

THE END OF INNOCENCE: RETHINKING NONCOMBATANCY IN THE POST-KOSOVO ERA

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IN BRIEF

The protection of civilians and their property in war is an accepted norm of international law — even where the putatively “noncombatant” populace openly supports the immoral use of force by its military. NATO’s Kosovo operation suggests, however, that the imposition of hardship on the sentient, adult “noncombatant” population through property loss can erode a society’s appetite for malevolence. While civilians should not be targeted, a new paradigm for noncombatancy that allows the destruction of certain property currently protected by international law but not absolutely indispensable to civilian survival may well help shorten conflict and effect necessary societal change.

If recent press reports about the Kosovo air campaign in the spring of 1999 are to be believed, the Milosevic regime yielded not because its fielded forces were defeated, but because of the impact of the bombing on the Serb people.¹ According to reports, the air strikes gradually reduced many Yugoslav civilians to “caveman” status.² The record shows the progressive imposition of that condition coincided precisely with the sought-after breakdown of Serb resistance. Yet such bombings are troubling to some.³ If they were aimed primarily at adversely affecting noncombatants (as opposed to diminishing actual military

capability), they seem at odds with the common understanding of legal and ethical war-making that seeks to spare civilians the effects of the use of force. A new paradigm for non-combatancy may be in order for the post-Kosovo era.

Noncombatants and Moral Innocence

A conceptual anomaly arises from the fact that the Law of Armed Conflict (LOAC) is much more generous in the protections it affords civilians than many nonspecialists intuitively consider appropriate. Today LOAC

1. See e.g., John Barry and Evan Thomas, *The Kosovo Cover-up*, Newsweek, May 15, 2000, pp. 22, 24. (“Air power was effective in the Kosovo war not against military targets but against civilian ones.... Making the Serb populace suffer...threatened [Milosovic’s] hold.”)

2. Just days before the Serbs yielded to NATO, former President Jimmy Carter complained that “Serbian citi-

zens report they are living like cavemen, and their torment increases daily.” Jimmy Carter, “Have We Forgotten The Path To Peace?,” *New York Times*, May 27, 1999. This news item and others for this article, see Department of Defense, *Current News Early Bird*, at <http://ebird.dtic.mil>.
3. See Charles Truehart, “War Crimes Court Looking at NATO,” *Washington Post*, December 29, 1999, p. A20.

does not, for example, attempt to determine moral culpability when assigning noncombatant status. Indeed, many of those protected as “noncombatants” by international law as it has evolved over the years have unmistakable moral responsibility. In *War & Law Since 1945* Geoffrey Best notes that the “idea of the non-combatant shifted” over the years. Where once the law sought to protect “a person who formed no part of an enemy country’s armed strength and made no contribution to it,” it now extends coverage to all those not formally part of a military organization. He further observes that “this legal development is not without moral and political difficulties. It has produced rules of law which may not correspond with the moral and political realities of societies in armed conflict.”⁴

Best’s concerns about moral accountability as it relates to LOAC is especially well-founded in cases where force is required to deal with societies psychologically disposed to champion ethnic cleansing and similarly maniacal behavior by their militaries. Furthermore, unlike the situation existing when noncombatant status originated, civilians in developed societies do, as Best might put it, very often “contribute” to the country’s armed strength in ways not extant just a few decades ago. The growing dependence of today’s militaries on civilian systems necessary to support high-technology war makes this so,⁵ as does the fact that in modern — and relatively modern — nations, the need for popular support in order to project force is an accepted fact of political life.

