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**NAVAL WAR COLLEGE  
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**LEGITIMACY AS AN OPERATIONAL FACTOR:  
AN ALTERNATIVE ANALYSIS**

by

**Stephen E. O'Rear**

**Lieutenant Colonel, United States Air Force**

**A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.**

**Signature: \_\_\_\_\_**

**23 October 2006**

## **Abstract**

### *Legitimacy as an Operational Factor: An Alternative Analysis*

Joint Pub 3-0 defines operational art as “the application of creative imagination by commanders and staffs – supported by their skill, knowledge, and experience – to design strategies, campaigns, and major operations and organize military forces.” Among the numerous components comprising operational art, operational factors space, time, and force have been recognized as decisive for making decisions at all levels of war. Legitimacy is now being touted as a fourth operational factor based on claims it is as pervasive across the range of military operations as factors space, time, and force. This paper provides a dissenting opinion, offering an alternative analysis that legitimacy is best viewed as a principle of war vice operational factor. The analysis contrasts factors space, time, and force with legitimacy to demonstrate how legitimacy’s abstract nature constrains its relevance at the operational level to application of the law of armed conflict.

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## LEGITIMACY AS AN OPERATIONAL FACTOR: AN ALTERNATIVE ANALYSIS

*Justice without force is a myth, because there are  
always bad men; force without justice stands convicted  
of itself. We must therefore put together justice and  
force, and so dispose things that whatever is just is  
mighty, and whatever is mighty is just*

- Pascal<sup>1</sup>

Anyone who has ever taken a course in philosophy has had some exposure to the countless disciplines explored by brilliant minds engaged in the universal search for truth and wisdom. Some of the greatest thinkers known to man, Socrates, Pascal, Machiavelli, Hobbes, and Nietzsche, are but a few of those who have sought simple answers to complex questions regarding the nature of life, religion, and morality among other topics. For these scholars, morality is a topic of particular interest, since it forms the basis for many other concepts, like the nature of man, individual free will, and for the purpose of this paper, legitimacy.

At the low end of the morality spectrum, Machiavelli believes man is evil by nature, making the formulation of ethical rules and standards virtually impossible.<sup>2</sup> Moral relativists such as Hobbes and Pascal, on the other hand, contend that “all moral codes and ethical standards have their limitations” and that “we shall never discover a moral law appropriate to all times and to all places.”<sup>3</sup> Pascal further argues, “there is not a single law which is universal.”<sup>4</sup> In such a world, clearly the laws of nations would remain wholly dependent on the standards and interpretations of individuals. Indeed, it appears the relativists embrace the

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<sup>1</sup> Robert Phillips, *The Philosophy of War* (Norman OK: University of Oklahoma Press, 1984), np.

<sup>2</sup> Max Rosenberg, *Introduction to Philosophy* (New York, NY: Philosophical Library, 1955), 375.

<sup>3</sup> *Ibid.*, 377.

<sup>4</sup> *Ibid.*, 378.

view that “one people’s sins are another people’s virtue.”<sup>5</sup> In their mind’s eye, what is legitimate in one place and time is illegitimate in another. If these intellectuals view legitimacy with such skepticism, does it make sense to make it an integral part of one’s course of action?

## INTRODUCTION

*The first thing we do, let’s kill all the lawyers*  
- William Shakespeare<sup>6</sup>

Recently, there has been some impetus to declare “legitimacy” the fourth operational factor, joining space, time, and force as decisive for making decisions at every level, be it strategic, operational, or tactical. In making the case, proponents argue that legitimacy “is as pervasive to military planning across the range of military operations as are space, time, and force.”<sup>7</sup> Furthermore, the assertion has been made that failure to account for legitimacy in a course of action “will almost certainly result in a failure to achieve the desired end state.”<sup>8</sup> This paper presents a dissenting opinion, offering an alternative analysis that legitimacy is best viewed as one of several joint principles of war, vice operational factor, and as such plays a lesser, but not necessarily less important, role in the joint planning process.

