



and War (1861), used by the faculty of West Point in the classroom, America's leading expert in the field, Gen. Henry W. Halleck, reaffirmed Vattel's legal opinions.

But customary international law was overthrown by the Leiber Code's advocacy of total war based on "military necessity." Article 15 of the Leiber Code states that

Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army . . .

To justify total-war tactics, Article 29 claims that, "The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief."

In place of Vattel's "maxim of justice and humanity," the Leiber Code declared (Article 17) that "It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy." In addition,

When a commander of a besieged place expels the noncombatants,

in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender [Article 18].

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity [Article 19].

The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war [Article 21].

. . . The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit [from Article 22].

The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch [Article 27].

. . . No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it impossible to cumber himself with prisoners [from Article 60].

The Leiber Code schizophrenically claims to promote humanitarian principles while deliberately undermining them with qualifications and obfuscations. For instance, Article 16 states, "Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge . . ." This implies the infliction of suffering is permitted for other reasons.

Article 38 proclaims, "Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States." Since *military necessity* is effectively defined by the whim of the commander in the field, there is, in fact, no protection for private property.

In Article 44, Leiber decrees that "all

destruction of property not commanded by the authorized officer" is "prohibited under the penalty of death." Therefore, destruction of any and all property is lawful, as long as it is "commanded by the authorized officer."

Excerpts from two letters written in 1864—one, by General Sherman; the other, by General Sheridan—bear witness to the reality of the Leiber Code. Sherman ordered a subordinate to "burn ten or twelve houses" and "kill a few at random," and "let them know that it will be repeated every time a train is fired upon." Sheridan, in turn, wrote to Grant that his troops, whom he described as "barn burners" and "destroyers of homes," had already "destroyed over 2200 barns . . . over 70 mills . . . have driven in front of the army over 4000 head of stock, and have killed . . . not less than 3000 sheep. . . Tomorrow I will continue the destruction."

It is sad that the statesmen who signed the Declaration of Independence and authored the Constitution and the *Federalist* were succeeded by the politicians who created and promulgated the Leiber Code. And it is alarming that the concepts propounded therein remain acceptable under international law. As long as they are, no civilians are safe from the terrors of "military necessity" and total war.

Joseph E. Fallon writes from Rye, New York.

## FOREIGN AFFAIRS

### Kosovo in the Crosshairs

by James Bissett

Serbian voters have approved a new constitution that, among other things, reaffirms Serbian sovereignty over Kosovo, which, since the NATO bombing of 1999, has been administered by the United Nations with the help of NATO troops. The referendum's passage will further complicate the efforts of Western policymakers to grant independence to Kosovo since to do so without Serbia's consent would violate the U.N. Charter's protection of territorial integrity and the inviolability of borders. Nevertheless, there have been indications that U.N. Special Envoy Martti Ahtisaari will rec-

commend before the year is out that Kosovo be separated from Serbia and become an independent country. This would be a mistake.

For the past seven years, Kosovo, under U.N. administration, has become one of the most dangerous places on earth. It is the center of heroin, weapons, and human trafficking into Western Europe. Murder and abduction of non-Albanians occur daily. Civil society is nonexistent, and living standards are equivalent to those of Haiti. More alarmingly, there is evidence that Islamic extremists with Al Qaeda connections are a growing presence there. Kosovo has all of the characteristics of a failed state, and, of all the people in the world striving for independent status, the Albanians in Kosovo must rank among the least deserving.

Under the watchful eyes of U.N. and NATO authorities, over 200,000 Serbs, Jews, Gypsies, and other non-Albanians have been expelled from Kosovo. Those who remain are in constant danger. Some of those encouraged by the United Nations to return have been murdered. Kosovo's prime minister, Agim Çeku, is an indicted war criminal. Though ethnically Albanian, he led the Croatian forces in 1993 who overran Serbian villages protected by Canadian peacekeepers. When his troops were driven out, the Canadians found all of the civilians and their animals had been slaughtered. Later, Çeku inflicted widespread carnage by ordering his artillery to fire on Serb civilians fleeing from their ancestral lands in Croatia.