Americans find ascribing culpability to the enemy citizenry disconcerting. The reflexive desire to absolve the supporting populace resonates in the mantra of U.S. politicians of recent years: “America’s fight is not with the ___ people, it is with their leader.” Regrettably, this thesis is often flawed, and was plainly wrong as applied to Slobodan Milosevic and his countrymen. In an insightful essay in the *New York Times*, Anthony Lewis wrote:

Slobodan Milosevic is not the only author of the war crimes in Kosovo. Thousands of Serbs were involved. And hundreds of thousands more back in Serbia proper were fixed in the belief that the Serbs had done no wrong. They were subjected to Milosevic propaganda, yes. But even when told of Serb atrocities in Kosovo, they argued that the Serbs were only replying — they were the real victims.⁶

In such cases “America’s fight” — contrary to the politician’s paean — is, in fact, with the “people” in those societies that countenance and support murderous conduct. Samuel Huntington, in his perceptive book, *The Clash of Civilizations*, predicted the U.S. may well find itself in contests with civilizations that do not share its values.⁷ That Americans find this so inexplicable is partly the result of cultural arrogance — the idea that whole societies could reject the U.S. *Weltanschauung* is foreign to the American psyche — and partly out of an almost inexplicably innocent naiveté. Daniel Boorstin tells us Americans suffer from “Myths of Popular Innocence” — the illusion that adversary populations are helpless victims of cruel leaders.⁸ In truth, this is seldom the case even when the leaders are, indeed, ruthless autocrats. Boorstin points out that despite the existence of a powerful military backed by an extensive internal security apparatus, the Soviet empire collapsed with nary a shot fired once the popular will evinced an unmistakable desire for change.

In short, Americans like to believe others think much as they do and that the whole world aspires to their same values. The sad fact is that this just is not true. In Kosovo, the unpleasant reality is that many Serbs were willing supporters of Milosevic’s policies, if not of the man himself.⁹ True, Serb propaganda provoked ethnic hatred, and this may have explained the attitudes of rural and uneducated Yugoslavs. But that does not explain —

4. Geoffrey Best, *War and Law Since 1945* (Oxford: Clarendon Press, 1994; paperback ed. 1997), pp. 258-259.

5. See Michael N. Schmitt, “Bellum Americanum: The U.S. View of Twenty-first Century War and Its Possible Implications for the Law of Armed Conflict,” *Michigan Journal of International Law*, Vol. 19, No. 4., p. 1068-69.

6. Anthony Lewis, “The Question of Evil,” *New York Times*, June 22, 1999.

7. Samuel P. Huntington, *The Clash of Civilizations and The Remaking of World Order* (New York: Simon & Shuster, 1996).

8. Daniel J. Boorstin, “Myths of Popular Innocence,” *U.S. News & World Report*, March 4, 1991, p. 41.

9. See e.g., Eve-Ann Prentice, “Serbs Unmoved By Kosovans’ Anguish,” *London Times*, May 26, 1999.

as the *Wall Street Journal* notes, the behavior of “the Serbian intelligentsia — the university professors, journalists, potentates of the Orthodox Church and other cognoscenti who knew better but kept silent....”¹⁰

Influencing Mass Psychology

Thoughtful military strategists readily appreciate that successfully influencing the psychology of the masses can clear a path to victory. War is *not* — as many Americans and others are wont to believe — merely a process of destroying an enemy’s military artifacts. In war properly conceived, the real battlefield is the human mind. The great military theorist Carl von Clausewitz taught that war is an act intended “to compel our enemy to do our will.” Clausewitz further maintained that the people, the government, and the military formed a “remarkable trinity” essential to waging war.¹¹ Disassembling that trinity has been a goal of Clausewitzians for generations because it results in the collapse of an opponent’s ability to continue to fight.

Airpower thinkers — beginning with Giulio Douhet in his classic *Command of the Air* — have long sought to use the air weapon to do the dismembering.¹² Warplanes can strike directly at an enemy’s heart by overflying his military forces and attacking his homeland in order to sever the people from their government and military. To some, however, the resiliency of the German population during World War II air bombardments, as well as that of the Japanese people, disproved the theories of Douhet and his adherents.

