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“HANDS UP WHO WANTS TO DIE?”: PRIMORATZ ON
RESPONSIBILITY AND CIVILIAN IMMUNITY IN WARTIME

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ABSTRACT. The question of the morality of war is something of an embarrassment to liberal political thinkers. A philosophical tradition which aspires to found its preferred institutions in respect for individual autonomy, contract, and voluntary association, is naturally confronted by a phenomenon that is almost exclusively explained and justified in the language of States, force and territory. But the apparent difficulties involved in providing a convincing account of nature and ethics of war in terms of relations between individuals has not prevented liberal theorists from attempting this task. This paper examines a recent attempt by Igor Primoratz to sketch out the implications of a consistent liberalism for just war doctrine and, in particular, as regards the question of who may be a legitimate target of attack in wartime. Primoratz's paper itself is a critique of Michael Waltzer's authoritative exposition of just war theory for failing to be sufficiently and consistently liberal. The debate between these two authors is a productive site for investigating the potential and limitations of liberal theories of just war.

KEY WORDS: citizenship, civilian immunity, *jus in bello*, Just War theory, non-combatant immunity, Primoratz, principle of discrimination, Walzer, war

War is in no way a relationship of man with man but a relationship between States, in which individuals are enemies only by accident; not as men, nor even as citizens, but as soldiers . . .

(Jean Jacques Rousseau, *The Social Contract*, Book 1, Ch. 4)

INTRODUCTION

The morality of war is something of an embarrassing subject amongst liberal political thinkers. A philosophical tradition which aspires to found institutions in respect for individual autonomy, contract, and voluntary association, is naturally affronted by a phenomenon that is almost exclusively explained and justified in the language of States, force and territory. But the difficulties involved in providing a convincing account of the nature and ethics of war in terms of relations between individuals has not prevented liberal theorists from attempting this task. This paper examines a recent attempt by Igor Primoratz to sketch out the implications of a consistent

liberalism for just war doctrine and, in particular, as regards the question of who may be a legitimate target of attack in wartime.¹ Primoratz's paper itself is a critique of Michael Walzer's authoritative exposition of just war theory for failing to be sufficiently and consistently liberal (Walzer, 2000). Walzer's account draws on elements from both liberal and communitarian political thought. The debate between these two authors is therefore a productive site for investigating the potential and limitations of liberal theories of just war.

The title of this paper, "Hands up who wants to die?", refers to Primoratz's ambition to revise the doctrine of civilian immunity in wartime to respond to what he argues are significant differences in the responsibility of civilians for unjust wars fought by democratic states of which they are members. According to Primoratz, responsibility for war is not distributed equally amongst all citizens, but unequally according to each individual's relation to the war. By supporting an unjust war, by agitating or voting for it, or even by failing to oppose it, civilians may put their hands up to be liable to be justly killed. Indeed, I will argue that Primoratz's account ultimately implies that whether an individual is a legitimate or illegitimate target of attack turns on a purely psychological matter to do with their attitude towards the war. Furthermore, his account cannot explain the role played by citizenship in determining who may, or may not, be attacked. Finally, although Primoratz does not discuss them, his arguments have unsettling implications for just war doctrine when a democratic state is involved in a just, rather than an unjust, war. In such cases, Primoratz's account risks collapsing a significant portion of the doctrine of *jus in bello* into *jus ad bellum* and, consequently, weakening the prohibitions of *jus in bello*. For these reasons, as well as others discussed below, the consequences of his account are more far reaching and less plausible than Primoratz acknowledges.

A close reading of Primoratz's argument, and examination of the problems therein, provides us with a clearer sense of the difficulties inherent in any attempt to understand or justify war in terms of relations between individuals, and reminds us that any satisfactory account of *jus in bello* must acknowledge the essentially collective and coercive nature of the phenomenon of war.

Walzer on jus in bello

In *Just and Unjust Wars*, which is the target of Primoratz's critique, Michael Walzer defends – amongst other things – the traditional distinction made between combatants and non-combatants within just war theory, as a central part of the doctrine of *jus in bello*. Combatants – roughly, the military,

¹Primoratz, 2002. Page numbers in the text refer to this work, unless otherwise indicated.

high political officials, workers in munition factories, and others “currently engaged in the business of war” – are legitimate targets of attack in wartime. Non-combatants are not (Walzer, 2000, pp. 144–146). Walzer also wishes to maintain the independence of the doctrines of *jus ad bellum* and *jus in bello*. The question of whether a war is fought (morally) well is independent of the question of the justice of the cause in which it is fought (Walzer, 2000, p. 21).

In order to maintain the independence of these doctrines, soldiers must be absolved of responsibility for determining the justice of the cause in which they fight. The responsibility for the decision to go to war is the government’s. The rights and obligations of soldiers as combatants do not alter on the basis of the justice of this decision. Were this not the case, soldiers fighting in an unjust cause would be guilty of murder whenever they killed, if not legally, then at least morally. Thus soldiers may legitimately kill or be killed once war is declared. In contrast, non-combatant civilians retain their presumptive immunity from attack regardless of whether they are citizens of a nation fighting a just or unjust war.

Primoratz on Responsibility and Immunity

Primoratz surveys and criticizes a number of reasons (he identifies six) that Walzer provides as to why soldiers are not responsible for their decision to participate in an unjust war. He argues that, if valid, the majority of them provide excuses rather than justifications for what soldiers do in war (p. 225). In fact, he claims, Walzer’s arguments here are not valid. They exaggerate the difficulties of assessing the justice of the cause in which a war is fought and underestimate the agency that soldiers have in relation to their participation in war (pp. 226–230). Moreover, Primoratz takes Walzer to task for excusing soldiers from responsibility for their actions in going to war, where he does not excuse them for what they do while at war. The arguments that Walzer provides to excuse soldiers from being responsible for being at war work equally well to excuse soldiers when they follow orders to commit violations of *jus in bello* in war (pp. 225–230).

