

“The Enemy We Dare Not Kill in the War We Must Not Lose: The Inverted Battlefield Moral Logic of the Justly Fought War On Terror”

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NOTE TO READERS: What follows is the extended abstract that’s been up on the conference site for a while, except single-spaced (for those who don’t have time to read the full paper), then the actual paper, double-spaced, beginning on p. 4. My apologies for the delay with the paper.—D.M.

Extended Abstract:

It is standardly thought that, in a just war against an unjust enemy, it is appropriate for the enemy combatants to be the first ones killed (for aggressing in an unjust cause), followed by the non-enemy combatants (who must risk death to protect their innocent civilians), then enemy civilians (who are presumptively complicit in the unjust aggression, and so liable to being killed collaterally in militarily necessary operations against enemy combatants), then non-enemy civilians (who are presumptively completely innocent and unable to defend themselves). Indeed, the correctness of the foregoing hierarchy appears to be thought virtually a necessary truth, and one known a priori.

Yet it is also widely thought that, in the war on terror, killing terrorists only makes more terrorists, since it confirms the (arguably correct) perception of the West as unjustly hegemonic, and so recruits yet more people into its terrorist resistance. And that results in yet more non-enemy civilian deaths.

But then the war on terror cannot be won by violent means. Such means can only make terrorism manageably chronic rather than acute, like an incurable infection, except one fought by drones instead of anti-bodies in a slow-motion slaughter without end. This is problematic for proportionality and necessity justifications of violence in the war on terror, since it entails that the number of casualties will be infinite. If there is any alternative with any non-zero probability of only finite casualties, it must be preferred.

At any rate, the war on terror can be won outright only by addressing the root causes of the radicalizing of people into terrorism. Accordingly, the West must stop behaving hegemonically, must make amends for past such behaviour, and must help eliminate the poverty and lack of education which are inducing people in the East towards a religious fundamentalism which further portrays the West as an evil to be violently resisted. The West must also become more pro-active in preventing the principle cause of self-radicalization into terrorism, namely, the alienation of citizens both abroad and at home from the benefits of society, an initiative that will probably require a move towards greater equality.

As part of behaving less hegemonically, the West must cease trying to defend itself from terrorists by the method of taking the battle overseas with things like drones and the de-stabilizing of foreign regimes. Instead, it must retreat to a non-sovereignty-violating, less resentment-inducing, more passive, defensive strategy, one prosecuted

only within its own borders. This it can do without making things worse, for no one begrudges the West for defending its homelands in its homelands.

But this withdrawal will likely mean a temporary increase in terrorist attacks against the West. For attacks being plotted overseas would no longer be pre-empted by anti-terrorist offensives overseas.

And a perverse and repugnant consequence of this being the strategically and morally correct path is that it in effect inverts the hierarchy of the order of proper liability to death by people involved in the conflict. That is, it means, at least for a while, that the first to be killed should be our own innocent civilians (in whatever terrorist attacks we can't prevent by filtering out terrorists at our borders), the second, our own just combatants (who will die in defending civilians from these attacks and in capturing fleeing terrorists), the third, the terrorists themselves (who may die in resisting capture), and, lastly, the civilians on the terrorist side (whom we must not harm with collateral damage on pain of fanning the resentments that gestate yet more terrorists).

I've just said that the West should refrain from killing more terrorists (or at least from doing so overseas in ways that make martyrs of them) and from killing civilians on the terrorist side, and should instead absorb harms to its own citizen populations while it endeavors peaceful solutions. But isn't this tantamount to the imposition of an immoral level of risk on our innocent citizens? No. In fact, it is the only course that is morally responsible to our own citizens. For as we've just seen, killing terrorists and their civilian sympathizers is self-defeating, since for every terrorist we kill, we create yet more terrorists, and so indirectly wind up killing yet more innocents in the West. (Thus I think what I'm proposing would pass Haque's proportionality criteria, for we get to put some portion of our citizens at risk only if we expect this to lower the total risk to civilians over the course of the conflict. And I think this is an interesting test case for his theory: can it explain what sorts of harms we can morally put our own citizens at risk of?)

Next, it is not just from moral duties to our own citizens that we must undertake this course. For there is the additional fact that the terrorists have a point, morally speaking: the West has been unjustly hegemonic; and therefore the terrorists are not straightforwardly or purely wrong-doers. Instead, they are trying to induce a correcting of injustice, a correcting we have a duty to uptake, one making it morally problematic for us simply to kill those who are trying to induce this. Some subtlety is needed in analysing the conflicting moral claims of the West and of the terrorists. The West behaved badly in the East in the past, and profited from this behaviour; so it owes apologies and amends. The terrorists, meanwhile, behave in ways that, taken in isolation, are immorally harmful, and more recently immorally harmful than the historical such actions of the West. But we must de-prioritize recency of harm (perhaps contra Frowe?) as the decisive feature of a harm that determines whether it is morally appropriate to meet it with defensive violence. Instead, the theory of justice that should prevail in these matters is whatever one maximizes expected utility for all by minimizing violence in the long run, and which brings as many human affairs as possible into a mutually beneficial deal, minimizing externalities; and this theory of justice will require non-retaliation against some of the more recent harms from terrorists. Nevertheless, even if the West started this conflict, the West has the moral right to prevail in it, on account of the moral superiority of its vision

of a justly organized polity, and the intellectual superiority of its metaphysical world-view.

But a further factor reducing our moral justification for simply killing terrorists is that, by virtue of the extremity of their poverty and hopelessness, their lack of an emancipating education, and their indoctrination into a self-oppressing, fundamentalist religious world-view, terrorists are not straightforwardly fully responsible for their actions and therefore are not straightforwardly wrong-doers. (The last two points and the next are in the spirit of Barzagan.)

