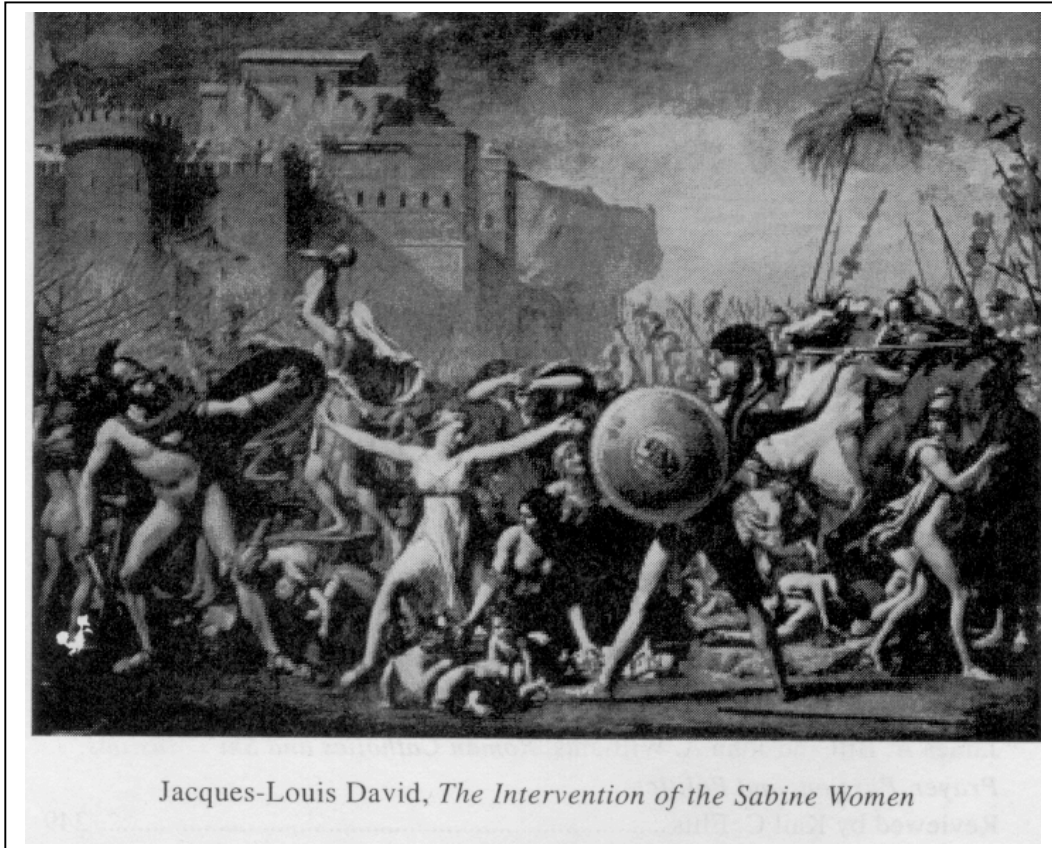


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PHILOSOPHICAL AMBIGUITIES
IN OSTENSIBLY UNAMBIGUOUS TIMES:
THE MORAL EVALUATION OF TERRORISM

Edmund N. Santurri

The title of my lecture, "Philosophical Ambiguities in Ostensibly Unambiguous Times: The Moral Evaluation of Terrorism," is meant to signal, among other things, a certain apprehension I feel about addressing this subject in the aftermath of September 11. I can imagine some in the audience becoming impatient with what they are about to hear, impatient, that is, with *philosophical* reflection on this particular topic at this particular time. Terrorism, it might be said, calls for unequivocal condemnation rather than philosophical speculation, logic splitting or argument parsing. And that kind of objection implicitly raises questions about the proper disposition for ethical judgment on matters of grave importance and urgency. Should that disposition evidence analytic distance, circumspection, dispassion and abstraction or should it reflect deeply engaged passionate, unequivocal commitment and expression—in the case of the disposition toward terrorism, unqualified righteous indignation? Some in the audience, I suspect, would opt for the latter with respect to terrorism--passionately expressed righteous indignation. If so, I ask especially for their patience since my own considered view is that for the purposes of moral judgment we need moral inquiry, and for moral inquiry we need at least some kind of dialectical relation between the particular judgments of passionately

held conviction and the measured, distanced assessments marking philosophical reflection. While the philosophic disposition in some measure abstracts from and at times may depreciate unduly the experience of passionate outrage, it is also the case that passions can blind one to or at least obscure important complexities. Now and then we require (to borrow a phrase from the eighteenth century British moralist, Bishop Butler) a cool calm moment to reflect critically on our righteous indignations, righteous as they might remain even after the evaluation of dispassionate critical inquiry.

Let me signal my own moral intuition on terrorism up front. Terrorism, which I define here as the use of violence or the threat of violence against noncombatant or civilian populations for some political purpose--terrorism in this sense--is morally wrong no matter how just the cause of the terrorist against the offending group. This is my moral intuition. Yet there are philosophical objections to this position that give me pause. And while I think some of the objections can be met, as I shall try to show, some others continue to make their presence felt even after spirited defense of the intuition. So I am left with a moral commitment that remains troubled, uncertain in some measure. That may be unsatisfactory to some in these ostensibly unambiguous times, but that's where I am.

I want to begin by identifying some grounds in the so-called just-war tradition for the moral condemnation of terrorism. This is a tradition I have some sympathy for and one that has a long complex history rooted in various philosophical, religious, moral, social, cultural and legal traditions of the west, a history that I cannot chart in detail here. When I talk about what just-war tradition stands for I am describing a rough consensus among contemporary proponents of that tradition--moralists, philosophers, theologians and international legal theorists, who argue, as just-war thinkers, that under certain moral conditions a group might resort to political violence (e.g., to protect the innocent) but who also insist that the use of political violence--even when the cause is just--must be governed by certain moral constraints prohibiting terrorist acts *inter alia*. Typically just-war theory is presented as a kind of midway position between a pacifism that rules out violence altogether and a political realism that admits of political violence *and* is open in principle to violence of any form that advances certain morally commendable goals (e.g., justice). That is, just war theory, against pacifism, allows for some political violence, but, against realism, permits such violence only with firm moral limits on the sort of violence allowed. At any rate, once I have identified grounds in the just-war tradition for the prohibition of terrorism, I then turn to examine selected philosophical arguments designed to challenge the just-war position on this matter--that is, I turn to consider philosophical arguments designed to qualify, attenuate or undermine the just-war judgment that terrorism is morally wrong.