According to Primoratz, then, soldiers are responsible for their decision to participate in war. This means that soldiers fighting in just and unjust wars are not morally equivalent. Soldiers fighting in unjust wars are guilty of murder, even when they kill other combatants (p. 230). Walzer is too quick to excuse soldiers of responsibility for the deaths of those they kill in the service of an unjust cause.

However, Primoratz’s primary ground for criticism is that Walzer’s account reflects an outdated model of the state, and in particular of the relation between citizen and state (pp. 224, 233). Walzer theorizes the decision to go to war as though responsibility for it rests with – and stops at – the state that has the sovereign power to make it. Neither individual soldiers nor

citizens may be held responsible for this decision. Walzer's thought here reflects his communitarianism, evident in his political writings elsewhere (Walzer, 1995, 1987, 1994).

Yet according to contemporary political theory, it is the people rather than the state that is sovereign. This shift in our understanding of the nature of sovereignty has implications for the allocation of responsibility for political decisions (Green, 1992). When a state is an undemocratic state then responsibility for an unjust war rests with the political leadership. But if it is a democracy then, according to Primoratz, responsibility for an unjust war rests with the voting populace (pp. 233, 235). More precisely, Primoratz suggests that it rests with those who voted for the war (pp. 235–236).

Primoratz argues that this undermines the combatant/non-combatant distinction as traditionally understood. Responsibility for unjust attack is relevant to whether or not a person may be killed in the course of defending against that attack. Primoratz illustrates this using the case of an "innocent aggressor", who poses a threat to her victim only because of the activities of some other agent. He argues that in such cases we do better if we defend ourselves by acting against the party responsible for the attack, rather than their unwitting agents (pp. 236–237). In war, then, we may do better to defend ourselves by attacking citizens of a democratic state who voted for the war, than (for instance) conscript soldiers who opposed it.²

The considerations surveyed above move Primoratz to offer a substantially revised account of the principle of discrimination, within the doctrine of *jus in bello*. Instead of a blanket doctrine of civilian immunity, he puts forward an account which turns on the responsibility of individuals – including civilians – for war. Soldiers participating in an unjust war are responsible for their decision to do so and are therefore legitimate targets of attack.³ In undemocratic states, the civilian population may not be held accountable for the actions of the state and thus retain their immunity to deliberate attack (p. 235). But in democratic states, responsibility can be devolved to the citizenry. Those who actively support the war, by voting for the ruling party, giving allegiance to the government that is pursuing it, and expressing support for it on appropriate occasions, are fully responsible for

²Though in fact Primoratz holds that even conscript soldiers are responsible for their participation in war (Primoratz, 1997, p. 227). Allowing that they are not, has potentially damaging implications for his account, as I shall discuss further below.

³The implications of Primoratz's account for soldiers fighting in a just war are less clear. These troops are responsible for their decision to fight too and would appear to lose their immunity as a result. Yet because those who would kill them are fighting in an unjust cause, their deaths are nonetheless murder. This latter thought suggests that in this they are no different from civilians and thus immune to legitimate attack. However Primoratz's original emphasis on soldiers' responsibility for their participation in war suggests that soldiers fighting in a just cause should be considered to have sacrificed their immunity to attack.

it, and therefore are proper targets of deliberate military attack (p. 236). Those who oppose the war by voting and protesting against it, according to Primoratz, bear no responsibility for war and maintain their immunity to deliberate assault (p. 238). Primoratz argues further that, given what is at stake in war, there is a weighty obligation on citizens to choose one or other of these camps (p. 237). Those who do not actively support the war, but who do nothing to oppose it, are “passive supporters” of the government (p. 238). While their responsibility for war is not sufficient to render them liable to be legitimately killed, it is enough that their property may be targeted, and to deny them grounds for complaint if they suffer by virtue of attacks on their country’s infrastructure.

I will argue that while a number of individual arguments that Primoratz directs against Walzer are well made, the conclusions that he draws, and indeed his entire approach to the ethics of war, are fundamentally misguided. Our intuitions and moral and legal conventions about war cannot be explained or justified by arguments about individual responsibility of the type Primoratz offers. As the quotation from Rousseau with which I prefaced this paper suggests, it is a mistake to try to provide an account of the ethics, or even the nature, of war in terms of relations, whether moral or causal, between individuals. The vast majority of the participants in war have no personal relationship that could possibly serve as a justification for them killing each other. Individuals cannot be “at war” with each other. Moreover, no conjunction of relations that individuals – qua individuals – may be involved in with one another will add up to war. War is fundamentally a state-centric concept. Violence only becomes war when it occurs between organized social groups (Mavrodes, 1985, p. 55; Walzer, 2000, pp. 30–31; Green, 1992, p. 40).⁴ When relationships between individuals justifying killing in wartime do arise – for instance when one threatens another who then has a right to kill them in self-defence – they arise because the individuals occupy social positions within nations that are already at war.⁵

In order to understand and discuss the ethics of war, then, we must make reference to the relations between nations in which it is founded.

⁴ Throughout the discussion that follows, I will use “state” and “nation” more or less interchangeably. In ordinary circumstances this substitution would be problematic. Nations are peoples or collectivities that have a plausible right to self-determination. “The state” refers to the nation as institutionally embodied, especially in its relations with other nations (Green, 1986, pp. 133–134). However, in war, nations are forced to develop the apparatus of the state and states strengthen their hold over the nation – which means that writers discussing the ethics of war routinely talk as though every warring state is a nation and every nation at war has the appearance of a state.

⁵ Civil wars and guerrilla conflicts are therefore only imperfect examples of the phenomenon of war. This is reflected both in the ways in which these wars tend to be fought and in the difficulties apparent in applying just war theory to such cases.

