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## Risk-transfer militarism, small massacres and the historic legitimacy of war

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### *Abstract*

The perception of initial success in the 'war against terrorism' appears to strengthen a general relegitimation of war in Western society that has been gathering pace over the last two decades. This paper considers the war in Afghanistan as the latest example of the new Western way of war, and analyses its casualties compared to previous campaigns in the Gulf and Kosovo. It identifies the new type as 'risk-transfer war', a central feature of which is a 'militarism of small massacres'. This new type thus offers only a partial answer to the problems, for the legitimacy of warfare, caused by the systematic targeting of civilians in earlier 'degenerate war'. Despite a closer approximation to 'just war' criteria, inequalities of risk between Western military personnel and civilians in the zone of war revive the question of legitimacy in a new form. The paper suggests that in our concern for relatively small numbers of civilian casualties, we may be applying to war standards from which it has historically been exempt. In this context the contradictions of the new Western way of war reinforce a 'historical pacifist' position towards the legitimacy of warfare.

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A renaissance of warfare is one of the most striking features of the early twenty-first century. War, it seems, is not the prerogative of international criminals, but the first resort of the righteous. Since 11 September 2001, it is widely believed, America has shown that might can indeed enforce right. As Polly Toynbee, one of Britain's foremost liberal commentators, put it, 'bombing works'. The confidence in this position, especially in America, involves a striking reversal of the pacifistic sentiments that largely prevailed in Western democracies during much of the last century. It is a veritable *relegitimation* of war.

I call it this because warfare had been comprehensively – if obviously not finally – delegitimised during the course of the twentieth century. In 1914-18, the trenches of Flanders gave us the paradigm of 'senseless slaughter' that helped frame a 'structure of feeling' about war that remained influential throughout the century. So the new resort to war in 1939-45 in Western democracies was heavier-hearted, accompanied by less jingoism, and motivated as much by anti-fascism as by nationalism. True, this did seem to many like a good war, a perception that has

been greatly accentuated in more recent times by the misrepresentation of the war almost as a crusade to halt the Holocaust. But this increasingly appeared very much as an exception. The threat of nuclear extermination created an overwhelming perception, during most of the second half of the twentieth century, that major war was to be prevented at almost all costs. Vietnam reinforced the anti-war structure of feeling by showing how even the limited kind of war, that could be fought despite nuclear weapons, would also involve senseless slaughter. The importance of this experience was that it affected the most powerful Western state, the only one (apart perhaps from Britain) in which the use of war was not already delegitimised by the horrors of 1939-45.

The relegitimation of war is not an entirely new phenomenon. One element of it derives from a similar source as the understanding of the Second World War as 'good'. This is the role of war, or at least of organised military force, in halting genocide and other violence against civilians. This new 'positive' was already emerging at the time of the last great peace movement in Europe, the campaign against nuclear weapons in the 1980s. At that time, however, the examples of good war came from Third World states like Vietnam (in Cambodia) and Tanzania (in Uganda). More recently, of course, this has come to be called 'humanitarian intervention' and has become a declared aim of much Western-sponsored military action.

This was always, however, only one strand of the new Western willingness to resort to war. Margaret Thatcher pioneered a different mode, 20 years ago in the Falklands, and with the end of the Cold War the United States also began to fight real wars with success again. The first President Bush 'kicked the Vietnam syndrome' in the war against Iraq in 1991 and NATO successfully concluded its first ever war over Kosovo in 1999. So the ground was well prepared for President George W. Bush to pronounce his 'war against terrorism' and before long claim victory in this enterprise.

So until recently, the legacy of this last century's pacific lessons seemed powerful. With the US success in Afghanistan, however, it is difficult to avoid the conclusion that the trend is very much the other way. A series of almost unprecedented successes in the use of arms, by the most powerful forces on the planet, threatens to give warfare a strong new momentum. At the moment there is little attention to the contradictions of this development – opposed mainly by those who confuse it with earlier manifestations of Western military power – still less the troubling consequences that it could bring to world society in the coming decades.

In this paper, I will first consider the war in Afghanistan as the latest example of the new Western way of war, and analyse its casualties alongside those of previous campaigns in the Gulf and Kosovo. I shall identify the new type as 'risk-transfer war', a central feature of which is a 'militarism of small massacres'. I shall argue that this new type thus offers only a partial answer to the problems, for the legitimacy of warfare, caused by the systematic targeting of civilians in earlier 'degenerate war'. Despite a closer approximation to 'just war' criteria, the application of which the new mode I shall discuss, inequalities of risk between Western military personnel and civilians in the zone of war revive the question of

legitimacy in a new form. The paper then suggests that in our concern for relatively small numbers of civilian casualties, we may be applying to war standards from which it has historically been exempt. In this context, I shall argue that the contradictions of the new Western way of war reinforce a 'historical pacifist' position towards the legitimacy of warfare.

