

2006

Terrorism in the age of just war thinking

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TERRORISM IN THE AGE OF JUST WAR THINKING

A Thesis

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Master of Arts

In

The Department of Philosophy

by
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B.A., Millsaps College, 2000
May 2006

ACKNOWLEDGEMENTS

I would like to thank my committee members—Dr. Gregory Schufreider, Dr. Cecil Eubanks, and Dr. François Raffoul—for their commitment to this endeavor. Special thanks to Christopher Blakley for his invaluable advice and motivating influence on this study’s direction. Thanks also to Dr. Patrick Hopkins, whose creative and personal approach to academia is why I chose to further my education in this discipline. Finally, I would like to thank my family for their endless support and confidence in my ability to do what I love.

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ABSTRACT

A disagreement over two questions contributes to further disagreement about the war on terrorism. First, what is terrorism? If terrorism is a term to intensify negative connotations of any activity, then all unjust acts are terrorism potentially. I argue that terrorism is a specific act; it is the use, or threat of use, of premeditated violence against noncombatants, intended to coerce a group into some course of action. Second, is the war on terrorism just? Because terrorism is not a pejorative, we must evaluate terrorism to determine if response to terrorism is response to an unjust aggressor. Using Michael Walzer's Just War Theory, I show that victims of terrorism and the international community have just cause to respond to terrorism because all terrorists intentionally harm innocents to advance their cause. Even if terrorists have just cause, their terrorist acts are unjust because they maximize civilian risk.

When nothing else will stop a terrorist attack, war is just. Just war minimizes civilian risk and only targets people responsible for unjust aggression. The Bush administration's war on terrorism uses a preventative strategy to eliminate future terrorist attacks. Using war to prevent future terrorism is just only when there is a legitimate threat of terrorism and no alternative short of war will stop the attack. The United States had just cause for the war in Afghanistan because war was necessary to stop al Qaeda, a legitimate threat, from attacking again; however, the United States did not have just cause for the war in Iraq because although Saddam Hussein was a legitimate threat, means short of war were available to restrain him from supporting terrorists. By defining terrorism properly and using the resources of Just War Theory, we can continue to evaluate engagements in the war on terrorism.

INTRODUCTION

General Sherman was correct—war is hell; however, peace is not always the best alternative. Because there are worse things than war (namely, the persistence of an unjust war), it is necessary to be able to determine when military force must be used to stop some violence or oppression. Just War Theory (henceforth, JWT) was developed in response to the need for standards to determine when a declaration of war is just and which acts in war are just. Although conventional war is typically its subject, we can use JWT to evaluate unconventional acts of war like terrorism.

Discussion about the war on terrorism, particularly the war in Iraq, raises at least two philosophical issues. First, what is terrorism? Because “terrorism” often is a derogatory term in public debate, some people use the term to bolster their cause.¹ I argue that terrorism is not a term that denotes the intensity of a bad act; terrorism is a specific kind of activity that we judge just or unjust. Second, is the war on terrorism, as carried out by the Bush administration, just? Once we properly understand terrorism, the war on terrorism is not a war against a clear injustice. We must study the justice of the war on terrorism by evaluating terrorism and limits to various responses to it. I argue that using war in the war on terrorism is just only if it is necessary to stop a legitimate threat. In what follows, I bring the resources of philosophical thinking, particularly JWT, to bear on these questions. My aim is to show

¹ The public implies an activity is horrible when they add “terrorism” to the term for the activity. Use of terrorism as a term to intensify the negative connotations of an act is evident in several editorials. For example, in the *Toronto Star*, Van Alphen refers to a \$200 million dollar payout to investors as “corporate terrorism” because the deal was likely to force the company to go bankrupt. In the *Chicago Defender*, violent crime in urban communities is “urban terrorism” because it disproportionately affects minorities. In the *Champlain Islander*, Robert Skinner calls sexual predators “sexual terrorists” because their victims are “forever psychologically wounded.” By calling some activity “terrorism,” we imply that the activity is wrong.

how the public debate over terrorism and the war on terrorism benefit from philosophical thinking.

In the first section, I develop a working definition of terrorism. Because we accept that we know terrorism when we see it, the public uses the term “terrorism” to denote ideas and interests with which they strongly disagree (e.g., “sexual terrorism” or “corporate terrorism”). Terrorism is not a qualifying term because it indicates a specific violent activity, irrespective of it being unacceptable. Terrorism is distinct from other forms of political violence because it is the use or threat of premeditated violence against noncombatants in order to coerce a group into some course of action.

In the second section, I evaluate the war on terrorism drawing on Michael Walzer’s JWT, which is the predominant view in philosophy on just wars. Because a just war responds to an unjust aggressor, for the war on terrorism to be just, terrorism must be unjust. JWT is appropriate for evaluating terrorism because terrorism is an act of war. All terrorism is unjust because terrorists’ means violate the rules of conduct in war. Terrorists intentionally harm people not responsible for alleged injustice in order to spread fear in some targeted group. All terrorism is unjust, even if terrorists have just cause for acting, because the strategy terrorists use to advance their cause is unjust.

Because terrorism is unjust, victims of terrorism have just cause to respond; however, the principles of proportionality and discrimination limit justifiable responses to terrorism. Just responses must target the people responsible for terrorism only and must not harm civilians disproportionate to the objective of the response. Because war harms civilians, it is the last resort. When a nation responds to the threat of future terrorism, it should only declare war if there are no alternatives available with less potential harm to civilians.

According to the Bush administration, in the war on terrorism, the United States will resort to war only when no other means are available.² A just preventative war attempts to stop a legitimate threat from attacking by using war (because it is the only option). In contrast, an unjust preventative war attempts to stop a possible threat from attacking in the distant future by using war (even though it is not the only option). I argue that the United States had just cause for the war in Afghanistan because al Qaeda was a legitimate threat of future attack and war was the only way to find the terrorist cells in the nation. The United States did not have just cause for the war in Iraq because if the United States renewed and enforced the United Nations' mandatory inspections, the United States may have prevented attacks in the distant future.

The purpose of this study is to clarify the definition of terrorism and to apply the resources of just war theory to evaluation of the war on terrorism. To do this, we must reevaluate what we consider terrorism and examine how justice constrains the war on terrorism.

² *National Security Strategy of the United States of America*, 16 March 2006,

CHAPTER 1

WHAT IS TERRORISM?

Developing a precise definition of the term “terrorism” is problematic for two reasons. First, people do not consistently refer to one activity as “terrorism.” In public debate, the term “terrorism” is often used as a “catch-all pejorative” for another’s political agenda with which the speaker disagrees.³ Second, many believe that “one man’s terrorist is another man’s freedom fighter” because they do not distinguish a terrorist’s cause from a terrorist’s means. I argue that terrorism is distinct from other forms of political violence because it is a specific strategy. A terrorist is not necessarily an agent with an unjust cause; a terrorist is an agent who uses, or threatens to use, premeditated violence against noncombatants in order to coerce a group into some course of action. Once we have a working definition in place, we can evaluate terrorism by JWT. If a response to terrorism is just, then terrorism must be unjust.

Terrorism as a Pejorative

The first recorded use of the term "terrorism" referred to acts committed by the French government during the Reign of Terror.⁴ At this time, terrorism referred to a ruler’s actions (e.g., the use of the guillotine indiscriminately against members of certain groups or discriminately against members of certain groups because of their opinions). Of course, the Jacobins, who led the government at the time, were also revolutionaries, and gradually "terrorism" came to signify violent revolutionary activity in general. The first uses of “terrorism” referring to struggle against a government were in 1866 in Ireland and 1883 in

³ Pillar, *Terrorism and U.S. Foreign Policy*, 12.

⁴ Elshstain, 18.

Russia. Since then, people have called many different kinds of action terrorism, often because of public sentiment. For example, Palestinian leader Yasir Arafat was a terrorist, but now is not. Jerry Adams of Ireland's Sinn Fein and Nelson Mandela of South Africa were terrorists, now they are statesmen. Terrorism is conceptually ambiguous in public debate, which opens up the possibility for people to use it as a tool of propaganda. The difficulty in defining terrorism is a consequence of the negative connotations the public applies to the term. Because the public intuitively thinks terrorism is evil, they call the act they consider evil "terrorism" to enhance their claim. Once we acknowledge that flippant usage of the term signifies no specific activity, we can develop a working definition of terrorism and then evaluate that activity.

Today, terrorism is still a politically loaded term. For example, the BBC refuses to use the term because of negative connotations associated with it and a lack of acceptable definition.⁵ Others use the term to draw attention to their cause. For example, some union activists call the unsafe working conditions in third world nations "corporate terrorism."⁶ In political circles, a powerful state that wants to condemn certain actions designates these actions as terrorism; people who want to condemn the state's actions also equate these actions to terrorism. Philip Jenkins explains that the latter is the perspective of the "Marxist Vision."⁷

The Marxist Vision maintains that the exploitation of the weak is the foundation of capitalism in a manner that makes state terrorism commonplace; therefore, when the state claims that an action directed against the state is terrorism, they claim so hypocritically. Jenkins remarks that this perspective is evident today in the view that the West commits the

⁵ Jenkins, 18.

⁶ Ibid., 18. Also note the examples given in footnote 1.

⁷ Ibid., 19-20.

most terrorism and that it claims that the non-West is terrorist to justify its own actions. Regardless whether or not this perspective is sound, it brings to light a possible reason why, collectively, nations have not developed a definition of terrorism. A common definition of terrorism would force some nations to retrospectively call themselves a terrorist state. Instead, the international community primarily considers that terrorism is self-evident.

National leaders largely have given up on a formal definition of terrorism and tend to believe that people know terrorism when they see it. For example, the United Nations Resolution 1368, introduced on 12 September 2001, takes this approach. The first official international description of a terrorist attack was in this resolution, but its definition of terrorism just states that terrorism is a threat to international peace and security.⁸ The description did nothing to help us understand what activity is terrorism. Accepting that terrorism is self-evident only caters to our strong objections to “terrorism”; however, doing so tells us nothing about to what we are objecting. A working definition is necessary for both political and philosophical uses. We must know what terrorism is to evaluate specific terrorist acts because without a definition, we would judge all terrorism unjust simply because of our emotional attitudes toward the term.

Without a formal definition, we inappropriately label certain acts as terrorism. For example, following 11 September 2001, the United States declared a “war on terrorism.” Some people opposed the declaration because they believed that the United States’ record of terrorism made it an illegitimate candidate for condemning terrorism. Noam Chomsky is representative of this group. He claims that the United States is the only nation that the international court condemned for practicing terrorism and we should consider this fact when

⁸ Press Release SC/7143, Security Council 4370th Meeting.

we evaluate terrorist acts against the United States.⁹ Jenkins explains that the court condemned the United States for using unlawful force in Nicaragua, but never for using terrorism; however, others have taken notice that Chomsky implicitly justifies terrorism by presuming that one nation's use of terrorism mitigates the injustice of terrorism used against that nation. They argue that regardless of past events, if a present event is terrorism, one must treat it as such. Throughout this debate, terrorism nonetheless remained a label referring to all kinds of enemy violence.

The arbitrary labeling of activity as terrorism allows people to believe that "one man's terrorist is another man's freedom fighter." When used this way, terrorism refers to cause, not actions, because the labeler implies that the "terrorist" does not have legitimate grounds for action. By ignoring the actual action of the "terrorist," the labeler allows the labeled to show that the term applied to him is improper and thereby justifies, perhaps inappropriately, his actions. We must reject the parallel between freedom fighter and terrorist in a formal definition of terrorism because "freedom fighter" refers to an agent's cause and "terrorist" refers to an agent's strategy. A terrorist's cause can be just, but if a terrorist's means are unjust, then the terrorist is unjust; therefore, even if terrorists' actions are unjust, they are still considered freedom fighters if they have just cause. Because terrorism is a strategy in war, not a cause for war, if the means a terrorist uses are unjust, then he is unjust.

Terrorism Defined

Although people commonly use terrorism to intensify an act's negative connotations, in doing so, they specify terroristic traits of an act. They generally provide explanation for

⁹ Jenkins, 21.

their intuitions that identifies some horrible attribute to designate why the act is terrorism.¹⁰ Relying on intuitions alone presupposes that terrorism is unjust because people label any act they dislike “terrorism.” Terrorism is not a pejorative; people inappropriately identify terrorism because terrorism to a specific kind of strategy. Although people’s intuitions often are misleading, explanations for their intuitions supply us with a starting point to examine what is terrorism. When people give reason for why a certain activity is terrorism, they pick out one or more of the following attributes in the activity: deliberate or random violence; political motivation; premeditation; targeting civilians; and causing a group to be fearful. From these qualities, we can determine what distinguishes terrorism from other violent acts. I argue that terrorism is the premeditated use, or threat, of violence against noncombatants to coerce some group through intimidation. Terrorism is distinct from other political violence because it targets noncombatants; it is a “systematically unsystematic” strategy because it intentionally targets people who do not know they are targets.¹¹

According to the “you know it when you see it” definition of terrorism, any act that one does not approve of may be called terrorism. This definition allows both violent and non-violent acts to be terrorism (e.g., cyber terrorism, eco-terrorism, corporate terrorism). For example, C. A. J. Coady claims that an attack on the property of noncombatants is terrorism, even though it is not as severe as attacks on life.¹² Even assuming that there is some distinction between a trivial attack and a terrorist attack on property, including non-life threatening acts overextends the definition of terrorism. Terrorists intend to create a panic among those attacked, which will occur by fear of violence only. Coady is correct that

¹⁰ Refer to footnote 1 for examples.

