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THE WAR IN VIETNAM: A DISCUSSION

I. THE VIETNAM CONFLICT: A MORAL EVALUATION

A distinctive aspect of the discussions concerning the Vietnam conflict is the conclusory character of the arguments. Debaters assume the war is just or unjust, leaving the premises of their argument unarticulated. This procedure is particularly true of those who believe the war to be immoral. They consider the point obvious and treat the details of a negotiated settlement as the only matter worthy of extended discussion. Such attitudes mark a shift in the quality of ethical discourse concerning the legitimate uses of force. There is a sharp contrast between current thinking and earlier evaluations of the use of force, such as the careful analysis and critique of obliteration bombing by John Ford, S.J., during the Second World War.¹

This shift from discourse to intuition is perhaps explainable in terms of the moral awareness of the incompatibility of warfare with the purposes of human existence. Yet it remains true that men, and nations, are more susceptible to the measurement of their conduct by reasoned discourse than by unarticulated intuition, however penetrating or profound. Moreover, the existence of moral philosophy as a science capable of providing guidance for human affairs depends, in large measure, upon its capacity to elevate the moral sense into higher and more extensive realms of human thought. These considerations suggest that an ethical evaluation of the Vietnam conflict would be a worthwhile enterprise. Yet, such an effort is precarious. Objective judgments about human events are rare; rarer still is our ability to think dispassionately about the tragic conflict of warfare, which evokes strong feelings of sympathy or disavowal. In spite of formidable obstacles, the attempt to illuminate the conflict in terms of higher realities is worth the effort of all who affirm moral reason as the supreme instrument for the advancement of human good.

In this essay I shall try to analyze and evaluate the Vietnam conflict in terms of the features of the war which appear to be most susceptible to extensive moral consideration. This procedure necessarily involves some selectivity and the arrangement of events in a chronological fashion. It is imperative for a moralist to see the full complexity of a problem; the effort involves emphasis of prominent features, rather than a step-by-step appraisal of concrete events. Some readers may find this disconcerting, since certain aspects of the conflict will be highlighted, to the apparent neglect of other facets which are undoubtedly of some significance. Moreover, the order of discussion I have chosen may give rise to the fear that I have deliberately decided to criticize the actions of one side of the struggle while closing my eyes to the depredations of the other. How-

¹ John Ford, *The Morality of Obliteration Bombing*, 5 THEOLOGICAL STUDIES 261 (1944). One exception to the paucity of reflection is the collection of essays, VIETNAM: CRISIS OF CONSCIENCE (1967).

ever, if the reader will patiently examine the entire essay I am confident that he will find the appraisal to be both comprehensive and impartial.

I. THE GENERAL RIGHT TO USE FORCE

The Problem of Public Authority.—The Vietnam conflict involves a wide variety of armed violence — insurgency, counterinsurgency, intervention; it is difficult to grasp a starting point for analysis. The first condition of St. Thomas for a just war — public authority — is, however, a useful point of departure.² The question may be asked, Does the Republic of South Vietnam possess the right to use armed force for military purposes?

The issue of public authority is linked to the concept of statehood. It is the state, rather than private groups, which possesses the right to institute warfare. The question, as much judicial as ethical, is appropriately considered in the light of international legal criteria. An entity is considered a state for international law purposes if it possesses a defined territory, permanent population, government, and the capacity to conduct foreign affairs.³ These juridical formulae are closely intertwined with international politics. To recognize an entity as a state is a matter of political choice by states already part of the international community. Juridical formulae are often subservient to the purposes of geopolitics. Hence flows the comparative inability of moral philosophy to measure the creation of the legal reality which is the foundation of the requisite public authority for the use of force. The best that can be demanded is some application in good faith of the juridical prerequisites.

In the case of the creation of South Vietnam, the evidence is conflicting, but it cannot be said that in acknowledging its statehood the nations responsible have abused the discretion which they possess in the present state of international relations.⁴ South Vietnam has been accepted as a state by a sufficient number of existing states to meet the minimal criteria of statehood. It follows that the Republic of South Vietnam is possessed of indicia of public authority sufficient to meet the conditions precedent to the use of arms. However, as will be seen, there are weaknesses in the juridical status of the Republic which raise serious questions about the actual exercise of armed force by it and its allies within the arena of combat.

Intervention.—Intervention by the United States in the conflict is an issue of major importance. It may be appropriately discussed at this juncture because it is closely linked to the authoritative character of the South Vietnamese government. The right to request assistance is dependent upon the public character of the requesting entity.

² THOMAS AQUINAS, *SUMMA THEOLOGIAE* 2-2, q. 40, a. 1; FRANCIS SUAREZ, *DE LEGIBUS*, Disputation XIII, Sec. II.

³ WILLIAM W. BISHOP, JR., *INTERNATIONAL LAW* 210 (2nd ed., 1962).