### **I Death tolls in the 'war against terrorism'**

Carl Conetta analysed direct civilian casualties from Operation Enduring Freedom, to late January 2002. He concluded that a safe estimate would be in the range 1000-1300. He argued that 'If all Taliban government and Afghan refugee accounts of the numbers of civilians killed or wounded in the bombing campaign are taken at face value they would suggest a total of more than 5,000 killed and 10,000 wounded. ... It is likely that the actual toll is less than one-quarter as many. This discrepancy, although large, is not particularly surprising. In the United States, official estimates of the number of people killed on 11 September were initially twice as high as where they sit today. It took more than a month for the figures to be adjusted downward and more than two months before they came close to the present official estimate. ... The final accounting of the deaths suffered on 11 September will probably be 50 percent below the estimates that prevailed during the first month after the attack.'

To these civilian deaths must be added, however, Conetta concluded (in a companion study), 'A minimum of 3,000 civilian deaths attributable to the impact of the bombing campaign and war on the nation's refugee and famine crises.' His report uses 'an estimate of 8,000-18,000 Afghani deaths occurring during the mid-September to mid-January period and due to starvation, exposure, associated illnesses, or injury sustained while in flight from war zones. Of this total, at least 40 percent of the deaths (3200+) are attributed to the effects of the crisis and war.' It will be noted that because there were multiple causes of these categories of civilian deaths, Conetta is reduced to ascribing a percentage of them to the US campaign. Clearly this procedure is fraught with methodological difficulties, but something like this may be necessary if we wish to put a figure to the deaths caused by the US bombing.

To these, Conetta argues, must be further added '800+ troop deaths due to post-war reprisals and mis-management of prisoners' (the inclusion of this figure is justified because once captured Taliban-al Qaida fighters are no longer combatants). Therefore using what he regards as conservative estimates, his report leads to the conclusion that the total of non-combatant deaths as a result of the American military campaign, up to January 2001, was 5,000 or more. (This figure was already higher, therefore, than the likely final toll of around three thousand civilian deaths in New York and Washington.)

These estimates do not address, of course, the killing among the Taliban and al-Qaida fighters as such. It is obvious that while the US aimed to minimise the number of civilian casualties, it actually intended to kill enemy fighters through the formidable bombing campaign that was stepped up markedly towards the end

of 2001 and continued well into 2002. It seems likely, therefore, that the numbers of enemy combatants killed was considerably in excess of the numbers of direct civilian deaths (although it is not certain that would continue to be true if all indirect civilian casualties were added in). However we have no figures on enemy combatant deaths.

We need to set against these considerations of civilian and enemy deaths the death tolls of the US and allied forces, as well as deaths of civilians due to the actions of the enemy, i.e. the Taliban-al Qaida. Only *one* US officer was killed by the enemy during the period covered by Conetta's figures (a CIA operative killed in the Mazar-e-Sharif prison rebellion), although several died in vehicle and helicopter accidents. The death toll among local allied forces, the Northern Alliance/United Front, during this period is likely to have been greater than that of the Americans but much less than that of the Taliban-al Qaida, but again we have no figures. The numbers of civilians killed by the Taliban-al Qaida during the period of the war, as opposed to the longer period of their misrule in Afghanistan and earlier periods of civil war, is also likely to have been small. However they also contributed to the indirect civilian casualties of the recent conflict.

Comparisons with the other two Western wars of the global era are interesting. Looking at these wars, for the measures suggested by this discussion, we find the pattern suggested in Table 1. The figures given are generally more conservative estimates. Naturally most of these figures are disputed. For example, estimates of total Iraqi deaths in the Gulf war have gone into 6 figures. The figure of 12,000 civilian casualties of Serbian action in Kosovo includes up to 2,000 who are estimated to have been killed before NATO bombing began, and 10,000 widely claimed to have been killed immediately after the NATO bombing. However critics of NATO point to the fact that only about 2,500 bodies have been exhumed to suggest that this figure is exaggerated; while on the other side, the Council of Human Rights and Freedoms in Pristina has recently claimed that an additional 3,000 remain unaccounted for. Although it is important to arrive at precise figures, this paper is concerned with the broad relativities of the exposure to risk of death among different groups of combatants. Its arguments would not be seriously affected by any of the adjustments suggested by these points of view, and so detailed arguments about death tolls will not be pursued further.

