



Terrorism and Innocence

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TERRORISM AND INNOCENCE

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ABSTRACT. This paper begins with a discussion of different definitions of “terrorism” and endorses one version of a tactical definition, so-called because it treats terrorism as involving the use of a quite specific tactic in the pursuit of political ends, namely, violent attacks upon the innocent. This contrasts with a political status definition in which “terrorism” is defined as any form of sub-state political violence against the state. Some consequences of the tactical definition are explored, notably the fact that (unlike the political status definition) it allows for the possibility of state terrorism against individuals, sub-state groups and other states. But a major problem for the tactical definition is the account to be given of “the innocent.” In line with just war thinking, the idea of “the innocent” is unpacked in terms of the concept of non-combatants and this in turn is treated as the category of those who are not prosecuting the harm that allows for a legitimate violent response. Problems with this approach are explored, with particular reference to criticisms made by Gregory Kavka. The recent drive to expand the class of those who may be legitimately attacked is subjected to scrutiny. Particular attention is paid to the role of “collective responsibility” and “deserving your government” in these arguments.

KEY WORDS: children, civilians, collateral damage, definition, immunity, innocence, just war, Gregory Kavka, liability, non-combatants, responsibility, terrorism, violence

For a phenomenon that arouses such widespread anxiety, anger and dismay, “terrorism” is surprisingly difficult to define satisfactorily. It has been estimated that there are well over 100 different definitions of “terrorism” in the scholarly literature.¹ This disarray partly reflects the fact that much discourse employing the term is highly polemical so that the act of defining becomes a move in a campaign rather than an aid to thought. Consequently, many definitions are too broad to be of analytical value, conflating terrorism with any form of violence of which the authors disapprove. Just as you are stubborn and pig-headed where I am firm and resolute; so you are a terrorist where I am engaged in legitimate defence (or, these days, pre-emption). We need to move beyond this double-talk if we are to make sense of what is important in the debate about terrorism. On the other hand, it should be conceded that some of the

¹ Alex P. Schmid, *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases, and Literature* (Amsterdam: Transaction Publishers, 1984), pp. 119–158, cited in Walter Laquer, *The Age of Terrorism* (Boston: Little, Brown & Co., 1987), p. 143.



semantic confusion results from difference in judgement about the moral significance of certain key political concepts, such as national sovereignty, self-determination and political legitimacy. I shall have something to say about this in what follows, but will not seek to settle these issues, merely to get them into the open. My main target is not, in any case, definitional, but primarily moral since I am concerned by attempts to reinterpret terrorism by chipping away at the concept of “innocence.” But some definitional clarification is initially necessary.

Let me begin with a sample of some influential definitions picked out by the Terrorism Research Center in the United States.

- Terrorism is the use or threatened use of force designed to bring about political change (Brian Jenkins).²
- Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted.³
- Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience.⁴
- Terrorism is the unlawful use or threat of violence against persons or property to further political or social objectives. It is usually intended to intimidate or coerce a government, individuals or groups, or to modify their behaviour or politics (U.S. Vice-President’s Task Force-1986).
- Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives (Federal Bureau of Investigation Definition).⁵

These definitions exhibit how much confusion exists about what terrorism is. We might note that Jenkins’ definition has the consequence that all forms of war are terrorist. Whatever verdict we give on war, it is surely just confusing to equate all forms of it, including armed resistance to Adolf Hitler, with terrorism. More interestingly, several of the definitions make use of the idea of unlawful or illegitimate violence, but this seems to fudge too many questions about what is wrong with terrorism.

² The definition from Jenkins is cited by the Terrorism Research Center Inc. on their website <http://www.terrorism.com>, accessed December 8, 2003. The same source has been utilized in the references in footnotes 3, 4 and 5 below.

³ Laqueur, *The Age of Terrorism*.

⁴ James M. Poland, *Understanding Terrorism: Groups, Strategies, and Responses* (Englewood Cliffs: Prentice-Hall, 1988).

⁵ Terrorism Research Center Inc.

The idea of the illegal raises acutely the issue of what and whose laws are being broken. Consider armed internal resistance to Hitler by German citizens, especially Jews, Communists or Gypsies threatened with extermination. This, like the Jewish armed resistance in the Warsaw ghetto, would arguably have been justified and, depending on how the resistance was conducted, would probably not have been called "terrorist" by most of those not ruled by the Nazis. Yet it would certainly have been against German law. And the adjective "illegitimate" needs unpacking in terms of what makes this or that use of force or violence illegitimate.

Rather than further reviewing the varieties of definition, I propose to concentrate on one key element in common responses to and fears about terrorism, namely the idea that it involves "innocent" victims. This element features in several of the quoted definitions. It was recently overtly invoked by Yasser Arafat's condemnation of terrorism when he said: "... no degree of oppression and no level of desperation can ever justify the killing of innocent civilians. I condemn terrorism, I condemn the killing of innocent civilians, whether they are Israeli, American or Palestinian."⁶ I make no comment on the sincerity of Arafat's condemnation, the important point here is his acknowledgement of the conceptual element. This focus also usefully provides a point of connection with the moral apparatus of just war theory, specifically the principle of discrimination and its requirement of non-combatant immunity. Of course, terrorism does not always take place in the context of all-out international war, but it usually has a war-like dimension. I will define it as follows: *The organised use of violence to attack non-combatants ("innocents" in a special sense) or their property for political purposes.* This might be thought too restrictive in one direction since the threat to use such violence, even where the violence does not result, would be regarded by some as itself an instance of terrorism. If you think that plausible, you could amend the definition accordingly. (Elsewhere,⁷ I have used "target" instead of "attack" to encompass this possibility, though it might be argued that people can be targeted without being threatened. This would be argued by those who think that something is not a threat unless those threatened are aware of it, but rightly believe that you can target something or someone without such awareness being required in the target.)

⁶ Yasser Arafat, "The Palestinian Vision of Peace," *New York Times* (3 February 2002), p. 15.

⁷ C. A. J. Coady, "Terrorism, Just War and Supreme Emergency," in C. A. J. Coady and Michael O'Keefe (eds.), *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne: Melbourne University Press, 2002), p. 9.

