

March 9, 2007

**It's "just war" (but is it *just* ?) Is there such a thing? Can one go into war for just reasons?
Can war be waged in a just manner?**

Kicking off the discussion (in all three sections) I began with the following rough outline:

<p><i>Jus in bello</i> [waging war in a just manner]</p> <ul style="list-style-type: none"> The 'how' 	<p><i>Jus ad bellum</i> [going into war/declaring war for just reasons]</p> <ul style="list-style-type: none"> The 'why'
<p>Robert Phillips</p> <p>-Proportionality: (Intensity of force must not exceed potential force of threat) "The force ought to be morally justified only if it can be employed in a discriminate manner [based on the Double Effect] lies at the heart of <i>jus in bello</i>.</p> <p>-Double Effect: (p. 474) When inadvertently evil consequences occur, involving the killing of combatants and non-combatants (collateral damage), is nevertheless morally justifiable provided:</p> <p>(a) Action must be conducted, under 'good consequence' intentions (intentions to produce morally good effects.)</p> <p>(b) Evil effects aren't intended as ends in themselves, nor as a means to some other end.</p> <p>(c) Collateral evil must be justified in terms of proportional moral weight.</p>	<p>Robert Phillips</p> <p>-Last Resort, declared and waged by a legitimate authority.</p> <p>-Points II.A-D (Defense against aggression, correction from injustice gone uncorrected, re-establishment of a social order which will distribute justice, intention to bring about peace.)</p> <hr/> <p>G. W. Bush Admin. Statement on pre-emptive action:</p> <p>-Descriptive features of Rogue States (compare with Phillips' II.A-D)</p> <hr/> <p>Boot's editorial</p> <p>-G. W. Bush Administration merely transformed pre-emptive war from a <i>de facto</i> principle (a principle that actually exists and has been invoked throughout history, though not officially approved in the pre 9/11 times) to a <i>de jure</i> principle (one that can be justifiably implemented in <i>some</i> instances). (6)</p> <p>-Moreover: "While preemptive military action has received all the attention, it actually forms only a small part of Bush's National Security Strategy..."</p> <p>-Furthermore: [Preemptive] military action doesn't have to mean hundreds of thousands of troops garrisoning a state for decades." (5)</p>

Starting with the left hand side first, I tossed out the following question:

Do Phillips' principles of **proportionality** and **double-effect** have any applicable relevance in the face of the harsh extremes of 21st century warfare, spanning such enormous extremes like 'smart bombs' on the one hand and 'child soldiers'¹ on the other?

¹ For see <http://hrw.org/campaigns/crp/index.htm> for more information concerning the exploitation of children that is becoming a world-wide

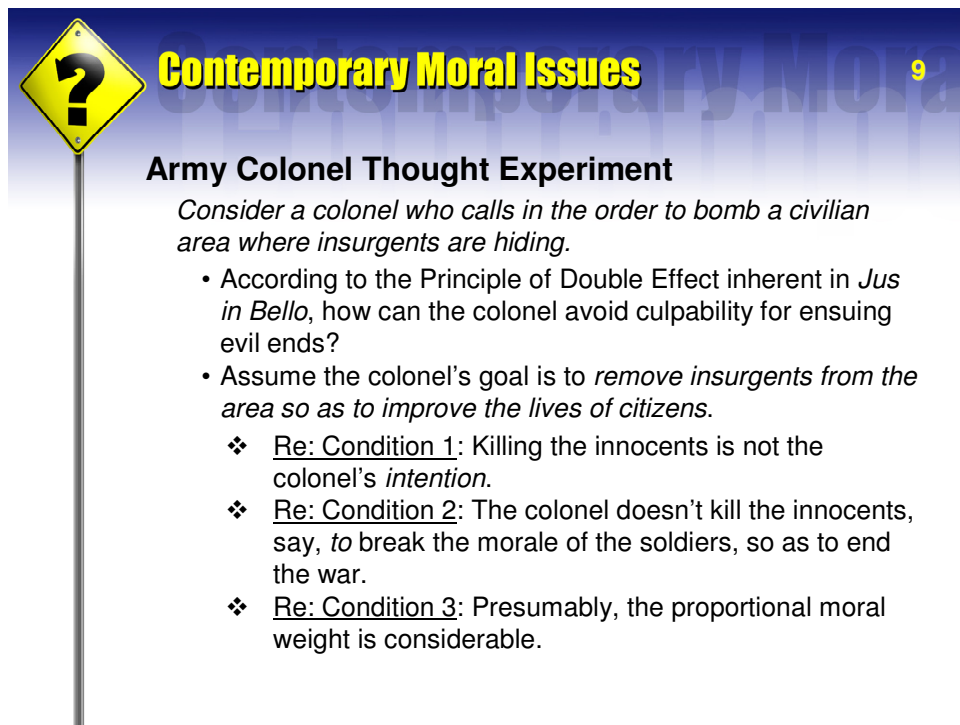
No clear consensus had been reached among the discussants in all three sections (not that anyone could expect such---given the nature of the question and the topic). Before summarizing student input and feedback, a few clarificatory remarks are in order:

