

Chapter 46

Secession and Nationalism

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Secession, Autonomy and the Modern State

The past decade and a half has witnessed a rash of secessionist movements. Some have succeeded, some have failed; some have involved large-scale conflict and ethnic cleansing, some have been remarkably peaceful. These momentous events call into question not only the legitimacy of particular states and their boundaries, but also the nature of sovereignty, the purposes of political association and the scope of majority rule.

Less publicized and less dramatic movements for greater self-determination of groups within the framework of existing states are also becoming pervasive. The indigenous peoples' rights movement, pursued with vigour in the United Nations and other arenas of international law, embraces Indians in North, Central and South America, Southeast Asian Hill Tribes, the Saami (Lapps) in a number of countries touched by the Arctic Circle, and Native Hawaiians, among others. Self-determination movements among Flemings in Belgium and Scots in the United Kingdom appear to be building as well. In most of these cases the groups in question do not seek full sovereignty, but rather greater autonomy through the achievement of limited rights of self-government as distinct subunits within the state.

The proper analysis of the concept of sovereignty is, of course, a matter of dispute. However, the root idea is that of a supreme authority – one whose powers are unrestricted by those of other entities. It is useful to distinguish between *internal* and *external* sovereignty (McCallum, 1987, pp. 36–45). Internal sovereignty is the state's supremacy with respect to all affairs within its borders. External sovereignty is the state's supremacy with respect to its relations with other political units beyond its borders; in particular, its right to the integrity of its territory, and to control crossings of its borders, as well as the right to enter as an independent party into economic agreements or military alliances or treaties with other states.

No state enjoys literally unrestricted external sovereignty. International law imposes a number of restrictions on every state's dealings with other states, the most fundamental of which is that each is to recognize the others' territorial integrity. In addition, virtually all modern states acknowledge (in principle if not in practice) that their internal sovereignty is limited by *individual rights*, in particular the human rights recognized in international law.

Autonomy movements seek to impose further limitations on internal sovereignty through the recognition of various *group rights*. These include not only so-called minority cultural rights, such as the right to speak one's own language or to wear cultural dress, but also collective property rights for the group, rights of internal self-government, and in some cases rights to participate in joint decision making concerning the development and exploitation of resources in the area occupied by the group (Quebec, 1991).

Autonomy movements may appear to be less radical than outright bids for secession. After all, what they demand is not the dismemberment of the state into two or more new states, but only a reallocation of certain powers within the state. This appearance, however, is misleading. If a state recognizes substantial powers of self-determination for groups within its borders, it thereby acknowledges limits on its own sovereignty. And if the modern state is defined as a political authority which (credibly) claims full sovereignty over the entire area within its borders, then a state that recognizes rights of self-determination for minorities within its borders thereby transforms itself into something less than a fully sovereign state. (For example, American Indian law, in conferring significant powers of self-government upon Indian tribes, uses the term 'Indian Nations', and is increasingly regarded as approaching the status of *international law*; Williams, 1990, pp. 74–103.)

Thus, secession movements only threaten the myth of the permanence of the state; autonomy movements assault the concept of state sovereignty itself. Successful and frequent secession would certainly shatter the international order; but it would not challenge the basic conceptual framework that has governed international law for over three hundred years, since the rise of the modern state. What is fundamental to that framework is the assumption that international law concerns relations among sovereign states. If successful, autonomy movements within existing states may make the case of sovereign states the exception rather than the rule (Hannum, 1990, pp. 14–26, 453–77).

Even though secession is in this sense a phenomenon which the traditional framework of international law and relations can in principle accommodate, it is the most extreme and radical response to the problems of group conflict within the state. For this reason, a consideration of the case for and against secession puts the moral issues of group conflict in bold relief. In what follows, we will explore the morality of secession, while bearing in mind that it is only the most extreme point on a continuum of phenomena involving the struggles of groups within existing political units to gain greater autonomy.

Nationalism and the Justification of Secession

Some see the recent spate of secessionist movements as the expression of an unpredicted and profoundly disturbing resurgence of *nationalism*. And indeed one of the most familiar and stirring justifications offered for secession appeals to *the right of self-determination for 'peoples'*, interpreted such that it is equivalent to what is sometimes called the *normative nationalist principle*. It is also one of the least plausible justifications.

The normative nationalist principle states that every 'people' is entitled to its own state; that is, that political and cultural (or ethnic) boundaries must coincide (Gellner,

1983, pp. 1–3). In other words, according to the normative nationalist principle, the right of self-determination is to be understood in a very strong way, as requiring complete political independence – that is, full sovereignty.

An immediate difficulty, of course, is the meaning of ‘peoples’. Presumably a ‘people’ is a distinct ethnic group, the identifying marks of which are a common language, shared traditions and a common culture. Each of these criteria has its own difficulties. The question of what count as different dialects of the same language, as opposed to two or more distinct languages, raises complex theoretical and meta-theoretical issues in linguistics. The histories of many groups exhibit frequent discontinuities, infusion of new cultural elements from outside, and alternating degrees of assimilation to and separation from other groups.

More disturbingly, if ‘people’ is interpreted broadly enough, then the normative nationalist principle denies the legitimacy of any state containing more than one cultural group (unless all ‘peoples’ within it freely waive their rights to their own states). Yet cultural pluralism is often taken to be a distinguishing feature of the modern state, or at least of the modern liberal state. Moreover, if the number of ethnic or cultural groups or peoples is not fixed but may increase, then the normative nationalist principle is a recipe for limitless political fragmentation.

Nor is this all. Even aside from the instability and economic costs of the repeated fragmentation which it endorses, there is a more serious objection to the normative nationalist principle, forcefully formulated by Ernest Gellner.

To put it in the simplest terms: there is a very large number of potential nations on earth. Our planet also contains room for a certain number of independent or autonomous political units. On any reasonable calculation, the former number (of potential nations) is probably much, *much* larger than that of possible viable states. If this argument or calculation is correct, not all nationalisms can be satisfied, at any rate not at the same time. The satisfaction of some spells the frustration of others. This argument is furthered and immeasurably strengthened by the fact that very many of the potential nations of this world live, or until recently have lived, not in compact territorial units but intermixed with each other in complex patterns. It follows that a territorial political unit can only become ethnically homogenous, in such cases if it either kills, or expels, or assimilates all non-nationals. (Gellner, 1983, p. 2)

With arch understatement, Gellner concludes that the unwillingness of people to suffer such fates ‘may make the implementation of the nationalist principle difficult’. Thus to say that the normative nationalist principle must be rejected because it is too *impractical* or *economically costly* would be grossly misleading. It ought to be abandoned because the *moral costs* of even attempting to implement it would be prohibitive.

It is important to see that this criticism of the principle of self-determination is decisive *only* against the strong version of that principle that makes it equivalent to the normative nationalist principle, which states that each people (or ethnic group) is to have its own fully sovereign state. For the objection focuses on the unacceptable implications of granting a right of self-determination to all ‘peoples’ *on the assumption that self-determination means complete political independence, that is, full sovereignty*.

However, as we have already suggested, the notion of self-determination is vague or, rather, multiply ambiguous, inasmuch as there are numerous forms and a range of

degrees of political independence or autonomy that a group might attain. Instead of asserting an ambiguous *right* to self-determination, it might be better to acknowledge that many if not most groups have a *legitimate interest* in self-determination and that this interest can best be served in different circumstances by a range of more specific rights or combinations of rights, including a number of distinct group rights to varying forms and degrees of political autonomy, with the right to secede being only the most extreme of these.

