THE MORALITY OF TACTICAL NUCLEAR WEAPONS:

A PHILOSOPHERS' DEBATE

The issue of morality in war, going back at least to the just-war theory of St. Augustine, has long occupied a prominent place in the literature of moral discourse. But owing to the controversy concerning the justness of the war in Vietnam and the unprecedented killing power of proliferating nuclear weapons, the issue has again come energetically to the fore. Michael Walzer's Just and Unjust Wars *(1977) and Malham M. Wakin's* War, Morality, and the Military Profession *(1979) are prominent examples. With respect specifically to the issue of tactical nuclear weapons,* Parameters *presents below the generally opposed views of philosophers Richard Brandt of the University of Michigan and Thomas Nagel of New York University. At the end of the two articles, Professor Brandt adds a reply, followed by Professor Nagel's counter-reply. Despite the sometimes elusive nature of philosophers' discourse, the issue they deal with comes ultimately to assume immense practical importance to today's professional officer.*

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WHEN IS IT MORALLY PERMISSIBLE TO USE TACTICAL NUCLEAR WEAPONS?

Richard Brandt

There are two major questions about the morality of nuclear warfare. One is: Under what conditions is it morally acceptable to become involved in military combat of such seriousness that the use of nuclear weapons might be considered? If the answer to this question were "Never," then the second question need not arise. But I believe it would be agreed that there are circumstances in which it is permissible to become involved in such a war; the circumstances of World War II are an example. Such conditions exist if there is a clear threat to a decent, civilized way of life for a large number of people. So the second question is: If a nation is involved in a serious war, under what conditions is it permissible morally for it to employ nuclear weapons? It is this second question which I propose to address. Actually, I shall address only part of this second question: I shall concern myself only with the employment of *tactical* nuclear weapons. I mean by a "tactical" nuclear weapon one of comparatively low yield (e.g. a few kilotons), capable of being accurately directed at targets a short distance away (e.g. by an artillery round), and used for battlefield purposes only, *not* one employed to strike at targets of strategic significance such as factories; and I shall assume only defensive employment is contemplated. I wish to inquire when the use of such weapons is *morally* permissible.

WHAT KIND OF PRINCIPLES ARE TO BE APPRAISED?

In asking this question, we want to know *what principles commanders ought to use* in deciding whether to request or approve use of

nuclear arms. I do not mean merely which moral principles that moral philosophers would recommend they use. What we want to know is what principles should be firmly embedded in the practice of the armed services in somewhat the way in which the manuals of land warfare and naval warfare have binding force on the behavior of military personnel. Such rules probably cannot be formulated in such a way as to eliminate altogether discretion on the part of a commander. But one wants something better than reliance on case-by-case gut-decisions of an officer. One wants a set of rules which at least considerably reduce the range of discretion. A commander can hardly be expected to know decision theory, by which he weighs the utilities and disutilities for the long run, marking each down in accordance with the probability that it will occur if he takes a contemplated action. Judicious weighing is unlikely to occur in the heat of combat. So although some judgment must be used in the interpretation of rules, the officer must go by a book, and someone must give him a book to go by. Of course, the principles in the book must be simple and clear enough to become part of a directive that can be used for decisionmaking without indulging in speculation.

THE PRINCIPLES FOR MORAL APPRAISAL OF THE RULES

But what basic moral considerations should govern the choice of such rules? It is certainly desirable that whatever rules there are should be matters of treaty obligation and recognized by all parties to a war. But we are not in a situation where there are such treaty obligations. The Hague Convention of 1907 prohibits the use of weapons which can cause "unnecessary suffering," but that is too vague a restriction to be of use. Atomic weapons are not clearly prohibited by international law, although the experts do not speak with one voice on the matter. The UN General Assembly passed a resolution in 1961, by a far from unanimous vote, prohibiting the use of all nuclear weapons, but this has no legal force. So we have to ask ourselves what restraints on our own conduct are *morally* required, knowing that there are not legal restrictions, and that others may not restrain themselves in the same way. Therefore, what general principles must govern our decision about what rules should go in the desired book of rules?

There are some differences of opinion about this matter among philosophers around the world at present. I propose to employ what I think is the most widely accepted relevant set of principles, namely, *utilitarian* principles. What is the utilitarian idea?

