

## Two Wrongs Don't Make a Right: A Critique of Virginia Held's Deontological Justification of Terrorism

### Introduction

*Desperate times call for desperate measures.* Are some desperate measures so absolutely evil that they may never be used even in the most desperate of times? Investigating the moral bounds of this maxim is a key aim of Virginia Held's consideration of terrorism.<sup>1</sup> Of particular interest to Held are cases of ongoing, avoidable basic rights violations. When all other measures have been exhausted to no avail, can it be legitimate to use terrorism to try to bring about the effective protection of rights? Held ventures beyond the standard response found in both public and philosophical discourse, which regards terrorism as an absolute evil that is never permissible.<sup>2</sup> In some circumstances, she argues, terrorism is warranted.

Consequentialism offers the most straightforward moral framework according to which terrorist acts may be permitted (or even required).<sup>3</sup> Consequentialists assess terrorism solely on the basis of its consequences. Given a reasonable expectation that a particular act of terrorism will produce more good than harm, its use is permissible for the consequentialist.<sup>4</sup> Eschewing a consequentialist framework, Held approaches terrorism from a deontological perspective, specifically a rights-based

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<sup>1</sup>I focus on the argument she puts forward in "Terrorism, Rights, and Political Goals," in Igor Primoratz (ed.), *Terrorism: The Philosophical Issues* (New York: Palgrave Macmillan, 2004), pp. 65-79. An earlier version appears in R.G. Frey and Christopher W. Morris (eds.), *Violence, Terrorism, and Justice* (Cambridge: Cambridge University Press, 1991), pp. 59-85. A revised version appears in Virginia Held, *How Terrorism Is Wrong* (Oxford: Oxford University Press, 2008), pp. 71-90. Her fundamental argument has not changed.

<sup>2</sup>C.A.J. Coady offers a representative formulation of this view in "Terrorism, Just War and Supreme Emergency," in C.A.J. Coady and Michael O'Keefe (eds.), *Terrorism and Justice: Moral Arguments in a Threatened World* (Melbourne: Melbourne University Press, 2002), pp. 8-21.

<sup>3</sup>Following Held, I focus on whether terrorist acts may be *permitted* rather than *required*.

<sup>4</sup>Consequentialist justifications include Kai Nielsen, "Violence and Terrorism: Its Uses and Abuses," in Burton M. Leiser (ed.), *Values in Conflict* (New York: Macmillan, 1981), pp. 435-49; and R.M. Hare, "On Terrorism," *The Journal of Value Inquiry* 13, no. 4 (1979): 241-49.

one. Assessments of terrorism (tending towards the vilification of the act) usually focus on its victims. Without detracting from the victims' perspective, Held guides our attention to the other, often neglected, side of the equation: the people whose political aims terrorists are trying to advance. In many cases, these individuals have long endured oppressive circumstances. They lack social and political capital, and so for them, terrorism is a last-ditch effort to secure justice. Setting aside the empirical question of how often terrorism fits this model, we can at least grant its theoretical possibility for the sake of argument.

In cases in which terrorism is the only available means for oppressed persons to overcome injustice, can its use be justified? Held believes so, but not for consequentialist reasons. Rather, considerations of fairness lead her to the conclusion that oppressed groups can legitimately use terrorism to fight for their rights. In defending the restricted use of terrorism *on the grounds of distributive justice*, this innovative thesis has attracted significant attention.<sup>5</sup> Following Held, I use “fairness” and “distributive justice” interchangeably.

While I sympathize with Held's focus on the perspective of the oppressed, I find the details of her account problematic. My primary aim is to assess her deontological defense of terrorist acts. I consider how fundamental tenets of deontology—fairness, desert, and responsibility—figure into her argument. Held pays explicit attention only to the role of fairness. As I demonstrate below, however, desert and responsibility play a significant part in grounding the intuitions she appeals to in justifying terrorism. I do not take a stand on whether a differently construed deontological defense of terrorism might succeed, but I conclude that Held's version thereof proves untenable.

In the first section, I summarize her argument, which might be interpreted in either of two ways. On a “responsibility-insensitive” reading, the permissibility of using terrorism is not grounded in the responsibility that terrorist victims have for perpetrating the social injustices terrorists seek to overcome. A “responsibility-sensitive” reading of Held's argument, in contrast, justifies terrorism in part on the basis of establishing such responsibility. The second and third sections are devoted to examining the merits of each interpretation. After raising difficulties with each, in the fourth section I discuss an alternatively construed responsibility-sensitive formulation that could support her conclusion. I show that it too fails.