¹¹ Baur, 14.

¹² Coady, 7.

terrorism includes attacks on property and that they are not as severe as attacks on life; however, not all attacks on property are terrorism. Terrorism must threaten people's lives; so on the one hand, if an attack on property threatens one's life, then it is terrorism.¹³ On the other hand, if an attack on property does not threaten life, it is not terrorism. For example, it is terrorism to destroy all the available crops in an area because in doing so the attack threatens the people of that area with starvation, but destroying goods that are unnecessary to human survival is not terrorism because it does not produce panic.

Some people claim that acts of domestic violent crime are terrorism because they emphasize terrorism's violent quality. This "terrorism" harms a person, but these "terrorists" do not hope to influence some greater goal. For example, Goldenflame uses the terms sexual terrorist and sexual predator interchangeably in his book *Overcoming Sexual Terrorism*, but this interpretation treats terrorism as an adjective picking out the intensity of an act. It allows any type of violence described as malicious to be terrorism. Although the public's reactions to domestic violent crime are often the same as their reactions to terrorism, terrorism is different because terrorists' agenda is to affect some greater cause. All terrorists act to intimidate someone else into doing some political, religious, or social act that they would not do otherwise.¹⁴

Terrorist acts are not accidents or crimes of passion. All terrorist acts are premeditated. An accident or act of emotion is not the same as a prior decided act. If someone accidentally launches a weapon because of a technical malfunction, the act is not premeditated. It differs from a situation in which the agent launched the weapon

¹³ Primoratz, 17 and 21.

¹⁴ This feature of terrorism distinguishes terrorism from domestic violent crime, not from other political violence.

purposefully. If the act in question is the bombing of a building and the actor's intended target is the building adjacent to the actual building hit, the act of bombing that specific building is premeditated because the actor intended to hit another building.¹⁵ Similarly, if in a moment of rage an individual destroys a building by driving his vehicle into it, the individual does not decide prior to the event to cause the destruction; thus, the act is not terrorism.

Terrorism is distinct from other forms of political violence because terrorists target an unprepared group of individuals. Terrorists succeed by causing fear because of the indiscriminate nature of the fear itself. Terrorism is discriminate in the sense that it is random because terrorists target people who will best further their end. Terrorists are politically motivated, so they select people or representatives of groups whose deaths they believe will serve their political goals best. The targeted people do not know that they are the target because terrorism is nonindividualized—anyone in a group can be the victim from the perspective of the members of the group. In this sense, terrorism is indiscriminate because it is “systematically unsystematic.”¹⁶ Terrorism is unsystematic because specific individuals are aware that they are targets and is systematic because terrorists intentionally use terrorism's nonindividualized nature to maximize fear.

Additionally, terrorism is indiscriminate in the sense that terrorists do not discriminate between combatants and noncombatants.¹⁷ Intuitively, many people think political terrorism is wrong because it targets noncombatants. Whether or not this feature causes terrorism to be unjust, all terrorists target noncombatants. An attack on military personnel on active duty is not terrorism because those attacked know that an attack is possible and are prepared for

¹⁵ Pillar, 13.

¹⁶ Baur, 14.

¹⁷ I clarify the term “noncombatants” in the “Terrorists harm innocents” section. For now, it is enough to define combatants as the actors who do the violence and noncombatants as everyone else.

defense. Historically, revolutionaries emphasize the element of targeting noncombatants in terrorism to claim that all violent state activity aimed toward a revolutionary movement is terrorism because actors in a revolution generally are not uniformed military; however, when actors are attacking others, they are combatants because they are the source of the threat of harm.

Terrorists have direct and indirect targets.¹⁸ The latter mentioned here are the enemies that terrorists demand must do something they would not do otherwise. Terrorists claim that these targets are guilty of some alleged injustice against them. The direct, or immediate, targets are the people that terrorists kill or threaten to kill in order to intimidate the indirect targets. Some terrorists claim that their direct targets are guilty because they have some association with the indirect target, thereby are tacit supporters of the indirect targets. In this case, the direct targets are allegedly responsible for the alleged injustice. Whether or not this is true, indirect targets do not expect the attack because they have not agreed to be combatants.¹⁹

F. M. Kamm claims that terrorism includes the targeting of combatants when the aim in killing a combatant is to coerce the group for whom he is fighting to surrender.²⁰ If this characteristic were true of terrorism, then it would not be distinct from conventional acts of war. Although it is possible to kill a soldier in an unconventional manner in a conventional war, soldiers accept risk to their life and are not immune to attack. Whereas combatants accept the responsibility for the injustice of their group, noncombatants do not; therefore, one who targets a combatant is not a terrorist because he does not disregard any immunity.

¹⁸ Primoratz, 17 and Baur, 10-11.

¹⁹ I discuss the innocence of indirect targets in the "Terrorists harm innocents" section.

²⁰ Kamm, 658.

Another distinction between terrorism and other forms of political violence is its effect of spreading fear; it is *terrorism*. But, Coady argues that the goal of causing extreme fear should not be included in a definition of terrorism because terrorism may spread anger instead of fear.²¹ He explains that the goal of terrorism is to coerce a group, regardless of doing so through fear of further attacks or anger about the attack. For the purposes of a definition of terrorism, this distinction is irrelevant because both anger and fear cause coercion, which is terrorists' goal. Coady also contends that all warfare instills anger or fear into enemies so that they will surrender or negotiate.²² He explains that in conventional warfare, the purpose of using overwhelming force is to intimidate the enemy leaders so that they will want a timely end to the war to save the lives of their soldiers. Coady is correct that the goal of conventional war is often to make the enemy surrender by using overwhelming force; therefore, although all terrorists desire to coerce some group into acting, the goal of coercion is not limited to terrorism. However, spreading of fear into entire populations is a distinct feature of terrorism. Terrorism causes people associated with a targeted group to fear they will be the next targets. This fear is not characteristic of conventional war because ordinary citizens know they are not targets, so do not fear that combatants will harm them.

The threat of terrorism is also terrorism. The threat itself frightens a group by making it know that they intend to harm noncombatants. A threat of terrorism can be as effective as an act of terrorism because both can coerce the group into doing something by frightening the members of the group. If we do not accept terrorism as a just war strategy, then the threats of future terrorist attacks is not just.

²¹ Coady, 6.

²² Ibid, 9.

Based on these features, we can define terrorism as the actual use or threat of premeditated violence against noncombatants to coerce a group into some course of action. This definition avoids using terrorism to describe violence that one disagrees because it identifies a specific strategy. In addition, this definition prevents overextending terrorism to nonviolent acts that have no effect on a larger group.

When we define terrorism by intuition, terrorism is a tool of propaganda because it enables anyone to call any “wrong” activity terrorism. Because people differ in what they intuitively believe are legitimate actions, this definition allows one man’s terrorist to be another man’s freedom fighter. As a pejorative, the public deems terrorism unjust before any evaluation of the features of terrorism occurs. By defining terrorism as an act that uses, or threatens to use, premeditated violence against noncombatants to coerce a group into some course of action, the debate over the justness of terrorism is about the relevant features of a terrorist act. Because we know what terrorism is, we can now evaluate the features of terrorism and the war on terrorism. One has a legitimate reason to respond to terrorism if the features of the terrorist act are unjust.

CHAPTER 2

IS THE WAR ON TERRORISM JUST?

To evaluate the Bush administration's war on terrorism, we must use the resources of JWT because the war on terrorism is not a war against an activity that is unjust without evaluation. I argue that victims of terrorism have just cause to respond to terrorism because terrorists use unjust means; however, in the current war on terrorism, the Bush administration does not always use just means to pursue the just cause for war.

To prosecute my argument, I present Michael Walzer's JWT, which is the foremost standard in philosophy for judging conventional war. The obvious objection to using JWT to evaluate terrorism is that terrorism is not a conventional war strategy. I contend, however, that terrorism is in fact an act of war and that JWT theory applies. I show this by explaining that an organized group directs or is the target of all acts of war; so, because terrorism targets an organized group indirectly, terrorism is an act of war.

Walzer specifies rules for conduct in war and rules for causes in war. He contends that having just cause and using just conduct are necessary to fight a just war. I argue that terrorism is unjust because terrorists violate the rules for conduct in war by harming innocents intentionally. Terrorists pursue their cause by trying to harm people who are not responsible for the alleged injustices they suffer. Because terrorism is unjust and no excuse or apology mitigates the injustice of terrorism, victims of terrorism have just cause for war. I argue that just response to terrorism requires proportionality and discrimination. Just response to terrorism avoids and minimizes civilian risk in achieving military objectives and does not target people or groups who are not responsible for terrorism. I explain that the Bush

administration's war on terrorism includes just and unjust military engagements. Although there is just cause to respond to terrorism, the administration does not always follow the limits to just response.

Just War Theory

Walzer developed a contemporary version of just war theory to evaluate military conflict between nation-states. According to Walzer, a just response is response only to an unjust threat. In this section, I first explain Walzer's JWT criteria. I argue that Walzer's rules for just conduct and just causes apply to terrorism because organized groups are targets of both conventional war and terrorism. Because terrorism is a specific strategy in war, JWT provides the resources needed to evaluate the war on terrorism. If terrorism is legitimate, then victims of terrorism do not have just cause to respond.

Walzer's *Just and Unjust Wars* is the seminal text for JWT today. He maintains that a just war's cause is to preserve legitimate nation-states and the means used do not intend unnecessary harm. He writes, "*Jus ad bellum* requires us to make judgments about aggression and self-defense; *jus in bello* about the observance or violation of the customary and positive rules of engagement."²³ A just act of war must meet both conditions. Walzer argues that there are rules for when and whom a soldier can kill. If a soldier observes these rules, the means a soldier uses are just. Walzer also explains that a just cause for war must meet the nine principles of his theory of aggression. The only just cause for war, according to Walzer, is response to an unjust aggressor; therefore, if the war on terrorism is just, the United States must have just cause for the response and must use just means in the response. I argue that terrorists' means violate the rules for conduct in war; and hence, that terrorism is unjust.

²³ Walzer, *Just and Unjust Wars*, 21.

Because terrorists' means are unjust, according to Walzer's criteria, victims of terrorism have just cause to respond.

Rules for Conduct in War

Walzer writes that two sets of rules apply to the conduct of soldiers in war.²⁴ For a soldier's actions to be just, he must not violate either rule. The first set of rules is about when and how soldiers kill. Walzer explains that soldiers in the war must uphold any limit of this kind agreed upon by all parties engaged.²⁵ Not all wars observe the same rules of this type because when and how soldiers can kill is contingent to the circumstances of individual wars. If either side violates these rules, the other can violate them as well.

The second set of rules is Walzer's principal concern. These rules regard whom a soldier can justly kill. Walzer argues that unlike the first set of rules, the substance of the second set is not relative to the circumstances of particular wars. The general purpose of the second set of rules is for soldiers to distinguish between combatants and noncombatants. "Though the details vary from place to place, these rules point to the general conception of war as a *combat between combatants* . . . [We should avoid harming people who] are not currently engaged in the business of war."²⁶ Whereas it is legitimate for soldiers to kill combatants because combatants train for war and agree to fight, it is not legitimate to kill noncombatants because they do not engage militarily. Walzer explains that the specific rules of this set may differ among cultures, but the foundation of all is the immunity of noncombatants. In war, one violates the second set of rules when he harms noncombatants in

²⁴ Ibid., 41-43.

²⁵ Ibid., 42.

²⁶ Ibid., 42-23.

the manner that we determine is unjust. Therefore, we must decide what the immunity of noncombatants requires of combatants to determine if some combatant violates it.²⁷

Together, these two sets of rules comprise the war convention. Walzer recognizes that the way we judge acts determine the rules. The second set of rules is significant for evaluating terrorism because all terrorism harms noncombatants. How we describe the immunity of noncombatants will determine if a response to terrorism is just. If terrorism violates the immunity of noncombatants, then the victims of terrorism have just cause to respond.

Rules for Causes for War

In addition to rules for conduct in war, Walzer also argues that we must limit appropriate causes for war. His theory of aggression is the rules he develops for just cause. Walzer forms the first six rules for causes for war from the legalist paradigm, which reflects domestic law and order. He adds three rules to this paradigm to account for international law and order. These rules protect legitimate nation-states from being the victim of war. According to the legalist paradigm, which is the “fundamental structure for the moral comprehension of war,” the theory of aggression has six criteria²⁸:

- First, an international society of independent states exists. Walzer explains that the values of the people within states determine states; therefore, one should not attack states for the sake of life or liberty of the members within the states.²⁹

²⁷ I explain what the second rule requires for just conduct in war when I discuss the conduct of terrorism.

²⁸ Walzer, *Just and Unjust Wars*, 61-62.

²⁹ Walzer recognizes that one may have just cause to override the principle of non-intervention, which this criterion establishes. The second revision to the legalist paradigm accounts for the appropriate cases of intervention.