As a way of identifying the moral grounds in just-war tradition for condemning terrorism, let's begin by having a look at a painting by a favorite painter of mine. The painting is "The Intervention of the Sabine Women" produced by the great French Revolutionary artist Jacques-Louis David in 1799. As some in the audience will know, David was not only a *painter* in the French Revolution's cause. He was also an active political participant in the revolution and was part of the so-called Reign of Terror. And as was the case for many of the French's Revolution's participants, the revolution eventually turned against him. With the fall of his leader Robespierre, David was imprisoned. As a consequence, he began to harbor reservations, not surprisingly, about

the French Revolutionary Reign of Terror--and this painting is sometimes interpreted as expressing David's newfound interest in political reconciliation (though the interpretation is controversial since some historians wonder how genuine David's motivations were). The subject matter of the painting is drawn from Livy's account of Rome's early history. On the left, the Sabines, one of a number of ancient Italian peoples in conflict with the early Romans, are attacking the Romans to avenge the latter's earlier abduction of the Sabine women for the purposes of intermarriage. By this time, the Sabine women have mated with their Roman captors and have raised families. As a result, the women have dual allegiances--to the Sabines and to the Romans--and here in a climactic moment, they intervene to bring a halt to the belligerency by putting themselves and their children between the belligerents.

Now there are all sorts of moral parochialisms here that offend contemporary perspectives (e.g., allegiances born of forced marriages may not strike us today as generating much moral motivation for loyalty), but I want to abstract from such complexities and draw your attention to one image, just to the left of center, an image that transcends, at least a just-war theorist might suggest, any ancient Roman or, for that matter, eighteenth century French moral provincialism. The image is the one of the woman's raising her child on high, thus prompting the Sabine commanders to order the Sabine soldiers to lift their lances. Here, I want to propose, we have a visual metaphor of the moral intuitions lying behind the so-called principle of noncombatant immunity of the just-war tradition. According to that principle, noncombatants may not be the objects of direct military attack even when one has just cause in waging a war against an enemy. In this view, there is a moral limit on violence even when it is marshaled in support of a just cause, and that limit is presented in the form of innocuous, innocent, vulnerability--with children serving, here at any rate, as the paradigm instance. As the image depicts, violence is incapacitated morally in the face of such innocuous, innocent, vulnerability. The child poses no threat to the Sabine soldiers. The child is not an aggressor. There is no question of moral guilt borne by the child for the offense that might make for the just cause of the war. Moreover the child is utterly vulnerable, defenseless, against the attack. The mother's gesture, as a consequence, arrests the belligerency with moral force. The gesture pricks the consciences of the Sabine soldiers. The honorable soldier, that is, desists in response to innocuous, innocent, vulnerability. Now there is the complicating factor that this child is presumably a relation of the Sabine soldiers on the left whose militancy is arrested at least in part because the child is half Sabine, but I'm abstracting from that complicating factor here and reading the image more generally from the interpretive perspective of what might be called (adapting Arthur Danto's phrase) the "artworld" of just-war tradition, reading it, that is, as a visual metaphor of the just-war tradition's principle of noncombatant immunity rooted in the concern to protect innocuous, innocent vulnerability. Noncombatants, once again, are not to be the object of direct military attack even in a war where the attacker has just cause.

Another picture is closer to the home of our present topic. This is not a literal picture but one drawn in an historical narrative offered by Michael Walzer in his book *Just and Unjust Wars*:

In the early twentieth century, a group of Russian revolutionaries decided to kill a Tsarist official, the Grand Duke of Sergei, a man personally involved in the

repression of radical activity. They planned to blow him up in his carriage, and on the appointed day one of their number was in place along the Grand Duke's usual route. As the carriage drew near, the young revolutionary, a bomb hidden under his coat, noticed that his victim was not alone, on his lap he held two small children. The would-be assassin looked, hesitated, then walked quickly away. He would wait for another occasion. Camus [in his play *The Just Assassins*] has one of his comrades say, accepting his decision: "Even in destruction, there's a right way and a wrong way--and there are limits."¹

This is a complex example because we can ask whether the Duke, himself, in this case is rightly construed as a permissible object of attack. Some just-war thinkers would count political assassinations of public officials as terrorist acts because public officials are not soldiers, are not "aggressors," in some narrow sense of the term and thus are not fully "combatants" in the sense relevant to noncombatant immunity. Indeed, the international law of belligerency, which grows out of just-war tradition, has tended not to countenance assassination as a permissible activity. But the main point I am focusing on here is the Russian revolutionary's recognition of a profound moral limit posed by the presence of children, who do serve as clear cut cases of innocuous, innocent, vulnerability. For Michael Walzer, a just war theorist, the revolutionary is to be commended for resisting the temptation to terrorism, which in its indiscriminate character egregiously violates this moral limit and must be condemned.

As I have suggested already, in just-war tradition this moral limit is typically specified in terms of a principle--the principle of noncombatant immunity or sometimes called the principle of discrimination. According to the principle, noncombatants are *morally immune* to direct attack in warfare. Thus one must *discriminate* between combatants and noncombatants in the waging of war. This principle of noncombatant immunity is one of the so-called *ius in bello* criteria of just-war tradition. Rules of just war are typically divided in the tradition between those which specify conditions for the just initiation of war (these are called *ius ad bellum* [literally justice to war] rules) and those rules which specify conditions for just conduct within the war (these are called *ius in bello* [literally *justice in war*] rules). The principle of noncombatant immunity is one of the *ius in bello* rules governing conduct in a just war.

Various rationales are given for the principle of noncombatant immunity in contemporary just-war discussions. In one account, since self-defense or response to aggression is the principal moral reason for waging war in the first place and since one need defend oneself only against combatants (those who are attacking you), there is no rationale in just-war theory for using military force against noncombatants since they are not agents against whom one must defend oneself.² In some versions of Protestant Christian ethics, at least in modern contexts, one often finds a somewhat different emphasis reflecting a theologically motivated moral reservation about the principle of self-defense. Christian just-war theorist Paul Ramsey, for instance, gives the following rationale.³ The only just cause for going to war is to defend innocuous innocents against unjust aggression. But this *ius ad bellum* rationale for resort to war simultaneously generates a *ius in bello* constraint on the waging of war. If the resort to war is legitimated only by defense of innocuous innocence, then the innocuous innocent—as a matter of consistency—should not be the object of direct attack in the waging of war itself. Now as

an expression of Christian just-war theory, all of this abstracts from Christian arguments enjoining pacifism, which rules out violence altogether, arguments that typically appeal to the Sermon on the Mount where Jesus commands his followers to turn the other cheek in response even to assault that is unjust. For the Christian just-war theorist (and here I follow Ramsey again but the argument is in Luther too) Jesus says turn *your own* cheek in response to assault. So *self*-defense is morally problematic. Jesus does not say, however, turn the cheek of the innocent third party, who should be defended even with violence under certain conditions. That just-war defense against pacifism, at any rate, is a bit of an aside in the present context.⁴ The main point I am making here is this: If the rationale for war is defense of the innocuous innocent, then the innocuous innocent as a matter of consistency, should not be attacked directly in the prosecution of the war. Ergo the *ius in bello* principle of noncombatant immunity.