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<sup>5</sup>Critiques of Held's view include Richard Miller, “Terrorism and Legitimacy: A Response to Virginia Held,” *Journal of Social Philosophy* 36 (2005): 194-201; Igor Primoratz, “The Morality of Terrorism,” *Journal of Applied Philosophy* 14 (1997): 221-33; and Uwe Steinhoff, “How Can Terrorism Be Justified?” in Primoratz (ed.), *Terrorism: The Philosophical Issues*, pp. 97-109.

### 1. Two Readings of Held's Argument

To assess Held's argument we need to know what constitutes an act of terrorism.<sup>6</sup> On Held's preferred definition, "terrorism" refers to political violence that "usually spreads fear beyond those attacked, as others recognize themselves as potential targets."<sup>7</sup> Thus terrorism has two distinct targets. The "primary victims" are those directly subjected to physical violence, while the larger population among whom fear is created are the terrorist's "secondary victims."<sup>8</sup> I follow Held in focusing on violence inflicted upon persons rather than on damage to their property. Creating terror through violence is instrumentally valuable insofar as secondary targets or their representatives are expected to acquiesce to the terrorist's demands. This two-part structure and the use of terror to further political aims are generally taken to distinguish terrorism from other forms of violence.

Given this definition, Held explores the permissibility of terrorist acts as compared to other acts of violence. Held is not an apologist for terrorism in general. She appreciates that terrorism always involves the violation of rights. However, when a subgroup of society fails to have its basic rights protected, we must take seriously the need to look beyond the conventional blanket rejection of terrorism by assessing the relative unjustifiability of different morally bad alternatives. In this spirit, she suggests that terrorism can sometimes be the least of all evils.

Held offers the following hypothetical scenario to fix the relevant factors in her assessment of terrorism. In the status quo, "S1, the members of group A have a human right to  $x$  and they enjoy effective respect for this right in a given legal system, while the members of group B also have a human right to  $x$ , but suffer a lack of effective respect for this right." We are to suppose that "the failure to recognize the human rights of the members of group B as legal rights in legal system L is advantageous to members of group A ... and disadvantageous to the members of group B, in so far as further benefits and burdens accrue to them in exercising or in failing to have the rights in question ... In situation S2, in contrast, both the members of A and the members of B have a human right to  $x$  and they enjoy effective respect for that right."<sup>9</sup>

In the absence of other options, assuming "that terrorism will be ef-

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<sup>6</sup>In this paper, I use the definition favored by Held and do not take a stance on whether this is the best definition available. On this issue, see Held, *How Terrorism Is Wrong*, pp. 16-21 and 71-76; C.A.J. Coady, "Defining Terrorism," and Igor Primoratz, "What Is Terrorism?" both in Primoratz (ed.), *Terrorism: The Philosophical Issues*, pp. 3-14 and 15-27.

<sup>7</sup>Held, *How Terrorism Is Wrong*, p. 21.

<sup>8</sup>Samuel Scheffler makes this distinction in "Is Terrorism Morally Distinctive?" *The Journal of Political Philosophy* 14 (2006): 1-17, p. 9.

<sup>9</sup>Held, "Terrorism, Rights, and Political Goals," p. 72.

fective in moving a society from S1 to S2,” Held wonders, “can engaging in terrorism be better than refraining from it?”<sup>10</sup> Of course, terrorism will violate the basic rights of its victims. Yet, a choice must be made between two morally bad outcomes. Without using terrorism, the rights violations in the status quo will continue, while the use of terrorism will generate new rights violations but eventually lead to a reduction of others. Held argues that if terrorism can ever be justified, it is in cases like this in which the protection of rights for one group depends upon rights violations being inflicted on others.

Held’s argument is not a consequentialist call for maximizing rights protection. Beyond the expectation that terrorism will eventually lead to a just regime that respects the rights of all members of society, Held additionally cares about the moral character of the process by which that end is achieved. She accords value to the fact that terrorist attacks targeted at the privileged group, in the case at hand, would contribute to greater justice in the distribution of rights violations between the two groups. That is, she finds it “better to equalize rights violations in a transition to bring an end to rights violations than ... to subject a given group that has already suffered extensive rights violations to continued such violations.” This is because “[i]f we must have rights violations, a more equitable distribution of such violations is better than a less equitable distribution.”<sup>11</sup> That terrorism promotes distributive justice is necessary for its justification. Putting the deontological and consequentialist components of the argument together, Held regards an act of terrorism as permissible if and only if it meets the following three conditions: (a) it aims for a fairer distribution of rights violations, (b) it is a last-resort measure, and (c) it is likely to bring about greater rights enjoyment for all.<sup>12</sup>

To be clear about the deontological element of Held’s argument, it is useful to tease apart the two distinct ways in which the value of fairness factors into her account. First, a justified terrorist act must advance the goal of eliminating the widespread rights violations suffered by a disadvantaged group in society. Bringing about a fairer social order under which all individuals, independently of their social group membership, enjoy effective protection of their basic rights is the consequentialist element of the justification. Second, by harming members of the current-

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<sup>10</sup>Ibid., p. 74.