Before launching into the rationale supporting that position, however, a brief primer on factors space, time, and force is necessary to shape the analytical environment. Next, the paper examines legitimacy in its broadest sense, at the national-strategic level, before scoping it down to its applicability at the operational level. During that process, the reader will acquire some sense of the complexity associated with building legitimacy at both the

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<sup>5</sup> Ibid., 378.

<sup>6</sup> *King Henry the Sixth, Part II*, act 4, scene 2, line 15.

<sup>7</sup> CDR Peter Dutton, *Factor Legitimacy: Employing the Instruments of National Power Across the Range of Military Operations to Achieve the Desired End State* (presentation to the United States Naval War College Joint Military Operations Department faculty), date unknown.

<sup>8</sup> Ibid.

national-strategic and operational levels. The final section of the paper contrasts the characteristics of factors space, time, and force against those of legitimacy as advocated by its proponents. In that section, counterpoints are presented for each argument presented to justify legitimacy as another operational factor. The resultant alternative analysis provides clear evidence that legitimacy, though a significant aspect of the joint planning process, is best viewed and employed by operational-level commanders and staff as a principle of war vice operational factor.

### **FACTORS SPACE, TIME, AND FORCE**

*Strategy is the art of making use of time and space*  
- Napoleon I<sup>9</sup>

In his book, *Operational Warfare*, Dr. Milan Vego notes, “All great military leaders had an uncommon ability to evaluate the factor of space, the strengths and weaknesses of their own forces, and the speed of their movement. At any level of war, freedom of action is achieved primarily by properly balancing the factors of space, time, and forces.”<sup>10</sup> Clearly, in today’s environment, the phrase “any level of war”, more accurately corresponds to range of military operations, or ROMO, since the majority of operations planned and conducted the last sixty years have primarily been either constabulary or at levels other than war. While some may disagree with this assertion, the fact remains that the last congressionally-declared war United States forces were involved in was World War II. Whether termed all out war, as espoused by Clausewitz and Jomni, or ROMO matters little, as all three of these factors are inextricably linked. Thus, a shortfall in one may be offset by dynamically altering elements of one, or perhaps both, of the remaining factors.

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<sup>9</sup> Milan Vego, *Operational Warfare* (Newport RI: U.S. Naval War College, 2000), 79.

<sup>10</sup> Ibid., 29.

Clearly, space and time are distinct, discrete entities that are measurable and thus, can be calculated with some degree of precision. According to Dr. Vego, both factors “must be taken as rather fixed conditions that cannot be made to conform to the operational commander’s intentions.”<sup>11</sup> Factor space encompasses the physical dimensions of land, sea, air, and outer space, and readily lends itself to certain bounds. These bounds may be either delineated, such as occurred in 1907 when England and Russia agreed to a sixty-two by ninety-three mile wide zone in Afghanistan to avoid direct conflict of interests, or they may be dynamic, as was the case of the German front along European Russia between 1941 and 1943. During those years, the front fluctuated anywhere from 2,400 to 3,045 miles.<sup>12</sup> Dr. Vego continues by noting, “The importance of factor space in planning, conducting and sustaining major operations and campaigns cannot be overstated. Many military enterprises ultimately failed, or the effort required too much time and too many resources to reach a successful outcome, because the factor of space was either neglected or some of its key elements were improperly analyzed and hence led to a flawed operational scheme.”<sup>13</sup> He caveats this importance, however, by further stipulating that one should not overly stress its significance, since its overall effect is substantially dependent on factors time and forces.<sup>14</sup>

A cursory examination of any military action invariably leads to the realization that “time is one of the most precious commodities in the conduct of warfare and is closely related to the factor of space.”<sup>15</sup> Unlike space, however, time is the single operational factor that once lost, can never be regained.<sup>16</sup> As evidenced during Napoleon I Bonaparte’s

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<sup>11</sup> Ibid., 47.

<sup>12</sup> Ibid., 35.

<sup>13</sup> Ibid., 42.

<sup>14</sup> Ibid., 43.

<sup>15</sup> Ibid., 47.

