

idity is rooted in the human capacity for self-transcendence and for justice. The pope's insistence that freedom comes from obedience to the truth about one's fellow human beings is similar to John Courtney Murray's insistence that the opening words of the American Declaration of Independence were an affirmation that "there are truths, and we hold them." The encyclical has learned enough from the democratic experience to affirm that the discovery of these truths will come not from theology alone but from a truly interdisciplinary inquiry, that it demands attention to the practical experience of diverse peoples, and that "many people who profess no religion" will contribute to it.<sup>78</sup> But to this democratic experience, it makes an indispensable contribution: the need for solidarity and a commitment to the fact that human beings are not for sale, whether they be the poor in the advanced societies of the North Atlantic or those who live in the developing countries of the Southern hemisphere. Those who have been led to believe that *Centesimus annus* endorses "really existing capitalism" should take a hard look at the text. I hope that this modest "note" will encourage both such careful reading and subsequent talking in the spirit of solidarity and commitment to the common good that permeates the encyclical.

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#### THE JUST-WAR THEORY AFTER THE GULF WAR

Pictures on the nightly news from Croatia, Israeli-occupied territories, El Salvador, South Africa, and Iraq itself regularly remind us that the Gulf War of 1990-91 is simply one episode in the continuing history of military conflict and armed violence. But for several reasons it is worth special attention.

First, as an example of the new high-tech form of conventional warfare, the Gulf War gives us our first extended view of what the moral and policy problems of this new stage or type of warfare will be.

Second, the Gulf War, since it is the first major conflict to arise since the collapse of the Soviet empire, may well be an important indicator of the political shape of wars to come as well as of crises that will lead people to think they are on the edge of war. The coalition response to aggression in a world that has moved beyond bipolarity manifests one significant aspect of the international order of the future. The fact that the original conflict arose between a state that was lightly armed and very wealthy and a state that had both a modernizing economy and an extensive and diversified supply of armaments raises a whole series of

<sup>78</sup> *Centesimus annus* no. 60.

questions about weapons sales, access to technology, proliferation of different types of arms, and the role of alliances and international organizations in guaranteeing the security of small states.<sup>1</sup> The fact that control of oil reserves was a significant issue both in the original conflict between Iraq and Kuwait and in the subsequent Western reaction may be an indicator of a new series of conflicts in which access to resources rather than "national liberation" and ideological affinities will be the decisive consideration.<sup>2</sup>

Third, the Gulf War gives a vivid but quite unnecessary reminder that the Middle East is the most dangerous and violent area in the world today with numerous unresolved issues about forms of government, territorial boundaries, religious claims to political power, ethnic conflicts, staggering inequalities of wealth, and radically different responses to modernization and the Western world. The moral assessment of conflicts in this part of the world is bound to be especially difficult, because the conflicts will involve disparate moral traditions and will have a religious dimension which cannot be ignored.

As we look back over the Catholic contribution to the general public debate that began after Iraq's annexation of Kuwait on August 2, 1990 and which still continues (though in much diminished volume since the spring of 1991), we may feel that it is all rather inconclusive. Father Bryan Hehir, who plays a shaping role in the debate as an advisor both to the U.S. Catholic Conference and to many individual bishops and as a very well-informed and careful scholar, acknowledged at a key point in the process (February 1991) that "I am not prepared to declare the entire war unjust purely and simply."<sup>3</sup> Writing at a time when the scope and success of the air war was already apparent, he admitted that he was not ready to urge people to disobey the U.S. government or to call for the government itself to "cease and desist" from its prosecution of the war. He borrowed a judgment from Anthony Lewis, a columnist for the *New York Times*, who called the war "just but unwise." Like most commentators who have reflected on the Gulf War in moral terms, Hehir believed that compelling Iraq to evacuate Kuwait and deterring it from invading Saudi Arabia were objectives that warranted the use of force; but he also provided a list of those objectives that he regarded as serious issues but that he was not willing to accept as constituting just causes for war. The list included:

<sup>1</sup> The importance of the proliferation issue is strongly insisted on by Christian Mellon, "Trois leçons de la guerre du Golfe," *Cahiers pour croire aujourd'hui* 76 (1991) 22.

<sup>2</sup> For a brief thoughtful treatment of the oil issue in the Gulf War, see Gerard J. Hughes, "Wise after the Event," *The Tablet* 245 (1991) 635.

<sup>3</sup> J. Bryan Hehir, "The Moral Calculus of War: Just but Unwise," *Commonweal* 118 (1991) 126.

