

UNIVERSITY OF OKLAHOMA
GRADUATE COLLEGE

A MORAL EVALUATION OF TERRORISM

A DISSERTATION
SUBMITTED TO THE GRADUATE FACULTY
in partial fulfillment of the requirements for the
Degree of
DOCTOR OF PHILOSOPHY

By

ANGELA THURMOND
Norman, Oklahoma
2010

A MORAL EVALUATION OF TERRORISM

A Dissertation APPROVED FOR THE
DEPARTMENT OF PHILOSOPHY

BY

Dr. Neera Badhwar, Chair

Dr. Eric Heinze

Dr. Sherri Irvin

Dr. Amy Olberding

Dr. Zev Trachtenberg

Acknowledgements

Without the guidance of my adviser, Dr. Neera Badhwar, this dissertation would not have been possible. Her advice has directly aided my understanding of the subject at hand, and her insistence on precision and concision has, without question, positively affected my writing. I would like to thank my committee, Dr. Eric Heinze, Dr. Sherri Irvin, Dr. Amy Olberding, and Dr. Zev Trachtenberg for sharing their time and especially for their questions regarding my fundamental views. I am grateful for Charity Smith and Frankie Worrell's feigning of interest in my ramblings on excuses for countless hours, always being supportive and ready to supply a silly counterexample (the best kind!) to keep me honest and enthused. Finally, I would like to thank my family for their encouragement throughout these last few years.

Table of Contents

Abstract	viii
Chapter 1:	
Introduction	1
Chapter 2:	
Definition of “Terrorism”	8
I. Motivations	9
II. State and Nonstate Actors	12
III. Deliberate and Random Violence	14
IV. Noncombatant Targets	18
V. “Terror”	21
Chapter 3:	
Terminology for Moral Evaluations: Justification, Lack of Responsibility, and Excuse	25
I. Traditional Theories of Excuses	26
A. The Choice Theory of Justification and Excuses	27
B. The Character Theory of Justification and Excuses	30
II. Justification, Excuse, and Right and Wrong Action	34

A. Justification, Good and Bad Consequences, and Right and Wrong Action	35
B. Revisiting Standard Excuses	39
III. The Existence of Moral Dilemmas	43
A. The Objection: Only Inconsistent Moral Theories Accept Genuine Moral Dilemmas	43
B. Marcus on Moral Dilemmas and Consistency	46
C. Guilt Feelings: Remorse and Regret	49

Chapter 4:

Combatant and Noncombatant Liability to Attack	54
I. Combatants and Noncombatants	56
II. The Permissibility of Attacks on Combatants	58
III. The Permissibility of Attacks on Unarmed Military Noncombatants	71
IV. The Permissibility of Attacks on Civilian Noncombatants	73

Chapter 5:

Excuses for Terrorism	84
I. Some Potential Excuses for Terrorism	85
A. The Ends of Terrorism do not Normally Excuse Their Means	85
B. Terrorism is not Excusable even when it Results from a Loss of Emotional Control	87

C. Terrorism is not Normally Excusable when it is Used as a Last Resort	88
D. Terrorism is not Normally Excusable even when it is the only Means Available for a National Liberation Movement	90
E. Terrorism is not the “Universal Resort”	93
II. The Supreme Emergency Excuse	95
III. Clarifications and Defense of Walzer’s Supreme Emergency Excuse	99
A. Nonstate Actors can face Supreme Emergencies	100
B. Walzer Provides a Supreme Emergency <i>Excuse</i> , Not a Justification	103
C. Walzer’s Theory does not Succumb to Consequentialism	108
IV. Supreme Emergencies Create Genuine Moral Dilemmas for Political Leaders	111
Chapter 6:	
Conclusion	119
Bibliography	125

Abstract

The purpose of my dissertation is to provide a moral evaluation of terrorism from a rights-based perspective. I define terrorism as the use or credible threat of systematically random attacks on the vital interests of civilian noncombatants, with the intent to coerce an indirect target into a desired course of action. It is not limited to nonstate actors or actors with unjust causes.

I argue that terrorism is never right because it harms those who have committed no aggression. Some soldiers may deserve to be attacked in virtue of their aggression. However, terrorists target civilian noncombatants who have not committed aggression against the terrorists. Although particular civilian noncombatants may be responsible for aggression, the direct target of terrorism—the civilian collective—is not.

I argue that an act of terrorism is excusable if the terrorist faces a genuine moral dilemma in which he has no option but to choose between violating conflicting obligations. I think that this situation exists when the collective survival of a rights-respecting political community faces an imminent threat of destruction; when this community faces what Michael Walzer, following Winston Churchill, has called a “supreme emergency.” Many authors have argued that Walzer’s attempt to justify terrorism in these circumstances on consequentialist grounds undermines his rights theory. I believe that his argument is an excuse, not justification, and that it does not succumb to consequentialism. In supreme emergencies, the community’s leaders face the conflicting duties of protecting the existence of their community and upholding civilian noncombatants’ right to life. They confront a genuine moral dilemma. Any action they

choose is wrong. However, terrorism is excusable in supreme emergencies because its use allows the rights-respecting community to survive and prevents it from being replaced by one that systematically violates rights. Consequences, therefore, are morally relevant in this rights-based excuse. It is because rights are worth protecting that terrorism is excusable in some supreme emergencies.

Chapter 1

Introduction

Moral evaluations ought to account for the complexity of moral experiences. Actions, motivations, attitudes, beliefs, and consequences must all be considered in our moral judgments. We should not limit these judgments to either agents or actions, and we should not think that there is only one important moral judgment for any given situation. There are many ways to address morally relevant features, each of which expresses or adds to our moral perspective. For example, it is often the case that agents are unjustified in and blameworthy for committing wrong actions that result in bad consequences. But I do not think that this must be the case in all situations. Agents may be blameless for their wrong actions if they have moral motives for performing them and are justified in performing them if they inculpably believe that their actions are right. And, of course, the consequences of wrong actions need not be bad, or the consequences of right actions good.

Over time, debate over the morality of war and actions in war has resulted in a wider moral lens. Following Michael Walzer, contemporary just war theorists have rejected the dictum “*inter arma silent leges*” (i.e., in time of war, the laws are silent). Just war theorists tend to hold that although some acts of war are morally permissible and perhaps obligatory, some acts, like terrorism, are morally forbidden regardless of the actor’s ends. They base this view on their distinction between *jus ad bellum* (i.e., the justice of war) and *jus in bello* (i.e., the justice of conduct in war). The justice of war is primarily concerned with the causes for war, and the justice in war is concerned with the

way that the war is conducted, and (on the standard view) the latter is determined independently of the former.

I think that the complexity of war is not fully appreciated when we make a sharp distinction between *jus ad bellum* and *jus in bello*. The just conduct of war requires more than simply observation of the rules of necessity and proportionality. It also requires that combatants have moral reasons for fighting.

One of the thorniest issues is terrorism. The stakes are high, stated motivations are suspect, and the value of the expected consequences is disputed. Furthermore, our moral evaluations should concern more than the rightness or wrongness of terrorism; they must also concern terrorists' blameworthiness. Thus, an assessment of terrorism must be both cautious and thorough to capture all of the nuances of the situations.

What counts as terrorism has been widely disputed and before we can evaluate it and those who engage in it, we must be clear about what it is that we are evaluating. Therefore, in Chapter 2, I address sources of contention regarding the definition of terrorism and present an account of what I consider to be terrorism. Terrorists' causes matter in our moral assessments of them and their actions, but I do not believe terrorists' causes are relevant to distinguishing terrorism from other political violence since any cause may be supported by a variety of means. I will therefore give a tactical definition of terrorism. A tactical definition will help us to resist the impulse to think of terrorists exclusively as fanatical suicide bombers with unrealistic demands and unjust causes. Though the Al Qaedas of the world may get more publicity for their terrorism, I think that anyone who uses terroristic means, even an army fighting a just war, can be labeled a terrorist, so long as it uses, or has a policy of using, terrorism. At other times, it may be

more fitting to refer to the agent as a soldier or member of a movement or state or, more broadly, a movement or a state.

With these distinctions in mind, I define terrorism as “the use or credible threat of systematically random attacks on the vital interests of civilian noncombatants to cause other civilian noncombatants to fear that they will be the next direct targets, with the intent of coercing an indirect target into some course of action.” Terrorism involves a two-step strategy in which terrorists use or threaten severe harm as a means to intimidate others to yield to their demands. This definition allows us to question whether particular acts of terrorism are wrong and actors, in their use of terrorism, are unjust without misguidedly implying that an affirmative answer brands these agents as always unjust.

To evaluate terrorism and terrorists, in Chapter 3, I address three possible moral defenses: justification, excuse, and lack of responsibility. I defend an internalist account of justification in which an actor is justified in performing an action if he has good reason to believe that his action is right. I believe that justification should take into account the actor’s moral experience such that her beliefs about her situation are morally relevant to her status as a moral agent. Therefore, I describe agents as justified or unjustified and actions as right or wrong.

I argue that agents lack responsibility for their actions when they are unintended. For example, sleepwalking is grounds for the lack of responsibility defense. If a sleepwalker bumps into someone, which causes her to fall and break her leg, the sleepwalker is not responsible for the harmful effects of his behavior.

I find excuses to be the most interesting of the defenses because they come up in the situations that are most difficult to evaluate. In these situations, agents culpably

perform wrong actions, but there are reasons to (fully or partially) excuse them and their wrong actions. In other words, there are reasons to hold the actors blameless or less blameworthy than if these reasons did not exist. I argue that there are three grounds for excusing wrong actions and those who commit them. First, I argue that wrong actions are excusable when agents act on moral motives, but are mistaken about what morality requires. Unlike agents who are justified in their wrongdoing (i.e., they make inculpable mistakes of fact), agents who make mistakes of moral principles are not justified in acting because they culpably fail to act according to correct moral principles. However, their actions are excusable insofar as they have moral motivations.

Second, I believe that wrong actions that are the result of a loss of emotional control are excusable to the extent that the loss of control is understandable and the action is an understandable expression of the emotional response. It must be reasonable to assume that others in the actor's situation would react similarly for his action to be excusable.

Third, I argue that wrong actions are excusable in genuine moral dilemmas. In genuine moral dilemmas, the prescriptions of different duties conflict such that to fulfill one duty, the actor must violate another duty. In these situations, there may be good reason to prefer one wrong action to the other(s), and if so, only the morally preferable action is excusable. Nonetheless, even if the agent chooses the morally preferable action, it is wrong because it violates a duty. An action is no less wrong when it is excusable than when it is not. Excuses do not weaken our other moral judgments. Instead, they provide a sharper moral picture since their inclusion allows us to consider the appropriateness of blaming agents for wrongs that they commit.

Using these distinctions, I argue in Chapter 4 that terrorism is always wrong and terrorists are never justified. But soldiers are justified in attacking when they reasonably believe that their attacks are morally permissible. Like Jeff McMahan¹, I believe that an attack is permissible only when the targets of the attack are sufficiently morally responsible for a wrongful threat. However, unlike McMahan, I think that soldiers can be justified in attacking even when this is not the case, so long as they reasonably believe that their targets warrant attack, and their attacks observe the rules of just conduct, proportionality, and necessity. They may also be justified when they attack unarmed military noncombatants, or those civilian noncombatants who are morally responsible for the aggression.

However, the civilian noncombatant collective, unlike individual civilians, can never be reasonably expected to deserve harm. As a whole, they are never responsible enough for their political community's wrongs to warrant attack. Therefore, because terrorists randomly attack civilian noncombatants, their use of terrorism is always wrong. Moreover, because it is unreasonable to think that the collective deserves to be attacked, all terrorists are unjust.

In Chapter 5, I address several potential excuses for terrorism and reject all save one. Terrorism is inexcusable when terrorists believe that their terrorism is right and this belief is culpably mistaken. It is also inexcusable when it results from anger or grief since even though the anger or grief is understandable, the reaction of attacking civilian noncombatants is not. Finally, terrorism is inexcusable when terrorists have other options to combat the threat they face, when their lack of other options is due to a lack of supporters, or when they use terrorism to retain control of the community.

¹ See, for example, "The Ethics of Killing in War," *Ethics* 114 (July 2004) 693-733.

However, like Walzer, I believe that terrorism is excusable if and only if it is reasonably expected to successfully stop the destruction of a rights-respecting political community. This situation is a “supreme emergency” and the paradigmatic case of it is something like the circumstances Britain faced between 1940 and 1941 in World War II. There has been much criticism of Walzer’s view of supreme emergencies, but I think that most of the criticism has resulted from the misunderstanding that he is justifying terrorism. Against these critics, I argue that his defense of terrorism in supreme emergencies is an excuse, not a justification, for he acknowledges that terrorism is wrong even in these situations and that political leaders who order it have “dirty hands.”

According to Walzer, in a supreme emergency, political leaders face a genuine moral dilemma if only terrorism is expected to end the threat.² They must choose between allowing their rights-respecting political community’s destruction, which they have a duty to prevent, and using terrorism, which they have a duty to avoid; thus, they cannot help but do wrong. Respect for rights is the foundation of both duties. On the one hand, a political community that values rights is worth protecting and political leaders take on this responsibility in virtue of their position. On the other hand, terrorism is always wrong because it violates the rights of civilian noncombatants. However, terrorism is excusable in supreme emergencies because its use allows the rights-respecting community to survive and prevents it from being replaced by one that systematically violates rights. Consequences, therefore, are morally relevant in this rights-based excuse. It is because rights are worth protecting that terrorism is excusable in these supreme emergencies.

² See especially Walzer’s “Emergency Ethics,” *Arguing About War* (New Haven: Yale University Press, 2004, 33-50) and *Just and Unjust Wars*

Recognizing excuses as part of our moral evaluations allows us to make sense of why some difficult moral cases appear so difficult. Excuses come in degrees—they can both partially mitigate and fully mitigate the blame that an agent deserves given her wrong. When an agent is fully blameworthy for a wrong (e.g., most terrorists), there is no tension between a proper moral evaluation of the act and a proper moral evaluation of the agent because her wrong is not excusable. But when an agent is not blameworthy for a wrong that she commits (e.g., terrorism in a supreme emergency), the tension exists and should be understood, not as a problem for the moral theory used in the evaluation, but as a reason why excuses ought to be included in our moral vocabulary.

Chapter 2

Definition of “Terrorism”

Developing a precise definition of the term “terrorism” is problematic for two reasons. First, people do not consistently refer to one and the same activity as “terrorism.” In public debate, the term “terrorism” is used often as a “catch-all pejorative” for any political agenda with which the speaker disagrees.³ In response to public sentiment, different people have called many different kinds of action terrorism. For example, many attacks on Israeli soldiers by Hezbollah operatives and Palestinian soldiers have been called terrorism. As I will argue, this is not terrorism as no civilians are involved. And in other contexts, these attacks would not be considered terrorism. Similarly, states avoid referring to any of their own actions as terrorism and develop definitions which apply to none of their own actions. Consequently, some attacks that should be obvious cases of terrorism, like the British carpet bombings of German cities during World War II, are rarely considered terrorism.

The second problem with defining “terrorism” is closely related to the first. The emotionally charged labeling of certain political agents as terrorists allows some people to believe the aphorism, “one man’s terrorist is another man’s freedom fighter.” When used this way, terrorism refers to the terrorist’s cause, not his actions. As a result, similar actions are often evaluated differently. To avoid this inconsistency, terrorism ought to be evaluated according to the type of action it is, not the cause that it is used to promote.

³ Paul Pillar. *Terrorism and US Foreign Policy*. Washington D.C.: Brookings Institute Press, 2003, 12. Tomis Kapitan. “The Terrorism of ‘Terrorism,’” *Terrorism and International Justice*, Edited by James Sterba, Oxford: Oxford University Press, 2003, 47-68, 49-51.

Therefore, if terrorism is unjust, terrorists may still be considered freedom fighters so long as they have just cause—they are freedom fighters who use unjust means.

We should work toward developing a precise definition of terrorism to gain conceptual clarity and avoid inappropriately applying the term to one's enemy's actions merely to further one's cause. My definition will aim to capture the paradigmatic cases of terrorism. As I examine these cases of terrorism, I will note which features are most important to the evaluation of terrorism.

There have been many attempts to define terrorism by both political officials and academics. Some of these definitions are more successful than others and it is these more plausible definitions on which I will focus. Common in definitions of terrorism are the following features: the political motivation of terrorism, its use by nonstate actors, its use of deliberate and random violence, its targeting of noncombatants, and its causing of fear. By examining these attributes, I think that we can form a useful definition of terrorism that distinguishes it from other forms of political violence.

I. Motivations

Terrorism is often, but not always, politically motivated. Because there are a wide variety of terrorist motivations, some authors have opted to ignore or downplay this component. For example, Michael Baur contends that the only common motivational element is their “message of randomness or indiscriminateness,” but does note common terrorist objectives.⁴ I agree with Baur that terrorists have various causes, and that, over time, we will find terrorists motivated by goals that have yet to be considered. However,

⁴ Michael Baur “What is Distinctive about Terrorism and What are Its Philosophical Implications,” *Philosophy 9/11: Thinking about the War on Terrorism*, Chicago: Open Court, 2005, 3-22, 13.

it is important to understand why people are moved to commit terrorism because the variety of motives that terrorists have suggests that any cause may be pursued by terrorist means.

Today the most obvious motivation to use terrorism is to affect politics in a particular region or in the world. The Khmer Rouge, the Zviadists in Georgia, the Palestine Liberation Front, Hezbollah, Chukaku-Ha in Japan and the Revolutionary Armed Forces of Colombia, are all examples of terrorist groups with political motivations. Terrorists may be motivated by religious goals as well. Al Qaeda, Hamas, the Salafist Group for Call and Combat and the Armed Islamic Group in Algeria, and Al-Jihad in Egypt are terrorist organizations that have both political and religious motivations. Financial motivations may also encourage some to use terrorism. The Financial Revolutionary United Front in Sierra Leone is motivated by financial concerns. Its goal is to rule Sierra Leone in order to gain control of the diamond regions. Finally, terrorism may also have social motivations. The Ku Klux Klan, for example, has used terrorism to further white supremacy in the social sphere.

By emphasizing terrorism's violent quality, some people even claim that acts of domestic violence are terrorism. For example, Claudia Card refers to child abuse as "terrorism at home".⁵ She is correct that this abuse is *like* terrorism in that the abusers use fear and physical violence to coerce their victims. Her interpretation uses 'terrorism' to pick out the intensity and coercive nature of an act. However, I do not think that we should refer to this violence as terrorism because abuse is often a result of rage, rather than a means to further an end, whereas terrorism always includes the goal of furthering a certain end. Terrorists use terrorism to make people fear that more violence will occur

⁵ Claudia Card, *The Atrocity Paradigm: A Theory of Evil*. Oxford: Oxford University Press, 2002, 143.

unless their aims are met. Thus, Card's conception of terrorism is too broad. We need not call child abuse "terrorism" because the term "child abuse" captures the evil of the criminal acts with which she is concerned. The term "terrorism" should instead be reserved for a particular kind of violence.

Some terrorists' objectives are more realistic than others. Liam Harte notes that terrorists' demands have become less viable over time. He believes that more terrorists today demand large-scale changes and have little hope of their demands being met.⁶ He also argues that terrorists today seem less willing to make gradual changes and are willing to have greater casualties and use more powerful weapons to expedite their goals. Al Qaeda's stated objective in the 9/11 World Trade Center attacks, for example, was to end Western influence on Muslim cultures. However, how they expected and even if they expected this to occur is unclear.

It is true that current terrorists are more willing to use weapons of mass destruction to cause greater casualties. However, I doubt that this is because past terrorists were more concerned with the value of human life. It is more likely that today, terrorists have greater access to more effective weapons and are more likely to have the financial backing of states. Additionally, contra Harte, many terrorists today have more realistic demands than those in the past. For example, The Salafist Group for Call and Combat, the Revolutionary Armed Forces of Colombia, Al-Jihad in Egypt, the Revolutionary United Front in Sierra Leone, the New People's Army in the Philippines, The National Liberation Army of Iran, the Kurdistan Workers' Party in Turkey, Sendero Luminoso in Peru, and the Palestine Liberation Front aim to compel regime change or

⁶ Liam Harte. "A Taxonomy of 'Terrorism,'" *Philosophy 9/11: Thinking about the War on Terrorism*, Chicago: Open Court, 2005, 23-52, 28-32.

secession. Others, like the Morzanist Patriotic Front in Honduras, aim to prevent international influence on domestic affairs. Al Qaeda appears to be one of the few exceptions to the general rule of using terrorism to achieve a realistic end. Of course, terrorists' targets do not want to give in to their demands—this is why, in many cases, conventional efforts have failed. However, something like successfully ousting a regime is unlike ending cultural influence in that the former is a concrete goal that requires steps that the terrorist can articulate.

I think that we should ignore the particular demands that terrorists tend to have when we define terrorism. As Brian Orend writes, “terrorism *is a tactic used in the service of some other ‘ism.’*”⁷ An actor may use terrorism in an attempt to further any cause. Nonetheless, although terrorists' motivations may differ, all terrorism has at least one goal in common: to intimidate a state or group or society at large for the sake of achieving some end. Today, these ends tend to be primarily political and religious, but there are clear cases of financial and social terrorism and terrorists may support other causes in the future. Therefore, central to a definition of terrorism is coercion for a cause.

II. State and Nonstate Actors

The United States State Department's definition of terrorism limits terrorism to an activity committed by “subnational groups or clandestine agents.”⁸ Accordingly, states by definition cannot commit terrorism. As C.A.J. Coady argues, this exclusion can be

⁷ Brian Orend. *The Morality of War*. Toronto: Broadview Press, 2006, 68.

⁸ 22 USC § 2656f(d)(2)

supported only by naiveté or a bias towards states.⁹ If terrorism is wrong, then the exclusion would permit a state to perform an action against a revolutionary group that would be wrong for the revolutionary group to use against the state.

The term ‘terrorism’ originated during the French Revolution to describe a type of state violence. After the Jacobins took power, they executed tens of thousands of people, claiming that they suspected them of rejecting their authority. Many of the victims of the Reign of Terror were not given even the illusion of a trial. The Jacobins were not concerned with punishing those who were responsible for efforts to usurp their power. They were concerned with scaring the population into complete submission.¹⁰ Extrajudicial killings have occurred more recently as well. Examples of this terrorism include the Viet Cong death squads in the 1960s and 1970s in Vietnam and Cambodia, the Salvadoran government’s behavior during the Salvadoran civil war in late 1970s, certain acts in the late 1990s in Sierra Leone by the then leader of Liberia, Charles Taylor, and the Iraqi ‘black crow’ squads that have operated with various degrees of intensity since 2005.¹¹

States have also used terrorism against external enemies. For example, the carpet bombings of Guernica during the Spanish civil war, and of London and German cities during World War II, are examples of state terrorism. In these three cases, states

⁹ C.A.J. Coady. “Defining Terrorism,” *Terrorism: The Philosophical Issues*, Edited by Igor Primoratz, Palgrave Macmillan: New York, 2004, 3-14, 8. C.A.J. Coady. “Terrorism, Morality, and Supreme Emergency,” *Ethics* 114 (July 2004) 772-789, 773-4.

¹⁰ For details, see Donald Greer’s *The Incidence of the Terror during the French Revolution. A Statistical Interpretation* (Cambridge: Harvard University Press, 1935).

¹¹ For more information on extrajudicial killings, see the following: Stathis N. Kalyvas. “The Paradox of Terrorism in Civil War,” *The Journal of Ethics* 8 (March 2004) 97-138. Jeffrey A. Sluka. *Death Squad: The Anthropology of State Terror*. Philadelphia: University of Pennsylvania Press, 2009. Gabriel I.H. Williams. *Liberia: The Heart of Darkness*. Bloomington, Indiana: Trafford Publishing, 2006.

deliberately and indiscriminately killed civilians by bombing civilian centers. Their intention was to intimidate the enemy into ending the war to avoid further civilian deaths.