- Second, law establishes the rights of the members of the international society. Walzer emphasizes that although the exact rights will be fluid like society, the rights of territorial integrity and political sovereignty are necessary. He explains, “At any given moment . . . one can distinguish the territory of one people from that of another and say something about the scope and limits of sovereignty.”³⁰ Territorial integrity is the right for the members of a community to own the land in which they reside. Political sovereignty is the right for the members of a community to determine the authority and government under which they will live.
- Third, aggression, defined as any use or threat of use of force against the political sovereignty or territorial integrity of another state, is a criminal act. For one to resist aggression through force justly, the force must be urgently necessary to stop the aggression.
- Fourth, aggression justifies a war of self-defense by the victim and a war of law enforcement by any members of the international society. “The actual decision to join the fighting remains a unilateral one, best understood by the analogy to the decision of a private citizen who rushes to help a man or woman attacked on the street.”³¹ Walzer contends that enforcement from the international community is not obligatory, but if they do help stop aggression, their cause is just.
- Fifth, only aggression can justify war. The only just war is one that responds to an unjust aggressor. “There must have actually have been a wrong, and it must actually

³⁰ Ibid., 61.

³¹ Ibid., 62.

have been received.”³² Actual or imminent aggression justifies response. Walzer emphasizes that differences in religion and politics do not justify war.

- Sixth, after one militarily stops aggression, the victim, or others, can punish the aggressor for deterrent or restraint. “The domestic maxim is, punish crime to prevent violence; its international analogue is, punish aggression to prevent war.”³³ Although Walzer revises the goal of punishment in the third revision, he retains the permissibility of responding to aggression even when the immediate aggression ends.

Walzer recognizes that a strict legalistic theory of aggression cannot determine all judgments about justice and injustice during wars.³⁴ Although the legalist paradigm is a good place to start, the theory of aggression must be more flexible than a strict interpretation will allow because international relations are more complex than domestic crime and punishment.

Walzer states there are three necessary revisions to the legalist paradigm. First, he recognizes that wars begin before any fighting actually occurs. The first use of force does not always determine the aggressive act:

The general formula must go something like this: states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political sovereignty. Under such circumstances, it can fairly be said that they have been forced to fight and that they are the victims of aggression.³⁵

If a state fears an inevitable attack, and foreign observers generally agree because of the inevitable attacker’s moves, the state has legitimate anticipation. If not being the first to strike would jeopardize their territorial integrity or political independence, a state with legitimate

³² Ibid., 62. Walzer’s first revision alters this criterion to allow for preventing legitimate threats before they cause harm.

³³ Ibid., 62-63.

³⁴ Ibid., 61.

³⁵ Ibid., 85.

anticipation would be able to strike first justly. A strict legalist paradigm is insufficient to account for what is a serious risk to territorial integrity and political sovereignty because the risk involves factors that are not the same in every situation.

Second, intervention is just in some cases. Although Walzer emphasizes other states should not intrude on a nation's self-determination, if there is "relational ambiguity" between the community and the government of the community, intervention is just. Walzer explains that three kinds of intervention are just: If one community is struggling for independence from another community through military means, a nation can justly intervene to assist the secessionist movement; if a foreign army already crosses the boundaries of a community, a nation can justly counter-intervene to balance the prior intervention; and if self-determination is irrelevant because of mass violations of human rights within a community's boundaries, a nation can justly intervene to rescue people from massacre.³⁶ Walzer observes that "interventions are so often undertaken for 'reasons of the state' that have nothing to do with self-determination that we have become skeptical of every claim to defend the autonomy of alien communities."³⁷ Although it is ideal to limit acceptable intervention to the three cases, we should intervene when one of the cases arises. The second revision is necessary to evaluate the current administration's war on terrorism because part of the stated cause for intervention in Iraq was that Saddam Hussein's regime committed mass human rights violations.

Walzer's final revision of the legalist paradigm is that the deterrence or restraint of aggressors does not require their capture.³⁸ Walzer writes that the domestic ideals of capture

³⁶ Ibid., 90.

³⁷ Ibid., 91.

³⁸ Ibid., 121.

and punishment “are unlikely to have significant deterrent effects; they are very likely to extend rather than restrict the number of people exposed to coercion and risk; and they require acts of conquest that can only be aimed at entire political communities.”³⁹ He explains that the domestic legal paradigm for punishment is not applicable to international society because in many cases, one cannot capture an aggressor and in international relations, punishment must consider more than aggressive acts (e.g., relations between nations and reliability of intelligence concerning the aggressor). A nation must determine the punishment for an unjust act by deciding how to stop the aggressor from acting, how to restore the negative effects of the aggression, and how to reasonably prevent the aggressor from acting similarly again. For Walzer, because what one determines is appropriate will differ from situation to situation and is not analogous to domestic aggression, we must alter the legalist paradigm to account for how to react to unjust wars.

In his theory of aggression, Walzer argues that the only just cause for war is to protect a legitimate nation-state from unjust aggression.⁴⁰ A nation-state is illegitimate when the members of the state are unable to achieve self-determination because of the actions of the nation’s leaders. If a nation-state is legitimate then any act of aggression toward it is unjust and the nation-state should respond militarily.

Walzer writes that one cannot violate the war convention to advance a just cause because “the rights of innocent people have the same moral effectiveness in the face of just and in the face of unjust soldiers.”⁴¹ In a just war, combatants have just cause and use just

³⁹ Ibid., 121.

⁴⁰ By the fourth criteria (aggression justifies war of self-defense and war of law enforcement) and the fifth criteria (only aggression justifies war). Combined, the criterion for just cause is only aggression justifies a war of self-defense and/or a war of law enforcement, which are the only just wars.

⁴¹ Walzer, *Just and Unjust Wars*, 228.

means. This requirement for just wars is why defining the war convention is essential.

Although I will address the second rule in a later section, its connection to just cause in a just war is significant for Walzer. If no wars adhere to the war convention's requirements, then no war is just. Because all war has some civilian risk, it seems that all wars violate the second set of rules in the war convention necessarily. However, adhering to the rule for noncombatant immunity does not mean that one cannot harm noncombatants; it only means that one must try to avoid harming noncombatants. Consequently, some wars are just because they try to minimize civilian risk.

According to Walzer's theory of aggression and rules for just conduct, a response to terrorism is just only if terrorism is an act of aggression or violates the rules for just conduct. Terrorism violates the rules for just conduct if it uses unjust means to further its cause. If the conduct of terrorism is unjust, if terrorists violate the immunity of noncombatants, then victims of terrorism and the international community should respond.

Is Terrorism Just?

Terrorism is a specific strategy in war; it is not a specific cause for war. The causes for terrorism are the same ones actors have in conventional wars. Any conventional soldier becomes a terrorist when he intentionally harms noncombatants. Consequently, terrorism is unjust if terrorists violate the rules of conduct. To evaluate the justice of terrorism, we must address two issues. First, we must decide if JWT is applicable to terrorism. If terrorism is not an aggressive *act of war*, then the standards that apply to war are not pertinent to an evaluation of terrorism. Second, we must evaluate the conduct of terrorism. If the manner in which terrorists harm people is unjust, then terrorism is unjust. I argue that terrorism is an act of war and therefore under the purview of just war theory. Terrorism is an act of war because

terrorists target organized groups indirectly by harming members within the groups. I argue that terrorists violate the immunity of noncombatants, so terrorism is unjust. Terrorists violate the immunity of noncombatants because they intentionally target people who are not responsible for alleged injustices suffered.

Terrorism Is an Act of War

Walzer primarily intended his JWT to evaluate conventional acts in war, not unconventional acts like terrorism. If terrorism is not an act of war, then we cannot use JWT to evaluate it. Instead, domestic or international legal systems should judge terrorism. I contend that although terrorism may be an irregular act of war, it is nevertheless an act of war. Terrorism is a criminal activity, but legal systems are unable to evaluate terrorism. Domestic legal systems cannot adjudicate international acts and international law does not apply to non-state actors; therefore, JWT is an appropriate standard to evaluate terrorism.

If terrorism is unjust, terrorists are criminals because they commit murder; however, this is not the view that terrorists necessarily have of themselves.⁴² Some terrorists believe that they kill people in self-defense. For example, religious terrorists view themselves as martyrs, people who are killed for their faith, when they kill themselves in the process of committing terrorism. This interpretation is incorrect because other agents do not kill terrorists because of what they believe. When terrorists die because of their terrorism, they kill themselves because of what *others* believe or do. They are not martyrs; they are murderers.⁴³ When terrorists die from a military response to aggression, soldiers kill them because of their terrorist acts, not their beliefs. People who disagree with their faith kill

⁴² If at the end of this evaluation we decide that terrorism is just, terrorists are not criminals because the death they cause results from their response to some unjust threat. If an act of self-defense causes some necessary harm, those defending themselves are not criminally responsible if they tried to avoid causing harm.

⁴³ Elshtain, 18.

martyrs; therefore, if terrorists were martyrs, others would kill them because of their religious convictions. The only case where this seemingly applies is to suicide terrorism; however, others do not kill suicide terrorists because of their beliefs—suicide terrorists kill themselves as a means of killing others. The people killed by terrorists are closer to being martyrs than terrorists themselves because victims of terrorism die because of their association to some belief or act. If terrorists unjustifiably kill, they commit murder and so are criminals; however, criminal activities may be acts of war.

Terrorism is different from domestic criminality and traditional war. Elstain maintains that terrorism is neither domestic crime nor traditional war because terrorists act internationally and without declaration of war by an official government.⁴⁴ She explains domestic legal systems cannot regulate international terrorism and because most terrorism is not state sponsored, international law does not apply. Elstain is correct that often terrorism is distinct from what these systems typically regulate; however, we should respond to terrorism with both systems. If terrorism is unjust, we should respond to it as if it is *both* a criminal act and an act of war.⁴⁵ If terrorism is just, then it is not criminal in the same sense that killing someone in self-defense is not criminal.⁴⁶ If unjust, terrorist acts are criminal because they result in intentional harm in the same sense that murder or assault is criminal. Like conventional acts in war, if terrorism violates rules for conduct, we must hold the actors responsible for their unjust acts. If the actors are not fellow citizens or states, domestic and international legal systems are not sufficient, so we need a different standard to judge terrorism.

⁴⁴ Ibid., 19.

⁴⁵ Charles, 151.

⁴⁶ If we evaluate terrorists' means and causes as just, then terrorism is neither criminal activity nor an act of war because it is not conduct in war.

JWT is the appropriate standard because while its foundation is the legal paradigm, it also recognizes that revisions are necessary for the legal paradigm to account for aggression. When an unjust act is committed, response and punishment is just. JWT treats acts of aggression similar to how legal systems treat crime, but on an international scale:

[JWT] controls the extent to which a citizenry is victimized by criminal acts. It rewards the perpetrator proportionately with consequences befitting the crime. And it forces both the offender(s) and potential offenders to reflect on the grievous nature of the crime.⁴⁷

By applying JWT, if terrorism is an unjust act, it deserves consequences that befit its injustice. JWT requires that we hold unjust actors responsible for their unjust acts by eliminating their ability to act again. In the case of terrorism, we should find the actors responsible for terrorism and prevent them from acting again.

Generally, either states direct wars or wars are directed at states. “While many modern wars are the work of ragtag armies of rebels and angry irregulars, these half-organized forces tend to direct their violent efforts against the various faces of the states they live near or within.”⁴⁸ Consequently, terrorism is an act of war when it is the strategy of a state or the strategy of some group toward a state; however, by definition, terrorists direct their violence toward organized groups, which are not necessarily states.⁴⁹ Although the targeted group is not always a state, the organization of the group has the same relevant features as a state. The members in the group determine the group’s legitimacy because they agree with the group’s structure and direction. Terrorists target members in the group to coerce the group’s leaders into changing some course of action. Therefore, even when not directed toward a state, terrorism is an act of war.

⁴⁷ Charles, 146.

⁴⁸ Temes, 16.

⁴⁹ Defining state terrorism as an act of war is not problematic because it is the act of a state.

Terrorist acts are acts of war because they target some organized group, even if some terrorists are not organized groups. Temes explains that there are two different perspectives of war: the tribal perspective and the modern perspective.⁵⁰ First, the ancient or tribal perspective views wars as a conflict between individuals. The perspective of the soldier, not the group, is what is relevant in evaluating wars. Temes illustrates the tribal perspective through the story of Gilgamesh.

Like so many ancient epics, the epic of Gilgamesh tells the story of battle as the story of one man's character. The wars recounted in the epic are expressions of the bad character of Gilgamesh and the response to him of men and gods ... a warrior's arrogance sets the stage for tales of fighting, death, and the characters of a few good men.⁵¹

The tribal perspective assumes that wars are constant and so one cannot morally evaluate causes for war; only the individuals' actions in war are subject to moral evaluation. From this perspective, war is how an individual defines himself. The possibility for an unjust cause is inconsistent with this perspective. War is a natural state of affairs, so the conduct of individuals is all we can evaluate.

The modern perspective shows that when evaluating wars, one views actions as from the group, not from specific individuals. This perspective

brings the state into the center of war's meanings and enlarges the moral scale of war dramatically. War today is generally seen as a theatre of abstractions in conflict: states, civilizations, and even ideas themselves are the central actors.⁵²

In the modern perspective, an act of war is an act of the group. Whereas one can evaluate just cause for war, just conduct by individuals in war is irrelevant because individuals' acts are the will of the group. The group is responsible for individuals' conduct, but individuals are not.

⁵⁰ Ibid., 5-7 and 18-24.

⁵¹ Ibid., 6.

⁵² Ibid., 6.

