THE ETHICS OF WAR AND PEACE

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JUST WAR THEORY I

When to Fight

1. INTRODUCTION

Rightly or wrongly, pacifism has always been a minority view. Most people believe that *some* wars are morally justifiable; the majority of Americans believe that World War II was a moral war. But though most people have clear-cut intuitions about the moral acceptability of World War II, the Vietnam War, and so forth, few people have a theory that justifies and organizes their intuitive judgments. If morally concerned nonpacifists are to defeat the pacifists to their moral left and the cynics to their moral right, they must develop a theory that will distinguish justifiable wars from unjustifiable wars, using a set of consistent and consistently applied rules.

The work of specifying these rules, which dates at least from Aristotle's *Politics*, traditionally goes under the heading of "just war theory." The name is slightly misleading, since justice is only one of several primary moral concepts, all of which must be consulted in a complete moral evaluation of war. A just war—a morally good war—is not merely a war dictated by principles of justice. A just war is a morally justifiable war after justice, human rights, the common good, and all other relevant moral concepts have been consulted and weighed against the facts and against each other.

Just war theorists sometimes fail to notice that just war theory describes two sorts of just wars: wars that are morally permissible and wars

that are morally obligatory. The distinction between the permissible and the obligatory is persuasively demonstrable at the personal level. If I am unjustly attacked, I have a right to use force in my own defense—assuming that I have no other recourse. But since it is always open for the holder of a right to waive that right, I am not *obliged* to use force in my own defense. But suppose that I have promised to defend Jones, that Jones is now exposed to unjust attack, and that Jones calls for my help. In such a case I am obliged to defend Jones. At the level of nations, the distinction between permissible war and obligatory war has important consequences for policy. Frequently policy analysts demonstrate that a certain use of force passes the tests of just war, and then infer that the war is obligatory, that "justice demands it." But it may well be that the use of force is merely permissible, in which case it is also permissible to forgo the use of force. Indeed, there may be powerful prudential considerations why such a merely permissible just war should not be fought.

Another little point in the logic of just war theory deserves attention. In just war theory, the terms "just" and "unjust" are logical contraries. It follows that in war one side at most can be the just side. But it is possible that both sides may be unjust, and it is fallacious to think that if one side is provably unjust, the other side must be provably just. If your enemy is evil, it does not follow that you are good.

In undertaking the moral evaluation of war, it is natural to distinguish rules that determine *when* it is permissible or obligatory to begin a war (*jus ad bellum*) from rules that determine *how* a war should be fought once it has begun (*jus in bello*). *Jus ad bellum* rules apply principally to political leaders; *jus in bello* rules apply principally to soldiers and their officers. The distinction is not ironclad, since there may be situations in which there is no morally permissible way to wage war, in which case it follows that the war should not be waged in the first place. (Some believe that American intervention in Vietnam was such a case.) In this chapter we take up *jus ad bellum*; Chapter 4 is devoted to *jus in bello*.

2. COMPETENT AUTHORITY

From the time of Augustine, theorists have maintained that a just war can be prosecuted only by a "competent authority." Augustine, as we noted, considered the use of force by private persons to be immoral; consequently the only permissible uses of force were those sanctioned by public authorities. Medieval authors, with a watchful eye for peasant revolts, followed Augustine in confining the just use of force to princes, whose authority and patronage were divinely sanctioned. Given these scholastic roots, considerations of competent authority might appear archaic, but it is still helpful for purposes of moral judgment to distinguish wars from spontaneous uprisings, and soldiers and officers from pirates and brigands. Just war must, first of all, be war.

To begin, most scholars agree that war is a controlled use of force, undertaken by persons organized in a functioning chain of command. An isolated assassin cannot wage war; New York City's Mad Bomber in the 1950s only metaphorically waged war against Con Edison. In some sense, then, war is the contrary of violence. Second, the use of force in war must be directed to an identifiable political result, a requirement forever associated with the Prussian theorist Karl von Clauswitz. An "identifiable political result" is some change in a government's policy, some alteration in a form of government, or some extension or limitation of the scope of its authority. Since the extermination of a people is not an identifiable political result, most acts of genocide are not acts of war: the Turks did not wage war against the Armenians, nor did Hitler wage war on the Jews. (The American frontier cliché, "the only good Indian is a dead Indian" expresses the hopes of murderers, not soldiers.) And since the religious conversion of people is, in most cases, not a political result, many holy wars, by this definition, have not been wars.

Our definition of war as the controlled use of force for political purposes does not imply that wars can be waged only by the governments of nation-states. Many rebels and revolutionaries have used controlled force through a chain of command for political purposes, and there have been at least as many wars within states as there have been wars between states. If civil wars are genuine wars, the scope of "competent authority" must be extended from princes and political leaders to rebels and revolutionaries as well. But, as the case of Pancho Villa perhaps indicates, it is sometimes difficult to distinguish revolutionaries from bandits. In international law, this difficulty is described as the problem of determining when a rebel movement has obtained "belligerent status."

In the most recent international discussion of this issue, at the Geneva Conference of 1974–1977, delegates agreed that in the case of conflicts arising within a single nation-state between the government and "dissident armed forces or other organized groups," a state of war shall exist, provided the dissident forces are

> . . . under responsible command, exercise such control over part of its territory as to enable them to carry out sustained and concerted military operations and [to implement the laws of war]. (Protocol II, Article 1.1)

This recognition of belligerent status, however,

> shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of similar nature, as not being armed conflicts. (Protocol I, Article 1.2)

According to these rules, the American Confederacy in 1860, by virtue of its military organization and control of territory, qualifies for belligerent status, whereas the Symbionese Liberation Army, which controlled no territory, and the Newark rioters of 1967, who obeyed no commands, fail to qualify. By this standard, the American Civil War was war but the Patty Hearst kidnapping was crime, verdicts with which most people would agree.

But the new Geneva standard does not always yield satisfactory results. The partisan movements in World War II—the resistance movements in France, Italy, and the Ukraine, and Tito's great movement in Yugoslavia—rarely could claim specific territory as their own, yet their struggles can hardly be dismissed as unjust on grounds of absence of competent authority. Different perplexities arise in the case of peasant movements, where frequently territory is controlled from the capital by day and by the revolutionaries at night. Perhaps the requirement of "territorial control" is too strong.

The new Geneva standard also requires that genuine belligerents must be capable of carrying out "sustained and concerted military operations." This proviso would deny belligerent status to revolutionary groups that engage primarily in terrorist attacks against civilians, and most people would happily classify such terrorists as international outlaws. But what of revolutionary groups that do not engage in "sustained and concerted military operations"—which, in many cases, would be suicidal for the revolutionaries—but engage in sustained acts of terror against government buildings and officials of the incumbent regime? The campaign of assassination directed by the National Liberation Front (NLF) in Vietnam against village chiefs and other officials siding with the Saigon government was, at one point, the main form of its revolutionary struggle, and it seems pointless to deny the NLF belligerent status on the ground that its members were not engaging in sustained and concerted military operations. Though it might be criticized on other grounds, the NLF assassination campaign was controlled use of force directed to political ends, not a riot and not sporadic violence. It was dirty, but it was war.

3. RIGHT INTENTION

One can imagine cases in which a use of military force might satisfy all the external standards of just war while those who order this use of force have no concern for justice. Unpopular political leaders, for example, might choose to make war in order to stifle domestic dissent and win the next election. The traditional theory of just war insists that a just war be a war for the right, fought for the sake of the right.

In the modern climate of political realism, many authors are inclined to treat the standard of right intention as a quaint relic of a more idealistic age, either on the grounds that moral motives produce disastrous results in

international politics or on the grounds that motives are subjective and unobservable. ("I will not speculate on the motives of the North Vietnamese," Henry Kissinger once remarked, "I have too much difficulty understanding our own.") But it is unfair to dismiss idealistic motives on the grounds that they produce disaster in international politics, since realistic motives have produced their own fair share of disasters. It is a mistake to dismiss motives as unobservable, when they are so often clearly exhibited in behavior. The real difficulty with the demand for idealistic motives is that people usually have more than one motive for each of their actions, which makes it difficult or impossible to specify *the* motive for the act.