- What seems worrisome is that in a manner similar to Regan's letting himself off the hook concerning explaining the *how*², Phillips disclaims: "**It is not of course the province of *bellum justum* [just war theory] to provide a criterion of...proportionality** but only to establish that the principles of justice do in fact require such a standard." (473)

In the same passage Phillips worries aloud that problem "of making morality completely subordinate to whatever technological development happens to be occurring in the moment." (473)

Technology, in other words, is the *means* by and through which the maximum damage and carnage can be effected. By resisting to provide a criterion of proportionality, Phillips' *jus in bello* seems completely at the mercy of "whatever technological development happens to be occurring in the moment." But how can one reasonably rescue a criterion of **proportionate response** (let alone **proportional moral weight**) given the extreme and unprecedented range of technological effectiveness?

To clarify the worry, consider Darren Hick's Slide # 9 (March 6 lecture) concerning the army colonel thought-experiment:



Contemporary Moral Issues 9

Army Colonel Thought Experiment

Consider a colonel who calls in the order to bomb a civilian area where insurgents are hiding.

- According to the Principle of Double Effect inherent in *Jus in Bello*, how can the colonel avoid culpability for ensuing evil ends?
- Assume the colonel's goal is to *remove insurgents from the area so as to improve the lives of citizens*.
 - ❖ Re: Condition 1: Killing the innocents is not the colonel's *intention*.
 - ❖ Re: Condition 2: The colonel doesn't kill the innocents, say, *to break the morale of the soldiers*, so as to end the war.
 - ❖ Re: Condition 3: Presumably, the proportional moral weight is considerable.

² "All that philosophy can do...is to offer a version of what our deeds should aim at. And the why. But not the how." So states Regan (*What's Wrong*, p. 130). To which a more practical-minded reader may beg to differ: So she or he may retort that the burden of the philosopher's theory should at least include *some* account of *how* the theory could or should work, all things considered.

To make the thought-experiment more germane, consider the Army colonel orders a **BLU-82B/C-130** 15,000 lb. conventional “Daisy cutter” bomb to be dropped on the town. The “Daisy Cutter” is an explosive device that is used often by U.S forces in Afganistan, as well as in both Iraq campaigns (Desert Storm, and in the ‘shock and awe’ phase of 2003 invasion). It is an extremely lethal device,³ and could definitely easily wipe out a mid-sized town, no doubt killing thousands of civilians.

Strictly speaking, contrasting the technologically destructive power with the intensity of the threat of force that a team of insurgents could pose (with homemade IEDs⁴ and light weaponry, the Colonel’s order clearly *violated* Phillips’ ‘proportional response’ though the case could be made (as evidenced in the lecture) that the Colonel did *not* violate (c.) (proportional moral weight of the collateral damage posed by the bombing).

