



Shooting to Kill: The Ethics of Police and Military Use of Lethal Force

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Civilian Immunity

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Abstract and Keywords

Military combatants have special moral duties to protect the members of their own citizenry, but not *special* duties to protect citizens of other communities. Nevertheless, it is not the case that lives of military combatants can be given priority over the lives of innocent civilians of an enemy state. Partialist considerations can make a moral difference in relation to the permissibility of the use of lethal force in war. Moreover, intentions—as opposed to foreseen consequences—make a moral difference, but these intentions are not necessarily first-order intentions; in some cases they are second-order intentions that constrain first-order intentions. Finally, it is argued that the category of innocent civilians does not include citizens who are rights violators (i.e., non-life-threatening rights violators and those who culpably fail to discharge obligations to positive rights holders). Accordingly, some categories of noncombatants do not have the moral right to immunity in war.

Keywords: military combatants, civilian immunity, principle of discrimination intentions and, foreseen consequences, noncombatants, non-life-threatening rights violations

IN THIS CHAPTER I explore the principle of discrimination and, in particular, the closely related notion of civilian immunity in war.¹ I do so in the context of (1) the rights-based just war theoretical account of the moral justification for waging war elaborated in Chapter 6, and (2) the contrasting moral duties to innocent bystanders that police officers contemplating the use of lethal force have. Of course, innocent bystanders have a natural right not to be killed. This right can be overridden under certain circumstances. However, as is the case with ordinary citizens, and as was argued in Chapters 2 and 3, a police officer's

use of lethal force should not put the lives of innocent third parties at risk of serious harm other than in exceptional circumstances. In the case of police officers this requirement derives not only from the natural right of innocent third parties not to be killed but also in part from the primary institutional role of police officers to protect citizens from serious harm; and this latter (in part) institutional-based requirement typically trumps police officers' other primary institutional role of arresting offenders. By contrast with both ordinary citizens and police officers, military combatants can justifiably put the lives of innocent citizens at considerable risk; they can do so on grounds of military necessity. So the principle of discrimination in play is far more permissive. In section 7.1 I address the issue of moral differences between combatants and civilians and, in particular, engage with a **(p.186)** novel argument of Asa Kasher and Amos Yadlin that, contrary to the standard view, the lives of one's own combatants ought to be given priority over the lives of noncombatants of the enemy state or other collective political entity.²

In section 7.2 my focus is on the killing of innocent civilians in war. I discuss a number of putative moral justifications for the killing of innocent civilians by combatants who are fighting an otherwise just war. The most influential of these justifications relies on the moral difference between intentions and foreseen consequences, on the one hand, and the application of the principles of military necessity and proportionality, on the other. Roughly speaking, the idea is that it is morally permissible for combatants to kill innocent civilians, if: (1) these civilian deaths were foreseen, but not intended; (2) the collective end being pursued by the combatants was militarily necessary; and (3) the number of civilian deaths was not disproportionate.

In sections 7.3 and 7.4 I shift my focus to a moral issue that has received little attention to date: civilians (noncombatants) who are *not innocent*. I argue that there are two neglected categories of civilians that should not enjoy civilian immunity in war.³ The first category (discussed in 7.3) consists of the members of civilian groups who have a share in the collective moral responsibility for non-life-threatening rights violations, yet are not morally responsible for the *enforcement* of these rights violations. Such persons are neither combatants nor their leaders; nor do they necessarily assist combatants qua combatants, as do, for instance, munitions workers. The second category (discussed in 7.4) consists of the members of civilian groups who are collectively morally responsible for culpably refraining from assisting those who have a moral right to assistance from them. Once again, such persons are neither combatants nor their leaders; nor do they necessarily assist combatants qua combatants. Note that these two categories overlap insofar as they are members of civilian groups who are guilty of certain non-life-threatening rights violations by virtue of culpably refraining from assisting the rights bearers in question.

(p.187) 7.1 Prioritizing the Lives of One's Own Combatants over the Lives of Noncombatants of the Enemy

Asa Kasher and Amos Yadlin have put forward an argument that, if sound, would reduce the moral benefits of targeted (as opposed to nontargeted) killing of terrorists. Kasher and Yadlin argue as follows. Military acts and activities carried out in discharging the duty of the state to defend its citizens against terror acts or activities while at the same time protecting human dignity, should be carried out according to the following priorities, which reflect the order of duties the state has toward certain groups:

1. Minimum injury to the lives of members of the state who are not combatants during combat.
3. Minimum injury to the lives of the combatants of the state in the course of their combat operations.
4. Minimum injury to the lives of other persons (outside the state) who are not involved in terror, when they are not under the effective control of the state.
6. Injury as required to the liberties or lives of other persons (outside the state) who are directly involved in terror acts or activities.⁴

My concern here is only with Kasher and Yadlin's prioritization of priority 3 over 4. (Hence I have omitted a couple of categories that are irrelevant to this issue.) The group identified by priority 3 comprises the combatants targeting the terrorists (e.g., soldiers of the Israeli Defense Force (IDF) targeting Hamas terrorists). The group identified by priority 4 comprises noncombatant innocents who are not members of (or otherwise under the effective control of) the state whose combatants are targeting the terrorists (e.g., innocent Palestinians who happen to be in the vicinity of the terrorists).

In effect, this view of Kasher and Yadlin puts the moral value of the lives of innocent, noncombatant Palestinians at a discount, both vis-à-vis Israeli innocent noncombatants and vis-à-vis Israeli combatants. What is Kasher and Yadlin's argument for this prioritization? Essentially, their claim is that the state has a special moral duty to protect the rights of its **(p.188)** own citizens—including its citizens who are combatants—and it does not have this duty to noncitizens. This special duty, they argue, is compatible with the general moral obligation on the part of the state to respect the human dignity of all.

Bashshar Haydar claims that there is a flaw in Kasher and Yadlin's argument at this point.⁵ From the proposition that the state ought to give more weight to the interests of its citizens—and, specifically, the proposition that it has a special moral duty to prevent harm to its citizens—it does not follow that the state is morally permitted to cause harm to noncitizens for the sake of preventing harm to its citizens. This is correct; it does not follow. Presumably, what does follow is that if members of the armed forces have to choose between discharging their

special duty to prevent harm to their fellow citizens and discharging their general moral obligation to prevent harm to noncitizens, they ought to choose the former (other things being equal). I have argued this, in effect, in Chapters 3 and 6. However, the question remains whether the special moral duty to prevent harm to its citizens overrides the duty not to harm noncitizens. Haydar disputes this, claiming that the moral permissibility of giving more weight to special ties (in this case the ties between a state and its own citizens) when it comes to helping or preventing injury does not apply when it comes to harming or causing injury. So the state might have a duty to rescue its own citizens that it does not have to the citizens of other states, so that the United States, for example, has a duty to rescue US citizens taken hostage by Hezbollah, but China, arguably, has no such duty to US citizens under any circumstances. (See Chapter 8 for further discussion of this general issue.) However, from this it would not follow that that US Special Forces personnel are morally entitled to throw grenades at gunmen positioned on the balcony of a Hezbollah safe house as a prelude to rescuing US hostages being held in the basement, if the exploding grenades would likely also kill Chinese tourists standing on the adjoining balcony of a hotel.

