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## Terrorism, War, and The Killing of the Innocent

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**Abstract** Commonsense moral thought holds that what makes terrorism particularly abhorrent is the fact that it tends to be directed toward innocent victims. Yet contemporary philosophers tend to doubt that the concept of innocence plays any significant role here, and to deny that prohibitions against targeting noncombatants can be justified through appeal to their moral innocence. I argue, however, that the arguments used to support these doubts are ultimately unsuccessful. Indeed, the philosophical positions in question tend to misunderstand the justification of both the prohibition against targeting noncombatants, and that of the permission to attack combatants, for which the paper offers a new account. Such misunderstandings make it all too easy to justify both terrorist actions and morally objectionable actions on the part of nations at war. Taking proper account of the role of innocence in the context of armed conflict will alter our ordinary ways of thinking about the ethics of war, with respect to both *jus in bello* and *jus ad bellum*.

**Key words** collective responsibility · Fullinwider, Robert · individualism · innocence · Mavrodes, George · noncombatant immunity · proportionality · Primoratz, Igor · responsibility · terrorism · war

The trouble about violence is that most of the punishment falls on the innocent. That is why, even if you imagine you are fighting for the noblest of ends, the knowledge that it is more your children than yourself who will have to pay for your violence ... should make you hesitate.

W. H. Auden (2002, p. 454)

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## 1 Introduction

The idea that the particular moral horror of terrorism rests largely if not entirely on the fact of its being directed toward *innocent* victims is a firmly established article of common sense; so much so, indeed, that those nonphilosophers who turn to contemporary analytic philosophy in order to deepen their understanding of terrorism are likely to be disappointed, if not shocked, at the insignificance of the role innocence plays in this literature.<sup>1</sup> A significant number of philosophers writing on this topic at this time tend either to ignore, or to manifest a deep skepticism toward, the relevance of innocence to terrorism. Philosophers have their reasons, of course, for refusing to grant innocence the central place that it tends to assume in public discourse. But to the eye of common sense, from the perspective of which the intentional destruction of innocent human life is taken to be the *sine qua non* of terrorism, the rejection of the concept of innocence will seem either an inexplicable omission or a tragic mistake. Indeed, the typical nonphilosopher's encounter with this body of thought is less likely to make her doubt the relevance of innocence to the morality of terrorism, than it is to make her doubt the relevance of contemporary philosophy to some of the most pressing issues of our day.

The general reaction, at least in the western world, to the September 2001 destruction of the World Trade Center or the July 2005 London subway bombings cannot possibly be understood without noting the importance, for the majority of the public, of the perception that these were above all else attacks on innocent victims. That this is so suggests a continuing allegiance among the general public both to the idea that the intentional killing of the innocent is morally unjustifiable and to the idea that being a noncombatant civilian is sufficient to establish one's innocence.<sup>2</sup> Commonsense moral thought recognizes a general prohibition against targeting noncombatants (hereafter referred to as PATN) that is justified by the wrongness of trying to kill or harm the innocent, in a way that treats the terms 'noncombatant' and 'innocent' as synonymous, or at the very least as roughly coextensive. I will call this the Traditionalist account, which I mean to reflect not only its prominence in commonsense moral thought, but also the fact that it is supported by various religious accounts of the ethics of warfare, and in particular by the largely Catholic tradition of just war theory. As John C. Ford (1960, p. 98) writes, such accounts hold that noncombatants are to be disallowed as targets because they are "innocent of the violent and destructive action of war, or of any close participation in the violent and destructive action of war. It is such participation *alone* that would make them legitimate targets of violence themselves."<sup>3</sup>

Many contemporary philosophers, on the other hand, deny that the innocent/non-innocent distinction corresponds to the noncombatant/combatant distinction. These philosophers, whom I will call Revisionists, either deny that PATN is defensible at all, or

<sup>1</sup> The idea that terrorism is *by definition* directed at innocent targets is arguably a mistake, as the destruction of national monuments or other symbols, the targeted assassinations of certain political figures, and other such acts are nevertheless sometimes referred to as terrorism. Still, whether or not such cases properly fall under the classification of terrorist acts, they do not constitute core examples of that notion. For the purposes of this paper I will take the attack on the World Trade Center as a paradigmatic terrorist act, and will leave aside those not directed indiscriminately at human targets.

<sup>2</sup> This is not to imply that the objection to the destruction of innocent life is either universally endorsed or consistently applied. The American public, for example, has often shown a remarkable lack of interest in damage inflicted by its own military forces on innocent persons in other countries. I return to this topic, briefly, in Section 4.

<sup>3</sup> Others who seem to accept some version of the Traditionalist account include Bauhn (1989) and 2005), Holmes (1989), and Walzer (1977).

think that it must be justified on some basis that does not refer to the putative moral innocence of noncombatants.<sup>4</sup>

I will argue that the Traditionalist account is fundamentally correct, and that standard Revisionist objections to it are mostly unconvincing. PATN is justified with respect to almost all noncombatants, and it is precisely the fact that these noncombatants are *innocent*, in a substantial moral sense, that provides the justification. This is no trivial or merely theoretical disagreement: Revisionism, I argue, leads to serious and potentially dangerous errors. Even the best justifications Revisionism can offer for PATN are far less compelling than that provided by the Traditionalist account. As a result, the Revisionist approach tends to weaken and destabilize prohibitions against killing noncombatants, both in the context of war and in that of terrorism.

## 2 Against Revisionism

Revisionism denies that the innocent/non-innocent distinction corresponds with the noncombatant/combatant distinction. Thus, the Revisionist must demonstrate that there can be innocent combatants, or that there can be guilty noncombatants. (As a matter of fact most Revisionists argue for both.) In this section I will examine and critique the core arguments for Revisionism.

In an article published shortly after September 11, 2001, Robert Fullinwider wrote:

In war, however, the notion of “innocence” has nothing to do with lack of blameworthiness.... *From the point of view of moral-wrongdoing and just punishment*, many of the aggressor’s military personnel may be innocent; they may be reluctant conscripts with no sympathy for their nation’s actions. Likewise, among ordinary civilians, many may actively support and favor their country’s criminal aggression. They are not innocent. (Fullinwider 2001, p. 9; emphasis in original)

Why focus, as Fullinwider does here, on members of the *aggressor’s* forces? On standard accounts, which tend to hold that initiating military violence is never or nearly never justified, an aggressor is *by definition* engaged in an unjust war. Fullinwider, then, wants to provide a vindication of the innocence of some combatants that can apply even to combatants engaged in an unjust war. Given the common assumption that the rules of war must be neutral and symmetrical, so that the justice of the cause for which one fights must be viewed as irrelevant to the question of one’s innocence – in the words of Michael Walzer (1977, p. 41), combatants on both sides possess “an equal right to kill”<sup>5</sup> – any defense of innocence in the relevant sense must be as available to those who fight on behalf of unjust causes as to those who fight for just ones.