The utilitarian theory holds that the set of rules should be adopted which will probably maximize the long-term well-being or happiness of *everyone* affected. Let me emphasize that philosophers are not in a position to identify by themselves what rules of this sort should be. Specialists in warfare are needed in order to know what types of situations are apt to occur and what would be the likely outcome of one military procedure or another in those circumstances. Philosophers can perhaps be of help in arriving at the idea of an optimal set of rules, but it would be absurd for them to go at it alone. Having said that, let me propose a simple example—one drawn from an Army manual for field commanders. This rule states that a nuclear weapon may not be used if its employment would cause more than five

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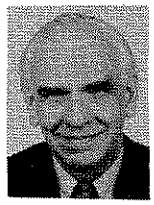
Professor Richard Brandt earned baccalaureate degrees from Denison University and Cambridge University and received his Ph.D. at Yale in 1936. He has taught at Swarthmore College where he was McDowell Professor of Philosophy and Religion, and at the University of Michigan at Ann Arbor where he was Chairman of the Department of Philosophy from 1964 to 1977. He was a Guggenheim Fellow from 1944 to 1945, a senior fellow for the National Endowment for the Humanities in 1971, and the John Locke Lecturer at Oxford University in 1973-74. Among Professor Brandt's books are *Ethical Theory* (1959) and *A Theory of the Good and the Right* (1979). His present article is based on a presentation before the War & Morality Symposium at West Point, N.Y., on 1-2 May 1980.



percent civilian casualties, except in case of great emergency.[1] I am not suggesting this is the right rule. Further, it does require some judgment about what constitutes a severe emergency. But the rule of thumb—"no more than five percent civilian casualties"—is clear enough, and the tables furnished by the Army on the fatalities to be expected at various distances from detonation of a bomb of a certain size at a certain altitude with given wind conditions, taken along with information about the location of the civilian populace, permit the rule to be applied without speculation. This rule, or some version of it, could be chosen on utilitarian grounds.

Utilitarian theory has an implication for this simple case, however, which deserves careful attention: *Which* civilians are we talking about? It sounds as if allied civilians are the ones in mind, e.g. West Germans and Dutch and Belgians. But how about civilians of the enemy, e.g. Russians, East Germans, and Bulgarians? The general utilitarian program is to count *all* lives, the welfare or happiness of everyone *alike*. What makes it bad to kill a person is the kind of good life he might have lived, but doesn't get a chance to live. And the quality of life of a Russian is just as good, or maybe just as good, as that of a West German. One thing that the recent 1977 Geneva protocol emphasizes is that the protections it invokes should be without distinction based on race, color, sex, language, religion, political opinion, national origin, wealth, birth, or other status (Article 75). That is what all utilitarians would affirm.

With regard to justifying the selection of rules in this utilitarian way, some philosophers have thought no *further* reasons are necessary, that manifestly rules should be selected on the basis of a cost-benefit analysis including all human beings affected. Some, however, would say rules so selected are morally justified because they would be chosen by rational persons who were impartial, that is, ignorant of facts which would enable them to advantage themselves. More specifically, they would say that rules so selected would be moral because they *would* be chosen by nations (say at a Hague Convention) which expected some day to be involved in a war, but when none knew whether in that war it would be more powerful or better equipped than its enemy. This general conception has been worked out most recently by John Rawls (but without the utilitarian conclusion),[2] but it is very similar to what is often called the "ideal observer" theory.[3]

There are some philosophers, however, who would not support a utilitarian-type selection of rules at all. Some of them would rather start from a Kantian-type principle such as "Respect human beings as persons" or "Never use a person merely as a means to your own ends." Or else they start with a variety of common-sense principles that seem to them evident, and think they can show that reflection on these leads to a coherent set of non-utilitarian principles which comprise a reasonably satisfactory moral guide. I myself think that if one starts in one of these ways he is not going to be able to give a convincing rational argument for *any* rules of nuclear warfare. But I shall not comment further on this possible view, except to caution against a possible confusion. Some people think we have no business talking about *rights*—prisoners' rights, human rights, noncombatants' rights, etc.—unless we hold to a non-utilitarian theory. This is a mistake. There is a utilitarian theory of rights, and a highly plausible one. As John Stuart Mill asserted, for a person to have a prima facie right means roughly that some other person or group is prima facie morally bound not to do certain things to him, or bound to do certain things for him. A utilitarian theory—which of course implies that people are morally bound to do or not do certain things to or for others—clearly does have implications for the various rights of human beings.

