THE MORAL IRRELEVANCE OF THE COUNTERFORCE/COUNTERVALUE DISTINCTION

1. Varieties of Policy and Varieties of Criticism

Since the atomic era began in 1945, there have been three waves of moral criticism directed at American nuclear weapons policies. The first wave, which began around 1957 and ended in 1962 with McNamara's announcement of Flexible Response, focused on Dulles's policy of Massive Retaliation. The second wave, which began in the early 70's and ended in 1974 with Schlesinger's announcement of Countervailing Response, focused on the Assured Destruction policy developed in McNamara's later reports to Congress. The third wave began in the 80's with Weinberger's remarks about "prevailing" in nuclear conflicts and may or may not end with the next MX vote or next strategic arms agreement.1

In each wave of criticism there has been a dominant moral note. From the moral point of view, the principal problem with Massive Retaliation is that the damage caused by a massive American retaliatory strike would outweigh in scale any injury the United States might receive before the strike is launched. Thus, action according to the policy violates the just war canon of proportionality, which dictates that in a just war the projected damage should not be significantly greater than the damage suffered if the war is not fought. In the case of Assured Destruction, the main moral problem is the use of cities as targets and populations as hostages, a feature first dictated by missile inaccuracy and later provoked by the hardening of opposing strategic forces. Action according to Assured Destruction is thus widely thought to violate the just war canon of discrimination, the rule that noncombatants should never be the victims of military force. In the case of Prevailing Response, concern arises that steps taken to assure success in nuclear war increase the probability that nuclear war will be initiated, and that nuclear war, once initiated, cannot be controlled. Thus the Weinberger policy is thought to require reckless and immoral risks.2

The judgment that Massive Retaliation violates Proportionality is today almost universally accepted, and to some degree this verdict may have influenced the abandonment of the policy, although Massive Retaliation was so riddled with strategic defects that it probably would have been abandoned on prudential grounds even if it had not been morally flawed.3 By contrast, the standard criticisms of Prevailing Response are somewhat
misplaced, if for no other reason than the fact that Secretary Weinberger's operations policy for strategic forces differs little from Harold Brown's, and Brown was eager to claim that his policies represented no radical departure from Schlesinger's. The moral criticisms which today retain the most force and relevance are the criticisms that appeal to the principle of discrimination, criticisms that influenced the development of Flexible Response and prevailing Response and which are still invoked today in arguments and budget requests for more precise and therefore more discriminating strategic weapons systems. These criticisms dominated discussions of Assured Destruction, but they apply to Massive Retaliation as well, and as I shall try to demonstrate, they have not been wholly satisfied by the policies which supplanted Massive Retaliation and Assured Destruction, policies which allegedly face and resolve the difficulties of reconciling respect for non-combatant immunity with the threat and use of strategic force.

2. The Case for Discrimination in Strategic Targeting

A typical presentation of the "argument from discrimination" against Massive Retaliation or Assured Destruction might go like this. Under these policies, population centers are "direct objects of attack." American missiles are aimed at cities, and they are so aimed for the purpose of destroying those cities; likewise American bombers are directed towards cities, with the hope of destroying those cities should a nuclear war begin. To act on such a policy would be immoral because non-combatants are innocents, and if they die as direct objects of attack their deaths are intended, in the sense that their deaths are means to a desired end. But the intended killing of innocents is mass murder, and a first or second strike under these policies would be mass murder. Thus, Massive Retaliation and Assured Destruction involve commitments to mass murder, and if it is morally wrong to perpetrate mass murder, it is also morally wrong to adopt a deterrent posture which commits oneself to doing it. True, this commitment to mass murder is conditional on the occurrence of provoking conditions, but under these policies the provoking conditions (for example, a nuclear first strike against the United States) are more than minimally probable. Even in the face of assured destruction, a nuclear enemy may overestimate his chance of success; he may strike accidentally or in a frenzy; he may fail to stop an unauthorized launch, or mistakenly believe he is under attack. Clearly, it is immoral to form a conditional intention to commit murder if there is a more than minimal chance that the condition will occur.

Such a commitment to mass murder might be excusable if it were the only way to prevent the mass murder of citizens in the United States. But it
is not the only way. If American missiles were aimed at military targets, not at population centers, then American policy would not intend the direct killing of non-combatants and not involve a commitment to mass murder. And such a shift in targeting policy would not weaken deterrence, since the prospective destruction of military forces should deter opponents as much as the prospective destruction of population centers. Thus a "counterforce" or "countercombatant" posture will not increase the chance of nuclear war but will make the war less evil if it comes.

The case for discrimination in strategic targeting is not purely moral; it is partly legal. The Hague conventions for land warfare stipulate that "the attack or bombardment, by whatever means, of towns . . . which are undefended is prohibited" (Art. XXV) The Galosh ABM around Moscow is more a joke than a defense; all cities in the nuclear era qualify as undefended against strategic attack. Furthermore, the 1977 Protocol to the Fourth Geneva Convention (1949) stipulates

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the main purpose of which is to spread terror among the civilian population are prohibited . . . Indiscriminate attacks are prohibited. Indiscriminate attacks are those which are not directed at a specific military objective . . .

