

‘This is Not Your Father’s War’
Confronting the Moral Challenges of ‘Irregular War’
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George R. Lucas, Jr
Professor of Philosophy
Director of Navy and National Programs
The Stockdale Center for Ethical Leadership
US Naval Academy (Annapolis MD, USA)

On Tuesday 4 November 2008, Paula Lloyd, assigned to US Army team AF-4 Blue, was conducting interviews among the local population in the small village of Chehel Gazi in southern Afghanistan. According to witnesses, she approached a man carrying a fuel jug and they began discussing the price of gasoline. Suddenly the man, Abdul Salam, doused her with the fuel in his jug and set her on fire. She suffered second-and third-degree burns over 60 percent of her body. Tragically, Paula Lloyd died of her injuries just last month. Her teammate, Don Ayala, initially apprehended the assailant and forcibly took him into custody. When news of the severity of Lloyd’s injuries reached Ayala approximately 10 minutes later, he allegedly flew into a rage and executed Salam on the spot with a bullet to the brain. He, in turn, was arrested and placed in detention at Bagram Air Base, pending a full investigation of possible charges of unlawful killing of a civilian noncombatant in custody.

Lloyd was not an American soldier. She was a civilian social scientist, part of a relatively new project that the Army calls its ‘Human Terrain Systems’ (HTS). She had been

embedded with Army brigade combat teams in Afghanistan to gather cultural intelligence, provide regional knowledge and orientation, and interpret the customs of indigenous peoples to US commanders in order to mitigate conflict and minimize the kinds of misunderstandings that can lead to ill-will, unwarranted violence, or inadvertent casualties (Lucas 2009a). Her presence as a civilian alongside combat personnel in contested areas of armed conflict – driven in turn by their need for reliable cultural understanding and accurate regional knowledge as well as linguistic skills to complement their technical prowess in war-fighting – is all part of a revolution that has transformed, and will continue to transform the nature of warfare in the twenty-first century.

Accordingly, we might ask: how adequately and thoroughly are we member-nations of NATO presently equipping our officers and enlisted personnel, both through their professional military education and through their general (liberal) education, to develop the requisite capacities to cope with this transformation, and to meet these novel requirements of what might aptly be described as “the postmodern battlefield?” (Lucas 2009b)

Ms Lloyd was, for her part, recruited in the US, hired, trained for four months at a special facility at Fort Leavenworth, Kansas, and finally, deployed to a combat zone in Afghanistan by a private military contractor, BAE Systems, Inc. Headquartered in the United Kingdom, BAE Systems (formerly ‘British Aerospace’) is a large, multinational defense contractor with major offices in South Africa, Sweden, Saudi Arabia, Australia, and the US. Until comparatively recently, it specialized in the sale and maintenance of sophisticated military hardware and armaments. The U.K.’s ‘Serious Fraud Office’ has, for several years, been looking into suspected bribery payments by BAE Systems to members of the Saudi royal family in connection with a huge contract known as ‘al-Yamamah,’ an enormous purchase of fighter

aircraft (Tornados, Hawks and, more recently, Eurofighter Typhoons). The Saudi family recently pressured the former Blair government to abandon the investigation without issuing findings (Wrage 2007).

One might find it curious that a British company, specializing primarily in the sales of weapons platforms, armaments and aircraft, and under indictment for bribery and fraud in Saudi Arabia, is now hiring American scholars and training them to deploy with combat forces in Afghanistan and Iraq. This is yet another important, and (as our British delegates might say) a ‘highly irregular’, feature of contemporary warfare. The reliance of modern military operations on private contractors, including private security firms (like DynCorp, Triple Canopy and the former Blackwater Worldwide, Inc.) has increased dramatically over the past decade. It is wholly impossible, at present, to deploy the military forces of any of our allied nations for *any purpose whatsoever*, without the logistical and security support provided by such firms and their contract personnel. This is the sobering reality of postmodern military operations, the full and stark significance of which most nations, governments, and their militaries have yet to fully confront.