The grounds offered by Fullinwider for rejecting the Traditionalist account parallel those described by George Mavrodes in an influential earlier article (1974/75, pp. 122–23):

[A] young man of limited mental ability and almost no education may be drafted, put into uniform, trained for a few weeks, and sent to the front as a replacement in a low-grade unit. He may have no understanding of what the war is about, and no heart for

<sup>4</sup> Significant defenses of this position include Mavrodes (1974/75), Fullinwider (1975/76), and Palmer-Fernandez (2000).

<sup>5</sup> I myself have deep doubts regarding this view (see note 23); for the most part, however, I put aside these doubts for the purpose of this paper.

it. He might want nothing more than to go back to his town, and the life he led before. But he is “engaged,” carrying ammunition, perhaps, or stringing telephone wire or even banging away ineffectually with his rifle. He is without doubt a combatant, and “guilty,” a fit subject for intentional slaughter. Is it not clear that “innocence,” as used here, leaves out entirely all of the relevant moral considerations – that it has no moral content at all?<sup>6</sup>

The correspondence between non-innocence and combatant status is here rejected mainly on the basis of the possible lack of correspondence between a combatant’s behavior and his inner state of mind.<sup>7</sup> A combatant might disapprove of what he is ordered to do, he might not have chosen to be there in the first place (he might have been conscripted); he might, as Mavrodes touchingly puts it, have “no heart for it.” Combatants who are thus alienated from the unjust causes for which they fight, claim Revisionists, are no less innocent than the civilians on whose behalf they fight. Indeed, since the civilians may bear violent and pro-war sentiments in *their* hearts, the combatants may actually be *more* innocent.

But is this really plausible? Let us imagine a combatant in a typical military conflict, fighting, as in Fullinwider’s story, on behalf of an aggressor nation. Suppose that our combatant, who is indeed trying to kill people, does not *want* to be killing people: he hates the war, has no sympathy with his country’s cause, and wants nothing more than to be home. Now, is there any way whatsoever in which these facts about this person’s sentiments might justify the claim that he is morally innocent, as the Revisionist’s argument suggests? He is trying to kill people, and in the service of what he himself admits to be an unjust cause. Perhaps he is doing it, not out of an intrinsic desire to kill, but because he has been ordered to, or believes that it is his patriotic duty. These facts might affect our moral evaluation of his behavior to some extent; but is it really plausible to think that his lack of sympathy for the evil actions he performs is enough to force us to declare him *innocent*?

Examples from other contexts cast doubt on this claim. Suppose that a mobster, ordered by his superiors to murder a suspected informant, says to his victim (entirely sincerely), “I really regret having to do this.” Or suppose a private citizen who conducts his life by an archaic code of honor feels that he simply *must* hunt down and kill the man who insulted his mother. No matter how distasteful such people find these violent acts, and no matter how keenly they might regret their alleged necessity, these individuals, if they carry out their acts, are clearly guilty of murder. Moreover, they are not simply *legally* guilty, as if by virtue of a technicality. Rather, these individuals are *morally* guilty.

The Mavrodes–Fullinwider critique of Traditionalism depends on the view that one’s sentiments, rather than one’s actions, are the primary determinants of moral blameworthiness. But this view is implausible. Indeed, one must wonder whether a person who claims to be opposed to some horrific action, but who performs it nonetheless, is *really* opposed to it at all; whether, that is, she has not merely registered an internal vote of opposition to it, precisely as a strategy for assuaging her conscience and attempting to excuse herself from full responsibility, in her own mind if nowhere else. Such strategies are distressingly

<sup>6</sup> Along similar lines, Sparrow (2005, p. 315) suggests that being “innocent of the desire to kill others” is enough to make one innocent in the relevant sense. A similar argument is sketched, but not fully endorsed, in Murphy (1973, pp. 531–32).

<sup>7</sup> There is also a secondary rationale – that the relation of the combatant’s action to actual *combat* might be so indirect that he cannot be considered to be genuinely “engaged” at all. However, as the account I will later propose will suggest, this seems insufficient to establish the combatant’s innocence in any meaningful sense so long as he is in fact willing to engage in combat if ordered to do so.

common and familiar. Stanley Milgram has written, with reference to his famous obedience experiments (1974, p. 10, my emphasis):

[B]etween thoughts, words, and the critical step of disobeying a malevolent authority lies another ingredient, the capacity for transforming beliefs and values into action. Some subjects were totally convinced of the wrongness of what they were doing but could not bring themselves to make an open break with authority. Some derived satisfaction from their thoughts and felt that – within themselves, at least – they were on the side of the angels. What they failed to realize is that *subjective feelings are largely irrelevant to the moral issue at hand so long as they are not transformed into action.*<sup>8</sup>

Psychological alienation from the violence one inflicts does not, then, excuse one from moral responsibility for one's intentional actions. Nor does it strengthen the Revisionist case significantly to claim that a combatant does not really choose his actions, but rather performs them only under orders from what he regards as a legitimate authority. For it is still up to the agent to choose whether or not to obey the order to do evil; and while some degree of responsibility may indeed attach to those who give the order, this need not be taken to diminish the responsibility of the agent for his own actions, and certainly not to entirely erase such responsibility. As stated in the Principles of the Nuremberg Tribunal (1950), "the fact that a person acted pursuant to an order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him."

If we are willing to recognize degrees of non-innocence – and I think we should – then we might well acknowledge a distinction between the *instrumental* non-innocence of an agent who is carrying out the evil intentions of another, and the *intrinsic* non-innocence of the agent who is carrying out her *own* evil intentions.<sup>9</sup> (Similarly, in the realm of the sentiments, we might well acknowledge that the very worst of the killers are those that *do* have the heart for it.) The point, however, is that the intuitive distinction between carrying out one's own intention and carrying out another's intention can only take us so far: ultimately, the person who chooses to act on another's intention thereby makes that intention her own. She does not bear responsibility for initially forming it, which may be the source of the intuition that she is less blameworthy; but this in no way diminishes her responsibility for accepting and acting on it.

Of course, it will be suggested by some that a soldier who obeys an order to do evil, and thereby makes an intention to do evil her own, is not to be blamed nor even excused but rather *admired*, since following the orders of a legitimate authority is a soldier's moral duty. In the case of such orders as we are considering, however – most centrally, the order to kill in the name of an unjust cause – this claim is highly dubious. It is true, of course, that a legitimate authority can sometimes authorize, and thereby make morally permissible, an action that would otherwise be wrong. A tax collector, for instance, is permitted to forcibly deprive me of a certain portion of my property in a way that no non-authorized citizen

<sup>8</sup> Compare Christopher Kutz's account of the moral responsibility of employees of companies with harmful policies: "[T]hose who contribute to collective acts on an ongoing basis will fall into the category of intentional participants so long as they see themselves as part of a collective act, and whether or not they favor the collective goal. [...] Insofar as the employees' actions are modulated to the demands of a collective end, he or she is an intentional participant in that end, accountable for it." (Kutz 2000, pp. 162–3.)

