

UNJUST WAR

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I The Traditional Theory of the Just War

The traditional theory of the just war comprises two sets of principles, one governing the resort to war (*jus ad bellum*) and the other governing the conduct of war (*jus in bello*). One of the central pillars of the traditional theory is that the two set of principles are, in Michael Walzer's words, "logically independent. It is perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules."¹ Let us say that those who fight in a just war are *just combatants*, while those who fight in a war that is unjust because it lacks a just cause (that is, an aim capable of justifying the resort to war) are *unjust combatants*.² Walzer's claim that an unjust war can be fought in accordance with the rules of *jus in bello* presupposes that those rules do not discriminate between just and unjust combatants but apply equally to both. So his claim echoes that of Henry Sidgwick, who urged that "in formulating the rules which civilised opinion should attempt to impose on combatants, we must abstract from all consideration of the justice of the war."³

If, however, the rules of *jus in bello* abstract from the justice of the war, it seems that we must grant that unjust combatants do not do wrong merely by participating in an unjust war. For it would make little sense to claim that all belligerent acts by unjust combatants are wrong, because the war to which they contribute is unjust, but to commend the unjust combatants for doing these wrong acts in the right way, in accordance with the rules. It is possible, as I will explain later in section IV, for there to be rules that constrain wrongful action. But this is not how the rules of *jus in bello* are traditionally conceived, even in their application to unjust combatants. While obedience to these rules may not always be sufficient for action in war to be permissible, there is a presumption that, in merely participating in war, even unjust combatants do not act wrongly unless they violate the rules of *jus in bello*. So the moral position of unjust combatants is, according to the traditional theory, indistinguishable from that of just combatants – a condition that Walzer refers to as "the moral equality of soldiers."⁴ Provided they fight within the constraints of *jus in bello*, both just and unjust combatants have "an equal right to kill."⁵

They do not, of course, have a right to kill just anyone. According to the traditional theory, combatants are permitted to kill only opposing combatants. This is, indeed, the traditional understanding of the central requirement of *jus in bello*: the requirement of discrimination. All combatants, just and unjust alike, must discriminate between combatants and noncombatants, intentionally attacking only the former and not the latter.

This understanding of the requirement of discrimination is so deeply entrenched that what many of us understand as "terrorism" is simply any act that violates the requirement, so understood, as a means of achieving aims of a broadly political nature. That is, we typically reserve the pejorative term "terrorism" for acts of violence intentionally directed against noncombatants as a means of achieving political goals.⁶

In this paper I will challenge the three foundational tenets of the traditional theory I have noted: that the principles of *jus in bello* are independent of those of *jus ad bellum*, that unjust combatants do not act impermissibly provided they respect the principles of *jus in bello*, and that the relevant distinction for the requirement of discrimination is

between combatants and noncombatants, so that it is terrorism to attack noncombatants as a means of achieving victory in war. I will begin by examining certain arguments that have been offered in support of these tenets. I will then explain why, even on the basis of assumptions internal to just war theory, these tenets cannot be correct. I will then sketch the main elements of a revisionist understanding of the just war that I believe is more consistent and more plausible, as well as better grounded, than the traditional understanding.

II The Presumed Permissibility of Defensive Force

The tenets of the traditional theory that I have cited are logically interrelated and appear to be grounded in a more general, fundamental principle. This principle emerges when we consider why the traditional theory is often articulated in a way that invokes the notion of innocence. The requirement of discrimination, for example, is often referred to as the principle of the immunity of the innocent. The idea is that everyone initially enjoys the same protected status: for example, each has rights against being attacked or killed. “Innocent” is the term applied to those who have done nothing to lose or compromise that protected status. In the context of war, therefore, the innocent are those who may not be intentionally attacked. The notion of innocence, however, does not merely mean “the status of being morally immune to intentional attack.” It also has substantive content. It indicates what is required in order to retain one’s immunity to attack and, by implication, what is sufficient for the loss of immunity. In the traditional theory, as Thomas Nagel puts it, “‘innocent’ means ‘currently harmless,’ and it is opposed not to ‘guilty’ but to ‘doing harm.’”⁷ The etymological basis for this use of the term is that “innocent” derives from the Latin word *nocentes*, which means “one who injures or is harmful.” To be *innocent* is to be *not nocentes*. Those who retain their immunity to attack are therefore those who are not themselves threatening anyone. In the context of war, the innocent are those who do not contribute to the prosecution of the war – that is, noncombatants. Those who pose a threat to others – combatants – are noninnocent; they lose their immunity and become liable to attack.

It seems, therefore, that the requirement of discrimination, as traditionally understood, is a corollary of a common belief in the permissibility of *defensive* force. We are permitted to attack those who threaten us but not those who do not. (Walzer explicitly appeals to the analogy between war and “domestic society, where a man fighting in self-defense ... is barred from attacking or injuring innocent bystanders or third parties. He can attack only his attackers.”⁸) Indeed, all three central tenets of the traditional theory that I cited seem to follow from a general principle of the permissibility of defensive force. Because just combatants threaten unjust combatants, they are noninnocent and lose their “right not to be attacked.” For “that right,” according to Walzer, “is lost by those who bear arms ‘effectively’ because they pose a danger to other people.”⁹ It does not matter that they have done no wrong: “Simply by fighting,” just combatants lose “their title to life and liberty, ...even though, unlike aggressor states, they have committed no crime.”¹⁰ And this is why unjust combatants do no wrong in attacking them. But just combatants are also permitted, for the same reason, to attack the unjust combatants who threaten them. The situations of just and unjust combatants are the same; hence “the moral equality of soldiers.” The fact that just combatants fight in a just war while unjust combatants do not is irrelevant to their respective justifications for fighting; hence the independence of *jus in bello* from *jus ad bellum*.

This also helps to explain why acts that violate the requirement of discrimination are particularly repugnant, so that we condemn them as terrorism when they are done for strategic, political reasons. For deliberate attacks on noncombatants cannot, in the nature of the case, be defensive; rather, they use the harming of those who pose no threat as a means of coercing others.

This account of the moral foundations of traditional just war theory is, however, vulnerable to two objections. The first is that the appeal to the permissibility of defensive force cannot in fact support one critical element of the traditional theory – namely, the claim that unjust combatants do not do wrong merely by fighting in an unjust war. For there is often one phase in an unjust war – the initial phase – in which the action of unjust combatants cannot be construed as defensive even in the broadest sense.¹¹

Suppose that one country's forces initiate an unjust war by launching a surprise attack against the unmobilized forces of another country. Do the combatants who participate in this surprise attack act wrongly, or impermissibly? Traditional just war theory claims that they do not, provided that their attack is directed only against their adversary's military. But if they do not do wrong, that can only be because their attack is directed against *combatants*. Certainly there can be no justification for what they do other than the traditional theory's claim that combatants are always legitimate targets.

But this understanding of the case is incompatible with the foundational assumption that only defensive force is justified. Recall that the reason why combatants are held to be legitimate targets is that, by posing a threat to others, they have lost their right not to be attacked. But the members of a standing military organization that is based in its home territory, is configured for defensive operations only, is not mobilized, and has no plans for war do not constitute a threat to those who conduct a surprise attack against them. Because they are neither doing nor threatening harm, they are innocent in the relevant sense. To claim that these military personnel are combatants is therefore to sever the connection between combatant status and the traditional theory's grounds for moral liability to force. One can call them combatants but only at the cost of losing the traditional theory's grounds for claiming that all combatants may permissibly be attacked.

The alternative to treating unmobilized military personnel as combatants is of course to accept that they are noncombatants, albeit "military noncombatants," and therefore innocent in the relevant sense.¹² On this view, they retain their immunity to intentional attack so that those who initiate an unjust war by conducting a surprise attack against them must be guilty of wrongdoing. These unjust combatants are guilty of violating the *jus in bello* requirement of discrimination.

Perhaps many just war theorists would be willing to accept this understanding of the morality of initial aggression, despite the fact that it conflicts with the traditional assumption that even unjust combatants do not do wrong by participating in war provided they confine their attacks to *military* targets. But consider more carefully what it means to concede that participation in an initial surprise attack is wrong, or criminal. It means that aggressors do wrong if they attack another country's military personnel *before* the latter have mobilized but that they, or other unjust combatants who enter the war later, do not do wrong if they attack those same people *after* they have begun to mobilize in self-defense. There may even be an implication that it is permissible to participate in unjust aggression against military personnel *if* the victims are given warning that enables them to mobilize, so that they can then be regarded as posing a threat, but not if no warning is

given. If so, this would lend some credibility to the charge made by some of its critics that the theory of the just war is nothing more than a quaint chivalric code.

There is, moreover, a problem of internal consistency that arises if the just war theory treats unmobilized military personnel as noncombatants *and* if there can be a justification for attacking unmobilized military personnel that is compatible with their having noncombatant status – that is, if just war theory can recognize moral reasons for attacking people with noncombatant status, reasons that override the presumption of immunity afforded by noncombatant status. Here is a possible example. Imagine a country that has two distinct “security” services: a domestic police force and a standing army. The government of this country has no aggressive ambitions against other countries, so its military forces are configured for defensive operations only. But its police force is engaged in a genocidal campaign against a domestic minority. Suppose the violence against this minority is sufficiently serious to justify humanitarian intervention. It seems that it could be justifiable to launch a surprise attack against the military forces of this country if, of all the options available, that would promise both the highest probability of success and the least amount of harm to all concerned, precisely because these forces are the ones who, if not immediately overcome, will fight to defend the government.¹³

If that is right, combatants can participate in a surprise attack against “military noncombatants” without doing wrong provided they have a just cause – in this case humanitarian rescue. But, as I noted earlier, they will do wrong by participating in a surprise attack against military noncombatants if the attack is an instance of unjust aggression. So whether it is morally permissible to participate in an initial surprise attack depends on whether the war that the attack initiates has a just cause. And this is inconsistent with the traditional theory’s insistence that *jus in bello* is independent of *jus ad bellum*.

