

The Just War and The Gulf War

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I Introduction

Discussions of the morality of the Gulf War have tended to embrace the traditional theory of the just war uncritically and to apply its tenets in a mechanical and unimaginative fashion. We believe, by contrast, that careful reflection of the Gulf War reveals that certain principles of the traditional theory are oversimplifications that require considerable refinement. Our aims, therefore, are both practical and theoretical. We hope to contribute to a better understanding of the ethics both of war in general and of the Gulf War in particular.

Two caveats are necessary. First, spatial limitations prevent us from giving an adequate defense of our empirical claims. Since our conclusions about the Gulf War depend on those claims, we recognize that they may be challenged by those who disagree with us about the facts. Second, the same constraints allow us to discuss only the most important deficiencies in the traditional theory that are revealed by consideration of the Gulf War. Lesser problems, and problems that do not arise in connection with the Gulf War, are merely gestured at or not addressed at all.

The core of the traditional theory of the just war consists of two sets of principles. The first set consists of six principles governing the permissibility of the resort to war, or *jus ad bellum*. These are the principles of Just Cause, Proportionality, Last Resort, Reasonable Hope of Success,

Competent Authority, and Right Intention. The first four will be defined later. We do not discuss the latter two. The second set of principles governs permissible conduct in wartime, or *jus in bello*. It consists of principles of Discrimination, Proportionality, and Minimal Force. Again, the first and last will be defined in the text. The second, which is an analogue of the *jus ad bellum* principle of the same name, will not be discussed.¹

II Just Cause

The *Requirement of Just Cause* is not simply a requirement that there must be a good or worthy aim that war could be expected to achieve. Nor is it a stipulation that there must be a good aim that is sufficiently important to outweigh the evils of war. Just as it is not always a sufficient justification for intentionally harming another person that doing so would have better consequences than other alternatives, so too there may be numerous worthy and important aims, including some that outweigh the evils of war, that cannot justify the resort to war. Just Cause is, rather, a constraint on the *type* of end that can justify the resort to war. We will not attempt to specify a criterion for distinguishing between the types of end that do and those that do not provide a just cause for war. But we grant that there was just cause for the war against Iraq. Since we are critical of the war, we are not helping ourselves to an assumption that advances our case.

We define a *just aim* (JA) as a goal that it can be permissible to pursue by means of war, or a good that, if it would be realized by war, contributes to the case for war. A *just cause* (JC), by contrast, is what justifies the resort to war. The JC is the goal, or set of goals, that provides the reason for going to war and makes it permissible, if other conditions are satisfied, to resort to war.

A single JA may constitute a JC. Such a JA is a *sufficient* JA. We believe that there was a sufficient JA in the case of the Gulf War — namely, the expulsion of Iraqi forces from Kuwait and the consequent restoration of Kuwait's political independence. This is so even if one has profound reservations about the character of the Kuwaiti regime. Like defending another country from unjust aggression, reversing unjust aggression

1 For a canonical exposition of the theory, see the Pastoral Letter of the US Catholic bishops, *The Challenge of Peace* (London: CTS/SPCK 1983), 24-30.

against another country once it has occurred has long been recognized as a sufficient JA.

Although a sufficient JA is capable of constituting a JC, it need not be the sole element in the JC. For the JC includes all of the goals that it is permissible to pursue by means of war, or all of the goods that are such that the prospect of their being realized by the war contributes to the case for war. In the Gulf War, there were at least two further JAs: the prevention of future Iraqi aggression and the deterrence of other states from similar aggression.

These latter JAs were not, however, sufficient JAs. Although there may be extreme cases in which the prevention of anticipated future aggression (henceforth 'prevention') can constitute a JC, we otherwise agree with the traditional just war theorists, and also with the architects of international law, that the aim of prevention cannot justify the resort to war. That is, we accept that preventive defensive war is generally impermissible. Similarly, the aim of deterring future aggression (henceforth 'deterrence') cannot by itself constitute a JC for war.

Prevention and deterrence are therefore JAs of a special sort. While they cannot by themselves provide a JC for war, they are aims that it may be permissible to pursue by means of war *if* the resort to war is independently justified — that is, if there is a further, sufficient JA. JAs that have this secondary role are *contributing* JAs. Contributing JAs add to the case for war and constitute goals that can justify belligerent action in war that is not justified by reference to a sufficient JA. Thus a JC may consist of one or more sufficient JAs together with any number of contributing JAs.

Why do contributing JAs come into play only in the presence of a sufficient JA? Why, for example, can prevention not normally be a JC on its own? One reason is that our predictions about future aggression are so fallible that, if preventive war were recognized as permissible, wars would frequently break out on the basis of mistaken perceptions.² This leaves open the possibility that, in rare cases in which the evidence for future aggression is overwhelming, prevention can be a JC. In such a case, actual present aggression might provide evidence of future aggression by the same country that takes the overall level of evidence beyond the threshold of sufficiency. Often, however, actual aggression provides little evidence that further aggression is likely. Yet, even when that is so, and there is no independent evidence, actual aggression may suffice to

2 The category of preventive war includes preemptive war, which is war fought to prevent an *imminent* threat.

justify belligerent action to disarm the adversary.³ In other words, prevention may be permissible, given actual aggression, even if the evidence that future aggression is likely is weak. In this case, actual aggression defeats the presumption against preventive action, not because it overcomes the fallibility of predictions, but for a different reason.

While we are unable to identify precisely what that reason is, we believe that it is analogous to the reason that it is only when an actual offense has been committed that it is permissible to punish an individual in order to prevent future offenses. In civil society, we may not indefinitely detain a person on a mere suspicion, however well-founded, that, if he is not detained, he will engage in criminal activity. If someone engages in criminal activity, however, our response need not be limited to stopping the activity. We may also take further action both to prevent further violations of the law by the offender and to deter further violations, either by the offender or by others. In short, in order for it to be justifiable to punish an individual to prevent or deter him from violating the law, the individual must first commit an actual offense.

The justification for pursuing contributing JAs is analogous to the justification for punishment. Pursuing a contributing JA by means of war is permissible only if there has been an actual offense that itself constitutes a sufficient JA. Thus when the defeat of actual aggression constitutes a sufficient JA, belligerent action need not be limited to the achievement of that JA but may also be aimed at achieving the contributing JAs of prevention and deterrence.⁴

Punishment in civil society may serve a variety of legitimate functions, including societal defense (i.e., prevention of further criminal activity by the offender), deterrence of further offenses either by the criminal or by others, retribution, expression of moral condemnation, the symbolic

3 There may be cases in which disarming a defeated aggressor would be wrong. The paradigm of such a case would be characterized by three factors: the aggression of which the adversary was guilty is fully or partially excused by mitigating circumstances; the likelihood of further aggression is low; and there is reason to believe that the adversary will have need of its military forces for the purpose of justified self-defense.

4 Can the presence of a sufficient JA 'activate' contributing JAs, making it permissible to pursue them, even if one chooses not to pursue the sufficient JA? For example, if state *S* engages in aggression against one's enemy, so that there is a sufficient JA for war against *S*, may one go to war against *S*, not to defeat its aggression against one's enemy, but to prevent it from going on to attack one's ally or one's own country? We believe so. The occurrence of the offense is alone sufficient to lower certain moral barriers.

upholding of the norms of the society, reform of the criminal, and compensation of the victims of the crime. The JAs in war of prevention and deterrence are analogues of the first and second of these functions of punishment. It is possible that there are further contributing JAs that correspond to the other functions and that these JAs have a role in justifying the Gulf War. For example, trying to bring a less brutal regime to power in Iraq might correspond to the reformatory function of punishment. And ensuring that Iraqi aggression did not go unpunished might correspond to the retributive function. We mention these here but will not include them in our subsequent discussion since, even if they were contributing JAs, their importance was extremely limited.⁵

One might think that there could be two or more JAs, no one of which was a sufficient JA, which together could add up to a JC. We suspect that this temptation arises from thinking that Just Cause requires that there be a sufficient amount of good that war would achieve that would outweigh the evils it would cause. But this is to conflate Just Cause with Proportionality. Just Cause is a constraint on the types of end that may be pursued by means of war; it does not insist that there must be a great deal of good to be gained from war in order for there to be a JC, or that if there is a great deal of good to be gained there must be a JC. It is, of course, true that the more good the achievement of the JC would realize, the more likely the war is to be justified; but that is because it is then more likely to be proportionate.

We can now see that three apparently inconsistent beliefs that are commonly held by writers in the just war tradition are in fact consistent. These beliefs are [1] that preventive war is impermissible; [2] that no belligerent action can be justified unless it contributes to the achievement of a just cause (a belief that underlies the traditional theory's condemnation of the demand for unconditional surrender); and [3] that, in a war in which one has already defeated an act of aggression that provided the just cause, it is often permissible to continue belligerent action to disarm the adversary in order to prevent future aggression. Given a univocal notion of just cause, these propositions are indeed

5 It may be that, if Iraq's aggression had not been reversed, this would have had a harmful effect on the world's oil markets, causing damage to many economies and hence much human suffering. If so, then the prevention of this effect should be included among the goods that the war might have sought to achieve. It is not clear, however, whether this was a separate possible JA or whether it was subsumable within the JA of ending the Iraqi occupation of Kuwait. How serious the threat was is also a matter of speculation. Would Iraq have boosted production or boosted prices and how would other oil-producing nations have responded?

inconsistent. There is no inconsistency, however, if what [1] claims is that the prevention of future aggression cannot be a *sufficient* JA. That is compatible with the belief that it, as [3] may be interpreted to claim, can be a *contributing* JA.

Thus, while prevention of future Iraqi aggression and deterrence of future aggression by Iraq or by others were on their own insufficient to justify the resort to war against Iraq, they were contributing JAs given the sufficient JA of defeating the aggression against Kuwait. They were therefore goals that could have justified forms of belligerent action during the war that might not have been justifiable by reference to the sufficient JA of defeating Iraqi aggression. And they constitute goods that weigh against the evils caused by the war in determining whether the war was necessary and proportionate.