⁴ Compare, e.g., John Moore and James L. Underwood, *The Lawfulness of United States Assistance to the Republic of Viet Nam*, 5 *DUQUESNE LAW REVIEW* 235 (1967), with Richard Falk, *International Law and the United States Role in the Viet Nam War*, 75 *YALE LAW JOURNAL* 1122 (1966). Political motivations for intervention are discussed later in this paper.

Intervention raises extremely complex questions of both international and municipal law. While the practice of intervention is severely criticized by eminent jurists, it is impossible to say that a juridical norm prohibits one state from intervening to repress an internal conflict in another state, particularly when requested to do so by the incumbent regime. The intervention in Vietnam by the United States is at the request of the Saigon government.⁵

Some jurists object to intervention on the grounds that it is incompatible with human rights of self-government. By this reasoning insurgency is identified with the aspirations of people to rule themselves, expectancies frustrated by the repressive actions of the incumbent regime. To assist the existing government constitutes conspiracy to violate human values. It thus becomes wrongful for one state to intervene in the civil wars of other states even when requested to do so by the regime in power.⁶

This argument has a persuasive quality especially since many modern governments have been formed by the violent overthrow of repressive regimes, and outside assistance undoubtedly has preserved elites that deserve to fall. There are, however, two major weaknesses in the argument. The first is its implied assumption that all insurgency is justified, i.e., from the fact that an attempt is being made to overthrow an existing government, the assumption is made that moral right is automatically on the side of the rebels. But it is impossible to make such generalizations in human affairs. A similar argument flows from ideological premises. To a Communist, "wars of national liberation" are justified — a standard flexible enough to apply whenever the exigencies of geopolitics suggest that its use may be convenient.⁷ While this standard, because of its qualification, is an improvement upon the prior generalization, it is still an unsatisfactory standard from a moral point of view. What is objectionable is its a priori assumption that all governments not founded upon Marxist principles have no right to exist. Such regimes are, by hypothesis, wrongful no matter what their consensual basis may be. More importantly, since their program of political and juridical activity is not Communist they are *intrinsically* oppressive; their non-Communist character is the proximate reason which justifies their violent overthrow no matter what the factual realities of the question of tyranny may be.

This principle is too abstract a justification of the right of revolution. The right of revolution has, in traditional ethics, always been embedded in contingent circumstances. The question always has been whether the existing regime by the de facto exercise of its power has so oppressed human values that its overthrow is justified. It requires that all avenues of reform within the existing structure of government be closed.⁸ These factors have an obvious bearing upon several aspects of the war, but they have an immediate bearing upon

⁵ See Letter from President Diem to President Kennedy, Dec. 7, 1961, 46 DEPARTMENT OF STATE BULLETIN 13-14 (1962); Comment, *The United States in Vietnam: A Case Study in the Law of Intervention*, 50 CALIFORNIA LAW REVIEW 515 (1962).

⁶ See CHARLES C. HYDE, 1 INTERNATIONAL LAW 253 (2nd ed., 1945).

⁷ See ACADEMY OF SCIENCES OF THE U.S.S.R., INTERNATIONAL LAW.

⁸ AQUINAS, *op. cit. supra* note 2, at 2-2, q. 42, art. 2, *De regimine principis*, bk. I, ch. VII; SUAREZ, *op. cit. supra* note 2, at Dispt. XIII, Sec. VIII; PAUL VI, POPULORUM PROGRESSIO 30, 31. The present Pontiff speaks strongly against revolutions because of the increased injustices they involve.

the issue of intervention. The impossibility of deciding in advance whether a revolt is justified makes it equally futile to dismiss as wrongful all interventions directed towards stopping civil war.

There is a second reason why the absolute condemnation of intervention is unacceptable. The objection goes to acquiescence in civil strife as a normal incident in modern life. The unconditional exclusion of external assistance is tantamount to the acceptance of violence as an integral aspect of governmental change. But the human conscience must be concerned about violence within, as well as between, states. There is obviously a vacuum here: the absence of a supranational authority capable of assuring that genuine aspirations not be repressed while it simultaneously insists upon peaceful procedures of transition.⁹ Given this deficiency, the remedy does not lie in the abdication of all stabilizing influences. Intervention is an unsatisfactory solution, but moralists have to work with things as they are. This is not to condone all interventions; each must be judged on its merits, and responsible officials should, by ethical reflection, be prodded to develop those universal institutions which can made interventions both unnecessary and unacceptable.

Was the United States' intervention by request of the South Vietnamese government morally justified? This is a question for which it is difficult to obtain a satisfactory answer because the available evidence as to the causes of the insurgency is inconclusive. While the regime was guilty of repressing civil rights within the country, it is uncertain whether repression had reached a point which would justify armed revolt.¹⁰ Moreover, there is considerable evidence of organized Communist involvement, both within South Vietnam and in the North.¹¹ On the available evidence it is impossible to characterize the intervention as immoral, especially where substantial United States involvement closely parallels the intensification of the Hanoi-directed campaign.¹² Yet, acceptance of intervention does not imply approval of the actual conduct of the war. This is a central point which, in spite of its stress by the American Catholic bishops, is too often forgotten by those interested in the conflict.

