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Recent Strategic Developments: A Critical Overview From A Just War Perspective

Abstract: Beginning with a sketch of the major moral ideas contained in just war tradition, this essay applies them to three controverted issues in contemporary military debate: nuclear deterrence strategy, the strategic defense initiative, and the possibility of building and deploying fractional megatonnage nuclear weapons on delivery vehicles of extremely high accuracy. It is argued that, in terms of the criteria of just war tradition, deterrence in its present form poses grave moral problems. The two new weapons systems are then examined in terms of whether, by just war criteria, they represent more moral means of defense than contemporary nuclear deterrence.

Introduction

Moral Analysis of warfare is never done once and for all time, since the phenomenon of war itself never stands still for long. Weapons change, alliances among nations wax and wane, domestic political attitudes and material conditions may be transformed within the societies of prospective belligerents. It is one thing to apply moral analysis - itself far from an exact science - to a state of affairs that obtained in the past, so as to enter the debate, for example, over the justice or injustice of the strategic bombing campaigns of World War II. It is quite another thing to apply the same sort of moral analysis to the possibilities that war may - or may not - bring in a future that can never be glimpsed in its fullness from a perspective in the present.

The purpose of this essay is to bring to bear on certain recent strategic developments in the East-West power relation a moral analysis rooted in the perspectives of just war tradition. Specifically, I will comment critically on the present shape of United States nuclear strategy, then on two new strategic developments possessing the potential to change this current strategic posture decisively: the Strategic Defense Initiative and research and development aimed toward producing fractional megatonnage nuclear weapons of extremely high accuracy.

The Just War Concept

The term "just war" conveys somewhat different ideas to different people. As I employ this term, it refers to a broad moral tradition that has developed in western culture as a result of the interaction of certain religious and secular forces, principally Christian theological ethics and canon law, secular law both domestic and international, the practice of relations among states, and the traditions of professional military life. While the deepest roots of this tradition are to be found in the Hebraic and Graeco-Roman antecedents to western culture and in early Christian thought, we know it today substantially in the conceptual form that was given just war doctrine in the late Middle Ages and the early modern period. In that form the concept of just war is developed under two rubrics, the jus ad bellum, having to do with when it is just to resort to arms, and the jus in bello, having to do with what limits ought to be observed in fighting justly. The former includes, maximally, seven ideas: that there must be just cause for resort to arms, that there must be due political authority for the decision to take arms, that the intention in doing so must be correct, that the good done by protection of values in this way must exceed the harm, that there must be a reasonable hope of success in the decision to take arms, that this decision must be a last resort, and that the end sought must be a renewed state of peace. The jus in bello includes two major ideas: that noncombatants should be spared direct, intentional harm, and that disproportionately destructive force should be avoided in the conduct of hostilities (for more on these categories and their historical development see my 1975 and 1981, further Russell 1975, O'Brien 1981, Ramsey 1961).

The specific content assigned to each of these categories has varied somewhat over time and according to the context addressed by particular elements within the overall tradition. Thomas Aquinas in the thirteenth century, for example, identified three types of just cause: punishment of evil, repelling of an injury in progress (defense), and the need to recover something wrongly taken (Summa II/II, Quest. XL, Art. 1). Just war historian Alfred Vanderpol, commenting on Thomas's doctrine, argues that the punishment of evil was preeminent among these, and further that it remained the primary notion of just cause in church teaching throughout the Middle Ages (Vanderpol 1919, 250 ff.). By contrast, in twentieth-century international law the idea of defense is clearly the preeminent concept.¹ While it can be argued that the definition of defense can reasonably be stretched to include the other two ideas enumerated by Thomas,² the most striking development in twentieth-century thought on the justification of war is the extension of the category of defense to cover strategic nuclear retaliation. Whether deterrence by threat of retaliation is genuinely defense is a major moral issue raised by SDI, as we shall see below.

Alongside such particular changes as the concept of just cause there has been something of a sea change within the jus ad bellum of just war tradition as a whole. While medieval and early modern theorists treated the categories of just cause, right authority, and right intention as more important than the other jus ad bellum ideas, contemporary moral concerns have tended to stress precisely those concepts paid little attention by these earlier theorists: proportionality, last resort, the restoration of peaceful relations in the international community. While this implicit prioritization of the jus ad bellum ideas can be found in major ecclesiastical statements of position (notably the argument of the American Catholic bishops in their 1983 pastoral letter, The Challenge of Peace), the principal reasons for the shift of emphasis lies, I am convinced, in the nature of modern international law, which has constituted a major vehicle for development of just war thought and practice since the time of Grotius. In the international law redaction of just war tradition the existence of sovereign political entities is taken for granted, and there is no attempt to judge the rightness or wrongness of the governing authority of any particular one of them. Right authority thus becomes the compétence de guerre enjoyed by the ruling person or body of any independent state. Just cause devolves into defense against attack - narrowly understood as firing the second shot in response to the first shot already fired by an attacker - and right intention thus is defined implicitly as that of defending against attack. With the exception of the definition of just cause in terms of defense, international law pays little or no attention to these jus ad bellum categories. By contrast, international law has a major interest in maintaining the status quo of relations among nations, and this leads to greater attention to the effort to minimize or eliminate any resort to armed force (the just war concept of last resort) found in the League of Nations Covenant, the establishment of the World Court, the Pact of Paris, and the United Nations Charter. The just war category of the end of peace, redefined as the restoration of a tolerable stability among nations without use of armed force, follows from the same concerns. The stress on considerations of proportionality - counting the likely overall costs of an armed conflict and weighing them against the goods to be defended - has been in large part a result of reflection on the destructiveness of modern war, and particularly since 1945, of nuclear war.³