III Proportionality

1. Problems of interpretation.

We assume, then, that there was a JC for war against Iraq. But other requirements must be satisfied if war is to be just. We focus on two: Proportionality (henceforth *P*) and Last Resort (henceforth *LR*). In this section (Section III), we elucidate our understanding of *P*. Then, in Section IV, we consider whether the Gulf War satisfied *P*. In Section V, we develop a revised version of *LR*. In Section VI, we consider whether the Gulf War satisfied our version of *LR*.

Of the traditional *jus ad bellum* requirements, four — Just Cause, *P*, *LR*, and Reasonable Hope of Success — are intended to take account of considerations of consequences. *P* requires that the consequences of war should be acceptable when considered on their own, while *LR* requires comparisons between the consequences of war and those of alternative means of achieving the JC. (Because our versions of *P* and *LR* take account of probabilities, it is otiose to impose a separate requirement that the probability that war would achieve the JC should exceed a certain threshold. We therefore ignore Reasonable Hope of Success.) Although these requirements are concerned with consequences, they are not consequentialist — in particular, they impose restrictions on the range of goods and evils that count in favor of or against the permissibility of war. In the literature, however, these restrictions are seldom explicitly noted or defended. Moreover, different writers assume that different restrictions apply. Indeed, one occasionally finds a single writer who presupposes different restrictions at different points in the same work.

As usually interpreted, *P* holds that the relevant expected bad effects of war should not exceed the relevant expected good effects. A number of writers who have criticized the Gulf War have appealed principally to *P*. Douglas Lackey, for example, contends that '[t]he scale of the allied bombardment runs the President into trouble with the rule of proportionality, which requires that the damage caused by Allied action be less than the damage it prevents. Since the damage to Iraq was nearly total, and Iraq is considerably larger than Kuwait, the restoration of Kuwait cannot counterbalance the destruction of Iraq.'⁶ By contrast, Gregory Kavka, who holds that *P* requires 'that the good aimed at in fighting a war must outweigh the bads involved in, and caused by, the war itself,' remains agnostic about whether the war satisfied *P*.⁷ This is in part because he interprets *P* quite differently. He assumes that, in order to determine what the good and bad consequences of the war were, one must 'compare the war and its effects to what the world would have been like had the war not occurred, i.e., to a *counterfactual* situation.'⁸

There are two reasons why Kavka might believe this. One is that he may think that we cannot determine what the beneficial and harmful consequences of an act are unless we know what would have happened had the act not been done. At least, he might believe this when the relevant effect is the nonoccurrence of an event — e.g., when an act prevents the occurrence of an evil or a good. To know whether a rescuer's action saved a victim's life, for example, we may need to know whether the victim would otherwise have died. The second

6 Douglas Lackey, 'Bush's Abuse of Just War Theory,' in Duane L. Cady and Richard Werner, eds., *Just War, Nonviolence, and Nuclear Deterrence* (Wakefield, NH: Longwood 1991), 278

7 Gregory Kavka, 'Was the Gulf War a Just War?' *Journal of Social Philosophy* 22 (1991), 23-4

8 Ibid., 24. In another context, Lackey too appears to suggest that *P* requires a comparison between war and an alternative when he claims that *P* '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.' See Douglas P. Lackey, *The Ethics of War and Peace* (Englewood Cliffs, NJ: Prentice-Hall 1989), 40. Further down the same page, however, he offers a revised formulation: '[A] war for a just cause passes the test of proportionality unless it produces a *great deal* more harm than good.' He italicizes the intended revision, apparently unaware of having shifted from a comparative to a noncomparative version of *P* and thereby illustrating our earlier contention that writers often presuppose different interpretations of *P* at different points in their work.

reason is that it may seem that we should include among the consequences of war the goods and evils that consist in the avoidance of evils or the loss of goods that would be caused by the pursuit of courses of action other than war. Call these *comparative* goods and evils. Thus Kavka refers to the possibility that, if the US had relied on sanctions and they had worked, this 'would have set a marvelous precedent for a new world order: cancellation of aggressive gains by united diplomatic and economic action rather than war.'⁹ Perhaps he believes that the comparative evil of failing to set such a precedent counts among the costs of the war in determining whether it satisfied *P*.

If it were correct that, in order to determine whether war has as an effect the prevention of some evil, we must compare the effects of war with what would have happened had war not occurred, then the following problem would arise. Because there are indefinitely many courses of action that are compatible with not going to war, there are indefinitely many possible futures that might have occurred had war not occurred. How do we determine with which counterfactual situation or situations war must be compared? Kavka canvasses several proposals, eventually settling on the idea that war should be compared with whatever one would be most likely to do if one were not to go to war (which, in the case of the Gulf War, he believes was the continued imposition of sanctions).¹⁰ If war would have expected consequences as good as or better than those of the alternative, it would be proportionate; if not, it would be disproportionate.

There are numerous objections to this proposal. One is that it may be undetermined, when one is deliberating about going to war, what one would be most likely to do if one were not to go to war. Moreover, it is presumably true that the proportionality requirement applies to alternatives to war as well as to war itself. Thus what one would be likeliest to do if one were not to go to war must be an alternative that would itself be proportionate. But to what alternative should *that* alternative be compared in order to determine whether or not it would be proportionate? If we insist on a comparison with what one would be likeliest to do otherwise, we would seem to face an infinite regression.

Another objection is that it seems arbitrary for the permissibility of war to depend on something as contingent as what one would in fact be

9 Kavka, 24

10 While Kavka seems to abandon this interpretation in principle in response to one of the objections we cite below, he nevertheless follows it in trying to work out the implications of *P* for the Gulf War (Kavka, 24).

likeliest to do otherwise. What one would be likeliest to do depends, for example, on what options it has occurred to one to consider. Moreover, if what one would otherwise be likeliest to do would have worse consequences than war, then war would be proportionate no matter how destructive it would be; or, if what one would otherwise do would have better consequences than war, then war would be impermissible no matter how much good it would do.

Given these problems, one should consider whether counterfactual speculation is really necessary in order to determine what effects may be attributed to war. We believe that it is not. Consider one type of effect for which counterfactual speculation may seem appropriate: the prevention of an evil. In order for it to be true that an agent's action prevents an evil from occurring, it is sufficient that there be a causal sequence that will result in the evil if it continues uninterrupted and that the agent intervenes in the sequence so that it will not result in the evil. It need not be the case that the causal sequence would actually result in the occurrence of the evil if this particular intervention did not occur. Nor is it necessary, in order to know that an agent has prevented an evil, to know what would have happened had the agent not intervened. Suppose, for example, that a child is in the path of a speeding truck. A passerby snatches the child out of the way. It is not necessary to know what would have happened had the passerby not acted in order to know that she saved the child. Indeed, suppose that someone else would have snatched the child out of the way if the passerby had not. It remains true that the passerby saved the child — that her act prevented its death — even though it is not true that the child would have been killed if she had not acted, since in that case another cause would have operated to produce the same effect.¹¹

What about the claim that *P* must take account of comparative goods and evils? While the theory of the just war must take some of these goods and evils into consideration, it cannot and should not consider them all. It should not, for example, count as a benefit of going to war that this would avoid the evils that the US might have caused if, instead of going

11 Complications arise when the threatening sequence consists in action that the agent would or might abort. If, for example, the driver of the truck would have swerved to avoid the child, then it may seem less clear that the passerby's action saves the child. We believe, however, that the analysis of this case is the same: the passerby saves the child. The fact that the driver would have swerved does not show that there was no threat that the passerby averted. (What if the driver swerves at the same moment that the passerby snatches the child back? In that case they both save the child.)

to war, it had decided to melt the polar ice caps. Only the consequences of certain alternatives are relevant. The part of just war theory that is explicitly concerned with comparisons between war and alternative courses of action (i.e., the comparative requirement: *LR* or the replacement we propose below) provides constraints that limit the alternatives with which war needs to be compared. Thus the relevant comparative goods and evils can be adequately taken into account by that requirement. Because the satisfaction of *P* is not sufficient for war to be justified, nothing is lost if these goods and evils are ignored by *P*.

We believe, therefore, that *P* does not require comparison between war and any alternative course of action. The calculations required by *P* are instead confined to weighing up the goods and evils involved in war itself and its causal consequences.

2. Restrictions and weightings.

2.1 War and its causal consequences.

This last claim requires elucidation and qualification. For example, when *P* is employed as a guide to action, prior to war, the relevant goods and evils must be weighted for their probabilities. Furthermore, the relevant goods and evils are not just those that would be caused by a country's own action if it were to go to war. *P* must, for example, also take account of the expected harms that would be caused by the enemy. In other words, in determining whether a war it might fight would satisfy *P*, a country must take account of the good and evil effects of the *war*, not just the good and evil effects of its own actions in the war.

Many of the goods and evils of war are constitutive of the war itself — that is, events in the war. Others are causal consequences of events in the war, or causal consequences of the war itself, that may linger, or occur, after the war has ended. Many of the evils of the Gulf War — for example, the grief of the survivors, harms caused by environmental devastation, and so on — have continued or occurred after the end of the war. They nevertheless have to be taken into account by *P*. There are, however, many events and states of affairs that may appropriately be referred to as effects of a war that are causally too remote to be counted by *P*. Consider, for example, the massacres of Kurds and Shiites by Iraqi forces during the rebellions that occurred in the aftermath of the war. Ordinary language permits us to say that these were consequences of the war. But, even had they been predictable, these are not evils that should be taken into account by *P*. For these were evils for which the war was only one among many contributing causal factors. The war was not the cause of the evils but was merely a causal condition. *P* should be

restricted so that it takes into account only those events of which war is the cause. Without such a restriction, *P* would be both implausible and virtually impossible to apply.

Perhaps surprisingly, this restriction applies only to bad effects. For there are certain causally remote good effects that should, it seems, be taken into account by *P* — namely, those that are part of the JC.¹² Thus, for example, it seems relevant to *P* that the Gulf War might have deterrent effects that would predictably contribute to the prevention of aggression years after the war was fought. If, however, the deterrent effect would be only one among many factors that would contribute to the good of preventing the aggression, then only some fraction of the total good would be attributable to the war. At least this is so in cases in which the war is not a necessary condition of the occurrence of the good. If war is a necessary condition of the realization of some good, then, even if war is only one among a number of causal factors that together produce the good, the whole of that good should count in favor of war in determining whether war would satisfy *P*.