I find Haydar's argument compelling up to this point, though perhaps not beyond it. My main reason for accepting his argument is that, as argued in Chapter 1, refraining from assisting those one has a duty to assist is not morally equivalent to killing them⁶; other things being **(p.189)** equal, it is morally worse to kill someone than to fail to assist them, supposing one has a duty to assist. I return to this issue in the next section. Here, however, I want to press a somewhat different point.⁷ As already mentioned, an important respect in which Kasher and Yadlin's view is distinctive pertains to their putting of the lives of noncombatant (entirely innocent) noncitizens at a discount vis-à-vis the lives of combatant citizens. I want to argue against this claim.

Let us grant that combatants have a special duty to protect the lives of their fellow citizens, and that they do not have this duty in respect of noncitizens (or, at least, in respect of persons who are not under the effective control of the state). Moreover, let us assume that there is an important difference between combatants and noncombatants in relation to this duty. Specifically, combatants have an institutionally based moral duty to put themselves in harm's way—indeed, to risk their own lives—in order to protect the lives of their noncombatant fellow citizens. (I have argued for this proposition in Chapters 3 and 6.) Obviously, noncombatant noncitizens (of the state in question) do not have either of these duties. For example, noncombatant (innocent) Palestinians living outside Israeli-controlled areas in the Middle East do not have a moral duty to protect the lives of Israeli noncombatants; much less do they have a duty to put themselves in harm's way (indeed, risk their lives) in order to protect Israeli noncombatants.

Now consider the following two options confronting Israeli soldiers. They can intentionally fire a rocket into a building known to house Hamas terrorists, and thereby intentionally put the lives of noncombatant (innocent) Palestinians, including children who attend an adjoining kindergarten, in harm's way (i.e., there is a reasonable chance that some of these innocent Palestinian children will be killed). Alternatively, they can send in a group of soldiers to storm the building and kill the Hamas terrorists by using small arms at close range. The latter option puts the Israeli soldiers in harm's way, since there is a reasonable chance that some of them will be killed by the terrorists. On the other hand, the lives of the innocent children will not be put at risk. Kasher and Yadlin are **(p. 190)** committed to the first option, that of intentionally putting the lives of innocent children in harm's way in order to avoid putting Israeli soldiers in harm's way.

This conclusion is strongly counterintuitive. Let me explain why. The Israeli soldiers have a moral duty to put themselves in harm's way in order to protect the lives of noncombatant Israelis. The Palestinian children have no such moral duty. However, the Israeli soldiers are, in effect, intentionally bringing it about that the Palestinian children (unintentionally) discharge part of the Israeli soldiers' duty for them—the part that involves putting themselves in harm's way.

It might be argued against this that the Israeli soldiers' duty to put themselves in harm's way (in order to protect fellow Israeli citizens) is a duty that must be discharged *only if it is necessary to do so*; in this case it is not necessary to put themselves in harm's way, since the Palestinian children are available to (unintentionally) discharge this role for them. However, the necessity in play here is relativized to the institutional role (and attendant duties) of the Israeli soldiers. It would not be necessary for the Israeli soldiers to put themselves in harm's way if either one of two salient conditions obtained. The first condition is that it is not necessary for any person (other than the terrorists) to be put in harm's way in order for Israeli soldiers to protect the lives of the Israeli citizens. This condition does not obtain; either the Palestinian children or the Israeli soldiers themselves will have to be put in harm's way. The second condition is that someone else (other than the Israeli soldiers) has the duty to protect the Israeli citizens by putting him or herself in harm's way, or, at least, someone else is able and willing (has consented) to discharge the soldiers' duty for them. As we have seen, the Palestinian children have no duty to protect Israeli citizens, much less any duty to put themselves in harm's way to do so; moreover, the Palestinian children did not consent to be put in harm's way, thereby relieving the Israeli soldiers of their own duty.

Let us now assume, as has been claimed, that Palestinian noncombatants are given the opportunity by the IDF of evacuating an area in which the IDF is targeting Hamas terrorists by, for example, dropping leaflets warning of impending attacks. If there is a realistic option for the Palestinian

noncombatants in question to evacuate the area, then this is a morally relevant consideration, for in this circumstance they have chosen to remain in harm's way. However, it is disputed by some commentators **(p.191)** that this is in fact a realistic option, at least in the case of Gaza, on the grounds that there is typically no safe and secure location for them to go to within a reasonable time frame.⁸ At any rate, let us assume that it is a realistic option for the Palestinians to evacuate. Naturally, if the IDF is going to engage in air strikes, irrespective of whether the Palestinian noncombatants remain in situ or evacuate, then it may well be in the self-interest of the Palestinians to evacuate. But arguably they are not morally required to do so; it is morally permissible for them to remain in occupation of their own homes, the danger notwithstanding. Supposing they do so remain, is it morally permissible for the Israelis to proceed with their air strikes, knowing that they will kill innocent Palestinians? Arguably, it is morally permissible for the Israelis to engage in air strikes on military targets notwithstanding the possibility of collateral damage, assuming these air strikes are a military necessity and the loss of innocent lives is not disproportionate.

However, the problem that arises at this point is that the buildings being bombed are frequently civilian dwellings; they are not military installations, as that term is conventionally understood. Rather, the proposition is that the dwellings are ones that are (a) occupied by noncombatant civilians who are not in a position to relocate because, for example, they are children; but also (b) used by terrorist combatants as safe havens, weapons stashes, and the like. Accordingly, any air strike on such a building will not only involve the foreseeable death of civilians, it will also involve the intentional killing of those civilians. If, for example as happened in Gaza, a one-ton bomb is dropped on a house full of children, as well as terrorist-combatants, it is difficult to see how the deaths of the children was not intended.⁹ If this is correct, then the Israeli air strike is evidently in breach of the principle of civilian immunity.

