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## POLICY

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## UNCONDITIONAL VS. CONDITIONAL CRITICS OF TERRORIST VIOLENCE: A SEEMINGLY ENDLESS DEBATE

Vicente Medina

### INTRODUCTION

This paper explores whether terrorist violence could be morally justified or excused. It defends the absolute immunity of innocent people based on recognizing a stringent natural duty of nonmaleficence, which entails an obligation on moral agents to refrain from intentionally bringing about harm or significant risk of it to the innocent.<sup>1</sup> A distinction is made between unconditional and conditional critics' arguments regarding the use of terrorist violence, and between a narrow and a broad definition of terrorism. While unconditional critics accept the narrow definition or one akin to it because they generally equate terrorism with murder, conditional critics accept the broad definition or one akin to it because they occasionally attempt to justify or excuse the use of terrorism based on an analogy with a just war approach, consequentialism, moral relativism, supreme emergency or last resort.

Exception is taken with conditional critics' arguments because they attempt to justify or excuse the deliberate use of violence against the innocent. It is argued that an analogy between terrorism and just war is questionable since the latter unambiguously maintains that evil may not be done that good could ensue. Consequentialism is objectionable because (1) it allows, at times, for the intentional and deliberate killing of innocent people whenever a greater good can be reasonably expected to come out of it; (2) it allows for treating people as means only; and (3) it neglects a morally relevant distinction between acts of commission and acts of omission since they exclude the intentionality of moral agents from the consequentialist calculus. Those who espouse moral relativism blur the distinction between the innocent and the noninnocent because they contend that the justification of terrorist violence is just perspectival. They appear committed to the view that a person's innocence is in the eyes of the beholder. Moreover, supreme emergency arguments fail because they attempt to excuse the intentional and deliberate

killing of innocent people on consequentialist calculations or expediency. Last resort arguments are suspect because frequently perpetrators of terrorist acts, at least within a constitutional democracy, do not exhaust viable options that exist within the domestic or the international community to pursue their grievances peacefully. As a result, they unnecessarily risk innocent people's lives.

While unconditional and conditional critics might disagree about the meaning of innocence, terrorists are generally convinced of who their enemies are. This fundamental disagreement partly explains our lack of consensus regarding the nature and practice of terrorism. Yet to avoid moral blame, we must respect our stringent natural duty of nonmaleficence. Still, one needs to understand the nuances of this duty contextually. To do so, this paper will explore the September 11, 2001, attacks on the World Trade Center and the Pentagon to offer an unconditional defense of the innocent. With minor modifications, the argument could also apply to the March 11, 2004, attacks in Madrid, the July 7, 2005, attacks in London, and similar attacks elsewhere.

## I

"Terrorism" is a highly contestable term. It is generally conceived as a form of political violence associated with the intentional and deliberate destruction, maiming, and/or coercion of people—whether they are innocent or not. Political violence refers to the use of lethal or non-lethal physical force with the intent of influencing governments' policies or to radically transform a domestic or international political order.

Discussions of terrorism sometimes begin with a definition of the term "terrorism," and whether it should be defined in a narrow or in a broad sense.<sup>2</sup> Definitional disputations, however, are insufficient to establish if and when terrorist violence is morally justified or excused. The following working definition of terrorism is offered to capture the unconditional critics' view:

**Terrorism in the narrow sense:** *„ The use of political violence by individuals or groups who intentionally and deliberately inflict harm or impose a significant threat of it on the innocent, such as killing, maiming, and/or coercing them.*

Unconditional critics contend that while the practice of war per se has variously been characterized as just or unjust, the practice of terrorism is categorically wrong.<sup>3</sup> They uphold some version of the principle of nonmaleficence: it is seriously wrong to intentionally bring about harm or significant risk of it to innocent people, even when a greater good can be reasonably expected to come out of it. Thus the intentional and deliberate killing of the innocent is an instance of the *summum malum* that state and nonstate agents should avoid if they respect innocent people's lives. If they were to use the innocent only as means for other ends, their credibility and legitimacy would likely be diminished, at least in the eyes of those who respect the innocent. Those who intentionally and deliberately

kill innocent people are oftentimes considered murderers. Therefore, under the narrow definition, terrorists are considered murderers.<sup>4</sup>

Since conditional critics occasionally justify or at least excuse some kind of terrorist violence, the following broad working definition of terrorism is offered to capture their view:

**Terrorism in the broad sense:** *„ An intentional and deliberate use of political violence or threat of it by individuals or groups against those whom they perceive as their enemy, even though they are not formally engaged in military combat.*

Conditional critics openly or tacitly assume this definition or one akin to it. If not, their justification or excuse of terrorist violence would seem to be ad hoc and hence unwarranted.

Both definitions beg the question to some extent. The narrow one assumes that, in the absence of countervailing evidence, the concept of innocence entails absence of moral or legal wrongdoing, while the broad one assumes that the concept of enmity entails moral or legal wrongdoing. Yet based on our moral intuitions and legal practice the ascription of innocence takes precedence over the ascription of enmity to persons or groups, unless they are engaged in formal military combat where the distinction between enemy soldiers is clearly established and the concept of innocence is virtually pointless. Persons or groups are presumed innocent until proven otherwise. Those who espouse the broad definition must prove that the ones perceived as enemies are truly engaged in moral or legal malfeasance. If not, they would be acting arbitrarily in risking the lives of those who are otherwise presumed innocent. Since the narrow definition, unlike the broad one, coheres with our moral intuitions and legal practice about people's presumption of innocence, it follows that, other things being equal, the first is preferable to the latter one. Still, the justification or excuse of terrorist violence needs to be addressed by reasonable arguments rather than by appealing to people's intuitions alone.