The distinctions between cause, contributing causal factor, and causal condition are imprecise and controversial. Because of this, there are cases in which it is uncertain, and perhaps even indeterminate, whether some bad effect should count in determining whether war satisfies *P*. Similarly, there may be cases in which it is uncertain or indeterminate whether war should get full or only partial credit for some good that is part of the JC. This may be unavoidable. Our moral views have to develop around the concepts we have; when those concepts are blurred, we cannot expect to make sharp moral distinctions.

Moreover, while the line between effects that are sufficiently close to count in the calculation required by *P* and those that are not seems roughly to coincide with that between effects of which war is the cause and those of which it is a causal factor or condition, there may nevertheless be other considerations involved that we have failed to identify. Imagine, for example, that it had been predictable that the Gulf War would lead to the establishment of a regime in Iraq even more ruthless than Saddam's. Should this count in the calculation required by *P*? It may seem that it should, but given the complexity of the factors normally involved in causing a change of regime, it may also seem unlikely that war could be singled out as *the cause* of the change. Perhaps further

12 For reasons stated below in Section III.2.2, causally remote good effects that are not part of the JC are excluded from consideration by a further, different restriction on *P*.

adjustments of the line between direct and remote effects are needed to capture our intuitions in this and other cases. We leave that problem unsolved.

2.2 The relation of Just Cause to *P*.

The US Catholic bishops state that 'proportionality means that the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms.'¹³ According to Paul Ramsey, the most influential Protestant theorist of the just war in the postwar era, *P* requires 'that there be a reasonable proportion between the injury caused by any use of force and the good effected or the graver evil prevented.'¹⁴ And James Turner Johnson, the leading contemporary historian of just war ideas, asserts that what *P* requires is that 'the overall damage to human values that will result from the resort to force will be at least balanced evenly by the degree to which the same or other important values are preserved or protected.'¹⁵ What is striking about these definitions, offered by writers who are thoroughly conversant with the just war tradition, is that the range of good effects they allow to count in the calculation required by *P* is unrestricted. By contrast, we believe that, in addition to the restriction advanced in the previous section, a further restriction must be imposed on the good effects that may count towards the satisfaction of *P*.

To see this, imagine that it was predictable that, because of the complicated effects of changes in the flow and pricing of oil that the Gulf War would have caused, the war would have had beneficial effects on the world economy. If *P* is unrestricted, these effects would weigh against the war's bad effects. This, however, is not only intuitively implausible, but is also incompatible with Just Cause. For economic benefits are not the sort of good that can constitute a JA: they could not be part of the justification either for going to war or for any belligerent action during the war. Because of this, they cannot count in favor of war in the calculations required by *P*. Otherwise one would be allowing the achievement of a certain good to count in favor of war when by hypothesis it cannot. Thus,

13 *The Challenge of Peace*, 29

14 Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham, MD: University Press of America 1983), 193

15 James Turner Johnson, *Can Modern War Be Just?* (New Haven: Yale University Press 1984), 25

while all the goods of the various JAs count in favor of war for the purpose of satisfying *P*, *only* those goods count. Goods that are not part of a JA are not relevant to *P*.¹⁶

2.3 The priority of the innocent.

Lackey, we noted earlier, condemns the Gulf War on the ground that the damage it caused to Iraq exceeded the good it achieved for Kuwait. Since he does not indicate otherwise, it appears he assumes that the harm done to Iraqi soldiers and the damage caused to Iraqi military and political assets count in the same way that the harm caused to Iraqi civilians does, and, indeed, in the same way that the harms the war prevented Iraq from inflicting on Kuwait do. This is a mistake. A war may satisfy *P* even if the net expected harm it would cause to guilty aggressors would be greater than the net expected relevant benefits it would achieve for the innocent. This is true for the same reason that it is not disproportionate for an innocent victim to kill two culpable attackers if this is necessary to prevent them from killing her, even though the harm she would thereby cause would exceed that which she would prevent. In choices involving a conflict of interest between those who are innocent relative to that choice and those who are noninnocent (e.g., because they are culpably responsible for the fact that there must be such a choice), the interests of the innocent have priority. Call this *the doctrine of the Priority of the Innocent* (henceforth *POI*).

'Innocence' here refers to *moral* innocence. Suppose a choice must be made between causing and not causing a certain harm, or between causing or allowing one harm and causing or allowing another. A person is innocent with respect to such a choice if he has done nothing to render himself *liable* to harm in this context. In war, the innocent are those who bear no moral responsibility for the conditions that give rise to the JC.

This understanding of innocence is different from that of most writers in the just war tradition, who instead identify the innocent with noncombatants and the noninnocent with combatants. In traditional formulations, as Anthony Kenny notes, the ban on 'the deliberate killing of noncombatants ... was sometimes called the prohibition on "killing the

16 We are indebted to Thomas Hurka for the example of economic benefits, which forced us to see the need for this restriction. Despite its absence in the quotations cited above, this restriction is assumed by various writers in the tradition. Anthony Kenny, for example, says that Just Cause holds that 'war ... must be waged to right a specific wrong,' while *P* holds that 'the good to be obtained by the righting of the wrong must outweigh the harm which will be done by the choice of war as a means.' See Anthony Kenny, *The Logic of Deterrence* (London: Firethorn Press 1985), 9.

innocent," but the innocence in question had nothing to do with moral guiltlessness or lack of responsibility: the "innocent" were those who were not *nocentes* in the sense of engaged in harming one's own forces.¹⁷ Let us say that, while our view takes *moral* innocence to be the relevant notion, the traditional view assumes that it is *material* innocence that is relevant.

While spatial constraints preclude an adequate defense of our view, the following brief remarks may provide some indication of how that defense would go.¹⁸ Our view has in common with the traditional view the assumption that, when a person ceases to be innocent, a moral barrier to causing him harm is thereby weakened or removed. We believe, however, that the effect of moral noninnocence in lowering moral barriers is clearer and more decisive than that of material noninnocence. For if a person is morally innocent, her being materially noninnocent may have no effect on her immunity to attack. For example, when a person who is unjustly attacked by a culpable attacker engages in self-defense, she becomes materially noninnocent, yet it is impermissible for her assailant to counterattack even in self-defense. By contrast, moral noninnocence always diminishes a person's immunity in cases in which someone must suffer harm, even if the person is materially innocent. Suppose, for example, that Romulus has maliciously tampered with the brakes of Remus's car. As the car begins to career out of control, Remus realizes what Romulus has done. He also realizes, however, that he can slow the car enough to jump to safety by steering it into Romulus. If that is the only way he can save himself, it seems clear that he may kill Romulus by running the car into him. But Romulus is materially innocent. Although the threat to Remus's life was created by Romulus's past action, Romulus himself is now no part of the threat. Nevertheless, Romulus's moral noninnocence renders him liable; he cannot claim immunity by virtue of his material innocence.

We do not deny that material noninnocence also may have the effect of lowering moral barriers. Most people believe, for example, that it may be permissible to kill in self-defense even when the attacker is morally innocent. There is, however, considerable uncertainty about why mere

17 Ibid., 10

18 For a fuller defense, see Jeff McMahan, 'Innocence, Self-Defense, and Killing in War,' *Journal of Political Philosophy* 2 (1994), and McMahan, *The Ethics of War* (New York: Oxford University Press, forthcoming). Relevant arguments may also be found in McMahan, 'Self-Defense and the Problem of the Innocent Attacker,' *Ethics* 104 (1994).

material noninnocence should make a moral difference; and even when it seems that it does, the effect is less decisive than that of moral noninnocence, as is evidenced, for example, by the fact that the restrictions that apply to self-defense against innocent attackers are stronger than those that apply to defense against culpable attackers.¹⁹ It may be that, in a fully developed account of the *POI*, considerations of material innocence and noninnocence will interact with considerations of moral innocence and noninnocence to determine a person's overall moral vulnerability to attack. For present purposes, however, we will focus on moral innocence.

In some instances, the priority of the innocent is absolute, or lexical. For example, an innocent person is permitted to kill any number of culpable attackers if that is necessary to prevent them from unjustly killing her. There is, in other words, *no* number of culpable attackers whose interests combine to make it wrong for her to kill them in self-defense. This is not, however, because the interests of the noninnocent do not count. If they did not count at all, there would be no objection to causing a noninnocent person excessive or unnecessary harm. But to cause unnecessary harm — for example, to kill a culpable attacker when wounding him would be equally effective for self-defense — is always wrong.

There are, however, cases in which the priority is not absolute. Whether it is absolute depends on a number of variables, such as the degree to which certain people are noninnocent, the magnitudes and probabilities of the possible harms, and so on. Thus, to take a clear example, trade-offs between the interests of the innocent and the noninnocent may be acceptable when one must choose between a high probability of great harm to a number of only marginally noninnocent people and a low probability of lesser harm to a lesser number of innocent people.

The *POI* is limited in another respect. The priority due to the innocent reflects a requirement of justice: that they must not be disadvantaged by the wrongful action of the noninnocent. Once that is insured (e.g., by the defeat of aggression or the compensation of its victims) the interests of the innocent cease to have priority. Thus the *POI* provides no justification for harming the noninnocent to improve the level of well-being of the innocent relative to what it would have been had there been no wrongful action by the noninnocent.

19 See McMahan, 'Self-Defense and the Problem of the Innocent Attacker' and McMahan, 'Innocence, Self-Defense, and Killing in War.'

2.4 National partiality.

There is a further question about how interests are to be weighted in determining whether *P* is satisfied. This is whether, and if so to what extent, a country is justified in assigning greater weight to its own citizens' interests than to those of other people, particularly those of innocent civilians in enemy countries (which are not discounted by the *POI*). This question was raised by the Gulf War, in which the US's strategy of massive aerial bombardment, which was intended to minimize US casualties in subsequent engagements with Iraqi forces, betrayed a policy of assigning virtually infinite priority to American over Iraqi lives.²⁰

This is one of the central unresolved problems of the ethics of war. The tendency to believe that the interests of one's compatriots matter more, quite apart from considerations of guilt and innocence, is strong. In the Gulf War, the fact that the US bombings *caused* harm to innocent civilians in order to *prevent* lesser harms to US forces evoked only the faintest protest. National partiality was thus sufficiently strong to suppress the normal effect on people's intuitions of the distinction between doing and allowing.

