

What Justice Demands of Us in the Persian Gulf

Kenneth W. Kemp

Would the liberation of Kuwait by force of arms meet the criteria of the Just-War theory? It surely would, as a point by point consideration of the facts shows.

Is there a just cause?

On August 2, Iraq attacked and quickly overran its tiny neighbor, Kuwait. In the months that followed, Iraq pillaged Kuwait, dismantled its infrastructure, murdered its people, and declared that Kuwait was now part of Iraq.

Unlike Israel's Arab neighbors prior to Israel's seizure of the West Bank, Kuwait had made no threat against Iraq, and indeed had no way of doing so.

Iraq has *no* legitimate historical claim to Kuwait. The Kuwaitis come from the Arab peninsula, not from Iraq. They, like the Iraqis, were conquered by the Ottomans, who drew the borders on which Iraq's claims rely. Kuwait was not seized by the British in 1899 to cut anyone off from the Gulf. Rather, British involvement was a result of clever diplomacy by Sheik Mubarak in order to offset increasing pressure from the Turks. Even if there had been legitimate Iraqi historical claims, they surely vanished when, in October 1963, Iraq recognized Kuwaiti independence in exchange for a large sum of money.

Even if Iraq had not recognized the independence by treaty, the attack on Kuwait (1) violated the legitimate rights of the Kuwaiti people to their own nation and their own government and (2) set a dangerous precedent for the many other nations who have ancient grievances against their neighbors.

Iraq cannot have been seriously worried about its access to the Gulf, for Kuwait had been accommodating in this respect.

The takeover is not supported by the Kuwaiti people. The Iraqi government shows no respect for the common good, as the numerous reports of their theft of property and outrages against people make clear. The independence of Kuwait, by contrast, does have the support of the Kuwaiti people, and the Kuwaiti government clearly showed considerable concern for the common good of its people. The fact that Kuwait is a monarchy and not a republic, and even the fact that the emir suspended the parliament does not mean that it does not have a right to protection against Saddam Hussein any more than the undemocratic character of the Polish government in 1939 forfeited its right to be defended against Hitler. The reason that most of the people residing there do not have the right to vote is that most are foreign workers. Kuwait has many jobs for such people, but does not want to surrender its society to immigrants. Whether it is just of them to do so is a question that needs further discussion. Whether it deprives them of the right to protection from Iraq does not.

Iraq's egregious act of aggression deserves condemnation. Liberating Kuwait is about as just a cause as one can find.

Is war the last resort?

Determining when war is the only remaining option is a complex matter. Some people say that we should give sanctions more time to work. But how much more time? Why wasn't five months enough? If January 15th was too soon what date did they propose when the matter was still under discussion? Rhodesia held out against sanctions for 18 years. Supplies continue to cross the Jordanian and Iranian borders into Iraq. Do they really think that Hussein will finally give up Kuwait in 1992 or 1993? The injustices that Palestinians and Israelis perpetrate on each other almost daily is a standing threat to the coalition. Do they think that the coalition can be held together that long? Do we need to stay mobilized for another year in the hope that Hussein will finally come to his senses? Or do they propose that we bring the soldiers home for a year and then send them back if they are needed? What kind of a signal would that send to Hussein, especially in light of the entirely reasonable demand that Iraq withdraw from Kuwait by January 15th?

Someone can always think up some alternative that might just possibly work. And it's easy to say that just being creative will do the trick. But the issue needs to be resolved now so that the world's attention can be turned to other problems—in Eastern Europe and the Soviet Union, in South Africa, in Cambodia, in Palestine, and elsewhere.

The Kuwaitis have asked for our help. They should not have to wait years to get their country back. Justice delayed is justice denied.

Is war proportionate?

Although we can hope that a war will not be costly, we have no right to assume that it will be cheap in making proportionality assessments. Going to war may well be costly. What makes it proportionate is the cost of not liberating Kuwait.