Notice that, according to the principle, noncombatants may not be the object of *direct* attack, which is to say that lethal or harmful force may not be *aimed* at noncombatants per se. At the same time, according to some interpretations of the principle, one might anticipate permissibly the harm or death of noncombatants as an incidental by-product of one's intentional attack against combatant or military targets. There may be, in military parlance, anticipated "collateral damage," which includes the harm or death of noncombatants, so long as this damage is proportionate to the good one is trying to achieve. What the principle of noncombatant immunity insists on, in this interpretation, is that the death or harm of noncombatants serve neither as the end of one's action nor as a means to one's intended end (because one always intends the means to one's chosen ends and one must never intend evil). For example, you try to take out a military target (bomb an Al Quaida cave) anticipating that some noncombatants in the vicinity might be killed. The possible or probable death of noncombatants in this case may be foreseen but not intended. Such death cannot be part of the plan though it may be anticipated and accepted, in some measure and reluctantly, as an incidental result of the plan. To intend noncombatant death directly, in this account, is murder. More generally, what we have here in just-war theory is an application of the so-called principle of double effect, which presumably tells us when an act issuing in two effects, the one good and the other evil, is permissible. Such an act is permissible, according to the principle of double effect, so long as *inter alia* the good effect alone is intended.

If all of this is sound and if the principle of noncombatant immunity is a practical absolute, then, it would seem, terrorism, as I have defined it, cannot be justified morally. Terrorism, however just the cause of the terrorist, is still morally wrong because it involves the use of violence or the threat of violence against noncombatant populations as part of the plan. Harm to innocents is intended as a means to bringing about the envisaged end. However justifiable the ends, they do not justify evil means. I think it's fair to say that among contemporary just-war theorists, there is a rough moral consensus that terrorism must be rejected for this reason.

Arguments that Challenge Noncombatant Immunity

Now I want to consider five arguments challenging this moral consensus: (1) The Argument from Critical Scrutiny of the Principle of Double Effect; (2) The Argument from the Conventional Status of Noncombatant Immunity; (3) The Argument from

Collective Responsibility; (4) The Argument from Supreme Emergency; (5) The Argument from the Minimization of Human Rights Violations.

The Argument from Critical Scrutiny of the Principle of Double Effect

An attack against Afghanistan will probably kill a great many innocent civilians, possibly enormous numbers in a country where millions are already on the verge of death from starvation. Wanton killing of innocent civilians is terrorism, not a war against terrorism.⁵

Even if one were to grant that terrorism necessarily involves the killing of innocents, this alone does not place it beyond the scope of just war theory, for innocents may be killed in a just war. All that just war theory requires is that innocents not be *targeted*. The basis for this position is the principle of double effect, which holds, roughly, that innocents may be killed as long as their deaths are not the intended effects of violence but, rather, the unintended (though perhaps fully foreseen) side effects of violence. So the most that can be said against my position, even granting that terrorism involves the killing of innocents, is that the difference between (just) war and terrorism is that in the former innocents are not targeted but (routinely) killed while in the latter they are targeted and killed. Whether this is a crucial distinction is a question that would require us to go too far afield at this point. Perhaps it is enough to say that if there are reasons for rejecting the principle of double effect . . . there is all the more basis to think that terrorism and war are not so morally different from each other.⁶

Here I consider two arguments in support of terrorism that emerge from critical scrutiny of the principle of double effect. The first argument is grounded in the claim that the principle of double effect should be rejected. The second argument is grounded in the claim that certain forms of terrorism can pass the principle of double effect.

(1) The first argument proposes that the principle of double effect should be rejected because it draws a distinction without a genuine moral difference. According to this objection, accepting anticipated, though unintended, harm of noncombatants as a consequence of one's actions aimed at a good effect is no different morally from intending the harm of noncombatants as a means to bringing about the good effect. Thus, if you allow, say, for the recent U. S. military efforts against Afghanistan, where deaths of noncombatants are anticipated as byproducts of attacks aimed at military targets, then, according to this argument, you also ought to allow for terrorism when the terrorist's cause is just and when other conditions obtain. Now if one focuses exclusively on consequences in the moral assessment of human action, then this argument carries some force. But it is implausible to deny that intentions as well as consequences are crucial in the moral assessment of human actions, that there is a morally significant difference between an act whose evil effect is intended as means--in our case where the death of noncombatants is part of the agent's purpose--and an act whose evil effects (e.g., the deaths of noncombatants) are unintended byproducts. In giving a lecture on an abstruse topic, I might foresee that some in the audience would be perplexed. Yet giving the lecture with that in mind is morally different from giving the lecture with the precise

intent to confuse the audience. Now it might be thought that the degree to which one finds the distinction compelling turns in some measure on the probabilities of the unintended evil effects' occurring--in the case of warfare, on the probability of unintended noncombatant death. In this account, the higher the probability of unintended noncombatant death as an anticipated consequence, the less significant the distinction between intended and unintended consequence might seem to be. The more the death of noncombatants appears to be relatively improbable at the outset and thus accidental in effect if such death is brought about, the less it seems to be part of the plan and thus the more tolerable, if agonizingly regretful, it appears to be morally.⁷ But focusing on probabilities in this case is misleading.⁸ I might be reasonably sure that an evil effect will be the outcome of my action but this does not show that the effect forms part of my intention, is part of the plan of my action. A battlefield army medic is reasonably sure that the necessary amputation performed with insufficient anaesthetic given shortages will cause the wounded soldier considerable pain. Yet the medic's performing that action does not demonstrate that she intends to cause the pain. The issue of intention in such cases turns, not on probabilities of outcomes, but on whether the agent can claim reasonably that the evil effect would have been avoided if (counterfactually) it could have been avoided.

Such considerations do suggest, however, that the plausibility of any claim that a projected evil effect is unintended will turn in some measure on the degree of effort the agent expends in trying to prevent noncombatant death.⁹ For terrorists there can be no such effort because the death or harm of noncombatants, it would seem, is part of the plan. We can say, then, that terrorism must be condemned because it aims to harm noncombatants and propose that actions generating unintended deaths of noncombatants will be assessed according to the degree of effort expended to avoid the deaths and, failing prevention of such death, according to the degree of expended effort at reparation when such death occurs. With such a combination of judgments, we can preserve the unequivocal condemnation of terrorism while remaining open in principle to the moral possibility of a war effort such as the most recent American initiatives in Afghanistan where the deaths of noncombatants are foreseen as reasonably certain to occur and where other conditions of just war are satisfied (e.g., just cause, last resort, reasonable hope of success, proportionality, just goal, morally legitimate authority).