I have argued elsewhere that there is a moral right to secede, though it is a highly qualified, limited right. It is not a right which all 'peoples' or ethnic or cultural groups have simply by virtue of their being distinct groups. Instead, only those groups whose predicament satisfies the conditions laid out in any of several sound justifications for secession have this right. In this sense the right to secede, as I conceive it, is not a general right of groups, but rather a special or selective right that obtains only under certain conditions (Buchanan, 1991, pp. 151–62).

Types of Theories of the Unilateral Right to Secede

The greatest controversy and the greatest risk of violence arise in the case of unilateral or non-consensual secession – that is, cases where a group tries to secede without the consent of the state from which it is seceding. The current literature exhibits three main types of theories of the unilateral or non-consensual right to secede: (1) Remedial Right Only Theories, according to which the unilateral right to secede is a remedial right, a right a group comes to have as the result of the state committing violations of its rights or the individual rights of its members; (2) Primary Right Theories, which hold that groups can have the right to secede even in the absence of rights violations, either simply because they are nations, on the assumption that nations have a right of self-determination that includes secession (Nationalist Theories) or simply because they are a majority in the region in question favouring secession (Plebiscitary Theories). I have argued elsewhere in detail that Remedial Right Only Theories are more plausible, all things considered. Nationalist Primary Right Theories suffer from the difficulties noted above. Plebiscitary Theories wrongly assume that the same values that make democracy the appropriate form of government for an existing state also imply that any group that happens to be a majority within a particular part of state has the right to redraw the boundaries of the state. Without pretending to have done justice here to Nationalist and Plebiscitary Theories, I will now briefly sketch some of the kinds of arguments that make the Remedial Right Only approach attractive (Buchanan, 2004; see further Couture et al., 1996; Moore, 1998; Macedo and Buchanan, 2003).

Rectifying past unjust takings

This first justification is the simplest and most intuitively appealing argument for secession. It has obvious application to many actual secessionist movements, including some of those that completed the dissolution of the Soviet Union. The claim is that a region has a right to secede if it was unjustly incorporated into the larger unit from which its members seek to separate.

The argument's power stems from the assumption that secession is simply the reappropriation, by the legitimate owner, of stolen property. The right to secede, under these circumstances, is just the right to reclaim what is one's own. This simple interpretation is most plausible, of course, in situations in which the people attempting to secede are literally the same people who held legitimate title to the territory at the time of the unjust annexation, or at least are the indisputable descendants of those people (their legitimate political heirs, so to speak). But matters are considerably more complex if the seceding group is not closely or clearly related to the group whose territory was unjustly taken, or if the group that was wrongly dispossessed did not itself have clear, unambiguous title to it. But at least in the paradigm case, the argument from rectificatory justice is a convincing argument for a moral right to secede. The right of the Baltic Republics to secede from the Soviet Union, which forcibly and unjustly annexed them in 1940, is well supported by this first justification.

It is one thing to say that a group has the right to secede because in so doing they will simply be reclaiming what was unjustly taken from them. The *terms* of secession are another question. In some cases secession will adversely affect individuals who had no part in the unjust acquisition of the territory. Whether, or under what conditions, they are owed compensation or other special consideration is a complex matter (Buchanan, 1991, pp. 87–91).

The self-defence argument

The common law, common-sense morality, and the great majority of ethical systems, religious and secular, acknowledge a right of self-defence against an aggressor who threatens lethal force. For good reason this is not thought to be an unlimited right. Among the more obvious restrictions on it are (1) that only that degree of force necessary to avert the threat be used, and (2) that the attack against which one defends oneself not be provoked by one's own actions. If such restrictions are acknowledged, the assertion that there is a right of self-defence is highly plausible. Each of these restrictions is pertinent to the right of groups to defend themselves. There are two quite different types of situations in which a group might invoke the right of self-defence to justify secession.

In the first, a group wishes to secede from a state in order to protect its members from extermination by that state itself. Under such conditions the group may either attempt to overthrow the government, that is, to engage in revolution; or, if strategy requires it, the group may secede in order to organize a defensible territory, forcibly appropriating the needed territory from the aggressor, creating the political and military machinery required for its survival, and seeking recognition and aid from other sovereign states and international bodies. Whatever moral title to the seceding territory the aggressor state previously held is *invalidated* by the gross injustice of its genocidal efforts. Or, at the very least, we can say that whatever legitimate claims to the seceding territory the state had are *outweighed* by the claims of its innocent victims. We may think of the aggressor's right to the territory, in the former case, as dissolving in the acid of his own iniquities, and, in the latter, as being pushed down in the scales of the balance by the greater weight of the victim's right of self-defence. Whether we say that the evil state's right to territory is invalidated (and disappears entirely) or merely is

outweighed, it is clear enough that in these circumstances its claim to the territory should not be an insurmountable bar to the victim group's seceding, if this is the only way to avoid its wrongful destruction. Unfortunately, this type of case is far from fanciful. One of the strongest arguments for recognizing an independent Kurdish state, for example, is that only this status, with the control over territory it includes, will ensure the survival of this group in the face of genocidal threats from Turkey, Iran and Iraq.

There is a second situation in which secessionists might invoke the right of self-defence, but in a more controversial manner. They could argue that in order to defend itself against a lethal aggressor a group may secede from a state that is not itself that aggressor. This amounts to the claim that the need to defend itself against genocide can *generate* a claim to territory of sufficient moral weight to override the claims of those who until now held valid title to it and who, unlike the aggressor in the first version of the argument, have not forfeited their claim to it by lethal aggression.

Suppose the year is 1939. Germany has inaugurated a policy of genocide against the Jews. Jewish pleas to the democracies for protection have fallen on deaf ears (in part because the Jews are not regarded as a *nation* – nationhood carrying a strong presumption of territory, which they do not possess). Leaders of Jewish populations in Germany, Eastern Europe and the Soviet Union agree that the only hope for the survival of their people is to create a Jewish state, a sovereign territory to serve as a last refuge for European Jewry. Suppose further that the logical choice for its location – the only choice with the prospect of any success in saving large numbers of Jews – is a portion of Poland. Polish Jews, who are not being protected from the Nazis by the government of Poland, therefore occupy a portion of Poland and invite other Jews to join them there in a Jewish sanctuary state. They do not expel non-Jewish Poles who already reside in that area but, instead, treat them as equal citizens. (From 1941 until 1945 something like this actually occurred on a smaller scale. Jewish partisans, who proved to be heroic and ferocious fighters, occupied and defended an area in the forests of Poland, in effect creating their own mini-state, for the purposes of defending themselves and others from annihilation by the Germans.)

The force of this second application of the self-defence argument derives in part from the assumption that the Polish Jews who create the sanctuary state *are not being protected by their own state, Poland*. The idea is that *a state's authority over territory is based at least in part in its providing protection to all its citizens* – and that its retaining that authority is conditional on its continuing to do so. In the circumstances described, the Polish state is not providing protection to its Jewish citizens, and this fact voids the state's title to the territory in question. The Jews may rightly claim the territory, if doing so is necessary for their protection against extermination.