It might be objected to this argument that the unmobilized military in this case are legitimate targets because they in fact have combatant status. They count as combatants because they are prepared to use force to shield their government’s unjust activities.¹⁴ They are, one might say, *conditional* combatants and to attack them would count as preventive defense. But if the fact that they *would* fight to shield their government is sufficient to make them count as threats to others, then *anyone*, military or nonmilitary, who is prepared to defend his or her government or country against attack must count as a threat to others and therefore as a combatant. For, as the just war tradition is at pains to stress, whether someone poses a threat, and thus has combatant status, is independent of the justice of his aims.

III Justification and Excuse

This brings us to the second objection to the attempt to ground the tenets of just war theory in a principle of the permissibility of defensive force. This is that it is simply false that all defensive force is permissible. Consider an analogue at the individual level of the initial surprise attack. Suppose a villain attacks you, entirely without justification or excuse, but that the initial attack fails to overcome you. Rightly believing that he will continue to press the attack, you begin to attack him in self-defense. If defensive force is permissible, the fact that you now pose a threat to your attacker makes it justified, or permissible, for him now to attack you. Thomas Hobbes accepted this conclusion, at least in cases in which your defensive counterattack threatens your attacker’s life, but he was one of the last people to accept it. Most of us find it impossible to believe that, by

unjustifiably attacking you and thereby making it justifiable for you to engage in self-defense, your attacker can create the conditions in which it becomes permissible for him to attack you. Most of us believe that, in these circumstances, your attacker has no right not to be attacked by you, that your attack would not wrong him in any way, and that he therefore has no right of self-defense against your justified, defensive attack.¹⁵ But if your attacker has no right of self-defense, then not all defensive force is permissible.

Walzer, the most influential contemporary exponent of the central tenets of the traditional just war theory, recognizes this. He implicitly rejects my suggestion that these tenets derive from a general principle of the permissibility of defensive force. And he supplies his own counterexample to such a principle: “In the course of a bank robbery, a thief shoots a guard reaching for his gun. The thief is guilty of murder, even if he claims that he acted in self-defense. Since he had no right to rob the bank, he also had no right to defend himself against the bank’s defenders.”¹⁶ In general, Walzer believes, there is no right to self-defense in the course of criminal activity. And he concedes that “aggression is ... a criminal activity.”¹⁷ It seems, therefore, that he ought to abandon the claim that unjust combatants may permissibly attack just combatants because the latter pose a threat to them. For unjust combatants are engaged in aggression, which he accepts is a criminal activity, and should therefore have no right of self-defense during the course of their aggression.

But Walzer argues that participation in unjust, aggressive war differs in a morally significant way from participation in domestic criminal activities. In the domestic context, “the idea of necessity doesn’t apply to criminal activity: it was not necessary to rob the bank in the first place.”¹⁸ But the idea of necessity *does*, he argues, apply to war, and this makes a difference to the morality of participation in a war that is unjust. “Personal choice,” he contends, “effectively disappears as soon as fighting becomes a legal obligation and a patriotic duty. ... For the state decrees that an army of a certain size be raised, and it sets out to find the necessary men, using all the techniques of coercion and persuasion at its disposal.”¹⁹ Because those who become combatants are subject to a variety of forces that compel their will – manipulation, deception, coercion, uncertainty about the conditions of justice in the resort to war, their own sense of the moral authority of the government that commands them to fight, and so on – they cannot be held responsible for participation in war, even if it is unjust. As Walzer puts it, “their war is not their crime;” for “the war itself, ... soldiers are not responsible.”²⁰

Walzer advances these claims in support of the idea that unjust combatants do no wrong merely by participating in an unjust war. He accepts that aggression is a criminal activity but nevertheless repeatedly asserts that those who participate in it without having freely chosen it are not themselves criminals and therefore retain their right of defense against those who threaten them. In war, therefore, all combatants are permitted to use force against those who threaten them.

I believe that Walzer exaggerates the coercive pressures and the constraints on knowledge that typically apply to those whose government orders them to fight.²¹ Some have argued, moreover, that even if he were right that a soldier’s will is effectively compelled, his argument would still fail because a plea of duress is never fully exculpating in cases of wrongful killing.²² It seems obvious, however, that broad generalizations about the autonomy of unjust combatants are bound to fail. Some unjust combatants may well have had no choice but to fight. Others may have been subjected to

great pressures but still have had some capacity for free choice. And still others may have freely chosen, for discreditable reasons, to fight in a war they knew was unjust.

But all this is in fact beside the point. For the various considerations that Walzer cites are at best *excuses*. They may show that a particular unjust combatant is not a criminal and is not to be blamed or punished for what he does, but they do not show that he acts permissibly. But if unjust combatants are at best merely excused for fighting, while just combatants are justified, two of the central tenets of traditional just war theory must be rejected. It is false that unjust combatants are morally permitted to fight provided they respect the rules of engagement. They do not have a right to kill. And it is also false, a fortiori, that the principles of *jus in bello* are independent of those of *jus ad bellum*.

There is, perhaps, one way that some of the considerations to which Walzer appeals might support the claim that unjust combatants are morally permitted to fight. We might adopt a subjectivist conception of justification according to which, if one has certain beliefs that it is reasonable to have in the circumstances, and if one's action would be justified if those beliefs were true, then one's action is also permissible even if the beliefs are in fact false. On such a view, the *coercive pressures* Walzer cites would provide only an excuse, and probably only a partial excuse, for participation in an unjust war. But if the *epistemic condition* of an unjust combatant is such that it is reasonable for him to believe that his war is just – if, for example, it is impossible for him to have knowledge of the facts that make his country's war unjust – this would mean that he is *justified* in fighting rather than merely excused.

This subjectivist conception of justification is highly controversial. But I will not argue against it here; for even if it is true, it shows only that *some* unjust combatants are justified in fighting – namely, those whose beliefs about the justice of their war are *reasonable* in the context, that is, those who are unable to know, or cannot reasonably be expected to know, that their war is unjust. But these, it seems, constitute only a small minority among unjust combatants. For most unjust combatants, it is not impossible to recognize or discover the relevant facts and to reason morally on the basis of those facts to the conclusion that their country's war is unjust. In most cases, of course, they are actively deceived and are discouraged from inquiring about the facts or engaging in critical moral reflection; and they will find reassurance in the complacency of most of their fellow soldiers. But these considerations are insufficient to make their false beliefs reasonable. Whether their beliefs are reasonable in the circumstances depends in part on whether they have done what they could reasonably be required to do in order to ensure that their beliefs are justified; and that in turn depends on how important it is morally that their beliefs should be justified. In the case of combatants, it is obviously extremely important that their beliefs should be justified because of the seriousness of what they are being asked to do: namely, to kill people of whom they have little or no personal knowledge. And it should also be obvious that the risk that their cause is unjust is high. For, because wars are rarely if ever just on both sides but are sometimes unjust on both, it seems likely that most combatants in the history of war have fought in the service of an unjust cause. It seems, therefore, that all combatants bear a heavy burden of responsibility for determining whether their country's war is just. Most unjust combatants fail in this responsibility for, as Sidgwick and Walzer observe, they typically believe themselves to be in the right. But while the fact that this negligence is ubiquitous and widely tolerated may suggest that most unjust combatants are not culpable in falsely

believing their war is just, it does not make their beliefs reasonable or justified if a more conscientious person could, in their circumstances, find his or her way to the truth.

It is perhaps worth adding that if the subjectivist conception of justification were correct, it might show not only that some unjust combatants would be justified in fighting against opposing combatants but also that some combatants, just and unjust alike, would be justified in violating the principles of *jus in bello* if they reasonably believed that their action was in conformity with the relevant requirements.²³ In other words, the same considerations that would permit unjust combatants to fight at all might also permit them to fight in ways that would violate the principles of *jus in bello*. And this conflicts with Walzer's insistence, on behalf of the traditional theory, that all combatants are responsible for obeying the requirements of *jus in bello* in a way that they are not responsible for fighting only in wars that meet the requirements of *jus ad bellum*.

IV War as a Rule-Governed Activity

One can find in Walzer's text one further defense of the central tenets of the traditional theory. It is never separately developed as a distinct argument but is nevertheless suggested by recurrent references to war as a "rule-governed activity." For example, when Walzer considers the idea that an unjust combatant is like a thief who engages in self-defense while committing a robbery, he finds a difference other than that war is subject to "the idea of necessity." "The crucial point," he claims, "is that there are rules of war, though there are no rules of robbery (or of rape or murder)."²⁴ Even "aggressive war is a rule-governed activity."²⁵ Presumably the idea is that because rules distinguish between the permissible and the impermissible, it must be permissible to participate in a rule-governed activity provided that one obeys the rules. For there cannot be permissible ways of doing the impermissible. Therefore if even aggressive war is rule-governed, mere participation in it cannot be impermissible.

This argument also fails. For the rules of *jus in bello* need not, and in fact do not, state jointly necessary and collectively sufficient conditions of permissibility. Thus they could, in their application to unjust combatants, impose genuine moral constraints on an admittedly impermissible activity. They could indicate ways in which the basic wrong of participation in an unjust war could be aggravated or compounded by being done in a way that would involve additional offenses. An example outside the context of war of a principle that constrains a wrongful activity might be that, in robbing a house, one must not kill the inhabitants to avoid being identified by them, or burn the house as a means of erasing one's fingerprints. Similarly, the requirement of discrimination might say to unjust combatants: "Although you may believe your cause is just, it is not and you are doing wrong to fight at all. But at least do not add to the offense by killing noncombatants as well." This is one way in which participation in an unjust war could be impermissible and still be a rule-governed activity.