In the jus in bello the concepts of noncombatant protection and proportionality in the sense of matching level of force employed to the desired goal have, in general, risen in importance relative to the jus ad bellum over time. Some contemporary critics of military preparedness have argued that war today is inherently unjust because it can never meet these jus in bello criteria (see, for example, Geyer 1982, 191-93, and Yoder 1984, 79-80). This is in sharp contrast to the main line of just war tradition, even today, which regards these jus in bello criteria as coming into play only after the initial decision has been made that a resort to armed conflict is

justified (Brien 1981, chs. 3 and 8 explicitly makes this point). Certainly it is necessary to say that moral consideration of whether a prospective use of armed force will be just requires taking account of jus in bello concerns; this is not the same, though, as saying that the latter should dominate or overrule the former.

Where do we stand - or ought we to stand - today relative to this tradition on the justification and limitation of war? It must be said first that for the main line of western culture, there is really no getting away from either the conceptual categories of just war thought or, I think, the main line of the content of these categories as this has consensually developed over the centuries. While some critical voices contend today that just war thinking is irrelevant to the nuclear age, the fact is that the concepts and content of this tradition are so tightly interwoven with western moral and political concepts and institutions as a whole that we could not reject this one part of the whole fabric without calling in question the rest as well. James Childress, addressing this character of the just war categories, argues that they are experienced as imposing prima facie duties on us (1982, ch. 3). I would go farther: these categories, originating as they have in the communal experience of western culture over centuries, express fundamental values that lie near the core of the moral identity of this culture. When we say that there should be a just cause for resort to armed force, this is a way of saying that coercion by armed force is not morally neutral but needs to be justified by some grave reason; when we say that the resort to force should be a last resort and should be aimed at producing peace, this is a way of expressing a bias towards peace instead of war and towards the solution of disputes by non-military means where possible; when we say that harm to noncombatants should be avoided, this is an affirmation to the idea that people who do not themselves directly cause harm should not have harm directed at them; and so on for all of the nine major analytical categories or criteria of just war tradition.

Just war tradition is not, contrary to much popular usage, a 'doctrine'. Rather it is the result of the combination of many doctrines from various theoretical and existential perspectives over a history many centuries long. The proper use of this tradition for moral guidance requires entering the circle of witnesses provided by this history, taking seriously both what they agree upon in common and the elements of difference or tension among them, along with the reasons for such difference. In this way the debates of the past can be brought to bear on the debates of the present.

A Critique of Nuclear Deterrence Strategy

The strategy of nuclear deterrence is often represented as a means of defense, but it is more properly described as an effort to deter attack by threatening unacceptable damage in retaliation for such attack. Defense, as

understood in just war tradition and in military and political parlance prior to the nuclear age, referred to measures designed to prevent an attack from succeeding. A strategy of defense, then, in this sense, would be one of denial of victory to the attacker. Such a strategy defines force structures, types of weapons, and deployment patterns designed to be used against enemy forces deployed against them, and it implies military research and development oriented toward improving such 'war-fighting' capacity. Such a strategy also has a deterrent aspect, however, along with its 'war-fighting' thrust: no prospective enemy, when counting his own costs and measuring his own likelihood of success, could be expected rationally to set an armed conflict in motion knowing that he was unlikely to succeed or that the costs of success would be unacceptably high.

In any case, nuclear deterrence strategy in the broad form it has taken over the past forty years is a strategy of retaliation, not of defense; it aims at punishing the enemy for harm already given, not at warding off the harm as it is being dealt out and preventing its effects from being felt on the values of the society being defended. The difference can be seen in the simple realization that, should deterrence by threat of unacceptable punishment fail and a nuclear attack be launched, no amount of after-the-fact retaliation would prevent severe damage to the society or societies to be defended and forfeiture of values that were ostensibly protected by the retaliatory threat. A strategy of defense by victory-denial, however, still may operate to protect such societies and their values even after deterrence breaks down and armed conflict begins.

The argument is often made that nuclear retaliation strategy has been dictated by the nature of the technology of nuclear weapons. On this widely popular argument there could be no other strategy than one based on threat of retaliation for use of nuclear weapons and for protection against their use on western societies. This is, however, an oversimplification that overlooks the major value assumptions that have also affected the shape of strategic nuclear doctrine. Concepts of nuclear weapons and their use have evolved in United States doctrine in a direct line from the concepts associated with strategic bombing in World War II. The acceptance of counter-city bombing in this war rested, in turn, on the experience of counter-city bombardment in the first World War. Admittedly, in all these cases technology was a significant factor: for example, the inability of weapons delivery systems to discriminate closely enough to allow avoidance of harm to noncombatants even if desired. But an important shift in values also occurred which was not itself driven by technology. This was an erosion of the moral ideal of protecting non-combatants so far as possible in war. In the World War II debates over strategic bombing this erosion of the ideal of noncombatant immunity appeared in the idea that all citizens of the enemy state were themselves one's enemies, and that it was a proper act of war to attack the military

capabilities of troops in line of battle by attacking the morale of civilians at home. This shift in moral values was symbolized by the new concept of 'the home front' alongside the old one of 'the battle front'.⁴