Escaping discriminatory redistribution

The idea here is that a group may secede if this is the only way for them to escape discriminatory redistribution. Discriminatory redistribution, also called regional exploitation and internal colonization, occurs whenever the state implements economic policies that systematically work to the disadvantage of some groups, while benefiting others, in morally arbitrary ways. A clear example of discriminatory redistribution would be the state imposing higher taxes on one group while spending less on it, or placing

economic restrictions on one region, without any sound moral justification for this unequal treatment.

Charges of discriminatory redistribution abound in actual secessionist movements. Indeed, it would be hard to find cases in which this charge does not play a central role in justifications for secession, even though other reasons are often given as well. Here are only a few illustrations.

- 1 American Southerners complained that the federal tariff laws were discriminatory in intent and effect – that they served to foster the growth of infant industries in the North by protecting them from European and especially British competition, at the expense of the South's import-dependent economy. The Southern statesman John C. Calhoun and others argued that the amount of money the South was contributing to the federal government, once the effects of the tariff were taken into account, far exceeded what that region was receiving from it.
- 2 Basque secessionists have noted that the percentage of total tax revenues in Spain paid by those in their region is more than three times the percentage of state expenditures there. (A popular Basque protest song expresses this point vividly, saying that 'the cow of the state has its mouth in the Basque country but its udder elsewhere'.) (Horowitz, 1985, pp. 249–54).
- 3 Biafra, which unsuccessfully attempted to become independent from Nigeria in 1967, while containing only 22 per cent of the Nigerian population, contributed 38 per cent of total revenues, and received back from the government only 14 per cent of those revenues (Nwanko and Ifejika, 1970, p. 229).
- 4 Secessionists in the Baltic Republics and in Soviet Central Asia protested that the government in Moscow for many years implemented economic policies which benefited the rest of the country at the expense of staggering environmental damage in their regions. To support this allegation of discriminatory redistribution, they cited reports of abnormally high rates of birth defects in Estonia, Latvia and Lithuania, apparently due to chemical pollutants from the heavy industry which Soviet economic policy concentrated there, and contamination of ground water in Central Asia due to massive use of pesticides and herbicides at the order of planners in Moscow whose goal it was to make that area a major cotton producer.

An implicit premiss of the argument from discriminatory redistribution is that *failure to satisfy this fundamental condition of non-discrimination voids the state's claim to the territory in which the victims reside*, whereas the fact that they have no other recourse to avoid this fundamental injustice *gives them a valid title to it*. This premiss forges the needed connection between the grounds for seceding (discriminatory redistribution) and the territorial claim that every sound justification for secession must include (since secession involves the taking of territory). One good reason for accepting this premiss is that it explains our intuitions about the justifiability of secession in certain central and relatively uncontroversial cases.

In other words, unless this premiss is acceptable, the argument from discriminatory redistribution is not sound; and unless the argument from discriminatory redistribution is sound, it is hard to see how secession is justifiable in certain cases in which there is widespread agreement that it is justified. Consider, for example, the secession of the

thirteen American Colonies from the British Empire. (Strictly speaking this was secession, not revolution. The aim of the American Colonists was not to overthrow the British government, but only to remove a part of the North American territory from the Empire.) The chief justification for American independence was discriminatory redistribution: Britain's mercantilist policies systematically worked to the disadvantage of the Colonies for the benefit of the mother country. Lacking representation in the British Parliament, the colonists reasonably concluded that this injustice would persist. It seems, then, that if the American 'Revolution' was justified, then there are cases in which the state's persistence in the injustice of discriminatory redistribution, together with the lack of alternatives to secession for remedying it, *generates* a valid claim to territory on the part of the secessionists.

The force of the argument from discriminatory redistribution does not rest solely, however, on brute moral intuitions about particular cases such as that of American independence. We can *explain* our responses to such cases by a simple but powerful principle: the legitimacy of the state – including its rightful jurisdiction over territory – depends upon its providing a framework for co-operation that does not systematically discriminate against any group.

The self-defence argument and the argument from discriminatory redistribution share an underlying assumption, namely, that the justification for a state's control over territory is at least in part *functional*. Generally speaking, what entitles a state to exercise exclusive jurisdiction ('territorial sovereignty') over a territory is the state's provision of a regime that enforces basic rights in a non-discriminatory way. If the state fails to fulfil these legitimating jurisdictional functions with respect to a group, and if there is no other way for the group to protect itself from the ensuing injustices, then it can rightfully claim the jurisdictional authority for itself.

Attempts to justify secession on grounds of discriminatory redistribution are more complicated than might first appear. The mere fact that there is a net flow of revenue out of one region does not show that discriminatory redistribution is occurring. Instead, the state may simply be implementing policies designed to satisfy the demands of *distributive justice*. (Theories of distributive justice attempt to formulate and defend principles that specify the proper distribution of the burdens and benefits of social co-operation.) The problem is that distributive justice is a highly controversial matter and that different theories will yield different and in some cases directly opposing assessments of distributive patterns across regions of a country. A policy that redistributes wealth from one region to others may be a case of discriminatory redistribution according to one theory of distributive justice, but a case of just redistribution according to another. Even if there is fairly widespread agreement that the better off owe *something* to the worse off, there can be and is disagreement as to *how much* is owed. To this extent, the theory of secession is derivative upon the theory of distributive justice and subject to its uncertainties.

Justifications for Forcible Resistance to Secession

An adequate moral theory of secession must consider not only arguments to justify secession but justifications for resisting it as well. Here I will concentrate on only two of the more influential and plausible of the latter (Buchanan, 1991, pp. 87–125).

Avoiding anarchy

From Lincoln to Gorbachev, leaders of states have opposed secession, warning that recognition of a right to secede would result in chaos. The *reductio ad absurdum* of the right to secede is the prospect of the most extreme anarchy: not every man's home his castle; rather, every man's yard his country. Even if political fragmentation stops short of this, recognition of a right to secede is likely to produce more fragmentation than is tolerable.

This argument would be much more plausible if recognizing a right to secede meant recognizing an *unlimited* right to secede. But as we have argued, the right to secede is a special or selective right that exists only when one or more of a limited set of justifying conditions is satisfied; it is not a general right of all peoples. Nor, as we have also seen, can it reasonably be understood to be included in or derivable from an alleged right of all peoples to self-determination. At most, the threat of anarchy could create a rebuttable presumption against secession, so that secessionists would, generally speaking, have to make a case for seceding.

The theory of the right to secede sketched above can be seen as including such a presumption: a sound justification for secession is to include a justification for the secessionists' claim to the territory. In a sense, this requirement constitutes a presumption in favour of the status quo, and to that extent addresses the worry about anarchy. And since, as I have also noted, secession involves not only the severing of bonds of political obligation but also the taking of territory, this requirement seems reasonable.

Some might argue that by requiring secessionists to offer grounds for their claim to the territory, the theory proposed here stacks the deck against them (Kymlicka, 1992). Especially from the standpoint of liberal political philosophy, which prizes liberty and self-determination, why should there not be a presumption that secession is justified – or, at the very least, why should not secessionists and anti-secessionists start out on level ground in the process of justification?