(2) The second pro-terrorist argument emerging from critical scrutiny of double effect proposes that, in fact, certain forms of terrorist activity can actually pass the test of double effect. Consider, again, Walzer's example of the Russian revolutionary, who might have said sincerely that the deaths of innocents was not part of his plan, not intended, even if he threw the bomb into the carriage. The argument would go as follows: The intention was to kill the Duke. The Duke would have been killed whether the children were there or not. Were just the children in the carriage, he would not have thrown the bomb. This shows that the children's death was not intended. Therefore this kind of terrorism passes the test of double effect. Or so the argument would go. My response: There *is* something to this argument. It shows that if the principle of double effect is to be preserved, it has to be modified as follows: In an act of two effects, the one good and the other evil, one must neither *intend nor be callously indifferent* to bringing about the evil effect. Had the Russian revolutionary thrown in the bomb, that would have

shown culpable indifference to the deaths of noncombatants--and in that case the spirit of the principle of noncombatant immunity is violated even if technically the evil effect is unintended. Given the principle of double effect, so modified and given noncombatant immunity, terrorist acts would be precluded morally without precluding the possibility of war efforts in a just cause where harm to noncombatants is anticipated--so long as the bringing about of that harm did not indicate culpable indifference. Whether such has been the case in Afghanistan, I must leave to others to judge finally. The various official reports have suggested that American officials have done what they could to minimize the deaths of Afghan noncombatants and the impression has also been given that there was no reasonable alternative to war with Afghanistan given the threat of al Quaida, but obviously we are at the mercy of those issuing the reports and assessments.

The Argument from the Conventional Status of Noncombatant Immunity

According to this argument, the principle of noncombatant immunity is anchored neither in some natural moral law nor in some other metaphysical moral reality but reflects rather a social convention whose normative force derives either from its conventional status as agreed to or from its general utility or from some combination of both. Withdraw agreement and/or question its utility in a particular context and you deprive the convention of its normative force. Terrorists with just causes withdraw agreement to abide by the principle precisely because they believe that terrorist acts promote utility in some sense--e.g., they promote the rectification of injustices by getting the attentions of offending groups.

The conventional status of non-combatant immunity is signaled presumably (1) by the historical contingencies that give rise to the convention, (2) by the apparent arbitrariness of certain expressions of *ius in bello* generally, expressions dependent essentially on calculations of military advantage and collective egoism or (3) by the recognition that noncombatancy does not track genuine moral innocence consistently and by the envisaging of plausible alternatives to the principle of noncombatant immunity that might serve utility even better.

(1) In this account, the conventional status of noncombatant immunity is signaled by the historical contingencies that have given rise to the principle. According to one prominent conventionalist interpretation, rigorous adherence to the principle with its strict division between combatant and noncombatant was motivated in fact not by deep moral concern primarily but rather by the exigencies of a medieval and Renaissance chivalric code that saw no strategic advantage in targeting noncombatants. "During much of that time, the key to the conduct of war was combat between mounted knights and supporting infantry. Generally speaking, there was no military utility in attacking anyone other than the enemy knights and their armed retainers."¹⁰ Since medieval and Renaissance times, however, the nature of combat has changed. In modern warfare the larger societies, including civilian populations, are mobilized as substantial parts of war efforts, particularly as such draw on nonmilitary economic and cultural resources of various kinds. That fact conjoined with advances in military technology have made it impossible to engage in modern warfare while adhering absolutely and without qualification to a principle of noncombatant immunity. Yet certainly such warfare is

morally permissible given the existence of a just cause against an aggressor society. In these circumstances, the convention of noncombatant immunity may presumably be set aside.¹¹ And while not all conventionalist advocates extend the logic of this argument to justify terrorism as such is typically envisaged, it is easy enough to see how the extension might go. Given a conventionalist account of noncombatant immunity, terrorist groups having just causes against aggressive or oppressive societies might rightfully suspend the principle of noncombatant immunity assuming that other conditions of just war are satisfied (e.g., reasonable hope of success, proportionality, last resort, legitimate authority).

Yet, however one assesses the claim about the substance of medieval and Renaissance chivalric codes, the general line of argument under consideration confuses questions about the historical origin of a moral principle with questions about the normative validity of the principle. That the principle of noncombatant immunity emerged in a particular historical context under certain historical conditions for certain historical reasons shows neither that the normative force of the principle is contingent on that peculiar set of historical circumstances nor that its justifying reasons are limited to those that were operative at the point of its origination. Thus even if it is true that the medieval and Renaissance chivalric codes embraced noncombatant immunity because there was no military purpose in attacking noncombatants under those historical conditions, such would not demonstrate that the principle is a mere historical convention that might be set aside under different historical conditions in cases where military purpose (motivated by just cause) *could* be served by so doing. To assume otherwise, more than likely, would be to commit some version of the genetic fallacy. Whatever is said about the historical origins of noncombatant immunity, the central normative question that remains is whether there exist now decisive moral reasons for adhering to the principle above and beyond those that may have been operative at the time of its origination. And, as I have suggested already, such reasons are rendered in the just-war observation that it is morally wrong in warfare to kill or harm directly persons who are innocent, innocuous and vulnerable.¹²

(2) A second line of argument proposes that the conventionalist status of noncombatant immunity is signaled by the apparent moral arbitrariness of all *ius in bello* rules, whose interpretive history reflects "little more than convention" rooted in collective egoism. In this account the *ius in bello* tradition "simply states what most warring nations agree not to do in order not to risk the same in return."¹³ This egocentric conventionalism is reflected particularly in the history of armaments deliberations, which, in this account, are governed more by consideration of strategic advantage and disadvantage than by moral principle (e.g., chemical weapons are proscribed; nuclear weapons are not).¹⁴ But the larger observation applies presumably to *ius in bello* generally--such that the "fullest weight of moral inquiry" falls on *ius ad bellum* in ethical assessments of war.¹⁵ If all of this is sound, then debates about the meaning and scope of noncombatant immunity, a *ius in bello* principle, are functions more of strategic posturing and positioning than of serious moral deliberation, and such signals presumably the nonmoral conventional status of noncombatant immunity. Terrorism, then, bears no special *moral* burden of proof as a tactic within belligerency. If terrorism is inhumane, this is because all warfare, including conventional warfare, is inhumane. But if warfare is justified in spite of its inhumanity, then the acceptability or unacceptability of terrorism will turn on calculations of mutual

interest rather than on the nuances of moral deliberation.¹⁶

There are at least three problems with this line of argument. First, it is not entirely clear that armaments deliberations and practices historically have been as unprincipled as suggested. After all, whatever egocentric interests might have been served, say, by the banning of chemical weapons, it is certainly the case that the judgment of these weapons as relatively disproportionate has been a factor in the determination that they ought not to be used, and that is a moral consideration.¹⁷ Second, even if one grants the unprincipled course of armaments deliberations and practice as a matter of historical fact, one need not concede further that such deliberations inevitably evade moral analysis and critique. It may be the case, for example, that nuclear weapons, given considerations of discrimination and proportionality, ought to be proscribed morally even if nations have resisted that conclusion for self-interested reasons. The validity of moral principles is not undermined by the recalcitrance of nations. Third, even if one grants the point that armaments agreements in international law are conventions with little if any moral substance, one cannot infer from that fact alone that *all ius in bello* constraints are conventional in this sense. Moreover, it is implausible to suggest simply that:

[w]e do not butcher prisoners because we want ours to survive. This is a convention, and indeed a desirable convention. But it is not a canon of morality, as if there would be clear reasons why it would be moral to protect prisoners but also moral to shoot active combatants.¹⁸

On the contrary, there are clear moral reasons for the distinction between active combatants and prisoners of war, and the reasons are implicit in any sound account of noncombatant immunity. Prisoners of war approach the status of noncombatancy in virtue of the fact that they no longer constitute full material threats to security, and it is morally wrong to employ lethal or harmful force against persons who are not threats in this sense. Thus it is simply implausible to assert without further argument that POW regulations are no more than amoral conventions rooted in collective egoism. More generally, it is implausible to assert that all *ius in bello* constraints, including noncombatant immunity, are conventional in this sense. Certainly such does not follow from the observation, even if true, that armaments agreements historically have been conventional in the sense described.

(3) A third line of argument proposes that the conventional status of noncombatant immunity is indicated by the fact that noncombatancy does not track moral innocence consistently. Philosopher George Mavrodes advances one particularly interesting version of the argument:

Now, we should notice carefully that a person may be an enthusiastic supporter of the unjust war and its unjust aims, he may give to it his voice and his vote, he may have done everything in his power to procure it when it was yet but a prospect, now that it is in progress he may contribute to it both his savings and the work which he knows best how to do, and he may avidly hope to share in the unjust gains which will follow if the war is successful. But such a person may clearly be a noncombatant.... On the other hand, a young man of limited mental ability and almost no education may be drafted, put into uniform, trained for a few weeks,

and sent to a front in a low-grade unit. He may have no understanding of what the war is about, and no heart for it. He might want nothing more than to go back to his town and the life he led before. But he is "engaged," carrying ammunition, perhaps, or stringing telephone wire or even banging away ineffectually with his rifle. He is without doubt a combatant, and "guilty," a fit subject for intentional slaughter. Is it not clear that "innocence," as used here, leaves out entirely all of the relevant moral considerations--that it has no moral content at all.¹⁹

From such considerations Mavrodes infers that the principle of noncombatant immunity is a social convention whose normative force derives from multilateral acceptance conjoined with utility calculations. The point of its adoption is to limit war's destructiveness, but the convention carries no intrinsic moral force, and we can imagine other conventions that might serve the purpose better, though some of them are unlikely to be adopted (e.g., settling disputes via individual trial by combat). Mavrodes, himself, does not extend his analysis to allow morally for terrorism under certain conditions, but we can easily see how such an argument might go. If the principle of noncombatant immunity is just a convention whose normative force derives from a combination of multilateral acceptance and utilitarian considerations (it limits war's destructiveness) then a terrorist group with a weighty just grievance might withdraw its support for the convention on the grounds that its grievance is weighty enough to override concerns for the destruction brought about by setting the principle aside.

Yet, contra Mavrodes, establishing the failure of the principle of noncombatant immunity to track moral innocence consistently does not in itself show that the principle derives its force simply from convention, without grounding in some deeper moral reality that transcends conventional practice. Adherence to the principle may simply be the best we can do in tracking innocence given certain practical complexities, but the tracking of innocence, among other things, may, nonetheless, give the principle its general normative force. Moreover, as I have suggested already, noncombatant immunity tracks other properties (albeit imperfectly) that are morally relevant to establishing immunity from belligerent attack--namely, innocuousness and vulnerability. These properties along with innocence generate an intrinsic moral claim to protection. Certainly there are paradigm cases of all three properties converging on particular instances of noncombatants, e.g.--children in most circumstances. There are, of course, some borderline cases (civilians who bake bread for other civilians as well as for the army, munitions workers, children who throw grenades). But to pirate just-war theorist Paul Ramsey who pirated Samuel Johnson (with attribution), just because there is an evening does not mean there is no difference between day and night. The existence of borderline or questionable cases, which might be settled conventionally, does not disprove the existence of paradigm cases of individuals, picked out by the principle of noncombatant immunity, individuals whose protection is rooted morally in something beyond convention. To put the general point in another way, acknowledging that there is an element of conventionality in the principle of noncombatant immunity as it is applied is not to say that the principle's moral force is reducible to mere convention. Again, it may be the case that noncombatancy, though imperfect, is still the most effective criterion for tracking innocuous, innocent, vulnerability, that some borderline cases are resolved via convention, that some "guilty" types slip through, but insofar as the principle's application is largely useful in protecting

the relevant persons in a range of cases the principle is grounded in more than convention justified by utility. It is grounded in a moral reality or natural law which insists that innocuous innocent vulnerability not be harmed directly.

It is for this reason that Mavrodes's example of an alternative convention is misleading (the example of settling disputes via individual trial by combat). He admits that such a convention for limiting war's harm would not be accepted, but he neglects to say precisely why it would not be accepted. It would not be accepted, I submit, because it does not emerge naturally and with a high degree of moral force from the real circumstances of belligerency, circumstances that involve the moral contemplation of belligerent responses designed precisely to impede real threats. To take one example, a community whose political sovereignty was threatened by another community would be unlikely to surrender that sovereignty after its representative lost a conventionally arranged individual tournament trial by combat so long as the threatened community retained means to resist the violation of its sovereignty--any more than it would surrender its sovereignty after it lost a conventionally arranged flip of the coin. The claim in this case that continued resistance violated some moral limit could *only* be explained, and weakly at that, by appealing to some highly artificial, arbitrary and undoubtedly unstable convention. This is not the case with the limit of noncombatant immunity, adherence to which, again, admits of explanation in terms of intrinsic moral substance, namely, the protection of innocuous, innocent vulnerability. This grounding of non-combatant immunity in moral reality rather than mere convention is sufficient in my view to warrant a strong prohibition of terrorist acts as I have defined them.