We do not pretend to know how to evaluate national partiality. Reflection on analogues involving personal partiality suggests that some degree of national partiality may be permitted, or even required, in war. (For example, it is not implausible to suppose that, if one is alone in a room and discovers a bomb there, one may throw it out the window, thereby foreseeably killing two innocent passersby, if that is the only way to save oneself.) But, while it seems permissible, other things being equal, to give somewhat greater weight to the interests of one's compatriots, it also seems clearly impermissible to give them infinitely, or even vastly, greater weight.

Without being able to say precisely where the limits to permissible partiality lie, we believe that the US passed well beyond them in its conduct of the Gulf War. This does not, however, entail that the war violated *P*. It is possible to give excessive weight to the interests of compatriots while staying within the bounds of *P*. In order to condemn the excessive partiality of the US's action during the Gulf War, one may appeal to the Requirement of Minimal Force (*MF*), which requires that a belligerent use no more force than is necessary to achieve a legitimate

20 While pure partiality was clearly one reason for the policy, the minimization of US casualties was also sought for its instrumental value in maintaining public support for the war.

military aim. In order to have a sufficiently extensive range of applicability, *MF* must be refined so that it adequately takes account of the fact that alternative means of achieving an aim normally have both varying probabilities of success and differing levels of risk or cost to the agent in addition to causing differing levels of harm to the enemy. Taking these variables into account, the criticism is that the harms that the US inflicted were excessive in that the US could have pursued its military aims in ways that would have been less harmful to non-Americans, in particular to innocent civilians. This would have exposed American forces to greater risks. But, in avoiding those risks by causing additional harm to innocent non-Americans, the US passed beyond the limit of permissible national partiality.

3. How strong a requirement is P?

In summary, *P* requires that the evils of war and the evils of which war would be the cause must not, when weighted for probability, exceed the goods (also weighted for probability) involved in achieving the JC, taking both the *POI* and national partiality into account. How strong a requirement is this? One may distinguish two notions of what it would be for *P* to be a strong requirement. One concerns the likelihood that any war that satisfies Just Cause will also satisfy *P*. The other concerns whether, if a war fails to satisfy *P*, that alone is sufficient to make it impermissible.

Whether *P* is a strong requirement in the first sense depends on how restrictive Just Cause is. If one were to reject our view that Just Cause is a restriction on the type of goal that may be pursued by means of war and were instead to interpret it as requiring only that war must have a good aim in order to be justified (or, alternatively, if one thought that the range of possible types of JA is quite extensive), then the range of possible JAs could be very broad and could include aims of varying degrees of importance. In that case, *P* would rule out many wars with JCs that would be too trivial to justify the costs of war. If, by contrast, there are relatively few goals that constitute JAs, and if each of these goals is normally (though not necessarily always) extremely important (for example, in terms of its impact on the interests of the innocent), then it will be less common for *P* to condemn an otherwise justifiable war, since the value of achieving the JC will normally outweigh a considerable amount of destruction. Since we hold a restrictive account of Just Cause, we believe that *P* is relatively weak in this first sense.

Is it also weak in the second sense? Can it be permissible to fight a war even if it fails to satisfy *P*? Since war may have good effects that do not enter into the calculation required by *P*, it is possible (though very unlikely) that war could be disproportionate and yet have better conse-

quences overall than any alternative course of action. Whether war would be permissible in these conditions depends, it seems, on the circumstances. The only general point that can be made is that, if there is an alternative that would have better consequences overall, a disproportionate war is ruled out. Since this condition is the norm, *P* is a strong requirement in our second sense.

IV Was the Gulf War Proportionate?

1. *The retrospective calculation.*

Having set forth our account of *P*, we now consider what it implies about the Gulf War. There are actually three distinct questions here. First, there is the question whether the war satisfied *P*, asked retrospectively, when the war is over and its consequences have become fairly clear. Answering this question requires 'a retrospective calculation.' Second, there is the question whether a particular strategy for pursuing a JC by means of war, when considered prospectively and taking into account only the information available prior to the resort to war, would be proportionate. Answering this question requires a 'prospective specific calculation.' Finally, there is the question that arises prior to the resort to war whether there is *any* way to fight a war to achieve a JC that would satisfy *P*. Answering this question requires a 'prospective general calculation.' Since our concern is with the morality of the war as it was actually fought, we will consider only the first and second calculations. We start with the retrospective calculation.

1.1 The relevant goods.

The relevant goods achieved by the Gulf War certainly included the freeing of Kuwait. But what about the JAs of prevention and deterrence? Iraq has perhaps been prevented or deterred from engaging in further aggressive acts, but how many and for how long? It seems likely that Iraq will not soon repeat the sort of miscalculation it made about the international reaction to its invasion of Kuwait. And much of Iraq's military hardware has been destroyed, so that it is not capable of large-scale aggression in the near future. It may also be that the war prevented an invasion of Saudi Arabia, though this is uncertain.

It was not the war alone, however, that weakened the Iraqi military. Other factors, such as the sanctions that have been in place since before the war, have contributed to the prevention of further Iraqi aggression. UN inspectors have also been deployed to ensure that certain components of the Iraqi military are destroyed. The work of these inspectors was, however, made possible only by the war. Hence the good that the

inspectors have accomplished in helping to prevent further aggression should be counted among the goods attributable to the war.

It is difficult to determine how extensive the deterrent effects of the war have been, or will be. Moreover, even if a potential aggressor has been dissuaded from engaging in an act of aggression, it is likely that the 'lesson' of the Gulf War was only one of many factors that operated to prevent the aggression. In fact, the deterrent effects of the war may be quite limited because of the special features of the case — for example, that Iraq's aggression threatened both the world's oil supply and the balance of power in the world's principal oil-producing region. The absence of international intervention in response to the terrible suffering that is now (December 1992) being inflicted on the people of Bosnia suggests, indeed, that the example of the war is likely to elicit caution only from aggressors who consider acting in a way that poses a grave threat to the interests of the US and its allies. For this reason, while the war may have had and may continue to have deterrent effects, these effects are unlikely to be extensive.

1.2 Undermining the Iraqi nuclear threat.

One of the aims of the US in the war was to eliminate the nascent threat from Iraq's developing nuclear weapons program. This aim is subsumable under the contributing JA of preventing future Iraqi aggression and has in fact been achieved with a fair degree of completeness by the war itself and the subsequent work of the UN that the war has made possible. It is, moreover, difficult to deny that this is a substantial good — in particular for the many innocent people who might otherwise have become victims of nuclear attack or nuclear blackmail by Iraq.

Much of the good achieved was, however, fortuitously produced. Two important goods, in particular, were unanticipated both prior to and during the war. These were, first, the discovery that Iraq's nuclear weapons program was more advanced and more extensive than had previously been suspected and, second, the destruction of many of the hitherto unsuspected elements of the program.²¹

21 It might be argued that Bush's claims prior to the war about the magnitude of the Iraqi nuclear threat show that the administration was aware of the extensiveness of Iraq's nuclear program. There are, however, two reasons for believing what the experts said at the time — namely, that Bush was exaggerating the perceived threat for propaganda purposes. One is that the US announced during the war that it had eliminated the Iraqi nuclear weapons program. But in fact much remained for UN inspectors to discover in the aftermath of the war. The announcement therefore reveals that the US was unaware of those elements of the program that were

Like unanticipated evil effects, unanticipated good effects that constitute part of a JA count in the retrospective calculation.²² This, in effect, allows the good luck of the US to affect the moral evaluation of its action. Many people, particularly those influenced by a Kantian conception of morality, reject this. They believe that whether a war is justified depends entirely on what its architects believed, or ought reasonably to have believed, prior to its initiation. A war that would reasonably be judged unjustified prior to its initiation cannot subsequently become justified by its unexpected good consequences; nor can a war that was reasonably judged to be justified subsequently be condemned because of unforeseeable bad effects. Those who believe this think that the retrospective calculation is irrelevant; whether the Gulf War satisfied *P* must, for them, be determined by the prospective specific calculation. Since we are agnostic on the issue of moral luck, we will attempt both calculations.

1.3 The relevant evils.

The evils of the Gulf War are easier to identify and measure than the good effects. They certainly include the deaths of Iraqi civilians, at least 150,000 of whom are estimated to have died as a direct result of the war or its lingering effects (e.g., starvation and disease caused by the destruction of water purification systems, sewage systems, and medical facilities).²³ The evils also include the casualties among Iraqi military personnel, an estimated 125,000 to 150,000 of whom were killed.²⁴ Because these soldiers were materially and perhaps morally noninnocent, their deaths cannot count in exactly the way that the deaths of innocent

subsequently discovered by the UN. This is confirmed by the response of the US intelligence community to the UN revelations. Rather than claiming credit for their prescience, members of the intelligence agencies expressed surprise and conceded that the international intelligence community had been guilty of an extraordinary failure.

22 It may also be that there are goods that are in fact JAs that are not recognized as such prior to a war. These too, if actually realized by the war, count in favor of the war on the retrospective calculation even though they were not aimed at in the war.

23 See Ramsey Clark, *The Fire This Time: US War Crimes in the Gulf* (NY: Thunder's Mouth Press 1992), 209. Greenpeace gives the higher estimate of 230,000 civilians killed. See *Newsweek* (January 20, 1992), 28.

24 See Clark, 209. Citing Pentagon and other sources, *Newsweek* gives the range as 70,000 to 115,000 (18). Former Navy Secretary John Lehman estimated that 200,000 Iraqi soldiers were killed (Clark, 43 and 208).

civilians do. Yet a high proportion of the Iraqi soldiers killed were conscripts who were compelled to fight, in some cases by threats to their families. Their lack of enthusiasm for Iraq's cause was revealed by their readiness to surrender. Hence the degree of their culpability is arguably slight in spite of the gross injustice of the cause that their leaders pursued. Their deaths must therefore weigh to some extent against the goods realized in achieving the JAs. There are also, of course, the casualties suffered by soldiers on the allied side who, since their cause was just, must be considered innocent in making the calculations required by *P*.²⁵ Hence the harms they suffered have the same significance as those suffered by innocent civilians for the purpose of determining whether the war satisfied *P*.