<sup>9</sup> This distinction was suggested by an anonymous commentator for this journal.



can.<sup>10</sup> There is, however, a very deep disanalogy between this case and the sort of military case here under consideration. In the tax collection case, the collector's actions are permissible because her action is authorized by an authority who also has authority over me. Indeed, it is this latter fact – the government's authority over *me*, rather than over the individual acting on its behalf – that is really crucial to determining the legitimacy and permissibility of the act. In military cases, on the other hand, this clearly does not obtain: a soldier's government might have a degree of legitimate authority over *him*, but it has no authority over his *victim*, and therefore cannot authorize the killing of that person.<sup>11</sup> Thus we should agree, on this point, with Igor Primoratz (2002, p. 226):

We are constantly enjoined to do all manner of things by other individuals, groups, and institutions – and we are always bound to do some moral thinking for ourselves and check whether we really ought, or indeed may, do their bidding. In this respect, the state has no special status that exempts its commands from independent moral evaluation.

Despite what I have said so far, it will perhaps be thought that an excuse (though not, presumably, a justification) will be available in at least one type of case: that in which the combatants in question have been conscripted. I would argue, however, that in all but the most extreme cases, the fact of conscription will make very little moral difference. A conscription order, after all, is merely another order, and if one morally ought to disobey orders to commit immorality, this is presumably true here as well as elsewhere. Even in cases in which the conscript has been *coerced* into military participation, we must at the very least require that the threat involved in the coercion rise to a certain level of seriousness. That the threat makes disobedience a worse option, in *self-interested* terms, than obedience is necessary but insufficient (though given the risks and miseries of armed combat, this is already an extremely demanding criterion.) The threat must also outweigh the *moral* cost of engaging in violence on behalf of an unjust cause. To disobey a draft order certainly takes courage, but as David R. Mapel has written (1998, p. 178; cf. McPherson 2004, p. 496):

[I]f we expect individuals to be brave enough to risk their lives on the battlefield in order to fight for a just cause and to abide by the rules of engagement at significant risk ... why should we not expect individuals to be brave enough to endure social disapproval and even a lengthy jail term rather than engage in a war they are convinced is criminal? Are the two sorts of courage really so different?

As before, it is clear that we would not accept such an excuse in the context of civil society. If a mobster motivates a civilian to plot and carry out the killing of an innocent victim by threatening the civilian's life or relatives, establishing this as the cause of the murderer's action would not automatically release her from all blame. Why, then, should the matter be different in a military context? One might defend the difference by holding that the government, unlike a mobster, is *entitled* to use threats to force individuals to act against their better judgment – that this constitutes a *legitimate* forcing, as opposed to the mobster's illegitimate one. But this is only to return to the idea, which we have already

<sup>10</sup> I owe this example to an anonymous commentator for this journal.

<sup>11</sup> Obviously enough, this is not meant in any way to imply that there are no limits on what a government can do to those over whom it *does* possess legitimate authority. The U.S. government can no more authorize the killing of an innocent U.S. citizen than it can authorize the killing of an innocent foreign national.

rejected, that the government, by virtue of its nature as a legitimate authority, can transform wrongful actions in this sphere into morally permissible and even required actions. In all but the most extreme circumstances unjust violence remains unjust, unjustifiable, and inexcusable, even when committed by agents acting under orders, or under pressure, or who feel themselves to have been reluctant or unwilling participants.<sup>12</sup>

*Contra* Revisionism, then, a combatant's lack of identification with his violent actions provides little reason to relieve him of moral accountability. This becomes particularly apparent when we compare his case with the genuine and profound form of innocence – I will call it *paradigmatic* innocence – possessed by certain noncombatants: those who quite literally have nothing to do with the military conflict in question. Children are the clearest case: as Jeffrie G. Murphy (1973, p. 536) claims, “with respect to moral innocence, we can take babes in arms as paradigms.” The sense of tragedy that attends the death of a child in war reflects our sense that the child was not in any relevant way involved in the conflict. It is adults who make wars; children, on the other hand, merely get caught up in them. Any arguments that might be given for regarding certain noncombatants, who support the war in various spiritual or material (but nonmilitary) ways, as non-innocent will fail to implicate children, who retain their status of paradigmatic innocence regardless of the behavior of adult members of their society. The existence of the paradigmatically innocent poses a deep challenge to those philosophers who reject the relevance of innocence to the ethics of war and terrorism.

To bring up the paradigmatic innocence of children is to move from the issue of innocent combatants to that of guilty noncombatants; and at this point we must consider the suggestion that we should deny that any citizen of a nation at war can be held to be morally innocent of the violence of that war. Quite aside from such factors as one's psychological identification with or actual support for one's government's policies and actions, it is sometimes maintained, mere citizenship can suffice to make one responsible for the aggressions and other crimes of one's country, and so can render one an appropriate target of violence. Along these lines, Mavrodes (1974/75, p. 123) writes that

warfare, unlike ordinary criminal activity, is not an activity in which individuals engage qua individuals or as members of voluntary associations. They enter into war as members of nations. It is more proper to say that the nation is at war than that its soldiers are at war. This does not, of course, entail that individuals have no moral responsibility for their acts in war. But it does suggest that moral responsibility may not be distributed between combatant and noncombatant in the same way as between a criminal and his children.<sup>13</sup>

If moral responsibility and guilt are collective in nature, then an aggressor's combatants presumably share their responsibility and guilt with that side's noncombatants, and no

<sup>12</sup> This assumes, of course, that the combatants in question are old enough to be responsible for their moral decisions. Sadly, this is not always the case; in many parts of the world today, youths and even children are encouraged if not forced to take part in military violence. The moral status of these fighters is a difficult issue that must, for reasons of space, fall outside my discussion; I will only note my agreement with Primoratz's remarks on the issue: “If soldiers are minors, of course, they can't be held responsible [...] If they aren't minors, their youth doesn't exempt them from making their own moral decisions and being held responsible for them and the actions that follow. Making one's own decisions and living with their consequences is just what it means to be a minor no longer.” (Primoratz 2002, p. 229)

<sup>13</sup> Similar views are expressed in Sparrow (2005) and Zohar (1993 and 2004).



special prohibition against becoming the target of military force can protect the latter group on the basis of their alleged innocence.<sup>14</sup>

It is no doubt true that moral agents are sometimes morally accountable for what they do as a group, rather than what they do as individuals. Christopher Kutz (2000) has persuasively argued that an individual who knowingly promotes a group project may sometimes be held responsible for the harm caused by the group even if her own contribution is very small.<sup>15</sup> This, however, is a very different form of collective responsibility than that suggested by Mavrodes. On Kutz's account, while an individual may be accountable for harms she does not *directly* contribute to, it is still necessary that she make herself part of the group project through her voluntary actions. Noncontributing individuals are not accountable for harm caused by groups membership in which was not under their control, nor for harm caused by the unforeseeable wrongful actions of members of groups that they chose to join. To be accountable, individuals must choose to voluntarily aid or abet the wrongdoing in some way.