The problem lies in the role played by the extremes posed by technology: how does one define criteria of proportional response (or better yet, *sidestep* the issue altogether) while at the same time rationalizing such a response’s ‘proportional moral weight?’

The ‘Daisy Cutter’ illustration is analogous to how the U.S. waged war in Vietnam, and its use of napalm and carpet-bombing, killing hundreds of thousands of civilians. Nowhere was this clash of the two senses of ‘proportionality’ more apparent than in grisly irony of statement often used by U.S. soldiers during the Vietnam War: “We had to burn the village to save it.”

The technological factor introduces equally grisly notions that were coined during the Vietnam War era, and more-or-less put in place in the recent U.S. engagements in the Middle East: What constitutes an effective or acceptable ‘kill ratio?’ (defined as the # of non-combatant deaths/ # of combatant deaths).

Harsh realities like superior technological firepower and the accompanying notions like ‘kill ratios’ are subject that seem (at best) completely sidestepped in Phillips. He seems to rule out such hard questions altogether in his opening disclaimer, which I quote again: “It is not of course the province of *bellum justum* [just war theory] to provide a criterion of...proportionality but only to establish that the principles of justice do in fact require such a standard.” (473)

Granted, however, the technology factor can work in the other direction as well, towards minimizing collateral damage in the development and use of so-called ‘smart bombs.’ A more general point along these lines was made by **Marcel Pierre-Louis §0206**, as he pointed out that ‘all things being equal’ most contemporary combat engagements typically involve technological parity (whether it’s just in the form of troops going after each other with standard hardware: light arms, tanks, etc., whether in an urban or in a desert or mountainous setting.) In other words, **Marcel’s** point is we should (similar to the Inference to the Best Explanation strategy) focus on a set of ‘typical’ cases involving typical engagements, to test Phillips’ rules of engagement for conducting a just war.

Gopi Narang §0202 brought up another factor: separate from the technological issue(s), many 21st century conflicts involve *ideologies* which are a far cry from those typically encountered in the late Cold War era (Phillips wrote the article in 1984). Phillips briefly mentioned ‘hard cases’ like guerilla warfare, but in today’s realities, such unconventional (compared to Cold War era rules of engagement) conflicts have flared up and seem to engulfing the world in a way that seem

³ See <http://en.wikipedia.org/wiki/BLU-82>

⁴ Improvised Explosive Devices

to make the clash of Marxist vs. right-wing guerilla campaigns in the 1980s pale by comparison in their barbaric extremities. Present-day civil conflicts are waged and prosecuted by a host of issues spanning the ideological spectrum: ethnic, religious, tribal conflicts. The values and ‘rules’ (as evidenced in extremes like the use of child soldiers, mass rape and genocide) of engagement in such cases resemble more of hellish free-for-all than anything else. How does one even *begin* to implement Philips’ *jus-in-bello* at the ground level in such instances? For this to be possible, there must be a minimum of agreements among combatants that just doesn’t seem to even be on the radar screen in the light of such horrors as contemporary civil conflicts.

No doubt, the significant shifts that occurred since the breakup of the Soviet Union were ones in which we see a three-leveled power-structure emerging: developed nations on the top, with their host of multinational corporations, followed by developing nations (e.g. Brazil, India, Kenya, etc.), followed by rogue states or collapsed states (like Kyrzygstan for instance) which have radically depopulated over the last decade and have no legitimate internal economies to speak of.⁵ This is a far cry from the world of the Cold War, in which had essentially two superpowers setting the stage of the balance of tension/terror.

Kiersten Bugge §0206 for instance brought up this issue as a reason (similar to Boot’s point concerning the Bush Administration’s elevating preemptive war into a *de jure* principle) to call into question the ‘last resort’ stipulation of Phillips’ *jus ad bellum*. A neighboring country or alliance (similar to NATO or the Pan-African Union) could step into a collapsed state on the brink of all-out civil war and anarchy and one could see a rather positive opportunity to implement Philips’ *jus in bello*. The essence in such instances rests on the notion of ‘peace through superior firepower’ (of the occupying force).