First, this is the second neighbor Hussein has attacked. If he succeeds in this, surely it will only be a matter of time before he attacks a third. His previous actions show that that is the kind of man he is. But next time, he will be richer, more confident, and probably better armed. Preventing him from developing nuclear weapons will not be easy. Britain tried appeasement in the 1930's against Hitler. It failed. Those who do not learn the lessons of history are condemned to repeat it.

Second, the United Nations was founded to provide an alternative to individual nations deciding to go to war. So, instead of calling for war, Kuwait went to the United Nations for help. Fifty years ago, the League of Nations neglected to stop Italian and Japanese aggression. That failure led to the demise of the League. In this first post-cold-war crisis, we cannot allow the United Nations to suffer a similar fate. But setting a deadline and then neglecting to enforce it might well have precisely those undesirable effects.

Maintaining world order is an extremely important value. It benefits all and its destruction by aggression harms all. We risk losing more by not using force than we do by using force.

Is the war rightly intended?

President Bush has been clear that importance of resisting aggression is his reason for taking the course he has chosen. Impugning his motives would be as wrong as suggesting that those who oppose going to war do so out of cowardice.

Conclusion.

The purpose of this bulletin board is to urge all students to think about the demands of peace and justice. There is no peace and no justice in Kuwait. There will be no peace or justice there until Saddam Hussein is convinced that the Allies (including the United States) are willing to use armed force to evict him. Anti-war demonstrations make it hard to convince Hussein that he should leave. Such demonstrations have the practical effect of delaying if not preventing the return of peace and justice to Kuwait. Setting deadlines was the best hope of fulfilling our obligations to Kuwait with reasonable dispatch. That approach seems to have failed; we must be prepared to liberate Kuwait by force. It is sad that we could not achieve justice and peace without resorting to war; but refusing to follow through on the threat of November 30 will reduce the chances of ever liberating Kuwait and will increase the likelihood of aggression occurring again. The prompt liberation of Kuwait, by force if necessary, is not just a right; it is a duty.

What Justice Demands in the Persian Gulf...: A Response

Bernard Brady

In his essay, Prof. Kemp asks, "Would the liberation of Kuwait by force of arms meet the criteria of the Just War theory?" His answer, written before the Allied attack of January 16th, is a clear affirmative. Indeed he concludes, "The prompt liberation of Kuwait, by force if necessary, is not just a right; it is a duty." Like Prof. Kemp, I have struggled with this question. However, I have not come to the same conclusion. I believe that the Allied attack on Iraq was morally inappropriate.

Was there a just cause?

I would have to agree with Prof. Kemp here. Iraq is, simply stated, an unjust aggressor. Although Iraq may have had several legitimate economic complaints against Kuwait, these complaints were not strong enough to warrant a military invasion or any use of force. Also, as the testimony of eyewitnesses indicates (persons who escaped Kuwait after the invasion and those who were released by Iraq after being held hostage), Iraq's presence in Kuwait is blatantly and forthrightly oppressive.

It is important to remember that we are not fighting for democracy and liberty (strictly speaking) in the Gulf. According to American political standards, the government of Kuwait is not "legitimate." For example, only 8% of the adult population of Kuwait is able to vote (men who can prove their heritage for three generations). Citizens of Kuwait have nothing resembling the freedoms that are so central to the U.S. moral and legal order. If Blacks were treated like women are treated in Kuwait, we would not be there.

Was war the last resort?

I do not think this war was begun as the last resort to stop Hussein. I would like to make two points here. The first concerns the sanctions. During the sanctions, Iraq's GNP dropped 50%. Imagine what a 50% drop in the GNP would do to life in the U.S. Iraq was ostracized from the world economic order. This form of coercion was not given enough time. Seven and one-half hours at the table in Geneva was not sufficient.