The protocol requires a specific military objective, and "winning the war" or "winning the peace" is not specific enough. The demand for counterforce instead of countervalue targeting has at least some foundation in international law.

3. History of Attempts at Strategic Discrimination

In the history of strategic targeting, the introduction of Flexible Response was at least partially motivated by the belief that Massive Retaliation implied the slaughter of innocents. The "flexibility" in McNamara's policy of flexible response was flexibility for the President: should the President choose to use nuclear weapons, he had more than one way that he could use them. In the single integrated operational plan (SIOP) introduced in 1963, the President had five options, including an attack plan limited to Soviet strategic forces, an attack directed at economic and industrial targets, and an all-out spasm attack directed at everything of value in the Soviet Union. The five attack plans formed a sequence, with each attack plan including most of the targets in its predecessor. If the President chose to activate the earlier attack options without escalating to later stages, American bombs and missiles would strike primarily at military targets, not at Soviet cities. The new option of counterforce nuclear warfare was advertised in McNamara's most frequently quoted sentences:
The United States has come to the conclusion that to the extent feasible basic military strategy in a possible general nuclear war should be regarded in much the same way that more conventional military operations have been regarded in the past. That is to say, the principal military objective in the event of a nuclear war stemming from a major attack on the Alliance, should be the destruction of the enemy's military forces, not his civilian population.9

Since the details of the McNamara SIOP are still classified and since the arguments that actually secured its adoption are even less available, it is difficult to assess the degree to which the McNamara SIOP actually conformed to the principle of non-combatant immunity, conventionally interpreted. Two things are clear: (1) the SIOP did provide the President in the event of war with the option to avoid urban targets, but (2) despite McNamara's assertions in the sentences quoted above, the SIOP did not constrain the President or military leaders to strike only at military targets. Just as with Massive Retaliation, under Flexible Response if circumstances were right the President could choose to make cities the direct objects of attack. Indeed, given the exigencies of decision making in the event of a nuclear attack, the McNamara SIOP virtually committed the President to the destruction of Soviet cities in extreme circumstances, such as a massive atomic attack on American cities. The "commitment to mass murder" inherent in Massive Retaliation had not been eliminated in Flexible Response: what had been changed was the probability of the circumstances in which the commitment would be honored.10

In the late 1960's, McNamara stopped speaking in terms of "no cities" and began regularly describing adequate deterrence as the American capacity to destroy in a second strike one-quarter of the Soviet population and one-half of its industry.11 The reasons for the change from Flexible Response to Assured Destruction are complex, but an important technical factor was the hardening of Soviet silos and the ever increasing number of Soviet strategic submarines.12 Perhaps by 1968 American leaders were beginning to doubt that the early counterforce attack plans in the McNamara SIOP could be successfully carried out or were at least beginning to doubt that the early options could be executed without eventual escalation to the ultimate spasm. By the early 1970's, American leaders were beginning to speak as if Flexible Response had never existed. Thus in 1970 President Nixon asked:

Should the President, in the event of nuclear attack, be left with the single option of ordering the mass destruction of enemy civilians, in the face of the certainty that it would be followed by the mass slaughter of Americans?13

Now, if the move to Assured Destruction was caused by technical developments on the Soviet side, hope arose for an American technical
remedy, to be achieved by installing multiple independently targeted re-entry vehicles on missiles, by improving missile accuracy, and by placing short range attack missiles on bombers. By 1973 the technical capacity existed for a return to counterforce and a new SIOP was prepared. In March 1974, Secretary Schlesinger described the changes:

Threats against allied forces, to the extent that they could be deterred by the prospect of nuclear retaliation, demand more limited responses than destroying cities and advanced planning tailored to such lesser responses. Nuclear threats to our strategic forces, whether limited or large scale, might well call for an option to respond in kind against the attacker's military forces. . . . Targets for nuclear weapons may include not only cities and silos, but also airfields, many other types of military installations, and a variety of other important assets not necessary collocated with urban populations.14

Clearly the Schlesinger SIOP provides the President with a greater variety of attack options than the McNamara SIOP. But introducing sub-options into attack plans affects only rate-of-fire policy. Did the Schlesinger initiative represent a radical departure from McNamara's targeting policy? In what way did strategic target selection in 1974 differ from strategic target selection in, say, Laird's 1972 SIOP, inherited with little change from McNamara?