Conditional critics who adopt a just war approach justify the use of violence depending on the goal that one is trying to accomplish and how one exercises physical force to achieve it. For example, Andrew Valls states, "if war can be justified, then terrorism can be as well."<sup>5</sup> Similarly, Virginia Held argues, "some uses of violence may be justified, and terrorism may be not more unjustifiable than war."<sup>6</sup> They assume that war and terrorism can be analogous in their use of violence, namely aiming for morally worthy goals in morally acceptable ways. Thus, to avoid incoherence, if we justify the use of violence in the former, then we should do likewise in the latter. Those who accept this analogy argue that terrorist practices should be analyzed in light of a just war tradition conditioned by the *jus ad bellum* and the *jus in bello* principles that govern it. If these principles are reasonably fulfilled, then just war theorists contend that the use of physical force, whether lethal or not, can in principle be morally justified or excused.<sup>7</sup> The *jus ad bellum* and the *ius in bello* assume that noncombatants are innocent. but that

need not be so. If we want to do justice to the just war tradition, the innocence of noncombatants must be determined contextually rather than a priori. Traditional just war theory presupposes a morally relevant distinction between the combatant and the innocent. Thus, the tradition proscribes the intentional and deliberate targeting of the latter.<sup>8</sup> As a result, conditional critics who embrace traditional just war theory must also oppose the intentional and deliberate targeting of the innocent. If not, they would appear to be incoherent.

Conditional critics who adopt consequentialism might argue that a commendable goal can sometimes justify the killing of innocent people. For example, Ted Honderich argues for a "principle of humanity" that recognizes a general positive obligation to extend and improve human lives, or, as he puts it, "we are to save people from bad lives."<sup>9</sup> This principle requires that occasionally we ought to extend and improve the life of the many at the expense of the few regardless of the latter's innocence if one can reasonably expect to succeed in such endeavor. Therefore, in principle, he justifies the use of terrorist violence on consequentialist grounds.<sup>10</sup> Those who espouse moral relativism maintain that moral judgments are perspectival, and hence have no objective truth-value. Consequently, from their own perspective, they could be convinced of the justice of their cause. They could appeal to the notion of collective guilt to attempt to justify or excuse the use of indiscriminate violence against an entire population. Moreover, conditional critics' appeal to supreme emergency or last resort seems to fail for the following reason: they allow treating the innocent only as means for other ends, and hence they obviate our stringent natural duty of nonmaleficence. I will elaborate and assess the plausibility of all of the above views in the second part of the paper.

Sometimes the resulting death of the innocent can be excused, when, for example, their death is not intended but is certainly foreseen. In those instances, an appeal to the principle of double-effect might suffice to illuminate the excuse in question. This principle distinguishes between the intention of those who perpetrate an act and the foreseen but unintended bad consequences of it, such as the incidental killing of the innocent. An act may be morally permissible or excused if those who perpetrate it meet the following conditions: their intention is good, the foreseen but unintended untoward consequences are proportional with the good that they want to achieve, and no other reasonable way exists to achieve it.<sup>11</sup> If one accepts that some wars are just, namely those fought in self-defense or against great evil, it follows that in meeting the objective of achieving a just and lasting peace, innocent civilians will likely be unintentionally killed. For example, while bombings clear military objectives, such as command and control centers, innocent people and hence noncombatants will be incidentally killed. The number of innocent casualties will increase if we include as legitimate military objectives the targeting of transportation and communication systems, electrical power plants, and scientific research centers aiming at producing or enhancing military technology. The unintentional killing of the innocent is unfortunate; how-

ever, if the above conditions are met, then they are not necessarily treated merely as means. They are the sad result of a presumably necessary way of achieving a commendable end that could not have been reasonably achieved in any other way. Still, whether the above conditions are met usually remains contestable.

Reasonable disagreement might exist between unconditional and conditional critics on how to identify the innocent. Like guilt, innocence is a matter of degree. Innocent people are those who have done no significant moral or legal wrong, and they pose no imminent or substantive threat to anyone. While one can grant that contextual differences exist depending on whether one can excuse the incidental targeting of the innocent, there seems to be no ambiguity in the use of the term "innocent." The innocent is one who is neither morally nor legally culpable in any relevant sense. But even when inadvertently or involuntarily individuals threaten other innocent people's lives, by virtue of their innocence, they ought not to be intentionally and deliberately targeted.<sup>12</sup> We abhor the use of lethal force against innocent civilians because they pose no imminent or substantive threat to anyone. Therefore, to target them intentionally is to treat them only as means to further other ends. Yet doing so disregards their physical and psychological integrity and hence their moral standing or dignity. Such disregard is morally objectionable.