APPLICATIONS

In the first place, we must ask what there is about nuclear weapons that requires special attention as contrasted with conventional weapons. If we talk of nuclear weapons *generally*, of whatever size and however

employed, there are certainly differences which set them apart: first, the widespread and indiscriminate killing; second, the prolonged radiation-induced suffering followed by death or disability; third, radiation-induced genetic injury affecting members of the next generation; fourth, the persistence of radioactive contamination, which renders large areas uninhabitable for many years; and fifth, the considerable distances traversed by fallout, affecting civilians even of neutral countries. It is such features that raise questions whether the use of nuclear weapons does not cause the "unnecessary suffering" prohibited by the Hague Convention. These effects are greatly reduced in the case of tactical weapons, however, if, *as advertised*, they can be delivered with great accuracy, affect only a small area, are relatively "clean," and are directed only at prime military targets (tank concentrations, bridges, tunnels, etc.). Nevertheless, the contemplated human destruction must raise some question about their use.

Are there circumstances in which the use of tactical nuclear weapons might be morally permissible by any reasonable rules we might adopt? I believe the answer is affirmative. Which circumstances? First, the values at stake in the war must be so great that we are justified in using all the legal weapons at our disposal, where such use is absolutely necessary to avoid defeat. Second, the battle in which they are employed must have crucial importance. For instance, if such weapons could have halted the German breakthrough into Holland and Belgium, or destroyed Marshal von Rundstedt's tank concentration at the battle of the Ardennes, their use would have been morally justified. I am inclined to think that if the Soviet Union undertook a massive breakthrough into NATO territory, and if it could be halted only by use of such weapons, the employment would be justified. The justification would lie in the prospective long-term loss of quality of life for the defending nations, plus the long-term gain of establishing the principle that spreading of an ideology is not to be effected by force of arms.

There is a further important reason for the use of such weapons: their deterrent value. If the enemy knows one has them and will use them, he will count the heavy cost to himself in advance, and perhaps will behave himself and stay home. Unfortunately, if the enemy is to be deterred from an attack in this way, there must be readiness to *use* the weapon if he does attack, and he must know this.

The importance of this deterrence by tactical nuclear weapons is greatly enlarged by the fact that possession of such weapons appears to be about the only high card in NATO's hand, since the ground forces of the Soviet Union greatly outnumber what is available to NATO, as do their artillery and tanks. It seems, therefore, that in the next decade the only feasible deterrent to missionary enterprises by the Soviet Union is nuclear weapons. Hence, the argument becomes: a deterrent is of great importance; having the deterrent requires willingness to employ it; therefore, employment is morally justified in the total circumstances. Of course, it has been argued that it is immoral even to pose a nuclear *threat*. This view rests on a misunderstanding. The "threat" is only a defensive one (it is assumed to be morally justified to offer a defense). In effect, our argument is saying, "*If* you attack me, I shall hit you back *hard*." The whole idea is that there is not to be a fight in the first place.

There is, of course, a grimmer way of looking at matters. Suppose that the Soviet Union, for whatever reason, decides to invade anyway, despite the expected losses. And suppose it uses the nuclear response on the part of NATO as a pretext for unleashing its own nuclear weapons, not merely at the battle front, but against targets of strategic importance such as cities. That would risk, to some extent, a general nuclear war. But this argument does not amount to much. There are two points to be made. First, it is clear to everybody as to just who is doing the escalating—or at least it should be, barring a gross failure of communication—for tactical nuclear weapons are essentially defensive, battlefield weapons which pose no threat to Soviet territory. But, much more important,

one must ask what is the alternative. We are in the position of a householder, whose home is being broken into by a burglar with a lethal weapon, who has to decide whether to risk resisting the burglar or to let him in to do as he will. If tactical weapons are *not* used, it is true there is less risk of a general nuclear war. But the price is Soviet control of Europe. That might not be catastrophic, but I have assumed we are talking about whether these weapons should be used in a war we are justified in waging in the first place. If the values at stake in the war are such that NATO is morally justified in fighting it with all the legal weapons it can deploy, and if the use of tactical nuclear weapons is the only possible successful defense, and promises to *be* a successful defense, then their use is justified.

So far, I have avoided a thorny question by saying merely that the use of tactical nuclear weapons is justified in a very special situation—when it is the only way to stop a catastrophic invasion. But is the employment of such weapons morally justified in any other situations? In thinking about this, the philosopher needs the aid of military men who know the possible types of situations in which one might seriously consider such a tactic. I do not know what they would say. Have they thought such weapons might be used to deny the Soviet Union access to the Persian Gulf? Might their use be permitted to shorten a war and save American lives when an enemy is already effectively defeated but refuses to stop fighting, as perhaps was the case with Japan? One might say these questions are outside my topic, since they are about whether to begin or continue a war, not about how to fight it. But there is a point at which these questions merge. For our government might go into, or continue, a war which it thought could be won cheaply with nuclear weapons, when it would not go into the war, or continue it, if it thought there would be a high price in American lives. So we might ask simply whether it is morally permissible to wage a war in such a way as to be cheapest in terms of American lives, irrespective of its cost to enemy military forces.