Despite the difficulty of multiple motives, it is important to retain some version of the rule of right intention as part of the theory of just war. No thoughtful person can fail to be disturbed by current international practice, in which leaders make policy decisions without regard for moral considerations and then have their staffs cook up moral rationalizations after the fact. If it is too much to insist that political leaders take decisions solely on moral grounds or even primarily on moral grounds, we can insist that desire for what is morally right be at least *one* of their motives.

It follows from this qualified insistence on moral motivation in the political leadership that political leaders must be able to justify their decisions on moral grounds. They may not act primarily or solely for the right, but they must have some reason, producible on request, for thinking that they are acting for the right, among other things. For those who let slip the dogs of war, it is not sufficient that things turn out for the best. The evils of even a just war are sufficiently great that we can demand of leaders who initiate war that they understand the moral character of the results they seek.

If desire for the right must be included as one of the motives for just war, are there any motives that must be *excluded*? Various authors have insisted that a just war cannot be motivated by love of violence or hatred of the enemy. Even in the fifth century Augustine wrote, "The real evils in war are love of violence, vengeful cruelty, fierce and implacable enmity, wild resistance, lust for power, and the like" (*Contra Faustum*, XXII.75). Most people will agree that a leader who has love of violence or hatred of the enemy as his sole or chief motivation for war has a bad intention. But Augustine and other authors go further and argue that it is immoral to make war if hatred is just one of the many motivations one has for fighting. The rule is severe, but worth considering.

Consider the American campaign against Japan in World War II. By the usual standards, the American decision to fight against Japan satisfied the rules of just war. But as the war proceeded, many Americans, stirred up by wartime propaganda, were seized with racial animosity and came to hate all Japanese as such. The 4-year internment of 180,000 innocent Japanese Americans, the campaign of extermination against Japanese cities, and the attack on Hiroshima were all caused or rendered tolerable by

this atmosphere of hate. Observing this, Augustine would condemn this hatred of the Japanese as sin and the war against Japan as unjust. Nevertheless, it would be unreasonable to tell the relatives of those who died at Pearl Harbor or on Bataan that they should not feel hatred toward those whose acts and decisions took the lives of those they loved.

The difficulties concerning hatred can perhaps be resolved by distinguishing justifiable from unjustifiable hatred. Hatred of leaders who choose to wage unjust war is justifiable; hatred of their compatriots and coracialists is not, since hatred of human beings as such—apart from their voluntary acts—is not a morally acceptable emotion. By this standard, American leaders who chose wartime policies as a result of race hatred toward the Japanese were not engaged in just war, even if their policies were acceptable by all other moral tests.

4. JUST CAUSE

The most important of the *jus ad bellum* rules is the rule that the moral use of military force requires a just cause. From the earliest writings, just war theorists rejected love of war and love of conquest as morally acceptable causes for war: "We [should] wage war," Aristotle wrote, "for the sake of peace" (*Politics*, 1333A) Likewise, the seizure of plunder was always rejected as an acceptable cause for war. Beyond these elementary restrictions, however, a wide variety of "just causes" were recognized. The history of the subject is the history of how this repertoire of just causes was progressively cut down to the modern standard, which accepts only the single cause of self-defense.

As early as Cicero in the first century B.C., analysts of just war recognized that the only proper occasion for the use of force was a "wrong received." It follows from this that the condition or characteristics of potential enemies, apart from their actions, cannot supply a just cause for war. Aristotle's suggestion that a war is justified to enslave those who naturally deserve to be slaves, John Stuart Mill's claim that military intervention is justified in order to bestow the benefits of Western civilization on less advanced peoples, and the historically common view that forcible conversion to some true faith is justified as obedience to divine command are all invalidated by the absence of a "wrong received."

Obviously, the concept of a "wrong received" stands in need of considerable analysis. In the eighteenth century, the notion of wrong included the notion of insult, and sovereigns considered it legitimate to initiate war in response to verbal disrespect, desecrations of national symbols, and so forth. The nineteenth century, which saw the abolition of private duels, likewise saw national honor reduced to a secondary role in the moral justification of war. For most nineteenth century theorists, the primary wrongs

were not insults, but acts or policies of a government resulting in violations of the rights of the nation waging just war.

By twentieth-century standards, this definition of international wrongs providing conditions of just war was both too restrictive and too loose. It was too restrictive in that it failed to recognize any rights of *peoples*, as opposed to *states*: rights to cultural integrity, national self-determination, and so forth. It was too loose in that it sanctioned the use of military force in response to wrongs the commission of which may not have involved military force, thus condoning, on occasion, the first use of arms.

These two excesses were abolished in twentieth-century international law. The right to national self-determination was a prevailing theme at the Versailles conference in 1919 and was repeatedly invoked in the period of decolonization following World War II. Prohibition of first use of force was attempted in drafting of the U. N. Charter in 1945:

> Article 2(4): All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations.
>
> Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.

Strictly speaking, Article 51 does not prohibit first use of military force: to say that explicitly, the phrase "if an armed attack occurs" would have to be replaced by "if and only if an armed attack occurs." Nevertheless, Article 51, coupled with article 2(4), rules out anticipatory self-defense. Legitimate self-defense must be self-defense against an actual attack.

The U. N. Charter represents the most restrictive analysis of just cause in the history of the subject. In discussions since, members of the United Nations have continued to assume that just cause consists only in self-defense, but "self-defense" has come to be understood as a response to aggression. The definition of "aggression" thus becomes central to the analysis of just cause. In the United Nations, a special committee established to analyze the concept of aggression produced a definition adopted by the General Assembly on 14 December 1974:

> *Article 1.* Aggression is the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. . . .
>
> *Article 2.* The first use of armed force by a State in contravention the Charter shall constitute *prima facie* evidence of an act of aggression [although the Security Council may come to determine that an act of aggression has not in fact been committed]. . . .

> *Article 3.* Any of the following acts regardless of a declaration of war shall . . . qualify as an act of aggression:
>
> (a) The invasion or attack by the armed force of a State on the territory of another State, or any military occupation, however temporary;
>
> (b) Bombardment by the armed forces of a State against the territory of another State;
>
> (c) The blockade of the ports or coasts of a State by the armed forces of another State;
>
> (d) An attack by the armed forces of a State on the land, sea, air, or marine and air fleets of another State; . . .
>
> (g) The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above. . . .
>
> *Article 4.* The acts enumerated are not exhaustive.
>
> *Article 5.* No consideration of whatever nature, whether political, economic, military, or otherwise, may serve as a justification for aggression. . . .
>
> *Article 7.* Nothing in this definition . . . could in any way prejudice the right to self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right . . . particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support. . . .

By reading between the lines, the intent of the special committee can be easily discerned. In failing to enumerate under "acts of aggression" such traditional causes of war as attacks on citizens abroad, assaults on nonmilitary ships and aircraft on the high seas, and the seizure of property of aliens, the committee counted as aggression only military acts that might substantially affect the physical security of the nation suffering aggression. The only violation of rights that merits the unilateral use of force by nations is the physically threatening use of force by another state.

5. ANTICIPATION AND JUST CAUSE

One of the most radical features of the United Nations analysis of just cause is its rejection of anticipatory self-defense. The decision of those who framed the Charter was informed by history: the argument of anticipatory self-defense had been repeatedly and cynically invoked by political leaders set on military adventures, and the framers were determined to prevent a repetition of August 1914, when nations declared war in response to mobilizations, that is, to anticipated attacks rather than actual attacks. The U. N. view stands on good logical ground: if the use of force by nation A is justified on the grounds that its rights have been violated by Nation B, then nation B must have already done something that has violated A's rights. To argue that force is necessary in order to *prevent* a future rights violation by

nation B is not to make an argument based on rights at all: it is a call to use force in order to make a better world—a very different sort of moral argument than the argument that a right has been violated, and one rejected by the mainstream tradition that defines just war as a response to a "wrong received."

