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## Pacifism and moral theory

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## **PACIFISM AND MORAL THEORY**

- Jeff McMahan -

### **I. INTRODUCTION**

“Pacifism” is used to refer to a variety of different doctrines concerning violence and war. It can refer to the view that all violence is wrong, even in individual self-defense, or in defense of another innocent person. More commonly, it refers to the view that both the resort to war and individual participation in war are wrong. One could thus be a “war-specific” pacifist while accepting that violence can be permissible in individual self- or other-defense. Traditionally, however, pacifism as a doctrine about war has taken an absolutist form – that is, it has been understood as the view that war could never, in any circumstances, be morally justified. And it is difficult to reconcile an absolutist prohibition of war with the view that violence, and perhaps even killing, can be permissible in at least some cases of individual self-defense. For a large enough number of acts of individual self- and other-defense by people who are all citizens of the same state can together constitute a war. Absolute pacifism about war must, it seems, be based on an absolute prohibition of a certain act-type, such as the intentional killing of a human being.

The most plausible form of pacifism, in my view, is based on a non-absolute prohibition of knowingly killing an innocent person. It appeals to the idea that there is an extremely strong moral constraint against acting in a way that one foresees will kill an innocent person. Although the constraint is not absolute, the threshold at which it can be overridden by conflicting moral considerations is very high. According to this view, it can be permissible knowingly to kill an innocent person only if the consequences of not doing so would be vastly worse. For the killing of an innocent person to be permissible, in other words, it must be necessary for the prevention of an outcome that would be vastly worse.

A constraint of this sort supports a non-absolute war-specific form of pacifism. Because in many or most instances of killing in individual self- or other-defense, one can be confident that one will not kill anyone who is innocent in the relevant sense, these uses of violence can often be permissible. But, one might argue, wars and acts of war are quite different, at least in the world as it is now, in that they almost inevitably involve the foreseen killing of innocent people, often on a large scale. For the areas in which wars are now fought tend to be densely

populated, and modern weaponry is generally highly destructive. So, although the killing of innocent people in war could in principle be morally justified on this view, in practice the scale of the killing is too great for the constraint that opposes it to be overridden. While war is not absolutely prohibited, it is contingently ruled out. Hence this doctrine is commonly known as “contingent pacifism.”

In this essay I will sketch some of the moral assumptions and theoretical foundations of contingent pacifism. My aim is to explain why this view – or at least the version of it that I will consider, which I think is the most plausible version – is untenable.

To preempt certain common confusions, I should clarify the way I will use two terms that might be thought to require no clarification: “war” and “innocence.” People often say such things as that war is always evil, that it is always to be avoided, and so on. When non-pacifists say such things, they are referring to war as that which all the belligerent parties together engage in fighting. One uses “war” in this sense when one refers, for example, to the Second World War. But “war” can also refer to one belligerent party’s action in a war such as the Second World War. In that war, for example, Britain fought a war against the Axis powers and Germany fought a war against the Allies. Only such a war, fought by a particular belligerent party, can be just or unjust. Thus, Britain’s war was just, Germany’s wars were unjust, but the Second World War was neither just nor unjust. Although the context should make it clear, most of my claims will be about wars in the second sense, which can be evaluated as just or unjust. It is only about wars in this sense that pacifists and non-pacifists disagree.

In just war theory as it has standardly been interpreted for at least the last two centuries, “innocent” has meant “unthreatening.” On this understanding, noncombatants are innocent while combatants are not, irrespective of whether combatants are fighting in a just or an unjust war. That is not how contingent pacifists of the species I am considering typically understand the term. They generally use it to refer to those who are not morally responsible for a wrong, typically a threat of wrongful harm to others. Both traditional just war theorists and contingent pacifists take innocence to imply an absence of moral liability to defensive attack. The innocent are those who have done nothing to lose their moral right not to be attacked or killed. The noninnocent are those who lack such a right, at least vis-à-vis certain agents who act for certain reasons. The difference is that traditional just war theorists think that the basis of the immunity of the innocent is that they are unthreatening, while contingent pacifists generally believe that it is that they are not responsible for a wrong.

## II. THE CASE FOR CONTINGENT PACIFISM

Having made these distinctions explicit, I can now state some of the moral assumptions, or claims, to which contingent pacifists may appeal in support of their doctrine. All contingent pacifists claim that war inevitably involves the killing of a disproportionate number of innocent people. Some, however, argue that almost all the people who are killed in war are innocent in the relevant sense. If this were true, contingent pacifism would indeed be difficult to resist or reject.

Those who are killed in war have traditionally been divided into two categories, combatants and noncombatants. For purposes of exposition, I will subdivide each of these categories into those on the side fighting in a just war and those on the side fighting in a war that is unjust because it lacks a just cause. This yields four categories of people in countries that are at war: (1) those who fight in a just war ("just combatants"), (2) noncombatants on the just side ("just civilians"), (3) those who fight in a war that lacks a just cause ("unjust combatants"), and (4) noncombatants on the unjust side ("unjust civilians"). These categories are not exhaustive because the distinction between just and unjust excludes a further category: namely, those whose side is fighting a war that has a just cause but is unjust because it is disproportionate, unnecessary for the achievement of the just cause, or pursues additional aims that are both unjust and unnecessary for the achievement of the just cause. Because the four categories are thus incomplete, the following discussion will be schematically oversimplified. But this does not matter, at least not much, for a reason that I will state shortly.

Of the persons in these four categories, those who are most obviously innocent in any relevant sense are just civilians. In relation to the rights and wrongs of the war, they have certainly done nothing to make themselves liable to be killed, or to lose their right not to be killed, either intentionally or unintentionally. According to contingent pacifists and some contemporary just war theorists, this is also true of just combatants. They are not responsible for a threat of wrongful harm; nor can they make themselves liable to be attacked or killed merely by engaging in justified self-defense or defense of innocent just civilians. It seems, therefore, that virtually all of those killed in war by unjust combatants are innocent. The only possible exceptions might be unjust combatants who are accidentally killed by other unjust combatants – cases of killing by so-called "friendly fire." For one might argue that by collaborating in the use of lethal violence in the pursuit of unjust aims, unjust combatants make themselves liable to any harms they might accidentally suffer in the course of that action, even at the hands of their fellow wrongdoers.

Yet some contingent pacifists have argued that even most unjust combatants are innocent. Their argument typically appeals to two claims. First, they interpret moral responsibility for a wrong so that it presupposes culpability. They therefore claim that the criterion of liability to attack or killing in war is culpable responsibility for a threat of wrongful harm. Second, they argue that most unjust combatants fight both under duress and in nonculpable ignorance of the wrongful nature of their action. These factors together suffice in most cases to excuse them morally – that is, to exempt them from culpability or blameworthiness – for their participation in the war. Because they are not culpable, they are not liable to be attacked or killed. They are instead innocent.