Terrorists accept the modern perspective of war because they view moral obligation as applicable only to the group they target. Because some group is unjust in their eyes, terrorists believe it is necessary to punish that group with whatever means are available. However, we must evaluate war from both perspectives. Individual actors are responsible for their conduct and groups are responsible for their decisions. Even if a terrorist has a legitimate cause for war, he must use just means; therefore, when terrorists act, their acts are just if they use just conduct and have just causes for war. This means that the standards of the JWT are applicable to terrorism because even though terrorism may be criminal, if it is, it is a criminal act of war.

JWT is pertinent to evaluating terrorism because terrorists target some organized group indirectly. Although their direct targets are people associated with the group, terrorists target these individuals only as a means to coerce the group into acting in some way that it would not act otherwise. Since I have shown that we can evaluate terrorism by applying JWT, we are now able to do just that. The following section takes up the very evaluation of terrorism. I contend that terrorism is unjust because of the means all terrorists use to advance their cause.

Terrorists Use Unjust Means

All terrorists harm noncombatants intentionally as the means to achieve their goal; therefore, if terrorism is just, the rules of conduct in war allow harming noncombatants intentionally. We must examine how the immunity of noncombatants limits acts of war to determine if terrorists violate this rule. Terrorists do not violate the immunity of noncombatants if one or more of the following is true. First, terrorists' direct victims are guilty of the alleged injustices terrorists suffer. I argue that victims of terrorism are

noncombatants because they do not agree to risk their lives and are innocent of the alleged injustice. Second, intentionally harming noncombatants is acceptable conduct in war. I argue that terrorists intentionally harm innocents in a manner that is distinct from conventional warfare. Whereas just conduct tries to minimize or avoid harm to innocents, terrorists try to maximize harm to innocents and therefore act unjustly.

Terrorists Harm Innocents

By definition, terrorists intentionally harm noncombatants; therefore, if intentionally harming noncombatants is acceptable conduct, then terrorism is just. In this section, I address the notion of noncombatant; if terrorists harm people who are guilty of some perceived injustice, then terrorism is just because they do not harm innocents. I argue that terrorists harm people who do not threaten them directly. I argue that terrorists' victims are innocent for two reasons. First, the people harmed are not prepared to defend themselves and do not agree to risk their life for the group's alleged injustice. In war different agents have different degrees of violability (the degree to which others permissibly harm them), which terrorists do not recognize. Second, the people harmed are not responsible for the alleged injustice directly. I contend that even if the people harmed are responsible for the injustice indirectly, they are innocent and should not be harmed.

Although we commonly think of noncombatants as civilians or inactive military personnel, we must clarify this term for an evaluation of terrorist acts. Terrorists intend to kill people who are not prepared to defend themselves in order to produce fear in others that terrorists will kill them next. The fear terrorists create is possible only because terrorists violate the accepted rules of conduct. Fear results from terrorism because people perceiving themselves as potential future victims; before terrorists targeted their group, they did not view

themselves this way because the rules for war protected them from harm.⁵³ If all people associated with the “bad” group are guilty of the acts of that group, terrorists are not killing innocents; however, if there is a distinction between combatants and noncombatants, terrorist means are unjust and it is acceptable to respond to a terrorist act because it is an unjust act of war.

Some people claim that civilians are not immune to the threat of death in war.⁵⁴ They argue that wars must be as quick as possible so that the least destruction takes place. In this thinking, there is no purpose to war, so we should avoid war at all costs and if faced with war, use whatever means will end it sooner. If the only goal in war is to end it, just war is the most efficient war. Any effective means are just, including treating enemy civilians as enemy combatants. The flaw in this argument is that it assumes that during the absence of war, we are in a state of peace; however, in war, the goal is not for it to end, the goal is to produce a just peace. A just peace occurs only when just means defeat an unjust aggressor. If one allows aggression to continue, even though there is no war, the absence of war is not a state of just peace.

Terrorists target people who do not agree to risk their lives. In traditional warfare, a combatant is one who actively fights in a war. A combatant agrees to put herself in danger to respond to some threat. By definition, terrorists target non-combatants. Some terrorists claim that these noncombatants are culpable for the perceived injustice of the group they are associated with, so they are not immune from attack. For example, the group, Hizbullah, uses

⁵³ Conventional war becomes terrorism when noncombatants are targets. For example, carpet bombing is terrorism because it maximizes, not avoids, civilian risk, so produces fear in the population that the next bomb may harm them.

⁵⁴ Ibid., 84. An example of this thinking is Kamm’s theory of permissibility, which I will explain in the following section.

terrorism to force companies to cease business with certain governments and to stop people from supporting these businesses.⁵⁵ These terrorists perceive their targets as guilty by association. Charles explains,

Terrorism is an indirect form of engaging the enemy...it is not merely random murder but the assassination of innocent noncombatants that distinguishes terrorism. It deliberately crosses the line, demarcated by just-war thinking, between combatants and noncombatants. Gone is any distinction between soldiers and nonsoldiers, between innocents and those fighting in a conventional (wartime) sense.⁵⁶

Because some terrorists claim that noncombatants are guilty of an alleged injustice, they treat them as if they were combatants. But even though these terrorists treat noncombatants as combatants, they are aware that others perceive the targets as innocents.

Terrorists deliberately cross the line of traditional warfare to draw attention to their cause. They are aware that the people they target are not acceptable targets in traditional warfare because they violate the rules of war to spread fear in the group targeted. For example, referring to the September 11, 2001 attacks on the United States, Osama bin Laden declared:

There is America, hit by God in one of its softest spots. Its greatest buildings were destroyed, thank God for that. There is America, full of fear from its north to its south, from its west to its east. Thank God for that. What America is tasting now is something insignificant compared to what we have tasted for scores of years. Our nation (the Islamic world) has been tasting this humiliation and this degradation for more than 80 years. Its sons are killed, its blood is shed, its sanctuaries are attacked, and no one hears and no one heeds . . . To America, I say only a few words to it and its people. I swear by God, who has elevated the skies without pillars, neither America nor the people who live in it will dream of security before we live it in Palestine, and not before all the infidel armies leave the land of Muhammad, peace be upon him.⁵⁷

⁵⁵ Thomas, 120.

⁵⁶ Charles, 153.

⁵⁷ Bin Laden. Remarks aired on an Arab television station referring to September 11, 2001.

Al Qaeda's goal on September 11, 2001, was to destroy American sense of security by causing all American citizens to fear that they would become the next targets of terrorism. Only by violating the rules of just conduct could al Qaeda spread "humiliation" throughout the United States. Implicit in bin Laden's statement is recognition that the attack violated the rules of war because he compares it to what he claims is unjust aggression against civilians that "we have tasted for scores of years." According to Walzer's rules for conduct, a just war requires distinguishing between noncombatants and combatants, but where does that distinction lie?⁵⁸

F. M. Kamm distinguishes combatants and noncombatants by degrees of violability.⁵⁹ She writes that combatants are more violable than noncombatants, but also that the inviolability of one's fellow noncombatants, the enemy's noncombatants, and neutrals differs. Kamm uses the example that acts of war between two countries should not affect the citizens of neutral countries; therefore, she agrees that there is a rule of war that distinguishes the degree of inviolability between different noncombatants and combatants.

Kamm explains that we should uphold violability ratios among different types of agents in acts of war. A country determines the ratios independently; therefore, if one looks to the point of view of different countries, the ratios will change. Kamm writes,

For suppose that the war A is fighting is unjust and A knows it, but A should not stop fighting because this would have an even worse effect from the point of view of justice given that the war has started. Then, I believe, its own combatants and noncombatants have greater responsibility to shoulder burdens of war than do those of B, and A should know this.⁶⁰

⁵⁸ Walzer, *Just and Unjust Wars*, 42.

⁵⁹ Kamm, 673-681.

⁶⁰ *Ibid.*, 680.

Kamm argues that because a country has a duty to care for its own citizens, the inviolability of combatants and noncombatants in that country is higher than the inviolability of combatants in the enemy's country; however, because combatants are more violable than noncombatants, a country's own combatants are more violable than the enemy's noncombatants. Furthermore, the inviolability of a country's noncombatants is lower than the inviolability of citizens in neutral countries because the engaged parties must absorb all the costs of war. The order of violability for the just side from most inviolable to most violable is neutrals, fellow noncombatants, enemy noncombatants, fellow combatants, and enemy combatants. The unjust side's combatants and noncombatants must bear more of the burden than the just side must bear. Kamm explains that this responsibility does not contradict a country's duty to care for its citizens because a concern that your citizens not bring unjust harm on others replaces the duty to care for your citizens.

Kamm argues that a nation can put its citizens in danger because it is acting on behalf of the collective.

Citizens are to accept these risk and harms in wartime for the good of the collective of which they are apart. Even those, such as children, who have not yet reaped benefits of being a part of this collective are members of the collective that is organized to be of service to these children should they survive. This is justification in term of imposing risks and harms on people for their own collective good.⁶¹

She contends that citizens are liable to risks imposed on them (although they can also attempt to resist the harm) both to promote their country's interests and to stop their country's injustice. Citizens are liable to risks to stop their country's injustice because countries have a higher duty to be just to other countries. Kamm argues that a state can also put the enemy's citizens at risk if the enemy is unjust because the enemy's citizens are liable to risks to stop

⁶¹ Ibid., 682.

the unjust act from their country. The risks that a country can put on the enemy's citizens are risks that the enemy should impose on its citizens to stop its injustice; thus, she argues that one should allow terror killing to stop injustice because one has a duty to stop injustice.

Kamm maintains that the most important goal in war is to end an unjust war; therefore, using "unjust" means is just if less death and destruction results from the act. Kamm's argument is problematic because she argues that justice can result from injustice. Although less death and destruction is always appealing, absence of war should not come at the price of more injustice. To preserve justice in war, agents' conduct must be limited. Two of these constraints are the immunity of innocents and the rejection of the peculiar evil of spreading terror.

Because there are many choices that have the potential of improving the odds of winning, we must rule out some choices to make war more than just a matter of expediency. Because we must fight just wars, we need to eliminate some options. "Necessary action" cannot simply mean what best improves the odds of winning the war.⁶² Necessary action is action, permissible according to the rules of conduct, that is required to achieve some just objective. Intentionally killing noncombatants is never "necessary action" because it is not an acceptable alternative. Because soldiers agree to fight, are trained to fight, and do fight they are different from noncombatants. A soldier who is aware that he is in danger when fighting in a war differs from noncombatants who do not agree to be in danger and are not trained to defend themselves against danger.

Terrorism is unjust because terrorists harm noncombatants, people who are not responsible for aggression. But, who is responsible for aggression? Responsibility for unjust

⁶² Walzer, *Just and Unjust Wars*, 144.

acts varies between decision makers, combatants and civilians. People who make decisions in war are responsible for unjust acts because they are the source of the injustice. For example, political leaders are responsible for the effects of their decisions. “They aspire to office, connive at control and leadership, compete for positions from which they can do evil as well as good. If they hope to be praised for the good they do, they cannot escape blame for the evil.”⁶³ Political leaders are ultimately responsible for their group’s aggression because their decision is the source of the aggression. If these leaders will not end their groups’ aggression or negotiate for peaceful settlement, their victims have just cause to overthrow the unjust regimes.

Combatants are not responsible for their leader’s unjust decisions because they have no authority over what those decisions are; however, they are responsible for their individual actions. Combatants justly defend themselves from the immediate threat of harm from other combatants, but cannot use noncombatants to shield themselves from attack because noncombatants have not agreed to risk their lives. When combatants agree to fight, they agree to increase their risk of harm; therefore, when one combatant harms another combatant, the first acts justly because the other has agreed to the risk.

Whereas I define terrorism as the killing of noncombatants, Kamm writes that in some cases it is permissible to terror kill combatants.⁶⁴ “Terror killing combatants” is killing soldiers to coerce the group they are associated with into acting in some way. Kamm explains that although it is permissible in some cases to terror kill noncombatants, one can justify terror killing combatants in all cases. She explains that if soldiers are attacking with unjust cause, they need to be used in any way possible to stop the war. The act of killing the soldier

⁶³ Ibid., 290.

⁶⁴ Kamm, 658.

is permissible as self-defense, so the act remains permissible regardless of if one's intention is to terrorize the rest of the population into surrendering. The deaths are already necessary for a quick end to the war, so intending to cause the deaths is irrelevant.

Kamm is correct that "terror killing combatants" is permissible in war. In war, soldiers kill enemy soldiers to intimidate the enemy leaders into surrendering or agreeing to the terms of a ceasefire; however, this act is not terrorism. "Terror killing combatants" is simply defense against combatants, which is every act in conventional war. Terrorism is distinct from other violent political activity because terrorism is the intentional killing of noncombatants to coerce some group by intimidation. If someone kills a combatant in an unusual manner in war (e.g., torture), the combatant's fellow citizens are not terrorized because civilians have no reason to think they will be targeted next and combatants accept the risk to their lives and can defend themselves.

Civilians are not responsible for the injustice of their leaders. Walzer explains that in a perfect democracy, the degree to which a citizen supports their nation's injustice is responsible for it because their support makes the unjust act possible.⁶⁵ He argues that in this society all civilians should:

. . . withdraw his name from this act (the war policy) though not necessarily from every communal action, for he may still value, as he probably should, the democracy he and his fellow citizens have achieved . . . the more one can do, the more one has to do.⁶⁶

However, there are no perfect democracies. At most, civilians are responsible only for electing the officials that make decisions, but are unaware of what decisions these officials will make in war. Because civilians only have limited participation and are not individually

⁶⁵ Walzer, *Just and Unjust Wars*, 299-301.

