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### [Review of: C.J. Finlay (2015) Terrorism and the Right to Resist: A Theory of Just Revolutionary War]

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**DOI**

[10.1007/s10982-017-9314-4](https://doi.org/10.1007/s10982-017-9314-4)

**Publication date**

2018

**Document Version**

Final published version

**Published in**

Law and Philosophy

**License**

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[Link to publication](#)

**Citation for published version (APA):**

Noorda, H. (2018). [Review of: C.J. Finlay (2015) Terrorism and the Right to Resist: A Theory of Just Revolutionary War]. *Law and Philosophy*, 37(4), 467–471.  
<https://doi.org/10.1007/s10982-017-9314-4>

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## BOOK REVIEW

Christopher J. Finlay, *Terrorism and the Right to Resist: A Theory of Just Revolutionary War*. Cambridge. Cambridge University Press, 2015, pp. 339. \$99.

Christopher J. Finlay's *Terrorism and the Right to Resist: A Theory of Just Revolutionary War* offers an account of a philosophy of armed force as it might be justifiably employed in legitimate fights to protect human rights against foreign or domestic oppression. The argument is informed by an extensive knowledge of international law and is richly illustrated with historical and contemporary examples of armed resistance. Finlay's aim in the book is to describe the circumstances in which rebels have the right to claim that they are legitimate actors in revolutionary wars, and he explores the possibilities for the implementation of a set of *in bello* rules that change based on the contexts of different conflicts. His theory is topical, erudite, and fills a gap in the existing philosophical literature on war.

Finlay relies on the revisionist work of Jeff McMahan, Cécile Fabre, and David Rodin, among others. Typically, revisionists reject the traditional distinction in just war theory between the principles that govern the resort to war, *jus ad bellum*, which are relevant mainly to leaders, and those that govern the conduct of war, *jus in bello*, which are relevant mainly to combatants. They do this by arguing that the rules of war are reducible to the moral rules of everyday life. On this account, combatants who do not fight for a just cause do not fight permissibly, regardless of their adherence to the *jus in bello*; and combatants who target civilians do not fight a just war, regardless of their *ad bellum* objective. Finlay contributes to this stream of literature by extending the revisionist philosophy of war into the domain of revolutionary war.

Finlay employs the idea of human rights to define just revolutionary war. In his view, the violation of human rights may justify resistance. If we have human rights, Finlay argues, then we must in

some circumstances also have a right to resist those who threaten them (p. 20). He defines the right to resist as a claim resulting from a situation in which the state has shown that the normal avenues toward remedying oppression have proved fruitless (pp. 20–27). This human rights perspective may endorse various goals, including religious goals if they are important parts of legitimate national self-determination. Finlay states, in line with the Universal Declaration of Human Rights, that religious expression may not result in the oppression of others (p. 42). Thus, a non-state actor should not aim to establish a religious regime that violates women's rights, for example.

Finlay argues, in line with revisionism, that if the right to resist is claimed with justice by individuals, then the implication is that their opponents do not have a right to defeat them (p. 34). On his account, the question of whether an actor deserves legitimate authority depends on whether that actor wages war in the pursuit of a just cause. In contrast, from a traditional view on the laws of war, the principle of legitimate authority has been ascribed to rulers of states. From this perspective, rulers of states possess this authority by default, even if they initiate an unjust war. Finlay adapts the criterion of legitimacy to revolutionary wars and ascribes legitimate authority to non-state actors with a just cause. This is in line with our general understanding of revolutions, because we tend to think of revolutions in terms of the just fighting the unjust, i.e., revolutionaries rising up against foreign occupation, colonial power, or domestic dictatorship. However, it is worth considering that both sides in revolutionary wars typically assume they have justice on their side.

All rulers, even oppressive rulers, tend to think or tend to pretend to think they have justice on their side. For example, the Dutch government and the majority of the Dutch people were in favor of using force against Indonesian resistance fighters in their struggle for independence from Dutch colonial rule (1945–1949). During this revolutionary war, the Netherlands undertook military offensives, which they described as *politieele acties* (police actions), aimed at restoring law and order. The war involved a bloody armed conflict that resulted in about 150,000 deaths on the Indonesian side and about 5,000 on the Dutch side.<sup>1</sup> In 1949, the Netherlands recognized

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<sup>1</sup> See, National Library of the Netherlands, "Indonesie Zelfstandig", <https://web.archive.org/web/20150330042927/http://www.kb.nl/themas/geschiedenis-en-cultuur/koloniaal-verleden/indonesie-zelfstandig>.