The form of collective responsibility recognized by Kutz (call it responsibility via intentional action) would seem to be a genuine moral phenomenon. But the form of collective responsibility suggested by Mavrodes (responsibility via mere membership) is far more dubious. Indeed, even some theorists who are willing to admit that *some* forms of responsibility might be collective in the 'mere membership' sense are hesitant to say that *moral* responsibility might be. (See, e.g., Miller 2004). Given that national identity is (for most) not a matter of individual choice, the idea that someone could be held responsible or blamed for what her nation does, merely by virtue of her citizenship in that nation, is not only dubious but abhorrent. Those who are too young to take part in their nation's collective political life, who live under political arrangements that afford them no opportunity to do so, or who have used what means are available to oppose their nation's harmful actions and policies, cannot in any meaningful sense be said to be responsible for those actions and policies. Contrary to Mavrodes, the distribution of responsibility here is precisely analogous to that between a criminal and his children: each of them must be held to be responsible for her own actions, and only hers.

Some Revisionists, though, have argued that the situation is different in democratic societies. Thus, Virginia Held writes (2004, p. 67):

Especially in the case of a democracy, where citizens elect their leaders and are ultimately responsible for their government's policies, it is not clear that citizens should be exempt from the violence those policies may lead to while the members of their armed services are legitimate targets. *If* a government's policies are *unjustifiable*, and *if* political violence to resist them is *justifiable* (these are very large "ifs," but not

<sup>14</sup> Zohar (1993) offers an interesting alternative position, accepting the idea of collective responsibility for combatants, while insisting that responsibility must be distributed individualistically among noncombatants. This is convenient, in that it seems to match our pre-theoretical intuitions. However, in the absence of an explanation as to *why* responsibility should be assigned differently to combatants than to noncombatants, the suggestion seems somewhat *ad hoc*. Kutz (2005)'s discussion of these issues seems to reflect a view somewhere between Zohar's and my own. On the one hand, Kutz seems to allow that insofar as an individual combatant has "partly authorized a war" by voluntarily taking part in it, he may be held responsible; on the other, he seems to hold that what such combatants are responsible for is "the *collective* decision to wage war," and should be punished, and presumably evaluated, "as a member of a collective" (p. 165, my emphasis). Whether this account is compatible with mine depends on how we interpret the word 'collective.'

<sup>15</sup> See also Miller (2005).

at all unimaginable) then it is not clear why the political violence should not be directed at those responsible for these policies.<sup>16</sup>

This argument has been used by Osama bin Laden, among others, to establish that all U.S. citizens are deserving targets of *jihadi* violence and thus to justify the attacks of September 2001 (Feldman 2006, pp. 56–57). But even in democratic societies the conflation of ‘those responsible for these policies’ with the general citizenry is unjustifiable. First, the paradigmatic innocence of the children who reside in a given country represents an insurmountable obstacle for any view that would permit indiscriminate attacks on civilians. Nor, again, is it clear how those citizens who have actively opposed the government whose policies are unjustifiable could constitute legitimate targets.<sup>17</sup> Speaking of the responsibility of the democratic public as a whole is, at best, a metaphor, and potentially a very misleading one. It does not in any way justify our holding all of the citizens of such a country, regardless of their political beliefs and behavior, deserving of punishment for aggressions or other crimes committed by their government.<sup>18</sup>

### 3 Justifying the Permission to Kill

Thus far I have argued for two main conclusions. The first is that moral agents who knowingly participate in aggressive or otherwise unjustifiable military action cannot be established as innocent by means of the standard Revisionist strategies (that they may be psychologically alienated, only following orders, etc.) The second is that at least some individual noncombatants possess a form of moral innocence that ought to immunize them against becoming the intentional targets of violent acts. If these claims are true, then the case for establishing a Prohibition Against Targeting *Some* Noncombatants, and for doing so precisely on the basis of the moral innocence of those whom it would protect, is very strong. Moreover, since terrorist attacks of the relevant sort do not discriminate between these noncombatants and others, we may conclude that such acts can never be justified, regardless of the nature of the state against whose populace they are directed (cf. Primoratz 2002, p. 239).

If I am right about all this, then it is already enough largely to vindicate the Traditionalist view regarding the justification of PATN. I think, however, that the Traditionalist can do somewhat better. In particular, the precise nature of the moral innocence of noncombatants, and of the *non-innocence* that attaches to combatants by virtue of their combatant status, requires fuller elaboration. Moreover, the idea that the Prohibition Against Targeting Noncombatants provides only indirect protection for many noncombatants (by virtue of the prohibition against violence which fails to discriminate between the innocent and the non-innocent) will strike many Traditionalists as somewhat unsatisfactory.<sup>19</sup>

<sup>16</sup> McPherson (2004), while a bit vague on this, seems to hold a similar view; see p. 504.

<sup>17</sup> The suggestion that those who voted for the war may be considered legitimate targets will be considered in Section 3.

<sup>18</sup> I acknowledge that there may be other forms of moral responsibility or accountability, not directly linked to the justification of retaliatory violence, which might make every citizen of a country *legally* or *financially* liable for damages inflicted by her country’s army, etc. (See Miller (2004) and Baier (1991).) My concern in this paper, however, is only with responsibility insofar as it is relevant to noncombatant immunity.

<sup>19</sup> Indeed, as Sparrow (2005) points out, such a theory would seem to allow for attacks on at least some groups of civilians – the bombing of a pro-war rally, for instance (pp. 305–306).

Let us approach these issues by putting aside, for the moment, questions of innocence, and simply considering the proper justification of PATN.

In rejecting the Traditionalist idea that PATN can be justified through an appeal to innocence, Mavrodes suggests an alternative justification: PATN is a convention that is generally agreed upon solely for the purpose of reducing the destructiveness of war. The obligation not to target noncombatants “is best thought of as a convention-dependent obligation related to a convention which substitutes for warfare a certain form of limited combat. [...] [T]he convention itself is presumably to be justified by its expectable results” (p. 127; cf. Palmer-Fernandez 2000, pp. 170–71). Mavrodes’ view, then, is at its base a consequentialist one: adherence to PATN is justified by the fact that, *and only insofar as it is true that*, such adherence promotes good consequences overall (including similar adherence by others). Indeed, Mavrodes writes (p. 129), it is difficult if not impossible to understand how adherence could be justified were this not so:

[Suppose that] one’s cause is just and the slaying of noncombatants would advance it [...] If one refrains unilaterally in this situation then he seems to choose the greater of two evils [...] Now, if the relevant convention were operative, then his refraining from counter-population strategies here would be related to his enemy’s similar restraint, and indeed it would be related to the strategies which would be used in future wars. These larger considerations might well tip the balance in the other direction. But by hypothesis we are considering the case in which there is no such convention, and so these larger considerations do not arise. One acts unilaterally. In such a situation it certainly appears one would have chosen the worse of the two alternatives. It is hard to suppose that one is morally obligated to do so.<sup>20</sup>