“access to oil, preventing nuclear proliferation, establishing a balance of power in the Middle East, and Iraq’s human rights record.”<sup>4</sup>

In addition to addressing just cause or the “why” of the war, Hehir was also concerned about the “when” and the “how” of the war. In this he was typical of the mainstream of the public debate; for Hehir, as for most other participants, the questions of whether war was indeed a last resort and of whether some less violent alternative would have been sufficient to dislodge Saddam Hussein’s forces from Kuwait were of central importance. The centrality of these questions resulted from two factors. One was the time gap between Iraqi aggression and coalition response. This was virtually inevitable, given the distance of most of the coalition forces from the projected area of combat. But the delay was welcome both to those who wanted to work out a diplomatic solution to the crisis and to those military leaders who wanted the operation against Iraqi forces to be prepared in a thorough and comprehensive manner. The other factor was the fall 1990 testimony of retired military leaders and defense officials before the Senate Armed Services Committee to the effect that Iraq could be compelled to withdraw from Kuwait through comprehensive economic sanctions. This was a policy that was already in place and endorsed by the United Nations. It provided a specific alternative to the policy actually pursued by the coalition, an alternative which was acceptable both to many of those who regarded the annexation of Kuwait as a just cause for war and to those who were opposed to war. The imposition of sanctions is itself a coercive policy, though it need not involve bloodshed; for there is an implicit threat of force against those who do not comply with the embargo. Sanctions constituted in the minds of many, including the leadership of the U.S. Catholic Conference, a course which it was “a moral imperative” to pursue until its possibilities were exhausted.<sup>5</sup>

A provocative and valuable discussion of the sanctions issue was provided by Father Francis X. Winters, a theologian on the faculty of the School of Foreign Service at Georgetown. Winters summarizes the argumentation of the important letters sent on November 7 by Archbishop Mahony of Los Angeles to Secretary of State Baker<sup>6</sup> and by Archbishop Pilarczyk of Cincinnati, the president of the U.S.C.C., to President Bush on November 15, in the following three propositions:

(1) that sanctions were a necessary and sufficient instrument to dislodge Iraq

<sup>4</sup> Ibid. 125.

<sup>5</sup> Archbishop Daniel Pilarczyk, Letter to President George Bush, November 15, 1990, in *Origins* 20 (1990–91) 397.

<sup>6</sup> Archbishop Roger Mahony, Letter to Secretary of State James Baker III, November 7, 1990, in *Origins* 20 (1990–91) 384–86.

from Kuwait; that (2) the just-war criterion of "last resort" forbade reliance on any instruments to attain this goal *except* sanctions and the maintenance of forces in the Gulf; and that (3) the resort to force would likely violate the just-war principle of proportionality.<sup>7</sup>

Winters argues that the historical record on economic sanctions should make us sceptical of the first claim and that the third claim seems to rest on an unwarranted and unargued devaluation of the survival of Kuwait. But his discussion of the second claim is particularly instructive. Winters argues that Archbishop Pilarczyk (along with many others) misunderstood the traditional criterion of last resort:

For the criterion, namely, that a nation which is party to an international dispute may not resort to the use of force (for example, invasion) until it has appealed to bilateral and multilateral adjudication (in this case, the Arab League, the World Court, the U.N. Security Council) has normally been understood to articulate an obligation on the party who *initiates* war. In this case, of course, that party was Iraq, which violated the territorial integrity of Kuwait on August 2, 1990. Once Kuwait was invaded by Saddam Hussein in violation of the criterion of last resort, just-war theory accorded an *immediate* right of armed resistance to Kuwait and whatever allies it could speedily gather. To argue that, after being invaded, as Kuwait was on August 2, the wronged nation must negotiate with the aggressor for an unspecified period of time, while the aggressor pillages the conquered nation, is, some have argued, to stand the just-war theory on its head.<sup>8</sup>

I think that Winter's point is important and correct; but it applies in the first instance to Kuwait, the primary and direct victim of aggression, which is clearly entitled to defend itself. Given the break in military action which occurred as a result of the speedy imposition of Iraqi control and the long time required to bring coalition forces into a condition of readiness to attack, it was reasonable for various parties to attempt to resolve the dispute and to terminate the war which had already begun. More than that, it was a matter of considerable moral urgency to find alternatives that would be less bloody and less harmful than a major military operation to recover Kuwait. For the United States as well as for each of the other members of the coalition there was a distinct moment of decision about whether to make Kuwait's case its own. In this moment the question arises whether there is an alternative way of achieving a just resolution of the conflict; so, contra Winters, the question of whether a war is indeed the last resort for us is appropriate. The original paradigmatic situation of one nation de-

<sup>7</sup> Francis X. Winters, "The 'Just War' War," *Commonweal* 118 (1991) 221.

<sup>8</sup> *Ibid.* 222.

fending itself against a neighbor's attack has been expanded. But at the same time, in support of Winters's approach, we should recognize that the action of launching "Desert Storm" or some similar attack counts essentially as a response to an act of war initiated by the other side. Failure to respond to the plight of Kuwait after the invasion is not morally equivalent to sustaining a peaceful status quo. In fact, Michael Walzer in an interview given before the coalition attack on Iraq made the observation that Iraq was now a status quo power, intent on preserving and digesting its gains.<sup>9</sup>

### *How Reliable is the Just-War Theory?*

In a later article, Winters makes the observations that the Gulf War "has been a fair test of just-war theory" and that "on balance the theory failed the test of providing wise judgment." He attributes this problem to a lack of "sound political judgment."<sup>10</sup> This last claim is not easy either to verify or to dismiss. But the inconclusiveness of the general debate does raise questions about whether just-war theory is really a practicable and enlightening guide for political decision makers, for military personnel, and for citizens, as many of its proponents affirm. The basic lines of objection to relying on just-war theory seem to me to come down to three points: first, the pacifist thesis that the theory is theologically unacceptable and is incompatible with basic Christian values; second, the view that the theory effectively leaves out of consideration some aspects of either the particular situation or the general character of modern warfare that need to be considered if a satisfactory and conclusive verdict on the morality of a given war is to be reached; third, the view that the theory contains so many indeterminate elements and potentially contradictory considerations that we should not be surprised that applying it does not yield a determinate result.