Second, I must say I was most disappointed with President Bush's public discourse leading up to the deadline. Language such as, "kicking Saddam's ass" coupled with the President's continued public insistence of "no compromise" are among the indications that all appropriate channels were not honestly or intelligently tried. How do you move a violently aggressive Third World dictator riding the crest of a strong nationalist movement entwined with the fervor of religious fundamentalism? Maybe by the path President Bush initiated: support of other Arab peoples, world opinion, appropriate sanctions and a strong defensive military posture. But the President's later choices seems to be more in the preparation for war than opening the door for discussion.

Was the war rightly intended?

I am more comfortable questioning our government here than is Prof. Kemp. What was the intention of Operation Desert Shield ? What was the intention of Operation Desert Sword? What is the intention of Operation Desert Storm? The officially stated intentions have changed. I know it has something to do with oil. If Kuwait exported 10% of the world supply of sand we would not be there. I know it has something to do with stopping aggression, but how can we be so friendly with China after witnessing the slaughter of the non-violent pro-democracy students? Are we liberating Kuwait for our good or the good of the Kuwaitis?

Identifying intention in moral action is not easy. Perhaps we will only know the real intentions of President Bush by watching what he directs the military commanders to do. Or, more telling, by how he picks up the pieces (or how he allows the U.N. or the Arabs to pick up the pieces) in the event that the Allied forces are successful in liberating Kuwait.

The question of proportionality

This is where I find myself in strongest disagreement with Prof. Kemp. Proportionality refers to the proper relation between things. In the Just War Theory (moral criteria for recourse to war) proportionality means the costs must be proportionate to the good expected. We are asked here to make a judgment about the proportion of the means to the end. What evils will we cause to achieve the value of liberating Kuwait and stopping Saddam Hussein? Through the months of debate preceding January 16th, many people relied on an understanding of proportionality to make a moral judgment. However there has not been one universal interpretation of what proportionality demands. There have been, in fact, two approaches to understanding proportionality. One approach begins with the question, "What is the *cost of not going* to war? I take this to have been the official view of the U.S. government. This is also Prof. Kemp's starting point. While admitting "Going to war may be costly," he writes, "What makes it proportionate is the cost of not liberating Kuwait." Confronting an unchecked and nuclear powered Saddam Hussein tomorrow is encouraging a Hitler of the 21st century. Prof. Kemp concludes, "We risk losing more by not using force than we do by using force."

If the first approach begins with the question of the cost of not going to war, the second approach begins by asking what will be the *costs of going* to war. The primary cost is measured by the number of casualties likely to occur in the war.

- how many U.S. and Allied military personnel will be killed, wounded, or disabled?
- how many Iraqi military personnel will be killed, wounded, or disabled?
- how many Iraqi noncombatants will be killed, wounded, or disabled?
- what percentage of Allied deaths will be American? Saudi?

The number of casualties, while most significant, is not the only area of cost that is morally relevant.

- at what cost financially? the war is reported to cost between \$500,000,000 to \$1,000,000,000 a day. Who will pay?
- what is the social cost? will Kuwait and Iraq be livable (have an economy? hospitals? water and food?) when the war is over?

- what will the cost be in terms of U.S. (and Allied) relations with the Muslims of the world? What does the uncertainty that fighting against a jihad bring: Iraqis fighting to their ultimate death and destruction?, the possibilities of world terrorism?, Muslim reactions to the destruction of Iraq and Kuwait?

Examining these two approaches to proportionality, I conclude that the cost of going to war on January 16th does not appear to be proportionate to the good that we hope to achieve, liberating Kuwait by launching a massive war against Iraq.

Conclusion: What do we do now?

As I write, the war is a week old. This context is important for my decision. If the war were over by now, I might have made a different judgment; indeed I might be proved wrong. Like all Americans, I hope that peace comes quickly and with few casualties. I end with four comments.

1. If proportionality is the key, the clock is ticking. The longer the war lasts, the more the scale tips against its legitimacy.