There is much to be said in support of these claims. Unjust combatants are often conscripts, but even those who enlisted voluntarily at some point prior to the outbreak of war would face serious penalties if they were to refuse to fight once war had begun. Since the majority of combatants in most wars are either conscripts or were already serving when war began, it follows that most fight under a threat of sanction for refusal to do so.

The restrictions on their ability to know that their war is unjust are even more obvious. Soldiers seldom have access to all the nonmoral facts that are relevant to the evaluation of the war in which they have been commanded to fight. Even in democratic countries, governments frequently suppress or distort relevant facts, including facts about their own motives and intentions. They also lie – for example, in one recent case, about an adversary’s alleged stockpiles of weapons of mass destruction. Even if soldiers had access in principle to all the relevant factual information, they would not have the leisure either to do the research necessary to gather this information or to assimilate it and draw from it the appropriate inferences. Those inferences would, in any case, be difficult to draw unless the soldiers also had a reasonable understanding of the moral principles governing the resort to war (the principles of *jus ad bellum*), which very few, if any, have. This should not be surprising, since even the recognized experts on the theory of the just war disagree about the nature and content of the relevant principles, as well as about the application of these principles to particular cases. Given that soldiers are aware that what they can know is far less extensive than the information accessible to their government, some of which may be classified, and given that they, like others, tend to treat their own government’s official pronouncements as presumptively authoritative, they do not seem blamable if they reject the idea that they are competent to challenge their government’s assurance that the war they have been commanded to fight is just. Their nonculpable ignorance, then, reinforces the mitigating effect of duress, in most cases yielding a full excuse for participation in an

unjust war. (It might seem that if unjust combatants are innocent, the just combatants who attack them must thereby forfeit their own innocence. But even if just combatants do wrong in attacking and killing unjust combatants, they are presumably excused by the same considerations – particularly nonculpable ignorance – that excuse the action of unjust combatants.)

Though very succinctly expressed, those are the basic elements of the contingent pacifist case for the claim that most unjust combatants are innocent and not liable to be attacked or killed in war. The case for the claim that unjust civilians are also innocent is more immediately obvious. Unjust civilians do not participate in their country's unjust war; therefore, if they bear any responsibility at all for the unjust threats their country poses, it is in general quite weak, since their contributions to those threats tend to be causally remote and diluted, and must operate through the agency of others whose action they cannot directly control. Although most of their contributions are uncoerced – one exception being their financial contributions through taxation – the epistemic constraints that impede their ability to recognize that their country's war is unjust are typically much the same as those that restrict the understanding of unjust combatants. Given, then, that most unjust civilians bear a significantly lower degree of responsibility for their country's unjust threats than unjust combatants, who are the immediate instruments of those threats, and given that they tend to share the unjust combatants' nonculpable ignorance, they are in general not culpable to a degree sufficient to make them liable to be intentionally attacked or killed. So they too are innocent.

Finally, consider combatants and civilians in a country fighting a war that has a just cause but is nevertheless wrong or unjust – for example, because it is disproportionate. Those who fight in or otherwise support such a war are not included in the four categories I distinguished above. They are, however, significantly more likely to be nonculpable than those who fight in or support a war that is unjust because it lacks a just cause. This is because most wars that lack a just cause are fought to achieve aims that are positively unjust, and it is in general easier to determine that a war is unjust when its aims are unjust than when it has a just cause but is wrong for some other reason, such as that it is disproportionate. (There is another kind of war that lacks a just cause: namely, one that pursues an aim or aims that are neutral or good but do not rise to the level of a just cause. This kind of war is also more difficult to recognize as unjust than one that seeks to achieve a positively unjust cause. But unjust wars of this kind are less common.) Furthermore, some of those who are killed by combatants fighting in a war that is unjust but has a just cause may actually be liable to be killed. When the just cause for war is the prevention or correction of some serious wrong, it may be that those

who are responsible to a significant degree for that wrong are liable to be attacked or killed either as a means or as a side effect of the prevention or correction of the wrong, even when the war against them is unjustified – for example, because it simultaneously and unnecessarily pursues other goals that are unjust. For these reasons, those combatants and civilians who fall outside the four categories distinguished earlier are more likely to be innocent than unjust combatants and unjust civilians. If the contingent pacifist's claim that most of the latter are innocent is true, it seems that it must also be true, a fortiori, that those who fall outside the four categories are innocent as well.

### III. THE GROUNDS FOR THE LIABILITY OF UNJUST COMBATANTS

Such is the case for a strong form of contingent pacifism, one that claims that most people killed in war, and even most of those killed by combatants fighting for a just cause, are innocent in the relevant sense. Hardly anyone would quarrel with the claim that just civilians are innocent. I believe that the more controversial claim that just combatants are innocent is also true, provided that they pursue their just cause by permissible means. If both just civilians and just combatants are innocent, the contingent pacifist is right that virtually all of those killed by unjust combatants are innocent, and that strongly supports the conclusion that it cannot be permissible to fight in a war that is unjust because it lacks a just cause. I think that *that* conclusion ought not to be controversial, though of course it is. But what really divides contingent pacifists from those who believe that it is possible even in contemporary conditions to fight a just war is their claim that most unjust combatants are also innocent. If that claim is correct, war inevitably involves both the intentional and unintentional killing of innocent people on a large scale, even when it is fought for a just cause. While most of us accept that it could be permissible, on grounds of necessity, to kill innocent people on a large scale if the only alternative was to allow a vastly greater number of innocent people to be wrongly killed by others, the contingent pacifist may seem convincing in claiming that in practice these are never our only alternatives.

Yet the grounds for the claim that most unjust combatants are innocent and not liable to be killed do not withstand close scrutiny.<sup>1</sup> Is it really true that most unjust combatants are, to borrow a phrase from classical just war theory, “invincibly ignorant” that their war is unjust? Consider Nazi combatants in the German invasions of Poland, Czechoslovakia, France, the Soviet Union, and other coun-

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<sup>1</sup> The following discussion is brief. For a more extensive and detailed defense of the view that most unjust combatants are liable to attack in war, see McMahan [2009b] ch. 3, 4.

tries. Consider Japanese combatants in China, or Iraqi combatants in Kuwait. Is it really plausible to claim that they simply could not have known that their war was wrong? Is it credible to suppose that they could not even have had suspicions that ought to have prompted serious moral reflection, which could have revealed at least that their war was more likely to be unjust than to be just? What they were doing – killing people of whom they had no personal knowledge – is a form of action that clearly requires moral justification. Their victims had not, moreover, attacked them or anyone else; they were instead living peacefully in their own homeland. These combatants must also have known, since everyone does, that many wars are unjust, that many people therefore fight in unjust wars, and that many or even most of them mistakenly believe that their unjust war is just. These various considerations alone should prompt any reasonable person to wonder whether he might be fighting in an unjust war and therefore be killing people who had done nothing to make themselves liable to be killed. Yet we can infer from the fact that so few of these combatants – Germans, Japanese, Iraqis – refused to fight that most made no serious effort to understand the morality of their action. It therefore seems implausible to plead invincible ignorance on their behalf when hardly any tried to overcome their ignorance.

