MORALITY AND WAR

ETHICS, MORALITY, AND THE GULF WAR

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I.

First, some preliminaries.

A good case could be made, I suppose, that the three subjects noted in the title have at best a remote relationship to each other. Though to speak of an "ethics of war" may not yet be the oxymoron "morality of war" has become, it is well on the way. The rise of the nation-state, with its insistence upon absolute priority for its self-defined interests, has all but eliminated the prospect of developing and adhering to an objective, content-neutral formula for distinguishing "right" from "wrong" in international relations.

Of course the idea that such a formula should be employed might be a sociological intrusion ("fetish" perhaps?) rejected by ethicists and moralists alike. Even so, the starting point for this discussion is the presumption that the study of ethics (and morality as well) must be related to observable human behavior as a directive or restraining force and, at the same time, its product. Removed from that context, the attempt to codify and apply rules of universal application is reduced to an exercise in intellectual abstraction comparable to game theory and other more esoteric spe-

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cialties of higher mathematics. This is not to say it has no significance nor even possibility of practical application—after all, it was an equation that ultimately destroyed Hiroshima and Nagasaki—but it no longer serves as an effective source of controls or standards directly affecting and explaining the actual behavior of individuals in their social interactions.

Because it is the task of sociology to analyze, interpret, and—where possible—even predict patterns of human behavior in societies, ethics and morality can provide the key to the values motivating that behavior and, it follows, are a legitimate concern of the sociologist. To insist upon this as a significant area of overlap and mutual interest is not a reversion to the admittedly exaggerated claim of the early days of the discipline to being the “Queen” (in the regal sense, of course) of the social sciences. It is, instead, to state the obvious: in every actual social interaction, the actors’ behavior is an expression of the values operative at every stage of that interaction—the actual values whether or not they are the values professed. The possibility of discrepancy between the two, it should be unnecessary to note, presents crucial problems for any analysis of the “ethics” or “morality” of war.

These problems are intensified by a special complication arising from the terminology frequently employed by ethicists. Sociology, dealing as it does with matters of seemingly common everyday behavior, places special emphasis upon making distinctions and expressing them as precisely as possible. This has led to an insistence upon using familiar terms in tightly restricted ways or, often enough, the creation of new terms (the much-ridiculed “jargon”) to assure that precision. In this Essay, then, I shall avoid the lamentable practice of ethicists to employ the terms “moral” and “ethical” as interchangeable concepts. I am fully aware that the practice finds justification and support in dictionary definitions, but for purposes here a distinction will be made between moral ethics and secular ethics.

Part of the blame for the presumed equivalence may be traced to one of the revered “founders” of the discipline of sociology, William Graham Sumner.1 Sumner, despite (or, because of?) his earlier training for the ministry, rigorously rejected any religious concepts or implications in his treatment of “folkways” and “mores” and made both, in effect, categories of “secular ethics.” “Folkways”

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are the socially acceptable or expected forms of behavior; the "mores" are socially required behaviors in that they are considered essential to maintain the welfare and stability of society itself. Departures from the former, i.e., in diet, dress, or etiquette, might be dismissed as eccentricities and possible occasions for ridicule; violations of the "mores," on the other hand, are serious acts of deviance subject to severe sanctions, including ostracism and exile. Even death.

Because these cultural expectations and requirements are the products of a society's experiences transmitted to its members through the processes of socialization, the secular ethics are "content-neutral" in the sense that there is no "outside" superior power or universal source by which they can be judged. Moral ethics, by contrast, usually rest upon supernatural values made known through some form of revelation. Secular ethics as a result are more subject to change. This is certainly the case with the "folkways," but even the more binding "mores" will respond, though slowly, to major societal changes or events. In matters of fashion, for instance, one is no longer shocked to see women wearing men's clothing (though male cross-dressing still may present some difficulties). Practices that once were condemned as serious violations of the "mores" but that have become acceptable or at least tolerated—e.g., pre-marital and extra-marital sexual behavior, the practice of abortion—are usually characterized as "moral decline," but actually are more properly described as a redefinition of outmoded secular ethics. Moral ethics change too, of course; these changes usually take much longer, require evidence of "official" validation, and almost certainly provoke serious internal controversy (often a lasting schism) within the religious community involved.

Content-neutrality does not require the secular ethicist to be relativist in the analysis or interpretation of the behavior observed. It does, however, call for an effort to maintain a measure of objectivity to assure consideration of that behavior in the context of the prevailing secular ethic in the society under study before making favorable or unfavorable evaluations or comparisons. The ethicist's judgment may—and almost certainly will—be colored by his or her own ethical values (regarding a practice like cannibalism, for example), but scholarly integrity would insist that this be made clear. Equally important is avoiding the temptation to reify and personalize abstractions ("nation," "state") to the point of overlooking the fact that it is always the social actors, the human beings en-
gaged in patterned behavior, who should be the focus of critical reference and analysis.