<sup>11</sup>Ibid., pp. 74-75.

<sup>12</sup>Does the “last resort” caveat render Held’s view virtually indistinguishable from one that forbids the use of terrorism? In the real world, one might press, some other course of action always exists. Nicholas Fotion rejects the justifiability of terrorism on this basis in “The Burdens of Terrorism,” in Primoratz (ed.), *Terrorism: The Philosophical Issues*, pp. 44-54. In any case, whatever worries plague this caveat are not unique to this debate; justifications of the permissibility of humanitarian intervention and acts of war standardly uphold it.

ly privileged class, a justified act of terrorism achieves greater equality in the distribution of rights violations between Groups A and B. Fairness, then, enters into Held's reasoning both in terms of the consequentialist goal of an order under which different social groups enjoy similar rights protection and in transition to that goal by aiming for greater equality in rights violations. Held's novel contribution to this debate is the deontological element of her argument. As such, the remainder of the paper focuses on this element.

The deontological element of the argument lends itself to two interpretations, stemming from the following question: Does the responsibility of privileged individuals for their society's discriminatory legal system factor into the Heldian justification of terrorism? On the first interpretation, we can suppose that privileged persons do not hold responsibility for the system. It might even be the case that they vehemently oppose the discrimination and exert some effort to end it. If this were so, the reasons for permitting terrorism against the privileged group would not stem from their culpability for the rights-violating institutional order. Rather, on this responsibility-insensitive view, the permissibility of terrorist acts derives its deontological force fully from the greater distributive justice in the pattern of rights violations along the way to the end goal. If fairness, and not responsibility for oppression, were Held's prime motivator for allowing terrorism, then attacks upon small children, for whom an inclination towards protection would otherwise obtain, could be permitted. This is because the exclusion of children as legitimate terrorist targets would belie fairness: if the tots of Group B regularly endure rights violations, then distributive justice surely would endorse the infliction of similar harms upon the youngsters of Group A, all else being equal. Held's support for the responsibility-insensitive interpretation of her argument is perhaps, then, most strongly reflected in her endorsement of the legitimacy of terrorist attacks upon children. She writes:

although one may certainly maintain that any child is innocent, it is still not clear why the children of one group should be granted an absolute right of exemption from the risk of violence when no such right is granted to the children of an opposing group, if the violence is justified on other grounds.<sup>13</sup>

On an alternative, responsibility-sensitive, reading of Held's argument, responsibility for the unjust regime *is* relevant. Terrorist acts targeted at privileged individuals are in part justified by their responsibility for the status quo. Held does not explicitly regard responsibility for oppression as crucial to her argument. Nonetheless, responsibility seems to surreptitiously factor into her defense to bolster its plausibility. In reflect-

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<sup>13</sup>Held, *How Terrorism Is Wrong*, pp. 78-79.

ing on apartheid, Held states that it would have been worse to “continue these violations [of blacks’ basic rights] than to permit some comparable violations of the rights of whites *participating in this denial*.”<sup>14</sup> Moreover, she says, “[i]f punishment is considered, it would seem more appropriate for those *who have benefited from the rights violations* of the members of a given group to suffer,” although, she adds, “punishment need not be a factor in our assessment.”<sup>15</sup> Notwithstanding her denial of their necessity to the account, these references to privileged individuals sustaining or benefiting from an oppressive system suggest that responsibility does play some role in determining who counts as a legitimate terrorist target.