(p.192) 7.2 Moral Justification for Killing Innocent Civilians

In this section I discuss the moral justifications for killing innocent civilians; in the two sections following this one, I consider moral justifications for killing culpable citizens (noncombatants). Here we need to keep in mind a number of moral considerations identified in the previous section and in previous chapters. In each case, the considerations are subject to the condition of other things being equal. The moral considerations are: (1) it is morally wrong to deliberately kill innocent persons; (2) it is morally worse to deliberately kill innocent persons than it is to unintentionally, but foreseeably, kill them; (3) it is a greater evil to kill $n+1$ innocent persons than to kill n innocent persons, and it is a greater evil to fail to preserve the lives of $n+1$ innocent persons than to fail to preserve the lives of n persons (supposing that in each case one has a moral obligation to preserve the lives in question); and (4) regular soldiers (including navy and air force personnel) have a special institutional and moral duty to protect the lives of their own citizens. Of these moral considerations, I take 1 and 3 to be self-

evidently true, and 2 to be controversial. Accordingly, I discuss 2 in the last subsection of this section. In the meantime, I assume it to be true. What of consideration 4? I have argued for the truth of this consideration in Chapter 3. However, a brief discussion here for the purposes of clarification is in order.

As I argued in Chapter 3, regular soldiers have a jointly held special institutional and moral duty to protect the moral and institutional rights¹⁰ of their fellow citizens, but not necessarily the citizens of other countries. This joint special duty is in part based on a partialist joint moral obligation; namely, the joint moral obligation that all the members of a political community have to provide for the security of the members of that community. This partialism in respect of joint positive moral rights and obligations is an extension of three forms of more basic moral partialism; namely, to oneself, to one's family, and to one's friends. The extension derives in part from the fact that oneself and one's family and friends are typically part of one's political community, and in part from the fact that one's life typically consists in large part in participation in joint enterprises constitutive of one's community (e.g., educational, health, **(p.193)** economic, social, and political enterprises)—enterprises productive of collective goods enjoyed principally by members of one's community. Needless to say, this partialism is weakened in the context of globalization, since friends and relatives are increasingly globally dispersed, as are joint economic enterprises, in particular. Nevertheless, the continuing existence of an international order composed of nation-states underpins this particular partialist model, as well as the structure of joint special moral and institutional rights of military combatants that it gives rise to.

7.2.1 Justifiably Killing Innocent Civilians

To facilitate the discussion of the moral justifications for killing innocent civilians, let us consider a scenario in which the air force of a liberal democracy, A, might be ordered by its political authority to shoot down an airplane with 100 innocent civilians (citizens of A) aboard that is being piloted by enemy combatants of a political entity, B, who are intent on flying it into a building housing 1,000 innocent civilians (also citizens of A). Here the dilemma is whether intentionally to refrain from protecting the lives of the innocent many (office workers in the building) or intentionally to kill the innocent few (the passengers in the plane) to protect the lives of the innocent many (and given the passengers are almost certain to be killed in any case).

Here we first need to distinguish between institutional rights and duties, on the one hand, and moral ones, on the other. Elsewhere, I have argued that these may come apart; specifically, it may be morally permissible to perform actions that are, and ought to be, unlawful.¹¹ At any rate, arguably, prime ministers, presidents, senior security personnel, and other government officials in liberal democracies ought never to have the legal power to authorize the deliberate killing of their own citizens in order to save the lives of other people (whether

they be their own citizens or not)—or indeed for any other “larger” purpose. A reason for this might be that the moral legitimacy of governments—liberal democratic governments in particular—derives in large part from, and crucially depends on, respecting the fundamental natural rights of autonomous human persons considered individually, and not simply in aggregate. Put simply, **(p. 194)** individual citizens in liberal democratic polities, or in other polities for that matter, have not relinquished, and indeed cannot relinquish, their natural and inalienable right not to be killed, including their right not to be killed by governments. Rather the only general condition under which it is institutionally *and morally* permissible for governments intentionally to take the lives of their citizens are ones in which the right not to be killed of the citizens in question has been suspended by virtue of their own rights violations (e.g., these citizens are themselves unjustifiably attacking other citizens).¹² It might be argued that citizens can at least waive their right not to be killed. However, this seems doubtful, given that waiving one’s right not to be killed would be, in effect, to relinquish it; assuming the dead cannot return to life.¹³ At any rate, if this line of reasoning is correct, then military combatants who deliberately kill their own citizens, even for good moral reasons (of which more below), cannot be discharging their *special* institutional rights and, therefore, their moral right qua special institutional moral rights. Or, at least, these military combatants cannot be discharging their special rights in so far as these rights have been legitimately authorized by the citizenry, as is presumably required in a liberal democracy. It could, nevertheless, be argued that the intentional killing of a small number of innocent persons can sometimes be justified in order to save the lives of a much greater number. Perhaps so, but it would not follow from this that a special institutional and moral right should exist to enable this. In particular, such a special right would depend on appropriate authorization from the citizenry but, as already stated, such authorization would require the citizenry to do what they cannot do, i.e. relinquish or waive their right not to be killed.

Even if the government officials of liberal democracies—and perhaps of any morally legitimate system of government—are not, and could not be, justifiably authorized to intentionally take the lives of their own innocent citizens, scenarios like the one just described give rise to acute moral dilemmas for any human agent who has the opportunity to intervene; generally, such human agents will be, in fact, senior political, military, **(p.195)** or police personnel. Accordingly, let us proceed with the analysis on this basis, and in effect, therefore, bracket their institutional rights and duties.

Other things being equal, deliberately killing one innocent human being in order to save the life of another is morally wrong. However, in the plane scenario, the number of persons to be deliberately killed is small relative to the number of lives to be saved. No doubt, deliberately killing a few innocents in order to save the lives of many innocents is inherently morally problematic; it necessarily

involves doing what is morally wrong, given the undiminished moral value that attaches to the life of an innocent person. For deliberately killing one or more innocent persons is morally wrong, irrespective of whether it is done in order to save the life of one or more innocent persons. On the other hand, arguably, deliberately refraining from saving the life of one or more innocent persons is also morally wrong, albeit a lesser wrong, irrespective of whether or not it is done in order to avoid the morally wrong action of deliberately killing some other innocent person or persons. So the dilemma resolves itself into a choice between a greater and a lesser evil.

At any rate, at some point in this kind of scenario, the choice will surely need to be made in favor of killing rather than refraining from saving. Suppose, for example, that the choice is between deliberately killing one person and refraining from saving 1,000? Arguably, to kill one and save 1,000 is the lesser evil, and thus morally preferable. As it happens, in the plane scenario, there is a further consideration in play that is, I suggest, decisive. In this scenario, the innocent persons to be deliberately killed will die whatever option is chosen, for they are in plane about to crash into the building housing the other innocent people. Accordingly, the morally preferable option is to shoot down the plane and, thereby, save the innocent people in the building, and to do so in the knowledge that the innocent people in the plane will die whatever one does, since they cannot be saved. This “solution” to the dilemma does not imply that deliberately killing the innocent persons in the plane is not a morally wrong act; it implies merely that the *pro tanto* wrongful act of deliberately killing them is overridden by other moral considerations. Nor does it imply that the proportionately larger number of innocent lives to be saved is the only moral consideration that could override or, at least, make a decisive moral difference to the moral wrongness of deliberate killing of the innocent. For it may be that partialist considerations could also make a moral difference.