⁶⁶ *Ibid.*, 301.

responsible for any decision made, they are not responsible for injustice that results from their leaders' policies. When some civilians claim to support an unjust act of war, they are not responsible for the act because they had no part in the decision. "Even patriotic excitement, war fever, among such people is probably best understood as a reflex of distance, a desperate identification, stimulated, it may be, by false account of what is going on."⁶⁷ Because civilians are not a danger to combatants and do not make war decisions, they cannot be harmed in self-defense and are not responsible for aggression.

Kamm's violability ratios are correct that innocent third parties are inviolable and that groups should protect enemy noncombatants at the risk of their own combatants; but, she is incorrect that it is permissible to terror kill noncombatants. Even if a group could save members of an innocent group by terror killing an enemy noncombatant, the act is unjust because all noncombatants are immune from attack. They are not responsible for the alleged injustice. If a soldier is fighting an unjust war, he can harm enemy combatants because they are threatening his life. However, all combatants should respect the immunity of noncombatants because they are not responsible for the threat imposed. The noncombatants of a nation, its enemy nation, and neutral countries are equally inviolable because they are not responsible for the unjust aggression. Being responsible for the unjust act is why an actor is guilty. Just response only harms people who are guilty of the perceived injustice; therefore, because terrorists harm people who are not responsible, terrorists harm innocents.

The essential distinction between combatants and noncombatants is that the former is responsible for some threat of harm. Whereas combatants provoke the harm that they suffer, noncombatants are not an immediate danger, so one must not harm them. In many cases,

⁶⁷ Ibid., 302.

terrorists have to seek out the people they kill; they kill people with whom they have never interacted. Because terrorists create fear by harming people innocent of the alleged injustice that they suffer, terrorism violates the rule of noncombatant immunity; however, one could object that because innocent people die in all war, all war is unjust.⁶⁸ If this is true, then because injustice is necessary to enforce peace, terrorism is permissible in spite of it being unjust. In the following section, I address this objection by examining the distinction between the intention and unintentional harming of noncombatants.

Terrorists Intentionally Harm Innocents

Terrorists harm noncombatants to advance their causes. By definition, terrorist acts are premeditated; they intend to kill noncombatants. If intentional killing of noncombatants is permissible in normal wartime conditions, then terrorism is just. If intentional killing of noncombatants is necessary in war, then all war is unjust, so terrorist acts are equally permissible to all other acts in war. The Doctrine of Double Effect (DDE) is the traditional standard for evaluating permissible killing of noncombatants; however, it is problematic because it dismisses one's responsibility for side effect harm. I present Kamm's solution to the DDE, which is that an act's properties, instead of an actor's intentions, determine the act's permissibility. I argue that Kamm's solution is incorrect because it is not possible to know in advance specific consequences of actions and that her solution requires terrorism when it will prevent death. I argue that agents are responsible for side effect harm they cause; therefore, I favor replacing the DDE with the Doctrine of Double Intention, with the addendum of demanding use of a suboptimal alternative, because it requires decision makers to choose an

⁶⁸ This is Kamm's objection to the DDE discussed in the next section.

alternative that possesses less civilian risk. Whereas conventional warfare that harms innocents can be just, terrorism is unjust.

The difficulty in distinguishing terrorism from conventional warfare is that both cause noncombatant deaths. War scholars traditionally use the DDE to distinguish ‘strategic’ bombings from ‘terror’ bombings. According to the DDE, it is permissible to act when one foresees that harm will result from that act if and only if the act contains four elements⁶⁹:

- First, the intended end is permissible.
- Second, the intended means to that end is just.
- Third, one does not intend the foreseen harm.
- Fourth, the unintended harm is proportionate to the value of the end.

The purpose of the DDE is to deem acts with harmful side effects permissible and acts that intend the same harm impermissible. This means that I cannot intentionally kill ten civilians to save twenty civilians, but if I bomb a building to save twenty civilians, even though by bombing the building I kill ten civilians, my action is just. The DDE judges the permissibility or impermissibility of actions by the actor’s intentions; therefore, according to the DDE, terrorism is impermissible because terrorists’ intended end is impermissible harm.

The DDE is not an appropriate measure of permissible noncombatant death; however, one objection to the DDE does not accurately present its flaw. Kamm argues that the DDE is insufficient because it does not necessarily minimize overall harm. It is possible that either intentionally killing one person (unjust under the DDE) or fighting a long war with thousands of deaths (just under the DDE) achieve the same good. In this situation, more death is the just scenario, which is unacceptable for Kamm, who remarks that acts that are not normally

⁶⁹ Predelli, 18.

permissible are permissible if they minimize harm more than any other alternative. She explains that the DDE “sometimes allows as an alternative an act that would not have been permitted in the first place when the alternative act is the one, of all those that could reasonably be done, that minimizes the harm that would have been done to the same person.”⁷⁰ For Kamm, if one’s only options were to fight a long war that resulted in many deaths or to kill intentionally a person that would die in the war in any case, one should kill the person because he is no worse off and others are better off.

Kamm argues that the properties of an act determine permissibility rather than the agent’s intent. “One may do a permissible act for a bad reason, not for the sake of the properties that makes it permissible; hence, the DDE is incorrect because it would declare as impermissible acts that are permissible.”⁷¹ She explains that the properties of an act determine what we think the actor intends because we do not know for certain what the actor intends. If the act does good, we think the actor intended good. If the act does evil, we think the actor intended evil. An actor may intend an impermissible act, but as long as he has just cause for action, we should not fault him. According to Kamm, because all that matters is the property of the act, a terror bombing that intentionally kills one innocent and a tactical bombing that results in the death of one innocent are equally permissible.

The appeal of Kamm’s argument is that she wants war to end as quickly and painlessly as possible. It is true that war is never desirable, even if it is better than allowing some harm to continue. Kamm also agrees that in general killing an innocent civilian is worse than war and that noncombatants are immune from attack. The point where Kamm diverges is when

⁷⁰ Kamm, 659.

⁷¹ Ibid., 666.

intentionally killing a noncombatant ends some harm *and* in the future the noncombatant would die from that harm.

Kamm's solution to the DDE is problematic because it is impossible to know if a specific person would die in the harm that his death prevents. One cannot look to the future to evaluate what one should do in the present because the future is unknown; however, Kamm is correct in concluding that if the intentional killing of a noncombatant ends some harm *and* the noncombatant dies from that harm in the future, then the act is permissible. Without this feature, an action like the bombing of a tactical plant that will result in civilian casualties is impermissible because knowing about potential side effect deaths is the same as intending side effect deaths. When one acts, knowing that a side effect will occur, she intends both the act and the side effect.

Kamm's solution assumes that we know all of our actions' results before we act. However, general foreseeable acts are distinct from specific foreseeable acts and this distinction is relevant in evaluating unintended deaths. We can foresee general events that will result from an action; we can foresee that the bombing of a tactical plant next door to a school will demolish half of the school. We do not know in advance, however, that a specific individual will die from the bombing of the tactical plant because unexpected circumstances may arise that prevent the individual from being in the place where he would die from the bombing. For example, it is possible for one to foresee that the bombing of a tactical plant will destroy half of a school as a side effect, but it is not possible to foresee that the bombing will kill a certain child because he could by chance be in the half of the school unharmed. Although it is permissible to bomb a tactical plant with the side effect of harming half of a school, it is not permissible for one intentionally to kill the child in order to prevent the other

children from dying because one cannot foresee that he will die in the bombing.

Consequently, Kamm's solution to allow terror killing of individuals that will die anyway is faulty because we cannot verify that an individual will die in a future event that her death will prevent.

Combined, Kamm's arguments inadvertently form an obligation to use terrorism when it will prevent future deaths. First, Kamm argues that terrorism is permissible. Because the properties of an act are most important to Kamm, she contends that if we claim that all terror killing is unjust, we allow what is impermissible in some situations to be permissible in similar situations.⁷² Kamm argues that instead of allowing the impermissible to become permissible, the permissible should remain permissible in different circumstances; therefore, terror killing of noncombatants is permissible if a permissible act would kill them anyways.⁷³ For Kamm, if the DDE permits fighting a long war that kills an agent, it is acceptable to terror kill that agent because his death is permissible already. Kamm explains that killing the agent is permissible by another alternative, but terror killing him is a greater good because it ends the war, so minimizes harm. Likewise, if one person attacks another, it is permissible to kill the attacker in self-defense; therefore, it is also permissible to terror kill that person to scare the enemy into surrendering. Second, Kamm argues that actors should use any means to reduce noncombatant deaths in war. Kamm explains that if it is possible to decrease the number of noncombatant deaths by killing a smaller number of noncombatants, killing the smaller number is permissible because the goal is as few as possible noncombatant deaths.⁷⁴ Kamm makes a stronger argument than the one she intends to make. For Kamm, not using

⁷² Ibid., 653.

⁷³ Ibid., 659.

⁷⁴ Ibid., 655.

terror killing is morally problematic if it prevents deaths; therefore, if terror killing an individual, who dies in the war in any case would prevent deaths, then terror killing that individual is obligatory. Because, according to Kamm, the only objective in war is to end it, not only is terror killing permissible, it is required.

We should reject the case Kamm presents by appealing to the distinction between general and specific foresight and the effects of terror killing. Because one cannot predict an agent's death in the future, one cannot justifiably kill him to serve some purpose in the present; thus, terror killing an individual is never permissible. The difficulty occurs when we think in terms of general foresight. Terrorism includes harm to property that threatens lives (e.g., destroying all crops). If we bomb a military base in the middle of all the crops in a nation, we have general foresight that we will destroy the crops. But does this mean that it is permissible to destroy all the crops when doing so is not a side effect? In cases of general foresight, if we accept Kamm's solution, terrorism is permissible. However, destroying crops as a side effect is distinct from intentionally destroying all crops because the latter intends to produce a unique fear in the population. The only possible intentional reason for destroying all the crops, if it were not a side effect, is to spread fear in the population by threatening lives. Therefore, the description of an act does not account for all relevant facts about an act. Because terrorizing a population is a uniquely evil act, it is an unjust means in war.⁷⁵

The DDE, insufficiently minimizes harm because unintentional evil too easily results in evil as a side effect. The DDE only requires that combatants "not try" to harm civilians, whereas combatants should "try not" to harm combatants.⁷⁶ As long as a target is of enough importance, an act with horrible foreseen side effects is permissible according to the DDE.

⁷⁵ I discuss terrorism's uniquely evil status in the section on the consequences of terrorism.

⁷⁶ Lee, 235.

Walzer proposes that we replace the DDE with the Doctrine of Double Intention (DDI). He argues that instead of disregarding side effect deaths, we should attempt to minimize evil by increasing risks to combatants because “civilians have a right to something more. And if saving civilian lives means risking soldier’s lives, the risk must be accepted.”⁷⁷ The difference between acts that result in side effect harm and acts that intend harm is the kind of intention. The DDI holds that actors should intend to reduce harm to civilians. Actors are responsible for unintended harm. Although they are not accountable for it, they should not ignore that it will occur. Instead, actors should attempt to minimize the knowingly unintended, even though that means putting themselves in danger.

Kamm’s violability ratios support the notion that enemy civilians are more violable than a combatant’s fellow citizens. This notion is incorrect because immunity comes from being human. One loses this immunity only when he is responsible for some threat. By upholding the immunity of enemy civilians, one’s fellow civilians are at greater risk because doing so lowers the effectiveness of the military action; however, the purpose of principles governing conduct in war is to limit what is acceptable so that effectiveness is not the only consideration.⁷⁸ Even if double intention makes the war harder to win, one cannot ignore the humanity of enemy civilians.

Walzer argues that there is nevertheless a limit to the risks soldiers should take to minimize side effect deaths of civilians.⁷⁹ War decisions require only a positive commitment to save civilian lives. Although Walzer does not explain what this commitment entails, Steven Lee proposes a method for choosing means that reduce civilian risk. Lee believes that

⁷⁷ Walzer, *Just and Unjust Wars*, 156.

⁷⁸ Lee, 238.

⁷⁹ Walzer, *Just and Unjust Wars*, 156.

the commitment to save civilian lives requires combatants to choose an alternative to the militarily optimal alternative (the alternative that achieves some objective with the least amount of military cost) that lowers civilian risk.⁸⁰ Combatants do not have to choose the alternative that contains the least civilian risk but the smallest possibility of success; they must balance the relevant features of all alternatives and choose the option that will achieve the objective with the least civilian risk.

The appropriate alternative varies according to circumstances; however, all alternatives contain four relevant features that aid us in choosing the appropriate one.⁸¹ First, each alternative has a likelihood of success. In most cases, the alternative chosen has a high likelihood of success; but one should weigh this alternative against the reductions of civilian risk in alternatives with a lower likelihood of success. This is the second feature of all alternatives. Each alternative contains some risk to civilians. We should reject alternatives with higher civilian risk than the militarily optimal alternative. The third feature is the degree of risk the alternative poses to combatants. To decrease civilian risk, we should accept some increase in combatant risk and decrease in the likelihood of success. The fourth factor is the contribution of the objective to the overall war. This is in the assessment because in war, the stakes are high, so some risk is acceptable. Therefore, if faced with an unjust threat, one has just cause to respond. However, to be just, one must choose an alternative that minimizes civilian risk. If nonmilitary alternatives are available that are likely to achieve the objective, then one should choose these alternatives; however, if nonmilitary alternatives are not

⁸⁰ Lee, 239. When a group is able to conduct a conventional war, the group has options for acts within the war. If a group is unable to conduct a conventional war, they must not use terrorism because alternatives short of war are available (e.g., appealing to the international community for help). I address the excuse that terrorism is the only alternative in the “Mitigation of Force in Response to Terrorism” section.