## 2. The Responsibility-Insensitive Reading

Setting aside responsibility, let us consider why fairness is valuable. Fairness may be regarded as a “personal” or an “impersonal” value. In the former respect, bringing about greater fairness is judged as good *for someone*, which is to say that fairness has a beneficiary. Compared to a scenario in which Adam and Beth respectively get a third and two thirds of a cake, we can say that Adam would personally benefit from a fairer division of the cake in which each party gets one half. Understood in its impersonal capacity, fairness is seen as valuable even when achieving greater fairness is not good *for anyone*. Gains in impersonal fairness occur in “leveling down” cases, in which a fairer distribution of goods can be achieved by simply taking away from the better off.<sup>16</sup> In the original uneven division of cake between Adam and Beth, a fairer distribution could be achieved by taking away half of Beth’s share and disposing of it. If this were to occur, no one would personally benefit from the increase in fairness and thus its value (if it has any) would be entirely impersonal.

On Held’s account, fairness must have impersonal value. Acts of terrorism achieve fairness in transition to the goal since the subjection of the privileged class to violent terrorist action brings their tally of rights violations closer in number to that of the oppressed class. Fairness is not achieved by reducing the burdens suffered by the oppressed, but by creating *new* harms through terrorist acts.<sup>17</sup> This is a clear case, then, of leveling down. Not only are these harms bad for the victims of terrorism,

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<sup>14</sup>Held, “Terrorism, Rights, and Political Goals,” p. 70 (emphasis added).

<sup>15</sup>Ibid., p. 75 (emphasis added).

<sup>16</sup>On the issue of leveling down, see Larry Temkin, “Equality, Priority, and the Leveling Down Objection,” in Matthew Clayton and Andrew Williams (eds.), *The Ideal of Equality* (Basingstoke: Palgrave, 2002), pp. 126-61; and Derek Parfit, “Equality or Priority?” in *ibid.*, pp. 81-125.

<sup>17</sup>See Steinhoff, “How Can Terrorism Be Justified?” pp. 101-3.

they are also not good for any specific members of the oppressed population, which is subject to the same number of rights violations at present. Pointing to the future institutional order that will respect the rights of all would be to conflate the fairness of the consequences of terrorism with the fairness achieved in transition to those consequences.

Can fairness, regarded as an impersonal value, serve to justify terrorism? To test our intuitions, we can consider a similar case in which unequal burdens track group membership. Take a society in which affluent children enjoy high-quality public education while resource deficits compromise the quality of education received by children in poorer areas. The desired remedy to this inequality would be a redistribution of funding from high-income to low-income schools. A different way to promote fairness, however, would be via cuts to the total education budget, resulting in all children receiving the same low-quality education currently provided to the poor. This would be an unappealing solution. Even if the impersonal value of fairness counts for something, it would not suffice to outweigh the personally endured new harms that its promotion would require. In the case of terrorism, the same logic applies: the death of innocents is too serious a cost to be paid in the interest of fairness that benefits no one.

Held might respond as follows: "I agree that the new harms produced by terrorism outweigh the impersonal value of fairness, but nonetheless that value counts *for something*. Coupled with the consequentialist goal of a just order, impersonal fairness plays some part in grounding the justification for terrorist acts."

Against this rebuttal, it is unclear that the use of terrorism against members of a privileged group promotes impersonal fairness *at all*. To identify a gain in impersonal fairness, we must have a metric that allows us to rank different distributions in terms of their fairness. Let us turn to an example to demonstrate the importance of using a metric that measures fairness appropriately. Take a society plagued by gender discrimination in which women have significantly fewer opportunities for economic advancement than men have. To address this inequality, a government policy is carried out that leaves untouched gender discrimination in the workforce but results in a five percent increase in the male population's subjection to brutal physical violence. The government points out that its policy has promoted fairness since men and women now enjoy roughly equal welfare. But leaving untouched one injustice and creating another one does not promote fairness. This example suggests that fairness requires some sort of parity in the outcomes endured by members of different groups.

Seemingly cognizant of this difficulty, Held suggests that terrorism is justifiable only when the harms inflicted on victims of terrorism are simi-

lar in severity to those suffered by members of an oppressed group.<sup>18</sup> Yet, focusing only on the severity of harms suffered by each group still misses an important difference between the rights violations suffered by the oppressed (say, in facing regular threats to bodily integrity) and the rights violations suffered by the privileged (in being the victims of terrorist attacks). The injustice of a society that fails to protect the basic rights of some of its members, as occurs in the first instance, is distinctly institutional in nature. By this I mean that such a society expresses disrespect towards members of the disadvantaged class by supporting rules that contribute to their disadvantage or by culpably failing to offer them the same level of rights protection enjoyed by the advantaged class. That is, the differential rights protection experienced by each group has an institutional explanation.