The foregoing two factors – that the terrorists have some morally legitimate claims, and that they may not be fully responsible for their extreme behaviours, suggests that we need some new legal categories for them other than the categories of criminal or enemy combatant, e.g., the category of quasi person-having-the-excuse-of-ignorance-of-materially-relevant-facts, or the category of quasi juvenile (both of these categories applying in virtue of the terrorists' lack of education, their unawareness of other ways of living, their subjugation to religious dogma and their lack of training in critical thinking). There could also be the categories of quasi civil disobedient (for their engaging in protest against Western immorality), quasi psychiatrically-non-responsible patient (for them having suffered extreme, psycho-socially damaging trauma in their rearing), quasi person-under-duress (for the poverty and social pressures motivating them), and quasi person-having-the-defense-of-necessity (ditto). These new legal categories give us a paternalistic obligation to accept greater risks to ourselves in dealing with the oppressed populations of the East, including the terrorists themselves; for the new categories properly class these people as in various senses victims -- very fragile victims whom we have a duty to nurture. (Contra Bohrer and Osiel, it isn't so much the soldiers who are our children in the war on terror; it is the terrorists and the civilian populations from which they spring. But what of the soldiers? Doesn't my proposal ask a lot from them? Indeed it does. And we should be sure that we only ask them to take reasonable and necessary risks, that they be well-compensated for these risks, and well-insured in them. Ditto for our civilians.)

A final argument against simply killing terrorists speaks to our self-interest: killing terrorists and further alienating the members of the societies from which they spring, foregoes the opportunity of co-operative surpluses in the use of the manpower they represent and the resources they control in arrangements of high expected utility for all parties – better to seek to make amends with terrorists and their home societies and to partner with them in future co-operative ventures.

I have proposed a kind of partial pacifism as the means to winning the war on terror, a means whose implementation by a leader may seem to involve the leader failing his duty to protect his citizens. But I suggest that we need to re-conceive the responsibilities of political leaders in these situations. Their responsibilities are not to preferentially protect their own citizens and soldiers from harm in the short term (that would be the worst sort of nationalism), but to work towards arrangements that have the highest expected utility for all parties going forward in the long term, regardless of nation of residence. For like it or not, all citizens and all soldiers are now globally interconnected; and peace will come only from the adoption of arrangements of mutual benefit. Likewise, the citizens -- and soldiers -- of all countries in turn have the duty to

demand this of their leaders, and to absorb such vestigial harms as they may experience without retaliation until there is enough faith in the new indisposition towards violence of all parties for there to be a trusting peace.

THE PAPER:

I The Standard Hierarchy of Moral Liability to Death in War

It is standardly thought that, in a just war against an unjust enemy, if anyone must die, people should die in the following order:

- 1.) enemy combatants (for aggressing in an unjust cause);
- 2.) non-enemy combatants (who must risk death to protect their innocent civilians);
- 3.) enemy civilians (who are presumptively complicit in the unjust aggression, and so liable to being killed collaterally in militarily necessary operations against enemy combatants);
- 4.) non-enemy civilians (who are presumptively completely innocent and unable to defend themselves).

There are issues to be sorted out about how much harm one can inflict on a guilty party to save an innocent, what sorts of harms would be proportionate and militarily necessary, how much risk it is reasonable to expect those who are tasked with protecting the innocent to assume in undertaking this protection, which sorts of rules of engagement are most likely to protect human rights overall, e.g., extending combatant privilege to combatants on both sides, and so on. But it is thought that these details will be worked out in the context of the foregoing hierarchy. Indeed, the correctness of the hierarchy appears to be thought virtually a necessary truth – one that could be false under no conditions -- and one known a priori – without need of knowledge of any empirical facts. (I suspect this of Frowe, this conference, and of McMahan, on the evidence of his

abstract for this conference. They appear to be maneuvering as deontologists – philosophers who believe in fixed moral principles -- rather than as consequentialists – philosophers who think the correctness of principles varies with the situational consequences of following them.)

II The False Assumptions Grounding the Standard Hierarchy; Implications From and For the War on Terror

I believe this hierarchy is neither necessarily true, nor a truth known a priori. In fact, it is, if true, only contingently true, true only upon the obtaining of certain empirical facts; and therefore if and when it is true, it can be known only a posterior – by empirical examination of the facts. And this has implications for how justly to fight a war on terror.

What gives the illusion of the hierarchy being necessarily true a priori is that the contingencies upon which it depends can normally be taken for granted, for they frame a just traditional war.

In the war on terror, however, none of the contingencies needed to support the correctness of the hierarchy obtain. Thus the conditions framing the war on terror make that war a counter-example to the correctness of the hierarchy; and the conditions have vast moral implications for how that war should be fought. The hierarchy is correct only if the following assumptions are true; and yet in the war on terror, they are all false. The assumptions are these:

