rulers. (Keynes, J. M., 1920)

In terms of the Israel-Lebanon war, where the mainly Shi’a supporters of Hizbollah are also some of the poorest in Lebanon, the call for reparations for the bombing of cities like Haifa and Kiryat Shemona (which had 876 rockets fired at it (Erlich, R., 2006: 153)) would be incredibly difficult. Considering that the damage caused in Israel alone was estimated at $3.5 billion, it would seem impossible for Hizbollah and southern Lebanon to pay that kind of compensation, especially in light of their own costs ($2.8 billion (Reuters, 2007)).

The other difficulty is the rehabilitation of “aggressors”, especially if those aggressors are non-state or sub-state actors. Historically, states have encouraged insurgents to take part in the “rules of the game” through political integration. As such, insurgent groups like the IRA have established political parties in an effort to supplement and eventually replace the military wing. This process occurs as the result of compromise and moderation between the insurgent and the counterinsurgent. Specifically, the treating of captured insurgents as political prisoners or prisoners of war as opposed to criminals is a way of encouraging the insurgents to moderate their actions. As Merom points out, violence can only achieve so much, and once it exceeds its utility, it must therefore be replaced by more moderate approaches (Merom, G., 2003: 258).
Jus Post Bellum: War Crimes Tribunals – Vae Victus!12 Or Something More?

Much attention has already been given to the topic of war crimes tribunals, whether they are simply victor’s justice or not, whether they are morally satisfying (O'Donovan, O., 2003: 109), or whether they are even effective. The sixteenth century just war theorists argued against such measures, in that such an activity encouraged vengefulness and implacability (ideas that are inconsistent with justice), they undermined the ability for actors to act in “good faith”, and because they were seen as providing cause for future conflicts (O'Donovan, O., 2003: 109-110). Despite this criticism, authors like Bass, O’Donovan and Orend still maintain that war crimes tribunals serve a moral purpose, and are legitimate tools in establishing the just peace.

Are war crimes tribunals the appropriate institution? The interconnectedness between the insurgent and the populace means that the trial of insurgent leaders may cause further instability. Orend points out that “sometimes such leaders… retain considerable popular legitimacy, and thus bringing them to trial could seriously destabilise the polity within the aggressor” (Orend, B., 2002: 53). There is a real need to consider the context, (and whether the trial of leaders will affect the post war stability), while on the other hand, there is the need for the prosecution of those guilty parties who have caused acted aggressively.

Consider a hypothetical war crimes tribunal that could have been held in the aftermath of the 2006 Israel-Lebanon war. Here is a situation where there are demands for justice in response to perceived war crimes: the abduction of soldiers, the shelling and bombing of residential areas, the placing of those residential areas at risk through the hiding of military equipment there, the use of disproportionate and indiscriminate weapons, etc. Both sides of the conflict (Israel and Hizbollah) would have been guilty of doing harm, especially harm

12 “Woe to the conquered!”
outside the traditional war convention. Underlying this particular war is the Arab-Israeli conflict. In addition to the various issues that caused the specific war, there are more general issues that will continue to provoke conflict. In scenario, the use of war crimes tribunals as something “truth and reconciliation” councils can help to provide the justice that is required, but still ensure the stability that is peace. While “truth and reconciliation” councils have been used within states to overcome specific issues that caused intra-state conflict, it is possible to imagine a similar institution functioning to resolve some of the deeper issues that underlie the 2006 war.

The problem though lies in its ability as an institution to actually achieve justice by bringing individuals to trial. In an insurgency context, this inability to bring the guilty parties to trial becomes even more difficult in that the insurgents are disguised as “civilians” and discrimination is difficult. One response would be to therefore hold all people accountable (as guilt of doing harm). In this sense, the opposite extreme occurs, where there are too many people to be put on trial: how does an institution like a war crimes tribunal cope with putting a large population on trial? Is a war crimes tribunal the appropriate institution for providing justice? By placing the insurgent in a position of responsibility for the actions of the community as a whole, war crimes tribunals can overcome these problems and remain relevant. How so?

In democratic institutions, responsibility is thrust upon the state, especially the political leaders. In democracies, leaders can be defined in terms of their “representativeness” in relation to the population. If a nation commits aggression, then the leaders who represent the people are the ones who are held accountable for that aggression. Walzer argues that leaders who act in the name of the state do not diminish their culpability despite the fact that they act in “the national interest”; and he makes the same case for revolutionaries (and by
association, non-state/sub-state actors) (Walzer, M., 2000: 290). In this way, insurgent leaders are representative of the populations that support them, and are therefore held accountable for the actions that are committed in their name. While guilt as the doing of harm may encompass the whole community, the insurgent who disguises himself as a “civilian” is therefore accountable for the actions taken by the community.

