

ESSAY

Just War and Conduct in War: An Airman's Reflection

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The business that we are all somehow associated with - of contemplating war, preparing for war, deterring war, initiating war, prosecuting war, providing relief in war, ending war, recovering from war - is consequential. Getting as right as possible the intricate dance of decisions that define the initiation, conduct and conclusion of warfare is incredibly important for societies. It also has varying degrees of impact on individuals, from merely defining the outlines of individual service members' daily lives to shattering or ending the mental and physical existence of combatants and innocents. Unlike most of you, I'm not a long-time, credentialed scholar of ethical principles and their teaching—but I too consider the issues of whether and how we fight wars to be of paramount importance and worthy of our most serious consideration.

Thus, my remarks reflect a career spent serving far less as a student and scholar than as an instrument of national policy, and more as an operational consumer of the intellectual structures that have emerged from Just War Theory. In particular, I have engaged with that theory in the form of the codified laws of armed conflict that reflect it, and with the rules of engagement that guide those with the responsibility for employing lethal force in pursuit of assigned missions. I have spent some quiet times reflecting on what that has meant and could have meant. What I hope to do in the next few pages is share some vignettes, from three-plus decades of an accumulated Airman's perspective, that hint at the range of ethical challenges that the young men and women you're teaching may face. I also want to outline some of the challenges that should spur military and civilian leaders to think hard about either the principles of just warfare or, more likely, their application. My intent is to leave you with more questions than answers, but questions that I hope will energize some thought in your area of particular interest.

It makes sense to touch on issues in the order I encountered them—so I'll necessarily start back a few years, and end with some thoughts about challenges we face in the future. Incidentally, I'm not one who believes that *all* things are becoming more complex, more demanding, less manageable or more dangerous

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in military affairs. *Some* things, however, *are* significantly more demanding, and connecting theory to practice, ensuring understanding of that connection among military personnel and their civilian leaders, and doing it all in the presence of the increasing flood of information noise that surrounds us, is important to the appropriate, effective preparation and use of military force in the future.

Like many generations of graduates from the Air Force Academy, my first academic exposure to just war theory—or really, thinking about right and wrong of and in warfare at all—was in the cadet philosophy core course. I recall well the instructor (retired Brigadier General Mal Wakin), the book (*War, Morality and the Military Profession*) and the “big questions.” We addressed issues such as:

- a. When is it morally justified to use force?
- b. What are the moral limitations on how military force is used?
- c. What are the moral obligations of the military leader?
- d. What kind of person, morally speaking, must the military leader be?

The most powerful thing I took out of the course was a conviction of the importance of asking those questions, and questions like them, in order to arrive at answers that were credible and appropriate to the duties I was being asked to perform. That *duty to reflect* is something that I consider absolutely essential for leaders to put into practice. Those of you who teach already know this and I’m grateful for what you do to ignite the spark of curiosity in your students.

My first assignment was graduate school, where work in International Relations involved a thesis on the development of strategic bombardment doctrine in the USAF from 1945 until the beginning of the ICBM era in the early 1960s. Fortunately—and I say that in all seriousness—my thesis advisor was Adam Roberts, now Sir Adam Roberts, who I recall had recently finished a stint as one of the leaders of the UK Campaign for Nuclear Disarmament and who introduced himself to me as a committed personal pacifist. He was a true scholar and an invaluable incarnation of the idea that disagreement—even strenuous disagreement—was possible without being disagreeable. More importantly, his tutelage over many months illustrated the enduring value of differing viewpoints. I distinctly remember spirited discussions about the Ground Launched Cruise Missiles that President Reagan had ordered deployed to England. I still treasure the memory of a letter he sent me years later, in which he offered his congratulations for my then-new assignment (flying B-1s) and needled me politely at the same time for being engaged in the use of airplanes whose mission involved high explosives.

At that time, the 1983 Catholic Bishops’ pastoral letter “Challenge of Peace” had not yet been released, but deep concern about nuclear weapons, the arms race, arms control, and the implementation of deterrence theory were definitely in the air.