This criticism is valid only to the degree to which it is qualified by several facts. Specifically, the conventional munitions of World War II were not as potent as Douhet’s theory required; the ability of totalitarian regimes of the 1940s to persevere in the face of air attack was greater than Douhet’s concept foresaw; and air defenses proved to be much

more capable vis-à-vis the era’s bombers than Douhet anticipated. But Douhet was ahead of his time. Among other things, he expected the use of weapons of mass destruction (WMD) — poison gas in specific — in air attacks against urban populations in order to break the people’s will.¹³ Japan’s collapse after the destruction of just two of its cities by air-delivered WMD is more indicative of the validity of Douhet’s theories than any other comparison.

The air weapon should be unleashed against entirely new categories of property that current conceptions of Law of Armed Conflict put off-limits.

Most importantly — and this is critical to the future use of the air weapon — until Kosovo Douhet’s theories were never tested using today’s enormously destructive and ingeniously targetable conventional munitions, and never against the psychology of a modernizing, acquisitive, semi-cosmopolitan society dressed in quasi-democratic institutions and processes. This was much the situation, however, that American military officers found in Serbia at the start of the campaign. If the consequences of war could be brought to the Yugoslav public, the Serbs themselves would pressure Milosevic to yield or remove him entirely.¹⁴ The difficulty was that existing LOAC rules — not to mention ethical constraints — prohibited *directly* targeting noncombatants and noncombatant objects.

The *indirect* effects of orthodox attacks on dual-use infrastructure (that is, infrastructure used by both civilians and military forces) could, however, have the desired impact. Targeting infrastructure is consistent with LOAC so long as the direct and concrete *military* advantage sought outweighs expected collateral losses to noncombatants and their

10. “Deconstructing Serbia,” *The Wall Street Journal Europe*, June 22, 1999. See also Mark J. Osiel, *Obedying Orders: Atrocity, Military Discipline & the Law of War* (New Brunswick, NJ: Transaction Publishers, 1999), p. 66. (“Most Serbian officers, and even many Serbian enlisted personnel, had good reason to know that the war their superiors ordered them to wage was aggressive in nature.”)

11. Carl von Clausewitz, *On War* (Michael Howard and Peter Paret, ed., and trans. 1976) (1832), p. 75. Clausewitz

held that war is a “remarkable trinity” composed of the people, the military, and the government, p. 89.

12. Giulio Douhet, *The Command of the Air* (New York: Coward-McCann, 1942; reprinted Washington, DC: Office of Air Force History, 1983).

13. *Ibid.*, p. 58.

14. See e.g., Rowan Scarborough, “Civilian Deaths Must Be Expected, NATO Says,” *Washington Times*, June 2, 1999, p. 1.

property. Even with those limitations, the indirect effect of the bombing on the psychology of the civilian population seemed well understood. Consider the assault on Serbia's power grid. The *Washington Post* reported on May 25, 1999 that although NATO officially insisted that attacks on the power grid were intended to disrupt the Yugoslav military, "senior allied military officials acknowledged that they also wanted to damage the quality of everyday life so that suffering citizens will start questioning the intransigence of their political leadership."¹⁵ It appears this strategy worked, as Thomas L. Friedman related in the *New York Times*:

As the Pentagon will tell you, airpower alone brought this war to a close in 78 days for one reason — not because NATO made life impossible for Serb troops in Kosovo (look how much armor they drove out of there), but because NATO made life miserable for the Serb civilians in Belgrade.¹⁶

Following the conflict, *Airman* magazine, an official publication of the U.S. Air Force, published the following comments by the senior Air Force commander during the campaign:

"As an airman, I would have targeted the power grid, bridges and military headquarters in and around Belgrade the first day of the conflict," said [the commander], *who believes that's what eventually brought Milosevic to his knees*. "Air power is made for shock value."