To explain further the meaning and relevance of the institutional character of an injustice, consider the following illustration.<sup>19</sup> Suppose that rich white neighborhoods have low crime rates while poor black neighborhoods have high crime rates, and this disparity is due to greater police resources being devoted to the former. Suppose further that in poor black neighborhoods, individuals associated with the local church—the priest and nuns—face a much lower risk of criminal attack than others. There is a morally relevant distinction to be made in our assessment of the first inequality, between the races, versus that of the second inequality, within a poor, racially homogeneous area. The government, through its actions or omissions, has the capacity to reduce the inequality between whites and blacks. By choosing not to do so, it expresses disrespect for the latter. In comparison, the second inequality does not reflect an institutional injustice as long as we assume the government's practical inability to reduce the crime rate to zero. This inequality cannot be eliminated by the government because the immunity to criminal acts by members of the clergy occurs independently of what the government does or does not do. In this sense, a distinctly institutional breed of unfairness occurs with respect to the first inequality but not the second.

Equalizing rights violations through terrorism rather than by reshaping an institutional order fails to promote institutional fairness. This is because institutional fairness cannot be promoted directly by individuals' actions, but rather requires institutional modifications. Analogously, in the case of unequal education resources, equality in outcomes could be promoted by a wealthy private citizen donating large sums of money to poorer schools. Yet, in spite of the welcome result of greater equality, a serious

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<sup>18</sup>Held, "Terrorism, Rights, and Political Goals," p. 75.

<sup>19</sup>This example is from Steinhoff, "How Can Terrorism Be Justified?" pp. 102-3, although I use it to illustrate a different point from his. He in turn models it on an example of Held's in "Terrorism, Rights, and Political Goals," pp. 75-76.

complaint about injustice would remain: the government would have failed to alter its discriminatory treatment of citizens. This is the same complaint about the government policy to address gender inequality. Achieving greater equality in outcome by whatever means possible is not equivalent to rectifying an institutionally caused inequality.

If Held intends to preserve an institutional understanding of distributive justice, she must recognize the institutional order as the proper addressee for the perpetuation of unjust inequality. She ought not to count equality in burdens achieved by circumventing the institutional order as a gain for distributive justice. That she cares about institutional unfairness is evinced by her concern for “effective respect for rights,” which she takes to be achieved when “an existing legal system recognizes the rights in question and effectively upholds respect for them.”<sup>20</sup> Although some rights violations will inevitably occur under any actual legal system, the mark of effective respect for rights is reflected by a high probability of protection. She further notes that her “argument need not be limited to oppressed groups within a given legal system,” and cites as a relevant exception the Israeli-inflicted rights violations of Palestinians, a complaint concerning the official treatment of those subject to the rules of an institutional order.<sup>21</sup> Institutional fairness is not promoted when individuals take the law into their own hands, as terrorists do, to even out rights violations. Terrorist attacks against innocent individuals bypass the legitimate addressee of the complaint concerning inequality in rights violations, which is a discriminatory institutional order.

It might be claimed that Held's justification of terrorist acts does aim for fairness of the institutional variety via the consequentialist element of her argument. Yet, for Held, distributive justice is increased *by the means of terrorism* rather than merely *as a consequence of it*. She would not, for instance, endorse slaughtering a few dozen members of the oppressed group in order to bring about a just institutional order. Despite achieving institutional fairness as a consequence, this would be an unacceptable course of action since permissible terrorism must also increase fairness in transition to the desired consequentialist goal. On a consequentialism of rights, terrorism would be justified whenever it achieved optimal rights protection, and further moral value would not be accorded to the harming of privileged innocents to promote fairness along the way. The institutional sense of fairness, which appears to be favored by Held, is not promoted at all by terrorist acts. Therefore, the consequentialist aim of ending discriminatory oppression overall, rather than the promotion of fairness in transition to that goal, bears the justificatory burden on the responsibility-

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<sup>20</sup>Held, “Terrorism, Rights, and Political Goals,” p. 71.

<sup>21</sup>*Ibid.*, p. 76.

insensitive reading of Held's argument.

I have shown that fairness plays a confused role in Held's justification of acts of terrorism. First, as terrorism brings about new harms rather than distributing preexisting ones more equitably, the value of fairness is strictly impersonal. Second, terrorism increases fairness only with respect to the incidences of rights violations suffered by different groups. However, the unfairness that Held appears to care about is the systematic, institutional failure of a legal order to guarantee equal rights protection to all members of society. Using terrorism to even out rights violations fails to reduce this injustice except as an eventual consequence. As such, on this justification of terrorism, the deontological element collapses into the consequentialist element of the argument.