The answer to this question, I think, must in general be negative. Military action is justified only to the extent necessary to bring the enemy to a negotiating table in a mood to settle disputes in accordance with just principles, and within a reasonable time. The military "action" involved in use of nuclear weapons is very considerable, and the total lives lost—American or other—must be justified by the importance of having reasonable negotiations on the issue in dispute. Obviously, diplomatic and economic pressures should be employed to the fullest extent, both before and in the course of a war; what can be accomplished by these methods need not be accomplished by more drastic means. It might be replied that it is not reasonable to count *enemy* lives, particularly enemy in uniform, as a cost of military action. This view is mistaken. It is of course true that one tends to bring the enemy to the bargaining table by decimating *his* forces, not by decimating your own. But enemy troops, who after all presumably had no part in the decisions which led to the war and are normally unwilling victims of their own political system, have a right to life just as much as American troops. Hence, minimal destruction of enemy forces, compatible with the goal mentioned, should always be a desideratum. Further, the importance of the issue to be negotiated must set a restriction on the degree of violence to be tolerated; one is not to use a nuclear weapon, despite its promise to be highly effective, in stopping minor raids at a border, even if the enemy has no nuclear weapons and cannot reply. Application of a principle of this sort, of course, requires patience, self-restraint, and political leadership, and the American public has only a limited supply of these goods. In my opinion, the United States did not show a suitable level of self-restraint at the end of the war with Japan, at least in dropping a second nuclear bomb without some patient negotiation, and should be on its guard to avoid similar mistakes in the future.

I have no idea how this general policy could be spelled out in terms of more specific rules. Nor have I shown that its adoption would maximize expectable long-range utility, and the reasoning might not be easy.

But I suggest that it can be done, and that the general strategy for doing so is fairly clear.

NOTES

1. Department of the Army Field Manual 101-31-1, *Staff Officers' Field Manual—Nuclear Weapons Employment Doctrine and Procedures (March 1977), pp. 23, 28.*

2. *John Rawls, Theory of Justice* (Cambridge, Mass.: Belknap, 1971).

3. See Roderick Firth, "Ethical Absolutism and the Ideal Observer," *Philosophy and Phenomenological Research*, 12 (1952), 317-45.

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TACTICAL NUCLEAR WEAPONS AND THE ETHICS OF CONFLICT

Thomas Nagel

It is a familiar problem for any nation that relies heavily on nuclear weapons, whether tactical or strategic, that its primary means for achieving its ends are too costly. The costs are of two kinds: self-interested costs and moral costs.

The self-interested costs are fairly obvious. Whether we are talking about tactical or strategic weapons, there is the danger of all-out thermonuclear war and destruction of the society, either in retaliatory response to a strategic strike or as the result of escalation from the use of tactical weapons in the theater. Further, there are the costs of destruction of allied territory and of friendly troops by the use of tactical weapons in defense of a populous territory like Western Europe. It is important in thinking about Europe to remember that the Soviets, too, have tactical nuclear weapons. As far as I know, we don't have a clear edge in this respect in Europe, and they would presumably use such weapons in a European war without necessarily waiting for NATO to use them first. Our own tactical weapons and their importance in current planning give the Soviets a strong incentive to do so. When we add up the damage to Europe that would be caused by both sides in even a purely tactical nuclear exchange, we get a high self-interested cost even without escalation.

The moral costs are simply the costs of a commitment to wipe out huge numbers of civilians, either deliberately in strategic strikes, or as collateral damage from the counterforce use of tactical nuclear weapons. In addition, as Professor Brandt has mentioned, such a war would produce long-term radioactive contamination that would affect future generations as well.

This problem of excessive cost of both kinds has the further effect, for a nation that is heavily dependent on nuclear weapons, of reducing its military credibility because it inhibits action. This is obvious to any potential opponent. The Soviets knew they had nothing to fear from the West when they marched into Czechoslovakia in 1968, and they can be fairly sure that they will encounter military resistance in Europe only for the highest possible stakes, since the cost of a European war to the West would be so enormous.

There are obviously strong reasons, then, to reduce these costs, and to make it possible to fight effectively with more selective and less destructive weapons. But this in turn involves other costs—economic and manpower costs. Nuclear weapons, in proportion to their destructive capacity, are relatively cheap, and their use doesn't require a great deal of manpower. Many seem to think that these weapons could substitute for the kind of manpower that would require universal conscription in the West. So far, it has been politically, if not physically, impossible for NATO to approach Soviet-bloc conventional strength in Europe, despite the fact that the Soviets have to maintain a huge conventional force on the Chinese

border as well. Thus we are faced with a real dilemma. There are strong reasons both for and against heavy reliance on nuclear weapons. I want to elaborate on one of the types of reasons against: the moral costs.