This distinction is lost too often and much too easily in dealing with war and military activity, sometimes by the participants themselves. One recalls the many memoirs and staff reports written by generals and even lesser officers in a style that personalized military action by speaking of countering an enemy assault upon “my left flank” by attacking “his [the opposing general’s] strength”. Political leaders, too, often speak in terms of personal involvements and possessives in their declarations of public policy. A recent example of especially poor taste was the statement of the President of the United States reducing the Gulf War action to his desire to “kick Saddam’s ass.” Unfortunately the men (and increasingly women) of the armed forces whose lives are put at risk as the General’s “left flank” or the President’s foot end up being treated as depersonalized tokens in a game over which they have no control.

None of what has been said in these preliminaries to the more focused discussion of the ethics (and the morality) of the Gulf War should be taken as an effort to minimize the importance of such analyses. A detached and generalized search for limits and balances in human behavior relating to war and military action is not only a laudable pursuit but also increasingly essential to future existence and must continue. It is crucial, however, that the objective be kept in mind. The “nation” (or, more properly, the “society”) does not exist apart from its members whose interactions give it meaning and sustain its purpose. Those who for whatever reason are invested with the power to make decisions for the whole (and ethicist/scholars who later will judge those decisions) fail in their responsibility if they do not give priority to the needs and well-being of those who constitute that whole. War, especially modern war, threatens both, no matter how favorable its prognosis and beneficial its purpose may appear. The Gulf War and its aftermath (if it is even proper to speak of “aftermath”) of tragedy and failure provide ample and tragic verification of that threat.

II.

It may seem inconsistent with what has been said thus far to turn to the traditional “just war” theory and its conditions as the

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framework for developing a secular ethics critique of the Gulf War. This approach, identified with the teachings of the Roman Catholic Church and other “mainstream” Christian communions, might be deemed more appropriate to a moral ethics evaluation; this will be touched upon in Part III of this discussion. The argument here is that just war theory is, in fact, more secular than moral in its origin and application and, therefore, has little or no intrinsic relevance to the specifically Christian belief systems upon which most such analyses are purportedly based.

The early Church made no provision for the justification of any form of violence, not even as resistance or retaliation to the persecutions directed against it and its members. Christian leaders, especially the honored “Fathers of the Church,” strongly and consistently condemned war and military service. Whatever weakening there may have been in adherence to their teachings, this attitude represented the “official” teaching until the introduction of the Augustinian concessions under which Christians were permitted (and later encouraged) to serve in the armed forces of the Empire as good and loyal citizens. The “Age of Martyrs” had come to its end—except, of course, for later echoes when new martyrs, including pacifist Christians rejected as “heretics,” perished in wars blessed by Christian leaders over the succeeding centuries of Christian history up to and including our own.

Ronald Musto, in his comprehensive history of Catholic peace traditions, contends that “[t]he theory of the just war is not Christian in any proper sense of the word; it has no biblical, theological, or canonical foundation; it is the product of secular and ecclesiastical pressures during the Middle Ages.” This finds more recent and surprisingly strong support in a July 1991 editorial in La Civita Cattolica, an influential Jesuit periodical published in Rome. (Added significance lies in the fact that its editorials are regularly reviewed in advance by the Vatican Secretariat of State!) The editorial describes the “just war” theory as a rule-of-thumb formulated by theologians which “never became ‘official,’ [and was] never, therefore, sanctioned by the church’s teaching authority.”

The theory, as adapted by Augustine and, in effect, baptized by later Scholastic and neo-Scholastic theologians, is a codification of principles taken from ancient Greek and Roman philosophy, in

particular the ethics of Aristotle. It is, therefore, a system of secular, not moral, ethics—essentially the ethics of "the good pagan"—derived from philosophical inferences concerning the unwritten laws governing human nature.

In its more systematic development, the theory presents a number of conditions bearing upon the origin and conduct of war that must be met for a war to be considered "just." In a previously published article written more from a moral ethics approach, I argued that all, or almost all, of the required conditions were violated by the Gulf War, the judgment of Mr. Bush and a number of distinguished Christian leaders to the contrary notwithstanding.®

Shifting here to a secular ethics emphasis, though some slight modification will be in order, I see no need to revise that conclusion.