⁸¹ Lee, 241-246.

available, then one should choose a militarily suboptimal alternative. A militarily suboptimal alternative sacrifices some likelihood of success and an increase in combatant risk to lower civilian risk. Only then does one not intend to harm noncombatants.

The DDI is preferable to the DDE because we decide what kind of increase in combatant risk we should use to decrease civilian risk. The DDE accounts for duties that combatants have to civilians in a manner that allows combatants to disregard the absolute duty of protecting the innocent. Whereas the DDE holds that if one has an appropriate intention, an otherwise impermissible act is permissible, the DDI allows an impermissible alternative in some circumstances to be permissible in others. Because it is not always possible to avoid civilian deaths, the DDI distinguishes a strategic bombing's regrettable civilian death from a terrorist's celebrated civilian death. It is important that we do not regard civilian deaths as simply accidents when they are foreseeable because decision makers intend these "side effects."

According to the DDI, terrorism is impermissible because it maximizes civilian risk. Terrorists foresee that they will harm civilians, even if their ultimate goal is something other than harming them, and do not attempt to reduce civilian risk by the means they employ to further their end. Terrorism maximizes civilian risk because by that means, terrorists achieve their goal of coercion. Without purposefully increasing civilian risk, terrorists are unable to create fear in other members in the group, which is necessary for terrorists to pursue their ends. Whereas just harm to civilians is harm that the actor attempts to avoid, terrorists attempt to harm as many civilians as possible to advance their cause.

Because the strategy terrorists use require them to increase civilian risk, collateral damage in conventional war does not mitigate the impermissibility of terrorism. This,

coupled with the previous argument, terrorists knowingly violate the war convention to spread fear, entails that terrorism is unjust. Alleged injustices do not justify terrorism because the conduct of terrorism is unjust; even if terrorists have just cause, terrorism is never a just response because terrorists' means are unjust. Terrorist acts violate the immunity of noncombatants because terrorists *intentionally* kill people who the war convention deems innocent of the perceived or actual guilt of the group targeted. Therefore, terrorism is unjust, so is an act of aggression and one has just cause to respond to terrorism. We can now evaluate what JWT demands of a just response to terrorism.

Is the War on Terrorism Just?

According to Walzer's JWT, victims of terrorism have just cause for responding to terrorism and for punishing terrorism. I argue that proportionality and discrimination limit just responses to terrorism. The Bush administration's "war on terrorism" intends to punish terrorist attacks and prevent future terrorist attacks from occurring. The United States justly advanced this cause in Afghanistan, but the war in Iraq was unjust because an alternative that possessed less civilian risk would achieve the United States' military objective.

Constraints on Responses to Terrorism

A just response to terrorism and just punishment for terrorism must not violate the rules for conduct in war or the rules for causes of war. Victims of terrorism have just cause to respond; however, if some excuse lessens the injustice of terrorism, then victims must consider the mitigation when they respond to terrorism and perhaps respond with less force. A response or punishment complies with the rules governing conduct when it is proportional to the terrorist act and discriminates between people responsible and not responsible for terrorism.

Mitigation of Force in Response to Terrorism

One may object to responding to terrorism because some feature inherent in the circumstances of terrorism excuses its injustice. For example, one could argue that terrorism is the only alternative for some groups with legitimate cause for war. I argue that no excuse or apology legitimizes terrorism and that in no circumstances is terrorism permissible. Although the excuses for terrorism may reflect accurate assessments of the circumstances of terrorism, none mitigates the evil that terrorism causes.

We have already determined that terrorism is unjust because intentionally killing innocents is unjust, but to determine what an appropriate response to terrorism is we must decide if any reasons mitigate the injustice of terrorism for the purposes of mitigating the response to terrorism's force. If there is a legitimate reason that weakens the injustice of terrorism, then force used to respond to terrorism should be proportional to the degree the excuse mitigates the terrorist. The most common example is that terrorists have just cause. If we accept that terrorists with just cause can use unjust means, then we should use less force in response. In the following, I present Walzer's discussion of apologies that have potential for excusing terrorism. He concludes that none is applicable because terrorists use unjust means. He explains that no excuse justifies terrorism because none distinguishes just cause from just means. Although excuses are better than justifications because they recognize that terrorists use unjust means, we should eliminate both because they indirectly support terrorist actions by assuming just means are unnecessary in just war. Walzer identifies four types of excuses for terrorism, but none excuse the injustice of terrorists' conduct.

First, there is the excuse that terrorism is the last resort.⁸² Walzer explains that terrorists are more likely to use terrorism as a first option than a last resort. Even when terrorists try other options before resorting to terrorism, the excuse that nothing else is available is just that— an excuse. Even if terrorists have just cause, terrorism is not just. Walzer explains, “Whatever the cause to which they are committed, we have to recognize that, given their commitment, the one thing that they cannot do is ‘nothing at all.’”⁸³ If all else has failed, the agent should not use terrorism to advance their cause. If nothing else is feasible, the agent has no more options; however, simply because some action did not work the first time does not mean it will not work the second, or the tenth, time. In politics, repetitive acts are often the most effective. There is no way to know that further repetition of past actions will not result in the desired goal. One must use just means regardless of whether or not doing so requires them to repeat past attempts at their objective. If a group has used all available options short of unjust means, then they should stay the course. Not using terrorism as a first resort does not mitigate the injustice of terrorism when used as a last resort.

The second excuse Walzer addresses is the idea that terrorism is the only strategy available for struggling national liberation movements.⁸⁴ The excused scenario is when a movement is too weak to defeat an established state. To defend terrorism’s permissibility, Kamm appeals to this excuse. She argues, “Further, it might be permissible for one side in conflict to use terror but impermissible for the other side to use it. This is because one side may have no other means by which to pursue their goal . . .”⁸⁵ Although we traditionally think terrorists are irrational, Kamm contends it is possible that the only means available to

⁸² Walzer, *Arguing About War*, 53.

⁸³ *Ibid.*, 53.

⁸⁴ *Ibid.*, 54-55.

⁸⁵ Kamm, 653.

fight a rational agent's unjust threat is terrorism. An agent may not have access to armed personnel so he cannot carry out a traditional war. Additionally, it is possible that any other means (e.g. financial or nonviolent) are unavailable or would be ineffective. The international community may incorrectly disagree that the agent has just cause, so there is no hope of future assistance from other groups to advance his cause. In Kamm's scenario, the agent has just cause, but no alternative to terrorism; therefore, terrorism is not the last resort, it is the only available option because the agent does not have resources necessary for other alternatives.

Walzer's answer to Kamm's argument is two-fold.⁸⁶ First, Walzer explains that excusing terrorism because terrorists are too weak to defend themselves often confuses the movement's weakness with respect to the opposing state and the movement's weakness with respect to the people in the state. If a movement is weak because of "the inability of the movement to mobilize the nation . . . terrorism [is] the 'only' option because it effectively rules out all others: nonviolent resistance, general strikes, mass demonstrations, unconventional warfare, and so on."⁸⁷ For a movement to defeat a state using any means, the movement must have some popular support. If the movement is able to mobilize the nation, then acts involving many people are possible. If the movement does not have popular support, then the movement should not act because the members of a nation should determine the nation. If the members of a nation do not agree with a movement's aims, the movement should not achieve its goal.

Second, if the movement is weak because the state oppresses any available means, the movement cannot justly use terrorism. Walzer explains that if terrorism will defeat the state, other options will as well; therefore, this excuse is the last resort excuse and does not mitigate

⁸⁶ Walzer, *Arguing About War*, 55.

⁸⁷ *Ibid.*, 55.

the injustice of terrorism.⁸⁸ If there are no means for victims of oppression to take themselves, they could appeal to the international community for help. If international community refuses to help, the victims should continue to ask for help and try to defend themselves justly from the unjust aggression; therefore, even if an established state is internally aggressive, victims are unjust if they terrorize the members of the state because those terrorized are morally innocent.

The third excuse is the idea that terrorism works to achieve the goals of the oppressed without their participation. The excuse is that terrorism is the only act that is effective in meeting the ends of people who cannot act for themselves. According to Walzer, “But even if we were to grant some mean-end relationship between terror and national liberation...it must be possible to say that the desired end could not have been achieved through any other, less wrongful, means.”⁸⁹ He rejects this excuse because it assumes that nothing else is possible. As explained in response to the national liberation excuse, even the oppressed have alternatives to intentionally killing innocents. People oppressed may be unable to act for themselves, but they can ask the international community to act on their behalf by eliminating their oppressor; therefore, terrorism is not the only option, so this excuse does not mitigate the injustice of terrorism.

The final excuse Walzer addresses is the idea that terrorism is the universal resort.⁹⁰ This excuse assumes that all political action generates fear in innocents. Since terrorism is the politics of both state officials and movement militias, we should not punish terrorists for using the same means as legitimate states. Walzer responds, “Officials and militants who live, as it

⁸⁸ Ibid., 55.

⁸⁹ Ibid., 56.

⁹⁰ Ibid., 57.

were, on the margins of legitimacy and strength sometime choose terrorism and sometimes do not. Living in terror is not a universal experience. The world the terrorists create has its entrances and exits.”⁹¹ He explains that legitimate states do not need to terrorize their citizens the same way popular movements do not need to terrorize their opponents to be effective. If a state or movement has enough support, it does not need to instill fear into the population, and if a state or movement does not have enough support, it should not continue; thus, we should not excuse terrorism because normal activity in legitimate states is not terroristic.

A derivation of this excuse is that because oppression is terroristic, we should excuse the opponents of oppression’s terrorist acts. If an agent uses terrorism to respond to oppression’s terror, he is not at fault because “the oppressors set the terms of the struggle.”⁹² Walzer responds that if a liberation movement defeats oppression by using terrorism, it does not change the terms of the oppression. Both tyrants and terrorists disregard the immunity of the group they condemn, so if terrorists replace tyrants, only the targeted group changes. Terrorism only reinforces the oppressive acts and undermines the confidence of the oppressed that there is a way to end the oppression; hence, oppression does not mitigate the injustice of terrorism because responding to terror with terror only perpetuates the use of unjust means.

Walzer explains that these excuses shroud the decision to commit terrorism when decision makers view terrorism as an option. Terrorism is an act of aggression, so it is unjust because it intentionally harms innocent people. When faced with unjust aggression, decision makers must limit the means they use to respond so that they do not replace aggression with more aggression. No excuse mitigates the injustice of terrorism because agents with just cause always have alternatives to terrorism.

⁹¹ Ibid., 57.

⁹² Ibid., 59.

Terrorist acts are unjust, even when one responds to terrorism because one must respond using just means. Although some terrorists have just cause for action, using a terrorist strategy is unjust. Because no circumstances mitigate terrorist acts, we must respond to all terrorism equally in a proportionate and discriminate manner. I argue that in order to respond proportionately, victims must minimize civilian risk while achieving their objective. Victims should risk some likelihood of success by choosing an alternative with less civilian risk. To respond discriminatorily, victims must engage militarily only with people responsible for the unjust aggression. Before I address how a just response is limited, I explain the consequences of terrorism. Because terrorism causes entire groups to fear that they are the next targets, leaders may unjustly respond because they want revenge for their group's fear.

Consequences of Terrorism

We should respond proportionately to terrorism, but proportionately to what? To measure our response, we must understand what terrorism causes populations to experience. Although the consequences of terrorism vary, all terrorism has immediate effects and gradual effects. The immediate effects of terrorism are the destruction and devastation caused by terrorists successfully hitting their direct target. The degree of immediate damage is relative to the magnitude of the terrorist act. Terrorism also affects victims gradually because it disrupts civic peace and causes fear in everyday life.

Elshtain maintains that terrorist acts are unjust because terrorists disrupt civic peace. For Elshtain, this disruption causes people to “retreat behind closed doors” and not to interact publicly with the group because they fear that if they have such high visibility, they may be

the next targets.⁹³ Some terrorists claim that disruption to one's way of life is not exclusively a reaction to terrorism. For example, some Islamic terrorists argue that they have a just cause for war because the West disrupts their culture. Two of al Qaeda's goal are to "unite all Muslims and to establish a government which follows the rule of the Caliphs."⁹⁴ Osama bin Laden asserts that in order to reclaim the Islamic way of life, al Qaeda must overtake all Muslim governments, eliminate Western influence, and create a single state of Islam. Insisting that terrorism is unjust because it disrupts civic peace fuels the sentiment of terrorists. Although Elshstain's remark is correct that disruption of civic peace is a result of terrorism, she focuses on tangible effects only. The fear itself is also a distinctive evil of terrorism.