Nevertheless, many scholars are uncomfortable with an absolute ban on anticipatory self-defense. It might be wise, as a point of international law, to reject anticipatory self-defense in order to deprive nations of a convenient legal pretext for war, but from the point of view of moral principles, it is implausible that *every* case of anticipatory self-defense should be morally wicked. After all, people accept the morality of ordinary self-defense on the grounds that cases arise in which survival requires force directed against the attacker, and the use of force is morally proper in such cases. But exactly the same argument, "the use of force when necessary for survival," could be made in some cases of anticipatory self-defense.

Israel and the Six-Day War

The most frequently discussed example in the study of anticipatory self-defense is the Israeli attack on Egypt on 5 June 1967.

In the spring of 1967, tension mounted between Israel and Syria in the wake of a Syrian coup that brought the socialist Ba'ath regime to power. On 16 May, Syria mobilized its forces, and simultaneously in Egypt, President Nasser ordered U. N. peacekeeping forces to leave the Sinai, where they had been stationed since 1956, in part to guarantee free access through the Straits of Tiran, Israel's only access to the Red Sea. In response to the withdrawal of U. N. troops, Israel mobilized, and Egypt followed suit. On 23 May, Nasser blockaded the Straits of Tiran, sealing off the Israeli Red Sea port of Eilat. Should this action lead to war, Nasser announced, the result would be the destruction of Israel. On 1 June, Jordan entered into military alliance with Egypt, and an Iraqi division entered Jordan. On 5 June, at 8:15 A.M., the Israeli Air Force attacked and destroyed 300 of Egypt's 340 service-ready combat aircraft. Six days later, the war ended with the complete defeat of all Arab forces and a 400 percent increase in the size of the State of Israel.

Since Israel was the first to attack, supporters of Israel commonly describe the actions of 5 June as anticipatory self-defense, arguing that it was reasonable to believe that an Arab attack was forthcoming. Furthermore, authors like Michael Walzer argue that the blockade of the Straits of Tiran, and the strain of an ongoing mobilization, constituted a military threat of sufficient magnitude as to imperil Israel's existence, morally justifying a first use of force. But perhaps it is not necessary to describe Israeli actions in 1967 as anticipatory self-defense at all. If self-defense is the use of force in response to aggression, then the Israeli attack can be viewed as self-defense in response to aggression constituted by the Egyptian blockade

of the Straits of Tiran. Blockades have traditionally been considered acts of war, and blockades were prominently listed as acts of aggression in the 1977 U. N. definition of aggression quoted above. By this standard, Israeli actions are simple self-defense, not anticipatory self-defense.

6. INTERVENTION AND JUST CAUSE

At first sight it would appear that the U. N. Charter rules out the use of force by all nations except the victims of aggression. But there is an escape clause in Article 51, which grants nations the right of *collective* self-defense. In cases of legitimate collective self-defense, a nation can permissibly use force against an aggressor without itself being the victim of aggression.

So far as international law and custom are concerned, most scholars are agreed that legitimate use of force by A on behalf of B against aggressor C requires some prior mutual defense agreement between A and B. The legal logic of this interpretation of collective self-defense is straightforward: the main intent of the U. N. Charter is to prevent nations from having recourse to force, and to achieve this end it would not be a good idea to let any nation rush to the aid of any other nation that seems to be the victim of aggression. But international law here may be too strict for our moral sensibilities. We do not, at the personal level, require the Good Samaritans have prior contracts with those they seek to aid, even if the Good Samaritan, unlike his biblical predecessor, must use force to rescue the victim of attack. By analogy it seems unreasonable to require prior collective defense agreements between international Good Samaritans and nations that are the victims of aggression.

The cases of collective self-defense that have standing in international law are cases in which one nation intervenes in a quarrel between two other states. But there are many cases in which governments are tempted to intervene in a conflict *within* another state, a conflict between subnational groups or between subnational groups and national government. Defining just cause for interventions in these internal disputes is far more difficult. A long tradition of international law treats most such interventions as reprehensible violations of national sovereignty. The justification of self-defense is patently inapplicable. In history, the majority of such interventions have had immoral motives, disastrous results, or both. Yet every author who writes about this subject has a list of favorite cases in which, it is felt, military intervention was morally justified, or would have been.

The main argument against these interventions is that they violate the right of national sovereignty, recognized in international law. But though recognition in international law establishes a *legal* right, it cannot establish a *moral* right, since the law might itself be immoral. Should national sovereignty be accepted as a *moral* right? Does it make sense to attribute moral rights to *nations* as such?

Some believe that only individual persons can have moral rights. The possession of moral rights is logically connected to the possession of moral responsibilities, and moral responsibilities can be assigned only to entities capable of free choices. But only individual persons are capable of free choices; nations, which are aggregates of persons, do not possess consciousness, and "make choices" only in a metaphorical sense. Furthermore, a moral right is a moral warrant to make demands and undertake actions that are contrary to majority preference and to the common good. Moral theories that take rights seriously postulate such rights for persons on the grounds that individuals have the right to undertake projects and careers at some cost to the general interest, since self-chosen lives are the highest repositories of value in human life. No such rationales could be extended to the choices of nations, first, because they do not make choices, and second, because it seems intolerable that a nation should be morally justified in pursuing interests detrimental to the welfare of the world. To speak of "the rights of nations" is like speaking about "the average American family," something that doesn't really exist, though rights exist and families exist.

If only individual persons have rights, then the so-called rights of *nations* are derived from the rights of individual persons, and governments and political leaders pursuing policies in the name of the "nation" are morally justified only to the degree that their policies fulfill or defend the rights of their constituents: the only right of a state is the right to defend the rights of its citizens. If the government and the political leaders pursue policies that suppress the rights of their own people, then they cannot defend those policies against principled, Good Samaritan interventions on grounds of a right of national sovereignty.

Intervention, then, in the face of rights violation by a government may have just cause. But *which* rights violations provide just cause for interventions? It would be a grave mistake to sanction intervention in face of rights violations of every type. It would not be appropriate for nation A to intervene in nation B because nation B has closed down its free press, nor would it be appropriate for nation C to intervene in D if D permits private ownership of the means of production and expropriation of surplus value from the working class, even if we believe in rights to free expression and freedom from exploitation. Such a proliferation of just causes for intervention would lead to endless war. Rather, it is reasonable to limit violations of national sovereignty to cases in which a government has violated the basic values national sovereignty is supposed to protect: the physical safety of the citizens and their freedom from alien domination. Furthermore, the intervention must be requested, or at least welcomed, by the persons whose rights it is supposed to protect. Otherwise, one must assume that the rights in question have been waived, and the justification for intervention disappears.

(a) The Indo-Pakistani War of 1971

One case that meets these standards—a frequently cited example of justified intervention—is the Indian intervention in East Pakistan in 1971. In December 1970, the Awami League, a movement for greater regional autonomy in Bengali East Pakistan, won a majority in the National Assembly of Pakistan, a nation consisting of two separate territories to the east and west of India. Bending to opposition in West Pakistan, General Yahya Khan indefinitely postponed the opening of the National Assembly, an act that led to widespread agitation in East Pakistan. Khan responded by sending in the Pakistani Army, staffed by non-Bengalis. The Army began arresting Awami League members and soon shifted to a policy of wholesale slaughter of Bengali leaders, down to the village level. The numbers of dead were in the hundreds of thousands, and an ensuing famine may have killed millions. By November, over 6 million Bengali refugees had fled for food and safety into India. On 4 December the Indian Army smashed into East Bengal; on 16 December, Dacca was liberated. Pakistani forces surrendered, Indian forces withdrew, and the nation of Bangladesh was born. Protests from Rawalpindi that the Indian attack violated Pakistani sovereignty were absurd: in East Pakistan, the Rawalpindi government was engaged in rights violations on a massive scale; it had no moral sovereignty that it could lose.