I did not expect to be flying those B-1s a few years later, but that's what happened; we were still in a deeply adversarial phase of the Cold War. I very clearly remember the first alert tour as an aircraft commander; unusually, the changeover from the previous crew was at night. We were current and qualified in our aircraft, had studied our mission, understood our assignments, and were prepared to assume the task of maintaining a rapid response posture and readiness to launch if the President so ordered. I was *not* as prepared to stand under the aircraft's bomb bays and sign the forms accepting, for the first time in my life, responsibility for a significant number of nuclear weapons. That moment brought with it in a very concentrated way the weight of years of talking about deterrence, bombing doctrine, time in church, time with my wife and then-15-month-old daughter, time in political science classes reading about escalation theory, and other things I couldn't fully put into perspective. It was weighty.

The follow-on from that moment was more dispassionate and introspective. Like many other bomber, ICBM, submarine, and fighter crewmembers, I reconciled with my role in providing deterrence; indeed, as cliché as it may sound, "Peace is Our Profession"—the old Strategic Air Command motto—was in the end fairly logical to adopt as a moral outlook on what we were doing. As the Catholic bishops had said, deterrence was probably a necessary way station to the urgent but distant goal of eliminating the threat of nuclear war . . . so it was easy to pull alert and prepare for the cataclysmic war we thought would almost certainly never come.

One of the last unannounced "alert exercises" some time later forced another round of reflection, when my crew and I were suddenly awakened and spent fleeting moments not knowing whether something *really* bad was in the process of happening. So, while I had made a conscious decision long before then that I would do my duty as a bomber crewmember if WWII were to break out, I can honestly say I had never *truly* felt like it might happen. That night I did, for a very brief time.

So, my line of thought at that point was: if we were successful in the deterrence mission, the consequences of our actions would be good—whether or not waging the deterred war would be morally acceptable. If we were unsuccessful deterring a nuclear attack, we would be faced with a whole host of unenviable choices. Were we to make it off the ground in the face of likely missile and other forms of attack against our base, the probability that my family and hundreds of thousands—if not millions—of other American families would be, not theoretically but physically vaporized approached unity. I asked myself whether I would then be pressing forward on my mission *because* it was my duty—which might be permissible—or out of a sense of revenge, which I knew was not. It was not clear what positive outcome could result from prosecuting a second strike even though the *existence* of the second-strike capability was likely a key reason that the first strike should never have come. I was aware of the concepts of proportionality and of double effect but in

retrospect, as a young aviator, I never came fully to grips with them as they related to my assigned missions.

I tell this story because we sometimes seem to have forgotten the gravity of the threat that faced America, and indeed the world, during the Cold War. The nuclear non-proliferation and missile technology control regimes were a response to the horrors we feared in the Cold War, and they have been extraordinarily useful for decades; but with the rapid spread of technology and the concomitant slow (and sometimes seemingly inevitable) spread of nuclear weapons capability to new actors being the object of much conjecture at the moment, I would assert we will need to again, and soon, think and talk clearly about the moral choices associated with resort to force involving parties who possess nuclear weapons. They are arguably less likely to go away now than they have ever been.

The next decade was, in some respects, a period of relative clarity with regard to resort to force and the just use of force. Nuclear weapons receded in prominence and the aggregate, consistent precision of air-delivered weapons was increasing rapidly. The development and deployment of technology that would allow us to identify and discriminate among potential targets was also on the rise; Desert Storm was orders of magnitude more precise in demonstrating the application of airpower than previous conflicts had been. Southern Watch and Northern Watch (over-broadly described as ensuring Iraq did not use air assets against its own inhabitants or its neighbors) and associated sanctions on Iraq posed some vexing humanitarian and policy challenges for the international community, but from an air warrior's perspective, most trends seemed positive.

Near the turn of the century, from the vantage point of NATO headquarters in Brussels, the Kosovo conflict brought into focus a nexus between increasing international involvement in the prevention of humanitarian disaster, and the military tools available to support that purpose. In March 1999, NATO leaders called for "a verifiable stop to all military action and the immediate ending of violence and repression; the withdrawal from Kosovo of the military, police and paramilitary forces; the stationing in Kosovo of an international military presence; and the unconditional and safe return of all refugees and displaced persons and unhindered access to them by humanitarian aid organizations."