*[Table 1 here]*

The US's war in Afghanistan has been seen by its supporters as 'targeted' violence, by opponents as 'indiscriminate' slaughter. The discussion so far suggests that both of these claims are too simple. Certainly, the bombing has been quite successfully targeted. The likelihood is that as in the Gulf and (less markedly) Kosovo, the numbers of enemy combatants directly killed is greater than the number of civilian deaths similarly caused. The absolute number of civilians killed in this war, as in the previous two, is very small by comparison with historic US campaigns (e.g. Vietnam and Korea, as well as the world wars). To this extent, the charge of 'indiscriminate' killing of civilians appears inappropriate. However all killing of those who are not directly targeted clearly shows definite limits to discrimination. This kind of killing, notoriously called 'collateral damage',

cannot be avoided entirely in any long-distance use of powerful weapons and is inherently disturbing however much it has been scaled down from the historic pattern.

However the data in Table 1 suggest a rather different perspective. Not only does the increase in direct civilian casualties compared to Kosovo suggest some distinctive military objectives and methods in the Afghan war, as Conetta explains. The *general* pattern, across the three wars, is also highly interesting. Most striking of all is that, after the relatively very low level of Western military casualties in the Gulf, the West has managed virtually to eliminate such casualties in the two most recent wars. *And so in comparison to the tiny numbers of Western military casualties, the numbers of both direct and indirect civilian casualties - as well as of local-allied and (even more) enemy combatants - appear large.*

## **II Risk-transfer militarism: the new Western way of war**

Although civilian casualties are routinely described as accidents, this outcome is hardly accidental. It is the product of political choices in the refinement of Western military power, at three main levels: strategy, weaponry and media management. The combination of these elements enables the West to fight wars at little *human* cost to itself. And since the risk to human lives, pictured on television, has been since Vietnam the major political risk of war, this also means that the West is able to fight wars with a great reduction in the *political* costs. For the US, Afghanistan was never going to be another Vietnam, or even a repeat of the Soviet experience in the same country two decades earlier. American strategists, with practice in the new way of war in the Gulf and Kosovo behind them, could be reasonably confident of that.

The war in Afghanistan was thus an example of a new Western way of war. This 'new' war is not, of course, entirely new. It is a reinvention of the reliance on airpower that has been central to Anglo-American military thought and practice since the 1920s. The new mode relies on bombing – by both manned bombers and cruise missiles – even more than before. However it uses the enhanced precision that computer electronics brings to targeting (the so-called 'Revolution in Military Affairs') to avoid the large-scale and widespread massacres of enemy civilians that occurred in the Second World War and Vietnam. It increasingly uses local allies to carry out actual fighting on the ground. And it uses media management to mitigate the effects of the 'small' massacres that 'accidentally' happen, as well as of the (sometimes larger) numbers of indirect casualties.

In this way, the new way of war appears to transcend the fundamental degeneracy of earlier bombing, manifested in indiscriminate targeting of civilians and huge numbers of non-combatant deaths. But it introduces new contradictions, through the multiple transfers of risk, particularly to civilian populations, which result in the distribution of death that I discussed above. The comprehensive transfer of risks away from Western military personnel appears to be a major aim of the new way of war. And the significance of this aim shows how closely the new way of fighting is linked to the new way of managing news media and public

opinion, and designed to maintain the legitimacy of war in Western societies. And so we can call this way of war *risk-transfer militarism*, not just risk-transfer war.

To summarise, we can identify 5 major elements in this new militarism:

### **1 Killing the enemy**

The principal risks of being killed (as a direct consequence of military action) are actually applied to enemy armed forces, rather than civilians. This was clearly true in the Gulf War and has almost certainly been so in Afghanistan. In a historic sense, this is a transfer of risk back from enemy civilians towards the enemy military as such, and appears to reverse (at least for Western campaigns) the long twentieth-century trend towards overwhelmingly civilian casualties. This is clearly of great significance for arguments about the legitimacy of war.

### **2 Local allies take the risks on the ground**

The risks of ground combat, on the Western/US side, are transferred to local allies (based in the zone of conflict) wherever possible. The increasingly interdependence between Western airpower and local armies on the ground (the Croatian and Bosnian armies, the Kosovo Liberation Army, the Northern Alliance-United Front) enables the West to transfer of greater share of battle casualties to them. (This element was not developed far in the Gulf: although Kuwaiti and Saudi forces did play a certain role, the Shi'ite and Kurdish insurgents in Iraq were abandoned by the US, a crucial error of the war.)