<sup>16</sup> Ibid.

invasion of the Russian Empire in 1812, one can lose initiative, momentum, and territory, yet given adequate time and with the proper mix of forces, regain or recapture those elements.<sup>17</sup> His *Grande Armee*, comprised of 691, 501 men from 20 nations faced off against a Russian army half that size, numbering approximately 392, 000.<sup>18</sup> Following the Battle of Borodino, the decimated Russian army began a retreat, leaving the road to Moscow wide open and drawing the *Grand Armee* forces deeper into Russia.<sup>19</sup> Once Napoleon I reached Moscow, he found himself occupying a city that had been practically burned to the ground, devoid of any logistical resources to sustain his army.<sup>20</sup> While Napoleon I waited on a capitulation that would never transpire, the Russian army managed to reinforce its ranks to 904,000 men and mounted their counterattack.<sup>21</sup> Now facing a numerically superior force, Napoleon I and his *Grand Armee* began their long retreat out of Russia, a journey in which he eventually returned to France with only 22,000 of the over 600,000 men who had originally invaded Russia.<sup>22</sup>

Earlier, the assertion was made that time is pervasive to military planning across the range of military operations. While indeed true, factor time extends well beyond military planning, spanning the duration of conflict – through maneuver or movement of forces and supplies to dictating operational pauses.<sup>23</sup> Furthermore, factor time is equally important prior to initiation of the planning process, in that period where a nation requires time to mobilize or prepare its armed forces for conflict. It is also imperative nations possess an effective

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<sup>17</sup> Ibid., 89.

<sup>18</sup> “Napoleon’s Invasion of Russia,” 16 October 2006, [http://en.wikipedia.org/wiki/Patriotic\\_War\\_of\\_1812](http://en.wikipedia.org/wiki/Patriotic_War_of_1812), [20 September 2006]. These figures are inconsistent with numbers appearing in *Operational Warfare*, which indicate 180,000 Russian forces faced the 445,000-strong French army.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid. *Operational Warfare* notes only 4,300 men returned.

<sup>23</sup> Vego, 48-50.

warning mechanism which provides timely advance notice of an impending attack.<sup>24</sup> Egypt took full advantage of its adversary's limited time to prepare when, in 1973, its military forces mounted a rapid offensive to seize territory along the eastern shore of the Suez Canal before the Israeli Defense Force could mobilize.<sup>25</sup> The Egyptian incursion, despite recovering very little territory lost during the six-day war of 1967, boosted pan-Arab morale by dismantling "the twin myths of Israeli invincibility and Arab incompetence."<sup>26</sup>

Whereas space and time are generally fixed conditions, perceived as near constants in terms of their susceptibility to mensuration, factor force comprises varying elements that limit its ability to be quantified with any degree of precision. Dr. Vego notes, "in the strict definition of the term, 'force' refers to military sources of power. Properly understood, however, the factor of 'force' consists not only of the 'troops,' 'naval forces,' or 'air forces' but also forces of all services with their required logistical support."<sup>27</sup> Put another way, factor force not only encompasses the military forces from each respective service, it also consists of whatever other, nonmilitary sources of power are engaged in an operation.<sup>28</sup> Forces may take on physical traits, such as number of personnel, weapons and equipment, logistics, and command organization, which may be measured to some degree, or may consist of less quantifiable human characteristics, such as leadership, morale, and discipline, to name but a few.<sup>29</sup> Elements such as training and combat readiness, which may at first glance appear incalculable, lend themselves to relatively quantifiable measurement through the application of a comparatively subjective yardstick, the Joint Status of Resources and

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<sup>24</sup> Ibid.

<sup>25</sup> Maj Michael Jordan, *The 1973 Arab-Israeli War: Arab Policies, Strategies, and Campaigns*, 1997, <http://www.globalsecurity.org/military/library/report/1997/Jordan.htm>, [15 September 2006].

<sup>26</sup> Ibid., 50.