Although terrorism is more often the strategy of nonstate actors, these examples are obvious cases of state terrorism. States use terrorism against both their own citizens and external enemies. For this reason, terrorism should not be defined exclusively in terms of nonstate actors.

III. Deliberate and Random Violence

Baur writes that terrorism is a “systematically unsystematic” strategy because it intentionally harms people who do not know they are targets (14). This type of strategy is unique to terrorism, and therefore a key element in a definition of terrorism is that it is random. It produces fear in society because no one knows if there will be another attack, when it will occur, and if they will be harmed. As Michael Walzer writes, “Death must come by chance to individual Frenchmen, or Germans, to Irish Protestants, or Jews simply because they are Frenchmen or Germans, Protestants, or Jews, until they feel themselves fatally exposed and demand that their government negotiate for their safety.”¹²

Terrorists may target particular groups or entire nations, but their particular victims are unknown. Otherwise, the act is political assassination, not terrorism. For example, if a terrorist bombs a public place, not only does he not know the individuals that he kills, he may not even know if they belong to the group to which he objects. Nonetheless, he intends their deaths to affect the decision of the group’s leaders. For

¹² Michael Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1977, 197.

example, he may target a place that tourists frequent even though his grievance is not with tourists or their government. His action is still terrorism if he hopes to intimidate the leaders of that location into certain decisions. He may, for example, intend for them to expect that other tourist spots, or other public places, will be attacked. His concern is not with the particular people he targets, but with how their deaths may affect the decision of the group's leaders.

Coady objects to characterizing terrorism as random. He argues that terrorists may pick their targets, not randomly, but because of how destroying the particular target will intimidate the leaders ("Defining Terrorism" 7). For example, the World Trade Center was not a random choice of Al-Qaeda for the 9/11 attack. It was a symbol of the alleged imperialism to which Al-Qaeda objected and was chosen because of the expected reaction to its destruction. I agree with Coady that terrorists often choose the locations of their attacks carefully; however, this misses what makes terrorism random. Terrorists do not choose who will be at these locations. The actual victims are random. It would have made no difference to Al Qaeda if different workers arrived to the World Trade Center that morning. The spectacle is what matters to terrorists, not the particular individuals harmed.

I think that Baur is right to note that terrorists have systematized this randomness. Terrorists intentionally use terrorism's nonindividualized nature to maximize fear. Accidents are not terrorism. For instance, if a weapon is launched because of a technical malfunction, the act is not deliberate. It differs from a situation in which the agent launches the weapon purposefully. Suppose that the actor intends to target an enemy training camp, but the missile malfunctions and hits an elementary school instead. This

bombing is not an act of terrorism even if the victims believe it to be intentional and their false belief results in them surrendering.

In its systematic strategy, terrorism has two targets: direct and indirect.¹³ Indirect targets are the enemies that terrorists demand must do something. Terrorists claim that these targets are guilty of some alleged injustice against them. The direct, or immediate, targets are the people that terrorists harm, or threaten to harm, in order to intimidate the indirect targets. Even though terrorists randomly choose their individual direct targets, they deliberately choose the kind of group and location because the purpose of harming the direct target is to affect the decision making of the indirect target.

Because terrorists' ultimate aim is to intimidate the indirect targets, credible threats of violence toward direct targets should be considered terrorism. For example, if a potential actor is stopped before her attack is carried out, but she has planned the attack and has secured the weapons to fulfill it, she is a terrorist even though no violence occurs. Similarly, she is a terrorist if she attempts to detonate a bomb in a public place, but fails because of faulty wiring. Thus, the 21 people arrested by British authorities in August 2006 were terrorists because they planned to detonate explosives on multiple aircrafts, even though they were caught before the plan was implemented.

Some argue that terrorism may be directed at property or vital interests instead of persons. For example, Coady, Baur, and Igor Primoratz claim that an attack on the property of noncombatants can be terrorism, even though it is not as severe as attacks on their lives (Coady "Defining Terrorism" 7 and "Terrorism, Morality and Supreme Emergency" 776, Baur 6, 13, Primoratz 17, 21). This understanding of terrorism is

¹³ Igor Primoratz. "What is Terrorism?," *Terrorism: The Philosophical Issues*, Edited by Igor Primoratz, New York: Palgrave Macmillan, 2004, 15-30, 17. See also Baur 10-11.

appropriate. Terrorists intend to create panic among those they attack that is strong enough to effect significant change. If an attack on property is meant to cause and is reasonably expected to cause this panic, it is terrorism. For it to be reasonably expected to cause enough panic to intimidate the indirect target, the destruction must be to the “vital interests” of people; the property attacked must be “significantly related to life and security” (Baur 13, Coady “Defining Terrorism” 7). It is unlikely that property damage that does not threaten the owner’s life will cause enough panic to intimidate the indirect target, and absent this reasonable expectation, it is not terrorism. For example, stealing money from one bank account is not terrorism, but making it impossible for tens of thousands of people to access their accounts is terrorism if the actor’s goal is to coerce an indirect target into some course of action. Whereas in the former, the person affected likely is able to recover his funds, in the latter, the banking structure may be destroyed and any official measures to remedy the problem may be unfeasible or ineffective. The 2007 Estonian Cyberwar may be an actual case of terrorism that is not violence directed towards people. In these cyber attacks, Estonian public institution websites were inundated with spam, allegedly by the Russian government (although no proof of responsibility has been found). The goal was to stall the public institutions in Estonia temporarily and to undermine people’s confidence in their web-based security systems. If meant to be simply a nuisance, the cyberwar was not terrorism. If, however, demands were made that, if met, would halt the cyber-invasion, it would count as terrorism. Although we do not know what happened behind closed doors, there were no public demands in this case, so I suspect it was not terrorism. Nonetheless, something like this scenario is an example of non-violent terrorism.

The more reliant on internet communication that the world becomes, the more likely we are to see examples of cyberterrorism. Therefore, instead of emphasizing the violent nature of terrorism in a definition, one should focus on how it affects the vital interests of civilians. These interests, of course, include their life and health, so the definition should capture violent attacks on people, as well as large-scale attacks on personal or public property.

IV. Noncombatant Targets

I think that the most distinctive component of terrorism is that, unlike other acts of war, terrorists target noncombatants. Who counts as a noncombatant and whether that term is the most useful term for the direct targets of terrorism has been a source of debate. As Coady contends, the term “noncombatant” may be misleading in discussions of terrorism because it seems to be opposed to “combatant,” which is used only in the context of war. And terrorism can be used when there is no war. Nonetheless, he thinks that this difficulty can be avoided so long as we posit that some people are noncombatants even when there is no war going on (“Terrorism, Morality, and Supreme Emergency” 774).

Coady argues that we should understand “noncombatant” to mean anyone who is not “prosecuting the harms that are believed to legitimate resort to responsive violence” (774). All others, according to Coady, are combatants. He thinks, therefore, that some civilians are combatants, that combatants exist on all sides in war, and that the perception of one’s actions determines whether one is a combatant or noncombatant.

I disagree with Coady that civilians who indirectly help instigate a war are “combatants.” He writes, “Some civilians will be legitimate targets (and hence “combatants” in my sense) if they are actively directing or promoting [what is perceived to be] unjust violence.”¹⁴ Even the media and activists who sway public opinion in favor of war, thereby encouraging the government to declare war, are combatants on his account. I will address this issue in my fourth chapter, but for now, let me just say his view requires us to label too many people “combatants.” I think that instead of referring to all legitimate targets as combatants and all illegitimate targets as noncombatants, we should develop these categories and then determine whether it is permissible to attack the people in them. Even if it turns out that some attacks on civilians are permissible, they need not be combatants because they are not actively fighting in war.

I also disagree that perception of an injustice ought to determine who counts as combatants and who counts as noncombatants. Terrorists may believe that an entire group of civilians are responsible for an injustice—that their targets are not random. The perceived injustice, therefore, is the existence of that group at all. Thus, Coady would have to admit that all of the group’s members are combatants because their membership is what allows the “injustice” to continue. Consequently, he could not consider attacks on them terrorism even if the attackers have the additional goal of coercing leaders into some course of action by causing fear in the general population.

I hold that everyone who is not actively fighting in a war or directly aiding in the war effort is a civilian noncombatant. It may be legitimate to attack particular civilian noncombatants because of their actions, but this possibility ought not to tempt us to call

¹⁴ C.A.J. Coady. *Morality and Political Violence*. Cambridge: Cambridge University Press, 2008, 112.

them combatants. Therefore, not all attacks on civilian noncombatants are terrorism, but all terrorists target civilian noncombatants.

Of course, in targeting civilian noncombatants, terrorists may end up harming military members instead. For example, suppose a terrorist bombs a civilian center, but unbeknownst to him, there are no civilians there at that time. Instead, the people that he sees are soldiers in plainclothes going back to their platoon. The act is still terrorism because the terrorist intends to kill civilian noncombatants and he reasonably believes that his act will terrorize the civilian population.

Most authors limit terrorists' targets to noncombatants. However, some, like Baur, argue that terrorists also target combatants. Baur claims that soldiers may be terrorized by enemy soldiers or by their leaders (4-5). He gives the example of the 2000 attack by Al Qaeda on the U.S.S. Cole in Aden Harbor. This attack killed or injured 46 combatants. Baur does not explain why he thinks that this attack was terrorism; however, the fact that then President Clinton called the attack terrorism or that the bombing was a suicide attack may have influenced his evaluation. Nonetheless, even by his own definition of terrorism, the bombing was not terrorism. He argues that terrorism must be intended to cause fear "within certain sectors of society or within society at large . . . to influence popular opinion" (13-4). But the U.S.S. Cole bombing does not satisfy this criterion. Perhaps other sailors feared similar attacks, but the general public did not. Moreover, the actual targets of the bombing were no different from a conventional act of war: active military personnel. Therefore, even though Al Qaeda often uses terrorism and is considered a terrorist organization, this attack was not terrorism.

An alternative term for the direct targets of terrorism is “innocents” instead of “noncombatants.” I prefer “noncombatants” because “innocents” is a normative term. Thus, as Kapitan notes, if we were to use “innocents” to describe terrorists’ targets, we would have to face the difficulties of assigning responsibility for alleged injustices before we could call an attack terrorism (48). For example, some may claim that even tacit support for a state that perpetrates injustice renders people guilty. If this is true, then violence against them would not be terrorism and there would be much less terrorism than we think there is. Alternatively, if disagreement with the unjust cause and forced participation in the war is sufficient for innocence, then, as Coady suggests, many conscripted soldiers are innocents, and attacks on them to coerce an indirect target would be considered terrorism if “innocents” are the victims of terrorism.

Nonetheless, I think that most terrorists believe that their direct targets are considered innocent (or at least not responsible enough for the alleged injustice to deserve harm) by their community and the international community. They are targeted because harm to them is surprising and horrifying and it is these things only because they are regarded as innocent by most people. To avoid the confusion surrounding the term “innocent,” I will use the term “civilian noncombatant” for the people whom terrorists target. Nothing of value is lost by referring to this group of people in this way and much is gained by way of conceptual clarity.

V. “Terror”

The ‘terror’ of terrorism is another important way to distinguish terrorism from other forms of political violence. Terrorists intend their actions to result in “the intrusion

of fear into everyday life, the violation of private purposes, the insecurity of public spaces, the endless coerciveness of precaution.”¹⁵ Terrorists intend for the lives of all members of the targeted group to be interrupted by the sickening feeling that there is no way to know if their death is imminent. Will they arrive at their destination the next time that they fly? Will they be picked up by the death squad when walking home from work? Will their children be safe at school? The terrorist strategy is to cause this fear so that their indirect target will do *anything* to stop future attacks.

Harte rightly argues that the point of terrorism is to cause terror, but terror need not result from terrorism (25-6). When the population views this random violence as a part of life, e.g., when it is used commonly in a particular region, terrorism ceases to be terrifying. The population may fear that they may be the next victims, but do not find this possibility terrifying enough to alter their daily routine. It is an unfortunate fact that terrorism is becoming more and more commonplace. And as a result, people are becoming more and more desensitized to terrorism. Nonetheless, when actors intend to intimidate leaders by producing terror through the killing of civilians or the destruction of vital interests, their actions are terrorism. It is irrelevant if their efforts are successful.

Coady argues that the goal of causing extreme fear should not be included in a definition of terrorism because terrorism may spread anger instead of fear (“Defining Terrorism” 6). He contends that the goal of terrorism is to coerce a group, regardless of whether it uses fear of further attacks or anger about the attack. He suggests that terrorists may intend for their indirect target to be so angry about the attack that they act irrationally and “play into their hands” (6). But this idea seems peculiar. Anger would

¹⁵ Michael Walzer. “Terrorism: A Critique of Excuses,” *Arguing About War*, New Haven: Yale University Press, 2004, 51-66, 51.

be more likely to increase the resolve of the victims not to let the terrorists ‘win,’ so is unlikely to be the goal of terrorism. Additionally, even if terrorists intend their victims to be angry, the anger must be coupled with fear that they may be the next targets. This fear is what makes the second step in the strategy—intimidation—possible. For the same reason, attacks that are purely symbolic, or do not come with demands, are not terrorism. For example, Aum Shinrikyo, the Japanese religious group responsible for the 1995 sarin gas attack on Tokyo subways, is not a terrorist group (Harte 37). Their attacks are not meant to intimidate an indirect target into meeting any demands. Their one goal is the death of those that they attack. Therefore, their actions were simply mass murder.

All terrorism includes the intention of producing fear. However, is this feature of terrorism unique to terrorism? Or is it common to all political violence? Coady contends that all warfare instills anger or fear into enemies so that they will surrender or negotiate (9). He argues that in conventional warfare, the purpose of using overwhelming force is to intimidate the enemy leaders. ‘Shock and awe’ tactics are used, as their name suggests, to make the enemy believe that they can do nothing but surrender or negotiate peace. The enemy leaders desire to avoid unnecessary soldier deaths and *fear* that they will occur if the war does not end.

Coady is correct that although all terrorists desire to coerce some group into acting, the goal of coercion is not limited to terrorism. All war is coercive to some degree. If it were not, compromises would never be made. Nonetheless, terrorists intend *civilian noncombatants*, not combatants, to fear. And this is what is distinctive about terrorism. In conventional war, combatants fear their own deaths and leaders may fear unnecessary combatant deaths. However, terrorism causes all people associated with the

targeted group to fear that they will be the next targets. This fear is not characteristic of conventional war because ordinary citizens expect the enemy to follow traditional rules of war.

Based on these features, I define terrorism as the use or credible threat of systematically random attacks on the vital interests of civilian noncombatants to cause other civilian noncombatants to fear that they will be the next direct targets, with the intent of coercing an indirect target into some course of action. This definition allows us to evaluate terrorism based on the type of activity it is. It allows us to evaluate all terrorists as terrorists because it is not limited to particular actors.

Chapter 3

Terminology for Moral Evaluations:

Justification, Lack of Responsibility, and Excuse

To provide a moral evaluation of terrorists and terrorism, I must first provide a framework in which it can be evaluated and terminology that is both consistent with the framework and appropriate for the subject matter at hand. There are three ways in which one may defend terrorists. First, one may argue that terrorists are justified in using terrorism. What it means to be “justified” must be clarified to take this line of defense. Does it require that the terrorism is right or need terrorists only believe that their terrorism is right? Can they be mistaken about their actions and still be justified in performing them? Second, one may claim that regardless of whether the terrorism is wrong, a particular terrorist lacks responsibility for his actions. To understand this defense we must discover under what circumstances a person is not responsible for her actions. Does a terrorist lack responsibility when she is brainwashed to think that the terrorism is appropriate? May her upbringing make her unable to do otherwise than what she does? Third, one may argue that some terrorism is excusable; that some terrorists are not blameworthy. Do factors in a terrorist’s social background or a skewed moral code mitigate his blameworthiness? Can a terrorist’s circumstances be so dire that we do not blame him for his terrorism?

In this chapter, I provide a rights-based account of these three kinds of moral defenses. It is beyond the scope of this study to defend rights theory, though I do believe that people have rights and that the most important concern in evaluating terrorism is the

violation of rights. Here, I present a rights-based reading of justification, lack of responsibility, and excuse. I argue that agents are morally justified when it is reasonable for them to believe that they are doing the right action and they perform the action for these reasons, whether or not the action is actually right. Agents lack responsibility for a wrong action when it is impossible for them not to commit the wrong action that they, in fact, perform. Wrong actions are excusable and agents are not blameworthy for performing them under three conditions. First, wrong actions are excusable and agents are not blameworthy to the extent that the agent's moral reasoning is correct even though she makes a mistake of moral principles. Second, wrong actions are excusable and agents are not blameworthy to the extent that it is psychologically understandable for a provoked agent to lose control of her emotions and behave the way that she does. Third, in genuine moral dilemmas, wrong actions may be excusable and agents may not be blameworthy for performing them.

I. Traditional Theories of Excuses

Most of the literature on excuses is concerned with when the law ought to excuse wrong action. Although some of the authors of this literature recognize that the same analysis is relevant to moral theory, their primary goal is to explain when punishment for a legal offense is unwarranted. This focus is not a hindrance to my study because in both morality and the law, excuses relate to blame. The difference is that whereas the law is concerned with whether punishment appropriately follows cases of blame, morality is rarely concerned with punishment. Nonetheless, legal scholars' insights about blame are pertinent to my discussion. In this section, I address the two dominant theories of legal

justifications and excuses: choice theory and character theory. Both of these theories provide important insights into moral praise and blame, though I find neither a satisfying account of moral justifications and excuses.

A. The Choice Theory of Justification and Excuses

The choice theory of justification and excuses is attributed to H.L.A. Hart and Paul Robinson.¹⁶ According to this theory, actions are justified either when they are permitted by the legal (or moral) system or when the action is legally prohibited but outweighed by a greater good or avoidance of a greater harm (Robinson 82, 95). Excuses are concerned with facts about actors and their situations. For Robinson, *an actor* is excused (81-2), and for Hart, *his action* is excusable, when he violates a legal (or moral) law, but could not choose to do otherwise (*Punishment and Responsibility* 13-14, *The Concept of Law* 179).

As I argue below, I think that it is correct to characterize excuses as concerned with facts about the actor and their situation. Contrary to Robinson, I think that both actions and actors can be excused. It is unnecessary to limit our terminology, as Robinson does, to that of “acts are justified; actors are excused” (82). In fact, what is being excused—what the actor is not blameworthy for—is the wrong action. Thus, unless I am addressing Robinson’s account, in my own discussion of excuses, I will discuss excusable actions and corresponding actors’ excusable choices of them. When actors are excused for performing excusable wrong actions, they are not blameworthy or are less blameworthy than if these actions were not excusable.

¹⁶ H.L.A. Hart. *Punishment and Responsibility*. Oxford: Oxford University Press, 1968; H.L.A. Hart. *The Concept of Law*. Second Edition, Oxford: Oxford University Press, 1994; Paul Robinson. *Structure and Function in Criminal Law*. Oxford: Oxford University Press, 1997.

Both Hart and Robinson provide several excusing conditions, all of which are circumstances in which the actor could not help but perform an illegal act. Hart, for example, writes,

. . . the individual is not liable to punishment if at the time of his doing what would otherwise be a punishable act he was unconscious, mistaken about the physical consequences of his bodily movements or the nature or qualities of the thing or persons affected by them, or, in some cases, if he was subjected to threats or other gross forms of coercion or was the victim of certain types of mental disease (*Punishment and Responsibility* 28).

Though Hart acknowledges that this is not a complete list of excuses, from it we can gather that, for him, wrong actions are excusable when they result from accidents, mistakes, duress or insanity. He argues that wrong actions are excusable when the actors that perform them do not choose them or could not choose to do otherwise.

Robinson separates these excuses into two kinds: disability excuses and mistake excuses (83-8). He argues that both excuses are based on idea that “because of the special conditions, the actor could not reasonably have been expected to avoid the violation” (83). Robinson holds that actors are excused only if they cannot be reasonably expected to act in any other way, or at least cannot be reasonably expected to act according to the law. For Robinson, an actor is excused for her wrong action based on disability if, because of her “disabling abnormality,” she is unaware that her action is illegal or is unable to abide by the law (83-4). Actors who perform illegal actions because of insanity, immaturity, duress, and involuntary conduct are examples of actors who merit the disability excuse according to Robinson. Mistake excuses include misstatements of law (i.e., the actor performs an illegal action because she has been told by an official that the action is legal) and mistakes as to justification (i.e., given the actor’s circumstances, she reasonably believes that she is acting according to what is, in

fact, the law). They occur in situations in which the actor acted the way a reasonable person would have acted given the reasonable mistake.

Though both justifications and excuses eliminate blame, they are separate defenses. According to choice theory, some otherwise illegal actions are justified because of the circumstances in which they are performed (Robinson 95). This is because, in the circumstances, they are or ought to be legal. Robinson argues that defensive actions and force used in arrests are examples of justified actions that include an otherwise prohibited harm. Also, he argues that stealing food to avoid starvation is justified. These actions are justified, according to Robinson because “while the harm prohibited by the offense does occur, it is outweighed by the avoidance of a greater harm or by the advancement of a greater good” (95).

Applying Robinson’s theory to the moral domain, the morality of actions depends, to some extent, on the circumstances of the agents who perform them. For example, the use of force is immoral in some cases, but when police use it in a reasonable manner, it is morally permissible. Of course, a person concerned with rights will not accept Robinson’s utilitarian defense. For rights theorists, justifications are based on the actor’s reasons for acting, not the consequences of his action. Even if the state of affairs that results from respecting rights is more violent or involves more death than the state of affairs that would result from violating rights, one must disregard the foreseeable consequences and uphold rights. Nonetheless, examples of rights-respecting actions that result in bad consequences are rare.

However, the rights theorist may agree with Robinson that an actor is morally justified when she does not violate moral principles and is excused if she could not help

but violate moral principles because of her circumstances. The disagreement may be simply about what constitutes moral principles. I further address this argument below, but first, I will present an alternative account of justification and excuse as I think that both theories face similar difficulties defending their accounts of justification.

B. The Character Theory of Justification and Excuses

First attributed to David Hume, the character theory of justification and excuses is best articulated by Richard Brandt.¹⁷ Brandt argues that there are three ways that a person can defend her unlawful actions (“A Motivational Theory of Excuses in the Criminal Law” 95-6). First, he argues that some unlawful behavior is justified. On Brandt’s account, a justified action is one that is “reasonably believed to be preferable to other options open to the agent” (96). For example, lighting a controlled fire in the path of an out of control forest fire is justified on Brandt’s account since it is preferable to allowing the fire to continue unchecked. He argues that lighting a fire is unlawful when doing so is arson, but in these circumstances and with this motivation, it is justified. Contrary to Robinson, Brandt argues that it is improper to call justified behavior “unlawful” even if it would otherwise be illegal because legal codes ought to, and standardly do, recognize these exceptions. Similarly, he holds that if an action is morally preferable to all other options, it is justified and not immoral.