There is, moreover, an altogether different way of understanding the rules of *jus in bello*. They might not be rules that hold independently of their utility, but might instead be mere conventions that, when observed by both sides, serve everyone's interest in limiting or containing the inevitable ferocity of war.²⁶ This understanding is consistent with Sidgwick's description of the rules of *jus in bello* as the code that "civilised opinion should attempt to impose on combatants." But, if the rules of *jus in bello* are mere conventions, then the fact that they govern even the practice of aggressive or unjust war would not show that participation in an unjust war is morally permissible. General recognition that they apply to all combatants could moderate the effects of the action of

unjust combatants even if that action is morally wrong. It is true, as Walzer observes, that we do not have rules for robbery. But that is because they would probably have the effect of promoting theft by making it seem more acceptable and also because it would be difficult to persuade thieves that it would be in their interests to obey them. But if problems such as these could be surmounted, it would certainly be desirable to have conventions for robbery as well as for war.

Of course, if the rules of war are conventions that are agreed upon for reasons of self-interest *and there is no morality of war independent of the conventions*, then participation in an unjust war would not be wrong. But this cannot be what Walzer has in mind, for on this view, participation in an unjust war would be neither impermissible *nor permissible*, for war would be an amoral activity. Walzer, by contrast, sees the prohibitions and permissions of *jus in bello* as grounded in people's possession or forfeiture of genuine moral rights.

It is puzzling, therefore, that Walzer refers to the rules of war as "the war convention" and at one point defends their neutrality between just and unjust combatants by noting that "without the equal right to kill, war as a rule-governed activity would disappear and be replaced by crime and punishment, by evil conspiracies and military law enforcement."²⁷ Why, we might ask, would this replacement be undesirable? It cannot be simply that unjust combatants, or at any rate most unjust combatants, are not criminals. For we can recognize that criminal action does not entail criminality and yet accept that law enforcement is necessary to stop criminal action even by those who are not criminals because their action is excused. The best reason that it may be undesirable to conceive of war as crime and punishment is, as the political realists recognized, that if the participants conceive it this way, as a moral crusade against criminals, it will be conducted with fewer inhibitions on both sides than it would be if it were viewed, as Walzer thinks it should be, as a rule-governed activity whose participants on both sides are fellow victims, more sinned against than sinning.

Yet these two conceptions of war – as crime and military defense and as an activity governed by rules that apply equally to both sides – are not mutually exclusive. What I will suggest, in section VIII, is that at least some of the rules of *jus in bello* as traditionally understood do indeed apply to both sides but are only conventions that it is important to observe because of their role in mitigating the savagery of war. But there is also a deeper morality of war that is not convention-dependent. According to this view, war is rule-governed to an even greater extent than Walzer believes, for it is governed by two different and independent sets of principles. This, however, is problematic for reasons that I will briefly discuss at the end of the paper.

So far, then, we have failed to find a foundation for the central tenets of traditional just war theory. They cannot plausibly be grounded in a general principle of the permissibility of defensive force; nor is Walzer successful in his attempt to restrict the scope of such a principle to the conditions of war. It is, of course, obvious that merely to show that the central tenets cannot rest on these foundations is not to show that they have no foundation at all. Yet in the following section I will try to show that they *cannot* have a coherent foundation and therefore must be false.

V Why *Jus in Bello* Cannot be Independent of *Jus Ad Bellum*

As traditionally understood, the doctrine of *jus in bello* comprises four requirements: necessity, minimal force, proportionality, and discrimination. I will argue that it is virtually impossible to fight in a war that lacks a just cause without violating one

or more of these rules. It is, in other words, virtually impossible to participate in an unjust war without wrongdoing; hence the rules of *jus in bello* cannot be independent of those of *jus ad bellum*.

There is an obvious sense in which even an unjust combatant can satisfy the requirements of necessity and minimal force, which hold (roughly) that for an act of war to be justified, there must be no nonviolent means nor any less harmful means of achieving the same goal. Sometimes, however, these requirements are stated as constraints on the pursuit of *legitimate* aims, which would seem to imply that they do not apply to, and hence cannot be satisfied by, acts of war by unjust combatants, whose aims are not legitimate according to the *jus ad bellum* requirement of just cause. But I will not pursue this line of argument, which is unnecessary for my case against the traditional theory. For the traditional theory treats the satisfaction of *each* of the four requirements as necessary for the permissibility of an act of war. I will argue that in war as it is actually fought, almost no acts of war by unjust combatants against just combatants can satisfy the *jus in bello* requirement of proportionality; therefore almost no act of war by an unjust combatant can be permissible. Since this is not true of acts of war by just combatants against unjust combatants, it follows that *jus in bello* cannot be logically independent of *jus ad bellum*.

To present this argument, I must first elucidate the central requirement of *jus ad bellum*: just cause. This is not simply the demand that war be expected to achieve a good end; it is, rather, a constraint on the *type* of end that may be pursued by means of war. Just cause is an extension into the realm of collective action of the insistence at the individual level that one may not seriously harm or kill another person except for certain highly specific reasons, such as to defend oneself or another against an unjust threat of extreme gravity. Just as one may not kill a person as a means of promoting certain goods, no matter how great those goods would be, so there are many goods – for example, economic growth – that may not be pursued by means of war, no matter how effective war would be in promoting them.²⁸ I will not here attempt to identify the ends that may constitute a just cause for war; it is sufficient for present purposes to understand the formal nature of the requirement.

Consider now the *jus in bello* requirement of proportionality. It has been variously formulated by different writers in the tradition but we may take as representative the statement by Paul Ramsey, the most influential Protestant just war theorist of the second half of the twentieth century. According to Ramsey, the requirement of proportionality is “that there be a reasonable proportion between the injury caused by any use of force and the good effected or the graver evil prevented.”²⁹ In other words, the harms or evils that would be caused by an act of war have to be weighed against and judged proportionate to the goods that would be achieved.

But recall that the requirement of just cause restricts the kind of good that may be effected, or the kind of evil that may be prevented, by means of war. It distinguishes between goods that may permissibly be pursued by means of war and those that may not. And only those goods that may permissibly be pursued by means of war can contribute to the justification for war. For it makes no sense to suppose that part of the justification for going to war could be that war would achieve certain goods that must not be pursued by means of war. But if these goods cannot contribute to the justification for *war*, they also cannot contribute to the justification for any *act* of war. For, again, it makes no sense to suppose that goods that cannot contribute to the justification for the war as a whole

nevertheless *can* contribute to the justification for the individual *acts* that are together *constitutive* of the war. It seems to follow, therefore, that any good effects of an act of war that are neither part of the just cause nor appropriately related to the just cause cannot weigh against the bad effects of the act in the proportionality calculation; for satisfaction of the proportionality requirement is a necessary part of the justification for any act of war.

Note that I do not claim that the only goods that may permissibly be pursued by means of war, and therefore may count in the proportionality calculation, are those that are explicitly specified by the just cause. It can be permissible to pursue certain other goods provided that they are related in appropriate ways to the just cause: for example, goods that are instrumental to the achievement of the just cause, goods that consist in the avoidance of harms to which one is exposed in the pursuit of the just cause, and so on.

What this reasoning seems to show is that only those good effects of an act of war that are either part of the just cause or are appropriately related to it can count in the proportionality calculation. In the absence of a just cause, therefore, there seem to be no goods that an act of war might produce that can weigh against the harms it might cause. Since it is in the nature of acts of war to cause harm, it seems to follow that no act of war can satisfy the *jus in bello* proportionality requirement in the absence of a just cause. Hence no act of war by an unjust combatant can be permissible. This conclusion seems to be an implication of the traditional just war theory's own requirement of just cause.

If this is right, it raises an obvious question. What have just war theorists been assuming when they have claimed that belligerent acts by unjust combatants can satisfy the proportionality requirement? What goods have they thought might weigh against the harms caused?

Sidgwick gives a neutral statement of the requirement of proportionality, one that is intended to apply to just and unjust combatants alike. He states that the "moral combatant" will seek as his end "to disable his opponent, and force him into submission," but that he must not "do him ... any mischief of which the conduciveness to the end is slight in comparison with the amount of the mischief."³⁰ Walzer reasonably interprets this passage as claiming that the "mischief" caused by an act of war must be weighed against the act's contribution to "the end of victory."³¹ And this is the orthodox view: the harm caused must be weighed against the "military value" of the act, which is measured by its contribution to the defeat of the enemy.

But one cannot weigh the bad effects one would cause against the contribution one's act would make to the end of victory without having some sense of what the good effects of victory would be. And if one's cause is unjust, the effects of victory would presumably not be good but bad. How, for example, could a Nazi soldier weigh the harms he would cause to enemy combatants against the end of victory by the Nazis, given that victory by the Nazis would involve great evils for vast numbers of people and benefits, most of which would be unjust, for only a few? Do unjust benefits – for example, the spoils of aggression and conquest – count at all?

It seems implausible to suppose that the good that an unjust combatant is entitled to weigh against the harms he causes is the contribution his act makes to the triumph of an unjust cause. But perhaps the assumption that just war theorists have been making is that, because unjust combatants typically believe that their cause is just, all that the requirement of proportionality can demand is that combatants weigh the good they *believe* their acts will achieve against the bad effects that they believe those acts will

cause.³² This is, in effect, to reintroduce the subjective conception of justification in the case of the proportionality requirement. And again the appropriate response is that *at best* this form of justification could succeed *only* in cases in which an unjust combatant's beliefs about the good effects of his acts were reasonable. And this will often – indeed usually, in my view – be untrue. This form of justification, moreover, has no application to those unjust combatants who recognize, or even seriously suspect, that their cause is unjust but nevertheless continue to fight (perhaps in part because the just war tradition assures them that they do no wrong in doing so). In short, while it is hard to see how false or illusory beliefs could be relevant to moral justification in any case, they are certainly irrelevant when they are unreasonable or are not in fact held at all.