From what we know of Schlesinger targeting plans, many things were taken over from 1962. There is a general grading of targets into five rough categories—strategic weapons, military forces, military support forces, military command and control centers, industrial and economic targets. Items in these targeting categories are grouped together into attack options presented in summary form to National Command Authority. Apparently, as in 1962, there is a concerted attempt to put strategic weapons targets into attack plans more likely to be activated in the early stages of a multi-stage nuclear war, and to put economic and industrial targets into attack plans more likely to be activated in the later stages of a multi-stage nuclear war. But at least two innovations distinguish the targeting philosophy of the Schlesinger SIOP. First, the ultimate objective of the most inclusive attack plan in under Schlesinger is the destruction of the enemy—presumably the Soviet Union—as a functioning 20th century society. In the Schlesinger plan, economic and industrial targets are not struck blindly but selected with the object of hitting bottlenecks in the Soviet industrial system, bottlenecks located by input-output studies of the Soviet economy, and other methods.15 Second, certain targets are placed on "withhold," for example, targets on allied territory, non-military command and control centers, and cities.16 It is difficult to interpret exactly what is involved in these strategic withholds, but some special effort is being made, distinct from the McNamara initiative, to keep cities from serving as targets for strategic
weapons. Unfortunately, it remains unclear whether "withholding nuclear weapons from urban targets" implies only avoiding direct attacks on cities, calculated to destroy these cities, or whether it involves avoiding dropping any bombs on cities, including bombs directed at military targets that happen to lie within cities. The ambiguity of the situation regarding strategic "withholds" is summarized in national Security Advisor William Clark's 1982 letter to the National Council of Catholic Bishops:

For moral, political, and military reasons it is not our policy to target Soviet civilian populations as such. Indeed, one of the factors that has contributed to the evolution of U.S. strategic policy is the belief that targeting cities and populations was not a just or effective way to prevent war . . . This being said, however, no one should doubt that a general war would result in a high loss of human life, even though our targeting policy does not call for attacking cities per se and seeks to avoid population centers as much as possible. It is for this reason that it is clear that U.S. policy is to deter nuclear war and all situations that could lead to such war.17

4. Origins of the Modern Canon of Discrimination

The pregnant phrase "per se" in Clark's "our targeting policy does not call for attacking cities per se" highlights a curious marriage in the modern theory of just war—a marriage between the traditional doctrine of noncombatant immunity and the Catholic doctrine of "double effect."

Beginning with the medieval Peace of God, the traditional doctrine of noncombatant immunity protected certain classes of persons—initially clerics, monks, friars, pilgrims, travellers, merchants, and peasants cultivating the soil—from the warrior and the effects of war. A soldier, even a soldier fighting for a manifestly just cause, who deliberately (i.e. non-accidentally) killed anyone in a protected group, was guilty of sin and subject to Church discipline and the assignment of penance. When the Hague Convention adopted the rules of land warfare in 1899, the analogous prohibition was similarly strict: "The attack or bombardment of towns . . . which are undefended is prohibited," implying that even a bombardment incidental to a larger military operation is prohibited by the rules of war. Likewise, the 1899 rule regarding cultural monuments specifies

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, and charity, hospitals and places where the sick and wounded are collected, provided that they are not used at the same time for military purposes. (Art. XXVII)

where the word "necessary" implies what must not be done even if sidestepping the rule serves a just cause, and the phrase "as far as possible" implies that at best military necessity provides an excuse, but not a justification, for acts which damage such buildings and monuments.
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In the Hague Rules of Air warfare, formulated in 1922 but never adopted by the great powers, the question of whether or not protected places are exempt from all attack or merely from direct attack is explicitly faced:

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military works; military establishments or depots, factories constituting well-known centers engaged in the manufacture of arms, ammunition, or distinctly military supplies; lines or communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings, or buildings in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardments of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardments, having regard to the danger thus caused to the civilian population. (Art. XXIV)

The first three clauses specify that protected areas are exempt from all forms of attack, not just direct attack. The fourth clause modifies the preceding restriction by permitting attack on protected places when land forces are present nearby. But the rationale for this exemption is not that there is a moral difference between direct and indirect attack. The function of the fourth clause is to prevent opponents from protecting their land forces by putting them in protected zones. The implication is that if A by choice places land forces near undefended towns or heavily populated areas, then if noncombatants or their property are injured in an attack, responsibility for the destruction lies more with A than with the attacker.

There is, then, a dramatic contrast between the attitude towards noncombatant immunity exhibited in the tradition and in diplomatic conferences before World War II, and the attitude exemplified in the first protocol to the Geneva Convention, supra, with its carefully qualified injunctions against making civilians the "objects of attack." Obviously since the Hague Rules of Air Warfare were never adopted, the great powers by 1922 were beginning to find the traditional doctrine of noncombatant immunity too heavy a burden in the age of long range artillery and aerial bombardment. The desired adjustments came from the odd quarter of moral theology.

The doctrine of double effect originated in the 16th century and by the middle 17th century was elevated by the Salmaticenses Scholastici into a
principle governing the entire field of moral theology. Though it is not usually advertised as such, the principle in effect states special circumstances in which it is appropriate for Catholics to act like utilitarians. In J. P. Gury's classic formulation, dating from 1850:

Principle: it is lawful to actuate a morally good or indifferent cause from which will follow two effects, one good and the other evil, if there is a proportionately serious reason, and the ultimate end of the agent is good, and the evil effect is not the means to the good effect . . . All of the conditions in this principle must be present at one and the same time.

