

# TERRORISM AND SEVERAL MORAL DISTINCTIONS

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In this article, I examine several distinctions that may be relevant to the morality (and conceptual characterization) of terrorism: (1) the state/nonstate agent distinction, (2) the combatant/noncombatant distinction, (3) the intention/foresight distinction, (4) the means/side-effect distinction, (5) the interrelated necessary/nonnecessary means and produce/sustain distinctions, (6) the mechanical/nonmechanical use distinction, (7) the military/political distinction, (8) the harm/terror distinction, and (9) the harm-for-terror/terror-for-goal distinction. I conclude that some of these factors (though not those most commonly cited) account for the prima facie wrongness of terrorism and that the nondistinctive properties of terrorism (which it shares with some nonterrorist acts) are what make it most seriously wrong. I also provide a conceptual examination of terrorism as we commonly think of it and its relation to torture. In the course of discussing the distinctions and also in concluding the article, I consider why terrorism may sometimes be morally permissible.

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## I. INTRODUCTION

In this article, I examine several distinctions that may be relevant to the morality (and conceptual characterization) of terrorism. Some of these distinctions are commonly thought to be relevant; others are not: (1) the state/nonstate agent distinction, (2) the combatant/noncombatant distinction, (3) the intention/foresight distinction, (4) the means/side effect distinction, (5) the interrelated necessary/nonnecessary means and produce/sustain distinctions, (6) the mechanical/nonmechanical use distinction, (7) the military/political distinction, (8) the harm/terror distinction, and (9) the harm-for-terror/terror-for-goal distinction. Before considering these distinctions, I shall begin with a conceptual examination of terrorism

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as we commonly think of it. I shall conclude by considering why terrorism might sometimes be permissible.

## II. CONCEPTUAL EXAMINATION OF STANDARD TERRORISM

A.

This is not intended to be a set of necessary and sufficient conditions, but only characteristics of terrorism that we tend to focus on. In standard terrorism (ST), the victim is a noncombatant (NC). I shall take this to mean not only that he or she is not a fighting agent but also that he is innocent in the sense of not presenting a threat to anyone, not even as a nonresponsible human missile. The victim is typically a random member of the group that the terrorist agent is against and someone who is not otherwise shortly to die. The bad (broadly construed) that is done to the NCs in ST is (1) harm to some NCs of a severe sort, such as death or grave injury; and (2) terror in other NCs (due to [1]) put in fear of death or grave injury to themselves or to yet others.

This understanding of what goes on in ST implies that a community could not discover years afterward that some of its members were victims of ST, because if it did, this would imply that the community had not been terrorized at the time (assuming constant population). This is in contrast to a form of nonstandard terrorism (NST)—which is still terrorism—where the victim who is harmed is himself also terrorized and others can discover this later; it also contrasts with just random killing of NCs that does not terrorize anyone.

The agent in ST is a nonstate agent and is not engaged in standard war between nation-states. I shall leave it open that the nonstate agent receives support from a state but is not merely a subpart of it. This agent intends rather than merely foresees the harm and terror to his victims, either as a means or as an end in itself.<sup>1</sup> His actions are also thought through rather than impulsive.

Furthermore, all of this harm and terror is supposed to be bad for the NCs, at least in the sense of being against their prudential interests. This contrasts with a painful means of doing what is in their self-interest (as when we terrorize someone to get him to escape a flood). However, this

1. What if agents deliberately, with the intention of terrorizing people, damage only property? For example, people who dislike modern architecture might bomb certain modern buildings. They could aim to create the fear in people that if they build modern architecture, their buildings will be destroyed. These agents would then be engaged in NST. Suppose that people are killed as a mere side effect of these attacks and that people come to have fear of death rather than of having their new buildings destroyed, though this would not have been the intention of these terrorists. It seems that the agents are terrorists in virtue of aiming to terrorize people into not building modern architecture, but the fear of death they actually create does not account for why they are terrorists.

is consistent with the harm and terror being thought to serve the NCs' moral interests if it is taken to be a way of preventing their being too passive with respect to moral wrongs that their country is committing.<sup>2</sup> For example, suppose that German NCs had been bombed to awaken them to the existence of Nazi extermination camps. Even if such means were impermissible, the goal of setting people on the right moral track is in some sense in those people's interest.

The further aims of the terrorist agent could be various. For example, he might have political or religious goals and be trying to draw attention to his cause or aiming to eliminate what he sees as injustice. He might simply be aiming to show the mighty that they are vulnerable and also thereby create some equality between himself and his opponent. (It is unfortunate but often true that respect for an opponent may be greater when he shows that he has the ability and will to harm you. And respect may lead to negotiations.) He might be punishing the opponent for wrongs he believes have been done to his side. Or he might be trying to create political pressure by the populace on its government or directly create pressure on the opponent government in order to change its policies.

A famous example of such ST—as odd as it sounds—is the God of the Old Testament sending plagues on the Egyptians.

It is left open by my characterization of ST that it might be justified sometimes, though it is *prima facie* wrong in the sense of being *prima facie* impermissible. That is, it might always have negative properties that count against its permissibility but other moral considerations might override or efface these. My characterization contrasts with what has become a common use of the term “terrorism” to imply that such an act is always ultimately impermissible. On this common use, if the act is not wrong in the sense of being ultimately impermissible, then it cannot be terrorism. I think that we should rather use the term to designate a type of behavior that is *prima facie* wrong without implying any final moral judgment of impermissibility. We might still argue to the conclusion that terrorism is always impermissible, but this question should remain open for now.

B.

I.

Let us compare ST with Standard Murder (SM). The murderer in SM is typically an individual rather than a group. He also intends death, but not necessarily to terrorize others. Standardly, he has something against the particular person he would kill, rather than selecting him at random. The killing could be impulsive rather than thought through. It is typically done for personal (or perhaps, if done by the Mafia, for business) reasons.

2. Luc Bovens reminded me of this point.

It might be thought that SM is by definition morally wrong. But possibly, even murder is only *prima facie* wrong.<sup>3</sup> For imagine that I kill a ninety-year-old person who will die in 30 seconds anyway but who wishes not to die before then, in order to save the life of a twenty-year-old person who will then live a normal life span. This may be murder and yet be justified.

Is it possible that in the case of ST and SM the person harmed/terrorized is always wronged even if we wrong him in the course of doing an act that, all things considered, is not wrong? (Often a sign of someone being wronged is that he may permissibly resist what is being done to him even if this interferes with the goals of the agent that justify his acting.) Consider a variant of the possibly justified murder case described above: If I do not kill the elderly person, someone else will torture him in the last 30 seconds of his life. Suppose that he knows the details of his prospects but refuses to consent to being killed by me 30 seconds earlier. It seems that in this case, if I kill the man, I would murder someone in his own best interests. Do I also wrong him? Perhaps not. If not, then someone need not always be wronged in being murdered. By contrast, ST as described above is never in the prudential interests of those harmed/terrorized. On these grounds one might think that it, but not SM, always wrongs its victim, even if the act is ultimately right. But what if it were in the moral interests of at least those who are only terrorized to be jolted from passivity in the face of the crimes of their government? Must we always be wronging these people if we put their moral interests before some of their strong prudential interests?

## C.

### 1.

Let us consider possible implications of some of the differences to which I have pointed between ST and SM. Do the differences bear on the issue of whether stopping terrorists is a “war” rather than merely a “policing of (*prima facie*) criminal activity”? I have suggested that ST is not SM. But this does not mean that ST could not be criminal activity of any sort. If ST is a form of criminal activity, then might it be better to think of policing it rather than of being at war with it?

We should examine the war model. If we are at war with those who use terrorism, then this will be a war against the use of (let us suppose) improper means *per se*. This is a deontologist’s dream, in a sense. But is not a war against improper means just policing the activity of criminals rather than a war? No, because there is a sense of “war” in which it seems appropriate to speak of a war against crime. This is when we do not go piecemeal after criminals. Rather, we go all out and try to extirpate criminal activity. So it may be the metaphorical sense of “war” that is used by those who speak

3. Jeff McMahan believes that this is so.

of a war on terrorism (or a war on poverty). Terrorists, of course, do not think of themselves as engaged in a metaphorical war; they have declared real war on certain countries. But if white-supremacists in the United States have also declared real war on the United States, this does not mean that fighting them is any more than policing criminal activity and metaphorical war at most.

Consider another possibility. Perhaps terrorists are war criminals, and this is why it is appropriate to speak of being at war with them? But that suggests that there is a real war ongoing about something besides the use of improper means of fighting, for example, about the forms of government that should exist in the Middle East. In that real war, there are those who use means that are ruled out by the rules of just war, and they are the war criminals. But going after war criminals is itself usually a policing activity rather than a war. We might, however, make it a metaphorical war by adopting the all-out, extirpating approach discussed above. Then there would be two sorts of wars going on simultaneously.

Employing the second model of war, in which we are at war over issues besides improper means, we could say that we are at war with people over a particular substantive issue (e.g., the nature of political arrangements in the Middle East). It happens that all of the warriors on the other side use (seemingly) improper means in pursuing the war. If they are really unjustified in using those means, then they are war criminals. This model, unlike the first war-against-crime model, does not allow us to ignore the political/religious aims of the opponents and the differences between us and them over a particular substantive issue as well as over the means used in fighting.

Neither sort of war I have described implies by itself that there is a national emergency in a country at war (nor does an attack on one's home ground always imply a national emergency). It is the presence of an emergency rather than merely real or metaphorical war that might permit useful infringement of civil liberties and constitutional protections in order to stop terrorism.

## 2.

The second model of war—involving substantive disagreement—brings us to a possible implication of the difference made by the political/religious motivation of the terrorists. Suppose that we came to see merit in some of their views about the very important issues that divide us (e.g., political arrangements in the Middle East) and also recognized that we would never have changed our views in this crucial way but for their terrorist acts. Then we might think that it is not morally inappropriate to forgive their use of improper means rather than punish the terrorists as criminals. This seems to have happened with Menachem Begin of Israel and Yasser Arafat of Palestine, who were terrorists but became recognized leaders of their national groups. Forgiving or even excusing such terrorists may require them to forswear ST means but not necessarily apologize for past behavior.

By contrast, if Begin had been found to be an ordinary murderer and user of terror (e.g., he killed his wife to terrorize women in his family), then he would probably have been put on trial and told to resign his premiership. This raises the possibility that even planners of the 9/11 disaster could theoretically come to be seen neither as mere criminals nor even as war criminals. But this could be so only if it turned out that they had been in the right while we had been seriously deluded (and resistant to change except by terrorism) about crucial issues that divide us.

### III. SOME MORALLY RELEVANT CHARACTERISTICS OF ST

What makes ST at least *prima facie* wrong in the sense of *prima facie* impermissible? The obvious answer is that it involves killing, for all killing is *prima facie* wrong and requires justification. But those who ask about ST in particular are really concerned with why it may be *prima facie* wrong even when other forms of killing, such as killing in self-defense, have been justified. In discussing this question, we should keep in mind the possibility that what distinguishes ST conceptually from other forms of killing is not what is primarily responsible for its wrongness. What accounts for its *prima facie* wrongness could be something it shares with some other killings. We should also keep in mind that factors may make ST *prima facie* wrong singly, added together, or in interaction with each other. Furthermore, even if ST were permissible in order to achieve a very important end, it is not just the absence of such an end or the nonnecessity of ST to achieve it that makes terrorism *prima facie* wrong. Properties of the act itself or how it brings about consequences help make it *prima facie* wrong and nonproportional to many ends.

Suggestions as to what might make ST *prima facie* wrong include the nature of the agent and/or victims, the fact that harm and terror are intended, the positions of the victims (e.g., harm and terror to them are causally useful means), and the type of bad that occurs to people. Let us investigate some proposals related to these factors.

#### A. The State/Nonstate Agent Distinction

One proposal is that ST is *prima facie* wrong because of the nature of the agent. The agent is not a legitimate state but a self-appointed group. Terrorism, it is said, would be at least somewhat improved morally if it were done by a legitimate state, other things being equal. (This would make it NST, not ST, of course.) This is one way to emphasize the state-versus-nonstate agent distinction.

Some might want to rule out this position by declaring terrorism to be by definition an act of either a nonstate or a nonlegitimate state agent (such as rogue states); the same type of act done by a legitimate state would not

be terrorism. This position would not be correct, however. For suppose that someone blew himself up in a crowded area in order to kill NCs and terrorize others. We could know that this was a terrorist act without knowing whether it was a nonstate agent or a state as legitimate as France that directed the occurrence of this event. Hence I shall assume that it is possible for even a legitimate state to be the agent of terrorism and consider only whether this could change the act's moral status.

I do not believe that terrorism would always be morally improved if done by a legitimate state whenever other things are equal. For other properties of the act could make it wrong to such a degree that who carried out the act would be a morally irrelevant consideration. Nevertheless, there could be cases in which other properties of the act, including a justifying goal, create a context in which it is morally permissible for a politically legitimate state to act but not for a self-appointed group to do so. For not just anyone may permissibly carry out acts that are justified when a politically legitimate state carries them out. But of course, things other than whether there is a state or nonstate agent are not always equal. For example, a state may be nonrepresentative of its people even while being politically legitimate, while a nonstate agent may (arguably) be representative of people. Possibly a state may be morally illegitimate even if it is politically legitimate, and even a nonrepresentative nonstate agent could be morally legitimate. This would be true, for example, of a resistance group fighting a Nazi state when that state represents a supermajority of the population. These differences might count in favor of a nonstate rather than state agent as the morally preferred perpetrator of terrorism.

I think we should conclude that being a nonstate agent is not necessary for the *prima facie* wrongness of terrorism nor is it sufficient for the *prima facie* wrongness of ST, though sometimes the fact that a legitimate state acts could be morally relevant.

## B. The Combatant/Noncombatant Distinction

A second proposal is that it is the nature of the victim that contributes to the *prima facie* wrongness of ST. The victim is an NC who, it is imagined, has not, does not, and will not threaten to harm to others, unlike combatants. By contrast, it is not *prima facie* wrong to intend harm to combatants for the purpose of creating terror in other combatants in order to get them to surrender; this is an example of permissible NST. (I also believe that it is permissible to intend harm and terror to those who are serious threats more generally in order to stop their threats.)

To consider whether NCs are always immune to attack, suppose that NCs voted directly to authorize their leaders to do harmful things to others. For example, suppose that in a vote that requires unanimity, the NCs vote to authorize their leaders' military attack. This makes the NCs materially responsible for an attack on others and so, I suggest, subject to

counterattack. (I shall assume for argument's sake, along with standard just-war theory, that we need not consider whether their attack is just in order to decide whether those attacked may permissibly counterattack.) They are still not combatants nor direct threats to others, but they are responsible for such threats and, on this ground, subject to counterattack.