"Just think if after the first day, the Serbian people had awakened and their

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refrigerators weren't running, there was no water in their kitchens or bathrooms, no lights, no transportation system to get to work, and

five or six military headquarters in Belgrade had disappeared, they would have asked: 'All this after the first night? What is the rest of this [conflict] going to be like?'"¹⁷

Although the actual attacks conducted against Serbia's infrastructure appear justified as bona fide efforts to reduce the effectiveness of military facilities and military equipment/communications,¹⁸ the commander's hypothetical in *Airman* about infrastructure attacks does illustrate the complications of LOAC. Destroying infrastructure in order to deny noncombatants an indispensable necessity of life like drinking water, to make their bathrooms and sewage systems waterless and unworkable, to leave them in wartime without refrigeration for their food, and to deny them transportation without regard to the nature of their work, is not the kind of attack LOAC ordinarily allows.¹⁹ In other words, attacks for the *sole purpose* of eroding noncombatant life support systems are prohibited. This is not to say, however, that noncombatants cannot be inconvenienced or denied luxuries or, for that matter, have their political will be made a target. But doing so, as Yves Sandoz of the International Committee of the Red Cross observes, is difficult under today's legal regime because defining the "military advantage when the aim of the operation is to weaken the enemy so as to make him surrender" is quite problematic.²⁰

15. Phillip Bennett and Steve Coll, "NATO Warplanes Jolt Yugoslav Power Grid," *Washington Post*, May 25, 1999, p. 1.

16. Thomas L. Friedman, "Was Kosovo World War III?," *New York Times*, July 2, 1999.

17. As quoted by MSgt Tim Barela in "To Win a War," *Airman*, September 1999, pp. 2-3 (emphasis added). These are essentially the same points reported earlier by the *Washington Post*. See William Drozdiak, "Air War Commander Says Kosovo Victory Near" *Washington Post*, May 24, 1999, p. 1.

18. The Chairman of the Joint Chiefs of Staff insists that "[e]very target struck was a military-related target...."

General Hugh H. Shelton, "Kosovo: Joint Chiefs Chairman Disagrees," *Christian Science Monitor*, July 12, 1999. See also, Michael Ignatieff, "The Virtual Commander," *The New Yorker*, August 2, 1999, pp. 31, 35.

19. Article 54, 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, makes it prohibited "to attack, destroy, remove or render useless objects indispensable for the survival of the civilian population" for "any motive."

20. Yves Sandoz, "Beware, The Geneva Conventions Are Under Fire," *International Herald Tribune*, July 14, 1999.

Toward a New Paradigm

While the various rationales for avoiding dual-use infrastructure attacks are usually readily understandable, the reasoning against striking other kinds of civilian objects is rather less clear. Under the current Law of Armed Conflict, a civilian *object* exempt from attack is everything that is not a “military objective.” Military objectives “are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture and neutralization, in the circumstances ruling at the time, offers a definite military advantage.”²¹ Under these limitations, personal property is a category of civilian “objects” seldom subject to legitimate attack. This rule can create curious situations.

During the Kosovo campaign the press reported an alleged plan for a computer-based strike on Milosevic’s personal bank accounts.²² Later stories indicated that legal concerns were one reason the cyberassault was aborted.²³ If such a plan existed, the legal issues might include the fact that absent a showing, for example, that the monies are being used to directly support a military effort, LOAC would not permit raiding Milosevic’s personal accounts. To many the prohibitions against such attacks — especially where “bloodless” cyberwar techniques are used — are nonsensical. Cyberwar expert Don Stauffer, noting the unintended consequences on civilians of bombing campaigns aimed at traditional targets, makes the obvious point: “Surely hurting a civilian’s pocketbook is more ethical than bombing him.”²⁴ This observation is particularly apt as civilian leaders who serve as commanders in chief of their armed forces — like Milosevic — are legitimate targets themselves, although — paradoxically — their personal property is not.