Primoratz's attempts to avoid doing so result in an equivocation in his account between whether those for whom the questions he discusses arise are *citizens* or *individuals*.

CONSEQUENCES OF PRIMORATZ'S ACCOUNT

However, before I proceed to explore these issues further, I want to examine the consequences of Primoratz's account for the ethics of war. Looking at the consequences of his revision of the doctrine of civilian immunity may provide us with a clearer sense of just how much his account differs from our normal intuitions in this area.

Targeting Civilians

Primoratz initially suggests that the implications in practice of the difference between his and Walzer's accounts are minimal. The doctrine of civilian immunity remains in force because our bombs, missiles and bullets are not discriminating enough to kill and maim only those who actively support the enemy war effort. Because of this technical limitation in the means available to us, we may not target civilian populations in wartime (p. 239).

Yet Primoratz is optimistic in maintaining that his revision of the doctrine of civilian immunity will not lead to violations of this doctrine in practice. To say that we cannot guarantee that our bombs will kill only those who support a war is not the same as saying that we may not *target* this group. For instance, it may be possible to ascertain of a particular village or suburb that some 80 or 90% of its residents support an unjust war. If an attacker chooses to bomb this area because of the high number of individuals responsible for the war who live there, where they would avoid attacking other areas where support for the war is low, it seems fair to say that they are targeting those responsible for the war. It is true that it will be extremely hard to exclude innocents, including minors, from being killed in such raids. However, nothing that Primoratz has argued explains why such deaths could not be justified as "collateral damage" – as a foreseen but unintended consequence of the attack. Presumably the deaths of a certain number of innocent civilians will be permissible as collateral damage of an attack targeted at responsible civilians, just as currently some civilian casualties are acceptable if attacks are aimed at legitimate military targets.⁶ Allowing that some civilians at least may be the proper targets of attack therefore risks greatly increasing civilian casualties in wartime.

⁶In an earlier discussion of related issues, Primoratz himself endorses the use of the doctrine of double effect to explain how for the casualties occurred in the course of an attack on a legitimate target may be justified (Primoratz, 1997, pp. 227–278).

Note that Primoratz acknowledges that there are some circumstances in which his and Walzer’s accounts do come apart – when it becomes possible to kill the “right” civilians. Primoratz offers hypothetical bombing raids on pro-war rallies in Serbia, and attacks on Jewish settlers in the West Bank, as examples (p. 240). These examples seemingly differ little from those I have discussed above. The possibility of killing some innocents as “collateral damage” exists in each of these cases, but does not prevent Primoratz from concluding that these civilians are permissible targets.

Moreover, regardless of whether it authorizes attacks on civilian populations in the ordinary course of war fighting, there are at least two types of conflict where the implications of Primoratz’s accounts are very dramatic. The first is in relation to terrorism. The second is when the civilian population of a nation in fact does overwhelmingly support the war effort, because it is a just war.

Terrorism

The implications of Primoratz’s account for the morality of what would ordinarily be described as terrorism are profound. Because terrorists usually move within the community that they are attacking, and because their weapons are often suicide bombers, or explosives placed at a particular location, they are at least capable of targeting their attacks more precisely than is generally possible when states are attacking each other. They can target high-profile individuals who have supported the war.⁷ They can attack political meetings, or meeting places, or other areas where the geography or the demographics suggest that the victims of an attack will overwhelmingly be supporters of the war or injustice the terrorists are struggling against. If too many innocents are likely to be killed, they can abort their attack at the last moment, or inform the authorities in order that they may evacuate the area.⁸ These options are typically not available to conventional forces attacking during wartime. Terrorists have a greater capacity to target civilians who support an unjust war than do the regular military and therefore of taking advantage of Primoratz’s conclusions.⁹ If attacks targeted against

⁷ Indeed, assassination of appropriate civilians becomes an admirable means of war fighting on Primoratz’s account, as it targets those are genuinely responsible for the war rather than mere soldiers – who are usually responsible only for participating in it.

⁸ Walzer provides three historical examples of this phenomenon (Walzer, 2000, pp. 198–199). See also Valls (2000).

⁹ Walzer’s analysis of terrorism, and other analyses like it, obscure the possibility that one might discriminate between civilian targets in a campaign of terrorist activity because they hold that all civilian targets are equally illegitimate (Walzer, 2000, pp. 197–206). But if we allow that some civilians are responsible for wrongs committed by their state, and are therefore legitimate targets for attack, then it becomes possible both that particular terrorist campaigns might be indiscriminate but also that some might not be.

civilians who support an unjust war are legitimate, well-placed “terrorist” bombs will turn out to be permitted under *jus in bello* (Valls, 2000). Terrorist attacks that target civilians who support an unjust war do not attack the “innocent” (Valls, 2000, p. 73). Indeed, if we build the notion of “innocents” into our definition of terrorism, as a number of authors, including Primoratz (1990, 1997) himself, are wont to do, then a potentially broad range of attacks on civilian targets will cease to be “terrorist” – as long as they target civilians who support governments who are involved in an unjust war.

The Responsibility of Civilians for Just Wars

The second set of circumstances in which Primoratz’s account leads to problematic conclusions is when a state is fighting a just war. If the cause in which a nation fights is sufficiently just – for instance, in response to invasion – then the vast majority of the civilian population will support the war. According to Primoratz, then, if this state is a democratic one, these civilians are responsible for the actions of their state in pursuing the war. If this population should not be attacked, it is not because they are “innocent” of supporting the war effort.