There are, I believe, two sound reasons for a presumption that secessionists must make a case for taking the territory. First, a moral theory of secession should be viewed as a branch of *institutional ethics*. One relevant consideration for evaluating proposed principles for institutional ethics is the consequences of their general acceptance. So long as it is recognized that the presumption against secession can be rebutted by any of the arguments stated above in favour of a right to secede, such a presumption seems superior to the alternatives. Given the gravity of secession – and the predictable and unpredictable disruptions and violence which it may produce – legitimate interests in the stability of the international order speak in favour of the presumption.

Another consideration in favour of assigning the burden of argument where I have is that such a presumption – which gives some weight to the status quo – is much more likely to contribute to general acceptance of a right to secede in the international community. Other things being equal, a moral theory which is more likely to gain acceptance is to be preferred, especially if it is a theory of how institutions – in this case, the institutions of international law and diplomacy – ought to operate. It is often remarked that the one principle of international law that has gained almost universal acceptance is a strong presumption against violations of the territorial integrity of existing states. Requiring that secessionists be able to justify secession, and in such

a way as to establish their claim to the territory in question, serves to give appropriate weight to this fundamental principle, while at the same time recognizing that the state's claim to control over its territory is not absolute and can be overridden under certain conditions.

Avoiding strategic bargaining that undermines majority rule

It could be argued that if the right to secede is recognized, then a minority may use the threat of secession to undermine majority rule. In conditions in which the majority views secession as a prohibitive cost, a group's threat to secede can function as a veto over the majority's decisions. Consideration of this risk might lead one to conclude that the only adequate way to protect democracy is to refuse to acknowledge a right to secede.

However, as we have seen, there can be compelling justifications for secession under certain conditions. Accordingly, a more appropriate response than denying the right to secede is to devise constitutional mechanisms or processes of international law that give some weight both to legitimate interests in secession and to the equally legitimate interest in preserving the integrity of majority rule (and in political stability). The most obvious way to do this would be to allow secession under certain circumstances, but to minimize the risk of strategic bargaining with the threat of secession by erecting convenient but surmountable procedural hurdles to secession. For example, a constitution might recognize a right to secede, but require a strong majority – say three-quarters – of those in the potentially seceding area to endorse secession in a referendum. This type of hurdle is the analogue of an obstacle to constitutional amendment which the US Constitution's Amendment Clause itself establishes: any proposed amendment must receive a two-thirds vote in Congress and be ratified by three-quarters of the states.

The purpose of allowing amendment while erecting these two strong (that is, non-simple) majority requirements is to strike an appropriate balance between two legitimate interests: the interest in providing flexibility for needed change and the interest in securing stability. Similarly, the point of erecting inconvenient but surmountable barriers to secession (either in a constitution or in international law) would be not to make secession impossible but to avoid making it too easy. A second approach would be to levy special exit costs, a secession tax (Buchanan, 1991). Once these possibilities are recognized, the objection that acknowledgement of a right to secede necessarily undermines democracy is seen to be less than compelling.

Secession and the Problem of Group Conflict in the Modern State

Secession is only the most extreme – and in some cases the least desirable – response to problems of group conflict. A comprehensive moral theory of international relations would include an account of the scope and limits of the right to secede; but it would also formulate and support principles to guide the establishment of a wider range of rights of self-determination. Such a theory, if it gained wide acceptance, would

undoubtedly produce fundamental changes in our conceptions of the state, of sovereignty, and of the basic categories of international law.

References

- Buchanan, A.: *Secession: The Morality of Political Divorce: From Fort Sumter to Lithuania and Quebec* (Boulder, Col.: Westview Press, 1991).
- : *Justice, Legitimacy and Self-determination* (Oxford: Oxford University Press, 2004).
- Couture, J., Nielsen, K. and Seymour, M., eds: *Rethinking Nationalism* (Calgary: University of Calgary Press, *The Canadian Journal of Philosophy*, Supplementary volume, 22, 1996).
- Gellner, E.: *Nations and Nationalism* (Oxford: Blackwell, 1983).
- Hannum, H.: *Autonomy, Sovereignty, and Self-Determination* (Philadelphia, Pa.: University of Pennsylvania Press, 1990).
- Horowitz, D.: *Ethnic Groups in Conflict* (Berkeley, Calif.: University of California Press, 1985).
- Kymlicka, W.: 'Review of *Secession: The Morality of Political Divorce: From Fort Sumter to Lithuania and Quebec*', *Political Theory*, 20 (1992), 527–32.
- Macedo, S. and Buchanan, A., eds: *Nomos XLV : Secession and Self-Determination* (New York: New York University Press, 2003).
- McCallum, G. C.: *Political Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1987).
- Moore, M., ed.: *National Self-Determination and Secession* (New York: Oxford University Press, 1998).
- Nwanko, A. and Ifejika, S.: *The Making of a Nation: Biafra* (London: C. Hurst, 1970).
- Quebec, Province of: *James Bay and Northern Quebec Agreement and Complementary Agreements* (Quebec: Les Publications du Quebec, 1991).
- Williams, R. A., Jr.: *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

Further reading

- Barry, B.: 'Self-government revisited', in *The Nature of Political Theory*, ed. D. Miller and L. Siedentop (Oxford: Clarendon Press, 1983), pp. 121–55.
- Buchanan, A. and Moore, M., eds: *States, Nations, and Border: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003).
- Buchheit, L. C.: *Secession: The Legitimacy of Self-Determination* (New Haven, Conn.: Yale University Press, 1978).
- Cobban, A.: *The Nation State and National Self-Determination* (New York: Thomas Y. Crowell Co., 1970).
- Coppieters, B. and Huysseune, M., eds: *Secession, History and the Social Sciences* (Brussels: VUB Press, 2002).
- Coppieters, B. and Sakwa, R., eds: *Contextualizing Secession: Normative Studies in Comparative Perspective* (Oxford: Oxford University Press, 2003).
- Couture, J., Nielsen, K. and Seymour, M., eds: *Rethinking Nationalism* (Calgary: University of Calgary Press, *The Canadian Journal of Philosophy*, Supplementary volume, 22, 1996).
- Hannum, H. and Babbit, E. A.: *Negotiating Self-determination* (Lexington, Mass.: Lexington Books, 2006).
- Held, V., Morgenbesser, S. and Nagel, T., eds: *Philosophy, Morality, and International Affairs* (New York: Oxford University Press, 1974).

Chapter 32

Terrorism, Justification, and Illusion*

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Bernard Williams once said that doing moral philosophy could be hazardous because there, presumably unlike in other areas of philosophy, we may run the risk of misleading people on important matters.¹ This risk seems to be particularly present when considering the topic of terrorism. I would like to discuss what seems to be a most striking feature of contemporary terrorism, a feature that, as far as I know, has not been noted. This has implications concerning the way that we should view terrorism (and counterterrorism) and shows the force of a number of neglected illusions surrounding the issue of terrorism, as well as its justification.

I Preliminaries

First I will quickly go over some definitions and clarify some of my assumptions. There is a broad sense in which terrorism can be understood as "intentionally targeting non-combatants with lethal or severe violence for political purposes."² In ethical terms, this formulation seems to capture the salient feature of the practice, the intentional targeting of noncombatants (and not in the context

of crime or the like). However, I wish to focus here on terrorism in a narrower sense, as practiced by members of small or weak groups that lack the capacity to field an army and engage in warfare. Henceforth when I speak of terrorism I shall refer to this narrower sense. The distinction between combatants and noncombatants and its relation to the notion of innocence are problematic, but to a lesser extent in the context of terrorism than in that of warfare. Terrorism has typically and specifically targeted civilians without concern for their innocence; this is a large part of the indiscriminate murderousness and randomness that terrorizes. Similarly, terrorists themselves are typically not coerced conscripts or people ignorant of the nature of their commitments, of whom one can wonder whether they might not be significantly morally innocent.

