

ON THE ETHICS OF NUCLEAR WEAPONS

Framing a political consensus on the unacceptability of nuclear weapons

By Nobuo Hayashi
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- The absence of a specific ban on nuclear weapons under today's international law mirrors our moral ambivalence about them.
- Consequentialist arguments for or against nuclear weapons cannot refute each other, since they both rely on alternative histories and rival futures that are ultimately unverifiable.
- As is the case with torture, certain acts can be considered intrinsically wrongful, no matter how likely they may be to achieve their goals or however worthy such goals may be.
- The challenge now is to cultivate a political consensus that, nuclear weapons are so singularly inhumane we ought categorically to reject their use, whatever purposes they may be said to serve.

Introduction

Today's international law regime leaves little room for lawful use of nuclear weapons.¹ At the same time, there is no prohibition of these weapons *per se*.² This situation distinguishes them from biological and chemical weapons, which are subject to comprehensive bans under the 1972 Bacteriological and Toxin Weapons Convention and the 1993 Chemical Weapons Convention, respectively.

The 'legal gap' became a major focus in discussions at the third 'Conference on the Humanitarian Impact of Nuclear Weapons', held in Vienna from 8 to 9 December 2014. Both Austria's summary³ and subsequent national pledge⁴ noted this gap, as well as the desirability of filling it with a prohibition. Importantly, Austria also recognized the existence of profound moral and ethical questions concerning nuclear weapons that go beyond questions of law. As with other controversial areas of life in general, law's ambivalence

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often mirrors our own underlying moral ambivalence on the matter. So, if we are to eliminate international law's lacuna regarding nuclear weapons, it helps to begin by reflecting on their moral status.

To that end, here three major schools of thought are considered: consequentialism, just war, and deontology. This paper advocates a break with the security-focused, consequentialist discourse in which our contemporary moral debate on nu-

clear weapons has predominantly been framed (see Box 1). Nuclear strikes are better seen for what they really are, rather than what purpose they serve, and their moral status assessed on the unparalleled suffering they inflict. Far from being abstract or disconnected from political realities, such an examination relates to important practical questions of how—or even whether—policy makers can be persuaded that nuclear weapons' singular inhumanity makes it inherently unethical to use them.

Consequentialism's inconclusiveness

The use of nuclear weapons would cause vast physical destruction. Alongside blast and heat, intense and harmful ionizing radiation is created within the zone of the direct effects of nuclear detonations. Large amounts of radioactively contaminated material would probably be blown into the atmosphere, which would travel long distances and endanger human health far from 'ground zero'. Even one nuclear weapon detonation in a highly populated area would be a humanitarian disaster; the use of many would be cataclysmic. Intuitively, this strongly suggests that any moral justification for using these weapons would have to be grounded on some greater good that they might serve. This is the question with which humanity found itself grappling for much of the Cold War.

CONSEQUENTIALIST ARGUMENTS FOR AND AGAINST NUCLEAR WEAPONS

Some perceive the greater good served by nuclear weapon use to come in the form of international peace and stability. Nuclear weapons may be evil, but they have helped restore and maintain it. There is still a widespread view, for instance, that Hiroshima and Nagasaki hastened the end of

the Second World War.⁵ On this view, the fact that there has not been war between nuclear-armed states has to do with the credible fear of mutually assured destruction. International relations theorist Kenneth Waltz even suggested that, '[w]ith more nuclear states the world will have a promising future.'⁶

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Moreover, to this way of thinking unilateral abandonment of one's nuclear arsenal would only have a destabilizing effect. It would leave the disarmed party vulnerable to any adversary still armed with nuclear weapons, a situation that the latter would be tempted to exploit.⁷ Unilateral nuclear disarmament might even prompt the newly exposed 'umbrella states' (i.e., allies dependent upon a nuclear state for security) to develop their own nuclear arsenals. For example, Japan—a country located in a volatile region that already possesses nuclear know-how but has thus far chosen to remain under the United

BOX 1

WHAT IS CONSEQUENTIALISM?

Consequentialism is a highly intuitive and prevalent mode of ethical reasoning. Consequentialists debate the moral status of an act by assessing how likely it is to achieve its goal, and how worthy such a goal is. According to this view, it is moral to perform an act if and to the extent it helps achieve some desirable state of affairs. If not, it is immoral to perform that act. At its simplest, this way of thinking echoes the familiar adage: 'The end justifies the means.'

Utilitarianism is a variety of consequentialism. Championed by Jeremy Bentham and John Stuart Mill, among others, utilitarianism treats maximum common good (e.g. pleasure, happiness, satisfaction of preferences) as the ideal end-state, and considers the morality of action accordingly.

