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Locke Was Right: Nature Has Little Economic Value

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Locke Was Right: Nature Has Little Economic Value

Mark Sagoff

At the time Europeans began to colonize the New World, John Locke compared land values in Britain to land in America. He wrote that:

An acre of land that bears here twenty bushels of wheat, and another in America, which, with the same husbandry, would do the like, are, without doubt, of the same natural, intrinsic value. But yet the benefit mankind receives from one in a year is worth five pounds, and the other possibly not worth a penny

Ecological economists today describe as “ecosystem services” or as “natural capital” what Locke called the “natural, intrinsic value” of land. In 1997, a group of ecological economists, in a famous survey, estimated the economic value of ecosystem services and related natural capital at between \$16 and \$54 trillion per year. Locke suggested, on the contrary, that labor accounts for the economic value of agricultural and other production, while ecosystem services are “possibly not worth a penny.”

Locke’s Argument

Locke defended a labor theory of value. “Labor makes the far greatest part of the value of things we enjoy in this world: And the ground which produces the materials is scarce to be reckoned in, as any, or at most, but a very small part of it.” Locke observed that land that is not improved by labor and technology yields almost nothing of use to us. To depend on Nature’s free largess, i.e., to hunt and to gather, Locke correctly surmised, is to starve. “Land which is wholly left to Nature, that hath no improvement of Pasturage, Tillage, or Planting, is called, as indeed it is, *waste*; and we shall find the benefit of it amount to little more than nothing.”

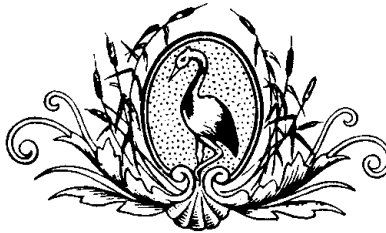
One may reply, however, that even if land will not feed us without the use of labor and technology, labor and technology will not feed us without the use of land. Classical economists from Ricardo to Marshall therefore identified land, labor, and technology (or capital) as the three factors necessary for economic production. If natural resources, labor, and technology

are all equally necessary inputs to production, why attribute economic value only to labor, as Locke did, or to labor and capital alone?

The reason is that labor and capital possess a crucial quality, namely, scarcity in relation to demand, which land lacks. Locke pointed out that excellent cropland was free for the taking in many places in the world, such as in regions of Spain (at the time) and in the “inland vacant places of America.” Locke wrote that one cannot acquire land in America “to the prejudice of his neighbor, who would still have room for as good and as large a possession (after the other had taken out his) as before it was appropriated.” As if to vindicate Locke’s view of the overabundance and thus the negligible economic value of cropland, the US government, starting in 1863 under the Homestead Act, gave a quarter-section (160 acres) free to anyone who would farm it for five years. By 1900, about 600,000 farmers had received free title to about 80 million acres of land under the act.

According to Locke, if the price of fertile land is negligible, as it was in America, the economic value of food “must all be charged on the account of labor, and received as an effect of that.” Locke reasoned that of the benefits we associate with agricultural commodities, “nineteenths are the effects of labor. Nay, if we . . . cast up the several expenses about them . . . we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labor.” In the production of commodities, “nature and the earth furnished only the almost worthless materials as in themselves.”

The economics of agriculture have changed little since Locke’s time. “The cost of labor is the biggest part of the total food marketing bill,” the USDA has reported year after year. According to a 2004 USDA publication, “Nineteen cents of every dollar spent on US-grown food goes to the farmer for the raw food inputs, while the other 81 cents covers the cost of transforming these inputs into food products. . . .” Of the 19



cents, land—the rent on the natural resource—represents perhaps one or two pennies.

In 2004, a typical acre of fertile soil in the American heartland sold at the average price of \$1,780, at least a quarter of which can be attributed to the distorting effect of subsidies, according to USDA figures. Farmers who are paid not to plant crops as a way to control surplus bid up the price of land where they can not grow them. In the absence of these distortions, the prices of (or rentals for) agricultural land in the United States would constitute about one-tenth of the farmer's expenses and thus less than two percent of the price of food. This is consistent with Locke's calculation that only one part in a hundred of the prices of agricultural products can be credited to the natural properties of the land, while 99 percent must be credited to labor and the tools it applies.

In his recent book, *The Curse of American Agricultural Abundance* (2003), Willard Cochrane, a leading agricultural economist, argues that the government should stop paying tens of billions in subsidies every year to prop up cropland prices. If President Bush succeeds in cutting payments, land will revert to prairie in the American West, much as it has returned to forest in the East. Cochrane suggests that "large parts of the Great Plains should be converted into a fenceless 'buffalo commons'." In the absence of government subsidies, a lot of farmland in the United States will return to the natural condition and to the negligible economic value it had in Locke's time. Locke was right. Because of its abundance relative to demand, cropland furnishes only "almost worthless materials as in themselves," which can be obtained for almost nothing.

"Sell Your Land and Caddie"

Every real estate broker can recite the three factors that control the economic value of land: location, location, and location. In 1840, Johann von Thünen showed

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that land values—or the "rents" farmers can extract from the land they farm—are higher the closer the land is located to city markets even if the uses of the land are the same. Transportation costs will diminish the economic value of land, however fertile, that is far away. Nothing has changed in 250 years since von Thünen wrote. The economic value of land still depends almost entirely on its location, that is, on its distance to highways, schools, restaurants, theaters, and society generally—its proximity to the amenity of

urban living as opposed to what Karl Marx called the idiocy of rural life.

Today, an acre of farmland commands the very highest price if it can be taken out of row crops and planted instead to shopping malls and tract mansions. According to the USDA, "survey data indicated that agricultural land with a potential for immediate development (expected land use if sold) was valued at more than \$5,700 per acre." To rent a ten-by-four foot parking space in Manhattan, New York, you must pay far more than you would pay to rent a hundred acres of good farmland near Manhattan, Kansas. Economic returns to Nature from agriculture are negligible, just as Locke thought.

"Truly sustainable agriculture in America's future," an agronomist has written, "will include only the very few forms of agriculture that are compatible with urban life," such as nurseries and turf farms. In 1928, humorist Will Rogers identified the only feasible strategy for sustainable agriculture in the United States. "I

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tell you turning your land into a golf course is the salvation of the farmer," he said. "The only thing to do with land now is just to play golf on it. Sell your land and caddie."

The Lauderdale Paradox

In 1819, James Maitland, Lord Lauderdale, reasoned that any good that Nature provides plentifully and freely, no one has any reason to purchase. It cannot fetch a price in a competitive market, even where markets for it exist, and so has no economic value. The result is a paradox. The more freely and lavishly Nature benefits us, the less economic value it will possess.

Manna from Heaven illustrates Lauderdale's paradox. According to Scripture, enough manna fell from Heaven during the Exodus to provide the Israelites with plenty of bread. Accordingly, no one had a reason to gather or hoard more than he or she could consume. The Israelites, the Bible tells us, stored up manna to eat on the Sabbath since none fell on that day. Since everyone could easily acquire as much as he wished without charge, no one was willing to pay for it; accordingly, manna had no economic value except, perhaps on the Sabbath, when it did not fall from Heaven.

The principal condition for production, exchange, and therefore economic value, Lauderdale argued, is

scarcity. He defended two principles:

1. That things [with desirable qualities] are alone valuable in consequence of . . . existing in a certain degree of scarcity.
2. That the degree of value which every commodity possesses, depends upon the proportion betwixt the quantity of it and the demand for it.

For Lauderdale, the economic value of a good can be located at the intersection of supply and demand for the next or incremental unit of that good, in other words, at its price in a competitive market. Economic theory suggests that competition drives consumer prices down to producer costs. Goods that cost the least to produce—such as the oxygen in the air—will fetch the lowest prices and therefore possess the least economic value, especially if supply vastly exceeds demand. That you inhaled a lot of oxygen yesterday does not make the air you breathe any less beneficial today. So long as the air is abundant and free, however, it has no economic value; that it is beneficial is irrelevant.

Advances in technology, by driving down the production costs of a good, lower its competitive market price and thus its economic value. The consumer pays less for his or her next purchase but may obtain the same benefit. For example, the long distance phone call that cost ten dollars years ago hardly costs ten cents today. Phone calls may soon be free—the Internet may allow this—and thus have no economic value. The benefit—the emotional, sentimental, and moral satisfaction of the ritual Sunday call to your mother-in-law—remains the same. The economic value of a good falls with its price even though the benefit does not decline. When the antibiotic Cipro lost its patent, for example, generic equivalents appeared at a tenth of the price. The “next” or “incremental” prescription costs the consumer much less but conveys exactly the same benefit.

Today the music industry is full of fear and loathing because potential consumers are copying songs for free for which they paid big bucks a few years ago. The entire industry, once worth billions, may lose its economic value because no one will buy what he or she can acquire *gratis*. People enjoy the music—now on their iPods—as much as before, but they use the money that they once spent on recordings to purchase other things. The price the music commands is zero; so is its economic value, but the benefit is as great as ever. The music industry, of course, cannot stay in business if its product cannot fetch a price—if everyone gets as much as he or she wants for free. Nature in contrast can benefit everyone freely without worrying about the prices people pay. It has no operating costs.

The Supply of Fresh Water

Consider a scenario in which Heaven rains manna in huge quantities but does not distribute it in equal amounts everywhere. The price of manna would vary with its distance from the deposits. This is consistent with the von Thünen model in which location is everything. What has value—what is scarce relative to demand—is not the manna, which is superabundant, but either 1) residential real estate close to the sources of manna or 2) the labor and technology needed to transport manna to where it is consumed.

Fresh water is a resource that nature provides through the hydrological cycle in vaster quantities than humanity can possibly use. The sun evaporates water from the oceans, the wind moves the clouds to land, and the distilled water precipitates like manna over the earth, but in some places more than in others. Overall, humanity uses about 2,100 cubic kilometers of fresh water a year—one-fiftieth of the amount that precipitates over land. The runoff from rain that is accessible—rainwater that is collected behind dams or in lakes, rivers, or aquifers near large human populations—equals slightly more than one-tenth of the total rainfall on land or 12,500 cubic kilometers annually. This provides about 5,700 liters of water per day for

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every person on earth—10 times as much water as the average European uses and about three times as much as the average American consumes.