The Offensive Campaign.—The use of force in South Vietnam by the Saigon government and its allies is predominantly offensive in character — designed to establish the authority of the Republic throughout the territory by securing its borders and by pacifying it within through counterinsurgent techniques. This general campaign involves some engagement between massed troops, but a major portion of the fighting is of a different character. In the so-called "search and

⁹ See Center for the Study of Democratic Institutions, *Preliminary Draft of a World Constitution*, in A CONSTITUTION FOR THE WORLD 25-54 (1965).

¹⁰ On the repression of civil rights, see: BERNARD B. FALL, *THE TWO VIET-NAMS* 254-88 (1963); Philippe DeVillers, *Ngo Dinh Diem and the Struggle for Reunification in Vietnam*, in VIET NAM 222, 223 (Gettleman ed., 1965); HANS MORGENTHAU, *VIETNAM AND THE UNITED STATES* 21-23 (1965); ROBERT SCIGLIANO, *SOUTH VIETNAM: NATION UNDER STRESS* (1963).

¹¹ See particularly, FALL, *op. cit. supra* note 10, at 358, and JEAN LACOUTURE, *VIET NAM: BETWEEN TWO TRUCES* 53-54 (1966).

¹² See RICHARD GOODWIN, *TRIUMPH OR TRAGEDY, REFLECTIONS ON VIETNAM* 32 (1967). The insurgency has been directed by Marxists from both North and South, and it contains non-Communist elements.

destroy" missions troops are sent to secure areas believed to be hideouts for Vietcong terrorists.¹³ These "search and destroy" missions often have as their final objectives villages or hamlets believed to be centers of Vietcong activity. The purpose of the military attack is to flush out Vietcong and to find and destroy their equipment hidden in the area. The distinctiveness of these operations is that their objective is not a specific military target distinct from the village itself. Since the Vietcong move in and out of the peasantry, the counterinsurgent military operation often falls upon the village population as a whole.

These attacks necessarily involve a high degree of direct injury to men, women, and children not engaged in the armed conflict, as well as the destruction of their homes and property. This raises the important question of whether these military operations directed against communities rather than specific military units or targets can be morally justified in view of the traditional immunity of noncombatants.

The primary justification for these attacks is that the immunity of non-combatants is inapplicable because although civilians are directly harmed, they are not innocent. By harboring the Vietcong, the villagers, through their cooperation, become accessories to the wrongful conduct of the rebels. A major difficulty with this argument is that it assumes that the Republic of South Vietnam, and its allies, have the right to recapture the villages and hamlets involved. It assumes that the existence of the State of South Vietnam gives its military forces the right to impose its authority throughout the territory. While this may be true with respect to areas substantially loyal to the regime, it cannot stand scrutiny when advanced as a justification for attacks upon all communities resisting South Vietnamese authority.

It was agreed that the Republic of South Vietnam had the requisites of statehood adequate to give the regime the quality of *public* authority which is the condition for conducting warfare. It possessed the requisites of territory, government, population, etc.; or at least other states, in acknowledging the presence of these factors, had not abused their discretion. But there is an important difference between the existence of recognizable borders and the right of a regime to possession of all territory within these borders.

Prior to the creation of the Republic of South Vietnam, the geographical area was a part of the French colonial empire. It is generally agreed that large parts of what is now South Vietnam were never under effective French control. Large numbers of people, particularly in rural areas, lived under the effective control of the Vietminh, the predecessor of the Vietcong.¹⁴ While possession of these areas was often obtained by violence, significant governmental services were administered by the rebels. More importantly, in many instances the peasants gave substantial allegiance to these operations. This situation has continued, in varying degrees, since the establishment of the Republic.¹⁵

¹³ For a general discussion of counterinsurgency see FALL, *op. cit. supra* note 10, at 368-82.

¹⁴ See DOUGLAS PIKE, VIET CONG 44-46 (M.I.T. Press, 1966). Pike believes the figure has been as high as two million.

¹⁵ In the elections establishing the republic in 1955, and in subsequent presidential elections, it was clear that the Saigon regime did not exercise control over substantial

These factors have an immediate bearing upon the right of the Saigon government and its allies to secure or "recapture" villages. In areas where the South Vietnam government has never exercised effective control, it is difficult to see how general resistance to its asserted authority is a wrong which can be redressed by the use of armed force.¹⁶ Moreover, where village cooperation with the Vietcong is coerced, the innocence of the peasantry becomes more probable and thus their right to immunity from direct attack is enhanced. Finally, even assuming the peasants' active approval of the rebellion, any right which the government may possess to discourage peasant cooperation with the Vietcong does not include the permission to directly slaughter civilians.¹⁷

Air Attacks.—The South Vietnam conflict has involved bombing of targets in the territory of both South and North Vietnam. Particular attention has been drawn to the bombing of the North. Concern is primarily centered upon the justification of the air attacks as a proper defensive measure and the permissibility of their continuance in view of the increasing evidence that they have involved injury to civilians and their properties.