Ideally one would look to the professional ethicist for the more definitive analysis and interpretation that the issue requires, but, like their theologian counterparts (though perhaps not as thoroughgoing in their disregard), specialists in the field of secular ethics seldom undertake the systematic ex post facto evaluations of actual wars once they have been fought. In presenting this admittedly nonprofessional substitute, I will follow the general pattern of discussing each of the conditions separately, though in a somewhat different clustering than the standard division into "ad bellum" (relating to the nature of the war) and "in bello" (relating to its conduct) conditions. Instead, the perspective will focus upon (a) conditions resting upon the self-interests of the parties to the dispute as defined by them; (b) conditions in which this self-interest perspective is supplemented to a limited extent by the judgment of outsiders; and, finally, (c) conditions in which external judgments dominate and could possibly, though not often, control.

The first set consists of the conditions "just cause" and "right intention." Though in the process of analysis both will be filtered through the judgment of the ethicist, they focus on the subjective perception of those who made the decision to initiate hostilities or respond in kind once they have begun.

History may provide instances where rulers chose to instigate wars they regarded as unjust while offering no pretense of justification, but such cases are probably rare. Even Hitler could and did "make a case" for his aggressions, first as rectification of the injus-

® See Zahn, supra note 2, at 367-68.
tices of the Versailles treaty and then, once the major powers be-
gan to prepare to oppose those aggressions, as necessary to regain
and defend Germany’s right to “a place in the sun.” Within that
general context he also advanced “justifications” for the Third
Reich’s euthanasia program (the need to eliminate a drain on war-
time finances and resources); the forced-labor policy (to replace
the manpower lost to combat duties); and, far-fetched though it
may have been, even the “Final Solution” (removing a threat to
the purity and resolve of the Aryan race in its momentous struggle
for survival). In Hitler’s distorted perception (and that of his large
and enthusiastic following), the foregoing “justifications” met the
test of “just cause.”

In the Gulf War too, each side proclaimed and almost cer-
tainly believed in the justice of its cause. Saddam Hussein saw the
invasion of Kuwait as necessary to stop (and penalize) Iraq’s small
neighbor’s exploitation of oil reserves claimed by Iraq and, in the
process, to gain disputed territory considered essential to Iraq’s na-
tional and economic security. A more remote (and ultimate) goal
was the “restoration” of the greater Moslem nation of the past that
Iraq claimed to represent. For its part, the United States and the
“coalition” it created set out to rectify the violation of interna-
tional order represented by Iraq’s incontestible (and brutal) act of
aggression and to restore the violated territory to its rightful rul-
ners. Though not stressed for a variety of reasons—but clearly pre-
sent—the potential threat to the world economy posed by Iraqi
control over the region’s oil resources played a major part in the
United States’ subjective justification of war. Later, Mr. Bush
would add the need to “remove” an evil tyrant (who, not too long
before, had been a valued friend) to the list.

On balance, it would seem that the coalition claims out-
weighed those of Iraq by a wide margin. Not completely though.
The justice of a cause can be vitiated by provocation, and Kuwait’s
unwillingness to negotiate a settlement could be seen—in that
light—as provocative. To that extent, the determination of the
United States and the coalition to maintain the status quo in the
Persian Gulf might not be justified if that status quo itself repre-

* See Detlev F. Vagts, International Law in the Third Reich, 84 Am. J. Int’l L. 661,
663-65 (1990); see also Harold J. Kearsley, Shadow of Versailles Lies Across Gulf Victory,
Independent, Mar. 5, 1991, at 18 (analogizing role of West and former Soviet Union in
arming Saddam Hussein “to the teeth” during his war against Iran to role of United States,
Britain, and France in imposing Versailles Treaty on post-World War I Germany).
sented, as many would be prepared to argue, an unjust exploitation of the region's valuable oil resources. Finally, the United States might bear some of the responsibility for helping to create in Hussein the threat he finally became. All of these are factors to be considered, though even taken together it is doubtful that they would be enough to justify Iraq's brutal invasion.

The same imbalance holds with respect to the "right intention" condition. Hussein simplified evaluation on this score by playing Hitler, making it clear that his intention was to keep what had been taken by incorporating what had been independent Kuwait as a province of Iraq. The proclaimed intention of the United States and its coalition partners was the restoration of violated international order (under authority of U.N. Security Council resolutions). Here too, Mr. Bush muddied the clarity of that otherwise laudable intention with his nebulous and rather disconcerting talk of creating "a new world order" (which, let us not forget, was also one of Hitler's stated intentions).