Strategic nuclear retaliatory doctrine, then, as it developed after World War II, carried forward tendencies and assumptions already shaped in that war and earlier, and it rests on a mix that includes ideological as well as technological factors. Rather than the one driving the other, there has been a mutual interaction of the two. The decision to use the original atomic bombs against cities in which civilian and military elements were mixed was preceded and influenced by a history of conventional counter-city bombing; it was the perceived lack of moral problem with such bombing that made such use of the atomic bombs seem right, not the technology of the bombs or their delivery systems. (Indeed, the first delivery systems were the same manned bombers that had been used for strategic bombing with conventional high explosives. Only the form of the explosive was different, and the convention of measuring the destructive capability of nuclear weapons in terms of equivalent tonnage of TNT shows the desire, in strategic terms, to assimilate the new forms of weaponry to the old.) Later in the nuclear age, a similar value orientation led to the development of fusion warheads of massive destructive power. The combined technological factors of the destructiveness of these warheads and the inaccuracy of early ballistic delivery systems meant that the only reasonable strategy that could have been developed around them was a counter-city one; yet the moral decision that it was justified to target population centers was an independent one that had already been made in earlier contexts (see Freedman 1981, chs. 4, 15-16, and *passim*, and Mandelbaum 1979, chs. 3-4).

In just war terms, the direct, intentional targeting of noncombatants is immoral. This fact informs contemporary just war theorizing in a variety of ways. Paul Ramsey, in books published in 1961 and 1968, argued that while direct, intentional targeting of noncombatants is morally wrong, this is not the same as saying that any harm to noncombatants in a war renders the war unjust. Rather, Ramsey reasoned by use of the moral rule of double effect, if the actual target (say, a military base or a missile site) is legitimate, then indirect, unintentional harm to noncombatants may be allowed, though there is still an obligation to avoid such harm where possible. This line of reasoning has an obvious force, though it eventually runs into difficulty: when scores of multi-megatonnage nuclear warheads are targeted on legitimate military objectives in and around a particular population center (see Bishops, § 81), common sense cannot discriminate between the intention to attack those legitimate objectives directly and the intention to attack the densely packed noncombatant population in the surrounding area. Indeed, in such a context an appeal to the rule of double effect to justify such targeting may be indistinguishable from mere

ratiocination. Use of the rule of double effect in the context of targeting of massively destructive warheads delivered on military targets in the midst of population centers does not satisfy just war concerns for the protection of noncombatants.

In their 1983 pastoral the American Catholic bishops recognized the immorality of direct, intentional attacks on noncombatants and expressed skepticism that use of strategic nuclear weapons would not violate non-combatant immunity; yet their attempt to resolve the moral issue was far from satisfactory. The Challenge of Peace distinguished between deterrence by threat of nuclear retaliation and actual use of strategic nuclear weapons. Such a threat, the bishops reasoned, is morally acceptable, though carrying out the threat by an actual counter-population strike would be morally wrong (§§ 188, 190). This rather ingenious bit of rationalization has already been the object of much debate. I have never found it the least bit persuasive, either as a moral argument or as a base for sound strategic thinking. Morally speaking, it is far from convincing to argue that it is acceptable to threaten to blow up another's house (along with his entire family and next-door neighbors) as a means to keep him from blowing up your own. This is, I am convinced, an immoral threat whether or not you actually intend to do what you threaten or possess the capability to do so. Yet the threat would not be credible were the capability to do so not in place; thus the dependence on the threat requires the existence of the capability to do what is threatened. In the case of strategic nuclear weapons, that capability implies the actual deployment and targeting of ballistic missiles.

The American bishops were right to argue that, on the theoretical level, there is a moral distinction between the threat to use these missiles and the actual use of them: it is the distinction between a lesser and a greater evil. This theoretical distinction, though, does not translate into an actual difference on the level of practical morality and concrete deterrence strategy. A nuclear strategy based on the threat to retaliate without the capability to carry through on that threat and the embodied intention to do so would not long remain credible. To attempt to redefine the moral issue by separation of threat from use does not, then, resolve the moral problems inherent in use of nuclear weapons of the current strategic types. Indeed, if anything, it draws attention all the more sharply to these moral problems.

The current strategy of deterrence is in fact, as I argued above, a strategy based on the credible threat of retaliatory punishment. In just war terms there is nothing inherently immoral about a strategy of punishment, despite the modern trend toward a moral rhetoric representing the only just cause for use of armed force to be defense. What determines whether it is wrong or not is the nature of the punishment and who

receives it. Given a strategy that rests, today as in the past, on multi-megaton nuclear warheads and a targeting doctrine that accepts multiple strikes on military targets inside centers of noncombatant population, neither appeal to the rule of double effect nor the effort to separate the deterrent threat from the retaliatory action itself can overcome the immorality inherent in such a strategy.

I argued earlier that the main line of nuclear strategy was driven by value assumptions as well as by the technology of nuclear weapons and delivery systems. Had the force of the moral ideal of noncombatant immunity not already eroded before the advent of the nuclear age, I doubt whether it would have seemed so right or so inevitable that nuclear weapons and nuclear strategy should have developed as they have. Similarly, if that moral ideal is now to be recovered and reasserted, this must imply changes in the nature of strategic doctrine, targeting policy, and in the weapons of defense and deterrence themselves.