An important juridico-moral argument against the permissibility of air attacks upon Northern targets has been developed by Falk. His thesis is bottomed upon two factors: an imperative of nonviolence and the necessity of mutual restraint by states for the purpose of insuring international order.¹⁸ States loosely characterize the action of adversary states as aggression, thus seeking to justify the use of unlimited force. To restrain arbitrary power Falk has postulated three models of permissive force: 1) When a state is subject to armed attack across its borders a full defensive response, including the use of force against the attacking state, is permissible both by the state subject to the initial aggression and by its allies. The Korean War is an example of this principle. 2) Where the attack upon a state is internal in origin, but includes outside assistance, the appropriate response by the intervener must be restricted to the territory of the state subject to the internal attack. The Spanish Civil War is a case in point. 3) Finally, where the violence is predominantly a local insurgency, with minimal outside help, no intervention is allowable. Falk believes that the Vietnam conflict falls within the third principle, but will concede *arguendo* that the conflict falls under the second category. He concludes that bombing raids against the North, since they expand the violence beyond the territory of the state subject to internal strife, are wrongful.

Falk's thesis has much merit both because of the symmetry of its principles and the deep moral purpose by which it is inspired. Moreover, its objective of developing mutual restraint among great powers anxious to intervene in the affairs of other states is important in view of the dangers of nuclear conflict

portions of the countryside. See FALL, *op. cit. supra* note 10, at 257, 277. It is also clear that peasant support of the insurgency has grown.

¹⁶ Redressing of an injury is a condition to the use of force. See AQUINAS, *op. cit. supra* note 2; SUAREZ, *op. cit. supra* note 2, at Dispt. IV.

¹⁷ Compare Ford, *op. cit. supra* note 1, at 270-271. For a vivid description of the injuries inflicted upon civilians during counterinsurgency operations see FALL, *op. cit. supra* note 10, at 350.

¹⁸ Falk, *op. cit. supra* note 4, at 1122-26.

which unrestrained escalation promotes. Yet, in spite of these positive qualities, the theory is unacceptable as a definitive moral solution to the problem of the permissibility of the air attacks. The difficulty with the theory lies in the imperative quality of its normative structure. Once the categories of permissible violence are fixed, they fall inflexibly upon the corresponding fact situations. In effect they determine a priori the issues of reasonable defensive strategy. It is true that apologists for the air raids have justified the acts by characterizing North Vietnam involvement as falling within the first classification. But essentially the raids are a question of reasonable response, an issue heavily enmeshed in contingencies. This perspective is destroyed by the Falk methodology. Once the type of conflict has been appropriately catalogued, the essentially concrete character of reasonable means is renounced in the name of a priori principles of nonviolence. But it is the function of morals to defend reason in all of its manifestations, and the range of the science of ethics includes a respect for the exigencies of human judgment as well as the defense of other values. It does violence to the structure of human decision making to preclude its exercise on the basis of categorical imperatives of order. Where the quality of the weapon is not questioned, a decision to make use of them under particular circumstances is too enmeshed in concrete circumstances to be susceptible of advanced determination by abstract rules. While the Falk thesis is deficient as a conclusive test of legitimacy, it deserves close consideration; it contains arguments which have an important bearing upon the general question of whether air raids against North Vietnam can be justified.

In evaluating the air attacks upon North Vietnam it is important to understand the type of bombing involved. The attacks are primarily a form of precision bombing. They have as their targets specific objectives believed to be of military consequence; they are not directed indiscriminately against large areas.¹⁹ This is a central distinction because it channels the use of force in terms of the traditional categories of combatants and noncombatants. Where the objective is a specific target, ostensibly of military importance, the fact that its destruction involves some civilian casualties is not, of itself, an adequate reason to assess the force employed as being immoral.²⁰ However, to justify any use of force which involves harm to civilians, the injury done them must be truly accidental; it must be a genuinely secondary effect. To make this determination requires a realistic appraisal of the circumstances under which the bombing occurs.²¹

Some of the air attacks against the North have been completed with few, if any, civilian casualties. Rail lines and bridges in remote parts of the country have been destroyed under circumstances which suggest minimal noncombatant effects. But many attacks have been upon targets extremely close to civilian concentrations in cities and outlying villages. In significant numbers of these raids the injuries to civilian populations have been extensive.²² It is these cases which raise the important questions of double effect.

¹⁹ See HARRISON SALISBURY, *BEHIND THE LINES—HANOI* (1967). Unfortunately the same is not true of bombing in the South; see Falk, *op. cit. supra* note 4.

²⁰ SUAREZ, *op. cit. supra* note 2, at Dispt. XIII, Sec. VII.

²¹ Ford, *op. cit. supra* note 1, at 290.