<sup>27</sup> Vego, 59.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

Training System. As long as component units furnish an objective assessment of their personnel readiness, training, and equipment and on-hand supply conditions, the ensuing measure may reflect a moderately close approximation of one's own combat effectiveness. Unfortunately, no similar means exist to evaluate an opposing force's combat power with any precision. Thus, we are typically left to gauge an adversary's relative effectiveness by the size of its military force, since sheer size and strength of a country's military force has historically been many nations' means to project worldwide power and influence. At the height of the Roman Empire for example, "the Roman Legion, the ultimate military machine of the ancient world, was the catalyst that spread Roman conquest and civilization throughout the known world."<sup>30</sup> In similar fashion Russia has, since the end of the Cold War, relied upon its military force to reassert its influence in the former Soviet republics, as a means to reclaim its "superpower" status.<sup>31</sup>

As noted earlier, factors space, time, and force must be taken as rather fixed conditions that may be balanced to achieve freedom of action. Given that perspective, one could argue that elements possessing such a state of fixed condition and balance would be, in mathematical terms, considered constants. Legitimacy, as we shall soon discover, with its abstract nature and proclivity to manipulation by outside forces, is best termed a variable.

### **FACTOR LEGITIMACY**

*Act so that your principle of action might  
safely be made a law for the whole world*  
- Emmanuel Kant<sup>32</sup>

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<sup>30</sup> "Roman Military," *Roman Military*, <http://unrv.com/military.php/>, [20 September 2006].

<sup>31</sup> Robert Cassidy, "Russia in Afghanistan and Chechnya: Military Strategic Culture and the Paradoxes of Asymmetric Conflict," (Carlisle, PA: U.S. Army Strategic Studies Institute, 2003), 49.

<sup>32</sup> Quotation taken from internet site <http://www.jimpoz.com/quotes/>, [20 September 2006].

The term “legitimacy” can be defined, and perceived, in a myriad of ways depending on audience and context. According to Joint Publication 3-0, “Legitimacy is based on the legality, morality, and rightness of the actions undertaken. Legitimacy is frequently a decisive element. Interested audiences may include the foreign nations, civil populations in the operational area, and the participating forces.”<sup>33</sup> The legal, moral, and righteous aspect of legitimacy with respect to use of military force can be directly attributed to *jus ad bellum*, commonly referred to as Just War Criteria.<sup>34</sup> The eight tenets contained therein, along with international law and customs have traditionally served as the basis for legitimizing United States military action.<sup>35</sup> Legitimacy viewed in this context, however, typically involves international actors and is best left to decision makers at the strategic-national level. At that level, the targeted constituency for building legitimacy remains fairly constant; that being the international community, most often represented by the United Nations. Unfortunately, in that world body, member nations occasionally allow self-interests to color their perspective of legitimacy and display a bureaucratic tendency to act slowly on issues where legitimate use of military force may be necessary. Such was the case in 1974 when the United Nations failed to take adequate measures in response to a *coup d’etat* by Greek Army officers on the island of Cyprus. By the time the United Nations intervened to broker a ceasefire, heavily armed forces from Turkey had already deployed to Cyprus and held three percent of that island’s territory.<sup>36</sup> In light of such bureaucratic paralysis, it is easy to understand why the United States, particularly in areas where national interests are involved, has acted and will continue to act unilaterally without building international legitimacy prior to commitment of

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<sup>33</sup> Joint Staff, *Joint Doctrine for Joint Operations*, Joint Pub 3-0 (Washington, DC: 17 September 2006), A-4.

<sup>34</sup> James Johnson, *Morality & Contemporary Warfare* (New Haven CT: Yale University Press, 1999), 30.

<sup>35</sup> LTC Jonathan Cofer, *Legitimacy and New World Order Conflicts – Changes in a Force Selection Paradigm* (Carlisle Barracks, PA: U.S. Army War College, 1993), 5.