(1) The ultimate end of the author must be good or at least indifferent, that is, the author may not intend the evil effect, because otherwise he would intend something evil and consequently commit sin. . . . he may not consent to the evil effect in any way;

(2) The cause itself of the effects must be good or at least indifferent . . . For if the cause is evil in itself, it makes the action imputable as a fault;

(3) The evil effect must not be the means to the good effect. The reason is that, if the cause produces . . . the good effect only by means of the evil effect, then the good is sought by willing the evil. And it is never lawful to do evil, no matter how slight, in order that good may come of it;

(4) There must be a proportionately serious reason for actuating the cause, so that the author of the action would not be obliged by any virtue to omit the action. For natural equity obliges us to avoid evil and prevent harm from coming to our neighbor when we can do so without proportionately serious loss to ourselves.

Gury's version of the principle of double effect set the norm for 20th century Catholic moral manuals, many of which provide students with exercises in applying the principle to problems from the field of war. According to the principle of double effect, it is permissible to close the submarine flood doors, trapping some men at the bow in order to save others astern, since one wills the rescue of the many but merely permits the drowning of the few, and so forth. A typical application of the principle of double effect to bombardment would argue that it is permissible to bomb a strategically important bridge, foreseeing that nearby civilians will die, since the destruction of the bridge is the object of one's intention but the deaths of the civilians are merely regrettable side effects.

The percolation of the principles of double effect into the theory of noncombatant immunity is evident in the first protocol to the Fourth Geneva Convention. Direct attacks on civilians are prohibited, but indirect attacks are sanctioned provided that they do more good than harm. Though the protocol to the fourth Geneva Convention has not been ratified by the United States, its principles appear in instruction manuals for American officers. The 1976 Air Force Manual, AFP 110-31, addresses the rule of discrimination or "humanity" in the language of double effect:
The principle of humanity also confirms the basic immunity of civilian populations from being objects of attack during armed conflict. This immunity of the civilian population does not preclude unavoidable incidental civilian casualties which may occur during the course of attacks against military objectives, and which are not excessive in relation to the concrete and direct military advantage anticipated.\(^{21}\)

5. Problems with the Principle of Double Effect

Although the principle of double effect still dominates moral analysis in Catholic universities,\(^{22}\) it is not popular with contemporary moral philosophers or philosophers of law. Many contemporary moral philosophers have found its "solutions" to moral problems problematic, and have tried to show that the principle either provides the right judgments for the wrong reasons or simply the wrong judgment for the wrong reasons. Philippa Foot, for example, has shown that all problems of "double effect" can be interpreted as problems of "double duty," and that the most intuitively satisfactory solutions to these problems of double duty can be obtained by ignoring the matter of intention altogether and by giving the duty not to injure priority over the duty to give aid.\(^{23}\) H. L. A. Hart and other students of jurisprudence have complained about the difficulty of verifying the presence or absence of the intentions specified in the principle, which differ from the more easily verifiable "intentions" of criminal law, in which an outcome is considered to be intended if it is reasonably foreseeable.\(^{24}\) Obviously, whatever difficulties might arise in verifying the presence or absence of these intentions in the case of individual agents will be compounded in attempts to verify their presence or absence in the case of nation-states, if, indeed, it is possible to speak intelligibly of the "intentions" of nations at all.\(^{25}\)

But I wish to press here a deeper criticism of the doctrine of double effect, a criticism which goes beyond assessment of the intuitive satisfactoriness of its verdicts. The deeper criticism is that the doctrine is conceptually incoherent, in the sense that it contains concepts which have not been defined and which defy definition. The problem concepts are the concepts of end, means, and side effect.

Every act of every agent has a multitude of effects. We can in most cases distinguish foreseen effects from unforeseen effects, and with greater but not insuperable difficulty we can distinguish effects that should have been foreseen from effects that need not have been foreseen. But the doctrine of double effect wishes to draw a distinction between foreseen and intended effects and foreseen but unintended effects, and distinguishing these types of effects requires criteria that proponents of the principle of double have never successfully supplied.
An agent performs an act A which has, among other foreseeable effects, the effects G (good) and E (evil). Suppose that the agent wants G to happen, that is, hope for G is his reason for performing A, but he does not want E to happen, and hope for E is not his reason for performing A. Indeed, the agent regrets the occurrence of E. We seem ready to pronounce judgment that G is an intended effect and that E is a mere side effect. But this will not do, because E may be the means by which G is produced, and if the agent intends the end G, he intends the means E as well, if E is a means. We can classify C as a foreseen but unintended side effect only if we can demonstrate that E is not a means by which B is produced.

