BOOK REVIEW

THE ETHICAL ANALYSIS OF WAR IN A POST-COLD WAR WORLD: THE PERSIAN GULF WAR AND BEYOND

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I. INTRODUCTION: THE COLD WAR IS OVER

1991 may prove to have been one of those turning points in world history, on the order of 1914 or 1789. Two events, of course, are the reason for the possible portentousness of that year. The first is the war in the Persian Gulf. The second is the implosion of the Soviet Union.

While this review will focus on an ethical analysis of the Persian Gulf War, the background considerations informing this review are very different from those which informed ethical analysis

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of warfare only a short while ago. International relations, even as late as New Year's Day, 1991, were defined by the rivalry between two nations, the United States and the Soviet Union, both commonly called superpowers because of their geographic size, their competing belief systems, their military capabilities, and their ability to attract the allegiances of nations that did not possess the perceived prerequisites of superpower status.

This rivalry has played itself out over the course of four and a half decades of confrontations that were sometimes bloody (Korea, Vietnam, Afghanistan) but more often relatively bloodless. The central feature of the confrontation was a nuclear standoff between the two superpowers. Each side, having acquired an arsenal of nuclear weapons more than adequate for the destruction of the other side, if not the entire planet, continually maneuvered for advantage, whether by creating MIRV'ed warheads, by placing warheads provocatively close to the other side's borders, or by experimenting with or even installing components of a missile defense system.

The entire complex of factors—from nuclear standoff to armed combat—was known as the Cold War. The exigencies of the Cold War demanded vast commitments from all the nation-states that were eventually caught up in this rivalry. Large sums of money were expended to procure the latest in military hardware and talent pools on both sides were disproportionately siphoned off to serve in Cold War capacities, from intelligence gathering to nuclear development and production.

The Cold War had the effect, in the United States and in the West in general, of being the prism through which international events were filtered. Events in the Middle East, in Latin America, in Asia, and in Africa were explained as the products of machinations by or understood as having advantageous or disadvantageous consequences for the other side. Only infrequently were they understood on their own terms.

Outside the West, the Cold War had the additional effect of suppressing ethnic rivalries that might otherwise have exploded into bloody confrontations. This has become evident in some eastern bloc countries, such as the former Yugoslavia and the former Soviet Union, both of which now seem to be damaged irreparably by ethnic rivalry. But this was the case in other regions as well.

Not surprisingly, the Cold War also spawned a generation and a half of ethical writing. Most of this ethical speculation occurred within the parameters of either traditional just-war or pacifist cat-
egories, but against the backdrop of the nuclear standoff. While much of this writing was of a general theoretical nature, it had either the explicit or implicit purpose of justifying or criticizing the standoff. One might, for example, argue in general terms that modern war was a destructive horror beyond contemplation, but always have in the back of one's mind the belief that modern war could lead to direct hostilities between the superpowers and thus to uncontrollable nuclear conflagration.

Events of 1991, however, changed this situation. The Cold War collapsed with the Soviet Union. Today, both sides are now taking steps to reduce the nuclear standoff. While the threat of nuclear war remains real—perhaps more real now than ten or fifteen years ago given the potential for a destabilizing proliferation of nuclear arms and knowledge—the possibility of a nuclear exchange between the superpowers is remote. Even if the constituent parts of the former Soviet Union succeed in reestablishing a central government, it is unlikely that renewal of the nuclear rivalry will be chief among that government's priorities.

At the same time, the Persian Gulf War possessed two features that may make it the paradigm of future conflict. First, at a deep level, the war was the result of the breakdown of colonial arrangements. The modern states of Iraq and Kuwait are the products of colonial intervention in the Persian Gulf and have a longstanding border dispute. Similarly, the claims of Kurds and Palestinians, which figured prominently in the Persian Gulf War, have resonance because of the past actions of Western powers. It is not surprising that these fissures should come to the surface once the British withdrew from the Persian Gulf and the Soviet Union went into eclipse.

Second, the war can also be understood as the first of a new type of conflict over control of natural resources. The Western Coalition responded to Saddam Hussein's invasion of Kuwait as aggressively as it did because this invasion was perceived as threatening access to the oil supplies not only of Kuwait itself, but also of Saudi Arabia and the smaller Persian Gulf principalities of Abu Dhabi, Qatar, and Oman. It stretches credibility to believe that the war was fought entirely with the altruistic motive of repelling Iraqi aggression, although many no doubt hold this latter view in good faith.

Furthermore, the war was fought against the background consideration of a potential confrontation between Islamic and West-
ern powers. Saddam Hussein's call for a holy war fell largely on deaf ears (perhaps because of the secularist history of Saddam's Baathist Party). Nevertheless, a confrontation between Islam and the West remains a growing possibility because increasing numbers of Arabs and other Moslems see the West as decadent and imperialistic while Westerners see Islam as a culture in need of reform and western-style enlightenment.

It is broadly contended in this review that the three books under consideration are inadequate responses to the sea change that has occurred in international relations and that moral reasoning about warfare is in need of fresh thinking. In many respects, each of the books is the product of a Cold War mentality. Richard Miller, in his award-winning book, *Interpretations of Conflicts: Ethics, Pacifism, and the Just War Tradition*, argues in general terms that pacifism and just-war theory share fundamental convergences that can serve as the starting point for further ethical reflection; but he has as a constant subtext the belief that nearly every war holds the possibility of nuclear holocaust. Miller seems to assume that nuclear weapons have made warfare obsolete and that ethical reasoning about warfare might best be used to develop a basis for dismantling the deterrent forces of each side. The Persian Gulf War demonstrates the inadequacies of Miller's arguments.

A Cold War mentality also informs *Just War and the Gulf War* by James Turner Johnson and George Weigel and *Lines in the Sand: Justice and the Gulf War* by Alan Geyer and Barbara Green. Johnson and Weigel, for example, hope that the Persian Gulf War leads to the "democratization" of Iraq and the banishment of the "Vietnam Syndrome." Such ambitions might have been justified where the adversary was the Soviet Union and the nature of the conflict was understood as one between Western constitutionalism and Marxist-Leninism, but they now need rethinking. Similarly, Geyer and Green put their argument into partisan categories that were shaped during the Cold War. None of these authors seem to recognize that the Cold War is over.

This review will examine each of these books in turn and close by suggesting areas for further development of just-war theory in light of the Persian Gulf War and the implosion of the Soviet Union. These conclusions will be informed by the reviewer's own commitment to the just-war tradition as articulated by, among
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others, Paul Ramsey,1 James Turner Johnson,2 William V. O'Brien,3 John Ford,4 J. Bryan Hehir,5 John Finnis,6 Germain Grisez7 and Joseph Boyle.8 These conclusions will also be shaped by the renewed attention such authors as John Keegan,9 Paul Fussell,10 and Geoffrey Best11 have paid to the human dimension and the human suffering of warfare, as well as by the courageous pacifist witness of persons like Gordon Zahn.12

As a preliminary matter, and in the interest of full disclosure, I should state my own view on the morality of the Persian Gulf War.13 I find the war problematic chiefly for the failure to observe

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7 See generally Germain G. Grisez, Toward a Consistent Natural Law Ethic of Killing, 15 Am. J. Juris. 64 (1970); Finnis, et al. supra note 6.
8 See The Challenge of Peace and the Morality of Nuclear Deterrence, in Peace in a Nuclear Age: The Bishops' Pastoral Letter in Perspective 323-35 (Charles J. Reid, Jr., ed., 1986)(criticizing the American bishops for failing to recognize the impermissible threat to innocent life inherent in nuclear deterrence); supra note 6.
12 Gordon C. Zahn, Another Part of the War: The Camp Simon Story (1979) (detailing the experiences of pacifist conscientious objectors during World War II).
13 At this point, and for the sake of clarity, I shall enumerate the just-war criteria. There are two large categories to just-war thinking, the jus ad bellum (the right to wage war), and the jus in bello (the law governing the conduct of war). The jus ad bellum includes the following components: (1) war must have a just cause such as self-defense or the defeat of aggression; (2) war must be fought at the authorization of competent authority; (3) those doing the fighting must possess the right intention; (4) war must be a proportional response in determining whether the use of force is appropriate; (5) there must be a reasonable hope of success and; (6) war must be the last resort. There are two basic jus in bello requirements: (1) tactics must be discriminate, that is, war-fighting strategies must avoid
the criterion of last resort. Credible opportunities for a diplomatic settlement, especially the French proposal of January 4, 1991, were rejected out of hand. It must be borne in mind that Iraqi society was devastated by the war and its lasting aftereffects. The death and destruction wrought in Iraq should be visited upon a nation only after all other options have been exhausted. Additionally, serious questions persist over issues of proportionality and discrimination, since it is becoming increasingly clear that the targeting of the infrastructure of Iraq was part of a sophisticated campaign to destroy the ability of Iraq to function as a modernized industrial society.

II. MORAL INDETERMINACY AND THE GULF WAR

As noted, Richard Miller, in *Interpretations of Conflicts*, is concerned with exploring the areas of convergence between pacifism and just-war theory. But his goals are at the same time larger than merely adumbrating this convergence. Ethical pluralism presents serious obstacles that Miller wishes to surmount. Moral theologians and ethicists have been talking past one another for some time now where issues of war and peace are concerned. What Miller wishes to recreate is a commonly agreed starting point for the ethical analysis of warfare. To accomplish this task, Miller limits himself almost entirely to statements of leading Western religious thinkers on the appropriate scope and limits of violence and warfare. At the same time, however, Miller refrains from adopting an explicitly religious stance himself. Rather, he utilizes his religious sources as evidence of a long-standing cultural tradition that favors convergence between pacifism and just-war thought. He seems to trust that secular members of his audience will be persuaded by this evidence to share his starting point.

Miller's book examines six major themes: (1) prior intimations of convergence between pacifism and just-war that can be identified within the just-war tradition; (2) the relationship of justice and order within Roman Catholic ethical thought; (3) H. Richard Niebuhr's theology of war as crucifixion; (4) Roman Catholic and Protestant perspectives on pacifism and civil disobedience; (5) the direct targeting of non-combatants; and (2) tactics must be proportionate, that is, they must correspond to the goals to be achieved. A helpful elaboration and defense of just-war criteria can be found in *Robert L. Phillips, War and Justice* (1984)(defending just-war criteria).
special case of nuclear deterrence; and (6) the relationship of American exceptionalism to American conceptions of the role the United States should take in international relations. All of these themes except nuclear deterrence will be discussed below.

Miller takes as axiomatic James Childress’s central insight that pacifists and proponents of just-war theories have a “mutual need” for each other. Working from the premise that killing is always at least presumptively wrong, Childress argues that one is always under a prima facie obligation not to harm others. Just-war theories, on this view, purport to advance reasons why one may, in narrowly circumscribed situations, override the prima facie obligation against killing. Even in these circumstances “moral traces” remain that require those engaging in violence to exercise restraint. Thus, a “duty of nonmaleficence,” a requirement to avoid harming others where possible, accordingly binds both pacifists and just-war theorists.

Methodologically, Miller eschews both inductive and deductive approaches to ethics. His method, rather, is “dialectical.” This approach, Miller believes, will enable him to “follow the traces of divergence, otherness, reversal, protestation, antinomy, discrepancy, obstacle, counterideology, and dialectical tension in Western grammar about the morality of war.” He wishes thereby to establish ground rules for a new dialogue on the ethics on warfare.

This review will test Miller’s hypotheses against the concrete moral problem of the Gulf War. Such a comparison will reveal many of the shortcomings of his book. Miller’s duty of nonmaleficence is of only limited utility for conversations between pacifists and just-war theorists. Before examining Miller’s substantive arguments, however, two preliminary concerns must be addressed.

First, Miller’s selection of texts: Miller relies nearly exclusively on religious texts to develop his duty of nonmaleficence but he steadfastly refuses to take a stance on their validity qua religious texts. Rather, Miller’s religious sources are taken as nothing more

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15 Miller, supra note 14, at 16-17.
16 Id. at 17.
17 Id. at 9.
than evidence of a cultural preference for a duty of nonmaleficence.

This use of the sources does violence to the premise they all share—their transcendent view of the world. What Saint Augustine, Thomas Aquinas, Dorothy Day, and Martin Luther King (to name only a few of Miller's sources) were about—their projects, as it were—was putting faith into action. Augustine, Aquinas, Day, and King count for something special within Western history because, whether as just-war theorists or pacifists, they were representatives of a larger, transcendent, Christian message.

If Miller wishes to use religious sources merely as a datum of Western cultural experience, he has cast his net too narrowly. By separating religious texts from their transcendent roots, Miller has put his sources on the same footing as a variety of other texts that are also part of Western history—most notably, texts belonging to a school of thought that might be labelled "power theory."

The power theory tradition has roots in the West as deep as the religious tradition Miller follows. It can be traced from Thucydides through Nicolò Machiavelli, Thomas Hobbes, Friedrich Nietzsche, Otto von Bismarck, and Hans Morgenthau. Power theory stresses power politics, personal or national advantage, the "natural" superiority of the strong over the weak, and international relations as a "great game" not subject to traditional moral constraints. Nonmaleficence plays very little part in the thought of the power theorists.

Why does Miller exclude the power theorists from the dialogue he wishes to establish? Why does he privilege religious texts? Why does he shut out Machiavelli's prince? Using the terms of the debate he has constructed Miller is unable to answer these questions. He has arbitrarily privileged one part of Western tradition and excluded another part. The duty of nonmaleficence becomes, on this analysis, a blind and arbitrary preference.

Miller, of course, could have constructed his dialogue differently. Miller could have acknowledged that pacifism and just-war theory take their origins in an explicitly Christian view of the world. He could have recognized that his sources—Augustine and Aquinas, Day and King—were all deeply committed participants in the Western Christian tradition. On this alternative reading, Dorothy Day and Martin Luther King matter because they were representatives of a transcendent view of the world. But Miller avoids committing himself on this basic issue. Although he never acknowled-
edges it, his work is of value only to those who have already committed themselves to just-war theory or pacifism. The most fundamental choice, whether to follow a just-war or a pacifistic approach to the problem of warfare, or whether to follow the path of the power theorists, remains unaddressed. Miller never tells his readers why The Catholic Worker and The Christian Century are more meaningful moral guides than the Melian Dialogue.  

Second, Miller's dialectical method: Miller's dialectics, drawn from the deconstructionism of Jacques Derrida, are ultimately self-defeating. A conversation requires guidance and goodwill. A good conversationalist should gently move his interlocutors to greater understanding, if not agreement. Beyond elucidating the duty of nonmaleficence that pacifists and just-war theorists share, Miller fails in this responsibility.

Thus, lacking both an anchor and a firm hand on the rudder, Miller's dialogue drifts. The concrete moral case presented by the Persian Gulf War exposes this drift. The remainder of this discussion of Miller's book will highlight this signal failure: pacifists and just-war theorists are simply not given the type of guidance needed to advance their dialogue. Thus, Miller's effort can best be described as achieving moral indeterminacy in the light of the Gulf War.