SUBSTANTIVE DEFINITIONAL IMPLICATIONS

This definition has several contentious consequences. One is that states can themselves use terrorism, another is that much political violence by non-state agents will not be terrorist. As to the former, there is a tendency, especially amongst the representatives of states, to restrict the possibility of terrorist acts to non-state agents. But if we think of terrorism, in the light of the definition above, as a tactic rather than an ideology, this tendency should be resisted since states can and do use the tactic of attacking the innocent. Some theorists who think terrorism cannot be perpetrated by governments are not so much confused, or disingenuous, as operating with a different definition. They define “terrorism,” somewhat in the spirit of the FBI definition, as the use of political violence by non-state agents against the state. Some would restrict it to violence against a democratic state. This is the way many political scientists view terrorism, and, at least in the case of a democratic state, they see it as morally wrong. Call this the “*political status* definition” to contrast with the “*tactical* definition.”

As to the latter consequence (that not all anti-state political violence need be terrorist) this seems a welcome consequence of the tactical definition. This is because there is clearly a case for justified revolutionary violence in extreme circumstances. In saying this, I do not mean to express any sort of enthusiasm for violent revolution, since I suspect that most violent revolutions that have actually occurred have been unjustified, even where they resulted from legitimate grievances. A violent response to grievance must meet more criteria than the reality of the grievance if it is to be justified – in particular, it must be a better response than non-violent alternatives and it must be likely to do more good than harm. Nonetheless, even if few revolutions have been justified, it is clearly possible that some were and others in the future might be. Indeed, most U.S. citizens regard their own bloody revolution as justified and so are ill-placed to reject the idea of justified political violence against an existing government. But, although the tactical approach does not treat “terrorism” as immoral by definition, the fact is that what it defines as “terrorist” would strike most people pre-theoretically as immoral, and many reject terrorism out of hand as immoral (however defined). Hence it is important to have a definition of “terrorism” that leaves open the possibility that non-terrorist revolutionary violence can occur and be morally legitimate. This is particularly important in the context of the current “war against terrorism” since there are a variety of governments throughout the world that are using the anti-terrorist campaign to deal with all internal or secessionist opposition – and to deal with it drastically.

It should be stressed that in spite of the widespread belief that terrorism is immoral, I am not building its immorality into the definition; we need discussion and some background moral theory to show that it is immoral. As Virginia Held, among others, has noted, it is better to define “terrorism” in a way that at least leaves some room for discussing the question whether it is ever justified.⁸ She thinks that I do not leave enough room, but that is matter for further debate on another occasion.

A final definitional clarification concerns the phrase “for political purposes.” It has been objected to this that some terrorism is conducted for religious or ideological purposes rather than political. Here I should say that the reference to the political is aimed at demarcating the scope of terrorism so that it does not encompass areas such as ordinary criminal violence, no matter how reprehensible and no matter how damaging to innocent people. Such a distinction seems plausible as an extrapolation from ordinary talk about terrorism. But my reference to political motivations is not meant to be so narrow as to include only secular or pragmatic outlooks. When religion or ideology employs violent means to undermine, reconstitute or maintain political structures for the further transcendent ends of the religion or ideology, then that counts as “political purposes.” War is a paradigm political activity, despite its ugliness, and it would be strange to say that the medieval Crusaders, for example, were not involved in politics when they invaded the Holy Lands. Modern counterparts of the crusaders and their enemies struggle for political supremacy even where their motives involve religious or idealistic commitments to theocracy, or Islamic fundamentalism on the one hand and democracy, free markets or Christian fundamentalism on the other. It should be added that the borders of the merely criminal and the fully political constitute a broad and fuzzy area. Criminal activities can become involved with the political, even in the matter of violence, as happened with the criminal drug lords in Colombia some years ago – and groups whose rationale is basically political may indulge in ordinary criminal activities, such as bank-robbery, to finance their operations. Still, the broad distinction is clear enough.

I take it to be an advantage of my version of the tactical definition (and of several other similar definitions) that it connects the discussion of the morality of terrorism with a well-established moral theory or tradition for discussing war and political violence, namely the just war tradition.⁹ The

⁸ Virginia Held, “Terrorism, Rights, and Political Goals,” in R. G. Frey and Christopher W. Morris (eds.), *Violence, Terrorism, and Justice* (Cambridge: Cambridge University Press, 1991), pp. 65–72.

⁹ Others to have made use of this connection in some way include: Igor Primoratz, “The Morality of Terrorism,” *Journal of Applied Philosophy* 14 (1997), pp. 221–233;

development of that tradition has been strongly influenced by Catholic philosophers and theologians in the West, but also by people of quite different commitments, such as Aristotle, Grotius, John Locke, and in modern times Michael Walzer.¹⁰ There are also parallel lines of thought in the ancient Chinese philosophical traditions. This is not surprising, because, unless one takes the view that war is entirely beyond moral concern or that it is simply ruled out by morality, then one has to give some account of what can morally justify it. Just war theories constitute a major line of response to this need; another is provided by utilitarian thinking and another by the so-called realist tradition. In the just war tradition, this account has two key divisions – the *Jus ad bellum* and the *Jus in bello*. The former (which I will abbreviate as the “JAB”) tells us the conditions under which it can be right to resort to war, the latter (which I will call the “JIB”) is concerned to guide us in the permissible methods by which we should wage war. This is not the place for elaborate discussion of these conditions, but the condition most relevant to terrorism, as I characterise it, is what is often called the principle of discrimination that forms a significant part of the JIB. This places moral restrictions upon the sort of people and things that can be subject to destructive attack.

Moral restrictions on how one conducts oneself in war are apt to be met with incredulity. “You do what needs to be done to win” is a common response. There is a certain appeal in this pragmatic outlook, but it flies in the face not only of just war thinking but of many common human responses to war. The concept of an atrocity, for instance, has a deep place in our thinking. Even the former U.S. General Chuck Yeager writes in his memoirs that he suffered genuine moral revulsion at orders to commit “atrocities” that he was given and complied with in World War II. He was especially “not proud” of his part in the indiscriminate strafing of a 50-mile square area of Germany that included mainly non-combatants.¹¹

THE SIGNIFICANCE OF NON-COMBATANT IMMUNITY

A major part of the discrimination principle concerns the immunity of non-combatants from direct attack. This is a key point at which utilitarian

Jenny Teichmann, *Pacifism and the Just War* (London: Blackwell Publishers, 1986); Robert Fullinwider, “War and Innocence,” in Charles Beitz (ed.), *International Ethics: A Philosophy and Public Affairs Reader* (Princeton: Princeton University Press, 1985), pp. 90–98, and Michael Walzer, “Terrorism: A Critique of Excuses,” in S. Luper-Foy (ed.), *Problems of International Justice* (Boulder: Westview Press, 1988), pp. 237–247.