There are, at this writing, over 900 private firms operating in Iraq alone, employing between 190,000 and 210,000 personnel, surpassing considerably the number of combat troops presently stationed there. Their functions encompass everything from preparing and serving food to maintaining barracks, showers, and latrines, providing troop transport and supply convoys, maintaining ship yards and motor pools, as well as (in some cases) providing security for diplomats, political officials, and embassy personnel. All the non-combat activities that used to fall to ‘Sergeant Bilko’ or ‘Beetle Bailey’ and his comic-strip friends – as well as, in real life, to military police (MPs), shore patrols (SPs) and Marine guards – are now ‘outsourced’ to

civilian contractors, quite often ‘ third-country nationals’ (TCNs) hired on sub-contracts by the civilian firms who win competitive bids from their own governments to provide these services. A colleague, a mid-career officer in the US Air Force, traveled to Baghdad in 2005 to assist in conducting an investigation of the Iraqi Police Force training programme. He was assigned a personal bodyguard, a Gurkha from Nepal, armed with an AK-47. As the two chatted, the major discovered to his horror that his Nepalese friend had initially been hired to work as a dishwasher, but, upon arrival in Iraq, was handed a rifle and re-assigned (to his amazement!) as a security guard, without prior training or experience.

That is not an unusual story. Private firms initially responsible only for logistical support may be left on their own to provide security for their personnel, workplace, or for the operations they supervise. They do what any private company would do: they, in turn, ‘outsource’ these additional tasks. The result is a crazy patchwork quilt of contractors and subcontractors performing logistical and security operations with little in the way of internal controls, supervision, training, or accountability (Fainaru 2008). These developments present an extraordinary challenge for maintaining effective integration, coordination, and command and control of the diverse forces and personnel in zones of combat, not to mention contract acquisition, accountability, and oversight of these private entities themselves. Military personnel returning from theatre report with disgust that Kuwait City or the Green Zone in Baghdad often resemble the infamous ‘bar scene’ from ‘Star Wars’ with all sorts of terrifying-looking individuals wandering around belligerently in strange costumes, sporting shaved heads, tattoos, and body- piercings, while armed to the teeth with contraband weapons (Lucas 2008b).

The depth of the acquisition and accountability dilemma, in turn, was suggested in a recent monograph on strategic military leadership by US Army (retired) Col. Jeffrey D.

McCausland, the former Dean of the US Army War College (McCausland 2008: 21-23). The number of private contracts and contractors has more than doubled over a six-year period from 2000 to 2006, while the number of federal officials responsible for acquisition and oversight has remained the same or been reduced. An audit of these practices by the Special Inspector General for Iraq in 2007 revealed that two federal contracting offers were overseeing over 700 personnel and contracts for the U.S. State Department in excess of one billion dollars. Not surprisingly, recent GAO audit reports consistently report tens of billions of dollars misspent or unaccounted for, while former members of the Iraqi Commission on Public Integrity report similar accounts of bribery and corruption totaling in excess of \$13 billion in US federal funds.¹

How adequately do we prepare our military personnel, in their programmes of professional military education based primarily upon the requirements of conventional warfare, to collaborate effectively with private military contractors, let alone understand the challenges their presence, and the military's increasing reliance on them, represents? What have we done to enable personnel from the military and government side of these contract negotiations to provide sufficient business and managerial acumen, as well as ensure ethical compliance, or otherwise to handle the enormous managerial burden this privatization presents?

At the time of this writing, the answers to these respective questions, in the US at least, are 'poorly, and 'not nearly enough.' A brief survey of US federal institutions during the fall of 2008 revealed that there was no formal discussion of this topic, or readings assigned, at the Naval War College or Post Graduate School, nor at Air University, nor at any of the five

¹ See the 2008 US House of Representatives Oversight Committee report on Iraq at <http://oversight.house.gov/documents/20081003181709.pdf>. The report from Salam Adhoob, former chief inspector of the Iraqi Commission on Public Integrity is reported in *The Washington Post* (23 September 2008; A19).

undergraduate federal service academies. The National War College includes the topic in passing in discussions of civil-military relations, while the Army War College assigns a single reading (Avant 2002) that surveys the topic only up through the Balkan conflicts. Enabling military educators to attempt a more systematic, rigorous, and comprehensive educational coverage and approach to this important development is the theme of the McCain Conference of Service Academies and War Colleges at the US Naval Academy (April 23-24, 2009). Meanwhile, in response to the enormous problem of contract acquisitions and oversight, Prof. Doug Brook, former Dean of the GSBPP at NPS, has instituted a new defense acquisitions MBA programme for DOD acquisitions personnel, commencing in July 2009.