2. Patriotism, loving and serving one's country, cannot simply equated with supporting a particular decision by an elected official. It is not "un-American" to oppose the Gulf war. It is not "un-American" to pressure the government to act responsibly.

3. The U.S. military forces in the Gulf, and their families back home, deserve all the respect and support we can give them.

4. I am impressed and encouraged by reports of the "smart weapons" and the stated position of the Allied forces to protect Iraqi civilians. (At this writing, the ground war has not yet started and full details of targets hit are unavailable.)

5. Anti-war protests and meetings are appropriate. Any use of violence or destruction of property during such gatherings is morally suspect.

What Justice Demands...: A Response to the Response

Kenneth W. Kemp

I appreciate Prof. Brady's response to my comments on the war, but I think there is more to be said. In this piece, I want to clear up some misunderstandings, to identify some red herrings that he sneaked into his response, and to re-emphasize some questions which still need answers.

Just Cause

Prof. Brady acknowledges Iraq's attack as aggression, but never does say whether this could count as a just cause of war.

His critique of the Kuwaiti government is the first of his red herrings. No one ever said (at least *I* never said) that this was a fight for democracy. It is a fight for self-determination (which is different) and a fight against aggression. Does Prof. Brady really think that only the citizens of democracies are entitled to our protection from the likes of Saddam Hussein? (What does he say about Poland's right to defense from Hitler in 1939?) His observation that the government of Kuwait is illegitimate is a bit strong—by that criterion probably half the governments of the world (including Iraq, China, the Soviet Union, and most African nations) are illegitimate. In any case, the whole matter is irrelevant—the Kuwaitis did not forfeit their right to be rescued by failing to adopt America's favorite form of government (& they didn't even forfeit it by leaving in place the kind of defects which Prof. Brady emphasized).

So why isn't the liberation of Kuwait a just cause?

Last Resort

Prof. Brady is right that economic sanctions have hurt Iraq's economy, but that's not the objective. Iraq's *per capita* income is still higher than that of many other countries. The economic adversity may cause the Iraqi people to suffer, but they don't have much influence, so imagining a similar thing happening to the US doesn't really help.

He says seven and a half hours were not sufficient (presumably, for negotiating). But does he really believe that Saddam Hussein, who could not even find a few *hours* in the entire month of December to meet with Mr. Baker was serious about negotiating? Recall also that in the seven and a half hours, Mr. Aziz would not even *talk* about Kuwait!

In any case what kind of negotiation, discussion, and compromise is Prof. Brady proposing? Would he please explain how compromising with Saddam Hussein would be different from the kind of appeasement of Hitler that was so spectacularly unsuccessful in Munich.

President Bush's personal remarks about Saddam Hussein should not have been made. (Weren't they only private remarks in any case?) But that does not make the war unjust. This is the second red herring.

Right Intention

Prof. Brady wants us to question the President's intention, but he does not really give us any reason to do so.

There is nothing morally wrong with the evolving intentions that Prof. Brady cites. The *immediate* intentions of the operations were (1) protecting Saudi Arabia, (2) backing up the economic sanctions designed to remove Iraq from Kuwait with a threat of military force, and (3) liberating Kuwait, respectively. The long -range intention (the prevention of aggression & independence for Kuwait) has been constant.

Is oil a factor? One of the reasons resistance to Saddam Hussein is important is that the more power he accumulates, the more dangerous his future acts of aggression will be. Gaining control of Kuwait's oil will give him new economic weapons and allow him to buy more military weapons. Not allowing Saddam Hussein to accumulate power by aggressive acts is still a just cause & aiming at it is a legitimate intention.

I don't know what Prof. Brady means by "so friendly" with China. Which policies should we change? But the answers to these questions are not relevant. The fact that we use different means to oppose oppression in China & aggression in the Gulf is the third of Prof. Brady's red herrings.

If there are reasons for questioning the President's intentions, let's get them out in the open, with reasons why we believe that he has those intentions. Otherwise we owe him the same charity we expect of others when they evaluate our intentions.