Should LOAC continue to bar the deliberate destruction of civilian property? Should the bar apply even when the destruction is aimed at eroding a society’s appetite to do the unconscionable against the helpless? In an intriguing new book, *The Soul of Battle*, classics professor Victor Davis Hanson suggests modern democracies should “rethink what constitutes real brutality in war and who are the real peace-makers.”²⁵ In coming to this conclusion Hanson examines three great campaigns against tyrannical “cultures of slavery”: Epaminodas’ destruction of Spartan militarism, William Tecumseh Sherman’s bludgeoning of the heart of the Confederacy, and George Patton’s race into Germany that smashed Nazism. Hanson points out that after “the terrible marches of retribution into their country, none of these cultures of slavery would field a credible army again.”²⁶

When societies propagate evil, democracies must be prepared to visit upon them force so staggering it will produce fundamental change.

Professor Hanson sees these three campaigns in stark terms of virtuous crusades of democratic armies against morally flawed societies. The genius of these operations, Hanson contends, is that the democratic warriors swept into hostile territory to destroy the spirit rather than the bodies of their enemy. Although the property damage inflicted upon the enemy’s territory in each case was immense, *there were relatively few casualties on either side*. Hanson insists a “democratic nation in arms must

21. The general protection of civilian objects was codified in the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, chapter III. While the U.S. has not ratified Additional Protocol I, this portion is considered part of customary international law.

22. See e.g., Gregory L. Vistica, “Cyberwar and Sabotage,” *Newsweek*, May 31, 1999, p. 38.

23. See William Arkin, “Cyber Bomb in Yugoslavia,” *Washington Post* (Electronic Edition), October 25, 1999,

at <http://washingtonpost.com/wp-srv/national/dotmil/arkin.htm>, and Bradley Graham, “Military Grappling With Rules For Cyber Warfare,” *Washington Post*, November 8, 1999, p. 1.

24. Don Stauffer, “Electronic Warfare: Battles Without Bloodshed,” *The Futurist*, January-February 2000, p. 26.

25. Victor Davis Hanson, *The Soul of Battle: From Ancient Times to the Present Day, How Three Great Liberators Vanquished Tyranny* (New York: The Free Press, 1999), p. 405.

26. Hanson, p. 406.

make the entire society of the enemy pay for the aggression of its army [and] must convince his own democratic army that they are morally superior to the enemy."²⁷ He argues the lesson for democratic societies today is that, in the end, there "must be a choice between good and evil, that the real immorality is not the use of great force to inflict punishment, but...the failure to exercise moral authority at all."²⁸

Hanson's thesis may suggest a strategy for the use of force in the future. Specifically, when facing a society whose moral compass is wildly askew, it may well behoove democracies to consider a similarly sweeping campaign against property — despite its terrible destructiveness. In other words, use ruinous force not upon people (to even include combatants if possible), but upon *objects*. Although Hanson envisions a physical invasion of an enemy's territory as necessary to induce a cultural change on an amoral enemy, there may well be application to the air weapon, if its full potential is realized.

We need a new paradigm when using force against societies with malevolent propensities. We must hold at risk the very way of life that sustains their depredations, and we must threaten to destroy the world as they know it if they persist. This means the air weapon should be unleashed against entirely new categories of property that current conceptions of LOAC put off-limits. As the Kosovo campaign demonstrates, striking from the air is today the safest and most effective way for the U.S. to use force because it exploits the asymmetric warfighting advantage it enjoys over every military in the world. American air power today is virtually unstoppable. Furthermore, technologies now available to U.S. airmen allow tremendous destructive power to be applied discretely and efficiently against a wide range of objects that opportunistic, materialistic societies like Yugoslavia value.

What kind of civilian objects would be added to target lists? None that are genuinely *indispensable* to the survival of the noncombatant population. Not struck, for example, would be many of the infrastructure targets suggested in the *Airman* magazine article. However, almost everything else of any value would be fair game. The new target sets would include

such things as banks and financial institutions. Factories, plants, stores, and shops that produce, sell, or distribute luxury products or, indeed, *anything* not absolutely indispensable to noncombatant survival, might be wonderfully rewarding targets — as could be their associated logistics systems. Reducing the middle and upper classes to a subsistence level through the destruction of access to all but essential goods might pressure the very groups best positioned to effect the desired change.