This case differs from a second one where the NCs vote for a government—for simplicity's sake, assume they do so unanimously—that they know will authorize policies that will lead agents on the other side to decide to attack, but these policies are not themselves harmful attacks. Rather, they are such things as instituting governments of a certain sort in the Middle East. Are the NCs then also subject to being attacked by the side that opposes the government's actions? (Let us again try to put aside the question of whether the government's actions are just or unjust.) I do not think so. In order to see why, let us look at a real-life example.

After a majority of (though far from all) Americans reelected George Bush, an Aljazeera correspondent said that now, as opposed to before the election, it was clear that Bush did not act contrary to the wishes of Americans. If the implication was that those citizens who voted for Bush were responsible for general policies unpopular in the Arab world and so were subject to counterattack, then I think that this implication is wrong. For these people, in voting for Bush's nonmilitary policies, were not directing harmful attacks on others. But if the implication was that citizens voting for Bush's war policies, involving an attack on others were directing those attacks, and so were liable to being counterattacked by those fighting the American combatants in Iraq, then this may be true. (This is on the continuing assumption of just-war theory that those directing attacks even on the just side are subject to attack by combatants even on the unjust side.)

To avoid these issues raised by certain cases involving responsible adult NCs, let us suppose that the terrorist agent would attack only babies and children (good babies and children!).<sup>4</sup> I believe this is *prima facie* impermissible in part because of the nature of the victims. (Of course, in ST these would still be members of the community that is being opposed by the terrorist. By contrast, suppose that the country opposed by the terrorist had impenetrable defenses, and so the terrorist attacked the children of a neutral country. For example, the terrorist attacks Swiss children because he can get at them, in order to get Switzerland to pressure the United States to change its policies. Is this attack on Swiss NCs even worse than one on U.S. children, even when both are impermissible? I suggest that it is. [And this is so even if the children who would be attacked are unloved orphans, so that we can factor out the possibly different moral significance of grief in Swiss adults from grief in U.S. adults.] If this were so, it would indicate that

4. However, I have stated (above) that those who do not order and help produce armed attacks may be in no worse a position than the babies and children *vis-à-vis* the permissibility of their being attacked.

even nonresponsible NCs of the country opposed are not quite as immune to attack as other NCs.)

But now notice that all of the damage to NCs—that the proposal for *prima facie* wrongness of ST that we are considering says is a major moral problem with ST—could occur as a mere side effect, foreseen or not, of nonterrorist attacks. (This is referred to as collateral damage.) That is, the deaths could result as a side effect of attacks on military targets for military purposes, and people could be terrorized by these deaths, even leading them to surrender. Here is a hypothetical example. Suppose, contrary to fact, that there were ongoing military operations in the World Trade Center (WTC) on 9/11 and it was instrumentally useful for Al Qaeda to attack them. Suppose also that the pilots could not take earlier planes to strike when no people were in the building, and both the NCs killed inside the building and the terror resulting were mere foreseen side effects. (Call this the WTC-Military case.) Would this action be less objectionable than ST, even if it is also impermissible in virtue of the harm to certain sorts of NCs? Could acts with collateral damage to highly immune NCs be permissible when ST is not?

### C. The Intention/Foresight and Means/Side Effect Distinctions

To answer these questions, we should consider the next proposal as to what factors make ST *prima facie* wrong. The claim is that the attitude of the agent—his intending harm and terror as a means or end (rather than merely foreseeing them)—contributes to the *prima facie* wrongness of ST. The intention/foresight distinction is sometimes associated with a separable distinction relating to the causal role of the victim's harm or terror. The claim is that the harm to NCs being a means to terror and the terror being a means to other things (rather than harm and terror being side effects) contribute to the *prima facie* wrongness of ST. (I have argued elsewhere that a person can bring about the means to his end without necessarily intending [and even refusing to intend] these means. This is one reason to discuss these distinctions separately.)<sup>5</sup>

The doctrine of double effect (DDE) is one view that relies on the intention/foresight distinction in determining the permissibility of acts, for it claims that when an agent intends the harm/terror as a means or end in itself, the act is impermissible. (On some interpretations, the DDE also involves the causal-role distinction independent of intention.) Furthermore, it is widely thought to be grounds for the impermissibility of an act that it

5. See F.M. Kamm, *The Doctrine of Triple Effect and Why a Rational Agent Need Not Intend the Means to His End*, PROC. ARISTOTELIAN SOC'Y (Suppl. 74, 2000). For example, suppose that destroying a munitions plant cannot help one's cause unless people are also harmed and terrified so that they do not rebuild the plant. If an agent bombs the munitions plant only because he foresees that the side effects of harm and terror will occur, this need not mean that he intends to bring the harm and terror about, I argue.

treats people as mere means to one's end. This, it is said, can make an act wrong even when an act that has the same bad effects on people but does not employ them as mere means to one's goal is permissible. And even if the latter type of act were impermissible because we act despite the harm to others, thereby failing to take people's interests sufficiently into account, this would not be as serious a wrong, it is said, as treating persons as available to be used as mere tools to one's end when this is seriously against their self-interest, they neither deserve nor are liable to such treatment, and they do not consent to it.<sup>6</sup>

In evaluating the intention/foresight proposal, first consider cases where the terrorist seeks to punish the NCs or simply make them suffer as he feels his side has suffered. While he here intends the harm and terror, these cases do not involve intending harm and terror to people as mere means to some further end. They also do not involve treating the people themselves as mere means (tools). This is because the agent believes that the NCs deserve to suffer these things as an end in itself, and the receipt of punishment by those who deserve it is a good not an evil. Punishment commonly involves intending harm. Hence, punishment does not necessarily involve doing to others only what they have done to you. For where the wrong to you was the creation of unjustified side-effect deaths, the punishment for this will not involve unjustified side-effect deaths but some (supposedly justified) intended harm or terror. The objection to punishing NCs in this way is not that it is wrong to intend harm or that punishing treats NCs as mere means to some end but that the NCs do not deserve punishment.

Hence, let us distinguish terrorists who punish from other forms of ST. Let us consider cases where there is intended use of harm and terror to NCs, where harm and terror are treated as mere means to a goal such as surrender, or where harm and terror are sought as ends in themselves from hatred (not for punishment).<sup>7</sup> The general conclusions for which I shall argue in this section are: (1) When an act is otherwise morally permissible despite the harm and terror it produces, intending the harm and terror as means or ends can make the act morally worse but it need not make the act impermissible, whether the act is appropriately called terrorism or not. (2) When the act is otherwise impermissible, intending the harm and terror as means or ends can sometimes make the impermissible act be a more serious wrong. (In Section D below, I will argue that when the agent, given how he acts, cannot achieve his end without the harm and terror, the fact that these are *necessary means to produce* an end, or the end itself, can make the act impermissible.)

6. There are many well known problems with relying on intending harm and terror as grounds for the impermissibility of acts that I shall ignore here. For a description of some of them, see F.M. Kamm, *Nonconsequentialism*, in BLACKWELL'S GUIDE TO ETHICAL THEORY (H. LaFollette ed., 2000).

7. Of course, punishing people because they deserve it could also be combined with using the punishment as a means to some further end.

### 1. Conceptual Issues

Let us begin the detailed discussion leading to these conclusions by considering whether intending harm as a means to terror, which terror is in turn intended as a means to something else, is sufficient to make an act be ST, when NCs are seriously harmed against their self-interest and without their consent. This is just a conceptual question independent of whether the act is a more serious wrong than causing collateral damage. In this part, I offer considerations against a positive answer. (In part 2, I consider a view that favors a positive answer.)

Consider this question first in cases in which it is assumed to be permissible to bomb a military facility, causing death and terror as collateral damage. The act will be permissible, if we use standards developed in just-war theory, when the military goal is sufficiently important, the bombing is a necessary means to it, it has a significantly high probability of bringing about the goal, and the collateral damage is a proportionate evil relative to the goal to be achieved.<sup>8</sup> I will further suppose that there is an objectively just goal in the following imaginary cases.

**P(i)** Suppose that the United States is controlled by Nazis. The Resistance's aim in bombing the WTC is to destroy ongoing military operations in it. Suppose that this would be morally justified despite the side-effect deaths and terror to nonresponsible NCs. However, the only pilots willing to fly the planes and drop the bombs on the WTC are those who are interested in bringing about the side effect of this, killing and terrorizing NCs. Would the character of the operation change from military bombing with collateral damage to terrorism merely because of the pilots' intentions? To focus on the intentions alone, I assume that these pilots are definitely unable to kill and terrorize any other people than pilots who lacked the bad intention, given that they would bomb the military facility in exactly the same way as the other pilots and would have no option to do otherwise in the case as imagined.<sup>9</sup> I do not think their intentions would change the character of the operation to terrorism.

It may be said that there are multiple acts here: the act of the pilot and the act of the authority in the Resistance who authorizes the attack. The former is an act of terrorism, the latter is not. It may also be said that in this case an authority uses terrorists to carry out a nonterrorist mission (at least if it knows of the pilots' intentions).<sup>10</sup> Possibly these points are correct. If so, then a minimal claim might be that we judge what type of event (terrorism or not) blowing up the WTC is in this case by reference to the authority's

8. I actually think that such justifications for collateral damage are incomplete and faulty. For more on this, see F.M. Kamm, *Failures of Just War Theory*, 114 *ETHICS* 650–692 (2003).

9. Intentions are often important because people who have them will act differently in changed circumstances from those without the intentions, even when they act in the same way in some circumstances. I am supposing throughout this discussion that there is no opportunity for different intentions to show up in different behavior and different effects. All behavior and effects are the same; only the intentions differ.

10. These points were raised by Jeff McMahan and Shelly Kagan.

intentions. It is for this reason that we can know that the United States did not engage in terrorism in World War II when it bombed munitions factories though children were killed as a side effect, even if we do not know as a matter of biography whether some U.S. bombardier intended to hit the munitions as a mere means to killing children. It is also for this reason that we cannot conclude that the authority seeks to kill and terrorize whenever we have a pilot who confesses to his intentions to kill and terrorize.

**P(ii)** Now suppose that there is no Resistance movement that will bomb the WTC in the Nazi United States. Instead, the bombing is planned and done by Baby Killer Nation, a group that takes an interest in destroying the Nazi's military operations in the WTC only because it is a means to satisfy its own desire to cause harm and terror to NCs. This is a desire Baby Killer Nation's members act on only when there is such a type of act in a just cause that can serve as a cover. Furthermore, they would never perform any acts in bombing the WTC that will cause more side-effect damage than would be caused by bombers who lack their bad intentions. Should their act of bombing the WTC be classified as an act of terrorism rather than a military operation? I do not think so. This conclusion goes beyond the minimal claim stated above, for the intention of the authority is not determinative here. Rather, the new minimal claim might be that the conditions under which the authority will allow itself to act on its intention to harm and terrorize NCs and its doing no more than what others seeking to destroy the military operation without bad intentions would do are determinative of the category into which we should place the act.

I believe that the conceptual issue that we are dealing with in P(ii) is analogous to a problem in the philosophy of law. Suppose that A intends to murder B but deliberately waits to do so until B attempts to murder him, so that A's act is no different from what C would permissibly do in self-defense if B attacked C, except, of course, that A's intention is different from C's. Indeed, we can suppose that A would supererogatorily have refused to defend himself against anyone's attack on him but B's. In other words, his act is not overdetermined in the sense that he also has a constant intention to save himself. I believe that even in this latter case, A's act should be classified as self-defense despite his intentions because his act is what is actually needed to defend himself.<sup>11</sup> (This will be true whether A intends B's death as an end in itself or as a means to, for example, making his organs available to save D.)

Of course, in P(ii), unlike a self-defense case, Baby Killer's actions that destroy the Nazi regime may not help save Baby Killer Nation itself. Rather they save others from the Nazi regime. An analogue to this is what I call the Bad Man Trolley case. Suppose that a trolley is headed toward killing five

11. I actually think that such acts are permissible as resistance, even if they have no hope of defending the self. I shall ignore this fine point here, but for more on this, see F.M. Kamm, *Harming Some to Save Others from the Nazis*, in *MORAL PHILOSOPHY AND THE HOLOCAUST* (E. Garrad & G. Scarre ed., 2003).

people, and it would be permissible for a bystander who wants to save the five to redirect it toward killing one person instead. Imagine, however, that the bystander is a bad person. He would not bother to save the five lives but for the fact that he recognizes that the one person who will be killed if he redirects the trolley is his enemy. He turns the trolley only in order to kill his enemy, but only because he is in a context where the five will be saved by his turning the trolley. His turning the trolley, exactly as a person who merely wanted to save the five people would turn it, is not, I think, a murder.

It might be suggested that the unwillingness to characterize P(ii) as terrorism is linked to a deeper point about the characterization of terrorism. Perhaps it involves the agent not only intending harm and terror but also intending that those harmed and terrorized know that it is his intention to harm and terrorize them. Bombing only on the condition that there is a militarily (or economically, etc.) useful target to hit (which will cause harm, leading to terror) may conceal the intention to harm and terrorize people. If making clear to the populace one's intention to harm and terrorize were a part of terrorism, then that would account for why P(ii) is not thought of as terrorism.<sup>12</sup> Possibly one could go further and claim that if Baby Killer Nation would bomb only on the condition that there is a militarily useful target, then it cannot even form the intention to make it clear to those harmed and terrorized that it intends them to be harmed and terrorized.<sup>13</sup>

I do not think that the latter claim is true. For it would not be inconsistent with bombing only on the condition that there is an appropriate military target to put on one's plane a sign that says, "Aiming to harm and terrorize you." (Call this the Baby Killer Message case). If one aims to avoid doing a harmful act that one has a duty to refrain from doing, then Baby Killer Nation can still accomplish that aim (by bombing only on condition that there is an appropriate Nazi military target) and also make sure that its other intention—to harm and terrorize—is not concealed. Should we still refuse to characterize the Baby Killer Message case as terrorism? I think so. But if this is true, then it weakens the claim that the reason we would not classify P(ii) as terrorism is that the agent does not aim to make clear to its victims that it intends them to be victims.

**P(iii)** Suppose next that Baby Killer Nation would have bombed the Nazi WTC even if there had been no military significance to its destruction; it has an unconditional intention to act just to produce the harm and terror. Suppose further that such an act would have been impermissible. But in fact, there are Nazi military operations worth destroying in the WTC, and Baby Killer Nation knows this. Further, it does nothing in bombing the WTC other than what a genuine resistance lacking intentions to harm and

12. I owe this Gricean point to Matthew Boyle.

13. This point was also suggested by Matthew Boyle.

terrorize would have done. Its bombing could then be categorized as a military bombing rather than terrorism, I believe. What the Nation would have done—bomb in the absence of the military operations—does not bear on our description of what it actually does in this case. Hence, we should move beyond the claim made in P(ii) that the conditions under which the authority will allow itself to act are always relevant to deciding whether an act is terrorism.

