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EDITOR'S NOTE

Text is pending.

CONSPIRACY THEORIES AND STYLIZED FACTS¹

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Abstract

In an article published in the *Journal of Political Philosophy*, Cass Sunstein and Adrian Vermeule argue that the government and its allies ought to actively undermine groups that espouse conspiracy theories deemed “demonstrably false.” They propose infiltrating such groups in order to “cure” conspiracy theorists by treating their “crippled epistemology” with “cognitive diversity.” They base their proposal on an analysis of the “causes” of such conspiracy theories, which emphasizes informational and reputational cascades. Some may regard their proposal as outrageous and anti-democratic. I agree. However, in this article I merely argue that their argument is flawed in at least the following ways: (1) their account of the popularity of conspiracy theories is implausible, and (2) their proposal relies on misleading “stylized facts,” including a caricature of those who doubt official narratives and a deceptive depiction of the relevant history.

In an article entitled “Conspiracy Theories: Causes and Cures,” published in the *Journal of Political Philosophy*, Cass Sunstein and Adrian Vermeule have argued that the government and its allies ought to counter “conspiracy theories” or “extreme views”² by infiltrating and undermining the groups that espouse them. While they specify that this would apply only to theories that are (or are *deemed to be*) “demonstrably false,” they give no hint regarding how such a judgment is to be reached. I will argue that Sunstein and Vermeule’s proposal is not well supported. Among other problems, their account of the “causes,” which purportedly explain the popularity of (supposedly) “demonstrably false” conspiracy theories, is premised on a caricature of those who doubt official narratives. Moreover, the air of acceptability that they attempt to evoke regarding their proposed “cures” relies on a deceptive depiction of the relevant history. To use their own terminology, their argument is based on misleading “stylized facts” (described below).

Before I begin my critique, I should say something about Sunstein and Vermeule. At the time the final version of their paper was published, they were both Harvard law professors. Sunstein had just moved from the University of Chicago to Harvard, and shortly thereafter he was chosen by President Obama to

head the Office of Information and Regulatory Affairs, in which capacity he now serves. He is reputed to be “the most cited law professor on any faculty in the United States” according to a White House website, and “one of America’s leading constitutional scholars” according to Obama himself.³ Indeed, according to Supreme Court Justice Elena Kagan, “Cass Sunstein is the pre-eminent legal scholar of our time—the most wide-ranging, the most prolific, the most cited, and the most influential” (Mangan 2008). So, although some people may regard their proposal as too outrageous to merit rebuttal, I agree with Sunstein and Vermeule on one thing: problematic views ought to be confronted, not ignored. And so, particularly given Sunstein’s acclaim and position, it is worth explicitly detailing at least some of the falsities and fallacies on which their proposal is based.⁴

Conspiracy Theories

Sunstein and Vermeule define a conspiracy theory as “*an effort to explain some event or practice by reference to the machinations of powerful people, who attempt to conceal their role (at least until their aims are accomplished)*” (2009, 205). It is worth noting that by this definition Saddam Hussein’s purported attempt to conceal the weapons of mass destruction he supposedly had counts as a conspiracy theory.⁵ (Were he and his supposed co-conspirators not powerful people?) But of course “conspiracy theory” is not typically employed to describe such official accusations. So Sunstein and Vermeule’s definition does not well capture the actual scope of this phrase in ordinary usage. Roughly following the philosopher Charles Pigden, I think a more accurate description of what is generally called a “conspiracy theory” is: an interpretation of an historical event that runs counter to an “official story,” and suggests that elements within a Western government have behaved in ways that seem particularly egregious. In any case, my critique of Sunstein and Vermeule’s proposal does not depend on any particular or precise definition of the phrase.

There has actually been a fair amount of scholarly work on the philosophy of conspiracy theories in the last several years, most notably: a collection of essays in a book entitled *Conspiracy Theories: The Philosophical Debate* (2006), and an issue of the journal *Episteme* (4.2, 2007) that was dedicated to that topic. The bottom line of this work, as I read it, is that *all attempts to explain why “conspiracy theories” (or a definable subset thereof) ought to be dismissed have turned out to be failures.* (Sunstein and Vermeule’s attempt in this regard is a failure as well, as my discussion of reputational and informational cascades below shows.) This should not really be surprising, since all sides admit that at

least some significant conspiracy theories have turned out to be true. Watergate and Iran-contra are usually cited, but there are many more as well. For instance, the Bush administration's coordinated propagandistic efforts to win support for an invasion of Iraq was a conspiracy.⁶ And those who called it what it was early on were promoting a conspiracy theory, by most definitions. (Alas, if only that conspiracy theory had been more successful, much suffering and death may have been avoided.) In addition, as U.C. Davis History Professor Kathryn S. Olmsted explains:

[A]s the [U.S.] government grew, it gained the power to conspire against its citizens, and it soon began exercising that power. By the height of the cold war, government agents had consorted with mobsters to kill a foreign leader, dropped hallucinogenic drugs into the drinks of unsuspecting Americans in random bars, and considered launching fake terrorist attacks on Americans in the United States. Public officials had denied potentially life-saving treatment to African American men in medical experiments, [and] sold arms to terrorists in return for American hostages, and faked documents to frame past presidents for crimes they had not committed. (Olmsted 2009, 8)

There are also scores of conspiracy theories that remain plausible, yet unproven—or at least not widely accepted as proven. Many of these may well be true too, for all we know.

Causes: Informational and Reputational Cascades

Sunstein and Vermeule's major innovation are (1) the suggestion that what accounts for the success of conspiracy theories deemed to be "demonstrably false" are informational and reputational cascades, and (2) the proposed "cure," cognitive infiltration, which is designed to disrupt these cascades. But these cascades are implausible explanations for the success of conspiracy theories, especially for the set of conspiracy theories that they take as their "running example," namely conspiracy theories about September 11.

Informational Cascades

Sunstein and Vermeule argue that informational cascades, in significant measure, explain the pervasiveness of "demonstrably false" conspiracy theories. I will quote them at length to show how easily such cascades can be applied to explain the success of (dubious) official stories as well. It is not a phenomenon that has any *particular* relation to conspiracy theories. I have simply changed references to conspiracy theories into references to official stories, as indicated by brackets and strikethrough lettering. (Note that so-called "informational cascades" do not actually involve cascades of *information*, or evidence, but rather cascades of opinion.)

To see how informational cascades work, imagine a group of people who are trying to assign responsibility for some loss of life. Assume that the group members are announcing their views in sequence. Each member attends, reasonably enough, to the judgments of others. Andrews is the first to speak. He suggests that the event was caused [just how the government said it was] ~~by a conspiracy of powerful people~~. Barnes now knows Andrews's judgment; she should certainly go along with Andrew's account if she agrees independently with him. But if her independent judgment is otherwise, she would—if she trusts Andrews no more and no less than she trusts herself—be indifferent about what to do, and she might simply flip a coin.

Now turn to a third person, Charleton. Suppose that both Andrews and Barnes have endorsed the [official story] ~~conspiracy theory~~, but that Charleton's own view, based on limited information, suggests that they are probably wrong. In that event, Charleton might well ignore what he knows and follow Andrews and Barnes. It is likely, after all, that both Andrews and Barnes had evidence for their conclusion, and unless Charleton thinks that his own information is better than theirs, he should follow their lead. If he does, Charleton is in a cascade. Of course Charleton will resist if he has sufficient grounds to think that Andrews and Barnes are being foolish. But if he lacks those grounds, he is likely to go along with them. This may happen even if Andrews initially speculated in a way that does not fit the facts. That initial speculation, in this example, can start a process by which a number of people are led to participate in a cascade, accepting [an official story] ~~a conspiracy theory~~ whose factual foundations are fragile. (2009, 213-214)⁷

Not only can these cascades work, in hypothetical cases, either for a counter-narrative or for an official story, they make more sense as an explanation for the success of dubious official stories, since official stories tend to have the crucial advantage of gaining early traction.

Sunstein and Vermeule are not actually the first to suggest that informational cascades are relevant to conspiracy theories. In a paper entitled “Are Conspiracy Theorists Irrational?” David Coady describes informational cascades in a context wherein it is the conspiracy theorists who are accused of (perhaps irrationally) exercising “intellectual autonomy” by *refusing* to go along with informational cascades. Keeping that context in mind, consider Coady's rather neutral description:

[W]hat economists call “information cascades”...can occur when people express their opinions about the answer to a certain question in a publicly observable sequence. If the early answers exhibit a clear pattern, people later in the sequence may decide to ignore their own epistemic resources and follow the crowd. This belief forming strategy can be entirely rational from an individual perspective, especially if expertise on the question at issue is reasonably evenly spread amongst the group. The epistemic danger of this strategy, however, is that it can lead to relevant evidence being hidden from those later

in the sequence. Thus the epistemic authority of thousands of people can be largely illusory, because most of them have had their beliefs determined by a handful of people at the beginning of the sequence. (Coady 2007, 201-202)

Coady concludes that while it may be “individually rational” to go with the flow of an information cascade, “those who refuse to follow the crowd, even when the crowd is more likely to be right than they are, are doing the crowd an epistemic favour by making it more likely that the crowd itself (or at least most of its members) gets the right answer in the end” (Coady 2007, 202). It is worth noticing, in this context, that doubters of the official narrative of September 11 often point out how quickly an official narrative took form. Even if not explicitly mentioning “informational cascades” by name, they clearly imply that setting up such cascades is a propaganda device that was employed very early on.⁸

The point is this: while the dynamic that Sunstein and Vermeule describe is undoubtedly real, it cuts both ways. Indeed, it works better as an explanation for the success of questionable official stories. Regarding September 11, some rather strong informational cascades (whether based on accurate information or not) affirming the official story began flowing within the first couple days, and have continued unabated. Counter-currents, on the other hand, didn’t start flowing with any strength for several years. And, as we will see at the end of this article, many of those skeptical of the official story of 9/11 cannot plausibly be regarded as uncritically following an informational cascade. Further, regardless of what peculiar informational cascades might flow through a particular group or segment within society, it is a rare individual indeed that would have escaped the mainstream media and their relentless support of the official story. At most, a counter-cascade could have emboldened some to question the official story, and perhaps to begin to investigate the issue. But it is hardly plausible that a counter-narrative informational cascade would overwhelm the official/mainstream informational flood—unless it drew strength in some other way, perhaps from empirical evidence.⁹ (Whether such evidence is truly substantial cannot be adjudicated *a priori*, but must be carefully examined.)

Reputational Cascades

When it comes to reputational cascades, Sunstein and Vermeule’s theory is even less plausible. They describe such cascades as follows:

Conspiracy theories do not take hold only because of information. Sometimes people profess belief in a conspiracy theory, or at least suppress their doubts, because they seek

to curry favor. Reputational pressures help account for conspiracy theories, and they feed conspiracy cascades. In a reputational cascade, people think that they know what is right, or what is likely to be right, but they nonetheless go along with the crowd in order to maintain the good opinion of others.

Suppose that Albert suggests that the Central Intelligence Agency was responsible for the assassination of President Kennedy, and that Barbara concurs with Albert, not because she actually thinks that Albert is right, but because she does not wish to seem, to Albert, to be some kind of dupe. It should be easy to see how this process might generate a cascade. Once Albert, Barbara, and Cynthia offer a united front on the issue, their friend David might be reluctant to contradict them even if he believes that they are wrong. In real-world conspiracy theories, reputational pressures often play a large role, leading people to squelch their own doubts in order to avoid social sanctions. (2009, 214-215)

While their example is hypothetical, Sunstein and Vermeule assert that such reputational cascades “often play a large role” in “real-world conspiracy theories.” So, let’s look at the real world.

Consider the case of Professor Woodward of the University of New Hampshire. According to an article in the Boston Globe: “[William] Woodward, a professor of the history of psychology, is a member of Scholars For 9/11 Truth.... When news of Woodward’s association with the group was published in a local newspaper last month, it sparked a hail of criticism from New Hampshire politicians.”¹⁰ In another article, James Joyner describes the situation as follows: “A student activist group has joined New Hampshire Governor John Lynch in trying to fire a University of New Hampshire professor for his rather bizarre views on the 9/11 attacks.... Gov. John Lynch called Woodward’s beliefs ‘completely crazy and offensive’ and asked the trustees to investigate.”¹¹ In an update to that article, Joyner writes: “[A reader] comments, ‘I don’t think they should fire him. I think they should ridicule him. Publicly. Relentlessly.’ Agreed. That is much more in the spirit of higher education than censorship.” Now, does this sound like an environment wherein a reputational cascade can plausibly account for the spread of the theory in question? I don’t think so. Further, I can personally attest, as an untenured assistant professor, that if I were basing my decision on enhancing, or at least not tarnishing, my reputation with my colleagues, advocating “9/11 Truth” would be just about the last thing I would do. Indeed, I have spoken my views on this matter with considerable hesitation, and despite the negative effect on my reputation that doing so risks.

Although some people doubted the official story from the beginning, it seems that, at least for a while, they mostly kept it to themselves.¹² In any case, the 9/11

Truth Movement didn't really start to take off until around 2005 or 2006. By then, informational and reputational cascades were flowing powerfully in support of the official story. In this context, appeal to such cascades as the explanation for the growing pervasiveness of 9/11 conspiracy theories is unpersuasive.

Cure: Cognitive Infiltration

For whatever reason, conspiracy theories, such as those positing insider complicity in 9/11, are becoming more popular. So, what should be done about this? Sunstein and Vermeule think that we can separate plausible conspiracy theories from "demonstrably false" ones. They imagine an alarming range of possible government responses to those conspiracy theories deemed (by someone) to be "demonstrably false." They write:

What can the government do about conspiracy theories, and what should it do? (1) Government might ban "conspiracy theories," somehow defined. (2) Government might impose some kind of tax, financial or otherwise, on those who disseminate such theories. (3) Government might itself engage in counterspeech, marshaling arguments to discredit conspiracy theories.¹³ (4) Government might formally hire credible private parties to engage in counterspeech. (5) Government might engage in informal communication with such parties, encouraging them to help. Each instrument has a distinctive set of potential effects, or costs and benefits, and each will have a place under imaginable conditions. Our main policy claim here is that government should engage in cognitive infiltration of the groups that produce conspiracy theories, which involves a mix of (3), (4), and (5). (2009, 218)

As an example of a set of theories that are "demonstrably false," Sunstein and Vermeule single out counter-narratives regarding the events of September 11, 2001. However, they neither provide a comprehensive proof of this falsity (granted, that would be unreasonable to expect of them) nor do they *point* to such a comprehensive demonstration (a more reasonable expectation). They do provide a limited critique of their own, but not one that inspires confidence in their conclusion, or in their thoroughness or impartiality. Their characterization of the significance of frames of video footage released by the Department of Defense, which I will discuss below, is an example.

In addition to the problem of misdiagnosis, their proposed cure has potentially dangerous side effects. By suggesting that groups who promote views they deem to be demonstrably false ought be infiltrated, they are implicitly suggesting that members of those groups, or others who hold similar views (including me), are not fully persons—in the Kantian sense of being autonomous rational agents

who are thus ends-in-themselves. There is an analogy between Sunstein and Vermeule's proposed infiltrations and the policy toward detainees instituted during George W. Bush's administration. By condoning harsh interrogations, stress positions, and such, the Bush administration set the conditions in which abuse was a predictable result.¹⁴ This is one of the many reasons that these policies were ill-advised, and that the administration bears considerable responsibility for the abuses that occurred—even though the official policy did not, of course, explicitly authorize turning detainees into naked human pyramids, or torturing them to death, or sodomizing them with broomsticks, and so on. How did these outrages happen? Dehumanization. Once someone is regarded as less than fully human, it is hard to avoid a feeling of contempt. And, contempt plus power, or at least the sense that one is working in the service of Authority, leads quickly to abuse, as the Stanford Prison Experiment so clearly showed.

Now, how does Sunstein and Vermeule's proposal compare? As suggested above, Sunstein and Vermeule's proposal treats "conspiracy theorists" as less than fully human in the sense that they are regarded as irrational¹⁵—rationality being the hallmark of humanity. Although this is based on a caricature of conspiracy theorists (which will be shown below), it is a necessary assumption for two reasons. First, the supposition that they believe "demonstrably false" theories suggests contemptible ignorance or stupidity. Second, positing irrationality justifies the notion that one must lie about one's identity, since conspiracy theorists are viewed as incapable of evaluating evidence that does not come from their kind. In addition, implicit in the proposal to actively undermine selected groups based on the beliefs they hold and promote is the notion that those groups do not really have a right to free speech and assembly. To suggest that they are without such a basic right is to suggest that they are less than human. But once individuals are viewed in this way, it is hard to restrain agents from exceeding their explicit mandates in their effort to please their superiors. Thus, here too, abuse is to be expected. And, as discussed below, infiltration has a history, which isn't pretty. This analysis, that abuse can reasonably be expected to follow if such infiltrations are permitted, holds regardless of whether we grant Sunstein and Vermeule's (unsafe) assumption of a well-motivated executive.

In addition to having dangerous implications, the "conspiracy theorists" that their proposal targets would naturally regard the proposal as straightforwardly insulting. But one ought not object because of the insult. After all, sometimes the truth hurts. The objection that I press in the following section is precisely that they have not expressed the truth. Their proposal relies on clearly false premises and misleadingly stylized facts.

Stylized Facts

Sunstein and Vermeule argue that conspiracy theorists suffer from a “crippled epistemology” as a result of their informational isolation, and thus they need “cognitive diversity” introduced by infiltrating agents able to reframe their “stylized facts.” Sunstein and Vermeule write,

[W]e suggest a distinctive tactic for breaking up the hard core of extremists who supply conspiracy theories: cognitive infiltration of extremist groups, whereby government agents or their allies (acting either virtually or in real space, and either openly or anonymously) will undermine the crippled epistemology of believers by planting doubts about the theories and stylized facts that circulate within such groups, thereby introducing beneficial cognitive diversity. (2009, 219)

Let’s discuss stylized facts. Not always negative in connotation, a “stylized fact” can mean: a general claim that is widely accepted as true as a result of its (supposed) instantiation in a wide variety of contexts. Its presumed truth, then, serves to limit interpretations of phenomena. For example, the idea that conspiracy theories are unwarranted is a stylized fact in this sense. The common refrain, “I don’t subscribe to conspiracy theories,” suggests, as a general “fact,” that conspiracy theories are always unwarranted, and that assumption (inappropriately) closes off the possibility of serious consideration of certain interpretations of events. Relatedly, “stylized fact” can refer to a simplified expression, or summary, of an empirical reality, which, being simplified, misses some (possibly significant) nuances. For example, Sunstein and Vermeule’s presumption of a “well motivated” government, which they characterize as a “standard” assumption, may count as a stylized fact in both of the above senses. Is it *true* that the government is well motivated? Well, there may be *some* truth in the claim that it is, but that generalization glosses over some rather rough spots that may well be very significant indeed. (Was the Tuskegee Experiment “well motivated”?) And, the assumption closes off certain perfectly reasonable lines of inquiry.

Sunstein and Vermeule offer no explicit example of conspiracy theorists relying on specific stylized facts, so it is hard to know exactly what they are thinking of. Nevertheless, since circulating these (unstated) stylized facts is apparently taken to be an epistemic sin sufficient to justify government infiltration, I take the phrase to be intended in a negative sense. I will, rather loosely, treat it as meaning simply “a misleading characterization of reality.” This is in keeping with Sunstein and Vermeule’s emphasis on conspiracy theories being grounded in misinformation or misleadingly incomplete information.

While it is no doubt true that so-called “conspiracy theorists” sometimes do stylize facts, Sunstein and Vermeule neither provide evidence that the conspiracy theories that they are most concerned about critically depend upon stylized facts, nor even that conspiracy theorists employ stylized facts any more than supporters of official theories do. But it is clear that Sunstein and Vermeule themselves rely significantly on misleadingly stylized facts. I will discuss four. (In this part of my discussion I will not restrict myself to the version of Sunstein and Vermeule’s article that was published in the *Journal of Political Philosophy*, but will include examples from an earlier version of their paper published online. I think this is fair because the issue is their own tendency to stylize facts, not whether the peer review process ferreted out all such significantly misleading “facts”—which we will see it did not.)

Stylized Fact 1: Conspiracy Theories are the Stuff of Rumor

Operation Northwoods was a Kennedy-era plan that was brought to light by NSA expert James Bamford in 2001, in his book *Body of Secrets*. Bamford explains:

[T]he plan, which had the written approval of the Chairman and every member of the Joint Chiefs of Staff, called for innocent people to be shot on American streets; for boats carrying refugees fleeing Cuba to be sunk on the high seas; for a wave of violent terrorism to be launched in Washington, D.C., Miami, and elsewhere. People would be framed for bombings they did not commit; planes would be hijacked. Using phony evidence, all of it would be blamed on Castro, thus giving Lemnitzer and his cabal the excuse, as well as the public and international backing, they needed to launch their war. (Bamford 2001, 82)

Now, Sunstein and Vermeule characterize Operation Northwoods as “a *rumored* plan by the Department of Defense to *simulate* acts of terrorism and to blame them on Cuba” (2009, 206, emphasis added). But there is nothing “rumored” about the document uncovered by Bamford detailing a variety of plans approved by the Joint Chiefs of Staff, which, Sunstein and Vermeule admit, “really was proposed by high-level officials.” So, why do they style it as “rumored”? Clearly the intent was to downplay the significance of this shocking and relevant example. Further, the plan proposed not only to “*simulate* acts of terrorism,” but even to *actually carry out* acts of terrorism, and blame them on Cuba. It was a plan that included false flag terrorism, not unlike the acts of terrorism carried out in Italy, from the late 1960s to the early 1980’s, often referred to under the heading Operation Gladio (see Ganser 2005).

Further, the analogy to what some so-called “conspiracy theorists” allege about 9/11 is striking. The Northwoods document even details a plan to blow up

an empty plane flown by remote control over Cuba. To give a sense of the level of complexity that the planners apparently considered unproblematic, I offer an extended quotation from the document:

8. It is possible to create an incident which will demonstrate convincingly that Cuban aircraft has attacked and shot down a chartered civil airliner enroute from the United States to Jamaica, Guatemala, Panama or Venezuela. The destination would be chosen only to cause the flight plan route to cross Cuba. The passengers could be a group of college students off on a holiday or any grouping of persons with a common interest to support chartering a non-scheduled flight.
 - a. An aircraft at Eglin AFB [Air Force Base] would be painted and numbered as an exact duplicate for a civil registered aircraft belonging to a CIA proprietary organization in the Miami area. At a designated time the duplicate would be substituted for the actual civil aircraft and would be loaded with the selected passengers, all boarded under carefully prepared aliases. The actual registered aircraft would be converted to a drone.
 - b. Take off times of the drone aircraft and the actual aircraft will be scheduled to allow a rendezvous south of Florida. From the rendezvous point the passenger-carrying aircraft will descend to minimum altitude and go directly into an auxiliary field at Eglin AFB where arrangements will have to be made to evacuate the passengers and return the aircraft to its original status. The drone aircraft meanwhile will continue to fly the filed flight plan. When over Cuba the drone will be transmitting on the international distress frequency a "MAY DAY" message stating he is under attack by Cuban MIG aircraft. The transmission will be interrupted by destruction of the aircraft which will be triggered by radio signal. This will allow ICAO radio stations in the Western Hemisphere to tell the US what has happened to the aircraft instead of the US trying to "sell" the incident.¹⁶

Now back to Sunstein and Vermeule's dismissive language. Their choice of words cannot be written off as a mere oversight on their part. For when we read the draft version of this paragraph, published on-line, their deliberate intent to be dismissive becomes unambiguously apparent. Immediately after the mention of Operation Northwoods they write: "In 1947, space aliens did, in fact, land in Roswell, New Mexico, and the government covered it all up. (Well, maybe not)" (2008, 4). This trivializes a whole list of significant conspiracies that they could not but admit were real, though the list could have been much longer.

Stylized Fact 2: Clear Evidence Proves Conspiracy Theories False

In the on-line draft for their paper, Sunstein and Vermeule write: "Some theorists claimed that no plane had hit the pentagon; *even after the Department*

of Defense released video frames showing Flight 77 approaching the building..." (2008, 20, emphasis added). If Sunstein and Vermeule had bothered to actually look at the video frames in question, they would have seen that they do not in fact show anything recognizable as Flight 77 approaching the Pentagon. Indeed, it is not at all clear what these pictures show. Apparently, either Sunstein and Vermeule were just too busy advocating infiltration to objectively scrutinize the evidence or else they were "stylizing" their facts.

To be clear, my own view is that this part of the official story of 9/11—that Flight 77 hit the Pentagon—is probably true, but it is far from clearly demonstrated. Indeed, legitimate questions remain. Further, there are other aspects of the official story that I am convinced are false—and the implications are quite troubling. Each person can make his or her own judgment on these matters—though I would hope that they do so only after consulting evidence, rather than being swept along by a cascade. In any case, it is positively chilling to think that, if I sought to meet with likeminded individuals, our group could be targeted for infiltration, if Sunstein and Vermeule get their way. Further, it adds insult¹⁷ to injury for them to use "evidence" as useless as the supposed pictures of Flight 77 approaching the Pentagon to "demonstrate" the falseness of alternative views, and thereby justify their deceit-countenancing, anti-democratic, and epistemically suspect proposal.¹⁸

Stylized Fact 3: Infiltration is Benign

Sunstein and Vermeule write:

By [cognitive infiltration of extremist groups] we do not mean 1960s-style infiltration with a view to surveillance and collecting information, possibly for use in future prosecutions. Rather, we mean that government efforts might succeed in weakening or even breaking up the epistemological complexes that constitute these networks and groups. (2009, 224)

This gives the impression that the COINTELPRO operations of the fifties and sixties were benign and passive. But this is far from accurate. Kathryn Olmsted gives a much more honest account:

During the cold war, the FBI started its domestic covert action programs, known by the acronym COINTELPRO, in which agents infiltrated dissident groups and eventually tried to "expose, disrupt, misdirect, discredit, or otherwise neutralize" them. The FBI did not just monitor these individuals, but tried to break up their marriages, "seed mistrust, sow misinformation," and provoke them to commit crimes so that they could be arrested. (Olmsted 2009, 10)¹⁹

Further, Olmsted adds:

Government officials tried to control how the public interpreted events, sometimes lied about these events, and spied on and harassed those citizens who suggested different interpretations.

Had Sunstein and Vermeule given a fuller and more accurate account of the true history of past practices it would have aroused a sense that great caution is warranted here. So, instead they stylized.

Stylized Fact 4: Conspiracy Theorists are Ignorant Extremists

Perhaps the most significant stylized fact involves the caricature of so-called “conspiracy theorists.” Sunstein and Vermeule charge that conspiracy theorists generally have “little (relevant) information” (2009, 211) or “skewed information” (2009, 210). But these claims are unsubstantiated. Indeed, many people that would count as “conspiracy theorists” by Sunstein and Vermeule’s lights are very informed people. Indeed, many have specialized knowledge of one relevant kind or another. But Sunstein and Vermeule ignore them.

For example, if all those who take the possibility of insider complicity in 9/11 seriously count, then that list includes established scholars that have employed their considerable research talents to understanding the dynamics surrounding 9/11, such as David Ray Griffin, Peter Dale Scott, Nefeez Ahmed, Graeme MacQueen, and Lance deHaven-Smith, to name just a few;²⁰ it includes established scientists such as Steven Jones, Jeffrey Farrer, Niels Harrit, and many others;²¹ it includes professional engineers and architects—more than 1,400 have joined Richard Gage in calling for a new investigation into the collapse of the Twin Towers and Building 7;²² and it includes intelligence professionals such as Ray McGovern,²³ Robert Steele, and (with some vacillation) Robert Baer. That is still a short list, but the complete list of highly accomplished people that have publicly questioned the official account is at least in the hundreds.²⁴ By caricaturing conspiracy theorists Sunstein and Vermeule are able to pretend that informed and sophisticated “conspiracy theorists” do not exist. But these people do exist. And Sunstein and Vermeule’s theory of the “causes” of conspiracy theories does not account for them.²⁵ And the inappropriateness of their proposed “cure” is most clear with regard to them.

Thus, in order to make their proposal palatable, Sunstein and Vermeule needed to stylize their depiction of those who question official stories. Indeed, they go to absurd lengths, worrying that their proposed infiltrators might be asked by conspiracy theorists to commit crimes. As suggested by the discussion

of the previous stylized fact, it is more likely that the infiltrators will be the ones that end up proposing criminal activity—even if Sunstein and Vermeule don't explicitly advocate this.

One might counter that some conspiracy theorists, surely, really are dangerous, and may indeed engage in and encourage criminal activity. But this would be true of virtually *any* large category of people. If there are valid reasons to think that a *particular* individual, or a small group of individuals, is dangerous, that is another matter. But the fact that a group thinks that, say, 9/11 was an inside job is not, *by itself*, a valid reason to believe that they are prone to criminality or violence. Sunstein and Vermeule's caricature of conspiracy theorists conflates those who hold views that they regard as false with the much smaller group of those who *in addition* have violent or otherwise criminal proclivities.