Additional targets under this proposal could include selected cultural, educational, and historical sites whose existence provides support — to include *psychological* sustenance — to the malignant ideology that stimulates the behavior the use of force is intended to stop. Furthermore, resorts, along with other entertainment, sports, and recreational facilities could be slated for destruction. Of course, government offices and buildings of every kind would be subject to eradication, even if they do not directly support military activities (except those whose destruction would seriously impede the delivery of services indispensable for noncombatant survival). Finally, to the extent it is feasible to do so, the *personal* property of the sentient, adult population ought to be held at risk so long as it is not, again, *indispensable* to human survival. Milosevic's bank accounts would be high on the target list under the revised model.

This proposal openly acknowledges an intent to inflict hardship upon the sentient, adult, (albeit putatively noncombatant) populace who must be held responsible for the deeds of their military forces. It includes even those who may oppose their government's policies. Given the tremendous scale of atrocities that are infecting the modern world, not to mention the globalization of WMD technology, ethical norms should place an *affirmative duty* on a nation's citizenry to actively frustrate their government's actions when they become patently inhumane. James W. Child points out "people have a duty to restrain their government from committing nuclear aggression and if they fail in that duty, their absolute immunity as non-combatants is undermined."²⁹ Much the same can be said when abuses on the scale of a Kosovo occur, at least insofar as the immunity

27. Hanson, p. 33.

28. Hanson, p. 412.

29. James W. Child, *Nuclear War: The Moral Dimension* (Somerset, NJ: Transaction, 1986), pp. 171-172.

currently enjoyed by civilian objects is concerned. If enemy publics fail to restrain their governments — notwithstanding it may require them to place their moral responsibility above their personal safety — then they must forfeit their claim to the quality of life civilian objects provide.

Nevertheless, the proposal recognizes that the wholesale destruction of civilian property not necessary for human survival may still unintentionally impose distress upon those truly innocent such as children, the infirm, and the insane. Realistically, this unfortunate predicament cannot be completely avoided, but efforts must be made to minimize it. Accordingly, in order to lessen unintended consequences, certain limits need to be put in place:

a) The attacks should only be conducted in those circumstances where the intended effect of undermining the will of the people appears to have a reasonable likelihood of success. Not all societies are necessarily vulnerable to a strategy that destroys objects as opposed to people. Particular adversaries may be indifferent to property loss, or have nothing of value to destroy.

b) The attacks must *not* be for the purpose, *per se*, of punishment for punishment's sake, but rather for the purpose of eviscerating the disposition of the adversary to conduct objectionable activities.

c) The attacks should be preceded by clear warnings, if possible, and be accompanied by an extremely aggressive information campaign that unambiguously sets forth the rationale for the attacks, as well as the actions needed to terminate them.

d) Civilian safe areas and evacuation routes should be designated whenever possible, and medical or religious facilities must not be targeted unless they are actually being used for military purposes. Steps must also be taken to provide subsistence for enemy noncombatants when necessary.

e) The scope and severity of the attacks must bear a reasonable relationship to the egre-

giousness of the conduct sought to be prevented, and the level of force necessary to purge the enemy society of its perverse beliefs.

Under the current Law of Armed Conflict, a civilian object exempt from attack is everything that is not a "military objective."

This proposal does not endorse infrastructure attacks intended solely to deny the civilian population water, power, and other indispensable necessities of life because, in addition to ethical and legal concerns, such strikes can be *militarily* counter-productive. Whatever tolerance the American public may have for the destruction of property, it does not appear to extend to acts that kill noncombatants, even unintentionally. In this regard it is instructive to note that mounting reports of civilian casualties during the Yugoslav conflict paralleled a progressive drop in public support for the air campaign.³⁰ From a frankly Machiavelian perspective, scenes of enemy noncombatants dying from the effects of infrastructure loss would undermine the ability of a democracy to make war.