A. Intimations of Convergence Within the Just-War Tradition

Miller commences his study by examining a number of prior "convergences, beginning with Augustine," in which just-war thought approaches pacifism in its concern for nonviolence. Augustine prohibited self-defense as an act of self-love and put strict limits on the other uses of force. Thomas Aquinas allowed self-defense but distinguished between licit and illicit intentions: one might use force in narrowly circumscribed situations to repel an attacker, but one must not directly intend to harm the aggressor. The Calhoun Commission, a Protestant Commission formed to evaluate the morality of World War II, used the principle of "relative justice" as a means of restricting and deplored violence,

18 See Thucydides, The Peloponnesian War 400-08 (Rex Warner trans., 1976); infra note 30 and accompanying text (discussing Melian Dialogue).
19 See Miller, supra note 14, at 18-23.
20 Id. at 23-27.
21 Id. at 27-31.
while Karl Barth put the taking of human life on the outermost margins of moral existence.\(^{22}\) The National Conference of Catholic Bishops, in its pastoral letter on nuclear arms, conditioned the use of force on the ability to establish a just peace featuring respect for human dignity and human rights.\(^{23}\) David Hollenbach’s theology of history recognized that the Kingdom of God will be a nonviolent one but that the Kingdom has not yet arrived.\(^{24}\) Finally, the Methodist Bishops asserted that distinctions between pacifism and just-war theory have become practically meaningless in light of the “nihilistic horror” of nuclear warfare.\(^{25}\)

These convergences represent, in Miller’s estimation, “intimations” of the duty of nonmaleficence. Undergirding each convergence is a presumption against violence and in favor of peaceful resolution of disputes. Nonmaleficence, in turn, has value for what Miller, following Henry David Aiken, calls “postethical reasoning.”\(^{26}\) The postethical level of discourse, according to Aiken, is the most general level of moral analysis possible. It is the level at which one is obliged to answer the question, “Why be moral?” Aiken wished to answer this question by positing the need for a “gratuitous decision” by the individual. In Aiken’s words, “decision is king.”\(^{27}\)

Miller would answer this question by suggesting that culture, common sense, and conventional wisdom all point toward a duty of nonmaleficence:

\(^{22}\) Id. at 31-35.  
\(^{23}\) Id. at 36; NATIONAL CONFERENCE OF CATHOLIC BISHOPS, THE CHALLENGE OF PEACE: GOD’S PROMISE AND OUR RESPONSE (1983) [hereinafter NATIONAL CONFERENCE].  
\(^{25}\) See MILLER, supra note 14, at 38.  
\(^{26}\) Id. at 42-43; HENRY DAVID AIKEN, REASON AND CONDUCT: NEW BEARINGS IN MORAL PHILOSOPHY (1962). Aiken distinguishes four different levels to moral reasoning. These are: (1) the expressive-evocative level, at which one unreflectively voices approval or disapproval of a particular action; (2) the level of moral rules, at which one begins to pose serious questions about a given course of conduct and to attempt to arrive at serious answers; (3) the ethical level, at which one attempts to arrive at general moral principles to guide wide varieties of conduct; and (4) the postethical level, at which the most basic question of all is asked: Why be moral? Id. at 66-87. Aiken’s response to this question resolutely emphasizes the individual: “[T]he authority of moral rules [is] constantly dependent upon what I, as an agent, elect to be or to do.” Id. at 87.  
\(^{27}\) See MILLER, supra note 14, at 42 (quoting AIKEN, supra note 26, at 87).
Yet at this level of discourse [the postethical] Aiken may have left behind one of his most fundamental insights, namely, the importance of tradition, ethical language, and communal values in moral experience. Rather than embrace the individualist and decisionist resolution to the postethical question, it is also possible—and in my judgment more plausible—to refer to the customs of tradition and history, the deposit of conventional wisdom about our social relations, in order to address the question, Why be moral? True, reference to custom and culture may provide no surer rational warrant than does individual decision... but... customs inscribed in cultural or religious traditions provide not only specific classifications and codes of action. They also provide the place through which the ethos of a culture "breathes," where more general, less articulate beliefs are enshrined. The beliefs of a culture and its religions, the less articulated "common sense," move the will to act no less, and probably more, than individual volition in which decision is king.28

Miller goes on from here to suggest that the duty of nonmaleficence is such a datum of common sense and that it conveys a "duty to hear the cries of pain and infirmity, to heed the laments of those who are agonized or alienated."29

Miller’s faith in the cultural and historical foundations for the duty of nonmaleficence is misplaced. There are elements within Western culture, preeminently the Judeo-Christian tradition, that lead one to a duty of nonmaleficence but there are also elements that lead one to the power theorists. Because Western culture contains both of these approaches, one cannot rely simply on culture

28 Id. at 42 (citations omitted). Miller recognizes that nonmaleficence can be a product of a religious vision, but he does not base his argument on this recognition. Rather, he grounds it entirely on the custom and practice of the West. Harold J. Berman has proposed an integrative model of jurisprudence, incorporating elements of history, moral reasoning, and a concern for rules, that offers a much sounder starting point than the approach adopted by Miller. See Harold J. Berman, Toward an Integrative Jurisprudence: Politics, Morality, History, 76 CAL. L. REV. 779 (1988).

29 See MILLER, supra note 14, at 42. Miller continues:
Most basically, nonmaleficence suggests a bias against suffering, intolerance of humiliation, respect for human dignity, and compassion for those who are victims of dangerous powers beyond their control.... It thus includes the mandate to hear alternative voices, to reckon with disturbing, disorienting, perhaps adversarial utterances: the elegies of those otherwise forgotten in the travails of history. Indeed, the duty not to harm is hardly intelligible apart from a general sense that injury is at least presumptively wrong, to which sorrow and mourning, if not guilt, are the appropriate responses.

Id. These are all praiseworthy values, but it is difficult to see how they are the only and inevitable outcome of reflection on the culture and tradition of the West.
as the foundation of a duty of nonmaleficence.

This central weakness in Miller's argument can be illustrated by reference to the Melian Dialogue, found in Thucydides's *Peloponnesian War*. Melos was a militarily weak island city-state that stood in the way of Athenian strategic operations in its war against Sparta. The Athenian commanders proposed to the Melian leadership that they subject themselves at once to the Athenian Empire to avoid destruction. The Athenians responded to Melian attempts to invoke "justice" by replying that only "self-interest" should govern their relations. When the Melians refused to accept the Athenian interpretation of their self-interest, the Athenians put Melos under siege, eventually captured the city, put to death all male Melians of military age, and sold the remainder of the population into slavery.30

Why should the cries of the weak or helpless Melians matter? Common sense and the cultural heritage of the West are inadequate replies. From the standpoint of Athenian strategic planning a forceful reduction of the obstinate Melians made a great deal of common sense. From the standpoint of cultural heritage, Thucydides is as representative as Augustine. The answer must lie at a deeper level than common sense or cultural heritage, but Miller avoids discussion of this deeper level. His effort to establish a common ground at which postethical reasoning might occur is accordingly a failure. A "pluralism" that does not include the Melian Dialogue is no real "pluralism" and Miller never develops the conceptual resources needed to defend the stance he has taken.

More modestly, Miller hopes that by developing these convergences and making them explicit, he will lay the basis for conversation between pacifists and just-war theorists. To a limited extent he has succeeded. Just-war theorists ought to recognize that the ethical analysis of warfare has always taken a deeply suspicious view of armed conflict and has always placed the taking of human life on the "extreme margin" of human behavior.

But the Gulf War also illustrates the limitations of such a conversation. Ultimately, one must decide whether it is morally proper to engage in armed conflict or not. A too lengthy delay might result in Kuwait effectively becoming incorporated into Iraq as Province 19. Ought one to resist aggression or not? And if so, how should this resistance take place?

30 *Thucydides*, supra note 18, at 400-08.
Miller avoids answering these questions as well, instead drawing a distinction between a negative duty not to harm and an affirmative duty to assist others that collapses on close inspection. Perhaps the choice between pacifism and just-war theory is an unresolvable dilemma; but Miller does not straightforwardly acknowledge this to be the case. In fact, any dialogue between pacifists and just-war theorists immediately encounters this obstacle, yet Miller does nothing to overcome it.

While Miller's convergences fail to solve the ultimate moral dilemma of whether or not to fight, they are useful as a means of judging whether participants in war possess the morally proper attitude. As Augustine stated, when one must fight, one should be motivated by a spirit of love, not a desire to dominate or destroy others. Considering Augustine's words, the attitude of many in the United States, especially upon the conclusion of hostilities in the Persian Gulf, was sorely deficient. Americans cheered as if celebrating a Super Bowl championship. Obliterated in the tickertape were the faces of the Iraqis incinerated in their trucks on the road to Basra, of the women and children crushed or suffocated in bombshelters, of Kurds dying on mountaintops. War has always been and truly is a grotesque affair. If a war must be fought, whole nations should not whoop as if watching a sporting event, a vast Roman Coliseum filled with high-tech gladiators. It would have been more appropriate for the conclusion of hostilities in the Gulf to have been marked by a penitential service than by parades and parties.

B. Justice and Order in Roman Catholic Thought

Miller's next concern is the relationship of order and justice in Roman Catholic thought on warfare. Miller builds the case that in Roman Catholic moral theology "order has a relative priority over justice . . . often requiring individuals or groups to suffer injustice

31 See Miller, supra note 14, at 40-41. Miller argues that the negative duty not to harm others, relatively speaking, is a stricter duty than the affirmative duty of coming to the assistance of others. This hierarchy of duties would create a presumption against coming to the aid of a nation that has been invaded by another, as Kuwait was by Iraq. But Miller also argues that just-war theories have the purpose of creating rationales for overcoming this hierarchy of duties. In effect, Miller's hierarchy of duties proves to be of no value in resolving the question whether intervention is warranted in the case of the Persian Gulf War or any other armed conflict.
rather than disturb the wider social order.” Miller locates this priority, interestingly, not in traditional Roman Catholic thinking about war, but rather in Roman Catholic thinking about revolution. Thomas Aquinas, for example, by posing the question, “Is sedition always a mortal sin?” presumed a substantial amount of injustice should first occur before one might permissibly resort to the disorder of armed revolt.

Thomas’s thought on insurrection, according to Miller, contrasts sharply with his thought on warfare against external foes. Insurrection takes place within the community and would by definition disrupt the community’s order. Warfare against external enemies, however, occurs against “outsiders” who by definition have already disrupted the social order. A “radical difference” prevails between the external enemy who attacks the community and the community’s defenders. It would be permissible, according to Miller’s reading of Thomas, to kill the external enemy before killing the tyrant. In the former case, order has already broken down, but in the latter, the insurgents must destroy the social order to dispose of the tyrant. This reading of Thomas thus puts a relatively greater priority on order than on justice.

Modern Roman Catholic thought, Miller asserts, has greatly expanded its concern for order by constricting the category of those who count as “outsiders.” This new concern for the priority of order over justice is seen, according to Miller, in a document like Pope John XXIII’s encyclical Pacem in terris. In Miller’s view, Pacem in terris gave new weight to concepts of global interdependence thereby moving Thomas’s concern with the maintenance of order from a domestic to an international setting and transforming the notion of “outsider.” No longer could those residing in other nation-states be considered as outsiders. Now, all persons are residents of a single global community within which Thomas’s strong presumption against internecine conflict should apply.

At the same time, Miller asserts, the emergence of liberation theology has created different rules for insurrections. According to

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32 Id. at 53.
33 Id. at 57-58.
34 Id. at 59.
35 Id.
36 The authorized Latin text of Pacem in terris is found at 55 Acta Apostolicae Sedis 257 (1963).
37 MILLER, supra note 14, at 63-64.
Miller's reading of Gustavo Gutierrez, liberation theology sees the poor in Latin America as marginalized outsiders. Violence is done to the poor daily by the institutions which exploit them. Miller reads Gutierrez as further asserting that class struggle and revolutionary violence are inevitable as these poor are called to overthrow their class oppressors. In this way, Miller sees Gutierrez and other liberation theologians as having "inverted" the old moral discourse. The class oppressor has violated the ordo pacis and has thus become the outsider whom it is now permissible to kill:

[R]adical otherness constitutes a basic feature of moral discourse about social conflict. The foe has been externalized according to the radical class differences characteristic of dependent capitalism in Latin American societies. And, in contrast to the traditional paradigm about tyrannicide, the principle of order quietly recedes from view given the fact that what is now an "external foe" has subverted material structures of existence. Thus it is legitimate, indeed unavoidable, to tolerate some measure of disorder for the sake of establishing just relations.  

Thus, Roman Catholicism sanctions the class struggle but condemns any other form of conflict. This is, of course, a misreading of Roman Catholic thought on order and justice traceable to Miller's use of expressions such as "radical difference," "the other," "otherness," and "the outsider." Drawn from the vocabulary of Michel Foucault and Jacques Derrida, the use of these terms distorts some basic themes in Roman Catholic reflection on order and justice.

To start with, Miller's reliance on expressions like "radical dif-

38 Id. at 73.
40 A significant part of Jacques Derrida's project has been a search for "difference." Like Foucault, Derrida has come under recent withering criticism. See, e.g., JOHN M. ELLIS, AGAINST DECONSTRUCTION (1989); DAVID H. HIRSCH, THE DECONSTRUCTION OF LITERATURE: CRITICISM AFTER AUSCHWITZ (1991); DAVID LEHMAN, SIGNS OF THE TIMES: DECONSTRUCTION AND THE FALL OF PAUL DE MAN (1991). A brief and incisive criticism of the Derridean project can be found in the opening paragraphs of Bruce P. Frohnen, Oakeshott's Hobbesian Myth: Politics, Pride, Character, and the Limits of Reason, 43 W. Pol. Q. 789-90 (1990). I am obliged to Bruce Frohnen for the helpful guidance he provided through the thicket of literature on deconstruction.
ference" or "the other" is historically misleading. In point of fact, if one considered the context within which Thomas was working, that of medieval scholastic philosophy and theology, and the political and ecclesiological reality of Western Christendom, one would quickly realize that "radical difference" had no role to play in Thomas's thought. Thomistic thought, far from being concerned with radical differences between or among persons, was concerned with what united them. This concern for unity and concord has at least four different aspects to it that are obscured by Miller's search for radical difference:

1. The Person

In discussing the nature of the human person, Thomas begins with the premise that God has created all men and women equal in the sense that all men and women have rational souls capable of understanding and knowing. While Thomas adapted Aristotelian philosophy to Christianity, he rejected Aristotle's division of mankind into superiors and inferiors, as well as Aristotle's conception of natural slavery.

2. The Ordo Charitatis

The ordo charitatis, or the order of love, is a complex hierarchy ranking the degree to which one should love other persons. At first glance, one might think that one has found "radical difference" among human beings in the various gradations and hierarchies Thomas suggests should govern human relations, but such a view would be mistaken. For while Thomas may, for example, ar-

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For whatever else he may borrow from the Philosopher [Aristotle], Thomas never, to my knowledge, appropriates his claim that some persons are fundamentally and categorically inferior to others in their capacities for reason and virtue. He comes dangerously close to asserting the natural inferiority of women . . . but what he seems to mean . . . is that women are generally less prudent than men, and not, as Aristotle claimed, that we lack practical reason altogether. Elsewhere he flatly asserts what Aristotle denied, namely that men and women are equal with respect to possession of an intellectual nature . . . . In any case, Thomas' enumeration of the order of charity does not in any way follow Aristotle's tripartite division of the human race into superiors and inferiors (masters and slaves, fathers and children, men and women . . .).

Id. at 202-03.
gue that natural relationships should be the object of greater love, he never denies love to any human being.\textsuperscript{43}

3. The Civil Polity

The civil polity according to Aquinas was organized around the principle that the common good was to be conserved and promoted by its inhabitants. But this notion of the common good did not cause the individual to disappear. The individual, within the community, could claim what was owed him or her in justice. The ruler was equally obliged in justice to respect the claims of the individual.\textsuperscript{44} Not surprisingly, in this context, Thomas spoke favorably of mixed constitutions that might distribute power among the various members of the community.\textsuperscript{45} But at the same time, life lived well within the community was rejected as the end of existence; the community did not command one’s ultimate allegiance. God and salvation were the paramount concerns and these concerns transcended community boundaries.\textsuperscript{46}

4. The Structure of the Church

Thomas’s conception of the Church was yet another factor that prevented radical differences from emerging. All Christians were incorporated into the Church by virtue of their baptism; they were united under a single head, Christ, and subject to a single law, the law of the Gospels. All Christians were members of one body in Christ.\textsuperscript{47}

\textsuperscript{43} Id. at 200. Jean Porter notes that Thomas Aquinas quotes Augustine’s maxim that “[o]ne ought to love all persons equally,” but Porter indicates that Thomas “reinterprets Augustine’s words to mean either that we love everyone in the sense of wishing everyone equally the same good, i.e. salvation, or that we love everyone equally in the sense that it is equally true of each person that we do in fact love that person to some degree.” Id. at 199-200.

\textsuperscript{44} See Thomas Gilby, Principality and Polity 203-50 (1958).


\textsuperscript{46} See Gilby, supra note 44, at 175-87.

\textsuperscript{47} See Benoît-Dominique de la Soujeole, “Société” et “communion” chez saint Thomas d’Aquin, 90 Rev. Thomiste 587 (1990). Jews and infidels, of course, did not belong to the Christian community and might at first glance appear to be “outsiders.” This understanding of the position of Jews and infidels, however, would be a superficial one. The papal decretal Sicut Judaeis (X. 5.6.9) created a zone of liberty within which Jews might practice their faith even while it railed against the “perfidy” of the Jews. While Sicut Judaeis was steadily restricted through the interpretation of the decretalists and frequently and brutally violated in practice, it nevertheless remained the law of the Church. See Solomon Grayzel, The Pa-
This alternative and more accurate reading of Aquinas reveals how alien Miller's notion of "radical difference" is to Thomistic thought. All human beings were united in the recognition that they possessed immortal souls capable of knowledge and capable of salvation. All human beings were worthy of love. The state was not the ultimate focus of one's allegiance. Rather, one's salvation, which in turn demanded that others be treated both lovingly and justly, was to be the center of one's concern, even in the limit case of war. The "other" was not an enemy to be extirpated or hated; even in the limit case of war, a human being is to be loved and respected. Miller, himself, acknowledges this view in his discussion of Thomas's doctrine of intentionality.