Two dominant claims on this issue that will concern us later on are

(a) The Principle of Noncombatant Immunity (PNI): it is never permissible to aim to kill (or severely harm) noncombatants; PNI forbids terrorist as well as counterterrorist activities aimed at killing (or severely harming) noncombatants.

* From *Ethics* 114 (July 2004), pp. 790-805.

(b) The Antioppression Exception to PNI: PNI is correct in general, but there are exceptions when weak forces are fighting unjust oppression. In our context, the Antioppression Exception permits terrorist targeting of noncombatants if it is necessary in combating oppressive regimes. Violating PNI in counterterrorist activity is still, however, forbidden.

Some general remarks about the normative views underlying this chapter. Some philosophers follow PNI and categorically reject terrorism as such. Coady, for example, writes, "I... object to the technique of terrorism as immoral wherever and whenever it is used or proposed."³ I do not hold any such unambiguous position. Following in the footsteps of previous discussions, I think that matters are more complicated and that, as we shall see, the attempt to stick the square absolutist-deontological peg into the shapeless hole of terrorism cannot always be successful.⁴ At the same time, I recognize the moral force of the deontological insistence on strict noncombatant immunity: according to this position the only permitted intentional targets are combatants, broadly understood, for it is only they who have in some sense forfeited the universal human right of security, by seeking to endanger others.⁵ In my view unless there are overwhelming countervailing reasons, the strict constraint on the intentional targeting of noncombatants should be followed. But such reasons may occasionally exist, in extreme situations.⁶

Moreover, as has been often pointed out, the widespread acquiescence in the idea of nuclear deterrence makes it difficult to maintain the absolute deontological adherence to PNI. The relationship between *jus in bello* and *jus ad bellum* also seems to me to be closer than PNI requires, so that we would need to pay close attention to *jus ad bellum*.⁷ And the distinction between what is philo-

sophically justified and what it would be pragmatically best to do also makes its presence felt in the issue of terrorism. These and other matters will concern us in detail here. For now all I wish to do is to note that all these complications suggest a multilevel pluralism (of various deontological and nondeontological ethical concerns and of principled versus pragmatic consideration) that defies easy codification.

II Terrorism and Justification in Practice

It seems to me that the relationship between terrorism and moral justification in the world today is striking: the major instances of terrorism are not justified, while in cases where terrorism might be justified, there is no or relatively little terrorism. In other words, in the world today we have abundant terrorism without justification and possibly-justified terrorism that does not materialize! We shall take up the issue of what this means in Section III. Here I shall defend the claim just made. In all three of our test cases I shall only be able to outline the factors relevant for our issue, while the wealth of historical detail and complex nuances lie beyond our scope.

The following examples of terrorism are the most prominent ones of the post-Second World War era: (1) the Irish Republican Army (IRA) struggle against the British and Protestants in Northern Ireland, (2) the Palestinian struggle against Israel, and (3) the Al-Qaida struggle against the West in general and others who refuse to recognize the exclusive authority of fundamentalist Islam.

A The IRA

In order to see the hopelessness of the case for IRA terrorism, it is enough to note the following facts:

a) There is adjoining Northern Ireland a free, independent, flourishing, and democratic Irish state, namely, the Republic of Ireland. Established in 1921, it covers some 85 percent of the island. The Republic fully respects the right of the Irish nation to self-determination, to cultural and religious development, and to unencumbered formation of identities as Irishmen and Irishwomen. Any Catholic living in Northern Ireland need only move south or west the distance of an hour's drive, and all of the above rights and privileges will readily be available to him or her.

(b) If choosing to remain in Northern Ireland, any Catholic is a citizen of the United Kingdom, which is similarly a wealthy and democratic state and an open society. He or she will enjoy full political rights and religious freedom as a British subject and be represented in the British Parliament, as well as in democratic local government within Northern Ireland.

(c) Living conditions for most Catholics in Northern Ireland, while unequal to those of most Protestants, partly due to discrimination, have throughout the period not been terribly harsh. Discounting certain measures arising from the need to deal with terrorism, there has been little violence inflicted on the civilian population by the British authorities and hardly anything that can be described as tyranny or repression.

(d) There is complete freedom of movement and ample possibility for cultural interaction with the Republic of Ireland for any Catholic choosing to remain in Northern Ireland.

Irish Catholics have a strong historical case for resentment against the English. Under contemporary conditions, however, the Catholics of Northern Ireland are arguably among the few percentiles of the world's population who are the most fortunate,

in most respects that matter - political, cultural, economic, and religious. The case for armed struggle, let alone for continuous terrorism, is very weak. There is, in terms of just war theory, no just cause. Unless one implausibly makes almost every grievance or interest justification for terrorism, the IRA's terrorist campaigns have no ethical justification. (Unionist terrorism in Northern Ireland can similarly be shown to be unjustified. Even immediate unification of the whole of Ireland could not justify terrorism by Protestants, for reasons parallel to the above.)

B *The Palestinians*

In the case of Palestinian terrorism the major factors that make for the absence of justification are the clear existence of alternatives to terrorism and the fact that the condition of the Palestinians has largely followed from their own choices. Consider the following:

(a) Israel was established in 1948 following a decision in 1947 by a large majority in the United Nations to partition what remained of the British mandate over Palestine (the part west of the River Jordan) into two independent states, a Jewish State and an Arab State (Resolution 181). The Jewish leadership accepted the decision. The official leadership of the Palestinian Arabs rejected the very idea of an independent state for the Jews as well as the compromise partition plan, and the Palestinians began fighting; this included a terrorist campaign, combined with the invasion of the military forces of five Arab armies. Hence, already in 1948 the Palestinians could have had an independent state alongside Israel.

(b) Between 1948 and 1967 the Palestinians could have called for and attempted to establish an independent Palestinian state in the West Bank and East Jerusalem (captured by Jordan in the 1948 war) and in the

Gaza Strip (captured by Egypt in the 1948 war), both areas intended to be within the Palestinian-Arab state according to the partition plan. The Palestinians made no such attempt, aiming their political efforts, coupled with continuous terrorist incursions, at Israel. Cross-border terrorism was led in the pre-1967 period by the mainstream Palestinian Fatah movement, headed (since 1964) with Yasser Arafat, with the avowed intention of provoking a war between Israel and the Arab states.

(c) The uncompromising Palestinian denial of Israel's right to exist continued after the Six Day War in 1967, in which Israel captured the West Bank, East Jerusalem, and the Gaza Strip, until the late 1980s and the signing of the Oslo peace accords in 1993. Indiscriminate terrorism aimed at targets such as airplanes, synagogues, schools, and supermarkets was continuous.