These objections I shall for purposes of brevity refer to as the pacifist thesis, the incompleteness thesis, and the indeterminacy thesis. All of them make appearances in the recent literature.

1. The *pacifist* objection can be stated in a straightforward syllogistic way which proceeds from a universal major premise that all wars are wrong; this would not seem to encourage either authors or readers to pay much attention to the specific features of the Persian Gulf War. But often enough what actually goes on when pacifists or people whose

<sup>9</sup> Michael Walzer, Interview, *Tikkun* 6 (1991) 40.

<sup>10</sup> Francis X. Winters, "Freedom to Resist Coercion: Augustine, Aquinas, Victoria," *Commonweal* 118 (1991) 372.

thought is moving in a pacifist direction comment on a particular war is that they want to offer further evidence that war is indeed an unacceptable evil or that it has now clearly become so. The progress of military technology ensures that there will be new means of killing and horrible forms of death which can serve as fresh examples of the evils of war. Contemporary pacifism, like just-war theory, is often uneasily yoked with an intense commitment to justice and the transformation of society; it is not to be reduced to an abstract universal premise. We should also note that there are many who have a pacifist disposition or a pacifist hope but who would not affirm the universal rejection of war which is the defining feature of pacifism. For them the evils done and suffered in a particular war are likely to have a special weight and will serve as so many reasons both to condemn this particular war and to consider the possibility that the pacifist view is either true or likely to become true. Recognition of this pattern of response may shed some light on the much-noticed article in the July 6, 1991 issue of *La Civiltà Cattolica*.<sup>11</sup> The principal theses of this very controversial article are:

1. Modern warfare is radically different from war in the past.
2. Modern warfare is total: it involves entire populations and all the resources of warring states, it involves many nations, and it uses weapons of mass destruction.
3. The Church originally saw war as incompatible with the spirit of the gospel; it then accepted the defense of the Roman Empire as a necessity. It tried to limit war among Christians in the Middle Ages, but did actively promote wars against non-Christians. From the time of Benedict XV (1914–22), the Church's opposition to war has been absolute.
4. Theology accepted just-war theory, but it never became the official doctrine of the Church.
5. The conditions for a just war cannot be met today.
6. War always produces more harm than good, since the logic of war leads to an escalation of objectives requiring the destruction of the enemy.
7. The injustices which wars seek to remedy can always be resolved through peaceful means of dispute settlement.
8. The only acceptable kind of war is a war of pure defense against ongoing aggression.
9. A war of legitimate defense becomes illegitimate if greater evils result from the war than from bearing injustice or if weapons of mass destruction are used.

<sup>11</sup> Editorial, "Coscienza cristiana e guerra moderna," *La Civiltà Cattolica* 142 (1991) 3–16. Through the kindness of Mr. David Gibson I have been able to consult a translation of this article by Father William Shannon which appears in *Origins* 21 (1991) 450–55. The formulation of the theses, however, is mine.

10. The use of weapons of mass destruction is immoral because such weapons unleash unlimited destruction.

11. The use of conventional weapons in modern warfare is also immoral because of the great destructive power of these weapons and because of the connected possibility of using atomic, biological, and chemical weapons.

12. Modern warfare does not solve the problems it addresses, but is part of a continuing spiral of violence.

13. Modern warfare is enormously expensive.

14. Peace is possible, and war is not necessary.

15. The Church in four major documents of this century has absolutely condemned war.

16. The proclamation of peace is part of the religious mission of the Church; hence the Church's denouncing warfare is not an improper incursion into politics.

17. The Church opposes the ideology of war and uncovers the actual motives for war, which are political domination and economic interests.

18. Practical recommendations include: (a) a limit on the production of arms, (b) solving the radical injustice of North-South economic disparity, (c) resolving regional problems in the Middle East.

This article, which is an unsigned editorial, has been taken by some as preparing the way for a repudiation of just-war theory by the magisterium; so it deserves careful scrutiny. Thesis 8 makes it evident that the position being proposed is not pacifism, as Theses 3 and 5 might lead one to believe. Thesis 9 actually involves an appeal to the norms of just-war theory. Thesis 18 could readily be accepted by proponents of just-war theory and by supporters of the coalition. Theses 1, 13, and 14 are clearly true, but they do not necessarily lead to the sweeping conclusions the editors wish to draw. Thesis 4 suggests a minimalist view of church teaching. The principles of just-war theory have not been solemnly defined as part of Catholic teaching, but they have been both presupposed and expounded in numerous papal and episcopal statements. It was not so very long ago that Pius XII denied that individual Catholics could rightly refuse military service. Theses 2, 6, 10, 11 and 12 rely on a doctrine of necessary escalation in warfare, which is not borne out by the course of events in the Gulf War, which, whatever its faults, was clearly fought as a limited war. Among the significant limits, we should notice the refusal of Israel to respond to the Scud missile attacks, the avoidance (admittedly imperfect) of civilian targets in the air war, the decision by both sides not to employ chemical weapons, and the limited advance of coalition forces at the end of the ground war. These considerations do not show that the war was just, but they make a doctrine of necessary and uncontrolled escalation seem to be a willful defiance of the facts. Theses 7 and 12 show a failure to reflect on the experience of trying to satisfy Hitler's demands in the