For the residents of New York City, like those of many other municipalities, abundant, pure, clean rain water falls like manna from Heaven; it has no economic value. City residents must pay, however, for expensive dams, reservoirs, pipes, and tunnels to gather and deliver the water from upstate sources, primarily the Catskills watershed. Ecosystem services contribute nothing of economic value. People who live in the watershed are required to build septic systems to treat their sewage because Nature will not do this for them. The City must deal with the fecal wastes produced by 350 vertebrate species that thrive in the Catskills region, including huge populations of deer, beaver, and waterfowl. In the reservoirs, “the background contamination from wildlife populations is apparent.” Since the 1920s, New York City (like many municipalities) has chlorinated its water in part to kill fecal bacteria and other pathogens associated with natural habitat.

In search of a salient example of an ecosystem service that can command a market price, environmentalists often repeat the urban legend that New York City in the late 1990s invested between \$1 billion and \$1.5 billion to purchase wildlife habitat as a way to cleanse rain water. There is no basis for the belief that New York City spent \$1 billion or more to protect wildlife habitat as a way to purify its water supply. This legend is constantly cited and repeated, however, perhaps because no better example can be found to illustrate an ecosystem service that commands a competitive market price.

Fish

What about fish captured in the wild? Wild fish stocks provide what seems to be an obvious example of the economic value of natural processes or systems. Economists use the concept of resource rent, developed by Ricardo in 1817, to measure this value. The rent on a natural resource is the amount left over when the cost of exploiting it is deducted from the revenue it brings. In theory, the resource rent approximates the maximum the owner of the resource could charge for its use.

To estimate the resource rent of wild populations of diverse kinds of fish, resource economists typically begin with a model that relates the total cost of exploiting a fishery, including a normal return on investment, to the total revenue the fishery generates, computed as the dockside price of fish per pound times the number of pounds caught. The difference between total cost and total revenue represents the economic value or rent on the resource. When rent is high—when fish cost less to catch than the price they bring—new boats will be attracted to the resource. With the entry of new boats, the effort and with it the cost of fishing increases, until the point at which the

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cost of catching a fish just equals the price it obtains—the point at which the resource rent, or profit, is dissipated. At that point, the resource has no economic value. Governmental financial transfers to the fishing industry (subsidies) exacerbate the problem, boosting the total costs of fishing even farther. The fishery has a negative economic worth, since the fish sell for less than they cost.

Fisheries experts often lament that “the main problem is that in the process of the expansion of fishing effort, resource rent has been completely dissipated. It has gone to finance the overexpansion of the fishery.” At fault are subsidies paid by many nations to support their fishing fleets in competition with the fleets of other nations. In 1999, a representative year, OECD countries alone paid about \$6 billion to subsidize their commercial fishing fleets. Some nations, such as Finland, paid far more in subsidies than the fish it sold brought in revenues; other countries, such as the United States, paid subsidies in excess of 25 percent of the total revenues. Under these distorted conditions, capture fishing operates at a deficit supported by taxpayers. Potential resource rents are more than dissipated; the natural capital or ecosystem service realizes an economic loss.

Even if the capture fishing industry optimized its effort, whatever resource rent it earned would be ephemeral. Capture fisheries must compete with aquaculture, which offers lower costs, reliable year-round supplies at huge volumes, uniform and consistent

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quality, just-in-time delivery, traceability, proximity to markets, and virtually every other competitive advantage imaginable. “By the year 2030,” according to the Food and Agriculture Organization, “aquaculture will dominate fish supplies and less than half of the fish consumed is likely to originate in capture fisheries.” Aquaculture accounts for over a third of the fish humans consume, and over the next two decades, according to the *Washington Post*, fish farming will largely “replace the last commercial food-gathering system based on hunting wild animals.”

Consider, for example, the price of fresh salmon, which has plummeted by about two-thirds since the early 1980s because of aquaculture. Salmon farming produces over a million metric tons annually, surpassing capture fisheries. According to a SeaWeb study, “As markets for salmon become glutted and prices continue to decline, many multinational corporations involved in aquaculture are diversifying their operations by adapting methods of farming salmon to other species of carnivorous fish.” Fish prices should descend to those of chicken and turkey, which also consume fish-

meal, or fall even lower as genetic engineering makes it easier to convert cheap organic matter along with soy and other oilseeds into high-protein feed.

The future of the fish industry lies with transgenic fish engineered for rapid growth, disease-resistance, inexpensive feeds, and table appeal. We can expect over the next few decades a rapid decline in capture fishing as the large fleets of the past are replaced by intensive, biotechnology-based, vertically integrated, closed-system, highly capitalized industrial aquaculture controlled—as the hog and poultry industries are controlled—by a few multinational corporations. It is hard to see how capture fisheries, already subsidy-dependent, can survive competition from aquaculture

When ecosystem services and wild stocks are inexpensive and superabundant, the economic return to Nature is negligible. When they are not, technology quickly develops to capture economic rent by making cheap and abundant resource flows . . . do the work of more expensive ones.

except in special cases. When ecosystem services and wild stocks are inexpensive and superabundant, the economic return to Nature is negligible. When they are not, technology quickly develops to capture economic rent by making cheap and abundant resource flows, such as genetic information and plentiful organic matter, do the work of more expensive ones.

The Great Transition

The transition from hunting and gathering in the wild to plantation-based industry, expected to occur in fisheries over the next two decades, has largely taken place in forestry. According to a recent report in *Issues in Science and Technology*, “The United States today finds itself in a world of timber surpluses and increasing competition.” Industrial tree plantations are rapidly underpricing and outproducing wild forests. “Particularly important has been the expanded use of intensively cultivated, short-rotation tree plantations in temperate and subtropical regions of the Southern Hemisphere. These ‘fiber farms’ have proved to be extraordinarily productive.”

According to Roger Sedjo, a prominent expert, “High-yield plantation forestry has the potential to meet the world’s industrial wood needs while simultaneously protecting existing natural forests and thereby conserving their environmental values.” The premium paid for large logs from slow-growth forests has largely disappeared because advanced methods can fuse small pieces of wood together for structural uses. Transgenic trees, moreover, will offer the same kinds of

economic advantages—fast growth, cold-hardiness, uniform and predictable quality, disease resistance, etc.—as transgenic fish.

The transition we are seeing from capture fishing and forestry to aquaculture and silviculture is unsurprising. An ecosystem service or resource flow that becomes scarce relative to effective demand also becomes economically valuable. For example, in the early nineteenth century, the price of whale oil, the principal source of illumination at the time, dramatically increased as the demand for lighting rose and the supply of whales decreased. For a short time, a living natural resource possessed an economic value and whaling produced great wealth.

In response to rising prices, however, technologists quickly substituted a more plentiful resource, first natural gas and then electricity, to produce the same good, illumination, as whale oil. With this substitution between resource flows came far greater efficiencies—a compact fluorescent light bulb in use today produces more light with a tiny fraction of the energy used by Edison’s bulbs, which were themselves far more efficient than earlier gas or oil lamps.

Environmental economists such as John Krutilla have noted that so far advancing technology has “compensated quite adequately for the depletion of the higher quality natural resource stocks.” Krutilla observed that “the traditional concerns of conservation economics—the husbanding of natural resource stocks for the use of future generations—may now be outmoded by advances in technology.” Robert Solow has opined that “what little evidence there is suggests there is quite a lot of substitutability” Solow, a Nobel Laureate, wrote that “[h]igher and rising prices of exhaustible resources lead competing producers to substitute other materials that are more plentiful and therefore cheaper.” During the 1950s and 60s, economists developed a model of economic growth that contained two factors: capital (including technology) and the labor to apply it. This model differed from earlier ones because “resources, the third member of the classical triad, have generally been dropped.”

Further, if optimists are correct—if technology will substitute between resource flows to keep prices low—then we are confronted with a dilemma: Either Nature provides so abundantly for our needs that no scarcity exists and thus no economic value is possible, or Nature provides inadequately and therefore technology develops to relieve scarcity and thus, again, Nature (economic services) has no economic value.

To argue that ecosystem services and with them natural capital have little or no economic value, as this article has done, is to take seriously the examples of whaling in the nineteenth century and of the fishing and forestry industries today. Because whales have little or no economic value—no one needs whale oil any-

The Deliberative Democracy Handbook Strategies for Effective Civic Engagement in the 21st Century

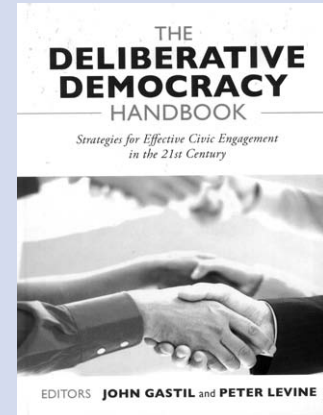
Edited by John Gastil and Peter Levine

"The Deliberative Democracy Handbook is a terrific resource for democratic practitioners and theorists alike. It combines rich case material from many cities and types of institutional settings with careful reflection on core principles. It generates hope for a renewed democracy, tempered with critical scholarship and political realism. Most important, this handbook opens a spacious window on the innovativeness of citizens in the US (and around the world) and shows how the varied practices of deliberative democracy are part of a larger civic renewal movement"

—Carmen Sirianni, professor of sociology and public policy, Brandeis University, and coauthor, *Civic Innovation in America*

"The Deliberative Democracy Handbook, edited by John Gastil and Peter Levine, is an important collection of readings for anyone interested in the role of citizen participation in the public policy process. It provides concrete examples of successful efforts to expand public input in decision-making at the local, state, and national levels. The book also grapples with emerging challenges to the continued development of these efforts in the future."

—Robert Mark Silverman, associate professor, Department of Urban and Regional Planning, University at Buffalo, the State University of New York



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more—they can be valued for their own sakes as the magnificent, nearly sacred creatures they are. Aquaculture and silviculture, by making wild fisheries and forests obsolete, allow society to regard wild fish and heirloom forests as aesthetic treasures and as ethical responsibilities, in other words, to appreciate and respect the aesthetic and spiritual values Nature does possess.

Objections

To suggest that Nature has only a negligible economic value is to invite many objections. First, one may earnestly assert that ecosystems "act to purify air and water, regulate the climate and recycle nutrients and wastes. Without these and many other ecosystem

goods and services, life as we know it would not be possible." The team that pegged Nature's services at tens of trillions wrote, "The services of ecological systems and the natural capital stocks that produce them are critical to the functioning of the Earth's life-support system." Bromides such as these, however edifying, tell us nothing about economic value, which is a measure of scarcity not dependency.