Conclusion

The stylization of the above "facts" is important for the plausibility of Sunstein and Vermeule's argument. (1) If they fully acknowledged the history of real conspiracies and of theories that remain plausible if unproven, that would undermine the efficacy of their dismissive rhetorical posture regarding the ill-defined subset of those theories that they believe should be undermined by covert operations. (2) By whitewashing the history of infiltration, they make their proposal seem less obviously problematic. (3) By presenting a caricature of people who espouse so-called "conspiracy theories" they treat them as "other"—something less than human, beings not fully capable of reason. Otherwise, a more honest, straightforward, and respectful response would seem more appropriate than infiltration. And, finally, (4) the bogus claim that there are pictures clearly identifiable as Flight 77 approaching the Pentagon made it possible for them to ridicule conspiracy theorists who continue to believe otherwise. Without recourse to ridicule, Sunstein and Vermeule's responsibility to deal with the relevant evidence in a more sophisticated way would have been more evident. And addressing the evidence in this way would have made establishing the falsity of all theories that suggest insider complicity in 9/11 hopelessly complex. But without establishing the clear falsity of those theories, they could not reasonably frame the members of the so-called "9/11 Truth Movement" as irrational, and thus appropriate targets for cognitive infiltration. In the final version of their paper, Sunstein and Vermeule drop the reference to Flight 77, presumably because it is so easily exposed as false.²⁶ In the end, they didn't really need to resort to ridicule based on false evidence. The strong bias

against conspiracy theories,²⁷ especially in the academy, evidentially seems to make such ridicule unnecessary.

It should have been obvious to these law professors that peaceful, law-abiding people ought to be allowed to freely assemble and pursue their inquiries without infiltration. And this applies even to those who promote theories that posit state crimes against democracy (SCADs)²⁸—which is what the most “dangerous” so-called “conspiracy theories” typically allege. In the interest of peace and justice, all people ought to be allowed to freely assemble and pursue their inquiries without infiltration—even those, or perhaps especially those, who dare to question official narratives.

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ENDNOTES

¹An earlier, and significantly shorter, version of this paper was presented at the Concerned Philosophers for Peace conference, in Montreal (October 30, 2010), under the title, “Spinning a Response to Crippled Epistemologies: Cognitive Infiltration, and the Stylized Facts of Obama’s Information Czar.”

This paper (a version, that is, resembling the conference presentation but under the title “Conspiracy Theories and Stylized Facts”) and my earlier paper on this topic, “Is Infiltration of ‘Extremist Groups’ Justified?” (Hagen 2010), were both denied peer review at the *Journal of Political Philosophy*, which published Sunstein and Vermeule’s article.

²One wonders what Sunstein and Vermeule would have said about allegations of sexual abuse at Abu Ghraib if graphic stories of naked human pyramids, and worse, had surface and swirled before the actual pictures came out. The accusation that American soldiers were engaged in *that kind of* heinous abuse may well have counted as an extreme idea. Not all ideas branded “extreme” are false, though we don’t always have pictures to clearly establish the truth.

³See “President Obama Announces Another Key OMB Post,” on the White House Office of the Press Secretary web site (April 20, 2009), http://www.whitehouse.gov/the_press_office/President-Obama-Announces-Another-Key-OMB-Post/ (Accessed on September 18, 2010).

⁴For a more exhaustive critique, see Griffin 2011.

⁵Sunstein and Vermeule acknowledge a similar conspiracy theory. They write, “[R]eal-world governments can themselves be purveyors of conspiracy theories, as when the Bush administration suggested that Saddam Hussein had conspired with Al Qaeda to support the 9/11 attacks” (2009, 219). But when accusations of conspiracy come from official stories they are not generally referred to with the dismissive term “conspiracy theory.”

⁶Charles Lewis and Mark Reading-Smith explain, “President George W. Bush and seven of his administration’s top officials, including Vice President Dick Cheney, National Security Adviser Condoleezza Rice, and Defense Secretary Donald Rumsfeld, made at least 935 false statements in the two years following September 11, 2001, about the national security threat posed by Saddam Hussein’s Iraq. Nearly five years after the U.S. invasion of Iraq, an exhaustive examination of the record shows that the statements were part of an orchestrated campaign that effectively galvanized public opinion and, in the process, led the nation to war under decidedly false pretenses” (“False Pretenses,” Center for Public Integrity, January 23, 2008).

⁷Many of their claims about conspiracy theorists are true of conspiracy deniers and agnostics as well. For example: “[S]ome people who [reject] ~~accept~~ conspiracy theories are mentally ill and subject to delusions” (2009, 211). That is true too, of course. While Sunstein and Vermeule’s point here is that it is not plausible that “all or even most” conspiracy theorists are mentally ill, they make this point in such a way as to suggest there is some significant correlation.

⁸An example that has been cited is footage from FOX News of (ostensibly) a random bystander, a man wearing a Harley Davidson shirt, who was interviewed shortly after the towers had collapsed. The “bystander” says, “...and then I witnessed both towers collapse, one first and than the other, mostly due to structural failure because the fire was just too intense.” See “9/11: Clues you might have missed” <http://www.youtube.com/watch?v=cyuc3BvB99I>. The FOX News presentation is cut so as to reinforce the message, presenting a close-up of some flames as the young man says, “Because the fire was just too intense.” The allegation is that presenting this on the news was supposed to begin or reinforce a cascade of opinion that the towers collapsed due to fire (in addition to the damage from the plane), not from something more elaborate. Once this opinion became entrenched, most people continued to believe it, despite the discovery of significant quantities of red-grey chips in the dust that appear to be bits of unreacted nanothermite (see Harrit 2009). Or, so it could be argued.

⁹For a brief set of examples, see Griffin 2011, 68-70. For an exhaustive treatment of the scientific evidence relevant to the collapse of Building 7, see Griffin 2010.

¹⁰See “A Muted Response from UNH: Professors’ Right to Opinion Cited,” by Tom Long, in *The Boston Globe*, September 10, 2006.

¹¹See “Move to Fire Professor for 9/11 Conspiracy Views,” by James Joyner, in *Outside the Beltway*, September 29, 2006. An article entitled “Another Scholar Under Fire for 9/11 Views” provides further details and a similar case: “State legislators chimed in, demanding Woodward’s dismissal and threatening to consider the issue when they next review the university’s budget. In some respects, the political reactions mirror those in Wisconsin, where lawmakers lined up to urge the University of Wisconsin at Madison to fire Kevin Barrett, who shared Woodward’s view” (*Inside Higher Ed*, August 29, 2006).

¹²This assessment is based on anecdotal information, from listening to various interviews of people who question the official story of September 11, corroborated by my own experience.

¹³I have no objection to this proposal (number 3), but Sunstein and Vermeule do not emphasize it.

¹⁴According to a report by Senators Carl Levin and John McCain, as summarized in the *New York Times*: “[T]op Bush administration officials, including Donald H. Rumsfeld, the former defense secretary, bore major responsibility for the abuses committed by American troops in interrogations at Abu Ghraib in Iraq; Guantánamo Bay, Cuba; and other military detention centers.... The abuse of prisoners at Abu Ghraib was ‘not simply the result of a few soldiers acting on their own’ but grew out of interrogation policies approved by Mr. Rumsfeld and other top officials, who ‘conveyed the message that physical pressures and degradation were appropriate treatment for detainees’” (See “Report Blames Rumsfeld for Detainee Abuse” by Scott Shane and Mark Mazzetti, December 11, 2008.)

¹⁵Although, I claim, their proposal *treats* conspiracy theorists as irrational, strictly speaking, Sunstein and Vermeule do not *characterize* conspiracy theorists as (fully) irrational. They explain that the theories that they are concerned with are “unjustified (not

in the sense of being irrationally held by those individuals who hold them, but from the standpoint of the information available in the society as a whole)” (Sunstein and Vermeule 2009, 207). In other words, while making a contemptuous proposal they pay lip service to the (limited) rationality of conspiracy theorists. This is similar to expressing support for “maintain[ing] an open society” (Sunstein and Vermeule 2009, p. 218) while, as I have argued elsewhere, “their recommendations involve moving *in the direction of a more closed one*” (Hagen 2010, 160).

¹⁶Northwoods Document pp. 10-11. See Ruppert 2004, “Appendix A: Joint Chiefs of Staff ‘Northwoods’ Document” to see photocopies of the entire document.

¹⁷I indicated that conspiracy theorists should not object just because they feel insulted. But this is not primarily an insult to conspiracy theorists. It is an insult to those reading Sunstein and Vermeule’s article.

¹⁸See Hagen 2010 for my defense of the claim that their proposal is deceit-countenancing, anti-democratic, and epistemically suspect.

¹⁹Charles Pigden also describes a particularly appalling COINTELPRO practice: “Suppose the husband of a civil rights worker received [an] anonymous letter suggesting that his wife had been having an affair. The obvious explanation would be that the letter was genuine (if malicious) and had been written by a mutual acquaintance. As for the idea that the letter was a forgery planted by the FBI to undermine his marriage—well, that would be just too fantastic for words! Would the US government, or even the great but sinister J. Edgar Hoover, descend to such petty malice? The husband, like a true disciple of Occam would opt for the simpler hypothesis and institute divorce proceedings. *But in some cases the FBI mounted just such a conspiracy*” (Pigden 2006, p. 37, emphasis in original). This quotation is from an article that *should have been* cited by Sunstein and Vermeule. Mentioning Pigden’s critique of Popper’s account of conspiracy theories, Sunstein and Vermeule cite an article not found in the book they indicate. However, in that book one does find the article “Popper Revisited, or What is Wrong with Conspiracy Theories,” in which the above quotation appears.

²⁰See, for example, Griffin 2010, Scott 2007, Griffin and Scott 2007, Ahmed 2005, and deHaven-Smith 2010, 819.

²¹Relevant publications include Jones 2008, Ryan 2009, and Harrit 2009.

²²See list of petition signers at <http://www2.ae911truth.org/signpetition.php>.

²³On the inside cover of *9/11 and American Empire* (Griffin and Scott 2006), Ray McGovern writes, “This book...confronts the American people—indeed the people of the world as a whole—with an issue second to none in importance and urgency. I give this book, which in no way can be dismissed as the ravings of ‘paranoid conspiracy theorists,’ my highest possible recommendation.” McGovern was a high-level intelligence analyst for the CIA, and is the founder of Veteran Intelligence Professionals for Sanity.

²⁴See Patriotsquestion911.com. See also Griffin 2011, pp. 29-42, for a list of several dozen accomplished professionals who question the official account of the events of September 11.

²⁵In particular, “reputational cascades” are implausible explanations for the growing number of scholars and professionals who take counter-narratives about September 11th seriously. Further, even *informational* cascades can explain the success of dubious official stories at least as well as they can explain the success of conspiracy theories, as explained above.

²⁶Of course, even if theories that deny Flight 77 hit the Pentagon were demonstrably false, it would not follow that all theories positing insider complicity must be false. But there may be a perceived “guilt by association.”

²⁷Charles Pigden—whom Sunstein and Vermeule cite twice (2009, 206 n15, and 208 n24)—has rightly characterized this bias against conspiracy theories as “dangerous and idiotic.” He writes, “[W]hat is really wrong [is] the bland assumption...that *of course* conspiracy theories are false or foolish simply because they *are* conspiracy theories. So far from being the sophisticated view this is one of the most dangerous and idiotic ideas to disgrace our political culture” (See “Wilt Thou Conceal this Dark Conspiracy,” p. 1). <http://www.otago.ac.nz/philosophy/Staff/CharlesPigden/Falsehood%20and%20folly%20.pdf>

²⁸See deHaven-Smith 2010 for an analysis of SCADs.

MUTILATED DREAMS:
AFRICAN-BORN REFUGEES IN US SECONDARY SCHOOLS

Immaculée Harushimana

Abstract:

This article argues that the US school system is partly to blame for the mutilated educational dreams among African born war refugee students resettled in the United States. Feeling mistreated, unprotected, and unsupported, these students have slim chances to integrate successfully in the public school system. Evidence from research and first-hand refugee testimonies provide an insight into the factors that blockade the educational success for “multiple-stop” refugee children, that is, refugees who move from one camp to another before reaching final destination. Included among these factors are: overlooked interrupted schooling, social/peer rejection, and unmet special needs. Recommendations stress the need for a reform in school policy and administration to ensure that refugee children receive the dignity they crave and the support they need in order to progress educationally, and eventually achieve their utmost dreams.

Introduction

“All my writing—and yours —”, says Donald Murray, “is autobiographical” (207).

This piece of writing is, to a large extent, autobiographical. Reunification with my two teenage sons, after 10 years of separation, opened me to the reality of how it feels to be an adolescent refugee from Africa in the U.S. urban public school system. The tribulations I encountered monitoring the school adaptation of my children revealed how naïve I had been, and how little I knew about the school culture in America. As an educator who had spent a decent amount of time working with public schools and teachers, I never anticipated having any problems with the schooling of my own children. That was until the day I went to enroll my sons in school upon their arrival in the United States. I was speechless when an emergency summer enrollment supervisor ordered the secretary to assign my older child, a war refugee teenager, to what was reputed to be the toughest school in New York City. In vain, I pleaded for mercy by informing the aide of my child’s special situation. When the supervisor was

briefed about the case, her response was, “Oh, he is from Africa! He will adapt fast. African children adapt easily.” Feeling angry and powerless, I obliged and took my son to be registered in the school. For the next four years, I powerlessly watched the poor child constantly struggling to survive academically and socially. It pained me so much that I reached out to other parents around and found out that his struggles were, alas, shared by a lot of refugee youth.

Through the work of its Office of Refugee Resettlement (ORR), the government of the United States opened its doors to refugee populations from lesser known African societies, such as Somalis, Burundians, Rwandese, and Congolese. While the resettlement initiative is a laudable act of humanity on behalf of the United States, research indicates that resettled refugees face severe hurdles during their adjustment process. In particular, due to their multi-faceted vulnerabilities—psychological, intellectual, and socio-cultural—refugee youth require far more attention than they have received. A 2009 case study by the Women’s Refugee Commission highlighted three main reasons, all related to pre-resettlement conditions, why resettled refugee youth in the United States struggle educationally: the lack of English skills, poor education during displacement, and inadequate orientation before resettlement (Women’s Refugee Commission 1). While the highlighted factors are worthy of consideration, there is evidence indicating that post-migration conditions, including host community receptiveness, school climate, and newcomer enrollment policy play an important role in the immigrant and refugee students’ adaptation process. Given the complexity of the refugee experience and the vulnerability of adolescence, there is a critical need to ensure that resettled refugee youth receive the services and care necessary in order to integrate successfully in the new homeland. This article attempts to uncover pre- and post-resettlement educational challenges incurred by African-born, war refugee students in US secondary schools. The central question the paper seeks to address is whether or not the host society, especially school officials, peers, and policy makers, facilitate the educational adaptation process and foster academic success for refugee youth from paralyzed African nations. Focus is placed on four major factors affecting the academic achievement of these adolescent refugees: schools’ insensitivity to the past of the students, inadequate socialization of the students in the U.S. school system, a flawed school enrollment system, and a hostile social environment. In advance of a discussion of these factors, it is necessary to provide a basis for understanding the shaping of the worldview of refugee people, as well as some pertinent demographic background.

Is There a Theory of the Refugee Experience?

Educational justice for refugee populations involves an understanding of the uniqueness of this immigrant minority category. Assimilation theories (Chacko 491; O' Brien 331) are frequently used to understand the adaptation processes of refugees and immigrants. Yet the flight conditions and factors, which happen to be very influential in the settlement in a host society, are very different for immigrants and refugees. Refugees undergo a very complex adaptation process—psychological, social and political. A theory which has attempted to capture the complex aspect of the refugee experience was proposed by Egon Kunz. Kunz's "exile and resettlement theory" (42-53) analyzes the refugee experience from two standpoints: (1) home related factors (i.e. attitudes towards nations of origins), and (2) host society related factors (i.e. the receptiveness expressed by the host nation).

Kunz's refugee theory is useful in assessing the adequacy of the educational accommodation provided by host nations to refugee youth. He (41) distinguishes three major categories of refugees, mainly based on their attitude towards their countries of origin. He also identifies three major factors that influence refugee adaptation in the host culture: "cultural compatibility, population policies, and social receptiveness" (46). According to Kunz, refugees who are convinced that their opposition to the events in their homeland is shared by the majority of their compatriots may inculcate in their children a sense of loyalty to the population left behind. With the support from home, integration in the host society does not feel too lonely or overwhelming. In contrast, refugees who feel betrayed by their own people and country are ambivalent or embittered in their attitude toward their former compatriots and, therefore, may encourage their children to take advantage of the resettlement opportunity to create a new life. Finally, there are those who, for varied individual reasons or philosophies, do not wish to identify with either their nation of origin or the host society. People in the last two categories tend to be especially susceptible and sensitive to any form of injustice they encounter.

One can hypothesize that the attitude of refugees toward their nation of origins, as explained above, interacts with host-related factors in the refugee adaptation process to influence the way they integrate in the new society. In the educational context, adolescent refugees from the most volatile and less valued nations, like some parts of Africa, constitute a highly vulnerable population that deserves special care and protection, especially during the early stages of school integration. The African refugee student population is likely to experience conflict in relation to "cultural compatibility, population policies, and social receptiveness" by the American people.

Background: African Refugee Population in the United States

Demographically, the 1980's are associated with the surge in African immigration. However, it is in the 1990's that the United States of America witnessed an inflow of refugees from African nations. According to statistical records published by the U.S. Department of State Bureau of Population, Refugees and Migration, 30,000 refugees from Africa entered the United States in the year 2004.¹ This was the highest number of African refugees ever allowed in the United States. Specific data on African refugee immigration indicate that 6000 refugees were resettled in the United States in 1997. The number increased from there to 12,000 in 1999, 18,000 in 2000, 20,000 in 2001, 22,000 in 2002, 20,000 in 2003, 21,000 in 2005, and 20,000 in 2006². Obviously more people have been accepted since then. Given these statistics, the African refugee population in the United States has reached a number that deserves consideration both in demographic planning and educational policy. Unfortunately, the refugee resettlement process seems to lack consistency and structure.

Prior to the 1990's, refugees in the United States were resettled in traditional gateway cities such as Atlanta, Austin, Charlotte, Dallas, Minneapolis-St. Paul, Phoenix, Portland, Sacramento, and Washington, D.C. (Farris n. pag.). However, in the 1990's and subsequently, waves of refugees were to be dispersed to all fifty states in accordance with new directives issued by the Clinton administration. According to Frey (n. pag.) and Farris (n. pag.), refugee resettlement programs have been established in non-cosmopolitan areas, such as Salt-Lake City, Oklahoma City, Colorado Springs, Farmingville, NY, Holyoke, MA, and Lewiston, ME. There is little indication that the geographic dispersion of refugees was accompanied with adequate orientation of the host communities. What is known is that this new immigration trend has not only caused some groaning, but has also created "daunting challenges for schools" (Pryor n. pag.). Not unlike the communities to which they belong, teachers of Caucasian descent who may have spent most of their lives living in small rural or suburban communities needed to be acquainted with the history, the culture, and the social and cultural practices of the refugee populations being resettled among them. News stories and research reports presented in the following sections offer a glimpse into the gruesome adaptation process of African refugee youth in urban, rural, and suburban U.S. schools. Refugee students face a dead end when teachers and administrators look at the situation as a one-way challenge, when their pre-migration conditions are not taken into consideration in enrolling them in school, and when they are the target of bullying and discrimination.

Two-Way Challenges: Giving Room to the Feelings of Refugee Students

There is a tendency among educators to see their role as more difficult than what their students go through. This reasoning becomes especially problematic when it is applied to refugee students. In the introduction to their article, “Responding to the Special Needs of Refugee Children: Practical Ideas for Teachers,” Judit Szente, James Hoot, and Dorothy Taylor pose the following question to their audience:

Imagine that on a Wednesday morning you hear a knock on your classroom door. You are greeted by your principal with a new student at her side. Unlike other children in your classroom, however, this child is a refugee. Scarce documents suggest that the child might be around 7 years of age. Based solely on this information, he is placed in second grade—YOUR second grade. Since the child has difficulty holding a crayon and books, you quickly suspect that he has never been to school. Moreover, he does not speak a word of English, and because his native language is uncommon in the United States, there is no one in the school system who is familiar with his language. Further, the school social worker tells you that the family has probably experienced untold horrors prior to finding safety in a refugee camp while awaiting a new permanent home in the United States. Having very limited information on this child’s history and being unable to speak a word of his language, how would you respond to the many needs of this child—in addition to those of your other students? (15)

With this question in mind, the authors “set out to explore promising practices regarding the education of refugee children, whose numbers are rapidly increasing in American classrooms” (Szente, Hoot, and Taylor 15).

While newcomer students with special needs may pose a serious challenge to the teachers and the administration, they are also engaged in a kind of journey that should not be overlooked. Teachers and administrators need to develop a sense of empathy towards refugees who come through their door carrying deeply traumatic experiences, only to step into another series of challenges. Consider the following scenario, parallel to one just presented, which poses the adaptation problem from an adolescent refugee’s perspective.

Imagine that you are a newcomer refugee teenager who escaped the most cruel death and has experienced untold horrors prior to finding safety in a refugee camp while dreaming of a permanent home in the United States. Then on a Monday morning, in the middle of the year, the guidance counselor knocks on a teacher’s classroom door, and you are greeted by curious looks and mean laughs from thirty foreign faces of young boys and girls. You have not had steady schooling in your life and can barely communicate in English. Moreover, nobody at your school or in the neighboring community can understand your native language to speak on your behalf. And the principal has issued instruction that you must be placed in the class level that corresponds to your biological age. How would you feel about the possibility of achieving your educational dream?

For many African refugee children mainstreamed in regular public classrooms, a new, unanticipated plight begins the moment they set the foot in school. Whereas there is a well established policy to regulate refugee admission in the United States, this policy does not go far enough to make the necessary educational provisions for children and youth who must continue their education in an entirely new context. Szente, Hoot, and Taylor (16) advocate that refugee students experience educational needs of a different nature than non-refugee special needs students. Due to instability in their lives, refugee students may need help to cope with traumas encountered during the flight and in transit, support to catch up with academics in the new school system, and mediation to nurture a positive parent/teacher relationship.

This observation is complemented by Ellis, MacDonald, Lincoln, and Cabral in their study, which concludes that perceived discrimination in the host society was the strongest predictor of depressive symptoms in a sample of Somali adolescent refugees (190). Encounter with discrimination can take a heavy toll on vulnerable refugee adolescents struggling to adjust psychologically, socially and academically. Discrimination can take different forms. It may be practiced overtly, like in denying refugee students access to certain services or participation in certain activities based on who they are or where they come from. Discrimination can also be practiced covertly, as in downplaying the refugee experience during the enrollment process. This analysis will give precedence to the impact that age-based placement practice and the social climate prevailing in schools have on the academic socialization for adolescent refugees from Africa attending regular classrooms in the United States.

Age Criteria as an Impediment to the Academic Advancement for Refugee Children

In matters of fair school practice an immigrant child's age, prior schooling, and cultural background should receive priority if the child's right to education is to be respected. According to the following U.N. stipulations referenced in Mike Cole's work on education, equality, and human rights (Cole 2),

- The education of the child shall be directed towards...respect for the child's parents, his or her own cultural identity, language and values.³
- Children with disabilities (special needs) have the right to care, education and training designed to help them to achieve the greatest possible self-reliance and to lead a full and active life in society.⁴

These stipulations become particularly critical when dealing with refugee children. To take one major example, school regulations reflect little sensitivity pertaining to the issue of school placement. Consider the following policy.

If a student who has been educated outside of the United States appears without education records, the student will be registered in an appropriate elementary, middle, or high school based on the student's age. A student from another country who does not have educational records who turns 15 within the calendar year will be enrolled in high school. In these cases, the principal or his/her designee will then determine appropriate grade placement within the school. (New York City Department of Education n. pag.)

Whereas, according to these criteria, chronological age is expected to be used as a placement criterion, the case of newcomer immigrant students with no academic evidence tells a different story. Despite the fact that the academic records for my elder son clearly indicated that he had not completed 7th grade, the placement supervisor ordered that he be placed in ninth grade since he was going to turn 15 in November. Not only is the age criterion deceptive, but it can also be detrimental for the academic progress of refugee or forced migrant children from war-torn countries, where regular schooling is made impossible by political unrest and human losses. Ultimately, using chronological age as the key placement criterion for newcomer students, especially refugee youth, accentuates the educational vulnerability of these children. A similar observation was made by Deborah Scuglik and Renato Alarcon. In their study of Somali refugee children and adolescents, Scuglik and Alarcon remark:

Many Somali children have not had the opportunity to attend school in Somalia or in the refugee camps in which they lived. When they arrive in the U.S., they are placed in the school grade level based on their chronological age. These deficiencies in education leave many children unprepared for the magnitude of academic achievement required for the grade level in which they are placed. (n. pag.)

Despite scant research on the drop-out rate among or the academic performance of refugee children and youth, available testimonies by some of the resettled young refugees show signs of serious educational struggle for this category of learners (Makepeace n.pag.; McBrien 345).

If the concept of *redistributive justice*, which relates to the “fair and equitable distribution of resources—potential to wealth, access to services, engagement, and participation in public, economic, and culturally relevant life” (Woods 90), is to be applied to refugees, the newcomers' enrollment policy would need to be carefully planned, and a realistic and equitable distribution of funds and resources put in place, so that the needs of refugee students would not be overlooked. In this respect, Woods recommends “policy shifts that firstly open new pathways relevant to the lived experiences of this group of students and secondly that will remove the urgency of educating young people in their late teens in what are often exceedingly short timelines after resettlement” (91).

A fair and just school placement for refugee children would need to take into consideration the several types of disruptions that interfere with normal schooling and academic performance for displaced and refugee children. Both refugees and internally displaced children experience severe traumas, including emotional instability, human losses, and schooling interruption. The use of age as the sole, uncontested placement criterion can leave refugee children, many of whom belong to the category of SIFE (students with interrupted formal education), wondering why they are not given the rights they are due, as children and humans.

Refugee Children Require a Complex Educational Adjustment

The major error made by school administrators and policy makers is their general tendency to assume that all immigrant children are the same, and that the same principles should be applied to their school socialization process. This attitude does great injustice to refugee children, who may require a much more complex adjustment process. In addition to being at risk for mental illness, a refugee child's educational future is jeopardized by both the quality and level of education a refugee child has received prior to fleeing, and the disparity between the educational system in the home country and the host country's curriculum.

A precarious pre-refugee education. Due to poor, interrupted schooling, many refugee children may not have a strong educational foundation prior to fleeing. In countries dominated by internal conflicts, like many African nations, civilians are the main target. Like civil wars, internal conflicts "are likely to lead to displacement of individuals, preventing students from enrolling in schools across levels of education" (Lai and Thyne 285). Little schooling goes on in countries in ruins, like Burundi, where "faint trails of smoke rise into the sky in scattered places across the horizon...from [burning] houses and schools" (Bunting n. pag.). It is difficult for a child to feel safe in school after witnessing "soldiers...setting the buildings on fire and shooting the students as they ran out of the flaming structures" (Bunting n. pag.). Children who manage to escape death and try to return to school find their classrooms vandalized and burned down, and some members of the school personnel missing, having either fled the country or been killed in the war. Educational authorities in the host society need to be made aware of this scenario in order to take informed decisions. They also need to take into consideration systemic and curricular differences between educational institutions.

Conflicting systems of education. Crossing the border implies stepping into a different culture and a different educational system, which might conflict with

one's prior educational experiences. As a result of colonization, most African nations chose the language of the former colonial master as the medium of education from upper elementary level onwards. As a result of fleeing to other countries, many young and adolescent refugees from African nations experience educational, linguistic, and geographic turbulence. Especially in Sub-Saharan Africa, it is not uncommon for a child to move to a country where education follows a different system and is provided in a language other than that to which he/she is accustomed.

For instance, a Burundian child refugee may likely flee to either Tanzania or Kenya, both of which have adopted Swahili as the language of early primary instruction and English for secondary and tertiary education. The story of Nezia Munezero (n. pag.) provides a good illustration of this situation. Burundian by birth, Munezero was born and raised in Rwanda by refugee parents; then due to the infamous Rwandan genocide she and her parents escaped to the Democratic Republic of Congo. When the Rwandan crisis spread to the Congo, the family fled to Tanzania where Munezero attended school before she and her entire family relocated to the United States of America, where she will have to juggle with Kirundi, Kinyarwanda, French, Swahili, and English ways of thinking.