1930s and on the experience of reconstructing society in the defeated powers after 1945. The key notion of "absolute condemnation" in Thesis 15 is not clarified; the reason for this, I suggest, is that the thesis would fall apart, since the implications of these condemnations were not so radical as those that the editors wish to assert. Thesis 17 is an important half-truth; but it only contributes to the editors' argument if it is taken, not as a specific claim about particular actors but as a necessary truth about the motivation of political decision-makers, in which case it is contradicted by a Catholic understanding of human nature as free and capable of both good and evil.

What are we to make of the controversial and vulnerable ensemble of affirmations in this article? I venture to make three positive suggestions. First, the editors wanted to register their dismay at the human cost of the Gulf War and their profound scepticism that it would have significant beneficial effects. These are honorable and reasonable concerns, but the intensity with which they were felt seems to have impeded the editors' ability to make careful arguments and to articulate their position in a clear fashion which would show some respect for the intelligence and probity of those who reach different conclusions. Second, the editors of *Civiltà* wish to delegitimize resort to war as a possibility in Christian moral discourse and as a public-policy option.<sup>12</sup> Their revulsion at the Gulf War is comparable to the feelings of many intelligent observers at the end of World War I; these feelings led to the renunciation of war as an instrument of national policy in the Kellogg-Briand pact of 1928. War has to be acknowledged as "a reflection on human nature," in Madison's phrase,<sup>13</sup> and as clear evidence that something has gone terribly wrong. No amount of reliance on just-war theory should obscure this point. In this sense it will always be appropriate to condemn warfare. But the questions that just-war theory tries to address are about what may rightly be done when minimal standards of order are violated and when there is serious reason to think that peace cannot be maintained. Thus it is not clear how the editors of *Civiltà* would deal with Winters's point that the Gulf War is a defensive war of the sort that they should recognize as legitimate. They could reply, of course, that it fails the proportionality test laid down in Thesis 9; but this involves a more specific set of judgments than Thesis 5 proposes.

If one compares the destruction wrought by the Gulf War and the

<sup>12</sup> This seems to be the objective of many of the speeches and dicta of John Paul II and of Paul VI before him. See, in particular, the New Year's Day address of John Paul II to the Diplomatic Corps, in *Origins* 20 (1991) 491–94.

<sup>13</sup> James Madison, *The Federalist Papers* 51.



nonviolent surrender of power by the Communist regimes in Eastern Europe, a reasonable person will have no doubts about which is the better path forward for humanity. But one also needs to include in one's understanding of the situation such further elements as the role of nuclear deterrence in restraining Soviet power during the Cold War, the contribution of Afghan resistance to the erosion of Soviet power and confidence, the possibility of serious violence in the disintegrating Soviet Union, and the willingness of the United States to sustain serious negotiations about regional problems in the Middle East. For we are dealing with more complex histories and a wider range of alternatives than a simple polarity of violence and nonviolence. Third, the editors are attempting a revision and repositioning of official church teaching so that the strong denunciations of warfare issued by recent popes would clearly count as the center of the teaching, and defensive war against ongoing aggression would count as a remote peripheral exception. Such a revision naturally raises questions about continuity in church teaching, which is a very delicate point. It could actually be presented as a clarification of just-war theory, which operates with a strong presumption against war.<sup>14</sup> But here I think that the editors of *Civiltà* are up against a dilemma. They can emphasize continuity and so put up for question their sweeping condemnation of the Gulf War, which many Catholics and others take to be a just war in its general scope. Or they can insist on the absolute condemnation of modern warfare and raise serious questions about the continuity of church teaching and their reading of history, both secular and religious.

2. The second objection, the *incompleteness* thesis, was presupposed by many of those who felt that focusing the discussion of just cause narrowly on the events of August 2, 1990, when Iraq invaded Kuwait, and on the subsequent annexation and occupation gave a misleading view of the dispute. Even the most vehement critics of the war in the United States and Western Europe such as the editors of *30 Days*, who devoted most of their March 1991 issue to a blistering attack on the Gulf War—which they described as “a ‘just’ extermination”—had to acknowledge that Iraq's seizure of Kuwait violated international law and was overwhelmingly condemned by the United Nations.<sup>15</sup> But the critics could point to a variety of more or less relevant considerations

<sup>14</sup> See, for example, the important essays by J. Bryan Hehir, “The Just-War Ethic and Catholic Theology,” and James Childress, “Just-War Ethic and Catholic Theology,” and James Childress, “Just-War Criteria,” in Thomas A. Shannon, ed., *War or Peace?* (Maryknoll N.Y.: Orbis, 1980).