This demonstration is not as simple as it first seems. The fact that the agent regrets the occurrence of E is obviously irrelevant, since many onerous means are regretted by those who put up with them for the sake of a desired end. Nor can we classify G as an intended end by claiming that it is necessarily connected with A while E is only contingently connected. We can only say that A has produced G and E if A is a sufficient condition of G and E. It follows that G and E are both necessary conditions of A, and without E, A will not occur. But if A is to qualify as a "military necessity" (which it must if we are to be morally justified in generating E), then A is also a necessary condition for G, and without A, G will not occur. So if we do not have E, we will not have A, and if we do not have A, we will not have G. In all cases, then, if we do not have E we will not have G. This is unfortunate for the doctrine of double effect, which is trying to keep E from implicating G, for example, to keep the deaths of the civilians that die when the bridge was blown up from implicating the blowing up of the bridge.

It might appear that we have an easy proof that E is not a means to G for many cases of E: E cannot be a means to G if E occurs later than G. But this suggestion is mistaken: my future paychecks may be the means by which I obtain a present loan. And even if this suggestion were correct, it would resolve only the smallest number of double effect problems, since in the vast majority of problem cases, for example, the bridge bombing problem, G and E occur almost simultaneously.

Some philosophers have suggested that to discriminate tolerated side-effects from regretted means we should consider how the agent would act in various counterfactual situations involving G and E. We can ask the agent, "Would you have performed A if only G would have resulted and not E?" and "Would you have performed A if only E would have resulted and not G?" If the agent answers "Yes" to the first question and "No" to the second, then G is an intended end, E is a side effect, and E is not a means to G. In the case of the bombing of the bridge, if the bombing would have been done if the bombarders believed that bridge would be destroyed...
but the nearby civilians not killed, and if the bombing would not be done if
the bombarders believed that bridge would not be destroyed but the nearby
civilians would be killed, then the destruction of the bridge is the intended
end of the bombing and the deaths of the nearby civilians are side-effects.

Now it should be obvious on a little reflection that this "Counterfac-
tual Test" is easily abused, and can be used to excuse any act that produces
an evil effect if it also produces a larger good effect. For example, one could
say that the bombing of Hiroshima had two effects, the killing of Japanese
civilians and the shortening of the war, and that if Truman could have
dropped the bomb and shortened the war without killing civilians he would
have done so (so the story goes), but if dropping the bomb would have
killed civilians without shortening the war he would not have dropped it.
Thus the killing of civilians at Hiroshima, self-evidently a means to the end
of ending the war, is by the counterfactual test classified not as a means but
as a mere side-effect, justifiable if the act saved more lives on balance than
any of the alternatives. This objection is entirely general, and shows that
any effect, intuitively judged as a means to an end, can be reclassified as a
side-effect by redefining the goal of the action that produces the "side-
effect." There is no way to stop the principle of double effect from collaps-
ing into utilitarianism, which is tantamount to abandoning noncombatant
immunity in favor of the more quantitative rules of proportionality and
necessity.

The same conclusion can be reached even without juggling specifica-
tions of the ends of action. Suppose that an act A has effects G and G', that
either of these effects is desired by the agent, such that the agent would per-
form A to obtain G alone and would perform A to obtain G' alone. Then
by the counterfactual test both G and G' are side effects of A, even though
A is done in order to obtain either G or G'.

In the preceding examples, the counterfactual test judged certain ef-
teffects to be side-effects when intuitively they were intended either as means
or ends. The counterfactual test can go wrong in the other direction and
classify as intended effects certain consequences which are intuitively
effects. Suppose that a woman wishes to be no longer pregnant and suppose
(what is unlikely but possible) that she is contemplating an abortion so late
in term that the fetus might be living after the abortion is performed. Sup-
pose that the woman's attitude is that she will have the abortion only if the
fetus is born dead, reasoning that if the fetus is going to be born alive it
would be better to proceed with the pregnancy and have a natural delivery.
Then by the counterfactual test the death of the fetus is not a side effect but
an intended goal of the abortion, whereas intuitively the goal of the abor-
tion is to end the pregnancy, and the death of the fetus, like the deaths of
the civilians beside the bridge, is a side-effect of the abortion procedure.

I conclude, then, that the counterfactual test is useless as a general procedure for discriminating means from side effects. No other general procedure is known to me. All that we have, then, are miscellaneous intuitions about what are means and what are side effects. Each individual’s intuitions may be incoherent, and one person’s intuitions will often conflict with another’s. Judgments about means versus side-effects are inherently undemonstrable. In the web of history, some events are sufficient conditions of others; some events are necessary conditions, and each event, if it occurs, raises or lowers the probabilities that certain other events will happen. That is all that nature provides, and the distinction between ends and means and side effects is a subjective imposition on the objectively given.