Of course, such civilians are innocent in the sense that they are the victims of an unjust attack. But in this case the moral status of the civilians as improper targets of attack rests entirely on the justice of their cause and the injustice of the cause of the aggressors. That is to say, in the doctrine of *jus ad bellum*. In attacking civilians who support their nation in a just cause, aggressors are not committing any further wrong than that they are committing in attacking military targets. Neither of these classes of person is more innocent than the other. The wrong here is the war itself. The distinction between legitimate and illegitimate targets in wartime plays no role. Primoratz’s argument therefore implies that *jus in bello* and *jus ad bellum* are not independent; the former is derivative of the latter.

Primoratz explicitly denies that he intends to undermine the claim that *jus in bello* and *jus ad bellum* are independent (see note 4, p. 230). Yet he does so in the context of a discussion of the question of whether or not soldiers can be condemned for participating in an unjust war. He does not seem to consider that the distinction between *jus in bello* and *jus ad bellum* might be blurred in the case of attacks on civilians supporting a nation fighting a just war.¹⁰

¹⁰In any case, his denial is one of the most unconvincing parts of his argument. The effect of his insistence that soldiers are fully responsible for their decision to participate in, and kill in, an unjust war is to render all of those who do (morally) guilty of murder, regardless of whether they kill soldiers or civilians. Given this, what further significance

WAR AND CITIZENSHIP

The consequences of Primoratz's account are therefore more radical than he allows. Resolving the question of immunity to attack in war according to individuals' responsibility for war opens the door to attacks on civilians in a wide range of circumstances. Indeed, our discussion so far has not exhausted the ways in which Primoratz's argument legitimates attacks on civilian targets contrary to orthodox doctrine on the matter.

Primoratz purports to offer an account which affirms the conceptual and moral priority of the individual to the state (p. 224). Yet he proceeds to discuss only the responsibility of soldiers and citizens for wars which are conducted by the nations of which they members. But if it is individual responsibility which is at issue, why should the question of responsibility arise for just these individuals? That is, why should only those who supported, or who failed to protest the actions of their government, who are also *citizens* of that nation, be fair targets? In many circumstances, persons outside of a nation at war may have more ability to stop or intervene in an unjust war than do ordinary civilians who are citizens.

This is most obviously the case when we consider the power possessed by political leaders of other nations who, even if they are not supporting financially or diplomatically one side or other in the war, may have the power to intervene to prevent a conflict. Many wars start or continue with the support of other nations. The leaders of these nations therefore bear some responsibility for these wars. Primoratz's argument would seem to make them legitimate targets of attack.

But the responsibility for foreign wars also extends to citizens of these nations who, if they were sufficiently politically active, could force their government to intervene to halt or prevent them. Citizens of other nations, whose governments could act to prevent the conflict, may have more power to halt it than citizens of the nations actually involved. Wealthy and influential citizens in the United States, for instance, may have just as much, or even more, power to prevent an unjust war in Palestine than do ordinary citizens of Israel.¹¹ With this power comes responsibility. Foreign citizens who support a government that allows an unjust war to continue may be more responsible for it than citizens of the nations immediately involved.

can be attached to the question of who they kill? Surely, murder is murder? (on this, see Walzer, 2000, p. 38) Primoratz insists that despite the fact that those who fight in an unjust cause are guilty of murder, we can still evaluate what they do in fighting it. Perhaps there are parts of *jus in bello* that remain independent, but the central distinction between those who are legitimate and illegitimate targets of attack seems to have collapsed.

¹¹I do not wish to argue here whether or not this is in fact the case; it would depend on a large number of empirical political questions which I am in no position to answer. I merely offer this as an example of something which *might* be the case.

As a result, I do not see how Primoratz can resist the conclusion that these civilians might be legitimate targets.

Notice here the implications of this conclusion in combination with my argument about terrorism above: not only are terrorist attacks on civilians who support a war conducted by their own government legitimate, but so too may be attacks on civilians who support a government that supports a war occurring elsewhere, that is to say, on citizens of other nations. Notice also the weighty responsibility this argument would attribute to citizens of any global hegemon, such as the United States is today. It is quite clear, for instance, that we would be forced to reconsider the morality of the September 11th bombings in the light of Primoratz's analysis.

Primoratz might want to insist that we can only be held responsible for wars initiated by our own government. But to do so would be to admit the fundamental role played by citizenship – and therefore by the idea of nations – in determining who may or may not be attacked in war; that is, that one becomes involved in a war only because one's nation is involved. It reverses the direction of the attribution of responsibility that, he argued, was a consequence of modern democratic thought. Whereas Primoratz argues that states are involved in wars only because of the choices of their citizens, this concession would acknowledge that individuals only become responsible for their choices by virtue of the actions of the state of which they are citizens. Moreover, it is far from obvious how his argument could accommodate this concession. When a matter as important as war is at stake, Primoratz denies that citizens have the right to sit on the fence. It is hard to see why the mere fact that the war is occurring elsewhere should restore this right. If people are being killed in an unjust war, and my government could prevent it, it seems that I have an obligation to demand that it does.

But even if we discount the responsibility that foreign nationals may have for war through the actions or inactions of their government, individuals who are not citizens of the attacking nation may still bear a significant responsibility for a particular conflict. Many wars, especially those that have the character of civil wars, are extensively financed and supported by expatriate communities overseas. Outsiders may contribute to war by financing political parties who support the war, by financing the armed struggle itself, or by procuring weapons to be used in the conflict. These non-citizens who play an active role in campaigning for and supporting the war bear more causal and moral responsibility for it than do citizens who have merely voted for the government or party which declared it. More generally, wars often have historical causes that reflect decisions made by non-citizens in roles of economic or institutional power. If individual responsibility is sufficient to make a person a legitimate target of attack then all these persons are clearly fair game.

Primoratz’s argument does not imply merely that sometimes it may be legitimate to attack non-citizens; it implies that there should be thought to be nothing out of the ordinary in doing so. Killing in war should track responsibility – and responsibility has only a contingent relation with citizenship. Moreover, insofar as attacks are directed at responsible individuals, other nations would have no grounds for complaint when individuals who happen to be their citizens are attacked. Such attacks may have both just cause and be consistent with *jus in bello*.