In an analogous Bad Man Trolley case, the same is true. That is, suppose the bad man would have turned the trolley on his enemy even if doing this did not also save the five, but in fact it will save the five, the bad man knows this, and he does only what someone who wanted to save the five would have done. Then his act should not be classified as murder. In a self-defense case, the same is true, I believe. That is, suppose that A would have killed B even if B were not attacking him, but B in fact is attacking A, A knows this, and A does only what C could permissibly have done in self-defense. Though A acts only intending to kill B as an end, his act should be classified as an act of self-defense.

**P(iv)** What if we assume that Baby Killer Nation was ignorant of the Nazi military operations in the WTC and bombed it with the intention to harm and terrorize NCs? Nevertheless, if members of the Nation actually destroy the ongoing military operations and they do no more than what a genuine resistance lacking their intention would have done, I think that their act should be characterized in the following way: they attempted to perform an act of terrorism but succeeded in doing something else. In an analogous trolley case, when the bad man does not know that five could be saved by redirecting the trolley, I think he attempted to murder his enemy but succeeded in doing something else. In an analogous self-defense case, A does not know that B is trying to attack him. When A attacks B, trying to murder him, he actually succeeds in defending himself, though he may be guilty of attempted murder.

**P(v)** So far, Baby Killer Nation has been presented as intending harm and terror as an end in itself while it is bombing the military operations in the WTC in the Nazi United States. Most terrorists do not intend harm and terror as ends in themselves but as means to achieving other goals. So let us suppose instead that Baby Killer Nation intends the death and terror as a possible means to the surrender of the Nazis. And indeed, it is as likely that the populace will surrender from terror as from lack of munitions.

Nevertheless, the Nation acts on this intention only when there is another possible route to victory, namely, stopping the military operations in the WTC. I believe that its act is then not terrorism. For suppose that members of a resistance movement foresaw but did not intend that people would surrender as a result of collateral terror in response to collateral deaths from their bombing the WTC, before the military effect of bombing the WTC was decisive. This would not make their bombing the WTC terrorism (or impermissible, if bombing the WTC is permissible when the deaths and

terror are mere foreseen side effects.)<sup>14</sup> After all, if they did not bomb the WTC, then they would not engage in the only act that might be useful (even without its causing terror or harm) to end the Nazi regime. Baby Killer Nation might sign up for just wars only when this same scenario was true, do nothing but what a resistance movement that would never harm and terrorize people as a means would do, and yet intend the harm and terror as a means. (Henceforth, I shall assume that all points about intending harm and terror as a means can be made by discussing intending harm and terror as an end in itself in cases where what one does also involves another possible means [e.g., getting rid of munitions] to an effect [e.g., ending Nazi rule] that can rationalize one's behavior.)

I have been considering the conceptual question of whether intentions to harm and terrorize NCs are sufficient to make an act that harms and terrorizes NCs terrorism, and have so far suggested "no." Now consider the means/side-effect distinction separately from intention. Suppose that in all these WTC-Military cases the harm and terror to which it leads are, in fact, the causal route through which the downfall of the Nazis comes about, as the terrorized citizens overthrow the Nazi government independently of any military effect of the destruction of the military operations. As I noted in discussing P(v), the actual causal significance of harm and terror are not enough for us to call the bombings of the WTC acts of terrorism. How people react to what may just be a side effect is not enough to determine the character of the agent's act. Would the combination of intending harm and terror with these being the actual causal route to surrender be sufficient for terrorism if neither alone is sufficient? Not in a variant of P(ii): Baby Killer Nation's bombing the Nazi WTC, intending the deaths and terror of NCs, and such terror actually leading to surrender do not imply that its act is terrorism given that destroying the military facility, its condition for bombing at all, could also be a means to surrender.

## 2. Moral Issues

Let us now consider the moral, rather than conceptual, significance in P(i)–P(v) of an agent's intention to harm and terrorize, and then, separately, the moral significance of the causal role for harm and terror in bringing about an agent's goal. (I shall return to the conceptual issue.)

Consider intention first. I believe that acts are morally worse when the intention is wrong, in the sense that there are morally wrong attitudes toward persons present and they are also efficacious in leading to acts. I think that it is worse to seek harm and terror (even as means rather than as ends in themselves) rather than act despite their occurrence (or even on condition of their occurrence) but not seek them, other things being equal.

14. This is like a case that Judith Thomson imagines in J. Thomson, *Self-Defense* 20 PHIL. & PUB. AFF. 282–310 (1991), where she argues against intentions determining permissibility. She, however, did not use the case to investigate how we should nonmorally categorize an act.

However, this is not the same as saying that the intention makes an act impermissible when another act like it in all respects except for the intention is permissible. Nor is it the same as saying that the intention makes an act a more serious wrong, in the sense, for example, that there is a higher threshold of good to be achieved that must be met in order to override the *prima facie* wrongness of the act and make it permissible.

In particular, in P(i)–P(v), we would not require the resistance movement or Baby Killer Nation or their pilots to refrain from bombing the military target, even when we know that they will act only for bad reasons. Furthermore, I think we would not require them to refrain even if we would require individuals to refrain from doing acts against the Nazis that were impermissible on grounds other than the agent's intentions. (That is, we need not merely be allowing impermissible acts for the greater good.) Nor would we require the bad man in any of the trolley cases to refrain from turning the trolley. Nor would we require A to refrain from attacking B in any of the self-defense cases, even if we knew he would act for bad reasons and we had no reason to favor the outcome in which he defended himself over the one in which he did not. We would certainly not require these agents to refrain from attacking a target or saving the five if it were the agents' duty to do these acts. Even Kant would have agreed. He argued that a shopkeeper should give the right change to a child from concern to fulfill his duty to do so rather than from mere prudence. But if a shopkeeper would return the change merely from prudence, Kant would not claim that his returning the change was morally impermissible, though his act would have no moral worth.<sup>15</sup> Furthermore, I think that we would not tell Baby Killer Nation, the bad man, or A to refrain from their acts even if it were not anyone's duty to take out the target, save the five, or defend oneself, but merely permissible to do so. Nor does the amount of good that would come from bombing the military facility, turning the trolley, or killing B have to be greater in order to justify these acts when the intentions of the agent are bad.

Now consider the means/side-effect distinction separately from the intention/foresight distinction, by considering the actual causal route to surrender. Does the fact that the actual causal route to surrender will be through the harm and terror mean that it is impermissible to bomb the Nazi military facility whose destruction could also have helped bring about surrender for military reasons? I do not think that this is so, even if it would have been wrong to bomb in the absence of any facility whose destruction was of military use. One need not be required to refrain from destroying a military facility whose destruction could promote an objective good (such as ending Nazi rule), when doing this is justified despite side-effect deaths, simply because people will respond to this side effect and surrender. Nor does the good that one can achieve through destroying a military facility have to be

15. IMMANUEL KANT, *FUNDAMENTAL PRINCIPLES OF THE METAPHYSICS OF MORALS* (T.K. Abbott, trans., 1990).

greater in order to justify one's act when one intends that it be the collateral harm and terror that will actually cause surrender.

Finally, returning to the conceptual issue, suppose that some of my conceptual suggestions in C(1) about P(i)–P(v) are incorrect, and some of these cases should be categorized as terrorism. Thomas Scanlon has argued that intentions can change the meaning of acts.<sup>16</sup> A meaning of Baby Killer Nation's bombing the WTC in P(i)–(iv) is that they seek to destroy and terrorize civilians as an end in itself. In P(v), a meaning of Baby Killer Nation's act is that people are available to be harmed and terrorized as mere tools to some goal. Whether their victims know of these meanings or not, these are what their acts mean. Suppose we should apply "terrorism" to acts that have these meanings, even when the agent conditionalizes acting with these intentions on being able to destroy some military target (as in P(ii) or P[v]). Then the fact that the acts are, nevertheless, permissible will imply that there are permissible acts of terrorism (though this does not mean that the aspects of these acts that make them be terrorism are justified). Indeed, surprisingly, it will be possible to show that there are permissible acts of terrorism that are justified by even rather small good effects. This will be so if the act that harms and terrorizes is a means to produce a good effect independently of any harm and terror, and the harm and terror that result as side effects, relative to this other way of producing the good effect, are proportionate to the good achieved. For example, suppose that bombing a small Nazi munitions factory should proceed because it reduces Nazi power a bit, even when ten innocent NCs will certainly be killed as a side effect. Suppose Baby Killer Nation bombs the factory in order to kill the ten people, as an end or means, and its act is terrorism even though it does nothing other than what those lacking this intention would do. Then this terrorist bombing will still be permissible so long as it also is a means to reduce the Nazi power a bit through destruction of the factory itself.

These results would imply that we could not rule out the permissibility of terrorist acts without first considering other possible effects of the acts, such as destroying military targets, that could justify the acts, even when it is the harm and terror that turn out to be causally efficacious to the good effect that justifies the destructive act.

I have been dealing with hypothetical cases where the act of destroying the Nazi WTC is assumed to be *permissible* (P). I argued that the intention to harm and terrorize (as an end or mere means), even when the harm and terror are actually the means that achieve one's end, does not account for the supposed distinction in moral permissibility between bombing that involves collateral damage and terrorist bombing. However, I also noted that the intention to harm and terrorize people can be additional bad elements of the act. It can lead to justified indignation toward attitudes people take to other people and the considerations they take to justify acts (such as death

16. See Thomas Scanlon, *Intention and Permissibility*, PROC. ARISTOTELIAN SOC. (2000).

and terror) that do not justify acts. Nevertheless, this need not imply that the act they perform for bad reasons is a wrong (impermissible) act.

### 3. *Impermissible Acts*

Now let us consider the role of intention and also of the actual causal role of harm and terror in deciding what type of wrong act is done (a conceptual issue) and how serious a wrong it is when the act is assumed to be *impermissible* (I). (That one act is a more serious wrong than another need not mean that it is more wrong. Some hold that all wrong acts are equally wrong. However, murdering someone is a more serious wrong than breaking his arm, other things being equal.) The act of bombing the military facility will be impermissible, at least, if the death and terror it leads to as a side effect are out of proportion to the military goal to be achieved. First consider imaginary cases.

**I(i)** Suppose that it makes military sense for Al Qaeda to blow up the WTC in a United States not controlled by Nazis, because of military operations going on in it. However, it is morally unjustified for it to attack because of the side effects of death and terror. (It could also be that, given the type of conflict Al Qaeda is involved in, it is not even permissible for it to destroy the opponent's homeland property, even if this harmed and terrorized no one.) No pilot is interested in taking the job for the purely military reasons. However, some pilots are interested in doing the job because it will kill and terrorize people. Does hitting the WTC with this intention, carried out in exactly the same way as pilots who do not intend to kill and terrorize would carry it out, become an act of terrorism, although Al Qaeda authorizes the mission to destroy the military operation? Even though the destruction of the WTC would be impermissible, I do not think that its impermissibility should alter our conclusion from what it was in P(i), namely, that the pilot's intentions do not determine how we should categorize the bombing. However, in this case, where we are considering which *wrong* was committed, it will be the wrong of impermissible bombing of a military facility rather than the wrong of terrorism.

**I(ii)** But suppose that all is as in I(i) except that Al Qaeda (including its pilots) is not interested in doing what it makes military sense for it to do. It is only interested in killing and terrorizing NCs. Nevertheless, it will not cause death and terror unless military factors are present to create a militarily rational cover for its operation. If it bombs only on this condition and does no acts that would not be done by someone interested only in getting rid of the military operation, is its act terrorism rather than impermissible military bombing?

I have mentioned the view that an authority's intention can change the meaning of the act and that "terrorism" should be applied when the meaning of the act is that people seek to harm and terrorize. If this view is correct, I(ii) is terrorism.

Alternatively, we might get support for the negative answer by considering a self-defense analogy.<sup>17</sup> In order for it to be truly relevant to I(ii), we would have to imagine that the self-defense is impermissible (for example, when the self-defense act would have very bad side effects on bystanders). This is a new extension of the philosophy-of-law problem discussed above.

So suppose that C would be engaged in impermissible self-defense against an attacker B in killing him even though he aims only at self-defense. Can we classify the wrong that A does, if he does only what C does, as impermissible self-defense when A aims only to murder B but waits until B's attack on him to kill him? Here the issue at stake is: May we ignore intention in characterizing the type of act done when the act is impermissible (as one view holds we might when it is permissible)? Might we focus instead on the condition that sets limits on when the bad intention will be acted on rather than on the intention (as was at first proposed in discussing P[ii])? Might the answer depend on whether there is a "core of appropriateness" to the act, even if it is ultimately impermissible? (That is, defending oneself in the face of an attack is appropriate but is made impermissible in virtue of some other factor, such as that the only available response is excessive. However, attacking a nonthreat does not have the same core of appropriateness. Attacking military supplies to be used unjustly against one is appropriate, even if ultimately impermissible due to collateral damage. Attacking a public garden does not have the same core of permissibility.)

In all of these cases, the agent should refrain from his act. This, I think, makes it more likely that we refer to his intention to characterize the act's type. So in cases I(i)–(ii), the conceptual results will be closer to those of the "meaning" approach to categorizing acts. It is also possible that the seriousness of the wrong done is determined by reference to this factor. If this were true, it would indicate that the role of intention in determining the type of act could be different for permissible and impermissible acts. Nevertheless, the impermissibility of the act is still established on grounds other than the presence of the intention to harm and terrorize.

Consider how we might reason about the relevance of intention in cases I(i)–(ii). Suppose that A, like C, would have impermissibly defended himself against attacking agents other than B, even though he did not begin with the aim of killing them, merely waiting for the cover of responding to an attack. Suppose also that A set the self-defense scenario as a condition of killing B. I suggest that we might then classify A's act in killing B in the same way as C's wrongful self-defense. This is because the case suggests that A has two intentions in the circumstance when he kills B—to defend himself and to eliminate B—and the self-defense goal is primary in that it suffices on its own as a reason for action and also sets the conditions

17. We could also use a Bad Man Trolley case as an analogue, but I will omit this for brevity's sake.

for action on the other intention.<sup>18</sup> Similarly, suppose that Al Qaeda, in our variants on imaginary examples I(i)–(ii), would have bombed the WTC military operation even if NCs would not be killed and would kill NCs only in attacking a building with military facilities. This suggests that where it intends to kill NCs, it has two goals. That is, it also intends to destroy the WTC for military purposes, and more than this, harming and terrorizing are not necessary for it to act. Then, if the impermissible self-defense analogy is to be trusted, Al Qaeda's wrong in this imaginary case would be classified as the wrong of causing impermissible collateral damage, even when it also intends harm and terror. (The meaning account might agree, for we have now introduced two intentions.)