Given this difficulty, one wonders why such effort has been expended to erect and impose the principle of double effect. Criminal law and tort law get on quite well without it. Why should the theory of individual morality require it, much less the theory of just war? Why should an explicitly non-utilitarian moral theory attempt to excuse anyone who knowingly and deliberately produces evil effects? If we return to Gury, who considers the distinction between means and ends to be unproblematic, we find an attempt to ground the double effect distinction in a deeper distinction between what is done and what is permitted:

[In the case of actions that produce evil effects but which satisfy the four requirements of double effect] it is not unlawful on account of the foreseeing of the evil effect, because in the hypothesis the evil effect is not intended but merely permitted.27

It is easy to see why Gury and others in the double effect tradition have been led to this explanation, since there are many double effect examples where the distinction between what is done and what is permitted seems to shed some light. If I close the flood doors to save the men astern, I save the men astern but I do not drown the men in front. I let nature drown them. The distinction seems even more salient in cases where the negative effect is produced by the act of some other person the evil effects of whose act I fail to prevent, or by some other person who distorts the effects of my own acts.28 If I fail to save a person that someone else has thrown in the water, assuming that I could save him, then I permit the drowning but the responsibility for the death lies elsewhere, or so it would seem.

A host of moral philosophers in recent years have attacked the moral validity of the distinction between what is done and what is permitted (ceteris paribus), and another host have sprung to its defense.29 This issue cannot be resolved here, except to note that these difficulties block resolu-
tion of the "means"—"side-effects" problem along these lines, since one cannot resolve a controversy by appealing to something even more controversial. And in the particular cases which typically arise in the discussion of nuclear weapons, the distinction between what one does and what one permits seems to be especially inappropriate. If one launches a nuclear weapon towards the docks at Odessa, a legitimate military target, and all Odessa disappears as a result, it is odd, to say the least, to declare that one has willed the destruction of the docks but merely permitted the destruction of the city and its people. It is far more natural to say that one has destroyed the docks and killed the people. That is also precisely what one would say if one aimed at the city, killing the people and destroying the docks. Thus in assessing moral responsibility the distinction between counterforce targeting and countervalue targeting is irrelevant; the person who executes the SIOP is as responsible for the collateral deaths as he is for the destruction of the primary targets.

6. Discrimination in Deterrence versus Discrimination in Attack

The preceding section has argued that the rule of discrimination, in its modern, double-effect dress, is incoherent and irrelevant to the moral evaluation of strategic weapons policies. Suppose that this argument is incorrect, and that the double effect interpretation of noncombatant immunity is morally sound. Suppose, furthermore, that counterforce targeting in its present form, or in some future format facilitated by deployment of the MX, and D5, and several thousand cruise missiles, satisfies the rule of discrimination, so interpreted. From this assumed compatibility of discrimination and counterforce many have inferred the moral acceptability of counterforce targeting as a form of deterrence, that is, they have assumed that if it is morally acceptable (in this respect) to execute a counterforce attack plan it also must be morally permissible (in this respect) to intend or threaten to carry out the counterforce attack plan. This inference, however, is not valid, since it assumes that the moral character of the threat to do A must be the same as the moral character of A, and this assumption is wrong.

The falsity of this assumption has been frequently argued by philosophers seeking to defend deterrence against those advocating unilateral nuclear disarmament. Suppose that we assume on the basis of some principle that it is immoral to launch a nuclear second strike. From this many unilateralists have inferred that it must be morally wrong to intend, threaten, or prepare for a second strike. But the act A and the formation of the intention to do A are separate acts, with different sets of probabilistic consequences and different associated intentions. Consequently
whether we are utilitarians or deontologists we must recognize that the act and the formation of the intention to do A require separate moral analyses which may generate radically different moral judgments. In particular, it is possible that forming the conditional intention to launch a second strike is morally permissible while launching a second strike is morally impermissible. But if it is not valid to infer the impermissibility of the formation of the intention from the impermissibility of the act intended, it is not valid to infer the permissibility of the formation of the intention from the permissibility of the act intended. Thus we cannot infer the permissibility of counterforce threats from the permissibility of counterforce attacks.

Let us take a look at counterforce threats, using in our moral analysis the same moral principles asserted by those who object to the "hostage taking" character of countervalue targeting and who argue for the moral superiority of counterforce. The primary intention of American nuclear weapons policy in general and American targeting policy in particular is to reduce the chance of a nuclear first strike against the United States. Now although the counterforce threat is aimed at military targets, it is obvious to all concerned that the destruction of those targets will produce immense numbers of civilian casualties. The thought of these collateral civilian deaths (according to the conventional wisdom about how deterrence works) cannot but terrify opponents and make them less inclined to launch a nuclear first strike against the United States than they would be in the absence of this prospect. So, if the Soviet Union is the American opponent, the risks that American nuclear weapons present to the Soviet civilian population reduce the chance of the Soviet first strike, and it follows that risks raised to Soviet civilians serve the primary goal of American policy. But if we adopt the deontological scheme of the counterforce advocates, with its distinction of means from side-effects, it is clear that risks presented to Soviet civilians are a means to the achievement of an American end. Even if the deaths of Soviet civilians in a second strike counterforce attack are to be dismissed as side effects, for which the United States is not primarily responsible, the risks presented to Soviet civilians by counterforce threats cannot be dismissed as side-effects, for they are means to ends. So long as the Soviet leaders are deterred by the prospective deaths of Soviet civilians caused by an American second strike, the Soviet population remains a hostage to American strategic weapons, regardless of how they are targeted.