Primoratz’s argument cannot explain why, when we are looking for a distinction between legitimate and illegitimate targets for attack, we are looking for a distinction between types of targets *within* nations that are (already) at war. Instead, it treats war as though it were a contestation between willing individuals rather than between states. It is thus blind to a central feature of our intuitions about *jus in bello*, that we should confine our attacks to soldiers and perhaps citizens of the nation with which we are at war.¹²

THE RESPONSIBILITY OF INDIVIDUALS FOR WAR

In fact Primoratz discusses only the responsibility of individuals as *citizens*, for wars embarked upon by their nations. I now want to argue that the emphasis that he does place on citizenship is itself contrary to the logic of his position. If individual responsibility is the issue, then individual citizens are not responsible for anything that might render them liable to be justly killed. The mere fact of citizenship does not make an individual responsible for a war, even if they should support it.

The Real World of Democracy

If Walzer is naive about the agency of soldiers, Primoratz is naive about the nature of actually existing democracies. I doubt that any existing democracy is structured so that decisions about war could plausibly be attributed back to its citizenry.

Even in democratic states, the power to declare and wage war is jealously guarded by the executive. It is rare for the decision to go war to be put before Parliament, let alone before voters in an election. The distinction between

¹²In fact, the existing conventions of war require that attacks be confined to the *territory* of the nations at war – or at least excluded from the territory of neutral states. Attacks on troops of an enemy nation which are stationed in the territory of a neutral third-party risk constituting an act of war against that third party and drawing it into the conflict. This further emphasises the nature of war as a conflict between sovereign states – as only such states can have territories.

those who voted for and those who voted against war, that Primoratz puts so much weight on, is seldom likely to arise in practice.¹³

In reality, public opinion about war reflects the state's decision to go to war rather than drives it. If the citizenry of a democracy does support war this is likely to reflect a decision the government has made to prepare and mobilize the population for a conflict. This phenomenon was strikingly illustrated prior to the 2003 US-led invasion and occupation of Iraq. What popular support there was for this war existed largely on the basis of false beliefs about the threat posed by Saddam Hussein, the existence of weapons of mass destruction in Iraq, and the connection between the Iraqi regime and the September 11th attacks on the United States, which were deliberately inculcated in their populations by governments that had already decided to go to war (Rampton and Stauber, 2003; Rai, 2003).¹⁴

Finally, even if the civilian population decides that a war is unjust, there is likely to be little that they can do about it. In matters of war, even modern democratic states are depressingly unresponsive to popular opinion. Again, the recent invasion of Iraq was protested by large elements of the population in Australia, the United Kingdom, and United States itself, without the governments of these nations taking the slightest bit of notice.

For all these reasons, it is implausible to hold that the advent of democracy has rendered citizens responsible for states' decisions to go to war.

One way of replying to my objections thus far is to concede that all existing democracies are at best imperfect democracies in Primoratz's sense, and that while this remains true the civilian populations of modern nations will retain their immunity to deliberate attack. But the problems involved with holding individuals responsible for the actions of a collective, even a democratic one, go deeper than this. Even in a perfect democracy, protests to oppose a decision to go to war may be ineffective if the majority of the population supports it.

Protest and Responsibility

Primoratz considers this circumstance. He argues that, even in this case, someone opposed to the war "has a duty to protest", even though "that

¹³If war *is* an election issue then it is likely to be contested solely on the question of which party is *more* likely to declare, or better able to prosecute, a war. Note that my observation here relates to the decision to *declare* war which often seems to generate a competition between opposing parties as to which can be more enthusiastic for war. The decision as to whether or not to *end* a war, however, *is* often a matter of electoral dispute.

¹⁴For discussions about the extent to which public opinion regarding the 1991 Gulf War reflected rather than drove the actions of the states involved, see Bennett and Paletz, 1994; Taylor, 1992.

admittedly won't effect the course of events"; it will however "give notice that the killing, maiming and destruction aren't being done in her name too". Such protest is "symbolic protest" (p. 238). Yet such symbolic protest is required, according to Primoratz, if individuals are not to be guilty of at least passive support for war and therefore to deserve destruction of their property and the inconvenience of attacks on the civilian infrastructure of their nation.

This is to place a lot of weight on an activity that will have no effect. How could participating in political activity in circumstances where it is guaranteed to be futile be either sufficient to, or necessary for, an individual to have the right not to have their house bombed while others around them are having theirs destroyed?¹⁵ Consider the case of someone, who is firmly opposed to the war, but who doesn't go to the anti-war rally because of unexpected child-minding responsibilities on the day. This person may be more passionately opposed to the war than someone who went along to the anti-war rally only because a friend was going, or just to see what it would be like. Surely she cannot deserve to die, or have her home destroyed, because she doesn't participate in protest because she has a sickly child?

Moreover, if it is symbolic protest that is at issue here, why need it take any particular form? Why does one need to go to a rally? What about wearing a badge, or displaying a bumper sticker? Or muttering heartfelt condemnation of the government's decision to declare war over one's crumpets while reading the newspaper? Don't these also establish that the killing is not being done "in our name"? If we are to put any weight on the distinction between those who support and oppose war, in circumstances where their actions make no difference, then it can be only their attitude which is morally relevant. If we further wish to insist that they must express this attitude, then any form of protest is as good as any other.¹⁶

¹⁵Primoratz suggests that protest is sufficient because there is no more that the protestor could have been reasonably expected to do to avoid complicity in the unjust war. But this is never true; people could always do more. They could become civil disobedients, or saboteurs, or revolutionaries. They could leave the state which is going to war in the service of injustice. Primoratz sets the bar of what is required of citizens to avoid war being in their name at a suspiciously low and convenient level. On these questions, see Hill (1979). Hill specifically denies that symbolic protest itself can alter one's responsibility for wrongdoing by groups of which one is a member.