The Argument from Collective Responsibility

This argument tries to undermine noncombatant immunity by raising different sorts of questions about noncombatant innocence or innocuousness. That is, in this account, "noncombatants" may be judged morally guilty in virtue of membership in an unjustly aggressive community or may be evaluated as aggressors in virtue of membership in an unjustly aggressive community. In either case, noncombatants are allegedly fair game for terrorists. James Burtchaell suggests this line of argument in the following remarks:

Americans must give thought to the peculiarity of their notion that any nation is divided into "innocent" bystanders and "guilty" militants who wear uniforms. Most of humanity throughout most of history has understood families and peoples to cohere in solidarity in ways that are incomprehensible to the rather recent Western views of the individual that date back to the Enlightenment.

... [Y]ears back, when a band of Africans raided a white man's Rhodesian farm and slaughtered his wife and children, the Western world was filled with revulsion at this outrageous violation of the innocent and uninvolved. From the Africans' viewpoint, however, there was no uninvolved. Those gentle children had been washed, dressed, schooled, and conveyed abroad and entertained and cultivated by dint of the occupation of *their* land and the low-paid labor of *their* backs and the deprivation and humiliation of *their* children. It had been the white children's father's rifle that violated them and their homeland, but it was his

family that lived good-naturedly on his violence. How could he be guilty and they be innocent?²⁰

In fairness to Burtchaell, it is not entirely clear whether he is suggesting that the Rhodesian wife and children did in fact incur collective guilt by profiting from injustice or just that such was the way the Africans thought about the matter and that we westerners needed to keep as much in mind when we contemplate responses to the terrorism. At any rate, if he means to attribute genuine moral guilt simply in virtue of membership in a community that has profited from injustice, then his analysis invites anarchy in our moral assessments since we can reasonably assume that virtually everyone alive has profited from some serious injustice and that would mean that everyone was subject to some form of retributive punishment. The implausibility of that view needs little comment.

In any event, if ascriptions of collective guilt amount to anything more than mystifications, they are going to have to be tied to instances of individual wrongdoing and guilt gained by something beyond a kind of collective moral osmosis. And in fact the most plausible justifications of terrorism rooted in ascriptions of collective guilt do attempt to tie such ascriptions to individual guilt in this way. Yet I think these arguments typically fail to deliver fully what they purport to deliver. Thus Burleigh Taylor Wilkins proposes that an oppressed group might reasonably adopt a strategy of graduated violence eventually targeting the noncombatant population of the offending community:

[T]he terrorism in question should be directed initially at the perpetrators of violence and then at their accomplices in such a way as to reflect the part they played in the violence. If terrorism still fails to achieve its goal, the successful defense of the terrorists or the community or group to which they belong, then they should proceed to violence against those who, as individuals, are guilty of moral complicity in the violence in question. For example, the editors, the bankers, the university professors, and the motion picture makers who "knew what was going on"--and were handsomely rewarded for their silence and acquiescence--should be next in line. But what about members of the "silent majority" who, it would seem, do no evil, see no evil and hear no evil, or if they do hear aren't really listening or dismiss what they hear as rumor?... Certainly it seems reasonable to suppose ... that no systematic persecution of significant numbers of innocent persons can continue over long periods of time if the "silent majority" is awakened from its lethargy or its preoccupation with the details of its daily existence. Terrorists can be pictured as saying, [to the silent majority] "We demand your attention." But what if they fail, in their campaign of violence against the perpetrators of violence and their criminal and moral accomplices to awaken the conscience and the voice of the "silent majority" Then it would seem that the "silent majority" itself would become tainted first with moral and perhaps eventually even with criminal complicity in the ongoing violence directed against the terrorists and the community or group they represent. Under these circumstances, some judicious, highly selective terrorism aimed at members of the "silent majority" might become morally appropriate and tactically necessary, as a reminder that no one is safe until the injustice in question is ended.²¹

There are at least two responses to this line of argument. First, the ascription of moral complicity to the "silent majority" is bound to be highly speculative at best. One cannot assume simply that silence signifies culpable ignorance or subconsciously willful self-deception though it might in a range of cases. And given this fact, it is difficult to see how "some judicious, highly selective terrorism" that neatly discriminates guilty from innocent "silent majority" noncombatants might be accomplished. Second, even if guilty members of the silent majority might be identified with reasonable assurance, we are still left with the question whether their offense requires, in effect, capital punishment or torture--the typical results of successful terrorism. Certainly there is an important degree of difference between the primary perpetrators of violence against an oppressed group and those who are passively or self-deceptively complicit in the wrongdoing. If such considerations are sound, then it looks like the pro terrorist argument under consideration is going to gain most of its normative force, if it gains any, from the utilitarian consideration suggested at the end of Wilkins's quotation, namely, that terrorist activity is likely to be most effective if you hit the silent majority whether the silent majority deserves such punishment or not. But this is no longer simply an argument from collective responsibility. It is rather the argument that terrorism against the silent majority (deserving or not) is warranted by the consequences such promotes. My view is that such an argument unduly privileges consequences in relation to individual human rights.

The Argument from Supreme Emergency

This brings me to another argument that has a consequentialist (utilitarian) version--the so-called argument from supreme emergency. In this account, the principle of noncombatant immunity applies in ordinary circumstances, but we can envisage extraordinary circumstances of supreme emergency where something absolutely crucial to a community is threatened by unqualified adherence to the principle. Under these conditions, presumably, the principle may be overridden. Since the terrorist may be faced with such conditions of emergency, in such cases terrorism designed to ward off disaster is morally justifiable.

It is interesting to note that just-war theorist Michael Walzer accepts with some qualification a version of the "supreme emergency" argument with respect to the Allied bombings of Dresden during World War II. Noncombatant immunity was violated by that bombing but in principle was justifiable, according to Walzer, on the assumption that this was the only way to defeat the Nazi threat, which constituted a "supreme emergency" given this assumption. Yet elsewhere, as I have noted already, Walzer also rules out terrorism categorically because it violates noncombatant immunity. He has been criticized for allowing Dresden and ruling out the possibility of a morally justifiable terrorism given supreme emergency conditions faced by the group contemplating terrorism.²²

It is also interesting to note the view of some scholars that the argument from supreme emergency is at the heart of certain contemporary radical Islamic justifications of terrorism--including those of bin Laden, Hamas, and Islamic Jihad.²³ For Islamic radicals like bin Laden, of course, it is Islamic life that is allegedly threatened by the encroachments and pressures of the west, and this threat presumably constitutes the

supreme emergency, but such particularistic religious claims can be converted into a more generally accessible argument rooted in a concern for corporate autonomy. In this account an entire people's *self-determined* way of life is threatened, and this constitutes a supreme emergency that warrants the "overriding" of even the most weighty of moral prohibitions, including the principle of noncombatant immunity. All of this assumes, of course, that Islamic radicals like bin Laden are right in their assessments of the state of affairs, that Islam is, indeed, threatened decisively by American actions, that figures like bin Laden have morally legitimate authority to issue such judgments, to call for belligerent response based on such judgments, and so forth. Many of these claims seem unlikely to be true. But the central issue here is more generally whether, given a just cause of significant weight, supreme emergency or necessity provides a warrant for overriding the most serious of moral prohibitions, including the principle of noncombatant immunity.