Moreover, if "radical difference" is alien to Thomas Aquinas's theology, it follows that Miller's reading of *Pacem in terris* is also wrong. Pope John XXIII had a deep wellspring of tradition to draw upon when he wrote this encyclical. Thomas Aquinas himself was one source for *Pacem in terris.* Pope John XXIII drew as well upon the tradition represented by early international law scholars like Francisco de Vitoria and Francisco Suarez, who stressed that nations were not radically autonomous entities, but parts of a larger international community organized and governed by principles of natural law. While *Pacem in terris* is new in that it addresses global interdependence in the context of the potential for nuclear annihilation, its thought is at the same time deeply grounded in historic Roman Catholic speculation on the relations

*pal Bull Sicut Judeis, in Studies and Essays in Honor of Abraham Neuman 243 (1962). See generally Walter Pakter, Medieval Canon Law and the Jews (1988). Similarly, infidels were recognized as possessing certain basic rights. Pope Innocent IV, for example, recognized that infidels had a basic right of self-governance. See James Muldoon, Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250-1550 at 5-15 (1979). As in the case of Jews, infidels were also sometimes brutally deprived of their rights. It is entirely likely that Jews and infidels were treated as brutally as they were not because of radical differences that were perceived to exist between their communities and the dominant Christian community, but because of perceived similarities. Since all persons, including Jews and infidels, were given reason and immortal souls, it would be the height of unreasonable arrogance, from a thirteenth or fourteenth century Christian perspective, to resist efforts at conversion. I am indebted to Harold J. Berman for this last observation.*

*48 Pope John XXIII cites Thomas directly in paragraph 38 of the encyclical and otherwise demonstrates his reliance on Thomism in his recurrent citations to Pope Leo XIII, one of the leading proponents of nineteenth-century neo-Thomism. An English translation of *Pacem in terris* is found in Seven Great Encyclicals (1963).*

*49 On Vitoria, see James Brown Scott, Francisco De Vitoria and His Law of Nations 281-83 (1934); Francisco Suarez, Selections from Three Works of Francisco Suarez, S.J. (1944).*
of nation-states. Pope John’s encyclical did not somehow destroy the “radical differences” of Thomistic theology. The differences were simply not radical in the first place.

Miller’s assertion that liberation theology represents the dominant approach within contemporary Roman Catholicism to the issue of insurrection is also problematic. First, it is not at all clear that liberation theology has come to occupy such a central role within Roman Catholic thought. Alternative models of revolution and resistance to tyrannical states are in active intellectual competition with liberation theology.50

Second, there is the definitional problem: What counts for liberation theology? Miller avoids this issue altogether, but, in fact, significant differences exist between the nonviolent witness to human suffering of an Oscar Romero and the revolutionary, Marxist-influenced writings of someone like Gustavo Gutierrez.51 Even if one takes Gutierrez as paradigmatic of liberation theology, however, the significant developments that have occurred over the years in his thought must also be taken into account.52

And even if one takes the youthful, “radical” Gutierrez as representative of liberation theology, a quest to find the “radically different other” in his work may ultimately prove fruitless. Without doubt, Gutierrez sees the contemporary world as one flawed by radical cleavages, primarily the “class struggle.” Gutierrez’s recognition of class struggle, however, does not turn “class oppressors” into radically different beings. Even in his most forceful rhetoric, Gutierrez emphasizes the need to love even the class oppressor:

The Gospel announces the love of God for all people and calls us to love as He loves...

To love all men does not mean avoiding confrontations; it does not mean preserving a fictitious harmony. Universal love is that

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50 The career of Father Jerzy Popielusko can be seen as one alternative model to the sort of liberation theology proposed by Gustavo Gutierrez. See generally Grażyna Skorska, Jerzy Popielusko: A Martyr for the Truth (1985) (Jerzy Popielusko a model of nonviolent resistance to the Communist government of Poland).

51 For some of the definitional difficulties, see The Congregation for the Doctrine of the Faith, Instruction on Christian Freedom and Liberation, 15 Origins 713 (1986).

52 For a review of some of the developments in Gutierrez’s thought, see Paul E. Sigmund, Liberation Theology at the Crossroads: Democracy or Revolution? 176-82 (1990). Miller assumes that Gutierrez advocates violent revolution. For a differing view, see Frederick Sontag, Liberation Theology and the Interpretation of Political Violence, 55 The Thomist 271, 284-87 (1991) (Gutierrez ambiguous at best in his calls for armed revolution).
which in solidarity with the oppressed seeks also to liberate the oppressors from their own power, from their ambition, and from their selfishness. . . . One loves the oppressors by liberating them from their inhuman condition as oppressors, by liberating them from themselves.  

One does not see in these lines a sense of radical difference between oppressor and oppressed; both are human beings and each has been victimized in his or her own way. Class enemies are not to be killed with the impunity that would attend the murder of radically different outsiders; they are to be loved and liberated.

One can conclude that the entire chapter constitutes a misreading of Roman Catholic thought on justice and order. Its mistake is to rely chiefly on notions of radical difference or radical otherness to explain Roman Catholic thought on war and insurrection. Michel Foucault, who first developed the notions of radical difference and radical otherness, was concerned with analyzing power relations and dominance. Foucault had no room for love in his analysis of social relations.

Roman Catholic thought, however, like Christian theology generally, has always had to grapple with the love commandment. All human beings are made in the image and likeness of God and are therefore to be loved as Christ loved us. The effort to reconcile love and violence is the central tension in any Christian speculation on warfare. In the end, the love commandment forces Gustavo Gutierrez to acknowledge the need to love class enemies just as it compelled Thomas Aquinas to develop a theory of intentionality that avoided directly intending the taking of human life.

A search for Foucauldian radical difference within a tradition that has viewed all human beings as objects of love is accordingly to apply an erroneous approach to that tradition. To say that such an effort is a mistake is not to deny that great injustices have been committed in the name of Christianity, or that the love commandment itself has historically been misused to justify crusades or pogroms. But it is to acknowledge that one simply cannot find radical difference within an intellectual tradition that has measured its own validity by the command to love everyone.

This excursion into the land of radical differences has gone on

64 See Jonathan Riley-Smith, Crusading as an Act of Love, 65 Hist. 177 (1980); supra note 43.
long enough and should conclude with the observation that the di-
chotomy between order and justice does not work the way Miller
wishes it to. The Gulf War illustrates this point neatly. What is
order and what is justice in the case of the Gulf War?

The lines must be drawn differently than Miller allows. Order
was violated by Saddam Hussein's invasion, but so was justice. Re-
pelling Saddam's aggression, therefore, did not pit justice against
order, but sought to restore both. In fact, order and justice are re-
lated in ways that Miller's search for the radical other obscures
rather than elucidates. While this is not the proper place to engage
in a searching examination of the relationship of order and justice
in Roman Catholic thought, this line of analysis may conclude with
the observation that Miller has radically misconceptualized the is-
issues at stake.

C. War as Crucifixion

H. Richard Niebuhr, according to Miller, attempted a radical
“repoeticization” of the theology of war in light of the mass mo-
bilizations and mind-numbing casualty figures of World War II. In
a series of articles, later known as the “War Articles,” published in
The Christian Century over the period 1932-1943, Niebuhr ex-
pressed profound dissatisfaction with those who viewed war as an
act of retributive justice.

The greatest difficulty of all which the moral theory [of retribu-
tive justice] faces is the fact that in war the burden of suffering
does not fall on the guilty, even when guilt is relatively determi-
nable, but on the innocent. Retribution for the sins of a nazi
party and a Hitler falls on Russian and German soldiers, on the
children of Cologne and Coventry, on the Finns and the French.
In order that the moral theory may be used it becomes necessary
to convict all the common men, the whole opposing nation of
guilt.57

55 Miller’s use of the term repoeticize is borrowed from modern theories of literary criti-
cism. See MILLER, supra note 14, at 269 n.14. Miller’s effort to repoeticize Niebuhr seems to
add little to the analysis.
56 The war articles include: H. Richard Niebuhr, The Grace of Doing Nothing, 49
CHRISTIAN CENTURY 378 (1932); H. Richard Niebuhr, A Communication: The Only Way into
the Kingdom of God, 49 CHRISTIAN CENTURY 447 (1932); H. Richard Niebuhr, War as the
Judgment of God, 59 CHRISTIAN CENTURY 630 (1942); Virgil A. Aldrich & H. Richard
Niebuhr, Is God in the War?, 59 CHRISTIAN CENTURY 953 (1942); and H. Richard Niebuhr,
War as Crucifixion, 60 CHRISTIAN CENTURY 513 (1943).
57 See NIEBUHR, War as Crucifixion, supra note 56, at 513.
Niebuhr thus viewed the just-war theory as unable to justify on its own terms recourse to force. The innocent, not the guilty, are punished by war. Niebuhr proposed instead that war be seen as part of the sinful structure of human institutions and practices. God is immanent in the world but allows war to take place because of the human propensity to sin. All egoism and self-centeredness, on this view, is sinful and it is precisely human self-centeredness that leads to war. Furthermore, because all human beings are sinful, no one has a monopoly on virtue and no one should presume to judge another. Thus, Niebuhr concluded that one’s duty in warfare is not to kill the wicked or the guilty, but to defend one’s neighbors from abuse or injustice.

Having explained war as the product of and punishment for sin, Niebuhr offered a theological explanation for the suffering of the innocent in war. The innocent who suffer should be viewed as undergoing a “crucifixion.” Like Christ, they make vicarious satisfaction through their suffering for the sins of the human community.

This approach has been criticized as failing to provide positive guidance for human action in time of war because it overly stresses the limits of human power. Human life is tragic; human beings must engage in self-assertive activity and “all self-assertions [will] end in destructive conflict.”

James Gustafson represents one response to this criticism. Gustafson understands Niebuhr to have articulated a complex ethical system that has at its core the fundamental uniqueness and particularity of the individual believer and that believer’s response to the totality of Christian revelation and to the social relations and moral dilemmas into which that believer is placed. Gustafson’s interpretation of Niebuhr’s system does not recommend passivity in the light of the inevitably tragic consequences of human action; rather, it stresses the relativity and particularity of the individual’s response to Christ. Thus, depending on their assessment of their own position, their understanding of God’s demands upon them,

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58 See Niebuhr, War as the Judgment of God, supra note 56, at 632-33.
59 Id. at 632. “To carry on the war under the judgment of God is to carry it on as those who repent of their self-centeredness and who now try to forget about themselves while they concentrate on the deliverance of their neighbors.” Id.
60 See Niebuhr, Is God in the War? supra note 56, at 953-54.
and the concrete circumstances confronting them, believers may respond to a given moral crisis with either activity or inactivity.\footnote{Miller's response to the charge that Niebuhr's system lacks positive guidance differs from Gustafson's by focusing on the role of repentance in Niebuhr's thought and by positing a dialectical tension between the Christian's need for repentance and the "divinely ordained events" that take place in the world around him. Repentance, understood as submission to the self-sacrificial message of the Cross and God's "radical monotheism," requires us to focus on human suffering and to purge ourselves from self-centered tendencies. Once we have made the "other" the center of our concern, we can begin to respond effectively in whatever way the events of the world demand. From this dialectical tension, Miller derives three more concrete benchmarks for moral action. These are:}

1. "Other-Regard" and the Decision to Fight

Miller asserts that one can identify in Niebuhr's ethics "a qualified preferentialism for the innocent victims of war."\footnote{Miller bases this finding on Niebuhr's sympathy for the victims of war and his encouragement to Christians to protect their neighbors from harm.} Miller moves from this starting point to develop Niebuhr's argument into a general principle of "other-regard" which is binding whenever one is confronted with the issue of going to war, whether one ultimately follows a pacifist course of action or what Niebuhr calls a "coercionist" path:

We are to act not in self-defense, but out of care for the needs of others. As Niebuhr states, "If we accept God's judgment

\footnote{\textit{See} James Gustafson, \textit{Christian Ethics and Social Policy, in FAITH AND ETHICS: THE THEOLOGY OF H. RICHARD NIEBUHR} 119, 120-22 (Paul Ramsey ed., 1957). Gustafson identifies four "motifs" to Niebuhr's ethics, with the central motif being "the relativism of life in faith." \textit{Id.} at 122.}

\footnote{\textit{Id.} at 122.}

\footnote{A central part of Niebuhr's theology is radical monotheism. God should be the first loyalty of every believer. As Miller, puts it: "All finite realities have value not in themselves, but in 'relation to the One to whom all being is related.'" \textit{Id.} at 131 (quoting H. Richard Niebuhr, \textit{RADICAL MONOTHEISM AND WESTERN CULTURE WITH SUPPLEMENTARY ESSAYS} 32 (1943)).}

\footnote{\textit{See} Miller, \textit{supra} note 14, at 132-37.}

\footnote{\textit{Id.} at 141.}

\footnote{\textit{Id.} at 141.}
on our self-centeredness we cannot respond to it by persisting in actions of self-defense and by fighting the war for the sake of our selves or our values instead of for the sake of the innocent who must be delivered from the hands of the aggressor." Accordingly, Niebuhr's argument places moral grammar about war under the rubric of protection rather than self-preservation. The point of his critique is to eliminate self-regard and, simultaneously, to secure a strong basis for other-regard in the recourse to lethal force . . . .

Other-regard, especially for innocent victims of harm, likewise holds for Niebuhr's reconstructed affirmation of pacifism . . . . Niebuhr insists that the self must be displaced from the center of pacifistic nonparticipation. Pacifistic nonparticipation is tenable, in other words, "only if it be part of a total action in which concern for others has been given preeminence over concern for self and its values." 68

2. "Relative Justice" and Rationales for Fighting

Miller reads Niebuhr as an ardent foe of exceptionalism. Miller defines exceptionalism as "the idea that a nation, or an alliance, may make special claims for itself by appealing to the moral fabric of its own political order, especially when juxtaposed to the relative evil of an opponent." 69 By emphasizing repentance, understood as self-sacrifice, exceptionalism can be banished. Thus directed, the conclusion follows that "no nation has a monopoly on justice or moral rectitude in the course of war." 70 Uniquely privileged claims of justice ought not to be asserted when deciding whether to fight or what methods to use if fighting breaks out.

3. "Other-Regard" and Conduct in War

Finally, Miller argues that the principle of other-regard should govern one's behavior in warfare:

[R]epentance and care for the innocent ought to fortify moral action against slipping into extreme measures under the circumstances of a supreme emergency . . . . Consent to God's judgment displaces the self from the center of concern, precluding the notion of a supreme emergency altogether. The result is to secure

68 Id. (quoting H. Richard Niebuhr, War as the Judgment of God, 59 CHRISTIAN CENTURY 632 (1942)).
69 Id.
70 Id. at 142.
fairness and care as grounds for moral action within the heat of battle.\textsuperscript{71}

The elements of Niebuhr’s thought which Miller highlights strike at one of the chief weaknesses of just-war thought: its anti-septic, analytical quality in the face of violence. In fact, there is much that is praiseworthy in Miller’s treatment of Niebuhr. The just-war theorist responds to the suffering of the innocent in war with the principles of proportionality and discrimination. Proportionality requires the just-war theorist to weigh human suffering against the values defended by going to war and the particular means of fighting a war. Discrimination requires the just-war theorist to refrain from deliberately attacking noncombatants, as well as affirmatively attempting to keep foreseeable noncombatant casualties to a minimum.

When weighed against Niebuhr’s discussion of the suffering of war, the principles of proportionality and discrimination can appear terribly bloodless. When discussing proportionality in the context of a bombing raid, for example, sanitized references to measurements of values \textit{vis à vis} body counts mask the real human damage caused by the attack: How many homes or air raid shelters were destroyed, how many persons crushed, how many bodies mangled, how many lives disrupted? Miller’s discussion is valuable because it calls attention to the tendency of just-war theorists to overlook the bloody consequences of their deliberations.