(It is perhaps worth noting that insofar as wars that lack a just cause are more likely to be fought in indiscriminate and barbarous ways than wars fought for a just cause, the barbarous conduct of a war offers those fighting in it a reason to doubt that its aims are just. Indeed, the barbarous conduct of a war can give those fighting it a reason to refuse to continue that is independent of the nature of the war's ultimate aims.)

We now have ample testimony that a significant proportion of the American combatants in the Vietnam war were convinced that their war was unjust but continued to fight nonetheless. Did they simply have no choice? That is, do conditions of duress almost always exculpate unjust combatants when the excuse of nonculpable ignorance is unavailable? That too is hard to believe, especially in the conditions that characterize contemporary war – conditions to which contingent pacifists appeal in making the empirical part of their case – in which the penalties for conscientious refusal to fight are generally mild in comparison to what they once were. There are, moreover, options other than refusing to fight, or to continue to fight, once one finds oneself at war. People can and often should have serious doubts about the morality of a war well before they are ordered to fight in it. Many young Americans, for example, believed that the Vietnam war was wrong before they were conscripted, yet acquiesced in conscription and fought in spite of their moral convictions. It is hard to see this as action under duress in the tradi-



tional sense. Most of these young men had at least two other options: accepting asylum in a neutral country such as Canada or Sweden, and submitting to a period of imprisonment. Both of those options would have involved substantial hardship. But whether the threat of those hardships constituted duress depends on what the alternative was. And the alternative for American conscripts was to live, for at least as long as they would have had to spend in prison, in appalling physical conditions at high risk of being killed or maimed. Thus, in objective terms, the threatened harm from exposure to the conditions of war in Vietnam exceeded the threatened harm from imprisonment for a comparable period. What motivated many of these men to act in opposition to their moral evaluation of the war was not so much fear of the threatened punishment for refusal but the sense that refusal, even on conscientious grounds, would be perceived by others as shameful, dishonorable, or cowardly. As Tim O'Brien, himself a Vietnam veteran, has observed, "men killed, and died, because they were embarrassed not to."<sup>2</sup>

In any war that lacks a just cause there are no doubt some combatants who are invincibly ignorant of the unjust nature of their war, and in many unjust wars there are some who fight only as a result of irresistible duress. These unjust combatants are fully excused, and if culpability is a necessary condition of liability to killing in war, they are innocent. But in most unjust wars it is false, for the reasons I have given above, that all or even most unjust combatants are fully excused by nonculpable ignorance, duress, or a combination of both. In most cases, the culpability of unjust combatants is indeed substantially mitigated by these and other potential excusing conditions; but it is not diminished to zero. Even if, as I believe, their culpability is generally diminished below the level necessary to make them liable to criminal punishment solely for fighting in an unjust war, it is nevertheless sufficient to make them liable to defensive attack by those who are wholly innocent. *Any* degree of culpability for fighting in a war that lacks a just cause is sufficient for liability to potentially lethal attack.

It seems, however, that a person can be liable to attack in war without being at all culpable. Suppose, for example, that the common view of duress is true: there is a level of duress that can be irresistible and when someone acts wrongly under that level of duress, he is fully excused – that is, he is exempted from all culpability. Next imagine that a villain puts a gun to an ordinary person's head and credibly threatens to kill him unless he kills you. You cannot incapacitate the villain; your only chance of survival is to kill the threatened person before he kills

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<sup>2</sup> O'Brien [1990] p. 21.

you. If culpability is necessary for liability to defensive attack, the threatened person is not liable; he is instead excused by duress. While you have a right not to be killed by him, he retains, at full strength, his own right not to be killed by you. There seems to be no reason why your right overrides his. He is, after all, an innocent person, just as you are. It also seems that you have no justification of necessity, or lesser evil, for in either possible outcome, exactly one innocent person gets killed. It seems, therefore, that if culpability is necessary for liability, it is not permissible for you to kill him in self-defense. The implications of the view that culpability is necessary for liability to defensive attack are the same in war – that is, they are what the contingent pacifist says they are: a person fighting for a just cause, for example, has no justification for killing an unjust combatant in self-defense if the latter is fighting under irresistible duress.

If these implications seem implausible, that is because it is implausible to suppose that culpability is necessary for liability to defensive attack. There can be cases in which one is *morally responsible* for a threat of wrongful harm without being culpable – for example, cases in which one voluntarily engages in a generally benign activity, such as driving, in the knowledge that it involves a very tiny risk of causing great harm to someone. If one is unlucky and actually does cause great harm, one may be responsible even though one has acted without fault. One's having freely chosen to impose that small risk on others may be sufficient for responsibility, and for liability, even in the absence of culpability.

In the case of the person who will be killed unless he kills you, the grounds of responsibility are different. Although we say that he acts under irresistible duress, we do not mean that he literally cannot avoid trying to kill you. He could choose to allow himself to be killed rather than kill you. But we recognize that such a choice would be extraordinarily difficult to make, and that it would be unfair to blame him for doing what we ourselves would most likely do in his situation. So we concede that he is blameless, but not because he had no control over his action and was therefore in no way responsible for it. Though it would have been heroic to have chosen otherwise, his choice to kill you makes him responsible for his action, and that, I think, is sufficient to make him liable to defensive killing.

The degree of duress under which most unjust combatants act in fighting in an unjust war is significantly lower than that under which the threatened person in our example acts. Perhaps it is nonetheless sufficient to excuse them for their action, but it does not relieve them of all responsibility for that action. Similarly, even if most unjust combatants are excused on grounds of nonculpable ignorance, there is still a choice they make that grounds their responsibility for what they do. That choice is to attempt to kill people in a war they know may be unjust. Because

they know that there is a risk that their war lacks a just cause, they also know that there is a risk that those they intend to kill are innocent. Their choice to kill them anyway is sufficient to make them responsible for those killings if, as we are supposing, their war is in fact unjust. These forms of responsibility are sufficient to make most unjust combatants liable to defensive attack, even if there are excusing conditions that render their action blameless.