²² See SALISBURY, *op. cit. supra* note 19, and WILFRED G. BURCHETT, *VIETNAM NORTH*

The civilian injuries in question are not intentional; rather they are a consequence flowing from the nature of the air war. The targets of these attacks are small, such as a dike, a bridge, a depot. To reach them, pilots must approach at low altitudes. They are met by heavy and effective anti-aircraft fire — a circumstance which promotes the hasty and premature delivery of the bombs. As a result the bombs frequently miss their targets, and a failure of small magnitude often results in direct injury to civilians.²³

Under these circumstances it is difficult to believe that the noncombatant injuries are a side effect of legitimate destruction. While noncombatants are not intentionally bombed,²⁴ the lack of an intention to injure the innocent does not obviate the necessity of a moral evaluation of the acts themselves. Even assuming that some military targets are purposely located near civilian centers, this fact is not an excuse for continuing the attacks, since the positioning of military equipment is a matter over which the civilian population has no control and for which it is not responsible. Nor is it just for the United States to demand that civilians move if they wish to avoid injury. Such a condition, even if it were feasible, is an unwarranted imposition upon civilians who as innocent persons have an immunity from attack. The burden is upon the one who uses arms either to justify his conduct or to refrain from the use of weapons.

Finally, these air raids cannot be defended in terms of proportionate good.²⁵ The evil consequences are immediate and reasonably certain. That the bombing has decreased the involvement of North Vietnam in the war is a dubious hypothesis, and there is considerable evidence that the air raids have solidified the determination of the North to continue the war.²⁶ Moreover, the incessant bombing increases the dangers of further involvement by other powers. It is at this juncture that Falk's thesis is most relevant: the continuation of the air attacks increases the dangers of a nuclear holocaust and weakens the mutual restraints which are so essential to world peace. There is the further relation of the continuance of the bombing to the possibilities of negotiation.²⁷ It is impossible to make a causal judgment on this matter. That Paul VI, as well as other leaders, has called for the cessation of bombing is a matter of vast significance. In view of the possibilities these pleas suggest, it is difficult to justify the continuance of the air war in the absence of some compelling necessity. It is elementary ethics that the goodness of an act is, in part, dependent upon the foresight it reflects.

Force by the Insurgents.—Evaluation of the use of force by the insurgents should logically begin with the origins of the conflict and the compatibility of the conflict with traditional norms on the right to revolt. The difficulties with such an analysis have already been suggested when uncertainty about the

22-23 (1966). The latter's obvious sympathy with the North Vietnamese objectives would ordinarily lessen the authoritativeness of his opinions. However, the coincidence of his observations with those of Salisbury makes the work a valuable reference.

²³ SALISBURY, *op. cit. supra* note 19, at 65-69; BURCHETT, 24-26.

²⁴ SALISBURY, at 65; cf. BURCHETT ch. 2 *passim*.

²⁵ See Ford, *op. cit. supra* note 1, at 289.

²⁶ See GOODWIN, *op. cit. supra* note 12, at 57-62.

²⁷ See, for example, SCIGLIANO, *op. cit. supra* note 10, at ch. 3-4.

justifications was noted and when doubt was cast upon the Saigon government's range of control. Vast areas of South Vietnam had been under Vietminh or Vietcong control prior to the establishment of Diem's regime; and the new leader sought to incorporate by force, if necessary, all the area into the government. He received a general mandate in the 1955 elections, and there is considerable evidence that he then made a bona fide effort to establish a democratic government with opportunity for all sections of the country to participate. On the other hand, he was adamant in his refusal to permit Communist participation, and it is clear that in his zeal he refused political activity to persons and groups which were not Communists and who, while opposing Diem, had peaceful and constructive objectives. There were other serious infractions of civil liberties which undeniably contributed to the beginning of the insurgency.²⁸ While Communist elements had participated in the revolution from the beginning, the rebellion contained local non-Communist elements as well.²⁹

For the moralist the problem posted here is similar to the difficulties encountered in attempting to evaluate intervention. Both phenomena are refractory to moral analysis because of juridical and political ambiguities. Both contain decisional factors which elude objective scrutiny. A key factor in the right to revolt — the point where oppression becomes intolerable — depends greatly upon local conditions and the evaluation of these factors by those contemplating violence.³⁰ Consideration must be given the desperation of groups with legitimate grievances who have no effective remedies to them. Under the circumstances which probably existed, it is impossible to condemn the revolution *ab initio*.³¹

As far as the use of force by the insurgents is concerned, a basic difficulty is raised by the fusion of political with military objectives.³² The revolution is an attack upon an entire governmental structure; violence is directed against all connected with the incumbent regime in whatever capacity; it is not limited to campaigns against police and soldiers. The assassination of village leaders, for example, is an integral part of the campaign. It is impossible to justify this as a legitimate use of force. Were public health officials of the Saigon government, visiting a rural village to institute a malaria control program, "combatants" when the Vietcong were justified in killing?³³

Other aspects of the Vietcong strategy are equally subject to moral objection. Since it is a war against a government, the lessening of popular confidence in

²⁸ See the authorities cited in footnote 11 *supra*.