Indonesian independence after a great deal of pressure from the international community, but, at the time, the Netherlands did not recognize the unjustness of its war. It is worth asking how Finlay's theory of just revolutionary war can regulate conflicts in which both the state and the revolutionary group assume they pursue just causes. At first sight, it seems he does not provide a framework for revolutionary conflicts in which both parties fight under the assumption to have justice on their side.

Ultimately, Finlay accepts that some non-state actors have the power to force enemies or the international community to recognize a state of war once those actors achieve the level of organization, territorial control, and capacity for effective armed force. He also mentions the First and Second Protocols to the Geneva Conventions (1977) that provide a basis for regulating full-scale civil wars and wars of national liberation that may meet these standards (p. 177). Moreover, he argues that wide support in a community may create a *de facto* state of war unilaterally (pp. 184–185). Opposing states may apply “prisoner of war” status to combatants who apply the discrimination principle and, thus, only target the opposing military. Non-state actors with an unjust cause do not have the right to invoke *jus in bello* because they do not meet the just cause condition as put forward by Finlay; however, there may be a prudential case for recognizing them as combatants if they become large and powerful enough. In this case, a community believes that the resistance group has justice on its side and the ruler of the state does not agree with that idea but, nonetheless, for prudential reasons, treats her opponents as combatants. Thus, Finlay does give some room for applying *in bello* rules to so-called unjust revolutionary fighters. However, Finlay's proposal might raise practical difficulties in its application, because he does not address the question of what institute or organization decides whether the resistance fighters are waging an unjust war.

As for the conduct of combatants in war, Finlay sets aside the assumption that only the standard *jus in bello* can be invoked to regulate the actions of legitimate movements engaged in justifiable armed resistance. He describes three *jus in bello* frameworks that are based on offensive violence: standard *jus in bello* (Chapter 6), partisan *jus in bello* (Chapter 8), and terrorist *jus in bello* (Chapter 9). The

appropriate code is determined by the method of resistance that is justifiable under the circumstances. His partisan and terrorist *jus in bello* frameworks allow rebels to use impermissible tactics, widen the range of permissible targets, and allow terrorists to kill civilians. While these frameworks appear provocative at first sight, Finlay's proposals are moderate and close to international law. As Finlay explains, civilian camouflage is only allowed to give revolutionary fighters the same ability that state-combatants have to withdraw temporarily from fighting for purposes that are consistent with the laws of war (par 7.4.3). By contrast, he does not allow combatants to use human shields. This is in line with international law, which allows for defensive forms of deception in war but not for aggressive forms, such as perfidy.

Finlay's arguments regarding the range of permissible targets are more problematic than his claim that combatants may wear civilian clothing in particular circumstances. He defends a form of partisan discrimination that allows targeting non-military but liable targets (par. 8.2.2). This approach is highly problematic for the following reasons. First, Finlay's method for assessing target liability is similar to the methods used for police profiling and signature strikes, where risk is assessed based on vague factors, such as social connections with perpetrators, age, gender, etc. Second, the process by which individuals are targeted is alarming. Are there proper processes for reviewing death lists during revolutionary wars? Third, the effect of such killings on innocent civilians is worrisome, because it is questionable whether it is possible to give assurances that innocent civilians will not be harmed. On top of this, although revolutionary fighters may convince themselves that they are justified in killing particular people as a matter of self-defense, these practices are, in fact, homicidal. The homicidal character of these practices ought to raise questions about the kinds of non-state actors that can utilize them. Would it be desirable to provide them with a *jus in bello* framework to regulate such killings?

With regard to terrorists killing civilians, Finlay argues that this is not likely to be justified in any historical or future case (p. 284). His point is to show how such cases fall short of the necessary justifying conditions. For example, they would have to meet the requirement of waging war for a just cause, terrorism would have to be the most

proportionate available alternative, and the enemy state would have to lack a commitment to civilian immunity. Thus, Finlay sets out the exception as a means of proving the rule that terrorism ought not generally to be regarded as a legitimate tactic.

In sum, Finlay offers a timely contribution to the philosophy of war by significantly advancing the theory of revolutionary war. In doing so, he provides thought-provoking proposals for adapting *jus ad bellum* and *jus in bello* in order to regulate revolutionary conflicts.

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