- a) harming the enemies does not create more enemies (false: killing terrorists just creates more terrorists);
- b) there will be a finite number of enemies (false: killing terrorists just makes enemies without end);

c) a finite number of harms will nullify the enemies (false: the number of harms will have to be infinite since the number of enemies needing to be harmed will be infinite);

d) there is therefore a proportionate amount of harm whose infliction is necessary and sufficient to win the war (false: the infliction of harms will make the war never-ending, and so never won, so that no amount of harms is sufficient; and in any case, the inflicting of infinitely many harms can never count as the inflicting of harms morally permissible to inflict because proportionate, for infinitely many harms is necessarily disproportionately many harms; nothing could be worth them – although see below);

e) harming the enemies does not in turn lead to harms to those we seek to protect (false: the more terrorists we kill, the more we make, and so the more terrorists there will be to harm our citizens, and so the more our own citizens will be harmed);

f) nullifying the enemies by harming them is not itself a loss for us (false: every person we kill is a person removed from the global economy from which we all profit, a person who could have contributed productive labour towards a co-operative surplus of goods in which we could all have shared; and every enemy we harm is a person by the harming of whom we harm ourselves because as humans we are incapable of not being psychologically traumatized by our having to inflict harms, especially in the ways we are having to inflict them in the war on terror, namely, in situations of extreme moral ambiguity, whether in neighborhoods where the friend/enemy line is blurred, or in the way strangely removed from the normal dynamics of self-defense in drone operation – see the articles by Schaller, Grossman and the Washington Post for this conference);

g) the enemy is responsible in the sense of being competent as an agent (false: the enemy is poorly educated, religiously indoctrinated, impoverished, desperate, highly peer-

pressured, and so on, all factors that impair his agency, his ability to make genuinely informed, free choices);

h) we are clearly just, the enemy, unjust (false: the West has been unjustly hegemonic in its dealings with terrorist homelands in the past, and so even though terrorists are inflicting immoral harms, they are not doing so without some moral pretext);

i) these two facts (g) and h))combine to make the enemy culpable, us, not (false: the enemy is neither competent enough as an agent nor so clearly all things considered in the wrong, us, in the right, for it to be straightforwardly true that the enemy is culpable, us, not; and yet, even though we have sinned, we are fighting on the just side of the war, because our conception of a proper civilization is the one that deserves to prevail);

j) inflicting harm on our enemies is at least as effective in attaining our goals as conferring benefits on our enemies would be, benefits like education, economic investment, apologies, reparations (almost certainly empirically false: we would do far better making partners of peace of our enemies in co-operative ventures);

k) the causes of the conflict are irrelevant both to delimiting our morally permissible conduct in the war and to determining as a practical matter how best to succeed in the war (false: the causes of the conflict explain why you can't get rid of terrorism by killing terrorists, the causes make it less clear that we are just in the ways we are fighting this war, and less clear that we are untaintedly fighting in a just war, and so these causes make it less clearly the case that our inflicting of harms in this war is justifiable by an other-things-equal logic of self-defense, this, in turn, making problems for the foregoing hierarchy, as we shall see).

III The Central Problem for the Hierarchy – The Hydra –Headedness of Terrorism

Evidently these assumptions, and the moral hierarchy which depends upon them, are made problematic by such widely acknowledged facts as the fact that, in the war on terror, killing terrorists only makes more terrorists (in the way that cutting off the head of the Hydra just makes more Hydra heads), since it confirms the (arguably correct) perception of the West as unjustly hegemonic, and so recruits yet more people into its terrorist resistance. And that results in yet more non-enemy civilian deaths.

But then the war on terror cannot be won by violent means. Such means can at best make terrorism manageably chronic rather than acute, like an incurable infection, except one fought by drones instead of anti-bodies in a slow-motion slaughter without end. This is problematic for proportionality and necessity justifications of violence in the war on terror, since it entails that the number of casualties will be infinite. If there is any alternative with any non-zero probability of only finite casualties, it must be preferred. (A mathematical note: of course in this sequence of killings there will never be a day by which infinitely many killings have occurred. But the policy of seeking to win the war by violent means is such that, if it were followed for an infinitely long time, infinitely many killings would occur. Other policies may be such that, even if they were followed for an infinite period of time, they would result in only a finite number of killings. This thought-experiment-in-the-mathematical-limit difference is the relevant distinction. But in the case of the infinite killing option, couldn't something intervene to make it that it's really only a finite killing, e.g., a miracle of peace occurring, or the end of the world? Sure. Ditto for any alternative plan. But these things would not be occurring as parts of the

plans and so aren't currently relevant. We are evaluating which plan would be better if things went according to plan, not if they didn't.)

I've made two claims here, first, that the war can't be won with violence, only prolonged and attenuated, and second, that, since this could result in infinitely many casualties, any alternative which would result in fewer casualties must be preferred. I now defend these points.

IV Why is Terrorism Hydra-Headed?

I said we can't win the war by killing the terrorists, since this only begets more terrorists. But why should this be so? The reason is that terrorism against the West is motivated by resentment of Western power; so the more the West seeks to harm or kill terrorists, the more terrorists will be created in further resentment of this further demonstration of Western power. And there is no way to get ahead of the curve. Part of this is due to the cycle of violence: if you kill a terrorist, you must also kill those who will be inspired by his martyrdom, those who would avenge him, and so on. So if you kill one, and you make more than one; if you kill two you make more than two. If you try killing a terrorist and at the same time anyone his death is likely to inspire into terrorism, you will be perceived as killing ever more indiscriminately, something that will recruit ever more people against you. Take this to its logical extreme: suppose you simply nuke whichever country houses terrorists; then you will horrify the whole world, radicalizing everyone against you, again, multiplying enemies.

But part of the cause of terrorism is not simply the violence cycle, but the fact that people in the East hate the West for its past hegemonic actions; people in the East hold fundamentalist religious world-views which represent the civilization of the West as

inherently evil, and this, combined with the West's interventions in Eastern affairs, has made the West doubly a target; finally, people's lives in the East are so bad that people of the East are strongly circumstantially incentivized into lashing out against the West. (By contrast, the U.S. had grievances with Britain rising to the level of war in the distant past, Canada, differences rising to the level of war with France; but that's no matter now, because life's good for all parties to the former conflicts.)