States' nuclear weapons umbrella—is sometimes mentioned in this regard.⁸

There are, of course, also those who believe that nuclear weapons should be banned. For some people in favour of a prohibition, continued dependence on these weapons is not only evil but also detrimental to international peace and stability. It is notable in this regard that recent scholarship has cast some doubts on the idea that the bombing of Hiroshima and Nagasaki played a central role in Japan's decision to surrender.⁹ And, even if nuclear deterrence added to strategic stability between the superpower-led ideological blocs during the Cold War, it clearly failed to curb numerous conflicts that occurred elsewhere. Indeed, it may have made their incidence more likely as proxy wars.

Even with the best of intentions amongst nuclear-armed states, there are always risks of accidents and inadvertent escalations that may trigger nuclear exchanges.

In addition, those opposed to nuclear weapons consider that the effectiveness of nuclear deterrence, and the danger of its absence, is exaggerated. Even with the best of intentions amongst nuclear-armed states, there are always risks of accidents and inadvertent escalations that may trigger nuclear exchanges.¹⁰ The possibility that nuclear-armed states may go 'rogue', collapse, or fail to prevent their arsenal from falling into the hands of terrorists, can scarcely be ignored.¹¹

COUNTERFACTUALS, UNVERIFIABILITY, AND UNEVEN PLAYING FIELDS

For the past 70 years, both consequentialist arguments for and against nuclear weapons have captured—and imprisoned—our moral imagination. Because of their use of counterfactuals, however, consequentialist claims are incapable of verification and, in fact, merely favour any workable status quo.

In a nutshell, consequentialism asks us to compare two things. One is the actual level of interna-

tional peace and stability, with the actual level of global nuclear armament in it. The other is an imagined world with fewer, or no, nuclear weapons. How would history have unfolded, where would we be today, and what might the future hold in store for us?

If you feel that the real world is at least as peaceful and stable as that other, counterfactual one without nuclear weapons, then you implicitly accept the morality of these weapons on consequential grounds. After all, we know that, for all its bumps and scary moments, the nuclear world has so far held itself together. Maintaining the status quo and, where necessary, strengthening it (for instance, reducing risks, and making sure that nuclear weapons remain in the hands of reliable players) may very well give us the best overall chance of continued peace and stability. We know this devil, and we have learned how to live with it. Besides, how can one be sure if fewer nuclear warheads would have generated peace and stability, or whether a future world free of nuclear weapons is also a secure one?¹² In any event, it would be idle to dwell on such what-ifs and maybes, even if we wanted to believe in better alternatives. The genie is already out of the bottle: nuclear weapons cannot be dis-invented.

Conversely, you may feel that it is despite nuclear weapons that our world is as peaceful and stable as it is. Perhaps you are convinced that these weapons' continued existence would make the world more dangerous. If that is the case, you are essentially trying to neutralize consequentialist arguments for nuclear weapons with consequentialist arguments of your own.

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Consequentialism has three major limitations, however. First, both you and your opponent rely on alternative histories and rival futures. It is impossible to verify or falsify claims of 'but-for' causation¹³ that are implicit in consequentialist justifications ('The Cuban Missile Crisis would have triggered a full-scale nuclear war, but for the successful application of nuclear deterrence'). Unfortunately, it is impossible to prove or disprove counterfactual objections to such claims, either ('The world would not have had to experience

emergencies like the Cuban Missile Crisis, if we had not had nuclear weapons in the first place'). Nor, for that matter, do future predictions ever really go beyond the realm of educated guesses, however technically sophisticated they may be.

Second, those opposed to nuclear weapons on consequentialist grounds are essentially suggesting that we should deal with the devil we do not know. This is an exceedingly tall order, particularly since you are up against a model of the world that has more or less shown itself to 'work'. Consequentialism has a built-in bias in favour of the status quo (all else being equal) as long as that status quo sustains itself tolerably well.

Just war's explosion

The just war theory shields itself from consequentialism's troubles, at least to some extent (see Box 2). It does so by combining outcome-based criteria (e.g. reasonable prospect of success) with those that are not consequentialist (e.g. just cause).

Alas, this theory collapses where it matters most. Given the tremendous destructive power and after-effects of nuclear weapons detonated in populated areas, a nuclear war, it could be argued, would be more evil than an ordinary war. In order for nuclear war's alternatives to be more evil than nuclear war, such alternatives would have to be correspondingly more evil as well. We might reach that point in what the International Court of Justice called an 'extreme circumstance of self-defence' where the 'very survival' of a state would be at stake.¹⁴ Faced with a truly existential peril, responsible leaders of an organized political community armed with nuclear weapons may legitimately conclude that they have no choice but to threaten or even use them.¹⁵

No matter how deftly you highlight the flaws, dangers and risks of nuclear weapons, doing so does not, in and of itself, validate the supposed superiority of their absence.