Brandt is an ideal rule-utilitarian. He argues that “an act is right if and only if it would not be prohibited by the moral code ideal for the society; and an agent is morally

¹⁷ Richard Brandt. “A Motivational Theory of Excuses in the Criminal Law,” *Justification and Excuse in the Criminal Law: A Collection of Essays*. Edited by Michael Louis Corrado, New York: Garland Pub., 1994, 95-129; *A Theory of the Good and the Right*. Oxford University Press, 1997; *Morality, Utilitarianism, and Rights*. Cambridge: Cambridge University Press, 1992.

blameworthy (praiseworthy) for an act if, and to the degree that, the moral code ideal in that society would condemn (praise) him for it” (*Morality, Utilitarianism, and Rights* 119-20). For Brandt, the ideal moral code differs from society to society, and it is the system that, as a whole, maximizes utility in the society, even though particular rules may not, in fact, maximize utility (130). For example, he contends that right actions may be determined by “what an intelligent person who had fully interiorized . . . the ideal moral system would feel best satisfied with doing.” For Brandt, if the conventional law does not match the ideal moral code, a person who follows the ideal moral code instead of conventional law is justified.

Brandt argues that an ideal rule-utilitarian can account for rights. He holds that rights are justified insofar as their existence in the moral code maximizes utility, but can be overridden by “extreme demands of welfare” (*Morality, Utilitarianism, and Rights* 197-200). The scope of rights is determined by the utility maximizing moral code. According to Brandt, once they are established, it takes a great amount of disutility to justify overriding them in a particular situation.

The problem with Brandt’s justification of rights, however, is that it ignores the function of rights. Rights exist not to maximize utility, but to protect individuals as individuals, even when utility would be better served by violating rights. Rights theorists do not consider any violation of rights permissible. Rights must not be sacrificed to other considerations. If a person violates a right, she has done something wrong. My argument for this contention will be discussed at length in the following sections.

Brandt’s second type of defense for unlawful actions is that of excuse. He argues that an unjustified, unlawful action is excusable if the agent’s motivation is not evidence

of his having a defective character. Though his action is wrong, he believes that he is doing something permissible. For example, if a person mistakenly believes that a murderer is breaking into his home and kills what turns out to be his mother coming in to surprise him, his behavior is excused according to Brandt's view because he made a mistake of fact. He had the proper motivation—i.e., defense against a would-be murderer—and if the facts matched his belief, his action would be justified. However, because he is wrong, his action is unjust. If he is not culpable for his mistaken belief, his action is excusable. For Brandt, “an act is *morally* justified if it is shown to be *right* (what an informed person might do consistently with a proper level of moral motivation) or, perhaps, to be *excused* because, in the total circumstances, his act did not show his level of moral motivations to be defective” (*Morality, Utilitarianism, and Rights* 90). In addition to mistakes of fact, accidents, some mistakes of law, duress, provocation, and some cases of insanity may excuse unjustified, unlawful action. Brandt argues that even though his action is excusable, he should feel “uncomfortable about his act” because it harmed someone else (*A Theory of the Good and the Right* 167).

Third, Brandt argues that people are not responsible for their unjustified, unlawful actions in some cases. Like excuses, lack of responsibility defenses mitigate the punishment one ought to receive for performing the action. Brandt believes that there are two kinds of agents who are not responsible for some or all of their actions: infants and some insane people. Infants are incapable of making informed and deliberative decisions regarding their behavior, so ought not to be held culpable for any behavior that would be unlawful for an adult. Insanity is also a defense against one's responsibility for unlawful action. However, Brandt believes that some unlawful behavior performed by insane

people is better defended by appealing to excuses than to the lack of responsibility defense. For instance, some schizophrenics perform actions based on delusions (i.e., mistakes of fact) and absent the confusion would have performed the right action. Their action is excusable because it was based on an inculpable false belief according to Brandt.

Brandt argues that we should be concerned with a person's motivation in assigning moral praise, moral blame, and legal punishment. We should blame people for their unlawful actions only when these actions are caused by a defect in the agent's long-term motivations (i.e., character). An agent's responsibility for an unlawful and inexcusable action is evidence that her character is defective and that her future behavior will be unlawful and unjustified in similar ways ("A Motivational Theory of Excuses in the Criminal Law" 101-3). She is either aware that she is doing something that is wrong and has no mitigating factors or is mistaken about what is morally required of her, so can be expected to perform the same action in similar future situations.

According to Brandt, his motivational theory is superior to a theory that focuses only on actors' intentions. He argues that if we are concerned only with intentions, we need only to show that an actor foresaw the harm that she caused to blame her for that harm (103-6). However, Brandt claims that our evaluation of a harmful action ought to be based also on why the person was indifferent to the foreseen harm. Our motives are the reasons why we have the intentions we do and, combined with our intentions, they are the reasons that we perform particular actions. Thus, they indicate something about our moral attitudes. Suppose that Sarah kills Jennifer. Under Brandt's terminology, if we evaluate moral agents *via* intentions alone, we need only discover that Sarah's action was

deliberate and that she foresaw that Jennifer would die. But only by noting Sarah's motivation do we have a complete picture. We may discover that Jennifer was threatening to kill Sarah and that Sarah's actions were defensive. With this information, we ought not to hold Sarah blameworthy for killing Jennifer because we know that Sarah's motivation was to protect herself from the imminent attack.

I agree that we must include motivations to correctly evaluate moral situations. I also believe that we should consider lack of responsibility defenses and excuses as separate defenses. A person who is not responsible for his action has done nothing wrong for which he may be excused. The consequences of his action may be harmful, but they are not his fault. The essential difference between excuses and lack of responsibility defenses is that in the former, an agent intentionally performs a certain act, whereas in the latter, he either does not act, or intends to commit a different action. Therefore, Brandt is wrong to label unintended but harmful accidents excusable instead of non-responsible. Other examples of non-responsible actions include the actions of infants, the uncontrollable actions of some insane people, the actions of sleepwalkers, and the actions that result from physical force. Thus, if a sleepwalker walks into someone, he is not morally responsible for the injuries that he causes. Similarly, if a person is pushed into another person, he did not intend to cause the injury to the other person.

II. Justification, Excuse, and Right and Wrong Action

Choice theorists and character theorists agree that justified actions are right actions. However, they disagree about excusability conditions. Whereas choice theorists argue that a wrong action is excusable or an actor is excused for her wrong action if it is

impossible for her to not commit the wrong, character theorists contend that a wrong action is excusable so long as the actor has moral motives. In the following, I argue that neither theory properly accounts for an important sense of justification nor do they properly distinguish excuses from justifications.

A. Justification, Good and Bad Consequences, and Right and Wrong Action

Both choice theorists and character theorists argue that when a person has a false belief for which she is not at fault, and that belief causes her to perform a wrong action, the wrong action is excusable. Though their theories are predominately concerned with legal justifications and excuses, they apply their arguments to the moral domain and thereby argue that only morally right actions are morally justified. Hart writes, “It is important to see that ‘I could not help it’ is only an excuse . . . If good intentions were a justification for doing what moral rules forbid, there would be nothing to deplore in the action of a man who had accidentally and in spite of every care killed another” (*The Concept of Law* 179). Similarly, Brandt argues that a person is morally excused, not justified, “if the behavior occurred inadvertently, or *as a result of an unavoidable mistake about the facts of the situations*, or if the person was at the time unable to do what he thought was right” (emphasis added) (*A Theory of the Good and the Right* 167). I think that their views are mistaken because I believe that moral agents can be justified in performing wrong actions.

Kent Greenawalt argues that a person who performs a wrong action because of an inculpable mistake of fact is justified and is not blameworthy for her wrong action

because she does what any other reasonable person in her situation would do.¹⁸ Although she is mistaken and her action is wrong, *she* is justified in performing that action because of her beliefs. He thinks that this justification applies to both the legal and moral domain. Following Greenawalt, I believe, therefore, that for a person to be morally justified, she need only have a reasonable belief that she is acting morally.

Consider the following legal example that Greenawalt provides: Roger, a forest ranger, orders that a section of the forest be burned to stop a forest fire. He believes, based on the information that he has been given about the fire and his training about stopping out-of-control fires, that burning the small area will prevent the fire from continuing deeper into the forest. However, the wind shifts and the fire ceases before it reaches the burned section (352-3). Roger did what any other reasonable ranger would do in the situation; hence, he is not culpable for his false belief and is justified.

Greenawalt argues that if a more skilled or more experienced ranger would have been able to predict the wind shift and the fire's subsequent burnout, Roger is not justified, though he is not blameworthy for the unnecessary burning (354). According to Greenawalt, a person is justified only if he performs the best possible action that a person in his position could perform. I find this restriction unnecessary. If justification requires only that it be reasonable for the person to act the way that he acts based on the information that he has (so long as he is not culpable for the faulty information), then Roger is justified in ordering the burning. However, he would be culpable for his mistake if he missed training sessions or lied about his experience when he applied for the ranger position. Absent these conditions, his wrong action is the result of an

¹⁸ Kent Greenawalt. "The Perplexing Borders of Justification and Excuse," *Justification and Excuse in the Criminal Law: A Collection of Essays*. Edited by Michael Louis Corrado, New York: Garland Pub., 1994, 341-376, 347, 352-6.

inculpable mistake of fact and, therefore, he is justified in performing it since any reasonable person with the same training and experience would have made the same decision in the circumstances.

This sense of justification captures the importance of the agent's mental state in moral evaluations. To fully capture the moral experience, our evaluations must consider whether an action is right or wrong, whether the agent chose the right or wrong action based on morally relevant information, whether she chose a wrong action even though she did the best that she could with the information available to her, or whether she ignored morally relevant information and based her decision on nonmoral reasons. The answers should all alter our moral evaluation of the actor.

This account of moral justification is in line with the internalist's position on epistemic justification. According to internalism about epistemic justification, a person's internal epistemic states determine whether he is justified in believing a proposition. If an epistemic agent's belief is reasonable given his other reasonable beliefs or his evidence, then he is justified in holding it for these other beliefs serve as evidence of the belief in question. Similarly, a person is morally justified in performing an action so long as it is reasonable for him to believe that he is acting permissibly or dutifully. And it is reasonable for him to believe that he is acting permissibly or dutifully so long as, given the information that he has, any other rational agent in his situation would think the same.

Nonetheless, we are responsible for trusting the information on which we base our moral beliefs. If a person has access to evidence that contradicts the information on which she is basing her belief, and she does not investigate the discrepancy, she is culpable for her wrong action. Similarly, if the information is given to her by an

unreliable source, she suspects that the source is unreliable, it is possible to verify the claims, and she has time to do so, she ought to do so before she acts. Hence, moral justifications depend largely on epistemic justifications. A person is not morally justified in acting on information that she is not justified in believing.

In addition to defending the internalist sense of moral justification, Greenawalt also argues that the consequences of actions are justified or unjustified. He writes that the “natural language is rich enough for people to differentiate between the justifications of an actor’s behavior and whether the consequences of that behavior turn out to be justified” (366). For example, he argues that Roger, the forest ranger, was justified, but the fire was unjustified.

I see no benefit in applying the term “justification” to good consequences. Justification is a morally laden term, so to speak of consequences as justified implies that it is possible to morally evaluate consequences even when they are unintended or unforeseen. Moreover, referring to consequences as “good” or “bad” captures everything that we need to capture.

A less contentious use of “justification” is the one that Hart, Robinson, and Brandt use. Recall that for them, right actions are justified. I think that using justification in this way is unnecessary because we could instead refer to actions as “morally right” and “morally wrong.” Nonetheless, what is important is that we make room for evaluating people as justified or not in performing their actions on the basis of their reasons.

B. Revisiting Standard Excuses

As I have argued, an agent that makes an inculpable mistake of fact that results in wrong action is justified in performing that action. I believe, therefore, that choice and character theorists improperly label inculpable mistakes of fact excuses. Our disagreement regarding justification also causes me to disagree that mistakes of moral principles, accidents, and all insanity defenses may fully excuse wrong action.

Mistakes of moral principles occur when an actor mistakenly believes that something is morally permissible. These mistakes are different from mistakes of law in that the latter occurs when an agent mistakenly believes his action is legal. In mistakes of moral principle, a person is either incapable of deciding what action is morally permissible but has to act and acts wrongly, or she reasons incorrectly that her action is right. If she lacks the capacity to make moral judgments, she is not a moral agent and lacks responsibility for her wrong action. If her moral deliberation is faulty, she is responsible for the wrong action and is blameworthy. We are responsible for developing our practical reason, so when the serial killer believes that he is doing the right thing by killing those he considers immoral, he has failed morally. However, his actions are excusable to the extent that his cause was good. If retributivism is correct, and the people he killed were murderers who, for various reasons, the criminal justice system did not hold accountable for their crimes (e.g., Dexter from the drama *Dexter*), his actions are somewhat excusable, whereas they would not be excusable if his victims were jaywalkers. He is not blameless because it is wrong for him to think that it is moral to take justice into his own hands. Nonetheless, he retains the partial excuse that these people deserved to receive harm comparable to the harm that they caused.

Accidents occur when the intended good consequence of the action is disrupted by an external event. Unlike the case of inculpable false beliefs, when an accident occurs, the agent's beliefs and intentions about his action are proper. However, there may be similarities between these cases in that agents may lack information that is necessary for the good consequences to result. For example, suppose that I am motivated to help starving children and send money to a charity to this end. However, unknown to me, the charity is going through an administrative change and the money that I sent is mistakenly given to a "charity" that is, in fact, a cover for a human trafficking organization. I am not responsible for the accident; therefore, I have done nothing wrong for which to be excused.

Choice theory and character theory also consider duress and provocation to be excusability conditions for wrong action and I agree. In both of these cases, a person deliberately performs a wrong action that he would not commit otherwise. When a person is provoked, he is motivated to perform the wrong act only because he lost control of his emotions. If this is understandable under the circumstances, such that we may assume that others in his situation would also lose control and act similarly, his action is excusable. However, most provocation excuses are not exculpatory. As Brandt writes, ". . . the standing motivation of the provoked man is not so very far from that of the ordinary man (but surely he is a difficult person with a hot temper!). . ." ("A Motivational Theory of Excuses in the Criminal Law" 115). If the provoked person does not have sufficient control over his emotions generally, the defense, at most, partially excuses his wrong, but it also may be no defense at all. Instead, it may simply explain why he acted the way that he did.

Not only must the provoked person's loss of emotional control be psychologically understandable, but his choice of action must be as well for it to be excusable. What counts as an excusable action in cases of provocation varies, but, at the very least, it must be concerned with the provoking agent. For example, if an actor is taunted by one person, walks away, and hits someone else, his action is not excusable.

In cases of duress, a person commits a wrong action because she is threatened with force that she cannot be expected to resist. If, for instance, Rachel's child is kidnapped and the kidnappers tell her that they will kill the child if she does not rob a bank and give them the money, she commits the wrong under duress. Rachel could choose to allow the kidnappers to kill her child, so she is responsible for her choice. She is not justified in robbing the bank because she knows that she has a duty to not steal. But her more important duty is to save her child, and so her robbery is excusable.¹⁹

I think that the duress excuse falls under a larger category of excuses; namely, genuine moral dilemma excuses. When someone under duress commits an excusable wrong act, she does so because she faces a genuine moral dilemma. It is wrong for Rachel to rob the bank and it is wrong for her to allow the kidnappers to kill her child.

¹⁹ In "Persons, character, and morality," Bernard Williams argues in cases in which there is a conflict between a special duty (e.g., the duty of a mother to protect her child) and a non-special duty (e.g., the duty one has to help others or the obligation not to steal), a person should fulfill the special duty, but not because it is a duty. He argues that the person should favor those with whom she has an attachment because of the attachment, not because she is following a moral principle that requires her to prioritize the special attachment. Williams argues that if the agent thinks about the requirements of morality in these cases, she is having "one thought too many" (18). I think that Williams is correct that in these actual cases, a person need only think of her attachment to the person; however, thinking about the moral principles is not "one thought too many." The moral agent who thinks only of the attachment does so because she has internalized the moral principles that guide her to favor the attachment. Nonetheless, thinking about these principles when she makes her decisions does not mean that she is unaware of them or has not internalized them. She may instead do so because she is committed to the principles and to conscientiously leading the moral life. Furthermore, in a theoretical discussion of these cases, only thinking of the attachment is one thought too few. A defense of the reasons for why, e.g., duties to protect one's children are special is also necessary.

However, she is not blameworthy for robbing the bank because it is morally preferable for her to uphold her duty to protect her child than for her to uphold her duty not to steal. Wrong action is excusable in circumstances of duress, like in other genuine moral dilemmas, under the following conditions: (1) The actor is faced with a genuine moral dilemma in that she must choose between conflicting obligations. (2) If it is morally preferable to fulfill one obligation than to fulfill the other(s), only the morally preferable action is excusable. If there is no moral reason to prefer one action to the other(s), any of the actions are morally excusable, though there may be prudential reasons to prefer one of the actions to the other(s).

If an actor faces a genuine moral dilemma and does not perform the morally preferable action, he has done something worse than if he performed the morally preferable action (though, again, he does something wrong in both cases). In an evaluation of particular genuine moral dilemma excuses, one must therefore make two judgments about the situation. First, one must decide if a genuine moral dilemma exists (e.g., no matter what Rachel did, she would have done something wrong). Second, one must determine whether any of the possible wrong actions are morally preferable to the others.

Suppose that Rachel does not rob the bank. Perhaps she defends her choice by arguing that she does not want her children to live in a world where people place financial value on life. Or, perhaps she is a strict Kantian and argues that she has a duty not to dirty her hands, so cannot steal, whereas letting the kidnapper kill her child would dirty the kidnapper's hands. Most people would argue, however, that parents' special duty to protect their children is more important than the duty not to dirty one's hands, and

regard Rachel's moral reasoning as misguided. Because of her faulty moral reasoning, her action is not fully excusable. However, it may be partially excusable because she acted out of a legitimate, though in this context misguided, moral concern (i.e., she made a mistake of moral principles). Though her action is wrong in both scenarios, her moral reasoning in the second scenario is inferior to her moral reasoning in the first scenario. Therefore, her action in the first scenario is more excusable. She is less blameworthy for the wrong action the closer that she reasons to correct moral principles.

III. The Existence of Moral Dilemmas

One may object to my moral dilemma excuse by denying that there are any genuine moral dilemmas. This is true enough for consequentialists, since for them there is only one ultimate standard, namely, maximization of the good.²⁰ Hence, it is not surprising that choice theorists and character theorists, who assume a consequentialist ethics, do not address moral dilemmas. But even rights theorists may argue that there are no moral dilemmas.

A. The Objection: Only inconsistent moral theories accept genuine moral dilemmas

Many philosophers have argued that only an inconsistent moral theory allows for genuine moral dilemmas. Kant, for example, writes,

But since duty and obligation are concepts that express the objective practical *necessity* of certain actions and two rules opposed to each other

²⁰ In "The Good and the True," Ronald B. de Sousa hints toward a possible objection to my claim. He argues that whenever one chooses between conflicting qualitatively different goods, one may regret the loss of the good that one was unable to choose. As I will discuss below, one may suggest that regret is evidence of a moral dilemma. If this is true, then consequentialists may experience genuine moral dilemmas. However, I believe that an agent feeling regret is not a sufficient condition for him to be in genuine moral dilemma. Therefore, regret over inevitable loss is not evidence of a genuine moral dilemma.

cannot be necessary at the same time, if it is a duty to act in accordance with one rule, to act in accordance with the opposite rule is not a duty but even contrary to duty; so a *collision of duties* and obligations is inconceivable (*obligations non colliduntur*). However, a subject may have, in a rule he prescribes to himself, two *grounds* of obligation (*rationes obligandi*), one or the other of which is not sufficient to put him under obligation (*rationes obligandi non obligantes*), so that one of them is not a duty.—When two such grounds conflict with each other, practical philosophy says, not that the stonger obligation takes precedence (*fortiori obligation vincit*), but that the stronger *ground of obligation* prevails (*fortiori obligandi ratio vincit*).²¹

Here, Kant implies that a moral theory that allows for genuine moral dilemmas is incoherent, and that in his theory, apparent moral dilemmas are resolvable. For Kant, a person may have competing “grounds of obligation,” each of which would be binding if there were no conflict. Combined, they are reasons to do two or more conflicting actions. However, for Kant, the reasons for one action must override the reasons for the other action(s) and the person ought to act on these overriding reasons. The corresponding action is obligatory and the alternative actions are not. Kant’s point, therefore, is that moral dilemmas are only apparent. If Kant is correct, then a person is justified when she acts according to the stronger reasons and her action is right.

Philippa Foot agrees with Kant that if you have better reasons to act according to one horn of an apparent dilemma, then you ought to act on them.²² She argues that you cannot have a moral reason for an action if it is not possible to perform that action without violating a higher duty (179-183). As a result, she argues, you can have no reason for doing both conflicting actions in your situation in the first place. The action that is the best possible in the circumstances is the one that you ought to do. You have

²¹ Immanuel Kant. “The Metaphysics of Morals,” *Practical Philosophy*. Translated and Edited by Mary J. Gregor, Cambridge: Cambridge University Press, 1996, 353-604, 378-9.

²² Philippa Foot. *Moral Dilemmas: and Other Topics in Moral Philosophy*. Oxford: Oxford University Press, 2003.

committed no wrong because you ought not to have acted according to what appeared to be a conflicting duty.

A different kind of argument against the possibility of moral dilemmas is presented by E.J. Lemmon.²³ He argues that one should opt to fulfill the obligation that produces the most utility when one faces an apparent moral dilemma, whereas in other situations, one utility is not morally relevant (108-9). For instance, in discussing Plato's example of a promise to return a weapon to a person bent on mayhem, Lemmon writes that one ought to "sacrifice one's obligation to utilitarian considerations" and not return the weapon (109). He argues that in moral dilemmas, the moral agent will know which consequences are better and choose them.

If, when push comes to shove, consequences, not rights, are what determine right action, then they should do so all the time. Thus, nonconsequentialists should not accept this analysis since, for them, good consequences do not determine right action.

Nonetheless, I do think that a rights theorist ought to hold that some consequences are morally relevant in moral dilemmas because they may determine which wrong action is morally preferable, and thereby excusable. Unlike Lemmon's argument, this view does not undermine a rights-based theory since the morally preferable action is still wrong.

²³ E.J. Lemmon. "Moral Dilemmas," *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 101-114.

B. *Marcus on Moral Dilemmas and Consistency*

Ruth Barcan Marcus argues that, on a realistic conception of consistency, a consistent moral theory allows for genuine moral dilemmas.²⁴ A consistent set of rules is standardly defined as a set of rules, each of which it is always possible to act on in all possible worlds. Marcus rejects this definition because it is unrealistic. She writes, “In such a world persons bent on mayhem have not been promised or do not simultaneously seek the return of a cache of arms. Sororal obligations do not conflict with obligations to keep one’s word or preserve the peace” (“More about Moral Dilemmas” 26). But in reality these situations occur. She therefore redefines consistency to allow for conflicts in obligations. She holds that a set of rules is consistent if it is possible for all of the rules to be obeyable in a possible world (“Moral Dilemmas and Consistency” 194-5, “More about Moral Dilemmas” 25-66). The rules need not be obeyable in all possible worlds; it is necessary only that there are possible circumstances in which they are all obeyable.

Marcus’ definition of consistency has consequences for standard rules of deontic logic. One faces a moral dilemma when one ought to do A and ought not to do A. Alternatively, one is in a moral dilemma when one ought to do A and ought to do B, but cannot do both A and B in the circumstances. For the sake of simplicity, I will use OA & $O\sim A$ to cover both cases. In the second case, B requires that one not do A, so the simplification should not be problematic. I may make two promises that I cannot both keep, so fulfilling promise A requires that I not fulfill promise B and fulfilling promise B requires that I not fulfill promise A. Since $OB \Rightarrow O\sim A$, we come to OA & $O\sim A$.

²⁴ Ruth Barcan Marcus. “Moral Dilemmas and Consistency,” *Moral Dilemmas*. Edited by Christopher Gowans, Oxford University Press, 1987, 188-204; “More about Moral Dilemmas,” *Moral Dilemmas and Moral Theory*. Edited by H.E. Mason, Oxford University Press, 1996, 23-35.