Additionally, the proposal must not be confused with the kind of indiscriminate bombing campaign the Russians are reported to have conducted in Chechnya. There, objects indispensable to noncombatant survival apparently were destroyed, and many civilians trapped in battle areas were killed. Nor should it be confused with "bomb them back to the Stone Age" efforts apocryphally attributed to Vietnam-era strategies. Both approaches violate the proposal's central principle that calls for discrimination between objects that are indispensable to noncombatants, and property superfluous to human survival. Furthermore, as already suggested, imposing massive property loss will only have a positive effect on

30. By May 25, 1999, CNN was reporting that 82% of Americans favored a suspension of the airstrikes. See Keating Holland, "Americans Want Temporary Halt to Airstrikes," May 25, 1999, at <http://cnn.com/ALLPOLITICS/stories/1999/05/25/poll/>. In the same poll, the percentage of Americans favoring U.S. participation in the

airstrikes fell from 61% on 15 April to 49%. For details of the earlier poll see Keating Holland, "Support for NATO strikes, and ground troops growing," April 15, 1999, at <http://cnn.com/ALLPOLITICS/stories/1999/04/15/kosovo.poll/>.

accumulative, wealth-oriented nations with assets to lose, and those societies accustomed to — or desirous of — the benefits of modernity.

Conclusion

It is, of course, troubling to anyone concerned with the ethical conduct of war to acquiesce to what seems to be a retreat from a carefully constructed legal architecture aimed at diminishing war's horror. Nevertheless, evolutions in accepted norms do occur in LOAC from time to time, as they do in other areas of international law. From a moral perspective a change that seeks to replace the killing of people with the destruction of objects would seem to represent a positive step toward reducing human suffering in armed conflicts.

Some will contend the massive destruction of property will simply create deep-seated bitterness that will plant the seeds of future conflict. Despite a certain logic of the contention, experience demonstrates a fearful truth: that such will only occur if the destruction is inappropriately tempered. Consider that the massive destruction of Germany and Japan during World War II allowed the necessary physical and psychological reconstruction to begin cleanly from "bare metal" with the help of the U.S. and others. Importantly, the devastation inflicted — much of it upon *irreplaceable* objects — did *not* result in embittered societies biding time to wreak revenge. To the contrary, the millennium-old militaristic instincts of both a great Asian power and its European counterpart were uprooted in little more than a generation to be replaced by near pacifism. The hideous fascism of both cultures is now only an embarrassing memory.

It is fair to say that aiming to destroy non-combatant property as discussed above represents a significant departure from a basic premise of LOAC, that is, the idea that *jus in*

bello ordinarily makes no judgments as to the moral rectitude of any belligerent. Proponents of this concept maintain that if the rule were

that the morally "wrong" side was unworthy of the protection of LOAC, then all war would quickly escalate without constraints as each party believes it and it alone has the moral high ground. Regrettably, the logic behind *jus in bello* simply has not sufficed in practice. Even the most

ardent zealots of LOAC admit its rules are often unknown or, if known, ignored.³¹ A cursory review of the savage conflicts of the last twenty years in the Balkans, Sudan, Lebanon, Sierra Leone, Chechnya, Sri Lanka, and elsewhere proves that lamentable point.

Most ominous, however, is the potential that some future adversaries may deliberately abandon LOAC adherence altogether — based on their notion of righteousness. In a recent book, two Chinese officers proposed a policy of "unrestricted war" for their nation. They complained "We are a weak country...so do we need to fight according to your rules? No. War has rules, but those rules are set by the West.... But if you use those rules, then weak countries have no chance."³² Confronting an enemy disposed to use force wholly unrestricted by legal boundaries may someday present a harsh dilemma for the U.S. and other Western countries: suffer brutal losses — or even defeat — or lash out in kind. The reality is that neither result is acceptable. What we must do is fashion new rules *now* that — at a minimum — honor the value of human life over property interests. Trying to do so in the midst of a future conflict would be gravely ill-conceived — it must be accomplished in the reasoned atmosphere of peace, prosperity, and power.