(p.196) Consider a scenario in which an agent, A, has to choose between killing a few innocent persons (say, n) in order to save a larger number of innocents (say, N) or doing nothing, in which case N innocents die because they are not saved, but n remain alive because they are not killed. On the basis of the argument made above, assume that it is morally required to kill n innocents in order to save N , but morally impermissible to kill $n + n^*$ innocents in order to save N (where n^* is less than n , and $n + n^*$ is less than N). Thus far, the two moral considerations discussed above are in play; namely, consideration 1, the lesser or greater evil consideration based purely on the number of innocent lives to be preserved or lost (lesser evil principle); and 2, the intention/foreseen consequences principle. What of the third kind of moral consideration, the partialist ones? Can they make a moral difference? The partialist considerations in question are natural in character, as opposed to institutional.

Here there are two salient propositions: (A) Partialist considerations transform the impartialist moral obligation to kill n innocents in order to save N innocents into a moral permission (if not a requirement) not to kill n innocents in order to save N innocents, because the n innocents consist of oneself and one's close relatives (i.e., one's parents, siblings, and children), whereas the N innocents are all complete strangers. (B) Partialist considerations transform the impartialist moral requirement not to kill $n + n^*$ innocents in order to save N innocents into a moral permission (if not a requirement) to kill $n + n^*$ innocents in order to save N innocents, because the N innocents consist of oneself and one's close relatives (i.e., one's parents, siblings, and children) and the $n + n^*$ innocents are all complete strangers. I take proposition (A) to be self-evidently correct, but what of proposition (B)?

The argument for proposition B might go as follows: The truth of proposition A demonstrates that moral consideration 3 (natural partialist considerations) can, at least in principle, transform a moral requirement to kill into a permission not to kill (given the only other moral considerations in play are 1 (lesser evil principle) and 2 (intention/foreseen consequences principle). But if consideration 3 can transform a moral requirement to kill into a permission not to kill, why can it not transform a requirement not to kill into a permission to kill (given that in both cases, 1 and 2 are the only other moral considerations in play)?

Let us consider the matter further. The truth of proposition A seems to rest on the proposition (proposition C) that it is morally worse to deliberately kill (say) one's innocent mother than it is to deliberately kill an innocent stranger. If this is so, then it is surely morally worse not to save one's innocent mother than it is not to save an innocent stranger. Indeed, **(p.197)** the latter proposition (proposition D) seems to be independently true. But in that case, proposition B is evidently correct, since it can rest on the truth of proposition D. To see this, consider the following: We accepted above that it is morally permissible to kill n innocents in order to save N innocents, but that it is impermissible to kill $n + n^*$ innocents in order to save N innocents. For instance, it is morally permissible to kill two innocent persons in order to save four innocent persons, but not in order to save three innocent persons. Now assume that your mother is one of the latter three innocent persons. Arguably, it is morally permissible for you to kill the two innocents in order to save the three innocents of which your mother is one.

I conclude that partialist considerations can, at least in principle, make a moral difference, in that they can add weight to other moral considerations in a manner that enables them to transform a moral obligation to kill innocents in order to save innocents into a moral permission not to kill innocents in order to save innocents, and to transform a moral obligation not to kill innocents in order

to save innocents into a moral permission to kill innocents in order to save innocents.

Since the partialist considerations discussed above are natural rather than institutional in character, it does not necessarily follow that the special institutional (moral) duties of regular soldiers can likewise make a moral difference. On the other hand, these natural partialist considerations partly underpin the special duties of military combatants. This suggests that the special duties of regular soldiers may well make this kind of moral difference. Here much turns on the nature of the partialist considerations inherent in the joint enterprises that also partly underpin the special duties of military combatants.

7.2.2 The Moral Significance of the Intention/Foreseen Consequences Distinction

In the above discussion, I have assumed that the intended/foreseen consequences distinction is morally significant. Specifically, other things being equal, if the death of innocent victims is intended, then the action causing the deaths is morally impermissible, whereas if the deaths were merely foreseen, then the action may well be morally permissible. This has been disputed by some theorists, notably Frances Kamm.¹⁴ Kamm (**p.198**) argues that “when an act is otherwise morally permissible despite the harm and terror it produces, intending the harm and terror as a means or ends need not affect the permissibility of the act.”¹⁵

Kamm offers the example of Baby Killer Nation (BKN).¹⁶ BKN intentionally kills and terrorizes children (innocent civilians) as an end in itself, and also as a means to protest pro-natalism. However, BKN only kills when it has a justified (moral and legal) pretext to do so in order to escape punishment. For example, BKN bombs a building housing Nazi combatants, with the consequence that the objectives of the just war against the Nazis are furthered, albeit at the cost of the lives of some children who reside nearby (they are collateral damage). However, these civilian deaths are a morally acceptable cost by the lights of just war theory (specifically, the principles of necessity and proportionality). Accordingly, the building would be a legitimate military target (in terms of international law and, presumably, morality) of some armed resistance group engaged in morally justified armed conflict against the Nazis. However, BKN bombs the building only as a means to kill the nearby children, whereas the resistance would do so without this intention (though the death of the children would be an unintended but foreseen consequence).

BKN is akin to a homicidal maniac who goes to war in order to kill people as an end in itself, but who conforms to the laws of war in order to escape punishment; the laws, therefore, constrain his killing. On Kamm’s view, the homicidal-maniac-

soldier would not be guilty of murder. Assuming murder is unlawful killing, and the law in question mirrors the relevant moral principles, this seems right.

Kamm goes on to make the normative theoretical claim that when an act is otherwise morally permissible (notwithstanding the harm it produces), intending the harm need not affect the permissibility of the act. However, I am not sure that Kamm succeeds in adequately justifying the claim that when an act is otherwise morally permissible (notwithstanding the harm it produces), intending the harm need not affect the permissibility of the act—at least insofar as she relies on BKN for this justification.¹⁷ **(p.199)** For there is a further relevant feature of BKN that has thus far escaped her and others' notice; namely, a certain second-order, good intention.

The first point to be made here is that BKN *intends to*, or is otherwise aiming at, escaping punishment, and has as a means to this end its compliance with legally enshrined just war principles. The question is whether BKN complies intentionally or merely as a foreseen consequence of its action of bombing the building. It seems to me that compliance with the just war principles is not adequately described as a mere foreseen side effect of the bombing. (By the way, this [at least in theory, if not in practice] might be consistent with Kamm's claim that the death of the Nazi occupants of the building was foreseen but not intended). For these principles are accepted by BKN as a constraint on its activities, and BKN surely scrutinized its planned actions and their consequences, and, if necessary, would have adjusted its actions to ensure that they complied with these principles (albeit in order to escape punishment), by, for example, ensuring that the bomb would not kill more civilians than would be justified under the principles. Moreover, if the principles were more permissive, then BKN would no doubt have taken advantage of this to, say, explode a bigger bomb that would have killed even more civilians (assuming a bigger bomb was the only one available). Accordingly, it seems to me that BKN *intentionally* complies with the principles in order to escape punishment, or, at least, that it is far from clear that this is not so. If this is right, then the bad terroristic intention is constrained by this good, just war theoretic intention—the latter being a second-order intention with respect to the former. In this respect, BKN is akin to our homicidal-maniac-soldier.