#### IV. A WEAKER CASE FOR CONTINGENT PACIFISM

That conclusion substantially weakens the case for contingent pacifism. Yet one might concede that most unjust combatants are not innocent in the relevant sense and still maintain that war is never in practice permissible in contemporary conditions. For one can argue that even if most unjust combatants are liable to attack, there are nevertheless *some* who are innocent and, assuming that *all* unjust civilians are innocent, even a war fought for a just cause will unavoidably kill too many innocent people to be permissible. If the destruction of war could for the most part be confined to the battlefield, where combatants could fight one another without killing large numbers of innocent bystanders as a side effect, then, according to the contingent pacifist, it might be permissible to pursue a just cause by means of war. But conditions in which ordinary civilian life can be insulated from the effects of war belong to the distant past.

This weakened case for contingent pacifism depends on two assumptions: (1) that all or at least the vast majority of unjust civilians are innocent and (2) that the constraint against killing innocent people is sufficiently strong to make war in practice impermissible on the ground that the number of unjust civilians that would be killed would inevitably exceed the number that could permissibly be killed for the sake of a just cause, however important. Both these assumptions are open to challenge. My critique of contingent pacifism will concentrate on the second, but I will briefly suggest a reason for skepticism about the first as well.

As we have seen, the strong case for contingent pacifism appeals to the claim that unjust combatants are innocent. Although I have argued that that claim is false, my argumentative burden would have been trifling if “innocent” were understood, as it is in traditional just war theory, to mean “unthreatening.” On that understanding, even just combatants, who merely defend themselves and others against wrongful attack, are not innocent. It is therefore obvious why this understanding of innocence has little appeal to those who are attracted to contingent pacifism, who tend instead, as I noted, to understand innocence as a form of moral innocence – specifically, as the absence of moral responsibility for a wrong.

In the context of war, the relevant kind of wrong is usually a threat of wrongful harm.

When “innocent” is used to mean “unthreatening,” almost all civilians count as innocent, since they are almost all noncombatants. But for civilians to be innocent in the sense in which that term is used by most contingent pacifists, they must be free of moral responsibility for a threat of wrongful harm – specifically, free of responsibility for their country’s wrongful war. And in the case of many unjust civilians, it is not obvious that they are. In relations among individuals outside the context of war, as well as in the criminal law, people who are not the actual perpetrators of wrongful acts may nevertheless bear moral responsibility for such acts. They may be complicit in, or accessories to those acts in a variety of ways. They may, for example, instigate the action, conspire in planning it, or aid and abet its commission. The same is true of civilians in relation to wars that lack a just cause: they may share responsibility with those who actually do the acts that are constitutive of the war. Civilians may contribute to an unjust war in various ways. They may campaign for the election of, and vote for, politicians who advocate war, or campaign against those who oppose it. They may arouse or strengthen popular or governmental support for the war by writing editorials, pamphlets, books, or even just letters to the editor that promote it. They may attend rallies, urge their children to enlist, publicly impugn the patriotism of those who oppose the war, finance the war through the taxes they pay, and so on. Many of these acts appear to be sound bases for the attribution to those who do them of culpable responsibility for an unjust war.

But contingent pacifists, along with most other people, argue that these acts are not in fact grounds of responsibility for an unjust war. For even if such acts are wrong, those who commit them are excused by the same considerations that excuse unjust combatants for their participation in the war. In most cases, of course, duress is not an important excuse for civilian support for an unjust war, though it does excuse or at least mitigate responsibility for support via the payment of taxes. But the epistemic excusing conditions that apply to unjust civilians are much the same as those that, according to the contingent pacifist, excuse unjust combatants. Unjust civilians also have limited access to the nonmoral facts, are often manipulated and deceived by their government, have little understanding of the moral and legal principles governing the resort to war, and so on. What is more, their moral reason to ensure that their relevant nonmoral and moral beliefs about the war are epistemically justified is weaker than that of unjust combatants. This is because the stakes are lower in their case than in the case of unjust combatants. Unjust combatants must choose whether or not to kill people. In decisions of that

sort, the demand that one ensure that the beliefs that support one's choice are justified is high. For most unjust civilians, by contrast, the choice is only whether to support or to oppose a war. Since the outcome of this choice is unlikely to make a significant difference to what happens in the world, the demand for epistemic justification is weaker. This suggests that unjust civilians have an even more potent excuse of nonculpable ignorance than most unjust combatants have. For their ignorance is less likely to be culpable.

Yet the same replies that I offered to the claim that most unjust combatants are nonculpable apply in the case of unjust civilians as well. And the fact that most of the acts by unjust civilians that support an unjust war are not done under duress tends to diminish the force of their epistemic excuses. It is certainly true that most civilians who actively support a war that is unjust because it lacks a just cause do so on the basis of a range of false nonmoral and moral beliefs. But it is also true that if they have any sense at all, they are aware that their understanding is limited and could be expanded by greater efforts to gather relevant nonmoral facts and to enhance their understanding of the morality of war. Unlike unjust combatants who have been ordered to fight, they are not under compulsion to commit themselves immediately one way or another. But if they have the option of enhancing their understanding before they act, but instead choose, with unjustified confidence in their beliefs, to campaign for or otherwise support a war that is in fact unjust, it is difficult to conclude that they are entirely blameless. And even if they were blameless, that is compatible, as I argued with reference to unjust combatants, with their being responsible in a way that is sufficient for liability to some forms of defensive action.

In most cases, however, in which unjust civilians are liable to some form of harm in war, the degree of their liability is very low. This is true for the same reason that the moral demand for epistemic justification is weaker in their case than in the case of unjust combatants: namely, that their contribution to the unjust war is substantially less significant than that made by most unjust combatants. This diminishes their responsibility and therefore also their liability. Thus, while I believe that most unjust combatants are morally liable to intentional attack, I doubt that more than a relatively small proportion of unjust civilians are.

Yet the question of civilian liability to intentional attack or killing is not what is at issue here. The dispute between contingent pacifists and just war theorists is not so much about whether civilians are legitimate targets of attack, but about whether it is possible to pursue a just cause by means of war without killing a disproportionate number of innocent civilians as a *side effect* of military action. It might be supposed that issues of liability simply do not arise with respect to

harms that are unintended, or mere side effects. That is a natural supposition if one assumes that liability is, unlike desert, always instrumental – that is, if one assumes that a person can be liable to be harmed only if harming him will be instrumental to the achievement of some further good. But this assumption is mistaken. While it is true, at least on the understanding of liability that I favor, that a person can be liable to be harmed only if harming him is *necessary* for the achievement of some further good, the harm can be necessary either as a means of achieving the good or as an unavoidable side effect of action that is itself necessary for achieving the good.

