



Just War Reconsidered: Strategy, Ethics, and Theory by James M. Dubik.

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Lt. Gen. James Dubik (US Army, ret.) has written *Just War Reconsidered* to elucidate the responsibility of upper-echelon political and military leaders for initiating armed conflicts and deciding how they should be conducted. In so doing, he hopes to repair a lacuna in Michael Walzer's seminal study of just war theory.¹

Walzer stressed a sharp dichotomy between *jus ad bellum* (justification for going to war) and *jus in bello* (justification of what combatants do in fighting the war). This partitioning of responsibility, however, overlooks the multiple levels of officials' decision-making during the waging of war. Thus,

we draw a line between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible, at least within their own sphere of activity. Generals may well straddle the line, but that only suggests that we know pretty well where it should be drawn. We draw it by recognizing the nature of political obedience. [Gen. Erwin] Rommel was a servant, not a ruler, of the German state; he did not choose the wars he fought The atrocities that he commits are his own; the war is not. It is conceived, both in international law and in ordinary moral judgment, as the king's business—a matter of state policy, not of individual volition, except when the individual is the king. (38–39)

In chapter 1, "*Jus in Bello's* Missing Piece," Dubik notes the lively, in-depth rethinking of traditional American just-war theory in the recent work of moral philosophers like David Rodin, Jeff McMahan, David Luban, Brian Orend, and Nancy Sherman. He expands on their work in part by adducing examples from World War II to reveal the specific area of responsibility Walzer neglected: the conduct of war (*jus in bello*) not *tactically* by front-line fighters, but *strategically* by the political and military equivalents of senior managers.

In chapter 2, "Describing *Jus in Bello's* War-Waging Dimension," Dubik shows that careful attention to strategic functions contributed to the Union's success in the US Civil War, whereas recent American military efforts in Afghanistan and Iraq have failed for lack of a viable strategic plan that would facilitate "four morally relevant relationships," that is, between soldiers and the innocent; soldiers and fellow soldiers; soldiers and their commanders; and citizens-become-soldiers and the senior political and military leaders responsible for waging war.

Concerning the management style that might satisfy the aforementioned ethical responsibilities, Dubik, in chapter 3, "Principals and Agents," compares traditional principal-agent theory with objective control theory regarding both a functional imperative (to provide security) and a social imperative (to maintain civilian control of the military). Selecting examples mostly from the Vietnam War, he concludes that "responsible use of the right to be wrong requires some form of mutuality between senior political and military leaders greater than is found in a direct, monitory, and obey-or-be-punished framework" (87).

This greater mutuality, Dubik argues, requires political and military leaders to systematically carry on an "unequal dialogue" (chapter 4, "Dialogue and the Nature of War"). Drawing on the work of Eliot

1. *Just and Unjust Wars: A Moral Argument with Historical Illustrations* [1977], 5th ed. (NY: Basic Books, 2015).

Cohen,² he argues that political and military leaders are functionally and morally equal (94), but final decisions are the prerogative of civilian authority. “War is, by its very nature, a political-military activity that requires a continuous civil-military dialogue-execution regime” (117). Such cooperative discourse was missing in both Vietnam and Iraq. There was no mechanism for debating and revising goals and methods. Both Cohen and Robert Gates³ provide many examples of such interactions and the translation of dialogue into action and adaptation (124). Dubik stipulates a tripartite agenda of (a) setting war aims, strategic policies, and campaign decisions, (b) generating organizational capacity, and (c) maintaining legitimacy in the eyes of the people (133–34, 137, 176–77).

These objectives are explored further in chapters 5, “The Decision-Execution Regime,” and 6, “*Jus in Bello’s* War-Waging Principles.” The latter comprise continuous dialogue; deferral to *political* leaders in making final decisions; managerial competence within the pertinent bureaucracy; maintenance of war legitimacy; and permissible resignation. These complement Walzer’s axioms of battlefield action (169) and complete his conception of *jus in bello* morality.

It is too early to know how just-war scholars will receive Dubik’s theories. In her review of his book, Pauline Kaurin takes much of its content at face value, but cautions that Dubik’s concerns do not fall altogether under the category of *jus in bello* studies: “War waging seems to go back and forth and to share considerations, judgments and impacts on both *jus ad bellum* and *jus in bello* and therefore, a separate category (Justice of Waging/Management of War) would make more sense.”⁴ Other evaluations of the book also stress its modifications of the traditional dichotomy. But something more profound underlies Dubik’s argument—the recent prevalence of undeclared wars.

The United States has not actually declared war on any country or organization since the Second World War, yet it has engaged in many military actions, some of major proportions. The controversial War Powers Act of 1973 (50 U.S.C. 1541–1548), passed over President Richard Nixon’s veto, has curbed the chief executive’s power to commit the nation to an armed conflict without Congressional approval. Its key provisions include: upfront notification; a sixty-day limit on engagement; and a thirty-day withdrawal period. These checks may legally be disregarded in the event of a national emergency.⁵ Some American scholars claim a declaration of war is, strictly speaking, no longer necessary, while others insist that the constraints embodied in traditional just-war theory pertain fully to undeclared military engagements.

Given the constraints imposed on military action by the United States, well meaning fault-finders like Dubik must more accurately define what exactly constitutes the modern-day war-making. In the absence of conscription since the Vietnam War, US military actions are typically conducted via air strikes, drones, and special forces, directed by new types of political and military bureaucrats, who go nowhere near any physical battlefield. This sort of force projection relies heavily on killer drones and other innovative technologies.⁶ The film *Eye in the Sky* (dir. Gavin Hood, 2015) vividly conveys military futurists’ vision of cybernetic conflicts managed by military bureaucrats.

What James Dubik describes is not war, legally speaking, in the conventional sense; the old moral categories simply no longer apply. His account of specification of military and political leaders’ obliga-

2. I.e., *Supreme Command: Soldiers, Statesmen, and Leadership in Wartime* (NY: Free Press, 2002).

3. *Duty: Memoirs of a Secretary at War* (NY: Knopf, 2014), with review by David Fitzpatrick at *MiWSR* 2014-085.

4. *Real Clear Defense* (6 Dec. 2016) – www.realcleardefense.com/articles/2016/12/06/just_war_reconsidered_110443.html.

5. See Jennifer K. Elsea and Matthew C. Weed, “Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications,” *Congressional Research Service* (18 Apr 2014) – link: fas.org/sgp/crs/natsec/RL31133.pdf

6. See my “Making Drones to Kill Civilians: Is It Ethical?” *Journal of Business Ethics* (2015) 1–13.

tions pertains to many activities that are analogous to war in the strict sense. But the mainstream reluctance to speak of “war” in its conventional sense vitiates his effort to set moral standards for a bureaucracy not openly identified as waging war. Others may take up where Dubik leaves off by investigating connections between his work and the literature on management-oriented business ethics. Moreover, just-war theorists must catch up with military realities and ascertain the defining elements of undeclared military actions (whether labeled “wars” or not). Lastly, anyone who shares Dubik’s insistence on civilian control of the military must be concerned, because the present US administration seems to believe otherwise.⁷

7. See William D. Hartung, “What Happens When All We Have Left Is the Pentagon? Trump’s Vision of a Militarized America,” *Nation of Change* (3 Feb 2017) – www.nationofchange.org/2017/02/03/happens-left-pentagon/.