This suggests that Kamm is right in thinking that the intention to kill (innocent) civilians does not, in her example, make a difference to the moral permissibility of the action of BKN. However, it also suggests that she is wrong about the reason for this. The intention to kill innocent civilians fails to make a difference to the (all things considered) moral permissibility of BKN's action, not for the reason that this bad intention does not *in itself* make any (*pro tanto*) moral difference, but rather for the reason that there is *another intention* in play that neutralizes its moral effect: the above-described second-order, good intention with respect to this bad intention. This second-order good intention acts as a

constraint on the bad intention in question (and, therefore, on the bad intentional actions—acts of terrorism [or genocide]—that would otherwise be performed by BKN).

(p.200) 7.3 Civilian Immunity and Rights Violations

In this section I explore the moral notion of civilian immunity in relation to the category of civilians who are morally responsible for the rights violations that, in large part, justify the waging of war. Specifically, I want to focus on non-life-threatening rights violations. In the section following this one, I turn to a category of civilians who are culpable, but who are not morally responsible for *actions* that constitute rights violations; their sins are sins of omission rather than sins of commission. It will turn out that these two categories overlap insofar as there are members of civilian groups who are guilty of certain non-life-threatening rights violations by virtue of culpably refraining from assisting the rights bearers in question. However, for ease of exposition, my focus in this section will be on rights violations that are acts, as opposed to omissions.

In a just war, enemy combatants can be legitimate targets on at least two grounds. First, they might be a subset of the perpetrators of *rights violations* that provide the *casus belli*. This would be the case in a war of self-defense against an enemy hell-bent on genocide (e.g., the Allied forces fighting against the Nazi SS in the Second World War, or the largely Tutsi army fighting against the Hutu army and its militias in Rwanda in 1996),¹⁸ or on the imposition of a political arrangement characterized by egregious rights violations, such as enslavement (e.g., the Iraqi, US, and other armed forces fighting against ISIS in Iraq).

Second, enemy combatants are legitimate targets, if they are attempting to *enforce* a policy of rights violations. For example, the government in apartheid South Africa embarked on a policy of removal of so-called black spots; that is, moving black people out of designated white areas into impoverished black “homelands.”¹⁹ This policy was a form of racial or ethnic “cleansing,” and as such was a violation of human rights.²⁰ However, the role of police and military personnel was one of enforcement of the policy; the policy *in itself* did not necessarily consist of the use of coercive, including lethal, force, for it is conceivable that such a policy could **(p.201)** have been implemented by some means other than coercive force (e.g., by fraud) .

Accordingly, on the above outlined rights-based theoretical account of the just war (Chapter 6), civilians—as opposed to combatants—are legitimate targets, if (but not necessarily only if): (a) they are morally responsible for (natural and institutional) *moral rights violations*, or threatened rights violations, that justify the waging of war; and/or (b) they are morally responsible for the *enforcement* of such rights violations.

The civilians in question would include politicians, or other nonmilitary leaders, who are responsible for the rights violations, or the enforcement thereof, in the sense that in the context of a chain of command they were the relevant *authority* that directed that the human rights violations be carried out, or that they be enforced.²¹ Such civilians would also include persons who, while not necessarily part of any formal chain of command, were nevertheless responsible for the rights violations (or the enforcement thereof), in that they planned them, and saw to it that other persons performed the rights violations (or the enforcement thereof). Here, the latter are instruments, but not necessarily subordinates, of the former. For while the former are the principal agents, they are not necessarily in a position of political or military authority. For example, a political leader might pay a group of foreign mercenaries to engage in ethnic cleansing without being in a relation of political or, indeed, military authority to the mercenaries. Rather, the relationship might be an essentially economic or commercial one, such as that of employer to employee or client to service provider.

Four categories of persons responsible for rights violators can now be derived; namely (1) direct rights violators; (2) direct enforcers of rights violations; (3) political or military authorities, or other principal agents, indirectly (via their directives, payments, etc., to others) responsible for rights violations; and (4) political or military authorities, or other principal agents, indirectly (via their directives, payments, etc., to others) responsible for the enforcement of rights violations. Moreover, I take it that civilians who belong to either of these four categories of persons (directly or indirectly) responsible for rights violations (or their enforcement) are, at least in principle, legitimate targets, meaning that lethal force can justifiably be used against them under certain circumstances.

(p.202) Thus far I have distinguished between rights violations and the enforcement of rights violations. Moreover, we can distinguish between positive rights and negative rights, and between life-threatening rights violations and non-life-threatening rights violations. Some violations of negative rights, such as the right to freedom, might not be life threatening. And some violations of positive rights, such as the right to subsistence, might be life-threatening.

It is easy to see why the use of lethal force in response to life-threatening rights violations might be morally justified. However, the use of lethal force in response to non-life-threatening rights violations is more problematic—especially when such use of lethal force is on a scale properly describable as engaging in war. For it is typically assumed that life is more important than other goods to which people have rights. So it is harder to justify the use of lethal force in relation to non-life-threatening rights violations than it is in relation to life-threatening rights violations. On the other hand, as argued in Chapters 1 and 3, we can distinguish between moral rights to properties constitutive of selfhood and rights to properties not so constitutive. Violations of the former category of

rights (e.g., torture, enslavement), at least, are especially serious rights violations, and as such may well warrant a lethal response, if this is necessary to bring about their cessation. In speaking of non-life-threatening rights violations, I have in mind especially violations of rights to properties constitutive of selfhood *other than the right to life*. However, I will make it clear when the non-life-threatening rights violations under discussion are *not* of this kind (i.e., when they are not per se violations of rights to properties constitutive of selfhood). At any rate, I will now address the question of the legitimacy of directing lethal force at a particular class of civilians; namely, persons responsible for non-life-threatening rights violations. So I am not speaking of persons responsible for life-threatening rights violations. Nor am I speaking of persons responsible for *enforcing* non-life-threatening rights violations (or for enforcing life-threatening rights violations).

The use of lethal force against persons responsible for life-threatening rights violations is typically self-defense or defense of the lives of others. (In the case of life-threatening rights violations that are violations of positive rights, it is self-preservation, or preservation of the lives of others.) But what of the use of lethal force in response to non-life-threatening rights violations?