<sup>15</sup> Editorial, *30 Days* 4 (1991) 3.

which cast serious doubt about the consistency of U.S. policy in the Middle East generally and about the credibility of allied claims. Such considerations include U.S. support of Israel despite Israel's refusal to yield territories occupied since the Six Days' War in 1967; Western toleration of the Syrian occupation of Lebanon; the involvement of various Western states and corporations in providing weapons, sophisticated technology and material that would be useful for the production of advanced weapons of mass destruction; the sharing of intelligence with Iraq; tacit or covert support for Iraq in its long war with Iran; Western acquiescence in human-rights abuses in Iraq, Kuwait, Syria, and other states in the area; extensive commercial dealings, especially by France, with Saddam Hussein's regime; American toleration of the Israeli nuclear program; Western passivity in the face of nuclear proliferation in countries outside the region; previous American, British, and French interventions in the region; the Israeli attack on the Osirak nuclear reactor in Iraq in 1981; the entire history of Western imperialism; the efforts of Western states and companies to control or to regulate the petroleum resources of the region. These considerations have all been invoked in order to alter the popular Western interpretation of the moral imbalance between the coalition and Iraq.<sup>16</sup>

These considerations are relevant to moral assessments made within the just-war tradition in several ways. First, they call for a broader understanding of the sources of conflict and urge us to assess particular actions not simply for their conformity with specific norms of just-war theory but as part of a more extended narrative. Second, they are or can be extremely relevant to our reading of the intentions of participants in a conflict. They can assist us in the always difficult task of determining real as contrasted with stated intentions, and they direct our attention to those factors that cause a particular conflict to be interpreted in radically different terms by the opposing parties. Third, they are important to our assessment of the moral character and worth of the protagonists. Thus it is comparatively easy to use some of these considerations to show that American policy in the region has been inconsistent, short-sighted, and self-interested. Fourth, they remind us of the various policy objectives of the participants in the conflict and of the range of values that may be harmed or enhanced by different courses of action. In this way they serve to specify the very broad category of proportionality which requires that the benefits resort to force is reasonably expected to produce and the harms it is likely to

<sup>16</sup> Considerations of this sort are laid out in a persuasive way in Thomas Michel, S.J., "Why the War Bodes Ill for Christian-Muslim Relations," *Origins* 20 (1991) 633-38.

prevent must outweigh the evils that it will produce. Fifth, considerations of this type can be brought into just-war assessments in determining what the American bishops in their pastoral letter, *The Challenge of Peace*, call the criterion of comparative justice.<sup>17</sup>

In the case of the Gulf War, we face the question of whether we should allow some set of these considerations to overturn the generally acknowledged affirmation that Kuwait and its allies had a just cause for waging war with Iraq. Here an analogy may be helpful. If we think of aggression across international boundaries as a crime<sup>18</sup> (rather like assault), then it is legitimate to stop the crime, to reverse its effects, to restrain the criminal by force, and to convict the criminal. But this does not stand in the way of our acknowledging that the criminal may have relevant and valid excuses and that the situation which made the crime appear attractive may contain significant forms of injustice for which the criminal is not responsible. The application of just-war theory to maintain international order has something of the abstract quality of a criminal trial, in which many elements of the situation are excluded from consideration. The point in this case is whether Iraq in invading Kuwait committed an unacceptable act of injustice, an inadmissible breach of international order, not whether Iraq does or does not have some legitimate territorial claims against Kuwait, much less whether Iraq's general course of conduct can find some support in some moral considerations.

Containing just-war theory in this abstract way and focusing our evaluations on particular actions and issues is necessary if we are to arrive at determinate judgments within the theory. But the abstractive element that I am pointing to also reminds us that statecraft and moral understanding do well in looking also to a more holistic framework for understanding the sources of conflict and the diversity of perceptions that are commonly found on opposing sides. In the case of the Gulf War, however, it would be a serious mistake to think that a broader set of considerations or a more holistic approach would exonerate or excuse Saddam Hussein. For instance, the fact that the United States may be inconsistent, unwise, and wrong in tolerating Israel's development of nuclear weapons,<sup>19</sup> does not constitute moral justification for Saddam Hussein's use of deception and his signing and breaking the Non-Proliferation Treaty. Various forms of discrimination and

<sup>17</sup> For a brief, clear formulation of the way just war principles are currently presented in Catholic teaching, I rely on U.S. Catholic Conference, *The Challenge of Peace* (Washington, D.C.: U.S. Catholic Conference, 1983) nos. 80–110. "Comparative justice" is explained in nos. 92–93.

<sup>18</sup> See Michael Walzer, *Just and Unjust Wars* (New York: Basic, 1977) 51–63.

<sup>19</sup> See Seymour Hersh, *The Samson Option* (New York: Random House, 1991).

injustice in Kuwait do not provide an acceptable excuse for torture and massacre in Iraq, though recognition of these problems might well diminish the tendency to self-righteousness of the Americans and their allies, which would not be a bad thing. Drawing on these broader considerations is in many ways a more difficult task than applying the norms of just-war theory; it requires a delicate blending of sympathy and scepticism if a truly fair and illuminating account of these broader considerations is to be given as well as a great fund of historical, social scientific, and cultural knowledge.