Second, one may ask whether society can justify expensive regulations to control pollution without ascribing economic value to ecosystems services. If you shoot someone, the bullet may disturb air currents that regulate the climate. Exactly the same analysis applies to shooting poisons through the water or air. Pollution represents a problem not of preserving ecosystem services but of protecting human safety,

health, and property. Pollution represents coercion, trespass, or assault; it is a moral wrong we must minimize for ethical reasons, not an external cost we should optimize for economic ones. If pollution damages property, for example, fish stocks, it should be enjoined as a nuisance. The regulation of pollution vindicates common law rights of person and property; the economic analysis of costs and benefits is largely beside the point.

Third, what about “non-use” value? By now, a hundred commentators have pointed out that the economic literature on “non-use” or “existence” value confuses political beliefs with personal benefits. Responses to policy questions, in other words, are misconstrued as indicators of personal welfare. For “existence” or “non-use” values to be considered economic values, as economist Paul Milgrom has argued, they must reflect only “personal economic motives and not altruistic motives, or sense of duty, or moral obligation,” or disinterested

Locke understood that since God created Nature, humanity has a moral and spiritual obligation to respect and preserve it. The aesthetic, ethical, or religious reasons to protect the Creation do not depend on economic contributions.

policy positions, as they often do. Economists expect their reasoned beliefs about public policy to be judged on the merits, not priced at the margin. It is disrespectful, indeed maddening, for economists to offer to “price” by the method of “contingent valuation” the policy opinions and beliefs of others.

Fourth, natural amenities, such as the beauty and serenity of scenic vistas and open spaces, plainly possess economic value. Location is everything, however, at least as much with respect to beautiful places as fertile cropland. It can cost so much to travel to a magnificent vista, for example, a landscape in the Belgian Congo and or in Amazonia, that visitors may not be willing in addition to pay an admission fee, as it were, for the resource itself. Economists point out that people who live close to a beautiful place pay less in travel costs than visitors from farther away; this hypothetical difference in travel costs can be construed as a “consumer surplus” for those nearby and thus as a potential resource rent. However, housing and other goods may cost more the nearer they are to the resource—to a beach, for example—so that people who live relatively closer already pay premiums that exhaust the potential surplus or putative resource rent.

One might argue that differences in housing costs—rents are higher for places nearer the beach—reflect the value of the natural resource. If access to the beautiful place is open, however, the resource rent will be dissi-

pated as more and more houses are built, just as additional fishing boats dissipate the rent on a fishery. Another problem is that the scenic resource in question is economically valuable because of its location, that is, because it is near the houses. Since location is a symmetrical relation—A is near B if and only if B is near A—it may be arbitrary whether one says that houses are valuable because they are close to the beach or the beach is valuable because it is close to the houses. It is a baffling question whether the economic value of location attaches to the houses or the beach—or how the rent should be divided between them.

Fifth, nothing has been said here about minerals or metals, such as diamonds and gold, which are obviously scarce relative to demand, and thus have significant economic value. The argument here would not apply to diamonds and other minerals created with the earth but to goods such as fresh water, associated with the functioning of today’s ecosystems.

Finally, one may object that the argument presented here rests upon a questionable conception of economic value, namely, exchange value, competitive market price, or the intersection of supply and demand. Given this definition it is obvious that manna had no economic value even when it constituted the life support system of the Israelites. Ecosystem services and associated natural capital possess little or no economic value only insofar as “economic value” refers to market pricing based on supply and demand.

What other conception of economic value, however, makes sense? As long as one defines economic value in terms of competitive market price, one can determine empirically the value of ordinary consumer goods. If one defines and defends a conception of economic value that does not refer to the intersection of supply and demand, one must then explain how to measure the economic value of ordinary products such as toothbrushes, pairs of shoes, and light bulbs, and services such as dental care and trash removal. To do this, one could ask how much people might pay for shoes or dental care if these goods became scarce—and thus try to tease out scarcity rents or demand prices for them. After paying scarcity or monopoly prices for basic consumer goods, would anyone have any income left to pay for the functioning of the earth’s life-support system?

Everyone agrees, of course, with platitudes about our dependence on life-support systems, natural capital, and ecosystem services. Locke, like the classical economists who followed him, understood economic value as a measure of scarcity not dependency. Adam Smith famously noted that “nature does nothing; man does it all.” As an Anglican, Locke understood that since God created Nature, humanity has a moral and spiritual obligation to respect and preserve it. The aesthetic, ethical, or religious reasons to protect the

Creation do not depend on economic contributions. From the perspective of economic value, Locke was right. "Nature and the earth furnished only the almost worthless materials as in themselves."

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Resource rent "reflects what fishermen are willing to pay to harvest that amount of the fish stock. Resource rent is the net revenue in excess of normal profits generated by the harvesting of fish that is due to the fish stock itself. In open-access fisheries, rent dissipation said to occur because the value of the fish stock is not captured." See: <http://www.st.nmfs.gov/st1/econ/oleo/chap1.pdf>. The relation between the total cost of exploiting a fishery to the total revenue the fishery generates is generally known as a Schaefer model after M. B. Schaefer, "Some aspects of the dynamics of populations important to the management of commercial marine fisheries," *Bulletin of the Inter-American Tropical Tuna Commission*, vol. 1 (1954). 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If the fishing effort stopped at an economically optimal point, it would certainly capture some of this revenue resource rent attributable to ecosystem services. The potential rent would differ for different species at different places and times. See, *State of the World's Fisheries and Aquaculture 2002* \(SOFIA\) \[http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/005/y7300e/y7300e04.htm\]\(http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/005/y7300e/y7300e04.htm\). United Nations Food and Agriculture Organization \(FAO\), *State of the World's Fisheries and Aquaculture \(SOFIA\) 2000, Part 4, "Outlook,"* on line at: \[http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/003/X8002E/x8002e07.htm\]\(http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/003/X8002E/x8002e07.htm\). Juliet Eilperin, "Fish Farming's Bounty Isn't Without Barbs: Aquaculture May Change Way US Eats, but Effect on Seas Is a Concern," *Washington Post* \(January 24, 2005\). 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The progress from candles to carbon filament to tungsten incandescent lamps, for example, halved several times over the fuel required for a given unit of household lighting. See Dennis Anderson, "Energy-Efficiency and the Economics of Pollution Abatement," *Annual Review of Energy*](http://www2.gtz.de/rioplus/down-</p>
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Religious Violence or Religious Pluralism: Islam's Essential Choice

William A. Galston

Introduction

The question of the hour is whether traditional Islam is compatible with democracy. Though important, that question is subordinate to another: whether Islamic traditionalists can make their peace with religious pluralism, whether their efforts to impose their practices on Muslims who reject them will engender unending conflict.

It is natural for Western observers to believe that the "irrationality" of religious violence is the problem and that rationality (or at least reasonableness) is the solution. I want to suggest a somewhat different approach. The diminution of religious violence in the West, I shall argue, is the product not so much of ideas as of concrete historical experiences that made populations more receptive to the reality of religious pluralism and the necessity of tolerance. These practices, in turn, lent support to the theory and institutions of liberal constitutionalism. The real issue today, therefore, is whether there are concrete processes underway within Islam that may over time make the politics of pluralism more acceptable and attractive, even to traditionalist Muslims unsympathetic to Western liberalism.

Politics, Religion, Pluralism

Speaking broadly and schematically, there are three possible relations between political and religious authority. First, political authority may be comprehensively dominant over religion, which is seen as serving state power (and for this reason is often called "civil"). One of many difficulties with this position is that it subordinates the religious content of faith—its theological claims—to its civil consequences. Recent controversies in France over religious garb and symbols in public schools reveal the continuing compatibility between the civic republican tradition and the consignment of religion to civil status.

Second, and conversely, religious authority may coincide with, or comprehensively dominate, political authority, yielding some version of theocracy. This

stance invariably represents the dominance of a particular faith at the expense of all others.

Third, political and religious authority may coexist without either enjoying a comprehensive dominance. One version of this position seeks to divide social life into different spheres, dominated by either politics or faith. (Maxims such as "Render unto Caesar what is Caesar's . . ." provide the basis for such an understanding.) It is hard to come by such neat surgical divisions, however. More typically, the coexistence model implies overlapping and conflicting claims, generating the need for both theoretical clarification and legal adjudication.

Few individual believers or faith communities can be satisfied with the civic republican approach, which embodies an ordering of values antithetical to most religious commitments. As the history of European nations such as France and Italy with deep civic republican traditions shows, the effort to demote religion to purely civil status is bound to spark political conflict and, on occasion, actual violence.

The theocratic option fares no better. Whatever may be the case for homogeneous communities espousing a single faith (few of any size do so), the theocratic impulse creates grave difficulties for societies with multiple faith communities. In circumstances of diversity, a serious religious establishment (as distinguished from, say, the increasingly symbolic role of the Church of England) will inevitably use legal coercion to impose its views on faith communities that conscientiously reject them. Here again, political conflict will tend to spill over into episodes of violent resistance.

That leaves the coexistence model, a mode of pluralism that implies horizontal rather than hierarchical relations, not only between political and religious authority claims, but also among faith communities. By definition, this option is bound to leave both theocrats and civic totalists dissatisfied, but it holds out the hope of reducing coercion to a manageable minimum. The problem of religiously related violence can be addressed best, not through secularism, but rather through institutionalized pluralism.

Compared to the sixteenth and seventeenth centuries, the level of religious violence originating in the West is low. It is natural for those who applaud this change to wonder how it happened, and whether it can serve as a template for reform in regions where religiously inspired violence remains high. And it is reasonable to conjecture that ways of thinking now pervasive in the West helped shape that template.

One might speculate that there exists a relationship between the pluralist approach, the reduction of religious violence, and the Enlightenment. For the purposes of this essay, I will presuppose what many deny—namely, that religion often serves as an independent source of conflict rather than as a rhetorical screen for violent antipathies spawned by oppression, deprivation, the memory of colonialism, or a deep sense of humiliation—not to mention very specific

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complaints. It is more gratifying and convenient for Americans to believe that we were attacked on September 11 because our adversaries “hate freedom” than because they oppose the presence of our troops in Saudi Arabia. At the least, we should remain aware of the possibility that our current concerns about religious terrorism reflect tensions considerably less exalted than faith-based disputes over the content of God’s law.

It is a mistake, I believe, to think of the Enlightenment (even in Europe, leaving aside the encounters of Christianity, Judaism, and Islam with Greek philosophy) as a single, unified historical phenomenon. We may identify a *radical* Enlightenment, atheistic in theory and aggressively secularist in practice. The early days of the French Revolution revealed what the politics of radical Enlightenment actually meant, leading many who initially sympathized with the revolutionary impulse to recoil.