(b) The Osirak Raid of 1981

Few interventions are so morally clear-cut as India's in 1971. Consider a more problematic case: the raid into Iraq by Israeli fighter bombers that destroyed the nuclear reactor under construction at Osirak in 1981. The Osirak reactor was capable of producing weapons-grade plutonium, and the Israelis could not be blamed if they rejected the argument that Iraq—an oil-rich nation—needed nuclear reactors to generate electricity. The possession of nuclear bombs by the Iraqis would constitute a grave threat to the security of Israel and the safety of the whole world, and the Israeli raid was neatly confined to the elimination of this threat. At the same time, the construction of the Osirak reactor violated no rights of Iraqi citizens, and the Israelis could scarcely claim that Iraqi citizens had invited them to make the attack. The raid did more good then harm but, in the absence of rights violations by the Iraqis, it lacked just cause.

7. THE RULE OF PROPORTIONALITY

It is a superficially paradoxical feature of just war theory that a just cause need not make for a just war. If the just cause can be achieved by some

means other than war, then war for that just cause is not morally justified. If the just cause *might* be achieved by other means that have not been attempted, then war for that just cause is not just war. If the cause is just but cannot be achieved by war, then war for that cause is not just war. These rules, sometimes called the rule of necessity, the rule of last resort, or the "chance of victory" requirement, are part of that section of just war theory which acknowledges that some just causes are not sufficiently weighty, on the moral scales, to justify the evils that war for those just causes might produce. The rule of proportionality states that a war cannot be just unless the evil that can reasonably be expected to ensue from the war is less than the evil that can reasonably be expected to ensue if the war is not fought.

The rule of proportionality is easy to state but hard to interpret, since there are no guidelines as to what counts as an "evil" when the rule is applied. Suppose that we interpret an "evil" as a loss of value, that is, as death, injury, physical and psychological suffering, misery, and so forth. On this view of evil, the rule of proportionality implies that a war is just only if there will be more death, suffering, and so forth if the war is not fought than if the war is fought: a just and proportionate war does more good than harm. Given the destructiveness of war, the rule of proportionality, on this interpretation, would declare that almost all wars, even wars with just causes, have been unjust wars.

Suppose that we count as "evils" not merely losses of welfare but also losses that are violations of someone's rights. Then the rule of proportionality implies that a war is just if more rights would be violated if the war is not fought than if the war is fought. Since we have defined a just cause as a cause that seeks to prevent violations of rights, on this interpretation of the rule of proportionality, almost all wars with just causes have been proportionate wars.

Which interpretation of "evil" is the most appropriate for the moral analysis of war? If we interpret "evil" as "violation of rights," then the rule of proportionality, which was supposed to provide an additional and independent check on the moral permissibility of war, is subsumed into the requirement of just cause. If the rule of proportionality is to do any work, we must consider an "evil" to be the destruction of a value. But then the problem arises that the rule condemns almost all wars and reduces just war theory to antiwar pacifism. Some revision of the rule is in order.

From the standpoint of theories of moral rights, a rule which says that war is unjust unless it does more good than harm is far too restrictive. If a war has a just cause, then it is a war in defense of rights and, according to most theories of rights, the maintenance and protection of rights is morally permissible unless the defense of rights causes *a great deal* more harm than good. Accordingly, in just war theory, we can replace the traditional principle—a just war must cause more good than harm—with the less restrictive rule that a war for a just cause passes the test of proportionality unless it

produces a *great deal* more harm than good. Even this greatly liberalized rule of proportionality will declare that many wars fought for just causes have been unjust wars, since many wars for just causes have in fact produced a great deal more harm than good. On the other hand, if a war is fought for a just cause and produces only slightly more harm than good, the liberalized rule of proportionality will not judge that war to be unjust.

8. WEIGHING JUST CAUSE AGAINST PROPORTIONALITY

All just causes are just, but some are more just than others. The amount of harm that it is morally permissible to produce in pursuit of a just cause should be a function of the moral importance of the cause. No formula can be generated for weighing the justice of the cause against the harm that might be done in pursuing it; the question can be resolved only on a case-by-case basis, by persons with a grasp of the relevant facts and sufficient strength of character to view the problem from an impersonal rather than a patriotic point of view.

(a) Belgium 1914

Consider the position of the Belgians as World War I began. On 2 August 1914, a German minister to Belgium handed King Albert an ultimatum demanding free passage for German armies proceeding from Germany through Belgium to France. The king promptly refused, and Belgium prepared to resist scores of German divisions with just six of its own. Though Belgian resistance was gallant and surprisingly stiff at Liège, the German armies were delayed just two days by Belgian military opposition, and the losses to Belgium were immense. Though the Belgian cause was just, considerations of proportionality indicate that a decision not to fight would not have been immoral.

(b) Finland 1939

Considerations of proportionality weigh even more heavily against the decision of the Finns to resist the Russians in 1939. Despite the Hitler-Stalin pact, Stalin was sufficiently suspicious of the Nazis to seek a defensible western border, and this required that the Russian border be moved north, away from Leningrad. (Events in the subsequent siege of Leningrad proved this assessment to be essentially correct.) Stalin asked the Finns to sell territory that would realign the border, and the Finns refused. On 30 November 1939, the Russians attacked. Though the Finns, under Baron von Mannerheim, fought brilliantly through the winter, they collapsed before numerically superior forces in March 1940. As with Belgium in 1914, the Finnish cause was just. At the same time, Stalin's aims were manifestly limited, and the justice of the Finnish cause, one might argue,

did not outweigh the destruction that could be expected from resistance. If so, the Finnish decision to resist was disproportionately harmful, and both sides fought an unjust war.

(c) The Six-Day War Revisited

Because of the blockade of the Straits of Tiran, the Israelis could claim that their attack on Egypt was undertaken in self-defense. Thus, the Israelis had just cause. The question is still open, however, whether the Six-Day War was necessary and proportionate. First, if the Israelis had not attacked, war might have been avoided and 20,000 lives saved. (This argument cannot be rebutted on the grounds that we cannot know what might have happened if Israel had not attacked, since the Israeli case is equally based on assumptions about what might have happened if they had not attacked.) Second, the blockade of the Straits of Tiran, though serious, was not life-threatening to Israel, since there were open and unblockadable Israeli ports on the Mediterranean. Third, the strain of mobilization was at least as costly to Egypt as to Israel, and Arab troops would soon have had to stand down. Fourth, if the Israelis had not preempted and the Arabs had attacked first, the State of Israel would nevertheless have survived, since this was precisely what happened when greatly augmented Arab forces struck first in 1973.

In applying the rule of proportionality to the Six-Day War, we must consider not only the destruction that the war did cause, but also the destruction that the Israelis might have expected the war to cause before they began it. On 5 June 1967, the Israelis had no strong evidence that they were about to win one of the most astounding military victories in modern warfare, and that the war would be over in just six days. They had reason to expect that the war would be much longer and bloodier than it was, and it is all these *expected* deaths that must be weighed against the middling importance of reopening the Straits of Tiran.

(d) Extreme Emergency

There is one type of the justice-versus-proportionality problem that especially interests the just war theorist: cases in which the just cause is the continued existence of the state itself. Some might argue that any amount of force, causing any amount of harm, is morally justified if necessary for national survival. Is this reasonable?

Suppose that the state threatened with annihilation (call it state X) has started an unjust war that it is now on the verge of losing to enemies that have called for unconditional surrender, or that state X is the subject of morally justifiable intervention or morally justifiable revolution. In such cases, since state X has been a perpetrator of injustice, it would be bizarre to say that its continued existence is of such moral importance that it has the right to inflict great harm in order to preserve itself.

Now suppose that state X is innocent but cannot save itself except by actions that produce immense quantities of death and suffering. Can these quantities ever be so great that state X loses its right to self-defense? On the personal level, the right to self-defense entitles an innocent person to take actions that cause considerable destruction. If an innocent person is attacked by 20 people and has no recourse, he is entitled to kill all 20 if he can. By analogy, it would seem that one innocent nation is morally entitled to destroy 20 aggressor states if it can and if such an act is necessary for its survival. But the analogy is a poor one, since in the personal case, all 20 attackers are guilty, whereas, when a nation makes war, even just war, many innocent people are killed. The proper question to raise at the personal level is this: How many innocent people am I entitled to kill if their deaths are necessary for my own survival? Even for nonpacifists, the answer is "not many." It follows, at the level of nations, that the right of a state to cause destruction in order to assure its own survival is not unlimited.