(d) It seems that once these territories were in Israeli hands, Israel became a classic target for nonviolent resistance, as practiced by Gandhi in India. The fact that Israel is a democracy, the moral traditions and sensibilities of Jews who were continuously persecuted when themselves nonviolent, and Israel's dependence on and support from similarly open and principled societies all could have made such a nonterrorist campaign (if aimed at the establishment of a Palestinian state alongside Israel and not instead of it) particularly successful.⁸ But the opposite course has been repeatedly taken.

(e) In 1978 Israel signed a peace treaty with Egypt. In that treaty Israel recognized the legitimate rights of the Palestinian people; one of the provisions of that treaty was the establishment of Palestinian "full autonomy" in the territories, followed by negotiations toward a permanent settlement. That plan could also have led to the establishment of a Palestinian state. The Palestinians refused to join the talks when invited by the Egyptian

President Anwar el-Sadat and rejected Ilul j plan.

(f) In 1993 Israel, led by Yitzhak Rabin, and the Palestinians, led by Arafat, signed the Oslo agreement. This arranged for the gradual withdrawal of Israel from territories in the West Bank and Gaza Strip, in return for the commitment by the Palestinian authority (which was strengthened and well-armed following the agreement) to recognize Israel's right to exist, cease terrorism, and combat terrorism by other Palestinian groups that continued to call for its annihilation. This conditional "land for peace" agreement was soon broken: devastating terrorist attacks within Israeli cities occurred, often launched from Palestinian controlled territory, with the Palestinian Authority doing very little to stop them. This campaign resulted in the defeat of Rabin's successor, the Israeli Labor Premier Shimon Peres, in the 1996 elections, to the Likud candidate Benjamin Netanyahu, who, although continuing to give some further territory to the Palestinians, did not implement the Oslo accords in good faith. By then the Palestinians had some control of around 40 percent of the territories, including the major Palestinian population centers. The Palestinian state-on-the-way was once again derailed by Palestinian terrorism.

(g) In 1999, a Labor candidate, Ehud Barak, was again elected prime minister. Barak, in the Camp David negotiations (summer 2000) and in the following months at the Egyptian city of Taba (partly even after violence had begun), made the Palestinians dramatic offers: accounts of the details vary somewhat, but in Camp David the offers included the Gaza Strip, 90 percent of the West Bank, and a capital in East Jerusalem, with most Israeli settlements to be dismantled. The Palestinians rejected the offers, made no counteroffer, and resorted to violence. In Taba, the offers included around 97 percent of the West Bank, and Barak offered

even to hand over to the Palestinians some pre-1967 areas from within Israel itself (making it overall a roughly "100% deal"). Palestinian independence and the end to Israeli control seemed imminent. However, "like déjà vu all over again," the Palestinians rejected these offers as well as Clinton's bridging proposals, and they resorted to violence and armed struggle from the beginning, and shortly afterward - to systematic terrorism and suicide bombings. It is important to note the central role played in the terrorist campaign by the Palestinian mainstream led by Arafat's Fatah movement, and not only by radical Islamic groups like Hamas and Islamic Jihad. The view that the Palestinians only want a state of their own alongside Israel and, if that is granted, that they would truly recognize Israel and let it be (rather than use any territory that would be conceded as a springboard for seeking to destroy it) was perceived to have been discredited once again. The Israeli public in a political backlash elected Ariel Sharon. He has publicly supported the idea of a Palestinian state once terrorism ceases, although it is not clear what his intentions are.

None of this is to deny that certain Israeli actions have been morally unacceptable and that some Palestinian resentment has justification. No doubt, as in the case of Northern Ireland, the narrative is more complex and might be interpreted in somewhat different ways at various points. But our question is specific: whether terrorism has been justified. And in this case as well, the negative conclusion is clear: the Palestinians have repeatedly had peaceful opportunities for gaining a state of their own and, tragically, have opted instead for terrorism. For this there is no ethical justification. In terms of just war theory, the just Palestinian aim of establishing a state of their own alongside Israel did not require terrorism: the necessity condition was not met. Historical circumstances have changed over the years, but the

Palestinians have always seemed to prefer the hopes of annihilating Israel in concert with Arab states, or the romance of violent struggle, to constructive accommodation. Rather than terrorism being required in order to establish a Palestinian state, it is on the contrary the Palestinians that have repeatedly sabotaged the establishment of an independent Palestine alongside Israel, both directly, and indirectly through the influence of their choices and actions on the Israeli democratic process. (Instances of terrorism by Jews since the establishment of Israel also lack any credible moral justification.)

C *Al-Qaida*

Al-Qaida seems to have developed after the success of the fight against the Soviet occupation of Afghanistan into a network seeking to establish fundamentalist Islamic hegemony, a self-declared "Universal Jihad." Al-Qaida has targeted Western states and westerners in general, Russians, Jews, non-sympathetic Islamic regimes and targets within Muslim countries, and other areas where Muslims may gain power (such as the Philippines). The ideology of this group is radical: it is antidemocratic and totalitarian, **Utopian**, opposes universal human rights and the emancipation of women, anti-Western and anti-Semitic, and in favor of a continuous violent struggle toward the establishment of universal fundamentalist Muslim rule.

I trust that little needs to be said on why there is nothing here that can morally justify the most violent terrorist operations staged by Al-Qaida, which purposefully and typically discount noncombat immunity and moral innocence. Primarily, there is, in terms of just war theory, simply no just cause. There are twenty-two independent countries that are members in the Arab league and dozens of explicitly Islamic countries (the exact number depends on how those are

defined). There is ample potential for Islamic self-expression, the development of Muslim culture, and the practice of Islam, the religion of over one billion people. There are many problems within Muslim societies, as well as vast wealth derived from oil that could help deal with them, but nothing here can justify a terror campaign.⁹

D Where Might Terrorism Be Justifiable?

We have seen, then, that the most concerted terrorist efforts since the Second World War, those of the IRA, the Palestinians, and Al-Qaida, seem to lie very low in any plausible scheme of moral justification. This evaluation is not dependent on a subtle balancing of considerations but is apparent to any sensible informed analysis.

What about the other side of the equation? Here, since we are thinking hypothetically, it is much harder to judge, and, in any case, one must be very careful when suggesting that terrorist activity that might have been justified did not materialize. Making a convincing case here would also require a very detailed description of the situations. However, I do not think that as philosophers we can hide from ourselves that such cases can probably be made.

One situation where terrorism might be justified lies in situations where there is clear danger to a group's very existence or the mass extermination of noncombatants. There have been a number of almost genocidal situations in the post-World War II period we are considering - Biafra, Cambodia, Rwanda, Sudan, and East Timor. It is not clear whether terrorism would have been effective in stopping the horrors in those cases, or that there were not other untried means for doing so, but, if such a case for unique effectiveness could have been made, perhaps in those cases it might have been, overall, justified.

Another possible area we might examine is that of limited terrorist actions aimed at galvanizing public attention to the plight of poor people in the Third World. With millions in Africa starving, with further millions dying because they cannot afford to buy inexpensive and readily available medication, and so on, a consequentialist perspective, at least, certainly justifies great moral outrage. It might be argued that terrorism is unlikely to have a successful coercive effect here. However, if selective, limited, and symbolic, it could certainly raise the issues to the headlines. Whether there are other as yet untried alternatives, and whether terrorism can be a positive influence here overall, are questions that, again, would require detailed investigation. But for our purposes it suffices that we pay attention to the interesting fact that no serious attempts of this kind - whether justified or not - have occurred. Terrorism has continuously rocked the world, but such moral and idealistic aims have not been its targets.