At issue is the extent to which a person or group could be considered noninnocent in a relevant sense.<sup>13</sup> The noninnocent poses an unjustified substantive threat to innocent people's lives and well-being only if he or she unjustifiably violates or threatens to violate the physical or psychological integrity of the innocent. This agonistic sense of the term "noninnocent" is instrumental for singling out those who are judged to be so. Once we establish that an unjustified substantive threat exists against the innocent, we can include among the noninnocent, for example, members of the armed forces and related agencies who execute policies that create or perpetuate the unjustified substantive threat, and even public and government officials responsible for enacting and implementing policies whereby innocent people's lives are substantively threatened.

Occasionally, one can reasonably disagree about who the innocent are. For example, the status of munitions factory workers is contentious since, in making a living, they are causally and directly contributing to the war effort. Hence, they pose a threat to the enemy. The scenario becomes even murkier if they are coerced to work in munitions plants. The same can happen with conscripted soldiers and with scientists working in developing or enhancing military technologies that contribute to the war effort. They all pose a threat to the enemy regardless of whether they are coerced into their roles. Controversial cases should not preclude us from offering plausible and convincing arguments to classify as innocent beyond reasonable doubt groups such as the underage, the elderly, the mentally challenged, the severely disabled, and the chronically ill.

Given the contestability of the term "innocent," unconditional critics could focus instead on the term "noncombatant." But the classes denoted by the terms

"innocent" and "noncombatants" do not necessarily overlap. In war, noncombatants pose no substantive threat, immediate or otherwise, to the life and well-being of those engaged in armed conflict. Combatants, however, do pose such a substantive threat. They are identified as "members of the armed forces of a party to a conflict (other than medical personnel and chaplains)."<sup>14</sup> Still, while all innocent people are noncombatants, the converse need not be so. For example, public and government officials who seek to initiate a war of aggression or to sustain it are noncombatants, but they are noninnocent and hence morally blameworthy for promoting an unjust state of affairs and for treating the innocent merely as means to further their morally questionable aims. International law, however, classifies public and government officials as civilians and hence as noncombatants. Consequently, according to international law, they belong to a legally protected class of people.<sup>15</sup> Yet, despite international law, the use of political violence against them can be morally justified or excused since by engaging in a war of aggression, they are deliberately and intentionally contributing to inflicting suffering on the innocent. Judgments about the recognition of the noninnocent can be incompatible with the letter of international law. But strong nations have influenced international law sometimes neglecting the legitimate aspirations and needs of the weak. Still, if we were to reject a reasonable distinction between the innocent and the noninnocent, we would be sanctioning the principle of total war or the notion of collective punishment. Both show a serious disregard for the life of innocent people who belong not only to a legally but also to a morally protected class.

## II

To argue against terrorist practices that indiscriminately target innocent people, this paper will assess and reject plausible conditional critics' reasons to justify or excuse the use of political violence in the 9/11 attacks by appealing to just war, consequentialism, moral relativism, supreme emergency or last resort. If the assessment of conditional critics' reasons is sound, then, with minor modifications, it could also apply to the 3/11/04 attacks in Madrid, the 7/7/05 attacks in London, and similar attacks elsewhere. Since none of the conditional critics already mentioned have openly supported these attacks, one could plausibly contend that the argument in this paper is addressing a straw man. But, while not openly condoning the attacks, some conditional critics' reasons could tacitly excuse them. If one takes seriously the physical and psychological integrity of innocent people, then one needs to try to disarm such excuses.

Conditional critics might defend the use of political violence against the innocent by appealing to an analogy between the use of violence in a just war and those terrorist practices that meet similar conditions. In terms of accountability, a significant disanalogy exists between the institutionalized use of violence by the state, especially in a constitutional democracy, and the use of violence by nonstate agents, such as individuals or groups who engage in terrorist practices. For

example, the policies implemented by the leaders of a constitutional democracy can be publicly challenged and ultimately abrogated, and the leaders themselves can be held morally and legally accountable for their actions. They can be publicly repudiated and voted out of office or even impeached through peaceful enforcement of the law if there is probable cause of serious crimes. Nonstate agents, however, are strictly speaking accountable to no one in particular: they generally have been neither elected nor appointed. Still, one could plausibly argue that under international law, they are morally and legally accountable to the world community. For instance, under international law, the following acts have been classified as crimes against humanity: "murder, extermination, enslavement, deportation and any other inhumane acts committed against any civilian population before or during the war."<sup>16</sup> Regrettably, the nature of international criminal law is so fluid that its enforcement has been erratic at best.<sup>17</sup>

Nonstate agents might claim legitimacy based on three plausible justifications: the actual or tacit consent of those whom they claim to represent, the popularity of their cause, or their appeal to higher laws or principles. First, since they usually operate on the fringe of society with not much regard for democratic institutions, it is almost impossible to ascertain whether those whom they claim to represent actually consented. Second, since they frequently use violence and coercion to promote their cause, the notion of actual or tacit consent seems tainted because no reliable mechanisms exist to determine whether the consent is free and voluntary or based on intimidation. Moreover, an appeal to the popularity of their cause is suspect. A cause is legitimate because it is just regardless of its popularity. Yet its justness is sometimes debatable. Such a debate, however, should be settled by reasonable argumentation rather than by violence alone. They could appeal instead to higher laws or principles such as God's laws, universal human rights, or self-determination in order to seek solidarity from the international community. Still, nonstate agents are usually self-appointed liberationists who more often than not reject international law. In addition, their appeal to higher laws or principles must be fleshed out and understood contextually to assess whether their claims are reasonable and fair, and whether their behavior corresponds with the letter and spirit of their claims. This restriction applies to state and nonstate agents within international law. As a result, states and nonstate agents could in principle be held accountable for engaging in terrorist actions. Therefore, the fact that state terrorism has harmed more innocent lives than have nonstate agents does not excuse the latter for committing heinous crimes against humanity.