Another possibility is that, given the inevitable uncertainties about just cause, it is important to encourage all combatants to exercise restraint by keeping their action proportionate to what they may believe will be its good effects. This is indeed plausible but, so understood, the requirement of proportionality is not a genuine moral requirement but merely a device that serves the moral purpose of limiting the violence of those who ought not to be engaged in warfare at all.

Perhaps the good served by an unjust combatant's acts of war is simply his own self-preservation. That, at any rate, seems unambiguously good, at least for the unjust combatant himself. But even this rather minimalist suggestion is vulnerable to objections. First, an unjust combatant is entitled to weigh the good of his own preservation against the harms he might cause only if this good is one that it is permissible for him to pursue in the circumstances. But the right of self-defense is constrained by a requirement of necessity: for example, it is permissible to kill in self-defense only if that is necessary to save one's own life. Yet for most unjust combatants it is not necessary, for they have an alternative means of avoiding being killed: surrender. Of course, if their war were just, they probably would not be required to avail themselves of this option, for it would be likely to involve losses that that it would be proportionate for them to seek to avoid by belligerent means. But given that their cause is unjust, there is less of value to be lost through surrender.

Still, it may be necessary for an unjust combatant to fight, if not to preserve his life, at least to avoid capture and imprisonment. So the suggestion might be that belligerent acts by unjust combatants could satisfy the proportionality requirement if the good of their avoiding capture would not be out of proportion to the bad effects their defensive action would cause.

There are four points that can be made in response to this suggestion. First, the range of violent acts that might be proportionate by this standard is very narrow. The threat of temporary imprisonment by just combatants is, for example, very unlikely to be sufficiently serious to make killing a proportionate means of resistance, particularly when the alternative is a continued risk of being killed by remaining a combatant.

Second, and more important, if individual acts of self-defense against the threat of capture are the only acts of violence by unjust combatants that can satisfy the proportionality requirement, it seems that permissible acts of violence by unjust combatants cannot together, or in combination, constitute aggressive or unjust war. While a series of individual acts of pure self-defense might in combination count as war, it would in the nature of the case be a just rather than unjust war. Even if there can be just wars of aggression, an unjust war of defense would involve resistance to the aggressor's just cause and not just the defense of individual lives and liberty.

Third, and perhaps less important, to concede that the only good that can contribute to the justification of acts of violence by unjust combatants is the avoidance of the costs of surrender is already to abandon one of the central tenets of the traditional theory – namely, the independence of *jus in bello* from *jus ad bellum*. For on this view, the range of good effects that count in the proportionality calculation is vastly greater in the case of a just combatant than in the case of an unjust combatant. Thus whether a combatant's action serves a just cause usually makes a difference to whether the action can be proportionate.

Still, none of the three preceding points is quite sufficient to prove that *no* act of war by an unjust combatant can satisfy the requirement of proportionality. Thus I turn to my fourth and most controversial claim, which is that preservation of their own liberty is also a good that unjust combatants are not permitted to pursue in the context of unjust war; hence it cannot weigh in the proportionality calculation against the bad effects their belligerent acts would cause. The argument for this claim appeals to the fundamental principle underlying the requirement of discrimination. This is that people retain their right not to be attacked or killed – that is, they retain their innocence in the technical sense noted earlier – unless they do something to lose or forfeit it. And just combatants, merely by taking up arms to defend themselves and other innocent victims against an unjust attack, do nothing to lose or forfeit their rights. They do nothing, in other words, to make themselves morally liable to attack. Unjust combatants, therefore, are not permitted to attack them, even in self-defense.³³

To see this, return to the case, discussed at the beginning of section III, of justified self-defense at the individual level. If someone unjustly attacks you and you engage in necessary, minimal, and proportionate self-defense, your attacker has no right of self-defense against your defensive attack. If he attacks you in self-defense, he compounds his initial crime. For by engaging in self-defense, you do nothing to lose your rights or to forfeit your status as innocent. As we have seen, Walzer acknowledges this (as, presumably, most other just war theorists do) but claims that the conditions of war are relevantly different. I have denied this. That many unjust combatants have good excuses for their participation in an unjust war and that their conduct is subject to rules are irrelevant to whether the victims of their attack retain their right not to be attacked, even in self-defense. There is, in short, nothing about the state of war that makes the resort to justified individual self- or other-defense any different morally from self- or other-defense in domestic society. Indeed, justified warfare just *is* the collective exercise of individual rights of self- and other-defense in a coordinated manner against a common threat.³⁴

It is perhaps worth mentioning one further point that supports the case against unjust combatants having a right of self-defense against just combatants. This is that self-defense by unjust combatants tends to advance the unjust aims of their war. It does so in two ways. First, because it is aimed at disabling or killing just combatants, it weakens the resistance to the success of unjust aims. And, second, at least in the case of those unjust combatants who fight not only in self-defense but also to advance their country's war aims, it preserves them as agents of injustice.

May we now conclude that unjust combatants are never permitted to engage in self-defense and therefore that the good that consists in their avoiding harm in this way cannot count in the proportionality calculation? If we may, then surely we may also draw the further conclusion that no act of war by an unjust combatant can satisfy the

proportionality requirement. I am afraid, however, that we are still not justified in drawing either conclusion. For I can think of three possible exceptions to the impermissibility of self-defensive violence by unjust combatants.

The first is in cases in which neither side in a war has a just cause. In these cases, all participants in the war would be unjust combatants. And it is not implausible to suppose that, if an unjust combatant on one side is fully excused for his participation (for example, because he is a deceived conscript) while his enemy is fully culpable (because he is a fully informed mercenary), it is permissible for the former to attack the latter in self-defense. I will not take a position on this issue here. But the possibility of justification in this case forces me to restrict my claim about the impermissibility of self-defense by unjust combatants to cases of self-defense against just combatants.

The second exception concerns cases of what might be called *private* acts of violence done in the context of war. Suppose, for example, that an unjust combatant discovers a just combatant preparing to rape a woman in an occupied village. It is clearly permissible for the unjust combatant to use violence, if necessary, to defend the woman and to defend him- or herself against a possible counterattack by the marauding just combatant. For in this case the just combatant has done something that makes him morally liable to attack. What he has done, however, is not an act of war but a private act of wrongdoing. The unjust combatant's response to it is also a private act rather than a contribution to the war effort. This kind of case forces me to restrict my claim to *acts of war* (which includes self-defense against another act of war) by unjust combatants against just combatants.

The restrictions necessitated by the two previous exceptions may not seem serious. But the third exception seems to force us to accept that there can be acts of war by unjust combatants against just combatants that can be proportionate and therefore permissible. Recall that in the case of individual self-defense, I claimed that a person who is responsible for conducting an unjustified attack has no right of self-defense against his victim's self-defensive action provided that this action is necessary, minimal, and proportionate. The last clause is crucial. Suppose that someone is culpably trying to give you a ferocious pinch. He has no right of self-defense if you attempt to push him away or even, if it proves necessary, to punch him in the nose. But he does have a right to defend himself if, in order to stop him, you attempt to kill him. For that is a wholly disproportionate response to the threat he posed. Similarly in war, unjust combatants may have a right to defend themselves against unnecessary, excessive, or disproportionate defensive force. Suppose, for example, that an army of a thousand soldiers crosses an international border to capture a small tract of largely uninhabited territory that by right is part of another state but is of religious significance to the invaders. If an advance patrol of the invading army discovers that the defending forces are preparing to annihilate the entire invading army with a tactical nuclear weapon, it seems reasonable to claim that it could be permissible for the patrol to use violence to prevent this disproportionate defensive response. This would be an act of war by unjust combatants against just combatants but the harms inflicted in the course of preventing the use of a nuclear weapon could, it seems, be proportionate to the good of preventing the wrongful (because disproportionate) killing of a thousand people. The just combatants would be liable to defensive force by virtue of their responsibility for an unjust threat. (This is certainly true, I believe, if the harms inflicted on the just combatants would be less serious than lethal harms. I can imagine, however, that some people would claim that, even in these circumstances, unjust combatants have no right to *kill* just combatants.

For the unjust combatants have no right to be where they are. They must therefore suffer even disproportionate harms rather than kill those who oppose them.)

Alternatively, suppose that unjust combatants were to discover that just combatants were preparing to try to coerce their unjust adversaries to surrender by launching a series of attacks against schools and hospitals. Again, it seems that it would be permissible for the unjust combatants to use violence – and in this case even lethal violence – to defend their innocent compatriots against these indiscriminate and therefore wrongful attacks by the just combatants. The good of saving the innocent lives could weigh in the proportionality calculation in this case.

These types of case – in which unjust combatants may be permitted to use defensive force to prevent wrongful acts of war by just combatants – force me to concede that there can in principle be acts of war by unjust combatants against just combatants that are proportionate and indeed permissible. Yet the practical significance of this concession is negligible. For the range of permissible acts of war by unjust combatants against just combatants is itself negligible. Unjust wars cannot consist entirely of such acts. So it is not possible to fight an unjust war in a just or permissible manner (or, as Walzer more ambiguously expresses it, “in strict accordance with the rules”). (Suppose that in the case just presented, the invading army were to withdraw immediately after its advance patrol had prevented the use of the nuclear weapon. Would this constitute an unjust war consisting entirely of a single, permissible use of force? I think not. A movement of troops that is aborted after a single act of justified self-defense hardly seems to count as a war, much less an unjust war.)