On Kant's and Foot's accounts, in some circumstances, it may be the case that XOA , and in other circumstances, $XO\sim A$ (agent X ought to do A and agent X ought to do $\sim A$), but in no circumstances $XO(A \& \sim A)$. If doing A is morally preferable, then $XOA \& \sim(XO\sim A)$; there are no real moral dilemmas.

According to the Principle of Deontic Consistency, $XOA \supset \sim(XO\sim A)$, one cannot be required to both perform and not perform an action. This principle is based on two theses. One, ought implies can: $XOA \supset X\Diamond A$. And two, if one ought to do two independent actions, one ought to do both actions: $XOA \& XOB \supset XO(A \& B)$. Terrance C. McConnell argues that, together, these logical rules entail rejection of genuine moral dilemmas: $\sim(OA \& O\sim A)$.²⁵ For if you cannot perform conflicting actions, then you are not obliged to perform conflicting actions.

Marcus' definition of consistency preserves both the Principle of Deontic Consistency and genuine moral dilemmas ("Moral Dilemmas and Consistency" 199-200, "More about Moral Dilemmas" 31). If an agent ought to perform conflicting actions A and B, it is possible for the agent to perform A and B; taken separately, the agent *can* perform A and *can* perform B. The agent, however, cannot perform both A and B because they conflict in these circumstances. Marcus rightly argues that there is a failing in standard deontic logic; namely, it assumes that we are all morally perfect and have perfect knowledge. If we knew the future circumstances in which our actions, the actions of others, and natural events would put us and everyone acted according to the moral law, then we could avoid genuine moral dilemmas. For example, with this knowledge, Rachel could avoid the kidnapping of her child and thereby would not have to decide between

²⁵ Terrance C. McConnell. "Moral Dilemmas and Consistency in Ethics," *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 154-173, 155-6.

stealing and allowing her child's death. In this doubly perfect world, it is always possible to fulfill all of our duties. But, sadly, this is not the case and as a result, we may find ourselves in situations where, no matter what we do, we do wrong.

Marcus acknowledges that those who deny the existence of genuine moral dilemmas will simply argue that Marcus' definition ignores the real issue, namely action guidance ("Moral Dilemmas and Consistency" 195-6). They may say that the reason we must have a consistent (standardly defined) moral theory is to resolve conflict, so if a consistent (on Marcus's definition) moral theory does not solve all apparent moral conflict, it is a bad theory.

I think that Marcus rightly responds to this objection by arguing that, of course, we should attempt to avoid foreseeable moral dilemmas in developing our moral principles, but abstraction necessarily prevents us from accounting for all real world conflicts ("Moral Dilemmas and Consistency" 192, 196-200; "More about Dilemmas" 28-9). She argues that real life is complex and we may find ourselves in unpredictable situations. Therefore, it is unreasonable to think that our abstract principles will be able to guide us without conflict in all situations. The complexity of life, therefore, not our moral theory, is the source of genuine moral dilemmas.

A person is not necessarily at fault when he finds himself in a genuine moral dilemma. We often find ourselves in these situations because of others' actions. Other times, these situations occur because the agent has chosen a permissible (or even laudable) life plan. To use Marcus's example, politicians inevitably face situations in which they act with "dirty hands" and we should praise them for taking the moral risk,

not blame them for choosing a morally difficult course of action (“More About Moral Dilemmas” 29, 33).

Whereas Kant, Foot, Lemmon, and McConnell argue that we are justified in acting on the one overriding reason and that the other reasons no longer apply, Marcus rightly maintains that in moral dilemmas, our lesser obligation is not eliminated (“Moral Dilemmas and Consistency” 193, 198). She hints toward the view that I support—that we may be excused for our wrong action when we have to choose between conflicting actions. She writes,

. . . the agent who was confronted with a dilemma may finally act on the best available reasons. Still, with respect to the rejected alternative he acknowledges a wrong in that he recognizes that it was within his power to do otherwise. He may be apologetic and inclined to explain and make excuses (“Moral Dilemmas and Consistency” 198-9).

Moral dilemmas may be genuine, therefore, even when one of the prescribed actions is morally preferable to the other(s). This is not to say that all moral dilemmas are genuine. Apparent, but not genuine, moral dilemmas exist when an agent believes that he faces a conflict in duties, but is mistaken. Through reflection, he may realize that there is no conflict, either because he is mistaken about his duties or because he thinks of an alternative action in which all of his duties can be fulfilled.

C. Guilt Feelings: Remorse and Regret

Even though the agent who faces a genuine moral dilemma is not blameworthy for fulfilling the overriding duty (or either duty in the cases where there is no overriding duty), Marcus argues that she should feel remorse (“Moral Dilemmas and Consistency” 198-9, “More about Moral Dilemmas” 31-3). She chose to not fulfill an obligation, and

even though she made this choice to fulfill another obligation, she has chosen to do something wrong and should feel badly about it. Such remorse is necessary, according to Marcus, because it can motivate the agent to attempt to avoid the circumstances that give rise to moral dilemmas in the future.

Foot takes Marcus to be arguing that these feelings indicate that a wrong has occurred and rejects this view (175-6). For instance, Foot points out that even if a person feels guilty for giving away a dead relative's belongings, the person has done nothing wrong. His grief may cause his moral compass to malfunction in the sense that he thinks that he ought not to give the belongings away. More likely, however, he confuses his grief with guilt, and regret over the loss of his relative with regret over giving the things away. Thus, Foot argues that doing something wrong should lead you to feel regretful or perhaps remorseful, but we cannot discover wrongs by these feelings.

However, Foot misrepresents Marcus's argument by conflating the two senses of guilt. According to Marcus, a person can be guilty (judgment) without feeling guilty. If a person is guilty (judgment), she has committed a wrong. But even when she is not blameworthy for a wrong act, as in a genuine moral dilemma, she ought to feel guilty according to Marcus.

Thomas Hill contends that even a Kantian may agree that a person who feels remorse when he acts in a moral dilemma is better than the person who does not have these feelings.²⁶ While supporting Kant's view that acting according to the overriding duty is right, Hill argues that the moral agent recognizes that a harm is committed and that in other circumstances the action may be wrong. Therefore, he writes that there is a

²⁶ Thomas Hill, "Moral Dilemmas, Gaps, and Residues," *Moral Dilemmas and Moral Theory*. Edited by H.E. Mason, Oxford: Oxford University Press, 1996, 167-198, 187-194.

“normative expectation” for the agent to feel guilty (189). Hill is quick to distinguish a normative expectation from a moral duty since, as a Kantian, he does not believe that we have duties to have particular feelings. Nonetheless, Hill argues that it is compatible with Kant’s theory for the absence of such feelings to suggest a moral defect in the agent. To value the particular ends that individuals have, a moral agent must hope that the ends are achieved. Therefore, according to Hill, when the agent’s actions thwart the achievement of others’ permissible ends, he ought to feel badly, regardless of whether doing so was his fault.

Like Hill, Bernard Williams holds that a person may feel badly about violating an obligation even if there was no morally better alternative.²⁷ However, unlike Hill, Williams contends that the feelings of regret are themselves morally significant. According to Williams, regret in these situations shows one’s commitment to one’s moral principles, and therefore, will emerge in the “fully admirable moral agent” (124).

I do not believe that remorse is required when an agent commits a wrong that is the best choice, all things considered, so long as the he is not culpable for situation in which the moral dilemma arises. He necessarily commits a wrong and should acknowledge the harm that resulted from his choice, but he may also notice that he made the best choice that he could given his options. He has no reason to blame himself for the circumstances in which he finds himself. His emotional response, therefore, may be tempered by these thoughts.

Nonetheless, the moral agent regrets having to choose between two obligations and creating a state of affairs that he would rather avoid creating. Unlike remorse, regret

²⁷ Bernard Williams, “Ethical Consistency,” *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 115-136.

does not require him to blame himself for choosing the action that he did and to wish that he had chosen otherwise. Instead, regret only requires that he wish that a different outcome were possible. And the moral agent has this wish because, as a person who respects rights, he is dismayed when rights are violated, especially as a result of his action. Therefore, it is excusable for an actor to act wrongly only when she regrets the situation. She should recognize that she is in a genuine moral dilemma, and, therefore, that her excusable action is both right and wrong. For it to be excusable for *her* to commit it, she must regret that the best she can do results in the violation of rights; that the best she can do is still wrong.

Additionally, the degree to which a person can predict the circumstances in which there is a conflict alters what attitude she should have. If she unreflectively, but unintentionally, makes two conflicting promises, then her attitude towards the situation should be closer to remorse than simply regret. She should notice the wrong and feel badly about not being attentive to the circumstances that she created. Suppose that a husband promises to tell his wife anything that is said to him about her. Later, he agrees to keep a secret of one of his friends before the friend confides in him. It turns out that the secret is about his wife. He should have told his friend that if the secret concerned his wife, he would not be able to keep it from her. Nonetheless, he did not think to add this caveat to the promise. He did not intentionally create the moral dilemma, though it resulted from his being unreflective. For this reason, he should be remorseful when he does not tell his wife the secret.

The general existence of guilt feelings is evidence that moral experience is not black and white. Our moral terminology ought to include the genuine moral dilemma

excuse that I have presented because it best captures this complexity. There are better and worse ways to handle difficult situations, but the best available action may require that you do something immoral. Particular situations may excuse the actions of *moral agents*, but they do not make *moral principles* non-binding. Moral principles apply generally and universally.

I have yet to discuss how my view of justification and excuses contributes to a moral evaluation of terrorism. It is to this task that I now turn. The moral dilemma excuse will be particularly important to this evaluation because the leaders of political communities have duties to the members of their communities and to humanity generally, and these duties can conflict. As I will argue, in one situation in particular, these leaders may have to choose between two wrong actions and when they do, the arguments provided in this chapter will be necessary to understand what a defensible choice would be.

Chapter 4

Combatant and Noncombatant Liability to Attack

Now that I have presented my views on justification, lack of responsibility defenses, and excuses, I have the tools to morally evaluate terrorism. This chapter primarily addresses the question of whether terrorism is ever justified, though I also discuss possible lack of responsibility defenses for terrorism. In the next chapter, I focus on the possible excuses for terrorism. To recall, I define terrorism as the use or threat of systematically random attacks on the vital interests of civilian noncombatants to cause other civilian noncombatants to fear that they will be the next direct targets, with the intent of coercing an indirect target into some course of action. Given my internalist understanding of justification, in this chapter, I discuss whether terrorists are justified when they use or threaten these attacks and whether any conditions would deem them not responsible for their terrorism.

In evaluating the conduct of soldiers in war, just war theorists rely heavily on the principle of discrimination. According to this principle, it is permissible for combatants to attack opposing combatants in war and it is impermissible for combatants to attack any noncombatants. There are two difficulties in applying this principle. First, one must determine who counts as “combatants” and who counts as “noncombatants.” I think that it is inaccurate to claim that all and only members of the military are combatants. Sometimes soldiers are noncombatants and sometimes non-soldiers are combatants. To overcome this difficulty, I argue that we need to focus on these people’s actions to determine in which category they fit. Additionally, we must distinguish between two

kinds of noncombatants because the category “noncombatants,” as it stands, is too general.

The second difficulty in applying the principle of discrimination is that one must determine whether it should be taken as a general guideline or if it should be strictly observed. To make this determination, I examine each category of combatant and noncombatant to discover if, in fact, it is permissible to attack all combatants and only combatants. Based on this examination, I defend the following three claims concerning the permissibility of attack on these groups. First, if combatants support their leaders’ decisions to go to war, they bear some responsibility for the wars in which they fight. Therefore, if a combatant on the unjust side knows, or has good reason to believe, that he is fighting for the unjust side, then his actions are wrong and he is unjust, although he may be excused for various reasons. Second, unarmed military noncombatants on the unjust side are liable to attack in cases where they will attack in the near future, are directly required for the continuation of the combatants’ attack (with the exception of those who provide for the human needs of soldiers, such as providing medical care), or are partly responsible for the decision to start an unjust war. Third, because a person’s degree of moral responsibility for the initiation or continuation of an unjust war determines whether it is permissible to attack him, it may be permissible to attack some civilian noncombatants. However, absent evidence to the contrary, we should assume that civilian noncombatants are not sufficiently morally responsible for an attack on them to be permissible. Therefore, I argue that attacks on the civilian noncombatant collective (i.e., terrorism) are wrong.

I. Combatants and Noncombatants

According to Michael Walzer, people who are engaged in combat are “combatants” and all others are “noncombatants.”²⁸ Generally, he thinks that soldiers and civilians match the distinction and he commonly discusses it in reference to these groups of people. Nonetheless, he contends that members of the armed forces who store supplies, work in offices, are medics, etc. are noncombatants even though they are soldiers because they do not carry weapons and are not personally fighting. Similarly, a soldier who is asleep, on leave, or retired is not currently engaged in fighting, and so is not a combatant.

Walzer’s definition of “combatant” is appealing, and I think captures the commonsense notion of the word. As the root of the word suggests, a combatant is one who is “combat”-ing. People’s actions or roles are what we want to address in discussing their liability to attack, not their status as a member of the military. Additionally, group membership is not static; hence, judgments about their liability to attack should correspondingly shift. A soldier on leave, for example, is not a combatant even though he was a combatant while he was fighting in war and is still a member of the military.

Nonetheless, Walzer’s definition of “noncombatant” needs clarification. Instead of claiming that noncombatants are simply “not combatants,” we should differentiate between noncombatants who are and are not members of the military. What I will refer to as “unarmed military noncombatants,” should be distinguished from “civilian noncombatants” insofar as the former either (1) have acted or are expected to act in a way that threatens enemy soldiers or (2) are closely tied to the daily operations of war. The first group includes sleeping soldiers. The second group includes military office

²⁸ See *Just and Unjust Wars* pp. 144-6 as well as “Terrorism and Just War,” *Philosophia* 34 (2006) 3-12, 3.

personnel and medics. The actions or potential actions of unarmed military noncombatants may not, in fact, make them more liable to attack than civilian noncombatants, but we should be able to say why with reference to their ostensibly greater participation in the war effort. Put simply, they are not noncombatants in the *same sense* that civilians are and the form of our judgment should respond to this difference. Thus, we need a richer terminology of combatants, unarmed military noncombatants, and civilian noncombatants to make these judgments.

Michael L. Gross recognizes the nonpermanent nature of combatants in asymmetrical conflict.²⁹ Asymmetrical conflict exists, for example, when one side is significantly outmatched with regard to weapons and soldiers. Often in these situations, guerilla tactics are used, which makes it difficult to distinguish not only official soldiers (i.e., sanctioned military members) from civilians, but also fighting nonofficial soldiers from nonfighting nonofficial soldiers (154-5). Gross points to the Gaza War to illustrate this difficulty (255-7). In this war, the Israelis and Palestinians disagreed about the number of civilian casualties, not because they disagreed on the number dead, but because they disagreed on who counted as civilians. In their calculations, the Israelis considered some Palestinian armed police officers and other specialized civilians combatants and the Palestinians did not. Though, officially, these individuals were civilians, they were part-time unofficial soldiers as well. Gross argues that these part-time soldiers, whom he refers to as “civilian combatants,” ought to be treated as any other combatant when they are fighting, but when not fighting, they should be treated as civilians.

²⁹ Michael L. Gross. *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. Cambridge: Cambridge University Press, 2010.

I agree that when the part-time soldiers temporarily stop fighting, they are like other civilians in that they may have regular jobs and families and in these capacities do not contribute to the war effort. They are like sleeping soldiers if they will soon reassume their status as combatants or are like retired soldiers if their contribution to the war is over. Therefore, I consider them unarmed military noncombatants or combatants depending on whether they are currently engaged.

II. The Permissibility of Attacks on Combatants

Once war has begun, combatants from opposing sides pose a threat to each other. Regardless of the cause for which a combatant fights, he expects to be attacked by opposing combatants. For Walzer, this expectation is sufficient to morally permit attacks by any combatant on opposing combatants. He argues that these attacks ought to be limited only by military necessity and proportionality.

Militarily necessary acts are those that are necessary to win the war or reduce the risks of losing (Walzer, *Just and Unjust Wars* 144). If an attack on a group of combatants fails to meet this condition for necessity, those attacked have been wronged. The principle of proportionality requires that excessive harm be avoided (129-30). Consequently, in deciding if an act is right, one must weigh the expected deaths of soldiers and destruction to property against the act's probable contribution to victory. Requiring necessity and proportionality recognizes that all wars have devastating consequences and these consequences should be calibrated and constrained by the victory one seeks to assure.

Walzer argues that once wars have begun and subject to necessity and proportionality, all combatants are permitted to attack in self-defense, regardless of the rightness of their rationale for the war itself. Central to his argument is the idea that soldiers do not choose the wars for which they fight (34-41). He explains, “The atrocities that [the soldier] commits are his own; the war is not. It is conceived, both in international law and in ordinary moral judgment, as the king’s business—a matter of state policy, not of individual volition, except when the individual is king” (39). Walzer thus draws a sharp distinction between *jus in bello* (i.e., the justice of conduct in war) and *jus ad bellum* (i.e., the justice of war). He holds that soldiers are not responsible for the latter; any charge of soldier criminality must be concerned with the former.

Combatants fighting for the unjust side are not responsible for their state’s injustice according to Walzer. He contends that combatants do not have access to all of the reasons for war and will likely fight absent clear evidence against their state’s injustice (39-40). States do not present a full and accurate account of what they consider a justification for the war to soldiers. There is little time between the decision to go to war and the mobilization of troops, so the information provided to soldiers often lacks the detail that would be required for combatants to decide whether their war is right. Also, leaders often lie to their soldiers, military command, and country at large about some, or all, of the facts about their cause for war in order for the war to gain popular support. Because of this, soldiers fight without having strong beliefs about their war’s permissibility, or have strong beliefs based on faulty information.

Walzer argues that even if soldiers have reason to doubt the war’s permissibility, fear, patriotism, military socialization, or beliefs about their duties to civilians may

prevent their doubts from persuading them. Even compelling doubts are unlikely to prompt their resignation, the only readily available expression of disagreement to which they all have access. This, according to Walzer, is why we should hold them responsible only as a group. He contends that war is a “coercively collectivizing enterprise.”³⁰ Soldiers fight because their leaders are resolved that their fight is necessary and no individual soldier is responsible for actions he undertakes in accordance with orders. Personal justifications, according to Walzer, are necessary only when combatants act against their orders. Just war theorists commonly accept this argument. Most agree that “unjust war is a crime; it is, however, the crime of the political leader.”³¹ Political leaders are to be praised or blamed for their war decisions, but no combatant is or should be held similarly accountable.

Walzer’s argument, though taken to be conventional wisdom, is unsuccessful in justifying the attacks of unjust soldiers on two counts. One, the mere fact that combatants are unlikely to be persuaded by their doubts does not make not being persuaded by them right. He is correct that when leaders explain their cause for war, they present it in the most favorable light, and doing so may include lying about the events leading up to the war. However, if combatants have access to good reasons to doubt the information presented to them, they ought to question the war’s morality and seek out the truth. If their reasons for doubt are strong, they ought to object to the aggression. Moreover, when combatants accept clearly immoral reasons for the war, they are accountable for their actions. Before and during World War II, Hitler gave many speeches to inspire German soldiers to begin and continue the eradication of all Jewish

³⁰ Michael Walzer, “Response to McMahan’s Paper,” *Philosophia* 34 (2006) 43-45, 43.

³¹ Yitzek Benbaji, “A Defense of the Traditional War Convention,” *Ethics* 118 (April 2008) 464-495, 481.

people. Yes, we should blame Hitler for ordering the genocide. But we should also blame the Nazi soldiers who accepted the rationale for genocide.

Additionally, Jeff McMahan objects to Walzer's argument by arguing that lack of information as well as severe social pressure and political coercion may excuse unjust combatants' attacks, but it does not justify those combatants in their attacks.³² He argues that the fact that coercion sometimes occurs should not absolve all combatants of all responsibility. If, for example, a soldier is consistently deceived about the reasons for war and it is unreasonable to expect him to learn that the war is, in fact, wrong, then his actions are excused. But soldiers ought to make "reasonable" effort to gain the necessary information. Soldiers have different experiences, so their defenses for wrong action vary by degree directly proportional to the degree of ignorance, misinformation, or coercion that they face.

McMahan refers to severe coercion as an excusing condition, but because I distinguish excuses from lack of responsibility defenses, I take coercion to be an example of the latter since combatants with this defense are incapable of making decisions for which they could be responsible. Walzer provides a similar argument. Although Walzer argues that no combatant is personally responsible for the wars in which they fight regardless of whether they are capable of evaluating the war, he maintains that some combatants do not have the capacity to make decisions about their war's permissibility because of their background. He writes that some soldiers are "so terribly young when the disciplinary system of the state catches them up and sends them into war that they can hardly be said to make a moral decision at all" (*Just and Unjust Wars* 40). He suggests that child soldiers do not have the capacity to evaluate their war because of their age and

³² Jeff McMahan. "The Ethics of Killing in War," 114 (July 2004) 693-733, 699-702.

the “authority structures and socialization processes of the political community” (40). If the degree of coercion faced by particular soldiers amounts to brainwashing, then I agree that they lack responsibility for their actions; they are not moral agents. However, in various degrees, most people are socialized to believe that their state is just. But most of us are able to evaluate particular state actions and notice that some are wrong. Therefore, the socializing pressures must actually eliminate the combatant’s ability to evaluate the war for her to lack moral agency. These soldiers are neither justified nor unjustified in fighting since their beliefs about the permissibility of their actions are unavoidable. Although these cases occasionally exist, generally, soldiers are not brainwashed. If they have enough information about their war and are not subject to extreme coercion, they are capable of deciding whether the war for which they fight is just.

McMahan’s argument implies that in no situation are soldiers justified in fighting where they lack knowledge that the war is right. He defines justification in terms of rightness. Even soldiers who have every good reason to believe that the unjust war for which they fight is just are merely excused for fighting according to McMahan. As discussed in the previous chapter, I support the internalist sense of justification in which justified agents need only to have good reason for acting. When an agent is mistaken about what she thinks are good reasons for acting, the *agent* has done nothing wrong because the wrong action is the result of an inculpable mistake. And she has good reason to think that she has done something right! Thus, she is justified in acting, even though her action is wrong. Therefore, if soldiers have good reason to believe that the war for which they fight is just, they are justified in fighting in it.

Although I do not consider McMahan's examples of excuses for fighting an unjust war excuses, I do think that there are cases in which combatants are not justified in fighting, but are excused. Combatants may be excused for their wrongful attacks because they face a genuine moral dilemma. For example, a combatant's duty to provide for and protect his family may require him to continue his military service. He may have been drafted and his family will face serious repercussion if he deserts. In this scenario, no matter what he does, he does wrong, so he may be excused for choosing to fight.

McMahan holds that combatants fighting an unjust war whose actions are not excusable are not only blameworthy for their initial attack, but also for defending themselves in the course of the war. He argues that it is not permissible to attack combatants fighting for morally permissible causes insofar as they are defending themselves against attacks from combatants fighting for morally impermissible causes. (They would be liable to attack if, for example, they were indiscriminately killing children in the enemy territory.) Thus, even if combatants who wage an unjust war are not blameworthy for fighting in the war, they cannot permissibly defend themselves because they have lost their right to self-defense by initiating the aggression ("The Ethics of Killing in War" 698-9).