But if A, unlike C, would not have impermissibly killed any other attacking agent except B, this suggests that he is completely uninterested in self-defense, even though he conditionalizes acting for his true intention on self-defense, and so his impermissible act should be classified as a different wrong more serious than C's. Analogously, in I(ii), if Al Qaeda has no interest in the military target per se, then the wrong in bombing will be terrorism, even when it is made conditional on bombing a military operation. Finally, suppose that in variants on cases I(i)–(ii), Al Qaeda is interested both in destruction of the WTC and in harm and terror, but the harm and terror are a necessary (if not sufficient) condition for its acting. That is, Al Qaeda would not fulfill its intention to destroy the WTC unless it also achieved this other goal. Here, attacking the military is one goal of the action but is not sufficient on its own for action. Harming and terrorizing are also a goal of action but are not sufficient on their own. In this sort of case, I think that the impermissible act would be terrorism, at least in part.<sup>19</sup>

For completeness, let us now consider I(iii) and I(iv).

**I(iii)** Suppose that all is as in I(ii), except that although Al Qaeda knows about the military usefulness of destroying the WTC, it would have destroyed the WTC merely in order to produce death and terror even if there had been no ongoing military operations there. Its wrong is thereby the wrong of terrorism.

**I(iv)** Suppose that all is as in I(iii), except that no one in Al Qaeda knows of the actual military operations in the WTC and it aims to destroy the WTC in order to kill and terrorize. Here again, I think that the wrongful act is terrorism.

18. I take it that the fact that an agent has two intentions in acting is not the same as saying his act is overdetermined. I reserve the latter term to refer to cases where either intention without the other would be sufficient to lead to the act. But it is possible that only one or none of several intentions is sufficient to lead to an act on its own.

19. Recall that I said in discussing the P cases that on the view that emphasized the meaning of an act, some of the P cases might be terrorism (even though permissible). I had in mind that it might be said there, too, that whenever harming and terror are necessary for action, we have terrorism.

Should the actual causal route (independent of intention) to an end affect how we categorize an impermissible act or the degree of its wrongness. I do not think so. For example, suppose bombing the WTC military facility for military reasons would be impermissible at least because of collateral harm and terror. Does the act become terrorism or a more significant wrong just because the populace actually surrenders due to the harm and terror? I do not think so.

Suppose this analysis of when we should apply the term *terrorism*, arrived at by considering I(i)–(iv) and variants, is correct. Then it will be important in describing the actual case of bombing the WTC on 9/11 to consider whether bombing the WTC (where no military operations were ongoing) is something Al Qaeda would have done even if no deaths or terror occurred. The bombing would certainly be useful to show the vulnerability of one's opponent and perhaps to destroy some of its economic power. We could certainly conceive of some other agent (analogous to C in the self-defense cases) that did not intend to harm and terrorize NCs as a means or end yet would exhibit instrumental (though not moral) rationality in bombing the WTC for such reasons. Of course, such a bombing would be morally impermissible. It would be impermissible either because of the collateral damage or because it is not true that one may destroy the homeland property of one's opponent (let alone NCs) in just any sort of conflict. Nevertheless, the wrong would not be classified as terrorism. Suppose Al Qaeda would have bombed the WTC on 9/11 if no people would have been harmed or terrorized. Suppose that in its actual bombing on 9/11 it did nothing other than what someone who was interested only in destroying the WTC would have done. Then if what has been said about I(i)–(iv) is correct, even if Al Qaeda also intended the harm and terror and it was harm and terror that actually had the biggest useful effect for its cause, its impermissible act would not be terrorism.

Intention to harm and terrorize is, I believe, a necessary condition for ST.<sup>20</sup> However, it is not sufficient for ST, whether the act that causes harm and terror is permissible or impermissible.

I emphasize that my claim about Al Qaeda is different from the following claim that some people make: For all we know, given their observable acts, Al Qaeda did not intend harm and terror but only destruction of the WTC, despite foreseen collateral damage, and therefore we cannot describe its act as ST. (Some also conclude from this that we cannot say that what it did was impermissible.) My claim is that if Al Qaeda intended both the destruction of the WTC and the harm and terror, was willing to seek the former without the latter, and took seeking the former as a condition of seeking the latter,

20. By contrast, an actual causal route to one's end via harm and terror is not even necessary for some act to be ST. First, there are cases where harm and terror are one's end. Second, if one intends such a causal route as one's only route to an end but the causal connection fails, one's act is still terrorism.

then its act should be characterized as something other than terrorism, but it can also be true that this other type of act is *impermissible*.

#### D. Harm and Terror as Necessary to Produce One's End

I have argued that neither intention to harm and terrorize (as an end or means) *per se* nor the actual causal route to an outcome through harm and terror *per se* (nor the combination of these) determine impermissibility of an act. However, all this does not mean that impermissibility of an act might not be determined by the necessity, given one's act, of a causal route through harm and terror to a chosen outcome. (Such a principle of impermissibility might be part of a revised version of the DDE.) For example, the absence of any possible justification for the act independent of its causing harm and terror as a means or end might be grounds for terror bombing being impermissible when bombing with the same damage as collateral damage is permissible. This is a fourth proposal to account for the *prima facie* wrongness, in the sense of impermissibility, of ST. It is different from proposals that focus on intention and the actual (but not necessary) causal route through harm and terror.

##### *1. The Necessary/Nonnecessary Means Distinctions*

Intending harm and terror is necessary, I think, to make one's act be terrorism, but it is the conjunction of this intention with bringing harm and terror about when they alone are effects of one's act that could be a means to one's end that could make one's act be an example of impermissible terrorism. Cases that have been standardly used to illustrate terrorism have this characteristic. For example, they involve a pilot who drops bombs directly on children and intends the harm to them and the resulting terror as a means to surrender, when no other aspect of his act can help cause surrender that would justify side-effect deaths and terror. It has been mistakenly thought that the intention and/or actual causal route through harm and terror were the crucial characteristics for impermissibility. But if the harm and terror are effects that do bring about one's end when something else one brought about through one's act could independently also bring about one's end, we may not yet have either terrorism or an impermissible act, even with a bad intention. This was true in the case where hitting military operations in the Nazi WTC could also have brought about surrender by way of reduced munitions, if harm and terror had not actually led to surrender. The fact that harm and terror would be the only effect of one's act that could produce one's goal implies that it is necessary, given one's act, for them to have a causal role in achieving one's goal. (Note that the necessity of a particular causal route to produce one's goal, given one's act, is not the same as the necessity of that causal route *tout court*. The fact that one might have done many different acts to bring about one's end that did not require harm and

terror is consistent with the act one actually does leading to one's end only through harm and terror as a means to one's end.) But is the necessity of a role for harm and terror, given one's act, by contrast with the possibility of one's act leading through some other route to one's goal, sufficient to make the act impermissible?

## 2. *The Produce/Sustain Distinction*

There is reason to doubt this, as is shown by the following cases.<sup>21</sup> In the Sustain Destruction case, the Resistance bombs the military facility in the Nazi WTC, foreseeing the collateral damage and terror. However, it also knows that these facilities would be quickly rebuilt were it not that the collateral harm and terror to NCs will keep people otherwise occupied. There would be no point in bombing the facility if it were quickly rebuilt. In this case, the harm and terror are causally necessary for the achievement of the Resistance's goal because they sustain the destructive effects of its bombing. The Resistance bombs the WTC only because it knows that the harm and terror will occur unavoidably as side effects; it would not act if the side effects did not occur, for the military facility would then be quickly rebuilt. This need not imply that the Resistance intends the harm and terror or bombs in order to produce it. For there is, I believe, a conceptual distinction between acting only because one will produce an effect—on condition that one will—and acting in order to bring about that effect.<sup>22</sup> However, Baby Killer Nation might join the effort against the Nazis on this occasion, and it would intend to cause harm and terror. Whether it is the Resistance acting, or Baby Killer Nation, it would still, I believe, be permissible to bomb the WTC in the Sustain Destruction case. This is so even if the one possible route to the Nazi surrender, given the destructive act, is through harm and terror sustaining destruction of the WTC. Why is this so?

A key point in distinguishing the permissible from the impermissible cases where harm and terror are necessary, given one's act, to achieve one's goal is the different way in which the harm and terror come about and, as a consequence, the different causal roles of harm and terror. In the Sustain Destruction case, the harm and terror are brought about by the destruction of the WTC that, if only it could be sustained, would by hypothesis be the goal that could justify the existence of collateral harm and terror. This contrasts with the harm and terror being a necessary means, given one's act, to the initial destruction of the WTC, not produced by that destruction and merely necessary to sustain it. (It also contrasts, I believe, with harm and terror being the side effect of a mere means (such as dropping a bomb) to a goal (such as producing the destruction of the Nazi WTC or

21. These cases have their roots in my discussion elsewhere of various Trolley cases and my Munitions Grief cases. See F.M. KAMM, *2 MORALITY, MORTALITY* (1996).

22. On this, see Kamm, *supra* note 5. I argue there that the Counterfactual Test for intending fails to distinguish acting "because of" and "in order to."

sustaining its destruction by dropping further bombs on it.)<sup>23</sup> I believe that it is these differences that can account for the impermissibility of some terror bombing, for example, when harm and terror are necessary, given one's act, to produce a goal, and when harm and terror are effects of one's act in the absence of any other justifying effects.

I conclude that intending harm and terror as means or ends is necessary for a case to involve ST, but it is not this intention that contributes to the *prima facie* impermissibility of the act that causes harm and terror. Furthermore, neither an actual nor a necessary causal role, given one's act, for harm and terror in achieving one's goal makes for the *prima facie* impermissibility of the act that harms. Rather, what can be crucial for the *prima facie* impermissibility of an act is that the harm and terror have a necessary role, given one's act, in *producing one's goal or are the effects of one's act in the absence of any other justifying effect. This contrasts with harm and terror being the effects of achieving one's goal and such effects having a necessary causal role in sustaining it.*<sup>24</sup>

These results imply that a modal operator (such as the necessity of harm and terror, given one's act, as a means to producing one's goal or the possibility of doing without them in producing one's goal) should sometimes play a role in characterizing the impermissible or permissible act.<sup>25</sup> These results also imply that, even when someone does not intend to create harm and terror to NCs, we could condemn his act as impermissible because it involves harm and terror as the only possible means to producing his end, given his act. This is true even if the act is not terrorism because there is no intention to harm and terrorize. For example, consider the Cow case. Suppose that a pilot mistakenly believes that the people on the ground are cows. He has no intention of harming and terrorizing people but only of bombing a building to harm some cows in order to terrorize other cows into trampling a munitions site. Still, we could say that his act is impermissible because it would actually require these things being done to people if the munitions are to be trampled. This is so even if it were permissible to destroy the building to eliminate its military use, though it had as a side effect the same harm and terror to people and these would actually lead them to surrender.<sup>26</sup>

23. Hence I think the DDE is too liberal in allowing side-effect death and terror when it is the result of a mere means to a justifying goal. This is a topic that I discuss in detail elsewhere.

24. The discussion in Section D draws on distinctions that are discussed in much greater detail in Kamm, *supra* note 21; Kamm, *Towards the Essence of Nonconsequentialist Constraints*, in *FACT AND VALUE* (A. Byrne, et al. eds., 2001); and KAMM, *INTRICATE ETHICS* (forthcoming).

25. For more on characterizing impermissible acts using a modal operator, see KAMM, *INTRICATE ETHICS*, *supra* note 24.

26. It might be said that we could isolate the acts that require harm and terror in order to produce goals by also looking for the acts that it is only reasonable to think someone must intend in virtue of their causing harm and terror. By contrast, acts in which someone actually intends harm and terror, but that can produce a goal in some other way, are ones in which a reasonable agent could have a different intention (making reference to the other route to his goal). Why not then say that acts that could only be done (by a reasonable agent) with a bad

### E. The Mechanical/Nonmechanical and Military/Political Distinctions

Is there something else that contributes either to the prima facie wrongness of ST or at least to its increased moral badness (if this does not affect its impermissibility)? I think that we should consider how the effects of being used (in being harmed or terrorized) function, for possibly this will distinguish ST morally from other cases where there is improper use of harm and terror as a means.

#### I.

In order to make this clearer, consider the Human Tinder case: an agent bombs people as a means to start a fire that will blow up a military target. Or consider the Stampede case: an agent bombs people as a means to create terror in others so that they stampede and trample a military facility, thereby terminating a military operation. In these two cases, harm and terror are mechanical means to military ends. I say “mechanical” because the destruction of the target in the Human Tinder case could be produced by any burnable substance. And the terror involved in the Stampede case is like a fright-and-flight instinctive response and is in this sense mechanical.

By contrast, it is often true in ST that the harm and terror are meant to influence people’s judgment and will, especially in the political sphere. Here, fear gives rise to a prudential or altruistic judgment (that one should save oneself or others) that is meant to provide one with a reason to alter one’s behavior or policies. The fear is not a factor that causes one to bypass the exercise of judgment and reduces one to an instinctive fright-and-flight response. In the Stampede case, people act in a panic. This form of terror is somewhat like torture without the physical abuse, insofar as the torturer tries to undermine the victim’s will rather than give him a reason (namely, to avoid pain) to change his willed behavior. We might call this the mechanical/nonmechanical distinction.

In the Human Tinder and Stampede cases, the attacker fights *with* the people harmed and terrorized in the sense that he uses them as tools in defeating the military. But often in ST, at least when the NCs are in a democracy and are not juveniles, the terrorist is trying to get people to change their government’s policies. So there may also be a distinction to be drawn between the military use of harm and terror and its political use.

intention are impermissible? One response is that in the Cow case the act is impermissible, though a reasonable agent in that case does not require a bad intention to do the act, given that he believes there are cows below. (Perhaps the condition could be amended to say that a reasonable, fully informed agent could only do the act with a bad intention.) More important, we will decide that only a reasonable agent could only do the act with a bad intention could do the act by looking at the properties of the act and its consequences (including, I believe, how it causally relates to its consequences). If these properties could not be the object of someone with only good intentions, then the act will be declared impermissible. Hence it is really the properties of the act and consequences, not the possible intentions of agents, that determine the act’s permissibility.

Table 1 lays out the possible combinations of these distinctions:

**Table 1**

	Military	Political
Mechanical	MM	MP
Nonmechanical	NM	NP

Notice that there could be a nonmechanical use of people to defeat the military, as when fear leads people, as a matter of prudence or altruism, to consider sabotaging their own country's military operations. And there could be a mechanical use that affects the political realm, as when people's terror leads them to stampede and interfere with an election.

2.