My claim, therefore, cannot be that acts of war by unjust combatants against just combatants can *never* be proportionate or, therefore, permissible. My claim must instead be qualified as follows.

Acts of war by unjust combatants against just combatants, especially those that advance the aims of an unjust war but also those that are merely self- or other-defensive, cannot satisfy the requirement of proportionality and therefore cannot be permissible, except in some instances of self- or other-defense against an act of war by just combatants that is itself wrongful because it is unnecessary, excessive, disproportionate, or indiscriminate.

While not the exceptionless claim for which an opponent of the traditional theory might have hoped, this is sufficient to refute the central tenets of the theory as practical propositions. For if this claim is correct, it shows that there are no realistic cases in which unjust combatants can fight in an unjust war without wrongdoing. And because it is their lack of a just cause that prevents their action in war from being able to satisfy the proportionality requirement, it is clear that *jus in bello* cannot be independent of *jus ad bellum*.

The discerning reader will have noticed that the concession that some acts of war by unjust combatants can satisfy the requirement of proportionality seems inconsistent with the *a priori* argument I presented at the beginning of this section. For that argument concluded that no act of war can be justified in the absence of a just cause. Does the concession show that the earlier argument was mistaken? I think not. It shows instead that our understanding of the requirement of just cause and that requirement’s implications for *jus in bello* have to be subtler and more carefully qualified than we may have suspected. War, even on one side, is not always morally unitary, either over time or at a single time. A war that begins as unjust because it lacks a just cause may become just if a just cause arises during the course of the war and displaces the original unjust

aim. And a war that is mainly dedicated to the pursuit of an unjust cause may nevertheless have component acts or campaigns that pursue aims that are just. While these aims must be of a *type* that could in principle justify the resort to war, they may not, in the circumstances, be sufficiently serious to justify the *initiation* of war; yet they may nevertheless be sufficient to justify certain acts of war given that war is already in progress.³⁵ Such an aim is in a clear sense a just cause even if it justifies only certain aspects of a war and not the war as a whole. This suggests, among other things, that the claim that there is no just cause for war is often a mistaken expression of the claim that, although there is a just cause, to pursue it by resort to war would violate the *jus ad bellum* requirement of proportionality.

It is sometimes the case that a war is predominantly unjust while containing individual acts or campaigns that pursue just aims, or predominantly just with individual acts or campaigns that pursue unjust aims. The idea that a war, as fought by one side, must be either wholly and uniformly just or uniformly unjust is procrustean. It would, for example, be absurd to say of a country simultaneously pursuing both just and unjust aims that it was really fighting two wars, one just and the other unjust. But if this is right, then there can be just aims or goals that may permissibly be pursued by acts of war, even within a war that is predominantly or overall unjust, or dedicated to the achievement of an unjust cause or a variety of unjust aims. The aim of preventing a country with a just cause from pursuing that cause by indiscriminate means is a prime example of a just cause within an unjust war. So when combatants who are otherwise unjust combatants engage in such action, they *do* have a just cause, though not one that justifies other aspects of their war or the war as a whole.³⁶ (This raises various questions that I cannot address here – for example, questions about the permissibility of acts of war that advance both just and unjust aims.)

VI The Requirement of Discrimination

The arguments I advanced in the previous section also challenge the third tenet of the traditional theory that I identified in section I: the requirement of discrimination. They do not, of course, challenge that requirement in its most generic formulation, which is simply that just combatants must confine their attacks to legitimate targets and not intentionally attack illegitimate targets. Rather, they challenge the traditional assumption that the distinction between legitimate and illegitimate targets coincides with that between combatants and noncombatants. For I have argued that it is *not* permissible for unjust combatants to attack just combatants, except to prevent just combatants from engaging in wrongdoing that makes them morally liable to attack. Even in war, merely posing a threat to others is not sufficient for the loss of one's right not to be attacked or killed. For unjust combatants, therefore, there are, with the few exceptions just noted, no legitimate targets of belligerent action. In general, just combatants and unjust combatants are alike impermissible targets for unjust combatants.

If the requirement of discrimination as it has traditionally been understood is mistaken, because mere combatant status is not sufficient to make a person a legitimate target in war, is there an alternative understanding of the principle that is defensible? Surely there must be, for even if in general there are no legitimate targets for unjust combatants, there must, unless pacifism is true, be legitimate targets for just combatants, but also restrictions on what counts as a legitimate target. The fact that a just combatant's action may serve a just cause does not mean that he or she may treat anyone as fair game.

One possibility is that even if the traditional requirement is unacceptable in its application to unjust combatants, it is nevertheless correct in its application to just combatants. It might be, in other words, that just combatants are permitted to attack unjust combatants but not to conduct intentional attacks against noncombatants.³⁷ This view has, moreover, an obvious foundation in a more general and seemingly compelling principle. This principle is a significantly qualified variant of the principle that we rejected earlier, which asserts the permissibility of defensive force. The qualified principle holds that, if other things are equal, it is permissible to use defensive force against anyone who poses an *unjust* threat. Because unjust combatants pose an unjust threat (except, perhaps, on those rare occasions when they are defending themselves or others against wrongful action by just combatants) but enemy noncombatants do not, it follows from the qualified general principle that enemy combatants are in general legitimate targets for just combatants but that enemy noncombatants are not.

This position has the clear advantage of being able to recognize the impermissibility of self-defense against what I have elsewhere called a Just Attacker – that is, a person who is justified in attacking another and whose victim lacks a right not to be attacked by him and is therefore not wronged by the attack.³⁸ Thus, whereas the more orthodox view of Walzer and most others in the just war tradition has to assert that the conditions of war fundamentally alter the morality of defensive force (because defensive force is always justified in war but not in domestic society), this alternative position holds that the same basic principle – the permissibility of defensive force against unjust threats – applies equally and without modification both in domestic society and in war. And although this alternative view is fundamentally antagonistic to the more orthodox view, because it offers no justification for most acts of war by unjust combatants against just combatants, it, or at least something very close to it, is not unfamiliar in the just war tradition.³⁹

I will, however, argue against this alternative understanding as well, despite its greater plausibility. I will argue that even in its application to just combatants, the requirement of discrimination cannot take the relevant distinction to be that between combatants and noncombatants.

Again, the basic idea behind the alternative understanding of the requirement of discrimination is that it is *posing an unjust threat* that makes a person morally liable to defensive force or, to put it another way, makes the person lack a right not to be attacked in self- or other-defense. I believe this is mistaken. I believe that it is possible to pose an unjust or unjustified threat without becoming liable to defensive force or losing one's right not to be attacked, even in self-defense. And I believe that it is possible to be morally liable to self- or other-preservative force without posing an unjust threat or indeed without posing a threat at all. Let me briefly suggest why I think these claims, which I have discussed at greater length elsewhere, are correct.⁴⁰

First, how could it be that one could pose an unjust threat to another without losing one's right not to be attacked – that is, without it becoming permissible for one's potential victim to attack in self-defense? I believe – though I admit that the implications of this claim are counterintuitive – that one does not lose one's right not to be attacked by posing an unjust threat to another *if one is in no way morally responsible for this fact*.

Consider an example drawn from science fiction:

The Implacable Pursuer A person is drugged and kidnapped while sleeping by a villain who then implants a device in her brain that *irresistibly* directs

her will to the task of killing you. As a result, she will implacably pursue your death until she kills you, at which time the device will automatically deactivate itself.

Let me stipulate – what I believe to be possible – that the original person will continue to exist throughout the period in which her will is controlled by the device. Indeed it even seems coherent to suppose that, while she pursues you, a part of her conscious mind could observe her own behavior with horror but be powerless to exert control over the movements of her body.

I claim that the Pursuer, who is what I call a *Non-Responsible Threat*, has done nothing to lose any rights or to make herself morally liable to attack. Although she is causally implicated in the threat to you, that is a wholly external fact about her position in the local causal architecture. It has no more moral significance than the fact that an innocent bystander might, through no fault of her own, occupy a position in the causal architecture that makes your killing her the only means by which you could save your own life. If you would not be permitted to kill the innocent bystander as a means of self-preservation, I think you are not permitted to kill the Non-Responsible Threat in self-defense. For a Non-Responsible Threat is morally indistinguishable from an innocent bystander.⁴¹

This claim is, of course, controversial. It is not, however, directly relevant to the requirement of discrimination or to the morality of war, since those who pose an unjust threat in war are almost invariably morally responsible agents. Nevertheless, the case of the Implacable Pursuer does suggest that moral responsibility is important to liability. If the Pursuer were in some measure responsible for the unjust threat she poses, that would establish an obviously relevant moral asymmetry between you and her and would indeed seem to constitute a sufficient basis for the permissibility of your killing her if that were necessary to defend your life.

We ought not to conclude, however, that it is a person's being responsible for posing an unjust threat that makes it permissible to use force against that person in order to eliminate the threat. For a person may be morally liable to having such force used against him simply by virtue of being morally responsible for the existence of an unjust threat, even if he does not himself *pose* the threat. Consider again the case of the Implacable Pursuer. Suppose that the person who programmed and implanted the mind-control device – call him the *Initiator* – has suffered an accident and is now bedridden and temporarily dependent on a battery-powered respirator for his survival. You go to plead with him only to discover that he is unable to do anything to stop the Pursuer.⁴² At that point, you see the approach of the Pursuer, who has followed you to the Initiator's house. You have only two options for saving yourself. One is to shoot the Pursuer as she approaches. The other is to flee in the Initiator's car. This car, however, is battery-powered and the only available battery is the one that is supplying power to the respirator. In order to flee the Pursuer, you must remove the power supply from the Initiator's respirator, thereby killing him.