One is liable to a certain harm when one has acted in such a way that one is not *wronged* when one is caused to suffer that harm by another person, even though one neither deserves the harm nor has consented to suffer it. (One test of whether one is wronged by being harmed is whether one has a reasonable complaint against the person responsible for the harm.) According to most people's intuitions about these matters, a person's liability to be harmed can be sensitive to the intention of the agent who harms him. Suppose, for example, that a person bears a relatively small degree of responsibility for a threat that another person faces. One option for the potential victim is to harm the minimally responsible agent as a means of averting the threat. Suppose that if the harm the potential victim would inflict would be greater than that which she would thereby prevent herself from suffering, her act would be wrong because the degree of the agent's responsibility for the threat is too low to justify intentionally causing him greater harm as a means of averting the lesser harm. It is compatible with that, however, to suppose that it would be permissible for the potential victim to take other action to protect herself that would cause the same degree of harm to the minimally responsible person as a side effect. This person might be wronged by being intentionally harmed *as a means* of averting a threat for which he bears some slight responsibility, but *not* wronged by being harmed to the same degree *as a side effect* of action otherwise necessary to avert the threat.

Although these considerations are rather abstract, their relevance to the dispute between contingent pacifists and just war theorists should be clear. The implication I draw from them is that although unjust civilians very seldom bear a sufficient degree of responsibility for their country's unjust war to be liable to intentional military attack, some adult civilians who have provided substantial active support for an unjust war may not be wronged if they are harmed or even killed as a side effect of necessary and proportionate military action taken against those who *are* liable to attack. Particularly if they are culpable for their support for

the war, they may have no reasonable complaint if they are harmed as a side effect of defensive action taken by the victims of the war they have supported.

(Until this point I have followed the standard practice among just war theorists and contingent pacifists alike in using “innocent” to refer to people who, first, are not liable to be harmed and, second, do not possess certain characteristics, on the assumption that it is the absence of those characteristics that explains the absence of liability. Thus, for traditional just war theorists, “innocent” picks out people who are unthreatening and are also not liable to attack precisely because they are unthreatening. This use of the term becomes more difficult to sustain if liability is sensitive to intention. On the latter assumption, a person may not be liable to suffer a certain harm as an intended means but may be liable to suffer the same harm as a side effect. According to the traditional way of using the term, this person is innocent in relation to the act of intended harming but not in relation to the act of unintended harming. This is awkward, since the notion of “innocence” resists being relativized to acts in this way. I merely note this terminological problem without proposing a solution.)

Thus far I have argued, against the contingent pacifist, that most unjust combatants are liable to intentional attack even if culpability is necessary for liability, and that even more are liable if nonculpable responsibility for a threat of wrongful harm is sufficient for liability. I have also argued that some adult unjust civilians are culpably responsible, if only to a slight degree, for the threats of wrongful harm their country poses, and that this may be sufficient to make them liable to certain harms they may suffer as a side effect of the military action of just combatants. I have not argued that nonculpable responsibility for their country’s unjust war could make them liable to suffer unintended harms, but that too is a possibility. If my arguments are right, most of the unjust combatants killed by just combatants, whether intentionally or unintentionally, are not innocent in the relevant sense, and among the unjust civilians that are killed as a side effect, fewer may be innocent than we have hitherto supposed. These considerations weaken the objection to war that is based on the constraint against killing innocent people.

Contingent pacifists would, however, be unlikely to abandon their view even if they were convinced that all of these claims are true. They would still be likely to believe that even war that pursues a just cause unavoidably involves the killing of too many innocent people to be justified. For it is compatible with all that I have said to suppose that most of the civilians killed by those fighting in a just war are innocent in the sense that they are not liable to be killed, either as a means or as a side effect. And given the conditions of contemporary military combat, the

scale of the killing of civilians is inevitably substantial – too substantial, according to the contingent pacifist, to be morally justifiable.

## V. THE MORAL-THEORETICAL PRESUPPOSITIONS OF CONTINGENT PACIFISM

It seems, therefore, that the deepest disagreement between contingent pacifists and just war theorists is not about the concept of innocence or about what proportion of the people killed in war are innocent in the relevant sense. What divides contingent pacifists from just war theorists are instead certain foundational issues in normative ethical theory. Indeed, the differences among the major competing views about the morality of war are traceable in large measure to disagreements about the moral significance of three basic distinctions. One of these is the distinction between the innocent and the noninnocent, about which contingent pacifists and just war theorists generally agree. It is the other two distinctions that are the sources of disagreement.

The first of these is the distinction between bringing about an effect intentionally, either as a means or as an end, and bringing it about knowingly but without intending it, either as a means or as an end. Contingent pacifists, along with a great many contemporary moral theorists, believe that the intention with which one acts has no relevance, except in rare and unusual cases, to the permissibility of one's action. I will say, following Judith Jarvis Thomson, that they reject the "relevance of intention to permissibility" and instead embrace the "irrelevance of intention to permissibility." According to this latter view, the constraint against killing innocent people is no weaker in the case of foreseen but unintended killings than it is in the case of intended killings. Hence contingent pacifists reject the claim that the killing of innocent people in war is more easily justified if it occurs as a side effect of action directed against a military target than if it is intended, as it is in terrorist violence. Thus they deny that a person's liability to be killed in war is sensitive to the intention with which the killer acts. If unjust civilians are not liable to intentional killing, they are also not liable to be killed as a side effect. Their innocence does not vary depending on whether they might be killed as a means or as a side effect. When they are innocent in the sense of not being liable to lethal attack, they are innocent *tout court*.

The other distinction about which contingent pacifists and just war theorists disagree is that between doing harm and allowing harm to occur – and more specifically, in the context of war, the distinction between killing and letting die, which is a narrower instance of the broader distinction between doing and allowing. Neither contingent pacifists nor just war theorists reject the moral significance of the distinction between killing and letting die. They both recognize a moral



asymmetry but disagree about its *strength*. Just war theorists accept that there is a significant asymmetry but also accept that it can be permissible to kill innocent people, particularly if the killings are merely foreseen but unintended, if the alternative is to allow a significantly greater number of innocent people to die, or to be killed by others. Contingent pacifists, by contrast, believe that the asymmetry is much stronger. Indeed, some believe that it is *never* permissible knowingly to kill an innocent person, even as a side effect, in order to save other innocent people, no matter how many might thereby be saved. While these people are absolutists of a sort, they are nevertheless contingent rather than absolute pacifists, as they would concede that war is in principle permissible, provided that unjust combatants are not innocent and war could be fought in a way that would allow just combatants to kill unjust combatants without killing any innocent civilians as a side effect. They might, for example, accept that war could be permissible if it were fought entirely at sea, or in outer space.