Walzer argues that terrorism is never permissible because it is a "peculiar evil."⁹⁵

Terrorism forces fear into everyday life by causing insecurity in public and compels people to look endlessly for precautions. Walzer argues,

The moral difficulty is the same, obviously, when the conspiracy is directed not against you but against them—Protestants, say, not Catholics; Israelis, not Italians or Germans; blacks, not whites. These 'limits' rarely hold for long; the logic of terrorism steadily expands the range of vulnerability...No one is safe once whole populations have been put at risk.⁹⁶

Not only is terrorism a peculiar evil to the person to which it is directed, it also affects people to which it is not directed because it forces them to question if they will be targeted next. The unique injustice of terrorism is that it instills fear in the entire group targeted. Terrorists cannot claim that this unease results from any act to which they have been subjected. Even if

⁹³ Elshstain, 59.

⁹⁴ Federation of American Scientists, <http://www.fas.org/irp/world/para/ladin.htm>.

⁹⁵ Walzer, *Arguing About War*, 51.

⁹⁶ *Ibid.*, 52.

Islamic terrorists are correct, and the actions of the West do disrupt civic peace in Muslim nations, the West does not cause all members of these nations to fear that they will die from some immediate violent threat.

This fear is distinct from the intimidation that all acts of war cause. In conventional war, combatants from one nation attempt to overwhelm the enemy to force an agreement to the terms of ceasefire. If fear occurs, it is only of losing the war to the leaders of the enemy nation. Ordinary citizens do not fear for their lives in conventional war because they know that they are not the targets.

To determine what acts are appropriate in response to terrorism, we must refer to the immediate and the gradual effects of terrorism. By intentionally targeting noncombatants terrorism disrupts civic peace and causes fear in ordinary life. To prevent future terrorist attacks we must punish terrorists for the damages they inflict. Therefore, we must respond proportionately to terrorism.

Proportionality

A response to an attack must proportionally punish aggression. A nation must protect its citizens from harm, but balance that protection by protecting the citizens of other nations. The nature of the unjust act must determine the power of force one uses in response. Just response to an unjust act requires just means. This means that one must not respond to terrorism with more terrorism, even though it seems to be the most proportional; however, a proportional alternative that is also a just response is destroying training camps or weapons facilities of those responsible for terrorism. I contend that just response to aggression is proportional when the response has three limitations. First, just response only harms people responsible for the aggression. Not all members in a group are responsible for the group's

aggression. Second, just response is not an act of vengeance. Victims of aggression justly defend themselves and the international community justly enforces law, but excessive harm is not just punishment. Third, civilian casualties are proportionate to the military objective in a just response. When responding to aggression, victims should balance achieving their objective with minimizing civilian risk.

Kamm claims that it is permissible to harm people who are not responsible for aggression. She asserts that an agent permissibly harms someone when that harm prevents something that would harm him in the future; but she also argues that it is permissible for a group to harm its own members to achieve a military objective. She explains that there are special features of war that allows one to override Principle X (it is impermissible to act when the foreseeable side effects cause more harm than the foreseeable benefits). One way Kamm advocates overriding Principle X is that just states have the right to put its citizens in intentional danger as a means to a goal.⁹⁷ Examples of this are drafting civilians to serve during war and performing an act that is likely to kill some civilians when the cause is important enough.

Although Kamm is correct that unjust acts deserve punishment, when one uses military force to punish an unjust aggressor, one should never intend to put their noncombatants or the enemy group's noncombatants in danger. While punishment is necessary to deter future unjust acts, a nation should either try to avoid or limit civilian risk. In military action, there is always some civilian risk, but a just response tries to limit that risk

⁹⁷ Kamm, 681-682. I explained Kamm's argument in the section on distinguishing combatants from noncombatants.

by choosing a militarily suboptimal alternative.⁹⁸ The relevant objective in responding to terrorism is preempting future attacks. Because civilian risk in war is high, one should preempt terrorism by declaring war only when there is no time to try other alternatives.

Most cases of preventing future aggression do not require military force because alternatives are available (e.g., financial obligations, trade sanctions, or international edicts). Although these alternatives may affect people who are not responsible for the aggression, they do not risk lives as much as war. Because war is hell, it is best not to continue it unnecessarily. Short of war to overthrow a terrorist regime, a group should not respond to terrorism by increasing civilian risk. Victims of terrorism should never respond with more terrorism. They are to avoid war if other alternatives are available.

A proportional response is not one of revenge. Whereas justice is measured, revenge has few if any limits.⁹⁹ Victims of terrorism must not decide the appropriate response to terrorism quickly or consider the emotional states of the direct targets. Response to terrorism must not be terrorism. Those who lead their nation into war must retain moral integrity through the war so they can govern once the fighting ends.¹⁰⁰ A nation is capable of governing its population in a just peace only when their response to aggression is just. Only by evaluating the injustice committed and deliberating on a proportionate response within the constraints of just war thinking can one develop a responsible response.

A just response is not proportional in the sense that it causes the same consequences as the unjust act. When a nation kills civilians as a side effect to its just response, the deaths are

⁹⁸ The section on intentionality explains the requirements for a military suboptimal alternative. This alternative balances civilian risk with the likelihood of successfully achieving the military objective. If an alternative will achieve the objective without war, it is preferable to any militarily suboptimal alternative.

⁹⁹ Elshstain, 24.

¹⁰⁰ Ibid., 168.

necessary to achieve the objective. When an unjust act occurs, if the agent responsible did not intend for the act to transpire, one must not intend to respond. Because terrorists intend the consequences of their actions, one justly responds to terrorism with a measured response that protects the lives of innocent people.

Discrimination

All acts of war must respect the immunity innocents. As argued in the section on just conduct, in war agents must discriminate between combatants and noncombatants. This is difficult when one is attempting to respond proportionately to a threat that does not discriminate between combatants and noncombatants; however, a just actor must make this discrimination. We must not take lightly the death of noncombatants, even as a side effect.

Determining a discriminate response to terrorism is challenging because terrorists are generally not government actors. It is often difficult to distinguish terrorists from ordinary civilians. Unless a specific terrorist publicly acknowledges his actions, one does not know who is accountable for the unjust act. Although determining who is responsible may be difficult, it is not acceptable to kill noncombatants intentionally in retribution for some terrorist act. This would be tantamount to responding to terrorism with terrorism. Only by finding who is responsible for “planning, aiding and abetting, and perpetuating” the unjust act can a response to terrorism be just.¹⁰¹

In part of Kamm’s argument that it is permissible to terror kill agents responsible for unjust threats, she claims that one must determine who is responsible for unjust threats in order to limit permissible terror killing. Kamm’s second special feature of war is that victims may permissibly shift moral responsibility for the unjust action. This means that victims can

¹⁰¹ Ibid., 67.

attribute responsibility for terrorism to more agents than the terrorist actor.¹⁰² If Kamm is correct that we can shift responsibility, then we must discriminate between appropriate and inappropriate shifts in a just response.

According to Kamm, victims of aggression have a “defensive screen” that allows them to deflect the injustice of their actions to the groups responsible for the initial aggression.¹⁰³ Kamm identifies four appropriate shifts in responsibility for aggression. First, she explains that victims can transfer responsibility for negative side effects of their act to the enemy when the enemy puts people in harms way to deter their action. “A recognized example is when a country itself puts bystanders in the way of what would otherwise be a just response to its threat.”¹⁰⁴ In this shift, the enemy is responsible because if the enemy did not move bystanders in the way of the response, the act is just. Second, the enemy is responsible for the effects of victims redirecting a threat from the enemy back onto the enemy population. If one nation is able to deflect a missile, but in doing so, the missile will harm the enemy population, the enemy is responsible because they fired the missile. Third, if another country supports the enemy’s unjust threat then victims can permissibly harm them because they are causally responsible for the enemy threat. If the third party supplies weapons or harbors the aggressor, then they are responsible for the aggressor succeeding in his unjust threat, so the third party is responsible for the unjust threat. Fourth, if past acts of support for an enemy are the reason why that enemy is an unjust threat now, then the past supporter is causally responsible for victims’ acts toward them. Like the third shift, the past supporter has lowered inviolability because it is responsible for why the act occurred. These four shifts mean that if an agent has

¹⁰² Kamm, 689.

¹⁰³ Ibid., 689-690.

¹⁰⁴ Ibid., 689.

just cause, any unjust act he commits is not his responsibility, but is the unjust aggressor's responsibility.

If an agent is able to shift the moral responsibility for his actions, then the injustice of his unjust act is not his concern. Kamm does not examine the implications of shifting responsibility; she claims only that whoever started the unjust war must take all responsibility for what occurs in the war. This allows a nation to retaliate disproportionately to the unjust action without any responsibility. Without checks on both sides, the war will become more unjust because unjust acts, which neither side claims responsibility for, will continue. If an agent has a responsibility to retaliate justly to an unjust threat, then the war will not escalate inappropriately. Walzer remarks that "When we focus exclusively on the fact of aggression, we are likely to lose sight of that responsibility and to talk as if there were only one morally relevant decision to be made in the course of a war: to attack or not attack."¹⁰⁵ But, we must evaluate many decisions in war. Within a just and unjust war, we condemn specific acts by their conduct. If an agent decides to use terrorism against a state, his act is unjust regardless of whether or not the state is unjust.

Regardless if one's cause is just or unjust, the means one uses to further his cause contributes to the justice of one's act. When we respond to terrorism, we have just cause because terrorism is unjust, but we must also respond by using just means. This means that we must respect the immunity of innocents. Just response to terrorism requires that our actions intend to harm people guilty of terrorism and minimize risk to all others. Although this makes responding to terrorism more difficult, we must not sacrifice justice for simplicity or expediency. In cases where we do not know who is guilty, there may be no immediate

¹⁰⁵ Walzer, *Just and Unjust Wars*, 33.

response other than attempting to find the people at fault; however, we should not view the occurrences of inaction negatively because the alternative is to punish innocent people out of a desire for revenge, not justice.

The War on Terrorism

Because we must justly conduct a response to terrorism, we must limit our response to actions intended to harm the people responsible for terrorism and to actions that do not result in unnecessary civilian risk. The Bush administration declared a “war on terrorism,” which so far includes two campaigns, one to respond to a terrorist attack (the war in Afghanistan) and one to prevent more terrorism (the war in Iraq). In what follows, I evaluate the causes for the two military campaigns using the resources of JWT. Although I do not address specific conduct in these campaigns (e.g., torture, detention), the notions of discrimination and proportionality are essential to evaluating the causes for the wars in Afghanistan and Iraq. The United States’ causes for these wars were just if they knew who was responsible for a legitimate threat and the war was necessary to stop that threat from acting.¹⁰⁶

Earlier I argued that the war on terrorism has just cause because terrorism is an unjust threat that we should preempt; however, the administration did not have just cause for all engagements in this war. President Bush’s strategy for the war on terrorism includes preventative war:

To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively in exercising our inherent right of self-defense. The United States will not resort to force in all cases to preempt emerging threats. Our preference is that nonmilitary actions

¹⁰⁶ A preventative war is also unjust if conduct in the war is unjust. In a further study I will examine the specific acts in the war in Iraq and the war in Afghanistan to determine if the United States’ combatants violated the rules of conduct. The same requirement, immunity of noncombatants, applies to just response. However, this study examines only the causes for specific engagements in the war on terrorism.

succeed. And no country should ever use preemption as a pretext for aggression.¹⁰⁷

The Bush administration's stated cause for future engagements in the war on terrorism is just. Terrorism is an unjust threat, which one should prevent and one should use means short of war if possible. Preventative war requires an additional constraint beyond the requirements of responsive war. A preventative war attempts to prevent a perceived threat from acting and to be just, it must be necessary to stop a legitimate threat in the immediate future. I argue that the cause for war in Afghanistan was just because it was a responsive war for a past attack. However, the war in Iraq was unjust because it was a preventative war the United States could have avoided using means short of war. When a one aims to prevent future aggression, one is just when one finds agents responsible for a legitimate threat and prevents them from becoming aggressors using military intervention only when no alternatives are available.

Walzer's first revision to the legalist paradigm allows for preventative strike against an imminent unjust aggressor: "Both individuals and states can rightfully defend themselves against violence that is imminent, but not actual; they can fire the first shots if they know themselves about to be attacked."¹⁰⁸ He explains that we can defend ourselves before attack occurs and before the time that the effects of the act will necessarily harm us. JWT does not require imminent victims to wait until aggressors harm them when they know that the harm will occur. Imminent victims have just cause to prevent an imminent aggressor from acting when the aggressor threatens them verbally and shows that he will attack.

¹⁰⁷ *National Security Strategy*, 16 March 2006.

¹⁰⁸ Walzer, *Just and Unjust Wars*, 74. Walzer distinguishes between a prevention and preemption. I uphold the purpose for the distinction, but for clarity refer to what he calls "preemptive war" as a preventative war with just cause and refer to his "preventative war" as a preventative war without just cause.

Just preventative wars knowingly stop an aggressor from attacking. When an agent threatens and shows that he is capable of harming another agent, the victim has just cause for response. Walzer explains that threats are different depending on circumstances, but a legitimate threat is not “the boastful ranting to which political leaders are often prone, . . . the kind of military preparation that is a feature of the classic arms race [unless it violates a agreed-upon limit], . . . ‘hostile acts short of war,’ . . . [or] insults.”¹⁰⁹ All legitimate threats include a verbal declaration of intent and some act that shows the aggressor’s intent (e.g. troop mobilization). A just preventative attack requires legitimate threat of attack, but not imminent attack because if the attack were imminent, striking first would not stop harm from occurring. The aim of preemptive attack is to stop a threat from becoming actual; to stop present threats, not possible future threats. This means that if there is time to try other alternatives, even when faced with a legitimate threat, an attack is not just. If the war on terrorism is just, it is a preventative war against a legitimate threat and nothing short of war is available to stop that threat.