It would require 77 days of airstrikes before Slobodan Milosevic would capitulate and allow real movement toward those objectives. In substantial ways, this conflict seems to have met many criteria for a just war, if one accepts that a collection of sovereigns—in this case NATO—could legitimately construe the humanitarian disaster in Kosovo as a just cause. Certainly, there had been many attempts to resolve the conflict without use of force; action was directed by the North Atlantic Council (meaning that nations involved either actively supported or assented to the decision); and the chance that Serbia could stand up to NATO's 16-becoming-19 nations was small, making the probability of eventual success fairly clear. Arguably, the means adopted in the conflict were both proportional and discriminate, although there was some debate about

infrastructure targets in and around Belgrade and the military necessity to destroy them. There were also debates at the time concerning rules of engagement that to some, degraded pilots' ability to precisely identify and strike targets.¹

My overall point is this: as messy as the rhetoric and reports from the battlefield may have been at the time, the Allied Force operation in Kosovo may have been somewhat of a high-water mark for the just, limited and successful use of conventional force to mostly resolve a conflict involving sovereign states and people under their control.

During my time leading the B-2 wing, technology drove another interesting issue involving discrimination in the use of force. We have all seen video of a single, precision guided weapon striking a target with exquisite accuracy, and I'll address some of the challenges surrounding such strikes below. This was a different sort of problem. B-2s had dropped small numbers of precision weapons from each aircraft in Serbia with expected results; but in 2004, we achieved the ability to drop 80 precision-guided weapons from a single airplane on a single pass. One challenge of using this capability became clear when I asked my then-executive officer to build a briefing slide to illustrate what that capability might notionally look like if employed on an airfield-sized target complex. Her first attempt at selecting impact points on an aerial photo of our base resulted in numerous potential law-of-armed-conflict violations, because she essentially ran out of clear, militarily essential aim-points and assigned the remaining hypothetical "weapons" to less clearly military targets. In addition to the target *selection* challenge, there were associated practical considerations in work to address how an individual crew could identify multiple targets in flight, aim, and accurately deliver the weapons if all were to be released at once. This exercise raised a number of questions:

Can an operational capability that is discriminate in some cases be accurately deployed at scale; in other words, while we have the capability to aim precisely with a small number of weapons, can we exercise the same care with many? And if not, under what conditions do we attack the target multiple times in order to achieve some inherently discretionary level of assurance of accuracy, placing the delivery platform at increased risk?

Closer to home—literally—this exercise forced a sober assessment of our habits of thought, living on a continent that has been serenely isolated from

1. When the debate on proportionality and discrimination is informed by historical myth, "common sense," and sloppy journalism rather than contemporary military reality, it's harder to have a meaningful public discourse. One example to illustrate this point: during the conflict over Kosovo, much was made of pilots remaining "above 15,000" and being unable to see the tanks, buildings and so on they were bombing. Yet that discussion failed to take into account the historical reality that heavy artillery commonly lofts projectiles at least that far . . . and the view of the target for an artilleryman is arguably worse than that of the pilot. My point is not that either aerial bombing or artillery is inherently superior—it's simply that every new military technology requires us to look skeptically at "long held" preconceptions and weigh whether they are valid and under what conditions.

practical threats for a very long time. In particular, preparing that slide sparked an interesting discussion about the acceptability of a technically capable enemy targeting our leaders' homes—which likely include non-combatants on any given day. In this country, we tend to refer to efforts to prevent such attacks as anti-terrorism and force protection; and a case can be made that given the technical means to strike US military leadership targets discriminately, such an action could actually be permissible under the laws of armed conflict, and not terrorism at all.