For the four members of SEAL Team 10, inserted in the Hindu Kush mountains of Afghanistan's Kunar province on the night of 27 June 2005, however, the problem was not this puzzling abundance of private contractors and security firms in the battlespace, nor the enormous challenges of waste, fraud, corruption, or other abuses that they potentially represent. Instead, the problem these four individuals faced was a decided absence of reinforcements or backup support of any kind in a remote and inaccessible region far from their operational headquarters. Codenamed 'Operation Redwing,' the mission of these Special Forces personnel was to reconnoiter and get 'eyes on' Ahmad Shah, a close associate of Osama bin Laden, whose attacks had been taking a heavy toll on Marines operating in eastern Afghanistan. After setting up their observation post on a mountainside, overlooking a village near the Pakistani border in which this key Taliban leader was believed to be encamped with a small army, the four-man team was approached at midday by two Afghan men and a 14-year old boy, herding their flock of goats. The SEALs debated over whether to kill the three civilians in order to protect their cover, try to hold them prisoner, or simply turn them loose and abandon the mission. After

arguing among themselves, the four SEALs decided to let the Afghans go, and attempt to reposition.

A little later, however, nearly one hundred Taliban fighters materialized, coming across the same ridge over which the goatherds themselves had fled. The SEAL team fought for several hours, killing an estimated thirty-five of the enemy, but eventually they were overwhelmed. Their commanding officer, US Navy Lieutenant Michael Murphy, was shot and killed as he called for backup. Two of the three enlisted members of the team were also killed in the relentless gunfire. Petty Officer Marcus Luttrell, the lone survivor (Luttrell 2007), was badly wounded, and escaped by jumping down steep cliffs, falling hundreds of feet at a time. He was found and rescued by local Pashtun tribesmen, who, for several days, extended him extraordinary hospitality and protection. When finally located and rescued by Army Rangers, Luttrell learned that Lieutenant Murphy's original call for assistance had resulted in an even greater tragedy. An MH-47 Chinook set out with seven Army Rangers and 7 Navy SEALs aboard, all of whom had volunteered to rescue their comrades. Tragically, a Taliban rocket-propelled grenade (RPG) hit the rescue helicopter as it was landing, killing the two pilots and all 14 Special Forces volunteers on board, the worst single incident of battlefield fatalities sustained in the Afghan conflict to date.

When we reflect on the lessons to be drawn from this terrible incident, did Lieutenant Murphy do the right thing when he reminded his comrades (as Petty Officer Luttrell reports he did) of the status of noncombatants under the Geneva Conventions, and of the vital importance to the ultimate success of the allied struggle against terrorism of maintaining stringent adherence to those provisions? So as not to be unduly melodramatic, let me affirm clearly that I believe 'Murph' Murphy did act correctly and courageously in this instance, and fully deserved the

Medal of Honor he was subsequently and posthumously awarded. Unquestionably, however, he and his comrades paid a terrible, terrible price for this principled decision (Lucas 2007). It should come as no surprise, then, to recognize that this incident is the topic of intense debate. Petty Officer Luttrell believes that he and Murphy were mistaken in enforcing rules protecting noncombatants in this situation, and blames himself for this decision and for their deaths, and many agree.²

These stories are typical of the situations encountered, and the moral conundrums faced, by today's military personnel when deployed by their governments to undertake internationally-sanctioned missions in far corners of the world, fighting wholly unconventional wars to interdict terrorists, halt humanitarian atrocities, or restore stability, peace, and the rule of law in failed states. It is important that such issues be confronted and discussed for, as in the case of Lt Murphy and his comrades, ungrounded and untested raw intuitions can differ substantially, and provide little in the way of reliable guidance to individuals facing stark choices in the heat of conflict.