I agree with McMahan so long as he is referring to combatants who are not justified in fighting the unjust war. As McMahan argues, they lose their right to self-defense in the same way that a villain would lose this right if he attacked you. If you took defensive actions to counter the villain's threat, it would not be permissible for the villain to then kill you in response to your defensive actions. Your attack does not wrong the villain, so he has no right to defend himself. Similarly, combatants fighting for just

causes are defending themselves against wrongful aggression. The aggressors are responsible for the defensive actions, so they have no right to respond with more aggression.

As McMahan argues, moral responsibility for a wrongful threat, not simply posing a threat, is what makes it permissible for others to attack the initiator (719-22). Therefore, if combatants initiate a just war, the opposing side has no right to retaliate. For example, if a state mobilizes its troops to recover a territory that was taken previously, assuming that the recovery is just, the opposing side has no right to stop the invasion. If combatants from the opposing side do fight, they are unjust in their attacks, and therefore have no right to self-defense.

Responsibility comes in degrees, and the permissibility of attacking enemy combatants corresponds to their degree of responsibility. According to McMahan, combatants' reasons for participating in an unjust war may make it less permissible for the just side to attack or at least less permissible for them to attack given other options (724-5). For example, if combatants on the just side have the option of killing either conscripted soldiers or voluntary soldiers, then, all things being equal, they ought to attack voluntary soldiers. Suppose that our attacking either the Iraqi Republican Guard or conscripts in the regular Iraqi army will fulfill our goal. (Assume that we are fighting a just war. If our war is unjust, we should not attack anyone. We should withdraw.) It is reasonable for us to assume that volunteers are more responsible for the injustice than conscripts, so we ought to prefer attacking volunteers.

Walzer disagrees. He argues that it is as legitimate to kill conscripted soldiers as it is to kill voluntary soldiers. He contends that the line between conscription and

nonconscription is impossible to draw because even voluntary soldiers may not have agreed to fight if they knew the truth about the war or were less patriotic (*Just and Unjust Wars* 28). He also observes that volunteer or conscript status does not communicate the attitudes of individual soldiers, noting that some volunteers may privately oppose the war and some conscripts may endorse it (“Response to McMahan’s Paper” 44).

Nonetheless, without specific information about individual soldiers, it is reasonable to assume that conscripts are less responsible than volunteers. Suppose a soldier fighting for a just cause kills a volunteer. Even if the volunteer happens to be pressured into volunteering and plans to sit idly by during the actual fighting, the soldier who kills him is justified in killing him because this soldier reasonably believes that the volunteer plans to kill him; he makes a mistake of fact. The same is true when conscripts attack. It is reasonable for soldiers to believe that advancing conscripts plan to kill them, so it is permissible for them to fight in self-defense so long as they are fighting for a just cause. However, if they are involved in a surprise attack on a group of conscripts, they should take more risks to allow surrender than if the attack was on a group of volunteers because it is reasonable to assume that conscripts are more likely than volunteers to surrender.

McMahan provides and rejects one argument that may legitimize attacks by soldiers on the unjust side that does not rely on soldiers lacking responsibility for their actions and is not presented by Walzer. He posits that one may claim that military institutions are like police forces in that militaries can only provide security if soldiers follow orders whether they agree with them or not (“The Ethics of Killing in War” 704). Even if some police officers do not agree with a certain criminal law, they should enforce

the law. They should defer to the lawmakers about what should and should not be criminalized. Likewise, one may argue that in order for the military to function effectively, soldiers should defer to their leaders about what wars should and should not be pursued. According to this argument, fighting in an unjust war is right because combatants' duty to support the military overrides their duty to avoid committing injustices.

If successful, this argument would be an example of my moral dilemma excuse. On my account, their participation might be excused, though still wrong. Combatants on the unjust side are not relieved of their duty to avoid committing acts of injustice. Nonetheless, this argument is not successful even to establish an excuse. As McMahan responds, some acts are not permissible even if an institution calls for them (705-6). For example, if the state executioner has personal knowledge that a death row inmate did not commit the murder of which he was convicted, no duty to the legal system can require him to execute the inmate.

The same is true in war. Combatants fighting for an unjust cause that they have no good reason to believe is right are not excused. The duty one has not to take innocent life comes before one's duties to particular institutions. If soldiers allow their own moral judgments to be reversed by their leaders' commands, the soldiers (as well as their leaders) are at moral fault because they are not taking seriously the humanity of their victims.

Following the series of articles McMahan and Walzer have written in response to each other, Yitzhak Benbaji attempts to defend Walzer against McMahan's objections in "A Defense of the Traditional War Convention." Benbaji, like Walzer, holds that

combatants are not personally responsible for the war and combatants fighting for unjust causes still have a right to self-defense.

Benbaji argues that combatants fighting for a just cause are a threat to the opposing combatants, and even though they may be morally innocent, they are subject to defensive killing. To support this claim, he asks us to compare just combatants to soldiers on the unjust side who have slept through the beginning of the war and are therefore unaware that there is a war in progress (471, 481-2). At the time they are attacked, the sleeping soldiers are not responsible for any injustice, but they will participate in the war later. Benbaji claims that McMahan's position implies that it is permissible to kill the sleeping soldiers in preventive self-defense and the sleeping soldiers have no right to defend themselves because they would eventually fight for the unjust cause. Thus, Benbaji believes that to avoid this counterintuitive result, we should not consider any soldier personally accountable for following the orders of their leaders.

The scenario Benbaji presents is unrealistic. It is likely that the sleeping soldiers would be awakened to be told the war had begun. Additionally, if they had been mobilized, they would know that attacks are imminent and that they would soon be fighting. Therefore, the sleeping soldiers are not as far removed from the injustice of their fellow combatants as Benbaji suggests. Nonetheless, if we could construct a plausible scenario in which just combatants attack soldiers who have had no chance to evaluate the war, then the attacked soldiers have the right to self-defense. They have done nothing wrong and are not planning anything for the near future that would be wrong. At the same time, the combatants on the just side are justified in attacking them

since it is reasonable for them to assume that these soldiers are actively fighting for the unjust cause.

Benbaji also attempts to support his, and Walzer's, position through an analogy with an argument given by Judith Jarvis Thomson (476-7). Thomson asks us to consider the following scenario. Suppose that a man is pushed off a ledge and will land on you and certainly kill you. According to Thomson, you have a right to kill the falling man in self-defense because he constitutes a threat to you. You are justified in killing him. Additionally, she believes that it would be wrong for him to violate your right to self-defense since you are justified in acting. Therefore, if the falling man has a gun, he is not justified in killing you to prevent your defensive action since doing so violates your right to self-defense.

Benbaji disagrees with Thomson's assessment. He argues that the falling man has a right to stop the defensive threat that you pose to him. For Benbaji, the falling man is an unjust threat and still has a right to self-defense. Both you and the falling man retain the right to self-defense and have lost the right to not be attacked. Similarly, he thinks that combatants on the unjust side have the same right to self-defense as combatants on the just side. The former lose their right not to be attacked when they initiate the attack and the latter lose this right when they fight back.

The falling man example does not help Benbaji's argument. The falling man is not responsible for the harm his fall causes: he was pushed! As a result, it is permissible for him to act defensively. You, the victim of the push, also retain your right to self-defense since you have committed no injustice. But combatants who culpably fight for the unjust side are responsible for their wrong actions. They cannot be compared to the

falling man; they are like the person who pushed the falling man in that they are blameworthy for the harm. Nonetheless, soldiers fighting for the unjust side who are justified in fighting do not give up their right to self-defense. Therefore, like the falling man, it is permissible for them to attack soldiers who they have good reason to believe are fighting impermissibly.

Benbaji does concede that if a combatant on the unjust side knows that the cause for which he fights is wrong and that it is “morally preferable” for him to surrender or flee, but he does not, he is culpable for his wrongful attacks (483-6). He argues that usually, surrendering or fleeing will cause greater risk to fellow combatants or citizens, and so a combatant is not blameworthy if he chooses, for these reasons, to participate in the attack. In such a case, it would be morally preferable for the soldier to uphold his special duties to the combatants than not to fight for an unjust cause. However, in the rare cases in which it is morally preferable to surrender or flee, Benbaji admits that we ought to blame combatants for their wrong actions.

This concession poses a serious problem for Benbaji’s account. It assumes that, contrary to his arguments in response to McMahan, combatants are responsible for evaluating their actions in war. Here, he argues that they are responsible for their actions, and in most scenarios, their actions are right and praiseworthy. It is not because they, as combatants, are incapable of being blameworthy that they commit no wrong in this scenario, but because they ought to have participated in the attack. Therefore, for Benbaji, when combatants have a morally preferable alternative to fighting, their actions are wrong and they are blameworthy for committing them.

Additionally, Benbaji assumes what is in question; namely, what is “morally preferable.” He gives no argument to support his claim that it is morally preferable for a combatant on the unjust side to uphold the contractual duty to protect his side’s civilians and combatants instead of for him to uphold his duty not to attack those who are not responsible for an injustice. And there is reason to think that his claim is wrong. One does not have a duty to either protect those who are acting wrongly or thwart efforts to end wrong action. Therefore, soldiers on the unjust side do not have a duty to fight to protect their fellow blameworthy combatants from defensive threats.

Nonetheless, if these combatants’ surrender or flight would put civilian noncombatants in harm’s way, they have reason to continue fighting for they have a duty to protect civilian noncombatants from harm insofar as these civilians are not participating in the war. But combatants have this duty to both their own community and the enemy’s civilian noncombatants and their continued fighting poses risk to enemy civilian noncombatants. Hence, we should not be so quick to accept that their surrender or flight would risk more harm to civilian noncombatants than their continued fighting. Even if Benbaji is correct that combatants on the unjust side ought to favor protecting their side’s civilian noncombatants, and therefore, that it is morally preferable for them to fulfill this special duty by continuing to fight, their duty to attack only with a just cause is not eliminated. Thus, they still commit injustice, but their actions may be excusable because their aim is to navigate genuinely conflicting duties. Our moral evaluation of them is thereby different from our evaluation of the combatant with full knowledge of the reasons for war who nevertheless believes that his unjust cause is just. Only the former is unjust and excused; the latter is unjust and not excused.

In focusing on combatants' personal responsibility for their actions in war, McMahan moves away from the traditional view of the principle of discrimination. This move is needed to understand why we ought to blame some combatants more than others for the harms that they cause. Without addressing personal responsibility, we cannot say that the Allied soldier was morally better than the Nazi soldier since both were following orders. But he was better because the Nazi soldier was following unjust orders. Combatants are responsible for evaluating the wars in which they fight and if, having the facts and being capable of evaluating them, they wrongly believe the war to be just, they are blameworthy for not knowing better and, thus, for the injustice that they commit.

III. The Permissibility of Attacks on Unarmed Military Noncombatants

Unarmed military noncombatants, like combatants, are necessary for the war to continue. For this reason, Walzer claims that it is permissible to attack some unarmed military noncombatants. He writes, "The relevant distinction is not between those who work for the war effort and those who do not, but between those who make what soldiers need to fight and those who make what they need to live, like all the rest of us" (*Just and Unjust Wars* 146). For example, Walzer holds that munitions workers are liable to attack when they are working in a munitions factory because their actions are threatening. They make the weapons that soldiers need to fight. However, he also holds that people who are currently supplying food rations, and medics who are on the battlefield helping a wounded soldier return to fight, are not liable to attack.³³ He argues that although these unarmed military noncombatants are aiding soldiers, and so are engaged in threatening

³³ *Ibid* 146; Michael Walzer, "Response to Jeff McMahan" *Philosophia* 34 (2006) 19-21, 20.

activity, they are immune because their assistance is to the human needs of the soldiers, not their wartime needs.

Walzer's explanation is helpful in determining which unarmed military noncombatants are liable to attack. Even in peacetime, medics would still heal the sick and wounded, and food delivery workers would still deliver food to their customers. Their work is different from that of the munitions worker. Munitions workers' jobs were created to help the war continue, not to see to the human needs of the soldiers involved in the war. Killing a munitions worker is a preemptive defense against attacks, so it is permissible to attack her if she is working for the unjust side. But contra Walzer, I believe that a munitions worker for the just side has not aided in any injustice, so ought not to be attacked.

Sleeping soldiers are not an immediate threat to those who attack them, but will be responsible for future attacks. Though there is the possibility, as discussed before, that some sleeping soldiers are unaware that the war has begun, the enemy will not be privy to this fact. Therefore, it is permissible for combatants on the just side to attack sleeping soldiers on the unjust side since this attack would be akin to self-defense. It is also permissible for combatants who justifiably fight for the unjust side to attack sleeping soldiers on the just side once the war is in progress since these combatants retain their right to self-defense.

Political leaders, those who make decisions about initiating a war and who shape the general strategy for a war, are a special kind of unarmed military noncombatants. Though political leaders are civilians, they take on a military position in their role as war initiators and strategizers. Political leaders on the unjust side are more responsible than

any combatant for the injustice. They are the reason that the combatants are involved at all. They constitute a threat in terms of their decisions and their insistence that the war continue. Therefore, it is permissible to attack them if doing so is necessary for victory and the attack is proportionate. However, the probable consequences of attacks on political leaders must be carefully weighed. In revolutions with popular support, it is likely that attacking the current leaders will be effective in changing the political leadership. However, absent these conditions, it is more likely that a new, but similarly-minded leader will be prepared to take over and will retain his predecessor's policies. Furthermore, there may be reason to avoid killing leaders, and, instead, capturing and punishing them for their wrongdoings. For example, Truth and Reconciliation Commissions may be valuable as a way for the victimized communities to move forward after their former leaders acknowledge their involvement in the atrocities. Absent considerations like this one, attacks on political leaders are permissible.

IV. The Permissibility of Attacks on Civilian Noncombatants

Whereas all just war theorists agree that at least some attacks on combatants are permissible, most believe that no attacks on civilian noncombatants are permissible. The most widely discussed type of attack on civilian noncombatants is terrorism. Walzer provides two reasons to consider terrorism wrong. First, civilian noncombatants are immune from attack because they are not engaged in war. Whereas combatants are immediately threatening and consequently are liable to attack, civilians have not agreed to fight, so have not given up their right to life. Walzer argues that civilians ought not to be held collectively responsible for an injustice ("Terrorism and Just War" 4-5).

When terrorists attempt to justify their terrorism, they often point to this collective responsibility of civilians, responsibility derived from supporting a particular way of life or financially supporting an allegedly unjust war. Terrorists tend to believe that all civilians are equally liable to attack; membership in the objectionable group suffices to justify attack. “The message [terrorists] deliver is directed at the group: *We don’t want you here*” (5). However, Walzer argues that unlike military forces, civilians are not an organized force. Civilian society is not tightly connected, civilians have varying purposes and political views, and they include the very young and the old. In contrast, the military is organized, trained, purposeful, and goal-oriented. In war, the military is a united threat. Civilian society is not such a threat. Civilians are a collective in virtue of ethnicity, nationality, citizenship, etc., not by the goals that they pursue. Walzer contends that because terrorism attempts to destroy the civilian collective, it wrongly targets who people are instead of what they do.

McMahan rightly argues against Walzer that if it is true by definition that no civilian noncombatant is involved in the war, then “there would be fewer civilians than we think.”³⁴ Many civilians employed by private institutions perform work comparable to that of military workers in military institutions. Employees of private weapons manufacturers and private weapons research facilities are not military personnel, but they are engaged in the war just as much as unarmed military noncombatants. Consequently, such workers are civilians who bear some responsibility for the war’s continuation.

Benbaji objects to McMahan that basing liability to attack on one’s personal moral responsibility for injustice makes it impossible to defend noncombatant immunity

³⁴ Jeff McMahan, “Liability and Collective Identity: A Response to Walzer,” *Philosophia* 34 (2006) 13-17, 15.

(493-5). Many civilians are morally responsible for war. Taxpayers make it financially possible, activists stir up the public support that may be required for its continuance, philosophers defend misguided justifications for it, and so forth. As a result, Benbaji argues, if we do not support a war convention that immunizes all noncombatants and permits attacks on all combatants, we end up allowing attacks on many noncombatants.

Even if Benbaji is correct that many, if not all, civilians in a state that pursues an unjust war are morally responsible for the injustice, this need not require us to immunize all civilians to protect those who do not deserve to be attacked. Instead, we should hold, as McMahan does, that the *degree* of civilians' moral responsibility for the injustice is what ought to matter in determining whether it is permissible to attack them. Granting immunity to all civilian noncombatants ignores the fact that some civilian noncombatants may be more responsible for the injustice than any combatant. For example, McMahan argues that in 1954, shareholders from the United Fruit Company were more responsible for the Guatemalan coup than any combatant because they persuaded Eisenhower to overthrow the Guatemalan government ("The Ethics of Killing in War" 725-6). The Guatemalan government planned to seize and redistribute some of the United Fruit Company's land in Guatemala and pay less for the land than its value to the company. Several shareholders in the United Fruit Company were influential people in the United States, such as the Secretary of State, the CIA director and his brothers, and Eisenhower's personal secretary. These influential individuals persuaded the United States to aid the revolutionaries, who eventually overthrew the Guatemalan government. Most likely Guatemalan attacks on the shareholders would not have been militarily necessary to stop the coup or even prudent. However, assuming for the sake of argument that the

revolutionaries' cause was unjust, and, thus, aid to them was wrong, McMahan argues that if attacking the shareholders would have stopped the coup, then doing so would have been permissible.

McMahan insists that one must be morally responsible, not simply causally responsible, for the unjust threat to be liable to be attacked. He contends that if a person's threatening status is unintentional, he is a "nonresponsible threat" (719-21). For example, he argues that if a villain implanted a device in a person's brain that caused her to have an uncontrollable urge to attack you, it would be wrong for you to kill her to prevent your death since she is not morally responsible for the threat. He concludes that you ought to allow your own death if the only alternative would be kill the nonresponsible threat.

McMahan correctly characterizes an attack on a nonresponsible threat as wrong. However, I do not believe that you should permit this person to kill you. In this situation, you face a genuine moral dilemma in which your duty to protect yourself from harm conflicts with your duty to not harm people who are not morally responsible for an unjust threat. The wrong is unavoidable, but defending yourself against this threat is excusable. Nonetheless, McMahan correctly argues that it is not right to attack a nonresponsible threat; it is only right to attack someone who is "morally responsible for initiating or sustaining the threat (or perhaps, in some cases, for failing to eliminate the threat)" (721).

Most civilians are only marginally morally responsible for their state's injustice (e.g., those who voted for the current government). And some are not morally responsible for it at all (e.g., taxpayers are compelled to aid financially so are only causally responsible for the unjust threat if they would not contribute if they were not

compelled). To determine liability to attack, McMahan asks us to consider three factors: (1) the severity of the threat from the potential target, (2) the harm that an attack would cause, and (3) the potential target's degree of moral responsibility (727). He argues that one should react to a small threat by imposing a small harm on someone who is largely responsible for the threat. Where responsibility is minimal, little, and perhaps no, harm is permissible. Therefore, even though voters bear some responsibility for their government's wrongful threat, their degree of responsibility is too low for an attack on them to be proportionate to the harm that such an attack would cause. Moreover, McMahan argues that absent compelling evidence, no civilian noncombatants are presumed responsible enough to be attacked. Because such evidence is rare, generally, civilians are immune from attack.

I agree with McMahan that degrees of moral responsibility ought to be weighed against the harm of attack and the harm of the threat in determining an attack's permissibility. From this view, however, I do not think that it follows that any of the United Fruit Company shareholders were liable to attack for their contribution to the United States' aid to the Guatemalan rebels. Eisenhower made the decision to aid the rebels, and though some of the shareholders expressed their support for his decision, they did not force his hand. Consequently, although they were marginally morally responsible for the United States' injustice, like some voters, activists, and philosophers, they were not responsible *enough* to be liable to attack. Nonetheless, if these shareholders would have done more than express their views (e.g., if they would have blackmailed Eisenhower), then, if necessary and proportionate, attacks on them would have been permissible.

If civilians are attacked because of their marginal responsibility for an injustice, the attackers have done something wrong even though their attacks are not terrorism. Though terrorists may claim that they are attacking civilians because of their responsibility, their direct targets may include people who are not even marginally responsible for the injustice (e.g., children). Thus, terrorism is wrong because the harm of the attack is greater than the civilian's known degree of responsibility.

McMahan also claims that Walzer's argument for civilian immunity is inconsistent with his argument for the liability of military members. He argues that for Walzer, group membership makes one liable to attack in the case of combatants and makes one immune from attack in the case of civilians. By rejecting terrorism because it focuses on group membership, Walzer should also reject the targeting of combatants on the basis of their group membership, according to McMahan ("Liability and Collective Identity" 13-14). Therefore, McMahan argues, since terrorism is rejected on the grounds that it targets groups, "this tends in principle to collapse the distinction between just war and terrorism."

Walzer denies that his argument is inconsistent. He argues that it is not group membership *simpliciter* but the nature of the group that determines whether its members are liable to attack ("Response to Jeff McMahan" 19-20). Unlike the military, civilians as a group are not threatening. Because the military, as a group, is threatening, membership in the military does, in most cases, make one liable to attack.

If Walzer did base combatant liability on combatants' membership in the military, I would argue that he is wrong, though not inconsistent. However, as he addresses individual cases and explains his arguments further, it is not clear that this is even his

claim. Walzer holds that it is people's roles and actions that matter. For Walzer, it is impermissible to attack some military members and it is permissible to attack some civilians. Although he denies that any real world cases exist, he acknowledges that there may be hypothetical cases in which civilian responsibility for a threat makes them liable to attack ("Response to Jeff McMahan" 20, "Response to McMahan's Paper" 45). It seems, therefore, that even though we may disagree about specific cases, we agree that it is not group membership that is at issue. Personal responsibility for the initiation or continuation of an unjust threat is necessary to make someone a permissible target.

Acknowledging that civilians have varying degrees of responsibility allows us to understand why some collateral damage is preferable to other collateral damage. Traditionally, the Doctrine of Double Effect (henceforth, DDE) has been used to determine when it is permissible to foreseeably kill or injure noncombatants as a side-effect of another military action. Civilian casualties are permissible according to the DDE if

- (1) The act is good in itself or at least indifferent, which means, for our purposes, that it is a legitimate act of war.
- (2) The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers.
- (3) The intention of the actor is good, that is, he aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends.
- (4) The good effect is sufficiently good to compensate for allowing the evil effect; it must be justifiable under Sidgwick's proportionality rule. (*Just and Unjust Wars* 153).

Suppose that a school is near a weapons facility that provides a large percentage of weapons to the enemy's war effort. The air force bombs the weapons facility to increase the likelihood greatly of winning the war (thereby satisfying the principle of military necessity as well as (1) and (2)). As a result, the bomb destroys part of the school and

several children are killed. Their deaths are not intended and are not a means to destroying the weapons facility, hence the action satisfies (3). Also, the destruction of the facility is expected to end the war (so the act satisfies (4)). Therefore, the civilian deaths are permissible according to the DDE.

Walzer argues that the DDE should be revised. He thinks that civilian deaths are permissible only when the foreseeable evil is reduced as much as possible (155-9). So, in my example, the bombing of the weapons facility should take place at night when no one is in the school. Walzer thinks that (3) should be restated as (3*): The actor aims only at the acceptable effect, the evil effect is not necessary to achieve the direct effect and the actor does what he can to minimize the foreseeable evil, even at costs to himself.

According to this Doctrine of Double Intention (henceforth, DDI), soldiers should accept more risks to themselves to protect noncombatant lives.