Miller’s explication of Niebuhr is useful as well for its treatment of “supreme emergency.” The doctrine of supreme emergency was invented by Michael Walzer to justify the disregard Allied strategic planners showed during World War II toward loss of civilian life and the West’s subsequent adoption of a nuclear deterrent that embodied otherwise impermissible threats against innocent life.\textsuperscript{72} A supreme emergency prevailed in both cases, Walzer argued, because of the fundamental threat posed to Western civilization. The fact that civilization itself was at stake allowed behavior that moral canons would otherwise forbid.\textsuperscript{73} Niebuhr, in contrast, would view invocations of supreme emergency as inherently self-centered; the doctrine gives preference to one’s own values at

\textsuperscript{71} Id.

\textsuperscript{72} See Michael Walzer, \textit{Just and Unjust Wars: A Moral Argument With Historical Illustrations} 251 (1977) (doctrine of supreme emergency permits the West to engage in otherwise morally impermissible conduct).

\textsuperscript{73} Id. at 252-53.
the expense of another's. Such self-centeredness should not be used to justify the otherwise forbidden taking of innocent life.

Less positively, however, it seems that Miller's benchmarks for action lack the precision one needs to survey the morality of conduct in warfare. One begins to see the muddiness of these benchmarks by asking the question: Who was the "other" in the Gulf conflict? The Kuwaitis killed by Iraq's occupying army? The Israeli civilians terrorized or killed by SCUD missile attacks? Iraqi civilians killed in bombing raids on Baghdad? Kurds who, it seems, were encouraged to revolt and then abandoned at the conclusion of hostilities? In one sense or another, all of these disparate groups can be called "the other" from an American vantage point. How does one resolve the conflicts that arise between or among competing groups of "others"? How does one determine who "the other" is? Are the Kurds to be disqualified from otherness because of the misfortune of having believed assurances that were apparently given that their revolt would be supported? The principle of otherness is insufficient to resolve these questions. And by posing them, we are implicated in the search for standards of justice by which to measure competing claims. Banishment of self-centeredness can and should guide one's inner disposition in deciding whether and how to fight a war, but it fails as a benchmark for selecting the morally appropriate course of action when deciding concrete cases. One cannot escape questions that pit one group of "others" against another group of "others."

Finally, Miller's (and Niebuhr's) choice of metaphor is noteworthy. The Cross is a uniquely Christian symbol that carries vastly different meanings in the Islamic Middle East and the Christian (or "post-Christian") West. The Cross in the West connotes (or at least once connoted) suffering and self-sacrifice; in Arabic Moslem countries, the Cross still resonates with distant but vivid memories of the Crusades. Niebuhr uses the Cross as part of his theology advisedly, noting, for instance, that it applies very awkwardly to Japan's occupation of Manchuria.Miller's failure

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74 See Miller, supra note 14, at 141-42. Miller's argument contains an interesting tension, if not an outright contradiction. Miller argues that one can identify in Niebuhr's work both a principle of other-regard, requiring preferential treatment for "innocent victims of harm" and a principle of "relative justice" suggesting that no one may make special claims on their own behalf, because all parties to a war presumably bear some responsibility for it. If everyone is, to a certain extent, guilty (which is a fair inference from Miller's theory of relative justice) how can anyone be "innocent" and thereby qualify as an "other?" Id.

75 See Niebuhr, The Grace of Doing Nothing, supra note 56, at 380. The use of the
to acknowledge these limitations on the symbolism of the Cross is, at the very least, unecumenical, if not contrary to the principle of other regard.

D. The Pacifist Perspective

Miller’s discussion of pacifism is divided into two sections. The first singles out recent Roman Catholic pacifist thought for close analysis. Miller’s intention is to use various Roman Catholic approaches to pacifism as a vehicle for proposing his own idiosyncratic variant on traditional just-war criteria: a set of criteria, intended as the mirror-image of just-war criteria, to be used as a means to judge the legitimacy of pacifist dissent. The second section then more thoroughly explores points of convergence between pacifism and just-war discernible from a pacifist perspective. The works of both Protestant and Roman Catholic pacifists are used in this portion of the analysis.

1. Criteria for a “Justified Pacifism”

Miller begins by identifying three basic approaches to pacifism in Roman Catholic thought:?

a. Rights-Based Pacifism

The magisterium as expounded by Pope Pius XII (or, for that matter, his predecessors) had little room for pacifism. The only moral option open to Roman Catholics according to official teaching was just-war theory. Occasionally, individual Roman Catholics (such as Gordon Zahn) took a position at variance with the official one, but such stances were generally met with a chilly reception.?

The Vatican II decree Gaudium et spes dramatically changed Roman Catholic teaching on pacifism by asserting that individuals might practice pacifism, provided that their pacifism respected the rights and duties of other individuals and the community at large.

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76 See Miller, supra note 14, at 76.

States, however, remained bound by just-war constraints.\textsuperscript{78} The pacifist option received subsequent endorsement and elaboration in later magisterial statements. For example, the pastoral letter of the National Conference of Catholic Bishops, \textit{The Challenge of Peace: God's Promise and Our Response}, established a pacifist option by articulating a "theology of peace."\textsuperscript{79} This theory sees peace as part of the Kingdom of God, only imperfectly achieved in this world, but a goal that nonetheless requires the whole of one's effort.\textsuperscript{80} At the same time, Miller notes, the bishops' pastoral letter continued to see the pacifist option as embedded in "a theory of rights and justice, to the dissatisfaction of many Catholic pacifists hoping for a more radical position."\textsuperscript{81} The pastoral letter also retains \textit{Gaudium et spes}'s teaching that states are obliged to adhere to the just-war doctrine.

\begin{itemize}
\item \textbf{b. Eschatological Pacifism}
\end{itemize}

Miller defines "eschatological pacifism" as a preoccupation with what might be called the fulfillment of history through the establishment of the Kingdom of God. Dorothy Day and the Catholic Worker movement are taken as paradigmatic of this approach to pacifism. Dorothy Day, filled with apocalyptic expectation, believed history itself would end "when Christ, in an active and selfless love, is taken into every aspect of creation."\textsuperscript{82} Members of the Catholic Worker movement were admonished to "put on Christ" in a truly radical and self-giving way.\textsuperscript{83} The Sermon on the Mount

\footnotesize
\begin{itemize}
\item \textsuperscript{78} \textit{See The Teachings of the Second Vatican Council} 539, 541 (Walter Abbott, ed., 1966). \textit{Gaudium et spes} states: \\
\begin{quote}
"[W]e cannot fail to praise those who renounce the use of violence in the vindication of their rights and who resort to methods of defense which are otherwise available to weaker parties too, provided this can be done without injury to the rights and duties of others or of the community . . . ."
\end{quote}
\begin{quote}
Moreover, it seems right that laws should make humane provisions for the case of those who for reasons of conscience refuse to bear arms, provided, however, that they agree to serve the human community in some other way.
\end{quote}
\textit{Id.}
\item \textsuperscript{79} \textit{See National Conference}, \textit{supra} note 23, ¶ 15-55.
\item \textsuperscript{80} \textit{Id.; see also} Miller, \textit{supra} note 14, at 84-85.
\item \textsuperscript{81} \textit{See Miller}, \textit{supra} note 14, at 84.
\item \textsuperscript{82} \textit{See William D. Miller, A Harsh and Dreadful Love: Dorothy Day and the Catholic Worker Movement} 4 (1973).
\item \textsuperscript{83} \textit{See id.} William Miller describes what was meant by "putting on Christ": Putting on Christ was an act of freedom which would be a leave-taking in spirit, mind, and even body of the institutional forms, manners, and values of a world of
\end{itemize}

\normalsize
called on Christians to be peacemakers and this call was to be un-
derstood literally, universally, and without reservation, irrespective
of institutional or social consequences.84

The eschatological insight of the Catholic Worker movement is
particularly ill-suited for rational analysis. As William Miller, a bi-
ographer of Dorothy Day, noted, Catholic Worker eschatology
“certainly did not mean a further refinement and extension of the
analytic temper of the modern mind, so dear to the hearts of those
whose first thought is to ‘study’ the problem.”85 Rather, Catholic
Worker pacifism was a lived and emotional response to the call of
Christ to make peace. Catholic Worker pacifism was meant to be
public and jarring. The goal was to arouse the average person from
complacency and to illustrate vividly, in a form of theater, the to-
tal demands of the Gospel.

c. Iconoclastic Pacifism

Miller’s examination of “iconoclastic pacifism” understands it
to be a progeny of the leftist radicalism of the 1960s, which com-
bines a biblically-based pacifist ethic with a radical critique of
American social structures and militarism.

Daniel Berrigan, a founder of iconoclastic pacifism, is taken as
representative by Miller of the movement.86 Like Dorothy Day,
Daniel Berrigan has conceived his mission in radical Christian
terms. Christ makes total and extreme demands on the Christian’s
life that the Christian is obliged to follow. One must live out one’s

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84 See id. at 4. Dorothy Day and the Catholic Worker movement maintained that time
itself would end “when Christ, in active and selfless love, is taken into every aspect of crea-
tion.” Id. According to William Miller:

Th[e] idea is a return to the theme of eschatological expectation, which was so
powerful in the early days of the Christian community. In the minds of the foun-
ders of the Worker movement, Peter Maurin and Dorothy Day, it is the only radi-
calism worthy of the depths of man and sufficient to the crises at hand. It is the
only one that can take man from that centrifugal force, now so strongly felt at the
periphery of the process of time, and return him to the center of creation. It is
radical because it would have history submit to it and would not itself submit to
history.

Id.

85 Id. at 6.

86 See MILLER, supra note 14, at 97-99. Others that Miller numbers among iconoclastic
pacifists include James Douglass and Philip Berrigan. Id. at 91-99.
life non-violently but also with constant attention to "the assumption . . . that our life is our own "only when it is given for others."87

Similar to Day, Berrigan's beliefs have caused him to engage in civil disobedience.88 Berrigan differs from Day, however, in his critique of American society. Day was critical of all social institutions, seeing them as repressing Christian spontaneity and spirit. Berrigan, in contrast, who came of age during the Vietnam War, has developed a far more sustained and focused criticism of specifically American social structures as uniquely violent and unjust. Berrigan asserts that militarism is pervasive and unnoticed in the United States because waging war is taken for granted; thus, American involvement in Vietnam was invisible mass murder. In such a context, Christ is seen as a source of hope for revolutionary change.89

Miller is at his most critical when assessing eschatological and iconoclastic pacifism. Dorothy Day, for example, suffers from a lack of "clarity of thought," while Daniel Berrigan has failed to provide an "alternative" to replace the present order.

What Miller seems to find most disturbing about eschatological and iconoclastic pacifism, however, is its seeming inaccessibility. As a remedy for this problem, Miller proposes a framework for pacifist civil disobedience modelled on just-war principles. To engage in pacifist dissent, one must first possess a just cause "requir[ing] a defense of values either excluded or violated in public

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87 See Daniel Berrigan, *Lights On In the House of the Dead: A Prison Diary* 132 (1974). Elaborating on the religious foundation for his actions, Berrigan states:

The gospel gives us the right, indeed the command, to be prodigal in regard to our personal lives. There is a delicate rigor in the Lord's view of life—His own life, the lives of others. A Christian is asked to be serious about a serious issue; the lethal arrangements of power disposing of lives, the consignment of the living to death, for the sake of temporal gains, egoism, money, prestige, latest advantages—these are not the Christian game.

Id.

88 See Daniel Berrigan, *The Trial of the Catonsville Nine* 83 (1970). He is perhaps best known for his membership in the Catonsville Nine—a group that broke into the Catonsville, Maryland Selective Service office and burned files while waiting for police to arrive. At trial, Berrigan defended his actions as an outgrowth of his religious convictions. Responding to the question, "Was your action at Catonsville a way of carrying out your religious beliefs?" Berrigan replied: "Of course it was. May I say if my religious belief is not accepted as a substantial part of my action then the action is eviscerated of all meaning . . . and I should be committed for insanity." Id. at 83 (condensation of trial transcripts prepared by Berrigan). For a discussion of Berrigan's methods in preparing the condensation, see id. at vii-viii.

policy.” One must also act with competent authority. As understood by Miller, this requires pacifists to open their views to public scrutiny, and requires those who adopt revolutionary rhetoric to “specify criteria of political legitimacy.” Pacifists, furthermore, should act with a right intention, meaning that they should “order their aims toward peace and fairness.” Pacifist civil disobedience should also be a last resort, with all legal alternatives exhausted. There should be a reasonable hope for success and “rash or irrational recourse to civil disobedience” should be prohibited. Pacifists should be required to acknowledge the principle of relative justice, meaning apparently that those who choose to fight also possess a share of justice. Criteria of proportionality and discrimination should also be satisfied. Those engaged in dissenting activity should distinguish between “legitimate and illegitimate ‘targets’” and weigh the risks and benefits of their activity.

Miller’s proposals are thought provoking, but appear to suffer from at least two fatal flaws. First, while attempting to avoid openly selecting one type of pacifism over another, Miller’s criteria nonetheless have an inherent bias toward rights-based pacifism. The exhaustion of legal remedies, for example, or a careful weighing of the risks and benefits of pacifist civil disobedience, simply has no resonance in a pacifist vision shaped by an eschatological desire to “put on Christ,” and thereby subvert repressive institutions, or in acts of civil dissent motivated by a Christian recognition that one’s life is one’s own “only when it is given for others.” Rather than covertly building a bias against eschatological or iconoclastic pacifism into purportedly neutral criteria, Miller should have clearly and openly stated his preference and defended it. Only then would dialogue be possible.

Second, Miller’s criteria deny the profoundly religious dimension of eschatological and iconoclastic pacifism. A rights-based pacifist option, grounded on an analytically accessible theory of justice, can be reasoned with, even by those who do not share the pacifist’s religious convictions. Eschatological and iconoclastic pacifism, however, can only be engaged in dialogue by those willing to take seriously the religious viewpoint expressed. Miller’s criteria fail for the same reason his larger project fails: He does not take seriously the religious dimension of his sources.

The Gulf War amply illustrates the failure of these criteria.

99 See Miller, supra note 14, at 104-05.
Much of the pacifist dissent to the Gulf War followed eschatological or iconoclastic lines. From a pacifist’s perspective, the Gulf War was typically seen as the product of the profiteering of “idolatrous” social institutions, such as weapons manufacturers or oil companies, coupled with thoughtless, self-centered, and unrestrained consumption. Institutions destructive of the real nature of human-kind had to be challenged or transformed; selfish or ignorant consumers had to be confronted and their behavior changed.91

Many of the pacifists who saw the war in these terms reached their conclusions by means of religious insight. Social institutions and human behaviors were judged by transcendent standards and found wanting. “Putting on Christ” and “laying down their lives for others,” these pacifists excluded the possibility of “rational” cooperation with idolatry. In many instances, “rash and irrational recourse to civil disobedience” was precisely their intent.92

Dialogue is not possible with persons motivated by such a vision where that dialogue excludes the “irrational” religious dimension. Dialogue can only occur where the religious perspective is respected. By excluding this perspective, Miller’s criteria contribute little toward resolving pacifist dissent in the concrete moral case of the Gulf War.

2. Convergence From a Pacifist Point of View

Miller next addresses the issue of convergence from a pacifist stance, stating he “will allow pacifist voices to speak for themselves.”93 This effort to allow pacifist voices to speak for themselves will lead first, Miller asserts, to a recognition of the fundamental differences that exist between pacifism and just-war theory, but finally to a deeper sense of convergence at the “ethical” and “postethical” levels of moral reasoning.