Proportionality

There aren't two approaches to proportionality. There's only one—Are the costs & benefits of going to war greater or less than the costs and benefits of not going to war? Prof. Brady is right that sometimes it costs more to see that justice is done than it is worth. But he avoids some hard questions that really are at the heart of the matter. Is this just a matter of timing? Is it disproportionate now, but not at some later date (say, after two years of waiting for sanctions to work)? Or is this a cause that will always be disproportionate, no matter when we might use military force? If that's what he thinks, then couldn't Saddam Hussein take over the whole Middle East (one small bit at a time—"salami tactics") without our (or the victims themselves!) ever having a moral entitlement to use force against him? Why die for Danzig? (Or why kill over Danzig?) Because Hitler had to be stopped and the cost would only be made greater by waiting. Why die (or kill) for Kuwait? The answer is the same, only the names have been changed.

Prof. Brady's Conclusions

Only two of Prof. Brady's conclusions (#1 & 5) are responses to my letter. The other three are points we agree on.

Point (1) is confusing. Does this mean that there is a point at which we are no longer entitled to use military force? How do we keep what is true about that remark from meaning that the victims of aggression (and their allies) have no moral entitlement to resist aggressors who are tough enough to withstand a concerted attack? Of course it is possible for a war to become so costly that coming to the aid of the victims of injustice is no longer possible. But that does not mean that the

longer the war lasts, the less legitimate it becomes. As the war proceeds, the amount of remaining damage that must be done may go down, the prospect of certain adverse consequences may diminish, and the prospect of a victory (i.e., a just peace) may go up. Thus, the legitimacy of the war does not automatically fall as the war continues. (Of course, a war could go the other way, too. My point is that there is no necessity in either direction.)

Note that Prof. Brady's wording—"the clock is ticking"—only suggests what he needs to prove, namely, that any day now the war will suddenly become illegitimate.

Point (5) really requires clarification. I offered reasons to believe that the demonstrations undermine the prospects for peace and justice. Prof. Brady says that they are appropriate. But he can't think that it's appropriate to undermine the prospects for peace and justice. So he must think that they don't have that effect. Does he think that Saddam Hussein doesn't know about these protests? Or does he think that Saddam Hussein just doesn't consider them when he wonders whether he really had to worry about, or now whether he can hold out against, an American attack?

These are difficult matters and all of what both of us have said depend on difficult prudential judgments as well as an understanding of moral theory. Let us all pray for peace. But let us also not forget that being too suspicious of the war might leave us in a position of having done too little in defense of justice.

I Do Not See the Justice: A Second Response to Prof. Kemp

Bernard Brady

Prof. Kemp and I are in fundamental disagreement on two points: the interpretation of the Just War *ad bellum* criterion of proportionality and the moral legitimacy of publicly opposing the government position on the war.

Proportionality

I have previously written that a just cause for the war exists (contrary to Prof. Kemp's statement), but I am not convinced that the massive evil we are perpetrating can be overlooked or written off because we hope to achieve a greater good, namely the liberation of Kuwait. Paul Ramsey's thoughts on proportionality, from his 1968 book, *The Just War: Force and Political Responsibility*, illustrate my point and shed some light on my disagreement with Prof. Kemp. Ramsey states,

It can never be right to resort to war, no matter how just the cause, unless a proportionality can be established between military/political objectives and their price, or unless one has reason to believe that in the end more good will be done than undone or a greater measure of evil prevented. But, of all the tests for judging whether to resort to or to participate in war, this one balancing an evil or good effect against another is open to the greatest uncertainty. This, therefore, establishes rather than removes the possibility of conscientious disagreement among prudent men. (p. 195)

Ramsey suggests the proportionality criterion invites uncertainty. This is because judgments of proportionality are prudential judgments, i.e., products of practical wisdom. Such conclusions are based on what can be honestly and reasonably expected considering historical, political, military, and, in this case, religious realities. Reasoning about proportionality means making educated guesses about what is likely to happen. This then "establishes . the possibility of conscientious disagreement among prudent" people.