But there was also a moderate Enlightenment that wished to open a social space for free inquiry and religious diversity without denigrating or expunging specific faiths. The majority of the American founders fell in this category; those who did not (think of Thomas Paine) tended to stand out.

I would argue that the proponents of moderate Enlightenment were in fact pluralists, even though they did not use the term. For example, James Madison’s depiction of rights of religious conscience, which became canonical for American political

thought and eventually American jurisprudence as well, rested explicitly on the coexistence of two different kinds of authority, neither of which straightforwardly trumps the other.

It is also a mistake to trace the reduction of religious violence in the West solely to the Enlightenment, however understood. Consider the theocratic argument, stripped to its essentials. IF (1) revealed religion X is true; and (2) to secure spiritual perfection or salvation, individuals and communities must live in accordance with that truth; and (3) law backed by coercive force is a permissible means of overcoming the inevitable resistance to living in that manner, THEN there is no objection in principle to establishing and enforcing religion X. But while a handful of daring Enlightenment thinkers such as Benedict Spinoza and Pierre Bayle were offering critiques of this argument’s first two premises, the most effectual response focused on the third premise, for reasons that had little to do with the Enlightenment.

By 1640, a century of religious conflict had left Europe exhausted and disillusioned. Ordinary people as well as distinguished thinkers were moving toward the conclusion that coercion in matters of religion was unacceptable, even in the name of saving souls. Their experience had led them to an historic judgment: violence in the name of religion was a greater problem than the political, moral, and spiritual ills it purported to cure. Modern scholars as diverse as political theorists Judith Shklar and Leo Strauss have documented how European attitudes shifted against what Machiavelli was the first to call “pious cruelty.”

This judgment sparked the development of new conceptions of religious toleration. Some argued that coercion in matters of faith was a contradiction in terms and therefore bound to fail. Others contended that Christianity, rightly understood, precluded such coercion. A few brave souls even speculated that precisely

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because it is given to mortals to see the divine only through a glass, darkly, there was more than one path to God and that religious controversies over which so much blood had been spilled should be regarded as matters of “indifference.”

This thesis could, and did, verge on an approach to religion that reflected more directly the influence of the Enlightenment—the idea of “natural theology,” or (in the title of Kant’s notable contribution to the genre)

Quality of Life and Human Difference Genetic Testing, Health Care, and Disability

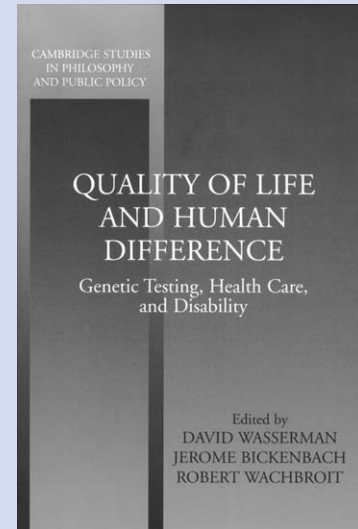
*Edited by David Wasserman, Jerome Bickenbach,
and Robert Wachbroit*

"What is most interesting about this volume is that while addressing the central issues in the debate about disability and well-being, it sets this in a wide context of getting to grips with deeper theoretical issues. . . . In addition to addressing the particular topic at hand this collection makes a contribution more broadly to bioethics. The material on measuring health versus well-being, for example, has significant implications for the endeavors in population genetic databases that are currently being advocated."

—Ruth Chadwick, Lancaster University

This innovative volume brings together two important literatures for the first time. One concerns the role of quality-of-life assessments in social policy, and especially in health policy. The second concerns ethical and social issues raised by prenatal testing for disability; a theme of this literature has been the role played by controversial assumptions about the quality of life of people with disabilities.

Hitherto, these two literatures have had little contact with each other. Few scholars have written about both or have compared the the two domains in a systematic way, and people with disabilities and disability scholars are underrepresented in recent discussions about health policy and quality-of-life assessment. This book brings to bear the perspectives of disability scholars on issues that have largely been the province of health methodology, policy, and philosophy, while focusing philosophical policy analysis on problems that have largely been the province of disability scholarship.



This volume will be sought after by bioethicists, philosophers, and specialists in disability studies and health care economics.

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religion within the limits of reason alone. But while this approach might vindicate the god and cosmos of the philosophers, it was bound to leave out most of what bound the pious to their particular faiths. Worse, it denied, tacitly if not explicitly, the core claim of most actual religions—that miraculous events of revelation or incarnation had pierced the barrier between God and man, making known truths beyond the bounds of reason. Even Kant felt impelled to remark that his famous critique of pure reason had limited reason's reach in order to make room for faith. It seems safest to say that while philosophy can try to understand the

conflict between faith and reason, it cannot surmount or abolish that conflict. Because there is no final solution, any viable political response must somehow embody this tension without overcoming it. This is what liberal constitutionalism at its pluralist best is able to achieve.

"Religion" and "Violence": Some Distinctions

"Up to now, I have conjured with "religion" and "violence" as undifferentiated concepts. At this stage of my argument, I need to offer some distinctions.

Religion

For my purposes, I want to propose three dimensions of variation among religions. (1) Religions differ in their basic structure. Some focus on inward states, while others give greater emphasis to external behavior, in the form of worship rituals as well as laws governing daily life. (2) Religions differ in the share of human existence over which they claim primary jurisdiction. Some view their domain as partial (Render unto Caesar what is Caesar's . . .), while others make totalizing claims to direct every aspect of life. (3) Some religions make universalistic claims, to be the one true faith for all human beings whoever and wherever they might be, while others are more particularistic.

My suggestion is that each of these dimensions bears on the ability of a specific religion to live with moral and religious plurality. In the first place, acceptance of pluralism comes more easily to religions that emphasize inner conviction, because they need ask little of politics beyond being left alone. By contrast, religions that take the form of law, as do traditional forms of Judaism and Islam, are forced to take seriously the content of public law. The terms of engagement between religious law and public law then become critical.

Second, religions that view their domain of jurisdiction as restricted are likely to coexist more comfortably with pluralism than are those with unlimited claims. Practitioners of a religion in which everything matters, from the consumption of food to the organization of politics, will feel compelled to use public power to mandate, or at least protect, their preferred practices. And this is bound to repress free expression and free exercise for other believers, not to mention nonbelievers, within that political community.

The difficulties for plurality engendered by comprehensive faith claims are deepened whenever a religion propounds the seamless unity of all existence. According to a leading traditionalist scholar of Islam, Seyyed Hossein Nasr, Islam rejects the distinction (characteristic of Christianity) between the religious and the secular, or the sacred and the profane: "In the unitary perspective of Islam, all aspects of life . . . are governed by a single principle." From this standpoint, the idea of a secular realm of freedom and plurality, independent of religion, is a leading modern example of the "mortal threat of 'polytheism'" against which Islam has struggled since its inception.

Finally, universalistic religions are likely to have a less accommodating stance toward plurality, wherever it may appear. At the very least, they will proselytize, raising the hackles of religious communities subjected to their messengers. And if they view the use of more forceful modes of conversion as limited only by prudential considerations rather than moral norms, then universalistic claims can be (and during the past two millennia, have been) translated into outright coercion.

My hypothesis is this: the more a religion expresses itself in external law, the more extensive its scope, and the more universalistic its claims, the less accommodating will be its stance toward plurality, and the more likely it will be to resort to violence to overcome or eliminate plurality. Thus, the universalism of many Protestant denominations is counterbalanced by their inward focus, and in some cases by more than prudential restraints on religious coercion as well. While classical rabbinic Judaism emphasizes external observance (and must therefore engage with public law), its claims

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are particularistic and (as we shall see) partial as well. Of all the "Abrahamic" faiths, my hypothesis suggests that Catholicism and Islam should have had a much harder time accepting plurality and eschewing violence; Islam the hardest of all, in that it holds *Shari'ah* to express the direct, unalterable will of God to a greater extent than does civil or canon law for Catholics.

Violence

The distinctions between restricted and unlimited domains, and between particularist and universalistic faiths, allow us to distinguish between religious violence that is essentially *defensive* in nature and violence that is *offensive*.

Particularist faith with limited domains are content to withdraw from the arena of power, or to participate in it on equal terms with others, so long as they are free to practice their faith. They may not accept other faiths as equal to their own. They may deplore the copresence of "foreign" or "strange" gods within their political community. But they are prepared to accept competing practices, out of necessity, as the price for being left alone. They will resort to violence only to defend themselves against other religious communities or public power seeking to restrict the free exercise of their faith.

Offensive religions, by contrast, seek and use power to impose their way on others. Four characteristics render them especially dangerous: their outlook is intolerant; their stance, uncompromising; their aspirations, totalist; their tactics, coercive when necessary. These are the faiths that pluralist societies and

those seeking to build such societies have good reason to fear.

There is another distinction that I introduce more tentatively. Some religious violence is *instrumental*—that is, consciously and deliberately chosen as the most effective way of advancing the one true faith. By contrast, another kind of religious violence is *instinctive*, when believers spontaneously lash out at practices they experience as degraded or disgusting.

My speculation is that it is easier to deter instrumental violence (through incentives and disincentives that rational actors must consider) than to restrain instinctive violence. Religions that experience diverse practices—for example, in gender relations—as impure and defiling are especially likely to be violence-prone. Consider the case of Sayyid Qutb, arguably the father of modern Islamist fundamentalism. As a graduate student at the University of Northern Colorado, he

Those who believe that there are many paths to God, or that it is not given to finite humans to know which is the right path to the Infinite God, will find it relatively easy to embrace religious pluralism.

was revolted by what he felt to be the licentiousness of relations between young American men and women—a wanton intermingling (while dancing, for example) rather than the strict division ordained by God. Describing his US experiences years later, his prose remains suffused with disgust. Radically divergent visions of gender relations may be close to the heart of the conflict between traditionalist Islam and social forces (within as well as outside the Islamic world) that have been influenced by Western modernity.

Pluralism and Religious Violence in Traditionalist Islam

At the outset of this essay, I suggested that more than ideas (let alone something as diffuse as the Enlightenment) it is concrete historical experiences that prepare the ground for religious pluralism and tolerance. In this concluding section of my essay, I offer the case of traditionalist Islam to illustrate this thesis.