One of the most shocking crimes committed by the Albanian majority in Kosovo has been the deliberate destruction of over 150 Christian churches and monasteries. The ruin of these ancient churches, many of them dating back to the 13th and 14th centuries, has been part of a calculated effort to remove all semblance of Christian heritage in Kosovo. Meanwhile, 400 new mosques—financed openly by Wahabi money from Saudi Arabia—have been constructed.

There has been no outrage by the "international community" at the destruction of these Christian holy places, no serious attempt to apprehend the perpetrators, and no expression of alarm or protest on the part of Christian churches in the West. It is another striking example of the double standard applied when Muslim outrages against nonbelievers are tolerated without complaint, while cartoons or imagined in-

sults to Islam cause widespread rioting and demands for apologies.

U.N. Resolution 1244, which ended the bombing campaign against Serbia, guaranteed that Kosovo would have a functioning civil society, democratic institutions, security for all citizens, and respect for the rule of law. It called for the disarming of the Kosovo Liberation Army and other militias. It provided for the return to Kosovo of limited numbers of Serbian security forces to guard the Christian holy places. And it reasserted Serbia's sovereignty over Kosovo.

Sadly, it seems the United Nations and NATO had no intention of honoring these commitments. These are hard facts, and they stand as a testimony of failure. The performance of these two international institutions has been marked by duplicity, double standards, and cowardice.

Granting Kosovo independence would establish a dangerous precedent, with far-reaching implications for all those around the globe who are striving for their own statehood. Russian President Vladimir Putin has already warned that such a decision would be applicable to post-Soviet territory. Currently, the most volatile regions are the Georgian provinces of Abkhazia and South Ossetia, which broke away from Georgia in 1992 and have been seeking independent status. Recognition of Kosovo independence would provide Abkhazia and South Ossetia with the precedent needed to demand equal treatment. This could result in violence and bloodshed, with serious implications for world security.

Otto von Bismarck once remarked that the Balkans were not worth the bones of a single Pomeranian grenadier. Yet he also predicted that, if there was to be another war in Europe, it would be because of some "damned silly thing" in the Balkans. The assassination of Archduke Franz Ferdinand in Sarajevo in 1914, sparking off World War I, proved him right. Ominously, there is a strong possibility that another "damned silly thing" is taking place in the Balkans: the seeming determination of Western policymakers to grant the Serbian province of Kosovo independence. In foreign policy as in other human endeavors, you can't get good results if you do dumb things.

*James Bissett served as Canadian ambassador to Yugoslavia. A shorter, edited version of this article appeared in the Toronto Globe and Mail on October 31, 2006.*

## JOBS

### The Education Mantra

by Gerald Russello

Back in October, Democrats and Republicans, following the release of the nation's employment numbers by the U.S. Department of Labor, retreated into their usual preelection fantasia. Democrats trotted out the class-warfare tropes, while Republicans continued living in their dreamworld, where increased employment in the service industry—such as insurance companies and doctors' offices—can make up for drops in manufacturing and housing-construction jobs.

A set of articles featured in the *New York Times* editorial pages over Labor Day weekend told a more substantial story and focused on economic indicators concerning the changing—and decreasing—status of the American worker. Collectively, they show that, whatever the merits of "conservative" control of Congress or the governors' mansions in the more than two decades since the advent of the Reagan years, the plight of the American worker has only worsened.

Consider some of the findings: People are working longer and later in life, even as a younger generation cannot find jobs appropriate for their overeducated and privileged selves. Today, government workers are better compensated than private-sector workers, and the average salary of the counties around Washington, D.C., has grown sharply, thanks to the explosive growth of government in recent years and, especially, to the "War on Terror." Individually and collectively, we are head over heels in debt, a condition that affects the working and middle classes more harshly than the rich. Unions have been devastated, having been largely reduced to negotiating how much of their wages and salaries to give away lest they see their jobs outsourced to more compliant "national regulatory regimes."

And then there is immigration. The flood of low-paid workers, on the one hand, and highly skilled transnational transplants, on the other, continues to squeeze middle-class Americans (except, of course, those on the government-salary dole).