The question of moral costs in warfare has become especially prominent in public debate in this country since the Vietnam War—though even before that there had been some discussion of the morality of city-bombing raids aimed at civilian populations during World War II—the bombings of Dresden, Tokyo, Hiroshima, and Nagasaki—and also of the postwar strategy of massive nuclear retaliation. In the debate about Vietnam, one can distinguish two aspects of the moral allegations against that war. The first was that we were fighting in a bad cause; the second was that we were using immoral methods, specifically that we and our allies showed too little regard for the lives of noncombatants. This second criticism shows that the problem of such moral costs is not limited to the case of nuclear weapons. It is essentially a problem about the use of any extremely powerful and indiscriminate weaponry.

Now it is very important that these two types of criticism be separated. It is possible to object to the conduct of a war without objecting to the war itself; and, in fact, those two strands of criticism in the case of Vietnam were sometimes pursued independently. One may fight in a good cause using immoral methods, as in the case of the raid on Dresden. One may also fight in a bad cause using morally acceptable methods, as in the case of Rommel's campaigns in North Africa. To some extent, means can be evaluated independently of ends. In this respect, I believe Brandt and I disagree, at least to some extent, and this is the question I want to focus on, because our difference in moral theory leads to a difference in view about weapon policies.

As a defender of utilitarianism, Brandt believes that civilian casualties, like all forms of suffering, are bad and should be avoided unless the alternatives are clearly worse. He has described some of the indiscriminate and long-term effects that make tactical nuclear weapons particularly sensitive to this sort of objection. I want to enter two caveats with respect to his facts. I don't know the range and power of tactical nuclear weapons now in place in Europe on both sides; I believe that many of them are much more powerful than "a few" kilotons and quite a number of them may be more powerful than the bomb that was dropped on Hiroshima. Further, rules are one thing; but what would actually happen in a war being conducted officially according to a certain set of rules is another. Difficulties of target selection, accuracy, and the details of control in battle make what will actually occur only a rather shadowy reflection of what is prescribed in the rules. A nuclear war in Europe would be devastating, regardless of preexistent rules and regardless of whether escalation occurred.

With so much as prologue, let me now record that Brandt and I also disagree at the level of ethical theory. I am not a utilitarian, for I believe it is worse to kill noncombatants than it is to kill combatants, and worst of all to aim deliberately at the killing of civilians, as in terror bombing. For a utilitarian the moral cost of an action depends simply on the amount of suffering produced. For some non-utilitarians, myself included, the moral cost depends partly on that, but also on whom you're attacking and what your relation to him is. But instead of arguing about this theoretical issue directly, I want to

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Dr. Thomas Nagel is Professor of Philosophy at New York University. He was educated at Cornell, Oxford, and Harvard and taught for three years at the University of California at Berkeley before going to Princeton, where he taught for 14 years. His main interests are ethics, metaphysics, philosophy of mind, and political philosophy. He is associate editor of *Philosophy and Public Affairs*, author of *The Possibility of Altruism* (1970) and *Mortal Questions* (1979), and co-editor of *War and Moral Responsibility* (1974). The present article is based on his paper delivered before the War & Morality Symposium at West Point, N.Y., 1-2 May 1980.

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concentrate on something much more specific to the morality of warfare.

I want to take issue with Brandt over his insistence on considering the question of means only against the background of an assumption about ends, and his unwillingness to treat means as an independent question. It is natural for a utilitarian to do this since utilitarianism holds that means must be judged by their tendency to produce good ends. But as a method of arriving at principles for the conduct of war, I believe it is inadequate and probably disastrous.

In summarizing his suggested principle for the use of tactical weapons, Brandt said this: "If the values at stake in the war are such that NATO is morally justified in fighting it with all the legal weapons it can deploy, and if the use of tactical nuclear weapons is the only possible successful defense, and promises to *be* a successful defense, then their use is justified." Let me concentrate on the initial clause, "if the values at stake in the war are such that NATO is morally justified in fighting it with all the legal weapons it can deploy"—the clause about the values. Brandt gives some examples in which he thinks this condition was or would be fulfilled; he speaks about the preservation of the long-term quality of life, though he doesn't actually give a detailed account of such a life. Nevertheless, it is a striking feature of this principle that it offers a moral recommendation applying only to the side that is overwhelmingly in the right.