Those who believe that there are many paths to God, or that it is not given to finite humans to know which is the right path to the Infinite God, will find it relatively easy to embrace religious pluralism. Islamic traditionalists cannot accept either of these beliefs. They may, however, believe that other faiths are on the same (right) path although they cannot reach the end—the one true faith. They may also believe that it is wrong to use coercion as an instrument of religious conversion.

Each of these beliefs finds textual support as well as opposition within Islam. For example, in the Koran we find the following: “Verily, those who believe and those who are Jews and Christians and Sabians, whoever believes in Allah and the Last day and do righteous good deeds shall have their reward with their Lord; on them shall be no fear, nor shall they grieve.” And even more famously, the Koran declares that “There can be no compulsion in religion.” In a recent article, Reza Aslan argues that

Islam is and always has been a religion of diversity. The [Wahhabist] notion that there was once an original, unadulterated Islam that was shattered into heretical sects and schisms is a historical fiction. Both Shiism and Sufism in all their wonderful manifestations represent trends of thought that have existed from the very beginning of Islam, and both find their inspiration in the words and deeds of the Prophet. God may be One, but Islam most definitely is not.

Much depends on the ability of the proponents of a genuinely Islamic pluralism to broaden public support for a generous and accommodating interpretation of their shared tradition.

This will not be easy, in part because there are important historical differences between Judaism and Islam that make traditionalist Muslims more receptive to theocratic claims than are most traditionalist Jews. Throughout the medieval and early modern periods, Jewish populations sought to maximize communal autonomy and to minimize conflict between the law of secular authorities and the commandments of the Torah. Efforts to enforce the fundamentals of the religion were invariably *defensive*, never *offensive*. And when, after World War II, Israel was established, it was barely thinkable that the religious law developed over centuries of political marginality in the diaspora could serve as civil legislation for the new state. For the most part, Orthodox communities and political parties in

Much depends on the ability of the proponents of a genuinely Islamic pluralism to broaden public support for a generous and accommodating interpretation of their shared tradition.

Israel ranked other goals ahead of the aspiration to rest civil legislation on Torah law, in part because applying it to political power wielded by a Jewish majority might well require sweeping revisions in the content of that law.

In contrast to Talmudic law, *Shari’ah* (Muslim religious law founded on the Koran and the conduct and statements of the Prophet) developed in an extended period during which Muslims wielded political power, often over populations that were overwhelmingly Muslim. The structure of that law thus reflects the expectation that it would have political as well as com-

munal authority. The idea of a secular state in which *Shari'ah* is both distinct from and subordinate to political authority stands in uneasy relation to this ideal, and many Muslims experience that idea as an alien (Western) imposition.

For example, in 1959, Iraq's new revolutionary ruler, General Abd al-Karim Qasim, promulgated a Code of Personal Status that contradicted *Shari'ah* in areas such as polygamy and inheritance. Clerical resistance to the Code helped undermine General Qasim's regime, and the repeal of the Code was among the first acts of the new government that took power in 1963 following a successful coup. (After taking power, Saddam Hussein instated a code that contradicted *Shari'ah* and permitted a substantial degree of gender equality.)

In the wake of the recent Iraqi elections, the new Shia majority is pushing for the restoration of *Shari'ah*-based codes, especially in the area of family law. "Our position on the family status law is non-negotiable. It will be based on *Shari'ah*," said Sheikh Kashef al Gatta, an influential Shiite politician who is expected to play a central role in drafting a new permanent constitution for Iraq. If this happens, traditionalist religious courts will make most decisions concerning marriage, divorce, inheritance, child custody, and the status of women. In this event, US policy makers would be faced with an unpalatable choice between honoring the results of a democratic election and defending what most Americans regard as basic human rights. Said one US official when asked about the possible majoritarian imposition of *Shari'ah*, "There is a vision of where we want Iraq to be that would make sense in terms of the resources we've put into this place and our overarching goal for democracy." The official's clear implication was that a coercive, theocratic family code would fail that test.

It would be too hasty to conclude, however, that Islamic traditionalism must entail some form of theocracy or always take a violent and intolerant form. One might well imagine an Islamic version of the Netherlands, a state in which a number of different faiths enjoy public funding and public standing, especially in the arena of education. Another possibility is a new version of the multi-confessional structure of the Ottoman Empire (reproduced to some degree in Israel), in which a dominant religious group shares civic space with other faiths that enjoy substantial autonomy and authority, especially over family law.

In short, there is no reason in principle why a moderate official "establishment" of Islam need eventuate in religious persecution and repression. As Noah Feldman, author of *After Jihad: America and the Struggle for Islamic Democracy*, has written:

If many in the West cannot imagine democracy without separation of church and state, many in the Muslim world find it impossible to imagine legitimate democracy with it. Fortunately, democracy does not require an absolute divide between religion and political authority. Liberty of conscience is an indispensable requirement of free government—but an established religion that does not coerce religious belief and that treats religious minorities as equals may be perfectly compatible with democracy.

Feldman is right, at least in principle. The most effectual cure for religious violence within Islam (or any other faith tradition, for that matter) is not grafting on some external concept of enlightenment, but rather mobilizing the resources within the faith that can open up social space for religious pluralism. But as the experience of early modern Europe shows, it can take a very long time indeed before the combatants conclude that the costs of religious violence exceed its benefits. In the process, instability reigns, and blood spills in profusion. It is not yet clear that the brave proponents of pluralism within Islam are speaking for anyone except themselves.

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Toward an Ethics of Detention and Interrogation: Consent and Limits

Charles A. Pfaff

Introduction

Detention and interrogation are ethically troubling activities. Detention deprives a suspect of the right to liberty. Furthermore, successful interrogators must at times rely on deception, incitement, and coercion in ways not normally acceptable to the general public. These means also involve using people in ways they have not agreed to be used, and seem at odds with democratic ideals upholding the dignity and value of human life. Respecting human dignity means giving people the kind of treatment they deserve, but prohibitions against torture, cruel, inhumane, and degrading treatment are based on the idea that there are kinds of treatment no one deserves.

As a result, both domestic and international law place severe restrictions on who may be detained and the kinds of methods interrogators may employ. However, exigencies in the Global War on Terror (GWOT) have stretched the normal moral and legal boundaries associated with detention and interrogation, and the temptation is intense to ignore these constraints entirely. Since detention facilities in

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Guantanamo, Iraq, and Afghanistan hold persons who undoubtedly possess information that can save hundreds, if not thousands, of innocent lives, taking into account ethical considerations that seem to undermine the effectiveness of intelligence gathering does not seem *morally* compelling.

The law of war sharpens this tension by prohibiting “physical or mental torture, [and] any other form of coercion,” inflicted on any enemy prisoner of war (EPW) or civilian to obtain information. Such a bright line makes it difficult for even well-meaning interroga-

tors to avoid pushing even approved techniques, some of which are inherently coercive, beyond the spirit, if not letter, of the law.

This environment of moral uncertainty demands reconsideration of where to draw the line between necessity and obligations to detainees. While moral argument does make room for torture, cruel, inhumane, and degrading treatment under certain restricted circumstances—often referred to as “ticking time-bomb” scenarios—it does not follow that such practices should be adopted as policy. We can, instead, recognize torture and ill-treatment as a choice some must make to avoid a greater harm. In doing so, however, those who cross the line must bear a personal moral cost. Otherwise the opportunity for abuse would undermine the US’s commitment to uphold the dignity of every human being.

Ethical Foundations of Detention and Interrogation

The ethics of detention and interrogation begin with a theory of rights, namely that by virtue of being human, all people are entitled, at a minimum, to the rights of life and liberty. But rights entail obligations, and if someone has a right to life and liberty, not only are persons themselves responsible for securing life and liberty (by, for instance, performing such life-preserving actions as eating and sleeping), but also *someone else* has an obligation to preserve them. This obligation falls to the state. But if the state is to exercise this responsibility, the state itself must also have rights of its own, namely the right to political sovereignty and territorial integrity. This provides the moral basis for which US forces may kill, destroy, detain, and interrogate citizens of other states in defense of the nation. However, respect for human dignity places moral restrictions on these kinds of actions.

Consent is a central moral criterion for evaluation of our behavior toward others. Murders, thefts, and lies are all recognized as wrong because they are violations of consent. No one consents to be murdered, have his

goods stolen, or be lied to. If one somehow did consent to be the recipient of such acts, they would not be classified as “murder,” “theft,” or “lie” at all. Consent plays such a critical role in moral reasoning because it is the manifestation of the freedom and dignity of the person. Failure to abide by someone else’s consent causes one to treat that person as a non-person, more as a tool than a user, merely a means to one’s ends. However, respect for human freedom and autonomy does not entail that one must always treat people in ways they *prefer*.

Consent *restrains*, as well as *enables*, what human beings may be morally permitted to do to one another. By virtue of one’s actions, one can consent to actions or circumstances that one prefers not happen, as well as to those that would be immoral without that consent. For example, the quarterback on a football team prefers not to be tackled by the other team, but if he is, he has no basis to accuse the other team of assault. Arguably most soldiers prefer not to be shot at, but by virtue of their activities as soldiers, they have accepted that risk. For this reason, although *no* blame is assigned to enemy soldiers for killing friendly ones, it is reasonable to argue that enemy soldiers have taken part in an unjust cause and therefore *are* morally wrong.

Criminals also consent to punishment by virtue of their commission of crimes. By not respecting the rights of others, criminals must expect a society founded on those rights to punish violators. Whether they expect that *they* will be punished is not relevant; it is simply their criminal activity that counts in considering the treatment they should reasonably expect. Criminals *should* reasonably expect that their rights as persons will be respected and that they will be subject to a judicial procedure that will permit them to address their innocence or guilt. But should they be found guilty, they should *expect* to be deprived of their freedom.

Insurgents and terrorists have exposed themselves to being killed, detained, and interrogated. Not only are they a threat, but also, unlike threats posed by quarterbacks, soldiers, and criminals, insurgents and terrorists have also consented to the possibility of detention and interrogation. In fact, they should *expect* to be detained and interrogated. However, insurgents and terrorists have not exposed themselves to unlimited kinds of treatment. I argue that there exist limits to moral permissibility in detention as well in interrogation.

Limits on Detention

The principle of consent at the outset limits who may be detained. Individuals suspected of insurgent or terrorist activity may be detained for two reasons: 1) to prevent them from conducting further attacks; 2) to gather intelligence in order to prevent other insurgents and terrorists from conducting attacks.