9. THE RULE OF JUST PEACE

The preceding sections considered all the traditional rules of *jus ad bellum*. Since the rules are addressed to decision makers contemplating war, they take into consideration only such facts as are available to decision makers before war begins. There is room for one further rule, a rule that takes into consideration facts available to moral judges after the war ends. For war to be just, the winning side must not only have obtained justice for itself; it must not have achieved it at the price of violating the rights of others. A just war must lead to a just peace.

The rule of just outcome provides a solution to an ancient controversy concerning just cause. In the modern analysis, for nation A to have just cause, its rights must have been violated by nation B. Pursuit of this just cause permits nation A to use force to restore its rights. But do the rules of morality restrict A to just the restoration of its rights? In civil law, if party B has wrongfully injured party A, A is often entitled not just to compensation for the loss sustained through the injury but also to damages. By analogy, a nation acting in self-defense is entitled not merely to a restoration of the status quo ante but also to further rewards. In considering the scope of these rewards, authors have looked charitably on such rewards as might provide nation A with improved security in the future and teach the lesson that international crime does not pay.

The analogy, however, between civil law and international affairs is weak. The party that pays damages in civil law deserves to be forced to pay, but changes in international arrangements resulting from successful wars fought in self-defense may involve thousands of persons who were not parties to the conflict. It is in the interest of these victims of international

upheaval that the rule of just outcome be applied. Such acts as go beyond the restoration of the status quo ante, acts that provide the victor with improved security or assess damages against the loser, must not violate the rights of the citizens in the losing nation or the rights of third parties.

(a) Korea 1950

A common textbook example of the use of force beyond the permissible limits of self-defense is Gen. Douglas MacArthur's thrust to the Yalu River in Korea in 1950.

In June 1950, troops from North Korea pushed into South Korea, nearly overrunning the country and bringing down the South Korean government in Seoul. After the successful landing at Inchon in September, MacArthur's troops reached and crossed the North Korean border in October, then moved north to the Chinese border at the Yalu River. The Chinese counterattacked en masse in November, driving American (and U. N.) forces far to the south. After three more years of fighting, the best that could be said for American efforts was reestablishment of a putative national division between North and South Korea, back at the original border.

If the United States had simply sought a restoration of that status quo ante, MacArthur should have stopped at the North Korean border in October 1950. Nevertheless, given the injustice of North Korea's attack and its manifest desire to impose its rule over the much larger population of South Korea, it *was* morally permissible to continue military operations northward; replacement of the North Korean government would not have been a manifestly unjust outcome. MacArthur's problem was not so much a breach of the principle of just peace as an imprudent estimation of the Chinese reaction to military forces marching in their direction.

(b) 1967 Yet Again

A more interesting test of the rule of just outcome is the long-term results of the Six-Day War. Let us assume that our previous analysis was correct and that the Israelis were acting in self-defense against Egyptian aggression, and let us assume, contrary to the previous discussion, that Israeli actions satisfied the rule of proportionality. Israel, then, was morally justified in using force to reopen the Straits of Tiran. Since the straits could not be reopened without war with Egypt *and* Jordan *and* Syria, the Israelis, on these assumptions, were morally justified in attacking all three nations. A restoration of the status quo ante would consist of reopening of the straits, together with military and diplomatic guarantees that they would remain open. By the sixth day of war, the Israelis had not merely reopened the straits but also had established military dominion over the Sinai, the Gaza Strip, the West Bank, East Jerusalem, and the Golan Heights, all of which, save for the Sinai, they control to this day.

In these territories live over 900,000 Arabs who have no prospect of Israeli citizenship and no desire to live at the dictates of the Israeli government. Of the occupied territories, only the retention of the Golan Heights can be justified on grounds of military necessity. (The Israeli government sometimes argues for the retention of the West Bank not on military reasons but on the grounds that "Judea and Samaria" were parts of biblical Israel.) If the blockade of the Straits of Tiran was aggression, the Six-Day War began justly. But by depriving nearly a million people of governments they preferred to Israel's, it did not end justly. By the principle of just peace, the Six-Day War was not a just war.

10. JUS AD BELLUM AND VIETNAM

No war and no act of intervention stirred more controversy in the United States than the Vietnam War. We will take up the decision to intervene in Vietnam rule by rule. The United States was seriously involved in the Vietnam conflict from 1950 on, supporting the French in a losing struggle to keep Indochina a colony of France. But for the United States, the point at which to apply the rules of just war is 8 March 1965, when U. S. Marines waded ashore at Danang. Ten years later the war ended, and 57,000 Americans and a million Vietnamese were dead.

(a) Competent Authority?

The war in which the United States intervened was a war between the government in Saigon and the National Liberation Front (NLF). In nominal control of all of Vietnam south of the seventeenth parallel, the Saigon regime had been established in October 1955, when Ngo Dinh Diem declared himself president of the Republic of Vietnam. Diem had been assassinated in 1963, but his successors—Duong Van Minh, Nguyen Khanh, Phan Huy Quat, and, finally, Nguyen Cao Ky and Nguyen Van Thieu—continued Diem's opposition to the unification of North Vietnam and South Vietnam—called for in international agreements signed in 1955—and to social revolution or reform in the South. The NLF, in 1965, was a coalition of South Vietnamese Buddhists, social reformers, socialists, and Communists, committed primarily to social change in South Vietnam but also interested in the reunification of Vietnam, acting with some degree of support from the Communist regime of Ho Chi Minh in the North.

Did the Saigon regime have "competent authority," that is, sufficient competence to wage a just war and to invite foreigners to use force inside South Vietnam? According to some authors, the Saigon regime was competent because (a) it functioned like a competent government—collected taxes, built roads, maintained bridges, delivered the mail, and so forth; (b) because it exercised control over identifiable territory, including the cap-

ital; and (c) because it exercised control "by responsible command" over its military forces.

Dissenting scholars argue that the Saigon regime was not competent (a) because it was established contrary to an international agreement that had brought peace to Vietnam in 1955, an agreement that called for free elections in 1956 which Diem had *prevented* from taking place; (b) because the majority of people throughout Vietnam considered Vietnam a single nation, which the Saigon regime had artificially divided; and, most of all, (c) because no government in Saigon could have held power for six months were it not for massive and continuous infusions of American aid. Opponents of the war believed that it was ridiculous to argue that American intervention was justified because the Saigon government "asked" for help, when the Saigon government was, in some sense, paid to ask us in, should it find itself unable to hold back the revolutionary tide.

The argument that the Saigon regime was an American puppet and not a legitimate national government deserves careful analysis. Let us assume that Diem and his successors could not have stood for very long on their own. For many, this suffices to show that the Saigon government lacked authority and, therefore, the right to use military force. But supporters of Saigon in 1965 might argue that the fact that a government needs help to subsist does not prove that it is illegitimate. The American Revolution, for example, could not have been won without help from the French, but nobody argues today that the Washington's use of force was immoral because colonies he defended could not stand on their own. The phrase "stand on their own" is troublesome and ambiguous. One could say of any government in the world that in the absence of certain supporting conditions, the government would collapse. For South Vietnam, the supporting condition was American aid. But the government did function, and for many years substantial numbers of South Vietnamese were prepared to die in its defense.

Opponents of American intervention will rush to point out that the analogy between George Washington and Diem is weak. The American revolutionaries declared independence without French prompting; they held on for several years with little French aid; they determined policy apart from French wishes; they developed a constitution and submitted it for ratification; and Washington stood in a general election before becoming president. Diem was brought in and propped up by the United States to carry out foreign wishes; he never submitted a constitution and hardly felt constrained by such laws as there were; and he never stood for election, because all sides knew that in a vote Ho Chi Minh would certainly carry all of Vietnam and probably even the South by itself. For all these reasons, Diem and his successors could be considered agents of the Americans. If so, American intervention fails to qualify as one nation assisting in the self-defense of another.