<sup>36</sup> Cyprus *Coup d’etat* details from internet site <http://www.answers.com/topic/cyprus/>, [15 September 2006].

forces. One such case in point involves the United States' 1989 intervention in Panama, where 24,000 troops deployed with the objective of toppling Panama's government and capturing its head of state, General Manuel Noriega.<sup>37</sup> In this instance, four reasons were given to justify the action; "to safeguard the lives of Americans, to defend democracy in Panama, to combat drug trafficking and to protect the integrity of the Panama Canal Treaty."<sup>38</sup> Making the case for legitimacy of the intervention, the Bush administration claimed the employment of military force was "legitimate assistance to a democratically elected head of state, Guillermo Endara", who had reportedly given his consent to the action.<sup>39</sup> Endara later commented, however, that he had been informed of the impending action only after forces were already in the air, crippling the Bush administration's claim.<sup>40</sup> Despite the rationale offered by the United States, the United Nations Security Council issued a resolution condemning the unilateral action.<sup>41</sup> Further undermining the U.S. justification, the Permanent Council of the Organization of American States refused to acknowledge the Endara administration and many Latin American countries withdrew their ambassadors in protest of the intervention.<sup>42</sup> Less than two years later, under similar circumstances in Haiti, the United Nations legitimized the use of force in removing one regime and installing another. Military intervention was avoided, however, when President Carter brokered an agreement with the Haitian junta to reinstate Aristide as president.<sup>43</sup> Interestingly enough, the use of force in this instance was authorized by the UN Security Council only after a Russian veto was averted by an agreement to support a peacekeeping

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<sup>37</sup> Simon Chesterman, *Just War or Just Peace?* (New York, NY: Oxford Press, 2001), 102.

<sup>38</sup> *Ibid.*, 103.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, 104.

<sup>41</sup> *Ibid.*, 103.

<sup>42</sup> *Ibid.*, 106.

<sup>43</sup> Chesterman, 155.

resolution in Georgia.<sup>44</sup> The salient point one draws from these two cases is this – achieving legitimacy at the national-strategic level is a 50-50 proposition and remains precarious once attained. Richard Shultz best described the strategic decision makers dilemma when he said, “the emerging post-cold war international system is more complicated, more volatile, and less predictable.”<sup>45</sup> In today’s global landscape, legitimacy waxes and wanes depending on the predominant political philosophies of the day. One’s actions or inactions, as the case may be, are deemed legitimate based on perceptions and interpretations, by the international community at the national-strategic level, or by any number of constituencies at the theater level.

From an operational commander’s perspective, legitimacy is more commonly a matter of *jus en bello*, or Law of War, where the employment of force to achieve a desired objective must be carefully measured in terms of a number of governing precepts.<sup>46</sup> Emanating from the Hague Convention of 1907, this prescription of the law has spawned many of the principles of war codified through the law of armed conflict and permeates every facet of United States military planning and operations.<sup>47</sup> The three main principles acting as regulatory devices under this canon are military necessity, humanity, and chivalry. Military necessity “justifies measures of regulated force not forbidden by international law with are indispensable for securing the prompt submission of the enemy, with the least possible expenditures of economic and human resources.”<sup>48</sup> It is imperative commanders take such measures into account during all phases of operational planning to ensure the legitimacy of

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<sup>44</sup> Ibid., 161.

<sup>45</sup> Richard Schultz, *In the Aftermath of War* (Newport RI: U.S. Naval War College, 2006; reprint, Montgomery, AL: Air University Press), 2.

<sup>46</sup> Miguel Walsh, *New Technology, War and International Law* (Washington, DC: DTIC, 1991), 7.

<sup>47</sup> Johnson, 30.

<sup>48</sup> Walsh, 9.

impending actions, or risk potential prosecution for war crimes upon the cessation of hostilities. Humanity calls for “prohibitions and restraints on the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes.”<sup>49</sup> From this principle, the military derives its concept of effects-based targeting, with the intent to limit destruction of property and loss of life to the greatest extent possible while trying to accomplish strategic objectives. The final principle, Chivalry, involves “well recognized formalities and courtesies among and between contending military forces...to make war less savage and more civilized for the individual combatant”<sup>50</sup> These three principles, then, form the basis for an essential construct whereby the conduct of war can be harnessed within limits prescribed through the rule of law and which the American public will accept.<sup>51</sup> Such a construct was fully applicable and judiciously complied with during planning leading up to, and hostilities undertaken as part of Operation Allied Force.<sup>52</sup> Lieutenant General Michael Short, Joint Forces Air Component Commander during Allied Force, recognized the crucial role legitimacy played in target selection and weaponizing those targets when he said, “I expected that I would be the targeteer, and so the advice of my lawyer would be extraordinarily important to me because everything I struck had to be a valid military target for all the coalition members. Concern for the law of armed conflict was absolutely paramount in my mind”<sup>53</sup>