These reasons allow for two classes of persons to be detained and interrogated: 1) persons who have engaged in, or assisted those who engage in, terrorist or insurgent activities; and 2) persons who have incidentally come by information regarding insurgent and terrorist activity, but who are not guilty of associating with such groups. By engaging in such activities, persons in the first category may be detained as criminals or enemies, depending on the context. Persons in the second category may be detained and questioned for specific information, but since they have not, by virtue of their activities, represented a threat, they may be detained only long enough to obtain the relevant information. If those who have incidentally come by information refuse willingly to provide it, they must be released.

Limits on Interrogation

Most cases for permitting torture and ill-treatment begin with variants of the “ticking time-bomb” scenario. The ingredients of such scenarios are usually an impending loss of innocent life, a suspect who knows how to prevent it—and in most versions the suspect is responsible for the impending loss of innocent life—and a third party who has no humane alternative to obtain the information in the time left. Such cases are compelling, since most people do not want to conclude that *no* form of torture would be permissible, even if torture would not likely yield the desired information. Even those who are uncomfortable with their deliberations, conclude that the “ticking time bomb” scenario morally justifies torture.

Consider the case of the Israeli Supreme Court in rendering its own judgment on the use of torture and ill-treatment. The Court opened its judgment with the statement, “(t)he State of Israel has been engaged in an unceasing struggle for both its very existence and security, from the day of its founding.” Although it found that forms of interrogation involving physical pressure, as well as cruel, inhumane, and degrading treatment, were prohibited, the Court did allow interrogators to claim a defense of necessity in “ticking time-bomb”-like scenarios. In an example offered by the legal scholar Alan Dershowitz, Israeli agents successfully used torture to find the whereabouts of a kidnapped nineteen-year-old. His mother, according to Dershowitz, rhetorically asks, “Was this man going to reveal this kind of information if they served him tea and played some Mozart?”

Setting aside the false dilemma portrayed in this retort, arguments about respecting the humanity of the suspect and upholding laws prohibiting torture and ill-treatment in such situations would hardly be persuasive to victims and their families who would justly ask why their right to life is trumped by the suspect’s

right not to be tortured. If we accept that there are cases in which torture is morally permissible, Dershowitz reasonably argues, we should then institutionalize it, both in terms of law and practice. However, just because something can be morally permissible it is not self-evident that it should be legally permissible or that intelligence professionals should add it to their list of professional core competencies.

To illustrate this point, it is important to first note that “ticking time-bomb” scenarios are very restrictive. They limit the kinds of suspects whom it is permissible to torture by the following criteria: 1) the interrogator must have strong reasons to believe the suspect possesses the needed information; 2) the information must be necessary for preventing immediate harm to innocents; and 3) there must be no way to prevent the harm otherwise. Further, such scenarios require interrogators to apply a “minimum harm” rule and not inflict more harm than is necessary to get the desired information. Any pain that is inflicted—for instance, after the interrogator has determined that torture will not yield the needed information, or in order to teach a lesson—is morally wrong.

Notably, the criteria above exclude torture or ill-treatment for a population of suspects, even if the interrogator *knows* one of them has information that will prevent harm to innocents. While the utilitarian logic of this practice can be compelling—torture a few so many may live—ultimately, this practice is morally self-defeating because it puts innocent victims of torture in an impossible position. The person undergoing torture cannot prove he does *not* have the information, which presumably is the only thing he can give the interrogator to stop the torture. The only options available to the subject are either to endure the torture or ill-treatment indefinitely, or to give the torturer something he will believe, regardless its falsity. Placing someone in a position where he or she has the choice of pointlessly enduring physical pain or of lying degrades not only the subject and the interrogator, but it also morally diminishes the community that permits the creation of such untenable positions. This same logic precludes torturing a known terrorist on the suspicion that he has useful information. There is no way he can prove he does not.

A complete account of the moral permissibility to apply torture, or cruel, inhumane, or degrading treatment requires discussion of the basis interrogators could claim to know or have strong reasons to believe that a detained terrorist possesses information that could prevent the loss of innocent life. Credible sources or even confessions can be wrong or misinterpreted. Since this is an epistemic rather than a moral question, I will set aside a detailed discussion of what counts as knowledge or “strong reasons.” However, in judging whether or not torture or ill-treatment is permitted, the

due diligence with which interrogators apply analytical standards must be taken into account.

Further, given the severe restrictions on torturing suspects in “ticking time-bomb” scenarios, it is reasonable to ask if institutionalizing the practice of torture is morally worthwhile. Prohibitions against torture are so fundamental to the notions of human dignity upon which liberal democracies are founded, that we ultimately risk doing more harm than good by overriding those fundamental notions. It is one thing to recognize that on a case-by-case basis we must accept the lesser of two evils. It is something else entirely to assert that there are occasions when overriding democratic values is a good thing. The former risks occasional abuses for which the legal and political institutions necessary to address them remain intact. The latter risks undermining fundamental democratic values—and the institutions that preserve them—in such a way that they might no longer exist when the emergency is over.

Institutionalizing torture, cruel, inhumane, and degrading treatment also risk the integrity of the intelligence and military professions. It will require establishing law that sets aside the Geneva Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While this will be politically difficult and could undermine international and domestic support for the global war on terror, failure to do so will put the associated government agencies in the morally precarious position of training its people to do illegal acts.

Assuming this difficulty is resolved, additional moral costs must be addressed. Institutionalizing torture means that people skilled in the art and science of torture will have to be recruited and trained. A number of studies indicate that this has negative psychological as well as moral consequences, since habituating people to do cruel things risks making them cruel people. If one accepts that information gained from torture is usually unreliable and if one adds this to the cost of institutionalizing torture to professions as well as professionals, it is not so clear, even from the viewpoint of necessity, that ultimately the good obtained from permitting torture outweighs its harms.

A more morally consistent approach would be the recognition that at times violating legal and moral norms is understandable—that is, we can recognize that a good *person* might commit such an act—but not necessarily conclude that the *act* is good. In such cases, someone who committed an act of torture must offer his actions up for review and judgment by a competent authority. An excellent example of how this worked in real life is the case of a 4th Infantry Division Battalion Commander who permitted his men to beat a detainee whom he had good reasons to believe had information about future attacks against his unit.

When the beating did not get the desired results, he fired rounds around the detainee's head. The tactic was apparently successful and US servicemen lives were likely saved. However, his actions clearly violated the Geneva Conventions and he was prosecuted by the Army. He was, however, not punished to the full extent allowed by law, but he was instead fined and allowed to retire.

This resolution permitted the commander to do what he felt certain was the right thing. But it also required him to be certain that the right thing in this case was worth the end of his career. Thus we can recognize good people may be placed in situations where there is no morally good choice, but we do not have to redefine our morality to accommodate it.

Conclusion

Of course, the tension between necessity and humanity will remain. Because of this tension, military and intelligence professionals must accept that in crises they may find themselves in circumstances where lives will be at stake and the morally appropriate way to preserve those lives will not be obvious. This should not preclude action, but these professionals must be prepared to accept the moral, as well as legal, consequences of torturing or otherwise ill-treating suspects. Failure to recognize and accept this represents the worst kind of careerism, placing the professional's career over the needs of the profession and the nation it serves.

At the same time, because it is indispensable to the state in the fulfillment of its obligation to secure the life and liberty of its citizens, the work of interrogators is a moral obligation. Their methods, however, must reflect this nation's commitment to human dignity. Acting morally does not necessarily mean that states give up obtaining critical information. Acting morally does require that states relinquish certain ways of obtaining information, even if that means that members of the military and intelligence professions must take greater risks.

Sources: On more regarding democratic ideas upholding the dignity and value of human life, see Charles R. Beitz, *Political Theory and International Relations*, second edition (Princeton, Princeton Univ. Press, 1999); also see John Rawls's *Theory of Justice*, revised edition (Boston: Harvard Univ. Press, 1999) and National Strategy for Combating Terrorism, February 2003. On the prohibition against "physical or mental torture . . ." see *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, Part III (Captivity) Section I (Beginning of Captivity) Article 17. In his well-known view of the freedom and dignity of persons, Kant recognized this in one of his formulations of his famous Categorical Imperative: Act in such a way that you always treat humanity, whether in your own person or in the person of another, never simply as a means, but always at the same time as an end. Immanuel Kant. *Foundations of the Metaphysics of Morals* (1785), translated by Lewis Beck (Indianapolis, Indiana: Bobbs-Merrill Educational Publishing, 1959). For the opening statement of the Israeli Supreme Court, see: *Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity*, p. 80 quoted in *The Israeli Law Review*, p. 2. http://unixware.mscc.huji.ac.il/~law1/ilr/ilr23_2.htm. See also <http://62.90.71.124/eng/verdict/framesetSrch.html>. Alan M. Dershowitz, "Stop winking at torture and codify it," *LA Times* (June 13, 2004). On the point that habituating people to do cruel things risks making them cruel people, see Jean Marie Arrigo, "A Consequentialist Argument Against Torture Interrogation of Terrorists," <http://www.usafa.af.mil/jscope03/arrigo03.html>. Deborah Sontag, "How Colonel Risked his Career Menacing Detainee and Lost," *New York Times* (May 27, 2004).

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Terrorism, Innocence, and Justice

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On May 21, 1856 proslavery forces from Missouri attacked the antislavery town of Lawrence, Kansas, looting stores, burning buildings, and beating residents. Three days later, John Brown, proclaiming himself the servant of the Lord, along with his group of antislavery fighters, known as the Free State volunteers, sought revenge by killing five proslavery farmers along the Pottawatomie Creek. At the Doyle farm, James and his two sons were hacked to death. Mrs. Doyle, a daughter, and a fourteen-year-old son were spared. Brown and his fighters then moved on to a second farm, where Allen Wilkinson was taken prisoner, and finally to a third where William Sherman was executed. The attack on Lawrence and the subsequent killings at Pottawatomie Creek sparked a guerilla war between proslavery and antislavery forces in Missouri and Kansas that lasted several months and cost nearly two hundred lives.

Brown's campaign against slavery won him many supporters in the North, particularly among a group of wealthy New Englanders. With their help, Brown moved to Virginia where he hoped to start a slave rebellion. In 1859 he raided the United States armory in Harper's Ferry and held some sixty hostages. He was defeated, arrested and charged with inciting a slave insurrection, murder, and treason. In a plea for Brown's life, Henry David Thoreau said Brown "was like the best of those who stood on Concord Bridge . . . [You who pretend to care for Christ crucified, consider what you are about to do to him who offered himself to be the savior of four millions of men." On December 1859, Brown was hanged. But in the North, church services and public meetings glorified his deeds. Ralph Waldo Emerson, for example, said that Brown's execution would "make the gallows glorious as the cross." Some years later, in an address given at Harper's Ferry, Frederick Douglass praised Brown's unequalled dedication to the cause of abolition by saying, "I could live for the slave, but he could die for him."