What would the corresponding utilitarian recommendation be to the opposing side in such a conflict? The strict analogy, if we were to include the corresponding assumption about ends, would be: "If you're in the wrong, surrender." But this would not be very useful as a principle of morality in the conduct of war, since if two nations are prepared to make the sacrifices involved in going to war in the first place, they, or their governments, are presumably both convinced that they are in the right and the others are in the wrong, and that the values at stake are extremely important.

I believe the problem must be approached quite differently. If we wish to find moral principles applicable to the conduct of war we should look for principles that are *general*, and that could be recognized as valid by parties to a conflict who are in other ways radically opposed—who are in fact mortal enemies because of the opposition between their values. The problem of whether to accept any restraints in the methods we may use to defend our ultimate political values cannot be solved by reference to those values alone: If there is a *moral* answer it should apply also to those who don't share our values. If there is such a thing as the general morality of warfare, it can't presuppose the values of either party to a military conflict, since at least one of them must be in the wrong. It requires instead some broader standards by reference to which each side can justify certain aspects of its conduct—if not the pursuit of the war itself, at least the way it is being conducted—to itself, to the opponent, and to neutral parties who may be affected. Even if we cannot justify the ends, at least we can hope to justify the means.

I don't believe a simple utilitarian method accomplishes this very well. If each side is supposed to adopt a policy on the basis of utility—i.e. its estimation of the contribution of its policy and its efforts to the general good of humanity—then there is no way to prevent each of them from putting the stakes arbitrarily high, in accordance with the conviction that the preservation of liberty, or the victory of socialism or national liberation (whatever the ultimate value), is of incalculable value. These ends would justify almost any means. In fact, I think that Brandt's own recommendations about tactical nuclear weapons are quite conservative by utilitarian standards. Why, if one is fighting for the ultimate values, should their use be limited to cases in which they provide the "*only* possible successful defense"? Why not allow them in cases where they provide a better chance of success than other methods? Why, for a utilitarian, should they be limited to cases where the civilian casualty rate will not be more than five percent or some such figure?

I think that in a way Brandt is right in describing utilitarianism as the majority view, not among the philosophers, which is what he meant, but among political agents. I think that there is at present a tendency for all parties to international conflict to accept a kind of utilitarianism, which they then apply in accordance with their different ultimate values. The situation is very like that in wars of religion, in which the stakes are seen as eternal salvation, making it possible to justify almost anything.

The result is that certain more universal standards of humanity are easily swept aside. I don't mean to minimize the importance of those ultimate political, cultural, social, and economic values for which nations are prepared to go to war. Probably all of us have a very profound commitment to certain values of this kind. I claim only that they can't serve as the basis of a general morality of warfare. And though it may seem paradoxical, I believe that there are other standards which can be mutually acknowledged and given priority even by deadly enemies: standards of human decency, which are not based on utilitarian calculations.

Our ideological antagonism with the Soviets, for example, profound and mutual as it is, need not obliterate our common moral interest in not killing civilians, either deliberately or incidentally. The aim of destroying each other's combat forces, once hostilities have begun, is inseparable from the conflict of values to which those forces are giving violent expression. But the protection of those who are not directly engaged in a military conflict has a powerful value of its own, a universal value that can be recognized by either party to the conflict, quite independently of the other values that divide them. It is therefore the kind of standard that deserves special and prior weight in the morality of warfare between enemies. It provides a powerful reason to exclude from utilitarian justification, from the possiblity of utilitarian justification, the use of nuclear weapons with their indiscriminate and long-term effects, and to seek acceptance of the same standard by others.

Nations and their military forces have a moral interest in not being put into the position where the only way they can defend their most important political values is to use methods which will kill multitudes of civilians and radioactively contaminate large areas. And in our case, even if we believe that certain ultimate ends would be *worth* these morally repellent means, we still have a moral incentive to try to get out of the position in which they are the only means available to us. I believe the moral cost is sufficiently great so that it would be worth paying other costs and accepting other risks accruing from reduced reliance on tactical nuclear weapons, in order to be in a position to reduce the indiscriminate destructiveness that such weapons would bring to a war in Europe. This would involve a change of emphasis from a policy of pure deterrence of war toward the development of a capacity to actually win such a war, or at least to avoid losing it. It is possible that this move might be facilitated by recent developments in precision guidance of more conventional defensive weapons which produce less collateral damage. In any case, as I said at the outset, this moral interest in relying less on nuclear weapons coincides with our interest in military credibility.