Contingent pacifists of this sort will be unimpressed by my argument that some unjust civilians are noninnocent. For on their view, if the pursuit of a just cause by means of war would predictably involve the killing of even a single innocent civilian, war would be impermissible, no matter how many innocent people it would prevent from being wrongfully killed by others. I am unsure what proportion of contingent pacifists accept that the foreseen killing of an innocent person can never be justified on the ground that it is necessary to prevent the killing of other innocent people (or perhaps even the *same* innocent person as well as others), which is, obviously, a rather extreme view. But it is not necessary to the defense of contingent pacifism to take the constraint against the foreseen killing of the innocent to be absolute. It is a sufficient basis for contingent pacifism for there to be an extremely strong constraint against the foreseen killing of an innocent person but only a much weaker reason of a different type (for example, a reason that is not correlated with a right on the part of the potential victim or beneficiary) to prevent an innocent person from being killed, or otherwise seriously harmed, by someone else.

The case for contingent pacifism, therefore, seems to depend on the following assumptions about the three relevant distinctions. (1) There are some people who are morally liable to attack in war and others – the innocent – who are not. (2) There is no morally significant difference between killing innocent people intentionally (for example, as a means to an end) and killing them knowingly but unintentionally. (3) Finally, there is a strong constraint against killing innocent people but only a much weaker reason to prevent innocent people from being killed.

It is illuminating to consider how these assumptions differ from those made by other approaches to the morality of war. Consequentialism, for example, at least as it is commonly interpreted, rejects the significance of all three distinctions. Like contingent pacifists, consequentialists reject the relevance of intention to permissibility. But they also reject the moral significance of the distinction between doing harm and allowing harm to occur, and a fortiori the significance of the distinction between killing and letting die. While there is nothing in principle that prevents consequentialists from accepting that the distinction between the innocent and the noninnocent is morally significant, few do. If innocence is understood as it is in traditional just war theory to mean “unthreatening,” it would be difficult for a consequentialist (or anyone else, in my view) to find anything other than instrumental significance in the distinction. If, however, innocence is understood to refer to the absence of moral responsibility for a wrong, it might seem plausible for consequentialists to assign greater weight to harms to the innocent than they assign to equivalent harms to the noninnocent. Yet the rationale for including this element in the theory is obscure. Perhaps the main reason that a consequentialist might be tempted to augment the weight of harms to the innocent or discount the weight of harms to the noninnocent is the expectation that this would enhance the intuitive plausibility of the implications of the theory. But that expectation is reasonable only if moral innocence is understood as it is in common sense morality to mean the absence of moral responsibility for a wrong, *when what constitutes a wrong is determined by nonconsequentialist criteria*. And that understanding of innocence seems doubtfully compatible with consequentialism. If, instead, wrongs are determined by consequentialist criteria, the theory will discount the weight of harms to all those whose failure to act in the way that would have the best consequences, or the best expected consequences, has causally contributed to some threat of harm. And this is unlikely to enhance by much the intuitive plausibility of the theory.

If all three distinctions are morally insignificant, as consequentialists typically claim, it follows that there is no moral difference in principle between killing enemy combatants as a means of winning a just war and killing an equal number of innocent civilians as a means, provided that these different means would be equally effective. That is, the rejection of the significance of all three distinctions entails a highly permissive view of the morality of terrorism. Of course, few, if any, terrorists are consequentialists. To the extent that terrorists consider issues of moral theory at all, they are more likely to justify their action by reference to a doctrine of collective liability, according to which *all* the members of the group against which their action is directed are held to be individually liable to be at-

tacked and killed. If they believe this, they can even accept the significance of all three distinctions and still find it permissible to kill civilians in a self-declared enemy population indiscriminately.

If, however, all doctrines of collective liability are false (as I believe), and if all three distinctions are morally significant, the implication for the morality of war is that some version of just war theory is correct. If common assumptions about the distinctions between intended and unintended killing and between killing and letting die are correct – that is, if the prohibition of intentionally killing the innocent is strong but not absolute and the asymmetry between killing and letting die is strong but not extreme – the form of just war theory that emerges is one that permits the intentional killing of innocent people, for terrorist purposes, only in the most extreme conditions, and permits the unintentional killing of innocent people as a side effect of military action only when it is an unavoidable consequence of preventing substantially greater harms to other innocent people.

Suppose, however, that one rejects the relevance of intention to permissibility, as contingent pacifists do. It may still be possible to avoid being committed either to contingent pacifism or to a permissive view of terrorism. This will be possible if one can identify and defend the moral significance of some other factor that divides the cases in much the same way that the view that intention is relevant to permissibility does. Frances Kamm, for example, has argued that the causal relations between acts and consequences, and between immediate consequences and secondary consequences, are morally significant in a way that explains common intuitions that have previously thought to be best explained and defended by reference to the significance of intention.<sup>3</sup> But if Kamm and others who may have rival proposals are unsuccessful in finding a substitute for the relevance of intention to permissibility that can do the same work in supporting common moral intuitions, it seems that the only bulwark against a permissive view of the morality of terrorism is an extreme moral asymmetry between killing and letting die.

Suppose that one accepts only a relatively weak asymmetry between killing and letting die. One might believe, for example, that while it would not be permissible to kill 10 innocent people as a side effect of preventing 12 innocent people from being killed, it would be permissible to kill 10 as a side effect of preventing 15 from being killed. Then, if there is no general moral difference between intended killing and foreseen but unintended killing, one is committed to accepting that it would be permissible to kill 10 innocent people intentionally, as a means of

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<sup>3</sup> See Kamm [2006a], [2006b].

saving 15. A similar though somewhat less disturbing conclusion follows if one embraces a moderate asymmetry. One might, for example, be committed to accepting that it would be permissible to kill 10 innocent people as a means of preventing 50 (though perhaps no fewer) innocent people from being killed. Anyone who is seriously opposed to terrorism on moral grounds cannot accept these implications. For a serious, principled objection to terrorism cannot be based on such contingent considerations as that terrorists often pursue unjust aims, or that they are usually mistaken about the good effects their action will have, or that terrorism is more often used *against us* rather than *by us*. It must instead be based on the idea that there is an especially strong moral constraint against killing or otherwise seriously harming innocent people.

If intention is relevant to permissibility, this constraint can be stronger against intended killing than against unintended killing, thereby ruling out terrorism in all but the most extreme cases but permitting the unintended killing of innocent people as a side effect of military action in a broader range of cases. It is this conception of the constraint against killing innocent people that has informed just war theory for many centuries. Without the relevance of intention to permissibility, however, the asymmetry between killing and letting die has to be greatly strengthened to do the work on its own of ruling out terrorism in all but extreme cases. It must be strong enough, for example, to forbid the killing of 10 innocent people as a means of preventing the killing of 100, or perhaps even 500, other innocent people. Only then can it sustain a serious, general objection to terrorism. But we have now not only ruled out terrorism in all but extreme cases; we have also arrived at contingent pacifism. For if intention is irrelevant to permissibility, it must also be impermissible to kill 10 innocent people as a *side effect* of military action that would prevent 100, or 500, other innocent people from being killed. And the contingent pacifist claims, with some plausibility, that wars cannot now be fought in a way that would satisfy a constraint this stringent against killing innocent people.