¹⁰ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd edition (New York: Basic Books, 2000).

¹¹ Chuck Yeager, *Yeager: An Autobiography*, ed. Leo Janos (New York: Bantam, 1986), pp. 89–90.

approaches to the justification of war tend to clash with the classical just war tradition. Either they deny that the principle obtains at all, or, more commonly, they argue that it applies in virtue of its convenience. The former move is associated with the idea that war is such “hell” and victory so important that everything must be subordinated to that end, but even in utilitarian terms it is unclear that this form of ruthlessness has the best outcomes, especially when it is shared by the opposing sides. Hence, the more common move is to argue that the immunity of non-combatants is a useful rule for restricting the damage wrought by wars. Non-utilitarians (I shall call them “intrinsicists” because they believe that there are intrinsic wrongs, other than failing to maximise good outcomes) can agree that there are such extrinsic reasons for the immunity rule, but they will see this fact as a significant additional reason to conform to the principle. Intrinsicists will argue that the principle’s validity springs directly from the reasoning that licenses resort to war in the first place. This resort is allowed by the need to resist perpetrators of aggression (or, on a broader view, to deal with dangerous wrongdoers) and hence it licenses violence only against those who are agents of the aggression.

This prohibition on attacking the non-perpetrators (non-combatants or the innocent as they are often called) has been a consistent theme in the just war tradition. So Locke says in his *Second Treatise of Civil Government* that a conqueror with a just cause “gets no power” over those amongst the enemy populace who are innocent of waging the war. As Locke puts it: “they ought not to be charged as guilty of the violence and injustice that is committed in an unjust war any farther than they actually abet it.”¹² Locke is actually discussing the post-war entitlements of a conqueror rather than the limits on how he wages the war, but his comments apply naturally to the latter and are clearly in the tradition of just war thinking. As the 16th Century Spanish theologian/philosopher Francisco De Vitoria, in similar spirit to Locke, had earlier put it: “. . . the foundation of the just war is the injury inflicted upon one by the enemy, as shown above; but an innocent person has done you no harm.”¹³

The fact that this prohibition is a key feature of the just war tradition does not show that it is beyond criticism, and there are many lines of criticism that have been levelled at it. These tend to be both conceptual and moral. On the first, it is often argued that, in the conditions of modern war, it is impossible to distinguish combatants and non-combatants, hence the distinction lacks application. But even without a fine-grained account

¹² John Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1988), II.xvi.179, p. 388.

¹³ Francisco De Vitoria, *Political Writings*, eds. A. Pagdan and J. Lawrance (Cambridge: Cambridge University Press, 1991), pp. 314–315.

of the distinction, it is clear that a baby asleep in its cot is palpably a non-combatant whereas a soldier attacking you with a sub-machine gun is not. Any attempt to deny this contrast strains both intellectual and moral credibility. Of course, some soldiers attacking you may be children (not babies in cots). This is a regrettable feature of much modern warfare because ruthless militaries coerce or suborn children on to the battlefield. Held makes much of this fact to cast doubt upon the usefulness of contrasting combatants and non-combatants in the discussion of the morality of terrorism. As she says of the child soldiers, "Such 'combatants' hardly seem legitimate targets while the 'civilians' who support the war in which they fight are exempt."¹⁴ This comment raises a number of questions that I will address below. Here I will simply note that the child soldiers are wielding weapons with intent, while the "support" that civilians offer the conflict may vary from positive planning of it or direct coercion of the children to vague support for its (possibly legitimate) objectives. As we shall see below, that makes a difference to the question of agency.

Held's objection to the moral importance of the combatant/non-combatant distinction is connected with an interesting argument to the effect that the just war tradition collapses what are really distinct categories—the innocent and the non-combatant. When we are enjoined not to attack the innocent, this injunction gives immunity to those who are not morally responsible in a full-blooded sense for the wrong that we aim to resist, but many combatants are not morally responsible in this fashion where many non-combatants are. If moral responsibility requires the satisfaction of both knowledge and freedom conditions with respect to the actions performed, then many wrongdoing combatants do not realise that they are doing wrong because they have been misinformed or "brain-washed" by patriotic or ideological conditioning. In addition, many combatants are coerced by conscription or severe public pressure and so may not be acting with full freedom.¹⁵ On the other hand, there will be many promoters and supporters of an unjust war who are not in uniform. It is common for just war theorists to reply to this by invoking a sense of "innocence" that is not so directly tied to rich moral responsibility. The innocent, for these purposes, they say, are those who are "not harming." This removes a lot of the mental baggage associated with the "moral responsibility" story since a deluded or coerced assailant is still an assailant and someone who bears you ill-will but does nothing about it is not. The

¹⁴ Held, "Terrorism, Rights and Political Goals," p. 68.