What runs through all of these otherwise distinctive vignettes as a common thread is that these situations do not fit the definition of conventional war, in which the objective is customarily said to be 'to destroy the enemy's army, occupy his cities, and break his will to fight' (Clausewitz 1832). That customary definition works reasonably well for the 18th and 19th century imperial wars that Michael Walzer frequently analyzes in his classic study, *Just and*

² Moral philosophers have likened this case to Jeff McMahan's well-known example of the 'innocent aggressor,' who poses a lethal threat to one's life, even if accidentally or unintentionally (McMahan 2002). I object to this analogy on the grounds that, unlike the lethal aggressor, the shepherds themselves were unarmed, and posed no direct or imminent threat. It is not clear, in any case, that the SEAL team's having been 'stepped on' (that is, discovered by potentially hostile locals) itself warrants an automatic death sentence for the unfortunate locals. But these remarks only suggest how intricate and inflammatory the analysis of such instances often becomes.

Unjust Wars (Walzer 1977) , for example. It safely encompasses World War II, or the first Persian Gulf War, involving pitched battles between the properly identified armies and navies of warring enemy nation-states vying for territory, resources, or political supremacy. But it hardly fits Rwanda. The nations we might now find ourselves ‘invading’ (and this includes Iraq) are not held to be ‘our enemies’ in any conventional sense. The purpose of military manoeuvres in our age is not conquest and occupation, but law enforcement and protection of the local populace, often from the threat posed by their fellow citizens or their own government (Lucas 2003b). The armed opponents, whether a local, genocidal militia as in Rwanda, a lawless, murderous paramilitary ethnic army, as in Bosnia or Kosovo, or shadowy, non-state actors in the hills of Tora Bora, do not constitute an opposing ‘army’ in the conventional understanding of that term.

If we are part of the Belgian army contingent of United Nations forces sent to Rwanda in 1994 under the command of Canadian Gen. Romeo Dallaire, it is not clear we can grant the marauding Hutus the status of ‘morally equivalent combatants’ that Walzer, for example, cites as an essential feature of the ‘war convention.’ And in any case, what is a young officer like Captain Luc Lemaire to do when ordered by his chain of command to withdraw his contingent of 90 Belgian soldiers from the Don Bosco school compound to assist in the evacuation of Europeans at the Kigali Airport, knowing, if he obeys, that the 2000 terrified locals under his protection in that compound will literally be hacked to death? How is a small and seriously undermanned Dutch battalion to respond, when sent to defend the vulnerable citizens of Srebrenica from attack by rogue ethnic militias, but denied adequate air cover and reinforcements in an unwieldy and inefficient United Nations bureaucratic chain of command? Are they to fight almost certainly to the death in a land that is not their own, to protect strangers

with whom they have no immediate personal or political connection, in a conflict in which they and their nation have absolutely no concrete political interests.. . . . or should they acquiesce and withdraw in the face of threats from the advancing ethnic forces, as “Dutchbat” eventually did, leaving the Muslim inhabitants of Srebrenica to their unfortunate fate? (Lucas & Rubel 2006)

These are not enviable positions in which to place relatively junior military officers, but they are not atypical of the situations into which we are increasingly sending such officers, as well as the enlisted personnel under their command. Once again we might ask, how well have we prepared them for these responsibilities? Just as importantly, how adequately have we examined and reformed our organizational structures and our traditional conceptions of military command and control, so as to enable, rather than inhibit, the kind of autonomous exercise of judgment, prudence, courage, compassion, and commitment to the principles of professional military responsibility that such agonizing situations as this are likely to evoke in those young officers (Lucas 2008a)? This goal is especially problematic when partners in the military coalition do not uniformly share the same understanding of, or commitments to fundamental moral and legal norms. Indeed, the challenge of evolving a common understanding of professional ethics and military leadership sufficient to guide international coalition forces in such exercises – what my esteemed colleagues Professor Albert Pierce at the National War College and Professor Henri Hude at the illustrious French Military Academy (St.-Cyr) both term “ethical inter-operability” – is perhaps the most serious ethical challenge we NATO member-nations face today. Have we scholars, military educators, political analysts, diplomats and most importantly, senior military and government leaders done our job of preparation effectively, so that, when the time comes, those same young officers and enlisted can do theirs?