¹⁶It will not do to respond here that these other forms of protest do not effectively communicate dissent to the government, because by hypothesis the government will ignore any such dissent in any case. Nor will it do to insist that if others protested by rallying against the war, the government would be forced to pay attention, where this is not the case with the other forms of protest I suggest, again because in the case we are considering, by hypothesis, sufficient numbers of others will *not* join in protest.

So much for those who oppose war. Now consider the phenomenon of a person who “votes for the ruling party, gives allegiance to the government that is pursuing the war, expresses her support for the war effort on appropriate occasions” (p. 236). According to Primoratz, this is a paradigmatic case of what it means to “actively support(s) the government and the war” and is sufficient to render her “fully responsible for the war” and a legitimate target for direct attack (p. 236). Yet such a person may have voted for the ruling party only because her parents always have, give allegiance to the government only in that she pays her taxes and obeys its laws, and expresses support for the war only out of ignorance and peer pressure. In this, in fact, she’s like most supporters of most wars, most of the time.

Such a person’s voting decisions may be ignorant, her support for the government unthinking, her approval of the war undoubtedly reprehensible, but is any of this enough to justify her being killed, as Primoratz insists? For instance, is there sufficient difference between this individual and more passive supporters of war who deserve only to have their property destroyed. What does this difference consist in?

Note that if the war has overwhelming public support then this one citizen’s choice to participate in these activities makes no difference to whether the war will occur or not. While – in a perfect democracy – majority support for war is necessary for it to occur, this person’s support is not. None of her actions directly threaten or attack the enemy. Except for the opinions she espouses, her activities during wartime are no different to those before the war was declared. Nor are they different from the previous activities of many of those now engaged in symbolic protest against the war, who may also have voted for the same party and paid their taxes regularly.

Primoratz criticizes accounts of civilian immunity that credit as “innocent” all of those not directly involved in threatening or harming others. It is less clear whether his account can sacrifice the claim that legitimate civilian targets should be causally responsible for the decision to go to war. Yet by attempting to ascribe responsibility for war to individuals, this is what it does. While the majority considered as whole are clearly causally responsible for the war, its individual members are not. Again, compare the supporter of the war described above to another, who is a well informed, conscious and passionate advocate of war, but who was prevented by past criminal conviction from voting for the party that supports it, who by habit or personal history is a law-breaker and tax-avoider and therefore does little to support the government, and who has been unable to attend pro-war rallies as results of suffering a bad back. Given that neither of these individuals makes any necessary material contribution to the war effort, their support for the war can only consist in the attitudes they take towards it – in which case this latter individual is more deserving of being killed.

Primoratz intends to counter pose the notion of responsibility to the notion of innocence. But in fact what he puts forward in the guise of an account of political responsibility is an account in terms of guilt, or purely moral responsibility. His argument is thus profoundly moralistic. In effect, Primoratz treats the question of responsibility for war as though all that is required is to ask of the population (indeed, of all those who have an opinion on the war, regardless of their citizenship), “Hands up, who supports this war?” Those people who raise their hands are the people who may legitimately be killed. Yet this is obviously implausible. No one deserves to die, merely for their opinions, no matter how reprehensible these may be.

On Being “At War”

There is a further problem with Primoratz’s account of individual responsibility, which concerns just what it is that these individuals are responsible *for* – and how this might justify them being killed. Primoratz suggests that they are responsible for “the war”. As I have argued, this is surely hyperbolic. At most they are responsible for *supporting* the war. But let us allow for the moment that they are responsible for “the war”. What would this involve, and how would it justify their lack of immunity?

The first question to ask is, who are they at war *with*? If we are looking for relations between individuals, the obvious answer is “all the soldiers, or perhaps citizens, of the enemy nation” – although notice that this answer already relies on the state-centric concept of citizenship. But even this answer is unavailable to Primoratz who – to preserve symmetry with his account of who is responsible for war – must answer “only those individuals who are morally responsible for the war (or at least their participation in it)”. But how could any such relation come into being? And what could it consist in? These individuals don’t know each other. Except in the case of soldiers in uniform, they couldn’t even identify each other. Nor is there any attitude or emotion that any given individual holds towards all these other individuals (Green, 1986, pp. 121–122). Where hatred and opposition between individuals do exist, these are the *result* of war and not its source (Walzer, 2000, p. 36). The only relation that exists between individuals who are “at war” is that they are citizens of *states* that are at war.

It is also unclear how any relation between civilian citizens of opposing nations could justify persons killing each other. The loss of immunity of combatants is traditionally justified with reference to the idea of self-defence. Soldiers can kill other soldiers because other soldiers are trying to kill them (Murphy, 1985). In fact, it is the nation rather than any individual that is under attack and thus may invoke the rhetoric of self-defence (Fullinwider, 1985). But there remains at least a sense in which combatants

pose a foreseeable and likely, if not always immediate, threat to each other and therefore might be said to be acting out of self preservation when they kill each other. Primoratz wishes to extend this reasoning to include all those whom he argues are responsible for this threat, including civilians. Those responsible for a just war are justified in killing those responsible for an unjust war.