The activities of John Brown and his militia have been repeated countless times throughout the world, particularly in the past few decades. Individual men and women organize themselves into a group and

engage in acts of violence for a political objective. Sometimes they wish to have their own separate homeland or defeat a foreign aggressor—the IRA in Ireland, ETA in Spain, Irgun in Israel, Tamil Tigers in Sri Lanka, FLN in Algeria, Hezbollah in Palestine. At other times they wish to overturn an unjust, tyrannical government and establish, as the Constitution of the United States declares, a "more perfect union." Such violence is almost always illegal. No state or system of law could long endure should it tolerate private violence, even for an important political objective. By almost all accounts, it is irregular violence, like vigilante justice, often biased in its own favor. Even when it elicits our sympathies, we regret if not fear this kind of violence. How, then, shall we think of John Brown? Was he a criminal, murderer, traitor, a religious zealot who killed and held hostage ordinary people? Was he a martyr whose selfless sacrifice contributed to the liberation of millions of children, women, and men from slavery?

Terrorism

One response is that John Brown killed innocent civilians. That makes him nothing less than a murderer. And it doesn't matter that he was motivated by a strong sense of justice, abolishing that horrible institution of slavery. That is a view that is well established in international law and that long tradition of moral reasoning called the just war theory. Among the important provisions of that theory is the principle of noncombatant immunity. It says that civilians are innocent and on that account they are to be spared the ravages of war. They are immune from deliberate attack and killing them is, as moral philosopher Elizabeth Anscombe puts it, "always murder." But what is the meaning of innocence in war? Why may we kill soldiers but never the ordinary citizen? Were Douglass, Thoreau and Emerson wrong about making Brown's "gallows glorious as the cross"? Was Brown, in today's language, a terrorist or a freedom fighter?

We do well first to come to some conceptual understanding of terrorism. What is it? How does it differ from other forms of political violence? When we define

terrorism we need to be careful not to confuse the conceptual with the moral issues. Some writers do just that, giving a definition of terrorism that makes terrorism always by its very nature an immoral activity. This makes any disagreement about the morality of terrorism a disagreement about its nature. Although it is difficult, we can distinguish one from the other.

In a recent article, C. A. J. Coady gives the following definition: terrorism is “the organized use of violence to target noncombatants (‘innocents’ in a special sense) for a political objective.” At first sight this seems a very useful definition. It covers a broad range of relevant phenomena and allows us to distinguish political from criminal violence, and more important to recognize that terrorism is a tactic used not only by nonstate groups (Aum Shinrikyo, al-Qaida, the Klu Klux Klan), but also by states themselves as a way of governing their citizens. Such an understanding is compatible with much of the history of terrorism. For example, the first English-language use of the word dates from 1795 and, like the French use that appeared a few years earlier, describes a mode of governing aimed to suppress political dissent. Examples of state terrorism abound: the mass-drowning and massacre of helpless prisoners during the Reign of Terror under Robespierre in France; executions in the former Soviet Union under

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moral issues.*

Stalin and in Haiti under “Papa Doc” Duvalier; the killing fields under Pol Pot in Cambodia; or the recent wave of torture, rapes, and arbitrary arrests in Equatorial Guinea, to name a few.

Coady’s definition captures this important dimension of terrorism. However, there are a few problems with it. First, it does not address an important development in the history of terrorism. The emergence of anarchist movements in Russia, France, Spain, Italy, and the United States in the 19th century brought a new type of violence not by states but, as we say today, “from below,” intended to bring about political change. Terrorism in this period referred to a way of fighting rather than governing and was largely restricted to the assassination of highly placed political figures. There was during this period hardly a trace of indiscriminate violence or the desire to intimidate and create fear in a civilian population for a political objective. On the contrary, a crucial feature of terrorism during this period was the attempt to arouse the spirit of revolt by highly selective violence and assassinations.

This understanding of terrorism continued well into the twentieth century. For example, in an entry in the *Encyclopedia of the Social Sciences*, published in 1934, indiscriminate violence was not yet a defining feature of terrorism: “Terrorist acts are directed against persons who as individuals, agents or representatives of authority interfere with the consummation of the objectives of group.”

Now, contemporary terrorism differs from its predecessors in an important way. Perhaps as early as 1940, it emerged as a way of fighting by acts of indiscriminate violence with the goal of intimidating, creating fear, and undermining the morale of a population. The paradigm case is the intentional indiscriminate aerial bombardment of German cities during World War II, where it was thought that subjecting large segments of the population to the terror of aerial bombardment would produce domestic unrest and widespread opposition to the war. The use of terror by revolutionary or insurgent groups (as some in Iraq today) differs from indiscriminate aerial bombardment only in degree, not in kind. Both aim for the same objective, to undermine civilian morale for the sake of arousing political opposition, and employ the same means, random killing and other acts of indiscriminate violence.

Second, contemporary terrorism is not restricted solely to targeting persons. Several groups have emerged in the past decades that strike only at property. Radical elements of the environmental and animal rights movements have engaged in a wide range of violent actions aimed to change social policies and practices that pollute water and air, and destroy forests and animal species. In the 1980s, for example, some of these groups spiked trees in public lands in Maine, Maryland, and North Carolina, others firebombed research facilities at Oregon State, Michigan State and Washington State Universities, and still others sabotaged and sunk whaling vessels in Iceland.

The above concerns can easily be incorporated in Coady’s definition. However, it has a further problem: by his account, terrorism targets the noncombatant—the ordinary civilian. This is problematic because there are many cases of killing soldiers that have a strong resemblance to terrorism. Consider the suicide bombing on October 1983 in Beirut that killed 241 American soldiers and 58 French paratroopers, or the identical attack on the US military barracks at Khobar Towers in Saudi Arabia on June 1996. What about killing soldiers on leave as they dine with their families, or go to the grocery store, or drink a beer at the local bar? Or soldiers sent on humanitarian missions after natural disasters, like the recent tsunami in South Asia? Not the happiest way of putting it, but perhaps if we distinguish between soldiers, who are military personnel not in a condition of war, and combatants who are soldiers in war, we can understand why killing the

French paratrooper or American soldier in Beirut and killing him on the battlefield are very different things. Combatants are soldiers in war. They are legitimate targets and killing them is an act of war. But soldiers (not in war) are much closer to civilians and killing them is an act of terror.

I propose, then, the following definition of the core feature of terrorism. Terrorism is the organized use of violence against civilians or their property, the political leadership of a nation, or soldiers (who are not combatants in a war) for political purposes. On this account, Robespierre, Stalin, Pol Pot, the radical environmentalists, the suicide bombers in Beirut and Saudi Arabia were terrorists. So, too, was John Brown. They killed civilians or destroyed their property or held hostages for a political purpose. We need now to determine whether what John Brown and other terrorists do is immoral. To do so, I first take up the question of innocence.

Innocence

For Coady and many other writers, terrorism is immoral because it deliberately kills persons who are illegitimate targets, persons who are, Coady says, innocent in a special sense, and those persons who are innocent in a special sense are the noncombatants. But these terms—illegitimate targets, innocence, and noncombatants—do not jibe. Furthermore, conflating them, as Coady does, confuses the conceptual and moral issues in terrorism. It smuggles the moral appraisal of terrorism into its definition, motivating the unavoidable conclusion that terrorism is, by definition, immoral.

The distinction between legitimate and illegitimate targets of attack has a long history. For example, the Hebrew Bible contains at least one passage that spares children and women from death in war, as well as livestock and fruit-bearing trees (Deuteronomy 20). The fourteenth century text by Honoré Bonet, *Tree of Battles*, explicitly prohibits the killing of ploughmen, laborers, pilgrims, and clerics (so, too the ox and the ass) because, Bonet writes, “they have no concern with war.” They lack responsibility for, and so are illegitimate targets of, war. In the sixteenth century the word “innocent” came into use to describe the civilian or noncombatant. “The basis of war is a wrong done,” writes the Spanish theologian Victoria. “But a wrong is not done by an innocent person. Therefore war may not be used against him.” For Victoria, innocents include children, women, old men, peasants, farmers, foreign travelers, literary men, clerics, and “the rest of the peaceable population.” All of them, Victoria says, must be “presumed innocent” unless they bear arms and pose a danger. But for Victoria, soldiers in war can also be innocent when, for example, they fight “in

good faith” or when their cause is just, or when they have been defeated. And these soldiers, he says, “may not be killed . . . Not even one of them.” Killing any one of them is on par with killing children, women, and old men.

When Coady says that noncombatants are innocent in a “special sense,” it is not that understanding he has in mind. For him, innocence refers to the role one plays in the prosecution of a war. Noncombatants are innocent in the special sense that they do not bear arms, are not directly engaged in the prosecution of a war, and do not pose a danger of imminent death to enemy combatants. But this notion of innocence makes no moral sense, for at least two reasons. First, it assumes that the role of the civilian is much like that of the medieval serf who toils the soil now for this lord and later for another, as the knightly class competed for honor, status, glory, and land. If there is any moral sense to the notion of innocent civilian it is here that we find it: harmless persons alienated from the source of political power, lacking any responsibility for the war. Under the political conditions of the time, there were hardly conscripts, volunteers, or citizen-soldiers. Armies consisted of hired guns of foreign mercenaries with little if any loyalty to a nation, but to the spoils and other material rewards of war. For them, war was not a political act or a form of public service. Civilians were immune from war only because they would later provide the source of labor the victor would need to profit from the newly conquered land. They were property, much like Bonet’s ox and ass.

But the nature of war changed dramatically with the French Revolution. Political power went from the monarchy to the people. Consequently, war was no longer the king’s or the knight’s concern. It became the people’s business. “The young men shall fight,” the French National Convention declared in 1793, “married men shall forge weapons and transport supplies; women will make tents and clothes and will serve in the hospitals; the children will make up old linen into lint; the old men will have themselves carried into the public square to rouse the courage of the fighting men, to preach hatred of kings and the unity of the Republic.” To assume that civilians are passive bystanders who, as Bonet puts it, “have no concern with war,” fails to recognize that for modern democracies war is a complex institution in which civilians play a crucial role. They provide not only the public spirit essential for war, but also the material necessities for success.