The Joint Staff recognizes, as did General Short during Allied Force, that legitimacy is based on the legality, morality, and rightness of the actions undertaken and has codified

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<sup>49</sup> Ibid., 10.

<sup>50</sup> Ibid.

<sup>51</sup> Andru Wall, ed., “Legal and Ethical Lessons of NATO’s Kosovo Campaign,” *International Law Studies*, Vol. 78 (Newport RI: U.S. Naval War College, 2002), 133.

<sup>52</sup> Ibid., 109.

<sup>53</sup> Ibid., 25.

that concept as another principle of war in the latest edition of Joint Pub 3-0, Doctrine for Joint Operations. Additionally, the Joint Staff has included legitimacy as one of the evolving fundamentals of 21st Century joint warfare and crisis resolution, a treatise shedding light on the future conduct of military operations.<sup>54</sup>

### ALTERNATIVE ANALYSIS

*It is the customary fate of new truths to begin  
as heresies and to end as superstitions*  
- T.H. Huxley<sup>55</sup>

In this paper's introduction, a number of comparisons were made between legitimacy and factors space, time and force. Those comparisons include assertions that legitimacy is as pervasive to military planning across the range of military operations as factors space, time, and force. Further, proponents claim that failure to account for legitimacy in a course of action will almost certainly result in a failure to achieve the desired end state. This section of the paper offers counterpoints to those claims, in addition to other arguments, and advances the alternative analysis that legitimacy is best viewed as a principle of war vice operational factor.

While at first glance legitimacy appears to possess a characterization similar to that of factors space, time, and force, in reality, they share only one common trait. Each of them, though susceptible to influence by joint force commanders, are not under his direct control. Other than that lone commonality, there are no compelling reasons why legitimacy should be elevated to that of an operational factor. Granted, legitimacy exhibits a pervasiveness that spans the range of military operations; but no more so than objective or security, two of the principles of war specified in Joint Pub 3-0. Every phase of an operation requires the proper

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<sup>54</sup> Joint Staff, "An Evolving Perspective: U.S Joint Warfare and Crisis Resolution in the 21st Century (Washington, DC: DTIC, 2003), 14.

<sup>55</sup> Quotation taken from internet site <http://www.jimpost/quotes/>, [20 September 2006]

identification of operational objectives which direct military efforts towards a clearly defined goal. Likewise, the imposition of some measure of security enhances the freedom of action necessary to achieve those operational objectives. Like legitimacy, while important in the formulation of strategy, these two fundamental truths do not have as immense an impact on an operational scheme as neglecting space, time or force.

Further, the inability to quantify or measure legitimacy, as one can space, time, and force, constrains a joint force commander in course of action development. As noted earlier, factors space, time, and force possess certain discrete bounds that are readily discernable; bounds such as hours, days, or months when considering time; territorial borders, kill boxes, and phase lines in space; and personnel, weapons systems, and equipment when dealing with forces. Though there are elements of factor force that may not lend themselves to precision in the strictest sense, they remain for the most part, quantifiable constants. This ability to quantify, or bound, each factor lends itself to their most symbiotic relationship – balance. Joint force commanders possess the ability to balance each factor with one, or both, of the other factors to offset a shortfall that may have resulted in an otherwise untenable situation. Dr. Vego reminds us, “disadvantages of space and inferiority in forces can frequently be remedied by acting faster and accomplishing assigned objectives within a given period.”<sup>56</sup> The successful Egyptian offensive against Israeli Defense Forces along the Suez Canal in 1973 demonstrated that time-space-force harmonization.