Cummins (230) posits that a child needs to attain the threshold level of language proficiency to be able to transfer cognitive knowledge from one language to the other, thus rising to the challenge of a new language of instruction. It is unlikely that the average Burundian child, for instance, who attended public or government-subsidized school, may have achieved the required proficiency in French such that he/ she can transfer skills into the acquisition of knowledge in Swahili and English. The transfer of knowledge, which is already problematic at the intracontinental level, becomes further complicated at the international level for the lucky few African refugees who have a rare opportunity to resettle in countries outside of the African continent, like the United States. Apart from systemic incompatibilities, curricular disparities and cultural distance constitute another set of serious hindrances to a refugee child's access to a just educational rehabilitation, particularly if the host society never anticipated this problem.

Curricular and cultural distance. It goes without saying that a small, agrarian African country like Burundi, and a vast, industrialized country like the United States are situated at two extremes of the economic and cultural continuum, where the United States is the most advanced nation and Burundi, the least. A shift from the African to the American educational system is likely to cause profound culture shock to a refugee child originating from a non-Anglophone

African country. In terms of curriculum, the average African child might have been exposed to the most rudimentary ways of teaching and learning, so that exposure to a more democratic and progressive curriculum may demand a long and careful process of socialization. In addition, the sudden encounter with western, native-English-speaking teachers might create adjustment problems to newcomer African adolescents in mainstream classrooms in America.

Linguistically, some students may come from contexts where English was the medium of secondary instruction. However, due to the contact that English has with vernacular languages spoken both in the home and the wider community (Rubagumya 68), African students' English discourse might contain features that are not easy for a native-English speaking audience to decipher. Other children come from a French educational background with very little encounter of English as a third language of literacy.

Doomed by their biological age, as discussed earlier, and due to prior exposure to some formal English instruction, these children get placed in mainstream classrooms. The combination of being put together with students who have needs different from theirs and assigned to teachers who do not know how to assist them increases the risk to "fall through the cracks." Some teachers have claimed that there is not much they can do to help children with such a tragic past and so many needs (Pryor n. pag.). When a teacher does not know or cannot relate to the complex history of a refugee child, a lot of things can go wrong, including the inability to reach the child at the point of need and the lack of sensitivity towards the child's feeling of estrangement and isolation in the new learning context.

Another element that teachers and administrators need to know is that while curricular and linguistic changes may have a deep impact on the adjustment process of refugee children, social adjustment plays an equally important role in the school life of resettled war-refugee youth—particularly those coming from countries that have a negative image in the world, like some African nations. African-born refugee children tend to be voiceless victims of social discrimination, peer assault and intimidation, which can have a deeply damaging, yet unnoticed, effect on their educational adjustment.

The Social Maladjustment of African-born Adolescent Refugees in U.S. Schools

Antisocial behavior and rejection by peers have been cited among the reasons why immigrant and refugee students drop out of school (French and Conrad 241; McBrien 345). Due to negative press, African refugee youngsters, especially

males, are likely to be treated with suspicion and contempt by peers in the host communities. In Ireland as in Australia, in the United States as in Africa, African refugees endure harsh treatment, ranging from arson, verbal abuse, and stone throwing (Harris and Byrne n. pag.; McGreal, n. pag.; St. John n. pag.).

Waonaje (Womens Commission n. pag.), a Congolese refugee in Tanzania, sadly recollected the dehumanizing labels, such as “fighters, robbers, eaters of men,” and “incapacitated people of no value,” which were inflicted on him and his friends while in Lugufu camp. More often than not, African and other refugee youth who resettle in the western world, carry with them the emotional scars from their past experiences in displacement. Although refugee youth like to describe themselves as resilient and education-hungry people, the inhumane treatment that some of them endure from their peers and teachers in the host land may ruin their academic adaptation process. A socially hostile environment is likely to disrupt them from their focus on and interest in education, as the following vignettes indicate.

Evidence of Anti-African Refugee Attitudes in U.S. Schools. Evidence included in this section indicates that African refugee students are faced with two kinds of social opposition (for lack of a better word): from school administrations and from peers.

According to the Minnesota and Pittsburgh complaints filed on behalf of Somali refugee students with the Office of Civil Rights (OCR), school personnel were accused of mistreating the students whereas the administration was found liable for some discriminatory practices (Ibrahim, n. pag.; OCR Chicago, n. pag.; Smydo, n. pag.). The other source of hostility came from peers, mainly in the form of bullying, harassment and intimidation. Although bullying has been described as a universal teenage phenomenon (Horowitz, Vessey, Carlson, Bradley, Montoya, McCullough, and David 166), it needs to be stressed that its practice is extremely damaging when perpetrated against refugee children.

In the introduction to her video production on refugee bullying, film producer Lauren Swain deplores the fact that refugee children who enter the American school system have to be re-traumatized as they face a new form of “otherness” (n. p.). Evidence shows that in the case of African adolescent refugees, bullying goes beyond “hitting or kicking, teasing or taunting” (Limber and Nation n. pag.); it involves individual shaming and cultural degradation, as the victims “are often bullied or excluded based on their lack of English, mode of dress, or lack of cultural savvy” (Swain n. pag.). The mischaracterization of Africa and Africans by the western media makes the bullying particularly tougher for refugees from Africa, as one of the participants in Traore and Lukens’ study explains:

People used to mess up with me a lot because I didn't speak English and they would talk about my country, and Africa in general, talk about it a lot, curse at me. I could not understand. They called me names and I fight, so that, that's what was rough, the main rough thing (Traore and Lukens 8)

In some situations, refugee youth have suffered severe physical assaults to the extent of hospitalization, like the case of a Liberian eighth grader who was brutally attacked on his way home from school, according to a report by a Philadelphia news report:

A 13-year-old Philadelphia student, who fled his war-torn country just a few weeks ago, was severely beaten on his way home from school on Monday afternoon and remained in intensive care yesterday at Children's Hospital of Philadelphia. (Moran, Bahadur, and Snyder n.pag.)

A similar incident was evoked in an interview that Nezia Munezero had with the *Baltimore Sun* (Dechter n. pag.). Her brother, then a senior at a high school in Baltimore, was severely beaten by strangers to the point of being treated at a hospital.

There seems to be a consensus among psychologists that refugee children need special protection from bullying, given the high levels of trauma that they have been exposed to in their countries (Moran n. pag.; Zlatos n. pag.). It is painful for refugee teenagers who have endured rejection in refugee camps to have to undergo a similar treatment in the country of resettlement, where they had hoped to find rest and peace. As McBrien observes, "Students already in need of healing from pre-resettlement experiences can face additional trauma when isolated or treated cruelly by their new peers" (345). Not only is bullying dangerous as a psychologically and physically demoralizing force; above all, it is academically inhibiting. In order to succeed academically, refugee children need to learn in a peaceful and safe atmosphere so that they can concentrate on the enormous "catching up" that needs to be achieved emotionally, culturally, and academically.

As illustrated here by the voices of young refugees, social rejection can be a doubly traumatizing experience for a refugee youth trying to get past the painful past to adapt socially, culturally, linguistically, and academically to a drastically new school setting. African immigrants and refugees deserve to be perceived as citizens of the world, with dreams and potentials for success worth supporting.

Conclusions and Recommendations

Successful educational adaptation of refugee children in resettlement requires a vigorous support system that is sensitive to the precariousness of refugee youth's developmental and educational experiences, and aims to provide a safe learning environment for them and a fair chance to succeed. Many of the problems facing refugee youth are mainly due to lack of willingness on behalf of the federal government, policy makers, and school administrators to develop a thoughtful plan to socialize these children in the new school and social environment, on the one hand, and to inculcate among the American-born student and teacher population a sense of hospitality and cultural understanding, on the other.

Bogner's study, which was based on interviews with principals of two New York City public schools on the needs of war refugees, reached the conclusion that "refugees get little recognition as a distinct subgroup of the larger immigrant population, via the statistical population information or with regard to resources available for incoming students" (40). Even with the recognition that these students had distinct behavioral and motivational problems in comparison with economic refugees, the principals in Bogner's study made a troubling confession that without the policy makers' support, they could not provide adequate support for this highly vulnerable student category.

My research for this essay has uncovered a dire human rights problem receiving little national attention. It is unsettling to learn that the final destination, rather than being a place where African refugee children and their families find hope, turns out to stage a reenactment of their past experiences of persecution and suffering. There is an urgent need for an amendment of the education policy to address the needs of and provide support and protection to underrepresented refugee students prone to bullying and discrimination. In order to facilitate the academic, emotional, and social adjustment of African-born and other third-world war refugee children in school, the following recommendations should be considered.

- Appropriate mechanisms need to be put in place to ensure that, given salient irregularities in their schooling, school placement for war refugee students is done according to their psychological well-being, intellectual ability, and educational history. In the absence of academic records, pre-entrance placement testing and interviews may provide more reliable biographic data about a newcomer student's prior education history.
- Students who demonstrate the need for intensive remedial instruction should be referred to philanthropic educational organizations, whose mis-

sion is to address the language, cultural and academic needs of resettled refugee student populations. These programs may be supplemented by Saturday academic enhancement programs and after-school tutorial services at the school sites to bring up to speed refugee students with acute academic arrears. In some states, schools partner with immigrant assistance organizations to provide tutoring and support for immigrant students who need help assimilating and reaching par academically for their grade. A model of such partnership is the “Catching Up” program at Montgomery Blair High School, Silver Springs, Maryland.

- Another service that is indispensable for refugee students is expert psychological help. While urban schools are familiar with students with special needs, the needs of war refugee students may be more complex than the more familiar cases of child abuse or other childhood difficulties. Information on trauma and rehabilitation centers should be made available for refugee parents whose children present symptoms of psychological imbalance and other behavioral problems. Enrollment in character development programs intended for refugee and immigrant students and their families is another effective way to boost confidence among refugee children, who may have spent most of their lives being treated like non-humans.
 - From a socio-cultural perspective, urban school administrations need to brainstorm effective ways to ensure a safe atmosphere, conducive to learning, for refugee students, especially those coming from stigmatized cultures like Africa. Through partnerships between schools and refugee and immigrant advocacy organizations (e.g., IRIS in Connecticut, refugee youth literacy programs, and newcomer center projects), American-born students can engage in volunteer/tutoring opportunities for refugee children, which can foster their awareness of diversity, as well as respect for other cultures.
 - At the administrative level, schools may contribute to the visibility and integration of marginalized students, like refugees, by including parents from culturally and linguistically underrepresented communities on school committee boards, like the Parent Teacher Association (PTA) and the School Leadership Team (SLT). The appointment of a successfully assimilated ombudsman with a similar background as the refugee students may be another effective way to establish communication between the schools and the communities the refugee students belong to.
- In the end, school administrators have the responsibility of making sure that both fellow students and personnel, especially teachers, school guidance

teams, and security officers, are aware of the presence of refugee students in the classroom, and the fact that they may have different needs than the general student population. Refugees constitute a protected class and this status needs to be reinforced in schools. The plight of uprooted African-born, refugee and immigrant children in western school settings will only improve when the citizens of developed nations will learn to treat immigrants and refugees from less fortunate countries with the respect and dignity reserved for any human being.

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ENDNOTES

¹The breakdown of the refugees by nationality is available at : <http://www.state.gov/documents/organization/37128.pdf>

²A more comprehensive breakdown of refugee admissions ceilings and regional allocations, FY1998-FY 2006 can be accessed at: <http://www.ilw.com/immigdaily/news/2006,0215-crs.pdf>

³1989 UN Adoption of the Convention on the rights of the child (178)

⁴Mike Cole (2)

WHY IS TORTURE WRONG?

Kenneth R. Himes, O.F.M.

Abstract

Roman Catholic teaching on torture has undergone evolution. At one time the Church endorsed the use of torture in trials and investigations. Today the proscription of torture is absolute, according to the Compendium of the Social Doctrine of the Church. What accounts for this development? This essay maintains that Catholicism's increased appreciation for the centrality of freedom to the experience of human dignity provides the rationale for the church's teaching on torture. While utilitarian and other forms of argument may be used by opponents to torture, the Catholic argument is fundamentally deontological. Contemporary forms of torture have as their aim the breakdown of a victim's inner freedom. For that reason torture, as it is practiced today, is judged to be especially antithetical to the Catholic understanding of the image of God within the person, the exercise of freedom as self-determination.

Why is torture wrong? For many, answering the question is not worth the effort. Akin to asking "why is rape wrong," the answer is considered obvious. Yet given the debate in recent years about torture, cruel, inhumane, and degrading treatment, and coercive interrogation, it is unwise to let principled opposition to such behavior go unexplained (Himes 193-203).

International law maintains the absolute wrongfulness of torture. The number of international agreements that universally and absolutely prohibit all torture is substantial. Chief among them is the 1984 international "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." This document as well as the Geneva Conventions and other international agreements barring torture have been widely accepted throughout the world (Compilation of Torture Laws).

In Catholic teaching the use of torture is also rejected completely as a violation of human dignity. According to statements of recent popes as well as the teaching of the *Catechism*, torture is viewed as absolutely wrong and "the prohibition against torture cannot be contravened under any circumstance" (Pontifical Council for Justice and Peace 404).¹

Despite the clear teaching of the Catholic church (along with many other religious bodies) and the existence of international agreements prohibiting torture, recent history demonstrates that torture not only continues but also is approved by large numbers of people. Although they may be signatories on treaties and declarations prohibiting torture, many governments, including that of the United States, have engaged directly, or abetted others, in torture. Furthermore, there is evidence of significant support among U.S. citizens for torture, with forty-nine percent “often” or “sometimes” approving of its use. A sample of white, non-Hispanic American Catholics suggests that cohort is even more likely than the general population to approve of torture. And support for torture increases with frequency of church attendance (Pew Forum on Religion and Public Life). Clearly, neither the moral force of international law nor the church’s teaching has persuaded many Catholic citizens that torture is simply wrong.

Of course, the Catholic church, despite its present strong opposition to torture, not only sanctioned torture in its past but actively sponsored it, particularly in regard to obstinate heretics (Noonan 150-153). What accounts, then, for the dramatic development that one finds in Catholic teaching about torture? Is there a solid basis within the Catholic tradition for the present rejection of torture? Or is the sizable percentage of disagreement with the teaching a sign that the development is mistaken? This essay will examine two developments—one regarding torture and the other concerning Catholicism’s growing appreciation for the centrality of freedom for human dignity—that shed light on why the church’s teaching has developed as it has.

The Meaning of Torture

Throughout the debates over torture a recurring issue is how to define it. In this essay I will follow the work of Darius Rejali, who suggests certain characteristics appear again and again in many of the historical uses of torture. First, the infliction of pain, physical or mental, is deliberate not incidental. The pain is not a by-product of some other purpose, such as hard labor under difficult or dangerous conditions where the point is not to make workers suffer but to complete a task. In torture the pain is desired; it is an intended means to an end. So torture is a species of a genus, cruelty, the intentional infliction of pain.

Second, torture may be distinguished from other forms of cruelty because it is also characterized by being inflicted or sponsored by the state, or at least done in collusion with the state (or a quasi-state agent). Private individuals can engage in acts that many might view as torture, but when doing so the actor uses only the resources available to an individual. Torturers can call upon the resources of

the state—the authority of the state, its protection, and also various means of coercion—entrusted to agents of the state in the name of the public. Torture entails the “use or abuse of public trust” (Rejali 39).

Third, torture is different than war. Although states sponsor war and soldiers act as agents of the state in their violent actions, such military actors confront one another as equal moral agents bound to abide by a code of honor, such as no deliberate attack upon unarmed civilians. “In torture, soldiers or other state officials act upon individuals who are helpless” (Rejali 37). This is why there can be war crimes, for example, deliberately killing hospital patients, but not torture crimes for torture is the crime.

These characteristics of torture provide a working definition of the term. A more formal definition is the one used in the UN. “Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed, or intimidating him or other persons” (United Nations Pt.1, Art.1)

Different Motives for Torture

Different uses of torture have relied upon different motives, and thereby required different arguments in opposition. Historically, the question of why we torture has at least five answers (Luban 1432). The most common setting for torture has been military conquest. In such cases victors often tortured their captives for a simple reason: to relive the thrill of their victory and to demonstrate the absoluteness of their mastery of the losers by inflicting pain whenever and however the torturer desired.

Torture also has been used for a second purpose of creating an atmosphere of terror in order to deter resistance to the state. Dictators have often wanted their subjects to know that torture was a weapon in the arsenal of police, militias, palace guards, and other agents of protection for a tyrant. The fear of the consequences if resistance was to fail was often enough to keep potential dissidents from opposing a ruler.

Third, torture has been employed as a means of criminal punishment. The use of torture in this instance served both to deter others from criminal behavior and to satisfy a sense of retributive justice. The Eighth Amendment of the U.S. Constitution was added as part of the Bill of Rights, expressly to rule out cruel and unusual punishment.

In some situations of police custody or juridical proceedings a fourth use of torture was to extract confessions. This was also the occasion of torture most

commonly associated with trials over religious belief. Heretics and other non-heterodox thinkers were coerced to admit their beliefs and these were understood to be injustices directed against God.

Today, one finds no responsible author in the West defending torture for any of the purposes noted above. Arguments against wanton cruelty, the needless infliction of pain when an individual is no longer a danger, opposition to treatment of any person as a means not an end—these and additional sensible objections have all been used to oppose the above instances of torture.

The intellectual debate about torture's permissibility focuses on one remaining purpose, intelligence gathering. After the attacks of 9/11 the acquisition of "actionable intelligence" to prevent deliberate acts of terrorist violence against the innocent is the single most important reason why torture became a matter for debate in the U.S. and other places.

In one sense the argument for the permissibility of torture for the sake of gathering intelligence is an extension of the established argument for killing an aggressor in order to save an innocent third party. A terrorist, although captured and in custody, is not viewed as an incapacitated enemy because the individual is thought to possess possibly vital knowledge of a still pending attack. Thus, the defenders of torture argue that the tortured terrorist is neither innocent nor rendered unthreatening and that harsh efforts to extract crucial information are permissible if it will save lives. The argument is not made to defend retribution or to excuse wanton cruelty. Rather it is akin to the justification a police officer may offer to explain violent force used against an assailant about to launch an attack upon an innocent victim.

Over the years the moral logic of the above argument in support of the use of torture has been employed in what is popularly called the "ticking time bomb scenario." This hypothetical case presents a captured terrorist who knows the location of a powerful bomb set to go off shortly that will kill many innocent people. The most recent versions usually posit the hidden bomb is a weapon of mass destruction planted in a major urban center.

Opposition to torture even in the case of the ticking time bomb may sometimes take a utilitarian form, arguing that torture just does not work. Or one might employ a virtue ethic approach, maintaining that torture corrupts the character of the torturer and/or the society that legitimates torture. David Luban has employed these and other rebuttals in his oft-cited essay. But the opposition of the Catholic church to torture relies primarily upon a deontological rationale, that torture violates the essential human dignity of the victim and, therefore, can never be permitted.

It is making sense of that argument, why torture violates human dignity in a way that requires an absolute prohibition, to which we will turn shortly. First, however, it is necessary to be clear about the kind of torture that is usually envisioned in cases where the goal is to elicit “actionable intelligence.”

Torture Today

Contemporary torture is less a matter of pain for the sake of pain, than it is a variety of practices that dominate, coerce, isolate, and disorient a person for the purpose of breaking down an individual’s sense of self. The aim of much contemporary torture is the destruction of the person’s interiority more than the imposition of physical pain per se (Physicians for Human Rights).

There are, of course, multiple answers to the question of how torture is done, even if we increasingly focus on methods of psychological torture now. Practices termed “enhanced interrogation,” and aggressive interrogation methods, using “moderate physical pressure” have been referred to disparagingly as “torture lite.” Several measures—being hooded, shackled, made to stand for long periods in one spot, forced nudity, exposure to cold temperatures, subjection to verbal insults, being slammed into a wall, forced feeding, physical isolation—are harsh individually, yet may arguably fall short of torture if done only once (Elshtain 85). Done in conjunction with one another in various combinations, however, the measures certainly constitute cruel, inhumane, and degrading treatment. Those same actions may amount to torture when joined with additional practices or when performed repeatedly over a period of time (Paeth; Wolfendale; Warrick, Finn, and Tate).

The aim of such techniques is “breaking down” a detainee physically but even more so, mentally. Psychological torture is real torture, as numerous victims will testify (Basolu, Livanou, and Cmoaric; Physicians for Human Rights). Many of the methods of psychological torture were initiated and refined in the Soviet Union during the communist regime of the mid-twentieth century and then exported to other locales. For example, a newspaper article from the era reported on the treatment of American airmen captured during the Korean War:

The United States declared today that Russians directed a Communist torture center where false confessions of germ warfare were wrung from United States fliers in Korea—even after the armistice. ... Dr. Mayo said an interrogation center known as "Pak's Palace" near Pyongyang, North Korea, was staffed by Chinese and North Koreans but directed by Soviet personnel. "Many of our fliers were interrogated there by Soviet personnel," the Minnesota surgeon said. He told of a Kansas flier who refused to write a confession despite 180 hours of questioning directed by Russians. Dr. Mayo said United

States fliers were reduced to a level lower than that of animals, and that the tortures were designed to be more terrible than medieval methods (Associated Press 1953).

Another article, one year later, reported on one of those tortured fliers: “Colonel Schwable, who has repudiated his confession, said he was ‘morally broken’ by the Red tactics, that he existed in ‘a world of fancy that is beyond the power of description.’ The system, he said, involved a ‘low, quiet and diabolical poisoning’ of the mind” (Associated Press 1954). And a U.S. government study, originally classified and then made available, described the effect of the torture methods upon one captive: “He follows the orders of the guard with the docility of a trained animal. Indeed, the guards say that such prisoners are ‘reduced to animals’” (Wolff and Hinkle 122).

The use of the terms “break” or “broken” is significant when discussing torture. As Andrew Sullivan has observed, “something broken can be put back together, but it will never regain the status of being unbroken—of having integrity” (Sullivan 2). The aim of modern torture methods is to use pain, physical or mental, as a means of destroying the victim’s sense of autonomy and self-control. It is to attack the inner life of a human being, to go after the sensibility that one is in control and to replace it with a sense of helpless dependence. It is the moral integrity of the person that is assaulted by today’s methods of torture.

The style of torture utilized by Soviet operatives metastasized throughout the second half of the twentieth century. Indeed, there is a clear connection from what captured U.S. military personnel suffered in Korea and later in Vietnam, to what U.S. personnel inflicted upon captives at the Guantanamo Bay Naval Base, Bagram Air Base, and Abu Ghraib prison during the Afghan and Iraq conflicts. The connection runs from CIA studies of the Soviet techniques between 1950 and 1962 that eventuated in the KUBARK manual on coercive interrogation (Marguiles), through SERE, the U.S. training program to counteract those methods, to the employment of similar methods in CIA-run interrogations by “reverse engineering” of the SERE techniques. As stated in one report that summarized the CIA’s de-classified guidelines for interrogation of “high-value” detainees: the “agency’s interrogators had grown adept at using sleep deprivation, stress positions and sometimes multiple methods to create a ‘state of learned helplessness and dependence’” (Warrick, Finn, and Tate).

Today, it is this evolution in the aim and methods of torture, as a direct attack upon the interior life of the person, which, in part, explains the church’s teaching on torture. The other part of the explanation is a development in Catholicism’s understanding of the centrality of freedom for human dignity.

A Catholic Understanding of Human Dignity

There are two key texts issued by the Second Ecumenical Council held at the Vatican during 1962-65, commonly referred to as Vatican II. The first text is found in paragraphs 16-17 of *Gaudium et spes*, the “Pastoral Constitution on the Church in the Modern World” (Vatican IIa). The second passage is drawn from *Dignitatis humanae*, the “Declaration on Religious Liberty,” paragraphs 1-2 (Vatican IIb). The importance of these documents is that they reflect a growing appreciation by the Catholic church for the value of an individual’s interior freedom. And it is the significance of the person’s inner freedom for human dignity that has led the church to adopt an uncompromising opposition to torture.

The Pastoral Constitution taught the value of conscience, a person’s “most secret core and sanctuary,” is that it is within this internal forum that the moral law is revealed. We are told this law is “inscribed by God” and “human dignity lies in observing this law.” Conscience is the human capacity that unites us with all other people “in the search for truth” (Vatican IIa 16).

In the next paragraph of the document an important claim is made which is a vital point for understanding Catholicism’s turn toward a modern appreciation of the human person. The Council fathers wrote, “freedom is an exceptional sign of the image of God” in the person. They also taught that it is “only in freedom that the person can turn the self toward what is good.” Indeed, it is claimed that God’s will is that individuals “should ‘be left in the hand of their own counsel’ so that they might of their own accord seek” the creator and freely attain perfection. Human “dignity therefore requires the individual to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by blind impulses in the self or by mere external constraint” (Vatican IIa 17).

According to the Council’s teaching, the mistake of the modern era regarding freedom is not that people cherish it highly, but that they improperly equate it with license, the freedom to do as they please. Freedom as a sign of the *imago Dei*, the image of God in a person that is the foundation of human dignity, is the capacity to choose the good. Moral integrity necessarily entails personal freedom, for an individual cannot be a full moral subject if the good is imposed rather than chosen. The touchstone for the morally mature is not external obedience, but the free and deliberate choice to embrace the moral good. The risk, of course, is that some will misuse freedom by rejecting the good; but the remedy for that danger cannot be to deny personal freedom. Rather, the challenge is to instruct, persuade, and support individuals to exercise freedom wisely.

What must not be lost is that the good is to be personally appropriated, not simply acknowledged notionally and externally obeyed. Moral growth requires

the transformation of the self and that occurs as a person freely chooses to embrace and make the good one's own. In sum, the insight that has emerged in the modern era, according to the Council, is that people must be allowed to seek the good freely, acting in self-determination and not subject to "mere external constraint" (Vatican IIa 17). This conviction led the bishops at the Council to acknowledge that people may mistakenly choose what is wrong, yet if they do so sincerely as a consequence of invincible ignorance, the dignity of a free conscience is not tainted (Vatican IIa 16).

The importance of freedom in the conciliar perspective is further affirmed by the teaching of the "Declaration on Religious Liberty." Without question the Council taught that the dignity of the human person is the foundation for the right of religious freedom (Vatican IIb 2). The duty to seek religious truth, as with moral truth, is a duty of conscience. "But people cannot satisfy this obligation in a way that is in keeping with their own nature unless they enjoy both psychological freedom and immunity from external coercion" (Vatican IIb 2). By the phrase "in keeping with their own nature," the bishops meant that humans are "beings endowed with reason and free will" (Vatican IIb 2). The obligation to acknowledge truth is of vital importance, yet the effort to meet that crucial duty cannot entail overriding the necessary means of reasoned self-determination. For absent the exercise of the proper means, the obligation cannot be meaningfully satisfied. It would be a logical contradiction to suggest one could seek truth by violating personal freedom for it is only by the proper exercise of internal freedom that one can choose truth.

The necessity of preserving interior freedom in the search for truth is a requirement not only of human dignity, therefore, but it is also due to the nature of truth. As the bishops teach, "Truth can impose itself on the mind of the individual only in virtue of its own truth, which wins over the mind with both gentleness and power" (Vatican IIb 1). A person can only come to embrace truth and appropriate it as one's own conviction if they enjoy the interior freedom to accept or reject a truth claim. "For this reason the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it" (Vatican IIb 2).

The Second Vatican Council's defense of religious freedom in *Dignitatis humanae* is of a piece with its defense of the dignity of conscience in *Gaudium et spes*. Both documents demonstrate Catholicism's developing appreciation for the necessity of the human person to exercise genuine freedom in order to actualize his or her dignity as a seeker of goodness and truth. So immense is the appreciation of interior freedom that this human capacity must be respected even

when an individual is indifferent to the obligation to be conscientious in the quest. Catholic teaching maintains it is unjustifiable to attack that basic interior freedom even if the cause is to bring someone to accept truth and goodness; for without the exercise of freedom it cannot be a genuine good and actual truth for the subject. As a consequence, the bishops at Vatican II taught that torture is a criminal act that violates the basic integrity of the human person (Vatican IIb 27).

Contemporary Ethical Reflection

The deepening appreciation for freedom in the Catholic understanding of the person is further explored in the writing of two prominent Catholic ethicists. In an essay examining the foundation for human rights, Lisa Cahill rightly pointed out that, within the framework of Catholic social teaching, rights are corollaries of obligations. Building on the Thomistic heritage that emphasizes duties more than claims, Catholic social teaching articulates human rights as basic goods, freedoms, or relationships that secure the necessary conditions enabling people to satisfy their moral duties or responsibilities.

In accord with Aquinas, Cahill has argued that the Catholic tradition has an essentially social view of the human person. The tradition does not begin with the autonomous individual as Locke and his liberal descendants do; rather, Catholicism starts with a social order “inclusive of the human community within which the individual functions” (285). In this latter framework the language of rights exists in order to specify the fundamental conditions that allow persons to attain their authentic development.