Third, there is the issue of limited and narrowly focused terrorism aimed at toppling dictatorial regimes and establishing democracy. Many Third World regimes (or indeed Second World ones, until the fall of communism) are not only undemocratic but also severely oppressive. In many countries there is no likely possibility of improvement unless present rulers are toppled. It could be argued that such regimes would not care about even a great deal of harm inflicted on their civilian population; hence, terrorism would not be effective. However, the regime's control over power might weaken, and selective terrorism might at least be a means of "communication," rallying opposition forces in social orders where other forms of communications are tightly controlled. Other means of reform are perhaps not available, while limited terrorism focused on discrediting the regime or on influencing or harming the often-narrow elite might work. Again,

great care must be taken here, and the possibility of making a proterrorism case should be viewed skeptically. The surprising fact, however, is, once again, how relatively uncommon terrorism has been in such contexts. The typical targets of terrorism in the narrow sense have been liberal democratic societies: consider which airlines have been hijacked, for instance. Terrorism has usually not targeted the worst but rather the best type of regimes in the world. These are doubtless easier targets, but not morally fitting ones.

III Illusions

I have argued, in a nutshell, that by and large where there has been terrorism it has not been justified, and where it perhaps could have been justified, it has not occurred. What follows from this?

A *The Impotence of Justification*

One would have thought that there would be some significant positive correlation between the practice of terrorism and moral justification. But not only is there no direct positive correlation, the two go in opposite directions. It might be argued that terrorists and those assisting them cannot be expected to follow intricate discussions of analytic philosophy. But that was not the expectation: there is, after all, political leadership, public discussion, media coverage, academic research, and individual moral reflection that might have been thought to have some positive effect, to help get things right. The continuous nature of terrorism as practiced in all these cases also precludes the thought that what we have here are some simple errors of calculation (e.g., the thought that limited acts of terrorism will ensure quick success) or some spontaneous reaction. Rather, long-term, well-developed, and seemingly self-sufficient bloody "cultures of terrorism" are involved.

Our result implies that the world is curiously disjointed. Perhaps there are situations where terrorism has been contemplated but not pursued as a result of good moral reasoning. Still, in a striking way the role of adequate moral reflection is shown in its emptiness - both when the efforts at justification ought to yield negative results and when they ought perhaps to yield positive ones. Within the societies and cultures that have generated terrorism, or support it, moral deliberation on our topic has failed to be effective. The thought that terrorism can be adequately guided by processes of justification is an illusion.

What, then, is going on? I think that an alternative "justification bypassing" explanation of the different situations can be provided, but doing this in detail is of course beyond our scope. Terrorism exists in our three major examples for historical, sociological, cultural, and psychological reasons. It is not by chance that, in all three cases, religion plays a large role. The nationalistic and religious hatred lying behind IRA, Palestinian, and Al-Qaida terrorism goes a long way toward explaining it. It is not so much substantive moral concerns - with massive danger to life, collective self-determination, personal freedom, basic cultural and religious rights, lack of alternatives, or the like - that lie behind these instances of terrorism, but the ghosts of history, the depths of ill will, and the temptations of power. Fanatical religious and nationalistic pride and intolerance, the psychological attractions of being a "victim" rather than assuming responsibility for one's difficulties, an uncritical culture of resentment and envy, romantic idealizations of struggle and violence, open hatred of the other for its otherness, irrational myths, the self-destructive desire for mastery, and other such beliefs and passions seem to lie behind contemporary terrorism.

B *Being Careful*

The general project of moral justification makes certain demands: for instance, that the existence of real needs and just aims be established, that severe violence should be used only as a last resort, that reasonable proportionality be maintained, and that standards of universalization can be applied to the would-be justification.

What does the considerable impotence of this project in the present context imply about what we should do? At the very least, it seems to me to suggest that we take great care with this issue. For those deontologists who would condemn every instance of terrorism as such, matters are simpler. But even without dismissing the possibility that terrorism can be justified, we have nevertheless concluded that, in the major examples of its prevalence, terrorism has been unjustified. This conclusion should lead us to be very skeptical about the idea of permitting terrorism. It might be countered that the absence of actualization of those examples where terrorism might be justified should lead us, by the same token, to be more daring in allowing it. But I do not think that matters are symmetrical here. Our conclusion, in brief, is that the connection between justification and actualization is severed: under such conditions, engaging with the issues in the hope of "fine tuning" the permission of terrorist activity is far too risky. We should err on the side of not allowing terrorism.

In a still deeper way, we need to confront the fundamental power of illusory forces. In the past, illusory ideas of superiority and fanatical hunger for power coupled with fantasies of world mastery, such as those of the Nazis, overtook whole nations. The record of modern terrorism shows some of those elemental illusory forces at play and, in any case, exhibits a similar gross blindness to, or disdain of, acceptable standards of moral justification. There is a grand struggle

between moral justification and the temptations of terrorism, and at least where terrorism has occurred, so far moral justification has seemed to have but little effectiveness. This applies both at the grassroots level and with the respective elites. All of this does **not** mean that we should give up the effort at clarifying standards of moral justification **or** give up the ideals of public enlightenment. We should, nevertheless, know where we are rather than fool ourselves.

C *Absolutist PNI as a "Positive Illusion"*

Under such conditions, the Principle of Noncombatant Immunity, or PNI, has a lot to be said for it pragmatically; PNI might be socially useful even though philosophically it is unpersuasively strict. Perhaps, in its insistence on absolute constraints, in its taboo on intentionally targeting noncombatants, it is, by and large, a "positive illusion."¹⁰

A pertinent factor here follows from the general features of combat. Because of its lethal nature, the psychological tendency of situations of combat to lead to strong feelings of hatred and revenge seeking, and because of the temptations in situations where normal restraints against violence are left behind, absolute prohibitions are perhaps pragmatically necessary in order to achieve actual restraint. While with many matters ethical sensitivity can be problematic, in the case of warfare the dangers typically lie on the other side.¹¹ Concerning the intentional targeting of noncombatants, and perhaps a number of other "temptations" of combat, it is better that people believe in absolute constraints and not make exceptions. It is far from obvious, in other words, that the philosophical-ethical complexity should be applied in practice, say, in the minds of soldiers and their commanders. Such a widening gap between theory and practice is, however, problematic in itself.¹²

The absolutist line concerning noncombatant immunity has become dominant in Western public debate and in the laws concerning the conduct of warfare. This has had a large emotional influence, which goes much beyond any possible force that a merely conventional understanding of the constraints might elicit. Noncombatant immunity is enshrined in international law, and, with the exception of nuclear deterrence, is widely respected, at least by First World countries. It has a civilizing influence that, other things staying constant, may be extended. Among the things that may not stay constant is terrorism, particularly as it receives support from established states and seeks to acquire nonconventional weaponry.

D *The Dangerous Illusion of the Antioppression Exception*

The Antioppression Exception to PNI, the modified version of PNI that allows the targeting of noncombatants by weak groups in the struggle against oppression, is a clear casualty of our discussion. All three of our major examples of terrorism are frequently assumed to be permitted by the Antioppression Exception. If there is no justification for terrorism in these cases, then our confidence in following this common lenient viewpoint should fade.