²⁹ GOODWIN, *op. cit. supra* note 12, at 23-26.

³⁰ See RAYMOND F. BEGIN, *NATURAL LAW AND POSITIVE LAW* 161 (1959).

³¹ This appears to lead to the contradiction that both the rebellion and the resistance to it are morally correct, since the intervention of the United States was not disapproved. But the contradiction is only apparent. What has been said is that the evidence is not sufficiently compelling to condemn either the intervention or the insurgency. Simple reflection should reveal that these positions are not inconsistent.

³² A rejection of the Communist justifications for the revolt has already been made, and the refusal to adjudge the insurgency wrongful is not meant to detract from those criticisms. The insurgency is directed towards a political objective. "Revolutionary warfare is the result of the application of guerilla-warfare methods and psychological-political operations for the purpose of establishing a competing ideological system or political structure." FALL, *op. cit. supra* note 10, at 349.

³³ An incident recounted in GEORGE K. TANHAM, *COMMUNIST REVOLUTIONARY WARFARE — THE VIETMINH IN INDOCHINA* 155 (1961).

that government becomes an important object of the insurgents. By terrorism — attacks upon public utilities, indiscriminate mortar bombardments, abduction and torture — the Vietcong seek to convince those living under the South Vietnamese government that it is not to be relied upon for safety or services.³⁴ Yet these purposes cannot be achieved without either direct physical injury to the civilians or by imposing upon them a regime of fear which is equally destructive of their human dignity. When the undermining of civilian morale becomes an objective, it soon becomes undistinguishable from a purpose to inflict injury and death upon the civilians themselves.³⁵

The full significance of indiscriminate injury being inflicted for political purposes can be seen when the Vietcong strategy is viewed in the light of the Marxist ethics which are its principal inspiration.³⁶ In this perspective the goal of national liberation gives meaning to the interim violence. Actions which contribute to the achievement of the final goal are, by hypothesis, good. Individual values are not ignored, but they become subordinate to the dialectical dynamism which is moving events inexorably towards final victory. This dynamic process is the root justification for violence without distinction.³⁷ As a sophisticated form of the theory that the end justifies the means, this claim cannot withstand moral scrutiny. The human person possesses intrinsic values which cannot be subsumed by any movements no matter how noble the objectives.

Northern Involvement.—The insurgency in the South involved persons with a broad spectrum of political views but it is reasonably certain that Marxist elements exercised substantial leadership and that the formation of the National Liberation Front was achieved with significant involvement by the Ho Chi Minh regime.³⁸ The insurgency was aided by direct assistance of the revolution by the North Vietnamese government and the dispatch of its troops below the demilitarized zone.

The legality of the North Vietnamese action has been debated in juridical terms.³⁹ One legal justification has been advanced which contains sufficient aspects of a moral quality to make it susceptible to an ethical evaluation. It has been argued that Ho Chi Minh is exercising a right to regain forcefully what has been denied him. This argument begins with the premise that the war against the French was a battle for the whole of Vietnam. The Geneva Accords of 1954 were a provisional arrangement acknowledging French defeat and giving the nation a breathing spell before national elections designed by the Accords to achieve national unity. The Diem regime wrongfully refused to submit to the

³⁴ *Id.* at 153; FALL, *op. cit. supra* note 10, at 359-68.

³⁵ Compare Ford, *op. cit. supra* note 1, at 294: "I contend that it is impossible to make civilian terrorization, or the undermining of civilian morale, an object of bombing without having a direct intent to injure and kill civilians."

³⁶ An appraisal in terms of Marxist ethics seems warranted by the facts surrounding the development of the insurgency. It is clear that at least since 1960 Communist influence has played a guiding role in the overall campaign against the South Vietnamese regime.

³⁷ See JACQUES MARITAIN, LEGALITY OF UNITED STATES PARTICIPATION IN THE VIET NAM CONFLICT: A MORAL PHILOSOPHY 1085 (1964).

³⁸ LACOUTURE, *op. cit. supra* note 11, at 51-60.

³⁹ *Symposium*, 75 YALE LAW JOURNAL 1083-1160 (1966).

elections, a wrong compounded by the general recognition that if the elections had been held, Ho Chi Minh would probably have been victorious. Under these circumstances he was justified in using force against the South to recover what was denied him through the frustration of political processes.⁴⁰

There are legal rebuttals to this argument, such as the fact that the South Vietnamese government refused to sign the Accords.⁴¹ The strongest reason for this refusal is political and historical: At the cessation of hostilities, the North Vietnamese government instituted its program of reform within the territory subject to its control. Its programs were carried out with an appalling disregard of human life and other human rights. A direct reaction to these events was the migration of refugees to the South.⁴² This historical experience weakens the North Vietnamese claim of legality. It points to a vital question which has not been satisfactorily resolved: Assuming that Ho Chi Minh would have succeeded at the polls in 1956, what would have been the status of civil rights in the South once he had assumed office? A satisfactory moral justification for the assertion of a political right requires consideration of the quality of human life subsequent to the formalities of the transfer of power.