According to Cahill a human right is a moral claim to a good that is “fundamentally related to meaningful human existence” and that is “dependent upon communal support.” Since persons are essentially social, rights-talk has a correlate in a theory of duties. The “preeminent duty” is each person’s “duty to seek God.” Individuals have a right to those necessary conditions that permit the fulfillment of duties, “especially the duty to God” (286).

This approach does not rule out conflicts between rights and duties. It does suggest that there is one duty which trumps all else, and that every man and woman has an “absolute obligation to respond to the claim of God” upon each person. This duty overrides all others for it entails each person’s obligation to achieve their ultimate call to live in accord with God’s purposes, that is, to attain the state of intimate friendship with the Creator (Cahill 283). This obligation generates all other duties and is the foundation for any human rights claim.

Within this framework each person can claim an absolute right to “the personal integrity which is the essential precondition of his or her fulfillment of

the ‘absolute duty’ to seek God or to respond to the claim of God.” Cahill employs the expression “personal integrity” to refer to “the freedom of the rational self-consciousness to cultivate the qualities of character, such as justice, fidelity, and love, which are essential to the concrete realization of human dignity” (289).

So understood, a right to personal integrity would mean the absolute claim to the goods of “freedom of thought, freedom of conscience, freedom of religious faith” (Cahill 289). This is because these fundamental goods are absolutely necessary for an individual to satisfy the highest duty of responding authentically to God’s call. Torture, or any other direct assault on the essential core of personal integrity, cannot be justified since it constitutes an effort to violate the fundamental condition of persons that allow a man or woman to respond as self-determining creatures to their creator.

The focus of Cahill’s essay is to examine the foundations for human rights and she discusses torture as an example of an extreme attack upon basic rights. A more recent article by Jean Porter specifically addresses the question of what argument can be used to support the prohibition of torture. She states her conviction that torture is an attack on the image of God that each person embodies, yet she admits such a claim is too general to justify an absolute prohibition, given that the image of God within each person does not prevent us from taking the life of the other in extreme circumstances.

Following Thomas Aquinas, and similar to Cahill’s argumentation, Porter posits a reading of the human person that sees the *imago Dei* in the human person as being rooted in the “human capacities for rational judgment, choice and free action in accordance with that choice” (349). In other words, the rational freedom to be self-determining and, therefore, accountable for oneself before God is what is at stake when the *imago Dei* within a person is involved.

Porter reminds us that torture is deemed wrong not simply because it is coercive or painful; after all, the experience of being forced to do things we do not wish to do is common, and the infliction of pain can be justified in a number of situations. The particular evil of torture is that it “subverts the will itself by assaulting or undermining the delicate psychic forces that sustain the individual’s integrity, sense of well-being and self-command” (349). Here it is safe to say that Porter is aware of the modern forms of torture that focus on the interior life of the victim and which are aimed at “breaking down” the person.

Porter’s conclusion is that torture attacks the capacity of its victims to experience themselves as spiritual creatures. It is precisely the ability of the human to be transcendent and to establish a relationship with one’s God that is

thwarted when the internal freedom of self-determination is denied. “No considerations of personal or national security, nor even the possibility of widespread loss of life, can justify an assault” upon “the integrity of the image of God within the individual, his or her capacities for faith, hope, and love.” That is the “fundamental theological reason” that torture should be banned absolutely (351).

The Catholic Viewpoint

The teaching of Vatican II and the ongoing exploration of the Catholic tradition by contemporary theologians testify to the way in which freedom has become central to our understanding of the human person. In particular, the inner freedom of the individual to exercise self-determination in the pursuit of truth and goodness is vital to the experience of human dignity.

Today, the church’s *Catechism* acknowledges with regret that in the past church leaders “themselves adopted in their own tribunals the prescriptions of Roman law concerning torture.” The paragraph continues, “in recent times it has become evident that these cruel practices were neither necessary for public order, nor in conformity with the legitimate rights of the human person (Holy See 2298). It is the view of the person as a creature endowed with the gifts of “conscious and free choice” (Vatican IIa), “personal integrity” (Cahill), and “rational freedom” (Porter), that serves as the foundation for those “legitimate rights” that torture violates.

Modern methods of torture used for extracting information are largely aimed at undermining the capacity of the victim to exercise the necessary freedom of conscience that allows an individual to properly choose moral truth. Vatican II suggests assaults on that freedom are truly assaults on human dignity in a way that even killing is not. Killing ends an individual’s temporal life, while torture allows life to continue yet robs it of the very condition that gives it dignity—the exercise of the freedom that is an exceptional sign of the image of God within the human person.

Conclusion

Torture, in the words of Andrew Sullivan, is the “polar opposite of human freedom” (1). A human life robbed of the interior freedom that permits self-determination is a broken life in which dignity has been crushed. This conclusion, I believe, is in accord with the insights of Roman Catholicism’s understanding of the dignity of the human person. It is why the Catholic church maintains torture is deserving of an absolute prohibition.

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END NOTES

¹In keeping with standard practice all references to church documents will be to paragraph not page numbers.

EDUCATION FOR SOME:
THE INADEQUACY OF EDUCATIONAL PROGRAMS
OFFERED TO YOUTH OFFENDERS IN ADULT AND
JUVENILE CORRECTIONAL FACILITIES

David Pasick

Abstract

As an adherent to the U.N.'s Universal Declaration of Human Rights, the United States has made a commitment to social justice. As a part of this commitment, the U.S. maintains that the right to an education is both innate and compulsory. This paper addresses U.S. government's failure to uphold its citizens' educational rights, made clear by the inadequacy of the educational programs currently offered to juvenile offenders. Based on the findings of recent scholarly literature, this paper argues that both juvenile and adult correctional institutions lack the resources necessary to provide proper educational instruction and adequately address the special educational needs of juvenile offenders. To help the U.S. maintain its commitment to social justice, alternatives to juvenile incarceration are proposed.

Introduction

The right to an education is thought by many to be innate, a right that is granted at birth. While the veracity of the notion is continuously debated within and between societies, many countries have adopted it into legislation. The right to education was formally acknowledged by the United Nations in 1948 when it drafted the Universal Declaration of Human Rights. Article 26, section 1 of the Declaration pertains directly to education:

Everyone has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit (United Nations General Assembly).

As an adherent to this Declaration, the United States has expressed a commitment to social justice, and has granted each of its citizens the right to an

education. State governments provide public education from elementary to secondary levels, and also make post-secondary education available. Education is also deemed compulsory up the age of 16, 17, or 18 depending on the state. These compulsory education laws include juveniles who have been convicted of a crime and placed in a correctional facility. Under this legislation youth offenders are granted the right to continue their education while they are being detained. In most states, juvenile detention facilities are responsible for providing educational services to the youths they detain. In addition, adult correctional facilities holding juveniles tried as adults are also responsible for delivering educational services (Leone, Wilson & Krezmien 2008).

This paper argues that both adult and juvenile correctional facilities are failing to deliver adequate educational services, if any, to juvenile offenders. It argues that both types of facilities are not equipped to cater to the special educational needs of many juvenile offenders. Potential avenues toward the improvement of correctional education programs are proposed, as well as possible alternatives to juvenile detention.

Adult Facilities

Offenders under the age of 18 represented 1.1% of prison inmates and 1.0% of jailors in the years 2002 and 2004 respectively. Prisons are long-term detainment facilities that hold offenders for felonies punishable by sentences over one year, while jails are facilities that detain offenders serving sentences less than one year, offenders waiting to be transferred to another facility, as well as criminal suspects awaiting trial. It is estimated that these percentages have remained relatively stable, and may be increasing (Leone et al. 2008). While one percent might seem like a small population it is actually considerable given the drastic increase in the overall correctional population since 1980. According to the U.S. Department of Justice's Bureau of Justice Statistics, the national jail and prison population numbered 2,299,116 in 2007 (Bureau of Justice Statistics 2008). A rough calculation would put the number of jail and prison inmates under the age of 18 to over 22,000 as of 2007.

One contributing factor to this strong juvenile presence may be the increasing number of juvenile offenders being prosecuted in criminal rather than juvenile courts. States have increasingly redirected youths from juvenile to criminal courts by way of judicial transfer, direct file, and statutory exclusion (Kupchik 2007). Adult correctional facilities then face a unique challenge when juveniles are sentenced to their facilities. Although they are required by law to provide educational services to juveniles who do not possess a high school diploma or

G.E.D., given the nature of most adult correctional facilities, their ability to provide juveniles with adequate educational programming is questionable. In fact, there are indications that correctional education programs in adult facilities are not on stable ground in general. Harlow (2003) reported that in the year 2000, 9 percent of state prisons, 12 percent of private prisons, and 40 percent of local jails did not have any educational programming at all. Also, a survey conducted by the Bureau of Justice Statistics indicated drops in participation in G.E.D., high school, and vocational programs in state prisons between the years of 1997 and 2004 (Crayton & Neuster 2008).

Developing quality correctional educational programming and other rehabilitative programming has been an uphill battle since the “Nothing Works” era was ushered in by Robert Martinson. Martinson (1974) essentially claimed that any and all rehabilitation programs were not effective at reducing recidivism. He found that “...with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism” (25). This claim was based on a previous research project in which he participated which reviewed over 200 rehabilitative programs between the years of 1945 and 1967. It was during those years that rehabilitative efforts were welcomed in correctional facilities and considered to be an essential part of reformatory efforts (Sarre 1999).

Martinson’s article, which appeared in *The Public Interest*, changed the way that nearly the entire country thought about rehabilitation. The article was published at a time when legislators on both sides of the political spectrum were willing to accept his proclamation. The Left did not agree with the predominance of indeterminate sentencing, which called for prisoners to remain imprisoned until they were deemed reformed by prison officials, or had completed the maximum term of their sentence. Martinson’s findings gave them cause to call for the abandonment of indeterminate sentencing. The Right, which typically favored retributive practices, welcomed the findings as they reinforced their cause for long sentences and capital punishment. Despite the fact that many of the programs Martinson was so quick to write off were poorly funded and under-staffed, correctional rehabilitative programming was deemed to be ineffective and was abandoned (Sarre 1999).

Although nearly forty years have passed since Martinson, the idea that “nothing works” still pervades much of prison culture today. Crayton and Neusteter (2008) report that a lack of public support and the fear of appearing soft on crime led Congress to pass the Violent Crime Control and Law Enforcement Act of 1994, an Act that did away with awarding Pell grants to

prison inmates. One year after it was passed, enrollment in postsecondary correctional education programs dropped 44 percent. Currently, the crime control mentality shown by Congress in 1994 is present in the administration of many prisons around the country, where educational programs are seldom assisted and sometimes impeded by prison administrators and staff. It is hard to imagine how educational programming for juvenile offenders is supposed to succeed in such a climate.

Even if the ideological environment were more conducive to educational programming and an effective juvenile education program were set in place, the regularly scheduled operation of that program would be challenged by the innumerable operational problems that prisons and jails face, including budget constraints, staffing shortages, and overcrowding. Overcrowding puts stress on bed space, security, and personnel, but despite these concerns state and federal laws require juveniles to be held separately from the adult population and thus call on correctional facilities to find additional space and staff where there is virtually none (Kupchik 2007). MacKenzie (2008) points out that frequent lockdowns, transfers, violence, and other security issues often keep inmates from attending scheduled classes. Security concerns also prohibit the use of many different forms of technology in the classroom, particularly the Internet. Eliminating use of the Internet, a resource that has become an integral part of educational services in the outside world, denies inmates a valuable instrument for information gathering and online library access.

There are myriad obstacles that juvenile educational programs face in adult correctional institutions. Prisons and jails are not environments conducive to juvenile education. It seems that those who are responsible for the increased prevalence of charging juveniles in criminal, rather than juvenile, courts are not considering the obligations of state and federal government to provide for those juveniles' education.

Juvenile Facilities

Juvenile correctional facilities are intended to be much different than adult correctional facilities. They are typically smaller, have lower inmate to staff ratios, and maintain policies that place more emphasis on treatment and educational programs (Kupchik 2007). In 2006, the Office of Juvenile Justice and Delinquency Prevention reported the total number of juveniles being held in residential placement facilities across the U.S. to be 82,854. This figure has decreased by over 14,000 youths since 1999 (Sickmund, Sladky & Kang 2008). The reason for the decline is unclear, although it could be attributed to the increasing trend of trying juvenile offenders as adults.

Kupchik (2007) investigated the effect these smaller populations had on juvenile facilities. He compared the populations of two juvenile facilities to three adult facilities all located in the northeast. Neither of the juvenile facilities reported populations over 160 detainees, while all three adult facilities reported populations of over 1,000 inmates. Kupchik also examined ratios of inmates to programming staff and found that the two juvenile facilities did not exceed 2.3 inmates to every one programming staffer, while the adult facilities all reported ratios of over 16 to one. One could reasonably assume that such ratios would result in more successful educational programming at the juvenile facilities, but the remainder of Kupchik's study found that this was not the case.

Over a full one-year period between 2000 and 2001, Kupchik conducted interviews with juvenile offenders being detained in both adult and juvenile facilities. (It is worth noting that, to avoid confounding factors, all 95 of the juveniles interviewed were sentenced to their respective facility through one state's court system.) Upon analyzing the data, Kupchik found that inmates in adult facilities rated the availability of "institutional services" more favorably than inmates in juvenile facilities. Respondents in juvenile facilities also reported that not all inmates in their facilities received counseling, as was reported by facility administrators. Based on these results, Kupchik concluded that facilities designed specifically for juveniles might actually reduce the services available to individual detainees because they would be spread out more evenly. Even though the ratio of programming staff to inmates is higher in adult facilities, the ratio of programming staff to *juvenile* inmates may in fact be lower in adult facilities compared to juvenile facilities. Kupchik ultimately concluded that while juvenile facilities claim to be focused on educational and treatment programming, they do not necessarily deliver those services better than adult facilities.

Data presented by the Office of Juvenile Justice Delinquency Prevention is similarly disappointing. The OJJDP's 2002 census of juvenile residential facilities found that despite the overall drop in population since 1999, many juvenile correctional facilities are faced with overcrowding problems. Overcrowding was determined using the number of standard beds and the number of occupied makeshift beds reported by each facility. The census found that 36 percent of the facilities responding were either at or over the capacity of their standard beds, or they relied on makeshift beds (Office of Juvenile Justice and Delinquency Prevention 2006).

This information reveals that juvenile correctional facilities are faced with the same problems as adult facilities. Meisel, Henderson, Cohen, and Leone (1998) explain that just as with adult corrections, incapacitation and punishment are

often considered higher priorities. The same crime control mentality is made evident through the endorsement of “zero tolerance” and “get tough” policies by not just the juvenile justice system but schools as well. Such policies will do nothing to improve the education of juvenile offenders.

Special Educational Services

The shortcomings of both juvenile and adult correctional facilities are made worse when the special educational needs of many juvenile offenders are considered. Youths with learning, developmental, and behavioral disabilities are at high risk for school failure and poor adult outcomes. As a result, many of them end up in correctional institutions. Practitioners and researchers from a range of different fields agree that youths with learning disabilities, mild to moderate mental retardation, and emotional or behavioral disorders are overrepresented in juvenile correctional facilities (Meisel, Henderson, Cohen & Leone 1998). In fact, the number of youths identified as eligible for special education prior to incarceration has been found to be three to five times the number of public school students considered disabled (Meisel et al. 1998). In addition, a survey conducted by Leone et al. (2008) found that 33.4 percent of juveniles enrolled in education programs in juvenile corrections nationally were identified as having a disability. Of that population 47.7 percent were identified as having an emotional disturbance, 38.6 had a learning disability, 9.7 were mentally retarded, and 2.9 had other impairments such as ADHD.

By law, correctional institutions are required to be equipped with the special services these juveniles require. Youths with disabilities under the age of 21 are entitled to educational services under the Individuals with Disabilities Act (IDEA), Americans with Disabilities Act (ADA), and Section 504 of the Vocational Rehabilitation Act. But the ability of correctional facilities to meet the requirements of these Acts has proven to be less than adequate. Leone et al. (2008) note that correctional facilities have frequently been unresponsive to the requirements of the IDEA, despite the fact that federal and state courts have confirmed the statute’s applicability to incarcerated youths on multiple occasions. Meisel et al. (1998) have also recognized these shortcomings:

While the requirement to apply the provisions of IDEA for incarcerated youth is clear, the implementation of IDEA in juvenile detention and confinement facilities compares to special education service delivery in the public schools 20 years ago. Substantial problems with both access *and* equity remain unresolved, and special education programs for incarcerated youth often fail to meet legal requirements and currently accepted professional standards. As a result, youth with disabilities in correctional settings do

not participate in education programs to which they are entitled, and which can prepare them to reenter their schools and communities. (p. 5)

In addition, many juvenile offenders *without* specific disabilities have also found difficulty in the classroom. Foley (2001) addressed this in an extensive literature review focusing on the academic characteristics of incarcerated youth. In this excerpt, she summarizes her findings:

Incarcerated juvenile delinquents appear to have significant problems in many intellectual and academic performance areas. Their intellectual functioning has been found to be within the low-average to average range. Second, studies have indicated academic achievement levels extending from fifth to ninth grade levels. Incarcerated youth have demonstrated significant reading, math, written, and oral language deficits when compared to their nondelinquent peers. Third, initial data have suggested that the intellectual and academic functioning levels of nonrecidivists are significantly higher than those of recidivists. Finally, school failure appears to be a common experience among incarcerated youth. (253)

These studies and excerpts showcase the inadequacy of correctional education programming for juveniles. Both adult and juvenile corrections are called upon to provide educational services to young people with *very* diverse educational needs. These institutions are not able to follow the standards established in the U.N.'s Universal Declaration of Human Rights. Therefore, significant improvement needs to be made in educational programming for juvenile offenders, and possible alternatives to juvenile detention and incarceration must be considered.

Avenues toward Improvement

Improving educational programs in correctional institutions begins with the decision making processes that lead to the incarceration and detention of juveniles. Court officials are required to balance the interests of public safety with the educational needs of youths when making sentencing decisions. While it is recognized that these are very difficult decisions to make, the inordinate number of decisions undermining the needs of youths must be examined.

Arthur (2001) reported that one third of all youths held in juvenile detention centers are detained for status offenses and technical violations of probation. Over-reactive policies in the name of "getting tough" and "zero tolerance" have led to poor decision making by court officials. This decision making process can be improved by changing how the risk of recidivism is evaluated at sentencing. My own previously conducted research has revealed that neither clinical nor

actuarial risk assessment methods have proven to be superior in predicting re-offense among juveniles (Pasick 2008). However, juvenile risk assessment instruments are continually being improved; with continued development actuarial methods may soon have an edge over clinical methods. Even as actuarial methods are still being perfected, it may be beneficial for more court officials to adopt juvenile risk assessment instruments in conjunction with clinical methods so that sentencing decisions are not as over-zealous as they have proven to be.

Another necessary improvement would be in the area of public awareness. In order to reverse the “nothing works” mentality criminal justice officials, politicians, and the general public must be made aware of the positive effects properly run correctional education programs can have on the reduction of recidivism. MacKenzie (2008) cites a number of studies indicating the potential role of education in re-offense reduction. MacKenzie reports that, on a cognitive level, education has shown to improve problem solving abilities as well as one’s sense of self efficacy, that is, one’s ability to control the events of one’s own life. Education increases maturity levels and moral development, thus instilling more solidified ideas of right and wrong. MacKenzie also suggests that education may reduce effects of “prisonization,” i.e., the adoption of prison culture and values through socialization.

If that is not persuasive enough, perhaps analyzing the economic impact of correctional education programs is more convincing. MacKenzie reports that employment after release is more likely for those who attain their high school diploma or G.E.D. while incarcerated. Based on the same economic premise, if individual educational needs can be identified in relation to the particular region’s job market, it could also increase the likelihood of job placement upon release, thus stimulating the economy rather than being a significant tax burden.

Alternatives to Juvenile Detention

If programming cannot be improved, the best way to ensure that juvenile offenders are afforded their rightful education is through the avoidance of correctional institutions altogether. Adult institutions are overburdened with overcrowding, staff shortages, and security concerns. As a result, juvenile education programs, special education programs in particular, falter. Despite differences in setup and policy, it is unclear whether juvenile facilities are any better than adult facilities at effectively educating youthful offenders. In addition, short detention periods only serve to interrupt a juvenile’s life and educational progress. A detention period must last a significant amount of time

for a juvenile to enroll in an education program, and then set and reach educational goals. Extended stays place juveniles at risk of prisonization and institutionalization which can increase the difficulty of reintegration. If correctional facilities are reserved for those juveniles who are truly a threat to society they will be able to receive necessary treatment, and all other non-violent and non-threatening juvenile offenders can seek rehabilitation in ways other than secured detention or incarceration.

First and foremost, juvenile offenders diagnosed with mental disabilities do not belong in correctional institutions. As of 2005, 9.7 percent of juveniles in correctional facilities who were diagnosed with a disability had mental retardation (Leone et al. 2008). Unfortunately, with the advent of deinstitutionalization and the closure of many mental institutions, mentally ill and handicapped individuals are directed to correctional facilities. The former director of the Ohio Department of Rehabilitation and Correction, Reginald Wilkinson, witnessed this phenomenon first hand:

We created more residential units in our prisons for persons with a mental illness at varying levels. We transferred the psychiatric hospital that was then operated by the Department of Mental Health to the Department of Corrections in the state of Ohio. So we became both the administrator of the mental health delivery system as well as the clinical agency responsible for mental health. So at that time, in addition to being the director of the Department of Corrections, I became a de facto director of a major mental health system. (Navasky 2005)

The sad truth is that many correctional facilities across the United States are pulling double-duty as asylums. This trend is regrettable, and must be reversed. Juveniles requiring such specialized treatment should not be receiving it in a correctional setting; they should be directed to appropriate health care facilities. If their conduct is a risk to the welfare of others it should be dealt with by the staff of that facility; locking them away in a correctional facility is not the correct course of action.

For those juveniles who are free of mental disability and are not a significant threat to public safety, community programs have proven to be very successful. Austin, Johnson, and Weitzer (2005) report that many juvenile offenders can be rehabilitated by way of community based supervision and intervention. Detaining youths in correctional facilities removes them from their family and community, as well as any other positive influences they may have had in the lives. Austin et al. make a strong case for the benefits of community programs:

Community-based programs are cost-effective solutions for a large number of delinquent youth. These alternatives to secure detention and confinement are intended to reduce crowding, cut the costs of operating juvenile detention centers, shield offenders from the stigma of institutionalization, help offenders avoid associating with youth who have more serious delinquent histories, and maintain positive ties between the juvenile and his or her family and community. (3)

If a juvenile offender maintains a positive connection with his or her family it is best not to take that juvenile away from it. The importance of maintaining ties to one's family is mentioned by Arthur (2001). A judge herself, Arthur recommends the use of home detention as an alternative to secured detention. She explains that home detention can be supported by an electronic bracelet, random phone calls, or even hold the juvenile's parent/s in contempt if the juvenile leaves home. In many cases the detention administered by one's parents is more effective than that of the state.

Another potential alternative to detention is restorative justice programs. Rogriguez (2007) discusses four types of restorative justice programs. First, "victim-offender mediation programs" call for the victim to meet with the offender to let him or her know how much harm their offence caused. Next, "community reparative boards" have members of the community meet with offenders to let them know the harm their delinquent acts do to the community at large. Third, "circle sentencing programs" bring family, friends, community members, victims, and offenders together to all seek out a general understanding of the offense. Last, "family group conferencing programs" follow the same protocol as circle sentencing programs with the addition of criminal justice officials. Rodriguez examined data from a county Juvenile Probation Department in Arizona over a three year period to determine the effect of restorative justice programs on juvenile recidivism. She found that juveniles enrolled in such programs were less likely to recidivate than those who were not. She also found that participants in restorative justice programs who had either one or no prior offenses had lower rates of recidivism than those not in the programs.

Some improvements are also being seen as a result of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative. Since the Initiative's inception, the Foundation has inspired a number of successful changes across the nation. In its 2008 KIDS COUNT Essay Message FACT SHEET, the Foundation reported that roughly 40,000 behaviorally troubled young people participate in family-focused treatment programs each year (Annie E. Casey Foundation 2008). It also reported that Connecticut has passed legislation that will increase the age of juvenile court's jurisdiction from 15 to 17, and that

several other states with a maximum age of less than 17 are campaigning to pass similar legislation. Such legislation will help juveniles avoid a criminal record. In addition, according to the report, the number of youths in state correctional facilities in California has dropped from 10,000 in the mid-1990s to 2,500 as of 2007. Similar figures were reported in Cook County, Illinois where only 400 youths were committed to state confinement in 2006, down from 900 in 1996 (Annie E. Casey Foundation 2008). While these figures show improvement, a great deal of ground still needs to be covered.

Conclusion

By virtue of its inclusion the U.N.'s Universal Declaration of Human Rights, the United States has deemed the right to an education as innate. With few exceptions, it has proven itself unable to provide adequate educational services to incarcerated and detained juveniles, thus violating their right to an education. The alternatives to incarceration and detention discussed here keep juvenile offenders out of inadequate educational programs and help maintain stability in their lives. If our government intends to uphold its commitment to social justice it must not only consider, but adopt these alternatives.

Afterword: A Note on the Meaning and Interpretation of "Social Justice"

Recognizing that the term social justice has now become a political buzzword, a more thorough evaluation of the social justice implications of our government's shortcomings is in order. No matter what social justice "standards" one uses, there is no question that the state of correctional education for juveniles in this country is unjust. If one is to consider the problem from the perspective of Rousseau's social contract theory he or she could conclude that withholding education from incarcerated juveniles is in violation of the "general will" (Rousseau 2008). That is, the ill effect felt by those who are not receiving a proper education is subsequently felt by society as a whole, and thus influences everyone. Or, if one is to endorse the ideas of John Rawls' *A Theory of Justice*, and place him or herself in the "original position" under the "veil of ignorance", he or she could find that the general principles of justice at which one would arrive under such conditions would never allow such disparity in how certain individuals are treated and educated (Rawls 1999). Looking through a completely different lens, if one were to view the situation from the perspective of Robert Nozick, he or she might find that the amount of influence the state is allowed over juvenile offenders is well beyond what it should be, and thus results in a violation of their rights, such as the educational rights violations that are currently apparent (Nozick 1974).

The point of this final exercise is to illustrate that regardless of one's particular standard of social justice, the current state of education for incarcerated and detained juveniles is unjust. In this 63rd anniversary year of the U.N.'s Universal Declaration of Human Rights, it is necessary that the United States be called to uphold its agreement, and maintain its commitment to social justice.

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TERRORISM, SECULARISM, AND THE DEATHS OF INNOCENTS

John P. Reeder, Jr.

Abstract:

The “moral equivalence” objector—appealing only to certain moral considerations, e.g., wellbeing and consent—argues that no inherent moral significance attaches to the distinction between intended means and foreseen side-effects: If an act of direct killing is wrong, then a morally comparable act of indirect killing is wrong as well; if an act of indirect killing is right, then so is a morally comparable act of direct killing. One secular version of double effect (“Thomson 1976”) is vulnerable to the objection unless it can provide a principle of justice which prohibits direct but justifies indirect killing. Both “Thomson 1976” and the moral equivalence view depart(in different ways) from a theological interpretation of double effect as “delegated dominion.”

Introduction

I want to discuss one important objection—the moral equivalence objection—to the doctrine that even in a just cause we may not attack noncombatants as a means toward victory, but that their deaths are permitted as side-effects if proportionate. The objection denies that the distinction between deaths intended as a means and deaths that occur as side-effects is morally relevant. Is the view that the distinction has intrinsic moral significance merely a secular “ghost” of an old theological doctrine ? There is serious debate today about the means/side-effect distinction both in academic and governmental circles.¹

I. Combatant and Noncombatant

On influential contemporary interpretations of the just war tradition (*jus ad bellum* and *jus in bello*), only the combatant loses immunity (the right not be killed). Hence the traditional principle of *noncombatant immunity*: There shall be no attack on noncombatants as a means; to fail to “discriminate” is to fail to distinguish between combatant and noncombatant targets. But deaths of noncombatants are permitted as a side- effect provided the loss is proportionate, for instance, that more innocent lives are saved.