7. Other Aspects of Counterforce

In concentrating on the rule of discrimination we have thus far ignored the argument that counterforce targeting makes nuclear war no more likely to occur but much less destructive if it comes. If counterforce targeting has
the same deterrent capacity as countervalue targeting, it would appear that counterforce targeting meets the elementary canon of necessity, the rule that one should do as little damage as possible in achieving military objectives, and countervalue targeting does not.

But this argument, unlike the claim about noncombatant immunity, relies heavily on empirical considerations which are hotly contested. True, many have claimed that a counterforce posture makes war less likely because it provides a wider spectrum of deterrent responses and because it targets those items that opponents allegedly value most, the instruments of coercive control. But an equal number have argued that the technical complexities of counterforce postures increase the chance of accidental war, that the introduction of counterforce systems connotes an intention to launch first strikes, and that the flexibility and precision of counterforce weapons renders the launching of second strikes more likely in those cases when both morality and prudence would dictate that the proper course is to issue no response at all. Furthermore, the chance of a deliberate American first use given American countervalue targeting is nil while the chance of an American first use given American counterforce targeting is not nil. Thus, even if the chance of an opponent's first strike is less with counterforce, the chance of someone's first strike may well be greater.

Equally controversial is the claim that counterforce targeting will reduce casualties in the event of war. In a sense this is trivially true: if one missile is launched towards an isolated Siberian radar station, obviously casualties will be fewer than if one missile is launched towards any Soviet city. What is controversial is whether, once the nuclear threshold is crossed, nuclear exchanges can be kept limited, both in terms of the numbers of weapons launched and the targets at which they are aimed. In 1979 Desmond Ball wrote an impressive pamphlet detailing the nearly insuperable technical difficulties involved in managing a limited nuclear exchange. Since 1979, the government has spent over $30 billion per year trying to rectify the problems in the command and control of nuclear forces, but when Paul Bracken reviewed the situation in 1984 there was hardly more cause for optimism about the possibility of limiting nuclear war in 1984 than there had been in 1979.

One recent empirical hypothesis, furthermore, undercuts the argument that counterforce targeting satisfies the rule of necessity while countervalue targeting does not. In the fall of 1983 computer studies of dust and smoke patterns generated in various nuclear war scenarios indicated and the collateral deaths and devastation from nuclear explosions would be much greater than previous estimates had suggested. Furthermore, the studies showed that this collateral damage would result from a nuclear winter con-
dition that could be generated either by a counterforce attack or by a countervalue attack. Thus, if the nuclear winter hypothesis is confirmed, even if we suppose that nuclear war can be limited and that escalation can be controlled, the crucial question to ask in evaluating an attack option according to the rules of proportionality and necessity is no longer "Is this a counterforce attack or a countervalue attack?" or even "How much primary and immediate damage is expectable from this attack?" but rather "Is this the sort of attack which is likely to generate nuclear winter?" If the nuclear winter hypothesis is confirmed, proportionality and necessity can give no special moral weight to the distinction between counterforce and countervalue targeting policies.

8. Summary

In the history of moral debate about nuclear weapons policies, special attention has been given to the rule of noncombatant immunity. That rule, interpreted via the doctrine of double effect, is incoherent, and fails to show that counterforce targeting satisfies the rule of discrimination better than countervalue targeting. Given the lack of consensus about the probability and damage of nuclear attacks given different targeting policies, it cannot be shown that counterforce targeting satisfies the rules of proportionality and necessity better than countervalue targeting. These three rules are the main rules of the theory of just war, or at least that part of it that constitutes the *jus in bello*. These are not the only moral rules appropriate to the evaluation of nuclear weapons policies, but they are the principal rules cited by those who argue for the moral superiority of counterforce targeting. By their own standards, they fail to prove their case.

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**NOTES**

1. The policy of Massive Retaliation was first publicly announced in Dulles's speech before the Overseas Press Club in January 1954 [Dulles 1954]. The speech implied that any provocation deemed sufficient to merit the use of American nuclear weapons would produce a single massive strike against a single set of enemy targets within the Soviet Union and China. That declared policy matched operations policy is exhibited in revelations about 1950's SAC war-fighting plans [Rosenberg 1981] and about the first Single Integrated Operational Plan [Rosenberg 1983, Ball 1983], completed in 1960. For Flexible Response, see McNamara 1962 and Kaufmann 1964. The
Assured Destruction "strategy," in retrospect more a force acquisition policy than a war-fighting plan, is developed in McNamara 1968; see also Enthoven and Smith 1971. For Countervailing Response see Schlesinger 1974 and Brown 1979. For remarks about "prevailing" in nuclear war—perhaps an extended nuclear war—see Weinberger 1982. For analysis see Powers 1982 and Talbot 1984.