Defenders of American intervention complained bitterly through the Vietnam years that critics of the war used different standards when judging American conduct and the conduct of the NLF. So we must ask: Was the NLF a competent revolutionary movement? Did it have the moral authority to use force?

Certainly the NLF in 1965 had military forces under responsible command, and had large sections of the countryside under control by day and even larger sections under control by night: in 41 of 44 South Vietnamese provinces, the NLF was regularly collecting taxes. These are the usual legal criteria for belligerent status. But if we dismiss the competence of the Saigon regime for its inability to subsist without American aid, should we not dismiss the competence of the NLF for its inability to subsist without support from North Vietnam?

Two arguments suggest that the NFL case is different. First of all, from the time of its founding in 1960 through 1965, the NLF appears to have received very little material support from North Vietnam; certainly it received from Hanoi but a small fraction of the support that Saigon received from Washington. (North Vietnam became increasingly involved after 1965, but an intervention in 1965 must be judged by the conditions of 1965.) Second, support from Hanoi was support for Vietnamese people by Vietnamese people. Such aid could be seen as part of an effort for national self-determination, which is a right of peoples recognized by the community of nations. From the first, the Americans assumed that they were fighting Communism, but more than anything they were fighting Vietnamese nationalism, which was as strong in the South as it was in the North. Had they been fighting only Communism, they might have won.

(b) Right Intention?

The United States had many intentions in Vietnam, so many that it is difficult to locate a dominant intention. The most frequently announced intention was that the United States was fighting so that the South Vietnamese people could freely determine what government they wanted. This explanation was difficult to sustain in light of the fact that Diem, with American support, had scuttled the general elections of 1956, and that no subsequent South Vietnamese leader could match the prestige and popularity of Ho Chi Minh. If there was a dominant American hope, it was to prevent the establishment of a Communist government in South Vietnam—*regardless* of South Vietnamese attitudes—a hope motivated by the idea that Communism would be a bad thing for South Vietnam and by the idea that a victory over Communism would be a good thing for American credibility in its global cold war.

If the dominant American intention was prevention of an outcome deemed harmful to the Vietnamese, then American intentions, tradi-

tionally rated, were altruistic and morally acceptable. If the dominant American intention was to strike a blow against world Communism that would improve American prestige and world standing, then the United States was using Vietnam as a pawn and American intentions were not morally acceptable. Which intention dominated the American decision to intervene? Did American policy makers really care what happened to the Vietnamese people? Did they really have their interests at heart? Were they prepared to sacrifice American prestige if the interests of the Vietnamese people demanded it? Did their interactions with the Vietnamese from the Saigon government down through the peasants express respect for people regarded as moral equals?

Many people familiar with events in Vietnam through 1965, people who know how the United States trained Diem's secret police and how they behaved, how at American instigation tens of thousands of peasants were uprooted from traditional villages and thrown into armed encampments, how American responses and judgments were biased by the racist attitudes that continued to infect American relations with Asian peoples, believe that the American leadership thought first about world politics and only second about the Vietnamese. In affirming the American commitment to Diem, a mandarin Catholic dictator in a land of Buddhist peasants, President Kennedy revealed his intentions to James Reston in 1961: "We have a problem making our power credible, and Vietnam looks like the place" (Stanley Karnow, *Vietnam: A History*, p. 248).

(c) Just Cause?

Much of the analysis of just cause in the case of Vietnam is tied to considerations of competent authority. But let us assume that the Saigon regime was competent and had the authority to use force. Did it have just cause to use it? In the modern analysis, just cause is restricted to self-defense, and in assessing the claims of self-defense, it is crucial to consider who used force first and where it was used.

When Vietnam was divided in 1955, there were many people in South Vietnam who had supported or participated in the Vietminh, Ho Chi Minh's movement against the French colonial regime. In 1955 and 1956, thousands of Vietminh cadres and leftist sympathizers in the South were subjected to arrest, torture, prison, and execution by the Diem government. At the same time, Ho Chi Minh had been persuaded to desist from military operations in the South in hopes of winning a political victory in the elections of 1956, elections that Diem refused to hold. In these years, then, what we have in Vietnam is a police action—indistinguishable in a dictatorship from military operations—against a political movement. Since the NLF did not begin its campaign of violence on any scale before 1961, the first use of force *in the South* was by the regime in Saigon.

Defenders of American intervention generally view the Vietnam conflict not as an internal struggle *in* South Vietnam but as a war *between* the states of North and South Vietnam. Do the actions of North Vietnam in these years constitute a use of force such that Saigon and Washington could claim that their actions against North Vietnam were acts of self-defense?

No one denies that North Vietnam aided the NLF from 1960 through 1965. But if one runs through the list of acts of aggression formulated by the U. N. special committee on the definition of aggression, none of the acts described there fit the acts of North Vietnam, and the level of North Vietnamese support, as we noted, was a small fraction of the support Washington provided to the Saigon regime. The U. S. State Department, which had every reason to exaggerate, claimed in 1965 that 40,000 North Vietnamese troops had entered South Vietnam since 1955, but that figure amounts to only 4,000 per year. The State Department did not claim that these troops mounted military operations against South Vietnamese forces, nor did it explain how it distinguished North Vietnamese from NLF cadres.

South Vietnamese naval commandos under American direction began taking the fight to North Vietnamese territory in the summer of 1964. After a South Vietnamese raid on 30 July against several North Vietnamese islands, North Vietnamese PT boats engaged the U. S. Destroyer *Maddox*, which was patrolling the Tonkin Gulf in the general area of these raids. On 4 August, PT boats approached and may or may not have shot at the *Maddox* and the U.S.S. *Turner Joy*, which may or may not have been in the North Vietnamese territorial waters—the accounts are contradictory. At any rate, no damage was done. President Johnson responded on 5 August by ordering an air raid that destroyed most of North Vietnam's small navy and a significant fraction of its oil-refining capacity.

Given subsequent events, historians will debate forever about North Vietnam's infiltration and the Tonkin Gulf incidents. But it is clear that by March 1965 the South Vietnamese and their American allies had used considerably more direct force against North Vietnam than North Vietnam had directed against the South.

(d) Proportionality?

In our treatment of proportionality, we noted that the amount of harm justifiable in military action should be proportionate to the justice of the cause. The justice of American intervention in Vietnam, however, is hotly debated; and if the justice of the cause is debatable, then the proportionality of the means used to achieve it will be debatable as well. To make the discussion of proportionality more interesting, let us assume that the real issue in the war was not the social reforms sought by the NLF but the

unification of the country under rule from Hanoi, and let us assume that the prevention of reunification was a just cause: that rule from Hanoi would violate the rights of people in South Vietnam in some fundamentally different and more malevolent way than their rights were violated under the Saigon regime. After these concessions to the defender of intervention, the question of proportionality is this: Was the harm to be expected from the effort to achieve this cause substantially greater than the evil that would be produced if the cause of South Vietnam was abandoned?

Most people in the United States today feel that the Vietnam War "wasn't worth the effort." For many hawks and doves alike, the harms done to American soldiers and the overall costs of the war do not seem proportionate to the importance of the cause. But this popular judgment is prompted by the knowledge that the war was lost, and that knowledge was not available to policy makers in 1965. Given the information available in 1965, and given the harm that could be reasonably expected to ensue from American intervention, did the intervention meet the test of proportionality?

Defenders of intervention believe that it did. Professor William O'Brien argues, for example, that the harm to be expected from intervention in Vietnam could best be estimated by extrapolation from American experience in Korea. Since, in O'Brien's view, the harm done in Korea was justified by the justice of keeping South Korea free from North Korea's Kim Il Sung, the harm to be expected in Vietnam was justified by the justice of keeping South Vietnam free from Ho Chi Minh.