From the perspective of the just war tradition, then, the violation of noncombatant immunity is why terrorism is wrong.² If we include the moral judgment

in the very concept itself, then terrorism would mean a wrongful killing. If we do not include the moral judgment in the concept, using it only as a descriptive notion, as Andrew Valls and Stephen Nathanson urge, then we would simply say that the just war tradition condemns this sort of killing.³

II. Double Effect

The principle of noncombatant immunity as often interpreted employs a notion of double effect:⁴ An act with both good and bad effects is permitted (or required) 1) if the act itself is morally good or indifferent,⁵ 2) the bad effect is not intended as means or end, 3) the bad effect is not itself an intermediary means to the good effect,⁶ and 4) the act has proportionate results overall.⁷ The principle of noncombatant immunity is interpreted accordingly as the prohibited taking of innocent life as an intended means, in contrast to causing deaths as a proportionate side-effect.⁸

An important question is 1) how to characterize the combatant who loses immunity (e.g., the bearer of an unjust threat, the member of an organized military force, a guilty or responsible agent, a contribution to an unjust threat) from the “innocent” noncombatant who does not.⁹ Another question 2) is how to distinguish what is intended as a means and what is a side-effect, or in the language of the Catholic tradition, what is “direct” and “indirect.”¹⁰ Still another question 3) is how to construe the notion of proportionality: Whose good, which goods, and how to weigh?¹¹ And even if we have good reasons to identify the combatant who loses immunity in a particular way, if we can draw a useful descriptive distinction between direct and indirect, and if we can devise a satisfactory notion of proportionality, there remains the normative question I will focus on here:¹² If innocent noncombatants are going to die, why is it important how they die, as a side-effect or as an intended means? Does the distinction really mark off actions that are permissible from those that are not?¹³

III. “Thomson 1976.”

Let me present first a nontheological answer to the question, “what are the moral limits on actions, in particular killings, undertaken as means to a greater good?” It is an answer which still gives moral significance to the intended means/side-effect distinction. I have in mind a notion of respect for persons, the right to life, and a related notion of double effect which is suggested, for example, in Judith Jarvis Thomson’s 1976 distinction between doing something very harmful to a person in order to (as a means to) distribute a threat, and doing something very harmful to a person in the course of (as a side-effect of)

distributing a threat by other means. One does not respect a person when one does something (very harmful) to a person in order to distribute a threat; but one still respects a person if one must do something (very harmful) to a person in the course of distributing a threat in some other way. So one may not cut up one relatively healthy patient in order to procure organs to save five who would otherwise die, but one may, in order to save five on the main track, turn a runaway trolley onto a side track where it kills one as a side-effect. One may not fatally use one patient to save many, unless the person yields their right to life; but one can kill the person on the side track as an unintended side-effect provided one's action is proportionate. The person on the side track is not killed unjustly, and thus his or her right to life is not overridden or violated. It would be unjust, however, and hence an infringement of the right to life, just as in the operation on the healthy patient, to shove someone onto the main track in order to use (fatally) their body as an obstacle to stop the trolley.¹⁴

The permissibility of turning the trolley depends on a view of how we should distribute threats. What is prohibited in the healthy patient case and the obstacle case is the fatal *using* of the bodies of persons. In contrast, turning the trolley onto the side track is sufficient to save five; the fatal damage to the person on the side track is not instrumental to that purpose; one would turn the trolley even if the person were not there, as opposed to the obstacle case where one has to use (fatally) the body of one person in order to stop the trolley from killing five.¹⁵

A fortiori, as I construct "Thomson 1976," it is also prohibited to seek death itself as an intended means. The terror bomber "intends," I will assume, the death of innocents when he or she chooses to act (e.g., drop bombs) *in order to* bring about their deaths, in contrast to the tactical bomber who drops bombs *in order to* destroy a military target.¹⁶ The terror bomber also acts in light of the belief that the deaths of innocents will in some way weaken the enemy; hence their deaths are not only intended, but "intended as a means" to that end, in contrast to the tactical bomber who intends to destroy the military target as a means of weakening the enemy.¹⁷

Persons (innocents) have a right to life, then, a right not be killed in either way (fatal use or death itself as the means) which obtains in virtue of their nature as persons.¹⁸ Both types of killing unjustly inflict a fatal harm on the body of a person as the intended means.¹⁹ I will speak, then, of the prohibited "direct" killing as including both intending death itself and fatal use as the means. "Indirect" killing in contrast refers to cases where death results, but where one neither seeks death in itself or a use which is necessarily fatal (in the circumstances) as one's means. Indirect killing is permitted only when proportionate.

One could argue, however, that in cases of fatal use one intends as a means only an *injury*, not a *fatality*. One operates on (cuts up) the one patient in order to remove organs (in order to save five). The removal of the organs is intended as a means to saving the five. But since one can distinguish the injurious use (the removal of the organs) and the death, and since only the former and not the latter serves one's purposes, it is incorrect to say that one intends a *fatal* use as a means. Susan Nicholson, for example, argued that in the classic craniotomy case, which the Roman Catholic Church has condemned, fetal death is not the intended means.²⁰ The surgeon who operates intends as a means only the crushing and narrowing of the threatening fetus's head, not the death itself,²¹ to ward off the danger from the fetus the surgeon needs only the narrowing, not the death.²² The death of the fetus becomes a side-effect.²³

However, I will assume here that one can legitimately speak of fatal use (as well as death itself) as an intended means. One chooses to act in order to bring about the injury (the crushing that narrows) which is fatal in the circumstances (according to the laws of physics and the limits of technology). One intends the injury which is fatal and one intends it as a means. Although the death itself does not serve one's purposes, nonetheless one intends this *type* of injury as the means to one's goal. Both death itself and fatal use, then, count morally as direct killing.²⁴

The "Thomson 1976" doctrine, then, has a broader scope than a traditional prohibition against taking innocent life directly, at least if the prohibition is understood only to prohibit intending death itself as a means. The "Thomson 1976" doctrine forbids both intending death itself as a means and fatal use (as in the healthy patient or obstacle on the track cases). In "fatal use" one inflicts an injury (one which results in death) as the intended means to avert an evil or obtain a good. In the craniotomy case, one inflicts the injury to avert the fetus's threatening force;²⁵ in the healthy patient, one inflicts the injury in order to provide a life-saving benefit (organs) to the five patients, who face a threat from their diseases.²⁶

The "Thomson 1976" notion of respect for persons, moreover, which entails a respect for their right to life, is offered as a secular thesis which does not require theological backing: Respect for innocent persons in virtue of their humanity rules out seeking death itself or fatal use as a means. Both count as the "direct" killing of innocents. Direct killing is wrong (unless victims yield the right to life). But indirect deaths—if proportionate—are not unjust; in these circumstances the right to life of innocent persons is not infringed.

We can apply to war, then, this understanding of direct and indirect killing: If you attack innocent noncombatants directly you do not respect them as persons,

but you do respect them if they die as a proportionate side-effect in the course of just attacks on military targets. The secular doctrine forbids killing both in cases like the healthy patient, where one's intended means is a fatal injury, and in cases where death itself is the intended means, as in terror bombing. In order to save those who would be the victims of an unjust aggressor, however, we are permitted or obligated to take steps in order to remove the military threat, provided that innocent noncombatant casualties are proportionate.

"Thomson 1976" thus provides an analogue for war. Aggressors engaged in an unjust cause could be considered morally as similar in some respects to the threat of a runaway trolley. The types of threat are different, of course. The threat of the trolley is the result of a mechanical failure (it is assumed), whereas the threat in war is the action of unjust agents. The response to the threats is different as well; in one case one diverts a threat (the trolley) which itself causes the side-effect death, while in the other case one's own military action against the threat (the bombing itself or the ensuing destruction) kills as a side-effect.²⁷ The similarity in the cases, however, is the judgment that one may not kill innocents directly (as a means) in order to repel either sort of threat, but under certain conditions one may kill as a proportionate side-effect. In sum, we can treat the threat of aggressors as we treat—according to "Thomson 1976"—the threat of the runaway trolley. Respect for persons and respect for their right to life requires that we do not take the lives of innocents directly (death itself or fatal use).

IV. The "Moral Equivalence" Objection

There is an important objection, however, to the conception of respect for persons in "Thomson 1976." The argument, roughly put, is this: "Thomson 1976" asserts that there is an intrinsic moral difference between killing the innocent as an intended means and as a side-effect; but, the objector claims, there is no such difference. The noncombatant who is killed directly as an intended means and the noncombatant who dies as a side-effect are equally innocent, in the sense that neither *ceteris paribus* has lost his or her immunity to attack. To take either life is to sacrifice one so that a greater number may live. If neither has consented, then in both cases the right to life is infringed. The right to life is a bulwark against both direct and indirect killing of the innocent.

To explain this objection, let us start with how a similar objection is applied to another traditional distinction, one between killing and letting die.²⁸ In regard to killing-letting die, the argument is that even if moral considerations consist not only in consequences, but in other factors as well, these considerations do

not attach intrinsic moral significance to the killing-letting die distinction itself, making one impermissible and the other permissible. In other words, if an act of killing is wrong because of consequences or for reasons independent of consequences, then so is a morally comparable act of letting die, and if an act of letting die is right, then, so is a morally comparable act of killing.²⁹ As Dan W. Brock argues, the effect on the patient's wellbeing, her self-determination, and the motive and social role of the one who kills or lets die, are the relevant moral considerations: "...the mere fact that one case is an instance of killing, another of letting die, does not make one any worse morally than the other, or make one justified or permissible but the other not."³⁰

The moral equivalence objector allows, however, that on some *particular* occasion, an instance of killing could be "worse" than letting or allowing to die; but this is a function of the relevant considerations which on this occasion "differentiate it morally from the particular instance of allowing to die."³¹ For example, in a particular case one sort of action or the other could have differential effects on the patient's wellbeing, or the patient might consent to one but not the other. A patient might consent to letting die (withholding or stopping treatment), but not to being killed (lethal injection). The former is permissible and the latter impermissible in this case not because of some intrinsic difference between the two types of dying, but because on this occasion this patient consents to the one but not to the other. In sum, the moral equivalence thesis is that if a moral consideration does not make one sort of dying right and the other wrong in some particular case, for instance, where the patient consents to letting die but not to killing, there is no residual moral significance which attaches to the distinction as such.

Now applied to the principle of double effect, the moral equivalence argument is that moral considerations do not attach intrinsic moral significance to the distinction between intended means and side-effect. For example, Brock distinguishes between a case in which at the patient's request the physician would administer *morphine* in order to relieve pain, with the foreseen side-effect that the patient's death would probably be hastened, and a case in which a physician would be asked by the patient to administer a shot of *strychnine* in order to kill the patient and hence end his or her suffering.³² In these two cases, one where the physician kills indirectly (as a side-effect) and in the other kills directly (as intended means), the competent patient makes the request in both, the physician's role and motive are the same, and relieving suffering is "of sufficient importance to justify acting in a way that leads to death. These seem to be the essential value judgments involved and they do not differ in the two cases."³³

The moral equivalence objector can allow, however, that a *particular* act of direct killing (the strychnine) could be wrong and the indirect right (the morphine), for example, because the patient requests, i.e., consents to, the latter and not the former. The point of the equivalence argument nonetheless is that where moral considerations apply in the same way, direct and indirect are equally right or wrong: If the patient consents in both cases, for example, then, *ceteris paribus*, the fact that one death is direct and the other indirect is morally irrelevant. If the morphine is justified, so is the strychnine.³⁴

Let us now engage in a thought experiment. Applied to war, and to the distinction between intended means and side-effect in that context, the moral equivalence argument goes as follows:³⁵ In light of the considerations the critic acknowledges, there is no basis for attaching intrinsic moral significance to the distinction between means and side-effect. It would be just as wrong to kill a noncombatant indirectly as it would be to kill the noncombatant directly. It would be wrong in both cases if the persons do not consent, i.e., yield the right to life. And conversely, if somehow the victims consent in both cases, then, *ceteris paribus*, killing directly would be as right as killing indirectly. Given the moral values or considerations so far acknowledged, i.e., wellbeing, consent, social role, and motive, no intrinsic significance attaches to the means/side-effect distinction. This is not the strong—too strong in my view—thesis that no considerations could *ever* attach such significance; it is the more limited view that in light of the considerations acknowledged in the killing/letting die and the strychnine/morphine cases, no intrinsic significance attaches.³⁶

In sum, then, if the parties do not consent, it would be as wrong to kill a noncombatant indirectly as it would to do so directly, and, conversely, if the object of attack were to yield the right to life, it would be as right to kill directly as indirectly. Only if there were a difference in which form of death the innocent noncombatant consents to would there be a moral difference in a particular case (if we assume as regards their wellbeing that they would die in either case, and that the social role and motive of the combatant who kills them are the same).³⁷

For example, just as a patient might consent to morphine but not to strychnine, suppose that a noncombatant in an enemy country welcomed our intervention as a just cause, and consented, should it be necessary, to dying as a proportionate side-effect, although not to direct attack.³⁸ Our war planners, then, might generalize from this case that noncombatants in the enemy country are prepared to die indirectly, so long as their deaths are proportionate. Our policy should be to avoid direct attacks, but indirect deaths (“collateral damage”) are permitted where proportionate. Of course, such a generalization about the

consent of the populace strains credibility to the breaking point; but the point now is that even if the policy were justified it would not rest on an intrinsic difference between killing as intended means and as a side-effect, but on the consent of some agents in a particular time and place to dying in one way, but not the other.

V. A Ghost?

Is “Thomson 1976” the “ghost” of a discarded theological conception?³⁹ Without a theological justification, does “Thomson 1976” fall prey to the moral equivalence objection? Some would argue that the doctrine that one may not attack the lives of innocents directly, but that their indirect deaths may be permitted if proportionate, rested, in one strand of Western traditions, on a theological notion of *delegated dominion*. One can contest, of course, this historical narrative. It may be mistaken, misleading, or inadequate. I present it here only as a speculative story.⁴⁰

The story goes that God, who as Creator has sovereignty over human life, delegates the authority to take life directly only to agents of government who constrain criminals and aggressors for the sake of the common good of the community.⁴¹ Human creatures (even agents of the state) are not delegated the dominion or authority to take innocent life directly; indirect deaths are permitted only if proportionate.⁴²

Thus God puts “limits” on love.⁴³ To save innocents, or, more broadly, to prevent suffering and promote wellbeing, we must not directly attack innocents. In one version of the dominion motif, God as just and benevolent Creator can take the innocent lives of creatures directly, or order them to be taken—divine sovereignty extends this far. But in his *wisdom* God delegates to human creatures as such the dominion to take innocent life *only* indirectly. Creatures are to rely on God who will secure the ultimate good. Without the notion of delegated dominion, so the narrative would go, a doctrine such as “Thomson 1976” is (in effect) an effort to give a new nontheological version of an old theological distinction between killing the innocent as intended means and as a side-effect. Instead of an appeal to the proper dominion of creatures, one now cites the idea that intending the deaths (or fatal use) of innocents does not respect persons and their right to life.

But the moral equivalence objector, as we have seen, tries to show that the relevant moral considerations do not attach moral significance to the direct/indirect distinction as such. Thus instead of the insistence that respect for persons rules out intending death itself or fatal use as a type of action, respect

for persons is now construed as respect for the rights-bearing individual: Individuals, who have sovereignty over their person, can assert or yield their rights. The right to life of an innocent, which must be yielded if it is not to be infringed, protects innocents against not only direct but indirect killing. For the moral equivalence objector, there is no moral reason, *ceteris paribus*, to say that direct killing infringes the right to life, but indirect does not.

Thus the moral equivalence objector could argue that “Thomson 1976” is a “ghost,” a notion of intrinsic limits on types of actions, in particular killings, taken as means to a greater good, but without the robust theological notion of dominion in which the idea of these limits was anchored. Without this anchor, the argument would go, the attempt in “Thomson 1976” to find a new grounding in respect for persons and their rights is not successful. The considerations the moral equivalence objector recognizes do not attribute intrinsic moral significance to the intended means/ side-effect distinction.

A new notion of respect focuses, then, on whether the individual consents, that is, yields the right to life. The notion of respect in “Thomson 1976” employed a distinction between actions intended as a means(death or fatal use) and actions which kill as a proportionate side-effect. But for the new notion of respect the distinction between these types of actions is not morally relevant as such. The right to life protects innocents against both direct and indirect killing without their consent.

To continue the story, how can we describe this shift in the meaning of respect for persons? Hans Blumenberg contrasts two notions of secularization. In a “transposition,” a secular conception reuses the content of a theological motif; in a “reoccupation,” a secular notion gives a new answer to an old theological question. For example, if I understand correctly, secular visions sometimes transpose—utilize—the content of some Christian moral ideals. The Marxist view of the laws of history, however, is a reoccupying, non-Christian answer to the old theological question, “what is the meaning of history as a whole?” That question was previously answered in Christian doctrines of providence and eschatology.⁴⁴

The moral equivalence objector, then, could argue that “Thomson 1976” was a *transposition*. It rules out directly seeking deaths or fatally using innocent persons even for a greater good, but permits indirect deaths as a proportionate side-effect. The normative content of the delegated dominion doctrine is preserved in nontheological form. The distinction between direct and indirect still has fundamental moral significance.

We could still be dealing with a transposition, indeed a stronger sense of transposition, even if the divine dominion motif is interpreted in another way. In

one version of the motif, as we have seen, it is not unjust for God to kill innocents directly, but the *wise* Creator has not delegated this dominion to creatures. It has also been held in some theological traditions, however, that the principle “never attack the innocent directly” is a *necessary moral truth* which guides the divine as well as the human will. Delegated dominion reinforces this truth. We have to do in “Thomson 1976” not only with a transposition of normative content (the moral significance of the direct-indirect distinction), but also with a restatement of its status as a necessary moral truth.⁴⁵

Thus “Thomson 1976” could be described as one or another sort of *transposition*. But it could also be characterized in another sense as a *reoccupation* because it attempts to give a new nontheological answer to the old theological question, “what are the intrinsic limits on types of action, in particular killings, taken for a greater good?” While “Thomson 1976” retains the moral distinction between direct and indirect—in that sense it recapitulates (transposes) the old normative content—it also dispenses with either version of the dominion theme, and replaces it with respect for persons and their rights in virtue of their humanity. It keeps the old question, but in this sense gives a new answer—a reoccupation.

Using Blumenberg’s categories, how then could we understand the moral equivalence objection? The moral equivalence objector is saying that on a different view of respect for persons and their rights, respect as respect for self-determination, for sovereignty over one’s body and life, the distinction between means and side-effect has no intrinsic significance.⁴⁶ It would be wrong to turn the trolley onto the side-track, even to save five, in the absence of the consent of the one person on the side-track who will be killed as a side-effect; we may not turn unless the person consents, that is, yields his or her right to life. The person on the side-track has the same right to life as the healthy patient or the person thrown on the track as an obstacle.

I think the moral equivalence objection could be described, then, as an attempt to escape the old question entirely.⁴⁷ It is not a reoccupation—a new answer to an old question, “what are the limits on actions (killings) taken to achieve a greater good?” In effect it says that given the moral considerations the secular objector recognizes, we should no longer seek for a morally significant distinction in types of action (e.g., direct/indirect killing). We should focus rather on the relevant considerations, and in particular consent, the sovereignty of the individual who has a right not to be killed indirectly or directly.⁴⁸

Conclusion

The new notion of respect for persons, of course, still recognizes a “limit” on actions: the person’s sovereign self-determination or consent with regard to his

or her rights. But this limit is not a matter of an intrinsic difference between direct and indirect; dominion now is exercised by the *individual* in *particular* cases. The new limit, *ceteris paribus*, is consent.

The “moral equivalence” argument provides a reason to suspend the project of attaching intrinsic secular significance to the distinction between intended means and side-effect. Someone might argue at this point that if we want to retain the moral judgment we have no choice but to recover “delegated dominion” or some other theological grounds.⁴⁹ But what if we persisted, and tried to find some principle which nonbelievers also could endorse?

1) One could try to defend the “Thomson 1976” substitute against the moral equivalence objection. The defender could admit that in regard to the patient at the end of life, moral equivalence holds as regards both killing/letting die and means/side-effect: All other things being equal, the patient’s (or their surrogate’s) consent here is decisive.⁵⁰ But as regards how we deal with runaway trolleys and unjust aggressors, the defender would argue, we must rely on another sort of consideration, a principle of justice. We should deal with an evil threat so as to save the most innocent lives, for example, so long as we do not seek deaths as such or fatally use some as a means in order to save others. To avoid instrumentalization in these circumstances is one thing we owe persons. It is permissible and perhaps required to ward off great evils in a way that maximizes the good even if as a side-effect we do harm to innocents. It is this principle of justice, the argument would go, which is at work in our sense that we should not fatally use one patient to save five, but that we can act for the sake of many even if some die as an unintended side-effect. No right to life is overridden or violated in these side-effect deaths because no injustice is done. On this view, an antecedent principle of justice determines the nature and scope of rights.⁵¹

The question, of course, is why we should accept this principle of justice. But if we could add this principle to our repertoire of moral considerations, “Thomson 1976” would not look like a “ghost,” a normative remnant of an older theological conception, which does not have an adequate nontheological grounding. The new principle and its justification would suffice. We would have anchored the moral significance of the intended means/side-effect distinction in a principle of justice which determines how we specify the meaning of rights such as the right to life.

Someone might object that such a principle really rests on consent, for those who die as a side-effect have consented (explicitly or implicitly) or would consent (under certain hypothetical conditions) to the principle. But consent in the sense of the affirmation or acceptance of a principle of justice (for whatever

reasons, even self-interested ones) is not the same as consent in the sense of presently yielding, or even proleptically yielding, a right. In the trolley and side track case, the argument would go, we assume a principle of justice regarding the distribution of evils.⁵² The considered judgment of justice at stake excludes using injuries to persons as means, by their deaths as such or by fatal use, and hence provides a bulwark against utilitarian maximization. But it allows one to maximize the good when the ones who die do so only as proportionate side-effects. Since the principle obtains, no injustice is done. The ones who will die have the right not to be directly killed, but not a right—under certain conditions—not to be killed as a side-effect.⁵³

2) If one accepted the moral equivalence, or some other, objection to “Thomson 1976,” however, one could try to revise the doctrine of double effect.⁵⁴ Or one might try to supplant the intended means/side-effect distinction, at least as employed in the principle of double effect, but find reasons for attributing moral significance to the difference between attacking combatants and noncombatants.⁵⁵

3) One might present arguments for noncombatant immunity as an international agreement or convention, or give a rule-utilitarian justification. As Edmund N. Santurri argues,⁵⁶ however, conventions and rule-utilitarian justifications rest the case on empirical assumptions, in contrast to rights which belong to persons as such.⁵⁷

It is important to notice, in any case, what the moral situation of the secularist is if no substitute for the theologically-shaped principle is available (neither “Thomson 1976” nor some other revisionary or supplanting secular substitute). Putting aside international conventions or utilitarian justifications, secularists who make the moral equivalence objection are left, it seems to me, with two broad alternatives. On the one hand, if neither the one who is to die indirectly or the one who is to die directly yields the right to life (consents), then it is at least *prima facie* just as *wrong to cause noncombatant casualties indirectly* as it is to kill them as a means. It would seem that this route could lead to a kind of practical pacifism. Assuming that we could not fight against aggressors without killing some noncombatants indirectly who have not yielded their rights, we could not go to war at all.⁵⁸

On the other hand, if we think some other moral consideration overrides a failure to consent, for instance, the justice of our cause, then this justification would legitimate, *ceteris paribus*, both indirect and direct deaths of innocent noncombatants since no significance attaches to the distinction as such: It is as *right to kill directly* as indirectly. We are led practically to disregard noncom-

batant immunity, and terror (the direct targeting of innocent noncombatants) becomes a tactical alternative.⁵⁹

What this secularist has lost is the mediating position Santurri finds in the just war tradition.⁶⁰ On the one hand the tradition forsakes pacifism and argues it is justified to resist the unjust aggressor by force if necessary; on the other hand, the tradition rules out terrorism, for the deaths of innocent noncombatants can only be justified under certain conditions as proportionate side-effects.⁶¹

END NOTES

¹See, e.g., Virginia Held, *How Terrorism is Wrong: Morality and Political Violence* (New York: Oxford University Press, 2008); Igor Primoratz, ed., *Civilian Immunity in War* (Oxford: Oxford University Press, 2007).

²I define terrorism as the targeting of noncombatants (for political purposes) by either state actors or nonstate actors, in contrast to the definition of terrorism as violence directed either against combatants or noncombatants by nonstate actors. The former (my definition) focuses on the noncombatant target, while the latter emphasizes the nonstate source. See C. A. J. Coady, "Defining Terrorism," in Igor Primoratz, ed., *Terrorism: The Philosophical Issues* (New York: Palgrave Macmillan, 2004), pp 3-14; Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2008); Stephen Nathanson, *Terrorism and the Ethics of War* (Cambridge: Cambridge University Press, 2010), Chs.1-5; Primoratz, "What is Terrorism?," in Primoratz, ed., *Terrorism*, pp. 15-27; Jenny Teichman, "How to Define Terrorism", *Philosophy* 64 (1989), 505-517. See Held, *How Terrorism is Wrong*, pp. 16-21, 37, 54-59, Ch.4, for arguments against making the targeting of civilians a necessary feature of terrorism.

³Andrew Valls, "Can Terrorism be Justified," in Andrew Valls, ed., with a forward by Virginia Held, *Ethics in International Affairs: Theories and Cases* (Lanham: Rowman and Littlefield, 2000), pp.65-79; Nathanson, *Terrorism*, Ch. 2.

⁴On various formulations and debates, see William E. May, "Double Effect," in Warren T. Reich, ed., *Encyclopedia of Bioethics* Vol. 1 (New York: Free Press, 1978), pp. 316-320; J.L.A. Garcia, "Double Effect," in Warren T. Reich, ed., *Encyclopedia of Bioethics*, 2nd ed., Vol 2 (New York: MacMillan, 1995), pp. 636-41; Mark Aulisio, "Double Effect, Principle or Doctrine Of," in Stephen Post, ed., *Encyclopedia of Bioethics*, 3rd. ed. (New York: MacMillan Reference, 2004), pp. 685-690; T. A. Cavanaugh, *Double-Effect Reasoning: Doing Good and Avoiding Evil* (Oxford: Clarendon Press, 2006); Christopher Kaczor, "Double-Effect Reasoning from Gury to Knauer," *Theological Studies* 59 (June 1998): 297 -316; and Lucius Iwejuru Ugorji, *The Principle of Double Effect: A Critical Appraisal of its Traditional Understanding and its Modern Reinterpretation* (Frankfurt am Main: Peter Lang, 1985). Alison McIntyre,

“Doing Away with Double Effect,” *Ethics* 111 (January 2001): 219-255, points out that the principle should stipulate a last resort condition, and Timothy M. Renick, “Charity Lost: The Secularization of the Principle of Double Effect in the Just-War Tradition,” *Thomist* 58 (1994): 460-61, argues that proportionality should mean not just more good than harm, but the least harm necessary, accepting risks to one’s own troops in order to minimize noncombatant casualties. See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. 4th ed. (New York: Basic Books, 2006, 151-159). Coady, *Morality*, pp. 134-5, distinguishes “incidental” effects which are foreseen but unintended, from “accidental” effects which are not foreseen but also are unintended. As regards the latter, one question is whether the agent has been reckless or negligent.

⁵The “act” in condition 1) cannot have as its defining “object” something intrinsically wrong. See James F. Keenan, S.J., “The Function of the Principle of Double Effect,” *Theological Studies* 54 (1993): 294-315. Condition 2) should be stated so as to rule out not only intending the bad effect as an end, but intending it also as a means *along with* the permitted means. Condition 3) rules out the case where the bad effect is an intermediary means between the permitted means and the end. (The bad effect must follow from the good, or with “equal immediacy”; Ugorji, *Principle*, 27-8, 32-38). See Keenan, “Function,” 301 n. 26: an “intrinsically wrong activity cannot be engaged as object of activity (first condition), intention (second condition), or material cause (third condition).”

⁶See Jean Porter, “‘Direct’ and ‘Indirect’ in Grisez’s Moral Theory,” *Theological Studies* 57.4 (December 1996), 611-632. Porter discusses Grisez’s attempt to distinguish the means in a causal sense from the means in a “morally relevant sense.” *Ibid.*, 618-20; 624. Porter presents the traditional view that causal structure is an “objective basis for assessing the intention of the agent;” were this not so, then one’s intention “could be described in terms of whatever could be said to be the agent’s purpose or motive in acting.” *Ibid.*, 620, 623, 626-7. See also Kaczor, “Double-Effect,” pp. 304-5, 309, 313, who discusses the view that “As long as one has a proportionate reason for allowing an evil, one’s moral intention is just, even if one *psychologically* intends an evil means.” Psychological intention here refers to the Thomistic notion of “means and ends chosen by the agent in practical deliberation.” See G.E. M. Anscombe, “War and Murder,” in *Ethics, Religion, and Politics*, Vol. III (Minneapolis: University of Minnesota Press, 1981), pp 51-61.