Thus you can't end terrorism with violence. For terrorism is grounded in an idea (the idea of the West as unjustly hegemonic), one confirmed by the very use of military force overseas against terrorism, and because there are practical incentives inducing Eastern peoples into living by that idea, incentives made even worse by the conditions of violent war, namely, damaged economies, obstructed educational progress, and adversarialized relations with the very nations investments from which could help.

No, the only way to defeat terrorism finally is i) to replace the idea it represents – that the West is inherently evil and is hegemonic – with a better idea, a more true idea – that the civilization of the West is a better civilization for humans and the West is prepared to renounce hegemony and be a partner for peace and prosperity with all peoples; and ii) to replace the conditions incentivizing people to ally with and live by the ideals of terrorists, replace them with conditions that will allow peoples of the East to embrace co-operation with the West, something that will require the West to provide education, investment, etc. But doing these things means the West must self-fulfill the prophecy of the better idea.

V The Ethics of Managing Terrorism as a Chronic Problem – a Prohibitive Moral Calculus

Next, I said that, since trying to win the war on terror by killing terrorists will simply make more terrorists you will have to kill, without limit, you will have to kill infinitely many people; so any strategy requiring killing fewer is preferable. But is it really true that this would always be preferable? Suppose the choice is killing one terrorist a week forever, or trying for peace instead, but then incurring the risk of a suit-case WMD going off in NYC, killing millions of innocent citizens this year. Surely the endless but slow sequence of killings is preferable?

Well, that depends: which has the greatest expected disutility? If the WMD event were itself to be part of a resumed, escalated, never-ending war on terror, which very likely it would be, then the kill-a-week method is better – at least the average number of deaths in any given time period is kept low. But if the WMD event will be part of a finite conflict, one with fewer total harms, then it's less clear that it's worse; for the odds of a high number of deaths multiplied by those deaths is a lower number than one hundred percent certainty multiplied by an infinite number of deaths, so that the former has a lesser negative expected utility.

What if the difference is that the slow war kills more of them than us, the fast war, more of us than them, even if, in some sense, we ultimately win the war – in the sense, for instance that secularism prevails over Islamic fundamentalism?

At that point questions of culpability enter. If we have an unjust enemy engaging in unjust attacks, and if we are just, then arguably we can kill as many as we need,

forever. But of course, in the war on terror, it is far from clear that we are purely just, our enemy, purely not.

It might be objected that it is a common and morally correct thing to engage in conflicts that will go on forever and so will result in infinitely many killings in the mathematical limit. For surely this is exactly the situation between police and criminals. There will always be criminals, we'll always need to police them, and there will always be criminals getting killed in this process.

And yet we generally think that the more people we have to harm in enforcing a law, the more problematic the law. These sorts of considerations have made us re-think the war on drugs, leading gradually to a re-conceiving of the problem as a public health issue and an issue of class and race inequality rather than a crime/police issue; and similar considerations changed sentencing over the last two hundred years for crimes of theft, making the punishments more proportionate (less extreme) for a given crime; and leading too to restructurings of society to reduce the states of need that lead people to crime – by enlarging social safety nets, for example, improving access to education, by the New Deal in short. Surely something similar is apposite in the case of the calculations of just war: all other things equal, surely the more we find ourselves having to kill people in a defensive war, the more we should think that there is a problem with our arrangements with these people, and that it is these arrangements that should be addressed, rather than continuing the killing. Just as, in an ideal world, everyone would be sufficiently psychologically healthy, everyone's needs sufficiently well met, that there would be no motivation towards crime, and so need of police and killings in the course of policing crime, so ideally the peoples of all nations would live under arrangements with

each other in which everyone would be sufficiently psychologically healthy, and everyone's needs sufficiently well-met, that there would be no occasion of war, and so no deaths of the sort that would result from the fighting of it.

A further moral arithmetical observation: it would be one thing to act in ways that will result in a few of our innocent civilians being killed in order to save many, another to act in a way that will result in many of our innocent civilians being killed in order to save a few. It is the latter that we are at risk of in trying to win the war on terrorism by killing terrorists. For however many Western civilians we save in a given pre-emptive, terrorist-killing operation, we set up indefinitely many more Western civilians for death in the indefinite future (at the hands of the terrorists our operation will create down the road).

It might be objected that we have a greater responsibility to people who exist now than to the merely possible people who will exist in the distant future, and therefore it is morally permissible to off-load the lethal burden of future terrorism onto them. Well, that may be, although it's a complicated matter. But even if that were true, it would not be decisive; for the fact is that it is almost certain we would be offloading that burden onto a great many currently existing people first.

VI Winning the War on Terrorism By Addressing the Root Causes of Terrorism

At any rate, the war on terror can be won outright only by addressing the root causes of the radicalizing of people into terrorism. Accordingly, the West must stop behaving hegemonically, must make amends for past such behaviour, and must help eliminate the poverty and lack of education which are inducing people in the East towards a religious fundamentalism which further portrays the West as an evil to be violently resisted. The West must also become more pro-active in preventing the principle cause of self-

radicalization into terrorism, namely, the alienation of citizens both abroad and at home from the benefits of society, an initiative that will probably require a move towards greater equality.