Traditional interpretations of the "just war" theory stress "the restoration of peace" as the essential "right intention." Here, too, the U.S./U.N. coalition had the advantage with repeated assertions that Hussein, not the Iraqi people, was the enemy. The assertions were coupled with assurances that every effort would be made to limit the effects of war upon the Iraqis. Hussein, on the other hand, went out of his way to demonstrate that he was indeed the villain his opponents made him out to be with his threats to unleash "the mother of all wars." Hussein crossed the line between secular and moral ethics by declaring his to be a "holy" war.

On these two counts, then, even allowing for possible imperfections in its claims, the U.S./U.N. coalition seems to present the more compelling case. From this point on, however, matters get more complicated.

The second cluster of conditions—the specific objectives through which the "right intention" is to be fulfilled; the legitimacy of the authority under which those actions are taken; and whether war was the "last resort"—do not depend solely on the subjective perspective of the combatants. Nations not directly involved and the "judgment of world opinion" must be factored in by the secular ethicist in evaluating the justice of a given war.

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Thus, though either or both parties to a conflict may convince themselves that war was the only choice, that their actions were proportionate to the ends sought, and that they had the full and unchallenged right to act as they did, they may encounter disapproval from non-participants who do not agree. If the disapproval is serious enough, the participants may be obliged to modify their actions accordingly.

On the question of "legitimate authority," for example, it can be argued that in the limited application of the secular ethics perspective, Saddam Hussein has a stronger case than President Bush. As a totalitarian ruler (even a "tyrant"), there is no doubt that Hussein had the authority to do what he did, reprehensible though it might have been in terms of more democratic values. One might question, of course, whether the total control Hussein possessed should be held by anyone; unfortunately, there are enough examples of such unchallengeable power and authority (including, for instance, the rulers of Kuwait, the victim, and Saudi Arabia, our principal ally) that content-neutrality must prevail.

With respect to President Bush’s actions, however, serious questions can be raised about the legitimacy of his exercise of war-instigating authority. These questions relate to sending troops to Saudi Arabia (with the misleading assurances that it was a purely defensive move with no prospect of military action), and to the equally arbitrary increase in those forces which greatly enhanced the probability of involvement in conflict. These moves by President Bush are susceptible to contrary interpretation of the legitimate scope of presidential prerogative and were reached with an obvious and presumably intentional avoidance of any meaningful consultation with Congress.8

The crucial point, of course, is that no declaration of war was sought or obtained. Even when hostilities became imminent and a deadlined ultimatum had been issued, it appeared for a time as if Congress would be excluded from any participation. Eventually, the President did, with obvious reluctance, submit the issue to the Senate which, after extensive debate, reluctantly approved. Even with that approval, however, it can be argued that Congress’s con-

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"Constitutional language suggests that the president and Congress share the war power, the dominant authority being vested in the legislature. Congress declares war . . . . The president, the constitution provides, is the Commander-in-Chief of the armed forces." Id.; see also U.S. Const. art. I, § 8, art. II, § 2.
stitutional authority and responsibility were ignored as the Gulf War was added to the growing list of "undeclared wars"—Korea, Vietnam, Grenada, Panama—and, in the absence of appropriate constitutional mandate, constituted an illegitimate exercise of presidential power and authority.9

That the circumvention was accomplished with congressional concurrence in the guise of approving the enforcement of U.N. resolutions does not "legitimize" the action. The U.N. facade was itself a carefully structured and patently hypocritical sham if one considers the bargaining, the diplomatic pressure—even bribery—involved in the Administration's determination to persuade the Security Council to adopt the resolutions in the first place. From that point forward, the President and his Secretary of State could and did take refuge in pious declarations that the U.S. armed forces were merely "fulfilling" the U.N. resolutions that the United States had authored and imposed upon the international body. Nothing, however, can obscure the fact that the war was instigated, directed, and (except for token contributions by some of the coalition partners) fought by U.S. forces under U.S. command. As the Secretary General of the U.N. would note, had the Gulf War been a U.N. action, General Schwarzkopf would have been wearing a blue helmet.

The manipulation and hypocrisy involved may not be enough to vitiate the claim that the war was fought under "legitimate authority," but there should be enough doubt to justify study and debate for future ethicists. This should include an evaluation of the President's insistence upon substantial financial contributions from "coalition" partners to cover the expenses (prospective human casualties not included in the tabulation) of the military action. To some, this insistence carries troublesome implications; perhaps our men and women in uniform became, in effect at least, mercenaries (which, as it happened, was how some of the Kuwaiti elite who spent the war in luxurious exile regarded them).