- **Other Criticisms/Comments on Phillips**

Aside from all the issues surrounding ‘proportion’ (response/moral) there were concerns expressed about the nature of (b) and (a) in Phillips’ Double Effect.

For instance both **Jasmine Tirado §0207** and **Adil Zahman §0206** saw problems with Phillips’ seemingly facile distinction between justified killing of combatants versus non-combatants:

“Generally speaking, classes of people engaged in occupations which they would perform whether or not a war were taking place, or services rendered to combatants both in war and out, are considered immune.” (477)

The focus of **Jasmine** and **Adil’s** worries concerned the inescapable fact that at the outset of modern warfare, civilians are ‘hijacked’ and used as pawns and collateral in a nation’s war effort. For instance, I recall my grandfather who worked as an engineer for Lockheed during WWII. During peacetime, he helped design and build civil aircraft. His job, like that of thousands of others, immediately switched to designing and building bombers, fighter aircraft, etc. Hundreds of thousands in the American workforce during WWII held jobs that involved actively handling munitions of some sort. According to Philips, such civilians represent legitimate targets. And as **Adil** pointed out in the example of the atomic bombs dropped on Hiroshima and Nagasaki, regardless how one may argue about ‘comparative moral weight’ of putting a speedy end to WWII in the Pacific theatre, the fact remains (similar to the ‘Daisy Cutter’ scenario depicted

⁵ For more information, see Benjamin Barber’s *Jihad Versus McWorld: How Tribalism and Globalism are shaping the twenty first century*.

above) that civilians were *actively* targeted and in their wholesale slaughter were treated as de facto combatants.

Granted, however, Philips might respond that the bombings of Hiroshima and Nagasaki were unjust, as a case could be made that the collateral damage was used as a utilitarian *end* to hasten the surrender of Japan through this cataclysmic act of demoralization and intimidation of its civilian population. In other words, where the utilitarian would argue that such acts were justified, insofar as they ensure ‘victory by any means necessary’ this would certainly not pass muster for Philips’ theory.

Still, however, the concerns brought up by Jasmine and Adil indicate a potentially slippery slope (into utilitarianism) for Philips, since 20th and definitely 21st century warfare doesn’t pose such a neat and clean distinction between combatant and non-combatant. Civilians are actively manipulated and exploited as combatants by proxy in most contemporary conflicts.

Ahmad Samarah §0202 raised a question concerning (a), involving intentions. Realistically speaking, in the face of grisly realities of conflict, how feasible is it for a strict separation of combatant/non-combatant to propagate down the chain of command? Granted, Phillips is speaking on the level of a principled theory, but again raising the worry about its feasible implementation, Ahmad asked whether it’s more appropriate to speak of intentions on the level of collective property (i.e., a nation’s intentions) as opposed to what should expect from an individual soldier. In the Smith/Jones thought experiment, the utilitarian responds ‘the enemy lies dead, full of bullet holes.’ Granted, however, Phillips point out the distinction makes a moral difference insofar as Jones has a moral argument for treating prisoners well, while Smith would be driven by a whim. Nevertheless, the question remains of such a notion’s feasibility. Restricting talk of intentions on a national level of course can open the door for all sorts of rationalizations for atrocities committed on the ground level.

- **Comments on Boot’s Defense and Interpretation of the Bush Administration’s Preemptive War Doctrine**

The discussion in all three sections mainly focused on Philips, however, **Jasmine Tirado §0207** pointed out that even if one buys into the claim that international law and policy can and should be revised to accommodate preemptive strategy (as opposed to status quo risk averse) this does *not* justify the Administration’s rationalization that *domestic* policy needs to be altered under the same guise. In other words, the doctrine of preemptive war should *not* give the president special war time powers on the domestic front. This is analogous, for instance, to the misuse of the notion of ‘national security’ to justify the government’s abuse of power during the McCarthy era.