¹⁵ There remain problems with the role of coercion in removing moral responsibility since it is unclear that mere public pressure, for instance, no matter how severe, can acquit one of responsibility for killing and maiming.

basic moral intuition, then, is that you are entitled to protect yourself against those who are trying to harm you whether or not they are morally responsible for their deeds. I am sympathetic to this intuition though it has more obvious bite in certain cases than in others. It is, for instance, clearer that you are entitled to direct (possibly lethal) violence at someone who is attacking you with an axe whatever the state of their soul, than that you are right to direct such violence at someone who is not of their own volition attacking you, but is being used to shield a genuine attacker. This is connected with an idea of agency that is less highly moralised than the one associated with the rich concept of moral responsibility. The deluded attacker is an agent of harm but the innocent shield is a mere instrument of an agent of harm. In Ken Loach's film about the Spanish Civil War, *Land and Freedom*, a group of POUM militia attack a village held by Fascist Falange troops. Some of the Fascist troops fight the attackers from the security of the local church, and, at one point, two of them issue forth shooting and protecting themselves by using two of the village women as shields. The POUM militia are reluctant to shoot back and suffer losses. One of these losses is a man who has run out of ammunition and begs his comrade for more bullets but is refused because the comrade is afraid he will kill the women when shooting at the soldiers or shoot the women to get at the soldiers. Instead he is shot by one of the Fascist soldiers while shouting at his comrade to hand over the bullets. Eventually the Fascist soldiers are killed as is one of the women. Let us assume that the POUM were fighting a just war and the Fascist soldiers were not. Nonetheless, the Fascist soldiers may well have lacked full knowledge of the (mostly) unjust cause they fought in and they may well have been coerced into the army. While shooting as they ran (with or without the shields) they were clearly agents of harm and just as clearly the women they actually used as shields were not.

In the context of personal self-defence, this notion of agency makes sense morally and pragmatically: morally, because your life and limb is under real threat from someone who is aiming to inflict serious harm on you and the protection of your life and body has a high moral priority, pragmatically, because the moral guilt or innocence of the attacker in the rich sense is usually not something you are in a position to determine when attacked. But when we move beyond these directly personal contexts we are shifting these issues about self-defence, in the spirit of what has been called the "domestic analogy," to relations between such entities as states or other political units, and this generates further problems.

Some powerful difficulties with this transition have been addressed in David Rodin's recent book, *War and Self-Defense*, which argues that self-

defence is a much less powerful justification for war than is commonly supposed.¹⁶ Rodin's critique is partly directed against a sort of automatic and unqualified right of state self-defence that I would not myself want to defend anyway. Nonetheless, he raises some very important philosophical difficulties for any easy transition from the personal self-defence model to the war-licensing national case. But let us assume that there are certain circumstances in which groups and communities, and in certain cases the states that represent them, can plead self-defence or the need to remedy a great harm directed against them or others as licensing a resort to lethal violence. Then the same point about agency applies, though there will be emphasis upon chains of agency as well as the simple agency of the axe attacker. It must be noted at once that part of the original objection remains for there will certainly be agents of harm who are not combatants in the sense of wearing military uniforms or being in the army. This shows that the combatant/non-combatant distinction is not equivalent to the soldier/civilian distinction. These categories will overlap to a considerable degree, but it is plausible to hold the high political leadership of the enemy state (those who plotted and instigated the war) to be agents of harm, as are the scientists and technologists employed in devising and producing new lethal weapons. And, as always, there will be grey or contentious areas in characterising the chain of agency.

KAVKA, INNOCENCE AND "LOOSENING CONNECTIONS"

It will be useful to begin with an influential discussion by Gregory Kavka of the targeting of civilians involved in most forms of nuclear deterrence, such deterrence requires the firm, though conditional, intention to engage in what the tactical definition would count as terrorist acts, and so raises sharply the issue of the immunity of non-combatants. Kavka's argument is that the immunity of non-combatants is a special case of what he calls "the immunity thesis." This is the thesis that "persons have moral immunity and it is impermissible to deliberately impose significant harms or risks on them unless they are themselves morally responsible for creating relevant harms or dangers."¹⁷ He then defines "moral responsibility" as determined by the holding of two conditions. The first is that "certain moral flaws or shortcomings of the agent are expressed in his acts (or omissions) and make a significant causal contribution to the existence of those harms or

¹⁶ See David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002).

¹⁷ Gregory S. Kavka, *Moral Paradoxes of Nuclear Deterrence* (Cambridge: Cambridge University Press, 1987), p. 88.

risks.”¹⁸ The second is that “the agent possesses the general psychological capacities necessary for being responsible for one’s actions.”¹⁹ I have some reservations about the first condition of this definition of “moral responsibility,” but they are not relevant here since Kavka’s definition is close enough to what I have called a “rich account of moral responsibility” to proceed further without discussing these reservations.²⁰ Kavka then argues, in the fashion adumbrated above, that enemy soldiers may not be morally responsible for their attacks but it is legitimate to shoot at them where we should have a different attitude to a civilian bystander. Here Kavka writes as if we are entitled to direct lethal violence at the soldiers but wrong to do the same to the civilian bystander even though there might be some advantage in attacking the civilian (he might then fall in the path of the soldier and impede his progress). This is a contrast that he wants to preserve, though his final position is so erosive of non-combatant immunity that it is doubtful that he can fully do so. Part of the problem is that he takes the intuition about the direct attacker who is not morally responsible to show that we are prepared to “weaken or annul” immunity in the cases of “looser” connections of individuals to the creation of danger. As he puts it: “. . . other ‘looser’ connections – creating danger out of madness or belonging to a group responsible for producing harm – are also sometimes taken to weaken or annul that immunity.”²¹ Kavka then considers the response that one particular connection is surely privileged here, namely that of causing the danger in question, but he dismisses this. His ground for doing so is that causation fails to do justice to our intuitions about the immunity status of “Innocent Threats” and “Innocent Shields.” As a case of Innocent Threat, he considers someone who “threatens” to cause harm by ringing your doorbell unaware that someone has connected the bell to dynamite under your chair so that ringing the bell will cause

¹⁸ Kavka, *Moral Paradoxes of Nuclear Deterrence*, p. 88.

¹⁹ Kavka, *Moral Paradoxes of Nuclear Deterrence*, pp. 88–89.

²⁰ There is of course a huge philosophical literature on the nature of moral responsibility, some of it published in this journal, and a good deal of it concerned with the metaphysics of the question, as in the debate about compatibilism. It will be apparent that, in my view, much of the intricacy of that literature is at best marginally relevant to the concerns addressed in what follows above. One discussion of moral responsibility that does, like Kavka’s, bear directly on my concerns is that of Jeff McMahan in his excellent book *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), pp. 401–421. Many other discussions have taken their point of departure from Harry Frankfurt’s influential work, especially his essay, “Freedom of the Will and the Concept of a Person,” *The Journal of Philosophy* 68 (1971), pp. 5–20, and the essay, “Identification and Wholeheartedness,” in Harry Frankfurt, *The Importance of What We Care about* (New York: Cambridge University Press, 1988), pp. 159–176.