Legitimacy, on the other hand, does not lend itself to such mensuration or harmony. The philosopher David Hume articulated this disadvantage when he described the differences between mathematical and the moral sciences. Hume said “an oval is never mistaken for a circle, nor an hyperbola for an ellipsis,” when describing how a morally-derived concept “is

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<sup>56</sup> Vego, 56.

not, and cannot be objective, nor measurable, nor certain.”<sup>57</sup> Further, it is important to note that overcoming one operational factor entails costs to the others. There exists no latitude, nor degrees or levels of legitimacy, where one can reduce legitimacy to remedy a shortfall in space, time, or forces and accept such corresponding costs.

Beyond comparisons to factors space, time, and force, advocates proclaim that commanders, during operational planning, must ask “who are the constituencies I need to influence in order to reach my desired end state?”<sup>58</sup> From their perspective, achievement of that end state requires choice, because the enemy always gets a vote about when the war is over.<sup>59</sup> They use the term “legitimacy” to describe this choice, or buy-in to the conditions set for conflict termination.<sup>60</sup> To the contrary, influencing constituencies to meet one’s desired end state does not necessarily equate to gaining buy-in from opposing forces. Dropping the atomic bomb on Hiroshima and Nagasaki, in all likelihood, influenced Japanese leadership to surrender and thus, ended World War II in the Pacific. Yet, the Japanese surrender does not necessarily equate to that nation’s government, military, or populace recognizing, or buying in to the legitimacy of General Eisenhower’s demand of unconditional surrender. In fact, the legitimacy of the ensuing occupation and political reconstitution of Japan is still debated by theorists and lawyers.<sup>61</sup> Similarly, in 1999 Lieutenant General Short directed the aerial bombardment of Serbian forces in Kosovo, and later the Former Republic of Yugoslavia, to influence the Milosevic regime to remove those forces and cease ethnic cleansing. Not unlike the situation in Japan, the bombing may have played a substantial role in pressuring

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<sup>57</sup> Rosenberg, 380.

<sup>58</sup> Dutton presentation to Naval War College Joint Military Operations faculty.

<sup>59</sup> Dutton presentation to Naval War College Joint Military Operations faculty.

<sup>60</sup> Dutton presentation to Naval War College Joint Military Operations faculty.

<sup>61</sup> Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004), 18.

Milosevic to accept the conditions set by NATO, but there is no evidentiary proof he recognized the legitimacy of NATO's actions.

Furthermore, how complicated does influencing constituencies become when the end state changes, as occurred in Korea in 1950-51? Leading up to, and immediately in the aftermath of the North Korean invasion of the south, the United Nation's desired end state was "the complete independence and unity of Korea"<sup>62</sup> By the time United States forces landed on the Korean peninsula, the end state had changed to "repel the armed attack and restore international peace and security in the area."<sup>63</sup> Following the expulsion of North Korean forces and China's intervention, a stalemate ensued. At that point, the end state became one of maintaining the status quo and providing "relief and support of the civilian population of Korea."<sup>64</sup> While joint force commanders may possess the ability to influence or balance space, time, and force under such conditions, shifting end states only further complicates an already complex task of identifying constituencies one needs to influence to achieve buy-in. Beyond the difficulty of identifying the correct constituencies, however, shifting end states would likely alter the psychological dynamics associated with influencing those constituencies to accept conflict termination. Rather, commanders should focus their effort on those interim objectives that will produce a cumulative effect leading to the desired end state.

One final impediment to declaring legitimacy the fourth operational factor remains. Time and time again, history has demonstrated that building legitimacy is a difficult task at

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<sup>62</sup> United Nations, UN Resolutions 195 (III) and 293 (IV), Official Records of the Security Council, (New York:1949), <<http://www.un.org/documents/sc/res/1950/scres50.htm>>, [18 October 2006].

<sup>63</sup> United Nations, UN Resolution 84, Official Records of the Security Council, (New York: 1950), <http://www.un.org/documents/sc/res/1950/scres50.htm>, [18 October 2006].