Let us consider the case of nonmechanical use for political purposes (NP) in more detail. When the aim is to create terror that will lead people to create political pressure on their government, the terrorist is trying to change people's judgment and deliberately willed political behavior.<sup>27</sup> NCs, unlike soldiers, are often not prepared to die for a cause, both in the sense that they are not trained to fight to the death for it and also, possibly, in that they would not be willing to fight to the death for it. The home front is often willing to commit to a policy only if it can rely on others who are soldiers doing the fighting and sustaining the losses for it. (So the agent's attempt to pressure or fight people who are not prepared to die does not apply if those affected are soldiers who are not in combat.) This would help explain why ST agents are considered cowards even when they risk their lives. For they are bypassing fighting the military to win a war, relying instead on attacking NCs, who are not trained to sustain attacks. This idea—perhaps somewhat inaccurate—of a coward is of someone who does not fight someone else prepared to fight.

The terrorist in the type of case we are considering is also trying to get people to behave in ways that exhibit a lack of the virtue of courage, it might be argued. When an agent harms people, she may be trying to make them unable to fight. When she terrorizes them for nonmechanical purposes, she tries to make them unwilling to support a fight or otherwise stay the course, though they are not unable to do so. (The Stampede case involves a mechanical form of terror that makes one psychologically unable to control oneself, so it differs from the unwillingness to stay a course that I am now

27. This is different from creating pressure on the government itself by killing and terrorizing its citizens, thus making the government incapable of fulfilling its duty to protect its citizens. Here the fate of the citizens would be used to alter the judgment and will of the government. And the government might be giving in not from fear but from a sense of duty to care for its citizens.

considering.) It would be better if people did not give in to fear, as doing so leads them to take factors on which one focuses merely because of fear as reasons to change policy. They cannot be proud of their behavior when they change a policy merely because of fear and independent of merit. This is especially true when the fear is out of proportion to the real increase in the probability of death and destruction, for example, when there is a much higher probability of dying in a car accident than from a terrorist attack.<sup>28</sup> Hence, ST of this type raises the specter of a war of cowards on both sides. (Suppose, though, that people mistakenly overestimate the probability of death, and the fear is proportional to the imagined probability. Then there may not be cowardice on their part but a form of irrationality that is also not admirable.)

Focusing on these factors in ST raises the issue of whether and when it is in fact cowardly to give in to fear as a reason for seeking a change in policy. It seems reasonable to surrender from fear when a criminal says, "Your money or your life."<sup>29</sup> But pressuring one's government out of fear to give in to terrorist demands is more like calling off the police from catching

28. There appears to be a problem of explaining why terror of grave harm is generated by infrequent ST such as we have known. For the actual chance of being killed seems to be much smaller than that of dying in a traffic accident. Indeed, if one alters one's behavior to avoid being terror-killed to the extent one can by, say, not going out to public venues as much in one's car, then one may actually reduce one's chances of dying from what they were *ex ante* ST. (In the case of bioterrorism, however, even if the probability of its occurring were low, the enormous number of people who would be severely harmed would make the expected disutility to each person very high. But even here, it seems to me to be an open question whether it is rational to fear in accordance with expected disutility or instead to give more weight to the low probability element.)

Why is there terror of future attacks such as we have experienced already but no terror of going out in one's car? Some suggest that this is because there is a fear of lack of control; an individual can do nothing much to avoid ST, but one can drive safely to avoid the car accident. (Judith Thomson suggested this in conversation.) But why should this be important if, despite greater control, there is in fact a higher death rate on the highway than there would be from terror-killing?

Perhaps, it may be said, fear is also appropriate when there is an increased chance of death (even if small) because one is not accustomed to that. But this suggests that while fear may reasonably occur after an attack, the fear should diminish over time as one becomes used to living with a small increase in the probability of great harm. Furthermore, a greater increase in the chance of death that one is not accustomed to may occur when the speed limit is raised than when there is a chance of ST, yet there is no terror in going on the highway immediately after the speed limit is raised. What if road accidents occurred not one at a time but less frequently and involving large numbers of victims at once. Might the prospect of dying in such a mass death justify terror of driving? Why would it, if the probability of dying does not change? (Fear of flying is sometimes attributed to lack of personal control—though one puts oneself in the hands of an expert—and the prospect of mass death.)

All of this suggests that long-term terror in response to ST, and perhaps even terror in the short-term by those not actually in the vicinity of a repeatable ST attack, would not be rational. (An alternative conclusion is that one should be much more frightened of going out on the road in a car than one is.) Suppose, for the sake of argument, that the terror caused by ST is not rational, and we were concerned only with those terrorized (rather than with those killed) due to ST. Then perhaps we should spend more time trying to show people that the fear is not justified rather than getting rid of it in some other, more costly way.

29. Thomas Nagel reminded me of this.

the criminal (to whom one gave in from fear) from fear. And this is wrong. It is also more like giving in to a criminal when what he asks for violates one's principles rather than just diminishes one's wealth. An analogy here might be calling off the police on criminals where their goal in killing and terrorizing is to stop racial integration from taking place.

In response to this last point, it may be argued that U.S. foreign policy (if that is what the terrorist is trying to change) is a matter of national self-interest, not principles, and so if changing the policy to stop terrorist attacks were in U.S. national interest overall, then there would be nothing morally objectionable (or cowardly) in its doing so.<sup>30</sup> (Of course, in the long run it might not be in its interest to do this, but suppose it were.)

However, even if the substance of U.S. foreign policy were only a matter of self-interest and not principle, giving in to ST would not be like ordinary action from self-interest. In ST (and in criminal threats) the agent takes or threatens to take something from people (e.g., their lives) to which they have a right, in order to make it be in their interest to trade something else (e.g., their foreign policy) in order to get back (or avoid losing) what they have a right to have without such a trade. Contrast this with a nation that says, "We will not give you our oil unless you change your foreign policy" (the Oil Threat case). This, too, may be done in order to cause fear in people and lead them to pressure their government to change its foreign policy. But such a threat does not involve taking U.S. oil (or anything else to which U.S. citizens are entitled) and then trying to trade it back to them for a change in U.S. foreign policy. Indeed, if a threat of withholding oil were intended to produce terror, then it might be an instance of morally permissible NST. (One might resent such an attempt to alter one's policies, but this would not be enough to show that it is impermissible. It is like the embargo that the United States used to try to alter Saddam Hussein's policies.) The moral objection to the attempt to make something be in one's self-interest seems appropriately greater in the case of threatened ST than in the Oil Threat case. Not acting on this moral objection (by standing fast in the face of terrorism) for reasons of self-interest or even concern about the interests of others seems morally objectionable and not only shortsighted. This would be true even if U.S. foreign policy were only a matter of national self-interest to begin with.

Perhaps this claim might be challenged in the following way.<sup>31</sup> Whether or not U.S. foreign policy is motivated purely by national self-interest, the United States also uses impermissible means to pursue its policies, for example, helping maintain unjust autocratic regimes. The terrorist tries to make it be in the United States's self-interest to alter its foreign policy by raising the costs of this policy. Perhaps he does so by immoral means, but as the United States uses immoral means in pursuing its aims, it is asked, how

30. Elizabeth Harman and Joseph Raz suggested this.

31. I owe this argument to Julian Lamont.

can it complain when the terrorist does likewise? Hence, the United States should treat the terrorist acts as just another cost when deciding whether to change its foreign policy; it should not think in terms of either morally impermissible means being used or of cowardice in giving in.

Consistently or inconsistently, however, the United States rejects the view that ST is just another way of raising costs and that, given its own conduct, it is not in a position to argue that there are moral constraints on pursuing aims. Indeed, given that ST actually increases the likelihood of death and serious injury to NCs very little, it is probably resentment against what it considers the terrorist's impermissible means, combined with the view that U.S. foreign policy is to some degree principled and the immoral means it employs are not as bad as ST, that may be underlying the attempt to extirpate ST. So we are back to the view that changing principled foreign policy from fear, when this requires giving in to pressure produced in immoral ways, is objectionable.

I conclude, therefore, that if ST is an attempt to give people a reason based on fear to give in to impermissible types of pressure and to change principled policies, when the actual increase in probability of death or serious injury is and is perceived to be small, then ST is an attempt to get people to behave in a cowardly manner. (If it is expected that people will unreasonably overestimate the increased probability of death, then there is at least an attempt by the terrorists to get people to behave in an irrational way.)

Giving in from fear is not the same as reconsidering the merits of a policy after ST, when one sees how strongly some people object to the policy. I suggested above that ST agents might be trying to set their victims on what they see as a morally right path. They may induce cowardice and irrationality to do this, but they may also seek conversion, a reconsideration of the merits of a policy. (To do this, harm and terror should be accompanied by dissemination of arguments for their side.) Suppose that one changed one's policy because on reconsidering it, one saw its flaws. (And not only in the sense that one sees that the policy is not really in one's self-interest because it leads to terrorism. One sees its flaws independent of that effect.) Will others believe that one changed the policy because of fear instead? That is, that one would have changed it even if it were not flawed? If so, this might encourage ST as a tactic. Indeed, even if others believe that one changed the policy on grounds of merit only after ST, then ST might seem to be a successful tactic for getting one to attend more closely to the merits of one's policy! This, too, could encourage ST.

If these things might happen, then it is no longer a simple matter of changing one's policies on the merits. The additional possible effects of encouraging ST might have to be considered and weighed in the balance. Here lies the poignancy of the Spanish case in 2003. The majority of the Spanish people all along thought that the policy of supporting the U.S. war with Iraq was wrong (and not just on self-interested grounds). But they

seemed to put real pressure on their government after an ST act, and so some causal chain was suggested. But should they have gone on paying with their lives for what they always thought was wrong, just so as not to be thought to be giving in—or even being responsive in some other way—to ST?

3.

(a). Suppose that an act of ST is an attempt to make people act cowardly, to prey on their weakness or on their less-than-optimal rationality in calculating risks. Does this help make the ST act *prima facie* wrong in the sense of being impermissible? I believe so. This is because it is *prima facie* wrong to play a role in undermining people's judgment and will. It is also because these effects are, given the agent's act, necessary to produce his further end (rather than only side effects). However, these factors are also present in the Oil Threat case, but they do not make that threat overall impermissible. Do these factors make an act that is impermissible on other grounds (e.g., it involves impermissible killing) be a more serious wrong? One way to test for this is to hold constant in all cases the amount of harm and terror and their causal necessity in producing an outcome and ask whether the agent does a more serious wrong in the NP case than in either an MM case or an MP case. One problem with this approach is that we might not be able to equalize for terror. For the terror that will undermine judgment entirely and produce panic must, it seems, be more intense and hence greater than the terror that does not.<sup>32</sup> One response to this objection is to imagine that the less-intense terror lasts for a longer period of time than the more-intense terror. In this way, we equalize total terror. Let us assume that this is possible and proceed with the comparisons.

Is it a more serious wrong to try to influence politics and thereby win a conflict than to merely influence the military when both are done through a mechanical use of harm and terror? Perhaps. Is it a more serious wrong to influence politics through the effect on judgment described above rather than mechanically? I think that it is in some ways "uglier" but I do not think that this makes the agent's act a more serious wrong. Why is it uglier? Because it may make ST a morally worse event for its victims. After all, they will act in a morally wrong way (e.g., in a cowardly way). The responsibility for any wrong behavior by the victims will be theirs when they let their judgment be swayed by fear. They have the option of not doing this. To some degree they even have the option of not feeling fear, as we have more control over this emotional response than over physical harms, at least when there is no panic attack (as in the Stampede case). For this reason the victims may prefer to be used mechanically, for then the responsibility for the outcome lies solely with the ST agent.

However, I do not think that it is the responsibility of an agent involved in a conflict, when he decides whether to use harm and terror mechanically

32. I owe this point to Jane Heale.

or nonmechanically, to choose on the basis of sparing his opponents from their own bad decision-making (if this will be bad only for his opponents). (By contrast, in nonconflict situations, I think that we should act to promote and support each other's good reasoning and moral virtues.) Similarly, we need not correct the errors of our opponents when this will harm our side, even when they consult us for advice. However, the victim's desire to avoid being placed in a situation where he will behave badly is an added incentive for him to try to extirpate ST, even if not because it makes what the ST agent does a more serious wrong.

Suppose that an agent did want to help the people he harms and terrorizes to avoid cowardly behavior or bad risk assessment, so that they would not later be ashamed of their conduct. He could make their behavior not exhibit these defects by increasing the harm he does, so that it would be truly reasonable for them to fear great further damage and be reasonable for them to surrender. But this has several problems. First, it would do more harm to people, and that seems too great a price to pay in order to make one's opponent's conduct reasonable and noncowardly. Second, it seems unnecessarily solicitous toward someone in a conflict to want to cushion the blow of choices they are responsible for making.

The first problem could be remedied<sup>33</sup> not by increasing the harm one actually does but rather by threatening to do much worse than one would actually do or by falsely magnifying the damage and frequency of attacks one has actually undertaken. Here, too, it could be only reasonable for others to be taken in and surrender. However, in these scenarios the agent takes it upon himself to appear to be much worse than he actually is or possibly would be. From the agent's point of view, this can be too great a moral sacrifice to make just to spare his opponent shame.

(b). So far I have argued that, due to the role of NC responsibility and the lack of a duty to be solicitous of one's opponent's behavior, achieving one's end via nonmechanical means does not make an agent's act a more serious wrong than achieving the end via mechanical means. Can we also argue that using the nonmechanical route—even though it will depend on eliciting poor judgment or cowardice on the part of one's opponent—is morally better than producing the same effects through mechanical means (holding the amount of harm and terror and their causal necessity in producing an outcome in both cases constant)? That is, if it were a more serious wrong to use the mechanical, rationality-undermining means, then this, rather than merely the refusal to be solicitous of one's opponent, should lead one to use nonmechanical means.

In answering this question, recall the claim that mechanical terror is like torture without physical abuse of the one terrorized. (There is, of course, still physical abuse in ST of those whose deaths lead to terror.) Indeed,

33. This was pointed out to me by Alex Verhove and Michael Otsuka.

psychological torture is a bona fide category of torture that does not require physical abuse. Some think that there is a human right not to be tortured. I do not think this is true, if we understand by a human right one that *is had* by anyone just so long as he or she is a human person.<sup>34</sup> For consider the following case: A is about to kill B unjustifiably. It is permissible for us to kill A if this is necessary to stop the fatal attack on B. We are about to do this when we realize that we could stop A's attack by torturing him (physically and/or mentally) for a few hours (with a long-distance radar device). It would be better for her to be temporarily tortured than to be dead. It is not always morally appropriate to do something to a person because it would be better for him than something else we could do. (I discuss a case like this below.) Nevertheless, I believe, it would be permissible to torture him rather than kill him in this case. Furthermore, suppose it would be permissible to kill B to stop his attack but we lacked the means to do this. Should we not be permitted to do what is less bad for him in order to stop his attack, and this includes torture in the manner described?