Yet these individuals are not actually threats to each other; if they were, they would themselves be combatants. Killing them is not self-defence (Fullinwider, 1985, pp. 92–93. *Contra* Alexander, 1985). If killing them is justified, it must be justified with reference to something like Fullinwider's "Principle of Punishment" whereby states may kill those responsible for an unjust attack upon them. But can this, or any analogous, principle justify civilians killing each other on the basis of the relation which holds between them as individuals during wartime? This relation is even more abstracted than that which holds between combatants during war. Any given individual is only one of the millions who are collectively responsible for a threat directed not against any one individual but against a whole class of individuals. This relation is too tenuous to justify killing. If two civilians from opposing nations which were at war were to meet in a neutral third country and one were to kill the other, we would seek both an explanation and a justification for this action. Learning that they were "at war" would be neither. While they may be responsible for participating in or supporting the war, they are not responsible for anything that would justify *this*, or any, particular person killing them (Green, 1986, pp. 121–122).¹⁷

The Case of Innocent Combatants

Finally, as a number of critics have previously argued, the distinction between those who are responsible for participating in and supporting war, and those who are innocent of these commitments, at least potentially, cuts across the combatant/non-combatant distinction (Mavrodes, 1985; Alexander, 1985). In wars involving authoritarian states and conscript armies, many of the combatants may be fighting despite a profound disinterest in, or often outright opposition to, the cause in which the war is fought. Primoratz follows Walzer in speaking of conscript soldiers "allowing" themselves to be conscripted, and thereby becoming responsible for their participation in war and thus a legitimate target. But in some conflicts soldiers fight only because the alternative is death for themselves or

¹⁷That we are owed an answer to this question is evidenced by the fact that we do not believe that anyone at all may kill those who support a war but only the armed forces of the nation with whom they are at war.

for their families. When this occurs, soldiers may well be innocent in the sense that Primoratz’s argument turns upon.¹⁸ This would seem to imply that they should be immune from attack. Imagine a case of a reluctant, and therefore pacifistic, conscript army forced into conflict on pain of imprisonment and death, being cheered on by an enthusiastic and war-mongering civilian population. If the presence of a small number of innocents in the civilian population prevents us from bombing them, I do not see how we could be justified in attacking the conscript army.

In fact, a concern with innocence or responsibility is much more disruptive of our normal practices of war fighting than the extreme nature of this example suggests. In any conflict there are likely be some persons involved in conflict who are innocent of the desire to kill others – or who are at least more “innocent” than civilian supporters of war (Mavrodes, 1985, p. 54; Murphy, p. 64).¹⁹ Primoratz’s claim that our inability to distinguish responsible from innocent civilians is sufficient to maintain the doctrine of civilian immunity in practice, would thus seem to imply also that attacks on military targets are illegitimate – as we are equally unable to distinguish soldiers who are responsible for their participation in the combat from those who are genuinely innocent.

WAR, STATES AND CITIZENS

The implications of Primoratz’s account of the principle of discrimination differ so radically from our ordinary intuitions about *jus in bello* that it should be rejected. The ultimate source of Primoratz’s errors is that the relation between citizen and state is deeper and more mutually constitutive than he acknowledges. In setting out the fundamental assumption which drives his account, Primoratz states:

... the individual is a citizen rather than a subject. The individual is conceived as prior to the state, both conceptually and morally. (p. 224)

But the second of these claims does not follow from the first. Indeed, the import of the first claim is to deny of the truth of the second. Individuals

¹⁸Primoratz denies that even the threat of death for desertion justifies soldiers participation in an unjust war (Primoratz, 1997, p. 227). But these soldiers are at the very least more innocent than civilians who rally for war. Primoratz is here confusing our right to kill someone in self-defense with the question of whether they deserve to die. On this, see the debate between Fullinwider (1985) and Alexander (1985).

¹⁹For instance, this will be true where-ever minors are allowed to volunteer for combat. As minors, they are not responsible for their participation in war and are thus morally innocent of it (Walzer, 2000, p. 229).

might be prior to the state.²⁰ *Citizens* are not. Whether or not an individual is, or becomes, a citizen is a question of state policy. Many residents in any state are not citizens, and many citizens are not residents. Many individuals who desire citizenship are denied it. The vast majority of individuals who have citizenship have not chosen it; instead, it was bestowed upon them solely due to the nationality of their parents and/or the location of their birth. In most cases, then, citizenship is both unchosen and morally arbitrary; it is simply a status accorded to some individuals by the state. Strictly speaking, then, not even the first of the claims above is true. Individuals are only citizens when they are subjects.

All of which is to say that the state is conceptually prior to its citizens. This is true politically and morally as well as ontologically. Even in a perfect democracy, the state represents all of its citizens and not just those who support its policies. The citizenry of a state are bound together through participation in a political community and this bond remains intact even when they disagree within that polity. Contra Primoratz, then, a state which wages war does so on behalf of all its citizens and not just those who voted for it, or supported the war. The majority would not be able to declare or wage war without the political structure, economic resources and stable patterns of social relations, of the nation, that are built upon the cooperative efforts of the entire citizenry. Similarly, the spoils of its victories or price of its loss will be distributed amongst all citizens. If individual citizens wish to avoid sharing responsibility for the activities of their state they must break from the state (Green, 1992). This is more than a matter of voting or protesting against its policies; it requires renouncing citizenship and all of its benefits.²¹

STATES, ARMIES AND CITIZENS

The argument above leaves the question of just what sorts of people are legitimate targets in warfare unresolved. What I have attempted to show here is that a certain class of answers to this question, those that seek to draw this distinction on the basis of the moral character of individuals, are untenable.

A proper account of the ethics of killing in war is a far larger project than I could attempt here. However, the broad shape of any plausible approach is suggested in the remainder of the passage from Rousseau quoted above.

(...) Since the object of war is to destroy the enemy State, it is legitimate to kill the latter's defenders as long as they are carrying arms; but as soon as they lay them down

²⁰Although it would be more accurate to describe them as alien to it.

²¹The practical difficulties and sacrifices involved in doing so are so extensive that it is unreasonable to require this of citizens if they wish to avoid the loss of civilian immunity.

and surrender, they cease to be enemies or agents of the enemy, and again become mere men, and it is no longer legitimate to take their lives.