A case that satisfies the DDE, but not the DDI, is the Free French bombings in World War II. The French had three options: (a) attack the factories with commandos carrying explosives, avoiding the casualties in the factory and nearby; (b) drop bombs on German factories that contributed to the war effort with the likely result of killing Frenchmen coerced to work in those factories and those who lived nearby; or (c) conduct precision aerial bombing that would reduce the risk of killing noncombatants near the factories but increase the risk to the combatants flying the planes. Option (a) would have little chance of success, so the Free French air force rightly did not consider it an option. The French chose (b) and it passes the DDE. Walzer suggests that they should have chosen (c) even though the risk to the pilots would be increased since he believes that combatants should take on additional risks to avoid noncombatant deaths.

The DDI is preferable to the DDE because it better recognizes the fact that civilian noncombatants are less responsible than both combatants and unarmed military noncombatants, and thereby are more wronged when they are the victims of collateral damage. Combatants ought to take more risks to avoid civilian deaths. Although these risks need not come at the cost of a necessary mission, combatants must seek and attempt alternatives that reduce risks to civilians. Nonetheless, neither the DDE nor the DDI aids us in deciding between targets that all result in civilian deaths. If combatants are able to choose between targets that result in the same number of civilian deaths, then either mission is permissible.

The responsibility criterion allows us to calculate the degree of responsibility of different civilians; therefore, it should be included in applications of the DDI. Whereas civilian noncombatants on the unjust side may be minimally responsible for their state's injustice, civilian noncombatants on the just side are not responsible for any injustice. Thus, not only are the latter not liable to attack, but additional measures should also be taken to lessen the collateral damage imposed on them. Nonetheless, civilian noncombatants from the just side do gain something from victory—they would no longer be subject to the injustice that initiated the war. Therefore, they ought to be more liable than civilian noncombatants from a neutral state to collateral damage by their own military since the latter likely gains nothing from a bombing that harms some of their members. Suppose that the just side can choose between attacking three possible munitions factories operated by the unjust state, the destruction of which would all benefit their cause equally. Each munitions factory is in a similarly populated area. The first is in the center of the unjust state, the second is on the border between the just and

unjust state, and the third is on the border between the unjust state and a neutral state. Given these options, the just state should decide to bomb the center of the unjust state. If that is not an option, then they should choose the border between the just and unjust state. Perhaps it may be permissible to target the border of the neutral state if no other options are available since its civilians may gain some benefit from an end to the fighting in their neighboring state, but this should be a last resort.

I think that focusing on the civilian collective's minimal responsibility for an injustice is sufficient to deduce that terrorism is wrong. Nonetheless, as Walzer argues, terrorism is wrong also because of the terror that it spreads to civilians ("Terrorism: A Critique of Excuses" 51-2). When subjected to the fear that they will be the next victims of the random violence, civilian noncombatants become subject to the "endless coerciveness of precaution." The terror that randomly attacking civilian noncombatants causes is unique to terrorism. In conventional wars, civilian noncombatants are likely to fear that they may be accidentally harmed, but this fear is unlike that spread by terrorism. Perhaps the only comparable fear is that spread by a violently tyrannical state, in which citizens are never sure that they will not be the next person to disappear or be publicly tortured. Although we do not think of such a state's acts as a standard case of terrorism, the term was coined to describe just these acts in the Reign of Terror during the French Revolution. Terrorists sow fear with every act of terrorism and the fear that terrorism spreads need not be limited to civilians in states involved in war. Terrorists cause other members of their targeted group to be fearful, but they also cause the members of their own group to fear a retaliatory attack. Other groups that sympathize with the victim community also suffer increased fear because they fear being attacked. As a result, many

tend to avoid public places, be suspicious of the people and objects around them, and desire more security in all areas of their lives.

The endless precautions that terrorism leads us to take must be included in evaluations of terrorism's morality. This need for extra precautions is an additional harm that terrorism causes. Therefore, for terrorism to be permissible, the attacked civilian collective's degree of responsibility, the severity of the threat to which the civilian collective contributes, or both must be sufficiently great to outweigh the harm of the attack. And these conditions are never met.

The principle of discrimination not only requires carefully parsed determinations of who are and are not combatants, but also of when it is permissible to attack these people. The claim that all and only combatants are liable to attack is too strong. In some situations, it is not permissible to attack some combatants (e.g., when the attacked combatant is fighting for a just cause). And in some situations, it is permissible to attack particular noncombatants (e.g., when they are directly and largely morally responsible for the aggression). However, in the context of terrorism the principle of discrimination need not be weakened. All civilian noncombatants are immune from terrorism; all terrorism is wrong.

Chapter 5

Excuses for Terrorism

“Here is the moral politician: it is by his dirty hands that we know him. If he were a moral man and nothing else, his hands would not be dirty; if he were a politician and nothing else, he would pretend that they were clean.”³⁵

Though terrorism is wrong and terrorists are unjust, I believe that some acts of terrorism are excusable. In excusing terrorism, one acknowledges that terrorists have done something wrong, but does not blame them for this wrong. In Chapter 3, I presented three possible excuses. One, if an agent makes a mistake of moral principles, her action is excusable insofar as she has moral motives. Two, if wrong action is the result of lack of emotional control and it is psychologically understandable for her to perform that action given her circumstances, the action is excusable. Three, if an agent faces a genuine moral dilemma, her wrong action is excusable if it is morally preferable to the other available actions or at least the other actions are not morally preferable to it. In the first two sorts of circumstances, the agent’s blameworthiness may be only partially mitigated, while the third excuse fully mitigates this blameworthiness.

These excuses are relevant to a moral evaluation of terrorism because terrorists may be in these circumstances. Terrorists may misguidedly think that their terrorism is right. They may be angry or devastated about actions done to them and act hot-headedly. They may face situations in which any option they choose would be wrong and opt for

³⁵ Michael Walzer. “Political Action: The Problem of Dirty Hands,” *War and Moral Responsibility*, Edited by Marshall Cohen, Thomas Nagel, and Thomas Scanlon, Princeton: Princeton University Press, 1974, 63-83, 70.

terrorism because they think it is morally preferable to the alternatives. In these situations, we should consider whether their reasons or circumstances count as moral excuses; if they are blameworthy for their wrong actions. In the following, I address many reasons for terrorism that some people might think count as excuses and argue that only one set of circumstances excuses terrorism.

I. Some Potential Excuses for Terrorism

Much has been written about terrorism used to combat a most severe threat and the following sections will address this possible excuse. In this section, I consider excuses that may be used to mitigate the wrongness of typical situations faced by terrorists, if one can say that any war threat is typical. Standard cases of terrorism are (i) a state uses terrorism because it believes that the terrorism will force surrender (e.g., some Israeli attacks), (ii) a weak national liberation movement uses terrorism because they believe that it will encourage the state to allow secession or will result in a change in government (e.g., some Palestinian attacks and some Irish Republican Army attacks), and (iii) a group uninvolved in a recognized war uses terrorism against another group or state to encourage change in that group or state or cause members of that state to be fearful (e.g., 2001 Al Qaeda attacks on the United States, 2005 London bombings).

A. The ends of terrorism do not normally excuse their means.

Most terrorists believe that their terrorism is right. They may admit that attacks on civilian noncombatants is generally wrong, but think that they are permitted to respond to a previous wrong in kind. Osama bin Laden, for example, defended Al Qaeda

terrorism by saying “Just like you kill us, we will kill you.”³⁶ His claim is that the terrorism is legitimate when it is reprisal for past acts. Dismissed as a lawful policy by the Geneva Convention, reprisals against civilian noncombatants are still acceptable according to many states (e.g., United States, Britain, France, Germany, Italy) since their legal possibility is regarded as an effective deterrent to attacks on civilians (Gloss 192). As I have discussed at length in the previous chapter, civilian noncombatants as a collective are never responsible enough for their state or group’s injustice to make them liable to attack. Thus, reprisals are never morally permissible. Nonetheless, the issue here is whether the belief that they are permissible can mitigate terrorists’ blameworthiness.

In Chapter 3, I argued that an agent’s wrong action is excusable to the extent that his moral reasoning is correct. We ought to blame the serial killer whose victims are people who got away with murder (e.g., the protagonist, Dexter, on the television drama *Dexter*) less than the serial killer who targets innocent children. Though Dexter is unjust, he is less blameworthy than the other killer insofar as he reasons correctly that these people deserve death. His moral reasoning has gone awry in thinking that he is the proper person to administer the punishment. Nonetheless, we ought not to blame him for the part of his moral reasoning that is correct, and thus, he is less blameworthy for the wrong he commits.

Are there any terrorists like Dexter? Terrorists’ alleged justifications for the rightness of their terrorism must deny that the essential feature of terrorism—random attacks on civilian noncombatants—is wrong in, at least, some situations. But contrary to the terrorists’ claims, civilian noncombatants do not deserve the harm from another

³⁶ Osama bin Laden. From an audiotape aired on *Al-Jazeera* (12 November 2002)

source like Dexter's victims do. Hence, nothing in a terrorist's moral reasoning about the morality of his terrorism even partially excuses it. Although some terrorists may reason correctly that their cause is right, this reasoning is not relevant to an evaluation of their action. In the Dexter case, the action is right, but the agent is wrong. In terrorism, the action itself is wrong. If a terrorist responds to aggression by using terrorism, and he thinks that the collective of civilian noncombatants is responsible (enough) for that aggression, he is incorrect. As a result, nothing in his moral reasoning that leads him to terrorism excuses it.

B. Terrorism is not excusable even when it results from a loss of emotional control.

Suppose terrorism is used after an attack in which the terrorist's family is killed as collateral damage. This is a common case as terrorists often recruit others by playing on their grief and desire for vengeance. Hamas, for example, regularly recruits people whose families have been harmed by Israeli attacks. Over time, the recruited terrorist may recognize that his action was wrong and that the death of his family did not make his response right. He may defend his actions as being the result of his mistaken desire for vengeance. We may, as a result of his defense, feel less anger toward him than toward a terrorist that remains convinced that he acted properly. We may be surprised and, though not satisfied, somewhat pleased that he apologized.

Nevertheless, the appropriate reaction to the apologetic terrorist ought not to be to stop blaming him or to blame him less. He is still blameworthy because his choice of terrorism is not understandable even in light of these psychologically understandable emotions. Civilian noncombatants are not the source of provocation and thereby, attacks

on them are not excusable. We should partially excuse someone who kills her child's attacker since it is understandable for her, in her anger and grief, to strike back at the person who caused the harm. Nonetheless, we should not excuse her for killing the attacker's child because it is not understandable for her to think that the child deserves harm. Correspondingly, terrorism is not excusable because it is not understandable for a terrorist to believe, regardless of his emotional state, that the collective of civilian noncombatants deserve harm.

C. Terrorism is not normally excusable when it is used as a last resort.

Walzer addresses several excuses for terrorism in "Terrorism: A Critique of Excuses." First, he discusses the view that terrorism is excusable if agents use it as a last resort (53). The motivation for this excuse is when nothing else has worked or is expected to work to achieve the objective, the end excuses the unjust means. Unlike the first excuse that I addressed, this excuse requires that no other options are available. Proponents of this excuse argue that we should either ignore the wrongness of terrorism due to a terrorist's just cause and limited capabilities or, at least, not blame this terrorist for the wrong that he commits.

Walzer provides two responses to this excuse. First, he claims that terrorists are more likely to use terrorism as a first option than a last resort, but even when terrorists try other alternatives before resorting to terrorism, the excuse that nothing else is available is simply a description of the situation. He contends that we must distinguish *jus ad bellum* requirements from *jus in bello* requirements and in doing so, recognize that even if

terrorists have just cause, terrorism is wrong. Not using terrorism as a first resort does not mitigate the wrongness of terrorism when used as a last resort.

I do not think that Walzer's first response is helpful because the last resort excuse admits that terrorism is wrong. If one argues that a particular act of terrorism is right, one attempts to justify, not excuse that terrorism. Conversely, proponents of this excuse insist merely that its wrongness is mitigated by the fact that other options were tried first or nothing else was expected to work.

Second, Walzer argues that even if all else has failed, a group should not use terrorism to advance their cause. If a group thinks that nothing else will end the threat, the group is out of options. Besides, simply because some action did not work the first time does not mean it will not work the second, or the tenth, time. In politics, repetitive acts are often the most effective. There is no way to know that further repetition of past actions will not result in the desired goal.

I agree with Walzer that politics is an art of repetition. In cases (ii) and (iii) especially, the group may receive some type of aid from the international community if they continue to plead their case and the wrongful threat actually exists. Of course, the aid that they receive may not be enough or of the right kind. Moreover, the lack of aid to Darfur is evidence that the members of the international community sometimes merely speak out against an injustice instead of stopping it. But more commonly, if a group has reached the "last resort," other states recognize that they are at this point and offer help to stop a recognizable aggressive force. When they do not help, it is often because the group asking for aid is in the wrong or the group does not face a wrong that merits the efforts desired. For example, Britain and the United States have been targets of Islamic

fundamentalist terrorism because these fundamentalists believe that these countries are disrupting their way of life. Even if some of the United States and Britain's policies are disruptive of the fundamentalists' values, they are not a legitimate cause for war. In these cases, it is right for the international community to not aid the fundamentalist groups because the groups do not have concerns that warrant aid. Terrorists may be correct, therefore, that their terrorism is a last resort. But it may be a last resort because they do not have just cause.

Nonetheless, terrorists may have just cause, the international community may have turned a blind eye, and there may be no reasonable expectation that repeating past unsuccessful conventional countermeasures will end the threat. Even in this situation, terrorism (in the typical cases) is not excusable. As I argued when addressing the first excuse, terrorists have completely and culpably failed to follow moral principles, so, in these typical cases, they have no grounds which mitigate their blameworthiness.

D. Terrorism is not normally excusable even when it is the only means available for a national liberation movement.

Walzer also considers whether terrorism is excusable for particular actors. He writes that some may argue that it is the only strategy available for struggling national liberation movements (54-5). The members of a state have a right to self-determination (i.e., the right of a people to form their own government by their own efforts), so if an oppressive ruling party prevents self-determination, the members of that state may rightfully overthrow the oppressive government. However, if the movement is too weak to defeat an established state, some argue that their use of terrorism is excusable. For

example, a national liberation movement may not have the means to fight because the state denies its citizens access to weapons or keeps its citizens in such poverty that they cannot acquire weapons. In these scenarios, terrorism against supporters of the current system may not be the last resort; it may be the only option available.

Walzer first responds by arguing that this excuse often confuses the movement's weakness with respect to the opposing state and the movement's weakness with respect to the people within the state. Widespread popular support tends to be necessary for just means to be effective and is sufficient for them to be available. If the movement is able to mobilize the nation, then just means are possible (e.g., general strikes, mass nonviolent demonstrations). Walzer thinks that if a movement does not have widespread popular support, then it does not have just cause. Therefore, no action is permissible because there can be no claim of self-determination without this support.

It is possible, however, that a movement has popular support but the majority of the citizens are too afraid of their oppressive leaders to show this publicly. Suppose that the leaders kill anyone who they believe disagrees with them. Though the terrorists are unable to find out if the members of the oppressed community would actually form a national liberation movement, it is reasonable to assume that no one would desire to be under the conditions that these people face. The terrorists may acknowledge that their actions are wrong, but claim that their ends excuse their means given their limited options.

Walzer criticizes this excuse by appealing to his other responses since this excuse assumes that nothing else is possible to stop the oppression. He argues that if a group is so moved to commit terrorism on behalf of those oppressed, they can also make appeals

to the international community on the oppressed people's behalf or work to create an underground movement within the oppressed state that may eventually be large enough to become public and force a regime change. Additionally, he contends that if terrorism can defeat a totalitarian state, other options can as well (e.g., nonviolent resistance and guerilla warfare) (55).

Moreover, a totalitarian state would not be threatened by terrorism against its citizens because this is already its own strategy to prevent those who desire to join a resistance movement from joining. As a result, Walzer argues, the state is "immune to terrorism" because "in totalitarian states state terror dominates every other sort" (55). And terrorism would not be effective because the state would likely respond with more terrorism.

But Walzer's claim that terrorism is less effective with totalitarian regimes than with non-totalitarian regimes is not convincing. He argues that totalitarian leaders are less concerned about what happens to their citizens than non-totalitarian leaders because only the latter need popular support to stay in power. However, terrorism against the few supporters of the oppressive leadership may encourage oppressed citizens to make their opposition known. It may be the only way for the oppressed to know that a resistance movement exists. As a result, in these dire circumstances, terrorism may be necessary for permissible means of resistance to be possible.

Walzer's responses address only one form of national liberation movements; namely, those that aim to force a regime change. However, other national liberation movements desire secession, so need not have widespread popularity. For example, the people of East Timor comprised 1% of the Indonesian population. If Indonesia had not

eventually allowed their secession after the violence following the 1999 vote for independence, East Timor would, in effect, have been a national liberation movement with just cause for war that was too weak to secede.

Generally, popular support is sufficient for non-terroristic means to be available to national liberation movements. Although other options may not be as effective as terrorism, with perseverance, they are likely to weaken the resolve of an oppressive state and encourage the international community to call for an end to the state's aggression. The hypothetical East Timor case is not typical and I will discuss it in connection with other nonstandard cases in the following section.

E. Terrorism is not the "universal resort."

Another excuse that Walzer addresses is the claim that terrorism is no worse than any other political action because power is established in fear, and all leaders use fear to pursue their goals (56-7). "The appearance of innocence and decency [in politics] is always a piece of deception, more or less convincing in accordance with the relative power of the deceivers" (56). Accordingly, since terrorism is the politics of both state officials and revolutionaries, proponents of this excuse argue that we should not blame terrorists for using the same means as legitimate states.

Walzer fittingly argues that legitimate leaders do not need to terrorize their citizens in the same way popular movements do not need to terrorize their opponents to be effective. If a leader or movement has enough support, it does not need to instill fear into the population, and if a state or movement does not have enough support, it should

not continue. Thus, we should not excuse terrorism on the grounds that it is not unusual because normal activity in legitimate states is not terroristic.

Walzer recognizes that the excuse could be reformulated to address terroristic states specifically (58-9). One could argue that if someone uses terrorism to respond to a terroristic ruler, he is not at fault because “the oppressors set the terms of the struggle” (59). The terroristic ruler, not the revolutionary terrorist, is responsible for all of the acts of terrorism because the his terrorism originated first.

Walzer responds to this argument by contending that if a national liberation movement defeats terroristic oppression by using terrorism, it does not change the terms of the oppression. Both tyrants and revolutionaries who use terrorism disregard the immunity of the group that they condemn, so if these revolutionaries replace these tyrants, only the targeted group changes. Terrorism only reinforces the oppressive acts and undermines the confidence of the oppressed that there is a way to end the oppression; hence, oppression does not mitigate the wrongness of terrorism.

Generally, I think that Walzer is correct to dismiss all of these excuses. Normally, non-terroristic means are available and are more likely to succeed in ending an unjust threat than terrorism. However, I do not think that he should summarily reject terrorism used to combat an oppressive state. He admits that there is one instance in which, although we ought not to praise the use of terrorism, we ought not to blame those who resort to it, and I think that it is possible for revolutionary groups to be in this situation. The relevant situation is when a threat is so severe that the system by which we make moral judgments is at risk. We are in a supreme emergency and it is obvious that nothing short of terrorism will end this condition. It is this situation that I now examine.

II. The Supreme Emergency Excuse

In “Emergency Ethics,” Walzer claims that in a “supreme emergency,” the *jus in bello* rules are binding but may be overridden.³⁷ Following Winston Churchill, Walzer defines a supreme emergency as when a moral political community’s “deepest values and collective survival are in imminent danger” (33-5). For example, a moral political community that soon faces large-scale massacre or enslavement is in a supreme emergency. The difficulty faced by many political communities that are in supreme emergencies is that no traditional methods of war will successfully end the threat and if the threat does not end, the community will be destroyed. Thus, for Walzer, the last resort excuse is acceptable in supreme emergencies.

Something like the Nazi threat that Britain faced from 1940 to 1941 is used in the literature as a paradigm case of supreme emergencies. Hitler was already ordering the indiscriminate bombing of British cities to weaken the resolve of its citizens, which he hoped would ensure the success of the planned invasion. An invasion was expected, as Churchill said, to “mean an age of barbaric violence and would be fatal, not only to ourselves, but to the independent life of every small country in Europe.”³⁸

According to Walzer, the rules that determine permissible actions in war (e.g., the rule guaranteeing noncombatant immunity) must still be acknowledged in this situation, but it is also morally preferable to violate them. He holds that the fact that the two moral systems—utilitarianism and rights theory—prescribe different judgments is simply “a feature of our moral reality” (“Emergency Ethics” 40). Respect for rights determines

³⁷ Michael Walzer, “Emergency Ethics,” *Arguing About War*. New Haven: Yale University Press, 2004, 33-50.

³⁸ Quotation found in Brian Orend’s *The Morality of War* on p. 141 as well as in Walzer’s *Just and Unjust Wars* on p. 254.

right action; thus, the rights of civilian noncombatants entail that attacks on them are wrong. However, he argues that in supreme emergencies, the right of noncombatants to not be attacked must be weighed against other values in a utility calculus (35-36).

According to Walzer, rights absolutism is wrong in supreme emergencies because the very systems that produce and uphold rights are threatened with destruction (36-7). He asks rhetorically, “How can we, the opponents of murder, fail to resist the practice of mass murder—even if resistance requires us, as the phrase goes, to get our hands dirty (that is, to become murderers ourselves)?” (37). Walzer suggests that upholding the moral order may require us to act immorally, and doing so is excusable because it is more important to preserve the rights-respecting community than to always act morally. Moreover, he argues that the “good man” who has dirty hands “will feel guilty, that is, he will believe himself to be guilty” (“The Problem of Dirty Hands” 68). For Walzer, in these situations, terrorism is wrong and terrorists are, and should believe that they are, unjust.

Walzer denies that utilitarianism alone sufficiently limits permissible actions in supreme emergencies. He argues that utilitarianism does not require positive values to be attached to upholding noncombatant immunity in the utility calculus. Even in these situations, he contends that we must not underestimate or ignore the rights of enemy noncombatants (“Emergency Ethics” 37-40). Moreover, he argues that leaders will be tempted to inflate the value of their victory and deflate the value of the lives of enemy noncombatants in a utility calculus, thereby resulting in unnecessary harm. “It’s not the case, I suppose, that every valuation is idiosyncratic. . . . When solidarity collapses, in pure or almost pure adversarial situations—in war, for example—utilitarian calculation is

zero-sum, and ‘we’ commonly attach only negative value to ‘their’ utilities” (38-9).

Walzer believes that by combining rights and utilitarianism, the value of enemy noncombatants will not be deflated in the utility calculus because they have the same rights as the noncombatants of the group making the decision to act. Therefore, the option to do nothing, to allow the community’s destruction, will be adequately considered in the utility calculus.

Walzer argues that whereas individuals can impose life-threatening risks on themselves, political leaders cannot impose these risks on their political community so long as there are available actions—moral or not—that would counter the extreme threat (41-5). The individuals threatened are important, but what makes this situation unique for Walzer is the value of the moral community itself. If destroyed, the community’s “ongoingness” ends as well. He writes, “We face moral as well as physical extinction, the end of a way of life as well as of a set of particular lives, the disappearance of people like us. And it is then that we may be driven to break through the moral limits that people like us normally attend to and respect” (43). The community must respect rights, therefore, for its protection in supreme emergencies to be valuable. And the threat that this community faces must “devalue morality itself” for terrorism to be excusable (40).

Therefore, the calculation that determines whether terrorism is excusable in supreme emergencies is concerned with the protection of rights in that one must evaluate whether accepting the community’s destruction or using terrorism to end the threat will better uphold rights. Thus, for Walzer, terrorism is excusable if (1) a rights-respecting political community is in a supreme emergency, (2) terrorism is expected to effectively combat the threat that constitutes the supreme emergency, (3) no means short of terrorism

are expected to end the threat, and (4) protecting the rights-respecting political community instead of allowing its destruction better upholds rights.