Prof. Kemp and I disagree not only on our conclusions regarding proportionality, but more significantly, on the meaning of proportionality itself. Prof. Kemp writes that proportionality asks, "Are the costs and benefits of going to war greater or less than the costs and benefits of not going to war?" His moral foundation is one that bears witness to an admirable objectivity. His description of proportionality reminds me of the symbol for legal justice in United States, the blindfolded goddess holding her balance. As the symbol indicates, the goddess in her fairness, does not really make judgments, rather she lets the scale decide for her. Objectivity and impartiality are the rules. The question is, which way will the scale tip? In Prof. Kemp's words, In favor of going to war? In favor of not going to war?

My understanding of proportionality does not begin on such an objective and impartial ground. My reading of the Just War Theory says that the balance is rigged. The presupposition is that one must present an argument that is undoubtedly and clearly compelling proving that the damage to be inflicted, the price to be paid, can be justified in terms of the good that is expected. In other words, the moral good of liberating Kuwait and restoring its former government must be so significant that it justifies all the evil (described in terms of the number of persons on all sides killed and wounded, the range of costs to the social fabric of the nation under attack, as well as all who are involved, the effect on the environment, etc.) that will be necessarily employed as the means to accomplish this goal.

I would argue that the requirements of proportionality were not met under either of the above descriptions. Saddam Hussein was a serious threat (and had been for a long time) to peace and justice in the Middle East as thus a serious threat to the world community. That threat was reduced with the U.N. sanctions. There seemed to be a good chance of holding Hussein in check. I do not believe we are preventing much evil with the massive bombing of Iraq.

What about the costs? At this writing, twenty some days into the war, we do not know much of the truth about the war. We know what the military wants us to know. We know that Allied forces have dropped more high-explosive tonnage on Iraq than was dropped by the forces during all of World War II. But we do not know the whole truth of the level of destruction we have caused. We have been shown a handful of polite smart bombs that knock before they enter and destroy military structures. But after 50,000 sorties how many people have we killed? What is the damage to Iraq's infrastructure? Its centers of production? What is the status of its food distribution system? Its water, power, and fuel supply? I am at a loss to comprehend how the costs of this war are outweighed by the good we hope to achieve in removing Iraq from Kuwait. It does not balance. Ramsey is correct in saying that it can never be right to resort to war, no matter how just the cause, unless proportionality can be established.

Demonstrations and the Cause of Peace and Justice

I will comment on why I would support initiatives by U. S. citizens aimed at ending the war or related efforts to publicly oppose the government's war policy. I will then comment directly on Prof. Kemp's disagreement with my position.

In time of war, morally serious persons have a tendency to be swayed by the passions of nationalism. From the perspective of ethics, this can be dangerous as it can lead people into weak moralisms and ethical laxism. Moral discourse often collapses into a simple positivism, i.e., what ever the policy of the U.S. is, it is right and it is good. This moral laziness is compounded by the related tendency to consequentialism, i.e., if we are winning, it is right and it is good. (The collapse of clear ethical thinking was graphically illustrated in the U.S. attack on Panama.) There is a dire need for persons to approach these questions in a morally serious way. The purpose

of demonstrations (whether they be in the form of prayers for peace, letters to the editor, teach-ins, public meetings, and public demonstrations) is to stir the conscience of the nation. I repeat what I said before, any use of violence or destruction of property during such gatherings is morally suspect.

I then reject Prof. Kemp's assertion that public expressions against the war undermine the prospects for peace and justice. Military tactics and procedures must be open to criticism from non-military sources. I believe that the military may at times be necessary for promoting the cause of peace and justice, but at the same time, I know that the military can never be thought of as sufficient to achieve peace and justice. Public affirmation and critique of the military are essential to the cause of peace and justice.