3. The *indeterminacy* thesis states that the various criteria of just-war theory do not cohere in such a way that they can be relied on to give definite and convergent results in the hands of different theorists. This is urged with his characteristic vigor by John Howard Yoder, who reflects on a previous debate in the *Christian Century* between James Turner Johnson and Alan Geyer. As he observes, "A criterion is something you can measure with; that can be done only if its meaning is shared by the several parties."<sup>20</sup> The meaning of such terms as "just cause" and "legitimate authority" is subject to dispute. The measurement of proportionality is subject to challenge, both by those who wish to attend to different values in the situation and by those who regard the notion as an incoherent relative of utilitarianism. The theory itself gives very little guidance about how to make decisions in clouded situations where one affirms both the justice of the cause and the disproportion of the means.

### *Questions Raised by the Fighting*

The conduct of the Gulf War itself raises many questions. Some of the most important are:

1. Were there intentional violations of the principle of noncombatant immunity during the air war?
2. Was the extensive damage done to the Iraqi infrastructure, particularly to those parts of it (the electrical and water systems) necessary for public health, a violation of noncombatant immunity (even if we assume that civilians were not targeted as such)?
3. Was adequate opportunity to surrender given to the Iraqi soldiers fleeing Kuwait?
4. Were the high totals of combatant and noncombatant casualties a violation of the principle of proportionality?
5. Did the coalition decision to end the war with Saddam Hussein

<sup>20</sup> John Howard Yoder, "Just War Tradition: Is It Credible?" *Christian Century* (1991) 297.

still in power mean that objectives important for the establishment of a just peace in the region could not be met?

6. Does the failure to achieve some ethically desirable objectives (the removal of Saddam Hussein from power, comprehensive protection for the Shi'ite and Kurdish rebels, the conclusive elimination of all Iraqi weapons of mass destruction) alter our judgments about proportionality?

7. Did the control of communications on the coalition side prevent citizens and soldiers from reaching an informed and conscientious judgment about matters that they needed to know in order to decide whether or not to fight or to support the war?

The September 1991 issue of the *Bulletin of the Atomic Scientists* provides two contrasting assessments of how the war was fought. Nicholas Fotion, a philosopher teaching at Emory University, praises the coalition for "taking—and keeping—the moral high ground."<sup>21</sup> He offers a good preliminary account of what distinguishes just-war theory from pacifism and realism. He contends that the coalition forces showed restraint in regard to attacks on civilians, and that their attacks on conscript forces produced numerous deaths that were tragic but not unjust.<sup>22</sup> He also gives a brief listing of Iraq's major violations of jus-in-bello norms:

Iraq held a large number of civilians hostage for an extended period of time, abused coalition prisoners, treated many Kuwait civilians cruelly, and executed others. They violated the rules of surrender at Kufji, sponsored two major ecological disasters, and perhaps worst of all, tolerated horrendous casualties among their own troops for no apparent military purpose.<sup>23</sup>

The items on this list do not establish the rightness of the way in which coalition forces behaved, but they serve as a useful reminder that we should look at jus-in-bello problems on both sides and that problems on one side are often linked to problems on the other side.

George Lopez, a political scientist at Notre Dame, notes the prominence of appeals to just-war theory in the U.S. public debate, but he is much more inclined than Fotion to believe that just-war norms were seriously violated. He mentions the Amiriya bomb shelter in Baghdad which was hit on February 13 with the loss of several hundred civilians. There is some uncertainty about whether this was the result of an intelligence failure or whether the structure had a significant military function as well. But this was clearly an aberration; it was coalition

<sup>21</sup> Nicholas Fotion, "The Gulf War: Cleanly Fought," *Bulletin of the Atomic Scientists* 47 (1991) 25.

<sup>22</sup> *Ibid.* 28.

<sup>23</sup> *Ibid.* 29.

policy to avoid purely civilian targets, which in this age of global television become instant foci for protest and all-too-vivid reminders of the brutality of war. The estimate that Lopez gives for Iraqi civilian casualties is 5,000 to 15,000 during the war and 4,000 to 6,000 after the war.<sup>24</sup> The wide range in the first set of figures is a reminder both of the collapse of communications within Iraq during the war and of the fact that Iraq is a closed society ruled by a dictatorship which treats information as an instrument of control.

Lopez also discusses the slaughter of Iraqi soldiers on the Jahra road from Kuwait to Basra, which became known as "the highway to hell." In this episode, which came at the end of the ground war, the head of the column was halted by aerial bombing; and the rest of the column of trucks, tanks, luxury cars, and personnel carriers was a stationary target for coalition air power. Retreating troops are a legitimate military target. These troops were withdrawing from Kuwait and thus were effectively complying with U.N. and coalition demands, but they were still under Iraqi military control, and they were moving toward an area which, as subsequent events showed, was a locus for coordinated Iraqi military action. In a sense, they were victims of the gap between air power and land power. It is reasonable to think that troops trapped in such a situation would be willing to surrender. But airplanes and missiles are not well equipped for taking prisoners. One can regard this case as, in Fotion's terms, tragic but not unjust, though one can also recognize a grim retribution effected on troops many of whom had been active in terrorizing and pillaging Kuwait. At the same time we need to find ways to deal with such situations in a humane and effective fashion. It should not be impossible to work out a surrender procedure for cases like this, especially when the side receiving the surrender enjoys overwhelming superiority. Conducting a "turkey shoot" of human beings who cannot effectively defend themselves cannot be morally acceptable.