### **3. Small 'accidental' civilian massacres**

The risk of repeated small massacres of civilians is an understood feature of the way the West fights its wars. Small massacres are 'accidental' in the sense that they are not specifically intended and that efforts are made to avoid them. But they are simultaneously programmed into the risk analysis of war. Each of the West's wars has been marked by numerous massacres, most commonly of a handful of people, but in numerous cases of 50-100 civilians at a time, with the largest single incident being the Amirya shelter bombing in Baghdad in 1991, in which around 400 died. The risk of massacres is not only known and understood by Western military planners, it is a completely predictable consequence of the protection provided to Western aircrew. Reliance on high-altitude bombing makes aircrew safe; but it inevitably leads to errors of targeting in which hundreds or thousands of civilians die in each campaign. So the transfer to civilians of the risks of being directly killed is deliberate and systematic.

### **4. Media management**

Because direct civilian killing on any scale could threaten the mediated legitimacy of the war, media management is a key element in risk-transfer militarism. Mediation and surveillance have become intrinsic to this refined mode of post-total war, but they can make it particularly



problematic. Western governments want no more TV pictures of direct victims than absolutely unavoidable: the largest massacres, like the Amirya bombing in the Gulf War and the bombings of a train in Serbia and of a refugee convoy in Kosovo, threaten legitimacy and are subject to intensive 'spin' to reduce their effects. Likewise, Western governments want no threateningly large direct casualty numbers. Thus Robin Cook, Leader of the British House of Commons, indicated at the beginning of the US war in Afghanistan that it would be acceptable because the numbers of its civilian casualties would be fewer than the death toll from September 11. That the number of direct civilian deaths is now estimated, e.g. by Conetta, at under half that total will be seen as supportive by Western politicians, even if the total number of deaths may be greater.

## **5. Indirect civilian casualties**

A corollary of this is that indirect and less visible casualties are more acceptable than direct casualties, and less decisive efforts may be made to minimise these. Where there are other possible causes of death - enemy policies, civil war, drought, etc. - responsibility is less easy to pin down and therefore the West finds the risks more acceptable. The fact that experts like Conetta can ascribe a figure to indirect bombing deaths only by making an arbitrary assumption about the proportion of them caused by US action, indicates the lesser political danger that indirect deaths cause for Western leaders. Of course, ever since the Kurdish refugee crisis after the Gulf War, Western leaders understand that even indirect casualties can rebound badly, where responsibility can be established. Hence Tony Blair tried to insert a 'humanitarian' dimension into the 'war against terrorism' from the start. However, Western strategists' awareness of the relationships between human risk and political risk may lead as much to efforts to deflect political responsibility as to real efforts to minimise indirect harm. This has been the balance of effort in Western responses to the long-running immiseration of the Iraqi people, through the combination of UN sanctions and Iraqi regime policies.

## **III 'Just war' theory and risk-transfer militarism**

How do we evaluate the legitimacy of this new way of war? The principal moral tools that we have available derive from the just war tradition. According to this tradition, as is well known, both ends and means have to be just. Richard Falk, the radical international scholar, who says that 'I have never since my childhood supported a shooting war in which the United States was involved', claims that 'The war in Afghanistan against apocalyptic terrorism qualifies in my understanding as the first truly just war since World War II. But the justice of the cause and of the limited ends is in danger of being negated by the injustice of improper means and excessive ends. Unlike World War II and prior just wars, this one can be won only if tactics adhere to legal and moral constraints on the means used to conduct it, and to limited ends.'

The justice of the ends of the 'war on terrorism' is not really the subject of this paper. However since there is necessarily a relation between ends and means, it is worth quoting Falk's defence of the resort to war: 'The extremist political vision

held by Osama bin Laden, which can usefully be labeled "apocalyptic terrorism," places this persisting threat well outside any framework of potential reconciliation or even negotiation for several reasons: Its genocidal intent is directed generically against Americans and Jews; its proclaimed goal is waging an unconditional civilizational war - Islam against the West - without drawing any distinction between civilian and military targets; it has demonstrated a capacity and willingness to inflict massive and traumatizing damage on our country and a tactical ingenuity and ability to carry out its missions of destruction by reliance on the suicidal devotion of its adherents.'