2. For moral criticism of Massive Retaliation outside the strategic community see King 1957, Pauling 1958, Russell 1959, and Ramsey 1961. For internal criticism see the essays in Brennan 1961 and the accounts in Ball 1983 and Kaplan 1984. For moral criticisms of Assured Destruction see Russett 1972, Ikle 1973, and Lackey 1975. For moral attacks on "prevailing" in nuclear war see Schell 1982 and Scheer 1983. One could summarize the difference between the objects of these criticisms by noting that the criticism of Massive Retaliation is criticism of Rate-of-Fire Policy; the criticism of Assured Destruction is criticism of Targeting Policy, while the criticisms of Prevailing Response are largely criticisms of Initiation Policy.

3. The main strategic arguments against Massive Retaliation are (a) that the effects of acting on it are so horrible that it is self-deterring [Kissinger 1957], and (b) that it provides no retaliatory option against a limited strategic strike that spares American cities. [Brodie 1959, 292–93]

4. For the relation between operations policy under Reagan and under Carter see Ball 1983. For Brown's self-proclaimed lack of originality see Slocombe 1981.

5. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 51. Since the Senate has not ratified this protocol the United States is not strictly bound by it. At the same time, since the Protocol was adopted by consensus at the most recent international conference that has considered these issues, it clearly represents the current jus gentium as regards strategic operations, and it is generally established from Nuremberg that failure to consent to a convention does not wholly exempt one from its legal force.

6. No author gives this argument in precisely this form, but the spirit of these remarks can be found, among the Protestants, in Ramsey 1961, among the Catholics, in Anscombe 1961, and among the strategists, most recently in Wohlstetter 1984.


10. For a clear statement that Flexible Response included a commitment to strike cities if American cities were struck see Halperin 1962. It was, of course, the prevailing belief in the McNamara group that although Flexible Response still involved the chance of striking cities, the probability that cities would be struck was much lower than it had been under Massive Retaliation. But there was always the troubling thought that the prospect of an initially limited response would (compared with Massive Retaliation) encourage aggressors to initiate hostile acts. Indeed, as it turned out, the chance that a two-sided nuclear war would occur peaked in October 1962, after the announcement of Flexible Response. Perhaps the Soviets decided that if their nuclear weapons were to be primary targets it would be a good idea to spread them around.

11. McNamara 1968, Ch. 4.

12. Other reasons why McNamara abandoned talk of "no cities" were lack of support from NATO allies, and an increasing tendency of the Air Force to view the
counterforce demand as a warrant for ever larger and more complex strategic systems. [Pringle and Arkin 1984, 124].

18. For a history of the doctrine of double effect that locates its principal development in the late 16th and 17th century, see Mangan 1949. Mangan, however, locates the origin of the doctrine in Aquinas’s discussion of self-defense (ST II–II, Art. 64). This is a mistake since in self-defense the killing of the aggressor is a means to the desired end of survival; thus, self-defense is not justifiable via double effect.


20. A typical example is from Healy 1960, 20:

The commander of a submarine torpedoes an armed merchant ship of the enemy, although he foresees that several innocent children will be killed by the explosion. *Condition 1:* He intends merely to lessen the power of the enemy by destroying an armed merchant shop. He does not wish to kill the innocent children. *Condition 2:* His action of torpedoing the ship is not an evil in itself. *Condition 3:* the evil effect (the death of the children) is not the cause of the good effect. *Condition 4:* There is sufficient reason for permitting the evil effect to follow, and this reason is the administering of a damaging blow to those who are unjustly attacking his country.

22. Not all Catholic moral theologians accept the principle of double effect. One notable dissenter is Father John C. Ford, who specifically rejected any use of the principle of double effect in his classic and condemnatory analysis of Allied strategic bombing in World War II [Ford 1944].

25. Some of the ambiguities in the notion of “intention” that infect discussions of deterrent intentions are analyzed in Lackey 1985.

26. The counterfactual test is suggested in Fried 1978, 40–41, but even Fried admits (p. 24) that the test though “not incorrect is defective.” Levine [1984] rejects the test completely.

27. Mangan 1949, 60.
28. Thus in Prummer’s handbook:

> Formal cooperation includes consent to another’s sin . . . Material cooperation is in itself a good act which is abused by another through his own malice [Prummer 1957, 103-04]


30. The most eloquent presentation of this point of view is Kavka 1978. Rejecting Kavka’s arguments, David Gauthier [1984] inverts the view of the unilateral disarmers by arguing that since the formation of the intention is permissible it must
be permissible to carry out what one intends if the conditions of the intention are satisfied—certainly a unique position in the nuclear weapons debate.

31. An American first use need not be an aggressive; it might be a response to aggression with conventional weapons.


REFERENCES