⁷I discuss double effect here only in the context of killing innocents (or, as I will assume throughout, inflicting very serious injury). See Oliver O’Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press), p. 105, who denies that double effect is a general moral principle; it applies “only, or primarily, to the taking of human life.” O’Donovan, *Ibid.*, pp. 43-5, takes “direct” to mean intended as end or means, but argues that if one foresees disproportionate side-effects and proceeds anyway, one intends the results. For a different view, see Mark P. Aulisio, “A Defense of the Intention/Foresight Distinction,” *American Philosophical Quarterly* 32.4 (October 1995), 341-354. See also O’Donovan’s use of the hypothetical question (if the predicted harm to noncombatants were prevented, would one’s attack lose its “point”) to deter-

mine whether an action is intended. *Ibid.*, 45-6. On the test question, see Jonathan Bennett, "Foreseen Side Effects versus Intended Consequences," in Woodward, P. A., ed., *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* (Notre Dame: Notre Dame Press, 2001), pp. 104-108, and Nigel Biggar, *Aiming to Kill: The Ethics of Suicide and Euthanasia* (Cleveland: The Pilgrim Press, 2004), pp. 83, 185.

⁸The bad effect is said to be permitted, permissible, or tolerated, although the act itself may be required, e.g., the defense of the community against unjust attackers.

⁹In some versions of the tradition, munitions workers, for example, or perhaps even workers in "dual-use" facilities, are counted, or at least treated, on the basis of their contribution as combatants, but others who only approve of the aggressor's action, or who support combatants in other ways, e.g., by providing food, are not. Soldiers are combatants even if they are not presently attacking you, but they are not subject to attack when they surrender; they are then "prisoners," not combatants. See Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004) and O'Donovan, *Just War*. Jeff McMahan in "The Morality of War and the Law of War," in David Rodin and Henry Shue eds., *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford: Oxford University Press, 2008), pp. 19-43, *Killing in War* (Oxford: Clarendon Press, 2009), and "The Just Distribution of Harm Between Combatants and Noncombatants," *Philosophy and Public Affairs* (2010) 38.4: 342-379, argues, against the traditional notion of the "equality of combatants," that just combatants do not lose their immunity. See the essays in Rodin and Shue, *Warriors*. See also McMahan, "Liability and Collective Identity: A Response to Walzer," *Philosophia* (2006) 34: 13-17, and Walzer, "Terrorism and Just War," *Philosophia* (2006) 34: 3-12, and "Response to Jeff McMahan," *Philosophia* (2006) 34: 19-21.

¹⁰See Jonathan Bennett, "Intended as a Means," in *Morality and Consequences*, S. McMurrin ed., *The Tanner Lectures on Human Values*, Vol. II. (Salt Lake City: University of Utah Press, 1981) pp. 95-116, and "Foreseen Side Effects versus Intended Consequences," in Woodward, ed., *The Doctrine of Double Effect*, pp. 85-118; Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," *Philosophy and Public Affairs* 18 (1989): 340-1 (Reprinted in Woodward, ed., *The Doctrine of Double Effect*, pp. 23-40, and in Quinn, *Morality and Action* (Cambridge: Cambridge University Press, 1993), pp. 175-183); Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford, 2002), pp. 398-421, and *Killing in War* Ch. 5; F. M. Kamm and John Harris, "The Doctrine of Triple Effect and Why A Rational Agent Need Not Intend The Means To His End," *Aristotelian Society Supplementary Volume* 74.1(2000): 21-39; F.M. Kamm, "Failures of Just War Theory: Terror, Harm, and Justice," *Ethics* 111.4(July 2004):650-92; *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (New York: Oxford University Press, 2007), Chs.1-5; and "Terrorism and Intending Evil," *Philosophy and Public Affairs* 36.2 (2008): 157-86. See Biggar, *Aiming to Kill*, pp. 78-84, on Bennett, "Foreseen Side

Effects.” See also Aulisio, “In Defence,” and Don Marquis, “Four Versions of Double Effect,” in Woodward, ed., *The Doctrine of Double Effect*, pp. 156-185.

¹¹On proportionality, see Brian V. Johnstone, C.S.S.R., “The Meaning of Proportionate Reasoning in Contemporary Moral Theology,” *The Thomist* (1998) 49: 223-47; P. A. Woodward, “The Importance of the Proportionality Condition to the Doctrine of Double Effect: A Response to Fischer, Ravizza, and Copp,” in Woodward, ed., *The Doctrine of Double Effect*, pp. 211-8; and Thomas Hurka, “Proportionality in the Morality of War,” *Philosophy and Public Affairs* (2005) 33.1: 34-66. See also McMahan, *Killing*, and “Just Distribution.” The tradition assumes that one is responsible not only for what is intended as means or end, but for side-effects; one’s act must be proportionate as well as discriminate. See Biggar, *Aiming to Kill*, pp. 72-8.

¹²Some proponents of the just war tradition affirm the immunity of innocents as a moral absolute, but other contemporary thinkers are prepared to make exceptions; see Walzer, *Just and Unjust Wars*, on “supreme emergency.” I read Walzer to say that the rights of noncombatants may have to be violated for the sake of another moral duty, not merely overridden; hence “dirty hands.” See Paul Lauritzen, “Torture Warrants and Democratic States: Dirty Hands in an Age of Terror,” *Journal of Religious Ethics* 38.1 (March 2010): 96-7, and John Reeder, “What Kind of Person Could Be A Torturer?,” *Journal of Religious Ethics* 38.1 (March 2010): 79-83, on the distinction between overriding and dirty hands. For objections to the notion of supreme emergency, see C.A.J. Coady, “Terrorism, Morality, and Supreme Emergency,” in Primoratz, *Terrorism*, pp. 80-96. In my terminology, overrides, dirty hands violations, and violations which are not morally motivated are all *infringements* of a right. See Edmund N. Santurri, *Perplexity in the Moral Life: Philosophical and Theological Considerations* (Charlottesville: University Press of Virginia, 1987) on the issues, and McMahan “Just Distribution,” who argues for a legal, but not a moral absolute.

¹³Nathanson, *Terrorism*, Ch. 7 (see also Ch. 17) asks what if the Sept. 11 attackers intended only to attack the buildings, and believed that the innocent noncombatant deaths were proportionate. I think this example raises the question of subjective and objective rightness. Attackers can believe—others say mistakenly—that they satisfy both *jus ad bellum* and *jus in bello*. Nathanson insists in any case that noncombatant deaths should not be caused recklessly, negligently, or with indifference to the value of human life. See David Rodin, “Terrorism without Intention,” *Ethics* 114 (July 2004): 752-771.

¹⁴“Thomson 1976” is my construction based on Thomson, “Killing, Letting Die, and the Trolley Problem,” *Monist* 59.2 (1976): 204-17. (Dated as 1975 in Reeder, *Killing and Saving: Abortion, Hunger, and War* (University Park: The Pennsylvania University Press, 1996). Reprinted in Thomson, *Rights, Restitution, and Risk*, edited by William Parent (Cambridge: Harvard University Press 1986), pp. 78-93.) I do not suggest that it is what she argued there or that she presented it as a doctrine of double effect. Thomson modifies her views in “The Trolley Problem,” in *Rights, Restitution, and Risk*, pp. 44-116; in “The Trolley Problem,” Chapter 7 in *The Realm of Rights* (Cambridge: Harvard University Press, 1990) (see also Thomson, “Reply to Commentators,” *Philosophy and*

Phenomenological Research 53.1 (1993): 187-194, and Reeder, *Killing*, pp. 117ff, 124 n. 27); and in “Turning the Trolley,” *Philosophy and Public Affairs* 36.4 (2008): 359-374. In “Turning,” p. 374, Thomson states why she would reject “Thomson 1976” as I present it: The bystander’s means is turning the trolley, and “Some early attempts to explain why the bystander may proceed appealed to that fact about his means. Alas, they don’t succeed, since, by turning the trolley, the bystander will kill the one, and thus infringe a negative duty to the one; and there is no good reason to think that fact about his means make his infringing the negative duty count any the less heavily against his proceeding.” See her arguments against double effect in “Physician-Assisted Suicide: Two Arguments,” *Philosophy and Public Affairs* 109.3(April 1999): 514-5. See also T.M. Scanlon, *Moral Dimensions: Permissibility, Meaning, and Blame* (Cambridge: The Belknap Press of Harvard University Press, 2008), pp. 19-20.

¹⁵See Reeder, *Killing*, pp. 122-7, on the contrast between “loopback” (where someone is fatally used whatever one does) and “connecting spur” (where one person’s body has to be used fatally in order to save five others; unless the trolley turned onto a side track hits the one, it will return to the main track and kill the five). In connecting spur, I believe one turns the trolley not just to get it off the main track, but to hit the one. Thus I place connecting spur morally with the obstacle on the main track case. In loopback, you either hit one saving five or hit five saving one. Cf. Kamm, *Intricate Ethics*, Ch. 4, and Scanlon, *Moral Dimensions*, pp. 16-18, 217 n. 24.

¹⁶Keenan in “Function” makes the “object of the activity” the bombing of a military target. Hence in the war case: “... the object of the activity is the bombing of a military installation” which “has two distinct effects: destroying the enemy’s war machine and the almost-certain deaths of noncombatants”(305). I say here that one chooses to bomb in order to destroy the military target (good effect) as a means to the end of weakening the enemy. (Roughly, one does x in order to cause y in order to achieve z.) Either the bombing or the destruction causes the noncombatant deaths (bad effect).

¹⁷Scanlon argues that generally intentions figure in our judgments of moral goodness (and the “meaning” of relationships) but the permissibility (the rightness or wrongness) of actions is determined directly by moral principles. Thus in regard to terror bombing, “the intention is wrongful because the act intended is wrongful,” not vice-versa. *Moral Dimensions*, pp. 28-9. Scanlon grants that “Any action is guided by some aim, and in choosing to perform that action we are choosing to be so guided.” *Ibid.*, p. 59. Scanlon even says that intention is “crucial to identifying what it is that (the agent) does...” Nonetheless Scanlon insists: “But what is at issue is not whether the agent’s intent can determine the type of action he or she performs. (Obviously, it can.) The question is whether the agent’s intent is crucial to the permissibility of his or her action.” *Ibid.*, p. 139. Scanlon thinks that those who think “the agent’s intention in acting is crucial to making what he does an action, and making that action the type of action it is” may be arguing that intention is crucial for the moral goodness of an action. (Note 10, p. 218, *Ibid.*, cites Cavanaugh, *Double-Effect Reasoning*; see also J.L.A. Garcia, “The Doubling Undone? Double Effect in Recent Medical Ethics,” in Joseph Koterski, S. J., ed., *Life*

and *Learning XVII* (Washington: UFL, 2008), pp. 38-40 .) But Scanlon insists that the goodness of actions is one thing, their permissibility another. *Ibid.*, pp. 24-5. The defender of double effect, however, may think that action is not just guided or identified by its aim or intention, but the bombing and the intention to kill innocents as a means, for example, together make up the action which is *chosen* . It is the rightness or permissibility of the chosen action with which the defender is concerned. Scanlon and the defender may also pull apart normatively.

¹⁸In *Killing*, pp. 132-6, I argue that Thomson in 1976 prohibits both death itself as a means and fatal use . But I refer confusingly to her overall doctrine of the prohibited killing as “fatal use.” I am grateful to Richard Miller on these points. See Miller, “Aquinas and the Presumption against Killing and War,” *Journal of Religion* 82.2 (April 2002), n. 71 p. 200, where he distinguishes Aquinas from John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (New York: Oxford University Press, 1987). Cf. John Finnis, “The Ethics of War and Peace in the Catholic Natural Law Tradition,” in *The Ethics of War and Peace: Religious and Secular Perspectives*, Terry Nardin, ed . (Princeton: Princeton University Press 1996), pp. 15-39; Joseph M. Boyle Jr., “Just War Thinking in Catholic Natural Law,” in *The Ethics of War and Peace*, Terry Nardin , ed., pp. 40-53.

¹⁹See the criticisms of Quinn, “The Doctrine of Double Effect,” on using persons, in Bennett, “Foreseen Side Effects,” and Marquis, “Four Versions.” See also F.M.Kamm, “Non-Consequentialism, the Person as an End-in-Itself, and the Significance of Status,” *Philosophy and Public Affairs* 21.4 (Autumn 1992): 354-389.

²⁰Paul Ramsey, “The Morality of Abortion,” in *Moral Problems: A Collection of Philosophical Essays*, ed. James Rachels (New York: Harper and Row, 1971), pp. 3-27, argued that even if the death of the fetus is not intended, whether such a death would be proportionate is another question— for Ramsey one life would simply be exchanged for another if the fetus who would live if nothing is done is killed to save the woman. Hence Ramsey insisted in effect on “nothing is lost” as well, that is, he limited the application of his double effect argument—death itself is not intended as the means—to the case where both the fetus and the woman will die if nothing is done (in contrast to the case where if nothing is done the fetus would live, but the woman die).

²¹On the distinction between temporal and causal priority, see Joseph M. Boyle, Jr., “Double Effect and a certain type of embryotomy,” *The Irish Theological Quarterly* 44 (1977): 303-318. See also Reeder, *Killing*, 112 n. 11 and 114 n. 14. There are cases where the bad side-effect is temporally prior to the good effect . A bullet aimed at an unjust aggressor passes through an innocent, or you run over someone as you drive five injured people to the hospital. But there is an ambiguity about these cases. As I have described them, the bad effect does not contribute to the good. But in another set of cases it would: You have to clear a field of fire, getting the innocent out of the way, in order to hit the aggressor, or you have to clear the highway in order to drive over it. In these cases, the fatal injury is not a side -effect but an intermediate means. Cf. Kamm, *Intricate Ethics*, 22, 24, 121-2, 149, 177 n. 5, 182 n. 47, Ch. 5 passim.

²²Susan Teft Nicholson, *Abortion and the Roman Catholic Church. Journal of Religious Ethics: Studies in Religious Ethics* Vol. 1 (Knoxville: University of Tennessee 1978), pp. 25-7, 37. See also Bennett, "Intended as a Means." Bennett argued that if the surgeon needs and intends only the crushing or narrowing, then the terror bomber needs and intends only the appearance of death. See Quinn, "Double Effect," Bennett, "Foreseen Side Effects," and Kamm, *Intricate Ethics*, Ch. 3.

²³Marquis in "Four Versions" discusses a distinction between means as "actions" and means as "states of affairs." Even if the same action which crushes kills, it is the "skull's becoming smaller"—a state of affairs—that saves the woman, not the fetus's death as such.

²⁴One could argue that fatal use should be included in the normative category of the forbidden "direct" killing, even if one rejects the notion that one *intends* fatal use as a means, and insists that in such cases one intends strictly speaking only an injurious use, not a fatality. The conjunction of injurious use and death moves us morally to put fatal use in the same normative category as death as a means. Cf. Quinn, "Double Effect," in Woodward, *The Doctrine of Double Effect*, p. 78 n. 6.

²⁵Some would argue, of course, that the fetus does not have full moral status. Even if it has, or is assumed to have, full status, one can argue that it has become a "material aggressor." See Keenan, "Function," 314, and Reeder, *Killing*, Ch. 3. See Richard B. Miller on types of attackers, double effect, and Aquinas in "Killing, Self-Defense, and Bad Luck," *Journal of Religious Ethics* 37.1 (March 2009), 131-158.

²⁶Someone might say that the healthy patient has a right not to have their body parts used without their consent, whether or not this use is also fatal. But one may not have such a right to all one's body parts; one might have a duty to share a replenishable part, e.g., blood or skin.

²⁷See Reeder, *Killing*, pp. 127-131. To be parallel with the trolley, one would have to divert the enemy force itself, e.g., a missile. As I understand double effect in "Thomson 1976," either one's military action itself or what it causes—the destruction—kills as a side-effect, just as in the hospital gas case, a gas which itself plays a role in saving five also kills one, or a saving medical action also produces a gas lethal to the one. Cf. Kamm, *Intricate Ethics*, 22, 24, Ch. 5, on the hospital gas meeting the criteria of double effect, but not being intuitively permissible.

²⁸Dan W. Brock, *Life and Death: Philosophical Essays in Biomedical Ethics* (Cambridge: Cambridge University Press, 1993); James Rachels, *The End of Life: Euthanasia and Morality* (New York: Oxford University Press, 1986). Rachels, *End of Life*, Ch.1, argues for the "Equivalence Thesis."

²⁹This "moral equivalence" argument would apply whether the killing-letting die distinction is presented as a contrast between commission and omission, or between taking independent measures to hasten death and withholding/stopping treatment. Brock, *Life and Death*, 165; McMahan, "Killing, Letting Die, and Withdrawing Aid," *Ethics* 103 (Jan 1993): 250-279; Reeder, *Killing*, Ch. 1; Cavanaugh, *Double-Effect Reasoning*, pp. 166-8, 168 n. 2.

³⁰*Life and Death*, pp.163, 140, 162-5, 169-170, 172-5. See also Scanlon, *Moral Dimensions*, p. 119, and Thomson, "Physician-Assisted Suicide," 514-5.

³¹*Life and Death*, 163.

³²*Life and Death*, 172-5. Contemporary medicine apparently can provide sufficient morphine without the side-effect of hastening death. See Alison McIntyre, "Doing Away," 225-6, and "The Doctrine of Double Effect," Section 5, *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/double_effect. But the example is still useful. See Greg Beabout, "Morphine Use for Terminal Cancer Patients: An Application of the Principle of Double Effect," in *The Doctrine of Double Effect*, Woodward, ed., pp. 298-311, and Stephen R. Latham, "Aquinas and Morphine: Notes on Double Effect at the End of Life," *De Paul Journal of Health Care Law* 3 (1996-7): 625-44.

³³Brock, *Life and Death*, pp.173-174.

³⁴Dan W. Brock, Rebecca Dresser, and Timothy Quill, "The Rule of Double Effect—A Critique of its Role in End-of-Life Decision Making," *The New England Journal of Medicine* 337.24 (December 11 1997): 1768-1771, distinguish between the use of high dosages of a drug such as morphine which can cause patients to die sooner, from "terminal sedation" in which a patient is "sedated to the point of unconsciousness in order to relieve otherwise untreatable pain" and then "allowed to die of dehydration or other intervening complications." See also Brock, "A Critique of Three Objections to Physician-Assisted Suicide," *Ethics* 109 (April 1999), 534-5. The second action here seems to be, in my terminology, a case of letting die. Just as there are direct and indirect forms of killing, so there are direct and indirect forms of letting die. One can withhold/withdraw in order to cause death, or one can withhold/withdraw in order to end the "burden" of treatment, with the result that the patient dies. One view in the Catholic tradition apparently is that both direct killing and letting die are prohibited, but indirect forms of both (under certain conditions) are permitted. See, however, Bruno Schüller, S.J., "The Double Effect in Catholic Thought: A Reevaluation," in R. McCormick and P. Ramsey, eds, *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978), 173, on another strand: in "Catholic tradition it is *only killing* [directly: JPR] an innocent person that is wrongful irrespective of consequences. By contrast, letting a person die is to be appraised not deontologically, but with regard to consequences." See also Schüller, "Direct Killing/Indirect Killing," in *Moral Theology 1*, R. McCormick and C. Curran, eds. (New York: Paulist Press, 1979), 148-9. Cf. Kamm, *Intricate Ethics*, pp. 23, 43 n. 30. Note that one could accept the descriptive analysis of the cases (killing/letting die, direct or indirect) without accepting the normative view that direct killing or letting die of the innocent is always wrong.

³⁵I am not suggesting that Brock or others extend the equivalence argument to war; I am arguing that it could be extended if those considerations adduced in the end of life cases (consent, wellbeing, motive, and social role) are taken as the only ones relevant to wars as well. I will refer ahead to the moral equivalence objector as one who holds that these are the relevant considerations in both contexts.

³⁶Sometimes it is held that no moral considerations whatsoever could attach intrinsic significance to the killing/letting die or the means/side-effect distinctions. This is too strong because some views do attach such significance. Of course one could still challenge the moral basis for the attribution of significance. But one may not argue a priori that no sort of reason could ever attach intrinsic significance.

³⁷In regards to war, the just war tradition regards only combatants in a just cause who have “right intention” as legitimate agents of violence against an unjust aggressor. Their motive and intention—to restore a just peace and to repel an unjust threat—are parallel to the doctor’s motive of concern for the patient and intention to cure or minimize the patient’s suffering (as opposed to some ulterior motive and purpose).

³⁸Thanks to Susan Niditch for drawing my attention to this point in a newspaper report about Iraqi noncombatants. The noncombatants could be said to have proleptically yielded their right to life (Reeder, *Killing*, Ch. 2). John Martin Fischer, Mark Ravizza, and David Copp, “Quinn on Double Effect: The Problem of ‘Closeness,’” in Woodward, ed., *The Doctrine of Double Effect*, pp. 205-7, say that noncombatants cannot be presumed to have yielded even if their deaths would be indirect. See also Marquis “Four Versions,” pp. 178-2, and Woodward, “The Importance of the Proportionality Condition,” in Woodward, ed., *The Doctrine of Double Effect*, pp. 222-6.

³⁹In forms of “classical” natural law (to some extent independent of revelation) the reference to divine dominion is explicit, whereas in forms of “modern” natural law basic moral principles are independent of theology in content and justification (see Jennifer A. Herdt, *Religion and Faction in Hume’s Moral Philosophy* (Cambridge: Cambridge University Press, 1997), pp. 17-8. The objector is claiming nonetheless that some modern doctrines come in fact “trailing clouds” of doctrine, that is, they are the secular ghosts of theological conceptions. See G.E. M. Anscombe, “Modern Moral Philosophy,” in *Ethics, Religion, and Politics*, Vol. III (Minneapolis: University of Minnesota Press, 1981), pp. 26-42; and Alasdair MacIntyre, *After Virtue* 3rd ed. (Notre Dame: University of Notre Dame Press, 2007 (1981)). A “ghost,” roughly, is a secular remnant of a moral conception originally grounded in a theological worldview, e.g., the idea of moral obligation without the notion of a divine lawgiver.

⁴⁰We need some story, but to tell a good one requires historical learning. On the complicated history of noncombatant immunity, see, e.g., James T. Johnson, *Ideology, Reason, and the Limitation of War* (Princeton: Princeton University Press, 1975), *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981), and “Historical Roots and Sources of the Just War Tradition in Western Culture,” in *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, edited by John Kelsay and James Turner Johnson (New York: Greenwood Press 1991) pp. 3-30. On double effect, see, e.g., Cavanaugh, *Double-Effect*; Kaczor, “Double-Effect Reasoning;” Keenan, “Function;” Colm McKeogh, “Civilian Immunity in War: From Augustine to Vattel,” in Primoratz, ed., *Civilian Immunity*, pp. 62-83; Renick, “Charity Lost;” and Ugorji, *Principle*.

⁴¹God has delegated the authority to take non-innocent life directly only to agents of the state for punishment and defense, as Miller in “Aquinas and the Presumption,” 194-204, 180, 184, 187-8 interprets Aquinas in the *Summa Theologiae*, 2a2ae, q. 64, a.7. To take life directly in other circumstances, e.g., even in self-defense against an unjust attacker, is *ex defectu juris* (suffers from a defect of right); one does not have the dominion or right to do so. See Joseph V. Sullivan, “The Immorality of Euthanasia,” in *Beneficent Euthanasia*, edited by Marvin Kohl (Buffalo, N.Y.: Prometheus Books, 1975) pp. 12-33; Schüller, “The Double Effect in Catholic Thought: A Reevaluation,” pp. 169, 172, 175, 178, 189; and James T. Walter, “The Foundation and Formulation of Norms,” In *Moral Theology: Challenges for the Future. Essays in Honor of Richard McCormick*, edited by Charles E. Curran (New York: Paulist Press, 1990), pp. 127, 136, on dominion and “*ex defectu juris in agente*.” See Ugorji’s objections to *ex defectu* in *Principle*, pp. 80-82.

⁴²See Miller, “Aquinas on the Presumption,” 180, 183-6, 190-93, 197-8, on the debate about whether Aquinas teaches a prima facie duty against harm which is overridden by justice in a just war, or whether the logic of prima facie and final duty is alien to Aquinas. Miller argues that Aquinas does rank moral precepts when they conflict, and hence the language of prima facie duty is not out of place. He grants that in the classic *quaestio* (S.T. 2a2ae, Q.40) Aquinas specifies what justice requires and does not present a conflict between killing in war with a duty of “nonmaleficence.” But he notes that the “objections” in effect present weighty considerations against harm. While Aquinas does not accept these objections as stated, Miller argues, at the end of the *quaestio* he sifts out and affirms what was true in them. For example, Aquinas inwardizes love of enemies and argues that the good of community as a demand of justice can override the nonviolence to which charity disposes us; harm to the enemy’s community, however, can only be indirect. On Aquinas, see also Cavanaugh, *Double-Effect*, pp. 1-37 and Ugorji, *Principle*, pp. 92-3.

⁴³Cf. Gilbert C. Meilaender, *The Limits of Love: Some Theological Explorations* (University Park: The Pennsylvania State University Press, 1987). Another strand in the tradition interprets double effect as the working out of what love (agape) requires: one can use force to protect the innocent neighbor, but never threaten him or her directly. One must only the force necessary (proportionality). Thanks to William Werpehowski.

⁴⁴“What mainly occurred in the process that is interpreted as secularization, at least (so far) in all but a few recognizable specific instances, should be described not as the *transposition* of authentically theological contents into secularized alienation from their origin but rather as the *reoccupation* of answer positions that had become vacant and whose corresponding questions could not be eliminated.” Blumenberg, *The Legitimacy of the Modern Age*, trans. Robert W. Wallace (Cambridge: Massachusetts Institute of Technology Press, 1983), p.65. See Gordon E. Michalson, Jr., *Fallen Freedom: Kant on Radical Evil and Moral Regeneration* (Cambridge: Cambridge University Press, 1990), pp. 135-140.

⁴⁵Cavanaugh, *Double-Effect*, pp. 148-9, 199, passim, argues that double-effect reasoning is part of common morality or “philosophy,” which is not dependent on, though

it may overlap with, “faith.” See Alan Donagan, *The Theory of Morality*. (Chicago: University of Chicago Press, 1977) on the idea of respect for persons carried within but not dependent on theological beliefs.

⁴⁶Stephen L Darwall, “Two Kinds of Respect,” *Ethics* 88.1 (October 1977): 36-49, distinguishes between recognition respect, weighing “appropriately” some “feature” of a thing or person and “acting accordingly,” and appraisal respect, a positive evaluation of qualities of persons as they engage in various activities. Respect for persons as such is recognition of the fact they are persons, i.e., of the “moral requirements their existence places on us.” One type of appraisal respect is of moral character, of the dispositions of persons as moral agents. *Ibid.*, 39- 45. Both senses of respect for persons I distinguish here are forms of recognition respect. See Richard B. Miller, *Terror, Religion, and Liberal Thought*. (New York: Columbia University Press, 2010), Ch. 5, on respect for persons.

⁴⁷Blumenberg suggests that in reoccupations we are still being controlled by the old questions (we got the old questions along with the old answers). Hence we fail to grasp the “legitimacy” of the modern age, the “self-assertion” of humanity. A legitimate feature of modern thought, e.g., progress in history, is distorted when it is pressed into service as an answer to the old question; thus a modest sense of progress is transmuted into a Marxist theory of inevitable progress according to the laws of history. See Blumenberg, *Legitimacy*, translator’s introduction. See Michalson, *Fallen Freedom*, pp.139, 138-142, *passim*, on Kant’s attempt “to have human autonomy displace divine action.”

⁴⁸In “A Critique of Three Objections to Physician-Assisted Suicide,” pp.526- 527, Brock argues that the right to bodily integrity is “grounded” in the right to self-determination. *Ibid.*, pp. 526-7. Someone might argue instead, without reducing the force of the moral equivalence objection, that since the right to one’s body (and life) can be asserted or yielded, the individual has a right to decide: The right to self-determination is a function of having the right itself.

⁴⁹Thanks to Diana Cates for the point that there may be other theological grounds.

⁵⁰Alison McIntyre, “Doing Away,” 223-4 n. 9, cites Quinn, “The Doctrine of Double Effect,” on the point that in the euthanasia cases only the life of a single person is involved. (The person could have duties to others that bear on the decision, of course.) The individual yields the right not to be killed or the right to receive life-saving treatment. In much of Christian tradition, I assume, the prohibition of direct killing of the innocent pertains both to killing oneself or having oneself killed in the end of life cases and to killing some to save others. For “moral equivalence,” however, the cases pull apart: the single individual can yield the right not to be killed or the right to be treated, but unless the person on the side track yields or there is some principle which justifies proportionate side-effect deaths, the person’s right not to be killed would be infringed if we turn the trolley.

⁵¹Cf. Thomson, *The Realm of Rights* (Cambridge: Harvard University Press, 1990), and Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2007). On my view, principles of justice specify rights which the individual can assert or yield. One could hold this general view--rights are determined by principles of

justice—even if one did not accept a principle which gives moral significance to the intended means/side-effect distinction. One could still acknowledge that principles specify rights and the conditions under which they apply. For instance, the unjust aggressor loses immunity from the counterattack of the victim, or those defending the victim, but still has a right to life against others.