Most of this is valid, in my view. But Falk's conclusion, the necessity of war, is less certain. It touches on the question of means: 'The perpetrators of the September 11 attack cannot be reliably neutralized by nonviolent or diplomatic means; a response that includes military action is essential to diminish the threat of repetition, to inflict punishment and to restore a sense of security at home and abroad.' It may be true that the perpetrators 'cannot be reliably neutralized' by non-military means; but it is far from certain that they can be, indeed have been reliably neutralized by military methods, either. Military action may 'restore a sense of security', but it is debatable if it actually provides security. And it is not clear that 'inflicting punishment' is a legitimate reason for military action; this is more obviously a judicial function. Indeed, the dangers of militarizing civilian legal and administrative functions have subsequently been widely recognised as a cause of concern, over the issue of the treatment of prisoners. Falk himself argues that unless the 'necessary military element is kept subordinate to the nonmilitary dimensions of response, the war against global terror will be lost in the end.'

Thus war is itself a means, the 'extension of political intercourse by other means' as Clausewitz famously described it. While there were not more 'reliable' means of 'neutralizing' the 9/11 terrorists, war was necessarily an *uncertain choice* among possible means. It may be difficult to imagine any American president not choosing war, after the New York and Washington massacres - but George W. Bush clearly did make an almost instant choice of war over law. His Wild West rhetoric - Bin Laden 'wanted dead or alive' - indicated an indifference to a painstaking judicial response. To put this choice in one sort of perspective: it is difficult to imagine any other Western government having acted in the same way, even faced with such awful events; although Russia, China or India may have done.

Thus, although there are strong elements of traditional international legitimacy in America's response, *the right to make war did not make war right*. The character of the original attack, a manifestly criminal massacre by a terrorist network rather than a state, meant that a policing and legal response was a plausible alternative, as Michael Howard argued. This has been, for example, the response to the 1995 Srebrenica massacre, whose perpetrators are slowly being brought before the International Criminal Tribunal for Former Yugoslavia. But the importance of these points is to show the connection, in this case, between the legitimacy of the choice of war, and the legitimacy of the means adopted *within* war. As Falk states, 'the justice of the cause and of the limited ends is in danger of being negated by the injustice of improper means and excessive ends.' The justice of the means is all the more critical if we accept that there were alternatives to war.

Let us evaluate risk-transfer militarism in just war terms. As Michael Walzer points out, it is axiomatic that the destruction of enemy is justified: "'Soldiers are made to be killed,' as Napoleon once said; that is why war is hell.' There can be little argument, it would seem, with the apparently sharper focus, in the new way of war, on killing the enemy. Of course, if killing can be shown to be superfluous to the goal of destroying the enemy's power, then its legitimacy can be put in question. And violence inflicted must be proportional, not only to the goals of one's own side but to the severity of the initial aggression.

On first inspection, maybe the intensive bombing of Taliban and al-Qaida fighters fits this bill, and the awesome weaponry used – such as the 'daisy-cutter' bombs – was merely an efficient means to this end. But if 'bombing worked' to defeat these enemies, it did so surely by slaughtering them. There are legitimate concerns about these victims. Since the slaughter in the trenches, we have learnt to attach more significance to the lives of soldiers. When one side can minimise the risk to its own soldiers to virtually zero, is it moral to practice industrial killing on a hapless enemy? The image of Iraqi conscripts bulldozed (literally) into the sand, at the end of the Gulf War, is emblematic of this issue. Certainly, as we are moved to contemplate these inequalities of means, we should recall the slaughter inflicted on helpless office workers by terrorists using civilian airliners. But if the US's own killing is almost as one-sided, does the fact that Taliban soldiers were carrying guns, and politically allied to al-Qaida, make it so much more tolerable?

If risk-transfer warfare raises questions for just war thinking even around the treatment of enemy soldiers, the issues concerning civilians go to the heart of the tradition. As Walzer continues, 'even if we take our standpoint in hell, we can still say that *no one else* [i.e. other than soldiers] *is made to be killed*. This distinction is the basis of the rules of war.' True, Walzer is prepared to countenance the extension of combatant status to civilian munitions workers in their workplaces, while they are actually making weapons, and he is also prepared to say that this 'plausible line ... may be too finely drawn'.

However it is certain that in practice, this line has been drawn progressively less finely. In the Second World War, Allied military planners extended it to the point when area bombing of German and Japanese cities killed civilians indiscriminately and in huge numbers. The end-point of this process was the atomic bombings of Hiroshima and Nagasaki, where the line had disappeared altogether. In the subsequent quarter-century, the development of nuclear weapons and strategy reached the point at which war could lead to the 'mutual' mass murder of whole nations. This truly awesome degeneration of warfare threatened, indeed, the more or less total extermination of human society if not of all life on our planet. In these developments, the practice and preparation of war by the most 'advanced' and 'civilised' states comprehensively negated the line between war and indiscriminate slaughter. While there remained significant differences between degenerate war and genocide, the similarities were in many respects more striking.