This is perhaps the occasion for an aside about people self-radicalizing not just in the East but also in the West: it is intelligible how this happens in the East. But how does it happen in the West? Sometimes this happens by people of Eastern affiliation being denied the benefits of the society in which they are trying to live in the West, so that they in effect have an experience of the West similar to that of people actually living in the East affected by Western hegemony – think of the Boston bombers, unable fully to fit in American society, in effect denied its benefits. Relatedly, there are certain forms of insanity whose existence conditions are essentially political. There cannot exist the form of insanity that expresses as wearing aluminum salad bowls on one's head to prevent one from being manipulated by electromagnetic waves from CIA satellites unless there are such things as the CIA and satellites. Nor can there exist that form of insanity in Western democracies that expresses as home-grown terrorism against, say, big government, or against secularism or American hegemony in the East unless there actually is a big government that sometimes infringes peoples' rights at home, American hegemonic activity overseas. And the antidote to these insanities is less hegemonic behavior overseas, a bit more wealth-sharing, and the improvement of social safety nets at home to make sure everyone here benefits from our society, and to make sure people with mental health issues are getting the help they need.

As part of behaving less hegemonically, the West must cease trying to defend itself from terrorists by the method of taking the battle overseas with things like drones

and the de-stabilizing of foreign regimes. Instead, it must retreat to a non-sovereignty-violating, less resentment-inducing, more passive, defensive strategy, one prosecuted only within its own borders. This it can do without making things worse, for no one begrudges the West for defending its homelands in its homelands.

VII The Inversion of the Hierarchy of the Moral Liability to Death in a Justly Fought War on Terrorism

But this withdrawal will likely mean a temporary increase in terrorist attacks against the West. For attacks being plotted overseas would no longer be pre-empted by anti-terrorist offensives overseas.

And a perverse and repugnant consequence of this being the strategically and morally correct path is that it in effect inverts the hierarchy of the order of proper liability to death by people involved in the conflict -- for a while, deaths should occur among the following populations in the following order of appropriateness:

- 1*) our own innocent civilians (in whatever terrorist attacks we can't prevent by filtering out terrorists at our borders);
- 2*) our own just combatants (who will die in defending civilians from these attacks and in capturing fleeing terrorists);
- 3*) the terrorists themselves (who may die in resisting capture);
- 4*) the civilians on the terrorist side (whom we must not harm with collateral damage on pain of fanning the resentments that gestate yet more terrorists).

I've just said that the West should refrain from killing more terrorists (or at least from doing so overseas in ways that make martyrs of them) and from killing civilians on the terrorist side, and should instead absorb harms to its own citizen populations while it

endeavors peaceful solutions. But isn't this tantamount to the imposition of an immoral level of risk on our innocent citizens? No. In fact, it is the only course that is morally responsible to our own citizens. For as we've just seen, killing terrorists and their civilian sympathizers is self-defeating, since for every terrorist we kill, we create yet more terrorists, and so indirectly wind up killing yet more innocents in the West. (Thus I think what I'm proposing would pass Haque's proportionality criteria, even though it was originally designed to assess the permissibility of degrees of damage to the enemy; for we get to put some portion of our citizens at risk only if we expect this to lower the total risk to civilians over the course of the conflict. And I think this is an interesting test case for his theory: can it explain what sorts of harms we can morally put our own citizens at risk of?)

In the West, especially in, say, America and Canada, we have a moral horror of exposing our citizens to this sort of risk. In fact, we take the entire point of fighting defensive wars to be to protect our civilian populations. In other countries, Israel and England, for example, some harms to civilian populations are expected, tolerated, seen more properly in their right actuarial proportion – even at its most intense, the odds of one's being harmed by terrorism are fantastically small. And when there is terrorist activity in the West, because the West is so sound in infrastructure, and in the availability of medical and psychological treatment, and so on, the consequences of that activity are far less than the consequences of military interventions overseas – fewer people are hurt at all, fewer die from being hurt, it's way easier being a "refugee" after an attack in America than in Eastern countries (you can check into a hotel for a while, there aren't famines, the rule of law generally prevails, it's easy to learn what's going on, there is the

reasonable expectation of a swift return to order, etc.). Where would you rather be during violence, here or in the Middle East?

All of this means that we have probably been under-using one of our biggest assets in the war on terror, namely, the resilience of our own civilian population in the face of terrorist attacks. And this means that we can afford to take a few hits as part of demonstrating a new non-belligerence toward the East, hits in the short-term that will make it the case that we experience fewer hits in the long run.

Note too that this logic means prioritizing the saving of our soldiers' lives over saving civilian lives; for it means we'll lose fewer soldiers in terrorism-pre-empting operations overseas. Again ironically, if you want fewer soldiers killed, then have them kill fewer terrorists. (Compare Bohrer and Osiel's paper, this conference.)

VIII Implications Against Standard Conceptions of Self-Defense Pretexts for Violence in War

All of this results in the following moral curiosity. Normally, if someone will kill me unless I kill them, all other things equal, I'm morally permitted to kill them. And if a bystander sees that I'll be killed unless the bystander kills the aggressor, the bystander is permitted to kill the aggressor. But this will not be true if the aggressor is a terrorist in the East overseas, I'm a citizen of the West, and the bystander is a soldier of the West in a position to disrupt a terrorist act in the West by killing the person commanding and controlling it in the East. For the justly fought war on terror requires the West to refrain from hegemonic actions; and the soldier, as an agent of hegemony, cannot kill the terrorist without ipso facto engaging in a hegemonic action. That is, the soldier is morally forbidden from defending his own innocent citizens from aggression.