Conditional critics who defend the use of political violence based on an analogy with a just war approach could appeal to the principle of double-effect to try to justify or at least excuse the hijackers' use of such violence against their perceived enemy, namely the United States government and its citizens.<sup>18</sup> Since this principle distinguishes between the intention of those who perpetrate an act and the foreseen but unintended bad consequences of it, they could have argued that the hijackers' intention in carrying out the attacks was not to kill innocent people but to disrupt

the financial industry and military logistics of their enemies in order to weaken them and thus to try to improve the lives of their fellow Muslims and Palestinians. But such a claim would be unfounded. They never intended to minimize innocent casualties. On the contrary, they intentionally and deliberately tried to bring mayhem to their presumed enemies. Moreover, the probability that such attacks would have improved the lives of Muslims and Palestinians was highly improbable and hence unreasonable. Unfortunately, the attacks have brought great suffering and hardship to Islamic communities worldwide. Therefore, in terms of intentionality and proportionality a possible appeal to double-effect to justify or excuse the attacks fails to pass muster.

Conditional critics could argue that the 9/11 hijackers' actions resemble some of those committed by the Allies during World War II. Examples include the area bombings by the British of German cities during the early stages of the war, the Allies' area bombings of German cities at the end of the war, and the fire bombing of Tokyo in 1945 carried out by the United States, which culminated with the dropping of the atomic bombs on Hiroshima and Nagasaki where thousands of innocent people died as a result of indiscriminate use of violence.<sup>19</sup> Those who uphold a stringent natural duty of nonmaleficence, such as Rawls and Walzer, object to some of the actions by the Allies. They distinguish between the area bombings by the British of German cities at the beginning of the war when its outcome was uncertain, and the Allies' bombings near the end of it when the outcome was virtually certain. Rawls reluctantly excuses the first based on the concept of "extreme crisis," and Walzer excuses it too based on the concept of "supreme emergency," but neither excuses the latter actions.<sup>20</sup> According to Walzer, a supreme emergency is a matter of life and death where there seems to be no way out of the dilemma: either we deliberately kill innocent people to try to salvage our political community, or the community will perish.<sup>21</sup>

Since the Germans initiated a war of aggression, Rawls and Walzer excuse the indiscriminate bombing of German civilians by the British at the beginning of the war because the war's outcome at the time was uncertain and a Nazi victory would have been catastrophic for Europe. Rawls's extreme crisis and Walzer's supreme emergency allow for the intentional and deliberate targeting of innocent civilians under conditions of uncertainty as a way of trying to accomplish a commendable goal and to avoid a catastrophe. A person's behavior might be reasonably excused by appealing to extenuating circumstances, for example, benign ignorance, accidental and hence unintentional behavior, or avoiding a catastrophe not created by one's own fault.<sup>22</sup> Yet there is something seriously wrong with trying to excuse the intentional and deliberate harming of innocent people under conditions of uncertainty. Such behavior comes across as gambling with innocent people's lives and hence treating them as mere means for an uncertain outcome.

Still, there might be exceptional circumstances under which one could excuse morally abhorrent behavior during war. For example, when the following condi-

tions are met: (1) one must have been unjustly attacked or seriously threatened, (2) a reasonable expectation must exist that a commendable goal can be accomplished, such as defeating the aggressor or neutralizing the serious threat; (3) no other reasonable way exists to accomplish the goal; and (4) a victory by the aggressor would be catastrophic.<sup>23</sup> Even if one agrees that (1), (3), and (4) were met at the beginning of the war, (2) was certainly unmet. First, the outcome of the war was uncertain, but the outcome of a British policy of indiscriminately targeting innocent civilians was most certain: infliction of death and suffering on a significant number of innocent people. And second, perhaps there were no other reasonable alternatives available to try to defeat the aggressor or neutralize the serious threat, especially since appeasement did not work. Yet they always had the option of pursuing the war by adhering to just war principles, namely targeting enemies and combatants rather than the innocent. If one were to argue that the British adopted a policy of targeting innocent civilians in retaliation for similar behavior by the Germans, it could be plausibly countered that two wrongs do not make a right. Moreover, regardless of the catastrophic consequences of a Nazi victory, one could contend in a Socratic spirit that sometimes it is preferable to suffer wrong than to inflict it on others. Therefore, to try to excuse the violation of people's stringent natural duty of nonmaleficence contingent upon an uncertain outcome seems to be morally questionable. Hence, a serious tension exists in Rawls's and Walzer's quasi-absolutist position. If they denounced the indiscriminate targeting of innocent civilians at the end of the war because the Allies' victory was almost certain, then moral consistency requires that they should have denounced the same type of behavior at the beginning of the war when its outcome was uncertain. Uncertainty of outcome, even in a just war, is insufficient to excuse violating our stringent natural duty of nonmaleficence. This duty is so fundamental for valuing people's moral integrity that those who intentionally and deliberately violate it and the community that condones such behavior are guilty of grave moral failure.