This degeneration was hardly an episode of accidental excess. Practised on all sides in all three major conflicts of the twentieth century (the two world wars and the Cold War), it was a product of deep historic tendencies. Modern industrial

capitalism, with its technology and social organisation, insinuated a dynamic of mass slaughter into the practice of war. States' military might depended on economic strength and social mobilisation. As a corollary, economy and society in the enemy state also became 'enemies', and technology provided the means of attacking them on a huge scale with bombs and later missiles. There always remained a difference between war against civilian populations *as an extension* of the war against states (I call this 'degenerate war') and war against a civilian population *as such* (i.e. genocide). However, as in the defining case of the Holocaust, genocide usually took place in the context of degenerate war. Although categorically distinct, the two phenomena were closely related.

In the context of this structural deformation of warfare, with its 'extremist' dynamic, it was difficult to pursue the refinement of 'strategy' - let alone to reinsert just war considerations into a surreal moral environment. In a context where war constantly, massively and systematically overstepped the principal moral and legal boundaries that had been proposed for it, it was reasonable to bring these boundaries themselves into question. If military practice *generally* tended to 'make a massacre what was a war', then war itself was problematised. Some tried to draw a line between 'weapons of mass destruction', especially nuclear weapons, and forms of conventional force that could be rehabilitated, thus embracing 'nuclear pacifism'. I have argued that this is inadequate: the tendency to degeneracy is a general characteristic of modern war, not only of specific types of weapon system. A more appropriate response is what I have called 'historical pacifism', defined as the belief that there is a historical tendency for war to become degenerate and hence illegitimate as a means of policy. As support for this position, I noted not only the tendency for war between major states to become self-defeating, but the parallel tendency towards the redundancy of force in 'revolutionary' change. The latter derived from the impasse of the 'militarised revolution', as practised in China and elsewhere, which had produced results as deformed and genocidal as those resulting from interstate war.

The threatening historical redundancy of war for Western states, linked as it was after Vietnam with the loss of self-confidence and looming decline of world power in the US, spurred government and military to refine the instruments of military power. Likewise, since they continued to regard war as a means of policy, moral philosophers were propelled to refine the arguments surrounding its proper means. Thus Walzer's classic post-Vietnam text on just wars, which provides many of the foundations for the arguments offered today about the new wars.

Walzer noted that the doctrine of 'double effect' provided a way in which 'it is permitted to perform an act likely to have evil consequences', such as the killing of innocent civilians. The key condition is that 'The good act is sufficiently good to compensate for the evil effect; it must be justified under [the] proportionality rule.' This was little justification for the atom bomb on Hiroshima, although US apologists had used, and still use a similar argument. However it appears plausible as an account of the 'accidental' killing of civilians in Afghanistan, Kosovo and Iraq, if only because the numbers of direct victims are much smaller and so the evil might conceivably be outweighed. And Walzer perfected a rationale that has been widely applied in these instances. 'Double effect is defensible', he argues, 'only when the two outcomes are the product of a *double*

*intention*: first that the "good" be achieved; second, that the foreseeable evil be reduced as far as possible.' The latter is exactly what the West now routinely claims to be doing in all its campaigns, with more plausibility than in the days before 'smarter' bombing.

However Walzer also provided the fly in the ointment when he pointed out that 'Simply not to intend the death of civilians is too easy. ... What we look for in such cases is some sign of a positive commitment to save civilian lives. Civilians have a right to something more. And if saving civilian lives means risking soldiers' lives, that risk must be accepted.' *In risk-transfer war, this is precisely what is avoided at all costs.* Bombing is undertaken in the firm knowledge that it will increase the risk to civilians compared to other possible means, military as well as non-military. High-altitude destruction is inherently indiscriminate; some forms, at least, of action on the ground, especially on the lines of armed policing, offer the opportunity to discriminate more and avoid civilian casualties to a greater extent.

Amazingly, Walzer provided a way out for Western strategists in this situation. He immediately qualified his statement by arguing, 'But there is a limit to the risks that we require. These are, after all, unintended deaths and legitimate military operations, and the absolute rule against attacking civilians does not apply. War necessarily places civilians in danger; that is another aspect of its hellishness. We can only ask soldiers to minimise the dangers they impose.' Exactly far they must go in doing this, he argues, 'is hard to say'; 'It is best ... to say simply that that civilians have a right that "due care" is taken.'