There are two versions of the argument from supreme emergency to be considered here--the utilitarian version and the "dirty hands" version.

(1) *Simple utilitarian version.* In this account, all moral rules (including the principle of noncombatant immunity) are rules of thumb that should be set aside when such promotes the greatest good for the greatest number. In cases of supreme emergency the greatest good for the greatest number might be promoted by employing terrorist acts to meet the threat. If there is good reason to believe that terrorism will accomplish this purpose, then such terrorism is justifiable on utilitarian grounds. For example, if it is true that homeless Palestinians face emergency conditions and if there is reason to believe that a Palestinian homeland could only be established by getting the world's attention with terrorist suicide bombings that kill civilians, then--*ceteris paribus*--such bombings are warranted, in this account, on simple utilitarian grounds.

Yet, apart from the problem of determining precisely when the conditions of supreme emergency are in place (and that is a significant problem), the utilitarian version of the argument from supreme emergency suffers from the standard deficiencies associated with utilitarianism generally, namely, it does not do sufficient justice to the moral reality of individual rights. To say that the rule of noncombatant immunity is no more than a rule of thumb whose normative force dissolves without remainder in the acid of utilitarian concern underplays the moral weight individual rights should carry in any theoretical account consistent with deeply held moral intuitions. That is less a counterargument, I suppose, than a proclamation, and here I am tempted simply to shout the Kantian dictum that persons as the bearers of moral rights are not to be treated simply as means to an end, no matter how significant the end in question, or to recite that portion of Dostoevsky's *Karamazov* exchange in which Alyosha, responding to his brother Ivan's relentless inquiry, admits that he would not torture one innocent child even for the sake of everlasting peace and universal harmony.

(2) *Dirty hands version.* The second version of the argument from supreme emergency tries to avoid this utilitarian diminution of individual rights by acknowledging their residual bearing on moral assessments. In this account, offered by Michael Walzer, such rights might be overridden in circumstances of supreme emergency and in some sense with moral justification, but residual moral guilt is incurred in so doing and that fact must be acknowledged in the "dishonoring" of those who override the rights. Walzer's principal example is the case of Arthur Harris, the British commander who led

the British bombings of Dresden, bombings that violated noncombatant immunity. The British never officially honored Harris, and that, according to Walzer, was in effect a kind of morally appropriate dishonoring.²⁴ As noted already, Walzer does not extend this argument to terrorism as such is typically envisaged, and he has been criticized for the omission. Given that extension, terrorist violation of noncombatant immunity would be morally justified in the face of supreme emergency, but terrorists would incur moral guilt for doing so and should be dishonored as a consequence, i.e., the moral indictment would have to be given some kind of official or public expression.

In effect, this argument proposes that under certain emergency conditions terrorists "dirty" their "hands" morally in doing what they ought to do, all things considered, from the moral point of view. This is an enormously complex position about which more must be said than I can say in the present context.²⁵ But suffice it here to state simply that the "dirty hands" view founders on normative grounds since it advances an incoherent account of moral responsibility. More specifically, if terrorism is morally justified under certain conditions, then it is incoherent and offensive to indict agents morally for engaging in terrorism under those conditions. If we indict terrorists for violating noncombatant immunity and thus individual rights, then we do so because we insist that they have done something that they ought not to have done--even under conditions of supreme emergency.

The Argument from the Minimization of Human Rights Violations

According to this argument, while terrorism violates some moral rights, refusing to engage in or countenance terrorist activity might perpetuate a state of affairs in which an even greater number of serious rights violations occur than would be the case were terrorism implemented. That is, under certain conditions, it might be true that fewer rights are violated through terrorist activity in a state of transition to a society that is more just than would be the case if terrorist activity were rejected and the status quo preserved.²⁶ For example, given the historical record, it is not implausible to argue that Palestinian rights to a homeland might never be honored apart from a strategy of terrorism that compels implementation of those rights. Indeed, so the argument might go, in cases where terrorism could advance the cause of liberation from oppression, absolute adherence to the principle of noncombatant immunity becomes a kind of ideology whose principal effect is to preserve a grossly unjust status quo. While such is a standard Marxist line, one need not be Marxist to adopt this position, which might also be taken, say, by a political realist. For example, though he does not (as far I know) justify terrorism explicitly, much of what Reinhold Niebuhr says about political violence generally could be reconstructed in support of an argument for terrorism along these lines.²⁷ Certainly a Niebuhrian political realism would be sensitive to the way in which appeals to the principle of noncombatant immunity in the condemnation of terrorism can serve to sustain an unjust state of affairs.

Of course, we can never predict with absolute certainty whether terrorism will achieve the goal of advancing human rights over the long haul though one might say that about any situation where violence is being contemplated to advance justice. But whatever the score on that matter, the principal problem with the argument under consideration is that it does not take into account sufficiently the moral significance of

the distinction between the active performance of an action violating a human right and the refusal to perform such an action with the consequence that another human right is violated by some other agent. Doing something (e.g., performing a terrorist act) which is the violation of a human right is morally different from refusing to perform that act (terrorism) as a matter of principle with the consequence that some other human right is violated by some other party. In the first instance, one aligns one's will with evil. In the second case, one refuses to so align one's will albeit recognizing, with agonizing regret, that the consequence of one's refusal is at least the provisional perpetuation of an unjust state of affairs. In the first case--to follow a line of argument proposed by philosopher Bernard Williams--in the first case, the violation of a human right becomes part of the agent's "project." In the second case the agent refuses to make the violation of a human right part of his project even though the refusal leaves unaffected an unjust state of affairs. In the first case, again to follow Williams, agent integrity is sacrificed; in the second case agent integrity is preserved; and integrity counts for something decisive—even when its preservation promotes less than optimal results.²⁸ The problem with the argument for terrorism under consideration resides in its presupposition that outcomes are the only things that matter from the moral point of view. Integrity matters too. And lest the concern for moral integrity here be construed as a kind of distanced, privileged, convenient, self serving concern to maintain one's moral purity at the expense of tolerating insensitively enormous suffering, it should be emphasized that the integrity advocated here is one informed by enormous compassion. Terrorism, after all, is a brutal business whatever good it might accomplish in the long run.