To sum up, I believe the commitment of this country and other powerful nations to increasingly indiscriminate weapons is a moral failure insofar as it expresses the rejection of common values of humanity that could be mutually acknowledged in the morality of warfare. Just as we share an ordinary interest in not being destroyed, so should we share a moral interest in not causing indiscriminate destruction. It is sometimes possible for those who disagree violently about almost everything else nevertheless to agree on basic principles which may govern the conduct of their disagreement. Whether we and our potential enemies can seriously attempt this, let alone succeed, remains to be seen. But our common incentives for doing so are not just self-interested, but moral.

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REPLY BY PROFESSOR BRANDT

A discussion of philosophical theory is hardly of major interest in the present context, but I believe a very small bit of it will be clarifying. The main point I wish to make is that, just as there are Republicans and Republicans, so there are varieties of utilitarianism. One variety is now normally called "act-utilitarianism"; it is the one Professor Nagel seems to attack. The other is called "rule-utilitarianism" or "principle-utilitarianism"; it is the one I defend. The view Nagel attacks is one I have myself repeatedly criticized in both articles and books. Roughly, the "act-utilitarian" believes that a particular decision or action is morally right if and only if it maximizes or probably will maximize the welfare of sentient creatures, as compared with any other action open to the agent at the time. My guess is that this version of utilitarianism is seldom subscribed to by persons who call themselves "utilitarians" at the present time.

So exactly what is the rule-utilitarian view which I defend, and which I think may fairly be said to be the "traditional" conception of utilitarianism? The idea of this version is that what justifies any societal institution, *including the moral code, or moral principles, or even the accepted mode of moral reasoning*, is the net benefit of getting them recognized and keeping them in force for all sentient creatures. Consider, for example, any principle you might accept about when a person is morally obligated to keep a promise of a certain sort. The rule-utilitarian will say, roughly, that the principle is justified if a cost-benefit analysis (including the costs of teaching it and motivating persons to follow it and feel guilty if they don't, and including the benefits of having it adhered to, etc.) indicates that acceptance of the principle will maximize expectable net benefit as compared with any other principle that might be proposed intead. The rule-utilitarian will appraise the justification of all laws and principles of conduct in roughly this fashion.

Accordingly, in my article I was proposing to assess by rule-utilitarian analysis possible *rules or policies* for the employment of tactical nuclear weapons, including prohibitory rules set forth in a US Army field manual. (One would be doing much the same thing in constructing a code of professional ethics for physicians or lawyers.) One possible rule would be: no use of nuclear weapons of any sort in any circumstances. My criticism of such a rule was that there are *conceivable* circumstances in which adherence to it would be highly counterproductive, meaning that some weaker prohibition is probably what we should look for. I then raised the question whether there are not at least *specifiable cases* in which tactical weapons should be banned, as for example when the war concerns a relatively minor matter, or when the war has already essentially been won although the enemy has not yet agreed to come to the peace table. I did not make any positive proposals for the form such rules should take; I suggested that philosophers are not the best persons to formulate such rules, certainly not by themselves. The closest I came to formulating a specific rule was in pointing out the Army's rule that a tactical nuclear device not be used, except in extreme emergency, if it would result in a civilian casualty rate higher than five percent. I do not see that Nagel concerned himself to attack this position; his artillery seems to me to have been directed at an unoccupied position! But I agree with him that these rules must be applicable regardless of whether one's cause in going to war is itself right or wrong.

It may be helpful if I point out what seem to me misconceptions in Nagel's article. First, he says that I—presumably, his charge applies to other utilitarians as well—am unwilling to discuss the morality of means independently of their relation to ends. This is a misleading accusation. In a symposium

paper on the rules of warfare (Nagel was the other symposiast), I once discussed such questions as whether it is justified to forbid killing prisoners even when it would be most convenient to do so. My answer was clearly yes, since the rule forbidding it is manifestly a good rule for the long run. Second, Nagel, rightly urging that rules for the conduct of warfare should be justified for both parties to a conflict, charges that on my view the rules would apply only to the side that is—or thinks it is—in the right. I do not understand why he interprets the utilitarian view in this way. Surely *both* sides can agree on humanitarian restrictions on the conduct of war, ones which reduce the human misery of the conflict without decisively influencing the outcome of the war. The prohibitions of the Hague and Geneva conventions are of this type, and all parties can agree to them. Third, Nagel says that he is not a utilitarian, for he believes "it is worse to kill noncombatants than it is to kill combatants." But this conviction would not disqualify him as a utilitarian, since a rule-utilitarian will agree that optimal rules for the conduct of warfare hold that both sides should try to avoid killing noncombatants. The rights of noncombatants are not absolute, however, as Professor Michael Walzer has pointed out in his discussion of the British bombing of a heavy-water plant in Norway during World War II (*Just and Unjust Wars* [Basic Books, 1977], pp. 157-58).