II. THE POLITICAL CONSIDERATIONS

When considering questions of force, moral reason has traditionally been circumscribed by the juridical mold in which its questions have been cast. It inquires whether a war is public or private or whether a state can conduct its military campaign in a certain fashion. These are matters of profound importance, but their phrasing necessarily restricts the focus of the moralist in a way that diminishes profounder considerations which bear upon the issues.

For moral philosophy to be a relevant discipline it must broaden its concern beyond the limited questions of man's right to apply power. It must observe the interplay between the legal and the political. Its purposes are not limited to approving or condemning particular uses of force by states. It may indicate how states can transcend the limitations of force and channel their energies in ways truly promotive of human good. Standing alone, critiques of the use of force leave the most important questions unanswered. The result of analysis and evaluation is that, excepting purely defensive measures, the violence in which all combatants are engaged cannot be morally justified. Yet such a judgment is singularly inconclusive. If the use of force is unwarranted, what are the alternatives? In practical terms, the dispute must be moved from the battlefield to some form of political settlement. From an ethical viewpoint this requires a shift from concern with ethico-judicial questions to a consideration of human rights and duties within the sphere of political activity.

The Ethics of Political Activity.—It may be best to begin by reflecting upon

⁴⁰ This argument is summarized in Falk, *op. cit. supra* note 4, at 1129-31. The Geneva Accords, and other relevant documents, appear in GOODWIN, *op. cit. supra* note 12, at 68.

⁴¹ See Moore and Underwood, *op. cit. supra* note 4, at 235.

⁴² See the description in Department of State, *The Legality of United States Participation in the Defense of Vietnam*, 75 YALE LAW JOURNAL 1085, 1099 (1966).

the extent to which defective political theory contributes to the violence which ethics desires to abate. Much of the human suffering we have witnessed in modern times is traceable to such a deficiency. What has characterized political conflict has been passion for a unitary conception of political life. Movements seeking power have been dominated by the assumption that they each possess the key to the good life, that their political philosophy is all-embracing. The correlation between this unitary viewpoint and violence is clear: opposition must be suppressed, and, in turn, what is suppressed forcefully resists its exclusion from the political arena. No major political movement has been immune from this tendency: Communism, Fascism, and Democracy have, in various ways, been victims of the urge to transform their particular insights into a complete explanation of man and his destiny.

The conflict in Vietnam has been infected with this virus. Political intransigence made insurgency inevitable. The Diem regime, committed to a philosophy of personalism, excluded all opposition, whether destructive or complementary. The Marxist-oriented Vietminh, along with its successor, the National Liberation Front, believed that it alone had the program to bring the nation out of the colonial past into a better future. These antipathies have continued to the present. It is this aspect of the struggle which is desperately in need of moral illumination.

The Modern Conception of Political Life.—While external political activity has pulsed in unitary directions, the growth of moral consciousness has exhibited a diffusive tendency. Human experience and reflection have nurtured an awareness of an essential pluralism in the human condition. Modern men have become aware of the immense complexity and range of human cultural achievements. This insight has led to a conviction of communal responsibility in terms of multiple values. The Church has shown its awareness of this dimension not only ecumenically but also in efforts to make its own societal structure more responsive to the diversity of thought and action which exists among its members.⁴³

Such developments have an immense significance for political life. They suggest that the refusal of any political theory to concede the significance of a rival social or economic philosophy is contrary to the modern moral understanding of the human experience. Moreover, political absolutism is an affront to human dignity since by hypothesis it excludes from personal consideration the alternatives of political thought upon which a genuine assent to government should be based.⁴⁴ A respect for the right of a person to participate in political life requires an acknowledgment of his right to be aware of, and to embrace, the widest range of thought concerning political questions subject only to the essential requirements of public order.⁴⁵

⁴³ Cf. Recommendations of the Canon Law Commission of the United States, 27 *THE JURIST* 283 (1967).

⁴⁴ It would also be useful to explore the connection between the unitary thrust of politics and the moral issue of the fanatic consciousness which is characteristic of modern man: The contempt for fine shades of truth generated by political passions. See GABRIEL MARCEL, *MAN AGAINST HUMANITY* (1951).