Moreover, if indeed the strict adherence to PNI is pragmatically so important, we see how dangerous the Antioppression Exception is to respect for PNI. The more "antioppression" by the weak is tolerated as a justification for terrorism, the more does the one-sided constraint put upon any counterterrorist transgressions of PNI seem unreasonable, adding pressure toward the abandonment of such counterterrorist constraint. Consider the following: "*Purity of Arms*: The IDF servicemen and women will use their weapons and force only for the

purpose of their mission, only to the necessary extent and will maintain their humanity even during combat. IDF soldiers will not use their weapons and force *to harm human beings who are not combatants* or prisoners of war, and will do all in their power to avoid causing harm to their lives, bodies, dignity and property" (my emphasis).¹³ Such limits follow from relevant parts of international law, which clearly incorporate deontological constraints upon combat: "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."¹⁴ Potentially useful ideas such as the following are all forbidden by PNI:

- (a) threatening to kill noncombatants that terrorists care about in order to deter the terrorists;
- (b) intentionally killing noncombatants as a means to hinder terrorist activity;
- (c) indifference to noncombatant casualties during counterterrorist activity;
- (d) the idea that some terrorists or their leaders are beyond moral conversational reach, and hence everything may be done - including targeting noncombatants - in order to suppress them.

Now, recall the thoughts of David Hume: "And thus justice establishes itself by a kind of convention or agreement; that is, by a sense of interest, suppos'd to be common to all, and where every single act is perform'd in expectation that others are to perform the like. Without such a convention, no one wou'd ever have dream'd, that there was such a virtue as justice, or have been indue'd to conform his actions to it. . . 'Tis only upon the supposition, that others are to imitate my example, that I can be indue'd to embrace that virtue."¹⁵ This may well seem

too extreme to many, and I would certainly put independent moral weight on PNI and think that views such as Hume's should be resisted. However, when for terrorists the indiscriminate murder of innocent civilians is the declared epitome of operational success, the idea that PNI is to be a strict constraint on self-defense from terrorism, with harmful operational repercussions, becomes psychologically problematic, more difficult to maintain in practice, and dubious at least in consequentialist and contractual ways. Even if PNI is maintained, and even if any accidental noncombatant enemy casualties are perceived as an operational failure by forces combating terrorism, concern for them, at least when they occur in the form of "collateral damage," would tend to diminish. And when terrorism becomes overwhelming, more direct "reciprocal" approaches that are ready to dismiss PNI in return for effectiveness can be expected. Moreover, as the experience in Northern Ireland attests, such anti-PNI escalation can itself take the form of terrorism, with both Catholic and Protestant sides engaging in it. By contrast, a firm insistence on PNI can limit divergence from PNI in counterterrorism and mutual terrorism.

Why can the Antioppression Exception be thought to be attractive as compared to strict PNI? The reason cannot simply lie with the moral weight of oppression, for oppression is not the only, nor is it the worse, form of badness that may need to be struggled against. So what line can the proponents of the Antioppression Exception take, given that they want to maintain the permission to transgress PNI as an exception available only for the weak? Perhaps the most plausible argument, from fairness or mutuality, might go like this: "You defenders of strict PNI are actually defending the strong against the weak, which is not fair. The forces of oppression, of course, wish to

limit struggle to armies or combatants», I because that is where they are strong and we, the opponents of oppression, are weak, ! Well, we are ready - give us an equal share of your tanks, missiles, and warplanes, and we will fight only combatants and forgo terrorism. Until you do so, however, the only way we can defend ourselves and combat oppression is by attacking the oppressors at their weak point, namely, by targeting their noncombatants." Now, one may or may not find this persuasive as a basis for permissible terrorism, but, if one does find it persuasive, I do not think that the break with PNI can be contained. On the contrary, if we leave PNI behind, there is no reason why counterterrorist activities oblivious to PNI could not be defended. If the terrorists are killing noncombatants, counterterrorist activities can bring forth similar claims for "necessity," because they may argue that they are confronted by a mirror image of the limitations that the terrorists fighting oppression confront. Those fighting terrorism can just as well say that they would be happy not to have to fight terrorism by targeting noncombatants but cannot afford such luxury because terrorists are elusively blending into their noncombatant environment, and only by targeting noncombatants is the justified struggle against terrorism possible. They would be quite ready to forgo the unfortunate killing of noncombatants, if the terrorists would only stop hiding and come out in the open.

Of course this leaves open the substantive question whether the aim is justified, as well as whether other conditions such as proportionality are being met. But this equally can be asked of the proponents of the Antioppression Exception in specific cases. The general question is simply whether the pursuit of just aims may proceed at the expense of PNI. There is nothing unique in the struggle against oppression by terrorists

representing weak groups that can justify the principled break with PNI through terrorism but can still stop in principle similar justifications for counterterrorism. Such a "Asymmetry Claim" needs firm justification, but one cannot imagine what that might be. My claim is not that a breach of PNI can be justified in the very same case both on the side of terrorism and of counterterrorism. Rather, it is that if it is just or otherwise morally justified to breach non-combatant immunity on the side of terrorism, it is likely to be sometimes so on the side of counterterrorism. It is an illusion that you can do morally nasty things in the name of, say, national liberation, but symmetrical justifications could not be found for counterterrorist breaches of PNI. Wherever we draw the line, it cannot reasonably apply only to one side.

It might be argued that the disappearance of the Antioppression Exception could have harmful consequences, emboldening the oppressors who would know that terrorist resistance would not be thought legitimate. This does not take into account the widespread use that oppressors currently make of the claim that repression is necessary because of the threat of terrorism, a claim which would also be set back. But, in any case, matters are symmetrical here as well: it might similarly be argued that ruthless non-PNI counterterrorism has a useful deterrent effect against terrorists, who would otherwise be able to count on the fact that, whatever they do, those fighting against them were limited by PNI!

In fact one of the particularly nasty features of terrorism is its "parasitic" nature: as in our three test cases, the terrorist infringement of PNI occurs just because the terrorists know that they can rely on their enemies not to react in a similar, ruthless manner. Sometimes terrorism aims to provoke reaction, but its perpetrators also know that such

reaction is typically constrained by PNI and other limitations. This is one of the reasons why contemporary terrorism has typically targeted Western democracies, exploiting the principled respect for PNI.

As I have claimed, a number of different illusions (sometimes conflicting, and held by different groups) seem to be present in the context of terrorism and justification:

- (a) the illusion of the efficacy of justification: that processes of credible ethical reflection and justification can be relied upon in generating what actually happens;
- (b) the illusion that the major instances of modern terrorism have a significant justification;
- (c) the overwhelming spread and force, in our context, of illusions - nationalistic, religious, ethnic, and cultural - irrational forces carrying great emotional weight with millions of people and leading to terrorism and the support of terrorism;
- (d) the arguably positive illusory belief, encouraged by the international laws of warfare, that terrorism is never justified, as embedded in something such as the absolutist constraints of PNI;
- (e) the illusion that we might and should permit this line to be crossed, but only in the fight by the weak against oppression (the Antioppression Exception).

The widespread impotence of the project of public moral justification and the prevalence of illusion, in the context of terrorism, merit further critical examination. What seems already clear is that these two factors should make us, as human beings, considerably more apprehensive, and as intellectuals, more humble.