The analogy between the hijackers' and some of the Allies' actions is weak. The Allies fought a just war, namely a defensive war against aggression. In addition, the war was fought, at least by the Western Allies, to achieve a just and lasting peace on behalf of the principles of constitutional democracy. For example, Germany and Japan successfully established constitutional democracies as a result of the war. Conditional critics, however, could argue that the hijackers were also fighting a just war against an aggressor, namely the Israeli occupation of Palestine.<sup>24</sup> Since the United States government is the main supporter of the Israeli government, they could contend that the United States has been contributing to perpetuate an unjust state of affairs. According to Osama bin Laden and his Al-Qaeda organization, some of the justifications for his call of war against the United States and its allies are Israel's occupation of Palestine, the suffering of Iraqi people, and the American presence in Islamic countries.<sup>25</sup>

First, even if one grants that a war is just, not all means of fighting it are necessarily just. That would depend on who is targeted and how. For instance, the already-mentioned actions by the Allies whether at the beginning or at the end of the war seem to be morally inexcusable and hence unjustifiable, since they used indiscriminate violence against innocent civilians. Their behavior violated a necessary condition of a just war tradition, namely the *jus in bello* principle, which presupposes the absolute immunity of the innocent. Still, the occasional violation of the *jus in bello* principle by the Allies did not necessarily forfeit their ultimate *jus ad bellum* justification for waging a war against aggressors for the sake of establishing a just and lasting peace. If it can be shown that a systematic policy for targeting innocent civilians exists throughout a given conflict, then a reasonably conceived just war could turn into an unjust one. The issue of when a just war could turn into an unjust one is a challenging issue beyond the scope of this paper. Since the hijackers' and some of the Allies' actions indiscriminately targeted innocent people, both could be viewed as morally inexcusable and hence unjustifiable.

Second, the hijackers' plausible appeal to the notion of a just cause on behalf of the Palestinians seems hyperbolic at best. Being members of a belligerent transnational organization engaged in a crusade to try to impose a militant Pan-Islamic alliance on Islamic nations against Western nations is a dubious just cause, and so is their appeal to *jihad*. They play with the ambiguity of the term "jihad" in their attempt to justify their actions based on self-defense of the *umma*. The term "jihad" has at least two different meanings: the greater *jihad* and the lesser *jihad*. The first describes our internal struggle against our own passions and weaknesses, and the second justifies defending the *umma* only if it is attacked.<sup>26</sup> They one-sidedly focus on the latter meaning to try to justify a holy war against Western nations. But their self-appointed leader, his comrades in arms, and their own version of Islam have a suspicious democratic pedigree.<sup>27</sup> Even if one grants that some of their claims on behalf of Palestinians and against Israel's unfair policies, those against corrupted Islamic regimes, and those against United States' unilateral foreign policy have merits, their intentional and deliberate killing of innocent civilians is inexcusable and hence unjustified by these claims.

Some conditional critics could argue on consequentialist grounds that the World Trade Center was vital to the financial industry of the United States. And, as the brain of the United States government, the Pentagon and the White House were legitimate military targets. Thus by attempting to destroy them, the hijackers were trying to weaken their enemy. In so doing, they would presumably have improved the lives of many in the Islamic communities at the expense of the lives of few infidels. Conditional critics could appeal to the following consequentialist principle to justify or excuse the hijackers' actions: we have a positive obligation to improve the lives of the many at the expense of the few regardless of the latter's innocence if we can reasonably expect to succeed in such endeavors.<sup>28</sup> Even assuming that we have such a controversial positive obligation, the hijack-

ers' actions were incompatible with it. Under a most optimistic forecast, it was highly improbable and hence unreasonable to think that such attacks were going to succeed in improving Islamic communities worldwide. On the contrary, their actions have had a detrimental impact on those communities and on Islam itself. Therefore, such a consequentialist justification appears to be unwarranted.<sup>29</sup>

An attempt could be made to argue for a relevant distinction between those hijackers who deliberately targeted the Pentagon and those who attacked the World Trade Center. In the first instance, the hijackers attacked those who were implementing policies of a government that they viewed as an enemy of Islam and hence as an aggressor. Thus they could have appealed to the notion of broad but discriminate terrorist violence to promote what they conceived as a just cause and as a way of defending their people from a perceived enemy and aggressor. But their perception is neither necessary nor sufficient to establish whether a given group of people is truly their enemy since their perception could be based on false beliefs, morally opaque goals, or mere expediency. Moreover, they violated not only the law against hijacking, which is a crime in domestic and international law, but, more importantly, they deliberately killed the innocent passengers of those airplanes. Therefore, they used them as means for their own political ends. In the second instance, however, the hijackers intended to terrorize everyone in order to promote their political goals. Their plausible appeal to a just cause, however, would have been insufficient to justify or excuse the intentional and indiscriminate killing of innocent civilians, as was the case with those who perished in the World Trade Center attacks. Consequently, an appeal to self-defense would have been specious. As a result, their behavior was that of criminals rather than warriors.