Miller’s pacifist voices speak with powerful religious convictions. John Howard Yoder, for example, has argued that warfare


93 See MILLER, supra note 14, at 107.
lacks New Testament sanction and therefore is forbidden to Christians. The just-war theory, to Yoder, is a product of natural law reasoning and uses a "competitive revelation claim" for its foundation. Just-war theories distort the Christian message because they "place 'our faith in some other channel of ethical insight ... than that which is offered us through Jesus as attested in the New Testament.'"94

Martin Luther King, in contrast, supported pacifism by synthesizing Christian love with a theology of creation. King viewed all of creation as a vast network of interconnections. Harm to one part of creation would thus harm all of creation. Because the Christian is called to love, he or she may not harm others. Warfare is prohibited because it is the antithesis of Christian love, but civil disobedience is allowed because of its pedagogical value: it will teach the oppressors to be better persons.95

Finally, Stanley Hauerwas has stressed the countercultural value of Christianity. The modern nation-state is jealous in its demands; one can very easily and quite unconsciously pledge total loyalty to the state. Christianity strives to counter this gravitational pull toward the demand of the state. The Christian must always give his or her first allegiance to God's law. Peace, one of the first requirements of God's law, compels the Christian, by giving witness to peace, to refute the total demands of the state.96

Miller moves from this introduction to argue that the selection of either a pacifist or a just-war option is essentially "dilemmatic.97 Both the pacifist and just-war option will necessarily lead to human suffering:

The problem of violence pertains to both camps because in either case to ally oneself to one set of fellow-creatures means that others will suffer as a foreseen but unintended outcome of one's choice: The nonpacifist's decision to act means that the aggressor must suffer, while the pacifist's choice not to act means that the victim will suffer.98

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94 Id. at 108 (quoting John Howard Yoder, The Original Revolution: Essays on Christian Pacifism 134-35 (1971)).
95 Id. at 218.
96 Id. at 111.
97 Id. at 117-18; see Cheyney C. Ryan, Self Defense, Pacifism, and the Possibility of Killing, 93 Ethics 508, 524 (1983). Miller follows Cheyney Ryan by seeing the option, between pacifism and just-war, as a dilemma. Id.
98 See Miller, supra note 14, at 118.
Miller does not attempt to resolve this dilemma, but rather adumbrates further points of convergence between pacifism and just-war. Pacifism testifies to the extremely marginal nature of war. As Miller puts it, "War immerses its participants and victims in an unusual realm of affairs—a realm of carnage, suffering, and waste that has few parallels with other moral acts in which we appeal simply or directly to love or justice as principles of authorization."

War, furthermore, raises in a profound way questions about ultimate meaning, especially for the pacifist. Miller thus finds it "only natural that many pacifists turn to the symbols of their religious tradition to frame their discussion of war." Miller concludes:

If the presumption against harm is taken seriously, then war appears to be an exceptional problem from the vantage point of both the just-war theorist and the pacifist. In addition, if just-war ideas are structured so that war is treated as an exceptional phenomenon, then a clearing is created in which we may pursue the positive requirements of peace during the normal course of human affairs, requirements that ought to bind the agendas of pacifists and nonpacifists alike.

It is submitted that Miller has avoided the truly difficult question. It is all well and good to encourage pacifists and just-war theorists to work together to advance the cause of peace in "normal" circumstances, but as the Gulf War starkly illustrates, "normal" circumstances sometimes break down; war remains a part of the fabric of human existence. The dilemma with which Miller opens his discussion, namely, which group of persons ought to suffer when war breaks out, is never addressed, let alone resolved. A dialogue of pacifists and just-war theorists which followed Miller's suggestions would end in confusion and silence at precisely that time when sustained dialogue is needed most—the breakdown of normal circumstances.

E. American Exceptionalism

The final large theme Miller deals with is not, strictly speaking, an issue of moral reasoning. Miller's study of American exceptionalism is meant, rather, to be an examination of the "American

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99 Id. at 121.
100 Id. at 123.
101 Id. at 124.
ideology par excellence.” Miller intends by this discussion “to show how American ideology has served ... as an obstacle to and a resource for moral vocabularies about war and peace.”

Miller begins by defining “ideology”:

By ideology I mean, following Raymond Geuss, “such things as the beliefs the members of the group hold, the concepts they use, the attitudes and psychological dispositions they exhibit, their motives, desires, values, predilections, works of art, religious rituals, gestures, etc.” As I am using it here, ideology can be both a neutral category and the pejorative notion of “false consciousness.” In a neutral sense ideology includes generally shared beliefs which have a wide and deep influence on our behavior, those attitudes about the world that are not easily given up. And, as Geuss observes, ideologies usually come in bundles. That is, they hold together with some coherence a variety of attitudes, goals, and beliefs, providing a “characteristic structure which is often discernible even to an outside observer.” Ideologies thus provide the grammar for our rituals of socialization, those cultural practices by which we foster personal identity and communal solidarity. But perhaps most important, ideologies serve an interpretive function. They provide the means by which we clothe history with myth, enabling us to single out and ascribe significance to the events of human experience. An ideology, then, is rarely an object of thought, about which we reflect; rather, it constitutes the background of our ideas, with which we ponder our experience and its moral dimensions.

Miller continues by defining American exceptionalism as “the idea that ... Americans have been possessed by a sense of uniqueness and election.” According to Miller, there are four components to this ideology: “[T]he belief in providential direction; the belief in exemplary status; the belief that the suffering of Americans is instrumental to a wider redemptive process; and the belief that Americans are called to obey a higher law, inaccessible to outsiders or critics.”

All four of these components have their roots in America's religious, especially its Puritan, past. All four themes became secu-

\[103 \text{Id. at 195.}
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\[104 \text{Id.}
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\[105 \text{Id. at 193 (quoting Raymond Geuss, The Idea of a Critical Theory: Habermas and the Frankfurt School 5 (1981)).}
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\[106 \text{See Miller, supra note 14, at 195.}
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\[107 \text{Id. at 196.}
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larized over the course of American history, with the pace of secularization accelerating in the nineteenth and twentieth centuries. These themes were sometimes used to justify American involvement in wars and even occasional claims of Anglo-Saxon racial superiority.

Miller argues that American moralists have been influenced by American exceptionalism to revise traditional just-war criteria. Miller sees William O'Brien as the chief offender in this regard. In the face of the Cold War standoff between the United States and Soviet Union, O'Brien modified the criterion of just cause "to include a comparison of the polities that oppose each other." According to O'Brien, some nations are to be considered as governed by regimes that are inherently more just than others, and this difference in justice should count when assessing the morality of conflict. Miller finds this modification of just-war criteria to be unprecedented in just-war analysis and a form of special pleading.

But at the same time, Miller asserts, American exceptionalism has also served the cause of peacemaking. The preeminent example given of American exceptionalist as peacemaker is Martin Luther King. King made vivid use of all four strands of American exceptionalist rhetoric to justify the civil rights movement. America was providentially directed; it was an exemplar, a redeeming agent, and a teacher for the world; the suffering of Americans, especially African-Americans, would assist in enlightening and saving the world; America, finally, was subject to a higher law which King could invoke to challenge the injustice of segregation. Violence was unnecessary, in King's estimation, because Americans could discern just from unjust laws.

Miller's treatment of Martin Luther King, however, exposes the weakness of his argument. The King that Miller presents is not the heroic leader of Montgomery or Selma, vindicating all that is best in American ideology but King the "counterideologist." King's ideas have no apparent validity to Miller, who sees King merely as someone who "traded on the language of exceptionalism in order to attack exceptionalist practices."

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107 Id. at 214.
109 Miller, supra note 14, at 221.
110 Id. at 217-22.
No further guidance is provided for those who wish to act morally in times of conflict. Miller reverts, in his closing chapter, to the principle of other-regard, the metaphor of the Cross, and the duty of nonmaleficence to suggest how a dialogue might be structured, but the effort fails. As noted above, the principle of other-regard founders on the inability to discern which “other” is to be the object of regard in times of conflict and the metaphor of the Cross is singularly awkward in the context of a Middle Eastern war. Furthermore, the duty of nonmaleficence cannot survive the dilemma avoided by Miller in his discussion of pacifism: If it is foreseeable that one group, victims, will be harmed by the failure of a third party to enter war, and another group, aggressors, will be harmed by entry into war, what course of action should the third party follow and why? Nonmaleficence, by definition, cannot answer this question, since it presumes that no one should be harmed. Where harm is unavoidable and the only question is who should be harmed, a theory of justice is required, not a duty of nonmaleficence.

One is left, at the conclusion of Miller’s book, with dialogue. Dialogue that has its source in a “postethical” option that in turn relies on a blind and arbitrary preference. We are brought back to our starting point, the Melian Dialogue. When faced with the promised destruction of their city, the Melians replied to the Athenians: “We put our trust in the fortune that the gods will send. . . .” Miller, by stripping the transcendence from his sources, would take away even the appeal to the divine.

Miller’s book thus fails for two essential reasons. First, his arguments remain vulnerable to the charge of the power theorists. Culture, convention, and common sense are inadequate, by themselves, to keep Miller’s dialogue secure. Thucydides is as much a part of tradition as Augustine. Second, Miller never resolves the basic dilemma between pacifism and just-war: Who should suffer in time of conflict? It is all very well to speak of “normal circumstances,” that provide a “clearing” in which the requirements of peace can be discussed, but the Persian Gulf War proves that war also remains a human reality. Dialogue that avoids this question will founder.

Miller’s book is precisely the wrong direction for ethical analysis to take in the light of the Gulf War and the implosion of the

111 See Thucydides, supra note 18, at 407.
Soviet Union. One needs more clarity, not less, in treacherous times.

III. THE CASE FOR THE WAR

Richard Miller's project is one of abstract reflection in the realm of postethical reasoning. As has been demonstrated, his proposals stumble in the face of a concrete moral problem. James Turner Johnson and George Weigel and Alan Geyer and Barbara Green have, in contrast, written books that directly focus on the concrete moral issues of the Gulf War. Johnson and Weigel endorse the war effort; Geyer and Green criticize it.

James Turner Johnson finds the Gulf War an easy case from a moral perspective, while George Weigel engages in a slashing polemic with opponents of the war, seeing them as victimized by the "Vietnam Syndrome" and argues that the United States should take the lead in fostering "predemocratic" institutions in Iraq. Both Johnson's and Weigel's arguments need careful scrutiny. The Persian Gulf War presents deep moral issues that are obscured by the authors' optimistic treatment.

A. James Turner Johnson

Johnson's contribution to Just War and the Gulf War is a succinctly written justification for using force in the Gulf. However, the more troublesome aspects of the Coalition's intervention are either not addressed or cursorily dismissed. There are two major components to Johnson's argument: First, standard just-war criteria are easily satisfied by the Persian Gulf War; and second, a political "rebuilding of Iraq" by "the creation of some form of democratic self-government is justified by the need to establish a 'just peace.' " Each of these issues will be dealt with in turn.

1. The Persian Gulf War and Just-War Criteria

   (a) Jus Ad Bellum

   (i) Just cause

   Johnson's claim that a just cause permitted American involvement in the Persian Gulf War can be framed syllogistically. Traditional just-war criteria establishes defense against aggression as
one of the standards by which to evaluate the justness of a cause. Iraq’s invasion of Kuwait was a “flagrant case of aggression.” Therefore, repulsion of the aggressor was justified.112

Johnson’s syllogism, however, does not address the crucial question: What is the philosophical foundation for intervening to defeat aggression? In an earlier work, however, following Augustine, Johnson argued that such intervention is part of a duty to protect the innocent and this appears to be Johnson’s working assumption in evaluating the Gulf War.113

Granting the existence of this duty, one is entitled to ask how it is to be fulfilled in the face of international aggression. Ought one to intervene militarily everywhere conflict erupts? This question becomes more urgent in light of the violent conflicts that have followed the breakup of the Eastern Bloc. These circumstances confront the moralist with the conundrum: to intervene militarily everywhere would quickly sap national resources and the will to fight. But to intervene in only those conflicts where national interest is at stake exposes the just-war theorist to the traditional charge that just-war reasoning is merely pretextual, a device to give a patina of moral respectability to the pursuit of national goals.114


113 See id. at 22. Johnson has stated:

Rather than concentrating solely on defense as the only allowable just cause for war perhaps it is also necessary to keep in mind what Augustine saw clearly: that it is a moral duty for those who possess the power to protect those who are relatively impotent when they are threatened by others more powerful than they.

Johnson, Can Modern War be Just, supra note 2, at 22.

Paul Ramsey has charted one possible means of answering this question. Ramsey has argued that in the absence of a world community (writing in 1968, he holds little optimism for the United Nations as an effective vehicle of international peacekeeping) the decision to intervene is ultimately the province of “statesmen” who must balance sometimes conflicting concepts of the national common good with the international common good. In balancing domestic and international needs, Ramsey suggests that the statesman “is not called to office to aim at all the humanitarian good that can be aimed at in the world. Instead, he must determine what he ought to do from out of the total humanitarian good that ought to be.”

Ramsey, The Just War, supra note 1, at 29-30.

114 See, e.g., What if Bosnia Had Oil?, N.Y. Times, Apr. 23, 1992, at A24. The New York Times has recently raised this issue with respect to the fighting in the former Yugoslavia:

When Saddam Hussein sent his divisions plunging into helpless little Kuwait, President Bush proclaimed an inviolate principle: Aggression would not stand. Hah, cynics said, the issue is not principle but oil. If Kuwait were not rich in oil, the West would not have rushed half a million soldiers to the Persian Gulf.
More is called for than the simple syllogism Johnson offers. What just-war theory needs, in the light of the Persian Gulf War and the collapse of the Soviet Union, is sustained reflection on national responsibilities when the international order is violated. Is the question of determining when and how to intervene solely the province of politicians? A product of reflection on national interest (and, thus, ultimately a product of realpolitik, not moral inquiry)? What role should moralists play? How should the issue of consistency be resolved? These larger questions are left unasked and unresolved.

(ii) Competent authority

Johnson’s argument on behalf of competent authority is similarly short, powerful, and uncomplicated. There were two sources of competent authority, according to Johnson. The international source was derived from Resolution 678 of the United Nations Security Council. The domestic sources of competent authority were “derived first from the president’s powers as defined by the Constitution and the War Powers Act, then by the congressional resolutions adopted on January 12 and 13 authorizing use of U.S. military force against Iraq.”

Johnson’s terse confidence is justified in the light of ultimate congressional approval for the war effort. But had Congress rejected the authorization and President Bush proceeded nevertheless, the war may well have lacked competent authority.

Was the President following a double standard? The world now looks to the aggression, every bit as cruel and unprovoked, by Serbia’s Slobodan Milosevic against Bosnia and Herzegovina. That newborn state has no oil — and no defenses. Will the U.S. . . . stand up for principle as strongly as they did for petroleum?


116 See Johnson & Weigel, supra note 112, at 23.

117 See Thomas M. Franck & Faiza Patel, United Nations Police Action in Lieu of War: “The Old Order Changeth,” 85 AM. J. INT’L L. 63 (1991) (Senate ratification of United Nations Charter permits Security Council action to commit United States to military “police action”). The question of competent authority has both an international law component and a constitutional component. In terms of international law it has been argued that Senate ratification of the United Nations Charter has replaced an “old unilateral war system” with a new system of collective security. Military conflict authorized under the Charter was to be understood as “police actions” binding on the signatories and not as war within the meaning of the United States Constitution. Id.

From the constitutional viewpoint the power to declare war resides with the Congress of
Like just cause, arguments over competent authority will likely increase in a post-mutual assured destruction ("MAD") world. The Persian Gulf may prove the exceptional case where issues of competent authority are concerned, given the time that elapsed between invasion and armed response and the intervening public debate. The more frequent scenario may more closely resemble the intervention in Panama than the intervention in the Persian Gulf. The euphemistically named Operation Just Cause was a military invasion of another country, which entailed significant civilian death and destruction and involved the removal of the sitting government—all without prior congressional approval.  

Competent authority to wage war is one point where just-war criteria and constitutional law converge. Just-war theorists should accordingly be sensitive to the potential erosion of constitutional and statutory limits on presidential war-making authority. A war that lacks proper authorization is not only illegal—it is immoral as well.

(iii) Right intention

Johnson’s argument on behalf of right intention is more complicated than his arguments for just cause and competent authority. Johnson asserts, correctly, that the Augustinian origins of right intention were concerned with individual morality: Did individual soldiers act with a proper attitude? Did they fight out of a desire for vengeance, or a love of violence, or a desire for domination? Or were they motivated to fight out of a sense of love?

Modern notions of right intention, Johnson continues, are no longer concerned with individual morality. Rather, as Johnson puts it, “[i]n the modern period the concept of right intention has become a matter of the conduct of states.”

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120 See Johnson & Weigel, supra note 112, at 24.
Johnson identifies both a negative and an affirmative component to the concept of right intention. Negatively, states are still obliged not to fight wars out of a desire for vengeance or domination. Affirmatively, states are required to fight for "such goals as protection or restoration of national, civil, and human rights, and other values, reestablishment of order and stability, and the promotion of peace."\textsuperscript{121}

Johnson rejects the possibility that the Persian Gulf War was fought for control over oil resources or otherwise to secure "hegemony" in the Gulf region. Such criticism, Johnson asserts, ignores prior Iraqi aggression. Johnson pays particular attention to the issue of "peace." The Persian Gulf War should have been fought for the purpose of establishing a just peace in the Gulf region. Johnson defines peace in the following terms:

The existence of a right intention on the part of the coalition in this case also substantially satisfied the requirement that the use of force aim at achieving peace. This criterion was understood classically in terms of three values: order, justice, and peace. The first aim of good politics, according to this view, is an order . . . that establishes things the way they ought to be. This would lead naturally to the existence of justice: a good order is inherently a just one, and maintaining justice protects the right ordering of affairs and relationships within the political community. The establishment of order and justice together produces the third . . . goal: peace. Peace would flow not only from the right ordering of politics within a society, but from the creation or restoration of a just political order in the relationships . . . between, and among nations.