It may be that there is a human right not to be tortured in the sense that being a human person is enough to *give rise* to a right not to be tortured. (Indeed, this may be the correct way to understand any human right.) But this does not mean that this right cannot be defeated or forfeited on occasion, for example, in virtue of acts that the person performs. So some human persons may lack the right not to be tortured in certain circumstances. It also may be true that someone's right not to be tortured is not defeated or forfeited merely because it would be useful to torture him when he is not doing or has not done acts that threaten others and whose bad effects could be stopped by torturing. Let us consider such impermissible torture in the following discussion.

Would it be morally worse to try to get a person to divulge information by breaking the person down to a nonrational, panicked state or by threatening him so that reasons of self-interest stemming from fear overcome his moral impulse to keep a secret? Even though the second course involves trying to corrupt someone, I think that it could be permissible to take it when reducing someone to a nonrational, panicked state is impermissible. This is so even if the corrupted person becomes less worthy of respect and the reduced person would be only an object of pity. This would explain why corrupting (by unpleasant or pleasant prospects) is considered a morally permissible interrogation procedure but psychological terror is not.

But perhaps the fear leading to panic is greater than the fear that gives one a prudential reason to divulge information, and this is why the former is prohibited when the latter is not. To deal with this possibility, we should imagine that the panic period is short and the lesser fear is extended in time. Alternatively, we could imagine options involving no fear at all. Suppose

34. The following points derive from my discussion in F.M. Kamm, *Rights beyond Interests*, in *INTRICATE ETHICS*, *supra* note 24.

that we could for a brief duration give someone a truth serum that made it impossible for him to exercise self-control, so that he blurted out anything he knew. The alternative way to get information is to bribe the person with the prospect of rewards rather than punishments. Again, I suggest that it is no solution to the problem of corrupting someone to undermine his rational agency instead, even for a short while in the way described.

Why might it be true that it is preferable to avoid mechanical psychological means? This is a difficult question. I suspect that it may be better in some way for the person to lose control in a way that, in a sense, reduces him to a nonperson level for a short while than to be corrupted. However, it is contrary to the importance of being a person to try to elicit responses from him by bypassing his rational control in this way, and those who do it bear full responsibility for his state and what he does in it. The alternative will involve encouraging him to make choices that reflect badly on his moral character. But the outcome, whatever it is, will be a function of his full humanity being exercised, not short-circuited, and more responsibility for his ultimate state will lie with him. We might say that while the short, tortured period could be (comparatively) better *for* him, it is more at odds with the importance of him. For similar reasons, it might be morally worse to create the mechanical panic response in a population rather than the fear that corrupts their judgment, even if we could equalize the fear involved.<sup>35</sup>

Hence I conclude that ST is *prima facie* wrong in part because it employs undermining judgment and will. However, such nonmechanical corruption does not make ST a more serious *prima facie* wrong act than mechanical use of terror.

#### F. The Harm/Terror Distinction

The degree and type of damage (loosely construed) done to the NCs, of course, also plays a role in making ST *prima facie* wrong. But it might be said that a distinction in the types of damage—that is, harm or terror—must be examined in order to isolate what makes ST, in particular, *prima facie* wrong. (In using “harm,” I mean to focus on physical damage. However, psychological dysfunction of a more than temporary sort [e.g., continued panic attacks or debilitating depression] can be considered harm too. “Terror” is not meant to include such long term, debilitating psychological conditions.) Some have actually said that terror is worse than harm, whether it is foreseen or intended, whether the terror is used as a means or is an end. Traditional emphasis on the intention/foresight and means/side-effect distinctions ignores the harm/terror distinction as a possible explanation of what is wrong with ST. (Indeed, in many accounts relying on the traditional distinctions, the emphasis is put on the intentional killing of someone that

35. I should note that I originally thought that trying to corrupt judgment is clearly morally worse than using terror in people mechanically, holding harm and terror constant.

leads to terror, without even focusing on the fact that there is also an intention to cause terror and that it is being used for a further end.) Let us, therefore, consider terror and harm separately, narrowing the type of harm to being killed. We shall focus on two questions: (1) Is what happens to those who are terrorized worse than what happens to those who are killed? (2) Is a more serious wrong done to people who are terrorized or to those who are killed?

### 1. *Terror*

(a). *Its Significance per se.* In order for there to be terror that is not unreasonable, what must its object be? Could it be a broken leg (in an ordinary person)? I doubt it. It must be fear of something very bad, such as death or grave injury to self or others. However, such terror could come from seeing someone else being harmed only to the extent of having his leg broken, if one thinks, "That's only the beginning."

There seem to be two major types of terror, as noted in Section III.E: T(a)—fear that gives one a reason of prudence or altruism to alter behavior; and T(b)—fear that undermines rationality so that one does not act for reasons of prudence or altruism as one is no longer reasoning; rather, one acts in a panic. Each type of terror might be temporary or permanent and (in each category) frequent or infrequent. (Permanent, infrequent terror would occur, for example, if the world were never again without ST, but it occurred no more than once a year.) As noted above, the T(b) form of terror is like torture without physical abuse, insofar as torture tries to undermine the will rather than give one a reason (namely, to avoid pain) to change one's behavior. T(b) is involved in the Stampede case mentioned above but not in nonmechanical uses of terror.

Are any of these conditions of terror worse for their victims than death or grave bodily injury, keeping constant the number of people affected? Neither temporary T(a) or T(b) nor permanent T(a) or T(b) if they are infrequent are as bad as death. But perhaps permanent and frequent T(b) would be as bad as or worse than death or grave bodily injury.

To confirm some of these judgments, consider the significance of temporary T(a) all by itself. That is, suppose that we aim to produce such terror but without any harm. We bomb some trees because we know that people will think we are trying to kill them and they then become terrorized and pressure for a change of policy. However, we do not and would not harm anyone. Call this the Trees case. (A Trees-Stampede case could be imagined involving T[b], where we bomb the trees in order to produce fear of death, leading to a panic that causes a stampede.) Or we might spread rumors that we have weapons of mass destruction (WMD) in order to terrorize people, though we have no such weapons (the Rumor case). Are these cases of terrorism? I believe so, but they are NST, as there is no physical harm (intended

or caused) to anyone.<sup>36</sup> Is this sort of NST as bad for its victims as death? I do not think so. Is this sort of NST, even if it is impermissible, as serious a wrong as impermissibly killing people? I do not think so. Even employing nonharming terror that is necessary, given one's act, as a means to produce an outcome seems morally preferable to killing as a side effect. If we had to choose which to do, we should do the former rather than the latter.

Of course, worse events can come from terrorizing without harm than from even killing, if the reaction to the former will be much worse than to the latter. So suppose that Saddam Hussein had terrorized (T[a]) people with rumors of WMD when he had none, and this led the United States to go to war, which resulted in many deaths on all sides. This could be a worse outcome than ST that did not produce such an extreme response. Even a mechanical stampede not caused by harm to anyone could result in more deaths and injuries than a few deaths that alternatively would have been caused by deliberately harming people. But the reason it will be worse is that it produces serious harm rather than just more temporary T(a) or T(b).

I have been arguing that terror per se is typically less bad and causing it has lesser moral significance than killing or gravely injuring, other things being equal. But this need not be true simply because being harmed is always morally worse than being wronged in nonharmful ways. For example, I think that killing a person against his will when it is for his own good is nonharmful but serious wrongdoing. It is more serious than harming him in some minor way. So, possibly, one should do what wrongfully breaks an arm in each NC rather than what wrongfully terrorizes them without harm, if one has a choice.

However, in deciding which to do, one must not only consider how terror compares with less serious harms; one must also consider the dynamics of responsibility for both harm and terror. (This issue is referred to in the discussion of victim responsibility in Section III.E.). That is, when we harm someone, even in a small way, it is we who are responsible for the harm. When we terrorize nonharmfully, and T(a) leads someone to change his conduct from fear, the responsibility for the change seems to be his. For when we cause T(a), its victims have the option of not responding to it in certain ways. Indeed, in the case of T(a), people may have control over whether they even become terrorized. (For example, if they stay calm and

36. If one actually had WMD, then spreading word of it could also involve NST. However, suppose others spread word of the fact that someone has WMD in order to produce terror that will help mobilize and hence protect potential victims. This would not be terrorism because the aim would be to serve the prudential interests of those who were terrorized. Another case of NST without harm to NCs involves terrorizing NCs in wartime by killing a combatant. Suppose that combatants are attacking you. You can stop them only by killing one of the combatants at the rear, near the NC population, for doing this will terrorize the NCs who believe that you are trying to hit them. And they will then help stop the attack on you. In all of the cases I have described, terror is not produced by creating a false belief that NCs have already been harmed, though doing this would also involve creating terror without harming any NCs.

remember that the objective probability of harm is not much increased, then they may not be terrorized.) An agent might reasonably prefer not to be responsible for causing harm and prefer to do what shifts responsibility away from himself for any harm that does occur. He may choose between nonserious harming and terrorizing on these grounds. Hence the prospect of achieving one's end with less responsibility for harm might attract an agent to NST that involves him only terrorizing.

As noted above, the way in which others respond to terror could make things worse for them than if they were killed by others. I noted that victims might cause more deaths in their own community in the long run in resisting the terror in a noncowardly (but perhaps ill-considered) fashion. Things could be worse for them as well if they gave in to the terror. This is so if acting shamefully or losing one's dignity is worse than even dying at the hands of others. However, as I argue in Section III.E, it is hardly the responsibility of an agent, when he decides whether to harm an opponent or cause him nonharmful terror, to choose on the basis of sparing others from their own bad decision-making. The victims who behave badly may ultimately prefer to have been harmed instead, thus avoiding responsibility for bad conduct. But this will not be an additional factor that makes it wrong for an agent to use harmless terror instead of harm.

However, what if an agent is morally responsible for either the truly unavoidable or the perfectly reasonable terrified responses by others to her harmful act (such as bombing trees)? For example, suppose that Iraq had provided strong evidence of its having WMD (stronger than what was actually pointed to in launching the war against it), and it would have been completely morally appropriate to respond to this evidence with fear and war, even though war would harm many. Then there would be less difference between an agent causing harm herself and having others cause harm in responding to her doing what merely terrorizes them.

We have been comparing causing terror and harm on the assumption that we are dealing with cases where it is wrong to do either one. But is it true that it is always impermissible in a conflict to use terror on NCs (when one causes no harm) as a means that is necessary, given one's act, to produce an outcome. In a conflict-free context, it is most often wrong to terrorize people, even by such means as telling them a truth one knows will create terror. But in a situation where one faces an opponent in a conflict, this may not be true.

Consider briefly some ways in which we might terrorize NCs in a conflict, intending to do so, in manner T(a): (i) We tell them the truth, for example, that their children will die as soldiers, their supplies are low, and we have superior arms. Causing terror in this way is permissible. (ii) In a declared war, we actually kill combatants who are their children, and they know that other children will then be called up as combatants. Causing terror in this way is permissible. (iii) We do or threaten to do other things it is permissible to do but that we know will reasonably lead to terror. For example, in the

Oil Threat case, someone threatens not to sell oil. Causing terror in this way seems to be permissible in a conflict. (iv) Now consider releasing a flock of butterflies over an opponent's population when we know they are very (irrationally) frightened of butterflies. This involves taking advantage of their irrationality and so is demeaning in a way that reasonable and truth-produced terror is not. Trying to get people to behave in a cowardly way is also preying on their imperfections. If the victims act shamefully, then they may wish they had been harmed instead of terrorized in this way. But this does not mean that using tactics in a conflict that depend on opponent NCs' defects of rationality and character makes the otherwise permissible act of sending butterflies impermissible when producing reasonable, truth-based fears would not be wrong. In cases (i)–(iv), terror per se is not only a less serious imposition than significant harm, it is also permissible.

Is it permissible to threaten to do what it is impermissible actually to do as a way of terrorizing? Some have argued that it would be permissible to threaten to use nuclear weapons on NCs if this would deter nuclear war, even if one never intended to use the weapons because using them on NCs would be impermissible. But the nuclear deterrent was supposed to benefit even the NCs who were threatened, on the assumption that they would be harmed as a side effect of their own side's releasing the nuclear weapons or of our responding even by attacking only military sites. A comparable condition would not be present in the cases of NST that I am considering now. So perhaps producing terror by threatening to do what it is impermissible to do is wrong if it will not also benefit those terrorized.

Is it permissible to do what one knows will give rise to an expectation that one will do what it is wrong to do, just because it will give rise to such an expectation, when this does not actually involve threatening to do what it is wrong to do? This is what happens in the Trees case (described above) when we seek to establish a false belief that we will bomb NCs as a means to producing our goal. It seems to me that this sort of terror might sometimes be permissible. It is also present in the Terror in Other Defense case: a military division is under attack. It cannot beat back the opponent. Someone not under attack realizes that if he kills a combatant at the back of the attacking force, close to where villagers live, then the villagers will think they are going to be attacked. This will lead the villagers to interfere with the attacking force. Creating the terror in NCs in this way seems permissible in a conflict.

On the basis of these cases of permissible and impermissible T(a) we can conclude the following. Terror (and the inappropriate weakening of one's resolve) is certainly something people would like to avoid, and it can make an act prima facie wrong. But people do not always have a right not to have someone bring these states about during a time of conflict. They may have a right that certain means, such as killing NCs, not be used (and even not be threatened to be used) to bring about these states, even in a situation of conflict. But this is because the people killed would be improperly treated if

their involvement is, given someone's act, a necessary means to producing the terror. (Could we also say that it is wrong to kill NC A not only because he has a right not to be killed but also because B has a right that A not be killed as a means of causing B terror? It seems odd to say this. Suppose that A is a condemned criminal who has no right not to be killed by the state executioner, but the killing of A will be carried out only in order to cause terror in ordinary citizen B. I do not think the fact that the killing will cause terror in B [and be done to cause terror in B] makes killing A impermissible. But perhaps it is correct to say that when T[a] comes about by means that are wrong quite independently of being a wrong way to bring about B's terror [e.g., it is a wrongful killing of NCs as an end or means], then B can complain not only about the terror caused but about the fact that an act that should not have been done leads to terror. And the fact that an act that should not have been done also leads to terror can become an additional ground for condemning the wrong act.)

Now consider whether it is always impermissible in a conflict to produce T(b) of a temporary sort as a means that, given one's act, is necessary to produce military or political ends. It may be that even though creating panic is "cleaner" than T(a) that may involve corrupting NCs, it is far more rarely permissible. This is an implication of our earlier argument in which we compared using torture without harm that reduces people to a nonrational state with doing what elicits incorrect judgments and moral weakness. Even dropping leaflets with truths on them that will cause a mindless panic or sending butterflies that will cause a mindless panic in NCs seems impermissible in many cases where these means to causing T(a) would be permissible. Still, if the only way to stop an attack on our side is for a bystander to do something harmless that creates a harmless terror stampede by an opponent's NCs, then I think that this may be permissible.