Conditional critics who are moral relativists could try to defend the hijackers' use of political violence by arguing for the underdeterminacy of a just war, thereby raising the possibility that a war could be just on both sides. James Turner Johnson refers to this possibility as "the doctrine of simultaneous ostensible justice."<sup>30</sup> According to Vitoria, that is implausible. A war might seem to be just on both sides because one conflates a person's or a group's conviction for waging a war and the objective conditions for waging it. Two individuals or groups could in good faith be convinced of the justice of their cause. But from such convictions it need not follow that both have right on their side. A war may be viewed as just on both sides when there is probable ignorance of fact, law or norm. One side would wage war in good faith and would have true justice on their side, and the other would wage war in good faith believing falsely that they have justice on their side.<sup>31</sup> Their good faith, however, is insufficient to exonerate them for targeting innocent people. It is also possible that both parties in good faith believe that they have justice on their side, but they could both be mistaken. Given the difficulties of establishing just cause, Vitoria advises those engaged in warfare to practice restraint.

The hijackers could have been falsely convinced but in good faith of the justice of their cause, so they could have appealed to the notion of collective guilt as a way to justify or excuse inflicting collective punishment over an entire population. For example, Hamas leaders frequently justify or excuse the use of indiscriminate violence against the Israelis based on the notion of collective guilt.<sup>32</sup> Regrettably, the State of Israel oftentimes acts likewise against the Palestinians. But regardless of its pedigree, the notion of collective guilt is morally opaque. As Hanna Arendt perceptively contends, "Where all are guilty, nobody in the last analysis can be judged."<sup>33</sup>

It is difficult to fathom in what sense the persons who perished in the 9/11 attacks or, for that matter, those who perished in the 3/11 and 7/7 attacks committed any moral or legal malfeasance to deserve such punishment. Ted Honderich, for example, embraces the notion of collective responsibility on our part for having contributed to the 9/11 attacks.<sup>34</sup> Yet by reducing the concept of moral responsibility to a broad causal chain without taking into consideration the notion of agents' intentionality and efficacy in bringing about a given state of affairs, he dilutes moral responsibility to a virtually superfluous concept. If we are all responsible for bringing about the 9/11 attacks, and by analogy the 3/11 as well as the 7/7 attacks, then no one is responsible for these atrocities, which is a counterintuitive conclusion. An appeal to collective guilt could be used as an excuse to avoid finding the real culprits, or it could be used as an excuse to inflict indiscriminate harm without having to worry about whether the harm is deserved.<sup>35</sup>

The arbitrariness of a so-called "terrorist justice" is evident. Those deemed noninnocent have no one to appeal to if they want to demonstrate their innocence. So they are guilty by fiat.<sup>36</sup> Moreover, no convincing argument exists on the part of the hijackers to contend that the passengers in those airplanes and most of the people who perished in the World Trade Center could be reasonably identified as their enemies and aggressors who were threatening the hijackers' lives or anybody else's life in any significant sense. The concepts of collective enmity and collective guilt are spurious. Neither is everyone an enemy nor is everyone guilty in a morally or legally meaningful sense. A real rather than a fictitious enemy is predisposed to significantly harm another whenever given the opportunity to do so. It is misleading to contend that all those who perished in the 9/11 attacks were enemies of the hijackers. If one were to embrace the notion of collective enmity and were to allow the terrorists to subjectively determine who their enemies are, then one would be sanctioning an indiscriminate use of terrorist violence against anyone. The absence of a universally agreed definition of terrorism should not impede us from continuing to argue for a universal enforcement of international treaties and conventions, in addition to domestic laws, that identify the intentional or indiscriminate infliction of harm on innocent civilians as crimes against humanity.<sup>37</sup>

Some conditional critics might contend that only under supreme emergency would deliberate harm to the innocent be excused. They could maintain, for example, that the endless Israeli/Palestinian conflict together with the disproportional

suffering and hopelessness of Palestinians could be seen as a supreme emergency that might have excused the hijackers' attacks. The problem with this claim is threefold. First, even though innocent Palestinians are enduring a disproportionate amount of hardship and unmerited suffering, it seems premature to claim that they are on the verge of perishing as a community. Second, the hijackers had no legitimacy as self-proclaimed guardians of the Palestinians. And third, even if they had been legitimately authorized to act on behalf of the Palestinians, and, assuming that they were acting for a just cause, if one allows any group of people who has a grievance against another group to one-sidedly determine when a supreme emergency exists, and to act as they wish, then one grants *de facto* carte blanche for anyone to harm whomever they please. But we ought not to do so for two reasons: (1) it would allow us to use innocent people as mere means for other ends, and (2) it would revert us to a state of nature where the possibility of a state of war and hence anarchy looms large.

Conditional critics who sanction targeting the innocent by appealing to a combination of a just war tradition and supreme emergency, such as James Sterba, seem to embrace incoherent positions. His tacit defense of the use of Palestinian suicide bombers and their indiscriminate use of terrorist violence is morally suspect.<sup>38</sup> Traditional just war theory is based on the Christian Natural Law tradition, which upholds the principle that "evil may not be done that good may ensue."<sup>39</sup> Therefore, this tradition is incongruent with Walzer's supreme emergency. In addition to a just cause, a fundamental reason for developing a just war approach and for its rightful application has been the insistence that in war a morally relevant distinction exists between the innocent and hence the noncombatant on the one hand and the noninnocent and hence the combatant on the other. Therefore, the deliberate targeting of innocent civilians is morally reprehensible.