In the case of the Gulf War, the goal of peace was closely tied to the concept of right intention: rolling back Iraqi aggression and restoring Kuwaiti territory and sovereignty (right order and justice), deterring such aggression in the future, restoring the shattered peace of the region, and attempting to set in place safeguards to protect that peace in the future. . . . What received too little attention, . . . we can see in retrospect, was the need to establish a just political order internally within Iraq as a key part of securing peace in the Gulf region.\textsuperscript{122}

Johnson's discussion of right intention needs careful scrutiny. On the most basic level, one can observe that the idea of right int-

\textsuperscript{121} Id.
\textsuperscript{122} Id. at 25-26.
tention, although governing the behavior of states, nevertheless re-
tains a role to play in assessing the morality of individual conduct
within war. An individual soldier might still fight a war because of
vengeance, or a desire to dominate, or to inflict violence. The doc-
trine of right intention would provide a moral basis on which to
condemn such conduct.

Johnson’s logic also contains a lacuna. Johnson assumes that
those objecting to the war on the ground that it was simply about
access to oil necessarily ignore Saddam Hussein’s prior aggression
against Kuwait. This need not be the case at all. Given the fact of
Iraq’s aggression, one might still be moved to assist Kuwait milita-
ri ly, not out of a desire to repel Saddam’s aggression, but because
of the threat Iraq posed to the oil supply. In such an instance the
criterion of right intention would not be satisfied.

One must also note that Johnson fails to consider how to go
about assessing the intention of states, a complicated matter.
Whose intention counts? In the case of the United States, is it the
president’s intention that matters most? If the president’s inten-
tion matters most, how does one discern what that intention is?
Should every speech the president gives in support of a war be
read as constituting part of his intention? Or should only a partic-
ular subset of statements be considered, for example, messages to
Congress, or assurances to foreign leaders?

But if it is the president’s intention that matters most, troub-
ling consequences follow for constitutional theory. At the very
least, congressional intention should also be taken into account.
But, as any student of legislative process knows, congressional in-
tention is at least equally difficult to discern. Should only the bare
language of congressional resolutions be taken as evidence of con-
gressional intentions? Or should congressional resolutions be read
against a backdrop of congressional speeches?

Furthermore, there is the problem of multiple or conflicting
intentions. What if the president harbors multiple intentions, some
permissible and some impermissible? What if presidential and con-
gressional intentions differ? What if only the permissible inten-
tions are made public, although the impermissible intentions prove
to be the real reasons a war is commenced? What role does public
understanding of the reason for the war play in analysis?

Finally, Johnson’s suggestions about the content of peace in
the Gulf needs to be examined carefully. He wishes to create “a
just political order . . . within Iraq” as part of the establishment of
peace. Elsewhere in his essay, he suggests that a just political order means the imposition of democratic structures on Iraq. This point will be dealt with in greater detail later. However, it suffices to state here that such a suggestion bespeaks a simplistic and naive faith in the ability of Western-style democracies to ameliorate the injustices of portions of the world where democratic structures have historically been weak or non-existent.

(iv) Proportionality as *jus ad bellum*

Johnson defines the use of proportionality in the *jus ad bellum* as “the effort to calculate the overall balance of good versus evil in deciding whether to use force to right a wrong.” This decision “is properly an exercise in moral and political judgment, not a mathematical calculation.”

Johnson takes issue with those who argued that the Coalition response to Iraq’s invasion of Kuwait was disproportionate. Proportionality should be read in broader terms than critics allow to encompass not only the military buildup on the Coalition side, but also the “damage already done, and continuing to be done, by Iraq’s aggression against Kuwait.” One must assess the evil done by aggression—the triumph of naked aggression, the continued sacrifice of human rights—and weigh this evil against both the costs of allowing its continuation and the costs of intervening to correct the situation.

Johnson does not take the issue of proportionality farther than this. Consider, however, some comments on the issue of cost-benefit analysis. Any calculus of costs should include an assessment of the costs of disrupting another nation’s political and social structure. Politically, socially, and economically, Iraq has been devastated. The country has been destabilized by revolts and massive relocations of hundreds of thousands of people; Iraq’s industry and its health services have been reduced to primitive conditions. A continuing public health crisis has caused the deaths of tens of thousands of Iraqi children. The rebuilding of Iraq will take de-

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123 See id. at 41.
124 See infra notes 136-37 and accompanying text.
125 See JOHNSON & WEIGEL, supra note 112, at 27.
126 Id. at 27.
127 Id.
128 The most recent study of the effect of the Gulf War on infant mortality in Iraq indicates that 46,900 children under the age of five have died between January and August,
cades. It seems, at least to this reviewer, that the war may well have been disproportionately costly, especially in light of the failure to take seriously opportunities for a diplomatic settlement of the crisis.

(v) Reasonable hope of success

Resort to war must also offer a reasonable hope of success. Johnson's discussion of this criterion is abstract and largely avoids specific application to the Gulf War. He notes that the concept of "success . . . can be interpreted in many ways," but cautions the reader not to expect too much from the use of military force. Ideally, war should be fought for the establishment of right order and justice; but given the reality of military conflict, one must keep in mind that the achievement of "specific and limited war goals" is also legitimate.\(^\text{1991}\)

It seems that Johnson at this point in his discussion is apologizing (without explicitly acknowledging that he is doing so) for the failure to remove Saddam Hussein. Although the war did not succeed in this aim, it should not on this account be criticized.

But the criterion of "reasonable hope of success" raises the question: What counts as success? In fact, Coalition conceptions of success were both murky and contradictory. The one common goal, restoration of the Al-Sabah dynasty, was satisfactorily achieved. But the rhetoric surrounding the decision to go to war seemed to promise more. Saddam Hussein, for example, was "worse than Hitler." Did this mean that Saddam ought to be removed by Coalition forces? What does it mean morally, that Saddam was not removed? Removal of Saddam, if it was a goal, was never adequately defined nor was it achieved.

In retrospect, a chief lesson of the Gulf War may be the need to define and state one's goals carefully. A careful articulation of purposes seems especially appropriate in a democracy, where ef-

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\(^{129}\) *Id.* at 28-29.
forts to stoke “warfever” are out of place.

(vi) Last resort

Finally, Johnson argues, war must be a last resort. He phrases his argument defensively, anticipating the charges of critics that the recourse to arms in the Persian Gulf was overly hasty. Last resort, Johnson asserts, “does not mean that all possible non-military options that may be conceived of must first be tried.” Rather, last resort, to Johnson, means a “prudential judgment” that recourse to war is the “only” means by which the morally permissible aims of war can be achieved.¹²⁰

Perhaps this bloodless account of last resort omits the human factor from consideration. The war against Iraq took (and continues to take) a horrific toll in life, disrupted or destroyed. Before one nation destroys another nation’s way of life it seems that every reasonable chance for a peaceful settlement should be attempted. American rejection of diplomatic initiatives weighs heavily against the morality of the war.

(b) Jus in Bello: Discrimination and Proportionality

Discrimination and proportionality are the two principles that govern the tactics used in waging war. Tactics employed by combatants must be discriminate, that is, must avoid the direct targeting of noncombatants, and proportional, that is, commensurate with the goals to be achieved.

Johnson argues that the Gulf War satisfied both the requirements of discrimination and proportionality. Johnson makes much of modern weaponry as singularly capable of satisfying these requirements. “Smart bombs” and other high-tech weapons are capable of precisely hitting their targets and are thus immune to the sort of criticism levelled against earlier generations of less precise weapons the use of which necessarily entailed a great deal of collateral damage (such as noncombatant deaths).¹³¹

Once again, the military reality of war in the Gulf is more problematic than Johnson would have the reader believe. It is increasingly being shown that the weapons systems employed in the Gulf War were less accurate than initial glowing reports sug-

¹²⁰ Id. at 29 (emphasis in original).
¹³¹ Id. at 33.
gested. Additionally, the military has persistently refused to offer any public assessments of the civilian death toll from the war, but assessments of civilian casualties conducted by agencies such as Middle East Watch indicate that the civilian death toll was substantial. One must finally bear in mind that the sustained targeting of Iraqi industries and economic assets has been found to have reduced Iraq to a pre-industrial existence. All of this evidence emphasizes the need to rethink initial glowing judgments about the satisfaction of the proportionality and discrimination criteria.

This evidence also suggests the need to rethink what amounts to proportional and discriminate military operations. Should the destruction of an industrialized way of life count as discriminate and proportional tactical planning, even if civilian casualties come not as the direct result of World War II style obliteration bombing but as the result of the destruction of infrastructure that supports a modern way of life?

2. Democratizing Iraq

The second prong of Johnson's argument is that the requirement of building a just peace demands the creation of a "right political order" in Iraq, understood as the "creation of some form [of] democratic self-government there." The United States should take the lead in bringing about a democratic Iraq: "The leadership role the United States has assumed in the Middle East since August 2, 1990, suggests that Americans might now do a great deal more ... than was conceivable so long as the Cold War lasted."

One must question what Johnson means by "democratic self-government"? Does he mean the simple process of electing leader-

132 See John A. Farrel, Pentagon Reduces its Success Rate for Patriot in War, BOSTON GLOBE, Apr. 8, 1992, at 1.
136 See JOHNSON & WEIGEL, supra note 112, at 41. Elie Kedourie has recently demonstrated through a series of case studies that every effort on the part of the West to introduce democracy into the Arab world has been met with failure. See ELIE KEDOURIE, DEMOCRACY AND ARAB POLITICAL CULTURE (1992).
ship, or the entire complex of values and ideas associated with Western constitutionalism? One might observe that although representative democracy has been of incalculable assistance in the development of the West, it is not necessarily the universal panacea for every injustice. For instance, in the Islamic world, Iran, Algeria (before the military take-over), and Jordan, have held elections and have made efforts to accommodate public opinion in the formation of national policy, but were far from close supporters of the Coalition effort against Iraq. Johnson avoids the issue of whether democratic processes (for instance, popular elections) can function apart from the constitutional structures and values of the West.

A skeptical attitude toward Johnson’s desire to bring democracy to Iraq does not, however, automatically lead one into the camp George Weigel has described as “unvarnished Tercermundismo.” Rather, a middle ground exists, mapped two centuries ago by Edmund Burke. Burke viewed societies and civilizations as organic entities, partnerships over time, slowly evolving in their ways of life. This organic growth should not be disrupted and certainly ought not to be uprooted.

The Islamic world should be seen in Burkean terms. From today’s vantage point, a major confrontation between Islam and the West is looming on the horizon and may even be inevitable. In light of this prospect, the West should adopt not a hostile attitude but rather one of Burkean respect. Islam should be seen as a culture with a proud and distinct heritage, a powerful and vital belief system (with a considerable amount of variety within the boundaries of what constitutes Islam), and a very different way of viewing the world.

A Burkean view of Islam would not seek to impose Western democracy on Iraq any more than it would try to impose democracy on Kuwait. Rather, it would allow a government to evolve in Iraq that would be faithful to Islamic culture and nonthreatening to its neighbors. In the interim, however, it would take steps to shut down the international arms bazaar, access to which was the real source of Saddam Hussein’s power.

137 Johnson & Weigel, supra note 112, at 50.
B. George Weigel

Like Johnson’s essay, Weigel’s is conveniently divisible into two large themes. The first part is an extended polemic against the moral stance taken by a variety of religious leaders, in Protestant and in Roman Catholic circles; the second is in many respects an expansion of Johnson’s case for a democratic Iraq.

1. The Case Against the Churches

The first part of Weigel’s essay is reminiscent of a recurrent theme in his earlier work: that American religious leaders of the 1930s through 1960s, like John Courtney Murray, Paul Ramsey, and Reinhold Niebuhr constructed a theoretical basis on which to conduct an American foreign policy that was internationally active and interventionist, but that this foundation has largely been abandoned over the last two decades by many of the elites in Protestant and Catholic circles.

Weigel commences his analysis by reviewing the “blame America first” position taken by the National Council of Churches (“NCC”) in the months preceding January, 1991. American recklessness, from the NCC’s view, was the cause of the Gulf crisis. The United States, by introducing armed forces to the Persian Gulf, brought about its militarization. NCC leaders called on American leadership not to act rashly by committing American forces to combat, but their requests for restraint were unsymmetrical because no corresponding requests were ever made of Saddam Hussein.

Thus, according to Weigel, the NCC maintains a double standard: America is to be blamed, even when its international actions are innocent, but third world aggression is to go unnoticed. Weigel’s argument occasionally reaches the level of contempt for his interlocutors and results in some unfair name-calling. For example, Weigel states that “a highly publicized ‘Church Leaders’ Peace Pilgrimage to the Middle East . . . [demonstrated] how utterly beholden [the NCC] remained to the politics of blaming America first, and how little it had to offer to serious moral debate about the ends and means of U.S. policy in the Persian Gulf.”

While showing somewhat more respect to the position taken

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140 See Johnson & Weigel, supra note 112, at 52.
by the Roman Catholic leadership, Weigel's attack nevertheless is sometimes savage. Weigel believes that the leadership of the National Conference of Catholic Bishops (predominantly the positions taken in letters written by Archbishop Roger Mahony to Secretary of State James Baker and Archbishop Daniel Pilarczyk to President Bush) were generally fair in their use of just-war criteria but overly stressed the doctrine of last resort and the efficacy of economic sanctions. Outside of these official statements, however, Weigel suggests, a great deal of confusion reigned. Pax Christi, for example, a Roman Catholic peace group that includes several leading bishops as members, is accused of indulging in "more of the same vacuity" (presumably of the type produced by the NCC).  

Particularly upsetting to Weigel is an editorial published by the Jesuit periodical *La Civiltà Cattolica*, a powerfully placed Roman periodical whose editorial positions frequently reflect those of the Vatican's office of secretary of state. The editorial maintained that the nature of war had changed in the modern world; noncombatant immunity had disappeared as an effective tool for limiting combat; and just cause should be limited to "the case of defending oneself from a grave aggression underway."  

Weigel's approach to the editorial position of *La Civiltà Cattolica* is to explain it away as relying on "a number of highly contingent judgments about modern warfare." In essence, he suggests that the editorial writers simply did not understand that modern warfare could be antiseptic and precise. Weigel's response to most of his other opponents is to label them all as victims of the "Vietnam Syndrome."  

On this view, the moral positions staked out by the NCC and by substantial segments of the Roman Catholic leadership were conditioned by a complex of factors that began to take shape in the late 1960s and early 1970s. The working presumption of those captivated by the Vietnam Syndrome, according to Weigel, is that the American "experiment" rests on unsteady ground, given its purported "racist" and "sexist" foundations; that the United States, and more generally the West, is invariably wrong when it attempts to act internationally; and that preference should inevita-  

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141 *Id.* at 61-62.  
bly be given to representatives of the “oppressed” of the Third World. What this complex of factors leads to, according to Weigel, is “functional pacifism.” Weigel describes this functional pacifism in the following terms:

[T]he conclusion that almost certainly has to be drawn from the mainline/oldline and Catholic address to the Gulf crisis must be that the leadership of these two critical sectors of American Christianity is now functionally pacifist in its politics. This is not, it must be emphasized, a pacifism of moral principle. Rather it is a functional pacifism rooted, for many oldline Protestant leaders in particular, in a profound alienation from the American experiment and in a deep conviction that American power cannot serve good ends in the world.

Indeed, the actions taken by the National Council of Churches, and by the more radical wing of the Catholic leadership, were grounded, not in a concern that American military action would fail, but in a deep fear that it would succeed. And were it to succeed, these men and women instinctively understood, that would be the end of ‘Vietnam,’ the prism through which their politics had been focused for a generation and the paradigm by which they had persistently read (which is to say, misread) the international politics of the 1970s and 1980s.

As the final portion of this review will suggest, there are certainly difficulties with the stance taken by some NCC spokespersons, but ad hominem attacks are not the appropriate response.