Other evils include physical and psychological injuries suffered by all innocents, the grief and loss experienced by innocent people on all sides who lost family members or friends, the expenditure of scarce resources, extensive environmental damage, and the destruction of much of Iraq's domestic infrastructure, including roads, bridges, power plants, and sewage treatment facilities, and whatever misery has been caused by this destruction.

1.4 The difficulty of the calculation.

It is clear, for a number of reasons, that the calculation is very difficult. First, the vagueness that, we have acknowledged, infects the distinction between cause and causal condition creates uncertainty about which evils to count. Second, there is uncertainty about how extensively and how enduringly goods such as deterrence have been secured. Third, some goods, such as dissuading others from aggression, normally require the cooperation of other causal conditions: so even if we could be sure that they occurred, it would be unclear how much of the effect was attributable to war. Fourth, there are problems of commensurability. The relevant goods and evils are of various types. Some consist in effects on individuals for better or worse. These have to be weighted to take account of both the *POI* and national partiality. It might be claimed, for example, that the badness of the harms inflicted on Iraqi civilians must be discounted for the fact that at least some Iraqi civilians bore some degree of moral responsibility for the aggressive acts of their government and thus were relevantly noninnocent to some, perhaps minimal,

25 If a war has a JC but fails to satisfy *P* (particularly in its prospective versions), then soldiers who fight in it may not be altogether innocent. But that fact cannot figure in the calculation that reveals that *P* is not satisfied.

degree. In addition to good and bad effects on individuals, there are also goods and evils, which we call *impersonal* goods and evils, that do not consist in such effects. Among these are goods and evils of *principle* — i.e., goods and evils connected with the fulfillment or violation of deontological requirements. It might be claimed, for example, that among the goods achieved by the war were just retribution and vindication of the principles of nonaggression and national sovereignty. It is obviously extremely difficult to get the various goods and evils of these different types onto the same scale for aggregation.

Because of the problems involved in identifying and aggregating the good and bad effects of the war, we see no way of proving that the good effects (the benefits to Kuwaitis and to other innocents spared further Iraqi aggression or aggression by others that might have occurred in the absence of the war's deterrent effects, relevant goods of principle, etc.) outweighed the bad (hundreds of thousands of deaths, widespread injury and disease, environmental destruction, etc.) — or vice versa. While we believe that it is not unreasonable to think that the evils outweighed the goods, our own view is that the goods and evils of the war seem, in a rough and gross way, to balance out, in the sense that neither decisively outweighs the other.

2. *The prospective specific calculation.*

P, like the other requirements of *jus ad bellum*, is supposed to be a guide to action when one is considering whether to go to war. As such, it requires that one consider, prior to resorting to war, whether war as one plans or intends to fight it will have relevant good effects sufficient to outweigh the relevant bad effects. When making this calculation, one does not know exactly what consequences one's strategy will have, so probabilities have to be considered.

The conclusion of our retrospective calculation is that it cannot be shown either that the goods outweighed the evils or that the evils outweighed the goods. If this is so, then the prospective specific calculation should yield a strong case for the claim that the war violated *P*. The reason is that before the war it looked as though there would be a lot more killing on all sides than there actually was, including a lot more killing of troops on the Allied side. US planners expected stiffer resistance both in the air and on the ground. The Iraqi Air Force was expected to put up a serious fight. It was expected that chemical weapons would be used against the Allies. Iraq's troops were thought to be 'battle hardened.' Instead they surrendered in large numbers, thereby eliminating both the threat they posed to Allied soldiers and the need of Allied soldiers to kill them.

While the expected evils of the war were greater than the evils that actually occurred, the expected benefits were not as great, since the good of eliminating the Iraqi nuclear threat was regarded as less significant than it turned out to be. These facts tip the balance in such a way that it does not seem reasonable to claim that the anticipated goods of the war counterbalanced the anticipated evils (given the intention of the US to fight in the way it did, with massive air strikes in populated areas preceding the ground campaign). In short, when viewed from the point of view of its planners prior to its initiation, the Gulf War violated *P*. We acknowledge, however, that there is room for disagreement with this assessment. We therefore turn to a further requirement of the just war that provides the basis for a more decisive critique of the war.

V Last Resort and the Requirement of Necessity

1. *Problems with the traditional requirement.*

Even if we assume that the war satisfied *P*, we must still determine whether the war was the right means of achieving the JC. To do this, we must compare the war with possible alternative means. The comparative requirement imposed by the traditional theory is *LR*, which insists, in the standard formulation, that peaceful means of achieving the JC must be exhausted before resort to war is legitimate. President Bush, or rather one of his speech writers, gave this interpretation in a speech that appealed to the traditional doctrine. There he claimed that 'extraordinary diplomatic efforts having been exhausted to resolve the matter peacefully, then the use of force is moral.'²⁶

The point of the requirement is to ensure that war should not be fought unnecessarily — that less destructive alternatives should be pursued instead. Some opponents of the Gulf War appealed to *LR* in support of the argument that, rather than precipitately resorting to war, the US ought to have relied instead on a combination of economic sanctions, defensive deployments, diplomacy, and arms control — a policy that we will refer to simply as *sanctions* — in order to compel Iraqi forces to leave Kuwait and to achieve the other JAs. Yet the *reasons* why sanctions might have been preferable to war are not captured by the simple claim that, since sanctions were available, war was not a last resort. War is not ruled out by the availability of just *any* alternative means of achieving the JC.

²⁶ *New York Times* (January 29, 1991)

Perhaps the reason why many just war theorists appear to believe that the availability of an alternative means of achieving the JC rules out war is that they assume that it follows from the idea that war and some alternative course of action are both *means* to the JC, that both have a 100% probability of achieving the JC. If that is so, then, since the goods that are relevant to justifying the war are all part of the JC, both war and the alternative promise the same amount of good. All that remains, therefore, is to compare them with respect to the evils that they would cause. Since it is natural to assume that war would have worse bad effects than an alternative means, one may assume that the alternative would be an overall better means than war.

The assumption on which this line of thought is based is false. It is not conceptually true of a means that its employment to achieve an end guarantees success. There are several respects in which a means of achieving a JC may fail to guarantee success. Recall, first, that a JC may consist of more than one JA. Whether a certain means will achieve a certain JA is always a matter of probability. And the achievement of a JA is often a matter of degree, in the sense that the JA may be achieved with a greater or lesser degree of completeness. A means of achieving a JC may therefore have a higher probability of achieving some of the constituent JAs than it has of achieving others, and it may promise to achieve some JAs more fully than others. Alternative means may also differ from each other in these ways. Thus alternative means of achieving a JC will seldom, if ever, promise the same amount of good.

It is because an alternative means of achieving a JC may have expected good effects that are less good than those of war, or may have bad effects that are worse than those of war, that the mere availability of an alternative means of achieving a JC does not automatically rule out the permissibility of war. We will argue that there are instead two conditions that an alternative should satisfy in order for its availability to rule out war. It is permissible to resort to war *only if* there is no alternative means of achieving the JC that satisfies both conditions. Call this — our revised interpretation of *LR* — the *Requirement of Necessity* (or *N*). *N* holds that the availability of an alternative means that satisfies both conditions is sufficient to make war impermissible on the ground that it is unnecessary.²⁷

27 To be permissible, an alternative to war must be proportionate. But it need not be necessary in the sense defined by *N*. Suppose, for example, that there are two nonbelligerent means of achieving a JC and that both would have better consequences than war. While *N* rules out war, it does not require that, if one chooses to pursue the JC by means of one of the alternatives, one must pursue the better of the two.

2. *The Better Consequences Condition.*

Because different alternative means of achieving the JC may promise different amounts of good, it is necessary, in comparing war with alternative means, to weigh the relevant expected good effects of war against its relevant expected bad effects (in effect, the proportionality calculation) and then to compare the net expected value of war with the net expected values of alternative means. If war has a greater net value, it satisfies the *Better Consequences Condition* (or *BCC*).

As in the application of *P*, the *BCC* of *N* takes account of all the goods of all the JAs. These goods include both effects on individuals for the better and impersonal goods — in particular, goods of principle. Again, with the exception of good effects that are part of the JC or that count in favor of an alternative to war (e.g., precedent-setting), good and bad effects are excluded if they have war or an alternative to war only as a contributing causal factor rather than as their cause. And effects on individuals have to be weighted to take account of both the *POI* and the relevant degree of permissible national partiality.

Acknowledging the permissibility of national partiality means that war can satisfy the *BCC* even when its relevant expected effects are worse, considered *impartially*, than those of some alternative means of achieving the JC. Suppose, for example, that one state is called to the aid of another. If that state were to defend the other by means of war, that would have worse consequences (taking due account of the *POI*) than some alternative means. But suppose that the alternative would be even costlier to the *benefactor state* than war. (Imagine, for example, that sanctions against Iraq would have required the stationing of large numbers of US troops in the desert for several years. This might have been more costly for the US than a quick war.) Provided that the difference in consequences is not extreme, it may be permissible for the state to opt for war. It may impose some of the costs of achieving the JC on others, even if this involves greater costs overall.²⁸

This is *not* to suggest that a state may resort to war when that would be worse for others than some alternative simply on the ground that the state's prospects would be *improved* by war. We do not claim states have a right to go to war to advance their interests. We claim only that, if a state has a JC and must choose between war and another alternative, both of which would involve a net loss, it may opt for war if war would

28 Although this is clearer in the case in which a war is fought in defense of another state, it also applies to other cases, including wars fought in self-defense.

involve the lesser sacrifice, provided that war would not be too much worse than the alternative for the innocent.

2.1 The means restriction.

As traditionally understood, *LR* compares war only with alternative means of achieving the JC. It might be suggested, however, that the *BCC* should rule out war if there is *any* alternative course of action that would have better consequences, regardless of whether it is a means of achieving the JC. But this unrestricted version of the condition would be too strong. Suppose that the US's contribution to the economic cost of the Gulf War could alternatively have been used to sponsor relief and development programs in the third world that would have saved hundreds of thousands of lives over a period of several years — a total number of lives, let us assume, greater than the population of Kuwait. If the net effects of this alternative would have been better than those of war, taking due account of impersonal values, the *POI*, and permissible national partiality, then, according to this unrestricted version of the *BCC*, war would be ruled out. But this is excessively restrictive. A state must have greater autonomy than this allows in determining what courses of action to pursue.