<sup>64</sup> United Nations, UN Resolution 85, Official Records of the Security (New York: 1950), <http://www.un.org/documents/sc/res/1950/scres50.htm>, [18 October 2006].

the national-strategic level. Operations Just Cause, Allied Force, and numerous others not mentioned in this paper highlight the immense challenges associated with building and achieving legitimacy in the international arena. In post-Allied Force law studies, many public international lawyers voiced great hesitancy supporting any legal justification for NATO's intervention in the absence of formal authorization by the United Nations Security Council.<sup>65</sup> Additionally, allegations have since been made that NATO's fraudulent basis for use of military force, i.e. humanitarian intervention, and subsequent employment of force in the absence of a UN endorsement, rendered all actions unlawful.<sup>66</sup> Yet, despite not achieving international legitimacy for Allied Force, U.S European Command attorneys noted during subsequent lessons learned, "in the event we were unable to get consensus in NATO to go with military action, the United States was also planning for the possibility of a US-only operation."<sup>67</sup> Apparently, these legal experts realized, as do many military commanders, "the challenge of molding a coalition of soldiers from many nations into an organization with a common purpose is extremely challenging."<sup>68</sup> It is always a distinct possibility that the various coalition members possess differing legal standards under which they are permitted to operate; treaty-based restrictions which put them in direct conflict with United States interpretation of the law of armed conflict.<sup>69</sup> Given the numerous complexities cited, joint force commanders cannot afford to be inundated with legitimacy challenges while planning or directing major operations. Were legitimacy put on par with factors space, time, and force, it is highly unlikely that joint force commanders possessing different doctrinal

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<sup>65</sup> Wall, 433.

<sup>66</sup> Ibid., 499.

<sup>67</sup> Ibid., 121.

<sup>68</sup> George Oliver, *Evolution of International and UN Peacekeeping* (Newport, RI: U.S Naval War College, 2006), 16.

<sup>69</sup> Wall, 316.

backgrounds and differing degrees of combat experience or national military histories would view it similarly. It all goes back to what the moral relativists contend – legitimacy remains wholly dependent on the standards and interpretations of individuals.

## CONCLUSION

*Necessity overrides every law*  
- Pope Innocent IV<sup>70</sup>

What have we learned about legitimacy that eliminates its consideration as a potential operational factor? First, it is an abstract concept that in the words of philosopher David Hume, “cannot be objective, nor measurable, nor certain.”<sup>71</sup> Second, legitimacy cannot be balanced in the same manner as factors space, time, and force to achieve freedom of action. Disadvantages in space, time, or forces cannot be overcome by legitimacy. Similarly, any shortfall in legitimacy cannot be overcome by space, time, or forces, since there are only two states – legitimate or illegitimate – possible. Finally, as demonstrated in World War II and Kosovo, there are no guarantees a commander’s efforts to influence a particular constituency will lead to buy-in of the desired end state’s legitimacy.

While building legitimacy for a proposed action may be highly desirable, failure to do so should not deter us from pursuing our national interests at the strategic level, or handcuff a joint force commander during course of action development. Whereas the burden of building legitimacy for military action falls squarely on the shoulders of strategic decision-makers, “it is the task of the operational commander to evaluate each individual operational factor and arrange their mutual relationship so that they collectively enhance his ability to act freely within political, diplomatic, legal, or other restraints and constraints” during course of action

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<sup>70</sup> Quotation taken from internet site <http://www.jimpost/quotes/>, [20 September 2006].

<sup>71</sup> Rosenberg, 380.

implementation.”<sup>72</sup> Only by balancing factors space, time, and force while simultaneously applying principles of war such as legitimacy, objective, and security, can the joint force commander accomplish those operational objectives necessary to attain the national strategic end state. It is already difficult for commanders to juggle factors time, space, and force while walking a resource-constrained tightrope. Throwing another ball into the mix, particularly one as enormous and thorny as legitimacy, is certain to cause a spill.

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<sup>72</sup> Vego, 29.

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