Lopez observes that the air-land battle strategy employed in Iraq came closer to total war than anyone had expected.<sup>25</sup> Coalition dominance of the air made it possible to expand the target list; and the effects on the infrastructure of Iraq, which served to support both military activities and the life of the civilian population in a modernizing society, exceeded both the expectations of military planners and the fears of those concerned for the survival of civilians. The Harvard

<sup>24</sup> George Lopez, "The Gulf War: Not So Clean," *Bulletin of the Atomic Scientists* 47 (1991) 32.

<sup>25</sup> *Ibid.*

study-team report "Public Health in Iraq after the Gulf War," issued in May 1991, concludes that "infant and child mortality will double and that at least 170,000 children under five will die during the coming year as a result of the delayed effects of the Gulf Crisis."<sup>26</sup> Assessing this prediction is not easy; the compilers of the report, though clearly conscientious, had to work rapidly in an unfamiliar society in very difficult circumstances. These deaths, unlike those in the Amiriya bomb shelter, are not concentrated or clearly demarcated from deaths in the ordinary course of events. But even if we have some scepticism about particular estimates, we have to recognize a serious problem in how we understand and apply the notion of noncombatant immunity.

This is a problem that is not to be resolved by applying a distinction between direct and indirect killing, important and valuable though that distinction is. When systems necessary for the continued survival of a population are destroyed, then the attacking party bears some responsibility for the civilian deaths that result. In the Iraqi case, we are not dealing with an indirect killing, but with actions that increase the risk of people, especially the members of vulnerable groups such as infants or the elderly, dying from various illnesses. The causal chain is more complex than it is for indirect killing, and there is room for intervening actions that would break the causal chain and save the lives at risk. It is not easy to determine in such a situation just which or how many deaths are the result of the military action and which would have occurred in any event. It is possible that various decision-makers in the coalition operated on the assumption that after the defeat of Iraqi forces and the overthrow of Saddam Hussein the coalition would be in a position to manage humanitarian relief and rescue efforts throughout the territory of Iraq and that they could undo the damage they were doing. (It is reasonable to think that the limitation of coalition war objectives at the end of the fighting in March, however commendable it may have been on other grounds, actually left the ordinary people of Iraq worse off than they would have been under a coalition occupation.) The question would still remain whether it was justifiable or necessary to put the civilian population at such increased risk. This is an important question even if early estimates of casualties turn out to be on the high side.

For understandable reasons, the teaching of just-war principles in

<sup>26</sup> Harvard Study Team Report, "Public Health in Iraq" (May 1991) 5. See also the testimony of Lawrence Pezzullo, executive director of Catholic Relief Services, to the House Select Committee on Hunger, August 1, 1991, "The Worsening Humanitarian Picture in Iraq," *Origins* 21 (1991) 171-74.

the U.S. military has focused on the *jus-in-bello* principle of noncombatant immunity or discrimination. (The principle of proportionality is all too likely to raise large questions that require political judgments and do not yield definite answers.) According to this principle, appropriate targets for fire are combat soldiers, military installations, communications and transportation facilities that can be used for military purposes, arms factories and storage facilities; inappropriate targets are chaplains and medical personnel (even if in uniform), Red Cross vehicles, hospitals, and civilians generally. The focus is (quite correctly) on categories of persons who should not be targeted and who are not to be killed directly. The Gulf-War case shows that we need to think about extending the list of inappropriate targets to those systems that are necessary for the survival of the civilian population. This means striving to come up with answers to such questions as: (1) Is attacking such systems truly necessary for the war effort? (2) Are there alternative ways of disabling enemy forces which will bring less risk to the civilian population? My own view is that in the Iraqi case such attacks were not necessary, given our overwhelming air superiority, which should have left us free to pursue a highly selective targeting policy. This is, admittedly, a retrospective judgment and one that may well not apply to all future cases. But it seems to me that the necessity of attacking such systems will need to be shown. Abstaining from attacking such systems is comparable to the exclusion of food and medical supplies from the embargo.

The issues raised by the Gulf War are still to large extent unresolved and will be reinterpreted in different ways depending on the fate of the various political regimes in the area and on the outcome of the negotiations between Israel and its Arab neighbors which began in Madrid in November 1991. Our judgments of proportionality in particular are likely to be altered as we understand more deeply the factors at work in the war and as we grasp in more detail the intentions of the various agents.

Two matters that are likely to be continuing foci of interest are the evaluation of revolutionary violence (a topic which is currently relevant in El Salvador, Sudan, Cambodia, Burma, Peru, Yugoslavia, Sri Lanka, the Philippines, and South Africa), and the teaching of other religions, especially Islam, on the morality of violence and warfare.