⁵²We ideally assume acceptance of the principle; but in some cases we might have to act given our moral beliefs even if we know others (even the ones who will die) do not share them. We are relying on our sense that our beliefs are justified.

⁵³Could support for the principle come from evolutionary psychology? Marc D. Hauser, *Moral Minds: How Nature Designed Our Universal Sense of Right and Wrong* (New York: HarperCollins Publishers, 2006), pp. 117- 136, argues in regard to trolley cases that we are disposed to have certain intuitions; there are “unconscious and inaccessible principles” underlying our judgments. He admits wide variations, but attributes differences to “cultural parameters.” See also Joshua D Greene, “The Secret Joke of Kant’s Soul,” in Walter Sinnott-Armstrong, ed., *Moral Psychology vol. 3: The Neuroscience of Morality: Emotion, Brain Disorders, and Development* (Cambridge: MIT Press, 2008), pp. 42-6. Greene attributes different reactions to turning the trolley onto a side track and to shoving someone onto the main track to how parts of our brain are disposed to respond: In the shoving case we are disposed emotionally to avoid “personal” violence, whereas in the side track case we use “impersonal” cost-benefit reasoning. We use the same impersonal logic in the “loop” case (what I call “connecting spur”) where unless we turn the trolley and hit the one it will go around to kill the five. But there seems to be disagreement about this case, not a “consensus.” I for one react to the connecting spur as I do to shoving the obstacle. In any case, even if we have tendencies to respond in different ways from different parts of the brain, we have to figure out how to interpret and relate these responses; the normative task is still before us. On the question of consensus and the theory itself, see the responses in *Moral Psychology* to Greene by John Mikhail, “Moral Cognition and Computational Theory,” pp. 81-91, and Mark Timmons, “Towards a Sentimentalist Deontology,” pp. 93-104; and Greene’s “Response to Mikhail and Timmons,” pp. 105-117. Cf. Kamm, *Intricate Ethics*, p. 143, p. 180 n. 34.

⁵⁴On Germain Grisez, see Biggar, *Aiming to Kill*, Porter, ““Direct and Indirect,”” and Suzanne Uniacke, *Permissible killing: The self-defense justification of homicide* (Cambridge: Cambridge University Press, 1994), Ch. 4. On Joseph M. Boyle, Jr., “Double effect and a certain type of embryotomy,” “Who is entitled to double effect?,” *Journal of Medicine and Philosophy* 16 (1991): 475-94, and “Toward Understanding the Principle of Double Effect,” in Woodward, ed., *The Doctrine of Double Effect*, pp. 7-20, see Marquis, “Four Versions.” See also Quinn, “Double Effect,” and Woodward, “The Importance of the Proportionality Condition,” who defends Quinn’s position against Fischer, Ravizza, and Copp, “Quinn on Double Effect.” On Quinn, see also Bennett, “Foreseen Side Effects,” Kamm, *Intricate Ethics*, Ch. 3, and Alison MacIntyre, “Double Effect,” 3, who says that Quinn “recasts double effect as a distinction between direct and indirect agency.”

⁵⁵See, e.g., Lisa Sowle Cahill, *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), pp. 10 -31 on McCormick and the proportionalists; and *Theological Bioethics: Participation, Justice, and Change* (Washington: Georgetown University Press, 2005), pp. 113-117, passim; Keenan, "The Function;" Walter, "Foundation and Formulation," 136-9; F. M. Kamm, "Justifications for Killing Noncombatants in War," *Midwest Studies in Philosophy*, XXIV (2000): 219-228, *Intricate Ethics*, Chs.4 and 5, and "Terrorism and Intending Evil;" and Scanlon, *Moral Dimensions*, Chs. 1, 2. See also Alison McIntyre in "Doing Away," 240 n. 44, who says that even without double-effect we can preserve the "substantive view concerning the conduct of war that aggression against noncombatants is prohibited, and that harm to them is to be minimized...."

⁵⁶Edmund N Santurri, "Philosophical Ambiguities in Ostensibly Unambiguous Times: The Moral Evil of Terrorism," *The Journal for Peace and Justice Studies* 12.2 (2002): 137-161.

⁵⁷See Yitzhak Benjabi, "A Defense of the Traditional War Convention," *Ethics* 118 (April 2008): 464-95 on the war convention, and McMahan, "Just Distribution," on legal agreements. See Nathanson, *Terrorism*, Chs. 14-15, for a rule-utilitarian defense of an absolute prohibition of terrorism, and Ch. 16 on conventions.

⁵⁸See Coady, *Morality* pp.136, 136 n.5, on Robert L.Holmes, *On War and Morality* (Princeton: Princeton University Press, 1989). See also Ausilio, "On the Importance of the Intention/Foresight Distinction," *American Catholic Philosophical Quarterly* LXX.2 (1996), 194, on "radical pacifism," and Nathanson, *Terrorism*, pp. 95-6.

⁵⁹See Valls, "Terrorism."

⁶⁰"Ambiguities." See Paul Ramsey, *War and The Christian Conscience: How Shall Modern War be Conducted Justly?* (Durham: Duke University Press, 1961) and *The Just War*.

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BOOK REVIEWS

Ann Jones, *War is Not Over When It's Over: Women Speak Out from the Ruins of War*. New York: Metropolitan Books, 2010. 288 pages. \$25.00 Hardcover. ISBN 978-0-8050-911-3.

“History is written by the victors” is a platitude so familiar that nearly no one pauses to consider its implications for the less-powerful people affected by war. The hegemonic control of war narratives by war-makers themselves ensures that victims' stories fill only the white space between the lines of the texts penned by government scribes. Political and military leaders may prate on and on about the evil of their enemies and the justice of their wars, but they can do so only because they altogether ignore the reality of war as experienced by those at the receiving ends of their bullets and bombs. In recent decades, this willful ignorance has been greatly facilitated by the unfortunate but widely embraced concept of “collateral damage,” a Pentagon public relations device invented during the Vietnam War to exonerate soldiers for the unintended harm caused to noncombatants. In *War Is Not Over When It's Over*, Ann Jones sets out to fill in some of the vast blank space left by the official stories of war, which invariably glorify the victors, downplay their mistakes, and ultimately endorse the use of deadly force as a means to conflict resolution all over the globe.

As a part of the International Rescue Committee's Global Crescendo project, Jones traveled in 2007 to several war-torn regions of the world to find out how organized and systematic group violence had affected the lives of women too disempowered even to speak out about their experiences, much less to be heard. Many of the women in these postwar societies were essentially hostages to those in power, nearly always men, whose prerogative it was to decide virtually all matters regarding their communities. Such gender-biased power structures naturally tend to promote and perpetuate themselves, with the ultimate effect of silencing women. Like the dominant pro-military narratives composed by the victors of wars, the official stories of Third World nations ostensibly at peace tend to focus, Jones observes, on the government and its relations to outside institutions, including other governments. As a result, the tales of women's trials and tribulations are trapped in the space between the lines of the peace treaties drawn up by men, often some of the very men who helped to ravage the land and perpetrate gross injustice through their brutal execution of war.

Jones discovered during her travels through Côte d'Ivoire, Liberia, Sierra Leone, and the Democratic Republic of Congo, and also in meeting with

Burmese and Iraqi refugees, that women's situations did not improve appreciably upon war makers' declarations of ceasefire. Instead, the logic of war, the use of brute force to compel submission, persisted and was in some ways worse as the propensity for violence seen among soldiers during war had infected civilian men as well. Habits of killing, torture, battery, and rape die hard in lands where they have become so widespread as to be commonplace. This war-engendered violence becomes a fact of life for women in some cases literally enslaved by their husbands and with no one to whom to turn in their male-dominated societies.

Of all of the harrowing realities revealed by Jones throughout this beautifully written but sometimes painful to read book, none is more disturbing than that in some parts of the world rape victims—sometimes mere children or infants—become immediately demonized and shunned, rendered pariahs by even their families. Rape thus destroys innocent victims' prospects, and their lives are often effectively ruined through these willful acts of violation by men. Yet, because of the postwar climate of impunity in violence-saturated societies that lack stable institutions, the predators may continue to replicate acts which they learned during wartime, knowing that no one can stop them. In countries where war crimes have been perpetrated for years, the proclivity for rape passes from soldiers to civilians, coming to be regarded as a man's right. In the worst cases, girls and women walk in constant fear of being attacked—even by civil servants such as teachers. The peculiar catch-22 whereby the victims are criminalized rather than helped and protected helps to explain the veritable epidemic of rape in the Democratic Republic of Congo, where for years women feared the social consequences—even worse than the rape itself—of revealing the fact that they had been raped.

Domestic violence, too, surges postwar, as men both disempowered and inured to their own and others' brutality vent frustration on their wives, the most readily available targets. Former soldiers now idle have too much time on their hands and too much anger pent up inside, and those morally corrupted by what they were led to do during wartime become more inclined to beat and rape their wives. Child soldiers conscripted against their will and forced to kill or rape other people, on pain of death for refusal to do so, represent a particularly shocking example of victims turned aggressors during wartime. Those who manage to survive the war bear the psychological burden of their deeds for the rest of their lives. Tragically, even men who did not serve as soldiers but were tortured while incarcerated may find themselves abusing their family members, having internalized the brutality of their torturers. The stories of all of this

misery, many examples of which Jones examines in detail, fall into the white space left out of the narratives penned by the exultant victors of war.

The Global Crescendo Project focuses on women omitted from official stories and too demoralized to speak about their troubles, so accustomed have they become to abusers themselves filling the roles of law enforcement officers, judges, jurists, and penal authorities, in addition to ruling households as husbands. In lands where men establish, interpret, impose, and enforce the law, women often resign themselves to the futility of attempts to render their society more just. Part of the problem is that individual women become isolated victims, incapable of standing up and speaking out to men, whether their husbands or local leaders. The victims are thus silenced, and their own lack of self-assertiveness perversely corroborates the prevailing narrative according to which they are less valuable members of society.

Recognizing how women's isolation serves to solidify sexist dichotomies which must be surmounted if the quality of their lives is to be improved, the Global Crescendo Project aims to increase the power of women by multiplying their voices to produce a crescendo effect that cannot be ignored. Participants are brought together in groups to share and discuss their experiences and to brainstorm about new solutions to problems. In order to facilitate this process, the women invited by Jones to be a part of Global Crescendo were provided with cameras and taught to use them, thus rendering formerly stifled victims capable of conveying complex problems hidden between the lines of texts penned by men. The cameras made it possible for women to express to one another—and also, potentially, to men—the difficulties they encountered in their everyday lives, portraying in some cases realities about which few dared to speak. The hundreds of photos snapped by each of the project groups and proudly displayed in exhibits by the participants served as springboards to discussions about how to improve their lives and render their society more fair and just. Although many of these women were accustomed to the summary denial by men of their claims, the cameras empowered them to capture the facts, to document them for all to see.

In the hopes of building on the positive as a part of the process of improving their societies, Jones asked the women to snap images not only of what was wrong but also of scenarios which they wished to nurture and promote. Thus alongside such photos as of a child mother, a woman recently beaten, a teenage prostitute forsaken by her family after rape, wives toiling away while their husbands sat idle, might be images (albeit rare) of men helping their wives, and girls dressed for school. Education was highly valued by the women—many of

whom were not literate—as essential to the hope for a bright future for their children. These women recognized that their powerlessness was in part a result of their dependence upon men. In order for their daughters to break out of the cycle of oppression and one day become capable of supporting themselves—as nurses, teachers, or successful businesswomen—they needed first to be educated.

Although *War Is Not Over When It's Over* effectively documents the disturbing social conditions of women in many parts of the world, it is much more than an anthropological study or an NGO conflict-resolution manual. Jones' book also offers an incisive critique of the ever-more prevalent use of military force by First World nations, above all, the United States. The subtext underlying the finely grained narratives brought to light by Jones is that the horrific consequences of war which she documents were ultimately caused by policies implemented by powerful people (usually men) in far-away places. Jones vehemently rejects the glib “Stuff happens” attitude of war makers such as former U.S. Secretary of Defense Donald Rumsfeld. Such administrators refuse even to acknowledge the realities of the postwar disaster areas they create, much less accept responsibility for the widespread suffering directly engendered by their own egregious policies. Although Jones does not mention by name Rumsfeld or the head of the Coalition Provisional Authority in Iraq, Paul Bremer, she does treat in detail many concrete examples of the life-disruptive consequences of their policies for the people of Iraq. The dismissal of the entire Iraqi army and the instigation of a nationwide purge of Ba'ath party members from government amazingly disregarded the obvious facts that, under Saddam Hussein's dictatorship, soldiers were conscripted, and Ba'ath party membership was a condition on the employment of many professionals. As a direct result of these ill-conceived initiatives, violence surged to the point of being intolerable, and millions of people, among them those best qualified to contribute to the reconstruction of their country, fled Iraq.

Jones takes great pains to explain how the Iraqi people were in fact violated long before the 2003 invasion, by the 1991 Gulf War. During the period between the two U.S.-led wars, Saddam Hussein's government remained intact while many thousands of Iraqis died as a result of the lack of clean water caused by the bombing of water treatment facilities conjoined with the sanctions prohibiting the importation of agents needed to sanitize water, including chlorine. The Iraqi people were also denied access to the medications needed to address their various war-induced ailments. Jones examines the circumstances of a family of three daughters who were effectively paralyzed by exposure to

toxic agents during Operation Desert Storm—a reality only belatedly, and partially, acknowledged by the U.S. administration in the case of veterans suffering from Gulf War Syndrome. By discussing in detail the plight of these refugees, Jones compels readers to reconsider the alleged justice of not only the 2003 but also the 1991 war on Iraq, the latter of which is blithely presumed by many Americans to have been a just war. We do not regard the punishment of the innocent for the crimes of the guilty as acceptable within the borders of our land, so how can we condone and even perpetrate such gross injustice abroad?

The persistent, long-range trickle-down effect of war's infliction of harm upon innocent people for the crimes of the guilty has been witnessed nowhere more graphically than in postcolonial Africa. In her chapter on the Congo, Jones reviews the causal connection between the CIA-promoted assassination of that nation's first democratically elected prime minister, Patrice Lumumba, and the horrors that ensued for years in that land under the brutal and kleptocratic leadership of the U.S.-installed president, Mobutu Sese Seko. Jones also underscores the more general connection between the provision of deadly weapons to strife-riven Third World nations and what later ensues, catastrophes especially graphic in the cases of Sierra Leone and Liberia. Make weapons available in unstable places where rival factions jockey over valuable resources, and there will be war. But the end of a war does not signal the end of suffering, Jones demonstrates throughout her work. To continue to permit the provision of deadly weapons to Third World nations under the assumption that they will be used only in “self-defense” would be laughably delusive, if the consequences of that delusion were not so very tragic.

Once upon a time, back when just war theorists first devised arguments by which to persuade Christians to kill at the behest of their “divinely inspired” leaders, war primarily involved the destruction of soldiers by other soldiers, and weapons targeted one person at a time. Those days are long gone. In the contemporary world, even so-called conventional weapons are capable of mass destruction, and most of the people killed in modern wars are not combatants. Moreover, those who manage to survive the brutality of war are often maimed in one way or another. Although the concept of collateral damage may make it possible for those who initiate and orchestrate wars—and also those who pay for them—to sleep soundly at night, it in no way redresses the physical, psychological, and moral damage done by war to not only those slaughtered but also those who survive. The harm done to the survivors of war lasts lifetimes, as it ramifies throughout entire communities, transforming them for the worst as violence becomes normalized. Ann Jones—with her razor-sharp intellect, the

soul of a poet, and the passion of an activist—has done us a great service by filling in some of the white space between the lines of the self-congratulatory text written by war-makers, revealing the flagrant injustice done to people all around the world by so-called “just wars”. As the large font, all-caps title on the jacket of her book, “*WAR IS NOT OVER WHEN IT'S OVER*” suggests, anger is the only reasonable reaction to the realities it reveals.

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***Jesus of Galilee: Contextual Christology for the 21st Century.* Ed. Robert Lassalle-Klein. Maryknoll, New York: Orbis Books, 2011. 274 pages. \$30.00. ISBN: 1570759154.**

This collection of essays constitutes a response to Pope Benedict XVI's invitation to his fellow theologians to reflect upon the significance of Jesus Christ in today's world. In the first volume of his work *Jesus of Nazareth*, Benedict poses the question, "What has...Jesus actually brought?" The contributors to *Jesus of Galilee* have sought to answer that query from a wide range of social, cultural and economic perspectives, considering the role and relevance of Jesus in the lives of men, women, and children from Africa and Latin America to Korea and Western Europe. In doing so, they bring the religious experiences of people from across the globe into dialogue with the findings of scholarship on the historical Jesus. The end result is an anthology which generally manages to skillfully unite academic theory with practical pastoral reflection and to successfully fuse the horizon of Jesus in his 1st century Galilean context with the diverse horizons of Christian believers living today.

Jesus of Galilee draws its title both from the location in which the authors first gathered to discuss the contemporary relevance of Jesus and from the conviction of many of them that Jesus' Galilean origins have much to say to present-day believers who live in similar socioeconomic conditions. The Church's preferential option for the poor serves as a hermeneutical lens which unites the otherwise diverse perspectives of the various contributors. Indeed, it is the significance of Jesus for the poor and marginalized which is the primary focus of most of the individual essays in this volume. When he issued his invitation to scholars to reflect upon the significance of Jesus in today's world, Pope Benedict stated, "Everyone is free...to contradict me. I would only ask...for that initial goodwill without which there can be no understanding."¹ For the most part, such good will is evident in the essays found in *Jesus of Galilee*. Occasionally, reflection on Jesus leads to criticism of the Church's hierarchy (e.g. Sols p.216). While the accuracy of such criticisms is open to debate, their tone is largely free of rancor or strident polemic. One might wonder how Benedict in turn would react to *Jesus of Galilee* as a response to his invitation to scholars, given the liberationist tendencies of its authors and the pope's own ambivalence toward liberation theology.

Sixteen scholars ranging from biblical exegetes and systematicians to experts in cultural studies have contributed to *Jesus of Galilee*. Six essayists explore the foundational principles that underlie the entire collection: Sean Freyne (Jesus in

his historical Galilean context); Gustavo Gutiérrez (preferential option for the poor); Virgilio Elizondo (culture and intercultural theology); M. Shawn Copeland (race and culture); Jon Sobrino (the Reign of God and the cross); and editor Robert Lassalle-Klein (the historical reality of Jesus). There are four contributions from biblical exegetes: Pablo Alonso examines the intercultural implications of Jesus' encounter with the Syrophenician woman (Mark 7:24-30); Caroline Mbonu explores the significance of Mary, the mother of Jesus, for women of the Nigerian Igbo tribe; Sophia Park considers the significance of the Emmaus encounter (Luke 24:13-32) for the future of Korean *minjung* theology; and Giacomo Perego offers an analysis of the puzzling episode of the young man who ran away naked in Mark's passion narrative (Mark 14:51-52). Three writers approach Jesus of Galilee from a systematic/doctrinal perspective: Roberto Goizueta reflects on the apparent tension between God's universal salvific love on the one hand and God's particular love for the poor on the other; Francis Minj, an Indian Jesuit, draws upon concepts and terminology from his Ādivāsi tribe to explicate a comprehensible Christology for his people; and José Sols considers the role of Christianity in a secularized western Europe. Finally, three contributors offer insights from the perspective of Christian spirituality: Mary Doak reflects on the role of the virtue of hope in a world marked by the mixed blessing of globalization; Michael Lee considers his experiences as a product of two cultures, Puerto Rican and American, and offers the figure of Nicodemus as a biblical paradigm for those caught between two worlds; and Daniel Groody addresses the issue of human migration in light of Christian discipleship, using the plight of Mexican immigrants as a case study. Lest readers be concerned that the insights of ethicists and moral theologians are overlooked, editor Robert Lassalle-Klein rightly points out that "ethical issues and methods run throughout the entire collection." Moral reflection does indeed pervade the essays as a whole, as does a thorough grounding in Sacred Scripture. Given my own training as a biblical theologian, I found this latter point especially heartening.

Perhaps the biggest challenge in reviewing an anthology of this nature lies in determining which essays to single out for particular attention. It is a tribute to the gifts of the various authors that each of their contributions is worthy of serious scrutiny, praise, and, at times, criticism. My background in biblical studies naturally inclined me to take greater interest in (and to give greater scrutiny to) those writings which were more specifically exegetical or biblical in content. I also tended to be most intrigued by those essays which explored aspects of societies and cultures with which I as a white American male am less familiar. In this regard, I was fascinated by Sister Caroline Mbonu's insights as an Ibo woman into

the role of the Virgin Mary, particularly her contention that the oft-used translation of *doulē* as “handmaid” rather than “servant” tends to trivialize Mary’s role vis-à-vis the gospel, as well as her claim that Mary’s self-understanding “tends to escape the attention and imagination of exegetes” (135). Similarly, I found Sophia Park’s exposition of Korean *minjung* theology vis-à-vis the Emmaus story quite intriguing, prompting me to want to learn more about this concept and its meaning for Koreans today. I was less impressed with “The Woman Who Changed Jesus”, Pablo Alonso’s study of Jesus and the Syrophenician woman from Mark 7:24-30. Perhaps because my own Christology tends to fall on the higher end of the spectrum, I found Fr. Alonso’s tendency to limit Jesus’ perspective to that of any ordinary Galilean Jewish male problematic, particularly his claim that Jesus had to learn to overcome his ethnic prejudices (130). Although Jesus embraced our humanity in all of its weaknesses and limitations, he was nonetheless without sin (Heb 4:15), a state which would surely seem to preclude a disposition to racial or ethnic bias. I was somewhat puzzled by the inclusion of Giacomo Perego’s “The Mysterious Young Man Who Ran Away Naked.” While this article is a fine exegetical study of Mark 14:51-52, and an enjoyable read in its own right, I was hard pressed to understand its significance as a part of *this* particular collection of essays, as it had little to say about the relevance of its subject matter for contemporary believers in a particular social or economic situation.

One of the greatest overall strengths of *Jesus of Galilee* lies in the capacity demonstrated by the majority of its contributors for integrating the theoretical and practical dimensions of theology. As the book’s subtitle makes clear, this is a work of *contextual* Christology, which explores the multifaceted significance of Jesus for a diverse array of contemporary peoples and situations. It has been my experience that, at times, the academy excels at doing theology in the abstract while maintaining little contact with the concrete lives of ordinary men, women, and children. Conversely, I have come across more than a handful of pastoral ministers who derive great satisfaction from their work among God’s people but fail to see the need for ongoing study and formation. During my licentiate and doctoral studies, I have had the privilege of ministering in two parishes, and have found that my studies and my ministry have continually reinforced one another. Most of the essays in *Jesus of Galilee* manage to fuse the two dimensions of theology in a way that enables experience to shed light on theological reflection, and vice versa.

Jesus of Galilee offers a rich tapestry of insights from the realms of biblical exegesis, systematic theology, cultural studies and Christian spirituality, all of which are integrated with the experiences of people from around the globe. The

academic in me thoroughly enjoyed the scholarly content of the articles, particularly the manner in which many authors incorporated the work of contemporary Jesus scholars (J.P. Meier, N.T. Wright, etc.) and the insights of biblical exegesis into their essays. At the same time, the pastoral minister in me deeply appreciated the many real-life examples and applications that brought the theology to life. I wish that all of the authors had thoroughly explored the Galilean dimension of Jesus in their essays rather than (in a few instances) simply paying lip service to Jesus of “Galilee.” That criticism aside, I highly recommend this volume to anyone interested in broadening their cultural insights and apprehending Jesus from a wide range of global perspectives.

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¹Pope Benedict XVI (Joseph Ratzinger), *Jesus of Nazareth: From the Baptism in the Jordan to the Transfiguration* (New York: Doubleday, 2007) xxiv.

***Catholic Social Teaching in Global Perspective.* Edited by Daniel McDonald, S.J. Maryknoll, New York: Orbis, 2010. 218 pages. \$26.00. ISBN: 978-1-57075-896-6.**

This collection of essays by representatives of the Catholic Church in seven different continents or “cultural settings” (Africa, Asia, Australia, Western Europe, India, and North America) is a welcome attempt to demonstrate how the values of Catholic Social Teaching (CST) can influence widely disparate cultural contexts. The editor, Jesuit priest Daniel McDonald, teaches on the Faculty of Social Sciences at the Gregorian University in Rome. In his introduction, he writes that what inspired this volume (the second in a series on CST and the first in English) was his inadequate response to a request from one of his students for guidance in applying the principles of CST to her culture once she returned home. The student's question highlights the problem skeptics have always had with CST: it sounds wonderful in the classroom, but how effective has it been and can it be in addressing real social issues? The authors of this volume not only reflect on the reception of CST in diverse cultural settings, but show how an analysis of culture challenges CST's notions of social justice and the common good.

Thomas Hughson's lead off article is an in-depth discussion of the latter topic. Accepting a post-modern conception of culture as “a contested, internally diversified process of producing and circulating meanings” (18) within a group or society, he goes on to distinguish two levels of meaning generation. Following Marcello Azevedo and Bernard Lonergan, he identifies the level of “social practice” as those activities which participate in the day-to-day operations of the main institutions of society, such as the family, the economy, the state and the schools (17). The second level or “reflexive component” (18) is comprised by the arts and sciences, indeed, all systematic pursuits of the good, the true, and the beautiful. Going beyond Lonergan and Azevedo, Hughson identifies popular culture as an important component of the first level. He points out that while acknowledging the importance of culture, especially in the post-conciliar documents, CST fails to distinguish between social practice and the reflexive level and nowhere demonstrates an appreciation of popular culture. This accounts for CST's failure to recognize a society's openness to criticism of its enduring institutions by its intellectuals and artists—even pop artists—as a measure of its social justice. While Hughson is probably placing more faith in the contributions of a society's critics to that society's well being than may be warranted, his perspective is certainly thought-provoking. His insistence that a

thriving society is characterized by a healthy interaction between the reflexive and practical levels is a corrective to CST's almost exclusively practical notion of the common good.

David Kaulemu's essay, on Catholic Social Teaching in an African context, follows Hughson's line of thought in showing how CST can be instrumental in "widening and deepening the social imaginaries" (37) i.e., the myths and symbols by which Africans understand themselves, which are fundamental to their societies. Social transformation in Africa will only take place, he argues, when modern institutions and processes can be integrated with traditional values. Currently, progress toward the goal of African countries as fully participatory democracies is hindered by the ambivalence of Africans toward the authority of their own nation states, whose laws, boundaries, and governing bodies are associated with the legacy of colonialism. Efforts at political and economic reforms within countries have largely failed, Kaulemu maintains, because they have been imposed on African societies in neglect of traditional culture. Kaulemu concedes that traditional tribal culture is flawed – many times reflecting a "siege mentality" (47) which sets it in opposition to and demonizes other tribes and ethnic groups. He points out, however, that this is in large part due to the colonialists' practice of emphasizing ethnic differences so as to divide tribes in order to better control them. Catholic Social Teaching, Kaulemu believes, can play a vital role in healing traditional social imaginaries and encouraging popular participation by helping to form African self-understandings which link pre-colonial values with modern realities. Organizations like the African Forum for Catholic Social Teaching (AFCAST)—working through the African Church in seven different countries—use the principle of solidarity as a bridge concept to bring together old and new.

Agnes Brazal's article is another example of intercultural dialogue, in this case, between Catholic Social Teaching and East Asian discourses. She begins by presenting different East Asian perspectives on the concept of harmony, identified by the Bishops Institute for Inter-religious Affairs (BIRA) as "the intellectual and affective, religious and artistic, personal and societal soul of both persons and institutions in Asia." (121) Of particular interest are the Taoist concept of "wu-wei" (non-striving), the Hindu notion of "Dharma", the universal principle which "holds together the various parts of reality" (127)) and the Confucian concept of "jen" or benevolence, which allows individuals to maintain the five relationships which provide social stability. These core principles both mediate and enrich CST concepts such as democracy, justice, solidarity, and the common good for East Asians and are themselves subject to

critique by CST. For example, “wu-wei”, which puts one in harmony with nature, adds to the concept of solidarity a planetary consciousness. But solidarity, in turn, through its prophetic dimension, can move Taoists from a simple appreciation of the inter-connectedness of all creatures to action on their behalf. Especially thought-provoking is Brazal's discussion of the East Asian concept of fluid dualities. In Catholic Social Teaching, the notion of masculine and feminine as representing a rigid dualism has been a contributing factor, Brazal believes, to the subordination of women. She is hopeful that the Eastern view of masculine and feminine as an instance of the yin/yang polarity in which all beings participate (so that everyone is both masculine and feminine) can be a challenge to CST in this area and contribute to justice for women.