The second condition in this cluster, "proportionality," measures the range and extent of actions taken to serve the "just cause" and to demonstrate the "right intention" claimed in legitimation of the conflict. Though often the most difficult to deter-

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9 Contra Jim Hoagland, Desert Storm Ticktock, Wash. Post, Jan. 16, 1992, at A27. "Contrary to the impression spread by critics of Bush as an imperial president eager to run roughshod over Congress, Bush is shown here resisting appeals from Cheney (a former congressman) and Scowcroft to ignore Congress' war-making powers." Id.
mine, it is again easily disposed of as far as the Iraqi side of the Gulf War is concerned. Hussein's promises of unrestrained mayhem proved beyond his competence to fulfill, but there is little reason to doubt his readiness to do whatever he felt was useful to gain his ends. Allowance must be made, of course, for his claim that he was fighting a "holy" war, in which case the limits and restrictions normally associated with the concept of proportionality would be superseded by the unrestrained mission of fulfilling Allah's will.

U.S./U.N. coalition military plans and performance were more in keeping with the idea of proportionality though in actual practice they, too, fell short in some respects. Certainly there were no threats of "all-out war" to match Hussein's, and it is probably safe to say that some of the coalition partners would have objected strongly to any such suggestion. Indeed, had the sanctions worked to the Bush Administration's satisfaction (as some of the partners apparently felt they were working), one can assume active hostilities would have been avoided altogether. This might have disappointed some of our military planners eager to test the effectiveness of their weaponry and strategies, but a casualty-free victory would probably have been welcomed by the President and Congress alike.

This is where, at least as far as U.S. actions are concerned, the proportionality condition fuses with the remaining condition in this second cluster, the requirement that war be the "last resort," that all other avenues of recourse must be tried and must have failed before war becomes a legitimate option. President Bush's insistence upon issuing ultimatums and setting deadlines before giving the economic sanctions ample opportunity to bring Hussein (or a much-desired successor) to the bargaining table may have been simple impatience. If so, the Gulf War would constitute a violation of the "last resort" condition. If, as may have been the case, there were pressing reasons for his impatience, this would bear more directly on the proportionality test. In the last analysis, resort to war may have been a violation of both.

Because the sanctions unquestionably were having effect, it should follow that they had not been fully "tried" and most definitely had not "failed." Under the circumstances, then, recourse to armed hostilities was premature and unjustified. However, there were reports of presidential concern that the coalition which had been so laboriously constructed might not hold; as the cost of maintaining the sanctions mounted, it was feared that some of its
members who did not share President Bush's personal animosity toward Hussein might weaken in their commitment to the cause and possibly even withdraw. Then, too, the likelihood that several months, and perhaps more than a year, would be required before the sanctions would have their full effect and impact brought political considerations into play. The risk that Americans could become edgy at the prospect of involvement in another unpopular, long-range confrontation could pose a serious threat to the President's hopes for re-election in 1992; this unhappy prospect may have put pressure on Bush and his advisors to "get the job done" without waiting for the sanctions to accomplish their purpose. If either was the case, the choice of a certain evil (the death and destruction actual hostilities would certainly bring) to avoid such potential and hypothetical inconvenience would not only be a de facto violation of the principle of proportionality but a blatant disregard of the "last resort" requirement as well.

Thus "Desert Storm," speedy and thorough military victory though it may have been, was at best an ethically dubious shortcut to fulfilling the objectives set forth in the claims to a "right intention." Its failure to achieve an acceptable peace or even the desired removal from power of Saddam Hussein (the restoration of Kuwait's undemocratic rulers was its only real success) is magnified by the grim events of the war's aftermath. Indeed, as already suggested, with the death toll and social disruption continuing to mount with little hope of early resolution, it may be misleading and much too early to even speak of "aftermath."

Which brings us to the third, and final, condition: for a war to be just it must be "just" in its conduct. As is often—perhaps, in modern warfare always—the case, both sides failed to meet that test. In its initial phase, Iraq's successful aggression against its smaller neighbor, there was nothing in Hussein's rhetoric or behavior that manifested the slightest intent to adhere to or even acknowledge the limitations imposed by customary "rules" of warfare. If, once the broadened conflict was in progress, his much-feared introduction of chemical or bacteriological weapons did not materialize, this probably reflected an inability to follow through on the threat or (more likely perhaps) caution inspired by fear of reprisal. His missile attacks may not have achieved the results intended, but by using them against urban targets (including targets in non-combatant Israel) he made it clear that the failure was not due to ethical restraint. The final touch of torching the Kuwaiti oil
fields when defeat was already certain bordered on the diabolical.

Unfortunately, as the full facts slowly become known, the same judgment can be made of certain aspects of U.S. conduct in the war. Much was made of the professed commitment to discriminate means, illustrated by profuse and highly detailed accounts of the wonders of the “smart” bombs being employed. Little mention was made of the fact that the great majority of the routine and heaviest bombing assaults involved “dumb” bombs, or that many of their “smarter” relatives suffered unfortunate lapses that brought them down miles from their targets.