### 3. The Responsibility-Sensitive Reading

I now wish to consider the responsibility-sensitive version of Held's argument. There are at least two different ways in which the notion of responsibility might be used to justify terrorism. The first, retributivist justification regards violent terrorist acts as deserved punishment to be inflicted upon members of an oppressor group.<sup>22</sup> A second argument mirrors the standard justification for self-defense against an aggressor, albeit as applied to a collective rather than to individuals. On this second view, oppressed individuals would be justified in carrying out acts of terrorism, if doing so were the only means they have to stop harms they suffer that are actively perpetuated by their oppressors. While punishment is justified in virtue of oppressors' responsibility for wrongful past actions, self-defense attributes responsibility to aggressors for an ongoing threat that they pose. In what follows, I examine whether terrorist acts against members of an oppressor group can be justified with reference to either punishment or self-defense, reasons that reflect those articulated by terrorists themselves.<sup>23</sup>

Turning first to the retributivist justification, a causal connection between the actions (or omissions) of the privileged group and the harms suffered by the oppressed needs to be established. We might suppose that in the face of the ongoing oppression, the privileged exhibit a marked

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<sup>22</sup>Mark R. Reiff considers and rejects the justifiability of terrorism on the grounds of retribution in "Terrorism, Retribution, and Collective Responsibility," *Social Theory and Practice* 34 (2008): 209-42.

<sup>23</sup>Both these justifications have parallels with debates on the permissibility of killing in general. Deserved punishment and self-defense are oft-cited exceptions to the principle that killing is always wrong. On how these exceptions relate to the justification of terrorism, see Primoratz, "The Morality of Terrorism," pp. 230-31; and Held, "Terrorism, Rights, and Political Goals," p. 77.

indifference to the plight of the oppressed and profit from their oppression. Given adequate awareness of the social circumstances as well as the capacity to enact change, it might be thought that if the privileged do not forgo the benefits of an unjust order, they ought to be held liable to change the system or to compensate the disadvantaged. Certain members of the privileged class might be excluded as transgressors, such as children, the mentally disabled, and others who cannot reasonably be expected to exhibit the appropriate level of awareness. In failing to redress the balance, the culpable privileged treat the suffering of the oppressed as an acceptable cost of an institutional order that serves their advantage. Enjoying the fruits borne of an institutional system that seriously and avoidably harms some individuals reflects tacit support for it.

I do not deny the wrongfulness of knowingly benefiting from injustice. Yet, considerations of desert would rule out the extreme violence of terrorist attacks as appropriate punishment for such benefit. Moreover, we should ask why *all* culpable privileged persons ought to be considered equally legitimate targets when presumably they differ in the degree to which they benefit from oppression, in their ability to avoid benefit, and in their ability to rectify the harms in question. It is possible that in spite of these differences in degree, a threshold view, on which they all be held responsible for enjoying a minimal level of benefit, could justify their subjection to terrorism. I explore this sort of view in the next section.

A more plausible retributivist argument regards acts of terrorism as justified in cases in which members of a privileged group not only benefit from but are responsible for maintaining a discriminatory institutional order. So understood, terrorism is framed as a legitimate form of retaliation. For a few reasons, this argument too is flawed. Some of the typical ways in which members of a privileged class support an oppressive regime are innocuous, and others unavoidable. Citizens vote in democratic elections, obey laws, and pay their taxes.<sup>24</sup> In addition, privileged individuals frequently reinforce social norms that perpetuate discrimination through their everyday behavior and actions. While the actions of any *particular* privileged individual are unlikely to cause much harm, the actions of all members of the privileged group *together* sustain the disadvantage suffered by members of the oppressed group. We must ask, then, for a typical individual who contributes to this oppression, though perhaps neither consciously nor maliciously, what punishment does she deserve? On the grounds of proportionality, again, an act of terrorism that threatens her life would be overly harsh and thus undeserved. The wrongfulness of such everyday behavior is not so great as to warrant pun-

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<sup>24</sup>Held considers citizens' potential responsibility for oppression in *How Terrorism Is Wrong*, pp. 20, 56, 78.

ishment by death.