Those who reject the relevance of intention to permissibility but have no acceptable replacement for it that supports the same range of moral beliefs must, it seems, choose among three positions: contingent pacifism, a permissive view of terrorism, and some intermediate position that would permit terrorism in a significant range of cases but also, in a different range of cases, prohibit the saving of innocent people at the cost of killing a significantly smaller number of innocent people as a side effect. Contingent pacifists, of course, welcome this restriction of the alternatives to their doctrine to a range of profoundly unappealing views, as it may herd many of those who reject the relevance of intention to permissibility into

their camp. But this does not always happen. Indeed, the two philosophers who have arguably been most influential in persuading people to reject the relevance of intention to permissibility – Jonathan Bennett and Judith Jarvis Thomson – have explicitly embraced a permissive stance on terrorism rather than opting for contingent pacifism. Bennett, in his most recent and presumably definitive articulation of his case against the relevance of intention to permissibility, candidly summarizes that discussion by observing that “I have been arguing that what the terror bomber does may be morally all right.”<sup>4</sup> And Thomson, in the paper in which she first advanced her highly influential arguments against the relevance of intention to permissibility, says that to the extent that “large-scale terror bombing of enemy cities” is wrong, that is because

it mostly is, or even in fact always is, unnecessary for the accomplishing of any morally acceptable purpose – which leaves it open that it is, or anyway might be, permissible when it is necessary for the accomplishment of a morally acceptable wartime purpose.<sup>5</sup>

(It is noteworthy that in a recent article, published 17 years after the one from which I have just quoted, Thomson has argued, in effect, that the asymmetry between killing and letting die is even stronger than she previously supposed.<sup>6</sup> Although she does not say so, the position she now defends implicitly repudiates her earlier view that large-scale terror bombing could be permissible if it were an effective means of achieving morally acceptable ends. It also, though she does not say this either, commits her to contingent pacifism, or to a view quite close to it, if contingent pacifists are right in their claim that large-scale killing of the innocent is now unavoidable in war.)

## VI. AGAINST THE THEORETICAL FOUNDATIONS OF CONTINGENT PACIFISM

The positions that contingent pacifists take on both the significance of intention and the strength of the asymmetry between killing and letting die are, I think, mistaken. I have argued in a recent article that the strongest and most influential arguments that have been advanced against the relevance of intention to permissibility are unconvincing.<sup>7</sup> If my arguments are right, we have no good reason to

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<sup>4</sup> Bennett [1995] p. 218.

<sup>5</sup> Thomson [1991] p. 297.

<sup>6</sup> Thomson [2008].

<sup>7</sup> McMahan [2009a].

abandon the view that intention is relevant to permissibility. And because that view seems to offer the best defense of a wide range of beliefs about morality and law that have remained remarkably uniform both over time and across cultures, we have reason to retain it unless compelled by good argument to do otherwise. But rather than rehearse the case for the relevance of intention to permissibility from my earlier article, I will focus here on the reasons for doubting that the asymmetry between killing and letting die is as strong as the contingent pacifist assumes. The central claims of this section are that an extreme asymmetry between killing and letting die takes insufficient account of the importance of preventing innocent people from being killed, and that a constraint against killing as strong as that presupposed by contingent pacifism has implausible implications for acts that are not certain to kill but merely risk killing.

Most contingent pacifists are, as I noted, “war-specific” pacifists – that is, while they believe that killing in war is contingently ruled out, they accept that killing in other contexts may be permissible. Most, for example, accept the permissibility of killing in individual self- or other-defense. Yet the problems characteristic of war that they claim make it impermissible can also arise in individual defense. Consider two cases of third-party defense. In the first case, you witness a potentially lethal attack that you can thwart by killing the attacker. You are entirely certain that the victim of this attack is innocent and are confident, though not certain, that the attacker is culpable. There is, you recognize, a small probability that the attacker is epistemically justified in believing that his act is morally justified. If his belief, though false, is justified, he is fully exculpated. If, as most contingent pacifists believe, culpability is necessary for liability, there is thus a small probability that the attacker is innocent in the relevant sense. What ought you to do? If the asymmetry between killing and letting die is as strong as contingent pacifists assume, it seems that you ought not to take a small risk of killing an innocent person, even for the sake of a virtual certainty of preventing an innocent person from being killed. Yet it seems clear that you ought to save the innocent victim by killing the attacker.

The weakness of this example is that it assumes that the absence of culpability is sufficient for innocence, and this assumption, while usually accepted by contingent pacifists, is not necessary for contingent pacifism. Contingent pacifism can be defended on the assumption that all those who pose a threat of wrongful harm are relevantly noninnocent, whether or not they are culpable or even morally responsible for that threat. If innocence consists in not posing such a threat, most civilians are innocent. Since war unavoidably involves killing civilians, if only as

a side effect, it is ruled out by contingent pacifism's strong constraint against killing the innocent.

Consider, then, an example of third-party defense that involves a risk of killing a person who is innocent according to a conception of innocence that contingent pacifists are unlikely to repudiate. Suppose, again, that you witness a potentially lethal attack that you can thwart by killing the attacker. You are, with justification, highly confident that the victim is innocent and the attacker is culpable. The objective probability that this is the case is 99% or higher. But you recognize that there is a small probability that the person you now see attacking another is in fact the innocent victim of a prior wrongful attack who is now engaged in justified self-defense. What ought you to do? Again, if the asymmetry between killing and letting die is as strong as it has to be to support contingent pacifism, it seems that you ought not to kill the attacker, since that would involve a small probability of killing a person who is innocent in the sense recognized by contingent pacifism. The fact that there is a very high probability that you will thereby fail to prevent the wrongful killing of an innocent person is insufficient to justify your taking that very tiny risk. Yet in this case as well, it seems that it is permissible for you to defend the victim from the attacker, given the overwhelming probability that the attack is unjustified and the victim innocent. It seems, indeed, that there is nearly always some probability, however slight, that the target of the third-party defensive action is, contrary to appearance, an innocent person. If contingent pacifism were right about the strength of the constraint against killing an innocent person, it seems that this constraint might rule out not only war but also third-party defense of others as a permissible option, in practice if not in principle.

The problem in war that is the analogue of the second of these two cases of third-party defense is one that challenges just war theory and strengthens the case for contingent pacifism. This problem is that no matter how compelling the reasons are for believing that one's war is just, there is always some probability, however slight, that one's war in fact lacks a just cause, so that everyone on the other side, combatants and civilians alike, is innocent.<sup>8</sup> Because of this, mere participation in war involves a risk that the people one kills are innocent, even when one is epistemically justified in believing that they are liable to lethal attack. But this fact supports contingent pacifism only if the asymmetry between killing and letting die is extremely strong. For there are cases in which this risk is quite low in comparison with the risk involved in not fighting, which is that one will allow innocent people to be killed when one could have saved them. The comparison with

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<sup>8</sup> See May [2010].

the preceding case of individual third-party defense suggests that the importance of preventing innocent people from being wrongly killed can sometimes outweigh the risk that those one believes to be wrongful aggressors are in fact innocent people.