If credit is to be given to the decision to avoid reliance upon the indiscriminate “carpet” bombings of civilian areas so commonplace in previous wars, new tactics and technologies call for evaluation. For instance, the “earth-shaker” bombs employed against Iraqi trenches and bunkers represented so great a concentration of destructive power, psychological as well as physical in their effect, by literally driving their targets mad, that the ethicist—moral as well as secular—must ask whether, or to what point, is “discriminate” use of essentially “indiscriminate” weapons permissible, and under what circumstances does it merit condemnation.

Other ethically dubious “advances” in the strategy and tactics employed by U.S. forces threatened to test the depth of human depravity. Consider, for example, plows mounted on massed tanks and combat earthmovers burying uncounted numbers of Iraqi soldiers (one figure hints at 8,000) alive in a sweep over more than 70 miles of trenches.\(^\text{10}\) Or the practice of setting the air itself afire by lowering blankets of incendiary gas that, once ignited, consumes everything (and, of course, everyone!) below in the resulting fireball.\(^\text{11}\) Consider finally the culminating atrocity, the “turkey shoot” on what has been termed the Highway of Death when the long line of a defeated army in retreat was blocked off at both ends and systematically slaughtered by pre-planned and synchronized waves of bombers.\(^\text{12}\) The grandfatherly image of the war’s super-hero, General Schwarzkopf, was weakened by his pouting in public that


\(^{11}\) Michael Kinsley, Dead Iraqis, NEW REPUBLIC, Mar. 18, 1991, at 6 (discussing horrors of “fuel-air-explosive” device).

the ceasefire interrupted his “battle of annihilation.” Secular ethics and moral ethics, together with the idealized traditions and vaunted mystique of “military honor,” had always made provision for permitting and respecting surrender of the vanquished enemy. But not, it seems, in the Gulf War. The enemy, all too often, was not given the chance to surrender.

In this, the conduct of the war added further testimony to what appears to be a troubling tendency for “the American way of war” to incorporate or favor annihilation, even extermination, as an acceptable war aim. Increasingly this is reflected in the weapons and strategies employed. This tendency found its historical origin in the preferred way of dealing with the Native American population: the only “good Indian” being defined as a dead Indian. In the Civil War, General Sherman presided over his own “highway of death” on his way to the sea and expressed little concern about civilians counted among the victims. War was Hell, in great part because he made it so. Our more recent history includes the “butchery of untold magnitude” of Hiroshima and Nagasaki (Pope Paul VI’s description) and the excesses of Vietnam, whether measured in the vengeance-crazed slaughter of villagers at My Lai or the more planned and carefully coordinated raids over city and remote hamlet alike. And now Iraq.

Had the U.S. forces stolen a march on Saddam Hussein and used the bacteriological weapons he threatened but failed to deliver, it would have been recognized and condemned as a crime against humanity. What they did, however, accomplished much the same effect. As Manchester’s Guardian put it,

> the worst civilian suffering was caused not from bombs which went astray but from weapons which hit the ‘right’ targets: power plants, oil refineries, roads and transport on a scale far wider than Saddam’s lines of supply and command. The effect has been compounded since the war by the maintenance of sanctions which hit hardest at its most vulnerable members — mothers, children and the sick or deprived.14

The March 1991 report of the United Nations speaks of “near apoc-

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13 George Church, Keeping Hands Off: As Saddam’s Loyalists Pound the Rebels, the Carnage Inside Iraq Poses a Quandary with No Attractive Alternatives for the U.S., TIME, Apr. 8, 1991, at 22 (in interview with David Frost, “Schwarzkopf said he had recommended that the U.S. keep fighting, since his troops could have ‘made it a battle of annihilation’ that, by inference, would have finished Saddam’s regime”).

14 When This Cruel War Was Over, MANCHESTER GUARDIAN, Sept. 20, 1991.
alyptic results" of the American bombings and concluded that "most means of modern life support have been destroyed or rendered tenuous."\textsuperscript{16} Other reports told of epidemics of typhoid and cholera in which 55,000 children under five years of age had already died and predicted another 170,000 would die in the coming year. UNICEF's Middle East Director reported, "You can go into places like Basra and walk for blocks and blocks almost knee-deep in liquid sewage."\textsuperscript{16}

Certainly these effects must have been anticipated and taken into account in the planning of the "discriminate," but no less deliberate, destruction of Iraq's infrastructure. What, it is fair to ask, is the difference between an air assault designed to spread disease and one designed to create the conditions under which disease is certain to develop? Again, at what point, the ethicist must decide, is foreknowledge of effects inseparable from the intention to produce them?