This sort of escape clause could have made rough and ready sense in the context of wars where large numbers of Western soldiers were seriously risking their own lives. It is difficult to see how it can be sustained in the context of wars like Afghanistan where, *after* risk assessments have been carried out, only one American soldier was killed by the enemy in the same period that over one thousand Afghan civilians were (predictably) killed by American bombs. The care taken for civilians is not only *less* than the care taken for American soldiers, it is *undermined* by a policy adopted to keep the latter safe. Risk to civilians is reduced not as far as practically possible, but as far as judged necessary to avoid adverse global media coverage. *Civilians' risks are proportional not to the risks to soldiers, as Walzer envisaged, but to the political risks of adverse media coverage.* Thus even if there is a limit to the risks we can require of soldiers, *it can surely be shown that Western forces in Afghanistan, Kosovo and the Gulf have gone nowhere near to this limit. We could conclude that even if the aims of the 'war on terrorism' are just, its methods are insufficiently so.*

It could be argued that my argument here vindicates Walzer's extension of the just war tradition, since I have used his case to provide a basis for criticising US policy. This is the line taken by Falk, who claims that 'The "just war" doctrine provides the most flexible and relevant normative framework. It has roots in the ethics of all the great world religions, it is a vital source of modern international law governing the use of force and it focuses attention on the causes, means and ends of war.' However it seems to me that the opposite could just as plausibly be claimed. Wars in which mortal risk to one's own combatants is reduced virtually

to nil, but such risk is routinely inflicted on substantial numbers of innocent civilians, require such flexibility that they extend the 'double effect' and 'proportionality' ideas to the point of absurdity. This may no longer be the most appropriate framework within which to evaluate the legitimacy of war.

### **The degeneracy of war and the case for historical pacificism**

I do not doubt that a consistent exponent of the just war tradition, like Falk, could try to rehabilitate it in the face of this *reductio ad absurdum*. But this would miss the point. The West is using armed force in a way that kills, directly, more enemy fighters than civilians; it generally doesn't target civilians except in error; it aims to minimise 'collateral damage' and 'accidental' massacres. Although civilians are still killed, in historical, especially mid-twentieth century, terms the numbers of victims are small. The new Western way of war thus meets, *prima facie*, many of the historic demands for just war, even if we may question some excesses. However, if my argument has been accepted, there is still something fundamentally awry. That disparity between over 1000 innocent Afghans killed, to one American, says it all.

If we are not satisfied with the justifications offered, this suggests that we may be applying different standards. In the rest of this paper, I want to explore what these may be, where they have come from, and where they may be leading. One obvious source of alternative standards is the political ethics of human rights. War has long been protected in Western thought from the norms that apply elsewhere in social life; but we may now be applying to war the standards from which it has previously been exempt. 'Thou shalt not kill' has been tightened as a general norm, with fewer and fewer exceptions allowed; many Western states even decline to impose the death penalty. And yet war has remained a huge exception. Could it be that now that exception is being challenged, that tight norms against killing are being extended even into the realm of legitimate organised killing itself?

There is certainly some evidence to suggest this. The enhanced concern to protect Western soldiers' lives is in itself a historic change: it reflects the outcry over the deaths of GIs in Vietnam, and a rejection of the idea of 'cannon fodder' in favour of the notion of soldiers' rights. As military sociology has shown, (professional) soldiering is now viewed more as an 'occupation'; one, certainly, with different risks, but still one in which all efforts must be made to reduce risk. This is far from the notion of the heroic warrior. And when things go wrong, officers and governments must be made to take responsibility. During the Gulf War, 9 British servicemen were killed when their vehicle was mistakenly attacked by a US plane: the largest loss of British lives in a single incident during this conflict. The soldiers' families took the British Ministry of Defence to court, and tried to get the US airmen brought as witnesses, in an effort to hold the state accountable for the avoidable accident of their sons' deaths. They did not fully succeed in their aims, but they did make the matter a cause of public debate. It is difficult to imagine any comparable concern over the lives of soldiers in similar incidents in earlier wars, simply because large-scale loss of life was so commonplace. But when numbers of deaths are reduced to small numbers, partly in consequence of fear about political effects of casualties, then individual lives can be made to matter.