The essays representing Australian and Indian attempts to implement Catholic Social Teaching have the most practical focus of any in the volume. In “Connecting CST to Contemporary Australia,” Sandie Cornish and David Freeman chart the ebb and flow of CST implementation in the Australian Church from the pre-Vatican II period to the present day. They note with pride the consensus among labor historians that the landmark *Harvester* decision of 1907 which prescribed a living wage for workers and their families was influenced by the presiding judge’s reading of *Rerum Novarum*. During the Cold War, Australian Catholics who promoted the principles of CST as enunciated by Vatican II were likely to be criticized as Marxist, but after the fall of Communism in 1989 and the revival of the social justice tradition in the encyclicals of John Paul II, CST entered the mainstream. Since then the national commission for justice and peace, first a lay body but later, taken over by the Australian Bishops Conference, has undertaken some ambitious projects which have caught the attention of the entire country. “Common Wealth for the Common Good,” the first statement issued by the Bishops as a result of their inquiry into the distribution of wealth in Australia, was debated by both Houses of the Federal Parliament. “Young People and the Future,” a 1998 statement based on an extended process of dialogue with young people (the Bishops made a special effort to include at-risk, indigenous, and non-English speaking youth in the conversation) also had a wide reception.

In “Catholic Social Teaching and its Application in Rural India,” Joseph Jadhav reports on the successful Watershed Development Programmes in the State of Maharashtra. Introduced by the Jesuits, these programs replace traditional methods of storing water, which result in the loss of topsoil, with a system of water conservation which prevents rainwater run-off and protects the topsoil. The community involvement necessary to establish and maintain these

programs has led to a greater sense of the common good within rural Indian communities and such practical benefits as an increase in jobs and a higher standard of living for women.

Concluding the volume with an essay by John Coleman on Catholic Social Teaching in the North American context was a wise editorial decision. Having entered different cultural standpoints by means of the previous essays, the American reader is well positioned to grasp the dissonance between our own culture and the values of CST—which is Coleman’s main point. In a somewhat bleak assessment, he cites individualism, consumerism, an uncritical acceptance of the free market, and the view that the U.S. is exceptional among the nations of the world as dominant themes of American culture which make it unreceptive to such core principles of CST as solidarity and the common good. However, his discussion of the Canadian Church’s attempt to implement CST ends his article—and the whole collection—on a positive note. Canada lacks the “taboo against socialism” (209) found in the U.S. and consequently, the Canadian Bishops have spoken out more strongly than their American counterparts on the “social sin” (211) of current economic arrangements and consistently refer to the inherent contradictions in the capitalist system. Their challenge to the role played by multi-national corporations in the global economy has no equal in the Bishops Conferences of other industrialized countries. An appreciation of the contributions to CST by our neighbor Church to the north seems like a fine way to bring this informative and fascinating volume to a close.

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We Cannot Forget: Interviews with Survivors of the 1994 Genocide in Rwanda.
Eds. Samuel Totten and Rafiki Ubaldo. New Brunswick, NJ: Rutgers University Press, 2011. 220 pages. \$26.95. ISBN-13: 978-0813549705.

In a way this is a simple book: a collection of first-hand accounts of eleven survivors of the 1994 Rwandan genocide of the Tutsi and moderate Hutu. The format is clean and unobtrusive. The editors do provide a brief but educated summary of the events leading up to the genocide. In the introduction they also discuss several themes that recurred consistently throughout the accounts. There is also a brief but helpful glossary that covers terms used in the survivors, but this is supplied at the end of the book. The stories are given to the reader without any scholarly apparatus, save for a very few bracketed words or phrases that are necessary to maintain the flow of the narrative. The reader is therefore presented with raw visual narrative of the genocide through the eyes of its survivors, who are also victims that happened to live through the ordeal. As someone who has heard at least a dozen survivor accounts during my several visits to Rwanda, my experience resonates with the over arching theme of this book: if you lived through the Rwandan genocide you hardly count yourself lucky. The title of the book is extremely telling and well chosen: We Cannot Forget. There are many people in Rwanda that want to forget what happen. There is an entire generation of Rwandans, however, that will never get past this. Emmanuel Muhinda, whose face is also on the cover of the book, is perhaps the most extreme example of the effects of the genocide. I will not tell his story (that is what the book is for), but I have been to Murambi (one of the largest genocide memorials in the country) and have spoken to Emmanuel several times. On my second visit there he recognized me immediately and acted as though we were friends. It was flattering, but as the day went on I saw him taking another group around the site telling them the same story (albeit shorter than the one in the book) that he had told to me and countless others before. In a very real and literal way, Emmanuel is bound to the genocide in a way that is incomprehensible to me. My students ask why he did not get on with his life, and why he chose to stay and recount the most painful memory one could imagine. But time has stopped for him and all that exists are the events that took place at Murambi in April of 1994. I know this sounds dramatic, but there is a psychological truth that comes through in all of these accounts. For survivors, the events of the genocide happened yesterday and the details are so vivid to so many. I was told by one of my Rwandan friends who was also a gacaca judge that if any one says that they do not remember what happened the day genocide came to their family or village, then they are most likely lying about something or protecting someone, probably themselves.

In a book like this we are confronted with the limits of our western talk therapy. As the editors accurately point out, suppression of trauma only creates more problems, but we in the west do not hold the answer either. What comes through in these accounts, which is consistent with my personal experience with survivors, is that genocide exacts a level of psychological damage that is only comprehensible to other survivors. As you read their stories there is the dawning awareness of a sinking feeling that this kind of suffering is simply beyond our powers of comprehension. When Umulisa, a survivor from Butare, was being marched with her family to the woods to be killed (p.53), she remembers hoping that her father had enough money (5000 Rwandan francs) to buy bullets so that they could be shot instead of cut with machetes. A simple thought from a child hoping her dad had enough money to buy her a quick painless death. This book is full of these moments that stop you in your tracks and illustrate the imaginative distance we must travel to get close to what this must have been like to live at this time in that place. As a professor who teaches genocide to college students, one of my concerns is that they come into my class wanting to understand genocide, but only enough so that they can drink that unique cocktail of horror, indignation, anger, and guilt to satisfy their thirst for justice or revenge. This brings me to my only reservation about this collection. Without doubt, this is a valuable resource for scholars who want direct access to the genocide as it happened on the ground. It is also invaluable for teachers to use in class, as a way for their students to walk with these people as they descended into nightmare. But this is a not a journey for someone who does not have some kind of grounding in the phenomenon of what genocide is, how it happens, or why it happens.

Without understanding or representing the perpetrators, the reader is bound to see them as inhuman monsters, or people who became killing machines. In general, I am suspicious of horror for horror's sake. When the editors state, "No one can really gain a true sense of the horror of genocide without coming face to face with it," (p. 22) my question then is why should we? If this book is used only as a way to gaze upon the worst that people that can do to one another, or if it used for titillation and genocide tourism, then the memories of the survivors will be defiled. I do not doubt the intention of the editors of this collection. What they have done here will be an invaluable resource for anyone who is dedicated to the prevention of future genocides. Yes we must walk though this valley of the shadow of death, but only so that we can move though this darkness to continue to move toward a world where genocide is less likely to occur.

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***Why Africa Matters.* Cedric Mayson. New York: Orbis Books, 2010. 217 pages. \$20.00. ISBN 978-1-57075-869-0.**

Africa was prominent in the world news in 2011, but not for the usual reasons. The year began with what became known as the “Arab Spring,” peaceful and inclusive grassroots revolutions to oust long-term dictators in Tunisia, Morocco, and Egypt. The calls for democracy, organized largely via online social networks, spread to Yemen, Bahrain, Syria, and Libya. Aftershocks from these revolutions continue. In July, the new nation of South Sudan was born following an overwhelming referendum vote to separate from Sudan after years of civil war. Cedric Mayson’s book was written before these momentous events, which underscore his main argument that Africa matters because it stands ready to offer humanity the vision of a revolution of spirit for a new beginning.

Organized in ten chapters, each begins with a synopsis and concludes with an afterword. The book offers three connected strands of arguments. First, humans (his term is Earthlings) today face the five horsemen of the apocalypse – “poppycock religions, poppycock economics, poppycock politics, poppycock ecology, and a poppycock media” (10). Like Jean Jacques Rousseau, Mayson argues that civilization has been bad for Earthlings because its horsemen have replaced an authentic liberation with all manner of dogma, superstition, an unhealthy conformity to institutional order, and a disastrous allegiance to patches. Dismayingly, religious and national patches seem like natural entities to the uncritically faithful. The book has chapters discussing the five horsemen, Earthlings, liberation, ecology, politics, economics, the media, and spirituality.

Second, Earthling liberation depends on adopting ubuntu. Ubuntu, for Mayson, is not only an African but a shared human sense of fellow-feeling, cooperation, and destiny. Adoption of an ubuntu consciousness is Africa’s contribution to Earthling rediscovery of “the spiritual energy in all Earthlings, the vital force within everyone everywhere” (155).

Thirdly, earthlings now live in a post religious age in which world peace depends on small groups of ordinary individuals who see beyond their patches and thus genuinely seek to understand the core messages in all world religions.

Mayson’s scope is limited to proclaiming “a new vision, not a detailed program” (193). Mayson, an ordained Methodist minister, fully expects that the devil will be in the details since each of the arguments is controversial and readers looking for a specific manifesto will be disappointed. Over the course of the book, he includes wonderful snippets of South African, African, and world history. The result is a rich and balanced narrative of an obviously well-traveled

author. Understandably, the argument about transcending our religious and political patches is particularly apt. Yet this may be the most controversial aspect of the book. A postreligious theology is sketched here that would make many conservative and fundamentalist believers nervous. Towards the conclusion of the book, Mayson recounts a recurring daydream. The daydream is of a party in Africa that includes South African women, Jesus, Mary of Magdala, Gautama Buddha, Prophet Muhammad (PBUH), Karl Marx, Prophet Isaiah, Abraham, Confucius, Lao Tse, and Zoroaster. Mayson's point is that the party chugs merrily along because, stripped of all extraneous elements to their teachings, all the prophets from the past espouse the same values: "They reveal a similar analysis, similar hopes, and a similar vision, espousing the same values, and asserting the same powers in the depths of human community." (191) Looking at our world today one wonders how we got here from there, and whether it is possible to find our way back. Consistently, Mayson takes the view that our problems do not come from Christ but from Christians. Religion is not the problem, but fundamentalists are – for whom he has particularly strong words. "Religious believers today often need to be liberated from indoctrination by the individualistic-colonialist-imperialist-missionary religions they inherited, or from the superstitions of the poppycock fundamentalists and turn to the postreligion secular-spirituality world." (p. 194)

This is a brave stand against fundamentalism, and the right one. It is easy to see how the *boko haram* fundamentalist group in Northern Nigeria and *al-Shabaab* in Somalia are ideological kin to North American mega-Churches and their almost exclusive focus on wealth. Yes, Muslim fundamentalists have nothing to do with real Islam just as boutique cults have little to do with the real message of Christ. Mayson's daydream nevertheless raises legitimate difficulties in imagining Prophet Muhammad (PBUH) in conversation with Karl Marx. Are their messages really the same? Are concerns about food, drink, music, or gender integral or extraneous? In sketching out elements of a postreligious theology, Mayson quotes approvingly from the late Joe Slovo, leader of the South African Communist Party. He also enlists Bantu Steve Biko, leader of the Black Consciousness Movement. The most jarring enlistment is of Fidel Castro.

While the objective of openness is laudable, Mayson's strategy leaves the religious reader struggling with the question of whether a liberation that welcomes such seemingly discordant voices is purchased at too high a price. Mayson pulls off the move by distinguishing between religion and spirituality. His opposition, and presumably that of Joe Slovo and Fidel Castro, is to organized religion and its structures that inevitably lead to ecclesiastical

apartheid. He is on solid ground here. We have the examples of Julius Nyerere and Kwame Nkrumah who, despite espousing African socialism, also described themselves as Christians. Yet unease is bound to remain as to what constitutes true Christianity, Islam or socialism. The devil is in the details.

The other controversial prong of Mayson's narrative is the reliance on the concept of ubuntu. Developed in the context of South Africa, ubuntu connotes a life-affirming sense of oneness with other humans as well as with the universe. We each equally belong to our planet, hence Mayson's preference for the term Earthlings. There have been limited discussions of ubuntu by African philosophers, yet Mayson asserts that ubuntu is a consciousness universally shared. Evidence for this claim is not clear. At a very abstract level, if ubuntu is meant as a substitute for personhood, then Mayson's claim is true. Still, there is a need for Africans and other Earthlings to work out the precise details of the concept. Even then, it is a long journey from understanding the concept to harnessing it for solving the problems humanity faces – rapid population growth, hunger, poverty, environmental degradation, depletion of resources, and war. A manifesto arising from Mayson's vision will have to address these elements.

Mayson's critiques of the media, organized religion, and politics as usual are spot on. He rightfully decries sensationalism in the media, corruption in politics, and idolatry in religion. Readers looking for a reform program are going to be disappointed. We can agree that the media should empower the citizens rather than merely titillate them, but how would an ubuntu culture achieve the desired goal? One can decry the ill effects of globalization and the incessant grasping for profits by multinational corporations, but where is the alternative economic arrangement? Will corruption in government be abated by having more enlightened souls in charge? There is room here to speculate about an alternative future for Earthlings had political leadership landed in the hands of Mahatma Gandhi, Nelson Mandela, Martin Luther King, Jr, the Dalai Lama, Archbishop Oscar Romero, and Mother Teresa. *Why Africa Matters* is a timely call for humanity to gear up and adopt an African concept that will be our ticket to saner priorities.

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J. Milburn Thompson, *Introducing Catholic Social Thought*. Maryknoll, NY: Orbis Books, 2010. 228 pages. \$22.00. ISBN-13: 978-1570758621.

Catholic social teaching has been communicated in varied ways by teachers, scholars and practitioners, both inside and outside the Church. By way of summary, the United States Conference of Catholic Bishops (USCCB) identifies seven themes constitutive of the teaching: the life and dignity of the human person; a call to family, communion and participation; the interrelation of rights and responsibilities; a preferential option for the poor and vulnerable; the dignity of work and the rights of workers; solidarity; and care for God's creation (USCCB, "Themes of Catholic Social Teaching"). J. Milburn Thompson tells the reader that he chose to omit attention to marriage and family because Catholic social teaching "has not approached these topics from a primarily social perspective" (8). By contrast, the *Compendium of the Social Doctrine of the Church* devotes an entire chapter to marriage, family, and its role as a vital cell in society (Pontifical Council for Justice and Peace 95). Thompson's omission of marriage and family in this introductory text on Catholic social thought creates a gap in the reader's understanding of the family as "the first natural society, with underived rights that are proper to it," placing it at the center of social life (Pontifical Council for Justice and Peace 95-96).

The book is divided into six readable chapters. The first chapter traces portions of the historical development of Catholic social thought, defining terms, setting expectations and identifying documents of central focus for the author. Chapter two focuses on the Church and politics, tying together a relationship between faith and public policy by examining historical developments in Church-state relations and highlighting selected applications of Catholic social teaching principles to public policy. The section on political advocacy is quite good; it is compact but very informative. Organizations discussed that address political advocacy include the USCCB, Catholic Relief Services (CRS), Center of Concern, NETWORK and Bread for the World (BFW).

Thompson's third chapter focuses on economic justice, beginning with a discussion of César Chávez and ending with some thoughts on Bono's activism and lifestyle. Next is the "war and peace" section of the book, with a somewhat fragmented consideration of just war theory and a scathing criticism of Pope Pius XII, in which Thompson asserts that he "failed the test of moral leadership in a time of war" (111). *Jus ad bellum* and *jus in bello* (105) are introduced three pages into the chapter but *jus post bellum* is not mentioned until thirty pages later (135). The author offers a bulky supply of case studies to supplement discussion of the first two principles but no case studies for the third.

The fifth chapter covers what he dubs “A consistent life ethic and care for the earth,” (139). His discussion of “consistent life ethic” appears to critique the Church’s protection of human life at all stages of development; he particularly speaks out against the Church’s teaching on the inviolable sanctity of human life in the womb, claiming among other things that “a woman’s experience is not allowed to affect the absolute norm prohibiting abortion” (150). The final chapter offers an account of the problems and weaknesses of Catholic social teaching on the one hand, and (in a very brief section) its contributions and strengths, on the other.

The tone of this text was somewhat disconcerting in places. For example, after lavishing praise on Pope John XXIII for opening the church to the modern world, Thompson goes on to accuse Pope John Paul II for being "out of tune with the spirit of Vatican II and the direction set by John XXIII and Paul VI". He adds, " the spirit of dialogue with other Christian Churches and other faiths and with the world was trumped by an assertion of the truth of the Catholic Church and of the absolute, universal principles taught by it...dialogue yielded to silencing and removing theologians who dared to seek truth beyond the church's official teaching" (51).

A closer look at Pope John Paul II's record reveals not only a documented call for Christian unity (John Paul II, *Ut unum sint*) but the establishment in 1988 of the Pontifical Council for Promoting Christian Unity, with two explicit roles: first, promotion within the Catholic Church of “an authentic ecumenical spirit” (Second Vatican Council, *Unitatis redintegratio*); and second, development of "dialogue and collaboration with the other Churches and World Communions" (The Pontifical Council for Promoting Christian Unity). Furthermore he raised the Secretariat for Non-Christians (established by Paul VI in 1964) to the rank of Council for Interreligious Dialogue, which promotes mutual understanding, respect and collaboration between Catholics and followers of other religious traditions, formation of persons dedicated to dialogue, and the study of religions (The Pontifical Council for Interreligious Dialogue). Far from silencing dialogue, these actions spoke to an active call for more of it.

Generally the book is well written but needs to be supplemented with other texts to adequately introduce Catholic social thought, particularly if it is used in the classroom. Furthermore, the author’s own editorial inclinations should be carefully considered and balanced with other readings reflecting greater diversity of perspectives on the same matters.

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Vincent Harding, *Hope and History: Why We Must Share the Story of the Movement*. 2nd Ed. Maryknoll: Orbis, 2009. 223 pages. \$16.00. ISBN: 978-1-57075-857-7.

In *Hope and History* Vincent Harding testifies to the continuing importance of the black-led freedom movement that developed after World War II. While the book is widely accessible, it is mainly geared towards educators and is meant as a primer of names, places, issues, strategies, and potential discussion questions for use in the classroom. The updated second edition (the first was published in 1990) has been expanded to include a few parenthetical references to Barak Obama's 2008 presidential campaign, as well as a short letter to Obama at the end of the book that unequivocally locates him as the movement's direct heir. The primary power of this text lies in its impassioned mining of the poetic and religious imagination that inspired the movement at its deepest levels, and in Harding's attempts to reclaim that creativity for a politically conscious pedagogy. However this marginally revised second edition nevertheless maintains and even exacerbates the major shortcoming of the first edition. Harding crafts a triumphalist narrative of the freedom movement which tends to occlude the social and economic complexities of both the time in which the movement took place and of the present for which Harding is attempting to recover it.

Hope and History consists of a collection of eleven essays and two concluding letters originally inspired by Harding's work on the PBS documentary series *Eyes on the Prize*. Each chapter is structured by his attempt to draw lessons for contemporary students and teachers out of the freedom movement's post-World War II history. (He is suspicious of the euphemism "Civil Rights Movement" for its tendency to simplify the movement into a homogeneous political program.) These lessons can loosely be grouped under four headings, which Harding outlines in his introduction: lessons about the development and exercise of democratic possibilities; inspiring a desire for freedom and willingness for responsibility among young people; creating solidarity among disparate social groups; and finally the formation of liberatory social identities (7-8). Every chapter is structured by lessons drawn along some or all of these four lines, and as a result the text is often quite repetitive.

The first two chapters—"Signs... Signs... Turn Visible Again: The Transformative Uses of Biography" and "Advanced Ideas about Democracy: Rediscovering Humanity's Great Lessons at Home"—form a unit. Both provide a "scatter-shot" form of introduction listing a great variety of people and events that were crucial for the history of the freedom movement and which he claims ought

to be included in classroom engagements with its history. But Harding's staccato lists of names and the very brief treatment each of these receives makes this portion of the text disjointed, a tendency repeated in the later chapter "Gifts of the Black Movement," where Harding provides a long list of the merits of the movement which lacks a guiding conceptual thread. These chapters also evidence the text's recurring tendency towards hagiography. Here and elsewhere Harding focuses on glorifying the personalities of a select number of leaders of the post-World War II movement and eschews the underlying social, economic, and gender relations structuring and complicating the movement's history.

In the third essay, "More Power than We Know: Recollecting the Young Warriors," Harding focuses on what the freedom movement can teach educators and students about the mobilization of youth for pro-democracy causes. Here Harding draws some provocative connections between the historical movement's mobilization of huge numbers of youth for community organizing, sit-ins, and civil disobedience, and the more recent mobilization of students in Tiananmen Square and elsewhere at the end of the 1980s and beginning of the 1990s. As he notes in his introduction, the Tiananmen protestors self-consciously cited the earlier, American movement in banners that read "We Shall Overcome", and Harding explores the cross-pollination of strategy and ideology in these disparate movements. Here and in the essay "In Search of the World: A Geography of Freedom," Harding effectively situates the freedom movement within an international frame. This shift of perspective is one of the more effective accomplishments of the book: the black-led American movement, Harding claims, is actually part of a global history of imperialism, anti-colonial struggle, and pro-democracy movements and shouldn't be read in separation from the events in China, Africa, Vietnam, or elsewhere.

As the book progresses past the first few essays it turns to the role of religion in the history of the movement. "Fighting for Freedom with Church Fans: To Know What Religion Means" analyzes the role of churches and religious leaders in organizing the pro-democracy movement. And in the following "God's Appeal to This Age: The Search for Alternatives to Violence," Harding recognizes in the nonviolent approach of large segments of the freedom movement—SNCC in particular but rooted in the churches—an effective weapon of social change rooted in the movement's ecumenical religious tendencies. Together, the two chapters make an important case for a politics and a pedagogy that doesn't shy away from the power of religion as a force of progressive change.

Harding is at his best in his essays on art and media, where he leaves the generality of staccato lists and broad themes and gets down to a more specific

business. "Poets, Musicians, and Magicians", like "Is America Possible?", is an exploration of the social imagination which spurred the freedom movement. The movement, he claims, wasn't a political one with artistic off-shoots but rather deeply informed by a poetic sense of political creation and possibility. Quoting Larry Neal, Harding writes: "The artist and the political activist are one. They are both shapers of the future reality" (123). Politics is *creative action*, Harding suggests, and the primary pedagogical importance of *Hope and History* lies in its attempt to reclaim a sense of that political creativity within the classroom. And if politics is creative, then art is political for Harding. In the essay "Doing the Right Thing in Mississippi and Brooklyn" he provides an acute analysis of contemporary pop media as embodying an artistic politics that suffers from historical amnesia.

In the final essays Harding sums up the importance of the movement's history for the present, indicating the pedagogical possibilities offered by that history. The most significant of these is the last chapter and Harding's major new contribution to the second edition of *Hope and History*. This essay takes the form of a brief letter to Barak Obama which traces the 2008 presidential campaign to its roots in the freedom movement which, Harding interjects earlier, "leads directly to" Obama (31). In that letter Obama's election is a triumph premised on all the triumphs that have gone before it in the black-led struggle for change, and is in addition at the crest of "the rise of a global passion for democracy" (23). In this way Obama is very nearly subjected to the hagiography that dominates much of the rest of the text, and Harding's very mild critique of the wars in Iraq and Afghanistan becomes something of an afterthought.

With this enthusiastic embrace of Obama in *Hope's* second edition, a major weakness in the text is exacerbated. *Hope and History* tends to provide a triumphalist view of history insofar as it presents a narrative of the constant victories of the freedom movement by heroic leaders like Martin Luther King, Jr., the members of SNCC, and Amiri Baraka. This narrative of victory, when combined with recognition of Obama as its direct heir, produces a vision of American history as the steady, constant progress of triumph over non-democratic tendencies. Occluded here, however, are the deep economic and social systems that have structured both the history of the movement as well as its legacy into our present. For example, several times in the text Harding lauds Amiri Baraka as "the most gifted of all the poets" (107) emerging from the movement, yet Cheryl Clark has noted the rabid homophobia and sexism informing Baraka's poetry, and she traces these as hidden tendencies back into the era Harding is reconstructing. In this way, Clark complicates the narrative Harding constructs by describing its

entanglement in the deep structure of patriarchy in which it developed. More than this, Harding's narrative discounts an economic system that both tolerated the political freedom movements after World War II and simultaneously preserved and continues to produce massive material inequality, de facto segregation of neighborhoods, and global war. In his vision of progress, Harding misses an economic and political system in which the pursuit of political freedom is premised on its material opposite. In other words, by connecting Obama to a triumphalist vision of the black-led freedom movement, Harding has effaced a deeply riven economic and social past and present. As a result, the text's attempt to revivify the past and inspire students and teachers comes at the cost of another form of amnesia.

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END NOTES

¹Cheryl Clarke, "Failure to Transform: Homophobia in the Black Community," *Oppression, Privilege, & Resistance: Theoretical Perspectives on Racism, Sexism, and Heterosexism*. Ed. Lisa Heldke and Peg O'Connor (New York: McGraw Hill, 2004) 252.

Brian Grodsky, *The Costs of Justice: How Leaders Respond to Previous Rights Abuses*. Notre Dame: Notre Dame University Press, 2010. 355 pages. \$40.00. ISBN: 978026802977

The Costs of Justice: How Leaders Respond to Previous Rights Abuses, written by Brian Grodsky, from the University of Maryland, explores how governments chose to pursue justice in the aftermath of human rights violations. This book provides an interesting contribution to the continuously growing field of transitional justice in two ways. First it bridges together the literature on transitional justice with that on decision-making processes. In this study, the author seeks to demonstrate how a number of domestic factors, including popularity of policies, as well as economic and social demands, influence elites in their choice of transitional justice policies. Second, Grodsky provides an unprecedented analysis and comparison of how four former communist countries, namely Poland, Serbia, Croatia and Uzbekistan, chose to deal with their past.

The book is divided into two parts. The first part deals almost exclusively with the theoretical and methodological aspects of the study, while the second part focuses on each of the case studies and their implications on the transitional justice scholarship.

Part one starts with a brief overview of transitional justice, which the author defines as “a new or nominally new regime’s legal and symbolic responses to past human rights violations.” (13) Grodsky goes on to argue that the decision to carry out justice in the aftermath of human rights violations does not happen within a vacuum, but rather is influenced by questions of power and popularity, as well as a number of what he calls “implicit constraints and incentives.” (32) While the author challenges the argument according to which transitional justice policies are largely defined by political power struggles between incoming and outgoing elites, he does not altogether reject it. Rather, Grodsky prefers to refine the argument, by stressing the importance of domestic pressures and popular demands. In other words, according to Grodsky new leaders must balance the need for justice with the public perception of efficacy. He adds that governments often only pursue justice to the degree that it is beneficial to them, and to the wider arrays of national (economic, social, political) policies in place.

The author is therefore interested in identifying the conditions that push leaders to implement a given set of transitional justice measures rather than others. For that reason, he puts forth a somewhat simplistic spectrum of justice that includes seven types of justice policies, ranging from ‘lenient’ to ‘harsh,’

and that, in his view, can be correlated with the power that new elites hold. The spectrum of justice includes policies that aim, for instance, at the rehabilitation of victims, or at the criminal prosecution of offenders. An illustration of the spectrum of justice can be found p.38. Grodsky explains that he purposefully omitted lustration, to which he dedicates chapter 5, and in which he justifies his choice on normative, legal, and theoretical grounds.

Part two of the book is dedicated to the four post-communist countries Grodsky chose to illustrate his argument with. The second section of this volume is largely based on media analysis, and the 250 elite interviews, that the author conducted himself in these four countries. Each country, namely Poland, Serbia, Croatia and Uzbekistan, is explored in a separate chapter. Each chapter, in turn, contains a discussion of the transition that took place and the types of justice policies adopted, using the justice spectrum.

The spectrum of justice is, therefore, central to the work carried out here, since Grodsky uses it as a tool to test his hypothesis, according to which new, incoming elites are more likely to pursue harsher policies, than those coming in through negotiated transition and having to deal with, and work along relatively strong outgoing elites. Moreover, Grodsky adds that government leaders (both old and new elites) must contend with the economic, social and political domestic reality, which may take precedence over the need for justice.

Overall, *The Costs of Justice: How Leaders Respond to Previous Rights Abuses* undoubtedly provides an innovative study of the process by which governments decide which transitional justice policies to adopt. Grodsky makes an interesting contribution to the field of transitional justice, by focusing on the domestic dimensions, and power play that affect and often define justice policy-making in transitional societies. Furthermore, the author does a commendable job at highlighting the similarities and differences between all four states in their attempts to come to terms with their past and carry out justice.

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