Jean Jacques Rousseau (*The Social Contract*, Book 1, Ch. 4)

This argument locates the origins of the different status of soldiers and civilians as legitimate targets in wartime in their different relations to the state. War is first and foremost a relation between states, and individuals only come to be at war by virtue of their position in relation to the state. Those who are “currently engaged in the business of war” are the instruments of state aggression. Their activities can be frustrated, if need be by killing them, in order to prevent the enemy state from carrying out its goals. But mere citizens are not essentially involved with the state’s activity of war fighting and so attacks on the state should not involve them (Anscombe, 1970, p. 45; Walzer, 2000, 144–146).

The effect of my paper has therefore been to defend Walzer’s account of the nature of war against Primoratz’s critique. But while Walzer’s approach seems to me the only plausible account of our intuitions about *jus in bello*, it also has significant and potentially radical implications for *jus ad bellum* that are less often recognized. This type of account abandons any pretence that there is justice in how individuals are treated in war. To be sure there are rules of war and these offer protection to certain classes of individual. But whether or not any particular individual may legitimately be targeted is a question of their membership of large political categories, which itself may reflect nothing more than circumstance (in the matter of citizenship and enlistment), and often coercion (in the case of conscription). If wars are justified, then this lack of discrimination in the victims of war must also be justified, because war can be fought no other way (Walzer, 2000, pp. 30, 138).

But, of course, whether or not war can be justified remains controversial. This lack of justice in the question of whether (and which) individuals live or die is itself something which needs to be justified. Moreover, recognizing the nature of war as a contestation between states, draws our attention to the fact what is at stake in war is the rights of states rather than the rights of individuals. Loss of territory, loss of sovereignty, these are losses that only that can only be incurred by states, as the corresponding rights are rights that may only be exercised by states. Self-defence may well provide a justification for killing, but as Richard Norman (1995) has argued persuasively, it is not easy to apply this justification to relations between nations – because threats to the nation do not equate to threats to an individual’s life. It is an open question as to whether *any* interest of the state is worth an individual human life (Primoratz, 1997, p. 231; Green, 1986, pp. 121–122). In this matter we may well wish to agree with Primoratz on the moral priority of individuals (but not citizens!) over States. But Primoratz’s attempt to reconcile concern for individual autonomy and responsibility with the conduct

of war fails. Respect for individuals is antithetical to war. Whether this is bad news for individuals or for the institution of war itself awaits further philosophical investigation.

REFERENCES

- Alexander, L.A., Self-Defense and the Killing of Non-Combatants: A Reply to Fullinwider, in Charles R. Beitz, et al. (eds.), *International Ethics*. Princeton, NJ: Princeton University Press, 1985, pp. 98–105.
- Ansombe, G.E.M., War and Murder, in R. Wasserstrom (ed.), *War and Morality*. Belmont, California: Wadsworth, 1970, pp. 42–53.
- Bennett, W.L., and D.L. Paletz, (eds.), *Taken by Storm: The Media, Public Opinion, and U.S. Foreign Policy in the Gulf War*. Chicago: University of Chicago Press, 1994.
- Fullinwider, R.K., War and Innocence, in Charles R. Beitz, et al. (eds.) *International Ethics*. Princeton, NJ: Princeton University Press, 1985, pp. 90–97.
- Green, M., War, Innocence, and Theories of Sovereignty, *Social Theory and Practice* 18(1) (Spring 1992), pp. 39–62.
- Green, T.H., *Lectures on the Principles of Political Obligation, and Other Writings*, Edited by Paul Harris and John Morrow. Cambridge, New York: Cambridge University Press, 1986.
- Hill Jr., T., Symbolic Protest and Calculated Silence, *Philosophy and Public Affairs* 9(1) (1979), pp. 83–102.
- Mavrodes, G.I., Conventions and the Morality of War, in J. Sterba (ed.), *The Ethics of War and Nuclear Deterrence*. Belmont, California: Wadsworth, 1985, pp. 50–60.
- Murphy, J.G., The Killing of the Innocent, in J. Sterba (ed.), *The Ethics of War and Nuclear Deterrence*. Belmont, California: Wadsworth, 1985, pp. 61–67.
- Norman, R., *Ethics, Killing, and War*. Cambridge: Cambridge University Press, 1995.
- Primoratz, I., Michael Walzer's just War Theory: Some Issues of Responsibility, *Ethical Theory and Moral Practice* 5 (2002), pp. 221–243.
- Primoratz, I., The Morality of Terrorism?, *Journal of Applied Philosophy* 14(3) (1997), pp. 221–233.
- Primoratz, I., What Is Terrorism?, *Journal of Applied Philosophy* 7(2) (1990), pp.129–138.
- Rai, M., *Regime Unchanged: Why the War on Iraq Changed Nothing*. London: Pluto Press, 2003.
- Rampton, S., and J. Stauber, *Weapons of Mass Deception: The Uses of Propaganda in Bush's War on Iraq*. Sydney: Hodder Headline, 2003.
- Taylor, P.M., *War and the Media: Propaganda and Persuasion in the Gulf War*. Manchester, New York: Manchester University Press, 1992.
- Valls, A., Can Terrorism Be Justified? in A. Valls (ed.), *Ethics in International Affairs: Theories and Cases*. Lanham, MD: Rowman & Littlefield, 2000, pp. 65–79.
- Walzer, M., The Communitarian Critique of Liberalism, in A. Etzioni (ed.), *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*. Charlottesville: University Press of Virginia, 1995, pp. 52–70.
- Walzer, M., *Interpretation and Social Criticism*. Cambridge, MA: Harvard University Press, 1987.
- Walzer, M., *Thick and Thin*. Notre Dame, IN: University of Notre Dame Press, 1994.
- Walzer, M., *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. 3rd Ed. New York: Basic Books, 2000.

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