In an age of human rights, this concern for individuals is in principle extended to individual civilians, and may even begin to apply to enemy soldiers too. After all, concern about illegitimate killing has been magnified in the justification of recent wars: where they are not actually proclaimed to halt human rights abuses, as in Kosovo, they may well be designed to punish the perpetrators of killing against innocent civilians, as after 9/11. Alongside these wars there are legal proceedings: the activities of the International Criminal Tribunal for Former Yugoslavia (ICTY) were ratcheted up during the Kosovo War, and some at least of the al-Qaida captives will face criminal cases (and there is evident inconsistency and embarrassment in the US attempts to keep the Guantanamo Bay prisoners away from the courts). Not surprisingly, the ICTY felt obliged to consider the case against NATO itself for its 'accidental' massacres of civilians in Serbia and Kosovo. The report of the Committee it established made a case that there is no *prima facie* basis for formally investigating NATO's conduct of that war. Whether, in terms of the current law of war, that was a correct conclusion is not my concern here. What *is* clear is that NATO *could* be held accountable, in principle at least, for the deaths of the civilian victims. What was driving the demand for justice was not so much the legal norms as the perception that all the individual lives mattered: the three people killed in the Chinese embassy, the 16 killed in the Serbian TV station, the 70 killed when a railway bridge was bombed, and so on. Incidents as small as traffic accidents, in terms of numbers of victims, could be matters for which the world's most powerful state could be brought to account, and in basically the same way.

No wonder that the US is concerned about the establishment of the International Criminal Court. The laws of war were never intended to be applied in criminal courts in this manner. The drive to do this stems from general trends towards intensified legal regulation, heightened awareness of individual rights and extensive litigation - trends that derive much of their momentum (ironically) from US society. But criminalization involves treating war like any other human activity, no longer *de facto* or even *de jure* excluded from norms that apply in all other fields. Taking 'Thou shalt not kill' seriously, in the context of war, does indeed threaten to make the practice of war very difficult. If the means of war are generally picked over with a fine toothcomb, in the courts, in the press and (indeed) in academia, then the legitimacy of war will be regularly undermined.

It is difficult, therefore, to resist the conclusion that the door has been fundamentally opened to new kinds of delegitimation of war. Regardless of Western governments' success in mobilising media and public opinion in particular cases, like the opening phase of the 'war on terrorism', the new Western way of war is generally vulnerable to new criticisms that will, sooner or later, challenge its even its newly refined justifications. The failure of any of the transfers of risk could expose the West to risk rebound. If airpower is insufficient to break the enemy, if the local forces are incapable of carrying out ground operations - or if they commit too many atrocities - or if the fickle media turn away from their would-be masters, the risks of the new mode of war will return to the West.

In the 1960s, 1970s and 1980s, it appeared that war was fundamentally compromised by the tendency of 'limited' wars like Vietnam, as well as of large-

scale 'conventional' and nuclear war, to produce large numbers of civilian casualties. Since the 1990s, Western governments and militaries have developed a new mode that seems to have overcome this problem. What I have tried to show in this paper is that alongside this new mode have come new bases for criticising war. The legacy of degenerate war can still be identified in disparities of risk: war's legitimacy can be challenged through even the smallest episodes of killing. Historical pacifism, though challenged by the reinvention of war, is being renewed, as the tests for justly killing get ever tighter.

**Table 1. Death tolls in the US's war in Afghanistan (to end January 2002), compared to previous Western wars of the global era**

	US and other Western military killed by enemy	local allies' military deaths	enemy military deaths	civilians killed  by enemy in precipitating events (note 1)	civilians killed  by West
<b>Gulf War 1991</b>	250	hundreds (Kuwaiti resistance)	20,000	2,000 (Kuwait)	3,200
<b>Kosovo 1999</b>	0	hundreds (KLA)	1,000	12,000 (Albanians)	500
<b>Afghanistan 2001</b>	1 (note 3)	few (Northern Alliance/UF)	thousands/ tens of thousands?	3,000 (NY/DC)	1,000-1,300

## Notes

1. 'Civilians killed by enemy in precipitating events' refers to deaths during the acts of aggression that initiated the immediate conflict. It does not include the longer-term death tolls of earlier campaigns (e.g. Saddam Hussein's genocides, Serbian campaigns in Croatia and Bosnia, the Afghan civil war and Taliban repression) or subsequent war (e.g. Iraqi civil wars after the Gulf War, the elimination of the Marsh Arabs, etc.) .
2. 'Indirectly caused civilian deaths as result of Western action' refers to estimates of civilian deaths in the immediate aftermath of the war (e.g.



civilian deaths as result of the US destruction of infrastructure in Iraq; and as a close consequence of recent bombing of Afghanistan). It does not include longer-term deaths in which the war may have been influential (e.g. as a result of later sanctions against Iraq, or possible long-term consequences of the Afghan war).

3. To the end of March 2002, a total of 40 US troops had been killed in Afghanistan, but of these, 'Only 8 are listed as victims of enemy fire: most of the others died in crashes and accidents.' (*Guardian*, 30 March 2002).