Walzer argues that the British bombings from 1940 to 1941 were excusable so long as Britain, a rights-respecting state, was in a supreme emergency and nothing short of these bombings was expected to stop the Nazi invasion (“Emergency Ethics” 33-4, *Just and Unjust Wars* 253-4, 259-60). Prior to 1940, the Nazi threat to Britain was not imminent, so Britain was not in a supreme emergency according to Walzer. The United States and the U.S.S.R. became involved in the war in 1942, and thus, Walzer argues, after their addition, terrorism was not Britain’s only effective option. Therefore, none of the aerial bombings after this point (e.g., the bombing of Dresden in 1945), were excusable on his account. Nonetheless, when the Nazi threat to Britain was imminent and prior to others’ involvement, Walzer believes that, assuming that the description of the events is accurate, it was reasonable for Churchill to believe that Britain was in a supreme emergency and the use of terrorism was excusable.

Of course, we may disagree about the facts. Even Walzer admits that Britain may have had alternatives to the bombings. His argument is based on the assumption that they did not have such alternatives. Other authors, however, have spent much effort disputing this assumption. C.A.J. Coady, for example, suggests that the aerial bombings of German cities in 1940 (i.e., the Battle of Britain) ended the imminent threat of Nazi invasion, or at least Britain’s imminent defeat (“Terrorism, Morality and Supreme Emergency” 782). If correct, then the bombings past this time were not excusable. Alternatively, Alex J. Bellamy argues that Britain had other viable alternatives to the bombings even in 1940 (e.g., using air force to attack military communications, supplies,

transportation, and headquarters).³⁹ Moreover, we should question whether it was reasonable for Churchill to think that terrorism would effectively end the Nazi threat. Nothing about Hitler before these bombings suggested that they would weaken his resolve. Retrospectively, we know that the British bombings were successful—Hitler turned his attention to the U.S.S.R.—but if Churchill did not reasonably expect the bombings to work, they were not excusable. These issues will always be present when one evaluates terrorism. Because we do not have access to all of the relevant information regarding the likelihood of terrorism’s or other actions’ success, our evaluations may be incorrect.

Nonetheless, discussing these situations in the hypothetical is valuable because discussing possible scenarios helps to articulate the appropriate criteria on which we should evaluate future events. Furthermore, noting the possible reasons why Britain’s use of terrorism, for instance, was excusable at one time and not excusable at others allows us to understand how other political communities may mistakenly believe that their use of terrorism is excusable and helps us to guard against this use ourselves.

III. Clarifications and Defense of Walzer’s Supreme Emergency Excuse

Walzer’s defense of the supreme emergency excuse has largely shaped this debate. Though his assessment of these situations is not entirely correct, I think that with slight amendment and addition, his defense of terrorism in supreme emergencies is successful. In this section, I provide two necessary clarifications of Walzer’s view and

³⁹ Alex J. Bellamy. “Supreme Emergencies and the Protection of Non-combatants in War,” *International Affairs* 80, 5 (2004) 829-850, 842.

respond to a common objection on behalf of Walzer. Both the clarifications and the response lend themselves to my defense of the supreme emergency excuse.

A. Nonstate Actors can face Supreme Emergencies

Walzer is concerned primarily with the possibility of large states facing supreme emergencies and not having just means available to stop the threat. This is not surprising since it may be intuitively easier for many people to excuse the use of terrorism when millions of people are threatened with destruction. In spite of this, it is not the number of expected deaths that leads Walzer to excuse terrorism, but that, without terrorism, a rights-respecting community will be destroyed.

Nazi Germany is a clear example of a political community that did not respect rights. Neither the leadership, nor the majority of citizens, valued the lives of various ethnic, religious, and cultural groups, whether these people were from other countries or their own. However, most political communities are not so uniform, and therefore, labeling a political community as “rights-respecting” or not may be more difficult. Often, the leadership and (at least) some established groups within the community disagree about the rights of certain people. This fact need not mean that the leadership is illegitimate, for legitimacy requires only that the members of the community consent to the leadership.⁴⁰ If there is a large enough gulf between their views that the members of the community rise up against their leadership (or would rise up in cases of mass

⁴⁰ Many authors have addressed the issue of legitimate leadership, especially as it concerns the permissibility of intervention.. See especially Charles Beitz’s “Bounded Morality: Justice and the State in World Politics,” Gerald Doppelt’s “Walzer’s Theory of Morality in International Relations,” David Luban’s “Just War and Human Rights,” and Walzer’s “The Moral Standing of States: A Response to Four Critics.”

oppression), the leadership is illegitimate. If illegitimate leaders order mass violations of rights and the members of the community object, or would object if they were not oppressed, it is incorrect to characterize the community as one that does not respect rights. The heart of the community—its members—is rights respecting. The illegitimate leaders alone are not so inclined. Because the community is rights-respecting, its use of terrorism in supreme emergencies is excusable when terrorism is the only option expected to successfully end the emergency.

Political leaders' use of terrorism in supreme emergencies may be excusable even if they and the members of their community do not explicitly acknowledge rights. Political communities disagree on what rights exist and ought to be supported. So long as there is some sense of respect for autonomy in both law and the member's attitudes, the community respects rights. Political communities respect rights to various degrees, and the degree to which they do so is relevant in determining whether their use of terrorism would be excusable in supreme emergencies. As Walzer argues, in supreme emergencies, terrorism is excusable if it is necessary to end the threat and "so long as what we do doesn't produce an even worse disaster" ("Emergency Ethics" 40). Thus, the severity of the threat must be addressed in determining particular cases. A threat that constitutes a supreme emergency necessarily includes mass rights violations. Therefore, the community contemplating combating this threat with terrorism need not have a robust conception of rights or a perfect record of protecting rights for terrorism to be the morally preferable option.

Additionally, political communities need not be established states for their terrorism in supreme emergencies to be excusable. Though Walzer does not rule out the

possibility of nonstate actors being in supreme emergencies, his rhetoric suggests, at the very least, that this is unlikely. He writes of “nations and leaders” being evaluated in these situations and “civilization itself” being threatened (“Emergency Ethics” 33, *Just and Unjust Wars* 253). However, political communities that are not states may also have their “deepest values and collective survival” threatened. In fact, it is more likely that nonstate actors will face supreme emergency conditions. Resistance groups fighting an oppressive government are often disregarded by the international community and are often small with few resources relative to the forces that they face. As a result, they are more likely to reach the last resort of terrorism. So long as a political community is sufficiently established and organized to have a common value system and that value system respects rights, it is possible for it to face a supreme emergency, and so it must decide whether to allow the community’s destruction or to pursue wrongful means.

Consider the situation in Darfur. In this conflict, the Janjaweed, sponsored financially by the Sudanese government, continues to fight rebels, most notably the Sudan Liberation Army and the Justice and Equality Movement. The rebels began this fight as a war for the recognition of their rights against the Sudanese government, claiming that the government oppressed non-Arab, black Africans.⁴¹ Most recent reports by the Centre for Research on the Epidemiology of Disasters estimate that almost 300,000 people have died as a result of the fighting and related displacement.⁴² Though there have been conflicting arguments for whether this situation amounts to genocide, the Sudan Liberation Army and the Justice and Equality Movement have clearly faced a

⁴¹ For details on the war in Darfur, see John Hagan and Wenona Rymond-Richmond’s *Darfur and the Crime of Genocide* (Cambridge University Press 2009) and Mahmood Mamdani’s *Saviors and Survivors : Darfur, Politics, and the War on Terror* (Pantheon Books 2009).

⁴² Olivier Degomme and Debarati Guha-Sapir. “Patterns of mortality rates in Darfur conflict,” *The Lancet*, 375, 9711, 294 – 300 (23 January 2010).

threat to their “deepest values and collective survival” for seven years. Even so, whether their use of terrorism would be excusable depends on whether the political communities that they represent respect rights, and whether it is reasonable for them to believe that terrorism would be effective.

*B. Walzer Provides a Supreme Emergency **Excuse**, Not a Justification*

Walzer is admittedly unclear on his preferred moral framework—he recognizes his position as paradoxical. Moreover, he is inconsistent regarding the moral status of the supreme emergency defense. His inconsistency has led some commentators to describe his defense as a justification and other commentators to describe it as being devoid of moral importance.

Alex Bellamy, Christopher Toner, and Daniel Statman view Walzer’s analysis as an attempted justification for a supreme emergency exception to noncombatant immunity. As a result, they object that he weakens the notion of noncombatant immunity. I believe that Walzer is providing an excuse, not a justification. But perhaps more light can be shed on his position by examining his critic’s understanding of his defense as a justification.

Bellamy does not consider the possibility that his argument is anything other than a standard justification. He writes, “Walzer himself has since argued vigorously against terrorism, insisting that it cannot be *justified* in supreme emergency terms unless ‘the oppression to which the terrorists claimed to be responding was genocidal in character.’” (emphasis added)⁴³ Additionally, in “Supreme Emergencies and the Protection of

⁴³ Alex Bellamy. *Fighting Terror*. London: Zed Books, 2008, 47.

Noncombatants in War,” Bellamy consistently refers to Walzer’s argument as an “exception” to noncombatant immunity, suggesting that in supreme emergencies, Walzer thinks that one ought not to be concerned with protecting civilian noncombatants. This entails that one is not wrong to violate their rights.

In “Just War and the Supreme Emergency Exception,” Toner also takes Walzer’s argument to be an attempted justification for terrorism in supreme emergencies. Closely related to Bellamy’s terminology of “exception,” Toner refers to Walzer’s argument as the “supreme emergency exemption,” not excuse. Walzer has used the term “exemption” to describe the case (“Emergency Ethics” 37). But this use need not be evidence that Toner is correct, as it may imply—as I think that it does—that the terrorist is exempt from blame. However, Toner uses the term to suggest that, for Walzer, the terrorism is not wrong. For example, he argues that if this exemption is allowed, the killings of innocents may be morally right outside of war. He writes, “the cost of the [supreme emergency exemption] seems to be that we must admit that people (individuals) have the authority to kill innocents (can be right in killing them) in emergencies.”⁴⁴ Toner, therefore, argues that because Walzer believes that terrorism is right in supreme emergencies, then it must be right in all emergencies.

Statman views Walzer’s discussion as a justification as well. He characterizes Walzer’s moral framework as a kind of moderate or threshold deontology, wherein rights violations can be justified when the consequences of upholding them reach a certain

⁴⁴ Christopher Toner, “Just War and the Supreme Emergency Exemption,” *The Philosophical Quarterly* 55, 221 (2005) 545-561, 552.

threshold.⁴⁵ Statman points to Shelly Kagan's presentation of deontological thresholds to describe this position. Kagan writes,

Presumably, killing an innocent is morally forbidden even if this is the only way to save five, ten, or maybe even a hundred or a thousand people—but at *some point*, when the amount of good that needs to be done is great enough, the constraint is overridden, and it is morally permissible to act.^{46 47}

Therefore, Statman takes Walzer to be arguing that terrorism is justified when the effects of not using terrorism are sufficiently grave.

Though not cited in any of their work, perhaps these authors' interpretation of supreme emergencies as circumstances in which terrorism is justified for Walzer comes from a line from "Terrorism: A Critique of Excuses." In "Emergency Ethics," his most extensive discussion of supreme emergencies, Walzer never claims that terrorists may be "justified" or "excused" or even that terrorism may be "right" or "morally permissible." However, in an editorial insertion in "Terrorism: A Critique of Excuses," he writes, "Would terrorism be justified in a 'supreme emergency' . . .? It might be, but only if the oppression to which the terrorists claimed to be responding was genocidal in character. . . ." (54).

Of course, his use of "justified" here troubles me and seems to give credence to the view that he is attempting to justify terrorism in some cases. However, I am convinced that his use of "justified" was a mistake. In this article, his explicit goal is to address excuses for terrorism, which he characterizes as defenses presented when "moral justification is ruled out" (52). He writes that excuses for terrorism are common and that

⁴⁵ Daniel Statman. "Supreme Emergencies Revisited" *Ethics* 117 (October 2006) 58-79, 61.

⁴⁶ Shelly Kagan. *Normative Ethics*. Boulder, Colorado: Westview Press, 1998, 79.

⁴⁷ This view misrepresents Walzer's argument because the body count, itself, is not his concern. Instead, he excuses terrorism in supreme emergencies only if it is necessary to protect a rights-respecting community.

though generally unsuccessful, they are “far better than a political culture in which terrorism is openly defended and *justified*, for the *excuse* at least acknowledges the evil” (emphasis added) (52). Within his discussion of the last resort excuse, he brings up the possibility of supreme emergencies as situations in which one may argue that terrorism is excusable as a last resort.

Walzer differentiates between excuses and justification in “The Problem of Dirty Hands.” He writes that excuses and justifications “are conceptually distinct, differentiated in this crucial respect: an excuse is typically an admission of fault; a justification is typically a denial of fault and an assertion of innocence” (72). In the next paragraph he continues,

When rules are overridden, we do not talk or act as if they had been set aside, canceled or annulled. They still stand and have this much effect at least: that we know we have done something wrong even if what we have done was also the best thing to do on the whole in the circumstances (73).

In supreme emergencies, for Walzer, the rules may be overridden. In these circumstances, Walzer maintains that the terrorist still commits a wrong and is not innocent.

Perhaps the most telling of Walzer’s arguments is his stance on the guilt of the leaders who would use terrorism in supreme emergencies. He writes that they should feel guilty even if they meet all of the conditions for excusable terrorism. “Were there no guilt involved, the decisions they make would be less agonizing than they are. And they can only prove their honor by accepting responsibility for those decisions and by living out the agony” (*Just and Unjust Wars* 326). For Walzer, not only have the leaders done something wrong in ordering terrorism, but they should take responsibility for their wrong and feel guilty about having to order it.

In Chapter 3, I argued that an actor need not feel remorseful when he is excused for performing a wrong action since he is not blameworthy for the wrong, but he should regret being in the situation in which he must do wrong. We ought not to blame them, so we should not require them to blame themselves. But we wish that the dilemma did not arise and the suffering that results did not occur, and they should as well. Consequently, like Walzer, I believe that moral leaders feel guilt about their ordering of terrorism and make reparations when possible. Political leaders should recognize their horrible circumstances, but I think that so long as they are not responsible for creating them, they should not wish that they had chosen to allow their community's destruction.

Terry Nardin believes that Walzer's supreme emergency argument is not a justification.⁴⁸ Instead, Nardin argues that in supreme emergencies, moral considerations are irrelevant for Walzer. Describing Walzer's view, Nardin argues, "This is the utilitarianism of extremity, for it concedes that in certain very special cases, though never as a matter of course even in just wars, the only restraints upon military action are those of usefulness and proportionality" (231). Nardin interprets Walzer as saying that if the heavens are falling, you need not act justly. Nardin thinks that Walzer's argument is that in supreme emergencies, the established rules can be abandoned in favor of producing consequences that are the most preferable by nonmoral standards.

Though I think that Nardin's interpretation of Walzer's defense is incorrect, I must note that even if all that matters is usefulness and proportionality in these situations, moral evaluation is still possible. For Walzer, necessity and proportionality are moral requirements, just like discrimination. If terrorism is not necessary or proportionate,

⁴⁸ Terry Nardin. *Law Morality, and the Relations of States*. Princeton: Princeton University Press, 1983.

terrorists have done something morally wrong even if they are not wrong to violate noncombatant immunity.

Nardin's interpretation of Walzer's argument is inaccurate. He is correct that Walzer defends a utilitarianism of extremity. However, he does not defend it in isolation. Walzer argues that in supreme emergencies, considerations of usefulness and proportionality must be combined with a continued respect for rights. He writes, "These rights, I shall argue, cannot be eroded or undercut; nothing diminishes them; they are still standing at the very moment they are overridden: that is why they have to be *overridden*" (*Just and Unjust Wars* 231). In "Emergency Ethics," he writes:

When our deepest values are radically at risk, the constraints lose their grip, and a certain kind of utilitarianism reimposes itself. I call this the utilitarianism of extremity, and I set it against a rights normality. The two together, it seems to me, capture the force of the opposed moral understandings and assign to each its proper place. I can't reconcile the understandings; the opposition remains; it is a feature of our moral reality (40).

In these passages, Walzer argues that a utilitarian calculation must be combined with a respect for rights. It is not simply usefulness and proportionality that matter in supreme emergencies, but also rights and the system that protects rights. This combination only makes sense if the argument is an excuse. Even in supreme emergencies, terrorism is wrong, but we ought not to blame these terrorists for their "dirty hands" because they face such dire circumstances.

C. Walzer's theory does not succumb to consequentialism

Walzer does not ignore the rights of noncombatants, but he argues that, in certain circumstances, it is morally preferable to favor consequentialist considerations. The

acknowledgement of rights does not go away; these consequentialist considerations excuse rights violations in supreme emergencies. Bellamy and Nardin argue that Walzer's analysis should be rejected since these consequentialist leanings are inconsistent with his rights-based project. I disagree with these authors because although Walzer does bring consequentialist considerations into the defense, this addition is consistent with his rights-based theory.

Unlike Nardin, Bellamy does not take Walzer to be ignoring noncombatant immunity by defending terrorism in some supreme emergencies. He correctly interprets Walzer to be defending the overriding of this moral constraint. However, like Nardin, Bellamy argues that Walzer's use of utilitarianism is inconsistent with his insistence on rights ("Supreme Emergencies" 836-8). He writes that, contrary to all of Walzer's other arguments, "the rights of non-combatants are conditional, not inalienable" in supreme emergencies (837). Bellamy argues that, for Walzer, these rights no longer exist when political leaders have reason to believe that they are in a supreme emergency.⁴⁹ According to Bellamy, with the supreme emergency defense, Walzer's theory no longer is one that respects unconditional rights since consequences determine whether rights must be respected.

I think that these authors are incorrect to interpret Walzer's supreme emergency excuse as utilitarian for two reasons. First, the version of consequentialism to which he allegedly yields is not utilitarianism. Though Walzer refers to his theory as a combination of rights normality and utilitarianism, the relevant consequences for him are not things like pleasure or preference satisfaction. He writes, "If the political community

⁴⁹ Walzer does not refer to justification in this way and would respond that the political leaders must actually be in a supreme emergency.

were nothing more than a neutral framework within which individuals pursued their own versions of the good life . . . , the doctrine of supreme emergency would have no purchase” (“Emergency Ethics” 44). What matters for Walzer is not that people will die, but that their deaths will inevitably eliminate the rights-respecting community. In their calculus, leaders in supreme emergencies should weigh the violation of rights that would result from using terrorism against the value of the community that is threatened with destruction. He believes that the community has value because it respects rights, not because its members find its existence pleasurable. Therefore, it would be more appropriate for their objections to focus on the combination of rights theory and consequentialism, not utilitarianism.

Second, Walzer’s theory is not consequentialist. The consequence with which he is concerned—the protection of the rights-respecting community—is intimately connected to the rest of his rights theory. He holds, like all rights theorists, that rights are valuable and worth protecting. He places special value on the moral community because it upholds rights. And supreme emergencies are such difficult cases for him to morally assess precisely because he does not let go of these principles. All violations of rights are wrong for Walzer, so violating noncombatant immunity is wrong, but if “dirty hands” are necessary for the protection of a moral community, they are excusable. Thus, his view is similar to the threshold deontology that Statman attributes to him. However, whereas Statman interprets him to hold that the rights violations from terrorism are *justified* when the consequences of doing so reach a certain threshold, Walzer actually maintains that these violations are *excusable*. His rights theory limits blameworthy wrong action such that if the wrong action is necessary to avoid the destruction of a moral community, the

actor is not blameworthy. Therefore, though his theory does include consequentialist considerations, it does not succumb to consequentialism.

IV. Supreme Emergencies Create Genuine Moral Dilemmas for Political Leaders

The genuine moral dilemma excuse that I presented in Chapter 3 helps to defend Walzer's supreme emergency excuse against the consequentialism objection. It is because political leaders in supreme emergencies are in a genuine moral dilemma that they must consider the consequences of the different courses of action open to them. No matter what they do, they violate one of their duties. And the consequence of protecting the moral community is reason enough to find terrorism in this situation excusable.

I agree with Walzer that political leaders in supreme emergencies face an almost inconceivably horrible situation and that in these situations, "A morally strong leader is someone who understands why it is wrong to kill the innocent and refuses to do so, refuses again and again, until the heavens are about to fall. And then he becomes a moral criminal. . ." ("Emergency Ethics" 45). In defending this excuse, we must continually reiterate that, though excused, a wrong is committed when noncombatant immunity is violated. However, in stopping here, rights absolutists miss an important fact about the use of terrorism in these situations. In choosing terrorism, political leaders are also doing something right. In supreme emergencies, political leaders face a conflict in duties. Not only do they have a duty to respect noncombatant immunity, they also have a duty to protect their moral community. No matter which duty they choose to fulfill, their action is both wrong (since it requires the violation of one duty) and right (since it fulfills one duty).

Political leaders' duty to protect their moral communities is important because, as Walzer contends, they have an obligation to the moral community that they represent; they have a duty to protect it. They take on this power knowing that they must make decisions that favor their community. Even if the leadership is illegitimate, so long as the leaders freely assumed their role, they retain the duties associated with it, so they have a duty to protect their rights-respecting community from harm.

Political leaders' having duties that require them to protect their community does not entail that they are right when, in fulfilling their leadership duties, they violate one of their human duties. They are human and political leaders. They are obliged to fulfill the duties associated with both capacities. Analogously, a parent has duties toward all people and special duties toward her children. To borrow an example I used in Chapter 3, one has a duty to not steal and a duty to protect one's children from harm. Even if the prescriptions of these duties come in conflict, e.g., kidnappers tell you that they will kill your child if you do not rob a bank, you are never free of either duty. In choosing to rob the bank, you have done something wrong even though you violated your duty in order to fulfill another, more important, duty.

In connection to this example, I presented what I call the moral dilemma excuse, in which a wrong action is excusable if: (1) The actor is faced with a genuine moral dilemma. (2) If it is morally preferable to fulfill one obligation than to fulfill the other(s), the actor must choose the morally preferable action to be excused. If there is no moral reason to prefer one obligation to the other(s), fulfilling any of them is morally excusable, though there may be prudential reasons to prefer one of the choices to the other(s). Additionally, I argued that moral actors who perform excusable wrong actions ought to

regret that they were in such a situation and regret that they caused suffering, though they ought not wish that they had chosen one of the other options.

I think that Walzer's supreme emergency excuse can be construed to be an example of my moral dilemma excuse. Political leaders are in a genuine moral dilemma if: (1) Their moral community is in a supreme emergency. (2) No actions (military or diplomatic) other than terrorism are reasonably expected to end the supreme emergency conditions. (3) There is a reasonable expectation of terrorism's success in ending the supreme emergency conditions. In these circumstances, the prescriptions that come from political leaders' duties to protect their moral community and to respect noncombatant immunity conflict. As a result, these leaders are excused for ordering terrorism if their circumstances meet these conditions, terrorism is morally preferable or equally preferable to the community's destruction, and the leaders wish that there were more available options.

I have been following Walzer in calling the supreme emergency situation a moral dilemma for the leaders of rights-respecting political communities, but my view of moral dilemmas is somewhat different from his. Walzer thinks that the conflict is between the prescriptions of consequentialism and rights theory, not between the prescriptions of particular duties ("The Problem of Dirty Hands" 63, "Emergency Ethics" 40). However, I think that his defense is better described as the latter. If the dilemma was really between two opposing moral frameworks, all political leaders would have to do is decide which framework is correct and then act according to it. But this is not what happens in supreme emergencies. It is when political leaders accept the right framework and

recognize the importance of the consequences of their actions—when they find rights valuable and worth protecting—that they are conflicted.