**Conclusion**

It is an aspect of the theory that ensures that war is limited by providing a solution to the war that inhibits further conflict. Essentially this means the production of a peace that is “better” than the peace that existed prior to the war. As such, the principles of *jus post bellum* are designed to facilitate the development of a just post-war settlement, and subsequent post-war order that reflects the ideals of discrimination and proportionality that are central to just war theory. As such, this chapter firstly placed the post war settlement in the context of war as justice, and as such, ensured that such a settlement did achieve justice, by showing that justice was achieved through the war, and that the guilty were held accountable. Subsequently, three problems were analysed. The first dealt with the puzzle of using this definition of guilt in providing a post-war settlement. Key to this puzzle was the fact that as society (being connected to the insurgent) shared the guilt of the insurgent who did the actual harm. As such, discrimination remains intact even if a post war settlement were to encompass all of society. Following from this, the puzzle of compensation and rehabilitation, and its effects on the provision of post-war stability, was discussed. If the Victim for the war deserved compensation, this could only work if such “punishment” did not cause harm to the victim society, and therefore cause further injustice. The final problem dealt with the much-discussed puzzle of war crimes tribunals, and whether they are suitable solutions in the context of asymmetric warfare. Importantly, just as the society can share the burden of guilt
through compensation, insurgents can share the burden of guilt through war crimes tribunals. Furthermore, because asymmetric wars can often have underlying causes other than those that initially started the war, there is a need for war crimes tribunals to function in a similar way to “truth and reconciliation” councils as well.
This thesis has aimed to provide a reconsideration of just war theory so that it can remain relevant to asymmetric warfare. Underpinning this thesis is the importance of the individual. Importantly for just war theory, the individual has worth, and harm is therefore wrong. Secondly, the individual is moral and rational, and therefore subject to moral praise or blame. Furthermore, this thesis builds on Merom’s analysis that shows a dialectic of restraint between ‘civil society’ and the ‘state’. And because the insurgent is ‘representative’ of the population that supports it, there is a similar dialect there as well.

Beginning with “Standing on the Shoulders of Giants”, just war theory was shown to provide a better account of the moral aspects of war, as well as provide a better framework for war as a whole (its inception, prosecution, and conclusion) than both realist theory and pacifism. Realist theory failed to provide any restraint on war, while pacifism, through its dismissal of all war as immoral, also failed to provide a way forward. Just war theory therefore stood alone as the best available vehicle for an analysis of the moral aspects of war. However, in its current state, its application to the prevalent methods of warfare, namely asymmetric warfare, was limited. This thesis therefore aimed to fill that gap.

In “In Good Conscience”, the decision to go to war was shown to be a moral one, and as such, had to take into account factors like ‘just cause’, ‘right intention’, and ‘proportionality of ends’. Of most importance was the question of whether non-state and sub-state actors have the authority to declare war. Even though this authority was traditionally reserved for those without a judicial superior, the post-Westphalian idea that a sub-state actor gains legitimacy through their ‘representativeness’ of their population gives them such
authority. Furthermore, the implications are that if a sub-state actor has legitimacy, then consequently, they will be bound by the other principles of just war theory as well.

“Defining the Limits” dealt with the difficult problem of discrimination and proportionality in a context where the insurgents not only disguised themselves as those who were ‘immune’, but also used tactics that aimed to maximise the human cost of the war. By defining culpability as those who are involved in the direct material cooperation in the doing of harm, discrimination was made practical. In this context, ‘isolation’ provided a balance between moral restraint and military prudence. Furthermore, the population’s support afforded the insurgent their legitimacy, and therefore encouraged the insurgent to abide by the principles of just war theory. Finally, reciprocity and restraint on the part of the counterinsurgent provided even further encouragement for the insurgent to moderate their conduct.

“All’s Well That Ends Well” showed how the principles of discrimination and proportionality were important in the post-war situation as well. Specifically, ‘agent culpability’ (dealing with the guilty actors) and ‘just peace’ (providing a just post-war order) were the building blocks for the just resolution of conflict. Agent culpability defines those who are guilty of wrongdoing (harm) in the inception and conduct of the conflict. On this basis, steps to the just peace can be taken, through the punishment of the guilty actors, and the restitution of the victim. Importantly, ‘compensation’, ‘rehabilitation’, and ‘war-crimes’ tribunals were important in developing this just peace.

In light of the persistence of war, there is a real need for fruitful and relevant discussions about its nature, and prescriptions for its limitation. This is the place of just war theory. The changing nature of war, specifically the use of asymmetric strategies by those actors who in a Westphalian context would have been dismissed as illegitimate, has provided
a challenge for just war theory. Yet, for just war theory to remain as a practical framework, for it to remain a useful and relevant tool in limiting war, it must meet this challenge. This thesis is a step in that direction. It has shown that there is a way for asymmetric warfare to be placed in under the principles of just war theory, for asymmetric strategies to be limited by moral restraint, and shown that the ultimate goal is the development a peace that reflects the individual’s rights.

It is this assumption, this foundation of just war theory, that can have larger consequences by providing a basis for international political science as a whole. Just as the importance, worth, rationality and morality of the individual has been used to analyse war in the specific, so too can this assumption be used as a basis for analysing the relations between states, and between non-state actors and the state. It is the importance and worth of the individual that defines his rights, and it is his rights that in turn define the state’s rights and responsibilities.

Though the 2006 Israel-Lebanon War is still recent, and the true after-effects are still developing, we see through this study of those events that just war theory can apply in asymmetric contexts, and that as developments arise, there is still much to discover. This thesis is by no means definitive, nor does it give justice to depth and complexity of the situation. However, it does provide a basis and a direction for others.

And so there remains a real need for further study in this area, and every step in this direction works toward limiting the suffering and harm caused by war. And while we look to the day where swords will be beaten in to plowshares, we know that that reality is not yet. We still need giants, so that the rest of us may stand and see far.


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