Wars to prevent terrorism are just if they intend to stop a legitimate threat of terrorism from occurring, and without the war, terrorism will result. A legitimate terrorist threat requires the terrorist to declare that he will harm the potential victim and show that he is capable of harming the victim. Although this generally means that the terrorist acted previously, prior terrorist acts are not necessary for a terrorist to be a legitimate threat. If an agent states that he will harm innocents to coerce the group associated with the innocent and reliable intelligence shows that war is the only way to stop the attack from occurring, the potential victims have just cause to act preventatively. For one to prevent attack, one must

¹⁰⁹ Ibid., 80-81.

know that an attack will occur. Because some group can attack does not mean it will attack; therefore, if one uses war to prevent a weaker group from gaining capabilities but there is no threat of attack, the war is not just. Likewise, if some group threatens to attack, but is not capable of attack, attacking that group does not prevent anything. Even if the war is “successful” (the attack does not occur), the war may have been unnecessary for success.

A preventative war on terrorism is unjust if an agent engages militarily with someone or group who makes terrorist threats but is not capable of it or is capable of terrorism but does not make terrorist threats. Military responses to terrorism are also unjust if they are against someone or group who allegedly supports terrorists, but the possible attack is in the distant future, or is capable of supporting terrorism but does not support terrorism. If one is able to prevent the possible attack by using means other than war, but uses war, then the strike is unjust.

Preventative wars are proportional and discriminatory when war is necessary to achieve the military objective, when there is no time to use means other than war to stop the attack. As explained earlier in the section on proportionality, victims must balance achieving their objective with minimizing civilian risk. Because war increases civilian risk, and combatant risk, one should use alternatives when possible. Although combatants should minimize civilian risk by choosing militarily suboptimal means, when the war itself is necessary to counter a legitimate threat, potential victims have just cause for war.¹¹⁰ Just preventative wars are discriminate because they target legitimate threats, not possible threats in the distant future; they do not assume that a group is a threat simply because they are capable of being a threat or is a threat when they are incapable of aggression. Just response to

¹¹⁰ Leaders should inform the enemy that they are going to declare war and give terms for the war because even though there is little time for diplomacy, the enemy may agree to the terms to avoid war.

threat therefore requires the precondition the enemy declares its intention to harm and shows that it is capable of harming. Instead of preventing a war that we do not know will occur by using war, we should use available measures short of war. A first strike is just only when no alternatives will stop a legitimate threat, so are *wars* in the war on terrorism just preventative wars?

The Bush administration's aim in the war on terrorism is to prevent terrorist attacks on United States soil. Although the exact means to prevent all future terrorism is unclear, President Bush has stated,

Ours [the war on terrorism] will be a broad campaign, fought on many fronts. It's a campaign that will be waged by day and by night, in the light and in the shadow, in battles you will see and battles you won't see. It's a campaign waged by soldiers and sailors, Marines and airmen; and also by FBI agents and law enforcement officials and diplomats and intelligence officers. It's a campaign that is being waged in distant lands, and a campaign being waged by our new Office of Homeland Security.¹¹¹

The war on terrorism uses all available means to prevent terrorism and many, especially those that avoid military campaign, are just; however, because we must evaluate each engagement in the war on terrorism separately for each has its own unique circumstances, I focus on the two wars that has been fought in this "broad campaign." I explain that the United States had just cause for the war in Afghanistan because it was a responsive war to an actual threat. The war in Iraq was not response to an actual threat; it was preventative response to a possible threat. President Bush explained that war in Iraq was a just preventative war because Hussein's regime supported terrorism.¹¹² I disagree that the cause for war in Iraq was just because alternative means were available that may have achieved the military objective. I

¹¹¹ President Outlines War Effort, 17 October 2001.

¹¹² "President Directs Humanitarian Aid to Afghanistan," 4 October 2001 and "Remarks by President Bush and Senator Kerry in First 2004 Presidential Debate" 1 October 2004.

argue that Hussein's regime was a legitimate threat because he verbally threatened the United States in the past and intelligence at that time concluded that it was likely he was developing weapons of mass destruction, but war was not necessary for the United States to prevent future aggression.

Intervention into Afghanistan by the United States was just because the United States identified the Taliban as a regime that protected and provided resources to the terrorists who attacked the United States on September 11, 2001. The United States had just cause to respond to the unjust aggression. According to Walzer's third revision, just punishment for aggression is limited to deciding how to stop the aggressor from acting, how to restore the negative effects of the aggression, and how to reasonably prevent the aggressor from acting similarly again. To prevent al Qaeda from attacking again, the United States had to destroy the terrorist system embedded throughout Afghanistan. The war in Afghanistan was had just cause because the September 11th attacks made it clear that al Qaeda would not compromise with the United States or adhere to any restrictions placed on the group. The Taliban regime refused to end their support of al Qaeda and refused to exile al Qaeda from Afghanistan; therefore, the only alternative that would achieve the United States' military objective of preventing future al Qaeda attacks, was intervention to overthrow the Taliban regime and find and punish the members of al Qaeda for their terrorist acts.

The war in Afghanistan was necessary to stop al Qaeda from attacking again and the decision to go to war was proportionate and discriminatory. Although civilians died because of the war, the act that resulted in their deaths was just because the war was necessary. The civilian deaths were proportionate to the just military objective because no alternative that possessed less civilian risk would have achieved the objective. The war was discriminatory

because the United States identified the group responsible for the September 11th attacks and acted to prevent their future attacks. Therefore, the war in Afghanistan had just cause because it identified a legitimate threat and responded with war because no alternative to war would stop al Qa'ida from attacking.

On 19 March 2003, President Bush informed the nation that the United States invaded Iraq. The causes for war were to “undermine Saddam Hussein's ability to wage war” and “remove a threat and restore control of that country to its own people.”¹¹³ President Bush explained that Hussein’s regime was developing weapons of mass destruction and if he continued, the United States would be a target. Although at this time, President Bush did not state that Hussein would support terrorism if allowed to continue developing weapons, in a later statement he included the objective of ending Hussein’s support of terrorism to the war effort.¹¹⁴

The administration correctly identified Hussein’s regime as willing to support of future terrorism.¹¹⁵ Hussein used chemical and biological weapons on the Kurds in the war with Iran and there was no reason to think that he was averse to using them in the future. Given the increased hostilities between the United States and Hussein’s regime, if Hussein acquired new weapons of mass destruction, it was possible that he would target them or give them to terrorists who would target the United States. If there was evidence that Hussein had weapons of mass destruction, then the United States had just cause to seize the weapons; however, military intervention was not necessary to seize weapons. All that the United States needed to do in order to confiscate the weapons was to enforce of pre-established inspections.

¹¹³ Presidential Address to the Nation, 19 March 2003.

¹¹⁴ President Discusses Beginning of operation Iraqi Freedom, 22 March 2003

¹¹⁵ Walzer, *Arguing About War*, 143-147.

Following the first Gulf War, the United Nations imposed restrictions on Hussein's development of weapons of mass destruction. The restrictions included mandatory inspections of Iraqi facilities and destruction of such weapons if found, but starting in the mid-90s, Hussein delayed inspections and refused access to inspectors. Because no country or agency used military force to compel the inspections, Hussein continued to refuse access to the facilities and eventually the United Nations stopped attempting to inspect the facilities. If the United Nations, or even the United States, had used military force at this time, the act would have been just because the inspections were mandatory. Nonetheless, no one enforced the inspections.

In the months preceding the Iraq war, President Bush worried the United States' renewed interest in the inspections would fail to convince Hussein to permit access to weapons facilities. Because no country desired to enforce the inspections by military personnel accompanying the inspectors, President Bush feared that renewing the inspections would further delay the international community from knowing if Iraq had weapons of mass destruction. This delay would increase our risk of attack, so the United States invaded Iraq to overthrow the Hussein regime so that he could not support terrorists in the future.

The administration's cause for war in Iraq was problematic because the United States did not know if Iraq had weapons of mass destruction.¹¹⁶ The United States did not know if within a few days or weeks Hussein would use, or give to terrorists to use, weapons of mass destruction. If the United States knew or even thought that Hussein was an immediate legitimate threat, they would not have spent months attempting to gain international support. The war's aim was to prevent possible terrorist attacks in a distant future.

¹¹⁶ Ibid., 147-149.

In Iraq, the preventative war was disproportionate because an alternative with less civilian risk was available that would still achieve the military objective. Because the restrictions were still in place, all needed to renew mandatory inspections of Iraqi facilities was some nation(s) to enforce the inspections. Although international enforcement would be best, the United States could have sent American soldiers to enforce the inspections. This alternative would impose less civilian risk than intervention because it would not overthrow Hussein's regime or increase civilian risk throughout all of Iraq. The conflicts, if any, would occur if the inspectors met military resistance. If Hussein continued to refuse inspections, only then would the United States have a just cause for war because he refused to comply with mandatory restrictions.

Mandatory restrictions would not remove Hussein from power, so would not meet all of the military objectives for going to war. In its stated reasons for the war in Iraq, the Bush administration included the humanitarian objective of saving the Iraqi people from a brutal dictator.¹¹⁷ In the second revision to the legalist paradigm, Walzer explains that a nation can violate the principle of non-intervention when the citizens of another nation suffer enough harm to warrant humanitarian intervention. For the harm suffered to be egregious enough for intervention, it must make self-determination impossible. In Iraq, the suffering was not enough to warrant humanitarian intervention because other methods were in place that successfully prevented acts by Hussein that would warrant intervention.¹¹⁸ For example, before the war occurred, the United States already enforced no-fly zones in the north to protect attack against the Kurds and in the south to protect attack against the Shi'ites. In these zones, the United States targeted and hit radar and anti-aircraft facilities with few civilian

¹¹⁷ Presidential Address to the Nation, 19 March 2003.

¹¹⁸ Walzer, *Arguing About War*, 154.

deaths. These zones prevented Hussein from reigning freely over Iraq and exterminating the Kurds and Shi'ites. If Hussein did commit genocide then the United States would be just in implementing a humanitarian intervention; however, he did not, so overthrowing his regime to alleviate any suffering was not just.

The United States could have achieved the objective of preventing Hussein from supporting terrorism without intervention by using an alternative that possessed less civilian risk; therefore, the war in Iraq is unjust. Unlike the threat of the Taliban supporting al Qaeda in Afghanistan, the threat of Hussein supporting terrorists was not imminent. Although the United States correctly pointed out that the international community should do something to prevent Hussein from supporting terrorism, war was not the correct choice of action. Instead, the United Nations should have renewed inspections with military force from any country willing to provide enforcement. If Hussein rebuffed this enforcement, only then would the United States have just cause for war.

CONCLUSION

When one uses the term “terrorism” to refer to any bad activity, one confuses a terrorist’s cause with his means to advance that cause. Terrorism is distinct from other forms of political violence by the means terrorists use, not because of their causes. A terrorist is an agent who uses, or threatens to use, premeditated violence against noncombatants in order to coerce a group into some course of action. Contrary to what an intuitive definition of terrorism entails, some unjust actions are not terrorism.

Walzer’s theory of aggression provides us with the necessary resources to evaluate the war on terrorism. According to Walzer, a just war responds to aggression and uses just means. The war on terrorism is just if it is a response to unjust aggression and uses just means to punish the aggression; therefore, for victims of terrorism to have just cause for response, terrorism must be unjust.

Terrorism is unjust because it is a strategy that violates the rules of conduct in war. All terrorism intends to harm people not responsible for alleged injustice, so all terrorism violates the immunity of noncombatants. Unlike just collateral damage in conventional war, terrorists do not try to minimize civilian risk. Terrorists maximize civilian risk to further their cause. Therefore, nations have just cause to respond to terrorism.

Responses to terrorism must be constrained by the principles of discrimination and proportionality. In order for a response to be just, it must balance the immunity of noncombatants with the objective of preventing future attacks. Although there is civilian risk in most military alternatives, the responding nation must try to avoid or reduce it by choosing an alternative that achieves the objective with the least civilian risk. Moreover, a just

response discriminates between people responsible and people not responsible for terrorism. We should not blame a group who is not responsible for terrorism simply because we want revenge for our suffering.

The Bush administration claims that future preventative wars in the war on terrorism will be just because the United States will use war only when other means fail. However, if the past is an indicator of the future, the United States will continue to use preventative war when means short of war are available. The United States had just cause for the war in Afghanistan because the Taliban refused to end their support of al Qaeda, who verbally threatened and showed they were capable of attacking the United States. War was the only option because the Taliban refused to cooperate with the United States and continued to harbor and protect unjust aggressors. The war in Iraq was not a just preventative war because the United States could have chosen an alternative to war that possessed less civilian risk. Renewing and enforcing the United Nations inspections of Iraqi facilities was an available alternative that may have prevented or stopped Hussein from developing weapons of mass destruction, and thereby prevented his support of terrorism. By defining terrorism as a specific strategy and using the resources of JWT, we will be able to evaluate future potential terrorism in a manner that will provide legitimate grounds for dissent and approval of future military engagements in the war on terrorism.

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