This is slightly less of a problem in America than elsewhere, since so many American citizens have firearms and so can defend themselves (from certain sorts of attack, at least). In fact, if the proposals I'm making were to become policy, we should add as a bit of temporary policy that citizens have not only a right, but a duty to bear arms until this conflict has run its course. Strange as that may seem, at least my analysis is saved from the even more unintuitive result that citizens may not defend themselves from terrorists. In fact, it would seem to follow from my view that they may, but they may not be defended by agents who are part of the apparatus of hegemony, or at least not acting as such. Thus police officers at home may intervene, as may hired private security organizations. And police in the nation of command and control of the terrorist attack may intervene. But it is problematic for even soldiers deployed at home to intervene in attacks at home. For the soldiers deployed at home are institutionally such that they might be deployed overseas in the prosecution of hegemony. Police at home and away, on the other hand don't by their role represent the incentivizing to further terrorism that we are trying here to avoid. (What if this police officer might in other circumstances become a soldier? Here things get complicated. We have a problem with terrorists being immune from being killed when they're in their civilian role – see Berman and Bialke, this conference. And we can imagine the East having a problem with the idea of a Western soldier changing into a police costume. Another issue is this: suppose our civilian population knowingly votes to support hegemonic activity overseas. Doesn't that make our citizens agents of hegemony, too, and therefore obliged to eschew even self defense? Perhaps they may avail of self defense only insofar as simultaneously agitate for their government to behave with justice overseas. More to think about.)

IX The Mixed Strategy is the Correct Strategy

We just saw that, on the new assumptions characterizing the conditions of the war on terror, hegemonic forces must refrain from hegemonic killings of terrorists, even if citizens may kill in their own defense, and even if police may kill in doing police business. But is there really no condition under which soldiers may kill terrorists?

Well, there is one, namely, when the killing occurs in a context where it is not problematically hegemonic. For example, if the West were trying, and were widely perceived as trying, to correct whatever moral wrongs it did, and if this increasingly marginalizes extremists who simply will not be brought on board, then it would be permissible for agents of the West to kill them as part of a kind of mopping up.

So the West need not go the Full-Ghandi. But it must go at least the Half-Ghandi.

X Further Arguments Against Fighting the War on Terrorism By Killing

Terrorists: The Non-Culpability of Terrorists Due to Their Moral Pretexts and Their Agential Non-Competence; Their Value in the World Economy

Next, it is not just from moral duty to our own citizens that we must undertake this course. For there is the additional fact that the terrorists have a point, morally speaking: the West has been unjustly hegemonic; and therefore the terrorists are not straightforwardly or purely wrong-doers. Instead, they are trying to induce a correcting of injustice, a correcting we have a duty to uptake, one making it morally problematic for us simply to kill those who are trying to induce this. Some subtlety is needed in analysing the conflicting moral claims of the West and of the terrorists. The West behaved badly in the East in the past, and profited from this behaviour; so it owes apologies and amends. The terrorists, meanwhile, behave in ways that, taken in isolation, are immorally harmful,

and more recently immorally harmful than the historical such actions of the West. But we must de-prioritize recency of harm (perhaps contra Frowe's paper for this conference?) as the decisive feature of a harm that determines whether it is morally appropriate to meet it with defensive violence. Instead, the theory of justice that should prevail in these matters is whatever one maximizes expected utility for all by minimizing violence in the long run, and which brings as many human affairs as possible into a mutually beneficial deal, minimizing externalities; and this theory of justice will require non-retaliation against some of the more recent harms from terrorists. Nevertheless, even if the West started this conflict, the West has the moral right to prevail in it, on account of the moral superiority of its vision of a justly organized polity, and the intellectual superiority of its metaphysical world-view.

Some may object to the idea that people currently in the West must do anything to help those in the East in consequence of past bad Western conduct; for surely the harms were done not by us, but by our ancestors, or by older incarnations of our governments. We ourselves have done nothing wrong. The reply is that, while we may have done nothing wrong, what was done wrong did in fact confer benefits on us we didn't deserve, and conferred harms on current peoples of the East that they didn't deserve. And we therefore have a duty to rebalance. (This argument is the same as the standard argument that even if I, a white person, never engaged in past racism, I'm unjustly benefitting from it, however non-voluntarily, while members of other races are unjustly still being disadvantaged by it, and so I have some duty to aid in re-balancing, to advocate for and accept policies contributory to re-balancing, and so on.)

But a further factor reducing our moral justification for simply killing terrorists is that, by virtue of the extremity of their poverty and hopelessness, their lack of an emancipating education, and their having been indoctrinated into a self-oppressing, fundamentalist religious world-view, terrorists are not straightforwardly fully responsible for their actions and therefore are not straightforwardly wrong-doers. (The last two points and the next are in the spirit of Barzagan's paper for this conference.)

The foregoing two factors – that the terrorists have some morally legitimate claims, and that they may not be fully responsible for their extreme behaviours, suggests that we need some new legal categories for them other than the categories of criminal or non-privileged, non-state combatant.

We are accustomed to thinking of terrorists as criminals or enemies evil in proportion to the harms they commit. This yields military and police conceptions of how to deal with terrorists, conceptions in which defensive, retaliatory, punitive, preventive and pre-emptive violence are the strategically, legally and morally appropriate responses. Unfortunately this way of thinking of terrorists, and the responses this way of thinking engender, lead to a violence cycle in which the use of violence against terrorists creates more terrorists. Moreover, this way of thinking does not premise its response in an understanding of the inducements to terrorism, and so it leaves us perpetually reactive, ever vulnerable to the next occasion of radicalization against the West, and so perpetually hyper-vigilant, having ever to be on our guard. All of this is also enormously costly – costly in money; costly in opportunity, the enmity it engenders in other nations and peoples preventing us from engaging in deals with them that could yield a co-operative surplus to our mutual advantage; costly in the prioritizing of the national agenda into an

eternal war, and in the warping of our culture into something eternally militaristic, defended, fearful; costly in lives, lives of civilians in the West and of those who take up arms against those civilians.