Is it really so difficult, however, to suppose that one might sometimes be morally obligated to choose the worse of two alternatives, given Mavrodes’ assumptions as to what makes one outcome worse than another? Suppose that the perpetrators of the September 11 attacks were in fact utilitarians whose intention was to precipitate American efforts to overthrow violent and oppressive regimes in Afghanistan and elsewhere, thus saving many more lives than were lost in the 9/11 attacks themselves, and increasing liberty and quality of life for a still greater number. To the extent that these perpetrators had reason to believe that these consequences would follow, Mavrodes would be committed to holding that they had good moral reason to act as they did. For my part, however, the idea that considerations of that sort could render the World Trade Center attack justifiable seems far less plausible than the common sense thought that *nothing* could possibly have justified such an action. Considered at a high enough level of abstraction, it might indeed be “hard to suppose” that one might sometimes be morally obligated to choose to bring about an outcome that is less good, overall, than another which might have been brought about. But when we move to consider the concrete case, where the case is of the nature of the September 11 attacks, many of us will suddenly find the same conclusion rather easy to suppose and, indeed, hard to deny.

It should not be thought that this is merely a psychological matter – that focusing on particular examples provokes emotional reactions that cloud our grasp of the general principles. Rather, what thinking about actual cases does is remind us of the “separateness of persons”: to remind us, that is, that in the actual world the interests that matter are those

<sup>20</sup> Mavrodes also asks us to suppose that “one is not prevented by considerations of justice and proportionality” from intentionally killing the noncombatants in question. If my position is correct, considerations of justice would *always* prohibit the intentional killing of noncombatants.

of particular individual people and not those of some aggregate or collective entity with respect to which a 'general good' can be defined. As Robert Nozick (1974, p. 33) writes, "There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more."<sup>21</sup> The alternative identified by Mavrodes as 'worse' may indeed be worse for some, but not for those noncombatants whose being killed would advance the "just cause" in question; and it is not clear how the benefit to those who would enjoy the just cause's victory could be expected to compensate the victims for having lost their very lives – or why the fact that they would *not* be compensated should play no significant role in the moral calculus.

One might wonder, moreover, why on Mavrodes' view PATN should focus on the particular individuals it does. The question of *who* is to be protected is fundamentally irrelevant on Mavrodes' consequentialist view; all that matters on that view is protecting as many people as possible. Why, then, should we protect noncombatants in particular? In light of certain empirical assumptions, Mavrodes' view happens to protect children, but this is not essential: if a convention that permitted the slaying of children on, say, Tuesdays and Thursdays while prohibiting the killing of combatants on those same days was ultimately more effective in reducing war costs overall, it would have to be preferred. As I have argued, however, the case for regarding certain individuals as innocent, and so morally off limits, is not in any way threatened by the arguments Mavrodes and Fullinwider provide. The view that prohibitions against deliberately killing noncombatants are *purely* conventional, then, far exceeds the degree of skepticism about innocence the anti-Traditionalist objections warrant.

However, while Mavrodes' conventionalism should be rejected, its failure helps point us toward a more adequate account. Mavrodes' account errs by approaching matters from the wrong direction: it begins with the presupposition that killing is allowable in war, and then asks why it is that, even in a war, certain people may not be killed. Let us begin instead with the natural thought that human beings, in normal circumstances, possess certain inviolable rights, chief among them being the right not to be killed. The question then becomes: how is it that, in certain situations, it is permissible to kill some people?<sup>22</sup> And it is here that the conventionalist approach turns out to contain an important grain of truth. For it is because people who take part in wars agree to the suspension of ordinary moral rules – the suspension of the ordinary prohibition on killing is, after all, an essential part of war – that ordinarily impermissible behavior becomes permissible. Thus, rather than explaining the combatant-noncombatant distinction by invoking a convention *against* killing – for the prohibition against killing is, from a moral point of view, surely the default position – we should, I suggest, explain that distinction by invoking a convention that *permits* certain forms of killing.

Unlike Mavrodes' suggested convention, however, which is limited only by its utilitarian efficacy, the permissive convention is subject to very significant moral restrictions. After all, it is clearly not the case that any type of behavior can be justified through the establishment or invocation of a convention by those engaged in it. At the very least it is a necessary condition that, where the behavior in question would otherwise be considered to

<sup>21</sup> Cf. Taurek (1977). I owe thanks to an anonymous commentator for suggesting that it would be useful to invoke Nozick here.

<sup>22</sup> Cf. Walzer (1977, p. 145): "The theoretical problem is not to describe how immunity is gained, but how it is lost. We are all immune to start with."

violate some party or parties' moral rights, the establishment or invocation of a convention can serve to permit that behavior only with respect to those who consent to the convention, and in doing so waive those rights. Thus, the violence permitted by the convention we are now considering – I will refer to it as the Permission To Attack Combatants, or PTAC – may only be intentionally directed to those individuals who freely choose to be governed by the convention: those individuals, who, in choosing to participate in combat, consent to the suspension of ordinary moral prohibitions against killing with respect to their own lives. Thus, the short answer to the question of why we may target combatants, but not noncombatants, is that in entering the battlefield as a combatant one is *ipso facto* consenting to be a target.

Thomas Nagel (1979, pp. 66, 69) has written that the conduct of combatants during warfare ought to be limited by the rule that

whatever one does to another person intentionally must be aimed at him as a subject, with the intention that he receive it as a subject. It should manifest an attitude to *him* rather than just to the situation, and he should be able to recognize it and identify himself as its object. [...] It may seem paradoxical to assert that to fire a machine gun at someone who is throwing hand grenades at your emplacement is to treat him as a human being. Yet the relation with him is direct and straightforward.

Nagel's account is, I think, essentially correct. What needs to be made explicit is that, no matter how "direct and straightforward" one's relationship to a person who poses a direct threat, a violent response can constitute treatment "as a human being" only on the assumption that the target has consented to playing by the rules according to which such violence is regarded as a legitimate and reasonable response. (In Nagel's imagined case, in which the target is deliberately throwing grenades, this condition is clearly met.) It is precisely this that makes one's relationships with enemy combatants "direct and straightforward," and which renders those who have not consented "peripheral," thereby placing them off limits.