(p.203) The use of lethal force in response to those who are *enforcing* non-life-threatening rights violations seems straightforward enough. For such enforcers are themselves using, or are threatening to use, lethal force in response to any attempt on the part of those whose rights are being violated to escape their fate. So the morally unjustified use of lethal force is being met with lethal force. This is not primarily or, at least, exclusively killing in self-defense in the sense of killing in defense of one's life; rather, it is killing in defense of rights other than the right to life.²² Nevertheless, it is the use of lethal force against combatants—combatants seeking to enforce non-life-threatening rights violations. And I take it that, historically, in wars of conquest, combatants fighting on behalf of the aggressor nation-state are seeking to enforce non-life-threatening rights violations, such as violations of the right to freedom (e.g., the right not to be enslaved). Accordingly, if the members of the state whose rights to freedom are under threat were to cease to resist, then their lives might well cease to be under threat.

At any rate, the use of lethal force against such combatants seems justified on the basis of the accumulated moral weight of three considerations: (1) the lethal force is used in order to bring about the cessation of non-life-threatening rights violations, or the removal of the threat thereof (e.g., rights of freedom); (2) the lethal force is used in response to the morally unjustified use of lethal force by the would-be enforcers of these non-life-threatening rights violations; (3) the lethal response is necessary in order to bring about the cessation of the (non-life-threatening) rights violations in question. Moreover, in the light of our earlier discussion, the use of lethal force against civilians who have authority

over such combatants enforcing rights violations, or with respect to whom the combatants are otherwise instruments, also seems morally justifiable, at least in principle.

However, this does not settle the question of whether it would be morally justifiable to use lethal force against civilians who are responsible for non-life-threatening rights violations, and yet who are not responsible for the enforcement of these rights violations. Consider in this connection public officials who plan and administer a policy of forced removals (racial or ethnic “cleansing”) or of enslavement, but who might not have any role **(p.204)** or authority in relation to the enforcement of the policy. Are such officials legitimate targets?

Here it is important to distinguish types of cases. The typical situation involves the existence of some collective end,²³ such as the removal of people from their homes to an impoverished tract of land, or the occupancy of some other nation-state and the enslavement of its population. This is a *collective* end, since its realization requires a large number of different individual persons to perform distinct tasks in the service of a common end—indeed, it requires a number of different persons to occupy a variety of different institutional roles in the service of a common end. There are planners, administrators, enforcers (combatants), leaders, and so on, engaged in a collective project (e.g., to dispossess a people, or to win a war of conquest). Given that the collective end in question constitutes a violation of rights (albeit non-life-threatening rights), the participants in this collective project are morally culpable; they are collectively morally responsible for wrongdoing. More precisely, each individual person is individually morally responsible for his or her contributory action that is part of the means to the collective end, and each individual is jointly morally responsible with the other individuals for the realization of the collective end (or, at least, its joint pursuit).²⁴

In many cases, enforcement is not only a means to the collective end—to the violation of non-life-threatening rights—it is integral to that end. This is obviously the case in wars of conquests, both past and present. Consider in this connection the war being fought by ISIS in Iraq. ISIS has enslaved thousands of Yazidis and Christians in Iraq, especially women (often provided to ISIS fighters as sex slaves) and children (and murdered many others, including many of their menfolk).²⁵ But it is also the case in the South African forcible removal example mentioned above. The policy of the elimination of “black spots” in apartheid South Africa was a policy that in part consisted of enforcement (i.e., of use of force, or the threat thereof). Therefore, non-enforcers such as public officials who planned and administered this policy are not only morally responsible (jointly with others) for the non-life-threatening rights violations, they are also morally **(p.205)** responsible (jointly with the enforcers) for the use of force. To this extent, they are analogous to military planners in respect of a war of

conquest. Naturally, the degree of morally responsibility may differ. For example, combatants might have a greater share of the collective responsibility than those who merely assist combatants qua combatants (e.g., munitions workers).

However, arguably, there are cases in which enforcement is not integral to the collective end that consists of a violation of non-life-threatening rights. Consider a variation on our forcible removal example. In our new scenario, blacks in apartheid South Africa are falsely told that they are being transported to a land of freedom and material well-being, when in fact they are going to an impoverished “homeland.” Assume further that when some groups of blacks disbelieve these claims, they are forcibly made to board the transport vehicles; indeed, lethal force is used on a number of occasions. However, enforcement is only used as a supplement to fraud. Now suppose the civilians who planned this policy of removal to “homelands” by fraud did not know—and could not reasonably have been expected to know—that lethal force would be used, and neither did the civilians who organized and time-tabled the transport. So in post-apartheid South Africa, these civilians claim that whereas they have a share in the collective moral responsibility for violating the rights of the blacks, including their property rights, they are in no way responsible for the use of lethal force that took place from time to time to further this collective end. In short, they acknowledge their guilt in relation to perpetrating non-life-threatening rights violations, but deny that they were guilty of enforcing these violations (and deny, therefore, any guilt in relation to life-threatening rights violations). Their moral claim seems reasonable, assuming the facts are as they describe them.

The upshot of this discussion is that there may well be civilian groups who have a share in the collective moral responsibility for the violation of non-life-threatening rights violations without necessarily being morally responsible for the enforcement of these rights violations. Arguably, such civilians do not have a moral right to immunity in war. After all, they are not innocent civilians, but rather rights violators.

Notwithstanding their lack of a *moral right* to immunity, these civilians might justifiably expect an extent of protection not afforded to combatants. For the argument in favor of using lethal force against these civilians has less moral weight than it has in the case of those—especially combatants—who are not only collectively responsible for **(p.206)** the non-life-threatening rights violations, but also for the enforcement thereof. Accordingly, other things being equal, such civilians might justifiably be afforded civilian immunity in some wars, such as ones in which it was not necessary to target both combatants and civilian rights violators who were not enforcers.

In this section I have not considered a number of familiar arguments pertaining to civilian immunity. Let me simply note that there may be other grounds, such as consequentialist or contractarian grounds, for restricting the use of lethal

force against civilians.²⁶ For example, conventions may have been set in place to prohibit the use of lethal force against civilian administrative personnel, and the abandonment of these conventions may bring about a situation that is morally worse, all things considered, than respecting them. Or the policy of violence may lead to counterviolence and a general escalation in violence that is morally less acceptable than the state of affairs in which legitimate targets were left unharmed. Nevertheless, there may be situations in which directing lethal force at combatants and their leaders alone is not sufficient to terminate the rights violations, and in which widening the set of targets so as to include civilian non-life-threatening rights violators is necessary to terminate the rights violations, and in which such widening is not overridden by consequentialist or contractarian considerations. In such situations, these categories of civilians may become legitimate targets, given that they lack a moral right to immunity.