Consequentialism has a built-in bias in favour of the status quo

Third, arguing consequentialism against consequentialism exposes you to being persuaded that nuclear weapons are morally acceptable, if they do contribute to world stability and peace. You are just disputing the evidence that purportedly shows their contribution.

Ultimately, just war concedes the possibility that even a great deal of evil, such as nuclear strikes on populated areas, may need to be endured for the pursuit of a greatly important and legitimate aim, such as survival. 'These weapons,' laments Michael Walzer, a prominent moral philosopher, 'explode the theory of just war. They are the first of mankind's technological innovations that are simply not encompassable within the familiar moral world.'¹⁶

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BOX 2

WHAT IS THE JUST WAR THEORY?

The just war theory is a tradition deeply rooted in Catholicism and Western philosophy. Nevertheless, it is also useful when debating the ethics of war in a more secular, global setting. This theory employs criteria such as the non-availability of less harmful options, proportionality, a reasonable prospect of success, just cause, right intention, and legitimate authority.

Just war thinkers try to reconcile the idea that, despite war's evil, alternatives to war may sometimes be even more evil than war. Thus, while this doctrine is sometimes said to glorify war, it takes a strong anti-war presumption as its point of departure. Nor should just war be seen as synonymous with pacifism.

Double effect's adjustment

Perhaps not all of just war, a centuries-old intellectual tradition, is lost. Closely related to the just war theory is an old tenet of Catholic teaching called 'double effect.' First developed by Thomas Aquinas,¹⁷ this doctrine requires that the agent (1) exclusively intend to achieve good, and (2) intend to minimize the foreseeable evil that the good's pursuit may cause. You can readily see some similarities with just war, particularly its right intention and proportionality requirements. The Catholic Church has adjusted its interpretation of the doctrine in recent years and, with it, its position on the moral acceptability of nuclear deterrence.

In 1983, American Catholic bishops issued a pastoral letter on war and peace.¹⁸ They made it clear that they 'cannot be satisfied that the assertion of an intention [by nuclear-armed states] not to strike civilians directly, or even the most honest effort to implement that intention, by itself constitutes a "moral policy" for the use of nuclear weapons.' The bishops said, essentially, that it was not enough for nuclear-armed states to satisfy double effect's first prong only. The letter revealed the bishops' deep concern about the feasibility of strictly proportionate nuclear strikes and the danger of nuclear escalations. Crucially, it seems that the bishops did not deem the nuclear-armed states' intention to minimize foreseeable evil—that is, the purported satisfaction of double effect's second prong—entirely credible. Still, at the height of the Cold War, the bishops were not prepared to reject the morality of nuclear deterrence either. Their letter concluded: 'These considerations ... lead us to a strictly conditioned moral acceptance of nuclear deterrence. We cannot consider it adequate as a long-term basis for peace.'¹⁹

At the 2014 Vienna conference, the Holy See circulated a paper that showed a possible shift in the Catholic position on double effect and nuclear weapons.²⁰ In the section entitled 'the problem of intention' the paper's authors observed: '[S]ince what is intended is mass destruction—with extensive and lasting collateral damage, inhumane suffering, and risk of escalation—the system of nuclear weapons can no longer be deemed a policy that stands firmly on moral ground.'

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The Holy See's paper effectively collapses double effect into single effect, i.e. the intention to minimize foreseeable evil. Today's Catholic Church seems to think that intending to use nuclear weapons would necessarily mean failing to intend to minimize such evil.²¹ On another possible reading, the Catholic Church rejects the idea that nuclear strikes could ever be genuinely intended to achieve good.²² Or, the paper simply acknowledges that a post-Cold War strategic setting undermines the rationale behind the American bishops' then-tentative acceptance of nuclear deterrence.

Be that as it may, the Catholic Church, once a reluctant yet influential backer of nuclear deterrence, appears to be withdrawing its moral support for it.

BOX 3

WHAT IS DEONTOLOGY?

Deontologists consider the intrinsic moral status of an act, rather than the moral status of its consequences. Certain behaviour can be wrongful per se. Once established, the inherent wrongfulness of conduct remains unaffected, however likely it may be to achieve its desired goal, or no matter how worthy such a goal may be. From a strictly deontological point of view, the end in itself never justifies the means. The means must be assessed independently by reference to a normative principle, belief, postulate, and the like.

Immanuel Kant's categorical imperative is a good example. He famously posited: 'Persons are, therefore, not merely subjective ends, whose existence as an effect of our actions has a value for us; but such beings are objective ends, i.e., exist as ends in themselves.' Acts such as the taking of hostages violate this imperative and are therefore inherently immoral.

Deontology's potential and challenges ahead

The Vienna conference, together with its two predecessors held in Oslo (in March 2013) and Nayarit (in February 2014), gathered a wealth of scientific material on the humanitarian consequences of nuclear weapons detonations.²³ Many policy makers now appear to feel that nuclear strikes are bound to inflict suffering so singularly inhumane they ought to be categorically rejected, whatever their utility.