Other moral concerns from just war tradition also point toward the need to make such changes. Current strategic doctrine and weaponry do not, as noted above, provide a defense of values against an attack in progress but are suited only to deter attack. Ironically, carrying through the threatened punishment might, under some circumstances, itself serve to complete the destruction of the values ostensibly being preserved and protected. (This would be the case, for example, in a scenario in which a Soviet first strike was beneath the level necessary to produce a 'nuclear winter', while the addition of an American retaliatory strike would exceed this level.) Again, though it is always difficult to quantify good and evil, the magnitude of destruction that could be reasonably expected from a strategic nuclear exchange calls into question whether a war fought in this way could ever not cause a disproportion of bad over good. Nuclear pacifists, though they typically deride just war theory as irrelevant to the nuclear age, have regularly argued their position in terms of this just war criterion. Mennonite theologian John Howard Yoder, for example, has argued explicitly that faced with adding disproportionate harm to disproportionate harm, the more moral course for Americans in event of a nuclear war would be simply to surrender (Yoder 1984, 64-67).

We may put the matter more positively by turning the critical focus of just war tradition around to ask what sort of strategic posture is compatible with the moral concerns found here. In the first place, a bias toward defense rather than offense runs through just war tradition as a whole, and it is especially strong, as noted earlier, in modern international law. Taken seriously, this implies development of weapons that are capable of providing genuine defense against attack, not only retaliatory punishment for attack. Second, there is a bias toward weaponry that is inherently not disproportionately destructive and capable of being used discriminately

against legitimate military targets.⁵ This implies lowering the destructive capability of nuclear weapons, replacing at least some nuclear weapons with conventional ones, and increasing the accuracy and controllability of delivery systems.

In the following sections I will apply these standards of measurement to two new strategic developments, the strategic defense initiative, or SDI, and fractional-megatonnage, high-accuracy strategic nuclear weapons.

The Case of SDI

The Strategic Defense Initiative, or SDI, has emerged as a central issue of disagreement between the United States and the Soviet Union in the arena of arms control. This is not necessarily the most important thing to say about it, however, from a moral perspective based in just war tradition. Arms control as such, as this is currently understood to mean limits on numbers and types of weapons, particularly strategic weapons, is not an end in itself, from a perspective within this tradition; it is, rather, at best a means to ends that are themselves morally justifiable.

Focusing on ends, not means, also shifts the debate over laboratory research versus testing versus deployment into a perspective different from that of the arms controllers. If strategic defense is itself morally justifiable, or justifiable in some forms but not in others, then all levels of work from research to deployment are justified. If the judgment is reached that strategic defense weapons systems, or some such weapons, are morally unjust, then earlier stages of work - and in particular, laboratory research - may still be justified if there is the possibility of producing moral benefits. Since most of the public debate has been carried on in terms of the narrow perspectives of arms control, these broader and more fundamental moral concerns have been largely disregarded.

Moral analysis of SDI is complicated by two further factors. First, attempts at moral justification have been a part of the SDI debate, on both sides, since its inception. Thus a just war analysis will inevitably look, at times, like an effort to take sides in the debate that is already under way, rather than a fresh attempt to evaluate SDI in moral terms. Nonetheless, it is important to conduct such a just war analysis, for doing so, along with providing a vehicle for judging SDI, also implicitly provides a perspective from which to judge the ostensibly moral claims that have already been advanced regarding this program.

A second complicating factor is the question of exactly what the term SDI means. President Reagan's initial rhetoric, in his address of March 23, 1983, seemed to hold out the promise of a defensive shield capable of protecting the American people as a whole. Advertisements in support of

SDI aired on American television for a time in 1985 reinforced this image, employing a voice-over technique while on the screen appeared a drawing like that of a young child in which a rainbow-like shield protected a house against incoming missiles. The actual shape of authorized SDI planning, though, so far as this can be made out from unclassified materials and public statements of military and Administration spokespersons qualified to speak on SDI, is much more selective: for technical and economic reasons current planning is focused on the possibilities held out by SDI for reinforcing the survivability of the American strategic retaliatory force.⁶

These are not necessarily contradictory concepts. One way of arguing for their complementarity is to describe the narrower version of SDI as the short-term goal, an initial step toward the implementation of the broader vision. Since admittedly the SDI program will be very expensive to bring to the deployment stage, and since it is dependent on extremely complex technology some of which is now only in the experimental stage, on this argument the proper first step is not to attempt to implement the broader counter-population shield in the first generation of space-based strategic defenses but to reserve that goal for subsequent generations of such defense systems. In this argument the high moral goal of counter-population defense is implicitly honored, but its realization is postponed for technological and economic reasons. A familiar operative rule of moral analysis is that no one is morally obligated to do something that is beyond his or her power; that rule is implicitly observed in this argument.

A second type of argument for the complementarity of the broader and narrower concepts of SDI is somewhat more complex, and it sharply shifts the ground of the moral reasoning regarding SDI. This argument is that the narrower version of SDI is valuable as an enhancement of strategic deterrence by threat of retaliatory punishment. By increasing the survivability of the American land-based strategic nuclear force SDI would reduce the possibility of a Soviet first strike, since that strike would be less punishing and a heavy retaliatory blow thus much more likely. We should recognize that this is a rather different kind of argument from the first one and is in tension with it. The first argument accepts the ideal of counterpopulation strategic defense, and a counterforce shield is understood as a first step toward that goal. The second, like all of the main line of deterrence strategy throughout its forty-year history, focuses not on counterpopulation defense against an attack in progress but rather on preventing such an attack from occurring in the first place by increasing the credibility of the threat of an unacceptably destructive retaliatory strike.

What of the connection between the narrower and broader defensive shields, according to this second argument? The answer, simply put, is that the concept of a full protective population shield is jettisoned.

Population protection, on this argument, depends on the continuation of credible deterrence, and that rests on a retaliatory threat. Given an initial limited SDI capability to protect the strategic retaliatory force, a later broadening of SDI capability would still be first of all for the purpose of enhancing such protection. Some degree of increased population defense might will be a result of such a more capable system, but it would be a secondary result from the steps taken to reach the primary goal.