Against the background assumption that those who threaten one another in war are *combatants* who have, in effect, consented to their status as combatants and so consented to the special rules of war, it is possible to see any and all rule-abiding war violence, no matter how brutal, as treatment that is in accordance with respecting one another as persons.<sup>23</sup> For it is of the nature of the rules of war to permit such treatment, just as it is of the nature of the rules of football to permit tackling; so that the attempt to shoot an enemy combatant is no more incompatible with respect for her as a person than is the tackling of an opposing player on the football field. (Tackling the *spectators*, on the other hand, is forbidden – not only by the rules of football, but by those of morality – even in cases where doing so might somehow help one's team win.) Only a soldier who had no grasp whatsoever of the nature

<sup>23</sup> There is one sort of case in which the interpretation of combatants as having *consented* to their combatant status is problematic. That is the case in which war is literally forced upon one: when one's homeland is attacked by an aggressor. In such cases, I tend to agree with those (including McPherson 2004 and McMahan 2004) who hold that just combatants in asymmetrically just conflicts should be considered to possess the right to employ military violence against those who, although they are already using violence, have no moral right to do so. These theorists disagree with the more standard view (held by Walzer 1977 and others) that justifications for participation in warfare must be available to combatants on all sides equally. Whether or not such cases call for special treatment, they are sufficiently uncommon, and the issues sufficiently complex, to justify leaving them aside for the purposes of this paper.



of war would find herself bewildered by the fact of her being shot at by opposing forces; a similar mistake is presumably made by the soldier who *resents* her enemies for treating her in this way. If they are in the wrong for so acting, then so is she, and so resentment becomes an inappropriate moral response.<sup>24</sup> Indeed, by becoming a combatant the soldier has signaled her own commitment to the view that the infliction of such violence on human beings is, under these conditions, a reasonable form of treatment. Being shot at is simply one of the things that happens in war; when one chooses to become a combatant in a war, one in essence authorizes such treatment, and so waives one's right to complain.

To say this is not to minimize the badness inherent in human beings' treating one another in this way. Nor is it to suggest that there is no reason to refuse to enter the arena of warfare as a combatant; indeed there are some quite powerful ones, which I shall come to in a moment. All I want to urge at this point is that these considerations provide us with a compelling justification for distinguishing between combatants and noncombatants in just the way that PATN recommends. PATN is simply the complement of PTAC: the latter marks out a class of exception cases to the former. Those engaged in warfare are permitted to target enemy combatants precisely because the combatants whom they target have consented to be so treated. Obviously enough, then, such combatants are *not* thereby permitted to treat as targets those who have not consented.

We need now to reconnect the account offered in the previous section with the notion of innocence. Let us begin by focusing not on innocence, but on non-innocence. If combatants are, in some sense, non-innocent, then they must be morally accountable for some bad outcome or action. What exactly is it, though, that they are accountable for? One possible answer is that they are accountable for trying to kill other combatants. This answer, though, is at least somewhat problematic, given that combatants, in accepting combatant status, thereby grant members of opposing forces permission to treat them in this way. This being the case, some might say, it is hard to see how the use of such force against legitimate targets could make them morally accountable. On the other hand, this position might strike some as excessively libertarian: surely, it will be protested, there are certain things we should not do to others, even if they say that we may. If this is so, then participants in wars may be morally accountable for the damage they inflict on their enemies despite the fact that their enemies have, in choosing to participate, acceded to such treatment.

Regardless of the resolution of that issue, there exists an additional negative outcome of warfare for which combatants clearly ought to be held morally accountable. If the damage caused by wars were entirely confined to those who chose voluntarily to take part in them, then libertarians at any rate would hold that participants in warfare were not morally accountable for anything of significance at all. But it is obvious that in the world we live in, wars are *not* like this; their damages are not at all confined to the people who choose to take part in them. We can speak here of a range of damages and costs, including environmental and economic ones, but what matters most is that noncombatants as well as combatants become direct victims of the violence of war; they, along with combatants, are liable to be injured or killed. Indeed, the tendency of modern warfare is to inflict *greater* damage on noncombatants than on combatants. According to Chris Hedges (2003, p.13) "In the wars of the twentieth century not less than 62 million civilians have perished, nearly 20 million more than the 43 million military personnel killed."

<sup>24</sup> This leaves aside, of course, the complicating possibility of asymmetrically just conflicts; see note 23.



In choosing to take part in a war, then, a combatant chooses to contribute to a project that is immensely costly, not only to those who choose to take part, but also to many who do not. And as Kutz (2000, p. 154) states, “It is both a reasonable and a necessary expectation upon agents inhabiting a crowded social landscape that they be prepared to deal with the costs imposed upon others by their freely chosen projects.” Indeed, it is highly plausible to think that a form of collective responsibility via intentional action will render such agents – that is, combatants on *both* sides of an armed conflict – accountable for the damage resulting from the conflict, given that they are knowing participants in an inherently destructive enterprise. I would argue, then, that John C. Ford is exactly right when he claims that what noncombatants are innocent of – and what combatants are accountable for – is, precisely, “the violent and destructive action of war.”

There are many reasons, then, why the decision to become a combatant – or a *potential* combatant, which one chooses to become by joining the armed forces in peacetime – may be regarded as morally objectionable. In the words of G.E.M. Anscombe (1981, p. 52):

The probability is that warfare is injustice, that a life of military service is a bad life “militia or rather malitia,” as St Anselm called it. This probability is greater than the probability (which also exists) that membership of a police force will involve malice, because of the character of warfare: the extraordinary occasions it offers for viciously unjust proceedings on the part of military commanders and warring governments, which at the time attract praise and not blame from their people.

Anscombe, of course, thought that the choice to be a combatant could sometimes be defended. Since my position is not that the permission to attack combatants is justified by their *deserving to be punished*, I need not deny that this is the case; it should be said, however, that I think cases in which it is are very rare. My position, again, is that the permission to treat combatants as targets is justified by the fact that in choosing to become combatants, they endorse the view that the infliction of deadly violence on human beings is a reasonable form of behavior, and indeed consent to being made the subject of such violence themselves. The rhetoric of innocence, as used in connection with war and particularly terrorism, expresses the thought that there is a certain degree of both tragedy and injustice involved when those who in practice eschew the view that it is ever reasonable or appropriate to treat human beings with such violence – those who, as we might say, “opt out” of war – nonetheless become victims of such violence themselves. If, as George Kateb (1992, p. 172) has written, one may object to conscription on the basis of “the right to life ...[i.e.] the right to be free of the state-imposed danger of premature violent death,” then one may on precisely the same basis object to any state-sponsored act of war which subjects civilians to the threat of military violence. For such persons, as much as those drafted into an army, have in effect been conscripted into a conflict they did not choose.

What are we to say, however, with respect to the responsibility of persons other than combatants? For while it is true that wars could not happen if no one were willing to fight, it is also true that others besides those on the battlefield help to cause wars. And this raises the possibility that some noncombatants will bear a level of responsibility for “the violent and destructive action of war” which is sufficient to render them proper military targets – thus casting doubt on the Traditionalist idea that the line between combatant and noncombatant corresponds to that between non-innocence and innocence.