A good brief introduction to Islamic teaching is provided by W. Montgomery Watt. Watt begins with the importance of peace (*salam*) to Islam and with the contrast between Christianity and Islam arising from the fact that Christians "only became a political community three centuries after Christ," whereas "from the time of Muhammad's Hejira or Emigration from Mecca to Medina in 622 A.D. the community of his



followers was a political as well as a religious community.”<sup>27</sup> Islam has drawn a contrast between the sphere of Islam (*dar al-islam*) and the sphere of war (*dar al-harb*). In the sphere of Islam peace is to prevail, and there are no just wars.<sup>28</sup> Muslim jurists did offer rules for wars against unbelievers, but “Muslim statesmen have never conceded the right of the jurists to make rules for the conduct of affairs between autonomous and semi-autonomous Muslim political units.”<sup>29</sup> Watt finds Islamic thought on issues of war and peace lacking in realism and persuasiveness, even though there is considerable convergence between some of the positions he cites and just-war theory.<sup>30</sup>

On the issue of revolutionary violence, which is always a problem within just-war theory, both because the theory is often formulated with a strong statist bias and because a revolutionary movement will necessarily contest the notion of proper authority that serves as one of the jus-ad-bellum criteria, I will discuss two essays, one by an American Protestant, the other by a Catholic working in Africa. Frederick Sontag, a theologian at Duke University long known for his sympathy with liberation theology, reviews a number of leading theologians on the subject of revolutionary violence (Gutiérrez, James Cone, Cornel West, Cullman) and generally finds them wanting. He commends Gutiérrez for taking a position that avoids making violence necessary, though he also criticizes him for evading the issue.<sup>31</sup> He is much struck by the difference in the social setting and its possibilities in North America and in Latin America. He concludes that “the Marxist/Leninist can undoubtedly find a clear doctrinal support for using violence to break those social/political/economic class structures which prevent liberation,” and that in this regard Marxism is very different from Christian doctrine which does not enjoin violence but which allows it to be “undertaken as an individual decision.”<sup>32</sup> This constitutes an unenthusiastic permission for a conscientious individual to resort to

<sup>27</sup> W. Montgomery Watt, “Islam and Peace,” *Studia Missionalia* 38 (1989) 167

<sup>28</sup> *Ibid.* 171.

<sup>29</sup> *Ibid.* 170.

<sup>30</sup> A more extensive set of reflections on this theme can be found in two volumes of essays edited by James Turner Johnson, the distinguished historian of just war theory, and John Kelsay, an ethicist with a strong interest in Islam: *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, and *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (Westport, Conn.: Greenwood, 1991). These volumes are the result of a sustained comparative dialogue and explore many of the parallels and conflicts between Western (predominantly but not exclusively Christian) and Islamic approaches to a very troubling set of problems.

<sup>31</sup> Frederick Sontag, “Liberation Theology and Political Violence,” *Thomist* 55 (1991), 271–92, at 287.

<sup>32</sup> *Ibid.* 292.

violence (perhaps on the model of Bonhoeffer), but does not countenance a revolutionary movement or party with significant Christian participation, which will need public forms of legitimation and justification. Sontag, I would add, never mentions the just-war tradition as a significant element in Christian reflection on this problem.

A more careful and nuanced study of this problem is offered by Breifne Walker, C.S.Sp., a theologian writing from Nigeria and focusing on official Roman Catholic teaching on this topic. He starts from Leo XIII, who denied the right to rebel against legitimate authority,<sup>33</sup> and he pays particular attention to *Firmissimam* (1937), a letter in which Pius XI addressed the situation of the church in Mexico, which suffered under continuing persecution from an antireligious state. Pius XI, in Walker's view, held "that in certain circumstances, it is morally justifiable to resist the state with armed force."<sup>34</sup> But Walker believes that his line of argument relies on a sharp distinction between means and ends, which is no longer tenable,<sup>35</sup> and that it neglects the complexity of the "connection between moral and historical judgments."<sup>36</sup> As a result, Pius XI overestimates the extent to which "the use of armed force is amenable to rational calculation and control."<sup>37</sup> He finds in the documents of the Medellin meeting of the Conference of Latin American Bishops (1968), and in Paul VI's encyclical *Populorum progressio* (1967), a recognition of "the dangerous ambiguity which clings to the use of armed force as a means for change."<sup>38</sup> In the Puebla meeting of CELAM (1979), he discerns a new decisiveness in the rejection of armed struggle to resist State injustice."<sup>39</sup> Behind this conclusion there is a convergence of pragmatic and theological considerations. Walker's article provides a fine illustration of the balancing of conflicting considerations and interpretations that is needed in assessing a highly problematic activity such as revolutionary violence, as well as a significant example of the way in which the detailed formulations provided by church documents and the need to guide the Catholic community through a great diversity of social and political circumstances give a disciplined concreteness and a historical complexity to the Catholic way of doing ethics.

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<sup>33</sup> Breifne Walker, C.S.Sp., "Official Roman Catholic Teaching on Revolutionary Armed Force," *Irish Theological Quarterly* 57 (1991) 44.

<sup>34</sup> *Ibid.* 47.

<sup>35</sup> *Ibid.* 49.

<sup>36</sup> *Ibid.* 50.

<sup>37</sup> *Ibid.* 76 n. 41.

<sup>38</sup> *Ibid.* 56.

<sup>39</sup> *Ibid.* 60.