What ought you to do: allow yourself to be killed, kill the person who poses an unjust threat to you but who is not responsible for doing so, or kill the person who now poses no threat to you but *is* morally responsible for the threat you face? Intuitively it is clear that, while it would perhaps be permissible for you to allow yourself to be killed, you *ought* to kill the Initiator *rather than* kill the Pursuer. Because the Initiator is the one who is morally responsible for the fact that someone must die, he should, as a matter of

justice, bear the costs of his own voluntary and culpable action. It would be unjust if either you or the Pursuer had to pay the costs of his wrongful action. (We can assume that, if you evade the Pursuer on this occasion, she can be subdued by the police and the device can then be removed from her brain.)

In summary, what the case of the Implacable Pursuer suggests is that *posing* an unjust threat is neither necessary nor sufficient for moral liability to force or violence that is necessary to eliminate the threat. Rather, what makes a person morally liable to force or violence that is necessary to eliminate an unjust threat is *moral responsibility* for initiating or sustaining the threat (or perhaps, in some cases, for failing to eliminate the threat).

This is the core of what I believe to be the most plausible account of the foundations of the rights of self- and other-defense and self- and other-preservation. (Because the Initiator does not himself pose a threat to you, your killing him cannot literally be an act of self-*defense*. It is instead an act of self-preservation.) There are, however, ways in which this core might be extended. It is possible, for example, that it can be permissible to attack someone who *unsuccessfully attempts* to create an unjust threat *if* the same threat, or a similar threat, then arises independently of this person's action *and* the threat can be averted only by attacking him.⁴³ Or perhaps, in order to avert an unjust threat, it can be permissible to attack someone who is not responsible for the threat but who *would* have created the threat, or would now create a similar threat, if he could.⁴⁴ There is in fact a spectrum of possible bases for liability ranging from the possibilities just noted to responsibility for a different unjust threat of the *same type* in the past or present, responsibility for a different *type* of threat in the past or present, being willing or disposed to create an unjust threat, possession of an otherwise bad moral character, and so on. I will not pursue these possible extensions here, despite their relevance to issues of *jus in bello*. It will be enough in the remainder of this paper to explore a few implications of the core account of self- and other-defense for the morality of war.

VII The Criterion of Liability and its Application to Unjust Combatants

The principal implication is, of course, for the nature of the requirement of discrimination. If it is moral responsibility for an unjust threat that is the principal basis of liability to defensive (or preservative) force, it seems to follow that what makes a person a legitimate target in war is moral responsibility for an unjust threat. This of course assumes that permissible force in war always involves defense against aggression; but it may well be that there are some types of just cause for war that are not defensive – for example, offensive action to recover territory or other goods that were lost to previous unjust aggression. To accommodate this possibility, our claim should be broadened to assert that what makes a person a legitimate target in war is moral responsibility for an unjust threat or, more generally, for a grievance that provides a just cause for war. Since the requirement of discrimination is just the requirement to discriminate morally between legitimate and illegitimate targets, what it must hold is that combatants must discriminate between those who are morally responsible for an unjust threat, or for a grievance that provides a just cause, and those who are not. It should state that while it is permissible to attack the former, it is not permissible intentionally to attack the latter – or if, more plausibly, we think that the requirement of discrimination should not state an absolute or categorical prohibition, it should state that there is a strong moral presumption against the permissibility of intentionally attacking those who are not responsible for an unjust threat

or for a grievance that provides a just cause. Alternatively, if we wish to follow the tradition in deploying the language of innocence, we can say that the innocent are those who are not morally responsible for an unjust threat or for a grievance that provides a just cause for war, while the noninnocent are those who are.

According to this understanding of the requirement of discrimination, all unjust combatants who are morally responsible agents and who pose an unjust threat are legitimate targets of defensive or preservative attack by just combatants. This means that virtually all unjust combatants are legitimate targets because virtually all are moral agents, and because even those who are in rear areas or are asleep and are therefore not presently attacking nevertheless pose a threat by virtue of their participation in a continuing attack that has many phases coordinated over time.

Notice that what is sufficient to make a person a legitimate target in war is *responsibility* for an unjust threat, not *culpability*. It is sometimes thought that if, for the reasons I cited earlier, we reject the view that the innocent in war are simply those who pose no threat while anyone who poses a threat counts as noninnocent, the alternative must be to accept that innocence means *moral innocence*, which contrasts with moral guilt or culpability. According to this latter view, it is culpable responsibility for an unjust threat (which includes culpably posing an unjust threat) that is the basis of moral liability to defensive force. This, however, is a mistake.⁴⁵ Culpability is, of course, a basis for liability, but this is because it is a strong form of responsibility. It lies at one end of a spectrum that includes many weaker forms of responsibility. If a person is a morally responsible agent, he can be responsible for an unjust threat even if his culpability is mitigated by his having a partial excuse. Or he can be responsible even if he is wholly exculpated by having a full excuse. Indeed, I believe that he can be responsible even if he is acting permissibly and an unjust threat arises from his action in a way that he could not reasonably have been expected to foresee.⁴⁶ When a morally responsible agent voluntarily chooses to engage in a risk-imposing activity, he is responsible for the harms he may cause, if other things are equal. The last clause allows that responsibility may be shared if others, including the victim of the harm, voluntarily assume or contribute to the risks, particularly if their action involves wrongful intent, recklessness, or negligence.

Unjust combatants pose an unjust threat. But they may, as we noted earlier, have one or more of a variety of excuses: for example, they may have been deceived, manipulated, indoctrinated, or coerced or compelled by threats, or perhaps they just believed, maybe even reasonably, in the moral authority of their government. In some cases, these excusing conditions will be strong enough to absolve an unjust combatant of all culpability for participation in an unjust war. But conditions of this sort are never sufficient to absolve him of all *responsibility* for his participation, or for the unjust threat he poses. Thus, even if he is *morally* innocent, he is not innocent in the sense that is relevant to the requirement of discrimination. Only the absence of a capacity for moral agency could absolve him of all responsibility for his action and thus make him innocent in the latter sense.

It is true, however, that moral responsibility is a matter of degree and that the degree of an unjust combatant's responsibility for posing an unjust threat is diminished by such excuses as nonculpable ignorance and duress. And it is reasonable to assume that the extent to which a person is morally liable to defensive force varies with the degree of his responsibility for the existence of, or for posing, an unjust threat. But how

are we to understand the idea that liability varies in degree? Either a person is a legitimate target or he is not; either it is permissible to attack him or it is not.

I claim that a person becomes a legitimate target in war by being morally responsible for an unjust threat, or for a grievance that provides a just cause for war. But there are various constraints that apply even to attacks on legitimate targets. The way that variations in the degree of a person's liability to defensive force are manifested is in variations in the strength or stringency of these constraints. I will mention two examples.

One constraint on defensive force is the requirement of minimal force. Crudely stated, this is the requirement that one use no more force than is necessary to achieve one's defensive aim. But in actual cases the choice is seldom among defensive options involving various degrees of force that are all equally likely to succeed in completely averting a threat. Instead, options that involve a lesser degree of force tend to have a lower probability of success, or to avert the threat less fully or completely. There can therefore be trade-offs between the risks or harms an agent seeks to avert and those he seeks to inflict. Variations in the degree of a person's responsibility for an unjust threat can affect which trade-offs it is permissible to make in defending oneself or others against him. If an attacker is fully culpable, it may be permissible to use the degree of force that minimizes the risk of harm to oneself; but if the attacker is responsible to a lesser degree for the threat he poses – if, for example, he is morally innocent – it may be necessary to “share the burden” of risk or harm with him by accepting a greater risk to oneself in order to reduce the degree of harm one inflicts on him in self- or other-defense.

A parallel claim applies to the requirement of proportionality. A degree of force that is proportionate against a culpable attacker may be a disproportionate response to the same threat posed by an innocent attacker.

In these ways the liability of unjust combatants to defensive force may be diminished by various excusing conditions that may apply to their conduct in war. Yet it may be objected that, while this might be true in principle, it is irrelevant in practice since it is normally impossible to know, of any particular unjust combatant, the degree to which he is morally responsible for the unjust threat he poses or for whatever grievance constitutes the just cause for war. This, of course, is largely true, though it is important to note that it is also true in most cases of individual self-defense as well and that in those cases we accept that a potential victim is entitled to presume that an attacker is culpable in the absence of evidence to the contrary. In conditions of war, however, there are often, or even usually, reasons to believe that unjust combatants bear diminished responsibility for their action – namely, the reasons that Walzer cites in arguing that those who fight in an unjust war are not criminals but victims. And this is indeed a very important fact that ought to affect the way that military planners and commanders think about the way in which their belligerent action against enemy combatants is constrained by the requirements of minimal force and proportionality.

It is, moreover, often possible to distinguish different degrees of responsibility, and therefore of liability, between broad groups of unjust combatants. For example, soldiers who fight on behalf of a totalitarian or dictatorial regime that rules by deception and terror usually bear a lesser degree of responsibility for participation in an unjust war than do soldiers of a democratic society with a relatively free press and relatively lenient penalties for conscientious refusal to fight. And even within a single society it may be quite clear that there are significant differences of responsibility between different groups of unjust combatants. In the first American war against Iraq, for example, it was obvious that members of the Republican Guard were significantly more culpable for their

participation in the war than the clusters of poorly armed conscripts who were known to have been compelled to take up positions in the desert by threats against themselves and their families. In all such cases, just combatants may have to accept greater risks to themselves in order not to attack less responsible unjust combatants in ways that it would be permissible to attack ones known to be more culpable.