²¹ Kavka, *Moral Paradoxes of Nuclear Deterrence*, pp. 88–89.

your death. Kavka seems to think (though the passage is not entirely clear here) that you would be somewhat more entitled to kill the “Innocent Threat” than the Innocent Shield. But, in any case, he regards the fact that the Innocent Threat would be *causing* the harm and the Innocent Shield would not as irrelevant to any contrast one might draw, and so concludes that this “indicates” that causation does not have the privileged position ascribed to it.

What are we to make of this? One might quibble about the attribution of terms like “causing” to one case and not the other since it might be said that the presence of the Innocent Shield is causing your vulnerability, is part of the causal chain that leads (in the upshot) to your death, but I do not intend to pursue this path. Causation is a tricky enough notion, but I agree in any case that causation by itself is not the central issue, since, as I have already argued above, the basic issue is agency. This fact is obscured by the example of Innocent Threat that Kavka considers, so we should take a different example to bring out the point. Consider Jones who has been cunningly tricked into believing (wrongly) that you are a hitman on your way to kill his family. He does not have time to get the police or other assistance and believes that the only way to prevent you is to kill you, so he attacks you with an axe. You have the means to save your life by injuring and possibly killing him and no other prospect of avoiding death. Given Jones’s state of mind, he counts as innocent on Kavka’s definition (and many others) so he is an Innocent Threat and most of us would think you were entitled to your defensive violence against him. But unlike the innocent bell-pusher or the innocent shield, Jones is intentionally aiming at your death; he is not just an unwitting causal factor in the mess in which you find yourself. Jones’s agency is not such as to require the blame or punishment appropriate to rich moral responsibility, but it makes sense to call him an agent of harm and his agency is strong enough to explain an annulment or weakening of immunity. His agency is not incidental to the connection between him and harm to you whereas the agency of the bell-pusher and the innocent threat is. Kavka says astonishingly that the bell-pusher “threatens to cause harm” to you, but this is clearly false since he has no intention whatever of harming you whereas Jones does threaten you in deadly earnest. And Jones is a far better example of innocent threat than the bell-pusher for the discussion of war or political violence more generally since his situation is parallel to that of the misinformed soldier.

Given these facts, we should be wary of any move to expand or loosen the sorts of “connections” with categories of person that allow for lethal violence to be directed against them. Kavka is particularly concerned to allow for enemy civilians to be targets of nuclear threat thus defending, at

least in part, Western policies of nuclear deterrence during the Cold War. But his ignoring of the agency issue (or conflating it with mere causation) allows him this loosening on inadequate grounds. He has, however, another argument for removing immunity from enemy non-combatants or civilians and this is provided by an account of the point of attributions of moral responsibility, an account which is characteristic of a certain tradition of soft determinism allied to utilitarianism. The idea is that we have the concept of moral responsibility because it allows us to influence behaviour in certain desirable ways (Kavka does not put the matter quite like this because he is concerned with liability more broadly rather than moral responsibility alone. But he thinks that holding people morally responsible gains its point from the functions served by attributing liability). As Kavka puts it, "The basic purpose of holding people liable for risks and harms is to protect people, by deterring and preventing dangerous and harmful acts. It is generally most efficient to control such acts by holding liable those morally responsible for them."²²

But this externalist perspective on responsibility and liability is surely faulty. It makes questions of personal desert far too instrumentally dependent upon social engineering. The "efficient" control of behaviour is indeed important, at least up to a point, but our interest in immunities from harm is primarily motivated by the concern not to inflict injury or harm on those who do not deserve it. This is why agency can limit or annul immunity where social policy cannot, or at least needs to make a very special case to do so. As Kavka notes, in the case of minor matters, some legal systems are, for reasons of utility, prepared to deliver small punishments on the basis of "strict liability." This usually refers to the fining of those who break some law without knowing that their act was illegal even in circumstances where that knowledge was hard to come by (Actually, Kavka speaks of "vicarious liability" and this is confusing since it may refer to holding those liable who have no agency connection whatever to the proscribed acts. I shall return to this below).

I think we should be cautious of equating the accepted practices of legal systems with the requirements or legitimate permissions of morality, even where these systems are our own, and it is worth noting that there are many critics of the practice of "strict liability."²³ Other legal systems have

²² Kavka, *Moral Paradoxes of Nuclear Deterrence*, p. 90.

²³ Two notable critics of the category are Colin Howard and H. L. A. Hart. See H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), pp. 173–175, and again in H. L. A. Hart, *Punishment and Responsibility* (Oxford: Clarendon Press, 1968), pp. 20, 34, 136, 152, 176. Also, see Colin Howard, *Strict Responsibility* (London: Sweet & Maxwell, 1963).

sometimes thought it efficient to punish family members very severely for crimes committed by their relatives even where the family members knew nothing of the behaviour and would have deplored it. This is what is normally meant by “vicarious punishment” and even those who accept strict liability in some cases have generally opposed this. Indeed, the efficiency criterion leaves it open that “we” might find it “generally most efficient” to hold vicariously liable all manner of people who are unconnected to the harming. It is surely a contingent matter how such efficient community management might best proceed. As Paul Ramsey once suggested, in a subversive comment on nuclear deterrence, the most efficient way to prevent the road carnage might be to strap babies on to the front of motor vehicles.²⁴ As noted above, Kavka is anxious to preserve the immunity of the mere bystander, but where utilitarian manipulation to prevent harm is the criterion of who shall have immunity, the bystander’s lack of agency connection to the harm is no guarantee of immunity.

“Loosening connections” for the sake of efficiency in controlling behaviour is fraught with peril in two directions. The first is that involved in expanding the categories of people caught in the loosened web of connections. We have already explored this. The second danger is the way in which the loosened connection is likely to carry with it the same grave consequences as the tighter connections. Kavka notes of strict liability that it is only acceptable where the penalties are light. As he puts it in speaking of domestic legal liability:

Where the penalties are not severe, and the efficiencies are relatively large, we are not greatly bothered by such loosening of liability conditions. When penalties are more serious, such as imprisonment, death, or risk of serious injury, we generally believe that tight standards of liability should be employed.²⁵

But when we are dealing with war and the immunity of non-combatants, “loosening the connection” means permission to visit the most severe of harms upon them. If there is any story about strict or vicarious liability that makes it morally acceptable, it surely cannot reach to consequences like these.