In short, the two lines of argument for SDI that I have sketched, together with their implications, lead squarely into a debate of long standing over the merits of defense as opposed to those of deterrence. Arguments opposed to SDI also lead toward this debate, though principally by one path only: the path that assumes the validity of deterrence doctrine and discounts the ideal of population defense.

War-avoidance is certainly a major theme in just war tradition, and it is the fundamental purpose embodied in the structure of strategic deterrence by threat of retaliation. What is morally problematic about this form of strategic deterrence is its failure to deal constructively with the eventuality that it might, under some conditions, fail to prevent a war from starting. In that eventuality it is reasonable to expect that the strategic nuclear weapons possessed by both sides would be used, with major destructive effect on noncombatants (including citizens of nonbelligerent states) even in the case of the most scrupulously discriminating choice of targets. The moral dilemma posed by reliance on strategic deterrence by threat of retaliation is that in case of the failure of deterrence to avoid war, the resulting conflict would likely be all the more destructive because of the use of the very weapons - strategic nuclear missiles - that were never supposed to have to be used.

So-called 'war-fighting' planning is, by contrast, weakest in terms of its ability to avoid war altogether and strongest in its purpose of continuing to defend threatened values in the midst of an armed conflict. There is an important deterrent or war-avoiding element to such a strategic configuration, though its effect is generally downplayed by its critics; the aim here is deterrence by threat of denial of victory.

Moral and strategic concerns tend to converge, then, on the problem of the optimum mix in defense planning of war-avoidance (deterrence) and war-fighting (active defense of values). Strategic defense offers new possibilities in both these regards. Its actual capabilities remain unproven, and other means to optimizing these twin concerns may prove better, but it is worthwhile nonetheless to examine SDI in this light.

The major claimed benefit for the more limited form of strategic deterrence is that it would improve the survivability of American land-based ICBMs, currently vulnerable to a first strike (see, for example, Brzezinski/Jastrow/Kampelman 1985). Not only would this in principle enhance the aim of war-avoidance. Since the weapons that would be protected include precisely those that would be most capable of being used in accord with the just war principles of discrimination (noncombatant immunity) and proportion, this would be a positive development in jus in bello terms as well.

On the negative side, it has been argued by critics of SDI that it would be provocative and destabilizing. In an article titled "Dark Side of 'Star Wars': System Could Also Attack" The New York Times (March 1985, p. 1 A 24) summarized some critics' fears about the offensive capability of space-based lasers: they might be used to "deliver devastating non-nuclear strikes to high-value targets anywhere on the earth's surface, in the air or in space, ... with no collateral damage to adjacent civilian populations." 'Key targets' might include oil tankers at sea, petroleum storage depots on land, power transformers, military vehicles, troops, and even grain fields and storage bins. A much more recent article (October 19, 1986, pp. 1,14) states that, for technical reasons, "space-based lasers ... have been abandoned", and if true this renders the above argument against SDI moot. Nonetheless, we should dwell a moment on the language of the critic quoted. From a just war perspective it would be a decided advantage, not a disadvantage, to be able to deliver non-nuclear strikes against legitimate military targets without collateral damage to adjacent civilian populations. Given that today's nuclear missiles can destroy high-value targets anywhere on the globe but at the cost of such collateral damage, a space-based laser would be a much more morally defensible weapon in terms of the ideals of discrimination and proportionality.

The most significant benefits, indeed, potentially offered by SDI lie in the region of war-fighting means and methods, the arena of the just war jus in bello. If there was ever a weapon inherently offensive in character, it is the multi-megaton nuclear warhead. While there are certainly offensive possibilities for the more exotic new technologies being researched for SDI - notably lasers and particle beams - these possibilities could scarcely pose worse problems than those of strategic nuclear weapons now deployed. Less exotic technologies - for example, the use of antimissile missiles and 'smart rocks' - pose no inherent offensive threat; they are purely defensive by their nature.

For just war tradition, though, the most fundamental issues in the war-fighting context are defined by the moral criteria of discrimination and proportionality. These criteria imply the development and deployment of

weapons that are highly accurate, limited in their collateral effects, and maximally subject to human control.

Applying these guidelines to particular weapons or weapons systems requires comparing them to rival weapons or systems, and it requires setting them in the context of their strategic and tactical purpose. Thus, for example, compared to the tactical fission warheads that they replaced, and in the strategic and tactical context of their intended use, the miniaturized fusion ('enhanced radiation' or 'neutron') warheads now deployed in NATO forces are morally superior because of their lessened collateral damage due to blast and long-lived radiation effects. Since conventional weapons able to perform the same functions would likely cause far more blast and fire damage than the enhanced radiation warheads, there may even be an edge in favor of the latter here. Similarly, a high accuracy (low CEP) ballistic or cruise missile is morally superior to one less accurate because it can, in principle, be used more discriminately (that is, so as better to avoid collateral noncombatant harm from a strike against a combatant target). Moreover, since for effectiveness against a given target the size of the warhead can decrease as accuracy increases, the low-CEP weapon may also be more able to satisfy the moral requirement of proportionality (for further development of this line of reasoning see Johnson 1984, 112-21, 138-48).

Measured against strategic nuclear weapons, the systems that are projected as part of SDI more closely conform to the criteria of discrimination and proportionality. They are to be counterforce weapons by design, and their collateral effect on noncombatants when used in this manner would, so far as can be told, be nil. Even if they were used in a counter-population mode, as the critic quoted earlier has suggested they might be, the effects of a thermonuclear explosion would be far less discriminate and far more disproportionately destructive of noncombatant lives and values.