Let me pause here just to address how contemporary US airmen are trained in the law of armed conflict and the application of those principles to their conduct in combat. In addition to introduction at some level in their accession training—whether basic military training or one of the officer training programs—every Airman for many years has had annual recurring training on the Law of Armed Conflict. That course is either conducted via distance-learning or, in some cases, in person for those units whose mission is likely to bring them into situations requiring a more refined understanding of LOAC. This material is much more thoroughly taught to air planners and especially to the operations law experts who support them. In its computer-based form, the course is comprised of tens of screens and takes an hour or so to complete; it covers basic principles, rules for targeting, legal and illegal weapons, detainees, reporting requirements, consequences for violation, and the like. It is summary, to be sure. Training differs by Service but I believe I'm safe in saying that all US Services rely heavily on *rules of engagement* (ROE) to guide their service members' actions in combat.

Beyond this Law of Armed Conflict training, ROE are the means by which the senior military and political leaders of our defense establishment guide the character of the conflict and where the soldiers, sailors, airmen and marines must "live," day in and day out. In a coalition operation, such as we have had in Iraq and Afghanistan, nation-specific ROE inevitably interact with each other and with coalition-wide ROE. These national ROE are often, at least partially, classified in order to avoid giving enemy forces a playbook by which to exploit our own restrictions and more effectively attack our forces. With their own rules, individual nations can and do caveat their adherence to coalition ROE by further restricting their forces from accomplishing missions that might otherwise be permitted by another nation.

From the standpoint of those directing air operations real-time, the national caveats and rules of engagement are critical to understand and honor, both as a matter of coalition management and operational effectiveness. In some cases, any aircraft from any nation could support a ground force action in a particular location and situation. In other cases, national caveats on weapon use (usually imposed to make absolutely sure the pilot and nation involved could consistently meet that nation's standard for proportionality) made an aircraft otherwise airborne and in a favorable position, unusable for that mission. So, in planning each day's air tasking order, and in dispatching available airpower to support

preplanned and emergent ground operations, ROE matter. The fact they are different from nation to nation reflects different equipment, different training, but most importantly, different national assessments of the ability to achieve, and importance of, discrimination and proportionality of the end-to-end weapon delivery capability on the part of the nations supplying those forces. This challenge will not get easier—as warfare intensity escalates, it may get harder fast.

It is worth noting one minor but vexing example of the way that I saw a sincere desire to apply just war principles—i.e. minimize the potential of harm to innocents—come into conflict with codified international law and its interpretations. I was responsible for airfield security at two airbases in Afghanistan, and we accomplished that mission using a combination of USAF security forces and other partners. Part of that mission involved USAF security forces traveling outside and around the base to meet with local leaders and people to understand how best to counter the threat to air operations. Since this involved a fair amount of ground travel, and since Afghan vehicles approaching our personnel could conceivably present a threat, security forces were sometimes forced to threaten or even fire warning shots at such vehicles to get them to stop at a safe distance. They saw much potential for harming innocent Afghans in his tactic, so they requested—and I approved—laser illumination devices that were designed to get attention of an oncoming driver and allow the security forces a non-lethal means of warning. This was a great initiative, one that I was glad to support. But shortly after we received the devices, we were told we could not use them—because it turns out these particular units were not considered eye-safe and therefore could constitute a prohibited weapon under LOAC, i.e. something that could cause blindness. You can see the obvious dichotomy here: the lasers posed a small chance of eye damage, contrasted with a great chance of a serious injury or fatality if .50 caliber rounds were fired toward a vehicle and its occupants. It took several months to obtain the “right” dazzlers. I am grateful, but it was by no means certain at the time, that we did not have a lethal fire incident during that delay.

Command of an expeditionary wing and duty as Air Component Coordination Element Director in Afghanistan forced me to confront another set of interesting issues related to the proper use of force. Those operations bring into focus something that is an increasingly important issue in just war theory’s application. This is the employment of remotely-piloted aircraft (RPA), with all the advantages and disadvantages they bring with them. I am not going to initiate a discussion about rules of engagement as they relate to RPA crews, ground commanders, and higher headquarters authorities. Suffice it to say that information flow in this world is incredibly attractive and by nature, has the potential to invite multi-thousand-mile screwdrivers that can help but can also hinder effective use of the RPA.