Kavka is interested in the idea of group responsibility and treats it as a case akin to strict (or in his sense, vicarious) liability. This seems to me to

²⁴ Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham: University Press of America, 1983), p. 171. Ramsey comments on his proposal: “That would be no way to regulate traffic *even if it succeeds* in regulating it perfectly, since such a system makes innocent human lives the *direct object* of attack and uses them as mere *means* for restraining the drivers of automobiles.” I doubt that the babies would usually be objects of attack exactly, but Ramsey’s point about their efficient use not making the use legitimate is surely right.

²⁵ Kavka, *Moral Paradoxes of Nuclear Deterrence*, p. 90.

confuse matters still further. There are clear cases of group responsibility where all the members of a group are agents of the deed in question even though they play different parts in its performance. Four criminals who decide to rob a bank, jointly evolve a plan to do, and then play assigned roles in the robbery are joint agents in the crime, share responsibility for it and can each be blamed or punished (though perhaps not identically, depending on role and circumstance). This has some parallels with the group responsibility of an armed force. But it is far removed from the sort of group responsibility Kavka seeks with his loosened connections since he wants to include the members of large groups, particularly nations, within his liability net. But this attempt to make all citizens share responsibility for the crimes committed by the governments of the nations they belong to is a huge stretch from the cases of criminal gangs and armies. Kavka calls the citizens "partially innocent" and compares them in this respect to the mad attacker, but most of them are not attackers at all. Indeed, vast numbers of them are not doing anything to contribute to the wrong their government is doing or planning. Kavka seems to recognise as much when he says that "organisational decision procedures and group pressure can often funnel individually blameless inputs into an immoral group output."²⁶ Furthermore, many of the so-called "inputs" may never get into the funnel at all, but Kavka is really concerned with something else. It is the prospect that respecting the traditional immunity of non-combatants will mean that those who want to control behaviour will "largely lose the ability to influence group acts by deterrence."²⁷ This reflects the context of Kavka's article which is primarily concerned with nuclear deterrence policy, but there seems no reason why the point should not be generalised to the delivery of violence as well as the threat of it. But now the question arises urgently as to what makes the citizens of some nation so different from bystanders that they are liable to violent destruction for what their government has done. Kavka simply takes it that citizens somehow form part of the group entity that engages in the offending acts for which retaliatory (or perhaps preventive?) violence is legitimate. The most he produces in support is the efficiency argument, the defects in which we have already considered. Clearly more is needed to show that the sort of membership of a group that citizenship involves is enough to make you a legitimate target of justified violence provoked by your government (To be fair to Kavka, he shows some nervousness at extending the range of legitimate targets and talks of non-combatant citizens as "partially innocent." He also thinks that considerations of "proportionality" should operate to reduce the vulnerability to attack of the "partially innocent." But the dominance

²⁶ Kavka, *Moral Paradoxes of Nuclear Deterrence*, p. 91.

²⁷ Kavka, *Moral Paradoxes of Nuclear Deterrence*, p. 91.

of the efficiency test surely operates to undermine the significance of this concession).

ERODING IMMUNITY AND “DESERVING YOUR GOVERNMENT”

The erosion of the immunity of non-combatants has been taken further in more recent writings where something has been done to provide this additional argument. Barry Buzan, for example, has developed the idea of “deserving your government” as a test for whom may be bombed (and presumably otherwise maimed and killed).²⁸ Buzan argues that there are a range of cases between those people (or peoples) who do not deserve the governments they have and those who do. In between the people who suffer under an imposed foreign yoke or vicious dictatorships and the members of “well-rooted democracies with traditions of individual rights, a broad franchise and regular elections” stand mixed cases of authoritarian governments with varying degrees of mass support.²⁹ Buzan explores various links between “a people” and its government without conspicuous success in arriving at a criterion of “deserving a government” but cheerfully announces his makeshift verdict:

In sum, the question of whether people get the governments they deserve can often be answered quite simply on the basis of day-to-day observations about the relationship between the demos and the government. This type of observation cannot always give a reliable answer, but is more useful than either sweeping generalisations about culture or simple assumptions that all civilians are innocent.³⁰

Buzan is worried that “the West” has become too scrupulous in its bombing policies and opposes the idea that governments and their peoples should be treated separately in directing lethal violence during war. The fastidious desire to respect the immunities of civilians he regards as a recent development that has become “something of a Western fetish.”³¹ As we have seen, the moral insight behind the immunity of non-combatants is of more ancient lineage, though the fastidious concern Buzan highlights is indeed a more recent and somewhat ambiguous development. It was certainly not prominent during the Vietnam War and the cluster of ideas around the terms “collateral damage” and “dual-purpose targets” throws some doubt upon how deep the scruples have gone during the more recent “Western” wars in Iraq, Serbia and Afghanistan. Furthermore, it is no part of my

²⁸ Barry Buzan, “Who May We Bomb?” in Ken Booth and Tim Dunne (eds.), *Worlds in Collision: Terror and the Future of Global Order* (New York: Palgrave, 2002), pp. 87ff.

²⁹ Buzan, “Who May We Bomb?” p. 87.

³⁰ Buzan, “Who May We Bomb?” p. 90.

³¹ Buzan, “Who May We Bomb?” p. 85.

defence of the principle of discrimination that all civilians are innocent since, as noted earlier, some will clearly be agents of wrongdoing (notably aggressive war).