As with the enjoyment of wrongful benefits, here too interpersonal variation in responsibility occurs. In addition to the ordinary means of support just considered—financial and political support, as well as through social norms—some members of Group A play a more direct causal role than others in perpetuating the suffering of Group B. Held's account is ill-equipped to deal with such intragroup variation in responsibility. Because it bases who counts as a legitimate terrorist target on group membership rather than on individual characteristics, it is not fine-grained enough to pick out the appropriate recipients of punishment. Doing so would require at the very least excluding children, as well as privileged individuals who actively oppose the regime and seek to minimize their contributions to oppression. The justification Held offers, if grounded in responsibility, would need to be based on a notion of collective responsibility for oppression that is evenly shared by members of Group A. This would be difficult to uphold. Responsibility varies interpersonally, and many members of the oppressor class do not deserve to be punished by death. If the responsibility is collective and diffuse, then it would be arbitrary to severely punish some individuals rather than enact a form of collective punishment.

A different responsibility-sensitive line of argument attempts to justify terrorism on the basis of self-defense. In standard discussions of self-defense, an individual whose life is under attack is thought to be permitted to attack her aggressor to save herself. The self-defense justification resembles the retributivist justification insofar as it too requires exploring whether the degree of responsibility for oppression exhibited by the privileged warrants the use of terrorist tactics against them. Unlike the argument concerning punishment, which focuses solely on past actions, the self-defense justification is in part forward-looking. While self-defense in this case has the goal of ending rights violations, it is not a purely consequentialist justification, because it permits terrorism only when targeted at those individuals, and *only* those individuals, responsible for ongoing rights violations.

Take a standard self-defense case. If Person A threatens Person B's life, many conclude that Person B may harm, and even kill, Person A to save herself. How does this insight translate to the society-wide case with which we are interested? Suppose again that Person B suffers rights violations at the hands of Person A, and each of these individuals belongs to a different group—blacks and whites, respectively. Some whites have direct causal responsibility for life-threatening rights violations suffered by some blacks, while other whites contribute only minimally to such rights violations (not enough to be held responsible individually for threatening any given black individual's life). As in the original case, Person A

threatens Person B's right to life. Suppose that if Person B throws a bomb at some whites and kills one of them, this action will achieve one of the following two outcomes: (a) save the life of Person B, or (b) contribute to reducing future rights violations suffered by other blacks while not necessarily having any impact on the current threat to Person B.

This hypothetical illustration highlights a flaw in conceiving of the legitimate targets of terrorism in terms of groups rather than of individuals.<sup>25</sup> There is not a one-to-one relation between victims of terrorist violence and the improved rights protection of members of the oppressed group. The individual who uses terrorist tactics neither necessarily harms his own aggressor nor succeeds in lessening the rights violations that he himself suffers. Instead, any black individual may justifiably use terrorism against any white individual, regardless of whether the former is personally in danger or whether the latter poses a threat. This result undermines a justification of terrorism grounded in self-defense. It's unclear, furthermore, whether an individual must even belong to the oppressed group to be licensed to use terrorism. After all, if the terrorist need not be defending herself against attack, then perhaps any person at all may be permitted to use terrorism on behalf of others. It follows from these considerations that the logic of self-defense fails to support a Heldian justification for terrorism. In a standard self-defense case, I defend myself from your attack upon me by launching a counter-attack that harms you, thus redistributing a would-be violation of my rights to you. In the group case, no specific rights violation is prevented nor thereby redistributed by the terrorist attack.

Does this disanalogy matter? In the standard, two-person self-defense case, the permissibility of Person B killing Person A crucially depends on the direct threat Person A poses to Person B. Since this sense of direct responsibility for rights violations is missing in the group instance, the case is undermined. Individuals are mistakenly held responsible for a harm that should be attributed to other individuals or to their social group as a whole.

Held considers this charge of not treating the targets of terrorism as distinct persons.<sup>26</sup> She responds that *the failure* to use terrorism in these circumstances exhibits disrespect towards oppressed individuals who will otherwise continue to suffer rights violations. Moreover, she emphasizes, an argument for the just distribution of rights violations only incidentally applies to groups but primarily serves to respect the rights of individuals in them. It is difficult to see how Held can uphold this claim. At best, she can cite a probabilistic decrease in rights violations in an

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<sup>25</sup>In a similar vein, Primoratz rejects Held's argument on the grounds that it fails to respect the separateness of persons. See "The Morality of Terrorism," pp. 230-31.

<sup>26</sup>Held, "Terrorism, Rights, and Political Goals," p. 77.

oppressed group, which is a point solely about a better outcome overall. A self-defense justification cannot be employed, because it requires that the target of a given attack pose a direct threat to the terrorist.