In fact, we have not done well at all. In the spring of 1996, I came to the US Naval Academy from Georgetown University to help establish a new core programme in military ethics. There I found midshipmen and their military and civilian instructors still discussing the challenges and demands of conventional war. If they studied anything on military ethics, they were reading Walzer, surely a good place to start. But despite years of humanitarian military operations in Somalia, Bosnia, and Haiti, alongside the notable failures of such operations in Rwanda, these non-conventional uses of military force were simply not discussed. A survey of practices in the other US federal military academies and war colleges revealed much the same, with very few exceptions. Over a decade later, after numerous terrorist attacks in several of our member nations, and two wars against terror waged in Afghanistan and Iraq, respectively, a thorough analysis of ethics and military education at academies and senior military educational institutions around the world, carried out by the European NATO-country-based “Military Ethics Education Network,” revealed that little had changed (Robinson et al. 2008).³

Meanwhile, with the almost sole exception of Michael Walzer himself, in the decades of disillusionment that followed the Vietnam War, scholars and teachers in civilian universities in the US, at least, had almost entirely abandoned the discussion of war, or the conduct of war, as a topic in ethics, and had neglected the military profession in order to pursue more timely and publicly-visible controversies in ‘professional ethics’ arising in medicine, business, and law. It

³ I regret deeply that my own institution was unable to participate in this initial deliberation of the Military Ethics Education Network (based in the Institute of Applied Ethics at the University of Hull, UK), because the findings of their study indicated that professional ethics and moral theory, both widely taught, should be accompanied by casuistry and the analysis of military case studies. Our current programme, while far from ideal, brings senior practitioners into the classroom with civilian subject matter experts, and the focus is on the case studies emerging in the most recent theatres of conflict (at the time, Somalia, Haiti, Bosnia, and the first Gulf War; and now, of course, Iraq and Afghanistan, as well as Kosovo). I myself see no reason why ethics and the military profession ought to differ in this respect from the way ethics and the professions are generally taught: that is, in close dialogue with senior practitioners, and exploring the application of moral principles to case studies drawn from professional practice.

took the tragedy of 11 September 2001 and the subsequent invasion of Iraq to re-awaken that interest,⁴ and once again galvanize the scholarly and academic communities to recognize their responsibilities to participate in civic discourse, and educate a generation of citizens (including soldiers) who would, as a result, be found sufficiently competent and capable to shoulder their civic and professional responsibilities.

Not only have we not done a good job of educating present and future military personnel about the challenges of irregular war, we have resisted doing so. Such wars do not employ the conventional strategy and tactics with which we are familiar, nor do they employ the exotic, expensive, high-tech weapons systems our military and industrial leaders favour. An F-18 ‘Super Hornet,’ let alone the new Air Force F-22 ‘Raptor’ or the F-35 ‘Lightning’ (the so-called ‘Joint Strike Fighter’), are not really designed for optimal use in Afghanistan, let alone in Rwanda or Darfur. Likewise, the culture of the ‘single seat fighter’ that dominates our Air Force defense acquisition decisions in the US is no longer relevant to these new challenges. Yet in the US and in European NATO nations, we sustain an industrial base that is economically dependent on producing such weapons, and military cultures that persistently favour them, despite their near total irrelevance to the kinds of military operations we shall most likely be asked to undertake in future coalition exercises.

It is in this sense that the ‘wars’ we are asking my own and others’ military ‘students’ to prepare to fight now, and for the foreseeable future, are ‘not their father’s wars.’ Indeed, these conflicts are not really ‘war’ at all: they are unconventional, asymmetric conflicts, with

⁴ The need to recover and re-acquaint the scholarly community with these recent challenges to conventional just war thinking was the theme of a summer institute for college and university faculty in America, sponsored by the National Endowment for the Humanities during the summer of 2004. Reflections by some of the participants can be found in (Brough, et al. 2007).