These reflections apply to both the narrower and broader conceptions of strategic defense as defined earlier. It is not necessary to imagine a defensive screen over the whole of American society - difficult or impossible to achieve by current technology or that projected for the next decade - to recognize that, in terms of the categories of just war tradition, strategic defense is morally superior to a continued reliance on strategic nuclear deterrence as the main line of the west's effort to protect and preserve its values.

Improvements in Nuclear Missiles

Moral responsibility does not end when a war begins; rather, with the onset of armed conflict a new dimension to that responsibility opens up: the need to fight so as to effectively protect and preserve the values be-

ing fought for without using methods and means that would themselves call those values into question. The jus in bello of just war tradition, in coalescing around the importance of avoiding harm to noncombatants and limiting the destructiveness of means of force employed, itself is a statement of value.

The principle of noncombatant immunity is a particular crystallization of the more fundamental moral conception that it is not right to harm the innocent. This principle is, for the jus in bello, what the idea of just cause is for the jus ad bellum. Those who may be opposed by force are thus those who themselves are doing wrong by force. Combatants do such wrong; noncombatants do not. Whatever their own sympathies may be assumed to be, then, the noncombatant population of an enemy state in wartime do not give up their moral status unless they themselves take up arms or move into positions of close support to those who actually bear arms. It is sometimes claimed that in modern war there are no noncombatants. This may be simply the argument that attitudes, not actions, make enemies, and that in a modern state it may be assumed that the civilian population wants their nation to win in war, just as do the soldiers in arms. Yet the antipathetic attitude of another does not in itself justify my using armed force against him, much less kill him.⁷ Or the argument that in modern war there are no noncombatants may be based on the alleged close ties of the civilian and military sectors in modern economics. The worker at a plant that makes ball bearings used in tanks does not himself bear arms, but he is nonetheless directly aiding the war effort. The answer to this line of argument is, of course, different depending on the type of example given. Yet even if the worker in question is a combatant, his bedridden father at home is not, nor his wife who has small children at home, nor those children. Broadening the category of combatants to include people in civilian clothes and civilian jobs like that of the ball-bearing worker does not do away with the fact that, in a modern society as well as in any in the past, there remain some persons and classes of persons who are genuinely noncombatants, to whom is owed a moral duty not to give direct and intentional harm.

The jus in bello principle of proportionality also echoes the moral concerns encapsulated in the jus ad bellum. This principle reminds us that the justification of use of armed force does not extend to the infliction of gratuitous destruction or the establishment of a Carthaginian peace. This just war concept does not mean, as is sometimes argued, opposing force with like or equal force to produce a stalemate; nor does it imply only defensive configurations and use of military force.⁸ Rather it means simply that, if a particular military objective is justified, then the force employed to attain it should be the minimum consistent with that object. Anything more is gratuitous.

Both these moral principles from the just war jus in bello point in the same direction. Weapons of war should be, by design, highly controllable and relatively limited in their destructive effects. For noncombatant immunity, controllability means the ability to discriminate between legitimate targets and noncombatants in the immediate area, while limitation of destructiveness means both minimizing the collateral deaths and damage that will occur around the target and also minimizing the long-term effects of the damage that will linger after the end of the war, when all are noncombatants. For proportionality, controllability means the ability to match countermeasures more precisely to threats, and limited destructiveness means the ability to neutralize a threat without gratuitous destruction to nearby values it would be well to preserve.

The above considerations are not new; Paul Ramsey advanced very similar arguments in his first book on nuclear war published in 1961, reasoning from them to the moral preferability of counterforce over counterpopulation (countervalue) targeting of nuclear weapons (Ramsey 1961, 148-49, 228-29, 232-33, 260-64, 320-23; cf. Walzer 1977, ch. 17, and O'Brien 1981, 47-68, 128, 135, 137-39, 343-44). When the actual weapons that might be targeted in a counterforce mode are considered, however, it quickly becomes apparent that, for multi-megaton warheads, even if delivered by vehicles with a reasonable accuracy, in practical terms there will be no difference between targeting a military installation in the center of a concentration of noncombatant population and targeting that noncombatant population itself. If we wish to take seriously such a realization while maintaining a commitment to the moral ideals of proportionality and noncombatant immunity, there are but a few alternative ways to do so.

1) We may identify nuclear weapons as a class with indiscriminate and disproportionate destruction and decide that therefore no circumstances exist in which they could be used morally. Taken in one direction, this path leads to total nuclear disarmament. Taken another way, it leads to the position of the American Catholic bishops that deterrence by threat of nuclear retaliation is morally permissible, but the retaliation that is threatened would not be moral to carry out. Lacking such general disarmament and recognizing the implausibility that threat and use can be separated as the American bishops desired, this way of dealing with the moral issue leaves a great deal wanting.

2) We may argue, as Ramsey did in 1961, that the important moral concern is to avoid direct, intentional attacks on noncombatants. Ramsey employed the rule of double effect to argue that where harm to noncombatants is an indirect, unintended secondary effect of a legitimate military action, then it is excused. This makes another distinction, like that between threat and use made by the American Catholic bishops, that is more persuasive in theoretical than in practical context. Though military and combatant civilian

installations in or near a given city may be the direct targets, for the case of multi-megaton weapons it is implausible to separate the intention of crippling these targets from that of harming the noncombatant population in the immediate vicinity. Where the area of destruction extends out from the point of detonation to include a hundred square miles or more, to call that destruction 'secondary' and 'unintended' is to twist the meanings of those words beyond reason.