Detaching the moral status of nuclear strikes from that of their purpose is to engage in an essentially deontological line of reasoning (see Box 3). It has two distinct tactical advantages. If the discourse is kept focused, opponents have to argue either that it is not wrongful *per se* to cause such unique suffering, or that the suffering in question is not so unique. Also, if opponents deviate from deontology and try to steer the debate to consequentialism, such a move may be challenged as a deflection: 'You are changing the subject. Can we stick to the suffering nuclear weapons cause, please?'

Deontology, however, is not without difficulties. First, it awkwardly commits its adherents to sacrificing themselves on the altar of an absolute rule. That is, can we really insist that we accept our own demise, rather than act immorally by using nuclear weapons? Second, not all people, particularly those in positions of political authority and responsibility who can make the real difference, may agree that deontology offers the strongest moral case against nuclear weapons. How persuasive can it be?

RULE FETISH

There is no such thing as expedient deontology. In his exchange with another philosopher, Immanuel Kant argued that lying is inherently immoral, and stood by the notion that 'it would be a crime to tell a lie to a murderer who asked whether our friend who is being pursued by the murderer had taken refuge in our house.'²⁴ Kant might be given credit for being consistent. It is doubtful, however, whether such radical steadfastness would accord with our ordinary sense of a lie's immorality in similar circumstances. Some even suggest that only 'rule fetishists'²⁵ would go that far. Obsessing about the deontological unacceptability of lying comes at the expense of the broader context and other weighty considerations.

Similarly, should the choice be between self-destruction and recourse to nuclear weapons, asserting these weapons' absolute immorality would amount to demanding that a nuclear-armed state choose self-destruction. This kind of rigid—indeed suicidal—fidelity to moral consistency may appeal to some abstract forms of idealism. It cannot be expected to form the basis of responsible and pragmatic national policy, however.²⁶ While deontology is good at highlighting salient ethical problems associated with an act, it is sometimes a mistake to disregard other important considerations.

Deontological absolutes in real life are perhaps more meaningful as restraints on our consequentialist reasoning than as its substitutes.²⁷

IT HAPPENED TO TORTURE

You may wonder if, in view of the foregoing, an act's inherent immorality can ever lead to its categorical rejection.

It can, and it has. Take the unreserved condemnation and categorical prohibition of torture,²⁸ for example. There are, of course, occasional dissenters who invoke the so-called 'ticking bomb' scenario,²⁹ or those in the aftermath of the 11 September 2001 attacks who sought to reopen the matter.³⁰ Most people, however, agree that torture is a moral wrong in itself and that under no circumstances is it ever justified.

Torture's inherent immorality remains the same—not only because it often does not work,³¹ but also even if it happens to 'work' in some situations. Our rejection of torture is independent of its utility or disutility. 'The claim that torture might be justified in ticking bomb situations is, fundamentally, a claim that certain individuals do not have the right to have rights and, thus, that the human can be reduced to a status other than human.'³²

Admittedly, condemnation of torture did not emerge overnight. On the contrary, it has evolved gradually and intricately.³³ In medieval times, torture was tolerated as an unpleasant yet necessary tool of justice and state power. It was statecraft's subsequent refinement that rendered torture dispensable. Meanwhile, Enlightenment progressivism embraced human dignity as its

centrepiece. Only then did a truly robust moral case against torture gather momentum and lead to its unqualified prohibition that we now take as self-evident.

THE SAME CAN HAPPEN TO NUCLEAR WEAPONS

Key to torture's condemnation has been the steady erosion of its perceived utility, accompanied by the gradual rise of humanitarian sentiments against it. Today, we are at a stage where our deontological conviction against torture is largely immune to accusations of rule fetishism. Similarly, the end of the Cold War has diminished the weight of its once all-encompassing logic and, with it, the perceived strategic value of nuclear weapons. At the same time, we are rapidly improving our awareness of their terrible humanitarian impacts.

These changes in the features of our moral landscape should enable us to free ourselves of the Cold War's existential, consequentialist yoke. This should, in turn, allow policy makers to see nuclear weapons for what they really are, rather than what purpose they serve. The morally relevant suffering here is suffering per se, not suf-

fering that is necessary or unnecessary for this or that purpose. We categorically reject nuclear strikes because they rob their victims, fellow human beings, of human qualities by subjecting them to unspeakable inhumanity and reducing them to the status of mere instruments for the benefit of the rest of us.

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The challenge now is to foster a broader political consensus on the intrinsic wrongfulness of nuclear weapons. Such a consensus would furnish a solid conviction with which to fill the legal gap.

BOX 4

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