A new paradigm that plainly declares the perpetrators of violent, misogynic policies will

The new target sets would include such things as banks and financial institutions. Factories, plants, stores, and shops that produce, sell, or distribute luxury products or, indeed, anything not absolutely indispensable to noncombatant survival, might be wonderfully rewarding targets.

31. See e.g., Juanita Darling, "Study Finds Geneva Convention Little Known, Seldom Obeyed," *Los Angeles Times*, November 5, 1999.

32. As quoted in John Pomfret, "China Ponders New Rules of 'Unrestricted War'," *Washington Post*, August 8, 1999, p. A1.

face a response so ferocious it will leave their nation physically and psychologically unrecognizable, just might dampen the urges of even the most recalcitrant of peoples. Promulgating such a paradigm will be no easy task. Today, intellectual fashion makes feel-good endeavors like outlawing landmines and other technologies of war the chic pastime for jet-setting internationalists. Such Nero-like preoccupations are incongruous in a world where machetes, knives, and other legacies of the Bronze Age inflict the worst horrors of war. These agreements do nothing to deter societies with insidious intents; for the foreseeable future only powerful forces of good can do that. Without question, the destruction of civilian property is hardly a cure-all, but it *is* another valuable tool for the forces of the moral against those of the amoral. The question is, how to implement the new paradigm?

Implementation could come in several ways. One method would be a revolutionary re-interpretation of “military objective” so as to de-link the now-required nexus to a contribution to a specific military action, and to explicitly *include* those civilian objects whose loss weakens the nation’s collective *will* to continue the conflict. A second approach would be to reinvigorate and expand the concept of belligerent “reprisal.” Simply stated, reprisals are acts otherwise prohibited that become permissible when a belligerent *in bello* engages in illegal conduct. The victim state (or those acting for it) is allowed to do things usually forbidden in order to end the unlawful acts being perpetuated upon it. True, to fully achieve the purpose of coercing societal change, the classic conception of belligerent reprisal may need expansion. But a first step — and one

long overdue — would be to remove the current LOAC limitations that prohibit virtually *all* reprisals against civilian objects under just about every circumstance.³³

What may impede the adoption of a new paradigm is a distorted view of egalitarianism that makes it hard to accept that evil beliefs could permeate whole peoples. John Leo wrote that students at some colleges are, for example, “unwilling to oppose large moral horrors, including human sacrifice, ethnic cleansing, and slavery because they think no one has the right to criticize the moral views of another group or culture.”³⁴ To those similarly disposed, it is easy to obfuscate issues by asserting complexity after complexity, subtlety after subtlety, legalism after legalism. But to the victims of Serb savagery — the Muslim woman being raped, the child being orphaned by the murder of his parents, the elderly refugee dying on a lonely road far from home — adjudging good and evil is a sadly easy task. We must not hesitate to demonize the demons.

When societies propagate evil, democracies must be prepared to visit upon them force so staggering it will produce fundamental change. The force needed to do so — whether delivered via traditional kinetic bombing or imposed by way of a newly developed cyber-technique — is not symbolic or incrementally administered, but rather massive, relentless, and profoundly shattering. If the widespread destruction of property serves the purpose of remaking a society that needs remaking, then international law and ethical norms must yield to allow it. If fretting about the sanctity of adversaries’ bank accounts prevents us from taking action that might help preserve the sanctity of their victims’ lives, then our priorities need re-ordering.



33. See Article 54, 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed

Conflicts, June 8, 1977.

34. John Leo, “A No-Fault Holocaust,” *U.S. News & World Report*, July 21, 1997, p. 14.