Thus *N*, like *LR*, should be restricted so that it compares war only with alternative means of achieving the JC. Call this the *means restriction*. When modified by the means restriction, the *BCC* does not impose an intolerable constraint on the autonomy of states. Unlike the suggestion that a state is forbidden to go to war if there is *anything* else that it could do that would have better consequences, the restricted *BCC* constrains only the means that a state may adopt in the pursuit of its chosen ends. We will express this constraint by saying that war must be the best means of achieving the JC.

2.2 The analogue of Just Cause for alternative means.

We have noted that the goods that count in favor of war are limited to those specified by the JC. This is because war is a morally inappropriate means of realizing certain types of goods. Similarly, an alternative means of pursuing the JC may be objectionable in a way that makes it inappropriate as a means of realizing certain types of good. For example, just as economic prosperity is not a good that can count in favor of war, so it also would not have counted in favor of sanctions if sanctions could have been expected (somehow) to benefit the world economy. For sanctions are *prima facie* morally objectionable, at least in part because they inevitably harm the innocent. Because of this, the goods that can count in favor of sanctions must be closely related, in a way that we are unable precisely to identify, with the JC. Again, the analogy with punishment is instructive. The goods that it is permissible to pursue by

means of punishment — retribution, prevention, deterrence, etc. — are all closely related to the offense that justifies the punishment. Economic prosperity does not seem to be a goal that is related in the right way to Iraq's offense to make it an appropriate goal to pursue by means of sanctions against Iraq.

The good effects that may count in favor of an alternative means of achieving the JC in determining whether war satisfies *N* must therefore be subject to a restriction analogous to Just Cause. But it cannot be the same — that only those goods that are part of the JC can count. For there may be some goods that count in favor of an alternative means that do not count in favor of war. There is one obvious example of such a good — one that is related in the right way to the offense that provides the JC but that cannot be a part of the JC *for war* because it cannot be achieved by war. Consider, for example, Kavka's claim that the exclusive use of sanctions could have set a precedent for the nonviolent resolution of international disputes. Call this the good of *precedent-setting*. This was a good that *could not* have been achieved by war. Yet it seems to count in favor of sanctions when one compares war with sanctions in order to determine whether war satisfied *N*.

It is also possible that, if an alternative means is less objectionable than war, it may be an appropriate means of pursuing a good that it would not be appropriate to pursue by means of war. If so, then the realization of this good would count in favor of the alternative means but not in favor of war. At least in the limiting case — that is, an alternative that is wholly benign, such as nonviolent resistance — it seems that virtually any good effect that it would have would count in its favor in comparing its effects with those of war.

In general, therefore, the goods that count in favor of an alternative means of achieving the JC must be restricted to those included in the JC together with any others that may appropriately be pursued by the alternative means (which, at least in the case of alternatives that are *pro tanto* morally objectionable, will be restricted to those that are relevantly closely related to the JC in the way loosely specified above).

2.3 An objection.

Consider a case in which the pursuit of a JC is optional rather than morally required. Suppose that, in this case, war fails to satisfy the BCC because there is a better means of achieving the JC. Suppose, however, that the state that is considering going to war is willing to go to war to achieve the JC but is unwilling to adopt the alternative means (perhaps because war would further its interests while the alternative would not). Suppose, finally, that it would be better overall (e.g., because it would be better for the innocent) if the state were to go to war than if it were not to pursue the JC at all. In this situation, the BCC rules out war, but

the state is not required to adopt the better means of pursuing the JC. Hence *N* forbids the state to pursue the best among the available courses of action that it would be willing to pursue.²⁹

Should the *BCC* be weakened to permit war in pursuit of a JC when war would be better than what the state would otherwise do, even though there is a better means of pursuing the JC? We are uncertain. It seems absurd to forbid the best course of action that the state is willing to pursue solely on the ground that there is a better alternative, albeit one that is not morally required.³⁰ Yet to permit war in these circumstances would rob *N* of much of its force — especially at the practical level. For in cases in which war would be more advantageous to the state than an otherwise better means of achieving a JC, the state could simply announce its unwillingness to pursue the nonbelligerent alternative, thereby dismissing *N* at a stroke. Because *N* seems to us a compelling requirement, and because weakening the *BCC* in the way suggested would render *N* virtually irrelevant at the practical level, we propose, with misgivings, to leave the *BCC* unmodified.

3. *The Inherent Character Condition.*

The *BCC* is concerned with considerations of consequences. But theories that require exclusive concern with outcomes — especially those that require that we do what would have the *best* expected outcome — are often criticized on two grounds: first, that they are excessively demanding in the sacrifices they may require of the agent; and, second, that they may require action that seems *inherently* wrong, or wrong for reasons independent of considerations of consequences. We assume that, in some form, each of these objections is valid. *N* avoids the first because the *BCC* permits national partiality. The second is addressed by *N*'s second condition.

This second condition — the *Inherent Character Condition* (or *ICC*) — is that an alternative means of achieving the JC should not itself be *inherently* wrong. This is not an absolute or necessary condition. Most of those who believe that an act, such as lying, can be *inherently* wrong also

29 It is worth noting that this objection applies equally to the traditional *LR*, which forbids a state to go to war if peaceful alternative means of achieving the JC remain untried.

30 One response is that, if a JC is sufficiently important to tempt us to permit war rather than allow the JC to go unachieved, then the pursuit of the JC by the better means is after all required rather than optional. This, however, is surely inadequate as a general solution.

believe that there may be conditions in which the act may nevertheless be permissible, all things considered.³¹ Thus it is possible that an alternative to war may be preferable even if it is inherently wrong — for example, if it would have substantially better consequences for the innocent than war would have.

Because this condition is not absolute, it is not necessary for an alternative to satisfy both conditions in order for its availability to rule out war. But the presence of an alternative that satisfies both *is* sufficient to make war impermissible.

4. When is it wrong to pursue a JC?

It might be objected that the theory combining *P* and *N* as we have interpreted them is in one important respect incomplete. For the *BCC* of *N* requires that war be compared only with alternative means of achieving the *JC*, while *P* does not require comparisons with other alternatives at all. Thus the comparative goods and evils associated with possible alternative courses of action that would not be means of achieving the *JC* seem to be irrelevant to the permissibility of war. Suppose, for example, that war is the best means of achieving a *JC* and that it would be proportionate but that there is an alternative course of action that, although it would do nothing to achieve the *JC*, would have substantially better consequences than war (e.g., the example in V.2.1 of relief programs). In some cases of this sort, one surely ought to adopt the alternative rather than go to war. Can our theory distinguish when war is permissible in these conditions from when it is not?

These are matters about which it would be foolish to try to legislate. States, like the individuals for whom they act, must be permitted some degree of autonomy in determining their ends. Thus there are instances in which it is permissible for a state to go to war even though there is an alternative that would have better expected consequences. In these cases, both war and the alternative are permissible options. But there are also cases in which some nonbelligerent action is so important that to go to war instead would be wrong. It would be silly, however, to presume in advance to provide a catalogue of the sorts of end that are overridingly important in this way. The most that can be said in a general way is trivial: viz., that, if one course of action is so important as to be morally required, and if war is not morally required, and if the two are mutually exclusive, then war is wrong. There is, however, an important point to

31 Thus 'wrong' here means *pro tanto* wrong, not wrong all things considered.

be drawn from this, which is that when the theory of the just war (either the traditional theory or our revised version) determines that war would be permissible, there is always an implicit *ceteris paribus* clause to allow for the contingent possibility that going to war may be incompatible with pursuing another course of action that is morally required.

VI Did the Gulf War Satisfy *N*?

1. *The retrospective calculation.*

According to *N*, war is impermissible if there is an alternative means of achieving the JC that would have better consequences, taking both the *POI* and national partiality into account, and would not be inherently wrong. In the case of the Gulf War, there were various alternative means that might have satisfied these conditions, including war fought in a different manner, the assassination of Saddam, and sanctions. Our discussion will focus on sanctions, since we believe that this was the best alternative.³² As in the case of *P*, both a retrospective and a prospective calculation of whether war satisfied *N* are possible. We start with the retrospective calculation.

1.1 Would sanctions have succeeded?

For sanctions to constitute an alternative means, they must have had some probability of achieving at least some of the JAs. (As we interpret the means restriction, it is not necessary, in the case of a JC comprising several JAs, for an alternative to be able to achieve *all* the JAs to some minimal degree in order to count as a means of achieving the JC. Of course, the fewer JAs an alternative can achieve, the less likely it is to satisfy *N*.) Whether sanctions satisfied the *BCC* depends on how many of the JAs could have been achieved, how fully they could have been achieved, and how likely they were to be achieved by means of sanctions. The evidence suggests that sanctions would have fared well in all three respects.

First, further Iraqi aggression — for example, an invasion of Saudi Arabia — could have been deterred by the deployment of defensive forces in the manner of 'Operation Desert Shield,' with those forces

32 The main objection to assassination is that it would have been ineffective, as there were a number of younger officers who had achieved prominence during the Iran-Iraq war who were in line to succeed Saddam and would apparently have maintained continuity with his policies.

eventually consisting largely if not entirely of forces drawn from states in the region. There are, moreover, at least two reasons for thinking that sanctions could also have achieved the sufficient JA of expelling the Iraqi forces from Kuwait. Many have argued for the efficacy of sanctions by appealing to historical studies that show that numerous embargoes that were weaker and leakier than that imposed on Iraq nevertheless succeeded. But a more convincing argument appeals to the fact that Iraq's main aims in occupying Kuwait were economic: to prevent the Kuwaitis from continuing to drive down Iraq's oil revenues and to gain control of Kuwait's oil resources in order, among other things, to facilitate Iraq's recovery from its war with Iran.³³ Sanctions that prevented Iraq from selling either its own or Kuwait's oil not only prevented it from improving its economy by continuing to occupy Kuwait but also ensured that its economy would continue to deteriorate as long as it maintained the occupation.³⁴ If offered an option that would have allowed him to withdraw while saving face (something the Bush administration refused to grant), it would have been in Saddam's own interest to withdraw.