But there is a second way to think about terrorists, namely, as creatures of circumstance induced to commit harms innocently, justifiably or excusedly. Induced by what? Many things: by a sense of grievance against the U.S. (and not only the U.S., but pre-eminently the U.S. among other Western nations) for its having backed problematic regimes in seeking people with whom to do business in other nations (e.g., the Shah of Iran); for its installing and backing diasporic Jews in Israel in a protested colonization of land perceived by some as already occupied; for its waging of war against the citizen farmers of opium in Afghanistan in order to stop the flow of heroin to America, itself ironically and bafflingly Afghanistan's largest customer; for waging an ideological war against the former Soviet Union on Afghani territory, re-empowering fundamentalists in resistance to communism, then balking at their resistance to the West; for its presence in the Suez; for the portion of its wealth and importance acquired by the oppression of other peoples; for its standing as a living embodiment of secularism, and for its evangelization of secularism (and/or Christianity). (There is nothing wrong with secularism. There is something wrong with shoving it down people's throats without first giving them the kind of education in critical thought needed to see the truth in it. As for Christianity, there is certainly something wrong with imposing it on people.) And people are induced to terrorism by being afraid for their lives due to poverty and a hopeless future, or because they are ignorant, or traumatized from past conflict, or under-affiliated, seeing their only hope of self-importance in lashing out at America, or confused by self-defeating, self-

oppressing ideologies infused in them by problematically illiberal cultures, or under-schooled in the self-liberatory tools of critical thinking.

An understanding of what causes people to take up arms against America cannot but suggest means to its prevention, namely: the issuing of apologies where apologies are due for past problematic interventions in other nations, the offering of reparations for these mistakes, and, wherever in the world there is need, especially need that is likely to find expression in resentment at America, the offering of economic help, counselling, social work, psychotherapy, nurturing, kindness, re-location, adoption, education, jobs, the opportunity to experience new ways of life, new conceptions of the good, new political systems and deals. Love bombs, not real bombs. (Note to the military industrial complex: there is a fortune to be made in “weaponizing” social work, psychotherapy, pedagogy, even philosophy. Diversify away from guns and into the caring professions and you’ll clean up.)

But it is very difficult for a nation under attack to do any other than see its attacker as either evil by virtue of its criminality, or evil by being the aggressor in an unjust war.

Yet see things differently we must, for our current way of thinking is trapping us into the lesser of the responses available to us.

Therefore, I propose to investigate whether seeing attackers of America as falling into different sorts of legal category might be appropriate, and whether it might help us to find a conception of the morality of the situation that will permit us to take a more compassionate and ultimately more successful approach to the problem. Thus maybe we should see some terrorists as really more like people:

i) engaged in an extreme form of civil disobedience in protest of what they see as injustice, injustice that will not be addressed by conventional means; and we are typically understanding of, somewhat tolerant of, and somewhat moved to reconsider our own positions by, civil disobedience.

ii) not yet of legal age, not yet fully responsible for their actions -- in this case, by virtue of being under-educated, inexperienced in other civilizations, perspectives, moral systems, world-views; and we are typically lenient with juveniles, we don't charge them with adult crimes, or when we do, we issue lighter sentences, or different sorts of sentence, sentences designed to enlighten, rehabilitate, to prepare them for full adulthood.

iii) not guilty of enmity (or at least less guilty) by reason of a kind of insanity; and we typically don't punish the insane, merely incarcerate them for their safety and our own, and try to heal them so they can return to society.

iv) not guilty by reason of duress, or less guilty by reason of the mitigation of duress; and here, we might recognize that if we help them with their duress, we can prevent them from having to attack again.

Seeing them in these ways still allows us to respond with military and police forces where nothing else will work. But it also opens the door legally and morally for us to respond by trying to fix the problem, not just by trying to defend ourselves from its symptoms.

Perhaps then we should see terrorists as falling variously into such newly created categories as quasi person-having-the-excuse-of-ignorance-of-materially-relevant-facts, or the category of quasi juvenile (both of these categories applying in virtue of the terrorists' lack of education, their unawareness of other ways of living, their subjugation

to religious dogma and their lack of training in critical thinking). There could also be the categories of quasi civil disobedient (for their engaging in protest against Western immorality), quasi psychiatrically-non-responsible patient (for them having suffered extreme, psycho-socially damaging trauma in their rearing), quasi person-under-duress (for the poverty and social pressures motivating them), and quasi person-having-the-defense-of-necessity (ditto). (I keep saying “quasi” because the terrorists don’t neatly fall into extant versions of these categories. E.g., some of them are too old to technically count as juveniles. Meanwhile, the category of civil disobedient is usually reserved for someone who commits a minor offense in protest of a major wrong and endures the minor punishment for the offense, while the terrorists are engaging in a major wrong – killing – and not tarrying to receive the punishment. And so on. Still, the analogies aren’t completely inappropriate. There is wrong to protest in past Western behaviour. And youth is not the main test for being a juvenile. Youth merely tends to be a correlate of it. But what juvenility really is, is an inability to understand and do certain things due to lack of experience and maturity. And the terrorists certainly suffer from those deficiencies.)

These new legal categories give us a paternalistic obligation to accept greater risks to ourselves in dealing with the oppressed populations of the East, including the terrorists themselves; for the new categories properly class these people as in various senses victims -- very fragile victims whom we have a duty to nurture. Contra Bohrer and Osiel, it isn’t so much the soldiers who are our children in the war on terror; it is the terrorists and the civilian populations from which they spring. After all, just think of how bad your life would have to be, how screwed up you’d have to be, how desperate, or how

outraged you'd have to be, in order to take up their way of life, to take up arms against the West. (But back to the soldiers: doesn't my proposal ask a lot from them? Indeed it does. And we should be sure that we only ask them to take reasonable and necessary risks, that they be well-compensated for these risks, and well-insured in them. Ditto for our civilians.)