Opponents of intervention will protest that there was plenty of evidence available in 1965 to show that the success in Vietnam would not come as easily as success in Korea, and that the damage done in Vietnam by American intervention would dwarf the damage done to Korea, great as it was. First, the population of South Korea was more than double North Korea's; the populations of North and South Vietnam were roughly equal. Second, the North Koreans attempted to conquer South Korea by brute force; they had little support in the South and no apparatus for political control. The NLF had developed an elaborate political mechanism in South Vietnam and had the support of a substantial fraction of the population. Third, the leader in South Korea, Syngman Rhee, had credentials in the struggle against foreign control (in this case, the Japanese) at least as credible as Kim Il Sung's. The rulers in Saigon were closely associated with French colonial rule; the rulers in Hanoi were leaders in the struggle against the French, national heroes in both the North and the South. Fourth, the routes from North to South Korea were defensible; the routes from North to South Vietnam led through neutral Laos and Cambodia, where the United States was reluctant to place troops. Fifth, in general, the geographical features of South Korea lent themselves more to the World War II-style operations, with which American commanders were familiar, than did the geography of Vietnam.

All these factors, visible in 1965, showed that war in Vietnam would be much more difficult than war in Korea, requiring a massive land war in the South and a massive air war in the North. The predictable scale of the land and air wars, conducted against politically hostile or indifferent populations, created the paradox of Vietnam that the United States never solved. The more American soldiers landed in South Vietnam, the more the Saigon regime seemed involved with foreigners. The more Saigon was involved with foreigners, the more true Vietnamese nationalists sided with the NLF. Similarly, the more American bombs fell on North Vietnam, the more the North Vietnamese felt inclined to back their government's "war against the imperialists." Thus, like Antaeus, America's opponent grew stronger each time it was smashed to the ground.

Short of the complete destruction of the material assets of North Vietnam and the imprisonment of half the population of South Vietnam, the great force of nationalism in the North and the widespread desire for social reform in the South would, sooner or later, make Vietnam a single nation once again. Even in 1965, clear-sighted people could see that the United States could not win in Vietnam. On this analysis, the principle of proportionality, which forbids the use of force where there is no chance of success, would rule against American intervention, even given the assumption that the American cause was just.

(e) Just Peace?

On 30 April 1975, North Vietnamese forces entered Saigon and renamed it Ho Chi Minh City. In 15 years of fighting, the NLF and North Vietnam had suffered perhaps 600,000 dead; the South Vietnamese supporting Saigon, 400,000; the Americans, 57,000. The landscape of Vietnam, North and South, was torn by bomb craters, devastated by herbicides, and littered with unexploded bombs, booby traps, and mines. Did the victory produce a just peace? Considering the scale of slaughter, it is hardly surprising that the victors from Hanoi dealt harshly with officials and supporters of the Saigon regime, though the great "bloodbath" predicted by defenders of American intervention did not materialize. Less excusable was Hanoi's treatment of surviving members of the NLF, very few of whom obtained positions of responsibility under the new administration in the South. Totally inexcusable was the persecution inflicted by the Hanoi government on ethnic Chinese and Vietnamese of Chinese ancestry, hundreds of thousands of whom risked their lives to flee Vietnam in the late 1970s, voting with their feet on the unacceptability of Hanoi's leadership. The arbitrary power of the landlords over the peasants had been abolished throughout Vietnam, but this seems largely to have been replaced by other arbitrary forms of power.

In seeking to throw the foreigners out of Vietnam, the North Vietnamese fought with just cause, but the victory in a just cause brought

exhaustion and madness, not justice. If American intervention was unjust, it need not follow that the war against American intervention was just. Perhaps the ultimate lesson of Vietnam is that violence in war, sufficiently prolonged, perverts winners and losers alike.

11. SUGGESTIONS FOR FURTHER READING

Introduction

Some introductions to the theory of just war are Paul Ramsey, *War and the Christian Conscience* (Durham, NC: Duke University Press, 1961) and *The Just War* (New York: Scribner's 1968), James Turner Johnson, *Ideology, Reason, and Limitation of War* (Princeton, NJ: Princeton University Press, 1975), *Just War Tradition and the Restraint of War* (Princeton, NJ: Princeton University Press, 1981), and *Can Modern War Be Just?* (New Haven: Yale University Press, 1984); Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977); and William V. O'Brien, *The Conduct of Just and Limited War* (New York: Praeger, 1981).

Competent Authority

The text of the Second Protocol to the Fourth Geneva Convention of 1949 (U. N. Doc. A/32/144 1977) is printed in *American Journal of International Law* 66 (1978), pp. 438 ff.

Right Intention

For an analysis of the status of intentions in institutions, see Peter French, "The Corporation as a Moral Person," *American Philosophical Quarterly 16* (July, 1979). See also Patricia Werhane, *Persons, Rights, and Corporations* (Englewood Cliffs, NJ: Prentice Hall, 1983).

For a discussion of American motives in the Pacific theater of World War II, see John Dower, *War Without Mercy: Race and Power in the Pacific War* (New York: Pantheon Books, 1986).

Just Cause

For the particular difficulty Americans seem to have in distinguishing just causes from ideological crusades, see Robert W. Tucker, *The Just War* (Baltimore: Johns Hopkins University Press, 1960).

The development of the "just cause" restrictions of the U. N. Charter is described in Ruth B. Russell, *A History of the United Nations Charter* (Washington, DC: Brookings Institution, 1958). For detailed analyses of national self-defense and aggression, see Julius Stone, *Aggression and World Order* (Berkeley: University of California Press, 1958), D. W. Bowett, *Self-Defence in International Law* (Manchester: Manchester University Press, 1958); and Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963). Careful analysis of the 1974 definition of aggression adopted by the U. N. General Assembly is given in Yehuda Melzer, *Concepts of Just War* (Leiden: Sijthoff, 1975).

Anticipation and Just Cause

Background information about the Six-Day War is in Michael Howard and Robert Hunter, *Israel and the Arab World: The Crisis of 1967* (London: Institute for Strategic Studies, 1967).

For an analysis of the initiation of the Six-Day War that differs from that given here but also ends up condoning the Israeli attack, see Walzer, *Just and Unjust Wars.*

Intervention and Just Cause

A nice discussion of the complexity of problems of intervention is Stanley Hoffman, *Duties Beyond Borders* (Syracuse, NY: Syracuse University Press, 1981). See also *Essays on Intervention*, ed. Roland J. Stanger (Columbus: Ohio State University Press, 1965); James N. Rosenau, "The Concept of Intervention," *Journal of International Affairs* 22 (1968): 165–176; R. J. Vincent, *Nonintervention and International Order* (Princeton, NJ: Princeton University Press, 1974); Ian Brownlie, "Humanitarian Intervention," in *Law and Civil War in the Modern World*, ed. John Norton Moore (Baltimore: Johns Hopkins University Press, 1974); Stephen J. Solarz, "When to Intervene," *Foreign Policy* 63 (Summer 1986): 20–39; and Jefferson McMahan, "The Ethics of Intervention," in *Political Realism and International Morality*, ed. D. Meyers and K. Kipnis (Boulder: Westview, 1987)

For a sharply critical interpretation of recent American interventionism, see Michael T. Klare, *Beyond the Vietnam Syndrome: US Interventionism in the 1980s* (Washington, DC: Institute for Policy Studies, 1981). But should readers conclude after reading Klare that the superpowers should swear off intervening in other countries' internal affairs altogether, they should ponder the notorious cases of nonintervention described in William Shawcross, *The Quality of Mercy: Cambodia, Holocaust, and Modern Conscience* (New York: Simon and Schuster, 1984); and David S. Wyman, *Abandonment of the Jews* (New York: Pantheon Books, 1984).

The Indo-Pakistani Conflict. The Background of the Indo-Pakistani conflict is laid out in Russell Brines, *The Indo Pakistani Conflict* (London: Pall Mall, 1968); for the military narrative see Lord Carver, *War Since 1945* (New York: Putnam's 1981), Ch. 11. The war produced an apologetic literature on the Indian side, including B. M. Caul, *Confrontation with Pakistan* (Delhi: Vikas, 1971); and D. R Mankekar, *Pakistan Cut to Size* (New

Delhi: India Book Publishing, 1971). See also Thomas M. Franck and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 62 (1973): 275–305.