More generally, it is worth observing that both Weigel and his interlocutors are engaged in a debate that has exhausted its vitality. Like his opponents, Weigel is also seeing the Persian Gulf War through the prism of Vietnam. The Cold War is over. The Persian Gulf War is the likely harbinger of a new type of conflict, involving the reopening of settled borders that had been drawn by alien, often colonial, powers or the armed prosecution of claims over scarce economic resources, such as oil. These new conflicts may

143 Johnson & Weigel, supra note 112, at 64.

The deepest taproot of the politics of the religious Left is its profound skepticism about the American experiment. A racist, imperialist, militarist, and, latterly, sexist America cannot act for good ends in the world. That is the orthodoxy in the NCC and in a depressingly large part of the Catholic episcopate. And the orthopraxis follows with inexorable logic: resistance to American power—not resistance to Saddam Hussein’s aggression—is the index by which one measures one’s commitment to ‘peace.’

Id. at 64.

144 Id. at 66.
feature all of the advanced weaponry developed during the Cold War including new and unstable configurations of nuclear threats. Heated finger pointing over Vietnam is of no assistance at this turning point in history. Rather, one should hope for patient and sustained reflection on first premises.

2. A Renewed Attempt at Democratizing Iraq

Weigel, more cautiously than Johnson, also endorses Western efforts to support what he terms the “pre-democratization” of Iraq:

Democracy is no panacea for the tangled and ancient conflicts of the Middle East. But from the point of view of Christian social ethics, which has laid great stress in recent years on the protection of basic human rights, it is surely worthwhile for American Christian leaders to support efforts to help lay down the building blocks of democratic culture throughout the Arab Middle East: a freer press; consultative assemblies as the staging grounds for genuine legislatures; legally protected opposition political parties; trade unions and business associations; and voluntary organizations, including human rights groups.146

What Weigel recommends, in essence, is that the Middle East adopt a form of Western constitutionalism, even though he acknowledges elsewhere that parts of Islamic culture might be uncongenial to Western governmental structures.147 Again, one need not come from an “unvarnished Tercermundismo” point of view, or that of a breathless Derridean infatuated with la différence, to be suspicious of Weigel’s claims. A Burkean skepticism of radical, culturally dislocating change, sharpened by rueful recollection of the reaction against Westernization over the last decade and a half in a country like Iran, will do quite nicely.

Here, too, Weigel, like his opponents in the NCC and the “radical wing” of Roman Catholicism, is a prisoner of the past. The Cold War, Weigel’s prism for viewing the Gulf War, might be understood in several ways. From different Western perspectives, the Cold War might be viewed as a defensive response against an expansionist Soviet state; a conflict of interests between rival global blocs; the product of misunderstanding between allies that had joined forces to win World War II; or, finally, a vast clash of ideas—the clash of democracy and Soviet Marxist-Leninism. In

146 Id. at 75-76.
147 Id. at 78-85.
fact, the Cold War probably reflected a complex mixture of all four
elements. But Weigel, an ardent campaigner for democracy in the
last ten or fifteen years of the Cold War, seems to have perceived
the Cold War solely as a clash of ideas. The triumph of democracy
in the Cold War appears to have signalled to Weigel that it is now
ready to solve some of the more intractable issues of the Middle
East.

But the Burkean response would be one of caution in circum-
stances that can only be called novel. Nothing that is said in the
course of this review should be understood as disparaging democ-

cracy or Western constitutionalism. But one must bear in mind that
the Western constitutional tradition is the product of a history
traceable to the eleventh and twelfth centuries and is rooted in a
great deal of history peculiar to the West. The struggle between
emperor and pope, legal disputes over rights and duties, reflection
on the nature of representation, speculation on the proper scope
and exercise of jurisdiction, and the protection of the voice of the
individual in the electoral process are the debates that have built
Western constitutionalism.147 The Cold War, to be sure, was won
with help from the democratic ideal, but there is also much that is
peculiar to the formation of that ideal that may not be readily ex-
portable to third parties. 1991 may yet prove to be every bit as
dislocating as 1789. We should not exacerbate the situation with
one-size-fits-all recommendations about how to democratize other
countries and cultures.

IV. THE CASE AGAINST THE WAR

Alan Geyer and Barbara Green, both of whom have been ac-
tive in NCC circles, have produced a book harshly critical of the
morality of the Persian Gulf War. In many respects, their book,
*Lines in the Sand: Justice and the Gulf War*, is a predictable mir-

or image of Weigel and Johnson’s book. To their credit, the au-

thors attempt to integrate into their work a broader understanding
of just-war tradition that takes into account such matters as the
colonial history of countries like Kuwait and Iraq148 but the book

147 For the deep origins of Western constitutionalism, see generally HAROLD J. BERMAN,
*Law and Revolution: The Formation of the Western Legal Tradition* (1983); GAINES
POST, *Studies in Medieval Legal Thought: Public Law and the State 1100-1322* (1964);
BRIAN TIERNEY, *Religion, Law, and the Growth of Constitutional Thought 1150-1650*
(1982).

148 See ALAN GEYER & BARBARA G. GREEN, *Lines in the Sand: Justice and the Gulf
as a whole is flawed by an unsettling partisanship. George Bush is attacked on nearly every page and the book even includes a digression on the role Norman Schwartzkopf's father played in possible C.I.A. activities in Iran. Greater balance would have made for a better book.

A. Just Cause

Geyer and Green open their argument by resolving to take a new look at the issue of just cause. Where traditional just-war thought focuses on the crossing of boundaries, Geyer and Green wish to examine "the roots of the conflict" and "questions of United States complicity in Iraq's invasion of Kuwait."

Geyer and Green find the deep roots of the Persian Gulf War to lie in British-Ottoman relations in the waning years of the nineteenth century. In the late nineteenth century, the territory that would become Kuwait, although ruled by the Al-Sabah family, also nominally belonged to the Ottoman Province of Basra. Fearful of reassertions of Ottoman power in the region, the Al-Sabah clan agreed to make Kuwait a British protectorate in 1899, an arrangement that the Ottomans refused to recognize.

When the Ottoman Empire collapsed at the close of World War I, the British succeeded to the Ottomans' place in the Persian

War 27-42 (1992). The just-war tradition, according to Geyer and Green tends:

(1) To obscure the ambiguities of justice in most conflicts, responsibility for which is typically shared by both or all sides.
(2) To avoid the imperatives of repentance, usually the precondition of reconciliation and a constraint upon national self-righteousness.
(3) To be reactive to the latest provocation, rather than to a whole longitudinal series of historic events (like the football referee who sees and penalizes only the player who reacts to a punch the official has not seen).
(4) To presuppose a disjunction between justice and love at the core of Christian ethics, thus elevating love to a level of docetic (disembodied) irrelevance.
(5) To define justice in terms of resisting overt military violence and to neglect conditions of systemic and institutional oppression.
(6) To justify excessive human suffering and death, euphemistically called 'collateral damage,' in the conduct of war by appealing to the casuistic principle of 'double effect'—that is, by preoccupation with the intention of targeting policies to the discounting of their actual consequences.
(7) To serve as the military ethic of the most powerful nations, rationalizing their policies against weaker powers and tending toward the unacknowledged conceit that might makes right.
(8) To reinforce unilateral decision-making in a world of multinational realities and the necessity for common security.

Id. at 23-24.

Id. at 47-48.
Gulf. In this way, the British were responsible for the creation of both Iraq and Kuwait. The creation of both states reflected, as much as anything, the exigencies of British colonial politics, not geographic or cultural differences. Kuwait's boundaries were drawn deliberately so as to limit future Iraqi power in the Persian Gulf: "The prescribed [Kuwaiti-Iraqi] borders not only definitively severed Kuwait from southern Iraq but also denied Iraq any secure access to the Persian Gulf. The British clearly wanted to keep Iraq as nearly landlocked as possible so as to deny Iraq any effective challenge to British control of the Gulf."\textsuperscript{150}

Iraq, however, like the Ottoman Empire before it, initially refused to recognize the boundary arrangements. The Iraqi response to Britain's grant of independence to Kuwait in 1961 was to mass troops on Kuwait's borders and declare the country to be part of Iraq. Iraq ultimately recognized Kuwait in 1963, but even then refused to acknowledge Kuwait's boundaries as legitimate.\textsuperscript{151}

While Geyer and Green's discussion of the deep roots of the Iraqi-Kuwait border dispute is useful as background information, it is flawed by its failure to confront the issue of Iraqi aggression: Granted, Iraq's border with Kuwait was the product of colonial manipulation, how does that justify Iraq's invasion? Shouldn't the peaceful resolution of border disputes be the preferred course of action?

If the demands of British colonial politics constitute the deep roots of the Persian Gulf, intra-Arab disputes over oil pricing constitute a more immediate cause. The treatment of this particular issue, unlike the authors' discussion of British colonial practice, is extraordinarily one-sided, very nearly painting Saddam Hussein as the innocent victim of inexplicably hostile neighbors. Iraq, following the conclusion of its war with Iran, faced an economic crisis brought about by massive wartime expenditures. Saddam Hussein, at least, perceived the situation as an unjust one, since his nation "had borne the burden of a common Arab cause... to prevent the militant expansion of Islamic fundamentalism, Khomeini-style."\textsuperscript{152} Desiring cooperation from his neighbors in setting prices that would allow Iraq to recoup some of its economic losses, Saddam was disappointed to find that these neighbors, especially Kuwait,

\textsuperscript{150} Id. at 35 (roots of the conflict); id. at 43-62 (questions of complicity); id. at 31-37 (historical roots).
\textsuperscript{151} Id. at 36.
\textsuperscript{152} Id. at 38.
wished instead to exploit the situation by driving down the price of oil.

This argument is one-sided, of course, in its portrayal of Saddam Hussein as victim. It must be borne in mind that Saddam’s Iraq, not Iran, initiated hostilities in the Iran-Iraq War. Opposing Islamic fundamentalism, to the extent it was a “common Arab cause” (as distinct from a concern of Arab leaders, a distinction that has new vitality in the face of the repudiation of elections in Algeria that promised to bring the fundamentalists to power) was a necessity that Saddam Hussein in large measure brought on himself and the Arab world by his invasion of Iran.

According to Geyer and Green, the United States also had a role to play in bringing about Iraq’s invasion of Kuwait. They identify at least three major areas of complicity, areas in which “past U.S. policies . . . may have contributed to the crisis.”

First, the United States was responsible for arming the entire Persian Gulf region. From the 1950s to 1979, the United States was Iran’s most important arms supplier, but following the fall of the Shah, and especially following Iraq’s invasion of Iran, the United States shifted to an increasingly pro-Iraqi position out of fear that Islamic fundamentalism might otherwise spread.

It now appears that the United States played a significant role in equipping Saddam Hussein for war,183 but one must bear in mind that the arming of Iraq was an international operation led by the Soviet Union. But to move from the arming of Iraq to a charge of American complicity in the Persian Gulf crisis reflects a misunderstanding of theories of causation. Saddam Hussein was not somehow forced to invade Kuwait by his surplus of armaments.

Second, the United States, according to Geyer and Green, was guilty of complicity in Iraq’s invasion of Kuwait because of its policy toward Israeli-Palestinian relations. American complicity was especially evident, on this view, in the almost tacit endorsement the United States gave to the Israeli invasion of Lebanon in June, 1982. By keeping silent about the invasion and continuing to provide Israel with support even after the invasion, the United States “gave Saddam Hussein his most incendiary weapon in the Gulf War: the exploitation of Palestinian grievances.”184


184 See Geyer & Green, supra note 148, at 56.
Again, this reading of events can be critcized for its failure to understand causation. As Geyer and Green themselves concede, Saddam Hussein did not invade Kuwait in order to advance the Palestinian cause. If any one exploited Palestinian grievances it was Saddam Hussein when he manipulated Palestinian emotions to further his war aims.

Finally, Geyer and Green offer what may be their most telling criticism of American conduct prior to the war. High-ranking U.S. officials, including Senator Alan Simpson and U.S. Ambassador to Iraq, April Glaspie, may have unwittingly signalled American willingness to tolerate aggression in the Gulf region. Senator Simpson, for example, in a meeting with Saddam Hussein, suggested that Saddam’s real problems lay with media coverage of his regime, not with his conduct. Suggesting that Iraq’s invasion of Iran and its use of poison gas were essentially cosmetic matters that might be remedied by better press relations could easily have been misunderstood by Saddam Hussein as implicit acceptance of his prior history of aggression. Ambassador Glaspie, furthermore, by stating that the United States took no position on inter-Arab boundary disputes of the sort Iraq had with Kuwait, may have signalled to Saddam that the United States would maintain a position of neutrality should military force be used to resolve Iraq’s claims on Kuwait.

B. Just Intent

Four motives, among others, are singled out as the driving force behind the decision to go to war: the establishment of a Pax Americana in the Persian Gulf, the protection of American access to relatively cheap oil, the elimination of Saddam’s chemical and nuclear arsenals, and the removal of a threat to Israel’s security.

In levelling what amounts to a charge that the president and his advisers wished to establish American domination in the Persian Gulf, Geyer and Green rely, not on direct statements by President Bush, but on past statements of policy, such as the Carter Doctrine, which pledged that no outside force would be permitted to establish control over the Gulf. This suggestion is at least

155 Id. at 51.
156 Id. at 59.
157 Id. at 60.
158 Id. at 72-76.
plausible. It would be a mistake to attribute the intervention in the Gulf entirely to altruistic motives. But, at best, Geyer and Green establish that the motives for going to war in the Gulf were mixed; some, the repulsion of an attacker, would satisfy just-war criteria, while others would not.

Geyer and Green offer a largely confused discussion of the “oil issue.” For the most part, they attack American consumption habits as wasteful of oil resources, but find the protection of the oil supply of other nations to be “a legitimate ethical concern.” While acknowledging that Americans are far too wasteful of a nonrenewable resource, one must also question why the protection of third party access to this nonrenewable resource should matter any more than American access.

The treatment of the chemical and nuclear issue is similarly confused. The authors accuse President Bush of having engaged in “alarmism” over Saddam’s nuclear potential but only grudgingly concede that Iraq’s development program was farther advanced than experts in the field had realized. No alternative to military force is suggested as a means of coming to terms with Saddam’s nuclear weapons program. Should Iraq’s weapons development have been allowed to proceed? What are the moral implications of allowing two nations—Iraq and Israel—to establish what would amount to a regional strategy of mutually assured destruction?

The authors’ discussion of an Israeli connection lacks solid evidence. To be sure, the American Israel Public Affairs Committee lobbied for military action and Israel benefitted from the removal of Iraq’s military threat, but this is not the same as saying that the war was “intended . . . for the sake of Israel’s security.”

Most unsatisfying, however, is the single-minded focus on George Bush’s publicly stated (and privately suspected) intentions. Invariably, only presidential statements are singled out as a source for identifying just intentions. Why dismiss Congress from consideration? Why should George Bush’s intentions matter more than the intention articulated by Representative Stephen Solarz: the elimination of evil?

159 Id. at 77-79.
160 Id. at 79-81.
162 See Geyer & Green, supra note 148, at 83 (quoting James M. Wall, Hussein’s Designs, Bush’s Intentions, 108 The Christian Century 251-52 (1991)).
The treatment of just intention can thus be seen as one-sided. One longs for an approach that would have dealt with such issues as Saddam Hussein’s nuclear development program, in a more thoughtful, less partisan, manner.

C. Last Resort

The treatment of last resort is perhaps the surest and soundest part of *Lines in the Sand*. Geyer and Green argue that the Bush Administration failed to pursue at least two serious proposals for a diplomatic settlement. The first attempt at a diplomatic settlement was that offered by King Hussein of Jordan, but the authors indicate that any chance at an Arab solution was subverted within the first few hours of the crisis when United States’ officials began to plan a military response to the invasion.\(^\text{163}\)

Then, on January 4, 1991, French President Mitterand offered terms for a diplomatic settlement that would have required an unconditional withdrawal from Kuwait by Iraq. But the proposal was not taken seriously by Bush Administration figures because of their desire to avoid the appearance of linkage between an Iraqi withdrawal from Kuwait and the settlement of other Middle Eastern issues, like the Palestinian question.\(^\text{164}\)

In fact, the Bush Administration apparently never considered a diplomatic solution to be a serious option. Geyer and Green provide ample documentation demonstrating that American “negotiating” strategy was not really that at all. President Bush and Secretary of State Baker took the position that communication with Iraq was possible—in the sense that the Administration would communicate to Iraq the seriousness of its demand that Iraq withdraw from Kuwait—but that any other form of negotiations was out of the question.\(^\text{165}\)

From the standpoint of just-war theory, the morality of the Gulf War is in serious doubt because of this failure to pursue diplomatic solutions to the crisis. The French plan, for example, would have required an unconditional Iraqi withdrawal from Ku-

\(^{163}\) See Geyer & Green, supra note 148, at 100-03; see also Bob Woodward, The Commanders 232-34 (1991) (early American military preparations had the effect of preempting Arab diplomatic efforts); Jean Edward Smith, George Bush’s War 7-8, 66-67 (1992) (Margaret Thatcher played decisive role in convincing George Bush to abandon Arab diplomatic efforts).