A final argument against simply killing terrorists speaks to our self-interest: killing terrorists and further alienating the members of the societies from which they spring, foregoes the opportunity of co-operative surpluses in the use of the manpower they represent and the resources they control in arrangements of high expected utility for all parties – better to seek to make amends with terrorists and their home societies and to partner with them in future co-operative ventures.

XI We Should Not Grant Combatant Immunity to Terrorists

Note that it does not follow from any of this that we should accord combatant immunity to terrorists. For if they attack us on our soil, they are committing crimes. True, if I'm right about them having compromised agency, they may have one or another legal defense at trial for those crimes; but crimes they remain. Likewise, if I'm right that terrorists are not without some moral justification for their actions, they may have an argument in sentencing for a less severe sentence than for morally unpretexted action, on analogy with how we treat civil disobedience. But again, they have still committed crimes. In both of these cases, we may arrest them if we can capture them on our soil. And police in the countries in which they are active may arrest them there.

We do, I think, have a moral duty to try very hard for capture rather than take the easier path of killing in dealing with them, which means the laws the police at home and

in terrorist-ridden nations should operate under should mandate this. But just as citizens may defend themselves with lethal force where nothing else will do, so the police may defend themselves that way in doing their duty.

It has been argued (by Corn, this conference) that even if it would not be strictly just to accord terrorists combat immunity (because -- as pointed out by Bialke and perhaps Berman, this conference -- they violate the normal conditions required for this, failing to fight in uniforms, to operate in a command structure, to carry weapons visibly, and to refrain from killing civilians), offering it conditionally upon them obeying international human rights laws would have the effect of making them fight less hard since they would not face accusations of war crimes if caught, and it would give them a positive incentive to respect human rights. But I suggest that they would have sufficient incentive to fight less hard if they knew they would face a legal system modified in the ways I've just proposed. And they will have a positive incentive to respect human rights in the fact that the worse the crimes they commit, the worse their sentences would be, even if muted sentences under the legal regime I'm proposing. In any case, I suggest we need to retain the prerogative of charging them with things able to be classed as crimes in order to have the legal right to mandate them into, for example, psychiatric care, in sentencing. So we must not give them a status that would simply let them walk away unmodified after capture. But perhaps my proposals about inventing new legal categories can be seen as a kind of compromise position on the combatant immunity debate.

XII The Responsibilities of Political Leaders

I have proposed a kind of partial pacifism as the means to winning the war on terror, a means whose implementation by a leader may seem to involve the leader failing his duty

to protect his citizens. But I suggest that we need to re-conceive the responsibilities of political leaders in these situations. Their responsibilities are not to preferentially protect their own citizens and soldiers from harm in the short term (that would be the worst sort of nationalism), but to work towards arrangements that have the highest expected utility for all parties going forward in the long term, regardless of nation of residence. For like it or not, all citizens and all soldiers are now globally inter-connected; and peace will come only from the adoption of arrangements of mutual benefit. Likewise, the citizens -- and soldiers -- of all countries in turn have the duty to demand this of their leaders, and to absorb such vestigial harms as they may experience without retaliation until there is enough faith in the new indisposition towards violence of all parties for there to be a trusting peace.

XIII Objections From Failed Precedents

But hasn't this sort of indulgent passivity in the face of immediate aggression been tried before, namely, in the Palestinian/Israel conflict, Israel absorbing enormous numbers of assaults without retaliating, and yet the assaults continuing unabated (Bohrer and Osiel, this conference)? So don't we know that this method doesn't work? No and no. The method hasn't been tried before. In the aforementioned case, Israel continued to behave provocatively to the Palestinians by continuing to establish homesteads in disputed territory. For all we know, if Israel had stopped doing this, the assaults would have abated as well.

XIV The Argument and the Real World

Some final points. If the empirical claims I'm making against the standard assumptions needed to ground the standard moral hierarchy are false, then some of what I've said here

goes out the window – the stuff about how you shouldn't kill terrorists because that just make more terrorists -- and to some degree it would then be back to the trolley problems of the philosophy of conventional war (although there would still be the arguments from the partial justice of the terrorists' cause, the argument from their lack of agential competence, and the argument from the benefit to us of recruiting them into arrangements yielding shared co-operative surpluses).

Next, I do not mean to say that the West is not doing what I'm saying should be done. Of course they're both trying to win hearts and minds, do the right thing, reach out in peaceful and helpful ways, and so on, while at the same time resorting to killing those who can be stopped in no other way. My claims are merely three: maybe we ought to be doing a little more of the first and a little less killing (the Half-Ghandi instead of the Point-Two-Five Ghandi); either way, the empirics radically undermine killing as a method to victory; and if we are trying to see what the West is doing in the war as just, what makes it just is the degree to which it is complying with the sorts of considerations I've been adducing here.

XV Conclusion

I have argued that while in a conventional war, the moral order of liability to being killed is enemy soldiers first, our soldiers second, their civilians third, our civilians, fourth, in the war on terror, the order must put our civilians first, our soldiers second, their non-state combatants third, their civilians, last. For fighting the war on the premise of the standard ordering merely results in even more of our civilians being killed, and in a permanent prolongation of war. The strategically effective and morally proper way to fight the war on terror is to try to constructively address its root causes while in the

meanwhile refraining from making things worse by hegemonically killing terrorists (instead dealing with them under renovated legal categories), even though this will temporarily vulnerabilize our own civilian population.