For the most part, the Traditionalist can defuse this possibility. We should grant, as Robert Holmes (1989, p. 187) suggests, that one’s responsibility varies with the level and nature of one’s contribution to military action, so that there exists a continuum of degrees of non-innocence, with “initiators of wrongdoing (government leaders)” and “agents of

wrongdoing (military commanders and combat soldiers)” at the top, and the paradigmatically innocent at the bottom.<sup>25</sup> Acknowledging this need not deeply trouble the Traditionalist, so long as it remains possible to draw a fairly clear line between those whose non-innocence compromises their immunity to military attack, and those who will be shielded by PATN. In fact – outside of a relatively small number of borderline cases – it seems quite clear where this line should be drawn. Those who either give or carry out military orders, including soldiers, military commanders, and political leaders who make the decision to go to war, can be considered as having eschewed the protections of PATN. As Primoratz (2002, p. 231) writes:

The case of high political officials might be thought controversial, as they have traditionally been classified as civilians who mustn't be attacked. Yet surely those implicated in the decision to go to war and in major political decisions related to pursuing it are as responsible for it as those who fight in the field. Accordingly, when a war is fought, they too can be said to be “currently engaged in the business of war”; thus they too are a legitimate target of deadly violence. The pre-Nuremberg conceptions of sovereignty and ‘acts of state’ are no longer considered good grounds for their exemption.<sup>26</sup>

But Primoratz's next move – to extend this liability to attack to cover civilians who, while not directly involved in the war effort, voted to support the war – is far more questionable. Admittedly, unlike the collective responsibility position which was rejected above, Primoratz's view encompasses only those citizens of democratic societies who actually perform actions which support the war; nevertheless, the view is still too liberal in distributing non-innocence of the relevant sort. According to Primoratz, a citizen who “votes for the ruling party, gives allegiance to the government that is pursuing the war, [and] expresses her support for the war effort on appropriate occasions” is, he writes, “fully responsible for the war” and therefore “a legitimate target of military attack. [...] For both the government and the armed forces are but the executors of her will and the will of others like her” (p. 236). But surely this is overstated. A country's armed forces are composed of individuals who are themselves capable of moral thought and decision, and who are separated from the voting public by multiple layers of authority and bureaucratic organization. It is highly misleading to picture soldiers as killing machines that the hypothetical war supporter directly operates as if by remote control. Responsibility for their actions thus cannot devolve to voters in anything like the simple and direct manner Primoratz seems to suggest. As for the government, voters vote for individual members of the government, not for wars; and in many cases the only way to avoid voting for a candidate whom one expects to support at least *some* unjust causes is to refrain from voting at all. Robert Sparrow, in his criticism of Primoratz's article, is therefore quite right to express “doubt that any existing democracy is structured so that decisions about war could plausibly be attributed back to its citizenry. [...] In matters of war, even modern democratic states are depressingly unresponsive to popular opinion” (Sparrow 2005, pp. 309–10).

Robert Holmes (1989, p. 186) claims that “those *most* responsible for wars are usually least involved in the actual killing” But noncombatants are less responsible *and* less directly

<sup>25</sup> Cf. Bauhn 2005, pp. 124–5.

<sup>26</sup> Of course, given my position that the vulnerability to attack cannot be extended to the general populace, it will normally be impermissible to launch indiscriminate attacks against government officials or others who live or work in close proximity to innocent non-combatants.

involved than those who give the orders to kill, and those who carry out the killing. Indeed, it must be pointed out that soldiers *as a group* are at least as responsible for wars as the politicians who declare war, for without them such declarations would be impotent. The existence of wars thus depends on the willingness of soldiers to show up and do the fighting; and it is true of each soldier that *if not for him and people like him*, the killing would not be taking place. Wars happen only because there are individuals available who are willing to pick up weapons and use them to try to kill other individuals who are strangers to them. The combatants who in this context attempt to kill one another are not, perhaps, morally guilty for doing so; but the fact that they are permitted to try to kill one another is not contingent on any such guilt. The permission is rooted, rather, in the fact that the combatants at whom they aim have agreed to being so treated. It is precisely for this reason that it is not entirely implausible to hold that, in trying to kill one another, combatants are not morally guilty. And yet, combatants *are* guilty of something that bears considerable moral gravity. They are guilty of taking part in wars, and in doing so helping to make wars possible; and if this is morally serious for no other reason, it is serious simply because in war, it is inevitable that some people who have not consented will nevertheless be injured or killed. This is the true nature of the moral distinction between combatants and noncombatants, and the proper explanation of the significance of the concept of innocence in this context.

#### 4 Conclusion: Individualism and the Conduct of War

By February 1945 ... the German people could not be separated from Hitler. By then, in the eyes of many, the only good German was indeed a charred one.

Hew Strachan (2006, pp. 16–17)

Sir, – Many citizens of Coventry who have endured the full horror of intense aerial bombardment would wish to dispute statements made in the *Daily Express* to the effect that all the people of Coventry expressed the opinion that they wished to bomb, and bomb harder, the peoples of Germany. This is certainly not the view of *all* or even the majority of the people of Coventry. The general feeling is, we think, that of horror, and a desire that no other peoples shall suffer as they have done. Our impression is that most people feel the hopelessness of bombing the working classes of Germany and very little satisfaction is attained by hearing that Hamburg is suffering in the same way as Coventry has suffered.

Letter to the *New Statesman*, November 30, 1943 (cited in Grayling 2006, p. 193)

My approach in this paper has been guided by a pair of intuitions regarding the form of non-innocence that is relevant to identifying certain people as proper targets of military violence. The first is that a person is only rendered non-innocent by *her* actions (as opposed to the actions of others). The second is that a person is only rendered non-innocent by her *actions* (as opposed to her opinions and sentiments).<sup>27</sup> I hope that, thus

<sup>27</sup> Again, this is not to deny that a person may have deplorable sentiments, or that she may be deplorable on account of having such sentiments. It is only to deny that such sentiments alone may render her non-innocent in the robust sense relevant to distinguishing between appropriate and inappropriate targets.

stated, these intuitions will seem to the reader (as they seem to me) to smack of common sense. I also hope that stating them in this way helps to bring out what I take to be their deep relation.

This relation might be expressed by saying that I take both of these intuitions to support a kind of *individualism* about military ethics. The first does so fairly directly, by stating that a person may not be considered non-innocent, and thus a proper military target, as a result of actions performed by her fellow citizens, her country's army, its leaders, and so forth. The relation of the second intuition to individualism is only a bit less direct. Most people – even those who deny the second intuition – find it impermissible to *initiate* violence in a previously non-violent situation against a person whose only “crime” is that of possessing morally deplorable sentiments.<sup>28</sup> It is only once the violence has begun that such people become, on these views, proper targets. But if sentiments alone are held to make one responsible in this way, then one need not inflict violence oneself in order to be a proper target; it is enough, typically, that one's fellow citizens are doing so, and that one bears toward their actions the sentiments of approval. The second intuition simply denies that this combination of *one's own* sentiments plus *another's* action can render one non-innocent in the relevant sense.<sup>29</sup>

I discussed above how a related sort of denial of individualism – a denial, in that case, of the “separateness of persons” – leads to the undermining of noncombatant immunity. In a similar way, Revisionist approaches to military ethics tend to enable if not invite moral justifications of violence aimed at noncombatants. Fullinwider, for instance, has suggested that reasonably plausible moral justifications can be provided for both the 1972 massacre of Israeli athletes by the Palestinian group Black September (2001, p. 11) and the 1986 massacre of Jewish worshippers at the Neve Shalom Synagogue in Istanbul (1988, pp. 255–56). If we are to condemn such acts, according to Fullinwider, it will not be through an appeal to the philosophically questionable notion of human rights, and certainly not via reliance on any substantial concept of innocence.