\(^{164}\) Id. at 103-04.

\(^{165}\) Id. at 94-100.
wait, thus satisfying through nonviolent means the moral requirement that aggression be repelled. The prospective good from a diplomatic settlement would have been the preservation of Iraqi society: Lives could have been lived out usefully, the Iraqi industrial infrastructure could have been preserved, and basic services, such as health care, could have continued uninterrupted. That diplomacy was not taken seriously is perhaps the greatest tragedy flowing from the Persian Gulf War.166

D. Competent Authority

Geyer and Green raise two challenges to the authority on which the Persian Gulf War was waged. First, they maintain that the United Nations Charter was only selectively observed during the debates leading to the Security Council’s resolutions authorizing the use of force. Article 33 requires “[t]he parties to any dispute . . . first of all, [to] seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”167 Geyer and Green argue that by rejecting the possibility of negotiating with Iraq and by refusing to countenance an Arab solution, the United States, as represented by President Bush, “at best only selectively and prejudicially invoked” the United Nations Charter.168

Geyer and Green also claim that the Charter was only selectively complied with in a second way as well: Article 42 requires that the Security Council first make a finding that economic sanctions “would be inadequate or have proved to be inadequate” before authorizing the use of force, but the Security Council never engaged in an inquiry to determine the effectiveness of economic sanctions.169 The authors then speculate that the reason the Security Council never engaged in such an inquiry was because of the effectiveness of the sanctions and the self-evident impossibility of proving their inadequacy.170

166 The issue of last resort has been helpfully discussed by J. Bryan Hehir, The Moral Calculus of War, Just But Unwise, 118 COMMONWEAL 125-26 (1991); Langan, supra note 142, at 97-99; and Archbishop Daniel Pilarczyk, Letter to President George Bush, 20 ORIGINS 397, 399 (1990).
167 U.N. CHARTER, art. 33, ¶ 1.
168 See GEYER & GREEN, supra note 148, at 115.
169 U.N. CHARTER, art. 42.
170 See GEYER & GREEN, supra note 148, at 116.
The congressional authorization of force is also challenged on the basis that President Bush misrepresented his purpose for seeking the resolution. The president had made the case that congressional support for the Security Council resolution represented the best prospect of avoiding war. By showing a united front, so the argument went, Saddam Hussein would be impressed by the forces arrayed against him and withdraw from Kuwait. Geyer and Green contend that this argument had some force, especially in the Senate, and persuaded some senators who were opposed to the use of force to vote in favor of the congressional resolution. "How many senators—and there were at least a few—honestly believed that they were voting for peace and not for war in supporting Bush is a haunting question, in view of the narrow margin in the Senate: three more votes could have defeated Bush."171

The argument that the United Nations Charter must be exactly complied with is an important development. Regrettably, the authors never integrate this argument effectively into a broader understanding of competent authority. The claim that senators were somehow duped into voting for the congressional authorization, on the other hand, seems groundless and can best be taken as evidence of the sharp partisanship that mars this book.

E. Reasonable Chance of Success

Generally reluctant to consider the war a success on any level, Geyer and Green grudgingly acknowledge that the war did reveal the scope of Saddam's nuclear development program and has led to efforts to eliminate it. Even so, the authors minimize this accomplishment. They tend instead to see Saddam once again as a victim. The United States unfairly imposed a double standard on Iraq. The authors state:

Iraq cannot help but notice the difference between U.S. treatment of Iraq and of the Soviet Union. In forty years of Cold War with the Soviet Union (which possessed nuclear weapons), the United States never launched direct hostilities against it, while the United States turned to war against Iraq (which presumably did not yet possess nuclear weapons) after only five months of confrontation.172

This sort of speculation opens the door to the question of

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171 Id. at 125.
172 Id. at 132.
whether it is preferable to eliminate a nuclear arsenal or to allow
the development of a regional version of mutually assured destruc-
tion. Surely the authors do not want to see nuclear threats
proliferate.

At the same time, Geyer and Green are silent about one of the
concrete accomplishments of the Gulf War: aggression was rolled
back. This accomplishment should count for something.

F. Discrimination and Proportionality

Geyer and Green make the case that the methods used in the
war were indiscriminate for at least three reasons: (1) the air war
conducted against Iraq was not as accurate as portrayed on broad-
cast reports from the Middle East; (2) the ground war involved an
unjustified “slaughter” of troops who had ceased to be combatants;
and (3) the destruction of the Iraqi infrastructure amounted to
warfare against the civilian populace of Iraq.

The most problematic of the authors’ claims is their criticism
of the air war. Some of their assertions (for example, the signifi-
cance they impute to the estimate that only 7% of the bombs
dropped on Iraq were “smart” bombs) amount to logically falla-
cious reasoning. It simply does not matter whether a given bomb
was a “smart” bomb or a “dumb” bomb from the standpoint of
discrimination. Rather, the focus should be whether the weapons
were used against combatants and whether measures were taken to
avoid civilian casualties. Thus, the use of “smart” technology in
the attack on the bomb shelter in the Amiriya section of Baghdad
(which the authors rightly criticize as an indiscriminate use of
force) amounts to impermissible conduct, but the use of inaccurate
gravity bombs against desert fortifications does not because even
should the gravity bombs miss their targets civilian lives are not
threatened.

Other claims about the air war amount to rhetorical overkill.
The authors, for example, criticize the use of fuel-air bombs, which
“suck out the air and shake the earth with the power of a small
nuclear explosion.” Without doubt, fuel-air explosives are highly
lethal (and therefore militarily effective) weapons. But it is danger-
ous to equate the use of fuel-air explosives with nuclear weaponry.
The nuclear threshold is one that should never be crossed again.

\[173\] Id. at 139; see Nora Boustany, Bombs Killed Victims as They Slept, WASH. POST,
The breakup of the Soviet Union together with the crumbling of mutually assured destruction has probably made nuclear conflict somewhere in the world more rather than less likely. The rhetorical blurring of the nuclear threshold only makes its eventual crossing that much easier. Geyer and Green should weigh their words more carefully on this subject.

The authors' claims about the ground war are, however, on more solid footing. An especially problematic part of the ground war (more accurately termed air-ground combat) was the slaughter that occurred on the road to Basra. In the closing hours of the war, when it became apparent that the Iraqi army would be driven from Kuwait, panic seized many troops, who thereupon attempted to retreat, pell-mell, to Iraq by any means available. Many thousands of troops ended up in what amounted to a ghastly traffic jam on the highway from Kuwait to the Iraqi city of Basra. This retreat came under bombardment. Witnesses have described the event as so much needless slaughter.174

Bear in mind that a soldier is only a combatant when he is functioning as a soldier. A soldier who is part of a disorganized and defeated army, retreating in panic away from the scene of combat, has ceased to be a legitimate target. Thus, by all accounts, the slaughter on the road to Basra approached the deliberate taking of noncombatant lives because the soldiers targeted could no longer fairly be considered combatants.

Geyer and Green's strongest argument, however, lies in their criticism of the war against Iraqi infrastructure. Oil refineries, electrical generating stations, railroads, and bridges were systematically eliminated over the course of the air war. Electrical generating stations were especially inviting because they could not be rebuilt without aid from the West. The result of this war against the Iraqi infrastructure, according to Geyer and Green, amounted

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Was it necessary to bomb the entire convoy? What threat could these pathetic remnants of Saddam Hussein's beaten army have posed? Wasn't it obvious that the people of the convoy would have given themselves up willingly without the application of such ferocious weaponry? The hundreds who, by some miracle, did survive were duly taken prisoner. They included two women and a child ....

Who were those Iraqis killed in the hundreds, burnt beyond recognition on the Mutla Ridge? It's a fair bet that most of them were nothing more than conscripts—regarded by Saddam Hussein as expendable.

*Id.*
to wholesale violation of the principle of discrimination:

By some estimates, more people will die after the war from the destruction of the civilian infrastructure than died during the war itself. . . .

Iraq had been a substantially mechanized, electrified, twentieth-century society before the war. While most civilian homes and buildings may have been left standing at war's end, the life-support systems that sustained them were wiped out. . . . Hospitals were largely incapacitated, resulting in death for many persons deprived of necessary equipment.  

Evidence increasingly supports the claim that this attack on the infrastructure approaches deliberate warfare on the civilian population of Iraq. A Washington Post story some months after the close of the air war has disclosed that many Iraqi targets were chosen only secondarily to contribute to the military defeat of Baghdad's occupation army. . . . Military planners hoped the bombing would amplify the economic and psychological impact of international sanctions on Iraqi society. . . . They also hoped to incite Iraqi citizens to rise against the Iraqi leader. Because of these goals, damage to civilian structures and interests, invariably described by briefers during the war as "collateral" and unintended, was sometimes neither. The Air Force and Navy "fraggers" who prepared the daily air-tasking orders in Riyadh, Saudi Arabia, took great care to avoid dropping explosives directly on civilians. . . . but they deliberately did great harm to Iraq's ability to support itself as an industrial society.

The worst civilian suffering, senior officers say, has resulted not from bombs that went astray but from precision-guided weapons that hit exactly where they were aimed—at electrical plants, oil refineries, and transportation networks.

This description of targeting practices raises serious questions about the adherence to criteria of discrimination and proportionality.

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176 See Geyer & Green, note 148, at 142-43.
178 See J. Bryan Hehir, Just Cause? Yes Just Means? Too Soon to Say, 119 COMMONWEAL 8 (1992). Referring indirectly to the Gellman article, J. Bryan Hehir has suggested that targeting practices which scrupulously avoid the direct killing of civilians but which have "devastating consequences" on the ability of a society to maintain public health and other necessities constitutes a new and ominous development in the conduct of modern warfare. Id. at 8. Father Hehir finds this development a "most troubling legacy" of the Gulf
Geyer and Green’s discussion of proportionality, however, is unfocused. The Coalition’s conduct of the war is associated with any number of purportedly disproportionate consequences—from widescale “ecocatastrophe” to “consequences for the world’s poor.” A sharper focus would have helped highlight the truly disproportionate aspects of the war. In assessing proportionality, one is required to weigh the values being defended against the damage particular tactics are inflicting. The value at stake in the Persian Gulf War was the principle that aggression should not be rewarded; the damage done as a result of the repulsion of Iraqi aggression was the substantial destruction of Iraqi society. Especially in light of the possibility that a diplomatic settlement could have prevented both war and a reward for aggression, the damage inflicted on Iraq was, in all likelihood, disproportionate.

G. The Terms of Peace

There are two basic components to the authors’ suggestions for quality of peace in the Middle East: tightened control over international arms transactions and redistribution of wealth. It is absolutely indispensable that the international arms trade be severely curtailed; though it is far from certain that it will be. Weapons have simply become too lethal to permit continued easy access. It must be remembered that Saddam Hussein would not have been a threat had it not been for his ability to mobilize a large and modern army.

Redistribution of wealth, however, seems both less workable and quite probably less desirable. It is difficult, for example, to understand how the average Yemeni might benefit from a sliver of Kuwaiti oil money. On the other hand, wealthy Arab states such as Kuwait might be encouraged to fund industrial development projects in nations like Yemen, thus providing the Yemenis with means for wealth creation and Kuwaitis with an income that is not dependent on oil revenue. While hopes must be guarded, the growth of an economy not dependent on petroleum might be the best means of reducing the unemployment, poverty, and misery that has proven to be such fertile ground for extremism.\textsuperscript{178}

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\textsuperscript{178} See Johnson & Weigel, \textit{supra} note 112, at 73-74 (making a similar suggestion).
V. CONCLUDING OBSERVATIONS

The opening pages of this review posed the question: Whither the ethical analysis of warfare take in light of the Persian Gulf War and the collapse of the Soviet Union? The following are some suggestions, gleaned from the body of this review: 179

(1) The direction Richard Miller would presumably advocate is precisely the wrong way to go. Just-war analysis and pacifism need more clarity, not less. Dialogue between pacifists and just-war theorists can only bear fruit when both groups recognize the profound differences that separate them. Efforts to minimize the basically dilemmatic character of the option will only produce confusion.

(2) The issue of what constitutes a just cause requires sustained reflection in the following areas:

(a) How are border disputes to be resolved in the post Cold War, post colonial world? The Cold War and colonialism have left the world with a number of arbitrarily created boundaries. Consideration must be given to peaceful means of resolving border disputes in a manner that is respectful both of settled rights and expectations and of separate cultural and ethnic identities.

(b) How consistent should military response be? Does intervention in Kuwait require intervention in Bosnia-Herzegovina? If one does not intervene militarily, what other steps are morally required? How does one avoid the charge that just-war reasoning is simply a pretext for political decisions that are motivated by considerations of realpolitik?

(c) Should just cause now include the deliberate evasion of international rules prohibiting the acquisition of nuclear arms or other weapons of mass destruction? How ought just-war theorists to respond to the international arms trafficking that was the source of Saddam Hussein’s power? 180

179 Additional suggestions for the development of just-war theory can be found in Ronald Cole-Turner, Just War and the Gulf War, 29 MEM. THEOL. SEM. J. 98 (1991) (just-war theory needs to reconsider proportionality and discrimination in the light of the tactical conduct of the Gulf War, as well as seek to enhance the role of the United Nations in analyses of competent authority).

180 See Elaine Sciolino, The Outlaw State: Saddam Hussein’s Question for Power and the Gulf Crisis 139-55 (1991). Elaine Sciolino, discussing the role played by the international arms market in creating and sustaining Saddam Hussein, has stated:

Saddam was remarkably successful at acquiring weapons. From 1975 to 1990, Iraq bought $65 billion worth of conventional arms, more than two-thirds of them during the war against Iran, according to military analyst Anthony H. Cordesman.
(3) The issue of competent authority requires development in the following areas:

(a) What role should the United Nations Charter play in defining competent authority? How ought the Charter to be reconciled with constitutional provisions governing the war making power?

(b) What actions should be taken in the event competent authority is lacking? Should those objecting to a war on this ground engage in civil disobedience? Is political action called for?

(4) The issue of just intent could benefit from analysis of the following questions:

(a) Whose intention matters in defining whether a nation is acting properly by going to war? Should presidential statements be the primary guide? Should congressional statements matter?

(b) How are conflicting intentions to be resolved? If a war is waged not only in order to repel aggression, but also in order to secure access to oil supplies, how should this conflict of intentions be treated? How are conflicting intentions voiced by different branches of government to be treated?

(c) Should the doctrine of intention govern individual behavior? Ought national war fever to be condemned as an impermissible intention?

(5) The issue of what constitutes a just peace requires reflection on the degree to which it is permissible to interfere with another nation's political system. Should democracy be a requirement of a just peace? What of redistribution of wealth? What role ought local cultural preferences or history to play in determining the content of a just peace?

(6) How should analyses of discrimination and proportionality respond to a war against infrastructure, as occurred in Iraq? Does the deliberate targeting of civilian infrastructure, that has the ef-

In the five years before Saddam invaded Kuwait, he was one of the world’s largest arms buyers—by some estimates purchasing almost 10 percent of the conventional weapons sold around the world in any given year.

One of the most striking aspects of Iraq’s weapons-buying program—the one that most embarrassed the United States and other governments in the West—was the sophistication and long reach of Saddam’s supplier pipeline.

Western governments that did not openly cooperate in Iraq’s arms purchases turned a blind eye to all but the most egregious deals for the most basic of reasons: It was good business.

Id. at 140-41; see also KENNETH R. TIMMERMAN, THE DEATH LOBBY: HOW THE WEST ARMED IRAQ (1991).
fect of destroying a nation's public health, amount to a war against noncombatants?

Preoccupied with the Cold War, just-war theorists have not dealt with these questions as adequately as they might have. But the climate has now changed, and not necessarily for the better. Just-war theorists (and pacifists) need to abandon habits of mind shaped by the Cold War and address these and similar questions in a patient and thorough fashion. Perhaps then we might begin to move toward a world that features *both* peace and justice.