I conclude that what happens in ST to those who are killed is usually worse and a more serious wrong than what happens to those who are just terrorized.

*(b) Challenges.* I have downplayed the badness and moral wrongness of causing terror per se (when no physical harm is done) relative to causing serious harm such as death. Consider some challenges to this view and my responses.

(i) It may be said that it is wrong just to compare terror with death in the same number of people, for terror typically affects many people, but killing via ST affects only a few.

A response to (i) recognizes that terrorizing more people is worse than terrorizing a few, and it is a more serious wrong than terrorizing a few when it is wrong. But still it is not as serious a wrong as seriously harming fewer people. This is because it is a mistake, in two ways, to aggregate much smaller impositions on each of many people in order to outweigh much graver losses to a few (assuming that their baseline condition was the same). First, it is not as bad an outcome if many people suffer T(a) as when a few

die. Second, if we have a choice of killing a few people or instead producing T(a) in many, then it would be wrong to do the former.

(ii) It may be said that it is wrong to focus on terror per se rather than on its wider effects independent of weakening commitment to policies. Terror undermines civil society in a way that even thousands of deaths do not. For example, people are afraid to lead lives in public and congregate with others, at least when the harm that people fear is random and does not occur at predictable times (unlike the nighttime bombing of London during World War II).

A response to (ii) recognizes that undermining civil society can make an act prima facie wrong (though not all means to this effect ultimately may be wrong, as discussion in Section III.F.1 (a) suggests). However, it is only if the absence of civil society and public life leads to death and grave losses to individuals (e.g., serious medical conditions are left untreated because people are afraid to go to hospitals) that the loss to individuals will be as or nearly as great as it is to those killed in ST. And only this is morally relevant, if we are to avoid the mistake of aggregating much smaller losses to many individuals so as to outweigh grave ones to fewer individuals (as discussed in the response to [i]).

So the response to (ii) implies that an outcome with a few deaths is worse than one where people are T(a) (but not because of any harm to anyone) and so there is no civil society providing non-life-preserving benefits to people. It also implies that if a terrorist agent has a choice, it would be wrong to produce the few deaths rather than the T(a) and collapse of non-life-preserving aspects of civil society through nonharmful means. (Henceforth I will assume that “civil society” involves only non-life-preserving benefits.)

(iii) Now consider a general objection to the view (embodied in the response to [ii]) that death to a few is worse than many being affected by both T(a) and the absence of civil society but with no deaths. We each often take a small risk of death in order to participate in civil society rather than certainly eliminate our civic involvement. (This is an intrapersonal calculation we make independent of numbers of people.) For example, we increase our risk of dying by driving to a café rather than staying home. Should we not then think that the small risk of dying in a harmful ST attack that terrorists expose everyone to is less bad than an outcome in which terror per se, without harm, causes people to cease participating in civil society? (In the cases where everyone runs a risk of dying by driving in order to participate in civil society, we are imagining that those who might benefit from civil society are also the ones running the risk of death. This is a simplifying assumption. Let us suppose that it is true in actual terrorist scenarios, where harm leads to terror, that those who would benefit from civil society are also the ones who run the risk of death, because it is in public venues that agents of ST attack.)

The risk to each is small if terrorists can only kill a few of many people at random. An important difference between the one-person and the

many-person cases is that only in the latter can we be sure that someone will be killed. Hence if many people avoid public activities, then each certainly loses civic life and there is also no civic life for each to participate in, but death(s) will be avoided that would otherwise have occurred. By contrast, in the single-person case, the person might never have been killed if his retreat from civic life had not occurred.

The possibility of no deaths occurring can sometimes also be a characteristic of many-person cases. Then the fact that people are each willing to take a small risk of a very bad outcome (such as death) rather than give up some good does not show that the occurrence of the bad outcome is less bad than the absence of the good *per se*. For example, each may be willing to risk a devastating nuclear explosion in order to have cheap energy that increases the standard of living. This is consistent with the nuclear devastation being far worse an outcome than is living with a somewhat lower standard of living. What is needed to make taking the risk a rational choice is the belief that the devastation need not certainly occur—that we really may all escape it.

But as noted, in some cases the bad state of affairs will definitely occur to someone, though each runs only a small risk of it happening to him. Such a case is one where many drive in order to participate in civil society. It is these cases that support objection (iii), for they support the conclusion that people think that the state of affairs in which something very bad happens to a few (such as dying in car accidents or terrorist attacks), and not just the state of affairs of running a risk of dying, is better than a state of affairs in which the deaths do not occur but many people are afraid and go without the good of civil society.

One response to this objection questions whether we can decide which outcome is worse just by considering with which one people would choose to live. If each person decides to live with an outcome in which a few die, on the basis of the low risk that each person has of being amongst the dead, this may just mean that each one does not care about how bad the outcome will be but only about the risk each faces. And this might be a morally permissible basis for decisions. But it still could be that the outcome in which people die is worse, and that it is morally appropriate for an agent who has a choice whether to bring about one outcome or another to care about which is worse.

Let us suppose, however, that willingness to live with an outcome tells us about its relative badness. A second response to objection (iii) raises what we can call the Paradox of Risk. That is, suppose the outcome is worse for us when we are afraid and we lose our participation in civic society than when each has a small risk of death and some eventually die. Then why would the terrorist, in increasing the risk of death to each a small bit, do anything that produced terror that stopped people from engaging in civil society? That is, why would he succeed in bringing about (what [iii] claims is) the worse state of affairs in addition to the few deaths he causes?

Perhaps it is because a more serious moral wrong is done when one is deliberately killed in terrorism than when one is killed in a car accident? But if it is fear that causes people to flee civil society, the fear should presumably be in proportion to the probability of being killed rather than to the moral seriousness of the death. In order to confirm this conclusion, imagine the following two imaginary variants of driving cases:

- D1. We have always believed that people die accidentally in highway collisions. Now we know that villains were operating in motor plants, weakening brakes slightly so that there is a greater risk of collision on highways. All deaths that occur on highways have been and will be for some time due to this cause, though the villains no longer work in the plants.
- D2. We have always believed that people die accidentally in highway collisions. Now we know that there are villains who use magnetic devices at long distance in order to cause collisions. All deaths that occur on highways have been and will be due to this cause, as the villains are still operating.

In these cases, the risks that drivers face and the deaths that actually occur are due to deliberate villainy. Would we think that this was a worse state of affairs than when people die in accidents? I believe we would. Should we stop driving and give up participating in civil society? I do not think so. But it is worth pointing out two factors that complicate giving this response. First, D1 and D2 may differ slightly in a morally significant way. In D1, the villains have done their dirty work already, and this will lead to collisions. Hence it may be that we have no concern that our driving and some being killed will encourage villains to engage in further tampering to achieve their aims. By contrast, in D2 the villains are still active (which is more like the situation with ongoing terrorism). Hence going out on the road and giving them successes may encourage them to continue to create collisions; our actions might fuel the creation of new risks of death and additional deaths. This effect on the villains may add another factor that makes the deaths in D2 worse from our point of view and may encourage one not to participate in civil society. However, a second factor may move one in the opposite direction, for not participating in civil society will give the villains power to alter one's behavior in another significant way. This additional factor could make giving up on civil society a worse outcome than it would otherwise be per se.

If we would be willing to have villain-caused deaths happen rather than give up civil society when abstracting from these two factors, this would suggest that we think it is a worse state of affairs not to have civil society for many than for each to run a risk of death and have a few villainous deaths.

Suppose terror and loss of civil society are worse than a few villain-caused deaths. Then it is only if people want not to encourage villains with successful killings that there would be a reason why what the terrorists do in ST would make people avoid civil society. Alternatively, their avoiding civil society may (again) raise the question of whether people are responding irrationally

when they fear death from ST but not from driving on the road (even in D1); perhaps they see the risk from ST as greater than it is. Perhaps they see the risk as so great that if they had to undergo the risk in order to participate in civil society, then they would reasonably forgo civil society. But this would not mean that the actual uninflated number of deaths involve a worse state relative to the loss of civil society.

(iv) The objection we have been considering to the claim that a few deaths are worse than fear that leads to the absence of civil society can be rephrased so that the objection avoids the Paradox of Risk. Assume that in reality there is a small risk of death to each of many (in driving or from terrorist attacks). The objection (rephrased) claims that the outcome in which some people die as the fulfillment of this risk is not as bad an outcome as the one in which deaths do not occur but people are afraid and avoid civil society. However, many people would give up civil society and stay home through terror because they *overestimate* the probability of death. They would run the risk and tolerate some of them being killed rather than give up civil society *if* they did not overestimate the probability of death. Now we must deal with this objection.

In all of the driving cases considered so far, the deaths occur to people who are trying to participate in civil society. Many deaths also occur to people while or as a consequence of participating in civil society. ST typically kills people on the occasion of their participation in civil society, which is why avoiding civil society is a response to the fear of death, as it eliminates the occasion for the deaths. We might describe the causal route as follows: participating in civil society (or means to it) leads to deaths, while not participating in civil society (or means to it) eliminates these deaths.

By contrast, we could imagine other cases in which it is also true that only those who try to or do participate in civil society are put at risk, but without it being true that they are at risk on the occasion of trying to or participating in civil society. Rather, undergoing some risk that will eventuate in death for some is just a condition of the availability of civil society. So we might describe this causal route as follows: accepting risk of death and some actual deaths allows for participating in civil society, while not accepting risk of death and some deaths disallows participation in civil society. Consider the following two cases as illustrations:

- D3. Villains control the route that people must go through in order to reach civil society. The villains will allow people to go through only if they are permitted to select a few people every month at random to be killed in their homes. The risk to each person of being killed is no greater than his risk of dying on the highway in an accident or from ST in civil society, and the latter risks are eliminated.
- D4. Everything is as in D3, except that villains target only those who are interested in participating in civil society and kill a few of them every month in their homes, yielding a death rate no greater than do ordinary highway deaths or ST in civil society, and the latter risks are eliminated.

It might be claimed that in these cases, too, we would each prefer a world in which we faced the risk of death and in which a few deaths occurred rather than have the villains cause all of us, by nonharmful means, to be afraid and so to give up civil society. This judgment is given as support for the claim that though the outcome in which the deaths come about by villainy is morally worse than when they do not, it is not as bad as no deaths but instead fear leading to the absence of civil society.

(v) The issue we have been dealing with in (iii) and (iv) is whether lesser losses to each of many people (such as fear leading to the loss of civil society) are a worse state of affairs than a few deaths of that group of people. Suppose, for argument's sake, that the answer is yes. (This would imply that we cannot rank the badness of states of affairs just by looking to see how badly off the worst-off people in them would be.) What would this imply about the wrongness of producing each state of affairs? Would it imply that if a terrorist had a choice between pressing one button that would cause a few deaths or another button that produced no deaths but caused T(a) leading to the collapse of (non-life-preserving elements of) civil society, then he would commit a more serious moral wrong if he pressed the second button rather than the first? I do not think so. For it may be a more serious wrong to do something that would result in a better state of affairs rather than something that results in a worse state of affairs.

This is a common view amongst nonconsequentialists. Typical examples involve the impermissibility of harming a few people in order to save many others. In these cases, however, if one does not harm some, one will not have harmed others but only not saved them from some harm. If we were given a choice between killing one person and killing five, other things being equal, even a nonconsequentialist would say that it is a less serious wrong to kill one. Suppose that this is because we cause (rather than allow) the harm in both cases, and greater harm is a worse state of affairs than less harm. Then if the destruction of civil society through T(a) is a worse state of affairs than a few people being killed, why does not a terrorist do a less serious wrong if he kills a few rather than causing T(a) and destroying civil society in a harmless way?

It might be said that when the terrorist kills, he is completely responsible for the deaths, but in pressing the other button he shares responsibility with his victim for the collapse of civil society. For this reason he commits a less serious wrong in doing the latter. That is, he only brings about a state in which people make bad judgments based on fear that may itself be inappropriate.

I think that we should put aside this issue of responsibility in trying to defend the view that it is a more serious wrong to kill the few. The issue we should focus on instead is the difference it makes to what we may do when the worse state of affairs has in it at least as many individuals as badly off as others will be in less bad states of affairs—for example, at least one person will be dead whether we kill five or kill one—by contrast to worse states of

affairs in which this is not true. I have emphasized this point elsewhere<sup>37</sup> in discussing the choice between saving many people from total paralysis and saving a few from death. Suppose that we should do the former because we thereby prevent the worse state of affairs. This does not imply that it is permissible to direct a threat where it will kill a few people instead of toward totally paralyzing many. This is so even though it would be permissible to direct a threat where it will kill a few instead of toward killing many.

Why may we not kill rather than produce (what we are assuming is) the worse state of affairs in which each person will suffer a lesser loss? When it is permissible to do something to people, this reflects morality's endorsement of a certain view about what status persons have as individuals, one by one. (When we let things happen to people, morality is not thereby endorsing what is happening to them.) It is a worse insult to the high status of a person to kill him than to paralyze him or cause him terror, for it endorses the view that it is permissible to violate a person in the more serious way. Violating a few strong rights involves a greater wrong to each than violating many weaker rights, because doing the latter need not imply that it is ever permissible to do something as bad as to kill someone. Hence the act that produces the worse state of affairs can be more respectful of persons, even if it insults more people and would make for a worse state of affairs.

I conclude two things here: (1) the wrong done to each person is greater when the few are killed than when each of many caused T(a) and is deprived of civil society; and (2) the wrong done when many are affected should be ranked by the worst one does to any given person, and only after that by the numbers affected.<sup>38</sup> Hence it is open for us to say that the ST agent does his greatest wrong against a populace in killing a few rather than in only causing terror to a greater number of people that shuts down non-life-preserving aspects of civil society, even if the latter were the worse state of affairs.<sup>39</sup>

## 2. Harm

We have already said that the harm involved in ST is severe since it is often death. This is the much more serious part of ST than the terror per se, I believe, at least because it involves the greater wrong against a person. One of the oddities of the term *terrorism* is that a nondistinctive part of ST (i.e., a

37. See, e.g., KAMM, *supra* note 21.

38. It might be said that there are also arguments based on citizen responsibility and effectiveness in changing policy for the wrongness of killing a few rather than terrorizing many without seriously harming anyone. First, if many citizens are thought to be responsible for a government's policy, then it is more just to impose smaller losses on each of the many than to impose a disproportionate greater loss on a few. But suppose that the citizens are not responsible for the government's current policy. They might still be in a position to change it in the future by voting the government out. Then from the point of view of effectiveness, it is better to do what terrorizes many voters rather than killing a few (on the assumption that there is an exclusive choice between doing one or the other). I owe these points to Daniel Elstein.