Apparently the military planners have no problem with this. The Secretary of Defense has been quoted as saying, "If I had to do it over, I would do exactly the same thing.\textsuperscript{17} The principle of noncombatant immunity, central to the "just war" theory in both its secular ethics and moral ethics application, was dismissed by another senior military officer with the comment, "The definition of innocents gets to be a little bit unclear. They do live there, and ultimately the people have some control over what goes on in their country."\textsuperscript{16}

An adverse judgment based on the application of secular ethics to the conditions governing the conduct of the Gulf War by both parties is inescapable. Both were guilty of violating it in spirit, in intent, and in deed: Hussein and the Iraqi forces in the brutal aggression against Kuwait and, even more, in what they would have done had they been able (and their regret that they were not); the United States in the excesses actually performed, excesses clearly planned and intended. Since evils of commission are always more costly in human terms than evils contemplated but not performed, the violation is more serious and the guilt greater for the United States and, by shared responsibility, its coa-

\textsuperscript{16} Id.
\textsuperscript{17} This Was Planned, \textit{War Watch} (OUTNOW, Santa Cruz, Ca.), Sept. 1991, at 4.
\textsuperscript{16} Id.
lition partners. And the guilt will multiply as the death toll continues to mount. In this sense, it bears repeating, it is premature to speak of an “aftermath” to the Gulf War. A victory, yes, but in spite of all the yellow ribbons and the celebratory frenzy, probably not one of which this nation and its leaders will long be proud.

III.

The secular ethicist’s final evaluation of the Gulf War on the basis of the conditions set forth in the “just war” theory would be “mixed” but more favorable to the U.S./U.N. coalition. At best the judgment would seem to be that it was “closer to ‘just’” on their part but certainly not “just.” The Iraqi cause was clearly “unjust” in its origin, pursued with no semblance of “right intention” or concern for the principle of proportionality. It was (again in a strictly content-neutral sense as far as the character of Hussein’s rule is concerned) conducted under “legitimate” authority—he had the office, the power, and apparently the acceptance of the Iraqi population. Once the “Desert Shield/Desert Sword/Desert Storm” sequence took over, fighting back may have been Iraq’s “last resort” but only if one ignores the prior aggression against Kuwait and the fact that the option of withdrawal was always open. Hussein’s conduct of the war, though the weapons and strategy were not particularly effective, was to be—and here one can take his rhetoric literally—unhindered by any moral or ethical limits.

Which is not to say that the Bush Administration’s war (and honesty requires it be so designated) came anywhere near meeting the conditions of the “just war.” One can grant the justice of the cause and the “right intention,” namely defending the integrity of international order and restoring Kuwait’s sovereignty, but other considerations cast doubt upon the purity of those intentions. After all, the rights of other small nations have been violated without stirring similar indignation and reaction on the part of the United States, a fact that gives rise to the legitimate suspicion that the Gulf’s oil reserves may have carried at least as much weight as Kuwaiti rights in the President’s deliberations and decision.19 As

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19 One might go beyond this to suggest that this obvious selectivity testifies more to long-standing policies serving or protecting narrow national interests than to high-minded dedication to international order and peace. For example, Jack Nelson-Pallmeyer cites a 1948 statement of goals issued by George Kennan on behalf of the State Department’s planning staff, recognizing the disparity between the United State’s share of the world’s wealth (50%) and its share of the world’s population (6.3%). Jack Nelson-Pallmeyer, War
already noted, too, there is reason to question whether the constitutional distribution of checks and balances was given due consideration and respect in the initiation and waging of war; and the deception involved in cloaking an arbitrary presidential decision with the semblance of U.N. authority may have hindered, rather than added, to the legitimacy of his subsequent actions.

The Gulf War clearly was not a “last resort” but rather the product of Mr. Bush’s impatient refusal to allow U.N.-approved sanctions a fair test. This in itself would violate the principle of proportionality—no more harm to be done than is necessary—and this violation was confirmed in the nature and scope of actions taken by the armed forces. The speedy outcome was, of course, to be welcomed if only for humanitarian reasons, yet it also testified to the gross inequality of the contest and the excesses perpetrated by the victorious “superpower” upon a clearly outclassed opponent. In the process of displaying that awesome disparity, the conduct of the war was such that it violated reasonable standards of justice. The horrors Hussein undoubtedly would have committed had it been within his power to do so may have been equalled by the United States, with token participation on the part of its coalition partners. Indeed, when the final accounting is made, they may have been surpassed.