VIII Noncombatant Liability

Recall that the Initiator in the case of the Implacable Pursuer illustrates the fact that one need not pose an unjust threat or currently be part of that threat in order to be morally responsible for it. And it should be obvious that in war there are some who occupy a position analogous to that of the Initiator: namely, those noncombatants who bear some responsibility for initiating or sustaining the unjust war, or for the wrong whose redress is the just cause for war. Indeed, some noncombatants – for example, an influential political commentator who has aroused public support for an unjust war through a series of inflammatory editorials, or a wealthy contributor to the president’s campaign fund who has used his influence to press the president to conduct an unjust military intervention that will protect his business interests – noncombatants such as these may bear a significantly greater degree of moral responsibility for an unjust war and the threats it poses than most of the unjust combatants who actually pose the threats. What this means is that, according to the understanding of the requirement of discrimination I have advanced – which I will call the *responsibility criterion of discrimination*, or the “responsibility criterion” for short – some noncombatants may be legitimate targets in war. The responsibility criterion thus denies both the permissions and the prohibitions asserted by the traditional requirement. Because it claims that it is in general impermissible for unjust combatants to attack just combatants, it denies the traditional claim that all combatants are permissible targets; and because it claims that some noncombatants are permissible targets, it denies the traditional prohibition of intentional attacks on noncombatants.

There are, of course, many objections to the responsibility criterion and many people will be disposed to reject it as pernicious. I will therefore conclude by briefly responding to a few of the more obvious objections.⁴⁷

One worry is that because moral responsibility is a matter of degree, it is difficult to identify a lower bound or threshold for responsibility for an unjust threat or other grievance that provides a just cause for war. Because of this, the responsibility criterion threatens to be utterly promiscuous in its assignment of liability in war. For in an unjust war many voters and perhaps all taxpayers must surely bear *some* degree of responsibility for their country’s action. But if the responsibility criterion implies that a great many or even most ordinary citizens in a country fighting an unjust war are legitimate targets, it can hardly be regarded as a principle of *discrimination* at all.

The first part of the reply to this objection is that the same objection applies in a more seriously damaging way to the traditional requirement of discrimination. According to the traditional requirement of discrimination, noncombatants are those who are not threatening, who do not contribute to the threat posed by their country. The problem of drawing the line between those who contribute to the threat and those who do not is a familiar one in the just war literature. The typical response is to try to find a basis for drawing the distinction between combatants and noncombatants in a way that limits liability in war to soldiers, those who directly supply them with the instruments of war (including, perhaps, workers in munitions factories, but *only* while they are at work),

and those who occupy positions in the military chain of command.⁴⁸ But these criteria of combatant status never correspond to the tradition's own generic notion of a combatant, which is simply the notion of a person who poses a threat in war or contributes to the threat his country poses. And the class of those who contribute, even quite directly, to their country's war effort is in fact considerably more extensive than writers in the just war tradition are willing to concede.

Consider, for example, a person who pursues research on computers, either in a university or in industry. Suppose that the Department of Defense supports her work because it foresees that it is likely to have important applications for certain weapons technologies. Indeed, this person is now on the verge of a breakthrough that will provide the basis for a new type of weapon that will greatly enhance her country's prospects for victory in an unjust war. It seems that she is about to make a significant contribution to her country's war effort, even if she herself is unaware of that fact. Why, then, is she not a combatant in the relevant sense? Why should it matter (to take one suggestion regularly offered in the just war literature) that she is doing exactly what she would be doing if there were no war in progress? (People in the military chain of command also do in war exactly what they would be doing in peacetime "war games," or training exercises involving simulations of battle.)

Or consider doctors who help the wounded on the battlefield. There is uniform agreement within the just war tradition that they have noncombatant status. Yet among the things they do is to patch up soldiers who have been incapacitated in order that they may return to combat. This directly thwarts the military action of the enemy soldiers, whose aim is precisely to neutralize the threat those soldiers pose.

So the line-drawing problem is not unique to the responsibility criterion. But on what basis can I claim that this problem is more seriously damaging to the traditional requirement of discrimination? The reason is that on the traditional view, the criterion of liability is all-or-nothing: either one is a combatant or one is not. There are no degrees of liability. The only constraints on attacking combatants are the requirements of minimal force and proportionality, and the proportionality calculation takes account of only two variables: the gravity of the threat the combatant poses (or, viewed from another perspective, the contribution that attacking him would make to the achievement of the just cause) and the magnitude of the harm one would inflict in using defensive force against him. According to the responsibility criterion, by contrast, the proportionality calculation has to take account of *three* variables: the gravity of the threat, the amount of harm that would be inflicted, and the degree of the potential target's moral responsibility. Thus a use of force that would be proportionate according to the traditional requirement of discrimination might not be proportionate according to the responsibility criterion if the person at whom it would be directed is only weakly responsible for the threat (or other grievance) that is the basis of his liability. In the case of most noncombatants, for example, the degree to which they may be responsible for any unjust threats their country poses is usually so slight as to make *military attack* a wholly disproportionate response. And this conclusion is reinforced by the fact that, in contrast to unjust combatants, even morally responsible noncombatants (however noncombatant status is defined) normally make only a very slight causal contribution to their country's unjust war, so that attacking them would do little to diminish any threat their country poses or to advance the just cause.

A second objection is that, just as it is normally impossible to have accurate information about an unjust combatant's responsibility for the threat he poses, so it is normally impossible to have detailed information about whether and to what extent a particular noncombatant is responsible for her country's unjust war. Again, this is true. But it does not show that noncombatants cannot be liable, but only that we can seldom know which ones are responsible or to what extent they are responsible. And this drastically restricts the practical significance of the responsibility criterion's implication that some noncombatants may be legitimate targets in war. For, while a few noncombatants may bear a high degree of responsibility for their country's unjust war and many may be responsible to a much weaker degree, there are also many others who are not responsible at all. Because one cannot normally distinguish among the highly responsible, the minimally responsible, and those who are not responsible at all, and because the former are in any case normally interspersed among the latter, military attacks on noncombatant targets must almost inevitably be disproportionate. In this respect, attacks on groups of noncombatants are importantly different from attacks on groups of unjust combatants, for *all* of the latter are (or may reasonably be presumed to be) to some degree morally liable to defensive force.

I have thus far tried to show that the responsibility criterion is in fact highly restrictive in its implications for the permissibility of attacking noncombatants in war. But it *does* imply that it can be permissible, on occasion, to attack and even to kill noncombatants – and *not*, as nonabsolutist versions of the traditional requirement of discrimination concede, because the prohibition against intentionally attacking noncombatants may in extreme circumstances be overridden, but instead because noncombatants are in some cases morally liable to force or violence in war. If, therefore, we accept the orthodox definition of terrorism as intentional attacks on noncombatants as a means of achieving political or other ideological goals, it follows that the responsibility criterion endorses the occasional permissibility of terrorism.

It should be obvious that the response to this third objection is to reject the orthodox definition of terrorism. This orthodox definition is in fact derived from a more generic understanding of terrorism as intentional attacks, for political purposes, on people who are innocent in the sense of having done nothing to lose their rights or make themselves liable to force or violence. If we combine this generic understanding with the traditional requirement of discrimination, which asserts that it is by becoming a combatant that one becomes liable to force in war, we of course get the orthodox definition. But if, as I have argued, the traditional requirement of discrimination has no coherent moral foundation, then we should abandon the orthodox definition. If the responsibility criterion is in fact the correct account of the moral basis of liability to defensive force, it would be perverse to apply the term “terrorism” to attacks on those whom this criterion identifies as legitimate targets. Terrorism ought instead to be defined as intentional attacks, for political or other ideological purposes, on those who are in no way morally responsible for an unjust threat or other grievance that provides a just cause for war.⁴⁹

I suspect that most readers are still left with a strong sense that opening the door to intentional attacks on noncombatants is profoundly dangerous, even at the level of moral theory. As with the other three objections I have canvassed, I think this is true. It is important that combatants should always experience deep inhibitions against attacking noncombatants. For one has only to read the newspaper to see that it is very often highly

tempting not only to the weak and oppressed but also to political leaders and military commanders to attack noncombatants as a means of achieving their goals; yet, even according to the responsibility criterion, it is very seldom permissible to do so. Given the dangers, therefore, it is probably better to discourage even those attacks on noncombatants that could in principle be morally justified.

This suggests that there is indeed a role for the traditional requirement of discrimination: although it is false as a criterion of moral liability to force or violence in war, it ought nevertheless to be upheld as a convention to which all combatants are bound. This suggestion is, however, vulnerable to two important objections. One has been forcefully stated by Walzer: “No limit is accepted simply because it is thought that it will be useful. The war convention must first be morally plausible...; it must correspond to our sense of what is right.”⁵⁰ But this may not be a problem, since the idea that it is wrong to attack noncombatants already corresponds to most people’s sense of what is right. And in any case it *does* seem that people can be got to accept limits, even in war, on the ground that these limits are in everyone’s interests. It is not obvious, for example, that poison gas is inherently more objectionable morally than artillery, provided that its use is confined to the battlefield. But the convention that prohibits its use is widely obeyed, mainly because we all sense that it would be worse for everyone, ourselves included, were the taboo to be breached.

The second objection is that there are bound to be circumstances in which morality as I have interpreted it seems to require an attack on noncombatants while the convention forbids it. How ought such conflicts to be resolved? In order for morality to require the violation of the convention in a particular case, it must of course take into account not only the positive reasons for attacking noncombatants but also the effect that the violation of the convention would be likely to have on general respect for the convention. For it is widely accepted that the violation of a convention by one side tends to release the other side from its commitment to respect the convention. If, however, this consideration is factored in and morality still requires the violation of the convention, it may be that the convention ought to be violated. Yet there is so much scope for self-deception in these matters that this is a conclusion that one ought never to accept with complacency.⁵¹

¹ Michael Walzer, *Just and Unjust Wars* (Harmondsworth: Penguin, 1977), p. 21.