More to the point with regard to just war, however, is the paradox in which I believe RPA operators can find themselves with regard to the principle of

discrimination. Unlike the soldiers of old, who one of our colleagues yesterday posited could be “invulnerably ignorant” of the nature of their actions, the nature of the RPA can allow operators to become “omnisciently intimate” with regard to some targets at some times. The persistence of the platform, the quality of the sensors, the high standards of the rules of engagement that generally govern RPA weapons employment, and the nature of the targets all combine to make it likely that RPA operators will be exquisitely aware of many attributes of some potential targets.

To build on one of our fellow discussants’ thoughts from yesterday: while *intentionally* targeting innocents would *likely* do significant damage to a combatant’s character, and causing *accidental* death of innocents is likely to do *little* to that same combatant’s character, the RPA operator is squarely in the middle—where there is very little chance that death of innocents will be unknown, if it happens. The RPA operator is far more engaged with and aware of those innocents than most soldiers, sailors, airmen or marines ever have been in the past. So, the psychological risk borne by RPA operators, while very different from that sustained by military members in direct personal contact with an enemy, is arguably at least as personal in some respects, and is inarguably sustained over greater periods of time.

Departing Afghanistan in 2007 marked the end, for me, of being part of a dynamic but relatively straightforward moral environment. Our enemy “in country” was not a state actor, but the means we had available to apply force were well understood, well matched the task at hand, and posed few legally vexing problems. Proportionality and discrimination were unquestioned as objectives, and never particularly problematic—although management of public perception of how well we honored those principles in practice certainly was. I found that while ROE were frequently a subject of discussion within the CJTF and across the coalition, they were also generally understood and honored. Our training programs seem, on balance, to produce military professionals who know the basics and seek advice where needed. That is not to say that every pilot’s decision, or every Marine or SF or infantryman’s decision on use of force, was perfectly proportionate and discriminate—war is inherently confusing—but they generally fell within the bounds of acceptability.

Transitioning from Afghanistan directly to NORAD & USNORTHCOM, headquarters of the joint service command for defense of the United States and of the bi-national command defending the US and Canada, was not only a change of Area Of Responsibility, but a dramatic change of perspective. I could spend a great deal of time discussing aspects of the homeland defense mission, but I will briefly highlight only two that are relevant to this conference’s theme:

First, the considerations surrounding air defense of the United States, particularly against the non-traditional threat that we first saw on 9/11: Most of you are

probably familiar with Heather Penney's story²; she was a DC Air Guardsman at work doing routine F-16 training the morning the hijackers struck. The story is complicated and I may not have all the details exactly right but the outlines are instructive. The events of her day became history when she and her flight lead were scrambled to intercept the aircraft which eventually crashed in Shanksville, PA. Three things are noteworthy about that potential intercept: 1) her father was a United Airlines pilot, flying that day; she did not know whether he might be aboard the airplane she was to intercept. 2) she and her flight lead had no weapons loaded so they had agreed one would collide with the nose and one with the tail of the airliner, if an intercept was necessary; and 3) they would likely have taken the lives of a hundred-plus people aboard the airliner, with no certainty whatsoever of its intended target or to what end those aboard would be sacrificed. I relay the story because the defense of the US against any such threat inherently involves some of the same very troubling and difficult considerations that then-Lt Heather Penney faced in 2001.

This leads me to the second aspect of the homeland defense mission, relevant to considerations of Just War. In defending against a state threat in the maritime, air, space, or even cyberspace domains, it is clear we still have practical challenges to understand and master—such things as building robust situational awareness in each domain relative to our homeland battlespace, determining command and control and resource allocation to enable timely response, and consistent execution of missions as required. These are not trivial problems, nor are they all solved. I cannot overstate the technical complexity of defending the 9,000-plus-mile perimeter of our part of North America, particularly in an era where we benefit from and depend on high-velocity global commerce in all domains.