Though the focus here has been upon the “just war” theory as related to secular ethics, these conclusions would also affect those Catholics and other Christians who accept it as the basis for a moral ethic of war. If they begin (as the 1983 pastoral letter of the U.S. Catholic hierarchy said one must) with the Scriptural pre-

Against the Poor 5 (1989). As defined by Kennan, “Our real task [becomes one of maintaining] ... this disparity without positive detriment to our national security.” Id. (emphasis omitted) (quoting Low Intensity Warfare: Counterinsurgency, Proinsurgency, and Antiterrorism in the Eighties 48 (Michael T. Klare & Peter Kornbluh eds., 1988)). This forces a policy choice between “altruism and world-beneﬁtaction,” which requires the United States to “dispense with all sentimentality and day-dreaming” and to “cease to talk about vague and ... unreal objectives such as human rights, the raising of living standards and democratization.” Id. (alteration in original).

Kennan’s conclusion that “[t]he day is not far off when we are going to have to deal in straight power concepts,” id., finds striking elaboration in the 1988 Report of the Defense Department’s Commission on Integrated Long-Term Strategy, which calls for a strategy fitting together “our plan and forces for a wide range of conﬂicts, from the lowest intensity and highest probability to the most apocalyptic and least likely.” Report of the Defense Department’s Commission on Integrated Long-Term Strategy I (1988) (Fred C. Ikle & Albert Wohlstetter co-chairs). Seen in this context, Saddam Hussein’s villainy may have masked the very real possibility that the war against Iraq was merely a stage in a continuing program of keeping overly ambitious Third World countries “in their place.”
sumption against violence in applying the theory’s conditions as set forth in that document, a fair judgment would be that all the conditions were violated at least by implication and, in most cases, explicitly.

The misfortune, of course, is that such application and evaluation is seldom, if ever, made in time of war and moral judgment is left to future studies (which are never made). In the case of the Gulf War, this pattern was broken by a number of bishops who openly denounced the war as unjust and actually advised the faithful not to take part, even at times giving active support to young Catholics who took that advice—many of whom, one must note, have been subjected to severe punishment by military authorities.

There were, of course, other bishops—usually of greater prominence—who adhered to the traditional pattern of automatically endorsing obedience to the secular power in time of war, but the impact of this was undercut by the public statements opposing the war emanating from Pope John Paul II in Rome.

Theologians, too, were divided on the issue, but if a census were taken of those who took a position, the majority probably followed the usual course of cautious support for the war with occasional reservations. Most surprising (and disappointing) to this writer was the statement of one of the most respected theologians, Father Avery Dulles, chiding the bishops for not leaving the determination of the war’s justice to military and political leaders in their professional capacity.

It is small comfort, perhaps, but the fact that different positions were publicly expressed (especially by bishops!) gives promise that the theory of the “just war” and its relevance, if any, to war as it is fought today is now an open question among moralists. There is reason to hope a more serious effort will be made to explore and, perhaps, rediscover the nonviolence and pacifism that characterized the actions and the teachings of the early Christians. This will


22 Little has been heard from these bishops, however, with respect to the conduct of the war and, in particular, its tragic and continuing effects.

23 Silvio F. Senigallia, Reality Rears Its Head in Italy: A Cause for Concern, New Leader, Feb. 11, 1991, at 8 (“John Paul II’s relentless denunciation of the Gulf War, his apocalyptic warnings, and his apparent refusal to make any allowance for armed self-defense, shocked secular opinion and greatly surprised Vaticanologists.”).
not, of course, determine the course of secular ethics but it may inspire its practitioners to join the moralists in a broadened search for the better answers to questions related to war and peace that must be found if the tragedy of the Gulf War is not to be repeated over and over, world without end.

The most pressing of these questions is whether, given the nature of modern war, its weaponry, and its strategy, war can be justified at all; whether, that is, the fulfillment of all the other conditions could outweigh the excesses that have become intrinsic to its conduct. If only a hundred hours of combat can produce deaths numbered in the hundreds of thousands and after-effects that assure that grim total may well be multiplied several times over, it becomes a mockery to speak of justice or, for that matter, reason. If the horrors of the Gulf War, once they sink into our consciousness, help to awaken us to that fact—*but only if it does*—it may yet accomplish some good. My hopes on this score, I confess, are faint.

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24 One religious leader of some prominence has already made such an assessment and voiced his judgment. In his homily at the Coventry airport, Pope John Paul II said, “Today, the scale and the horror of modern warfare—whether nuclear or not—makes it totally unacceptable as a means of settling differences between nations. War should belong to the tragic past, to history; it should find no place on humanity’s agenda for the future.” NATIONAL CONFERENCE, *supra* note 20, at 68-69.