Indeed — and this is the second argument for the efficacy of sanctions — the evidence suggests that Saddam realized almost immediately that the invasion was a prudential mistake and thus began to cast about for a means of extricating himself. Iraq began quite early in the crisis to issue a series of diplomatic proposals, several of which were considered by State Department officials to be serious and negotiable, though they were all dismissed by the US and were largely ignored in the mainstream media. Thus, as Noam Chomsky points out, sanctions had begun to work almost immediately upon their implementation.³⁵

It might be argued that, although sanctions are still in force today, they still have not been able to achieve their goal. That, however, is irrelevant to whether they could have forced Iraq to leave Kuwait. For the US's

33 It might be argued that Iraq's aims were principally political — that the invasion was the first step in a projected series of moves intended to establish its political dominance in the region. If that were true, however, it would be mysterious why Iraq did not wait to implement its plan until its program for developing nuclear weapons had succeeded. Only the urgency of its economic needs explains the timing of the invasion.

34 As early as the end of October, 1990, the director of the CIA reported that sanctions had stopped 98% of Iraq's oil exports and blocked 95% of its imports. See Theodore Draper, 'The True History of the Gulf War,' *The New York Review of Books* (January 30, 1992), 39.

35 For a summary of Iraq's proposals, see Noam Chomsky, "'What We Say Goes': The Middle East in the New World Order," *Z Magazine* (May 1991) 58-60.

main reason for insisting on the continued imposition of sanctions seems to be to curtail Saddam's power by preventing Iraq from being able to rebuild itself economically and militarily for the indefinite future. If so, there is really nothing that Iraq could do short of overthrowing Saddam and installing a regime more acceptable to the US that would satisfy the US's demands and thus permit the termination of the embargo.³⁶ But clearly Saddam's self-interested reason to resist the pressure to withdraw from power is significantly stronger than the reason he had to resist the pressure to withdraw from Kuwait. Hence the fact that sanctions have even now not succeeded in removing Saddam and the Ba'athist regime from power does little to support the claim that they could not have succeeded in forcing Iraq's withdrawal from Kuwait. Indeed, if US leaders really believe that sanctions may eventually remove the Ba'athist regime from power, this attests to an extraordinary faith in their ultimate coercive power.³⁷

We conclude that sanctions had a sufficiently high probability of achieving the sufficient JA to support the conclusion that they would have had better consequences than the war. There are, however, two ways in which the success of sanctions might have been a qualified success. One is that they might have ended the occupation of Kuwait less expeditiously than war, thereby prolonging and perhaps intensifying the suffering of the Kuwaitis. The other is that they would presumably have required a diplomatic resolution of the problem, which in turn would probably have required compromises. It might, for example, have been necessary to concede to Iraq certain rights (e.g., rights of ownership, access, or partial control) either to the part of the Rumailah oilfield that extends two miles into Kuwaiti territory or to the uninhabited Bubiyan and Warbah islands that block Iraq's only outlet into the Persian Gulf.³⁸ Or, alternatively, it might have been necessary for Kuwait to compensate Iraq for its earlier poaching in Iraq's portion of the Rumailah field and for having illegitimately driven oil prices down, to the detriment of the Iraqi economy. In short, while sanctions would ultimately have been successful, only war would have fully achieved the JAs — that is, without conceding to Iraq any spoils of aggression.

36 *Newsweek* quotes a 'senior US official' as saying that the US's aim in 'keeping pressure on' is to ensure 'that the Iraqis understand that the future's a bleak one as long as [Saddam] is around' (*Newsweek*, 27).

37 See Draper, 39.

38 As early as August 9, 1990, Iraq proposed that it would withdraw from Kuwait in exchange for recognition of its long-standing claims to these disputed border areas.

This brings out a further weakness of sanctions, which is that, if they would have required concessions — in particular concessions that would have left Iraq better off than it had been before it invaded Kuwait — then they would not have achieved the JA of deterring future aggression by others. Indeed, allowing Iraq to profit from aggression would not only have no deterrent effects but could actually have encouraged aggression by others.

This is a serious deficiency in the case for sanctions. It is, however, partially offset by a corresponding deficiency in the case for war. Recall that sanctions, if successful, would have achieved the good of precedent-setting. This good seems to be related to Iraq's original offense in such a way that its achievement could count in favor of sanctions. Both deterrence and precedent-setting are important aims. Although we have expressed doubts about the extensiveness of the deterrent effects of the war, we concede that sanctions could not have had comparable deterrent effects and that they might, indeed, have encouraged rather than deterred future aggression. Nevertheless, while sanctions *could* have had some deterrent effect, war necessarily defeated the aim of precedent-setting. So, even if deterrence is a more important aim than precedent-setting, the deficiency of sanctions where the good of deterrence is concerned is largely, and perhaps completely, offset by war's negative effect on the good of precedent-setting.

1.2 Sanctions and the BCC.

Because of the *POI*, the central question is whether sanctions would have been better for the innocent, and the partially noninnocent, than the war was. The following groups of people consisted mainly of innocent people: Kuwaiti civilians and resident alien civilians; Iraqi civilians; Saudi civilians; Israeli citizens; other civilians in the region who were threatened by further Iraqi aggression; civilians in other countries, such as the US, who either had been harmed or put at risk by Iraqi aggression or would have been adversely affected either by war or by sanctions; other potential victims of aggression by others that Iraq's war might have encouraged; and US and allied soldiers. The partially noninnocent included many Iraqi soldiers as well as those Iraqi civilians who supported or acquiesced in the brutal regime of Saddam when they could have resisted it, or who failed to seize opportunities to oppose his policies.

Let us compare the effects of war and sanctions on these groups. First, it is obvious that sanctions would have been very considerably better for many millions of Iraqi civilians, as well as for the few civilians in other countries in the region who were among the casualties of the war. Second, while it is true that war was better for that indeterminate group of potential victims of aggression that the war may have contributed to deterring, this is largely offset by the fact that sanctions would have been

better for the equally indeterminate group of potential beneficiaries of precedent-setting.

Third, sanctions would also have been better for US (and other Allied) civilians, many of whom suffered from having family members put at risk by the war and most of whom suffered economically from having to support the tremendous costs of the war. By contrast, it is doubtful that sanctions would have been costly for the US. After all, they continue to be maintained today at virtually no cost. It is true, of course, that the Bush administration believed that war would advance US interests by more than sanctions would. But the advancement of the interests with which the administration was concerned (some of which are noted in Section VIII) was not part of the JC and hence cannot count in favor of war in the comparison required by *N*. (If war and sanctions would both have been detrimental to US interests and sanctions would have been even worse than war, then the appeal to national partiality might have enabled war to satisfy the *BCC*. But neither condition obtained.)

There are also effects on the partially non-innocent to consider. Casualties among the Allied forces were low but with sanctions there would probably have been no casualties among them at all. And sanctions would obviously have been better for hundreds of thousands of Iraqi soldiers, many of whom were sufficiently close to being morally innocent that the harms they suffered must be weighed against the goods the war achieved.

The only group among those we have mentioned for whom sanctions might *not* have been better was civilians living in Kuwait. Reliance on sanctions might have forced them to endure a longer and more painful occupation or exile and perhaps to concede some spoils of aggression to Iraq. Yet there are respects in which the war itself was worse for civilians in Kuwait. Iraqi atrocities in Kuwait were greatly exacerbated in the final days of the occupation, suggesting that much of the violence, including the torching of the oilwells, was a vengeful and spasmodic reaction to the ignominious rout of the Iraqi forces.³⁹ Thus it is not obvious that a longer occupation would in fact have been worse for the Kuwaitis than having their homeland returned to them in a ravaged and ecologically devastated condition. We therefore conclude that sanctions would overall have been *very substantially* better for innocent and partially noninnocent people than the war was.

39 See Chomsky, 61; and Draper, 39.

2. *The Iraqi nuclear threat.*

A defender of the war might argue that, since the war eliminated the nuclear threat while sanctions could not have, and since this was one of the most important good effects of the war (good for innocent people the world over), it follows that sanctions fail to satisfy the BCC. We believe, however, that sanctions would probably have been sufficient to eliminate the nuclear threat.

In the retrospective calculation, we can use information that has emerged since the war. While initial reports after the war suggested that Iraq could have manufactured a bomb in less than a year from the time the war began, more careful studies have since indicated that Iraq was then at least three years away from producing even the crudest type of nuclear bomb.⁴⁰ The threat was neither so immediate nor so grave as it first appeared.

Moreover, war was not necessary to reveal the extent of the Iraqi program. The failure before the war to appreciate the extent of the Iraqi effort was largely the result of deliberate, politically motivated neglect. It was well known that Iraq was embarked on a program to develop nuclear weapons but the US remained relatively unconcerned as long as Iraq was being cultivated as an ally. For example, when evidence of the ambitious nature of the program appeared within the federal bureaucracy early in 1989, it was suppressed rather than investigated.⁴¹ Once Saddam came to be seen as an enemy rather than an ally, it was still possible to repair some of the effects of the previous neglect by combining the resources of the US intelligence agencies with those of the intelligence services of various allies, such as Israel, in order to ascertain how far the program had progressed. Much could have been learned simply by scrutinizing Iraq's dealings with western companies that had supplied technologies crucial to the program.

More important, the war was not necessary to constrain or eliminate the program. Contrary to what many have said, sanctions could have coerced Iraq both to permit inspections and to comply with UN demands that the program be dismantled. After all, one defense of the continued application of sanctions is that the threat of their further continuation is what forces Iraq to submit to the UN's efforts to eliminate the program. And even if sanctions alone would have been insufficient

40 See 'UN Says Iraq Was Building H-Bomb and Bigger A-Bomb,' *New York Times* (October 15, 1991); and 'Iraq's A-bomb Capability Overrated, UN Now Says,' *New York Times* (May 20, 1992).

41 'Warning on Iraq And Bomb Bid Silenced in '89,' *New York Times* (April 20, 1992)

to coerce Iraq to acquiesce in the dismantling of its nuclear program, war on the scale of the actual war was certainly unnecessary to eliminate the threat. The most that would have been justified would have been a series of surgical strikes on key facilities in the manner of the Israeli raid on Iraq's Osirak nuclear plant in 1981. Together, sanctions and surgical strikes could have achieved all the JAs (with the possible exception of deterrence).