An appeal to last resort by nonstate agents, such as terrorist groups within a constitutional democracy, is difficult to sustain because frequently viable options exist for them to pursue their grievances in peaceful and effective ways.<sup>40</sup> Terrorists and even government officials oftentimes jump the gun by appealing to last resort arguments without giving sufficient consideration to domestic or international organizations such as the United Nations to try to peacefully arbitrate a given conflict. The passive resistance to British occupation in India and the civil rights movement in the United States are classic cases of nonviolence with long-lasting results. Even under tyrannical regimes, peaceful means are sometimes able to transform those societies while avoiding unnecessary human suffering. That was the case with the policies of *glasnost* and *perestroika* that contributed to the collapse and reformation of the former Soviet Union. Unfortunately, nonviolence does not always work. For example, a peaceful democratic movement in China resulted in the massacre at Tiananmen Square on June 4, 1989. Even such an appalling act would have not justified or excused the use of indiscriminate violence against public and government officials.



In sum, no middle ground seems to exist in the assessment of terrorist violence. Either we exercise our diacritical capacity to distinguish between the innocent and the noninnocent, and hence agree with the unconditional thesis that upholds the absolute immunity of the innocent; or we allow conditional critics to occasionally justify or excuse using terrorist violence against the innocent. Exceptional circumstances can be conceived under which one could excuse morally abhorrent acts against the innocent, but those who carry out these acts always assume a substantive burden of proof. The nature of such exceptions, however, is debatable. Yet if, based on the controversial nature of an exception, we contend that the debate between unconditional and conditional critics of terrorism is underdetermined, we should advocate restraint rather than sanction or excuse the use of lethal force against the innocent. If not, we allow the innocent to be used as means for questionable ends. Perhaps that has been the practice in the history of warfare and in the use of political violence, but an appeal to what has been in order to justify what ought to be has no compelling logical or normative force.

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## NOTES

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1. This duty is natural by virtue of our nature as actual or prospective moral agents having a capacity for recognizing a reciprocal moral standing in others. Hence, we owe this duty to one another regardless of any social arrangements or associations. See John Rawls, *A Theory of Justice*, revised edition (Cambridge, Mass.: Harvard University Press, 1999), pp. 98–99.

2. Jenny Teichman, "How to Define Terrorism," *Philosophy*, vol. 64 (1989); see also R. G. Frey and C. W. Morris, "Violence, Terrorism, and Justice," in *Violence, Terrorism, and Justice*, ed. R. G. Frey and C. W. Morris (New York: Cambridge University Press, 1991), especially pp. 2–3.

3. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd ed. (New York: Basic Books, 1992), p. 197. See also Burton Leiser, *Liberty, Justice, and Morals*, 2nd ed. (New York: Macmillan, 1979), p. 375; Haig Khatchadourian, "Terrorism and Morality," *Journal of Applied Philosophy*, vol. 5, no. 2 (1988), p. 131; Igor Primoratz, "What is Terrorism?" *Journal of Applied Philosophy*, vol. 7, no. 2 (1990), pp.

129; and Jessica Stern, *Terror in the Name of God: Why Religious Militants Kill* (New York: HarperCollins, 2003), pp. xxii–xxiii.

4. Walzer, *Just and Unjust Wars*, p. 197. For a similar view, see G. E. Anscombe, "War and Murder," in G. E. Anscombe, *Ethics, Religion and Politics*, Collected Philosophical Papers, vol. 3 (Minneapolis: University of Minnesota Press, 1981), p. 53.

5. Andrew Valls, "Can Terrorism Be Justified?" in *Ethics in International Affairs*, ed. Andrew Valls (Lanham: Rowman & Littlefield, 2000), p. 78.

6. Virginia Held, "Legitimate Authority in Non-State Groups Using Violence," *Journal of Social Philosophy*, vol. 36, no.2 (Summer 2005), p. 180. See also C. A. J. Coady, "The Morality of Terrorism," *Philosophy*, vol. 60 (1985), p. 60; James P. Sterba, "Terrorism and International Justice," in *Terrorism and International Justice*, ed. James P. Sterba (New York: Oxford University Press, 2003), especially p. 211; Alison M. Jaggar, "What Is Terrorism, Why Is It Wrong, and Could It Ever Be Morally Permissible?" *Journal of Social Philosophy*, vol. 36, no. 2 (Summer 2005), especially p. 213.

7. C. A. J. Coady, "War and Terrorism," in *A Companion to Applied Ethics*, ed. R. G. Frey and Christopher Heath Wellman (Malden, Mass.: Blackwell, 2003), chap. 19, especially pp. 255–261. See also James Turner Johnson, *Morality and Contemporary Warfare* (New Haven, Conn.: Yale University Press, 1999), pp. 27–40.

8. John Finnis, "Ethics of War and Peace in the Catholic Natural Law Tradition," in *Ethics of War and Peace: Religious and Secular Perspectives*, ed. Terry Nardin (Princeton, N.J.: Princeton University Press, 1996), p. 26.

9. Ted Honderich, *After Terror* (Edinburgh: Edinburgh University Press, 2002), p. 53.

10. *Ibid.*, pp. 118–119.