7.4 Civilian Immunity and Culpable Omissions

Thus far we have mainly been concerned with civilians who are individually and collectively morally responsible for moral rights violations, implicitly understood as violations of negative rights, such as a war of conquest or an active and sustained policy of slavery or of forcible removal (ethnic or racial “cleansing”). We have not been concerned, at least explicitly, with positive rights and duties to assist as such. So our focus has not been on culpable omissions. That said, I have already acknowledged that the category of non-life-threatening rights violations includes violations of some positive rights. At any rate, in this section I will discuss the collective moral responsibility of certain categories of culpable non-attackers.

(p.207) In Chapter 1 I suggested that deadly force may well in principle be used to enforce some positive rights, as well as to enforce negative rights. These positive rights include rights to goods other than life; they include rights that can be unrealized, even when the right to life is realized. Moreover, as is the case with negative rights, third parties—at least in principle—have moral rights, and indeed moral obligations, to use lethal force to ensure that some positive rights are respected, such as enforcement rights and obligations.

This point has clear implications for certain civilian members of governments who intentionally refrain from respecting the positive rights, including subsistence rights, of their citizens. For governments have a clear institutional responsibility to provide for the minimum material well-being of their citizens; or at least this is so if the governments in question have the capacity to do so. Accordingly, the moral responsibility based on need—and the fact that those in government could assist, if they chose to—is buttressed by this institutional responsibility that they have voluntarily taken on. Consider Saddam Hussein’s refusal to distribute much-needed food and medicine to his own citizens, albeit in the context of UN-sponsored sanctions.²⁷ Citizens in such states may well be entitled to use lethal force against the government officials in question,

notwithstanding the fact that these officials are neither combatants nor the leaders of combatants. Perhaps such use of lethal force, including assassination, is to be regarded as terrorism, on the grounds that the victims of terrorism are not themselves attackers.²⁸ If so, then terrorism can be morally justified in some circumstances. However, the civilian victims in this kind of scenario are not innocent; their intentional acts of omission constitute violations of the positive rights of their citizens.

Some of these rights or duties to use lethal force to enforce positive rights might be exercised against certain categories of people with diminished responsibility. Consider the following scenario: Suppose that there is a pharmaceutical company that has a policy of not providing cheap drugs to HIV/AIDS sufferers whose lives are at risk, notwithstanding **(p.208)** that it could do so and remain profitable. The company prefers to inflate its profits by selling its drugs far above cost; it refuses to sell the drugs cheaply, and is able to do this, let us assume, because of its monopolistic position in the market. Suppose that one of the employees of the company is not actually responsible for the company policy, but is nevertheless the person who is refusing to provide sufferers with the drug when they come to procure it.²⁹ Assume also that the AIDS sufferer is not in a position to credibly threaten the company managers who are responsible for the policy. Although the employee seems to have diminished responsibility for failing to respect the AIDS sufferer's right to the life-preserving drug, it is nevertheless, arguably, morally permissible for the AIDS sufferer to shoot the employee dead, if that is the only means by which he can preserve his own life.

By analogy, government employees, such as administrators who deliberately refrain from assisting those in need because they are instructed to do so by their government, might well be legitimate targets of "terrorists." Consider our above described example of blacks in apartheid South Africa who were forcibly removed into desolate "homelands," such as Qua Qua, and once there found they could not provide themselves with a basic level of subsistence, and malnutrition and disease were rampant. Now suppose South African politicians declare such homelands to be independent states—as in fact happened—and thereby try to absolve themselves and their administrators of their preexisting institutional responsibility for the minimum material needs of the "citizens" of these alleged new states. Since the "states" were not legitimate—and were not in fact internationally recognized as legitimate—these politicians and other officials did not succeed in absolving themselves of their institutional responsibility. Accordingly, the South African government officials who refrained from assisting the relocated people were conceivably legitimate targets, on the assumption that killing these officials was necessary in order to ensure that the subsistence rights of these people would be realized. This might be so, even if the officials in question were not the same officials who planned and implemented the policy of forcible removals. Perhaps by this time the latter officials had retired, and were replaced by a new cohort of politicians and administrators. If so, these new or

succeeding officials (**p.209**) would simply have inherited the collective institutional and moral (prospective) responsibility to provide for the minimal material needs of the “citizens” of these alleged new states.

Let us focus on the collective responsibility of the members of a group who intentionally refrain from assisting their needy fellows. Here we need some theoretical account of collective responsibility for omissions (see Chapter 5, section 5.4). I offer the following account of collective moral responsibility for omissions, though it provides only a rough approximation³⁰ of a *sufficient* condition for such responsibility. Members of some group, A, are collectively morally responsible for failing to assist members of some group, B, who are in extreme need. (i.e., members of A are collectively morally responsible for a serious positive rights violation) if (1) the assistance was not provided and, as a consequence, the members of B died (or otherwise underwent extreme suffering); (2) the members of A *deliberately refrained* from so assisting; (3) each or most of the members of A intervening having as a collective end the (joint) provision of assistance would have saved the lives of members of B (or relieved their suffering); (4) each of the members of A would have deliberately refrained from intervening—and intervening having as a collective end the saving of the lives of members of B (or relief of their suffering)—even if the others, or most of the others, had intervened (in order to realize that end); and (5) each of the members of A had an institutional responsibility—jointly with the others—to intervene and, thereby, realize the collective end in question.

Complications arise when the intervention in question has to be performed on a very large scale, or indirectly via representatives of a community. Specifically, the nature and scale of the assistance might require appropriately authorized, organized assistance by members of trained occupational groups, such as medical personnel. Thus, in representative democracies, practically speaking, the members of the government may have to enact policies and authorize funding, and the membership of relevant organized groups may have to be mobilized, if the intervention is to efficiently and effectively relieve the large-scale deprivations in question. Here the notion of a multilayered structure of joint action and that of a joint institutional mechanism are relevant (see Chapter 2)—as argued above, the former notion enables collective institutional and moral (**p.210**) responsibility to be ascribed to organizational actions and omissions, and the latter to the decision making of centralized bodies, such as the prime minister and his or her cabinet.

I note that large voting populations in contemporary democracies cannot be assimilated to organizational structures, such as an army, or to small-scale directly participatory bodies, such as the cabinet in a Westminster-type system of government. Therefore, notions of collective responsibility that might apply to such organizations, or to such small-structured groups, do not apply to large populations. Accordingly, the failure of the members of democratic government

to discharge their collective institutional and moral responsibility and ensure appropriate humanitarian intervention does not generate a moral justification for the wholesale targeting of the civilian voting population by, say, terrorists, much less the targeting of a civilian population living in an authoritarian state that fails to do its duty in this regard.³¹

Nevertheless, in the light of this above definition, it might well be the case that civilian members of governments and their administrations—such as Iraqi politicians and administrators who failed to meet their responsibilities to distribute food and medicine to their own citizens, and South African politicians and administrators who failed to adequately assist destitute blacks in the “homelands”—are collectively morally responsible for omissions of a kind that might justify the use of lethal force on the part of their citizens to ensure that the rights to assistance in question are realized. In short, members of civilian groups who culpably refrain from assisting those who have a human right to assistance from them might thereby forfeit their right to immunity in the context of a conventional war or armed struggle.