But Buzan's criterion of desert needs closer attention. Note that one consequence of his division of different types of government-people relationships is that citizens of democratic states are more open to attack because of their government's misdeeds than are members of totalitarian or dictatorial regimes. Buzan is emphatic that democracy provides the clearest case of deserving your government: "Citizens in democracies do deserve their governments."³² It follows that, in a conflict between a dictatorship like Iraq and a democracy like the U.S. (or Australia), the Iraqi authorities would be entitled (under the *jus in bello*) to attack the civilian populations of the U.S. where the U.S. would not be entitled to attack Iraqi civilians. In terms of the tactical definition of "terrorism," an Iraqi attack on the Empire State Building would not be terrorist where a U.S. attack on a similar target in Baghdad would. The title of Buzan's article ("Who May We Bomb?") obscures these possibilities since the "we" in question always refers to "the good guys" in "the West." Commentators and intellectuals under the spell of this sort of thinking never imagine that their proposals may be such that what is sauce for the goose may prove even more appetising for the gander. Yet it is both a psychological and normative consequence of their thinking, since expanded permissions to bomb on one side will probably lead to their being adopted by the opposing side where possible, and legitimacy under the *jus in bello* is in principle available to any side in a conflict. But if Buzan has not explicitly anticipated these consequences, a comment he makes on the Palestinian-Israeli conflict seems to take him part of the way. In a passage that hovers between description of attitudes and endorsement of them, he says,

Arab radicals see no civilian sector in Israel. The Israelis have democracy, a large proportion of the Israeli population is in the military reserve and it is common for Israelis to carry, and use, guns. Israeli militants return the compliment by thinking of the Palestinians in much the same terms, as a people united in the pursuit of terrorism. War is cast as an affair between peoples.³³

Although he calls this "an extreme version" of the link between people and government, it seems he must endorse its legitimacy, at least for the Palestinian attitude to democratic Israel. More generally, the connection-loosening that Kavka advocates leads in the direction of the sort of group liability advocated by Osama bin Laden when he targets U.S. citizens for what he and his supporters see as the wrongs committed by the U.S.

³² Buzan, "Who May We Bomb?" p. 88.

³³ Buzan, "Who May We Bomb?" p. 88.

government. Something like this notion of group responsibility had earlier had some vogue in 1960s “liberationist” ideology, most notably in the thought of the Algerian intellectual, Franz Fanon.

In the present context, Buzan’s concept of “deserving your government” is no doubt part of the problem because it is too opaque a notion to help settle such a serious question as whom it is legitimate to subject to attack in war. It simply ignores the variety of reasons why people support a government or its actions or vote for this party or that at election times or in other ways become somehow associated with operations that are regarded as the activities of a nation. People may support their government’s health and social services programs as vast improvements on what have gone before, but be alarmed at, hostile to or largely ignorant of its foreign policy. Consequently, actions construed as support by citizens for their government’s foreign policy misadventures need be nothing of the sort. Buzan, for example, considers civilians standing on bridges during the air war against Serbia. He argues that if the civilians were coerced on to the bridges by government officials then the bridges should not have been bombed whereas if the citizens were there to show support for the Milosevic government then the bombing should have proceeded. But this argument shows how coarse-grained Buzan’s thinking is. Another likely explanation of citizens trying to make shields of themselves in this way is that they do not want their bridges destroyed. Such bridges, after all, are crucial to civilian life. Citizens of Manhattan or London should think about what the smashing of their bridges would do to them. The presence of Serbian civilians shows nothing about support for Milosevic, nor, more to the point, does it show anything about these civilians being involved in the Serbian government’s dreadful acts in Kosovo. The question about whether the bridges should have been bombed at all should turn on their military significance not on the answers to fantastic questions about whether (and which) Serbians deserved their government. There would indeed remain difficult moral problems if the bridges were determined to be genuine military targets because, say, they were being used to transport troops to Kosovo to engage in ethnic cleansing, and civilians nonetheless congregated on them to protect their bridges for their civilian uses. These are the sorts of contexts in which ideas like double-effect tend to be invoked.

IMMUNITY AND COLLECTIVE RESPONSIBILITY – FURTHER COMPLEXITIES

Behind these various confusions there remains a serious set of questions about group or collective responsibility. These have recently been much

canvassed in philosophy³⁴ and I cannot hope to solve them here. But I want to argue that they are mostly irrelevant to the issue of legitimate lethal targeting and the “innocent” that concerns us here. Part of the motivation for the renewed interest in collective responsibility is a certain philosophical reaction against individualism. Communitarians and others have stressed the social nature of human life and the ways in which community life impinges on individual identity. I do not have much sympathy with the directions that this critique has taken, especially in its anti-liberal manifestations and its frequent sentimentality about actual community realities, but the importance of social life and the depth of our links to one another are significant metaphysical and moral facts. These facts also have political aspects, though we should never simply identify the social and the political. This gives rise to the thought that, in addition to responsibility for our own individual actions and for joint actions that we explicitly involve ourselves in, we may have a less obvious share in responsibility for actions by certain groups to which we belong. So, it is noted that many people feel pride in or shame at what their group has done even where they have had no agent input to it at all. The most obvious case of this concerns past actions of the group. Some Australians feel ashamed of what their national authorities and compatriots did to dispossess, mistreat and even kill aboriginal Australians, just as some U.S. citizens react similarly to the history of American dealings with Native Americans and with the “peculiar” institution of slavery. Yet, unless we suppose that there is an actual super-agent, the nation, with a will and intention that somehow absorbs the individual wills and intentions of citizens, even those who do not yet exist or who reject the policies and deeds attributed to the nation, these feelings can seem absurd. In some respects, these phenomena mirror natural reactions of pride and shame that family members have about each other. Parents will take pride in the scholastic or sporting achievements of their offspring, even where they have had little or nothing to do with bringing them about. People will also feel pride or shame when they learn of good or ghastly deeds by their parents or grandparents, though their own agency is irrelevant. However we explain these reactions, it would be absurd to suggest that their legitimacy means that those having the reactions should be rewarded or punished for the deeds in question. The bond may be

³⁴ For instance, see articles by Margaret Gilbert, Burleigh Wilkins, Virginia Held and Jan Narveson in the 2002 special issue of *The Journal of Ethics* 6 (2002), pp. 111–198. See also Larry May and Stacey Hoffman (eds.), *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Savage: Rowman & Littlefield Publishers, 1991); Margaret Gilbert, *Sociality and Responsibility* (Lanham: Rowman & Littlefield, 2000); Seumas Miller, *Social Action: A Teleological Account* (Cambridge: Cambridge University Press, 2001); and Burleigh Wilkins, *Terrorism and Collective Responsibility* (London: Routledge, 1992).

real enough to make the reactions intelligible without being the kind that licences strong forms of liability. Nonetheless, it may licence or require some form of appropriate response. So many people think that present day Australians owe contemporary aboriginal people some form of apology or expression of regret for the wrongs inflicted by past Australians, especially where the wrongs were officially promoted or condoned. Similarly, parents may feel obliged to express sorrow to victims of their children's misbehaviour, even where the children are independent adults. For some categories of example, our answerability for past wrongs by relatives, colleagues or co-nationals may well be stronger so that there can be legitimate demands for restitution or compensation. There are deep and difficult issues raised by these demands and we cannot consider them further here.³⁵ But it would be absurd and unjust to propose jailing or executing contemporary citizens for murders or other grave crimes committed by their ancestors or fellow citizens in the past. As Kavka himself notices, stretched notions of liability make more sense, where they make sense at all, in the civil rather than criminal jurisdictions. Yet when we are discussing Buzan's question "Who May We Bomb?" we are clearly talking about international crime and how to deal with it.