Second, if civilians cannot be killed in war because they are innocent, we must recognize that innocents are always killed in war—not civilians, but morally innocent soldiers. Coady alludes to this point when he says that what is important is “the role the individual plays in the chain of agency directing the aggression or

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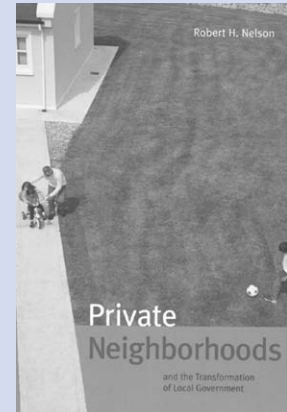
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wrongdoing." Those who are in that chain directing aggression or wrongdoing are guilty and may (perhaps must be) be killed. Some soldiers will surely be in that chain. But others fighting on behalf of justice and acting in self-defense are innocent and morally may not be killed. Suppose you unjustly attack me and I defend myself. Though I use lethal force against you, I am innocent of any aggression or wrongdoing. You do not have open to you to say that because I employ lethal force against you, you may do likewise and that killing me would not be wrong. Now, there are many soldiers who fit this description—innocent combatants fighting a war of self-defense. There will also likely be very many innocent combatants in totalitarian regimes whose leadership is guilty of aggression or wrongdoing, for example, forced conscripts in Baathist Iraq under Hussein in the 1991 Persian Gulf War. They were more cannon fodder than anything else. Combatants of totalitarian states hardly have any responsibility for the wars they fight and even when they fight an unjust war (like Hussein's aggression against Kuwait in 1990) seem more like Bonet's serf, ox or ass having no responsibility for the war. But civilians of democratic nations are not like Bonet's serf,

mere property used now by this lord and then the other, or combatants of totalitarian regimes removed from the source of political power. Citizens of democratic states fighting an unjust war have a measure of responsibility for the injustice. Are they, therefore, legitimate targets of attack?

Justice

There are many things any one of us may not have caused but which were nonetheless under our power to influence or control. Insofar as such things were under our power, we share some responsibility for them. And if such things bring harm to others, we are (partially) responsible for the harm. Suppose you endorse a political candidate by voting for him. This candidate declares that once elected he'll balance the federal budget by (among other things) slashing college financial aid, adversely affecting, discriminating against, harming, say, Chicanos and African Americans, but not white Americans. Are you by voting for that candidate responsible for discrimination, for the harm? Surely not, you will say, since you did not cause the policy nor wish to discriminate against

Chicanos or African Americans. But still you support him. He's your man in Washington. Four more years! That view of responsibility is very short sighted. It fails to see that government policies in a democracy are joint ventures. They are never the result of any one individual, but of many acting in concert for a common purpose. In such ventures, individuals play a necessary role by endorsing, contributing, or participating in them. By playing a necessary role in any one of those ways, each individual shares responsibility for the venture.

Those statements invite some general queries: What responsibility do citizens bear for their government's actions? Suppose a democratic regime, like ours, wages an unjust war. Just who is responsible? Are we morally responsible for the injustice of that war? Are we legitimate targets of deliberate attack? Would killing any one of us be an act of injustice?

Coady, the law of war, and the just war theory are firm in the opinion that regardless of the injustice of a government's actions, civilians are immune from deliberate attack. Individuals can lose their immunity in a number of ways, for example, by becoming soldiers, working for the war machine, or bearing arms. War is, however, never an individual, private, or personal enterprise. It is not something you or I do. But something we do together for a common purpose. It is a joint venture, a national activity. If we are engaged in grave injustice, say, a war of aggression, do those who endorse, contribute, or participate in the venture, as soldiers or civilians, lose their immunity from attack? How shall we think about this?

Suppose there is a gang of thieves headed by George and Tony who are in competition for territory and resources with another gang, headed by Boris and Jose. George and Tony decide to eliminate the competition and send their best hit men to kill Boris and Jose. Of course, Boris and Jose can defend themselves by killing the hit men, who are engaged in a criminal, immoral activity. But may they also kill those who sent them, George and Tony? After all, the hit men can botch their mission and then George and Tony will send their second best. Would it not be preferable for Boris and Jose to remove the danger by killing George and Tony rather than the hit men? Or do we say that since George and Tony are not bearing arms only the hit men may be killed? Who is responsible for the danger imposed on Boris and Jose?

In a democratic system like ours, given the possibility of free action, civilians bear a high burden of responsibility. When we support an unjust war, does it really make any sense to say that we are immune from attack because we are not bearing arms? Do we say only our soldiers can be killed, even when we, and not they, are responsible for an illegal and unjust proceeding? Are those who support an unjust war really innocent?

The fact is that not everyone will support an unjust war. And so, we have to distinguish between those who do and are therefore morally responsible, like George and Tony, and those who do not, who may not be killed because they are innocent of injustice. But it seems correct to say that George and Tony along with those who support, encourage, and send out the troops to wage an illegal and unjust war may morally be killed. If we take the idea of democratic popular sovereignty really seriously, then it is difficult to avoid that conclusion.

But there's at least one problem here: those who would attack a people waging an unjust war may kill only the guilty, otherwise they commit murder. Yet, there is no practical way by which one can do that. Bombs and bullets cannot read the bumper stickers on our cars that say "Not In My Name" and "Regime Change Begins At Home"; bombs and bullets do not know that some of us have organized anti-war demonstrations and that we know and have declared that this is an immoral, illegal, and criminal war. Nonetheless, suppose in some (very rare) circumstances the guilty can be distinguished from the innocent. When possible, then, the guilty may be morally killed.

We might, however, retreat from this view, even when we agree that it is correct. Perhaps morality is not always the best guide. Sometimes it demands too much. In the present case, it demands (at least permits) killing those responsible for grave injustice, the guilty. Of them, there will be very many and most of them will be found among the civilian population. But for the sake of reducing the carnage of war, we might let most of the guilty go free and restrict legitimate targets of attack to soldiers in war. But we do so not because civilians are innocent. Rather we do so because without limiting the range of legitimate targets to soldiers, there would be no room for war in this world. That might be a very good thing. But in the world as I know it, we must make some room for various forms of political violence as they can secure important moral goods—insurrection and revolution, for example, to free the slave and defeat tyrants, and war to defend the nation against those who would unjustly attack us.

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Sources: The quote from Henry David Thoreau occurs in http://www.sas.upenn.edu/African_Studies/Articles_Gen/Plea_Captain_Brown.html; accessed on 28 December 2004. The quote from Emerson can be found at: <http://www.loc.gov/exhibits/african/afam007.html>; accessed on 28 December 2004. The quote Douglass can be found at: <http://memory.loc.gov/ammen/today/oct16.html>; accessed on 28 December 2004. G. E. M. Anscombe, "Mr. Truman's Degree," in *Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press, 1981); C. A. J. Coady, "Terrorism, Just War and Supreme Emergency," in Coady and M. O'Keefe, *Terrorism and Justice* (Melbourne, Australia: Melbourne University Press, 2002). The *Oxford English Dictionary* provides the 1795 date for the first English-language use of terrorism, and still today defines terrorism as government by intimidation carried out by the party in power. For a discussion of state terrorism, see Morris Slavin, *The Left and the French Revolution* (Atlantic Highlands, NJ: Humanities Press International, 1995), Chapter 7; I am indebted to my friend and colleague, Morris Slavin, for many insightful discussions on revolution and terror. For a discussion of recent instances of torture, rape, and arbitrary arrest, see my "Justifying Political Assassination: Michael Collins and the Cairo Gang," *Journal of Social Philosophy*, vol. XXXI, no. 2 (Summer 2000): 160–177. The quote in the 1934 *Encyclopedia of the Social Sciences* is discussed in Walter Laqueur, *Terrorism* (Boston: Little, Brown and Company, 1976). The most comprehensive study of aerial bombardment used to break the morale of an enemy population is Robert A. Pape, *Bombing to Win: Air Power and Coercion in War* (Ithaca: Cornell University Press, 1996). In the 1920s, Guilio Douhet and Basil H. Lidell Hart articulated a doctrine of strategic air power, sometimes also called terror or obliteration bombing. "Take the center of a large city," Douhet wrote, "and imagine what would happen among the civilian population during a single attack by a sin-

gle bombing unit. . . . [I have no doubt that its impact on the people would be terrible. . . . [A complete breakdown of the social structure cannot but take place in a country subjected to this kind of merciless pounding from the air. The time would soon come when, to put an end to horror and suffering, the people themselves, driven by the instinct of self-preservation, would rise up and demand an end to the war. " *Command of the Air*, trans. Dino Ferrari (New York: Coward-McCann, 1942). See also the US Air Force book, *Target Germany*: "The physical attrition of warfare is no longer limited to the fighting forces. Heretofore the home front has remained relatively secure; armies fought, civilian populations worked and waited. . . . [But now] we have terror and devastation carried to the core of a warring nation." (NY: Simon and Schuster, 1943). I give only the core of terrorism. That core can accommodate multiple layers: e.g., revolutionary or agitational and state or enforcement terrorism (i.e., the typical cases), war terrorism and religious terrorism, as well as the notion, common among political scientists, that terrorism targets a much larger group than the victim group and it does so, as some of the Anarchists of the late 19th century put it, a "propagandistic effect." The fundamental point of my definition is that terrorism is a tactic with or without an ideology of terror. Honoré Bonet, *Tree of Battles*, translated by G. W. Coopland (Liverpool: University of Liverpool, 1949). Francisco Victoria, "De Indis et de Lure Belli Reflectiones," in *Classics of International Law*, edited by J. B. Scott, translated by J. P. Bate (Washington, DC: Carnegie Institute, 1917); for a contemporary version of these matters, see my "White Flags on the Road to Basra," *Journal of Social Philosophy*, vol. XXXII, no. 2 (Summer 2001): 143–157. For a further discussion of civilians as property, see my "Innocence in War," *International Journal of Applied Philosophy*, vol. 14, no. 2 (Fall 2000): 161–174. The quote from French National Convention of 1793 occurs in Hoffman Nickerson, *The Armed Horde 1793–1939* (NY: Putnam's Sons, 1940). In my points concerning justice, I follow some ideas of Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1992). For a further discussion of democratic popular sovereignty (introduced in my George and Tony example), see Igor Primoratz, "Michael Walzer's Just War Theory: Some Issues of Responsibility," *Ethical Theory and Moral Practice* 5 (2002), especially section 3.

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