3) We may decide to limit our use of such weapons to targets in unpopulated or sparsely populated areas, such as a naval battle group at sea or missile silos located in remote areas. In moral terms this would be about the limit of appropriate use of very large nuclear weapons, and a targeting plan for such weapons should at the very least give priority to this concept. Yet such targeting alone would be a severe restriction on the actual use of nuclear weapons, and it is not likely that without expansion of the target list beyond the bounds of discrimination and proportionality this could provide either a workable deterrence or a workable war-fighting plan. As one critic of strategic nuclear weapons has argued, "if you take the cities out of the war-plan, there's no war-plan left" (Powers 1984, 55).

4) We might choose to accelerate development and deployment of alternative types of weapons able to replace those that are by design incapable of being used against most legitimate targets without being indiscriminate and disproportionate. This would include delivery systems of very low CEP mated to either fractional megatonnage nuclear warheads or conventional high-explosive warheads. Since research and development, and some deployment, of such systems has already been under way for some time, the decision to seek the solution to the moral dilemma of how to protect values worth defending by just means is not just an expression of an ideal; it is rather the choice of an option for both deterrence and possible war-fighting that at once draws us closer to the goals of discrimination and proportion in our use of military force and to what is actually possible in weapons technology and force configurations built around it.

Counter-force targeting is, in short, implied by just war concerns. Yet without means capable of being employed against forces without indiscriminate and disproportionate collateral harm to values, adoption of the counter-force ideal remains empty of real content and, at bottom, a moral sham. Weaponry capable of being used in a counter-force mode without such indiscriminate and disproportionate effects, together with strategy and tactics that maximize the ability of such weaponry to keep the use of military force within these moral limits, is a direct implication of taking seriously the requirements of the jus in bello of just war tradition.

Now, how does reality - what is currently the case and what is reasonably expected to be possible in the near future - fit with this moral goal? Unlike the case of SDI, where most of the technology is still in the stage of research and much of it is new and untried, the move toward low-CEP delivery vehicles and fractional megatonnage nuclear warheads is already well under way in western forces. The United States Minuteman III with Mk-12A reentry vehicle has a CEP of approximately .10 nautical miles (or 200 meters) and a warhead whose yield is .335 megatons. Such a warhead is still too destructive to be usable, following just war standards, against targets in or near centers of noncombatant population. For such use both CEP and warhead yield would have to be reduced still further. The Pershing II has achieved a CEP of .015 nautical miles (30 meters), and the technology appears available to reduce CEP still further to the range of .005 nautical miles (or ten meters). Lowering the yield of nuclear warheads to the range of half a kiloton (.0005 megaton) is also possible.⁹ Such a warhead would be vastly less destructive than the current Minuteman III warhead mentioned above and another quantum leap away from the destructiveness of the multimegaton warheads now deployed by both the United States and the Soviet Union. (The largest warhead now deployed is Soviet, with a yield of 20 megatons. Such a weapon is essentially a counterpopulation weapon, whatever the ostensible targeting.) Now, half a kiloton is the equivalent of five hundred pounds of high explosive, and this has been one of the standard sizes of high-explosive bombs since World War II. In other words, when this range is reached - and indeed, considerably before it, if the comparison is between multiple conventional weapons and one nuclear warhead - there is a real option of substituting non-nuclear for nuclear warheads, given delivery vehicles of sufficient carrying capacity.

Another factor is whether the intended target is 'hard' or 'soft'. Counter-nuclear-force targeting must assume 'hard' targets, that is, reinforced concrete missile silos. Against such targets the CEP-yield ratio is crucial, for what matters is producing the blast pressure necessary to fracture the silo and render its missile inoperable. High-CEP weapons thus correlate with high yields and use of multiple warheads per target. (CEP, after all, is a measure of probable error, and a given missile may fall outside the average CEP radius, where it will fail to achieve the desired effect.)

Replacement of low-accuracy (high-CEP), high-yield weapons with newer types of high accuracy and commensurately lower yield has benefits in terms of the jus in bello concepts even when the target is in a remote area. After the Chernobyl disaster it is absurd to minimize the effect of nuclear fallout on populations even hundreds of miles away. Similarly, the atmospheric detonation of a high-yield strategic nuclear warhead, even if used in a counterforce mode against a remotely located silo, will inevitably produce counterpopulation effects in the form of radioactive fallout in areas

far removed from the target silo. In the real world of nuclear strategy we must magnify these effects by two (since typically two warheads are assigned to each hard target), multiply by the number of hard targets, then add the number of soft targets against which a single warhead will suffice. The result is massive noncombatant devastation, which is immoral even if we do not go so far as to postulate nuclear winter or, in Jonathan Schell's terms, "a republic of insects and grass" (the phrase is the title of ch. 1 in Schell 1982).

By contrast, increasing accuracy of delivery vehicles (lowering the CEP) allows lowering the yield of the warhead, since the desired blast pressure against hard targets can be had with lower yield when the placement of the warhead is more precise. The increase in accuracy may also make it possible to use only one, not two, warheads per hard target. Using a CEP of .015 nautical miles and a desired blast pressure of 5000 pounds per square inch, but still assuming two warheads per hard target, a recent article puts the necessary yield at 1.2 kilotons (.0012 megatons) for each such target (Altfried/Cimbala 1985, 10). Again, here we are in the range of conventional high explosive. Yet even without substituting high-explosive warheads for nuclear ones, there is a vast difference between the collateral harm caused by a nuclear explosion of .0012 megatons and one of .670 megatons (that is, two of the American Mk-12A warheads mentioned above), let alone one of 40 megatons (two of the 20-megaton Soviet warheads mentioned above). Even if we do not assume that targets in or near noncombatant population centers are among those chosen for actual destruction, there is a clear imperative, for persons concerned with the moral right of noncombatants to protection in war, to develop counterforce weaponry that will produce the lowest yield possible, thus producing the lowest collateral harm to noncombatants consistent with destruction of the legitimate targets.