39. It may also be true that sometimes, when a few deaths would occur because we omit to save lives (rather than because we cause deaths), it is wrong to omit to save the lives and instead save many more from lesser harms.

part that occurs in nonterror killing) has a greater role in making terrorism be wrong than the distinctive part of it that gives it its title. Even if ST were unsuccessful in causing any deaths, increasing the probability of death for insufficient reason can also make the terrorist agent's act seriously wrong. And even if the deaths from ST are less frequent and less numerous than those from car accidents, greater resentment against (if not fear of) wrong acts, and even bad intentions, rather than accidental causes is not irrational. It is consistent with being less afraid of being attacked by a criminal than of getting a deadly disease to insist that wrong acts be extirpated first. So it is not necessarily irrational to spend more money on stopping ST than on stopping accidents.

Of course, generating terror alone, as an end in itself, as a necessary productive means, or even as a side effect, can sometimes be rights-violating conduct that one can appropriately resist and resent. Nothing I have said in comparing terror per se with severe harm per se implies that causing the terror cannot add a wrong-making feature to an act and contribute to the prima facie wrongness of ST or that it is not often impermissible to do what causes people terror independent of any harm. But if the terrorized response is not entirely rational and is also subject to inner control by persons, this bad effect—unlike grave harm—could perhaps be avoided in some less costly way than stamping out or even defending against the people who try to produce it.

### G. The Terror-from-Harm/Harm-for-Terror/Terror-for-Goal Distinctions

Now consider the contribution to the prima facie wrongness of ST of the interaction of harm and terror. (This is in contrast to the mere addition of the factors.) We should consider the interaction of terror and harm because it is always possible that a factor like terror, considered on its own, has less weight than a factor like harm, considered on its own, but when terror is placed in a particular context with harm, its importance becomes greater.<sup>40</sup>

#### 1. *Terror-from-Harm*

Is terror a worse or a greater contribution to prima facie wrongness when it is caused by actual harm that has already occurred than when it is caused by bombing trees, as in the Trees case? Above, in Section III.F.1(a), I said that when impermissible harm is the cause of terror, those terrorized may complain, as they should not have been terrorized given the way the terror was brought about. In addition, along with the misery and trauma of loss, sympathy for those actually harmed accompanies terror when terror comes from known grave harm that has already occurred. The terror may even

40. I refer to the general phenomenon that might be in play here as the principle of contextual interaction. See KAMM, *supra* note 21 for more on this.

interfere with proper mourning for those already lost. This makes the event (if not the terror itself) worse than terror in the Trees or Rumor cases and can contribute to the wrongness of ST. (Of course, in the Trees case, people might not just fear future harm; they might incorrectly believe that others had been harmed. The misery and trauma relating to others would then also occur, even if they are not appropriate. But there could be no interference with proper mourning.) But are these factors plus terror worse than death? No. To test this claim, imagine that we could either stop people from having the terror, misery, and trauma from known deaths of group A by psychological counseling or stop other people of group B from being killed. We should do the latter.

### *2. Harm-for-Terror*

Is causing death worse and/or a greater contribution to wrongness of an act because it is used to create terror rather than for other purposes? For example, is it a greater moral wrong if one is killed as a means to start terror rather than as human tinder in the Human Tinder case? What if the terror is created to be a mere mechanical response that will interfere with a military operation, as in the Stampede case, by contrast with being created in order to change the judgment and will of people in politics? It seems morally worse to have wrongful harm done to one for an effect that is intrinsically worse, and this could bear on the seriousness of the wrong. If creating terror in NCs is a greater wrong than setting aflame a military facility, then it will be morally worse to die for this purpose. If will-undermining terror for political purposes is uglier for the victims, but producing mechanical terror in them is a greater wrong, then it will be morally worse to die in order to produce mechanical terror. (This does not mean that it makes sense to fear the morally worse deaths more.)

In this interaction, it is still the victim of harm who is the locus of our concern with the badness of ST, rather than the victim of terror per se. Here, a distinctive part of terror killing (that is, the terror) makes the harm that is necessary, given one's act, to produce the terror morally worse and (sometimes) a greater wrong, though the nondistinctive part of terror killing (that is, the killing) is still the part that is morally most significant and most to be feared (in virtue of death).

### *3. Terror-for-Goal*

Some may think that it is morally bad that people's appropriate, terrified response to harm to others is used for the terrorists' further aims. This focuses on a further wrong done to the people who are responding to the harm. It introduces the further distinction between using terror for a goal and using harm for terror. However, I think that the concern about misusing the person terrorized should pale before concern for the person gravely harmed, especially if he is harmed to bring about terror. It is consideration of the Trees and Rumor cases that lead me to this conclusion. For in these cases there is no harm created, just people's terror as a necessary means,

given one's act, to some goal, and a lesser moral wrong occurs. On the other hand, consideration of the Human Tinder case and the other mechanical versus nonmechanical terror cases lead me to the conclusion that not all uses of harm or harm plus terror are morally equal, even when they are all wrong.

#### H. Summary

I believe that on the basis of our discussion in Section III, we can conclude that the following factors play a role in making ST (and NST) *prima facie* wrong (in the sense of impermissible): (a) The fact that a nonlegitimate state act sometimes makes ST *prima facie* wrong. (b) Harm and terror to NCs, alone or together, makes ST *prima facie* wrong. (c) That the harm or terror is causally necessary, given one's act, to produce one's goal makes ST *prima facie* wrong. (d) That harm or terror play a role in undermining people's judgment, will, and involvement in civil society makes ST *prima facie* wrong. (e) That undermined judgment and will are causally necessary, given one's act, to produce one's goal makes ST *prima facie* wrong.

Distinctive features of ST are the intention to harm and terrorize NCs as an end or means. But the distinctive intentions in themselves do not account for the *prima facie* wrongness of ST. Nevertheless, the intentions can be wrong and be appropriately resented even if they do not make the act impermissible. The distinctive element of terror in ST also does not play as large a role in accounting for the *prima facie* wrongness of ST as does the harm it causes, which is an element it shares with nonterror killings.

### **IV. DETERMINING WHEN STANDARD TERRORISM MIGHT BE PERMISSIBLE**

Despite all of the factors that make for the *prima facie* wrongness of ST, we cannot conclude that a terrorist act is wrong until we consider other things. We have already seen above that on a "meaning" conceptual analysis of "terrorism," it is terrorism when the Baby Killer Nation bombs militarily useful Nazi targets in a manner that is no different from how the Resistance would do this but from an unconditional aim to terrorize NCs. If this is terrorism, then some acts of terrorism would be permissible. But now I wish to abstract from cases in which the act that harms and terrorizes is permissible because it also has other effects that are useful in a conflict and that could justify side-effect deaths and terror. Could even acts whose effects can only produce a good via harm and terror sometimes be permissible? To decide, I think we must consider the following points.

I

We must consider both the importance and kind of the ultimate goal being pursued by the terrorist and whether terrorism is the only way to achieve

that goal. (These are analogous to the proportionality of good to evil and the necessity conditions of standard just-war theory.) These factors must be considered if one is a “threshold deontologist” rather than an absolutist about the wrongness of certain means. A threshold deontologist holds that means that are most often impermissible, even if they are necessary to produce overall good or to avoid overall evil, can become permissible if the evil to be avoided or good to be produced is great enough and of the right type and there is no other way to achieve it.

To imagine a case where terrorism is permissible, suppose that one was fighting an immensely powerful Nazi nation and that one would lose the fight without these means. I assume that it is objectively true and reasonable to believe that such a nation is a very bad threat. (What if someone thinks that the United States is an infidel nation and as such a major threat to souls, and bombs the WTC for that reason? What if someone thinks that France is a major threat in virtue of its worldwide distribution of alcoholic beverages, and therefore bombs the Eiffel Tower? Believing that some group is a tremendous source of evil is not enough to make what one believes true or reasonable and not enough to make one’s terrorist act permissible.)

## II

In cases where terrorism is not the only means available, we must consider the means and their effects that would or could be used instead of terror killing. For example, suppose (without yet knowing the context) that near a park that contains no military operations there is a military facility. Suppose that if that facility is struck (for militarily sound reasons), then ten thousand people would be killed and more terrorized, all as a side effect. Instead, three thousand people in the park could be directly killed in order to terrorize other people. Furthermore, suppose that an agent would achieve his aims equally well with either strategy. There are two major variants of this Park and Military Facility case.

### *1. First Variant of the Park and Military Facility Case*

A small subsection of the *very same people* who would have been killed if the military facility had been hit would die if the park is hit instead for terrorist purposes. I suggest that if it were morally wrong to bomb the military facility, causing deaths and terror, and also wrong to bomb the park, considered as individual acts, it would be better if the wrong act of bombing the park is done in place of the wrong act of bombing the military facility. This can be true though it involves using the people in the park as necessary means, given one’s act, and though we assume that this act requires a type of causal role for people that can sometimes make an act impermissible when other types of acts causing the same or somewhat greater side-effect deaths would be permissible.

This conclusion implies that the fact that an agent kills people as a mere means to produce his end of winning a conflict should not always be taken as evidence of his having worse intentions for NCs than another agent. For in this scenario, given the alternatives, it could be the person who would choose to cause more deaths that have no causal usefulness who would exhibit the worst intentions toward NCs. I believe this is so because his killing fewer of the very same people who would die anyway from his other act is the morally preferable alternative, and an agent who knew this would only choose the act that kills more people because he intends their deaths as an end in itself.

(a). Suppose that threshold deontology implies that harming people as a necessary means, given one's act, to producing an end requires more to justify it than harming people as side effects, but also that this justification can sometimes be given. Typically, discussions involving threshold deontological reasoning result in a justification that makes an act permissible. But we can extend threshold deontological reasoning to apply to cases where the act that should be done instead of some other act is still impermissible. We can do this if we imagine that the Park and Military Facility cases involve Al Qaeda attacking a (non-Nazi) United States. Al Qaeda has no adequate goal morally to justify causing great collateral damage by bombing the military facility. Its bombing the park instead of alternatively bombing the military facility—which is the correct choice of the two—would be a true case of doing the lesser evil, as the act would still be an evil and would not be a permissible act at all. We can call it a *substitute wrong*, by which I mean an act that it would have been wrong to perform if it were the only act possible to achieve goals yet that should be substituted for another wrong act (bombing the military facility), all the while retaining its status as a wrong act.<sup>41</sup> At least part of the justification for the substitution of one act for the other is that the number of lives lost will be very greatly reduced and all those who die as mere means would have been dead as a side effect in any case. Hence no one is worse off than he would have been and some are better off (which creates a pareto-optimal outcome). The underlying idea is that the stronger moral constraint against doing an act that requires harm and terror as a means to produce an outcome is not as strong when the same harm and terror will not be avoided by abiding by the constraint.<sup>42</sup>

(b). Now imagine a case in which it would have been permissible to bomb the military facility despite collateral death and terror. For example, imagine that the United States is controlled by Nazis, and the Resistance would do this action. If a much smaller subsection of the very same people

41. This is by contrast with speaking of “doing the lesser evil” as doing an act that is usually wrong but which can be justified so that it actually is permissible in some circumstances. I discuss such a case in the next paragraph in the text.

42. For more on this, see KAMM, *supra* note 21; Kamm, *supra* note 8.

who would die if the Resistance bombed the military facility would die if they bombed the park instead, then I believe that bombing the park would no longer be a substitute wrong. It would be permissible and not merely a less seriously wrong act. This is so even if bombing the park would have been wrong (in virtue of how the victims were used as means to produce a goal) if it were the only act the Resistance could have performed. As a substitute for a permissible act that would have caused the deaths of the same people who will die in the park plus many more, what would be impermissible on its own becomes permissible as a substitute. It is secondarily permissible. (This is an instance of what I call the principle of secondary permissibility.)<sup>43</sup>

When people speak about doing the lesser evil, they sometimes speak as though they have in mind a choice between two acts that remain wrong whichever is done, but this model of a substitute wrong is only present in our case involving Al Qaeda. By contrast, when we do an act (that would otherwise be wrong) because it involves less harm instead of a more harmful permissible act, the second act can be not a lesser moral evil but permissible. This reminds us that the act that is eliminated was originally permissible even though it would cause more harm than an originally impermissible act, and is worse in that sense (if not a greater moral evil). It is because of this that in some cases, what was originally a greater moral evil (bombing the park) can become permissible secondarily because it involves less harm overall and no more to the same people who otherwise would have been harmed.

(c). In the cases in 1 (a) and (b), we moved away from the typical case of ST, which involves killing people who would not soon die anyway. But we can reintroduce this factor. For suppose that everything is as in 1 (b), except that those who can permissibly bomb the military facility would not actually do so because they cannot bring themselves to harm so many innocent NCs as a side effect. Then they find out that they can achieve their aims by directly killing a small subset of those NCs that they still can (are able to), but will not, permissibly kill as side effects. These are people who would not die shortly anyway, but they would be alive only because the Resistance refrains from doing what it still can permissibly do. Due to this, I think it becomes permissible for the Resistance to do to the smaller subset whatever I argued in 1 (b) it could permissibly do if it would alternatively have actually permissibly killed the same people plus others as a side effect.<sup>44</sup>

## 2. *Second Variant of the Park and Military Facility Case*

Entirely different people in the park will be killed and terrorized as means from those who would have been affected as side effects by bombing the military facility.

43. For more on this see KAMM, *supra* note 21; Kamm, *supra* note 8.

44. For more on this, see Kamm, *supra* note 8.

(a). Suppose bombing the military facility would have been impermissible, and bombing the park would also have been impermissible were it the only thing that could be done, but many more people would die in the former operation than in the latter. Then this might still make bombing the park the lesser wrong (despite its use of the morally less favored mere means role for people in producing a goal). This is a further instance of the idea of a substitute wrong, but here it is just the great difference in numbers dead that might bring us above a threshold in selecting between wrong acts (not in making an act permissible), not that all the dead would have been killed anyway.

(b). What if bombing the military facility would have been permissible (in the Nazi United States case) considered on its own, but bombing the park would have been impermissible even if it alone could have been done? When entirely different people will be affected in the park from those in the military facility bombing, and they will be in the disfavored necessary means role, it is quite likely that it will remain wrong to bomb the park rather than the military facility. For we cannot, in general, do equal or lesser harms to fewer people in an impermissible way in order to avoid doing equal or greater harm to a greater number of entirely different people in a permissible way. (This assumes that the additional seven thousand dead is not enough of an evil that preventing it moves us above the threshold for not killing three thousand people as mere means to producing a goal.)

Hence, in addition to what was said in Section III.C(2) above, we cannot say whether terrorist acts should not be done, at least until we know the number who will be similarly affected if another act is done, who those affected are, and whether the alternative act was permissible or impermissible. This is in addition to having to know whether a threshold on abiding by constraints on treating people in certain ways is reached, as transgressing the constraints is the only way to avoid some great evil that there is no other way to avoid. This examination of terrorism reveals that no easy answers are to be had on the topic of the moral permissibility and impermissibility of terrorist acts.