The fact that the war revealed a threat of unsuspected magnitude and made it possible to neutralize that threat for the near future does not, therefore, show that sanctions (or, in the worst case, sanctions combined with discriminate strikes against key facilities) failed to satisfy the BCC. It therefore remains to consider whether sanctions satisfied the IC.

3. *The morality of the sanctions.*

It is surprising how little discussion this question has received — surprising because, at least as conceived by the US, the sanctions bore (and still bear) the hallmark of terrorism: that is, they were intended to cause suffering among the civilian population as a means of influencing the conduct of the government. Of course, causing civilians to suffer was not the sole purpose of the economic embargo. Another important aim was to weaken Iraq's military and industrial capacity. But the embargo on shipments of food cannot be explained in terms of that aim. It was a variant of the traditional siege, a policy that held the members of Iraqi civilian society hostage in their own land.

The embargo was, of course, unlike a traditional siege in that it was not intended to coerce compliance by causing starvation — or so it was claimed. Bush accepted that shipments of food and medicine would be allowed, but only, in his words, 'when the embargo is so effective that the children of Iraq literally need milk, or the sick truly need medicine.'⁴² But at what point along the continuum from adequate nutrition through malnutrition to starvation do children literally *need* milk? When do the sick truly *need* medicine? In what might have been a gloss on Bush's statement, Michael Walzer, in an article supportive both of the sanctions and the war, wrote that 'we are committed (as we should be) to letting food and medical supplies through well before people start dying.'⁴³ This implicitly concedes that the embargo was supposed to cause harm to civilians, but only nonlethal harm. But while inflicting nonlethal harm

42 *New York Times* (September 14, 1990)

43 Michael Walzer, 'Perplexed,' *The New Republic* (January 28, 1991), 14

is usually less objectionable than killing, that does not mean that the intentional infliction of nonlethal harm on innocent people is acceptable. Acts that inflict nonlethal harm may still constitute terrorism. Indeed, if there are any types of act that are inherently wrong, intentionally harming the innocent is certainly one such type. Thus if we accept the commonsense view that an act can be inherently wrong — a view that is presupposed by the ICC — then we must conclude that the sanctions as actually implemented failed to satisfy that condition.

If the only alternatives had been indiscriminate sanctions, a war that would have been even more harmful to civilians than sanctions, and abandoning Kuwait to annexation by Iraq, it might have been necessary to allow Iraq to harm innocent Kuwaitis rather than to defend Kuwait by causing a comparable amount of harm to innocent Iraqis. Or, if at least some Iraqi civilians were noninnocent, in that they bore some degree of moral responsibility for the action of their government, while the Kuwaitis were innocent, then perhaps this asymmetry, together with the fact that the ICC is not absolute, might have made it permissible to impose sanctions intended to harm Iraqi civilians in order to save the Kuwaitis. In fact, however, this was not the choice the US faced. For it was not necessary that sanctions should take an immoral form. It was possible to devise sanctions aimed only at weakening Iraqi military and industrial power and preventing Iraq from profiting from its occupation of Kuwait. No doubt sanctions of this sort would ultimately have caused hardship for civilians. These hardships, however, would have been neither intentional nor as severe as those caused by the actual embargo. Moreover, the US and its allies could have sought to mitigate the effects on the civilian population by supplying Iraq with food and medicine. Any remaining harmful effects of these *discriminate sanctions* on the civilian population would simply have to have been accepted.

The obvious objection to discriminate sanctions is that they would have been less effective than less scrupulous sanctions in coercing Iraq's withdrawal from Kuwait and achieving the other JAs.⁴⁴ If so, then we must consider whether discriminate sanctions would have satisfied the BCC. We believe that the effectiveness of sanctions would not have been compromised had they been intended to avoid rather than to cause hunger and misery among civilians. This is because the Ba'athist regime, which rules by terror and intimidation rather than by consent and is concerned primar-

44 See Michael Walzer, 'Justice and Injustice in the Gulf War,' in David E. Decosse, ed., *But Was It Just? Reflections on the Morality of the Persian Gulf War* (New York: Doubleday 1992), 6.

ily with the wealth and power of the Iraqi state rather than with the welfare of the population, is not *vulnerable* to pressures applied through the civilian population. A regime that *itself* regularly terrorizes, tortures, and slaughters its own population cannot be readily manipulated by threats to harm that same population. Thus, assuming that the food embargo added very little to the power of the embargo on oil and other goods vital to Iraq's military and industrial capacity, it seems that discriminate sanctions would have been even better for the innocent than the sanctions that were actually implemented. For discriminate sanctions would have been vastly better for Iraqi civilians without being notably worse for other innocent people, such as the Kuwaitis, whose well-being depended on the achievement of the JC.

Discriminate sanctions therefore provided an alternative to war that satisfied both conditions of *N*. The principal reason why the Gulf War was immoral, when judged retrospectively, is that the vast and horrific destruction and suffering it caused were simply unnecessary. The just goals that the war achieved could have been largely achieved by means far less destructive of innocent life.

4. The prospective calculation.

On a retrospective analysis it is clear that the war violated *N*. This is even clearer on a prospective analysis, in which the calculation is based on how things seemed at the time the decision whether to go to war was being made. For, as we noted in Section IV, it was expected that the war would realize fewer goods and cause greater destruction than it in fact did. Prospectively, therefore, war compared even less favorably with sanctions.

VII Discrimination

While this is the main reason that the war was wrong, it is not the *only* reason. We turn now from the question whether the resort to war was justified to the question whether the war was fought in a just manner. Many observers have praised the Bush administration for the discriminate way in which the war was fought. In the US it is almost universally accepted that the US fought a clean war in which it eschewed terror bombing and sought to minimize civilian casualties from raids on military targets.

This view cannot, however, be reconciled with the facts. Among the targets that were directly and repeatedly hit were water purification facilities and sewage systems. These attacks left urban populations

without drinkable water and flooded both streets and rivers with raw sewage, thereby creating conditions for the epidemics of disease that ensued. What conceivable military purpose could these attacks have been supposed to serve? Why, moreover, was it necessary to accelerate the already savage bombardment of Baghdad during the ground war, as the routed Iraqi forces fled from Kuwait? What was the point of the repeated strikes on Saddam's home town of Tikrit?

There is a simple and plausible answer to these questions, which is that in this war the US developed a sanitized mode of terror bombing. While the US sought to apply pressure on the Iraqi government by harming and killing civilians (a strategy that, we have seen, was largely irrational), it did not attempt to kill them directly by blowing them to pieces with bombs; for that would have provoked international and domestic condemnation and undermined support for the war. Instead, the US used precision bombing to destroy the infrastructure of the civilian society, claiming that this was incidental to the destruction of objects that had both military and civilian uses, such as bridges. In this way the US was able to cause death and suffering among the civilian population while claiming, perhaps sincerely, that it never intentionally dropped a bomb on a civilian.

This charge against the conduct of the war by the US appeals to the *Requirement of Discrimination* (or *D*), which, as traditionally interpreted, asserts that there is a strong constraint against intentionally harming or attacking the innocent. Given the commonsense view of the relevance of intention, *D* is simply a corollary of the *POI*. As we interpret it, it diverges in two respects from the traditional formulation. First, we understand innocence as moral rather than material innocence. The second difference may be illustrated with an example from the Gulf War.

A central aim of the US in its conduct of the war was to cripple the Iraqi economy for the indefinite future. This was largely an instrumental aim, intended in part as a means of preventing future Iraq aggression by forcing Iraq to concentrate its energies on rebuilding its economy and infrastructure and depriving it of the economic strength to wage war effectively. Undermining Iraq's economic and political power was also, we believe, intended as a means of achieving the unjust aim of preventing Iraq from being able to threaten other US interests. As evidence that the US sought to cripple the Iraqi economy we would cite both the continued application of sanctions beyond the end of the war and also the way in which the bombing campaign was conducted. For example, electrical power plants that were known to have been rendered inoperative were subject to further attacks to ensure, not just that they would be unable to function for the duration of the war, but that they would be unable *ever* to function again.

Did the efforts of the US to cripple the Iraqi economy violate *D*? It might be argued that they did not since the intended means was to harm the economy, not the people. The consequent sufferings and deaths of the people were inevitable though unintended side-effects. Yet one cannot intentionally cripple an economy without intentionally affecting the people whose working and consuming lives are partially constitutive of that economy. And when one's plans require intentionally affecting the innocent in a way that one believes is either logically or causally sufficient for harming them, this is sufficient for one's action to be condemned by *D* — even if harm itself is not, strictly, an intended effect.⁴⁵

VIII Conclusion

If the Gulf War was unjust primarily because it was unnecessary, why was it fought? Was it because the Bush administration mistakenly believed that fighting the war the way it did was the best or indeed the only means of achieving the various JAs? We believe that, on the contrary, the US chose war rather than sanctions because there were several aims that it sought to achieve in addition to the JAs — aims that only war, and not sanctions, could achieve. In addition to the aim (mentioned in the previous section) of preventing great economic and political power from becoming concentrated in the hands of an erstwhile ally and client who had been guilty of insubordination and who might again threaten US interests, the other aims of the war included boosting the Bush administration's political fortunes; diverting attention from pressing domestic problems; and — since 'kicking butt' was the order of the day — 'kick[ing] the Vietnam syndrome once and for all,' as Bush put it, referring to the fact that the war had restored the prestige of the military, renewed public and congressional support for military spending, and helped to overcome the public's remaining inhibitions about military intervention, already weakened by the collapse of the Soviet deterrent. None of these aims is either a sufficient or a contributing JA.

These facts affect the form that our condemnation of the war must take. If this unnecessary war had been motivated solely by the high

45 This claim is defended at length in Jeff McMahan, 'Revising the Doctrine of Double Effect,' *Journal of Applied Philosophy* 11 (1994). The view defended there is indebted to that advanced by Warren Quinn in 'Actions, Intentions, and Consequences: The Doctrine of Double Effect,' *Philosophy and Public Affairs* 18 (1989) 334-51.

ideals to which its promoters appealed, then it would simply have been a terrible and tragic mistake for which its planners and promoters might nevertheless be excused or forgiven. But an unnecessary war that is deliberately pursued in preference to nonviolent means in part in order to serve aims that unjustly advance the national interest is not a mere mistake; it is a crime.⁴⁶

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