But it is finding the right long-term basis for understanding an ideologically-driven, non-state-associated, externally enabled and potentially externally directed threat that concerns me the most. We have work to do to define both the theory that helps us understand the right and wrong in fighting them, and to define and achieve the whole-of-government organizational missions and boundaries that best align with that theoretical construct. The last decade-plus of deliberation on exactly how the current conflict's detainees should be held, tried, or repatriated is just one indicator of the challenge, but it seems to me the core problem is defining whether to consider ourselves at war, and understanding what kind of war we are in with these non-state actors who wish us grave harm and do not themselves seem to subscribe to the principles of either *jus ad bellum* or *jus in bello*. This has been a wickedly difficult problem to date and

2. See Steve Hendrix, *F-16 pilot was ready to down plane her father piloted on 9/11*, WASHINGTON POST (Sept. 14, 2011), https://www.washingtonpost.com/lifestyle/style/f-16-pilot-was-ready-to-down-plane-her-father-piloted-on-911/2011/09/13/gIQAHasoSK_story.html; Steve Hendrix, *F-16 pilot was ready to give her life on Sept. 11*, WASHINGTON POST (Sept. 8, 2011), https://www.washingtonpost.com/local/f-16-pilot-was-ready-to-give-her-life-on-sept-11/2015/09/06/7c8cddbdc-d8ce-11e0-9dca-a4d231dfde50_story.html.

the proliferation of dangerous technologies over time makes it a problem whose time has come for the most serious consideration.

I'll conclude by simply sharing a small number of additional concerns that may merit your consideration. As the book of Ecclesiastes says more than once, there is "nothing new under the sun"—but sometimes old concepts combine in new and troublesome ways and I believe we need to think through them to best equip our nation to deal with the challenges they bring with them.

With regard to autonomous combat platforms in any domain (subsurface, surface, air in particular, but even possibly space or cyber): how do we think about the previously-human decision-making processes that guard against disproportionate or indiscriminate use of force? Can a software programmer bear responsibility if the autonomous weapon affirmatively mis-identifies a protected target as a legitimate target and causes impermissible damage or death? Who has responsibility for violating the laws of war: the crew chief, the air group commander, or the mission planner? How do we explain and account for the difference between a long-range guided missile—which is directed toward and intended to strike a target that was selected for it either precisely or within a fairly narrow ruleset—and an autonomous weapon, which may make a broader range of decisions to strike some target for some reason, not fully under human control? We need to think hard about the moral aspects of giving machines discretion to kill or not kill, and need to do it sooner rather than later; technology has a way of foreclosing thoughtful decisions when it gathers technological and economic momentum.

Against adversaries like ISIL, how do we honor the principles of just war, given our technological capability to know a great deal about the battlefield and the potential targets on it, *without* disproportionately advantaging an enemy who does not have, does not care about, or actively and publicly disregards principles of proportionality and discrimination and the protection of innocents?

How can we usefully assess the probability of success, when our democratic policy-formulation processes tend to yield diffuse objectives that are difficult to measure? As an example of the difficulty of formulating a precise desired effect, USCENTCOM's Operation INHERENT RESOLVE

“is intended to reflect the unwavering resolve and deep commitment of the U.S. and partner nations in the region and around the globe to eliminate the terrorist group ISIL and the threat they pose to Iraq, the region and the wider international community. It also symbolizes the willingness and dedication of coalition members to work closely with our friends in the region and apply all available dimensions of national power necessary - diplomatic, informational, military, economic - to degrade and ultimately destroy ISIL.”

I recognize that the answers to the questions I'm about to ask may be very clear to those who have actual responsibility for achieving the objectives, but the answers aren't so clear in the public square. Among other questions, one

could ask: does “destroy” mean to use a variety of air and ground weapons to kill as many individual fighters as we can? Or is it to eliminate their leadership, one by one? Or does “destroy” mean to work in the cyber domain to shut down social media capability and deprive them of the world stage they appear to desperately desire, thus interrupting recruiting at its base? Any or all of these may be the desired effect—but in evaluating the criteria for just war, it seems that having a target and a yardstick to measure progress is necessary. Defining the right effects, and having sufficient public understanding of effects and progress toward them, is a difficult but essential endeavor.

With these leading and unresolved questions, I will close by congratulating you again on being people who care about these issues and lead the way in thinking about the *right*, not just the *might*. It is a measure of the goodness of this country that we care deeply about the ways we use the power we and our predecessors have built. I thank you for letting me share some thoughts with you.