For these reasons, I think that resort to "collective responsibility" as a way of widening the scope of legitimate lethal targeting is a bad idea. There are, however, two things that this rejection does not mean. It does not mean that we should forget about the responsibility of individuals for group action where they are genuinely agents of what the group does. Mere citizenship (which, after all, a young child has) does not make you a co-agent with all your government's acts, crimes and follies, but there may be things you do (as a recruiting officer or a weapons manufacturer or a senior official in the Ministry of Defence) that make you a legitimate target. Second, you may be a subject of criticism, if not of attack, for not having done more to influence your government or to make your opposition to its policies more evident. Adult citizens, at any rate, have a certain political dimension to their existence which implies some answerability (if not full-blooded responsibility) for the sort of political society they live in. Of course, their opportunities for influence are often non-existent and frequently minimal, especially in dictatorships and often in democracies. Moreover, they have other things to do with their lives than beat their heads against the brick walls of political power. Yet, when all is said and done, the citizens of a country do stand in a somewhat different relation to its government than do foreigners and this calls for some attention. I put the matter weakly and talk of answerability rather than responsibility just because I

³⁵ Janna Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (Oxford: Polity Press, 2002), discusses many of them with great lucidity.

realise how impotent citizens in even a half-decent democracy can be in the face of powerful elites and the impact of wealthy pressure groups. Ordinary citizens also often face formidable informational difficulties in discovering what is going wrong and in working out effective ways of bringing about change. We need an approach that encourages responsible action without punishing real or imagined failure with something akin to the most severe treatment of the criminal law.

There is another important issue surrounding the definition and morality of terrorism that has come to the fore in recent years because of the degree to which direct targeting of non-combatants has been, at least rhetorically, acknowledged to be both immoral and impolitic. But of course it is one thing to attack non-combatants directly, it is another to create “collateral damage” to them. Just war theorists have usually allowed that some foreseen unintended harm to non-combatants can be legitimate in the pursuit of properly military objectives. This has often been encompassed by some version of the principle of double effect, but, however it is done, it seems that modern war (and perhaps any war) cannot be conducted unless there is room for some incidental harming of the innocent. Such harming should not only be unintended but it should not be disproportional to the specific military objective to be achieved. Moreover, if one has a genuine concern to minimise innocent casualties, then one should do what can realistically be done to operate military policy with that concern in mind. As Walzer has pointed out, this may involve taking more risks with the lives of one’s own troops, and I would add (what is perhaps implied by Walzer) taking more risks of defeat.³⁶ But if this is so, then it is not enough to dismiss unintended civilian casualties as mere “collateral damage.” Tolerance of collateral damage should not exhibit culpable indifference to the effects of lethal action upon civilians. There can be little doubt that much of the revulsion from talk about collateral damage that can be discerned in public debate about recent wars waged with high technology weapons, mostly from the air, arises from the perception of such indifference.

Should policies and deeds exhibiting such indifference be termed “terrorist”? They certainly share something with the spirit of terrorist acts, but I should be inclined to resist calling them “terrorist.” Policies and deeds in war or revolution can be gravely immoral without being terrorist, and it remains significant that policies involving varying degrees of indifference to collateral damage are not aimed at killing the innocent. Like the indifference to the deaths and injuries to one’s own ordinary troops that marked much of the conduct of World War I, they may nonetheless be gravely wrong. The affinity of spirit with terrorism might be marked by calling them “neo-terrorist.”

³⁶ Walzer, *Just and Unjust Wars*, pp. 151–156.

Finally, is terrorism wrong? Given just war theory and the tactical definition, the answer is, as I have argued elsewhere, clearly “yes.” And if one takes the principle of non-combatant immunity to invoke an absolute moral prohibition, as just war thinkers have commonly done, then it is always wrong. Yet many contemporary moral philosophers, sympathetic to just war thinking, are wary of moral absolutes. They would treat the prohibition as expressing a very strong moral presumption against terrorism and the targeting of non-combatants, but allow for exceptions in extreme circumstances. The really interesting moral issue is thus not whether terrorism is generally wrong, but whether it is nonetheless sometimes morally permissible. In some respects, the question is whether the intentional killing of non-combatants is like the offense of lying – something that is generally wrong but permissible in certain circumstances (Of course, it will be conceded that the wrong of such killing is commonly graver than that of lying and that this will affect the circumstances that can make it permissible). So Walzer thinks that in conditions of “supreme emergency” the violation of the normal immunity expressed by the principle of discrimination is permissible in warfare between states though only with a heavy burden of remorse.³⁷ Interestingly, he does not extend this limited license to sub-state acts of terrorism, though others seem prepared to do so.³⁸ Walzer’s reluctance is particularly curious, given that his way of understanding terrorism is similar to that expressed in the tactical definition and he is prepared to treat the Allied air attacks on German cities as forms of terrorism. This raises an issue of consistency and it is one of the reasons why I am suspicious of the “supreme emergency” and other exemptions from the principle of discrimination. But this is a matter to be discussed more fully elsewhere.³⁹

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³⁷ Walzer, *Just and Unjust Wars*, Chapter 16.

³⁸ Walzer, “Terrorism: A Critique of Excuses,” p. 238.

³⁹ I have made a beginning to such a discussion in Coady, “Terrorism, Just War and Supreme Emergency,” pp. 15–21.