The other focus of the contingent pacifist's concern about war is, as we have seen, the killing of innocent civilians as a side effect of military action. In general, however, this too is a concern about risk. Attacks in war are now often conducted from a great distance and their side effects are difficult to foresee or to predict. Combatants typically fire from a distance into areas in which they believe both that there is a legitimate military target and that there are, or may be, some innocent civilians. When they fire, they very often do not know that they are killing civilians. Rather, what they usually know is that they are *risking* killing civilians. For an entire military unit, taken as a whole, it may be statistically certain that their combined action in a particular operation will kill civilians as a side effect. But usually what each combatant does in each instance of attacking is to expose civilians to a risk of being killed. And often the risk that such an act imposes on each individual civilian is quite low, though of course if enough civilians are exposed to a low risk, the risk that *some* will be killed becomes quite high.

One might suppose that these matters can be taken into account in a straightforward and obvious way by the contingent pacifist, who can claim that the proper procedure in each case is to estimate the *expected killings* (that is, the sum of possible killings, each multiplied by its probability) of innocent civilians that would result from an act of war and weigh them against the relevant expected good effects, particularly the expected instances of preventing innocent people from being killed, on the assumption that all killings of innocent people count the same. The weighing would be based on the assumption that there is the same strong asymmetry between expected killing and expected letting die that there is between killing and letting die. Given this assumption, the contingent pacifist can claim that the expected good effects of an act of war are very seldom sufficient to outweigh the expected killings of innocent people.

It is, however, problematic to suppose that there could be so strong a constraint against risking killing innocent people. Some of our ordinary activities, such as driving a car, involve a small risk of killing an innocent person, yet no contingent pacifist, to my knowledge, argues that it is impermissible to drive. One might be tempted to dismiss this objection, either on the ground that those who are exposed to the risk of being killed – other drivers – assume that risk by engaging in driving themselves, or by pointing out that the risk one imposes on the innocent by fighting in a war is vastly greater than the risk one imposes by driving



a car. But many of the people one risks killing by driving do not obviously assume that risk – for example, pedestrians or small children who might wander into the road. And while it is of course true that the risk of killing an innocent person that one takes by driving is significantly lower than the risk one takes by fighting in a war, it is not just the degree of risk that is relevant but also the moral importance of what one might achieve by engaging in each activity. The achievement of a just cause for war normally involves the prevention of great harms to a great many people, including the prevention of wrongful killings of the innocent. But driving seldom achieves any morally significant goal at all. Most driving is done for comparatively minor reasons of self-interest. If the goal of preventing innocent people from being killed cannot justify risking the killing innocent people in war, how can a desire to go to the movies justify risking the killing of innocent people, even when the latter risk is very substantially lower? Given the differences between the aims that each activity pursues, it may well be that the contingent pacifist's argument counts more strongly against most instances of driving than it does against participation in a just war.

This shows, I think, that the constraint against killing the innocent cannot really be as strong as it must be if it is to support contingent pacifism. There is, however, one further argument that is worth sketching, even though it may be unnecessary and even though I am less confident about it than I am about the arguments I have already presented. I argued earlier that some adult civilians may be liable to suffer certain harms, particularly as a side effect, if they have acted in ways that make them responsible, if only to a relatively slight degree, for their country's unjust war. This may seem uncontroversial if the harms themselves are not too severe. We might, for example, judge that many adult German civilians in World War II were liable to suffer certain economic hardships caused by the British blockade. Let us assume, then, that some unjust civilians can bear sufficient responsibility for their country's war to make them liable to suffer certain nonlethal harms.

The next step in the argument is to note that all of us accept that can be rational to choose to accept a small risk of death in order to avoid a certainty of some lesser, nonlethal harm. For example, a person with chronic mild pain might rationally choose to have surgery to relieve the pain even though she knows that it involves a very small risk of death from anesthesia.

Next suppose that it would be rational for unjust civilians to prefer to be exposed to some small risk of death rather than to suffer some nonlethal harm to which they are liable. If just combatants would not wrong them by causing them to suffer that nonlethal harm, it is arguable that they would also not wrong them

by exposing them to that small risk of being killed. Indeed, if each civilian would rationally prefer a certain risk of death to a nonlethal harm to which he is liable, and if the act that would impose the risk could be as effective in contributing to the achievement of the just cause as the act that would inflict the harm, one might conclude that these civilians are liable to the imposition of that risk. This suggests that many of the instances in which just combatants expose unjust civilians to a risk of being killed as a side effect of their military action can actually be justified by considerations of liability.

But it also raises a difficult issue. From the fact that a certain unjust civilian is liable to be exposed to a certain small risk of being killed, it does not follow that he is liable to be killed. If he is among those for whom the risk of being killed eventuates in his actually being killed, he is wronged by being harmed to a degree that exceeds his liability. If this is true, most of those unjust civilians who are actually killed, even those who were liable to be exposed to a risk of being killed, turn out to be innocent in the relevant sense after all.

I have included this last argument not because I want to rest my case against contingent pacifism on it but because it raises interesting and important issues that I hope will receive some discussion. But I believe that I have said enough earlier to expose contingent pacifism's foundations in moral theory and to show that its foundational assumptions are ultimately untenable.

## **Bibliography**

- Bennett [1995] – Jonathan Bennett, *The Act Itself*, Oxford University Press, Oxford 1995.
- Kamm [2006a] – Frances M. Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm*, Oxford University Press, New York 2006.
- Kamm [2006b] – Frances M. Kamm, *Terrorism and Several Moral Distinctions*, “Legal Theory” (12) 2006: 19-69.
- May [2010] – Larry May, *Contingent Pacifism and the Moral Risks of Participation in War* (unpublished manuscript), 2010.
- McMahan [2009a] – Jeff McMahan, *Intention, Permissibility, Terrorism, and War*, “Philosophical Perspectives” (23) 2009: 345-372.
- McMahan [2009b] – Jeff McMahan, *Killing in War*, Clarendon Press, Oxford 2009.
- O'Brien [1990] – Tim O'Brien, *The Things They Carried*, Houghton Mifflin, Boston 1990.
- Thomson [1991] – Judith Jarvis Thomson, *Self-Defense*, “Philosophy and Public Affairs” (20) 1991: 283-310.
- Thomson [2008] – Judith Jarvis Thomson, *Turning the Trolley*, “Philosophy and Public Affairs” (36) 2008: 359-374.