² It is perhaps more natural to use the term “unjust combatant” to refer to anyone who fights in an unjust war, irrespective of the reason why the war is unjust. It may be, however, that those who fight in a war that has a just cause but is unjust for some other reason (for example, because it is unnecessary or disproportionate) have a different moral status from those who fight without a just cause. I want to focus in this paper on those who fight in the absence of a just cause.

³ Henry Sidgwick, *The Elements of Politics* (London: Macmillan, 1891), pp. 253-4.

⁴ Walzer, p. 34.

⁵ *Ibid.*, p. 41.

⁶ A representative definition is that “terrorists are those who target and kill noncombatants (including, as on the *USS Cole*, military people not engaged in hostilities) for the purpose of spreading fear and terror.” This is given in an advertisement by the Committee for Accuracy in Middle East Reporting in America in the *New York Times*, October 12, 2003. Similarly, C.A.J. Coady defines terrorism as “intentionally targeting noncombatants with lethal or severe violence for political purposes.” (“Terrorism,” in Becker and Becker, eds., *Encyclopedia of Ethics*, 2nd ed. (New York: Routledge, 2001). David Rodin defines it as “the deliberate, negligent, or reckless use of force against non-combatants, by state or non-state actors for ideological ends and in the absence of a substantively just legal process.” (“Unintentional Terrorism,” *Ethics X* (July 2004), p. . Noam Zohar writes that, “where non-pacifists express moral outrage against terrorism, they are necessarily affirming a commitment to non-combatant immunity.” (“Innocence and Complex Threats: Upholding the War Ethic and the Condemnation of Terrorism,” *Ethics X* (July 2004), p. _.

⁷ Thomas Nagel, “War and Massacre,” in Charles R. Beitz *et al.*, eds., *International Ethics* (Princeton: Princeton University Press, 1985), p. 69.

⁸ Walzer, p. 137. Compare Robert Fullinwider’s claim that “the moral relevance of the distinction in war between combatants and noncombatants [is] derived from the Principle of Self-Defense.” (“War and Innocence,” in Beitz *et al.*, p. 93.)

⁹ Walzer, p. 145.

¹⁰ Walzer, p. 136.

¹¹ For an earlier though less carefully and thoroughly developed statement of this objection, see Jeff McMahan, “Innocence, Self-Defense, and Killing in War,” *The Journal of Political Philosophy* 2 (1994), pp. 196-98. Some of the basic contentions of

the present essay are defended, though usually by different arguments, in this earlier paper. Among the important differences is that my understanding of the morality of self-defense has evolved in significant ways since I wrote the earlier paper. For a more detailed statement of the newer account of self-defense, see my *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002), pp. 398-421, especially pp. 400-407.

¹² Recall that “military people not engaged in hostilities” are said to be noncombatants in the definition of terrorism cited in note 6.

¹³ An alternative explanation of the permissibility of attacking these forces is that they are legitimate targets because they bear some responsibility for the genocide by virtue of shielding its perpetrators. This is the explanation I favor but it invokes a criterion of discrimination different from that of the traditional theory. I will return to this alternative account of discrimination in section VI.

¹⁴ I owe this suggestion to Richard Hanley.

¹⁵ See Jeff McMahan, “Self-Defense and the Problem of the Innocent Attacker,” *Ethics* 104 (1994), p. 257.

¹⁶ Walzer, p. 128. See also the discussion on pp. 38-9.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., p. 28.

²⁰ Ibid., pp. 37 and 38.

²¹ For a good discussion, see David R. Mapel, “Coerced Moral Agents? Individual Responsibility for Military Service,” *The Journal of Political Philosophy* 6 (1998): 171-89.

²² David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002), p. 171.

²³ This observation is a variant of Lionel McPherson's cogent argument that defenders of the traditional theory cannot consistently hold that combatants cannot be held responsible for obeying the principles of *jus ad bellum* but are responsible for obeying the principles of *jus in bello*. See his "Innocence and Responsibility in War" (manuscript).

²⁴ Walzer, p. 128.

²⁵ *Ibid.*, p. 21. Emphasis added.

²⁶ For a defense of this view, see George I. Mavrodes, "Conventions and the Morality of War," in Beitz *et al.*, pp. 75-89.

²⁷ Walzer, p. 41.

²⁸ Here I draw on the argument in Jeff McMahan and Robert McKim, "The Just War and the Gulf War," *Canadian Journal of Philosophy* 23 (1993), pp. 502-6, and 512-13.

²⁹ Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham, MD: University Press of America, 1983), p. 193.

³⁰ Sidgwick, p. 254.

³¹ Walzer, p. 129.

³² It might make a difference, on this proposal, whether the unjust combatant's mistake is one of fact – for example, what his country's cause is – or evaluation – for example, whether his country's actual cause is just. I will not pursue this here.

³³ On page 206 of "Innocence, Self-Defense, and Killing in War," I claimed that "a case can perhaps be made" for the view that morally innocent unjust combatants can be "justified in engaging in self-defense against the defensive counterattack by the victims of their initial attack." Because I now attribute less significance than I did earlier to the distinction between moral innocence and moral culpability, I believe that this earlier claim was mistaken. Two philosophers who have argued persuasively against my earlier position on self-defense by morally innocent unjust combatants against just

combatants are Richard Arneson (“Just War and Warfare Theory: Puzzles and Problems,” manuscript) and Lionel McPherson (“Innocence and Responsibility in War,” manuscript).

³⁴ This is, of course, a controversial claim that I lack space to defend here, though I do so in a manuscript in progress called *The Ethics of Killing: Self-Defense, War, and Punishment*. I defend the claim against important objections in “War as Self-Defense,” *Ethics and International Affairs*, forthcoming.

³⁵ In “The Just War and the Gulf War,” pp. 502-06, Robert McKim and I argue that there can be such aims within a just war – that is, aims that are insufficient to justify the resort to war but whose achievement can contribute to the justification for war.

³⁶ Since I have defined unjust combatants as those who fight without a just cause, it seems that they become just combatants when their action serves a just aim within their overall unjust war. Similarly, an otherwise just combatant may temporarily become an unjust combatant while his action is directed at an unjust aim. These are merely a terminological rather than a substantive points.

³⁷ I believe, contrary to the traditional assumption, that there can be rare instances in which both sides in a war have a just cause and are justified in fighting. For present purposes I leave it an open question what the requirement of discrimination should say about attacks by just combatants against just combatants in such cases.

³⁸ See note 15.

³⁹ See, for example, Elizabeth Anscombe, “War and Murder,” in her *Collected Papers, Volume 3: Ethics, Religion, and Politics* (University of Minnesota Press, 1981), especially p. _.

⁴⁰ “Self-Defense and the Problem of the Innocent Attacker,” pp. 258-59 and “Innocence, Self-Defense, and Killing in War,” pp. 200-205.

⁴¹ A mistaken variant of this claim is defended in my “Self-Defense and the Problem of the Innocent Attacker.” A better argument is in *The Ethics of Killing*, pp. 405-06. Others who argue that there is no right of self-defense against a Non-Responsible Threat are Noam Zohar, “Collective War and Individualistic Ethics: Against the Conscriptioin of ‘Self-Defense’,” *Political Theory* 21 (1993): 606-22, Michael Otsuka, “Killing the Innocent in Self-Defense,” *Philosophy and Public Affairs* 23 (1994): 74-94, and Rodin, *War and Self-Defense*, pp. 79-83. I accept, incidentally, that it may be permissible to use nonlethal force in self-defense against a lethal threat from a Non-Responsible Threat. But the amount of harm it might be permissible to cause would be no more than one would be justified in inflicting on an innocent bystander as a means of self-preservation.

⁴² I am indebted to Monsignor Stuart Swetland and to Richard Arneson for making me see the importance of this detail. If the Initiator could eliminate the threat to you, he could be regarded as continuing to *pose* the threat by having set it in motion and then refusing to stop it. For an ancestor of this kind of case that differs from it in that the person in the position of the Initiator remains a necessary cause of the threat, see Larry Alexander, “Self-Defense and the Killing of Noncombatants,” *Philosophy and Public Affairs* 5 (1976).

⁴³ I owe this suggestion to Eric Wampler.

⁴⁴ I owe this suggestion to correspondence with Richard Arneson and conversations with Larry Temkin.

⁴⁵ I am among those guilty of having made this mistake, in both “Self-Defense and the Problem of the Innocent Attacker” and “Innocence, Self-Defense, and Killing in War.”

⁴⁶ See *The Ethics of Killing*, pp. 403-3.

⁴⁷ Some of these responses indicate ways in which the account of the morality of war I have developed in this paper is superior to the cruder account I advanced in “Innocence,

Self-Defense, and Killing in War,” which invites similar objections but cannot answer them in the ways suggested here.

⁴⁸ For representative examples, see Nagel, “War and Massacre,” pp. 69-70, Walzer, *Just and Unjust Wars*, pp. 144-46, John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Oxford University Press, 1987), pp. 86-90, and David Oderberg, *Applied Ethics* (Oxford: Blackwell, 2000), pp. 217-19.

⁴⁹ For present purposes I leave aside such questions as whether violence against property can count as terrorism.

⁵⁰ *Just and Unjust Wars*, p. 133.

⁵¹ I have benefited from discussions of this paper with audiences at the University of Delaware and Tufts University.