Yet the registered worry here suggests that an important qualification is in order. If in addressing human rights violations one decides as a matter of integrity not to embrace or endorse terrorism as a strategy for change, a residual obligation is generated, borne particularly by those of us who have not suffered the injustices potential terrorists might have suffered, but who mainly look on and judge - namely, the obligation to address the rights violations as they are recognized in some way other than by endorsing terrorism. If the Palestinian rights to a homeland remain violated, though the continued violation cannot justify Palestinian terrorism, it does call for redress in some fashion. If the violations of the rights of Iraqi children who died as a consequence of American infrastructure bombing combined with U. N. economic sanctions do not justify bin Laden's terrorism (and they do not even though he appeals to them in the way of justification), they do call for measures that somehow address the very real moral grievances such innocent deaths represent. Not to press for such measures in the face of rights violations when such rights violations are recognized generates culpability, in varying degree, either for the continued violations or-- yes, one must say it-- for the terrorism that might arise out of a desperate sense that grievances will not be redressed in any other way. This is not to justify terrorism, but rather to distribute widely the moral responsibility for its commission. There is a truth to "political realism," and it resides in such observations.

Thus, I need to end this lecture by saying that terrorism is a moral wrong but that the distribution of responsibility for particular terrorist acts is an enormously complex matter-- when the cause of the terrorist is just. True enough, the principal perpetrators of terrorist acts must be held morally responsible for those acts. This is a matter of justice

and prudence. But, at the same time, one must acknowledge the very real and likely possibility that agents other than the principal perpetrators of terrorist acts in some way have been instrumental in the wrongdoing of terrorism-- to the degree, that is, such agents have contributed, either directly or indirectly, to the vast network of historical, social, political, economic and cultural conditions, inequities and iniquities that give rise to terrorism-- and one must acknowledge the very real and likely possibility that these other agents might be members of the very community under attack by the terrorist, painful as that may be to acknowledge.. Assessing such contributive responsibility with a high degree of precision is a virtually hopeless task, but I suspect many of us are more involved in the aforementioned network than we would be comfortable admitting.

Yet, that remark, I am happy to say, introduces a subject for another time and another lecture.

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Notes

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¹ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 198-199.

² Jeffrey Murphy, "The Killing of the Innocent," in *War, Morality and the Military Profession*, ed. Malham M. Wakin (Boulder: Westview Press, 1979), pp. 343-369.

³ Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham, New York, London: University Press of America, 1983, 1968), pp. 143-144.

⁴ Ramsey, p. 143.

⁵ Noam Chomsky, 9-11 (Seven Stories Press, 2001), p. 76.

⁶ Andrew Valls, "Can Terrorism Be Justified?" *In Ethics in International Affairs*, ed. by Andrew Valls (Lanham, Md.: Rowman and Littlefield, 2000), p. 77.

⁷ This line of thought on double effect is suggested by John Ford in "The Morality of Obliteration Bombing," in *War and Morality*, ed. Richard A. Wasserstrom (Belmont, Calif.: Wadsworth, 1970), pp. 26-31.

⁸ I am indebted to philosopher Ed Langerak for reminding me of this point.

⁹ For a related observation see Walzer, p. 155.

¹⁰ William V. O'Brien, *The Conduct of Just and Limited War* (New York: Praeger Publishers, 1981), p. 43.

¹¹ O'Brien, p. 45.

¹² John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Clarendon Press, 1987), pp. 183-189.

¹³ James Burtchaell, *The Giving and Taking of Life* (Notre Dame, Ind.: University of Notre Dame Press, 1989), p. 223.

¹⁴ Ibid., pp. 210-211.

¹⁵ Ibid., p. 223.

¹⁶ Ibid., p. 231.

¹⁷ "Realist cynics go too far when they allege that the non-use of gas by more or less symmetrically matched belligerents has been *entirely* due to *realpolitik*." Geoffrey Best, *War and Law Since 1945* (Oxford: Clarendon Press, 1994), p. 307.

¹⁸ Burtchaell, p. 223.

¹⁹ George Mavrodes, "Conventions and the Morality of War," in Wakin, pp. 332-333.

²⁰ Burtchaell, p. 221.

²¹ Burleigh Taylor Wilkins, *Terrorism and Collective Responsibility* (London and New York: Routledge, 1992), p. 30. In this text, the term "terrorism" is used more broadly than my own definition stipulates. For Wilkins, "terrorism is the attempt to achieve political, social, economic or religious change by the actual or threatened use of violence against persons or property" (p. 6). Nonetheless, it is clear that his argument attempts to legitimate "terrorism" in the narrow sense I employ the term, namely, to designate the use of violence against noncombatants.

²² Valls, pp. 65-66.

²³ Thus David Little: "[T]here is a more specific appeal--call it the emergency or necessity defense--which is offered for overriding normal prohibitions against attacks on civilians, and so on. In places like Sri Lanka, Sudan, and Israel-Palestine, the following argument is frequently heard. "Our side is so beleaguered and under threat, so at the end of our rope, that although we would not normally engage in activities of this kind, we now have no choice." That is the gist of the arguments put forward by bin Laden and his supporters in defense of his attacks on American civilians. In this connection, certain references contained in the Al Qaeda operations manual, *Military Studies in the Jihad against the Tyrants*, are interesting. The question is asked, how can a Muslim spy among enemies and retain his Islamic characteristics? How can he perform his duties to Allah and not want to appear Muslim? The answer is that if "a Muslim is in a combat or godless area, he is not obligated to have a different appearance from those around him. Resembling the polytheist in religious appearance is a kind of 'necessity permits the forbidden,' even though [forbidden acts] are basically prohibited." This appeal to necessity is extremely important. By bin Laden's account, Islam is under severe pressure from the West--particularly from the United States. There is the contaminating presence of U.S. troops on the "sacred soil" of Saudi Arabia, Israel's appropriation of Muslim lands with full U.S. support, et cetera. Other examples from the literature of Islamic extremism make a similar point. A text called *The Neglected Duty*, composed by the [Egyptian] Islamic Jihad who were responsible for the assassination of President Anwar Sadat, and the charter of the Palestinian organization Hamas, both contend that ordinary prohibitions normally governing armed conflict must be suspended or 'stretched' under conditions of necessity." Quoted in "Understanding Terrorism," *Harvard Magazine* 104 (January February, 2002), p. 47.

²⁴ Walzer, pp. 323-325.

²⁵ For a full discussion of the issues surrounding "dirty hands" and "moral dilemmas" generally, see my *Perplexity in the Moral Life: Philosophical and Theological Considerations* (Charlottesville: University Press of Virginia, 1987).

²⁶ See Virginia Held, "Terrorism, Rights and Political Goals," in *Violence, Terrorism and Justice*, ed. R. G. Frey and Christopher W. Morris (Cambridge and New York: Cambridge University Press, 1991), pp. 59--85.

²⁷ See, e.g., Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Scribner's, 1932), esp. pp. 169-180.

²⁸ See Bernard Williams, "A Critique of Utilitarianism," in J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (London and New York: Cambridge University Press, 1973), pp. 75-150.