What is Nagel's alternative to my rule-utilitarianism? I find it hard to discover. He seems to think that rules of warfare, mutually acceptable to both sides, can be based on generally acknowledged "standards of human decency, which are not based on utilitarian calculations." It is not obvious that there are any universally recognized standards of human decency separated from utilitarian considerations. Take for example the principle against putting persons in prison with only sham trials or the principle against torture. Insofar as there is agreement on such principles, I suggest it is based on utilitarian considerations. If we ask whether some rule *is* a good standard of human decency, I think we have to decide by asking if recognition of that rule maximizes human welfare in the long run.

I agree with Nagel that the United States ought not allow itself to be placed in the position of exclusive reliance on nuclear weapons—even if avoiding this necessity requires giving up the luxury of a volunteer army. I observe, however, that for geographic reasons even a conscript Army would not solve all the problems. The Soviet Union and its allies are in a position to mobilize forces quickly and to overrun Western Europe before American Army reinforcements could arrive; it is hardly realistic to propose the alternate approach that the United States maintain indefinitely in Western Europe a sufficiently large conventional component of NATO to allow the alliance to stall a Warsaw Pact invasion until there is massive reinforcement from the states.

I agree with Nagel that reliance on US *strategic* nuclear weapons reduces the credibility of NATO's deterrent. It is hard to believe that the United States would engage in a mutually annihilating nuclear exchange with the Soviet Union for the protection of West Germany. Our NATO allies are well aware of this. The defensive use of tactical nuclear weapons, however, is another story; they *would* be used, even at a slight risk of escalation—as, again, our allies are well aware.

I disagree with those who argue that NATO should *never* be the first to use a nuclear weapon of any sort on the ground that once such a weapon is used there will certainly be escalation, with mutual annihilation on a worldwide scale. Consider the position of an inhabitant of Western Europe. (I cannot conceive of a situation in which it would be to the advantage of the Soviet Union or the United States to engage in an intercontinental nuclear exchange, so let us set that possibility aside.) NATO will surely not use a tactical nuclear weapon except to halt a Soviet invasion. Let us suppose that, if such employment occurs, the Soviets escalate to the extent of using theater missiles to destroy important targets well behind the lines. (There is no point in

destroying Paris; the Soviet Union would surely not wish that kind of victory—winning a war which gave them access to bare land not fit for human habitation for 50 years.) The question then facing the West European is as follows: Do you prefer a *risk* of Soviet destruction of targets behind the lines by theater missiles (and it must not be forgotten that NATO also has more such missiles with which to reply to such an escalation, a fact which the Soviets must take into account), or the *certainty* of defeat and occupation by the Soviet Union? It is very possible that a rational person would prefer to take the risk of Soviet theater nuclear reprisal. Of course, it would be better if NATO had sufficient conventional forces such that the use of tactical nuclear weapons need not be considered; but in any event NATO must possess a tactical nuclear capability in case the Soviet Union chose to use its own.

I regret that philosophers cannot perform miracles, that they cannot provide an absolutely unassailable set of rules establishing the morally justified use of tactical nuclear weapons. But a couple of things are clear: first, that some definite rules should be adopted, thus leaving little to the speculations of a field commander in the heat of battle; second, that the adopted rules be ones that, on the evidence, promise in the long run to minimize human suffering and maximize human welfare, given the ugly context of nations at war.

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COUNTER-REPLY BY PROFESSOR NAGEL

My criticisms of Professor Brandt's position don't depend on a failure to distinguish act-utilitarianism from rule-utilitarianism. It is impossible to do cost-benefit analysis without some assumptions about how values are to be assigned to outcomes. Therefore, rule-utilitarianism gives no objective solutions if there is fundamental disagreement about values, as there often is between countries at war. There *is* no rule about the use of nuclear weapons that could be generally agreed upon as satisfying Brandt's criteria. Any limitation that has a good chance of affecting the outcome of the war becomes controversial by utilitarian standards if the utilities cannot be agreed on by both sides. This is no less true of a rule than it is of an individual action.

Something else must be found to base objective principles on, and I suggested that there are certain universal values which can be shared even by those who cannot agree about what rules would have maximum utility. These values are always in danger of being overwhelmed by the more particular social and political ideals that provoke conflict. But they may help to set some limits, which military opponents can adhere to even if they cannot be sure that adherence will maximize utility, by their lights. By reducing the destructiveness of war, those limits will also enhance utility in certain local respects. But since they may also affect the outcome of war, there is no telling whether they will maximize overall utility, unless we can agree on a general measure of human welfare, which notoriously we cannot.