What, then, might we rely on? In an early article Fullinwider (1988, p. 257) claims that the main objection that can be raised against terrorists is that they often miscalculate how effective their acts of violence will be in achieving their ends. But this would seem to be less a moral objection to terrorism than a prudential one; and one, moreover, that would leave us unable to criticize those terrorists whose actions were effective in achieving their goals. More recently (2001, p. 11), Fullinwider's position seems to be that terrorism is wrong because it is unlawful: “What is scary about terrorists is that they appeal to morality without appealing to law. They act as a law unto themselves.” But this account of the wrongness of terrorism places far too much significance on legality as a source of justification. As Per Bauhn (2005, p. 126) correctly notes, “What we find appalling is that innocent people are being killed, not that the agent who kills them lacks legitimate authority.”

A full recognition of the import of individualism in the sphere of military conflict would alter the conduct not only of those extra-legal groups deploying terrorist means, but of those states who have chosen to conduct their allegedly ‘legitimate’ armed conflicts in ways so

<sup>28</sup> Sparrow (2005, p. 313), for instance, writes that “No one deserves to die, merely for their opinions, no matter how reprehensible these may be.”

<sup>29</sup> The converse, of course, which is expressed in Section 2, is the denial that one's sentiments of *disapproval* for *one's own* actions can render one *innocent*.

highly damaging to civilian populations that they might well be considered guilty of so-called 'state terrorism.' The saturation bombing of German and Japanese cities in World War II is an example that has received some recent attention (see in particular Grayling 2006). At the time – and to some extent even now – it was common for citizens of the nations responsible to comfort themselves with the thought that the victims, being citizens of aggressor nations, were at least somewhat deserving of such treatment. But mere citizenship cannot possibly render someone liable for such treatment: a very large number of the German and Japanese civilians killed or maimed by British bombs were no more deserving of such treatment than were those residents of England killed or maimed by German bombs.

That aiming at civilians was seen by British Air Command as a legitimate and morally justified strategy surely testifies to the profound disrespect suffered by the concept of noncombatant immunity in the wars of the twentieth century. Still, it might be thought that strategies involving heavy civilian casualties could be justified if they did not target civilians directly, but only led to their deaths as side effects of the destruction of military targets. The robust version of noncombatant immunity supported by individualist moral intuitions is perhaps compatible with the thought that the death of civilians in wartime, while tragic, is an inevitable side effect of armed conflict and may, under the right conditions, be morally justifiable. But as is standard in just war theory, 'the right conditions' must include the requirement that the number and manner of deaths be proportional to the military objective obtained; and no approach compatible with the individualist intuitions I have relied on here will fail to rule out any conception of proportionality liberal enough to allow for the justification of anything approaching the destruction of Hamburg, Dresden, Tokyo, or Hiroshima.

Indeed, given that it maintains that a randomly selected citizen of Germany or Japan could not have been assumed to be any more worthy of being killed than a randomly selected citizen of Britain or the US, the application of the individualist conception leads fairly straightforwardly to a quite radical suggestion about the interpretation of the proportionality principle: a military action causing a certain number of enemy noncombatant deaths as a side-effect of bringing about objective *Y* ought to be considered morally justifiable if and only if it would be morally justifiable to cause, as a side-effect, the deaths of the same number of *one's own noncombatant citizens* in the course of bringing about *Y*. This version of the proportionality principle is, it must be acknowledged, far more demanding than any that is currently recognized in the global arena of armed conflict, and would disallow military strategies far less damaging to civilians than the saturation bombings of Axis cities – strategies that are now widely regarded as permissible and standard, and have been implemented by U.S. forces in air campaigns in Iraq, Kosovo and elsewhere.<sup>30</sup> Yet unless one rejects the underlying individualist intuitions, it is hard to see how to resist it. Of course, it is commonly accepted that societies may be partial to their own citizens in distributing *benefits*; but even supposing that such positive partiality can indeed be justified, it does not follow from this that partiality is also permissible when distributing *harms*. In the latter case, after all, moral rules are far more restrictive and the moral bar set considerably higher.

<sup>30</sup> This interpretation of the proportionality principle is defended in Christopher (1991).

Thomas Hurka (2005, p. 61) has suggested that we should accept partiality in the distribution of harms as well as benefits, arguing that the standard practice of placing more significance on the deaths of one's own noncombatant citizens can be defended via a domestic analogy: just as a father may collaterally kill more than one innocent bystander in order to save his daughter, a nation may collaterally kill a larger number of noncombatant noncitizens to save a smaller number of noncombatant citizens. Yet even if we accept his verdict in the domestic case (and I am not convinced that we should) the cases are so disanalogous as to render the comparison essentially useless. What works as a moral rule for parents, who almost never face situations involving the killing of bystanders, cannot be expected automatically to work for soldiers, who face such situations as a matter of course.

One need not accept this strictly egalitarian interpretation of the proportionality principle to believe that war, as practiced in the contemporary world, is very often if not nearly always conducted by unjust means. Modifying the rules of war to reflect individualist insights, then, would have significant effects on our conception of *jus in bello*. But *jus ad bellum*, too, would be affected: a significantly higher threshold would have to be met in order for countries to enter into armed hostilities. As I write this (November 2006) the Iraq Body Count website estimates the number of civilian Iraqi deaths due to the U.S. invasion to range between about 45,000 and over 50,000 people.<sup>31</sup> The invasion received widespread American public support at its commencement, with very few in the U.S. even bothering to publicly ask just what its cost in terms of civilian lives might be. It goes without saying that domestic support would have been in considerably scarcer supply had it been expected to cost tens of thousands of *American* lives.

The rejection of the Revisionist approach, then, will require us to modify our conception of *jus in bello* by accepting constraints on the conduct of war that will go beyond prohibiting intentional attacks on noncombatants – be they committed by 'legitimate' military forces or by nonstate terrorist organizations – in requiring a considerably higher level of due care with respect to noncombatant welfare than is generally regarded as obligatory at the present time. At the same time, it will require a substantially more demanding conception of *jus ad bellum* than is currently observed. Such changes to our ordinary ways of thinking about war will be necessary if we are to respect the deep moral significance of the fact that there are a great many people on both sides of any armed conflict who bear no meaningful relationship to the violence of the conflict and who, morally speaking, have more in common with 'enemy' civilians than with those who kill in their name – a significance which, I have argued, we can quite properly articulate via the language of innocence.

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<sup>31</sup> "Iraq Body Count: Civilians Reported Killed by Military Intervention in Iraq." Retrieved November 19, 2006 from [www.iraqbodycount.org](http://www.iraqbodycount.org). the precise lower and upper boundary figures are 47,305 and 52,483, respectively. It is entirely possible, moreover, that Iraq Body Count's methodology underestimates the true figures.



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