Conclusion

Just war thinking remains relevant in the contemporary world. It could hardly be done away with in any case, because it is part of the cultural heritage of the west and expresses a long-term historical consensus on when values should be protected by resort to force and what kinds of force are appropriate for the protection of value. In other words, this tradition tells us something of who we are and what we hold dear, and without it our culture would be different in ways difficult to imagine. But more than this, the tradition holds implications for present moral analysis and decisions affecting the future which we would be ill-advised to ignore. Contemporary military analysis is full to the brim with unidimensional arguments. The arms control community attempts to reduce everything to what helps or hinders arms control; members of the deterrence community focus on what is perceived by them as creating greater deterrent stability

or impairing that stability; nuclear pacifists hate weapons of any kind as such and value disarmament at whatever cost; extreme hawks work for overkill capability whatever the result that might follow in case of war. So often in recent debate the issues have been stated in terms of the value of deterrence over defense, the value of second-strike weapons (by definition too low in accuracy to be useful in a first strike, but also high in yield as a result of their CEP) over those that could be useful in a first strike. Just war tradition helps to return the moral debate to fundamentals: there may be expected to be occasions in which the only way to protect the values we hold dear is by use of military force, and it is justified to seek to protect these values by force in such cases; yet not any and all kinds of military force may morally be employed, since some would result in destroying those values themselves. Defense of values, not offensive endangerment of the values of others, is a bias in just war tradition. Avoidance of harm to noncombatants and of disproportionate, gratuitous destruction are also biases within this tradition. The tradition further serves as a reminder that we live in world in which the end of all war - all threat to value by force - is not a reality, so that it is wrong to pretend that it is. It reminds us, finally, that we must make concrete judgments regarding weapons, strategies, and tactics to seek to optimize the goods we seek to preserve. I have argued that just war considerations tend to produce a positive assessment of the strategic defense initiative and that they very definitely point to adoption of low-CEP, fractional megatonnage nuclear weapons. Neither of these is good in itself; yet in the real world of human history we must compare them to the strategies and weaponry of nuclear deterrence as this has existed up to now. The moral choices reached from this perspective will not look attractive to many persons whose prior commitments lock them within narrower points of view. Nor will the relativity of the moral choices implied by just war considerations be attractive to persons gripped by a utopian vision of a world in which there is no violence. The contemporary relevance of just war tradition nevertheless perseveres.

Notes

- 1 The 1928 Pact of Paris, the 'agreement to outlaw war', outlawed only first resort to force to settle international disputes; it did not abridge the right of use of force in self-defense. Similarly, the United Nations Charter, in Articles 2 and 51, restricts the first use of force while continuing to reserve the right of second - defensive - use. For discussion see Meyrowitz 1970; Kaplan/Katzenbach 1966; and pp. 266-70 in my 1975.

- 2 The 1982 conflict between the United Kingdom and Argentina over the Falklands/Malvinas Islands is a case in point. Both parties to this conflict argued that they were defending their own rights. Yet Argentina also justified its seizure of the Falklands/Malvinas as recovery of territory wrongly taken over by the British a hundred and fifty years earlier, and Britain in turn justified its military response as action to retake lost territory that was its own. Prime Minister Thatcher and her representatives also made much of the need to punish military aggression, while an undertone rose from among third-world countries that Argentina's action had been right because it was punishment of British colonialism. Here we have all three of the classic just causes (defense, recovery of something wrongly taken, punishment of evil) enumerated by Thomas Aquinas. Yet international law explicitly legitimizes only defense, and whatever the moral force of the other arguments, the legal case had to be put in these terms.
- 3 It is, of course, a major theme in anti-nuclear writing to argue for the inherent disproportionality of nuclear weapons, as in, for example, Schell 1982. A more moderate position, nonetheless resting heavily on the argument from the disproportionality of such weapons, is exemplified by The Challenge of Peace; see paragraphs 152-53, 180, 184, 189.
- 4 Paul Ramsey comments on the need to recover "the memory of a distinction" between combatants and noncombatants; see his 1968, chaps. 7, 17.
On the linkage between the justification of strategic bombing in World War II and nuclear strategy after 1945 see Freedman 1981, 1983, chapter 1; cf. my 1984, 129-38.
- 5 See further my exploration of this implication of just war tradition in 1984, chapters 3 and 5.
- 6 See The New York Times, October 19, 1986, p. 1: "Obstacles Force Narrower Focus on 'Star Wars'".
- 7 Whether a given individual is a combatant or not depends on actions, not attitudes. In the eighteenth century Emmerich de Vattel put the argument this way: "Women, children, the sick and aged, are in the number of enemies. ... But these are members (of the enemy society) who make no resistance, and consequently give us no right to treat their persons ill, or use any violence against them, much less to take away their lives." (Vattel 1916, Book III, section 145)
- 8 For a concise discussion of the requirements of the just war jus in bello and its connection to the international law of war see O'Brien 1981, chapter 3.
- 9 These figures are taken from Altfield/Cimbala 1985, 10.

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