11. For an application of the principle of double-effect to a just war scenario, see Francisco de Vitoria, "On the Law of Wars," in *Vitoria: Political Writings*, ed. A. Pagden and J. Lawrance (New York: Cambridge University Press, 1991), Q. 3, Art. 1, secs. 37–38.

12. For an opposing view defending the ambiguity of the term "innocent," see R. G. Frey and Christopher W. Morris, "Violence, Terrorism, and Justice," in *Violence, Terrorism, and Justice*, especially pp. 8–9.

13. The following taxonomy can illuminate the ambiguity of the term "noninnocent." A person can be considered noninnocent in the following senses:

1. **Moral sense:** one is noninnocent in the moral sense only if one unjustifiably infringes upon someone's right, in which case he or she is guilty of moral malfeasance.

2. **Legal sense:** one is noninnocent in the legal sense only if one unjustifiably violates a law, in which case he or she is guilty of legal malfeasance.

3. **Political sense:** one is noninnocent in the political sense only if one is perceived as an enemy by someone regardless of one's moral or legal malfeasance.

4. **Agonistic sense:** one is noninnocent in the agonistic sense only if one unjustifiably harms or threatens to harm someone.

14. 1977 Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, sec. II, art. 43, 2 in Adam Roberts and Richard Guelff, *Documents of the Laws of War*, 3rd ed. (New York: Oxford University Press, 2004), p. 444.
15. *Ibid.*, 1977 Geneva Protocol I, chap. II, arts. 50, 51, p. 448.
16. Charter of the International Military Tribunal at Nuremberg, 8 August 1945, sec. II, art. 6 (c) in Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (New York: Oxford University Press, 2001), Appendices, p. 349. See also *idem*; Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, especially arts. II and III, p. 352; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, November 26, 1968, especially arts. I and II, p. 359; International Law Commission Draft Code of Crimes Against the Peace and Security of Mankind, 1996, especially arts. 17, 18, 20, pp. 373–374; Statute of the International Criminal Court, July 17, 1998, especially arts. 5, 6, 7, pp. 375–376.
17. See Ratner and Abrams, *Accountability for Human Rights Atrocities*, p. 331.
18. For a brief exposition of the principle of double-effect, see pp. 366–367.
19. For an account of the Allies' actions, see Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven, Conn.: Yale University Press, 2001), chaps. 11 and 12.
20. John Rawls, "Fifty Years after Hiroshima," in *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), p. 568. See also Michael Walzer, "Emergency Ethics," in Michael Walzer, *Arguing about War* (New Haven, Conn.: Yale University Press, 2004), p. 46.
21. Walzer, *Just and Unjust Wars*, chap. 16.
22. For some of the nuances between our use of "justification" and "excuse," see J. L. Austin, "A Plea for Excuses" in *J. L. Austin: Philosophical Papers*, ed. J. O. Urmson and G. J. Warnock (New York: Oxford University Press, 1961), pp. 124–125.
23. The catastrophic is similar to what Primoratz refers to as a moral disaster where terrorist violence against the innocent could be excused to avoid, e.g., genocide or ethnic cleansing and only if doing so would prevent this outcome. See Igor Primoratz, "Civilian Immunity," *The Philosophical Forum*, vol. 36, no. 1 (Spring 2005), p. 58.
24. Honderich, *After the Terror*, p. 151
25. Osama Bin Laden, "A Muslim Bomb," in *Messages to the World: The Statements of Osama Bin Laden*, ed. and Introduction by Bruce Lawrence (New York: Verso, 2005), especially pp. 66–69.
26. A. G. Noorani, *Islam & Jihad: Prejudice versus Reality* (New York: Zed Books, 2002), pp. 43–57.
27. John L. Esposito, *Unholy War: Terror in the Name of Islam* (New York: Oxford University Press, 2002), pp. 5–9.
28. This principle is equivalent to what Ted Honderich refers to as "the principle of humanity." See Honderich, *After the Terror*, p. 53.

29. Ted Honderich admits that the hijackers' attacks were wrong not because they intentionally and deliberately targeted the innocent, but because it was unreasonable to expect that such attacks were going to benefit a large number of people. See Honderich, *After the Terror*, pp. 118–119.
30. James Turner Johnson, *Can Modern War Be Just?* (New Haven, Conn.: Yale University Press, 1984), p. 77.
31. Francisco de Vitoria, "On the Law of Wars," Q. 2, art. 4, sec. 32, pp. 312–313.
32. Stern, *Terror in the Name of God*, pp. 40, 57.
33. Hannah Arendt, "Organized Guilt and Universal Responsibility," in *The Portable Hannah Arendt*, ed. Peter Baher (New York: Penguin Group, 2000), p. 150.
34. Honderich, *After the Terror*, pp. 124–126.
35. Hannah Arendt, *Crisis of the Republic* (New York: Harcourt Brace Javanovich, 1972), p. 162.
36. Khatchadourian, "Terrorism and Morality," p. 139.
37. See note 16.
38. Sterba, "Terrorism and International Justice," especially pp. 214–215.
39. Francisco Suarez, "On War," in Francisco Suarez, *Selections from Three Works*, prepared by Gwladys L. Williams, Ammi Brown, and John Waldron (Buffalo, N.Y.: William S. Hein & Co., Inc., 1995), p. 848.
40. Michael Walzer, "Terrorism: A Critique of Excuses," in Walzer, *Arguing about War*, pp. 53–54.