Consequentialist considerations are relevant in deciding what course of action is excusable in the genuine moral dilemma, not in creating the dilemma itself. If terrorism is excusable in a supreme emergency, it must be morally preferable for the political leaders to protect their moral community rather than for them to uphold noncombatant immunity or there must be no moral reason to prefer one to the other. Since the imminent threat is so severe, either violation of duty would result in rights abuses. And the alternative to terrorism is to allow the community to be replaced with one that systematically violates rights. Violating noncombatant immunity, however, allows a community that values rights to survive. Only by getting their hands dirty do the political leaders who opt for terrorism in supreme emergencies affirm this commitment to protecting rights since this one breach prevents the mass violations that would occur otherwise. As Walzer argues, “Properly understood, [using terrorism in a] supreme emergency strengthens rights normality by guaranteeing its possession of the greater part, by far, of the moral world” (“Emergency Ethics” 50). Their use of terrorism is still wrong, but it is excusable.

Walzer argues that one should resist the impulse to think that leaders have an overriding duty to protect the members of their community *simpliciter* (“Emergency Ethics” 41-2). Toner mistakenly takes Walzer to make just this claim (547, 552). Both Toner and Walzer make similar arguments against this duty. They argue that if state violations of noncombatant immunity to protect the members of the community are excusable (for Toner, “justified”), then individuals’ harming others when they face

personal emergencies is excusable (for Toner, “justified”). They think that it is obvious that the consequent of this conditional is false, and so the antecedent is also false.

Nevertheless, I see no problem with accepting the consequent. Innocent individuals have a right to protect themselves so long as they have not given up their right to self-defense by being responsible for a wrongful threat. When this right conflicts with their duty to not harm other innocent people, they face a genuine moral dilemma and so long as there are no viable alternatives to harming an innocent person, they may be excused for this violation of duty. For example, a person may be excused for killing a person that is used as a shield by her attacker. She may be excused for killing her attacker’s friend as well if there are no other alternatives and there is reasonable expectation that doing so would end the attack. Of course, it is unlikely that killing the friend would be successful in ending the threat and that no alternatives to killing the friend are available.

Nonetheless, I agree with Walzer that terrorism is not excusable unless a moral political community is in a supreme emergency. It is not excusable if only individual members of the community are threatened. Political leaders are charged to preserve the territorial integrity and political sovereignty of their community from wrongful aggression. These state rights exist because of the “coming together of a people” (*Just and Unjust Wars* 57). And violations of these rights alone legitimize war (61).

I believe that Churchill was not blameworthy for ordering terrorism to defend Britain against the Nazi threat between 1940 and 1941 if we adhere to Walzer’s description of the situation and alter one more fact. According to Walzer, the British people at the time of the first attacks were not expected to support Britain’s use of

terrorism, as they themselves had been victims and did not wish similar harm to other civilian noncombatants. Because of this sentiment, military leaders initially told the public, falsely, that their targets were military centers (*Just and Unjust Wars* 255-7). On Walzer's description of the events, nothing short of terrorism was expected to successfully prevent the Nazi invasion and terrorism was expected to be successful. However, at the time of the attacks, Churchill did not view himself as facing a moral dilemma; he thought that bombing German cities was the right thing to do. Only later, after the bombing of Dresden in 1945, did he question the morality of the British attacks. At this time, Walzer quotes him as saying, "It seems to me that the moment has come when the question of bombing German cities simply for the sake of increasing terror, though under other pretexts, should be reviewed" (261). I think that Churchill was blameworthy for ordering terrorism since he did not regret its use when he ordered it. However, we can tweak the facts and portray Churchill as conflicted because he had to choose between two moral wrongs—violating his duty to protect Britain and violating his duty to uphold noncombatant immunity. On this interpretation of his attitudes towards his choice of terrorism, he would not be blameworthy for his excusable terrorism.

The circumstances faced by the Sudan Liberation Army and the Justice and Equality Movement in Darfur are closer to those of a supreme emergency than any other current conflict. The people that these groups represent have faced genocide. Nothing, including the criminal charges levied against Sudan's President Omar al-Bashir by the International Criminal Court, seems to be working to end the conflict and the international community has shown that it has no plans to act on the rebels' behalf. If the rebel groups and their supporters (i.e., their political community) are rights-respecting

and terrorism would be the only successful means to end the conflict, it would be excusable. However, it is not clear whether they respect rights and they have, and have had, other means to end the conflict. The leadership of these revolutionary groups has, at times, both delayed and refused peace talks with the Sudanese government, which suggests that they might have more sinister aims than those they have stated. At the very least, their reluctance to negotiate has unnecessarily perpetuated the conflict. Moreover, their uses of terrorism in the past (e.g., the May 2008 attacks on Omdurman) were unsuccessful and nothing indicates that things would be different now. Therefore, additional terrorism would be inexcusable.

The hypothetical case I constructed regarding the secession of East Timor from Indonesia satisfies the conditions of the supreme emergency excuse. Indonesia temporarily rejected the vote for secession and Indonesian militias attacked this small, rights-respecting political community. If Australian and United Nations peacekeeping forces had not stepped in to ensure recognition of the secession, the people of East Timor would not have been able to defend themselves. If the government's actions had threatened to wipe out East Timor, East Timor would have faced a supreme emergency, and their use of terrorism would have been excusable. Nonetheless, the actual events of this case are evidence that help may come to those on the verge of, or in, a supreme emergency. Terrorism is excusable only when it is the only option expected to succeed; it must be the last resort.

By examining Walzer's supreme emergency excuse as an example of my genuine moral dilemma excuse, one should see not only that terrorism is excusable in some supreme emergencies, but also that some consequentialist considerations are morally

important for a rights-based theory. Political leaders should be torn when they are in a genuine moral dilemma since no matter what they do, they must violate one of their duties. Their terrorism is excusable, and thus, we should not blame them and they should not blame themselves for their use of terrorism. Only these circumstances excuse terrorism and although the likelihood of them occurring is rare, their possibility is greater than theorists like Walzer admit.

Chapter 6

Conclusion

In this work, I have presented a moral evaluation of terrorism and terrorists. I think that most past discussions of terrorism have an overly narrow conception of both the features that count as morally relevant and the people and groups who can commit terrorism. In broadening these categories, I believe that my assessment better captures the nuances of the circumstances in which terrorism is performed, and therefore more accurately depicts the moral status of terrorists and terrorism.

The most obvious example of the tendency to limit the morally relevant features of terrorism is the exclusion of states from some definitions of terrorism. For if it is impossible by definition for states to commit terrorism, then even when they act like terrorists, we cannot call their actions terrorism. By advocating a tactical definition of terrorism, I have allowed the possibility that states can be terrorists. I have argued that an agent commits terrorism when he intends to coerce an indirect target into some course of action by using or credibly threatening systematically random attacks on the vital interests of civilian noncombatants to cause other civilian noncombatants to fear that they will be the next direct targets. Whoever performs such actions is a terrorist and ought to be judged as such.

Though terrorism is a type of activity, moral assessments of particular acts of terrorism ought not to be limited to the type of activity that it is. Like McMahan, I think that terrorism is wrong because terrorists' targets, civilian noncombatants as a collective, never warrant attack. Through their actions, individual civilian noncombatants may be

sufficiently morally responsible for aggression to legitimize necessary and proportionate attacks upon them; however, as a group, civilian noncombatants are not.

A moral evaluation of terrorism that is limited to right or wrong action disregards terrorists' motivations and beliefs. I have argued that we should address their states of mind in order to evaluate terrorists, not just terrorism. Thus, I think that we should evaluate particular terrorists' potential justifications and excuses for their terrorism. I hold that if combatants reasonably believe that the cause for which they fight is right, they are justified in fighting for it. Nonetheless, I do not think that any terrorist is justified because the two-part strategy of terrorism requires that he intend to harm civilian noncombatants as a group and the belief that this is right can never be reasonable.

Although it is not possible for any terrorist to be justified in engaging in terrorism, I think that terrorism is excusable in some supreme emergencies. Following Walzer, I have argued that terrorism can be excusable in some circumstances. If a rights-respecting community faces an imminent threat to its preservation, and terrorism is the only means that is reasonably expected to end the threat, then it is excusable. Some have argued that defending terrorism in this way is consequentialist and thereby inconsistent with a rights-based theory. I disagree and have argued that, in a genuine moral dilemma, rights theorists' concern for the consequences can express their esteem for rights.

My defense of terrorism's excusability in supreme emergencies is relevant to understanding many real-life cases of terrorism. I think that the terrorism that Churchill ordered in 1940 and 1941, as described by Walzer, was excusable even though Churchill's views about it make him blameworthy for it. And I think that it is possible for excusable terrorism to occur in the future. Moreover, I think that the concept of

supreme emergencies has value. For example, both sides in the Israel-Palestine wars have used terrorism and both sides have claimed that they fight to preserve their political community.⁵⁰ If either side's claims are true, the threat that they face constitutes a supreme emergency, and terrorism is the only option reasonably expected to succeed in ending it, then their use of terrorism to end it would be excusable. However, neither side meets these conditions because neither side is in a supreme emergency and both sides' use of terrorism has intensified the threats that they face.

Israel claims that they have just cause for war because the terrorist attacks that they face are aimed at eliminating all Jewish Israelis. Nevertheless, Israel's permissible responses (e.g., ground offenses and destruction of weapons smuggling tunnels) have sufficiently countered and will likely continue to counter this threat. Israel's uses of terrorism, on the other hand, have perpetuated the threat on many occasions (e.g., their use of indiscriminate airstrikes in December 2008). Palestinians claim, and I think rightly, that their right to self-determination requires that they control many of the disputed Israeli occupied territories. However, the Israeli occupation does not constitute a supreme emergency because the Palestinian political community's continuation is not imminently threatened; they have existed amidst the conflict as a political community for over a century and during much more severe threats than those now. Additionally, Hamas' power in the Gaza Strip and strategy of terrorism has given Israel just cause to respond militarily. Both of these communities have been wrongly attacked. Therefore, if the attacks are necessary and proportionate, it is permissible for Palestinians to launch a military offensive to gain control of the land to which they have a right and it is

⁵⁰ See Walzer's discussion of their four causes for war in "The Four Wars of Israel/Palestine" (pp. 113-30 in *Arguing About War*) for a detailed discussion of how these causes intersect and perpetuate the conflict.

permissible for Israelis to respond to the terrorists and terrorist organizations (e.g., Hamas) to stop future terrorist attacks. Nonetheless, neither community's use of terrorism to pursue these ends is excusable.

This short discussion of terrorism in the Israeli-Palestinian conflict illustrates how the supreme emergency excuse is useful in evaluating terrorism committed in non-emergency situations. For it provides the benchmark for excusable terrorism, against which all terrorism should be assessed. Because some terrorism is excusable, we must look to the circumstances in which a particular act of terrorism is committed to determine whether a particular terrorist is blameworthy. Doing so is important because it not only facilitates a more accurate moral assessment, but also reflects what I think should be one of our goals in capturing and punishing terrorists. This is a second project for which the arguments presented here are applicable.

I think that war crimes trials and subsequent punishment are important because they provide the opportunity to publically and officially express disapproval of an action and the motivations for that action. Joel Feinberg defends this symbolic function of punishment. He writes,

. . . punishment is a conventional device for the expression of attitudes of resentment and indignation, and of judgments of disapproval and reprobation, on the part either of the punishing authority himself or of those 'in whose name' the punishment is inflicted. Punishment, in short, has a *symbolic significance* largely missing from other kinds of penalties.⁵¹

I think that war crimes trials are symbolically significant. By trying and punishing war criminals, we are able to express sincere disapproval of their behavior to the global

⁵¹ Joel Feinberg. "The Expressive Function of Punishment," *Doing & Deserving: Essays in the Theory of Responsibility*. Princeton University Press, 1970, 95-118, 98.

community and are able to condemn the value judgments that produced the behavior (e.g., that certain ethnicities do not have the same rights as others, that it is legitimate to kill innocent civilians for political gain). When a former leader is tried and punished in the nation where his offense took place, the nation expresses its disapproval of his motives and actions. When a war criminal is tried and punished in an international venue, the global community, in effect, denounces his criminal actions and criminal motives.

I think that when terrorism is morally excusable, it is also legally excusable, and terrorists who are not blameworthy ought not to be punished, even though they ought to be tried. For criminal trials provide an opportunity for official statements of disapproval of terrorism generally and of the harms committed in these particular instances. Therefore, although I agree with Feinberg that the symbolic function of punishment is important, I think that in some instances, the trial alone sufficiently expresses disapproval of what should be disapproved; namely, the kind of action on trial and the harms in which it resulted.

Finally, the arguments I have presented have broad reaching effects on my views on moral theory. My view of moral justification, of when we lack of responsibility, and when we should excuse wrong action affect how I would evaluate any moral situation. These defenses concern the appropriateness of moral praise and blame, which I think ought to be part of what concerns us in moral evaluations. I believe that evaluating the morality of actions is valuable. However, I think that if we do not go beyond these evaluations, we fail to do justice to those who do these actions. Conversely, if our goal is to assign moral praise or blame to the agent in question, we must not only decide whether

her action is right or wrong, but also whether she is justified in performing it, whether she is responsible for choosing it, and whether her circumstances diminish or eliminate her praiseworthiness or blameworthiness for choosing it.

Bibliography

- Austin, J.L. "A Plea for Excuses," *Justification and Excuse in the Criminal Law: A Collection of Essays*, Ed. Michael Corrado, New York: Garland Publishing, 1994, 3-31.
- Baur, Michael. "What is Distinctive about Terrorism and What are its Philosophical Implications," *Philosophy 9/11: Thinking about the War on Terrorism*, Chicago: Open Court, 2005, 3-22.
- Bellamy, Alex. *Fighting Terror*. London: Zed Books, 2008.
- "Supreme Emergencies and the Protection of Non-combatants in War," *International Affairs* 80, 5 (2004) 829-850.
- Benbaji, Yitzek. "A Defense of the Traditional War Convention," *Ethics* 118 (April 2008) 464-495.
- Beitz, Charles R. "Review: Bounded Morality: Justice and the State in World Politics" *International Organization* 33, 3 (Summer, 1979), pp. 405-424.
- Bradley, F.H. "Collision of Duties," *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 62-82.
- Brandt, Richard. *A Theory of the Good and the Right*. Oxford University Press, 1997
- "A Motivational Theory of Excuses in the Criminal Law," *Justification and Excuse in the Criminal Law: A Collection of Essays*. Edited by Michael Louis Corrado, New York: Garland Pub., 1994, 95-129.
- *Morality, Utilitarianism, and Rights*. Cambridge: Cambridge University Press, 1992.

- “Utilitarianism and the Rules of War,” *War and Moral Responsibility*, Edited by Marshall Cohen, Thomas Nagel, and Thomas Scanlon, Princeton: Princeton University Press, 1974, 25-45.
- Card, Claudia. *The Atrocity Paradigm: A Theory of Evil*. Oxford: Oxford University Press, 2002.
- Coady, C.A.J. “Defining Terrorism,” *Terrorism: The Philosophical Issues*, Edited by Igor Primoratz, New York: Palgrave Macmillian, 2004, 3-14.
- *Morality and Political Violence*. Cambridge: Cambridge University Press, 2008.
- “Terrorism, Morality, and Supreme Emergency,” *Ethics* 114 (July 2004) 772-789.
- de Sousa, Ronald B. “The Good and the True,” *Mind* 83, 332 (October 1974) 534-551.
- Degomme, Olivier and Guha-Sapir, Debarati. “Patterns of mortality rates in Darfur conflict,” *The Lancet*, 375, 9711, 294 – 300 (23 January 2010).
- Doppelt, Gerald. “Walzer's Theory of Morality in International Relations” *Philosophy and Public Affairs* 8, 1 (Autumn, 1978), pp. 3-26.
- Feinberg, Joel. “The Expressive Function of Punishment,” *Doing & Deserving: Essays in the Theory of Responsibility*. Princeton: Princeton University Press, 1970, 95-118.
- Foot, Philippa. *Moral Dilemmas: and Other Topics in Moral Philosophy*. Oxford: Oxford University Press, 2003.
- French, Shannon. “Murderers, Not Warriors: The Moral Distinction Between Terrorists and Legitimate Fighters in Asymmetric Conflicts,” *Terrorism and International Justice*, Edited by James P. Sterba, Oxford: Oxford University Press, 2003, 31-46.
- Gardner, John. “The Gist of Excuses,” *Buffalo Criminal Law Review* 575, 1998.

- Glover, Jonathon. "State Terrorism," *Violence, Terrorism, and Justice*. Edited by R.G. Frey and Christopher W. Morris, 1991, 256-275.
- Greenawalt, Kent. "The Perplexing Borders of Justification and Excuse," *Justification and Excuse in the Criminal Law: A Collection of Essays*. Edited by Michael Louis Corrado, New York: Garland Pub., 1994, 341-376.
- Greer, Donald. *The Incidence of the Terror during the French Revolution. A Statistical Interpretation*. Cambridge: Harvard University Press, 1935.
- Gross, Michael L. *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*. Cambridge: Cambridge University Press, 2010.
- Hagan, John and Rymond-Richmond, Wenona. *Darfur and the Crime of Genocide*. Cambridge: Cambridge University Press, 2009.
- Hart, H.L.A. *Punishment and Responsibility*. Oxford: Oxford University Press, 1968.
- *The Concept of Law*. Second Edition, Oxford: Oxford University Press, 1994
- Harte, Liam. "A Taxonomy of 'Terrorism,'" *Philosophy 9/11: Thinking about the War on Terrorism*, Chicago: Open Court, 2005, 23-52.
- Hill, Thomas Jr. "Making Exceptions without Abandoning the Principle: Or How a Kantian might think about Terrorism," *Violence, Terrorism, and Justice*. Edited by R.G. Frey and Christopher W. Morris, 1991, 196-229
- "Moral Dilemmas, Gaps, and Residues," *Moral Dilemmas and Moral Theory*. Edited by H.E. Mason, Oxford: Oxford University Press, 1996, 167-198.

- Hume, David. *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*. Edited and Notes by P.H. Nidditch, Oxford: Clarendon Press, 1975.
- Kagan, Shelly. *Normative Ethics*. Boulder, Colorado: Westview Press, 1998.
- Kalyvas, Stathis N. "The Paradox of Terrorism in Civil War," *The Journal of Ethics* 8 (March 2004) 97-138.
- Kant, Immanuel. "The Metaphysics of Morals," *Practical Philosophy*. Translated and Edited by Mary J. Gregor, Cambridge: Cambridge University Press, 1996, 353-604.
- Kapitan, Tomis. "The Terrorism of 'Terrorism,'" *Terrorism and International Justice*. Edited by James Sterba, Oxford: Oxford University Press, 2003, 47-68.
- Lemmon, E.J. "Moral Dilemmas," *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 101-114.
- Littlejohn, Ronnie. "Responsibility Descriptions: Excuses," *Ethics: Studying the Art of Moral Appraisal*, University Press of America: New York, 1993, 83-104.
- Luban, David. "Just War and Human Rights" *Philosophy and Public Affairs* 9, 2. (Winter, 1980), pp. 160-181.
- Mamdani, Mahmood. *Saviors and Survivors : Darfur, Politics, and the War on Terror*. New York: Pantheon Books, 2009.
- Marcus, Ruth Barcan. "Moral Dilemmas and Consistency," *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 188-204.
- "More about Moral Dilemmas," *Moral Dilemmas and Moral Theory*. Edited by H.E. Mason, Oxford: Oxford University Press, 1996, 23-35.

- May, Larry. *War Crimes and Just War*. Cambridge: Cambridge University Press, 2007.
- McConnell, Terrance C. "Moral Dilemmas and Consistency in Ethics," *Moral Dilemmas*.
 Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 154-173.
- McMahan, Jeff. "Killing in War: A Reply to Walzer," *Philosophia* 34 (2006) 47-51.
- "Liability and Collective Identity: A Response to Walzer," *Philosophia* 34 (2006)
 13-17.
- "The Ethics of Killing in War," *Ethics* 114 (July 2004) 693-733.
- Moore, Michael. "Causation and the Excuses," *Placing Blame*, Clarendon Press: Oxford,
 1997, 481-547.
- "Choice, Character, and Excuse," *Placing Blame*, Clarendon Press: Oxford,
 1997, 548-592.
- Nagel, Thomas. "War and Massacre," *War and Moral Responsibility*, Edited by Marshall
 Cohen, Thomas Nagel, and Thomas Scanlon, Princeton: Princeton University
 Press, 1974, 3-24.
- Nardin, Terry. *Law Morality, and the Relations of States*. Princeton: Princeton University
 Press, 1983.
- Orend, Brian. *The Morality of War*. Toronto: Broadview Press, 2006.
- Pillar, Paul. *Terrorism and US Foreign Policy*. Washington D.C.: Brookings Institute
 Press, 2003.
- Price, Terry L. "Faultless Mistake of Fact: Justification or Excuse?" *Criminal Justice
 Ethics* 12, 2 (Summer/Fall 1993).
- Primoratz, Igor. "What is Terrorism?" *Terrorism: The Philosophical Issues*, Edited by
 Igor Primoratz, Palgrave Macmillian: New York, 2004, 15-30.

- Rawls, John. *The Law of Peoples*, Cambridge: Harvard University Press, 1999.
- Robinson, Paul. *Structure and Function in Criminal Law*. Oxford: Oxford University Press, 1997.
- Sluka, Jeffrey A. *Death Squad: The Anthropology of State Terror*. Philadelphia: University of Pennsylvania Press, 2009.
- Statman, Daniel. "Supreme Emergencies Revisited" *Ethics* 117 (October 2006) 58-79.
- Tadros, Victor. "The Characters of Excuse," *Oxford Journal of Legal Studies* 21, 3 (2001) 495-519.
- Taurek, John M. "Should the Numbers Count?" *Philosophy and Public Affairs* 6, 4 (Summer 1977) 293-316.
- Toner, Christopher. "Just War and the Supreme Emergency Exemption," *The Philosophical Quarterly* 55, 221 (2005) 545-561.
- Walzer, Michael. "Emergency Ethics," *Arguing About War*. New Haven: Yale University Press, 2004, 33-50.
- *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books, 1977.
- "Political Action: The Problem of Dirty Hands," *War and Moral Responsibility*, Edited by Marshall Cohen, Thomas Nagel, and Thomas Scanlon, Princeton: Princeton University Press, 1974, 63-83.
- "Response to Jeff McMahan," *Philosophia* 34 (2006) 19-21.
- "Response to McMahan's Paper," *Philosophia* 34 (2006) 43-45.
- "The Four Wars of Israel/Palestine," *Arguing about War*. New Haven: Yale University Press, 2004, 113-30.

..... “The Moral Standing of States: A Response to Four Critics” *Philosophy and Public Affairs* 9, 3 (Spring, 1980), pp. 209-229.

..... “Terrorism: A Critique of Excuses,” *Arguing About War*, New Haven: Yale University Press, 2004, 51-66.

..... “Terrorism and Just War” *Philosophia* 34 (2006) 3-12.

Westen, Peter. “An Attitudinal Theory of Excuse,” *Law and Philosophy* 25 (2006) 289-375.

Williams, Bernard. “Ethical Consistency,” *Moral Dilemmas*. Edited by Christopher Gowans, Oxford: Oxford University Press, 1987, 115-136.

..... “Persons, character, and morality,” *Moral Luck*. Cambridge: Cambridge University Press, 1981, 1-19.

Williams, Cabriel I.H. *Liberia: The Heart of Darkness*. Bloomington, Indiana: Trafford Publishing, 2006.