⁴⁵ Such a conclusion is required not only by the historical development of the human race but because of the nature of personal freedom. Participation in political life is an

To the extent that these truths are capable of practical expression, certain concrete actions seem to be required. Peaceful procedures must be considered as indispensable rather than provisional conveniences. The Marxist must modify his dialectic conception of history and his commitment to violence as an inexorable part of human emancipation. The Saigon regime must renounce its conviction that all those elements within the country who do not support present policies are not entitled to participate in the tasks of development. Conflicts of viewpoint, particularly these of diametrically opposed conceptions of human purpose, may suggest that political rapprochement is Utopian. But political problems are not the same as philosophical questions, and concrete circumstances provide opportunities for solutions if rigid doctrine does not present perception of them.⁴⁶

Identifying Participants.—In jurisprudence it is important to identify all who are involved in any given dispute, including those not normally referred to as parties. This is necessary in order to understand the relations of power, to clarify the issues, to evaluate interests, and to provide a decision maker with the materials necessary to make an objective comprehensive judgment. Such a process must be followed in an analysis of the ethics of warfare. Ethicians are usually asked whether those immediately engaged in combat are following a morally justified cause of action. Evaluation and judgment are directed only at these proximately concerned parties. Such a procedure is inadequate in dealing with questions of modern violence; contemporary international society has too many interconnections to permit such a limited range of ethical analysis. Political alliances of states are well known; what must be stressed is the scope of ethical responsibility.

integral part of human dignity (see *Pacem in terris*); that it requires a wide exposure to differing views on political and economic questions seems required by analogy, from the developments in the realm of religious freedom. Compare Second Vatican Council DECLARATION ON RELIGIOUS FREEDOM 3.

⁴⁶ John XXIII, *Pacem in terris*, Part V. Some evidence of the present attitude of the N. L. F. can be seen in SALISBURY, *op. cit. supra* note 19, at ch. XVI. Pope John, in calling attention to the relations between Catholics and non-Catholics in social affairs, made the following observations (*Pacem in terris*, Part V):

Meetings and agreements, in the various sectors of daily life, between believers and those who do not believe or believe insufficiently because they adhere to error, can be occasions for discovering truth

It must be borne in mind, furthermore, that neither can false philosophical teachings regarding the nature, origin and destiny of the universe and of man, be identified with historical movements that have economic, social, cultural, and political ends, not even when these movements have originated from those teachings and have drawn and still draw inspiration therefrom. This is so. Because the teachings, once they are drawn up and defined, remain always the same, while the movements, working in historical situations in constant evolution, cannot but be influenced by these latter and cannot avoid, therefore, being subject to changes, even of a profound nature. Besides, who can deny that those movements, insofar as they conform to the dictates of right reason and are interpreters of the lawful aspirations of the human person, contain elements that are positive and deserving of approval?

It can happen, then, that a drawing nearer together, or a meeting for the attainment of some practical end, which was formerly deemed inopportune or unproductive, might now or in the future be considered opportune and useful.

It is important to see how a localized conflict implicates the international community as a whole and reflects a failure of their collective responsibilities.

These considerations bear on a moral evaluation of the Vietnam conflict. Certain participants are obviously identifiable, but it would be erroneous to pass an ethical judgment solely on their conduct. From the conclusion of the war with the French to the present there has been a failure of all the nations of the world to meet their responsibilities in Southeast Asia. A central truth which has emerged from intervention by the United States is the folly of any attempt by a single state, no matter how powerful, to solve problems which are international in their most profound dimensions. Hence ethics, too, must adopt a world perspective.

CORNELIUS F. MURPHY, JR.

II. THE MORALITY OF WAR: THE CASE OF VIETNAM

There has been considerable recent discussion of the morality of war in general.¹ Unfortunately, however, moral issues have not been central in the widespread debate about the war in Vietnam.

One can plausibly and forcefully argue that war itself is intrinsically evil and utterly forbidden. This so-called pacifist view would not necessarily repudiate all use of physical force but only that organized use of force, with its accompanying complex of habits, which we have customarily called "war." From this perspective, moral judgment on the Vietnamese war is relatively simple: all war is forbidden; the conflict in Vietnam is a war; therefore the Vietnamese war is forbidden.

While the present writer would personally subscribe to the pacifist position, it is still the outlook of only a tiny minority. Most men today and for many hundreds of years have in principle subscribed to some kind of "just war" theory. Whatever its specifics, such a view holds that, while the burden of proof must always be upon those who would resort to war, there are, nevertheless, circumstances under which war can be "just" or "moral." In its classical expression, this position has roots in antiquity but was developed and rounded out in the writings of such men as St. Augustine, St. Thomas Aquinas, Hugo Grotius, and Francisco Suarez. Modern students of the doctrine like Joseph C. McKenna have sought to redefine and defend it.² From the viewpoint of the "just war" theory, the morality or justice of the Vietnamese war can be determined only by

¹ See, for example, WILLIAM R. MILLER, *NONVIOLENCE: A CHRISTIAN INTERPRETATION* (1964); WILLIAM J. NAAGLE, ed., *MORALITY AND MODERN WARFARE* (1960); and PAUL RAMSEY, *WAR AND THE CHRISTIAN CONSCIENCE* (1961).

² Joseph C. McKenna, S.J., *Ethics and War: A Catholic View*, 54 *AMERICAN POLITICAL SCIENCE REVIEW* 647 (1960).