shadowy, illusive, and ill-defined enemies and morally ambiguous objectives that are more akin to ongoing domestic attempts to combat organized crime, or stop gang warfare, or identify and arrest drug dealers and human traffickers than they are to armies defending their nations against enemy states in conventional war. Professor Paul Robinson of the University of Ottawa, himself a former officer in the British and Canadian Armies, notes that we have developed a number of military euphemisms to catalogue these kinds of conflict: stability operations, counterinsurgency warfare, “fourth generation” warfare, humanitarian interventions and the “three-block” war, and other assorted ‘military operations other than war.’ Again, as our British participants might emphasize, contemporary military operations of these collective sorts are all ‘highly irregular.’ Yet it is these conflicts, rather than conventional war, that we shall all hereafter be required to conduct, fund, or support.

For my part, ever since these kinds of conflicts came to dominate the political landscape in the immediate aftermath of the Cold War, I have insisted in my own teaching and writings that these new military operations are better classified as ‘constabulary actions,’ fraught with a kind of legal and moral ambiguity that is not helpfully sorted out or clarified by the conventional rules of war, or by the provisions of the classical Just War Tradition on any of its manifold modes of discourse (Lucas 1999). Instead, they require their own, distinct modes of analysis, and the issuing of clarifying guidance not unlike the kind of guidance provided in conventional warfare by the two traditional aspects of the just war tradition, *jus ad bellum* and *jus in bello* (Lucas 2003a, b). The needed guidelines, suggesting when we might be permitted or even obligated to become involved in such operations (I term these “*jus ad pacem*”), and how our coalition forces must be required to conduct themselves during those operations (by analogy, *jus in pace*), constitute deliberations that go far beyond, and are far more robust and detailed than anything

currently contained in Ambassador Gareth Evans' and the International Crisis Group's rather vague and tepid 'Responsibility to Protect' (ICISS 2001; Evans and Sahnoun, 2002; Lucas 2008c).⁵

In part for reasons cited above, not all military leaders and personnel are happy with these kinds of military operations. The publication by the US Army of new field manuals on 'Counterinsurgency' (in December, 2006), and on 'Peacekeeping and Stability Operations' (in 2008) was greeted with dismay in many quarters, as though the authors of these works were advocating a new role for military force other than conventional war-fighting. Instead, the more challenging fact to confront and acknowledge is that, whether we like it or not, the final conventional war as we know it played out in the sands of Kuwait and Iraq in 1991. For our lifetimes, and for the foreseeable future, 'irregular war' is the only kind of war militaries will be asked to conduct. It is important that we comprehend this fact, and adjust our expectations, re-shape our thinking about weapons and defense acquisitions, and otherwise orient our professional military education and training toward this urgent contemporary challenge.

This larger task itself might be understood as a new moral requirement of just war doctrine: what we might term *jus ante bellum*, the moral responsibility for preparing present and future warriors, in advance of any conflict, for the moral challenges and ethical responsibilities incumbent upon them in combat (Wertheimer 2010).⁶ Whatever we choose to call it, however, I

⁵ This is far too complex a matter to analyze in detail here, but these resolutions represent the work of a dissident group of U.N. diplomats formed in the aftermath of the Rwandan genocide, and in support of the unsuccessful bid of its leader, Australian diplomat Gareth Evans, for the post of U.N. Secretary-General. Unfortunately, their deliberations show no evidence of consultation either with the scholars who have devoted considerable thought to criteria for humanitarian military intervention, or with the military personnel who carry it out.

⁶ A new book series on 'Defence Ethics,' based in the U.K. under the editorship of Paul Robinson, James Connelly, Don Carrick will, in turn, subsume a series on military ethics that I have edited for the past several years

believe this ethical challenge to be the most significant moral responsibility we face today: deciding how we should educate the men and women whom we will charge to keep peace, protect the human rights of vulnerable peoples throughout the world, and defend the rule of law in our global society.

If we have the temerity to ask them to risk their lives to undertake *that* for us, we should be willing to do a much better job of *this* for them.

for the State University of New York Press (SUNY), under the title 'Ethics and the Military Profession.' The theme of *jus ante bellum* was implicit in those earlier entries (for example Cook 2004, Challans 2007, Brough et al. 2007), and is now made explicit.

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