Despite evidence of mass murder in East Pakistan, the United States came out against intervention and tilted against India. For a strained rationale see Henry Kissinger, *White House Years* (Boston: Little Brown, 1979).

The Osirak Raid of 1981. See Shai Feldman, "The Bombing of Osirak Revisited," *International Security* 7, no. 2 (Fall 1982): 114–142.

The Rule of Proportionality

For an analysis of the rule of proportionality, see Myres McDougal and Florentino Feliciano, *Law and Minimum World Public Order* (New Haven: Yale University Press, 1961), pp. 242 ff.

Weighing Just Cause Against Proportionality

The decisions in Belgium in 1914 are colorfully described in Barbara Tuchman, *The Guns of August* (New York: Macmillan, 1962). For the deviant view of the Russo-Finnish war advocated here, see D. F. Fleming, *The Cold War and its Origins* (Garden City, NY: Doubleday, 1961). For a discussion of what turns "extreme emergency" into a loophole in the just war doctrine, see Walzer, *Just and Unjust Wars.*

Just Outcome

For narratives of the Korean conflict, see Robert Leckie, *The Korean War* (New York: Putnam, 1962); and Barry J. Middleton, *The Compact History of the Korean War* (New York: Hawthorne Books, 1965). For a strong statement of the moral inadmissibility of Israeli occupation of territories conquered in 1967, see Edward W. Said, *The Question of Palestine* (New York: Times Books, 1979).

Jus Ad Bellum and Vietnam

For a narrative of events in the Vietnam War, See George C. Herring, *America's Longest War: The U. S. and Vietnam* (Philadelphia: Temple University Press, 1982); or Stanley Karnow, *Vietnam: A History* (New York: Viking, 1983), together with the documentary material in *The Vietnam Reader*, ed. Marcus Raskin and Bernard Fall (New York: Random House, 1965); and *Vietnam: A History in Documents*, ed. Gareth Porter (New York: New American Library, 1981). For the history of American policy, nothing surpasses the U. S. Defense Department's once-secret *Pentagon Papers*, ed. Mike Gravel (Boston: Beacon Press, 1971).

For an analysis of military tactics on the American side, see Guenter Lewy, *America in Vietnam* (New York: Oxford University Press, 1978; William Westmoreland, *A Soldier Reports* (Garden City, NY: Doubleday, 1976); Douglas Kinnard, *The War Managers* (Hanover, NH: University Press of New England, 1977), Leslie Gelb and Richard Betts, *The Irony of Vietnam: The System Worked* (Washington, DC: Brookings Institution, 1979); Harry Summers, Jr., *On Strategy: A Critical Analysis of the Vietnam War* (Novato, CA: Presidio Press, 1982); and Andrew F. Krepinevich, Jr., *The Army and Vietnam* (Baltimore: Johns Hopkins University Press, 1986). For the Vietnamese side see Vo Nguyen Giap, *Big Victory, Great Task* (London: Pall Mall, 1968), together with Robert J. O'Neill, *The Strategy of General Giap Since 1964* (Canberra: Australian National University Press, 1969).

Good background studies of the Vietnamese context include Bernard Fall, *Street Without Joy* (London: Pall Mall, 1964); G. Kahlin and John Lewis, *The United States in Vietnam* (New York: Dial Press, 1969); and, especially, Frances Fitzgerald, *Fire in the Lake* (Boston: Atlantic, Little Brown, 1972).

The U. S. State Department's legal justifications for involvement in Vietnam are "Aggression from the North: Legal Basis for United States Actions Against North Vietnam" (February 1965), reprinted in Fall and Raskin, pp. 143–155 (for criticism, see I. F. Stone, in *The Vietnam Reader*, pp. 155–164); and "The Legality of United States Participation in the Defense of Vietnam," (4 March 1966), reprinted *The Vietnam War and International Law*, ed. Richard Falk, I (Princeton, NJ: Princeton University Press, 1968). See also John Norton Moore, "The Lawfulness of Military Assistance to the Republic of Viet-Nam," *American Journal of International Law* 1-34 (1967). Arguments for the moral permissibility of American involvement in Vietnam are in William O'Brien, *The Conduct of Just and Limited War* (New York: Praeger, 1981); the stronger argument that it was morally obligatory to intervene in Vietnam is pressed by Norman Podhoretz in *Why We Were in Vietnam* (New York: Simon and Schuster, 1983).

Much criticism of American intervention of Vietnam is directed toward showing that intervention was contrary to long-term American interests; see, for example, J. W. Fulbright, *The Arrogance of Power* (New York: Random House, 1966); and Barbara Tuchman, *The March of Folly* (New York: Knopf, 1984).

The case that intervention in Vietnam was illegal is pressed by Richard A. Falk in "International Law and United States Intervention in Vietnam," *Yale Law Journal* 1051-1094 (1967); and by Charles Caumont in "A Critical Study of American Intervention in Vietnam" (1968), reprinted in *The Vietnam War and International Law*, II, ed. Richard Falk, (Princeton, NJ: Princeton University Press, 1969). The immorality of intervention from the standpoint of liberal principles is argued in George C. Herring, *America's Longest War* (New York: John Wiley, 1979); from the standpoint

of human rights, in Walzer's *Just and Unjust Wars;* and from Christian ethics, in Clergy and Laity Concerned about Vietnam, *In the Name of America* (Annandale, VA: Turnpike Press, 1968). Its malevolent character is argued in Carl Oglesby and Richard Shaull, *Containment and Change* (Toronto: Macmillan, 1967); and William Shawcross, *Sideshow: Nixon, Kissinger, and the Destruction of Cambodia* (New York: Simon and Schuster, 1979).

Competent Authority. The starting point for discussion of the competence of the Saigon regime is the Geneva accords of 1955, reprinted in *The Vietnam War and International Law,* I. For the legitimacy of the use of force by the Vietcong, see Thomas M. Franck and Nigel S. Rodely, "Legitimacy and Legal Rights of Revolutionary Movements with Special Reference to the People's Revolutionary Government of South Vietnam" (1970), reprinted in *The Vietnam War and International Law,* ed. Richard Falk, III. (Princeton, NJ: Princeton University Press, 1972). For the constitutionality of the American president's involving the United States in Vietnam without a declaration of war, see Francis Wormuth's pamphlet, "The Vietnam War: The President versus the Constitution," reprinted in *The Vietnam War and International Law,* II.

Right Intention. For a study of intentions on the American side, see David Halberstam, *The Best and the Brightest* (New York: Random House, 1972); William Colby and Peter Forbath, *Honorable Men* (New York: Simon and Schuster, 1978); and Wallace Thies, *When Governments Collide: Coercion and Diplomacy in the Vietnam Conflict 1964–68* (Berkeley: University of California Press, 1980). For the intentions of the war's principal architect, see Lyndon B. Johnson, *The Vantage Point* (New York: Holt, Rinehart, and Winston, 1971).

Just Cause. The incidents in 1964 in the Gulf of Tonkin are recounted in Joseph C. Goulden, *Truth is the First Casualty: The Gulf of Tonkin Affair—Illusion and Reality* (Chicago: Rand McNally, 1969); and Eugene Windchy, *Tonkin Gulf* (Garden City, NY: Doubleday, 1971).

Proportionality. O'Brien's discussion of proportionality in the Vietnam war is in *The Conduct of Just and Limited War,* Ch. 5; see also Eliot Hawkins, "An Approach to Issues of International Law Raised by United States Conduct in Vietnam," in *The Vietnam War and International Law,* I. The immense difficulties of carrying out the American program were described by the pro-NLF journalist Wilfrid Burchett in *Vietnam: The Inside Story of a Guerrilla War* (New York: International Publishers, 1965) and ignored by American policy makers who thought they knew better. The

costs imposed on Vietnam by American military methods are detailed in Jonathan Schell, *The Military Half* (New York: Knopf, 1968).

Just Peace. A book that captures the ironies of the Vietnam denouement in achingly personal terms in Truong Nhu Tang, *A Vietcong Memoir* (New York: Random House, 1985).