7.5 Conclusion

My concern in this chapter has been with the principle of discrimination and, therefore, with civilian immunity in war. While I accept that military combatants have special moral duties to protect the members of their own citizenry—duties that they do not have in relation to the citizens of other communities—I deny that the lives of military combatants can be given priority over the lives of innocent civilians of an enemy state. This is **(p.211)** congruent with the standard understanding of the principle of discrimination. However, I have argued that partialist considerations can make a moral difference in relation to the permissibility of the use of lethal force in war under some circumstances. Partialist considerations (e.g., between members of the same family or community) make a difference insofar as they underpin special moral rights and duties.

I have also argued that intentions—as opposed to foreseen consequences—make a moral difference, but the intentions in question are not necessarily first-order intentions; in some cases they are second-order intentions that constrain first-order intentions.

Finally, I have argued that the category of innocent civilians does not include rights violators, including non-life-threatening rights violators and those who culpably fail to discharge obligations to positive rights holders (culpable refrainers). Accordingly, some categories of noncombatants do not have the moral right to immunity in war.

Notes:

- (1.) Walzer, *Just and Unjust Wars*, Chapter 9; Igor Primoratz, ed., *Civilian Immunity* (Oxford: Oxford University Press, 2007); Larry May, *War Crimes and Just War* (New York: Cambridge University Press, 2007), Chapters 5 and 8; Coady, *Morality and Political Violence*, Chapters 6 and 7.
- (2.) An earlier version of the material in this section is in Miller, *Terrorism and Counter-Terrorism*, 142–145.
- (3.) An earlier version of the material in this section is in Miller, “Civilian Immunity, Forcing the Choice and Collective Responsibility.”
- (4.) Asa Kasher and Amos Yadlin, “Military Ethics of Fighting Terror: An Israeli Perspective,” *Journal of Military Ethics* 4, no. 1 (2005): 14–15.
- (5.) Bashshar Haydar, “The Ethics of Fighting Terror and the Priority of Citizens,” *Journal of Military Ethics* 4, no. 1 (2005): 52–59.
- (6.) Kasher and Yadlin, “Military Ethics of Fighting Terror,” 20.
- (7.) No doubt the distinction collapses in certain extreme cases. But in this respect, it is no different from many morally significant distinctions. The distinction, for example, between intentions and foreseen consequences is morally significant. However, in some extreme cases, it collapses. I take it that firing a lethal missile into a school building in which one *knows* there to be children and, thereby, causing their deaths is in effect to *intentionally* kill those children.
- (8.) Steven Erlanger and Fares Alkram “Israel warns Gaza targets by phone and leaflet” *International New York Times* July 8 2014 www.nytimes.com/2014/07/by-phone-and-leaflet-israeli-attackers-warn-gazans.htm
- (9.) Yuli Novak “When I served, the Israeli military was the most moral in the world. No more” *The Guardian* 28 July 2014 <http://www.theguardian.com/commentisfree/2014/jul/28/israeli-military-most-moral-no-more-outrage-indifference> Here the assumption would be that the military officers knew, or believed that there was a reasonable chance that there were children in the building.
- (10.) Or, at least, those moral rights to properties constitutive of their selfhood and those institutional rights derived therefrom.
- (11.) For example, in relation to torture. Torture ought never to be legalized, but it may well be morally justified in some extreme circumstance. Seumas Miller, “Is Torture Ever Morally Justifiable,” *International Journal of Applied Philosophy* 19, no. 2 (2005): 179–192.

(12.) Perhaps the right to life of innocent citizens has been suspended if these citizens consent to their lives being taken in order to save the lives of a much larger number of fellow citizens.

(13.) But see Joel Feinberg "Voluntary Euthanasia and the Inalienable Right to Life" *The Tanner Lecture on Human Values*, University of Michigan, April 1 1977.

(14.) F. M. Kamm, *Ethics for Enemies: Terror, Torture and War* (Oxford: Oxford University Press, 2011).

(15.) Kamm, *Ethics for Enemies*, 78.

(16.) Kamm, *Ethics for Enemies*, 79.

(17.) I do not have the space to deal with her interesting non-case-based justification (Kamm, *Ethics for Enemies*, 82-83).

(18.) See Fergal Keane, *Season of Blood: A Rwandan Journey* (London: Viking, 1995).

(19.) Francis Wilson and Mamphela Ramphele, *Uprooting Poverty: The South African Challenge* (Cape Town: University of Cape Town Press, 1988).

(20.) The policy did not necessarily, or in fact, involve large-scale murder of the persons being removed, as happened in, for example, Bosnia in the days of Milosevic and his Bosnian Serb allies.

(21.) Jeffrie Murphy, "Killing of the Innocent," *The Monist* 57, no. 4 (1973): 532f.

(22.) Naturally, it may result in killing in defense of one's life if the person whose rights (other than right to life) are being violated resists the enforcer of these rights violations and the two parties engage in lethal combat.

(23.) In Miller, "Joint Action," I offer an account of the notion of a collective end.

(24.) So *collective* moral responsibility can be understood in these cases as *joint* moral responsibility. See Chapters 3 and 5 above, and also Miller, "Collective Moral Responsibility."

(25.) Jessica Stern and J. M. Berger, *ISIS: The State of Terror* (London: HarperCollins, 2015), 215-217.

(26.) George I. Mavrodes, "Conventions and the Morality of War," *Philosophy and Public Affairs* 4, no. 2 (1975): 117-131.

(27.) Sandra Mackey, *The Reckoning: Iraq and the Legacy of Saddam Hussein* (London: Norton, 2002), 363. There was moral complexity here in that, given

that Saddam was refusing to dispense food and medicines under the oil for food program—citing sanctions as his reason—then almost certainly sanctions should not have continued to be applied. But this does not relieve Saddam of culpability.

(28.) This depends on the definition of a terrorist. See Miller, *Terrorism and Counter-Terrorism*, Chapter 2.

(29.) Assume also that he does not have an adequate reason for refusing to provide the drug, (e.g., if he provides the drug he will be fired and unable to get another job, with the consequence that his young children will be brought up in abject poverty).

(30.) For example, I have not bothered to spell out the conditions for moral responsibility, (e.g., that the agents were not under the influence of drugs).

(31.) But see Primoratz, "Michael Walzer's Just War Theory," 232f; and Michael Green, "War, Innocence, and Theories of Sovereignty," *Social Theory and Practice* 18, no. 1 (1992): 39-62.

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