#### 4. A Different Understanding of Responsibility for Oppression

As we have seen, efforts to justify terrorism on the basis of either fairness or terrorist victims' responsibility for oppression fail. Held's defense of terrorism, nevertheless, holds an intuitive appeal that requires further exploration. Those who seek to end grievous, institutionally sanctioned rights violations endured in virtue of their group membership certainly have legitimate political aims. Privileged individuals' ongoing, passive acceptance of, or worse, active support for, an unjust status quo reflects a serious moral defect on their part. In light of this, is it not deeply unfair to favor sustaining Group A's privilege at the continued cost of rights violations suffered by Group B? Ruling out terrorism as morally permissible can have the practical effect of sanctioning status quo injustices over meaningful social change for the oppressed. If the costs of terrorism, morally egregious as they are, are endured by the privileged, surely in some sense this appears more fair than allowing the harms suffered by the weak to continue indefinitely.

This section seeks to account for this intuition by offering a broader understanding of responsibility for oppression than that which has been considered thus far. Above, we have focused on terrorist acts primarily as they obtain between two parties, the terrorist and his victims. This characterization neglects the complexity of the violence of terrorist acts. Certainly, the overt violence of terrorism is manifested by the loss of life or limb. However, an overarching intent of terrorism is to make a statement, often one that consists in spreading fear as a means to a social or political goal.<sup>27</sup> To recall the terminology introduced earlier, the *primary victims* of terrorism suffer direct violence whilst fear is spread among the *secondary victims* of the act. With this two-part structure of the harm of terrorism in mind, we can shift the focal point of our query to whether terrorists are justified in the harms they inflict upon their secondary victims. Is there a sense of collective responsibility that legitimizes subjecting members of the privileged group to acts of terrorism qua secondary targets, due to their role in upholding an oppressive system that harms members of the worse-off group?

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<sup>27</sup>For Annette Baier, terrorism has an expressive function: it conveys violent protest, and this function is important independently of the act's instrumental value in furthering the terrorist's political goals. See "Violent Demonstrations," in her *Moral Prejudices* (Cambridge, Mass.: Harvard University Press, 1995), pp. 203-23.

A response in the affirmative draws upon a particularly relevant feature of the circumstances under which terrorism can be permitted for Held. She stipulates that the *only* way the oppressed can secure their rights is through terrorist attacks upon their oppressors. This condition matters. It indicates that members of Group A collectively serve as an obstacle to the realization of justice. Without becoming targets of terrorism, which demands their attention, the privileged will continue to ignore the injustice endured by Group B. The ineffectiveness of other measures, like peaceful demonstrations, reflects the unwillingness of Group A to take a stand against injustice from which they benefit *unless* their own interests are compromised through acts as extreme as terrorism. Investigating in more detail the relationship between the oppressed and their oppressors clarifies the culpability of the latter. I draw on a metaphor put forward by Marilyn Frye to convey the sense in which the members of a privileged class constitute an obstacle to justice for the oppressed:

The experience of oppressed people is that the living of one's life is confined and shaped by forces and barriers which are not accidental or occasional and hence avoidable, but are systematically related to each other in such a way as to catch one between and among them and restrict or penalize motion in any direction. It is the experience of being caged in ... Consider a birdcage. ... There is no physical property of any one wire, *nothing* that the closest scrutiny could discover, that will reveal how a bird could be inhibited or harmed by it except in the most accidental way. It is only when you step back, stop looking at the wires one by one, microscopically, and take a macroscopic view of the whole cage, that you can see why the bird does not go anywhere; ... It is perfectly obvious that the bird is surrounded by a network of systematically related barriers, no one of which would be the least hindrance to its flight, but which, by their relations to each other, are as confining as the solid walls of a dungeon.<sup>28</sup>

Just as no single wire entraps the bird, no privileged person on his own directly prevents the rights realization of the oppressed. Yet, all or most of the privileged class through their everyday actions maintain the metaphorical bird cage—the oppression—that binds the oppressed. Breaking free from oppression requires not only the brute physical violence suffered by the primary victims of terrorism, but more importantly the fear of violence that reverberates among the privileged as secondary targets of terrorism. In this way, terrorist acts constitute a rude awakening for the well off, a forced awareness of the abhorrent nature of the harms perpetuated in the present circumstances that the oppressed are railing against. For this role in sustaining oppression, do the members of Group A deserve to suffer as the secondary targets of a terrorist campaign to bring about a just regime?

Justifying terrorism on this basis requires identifying the criteria

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<sup>28</sup>Marilyn Frye, "Oppression," in *The Politics of Reality: Essays in Feminist Theory* (Trumansburg, N.Y.: Crossing Press, 1983), pp. 1-16, at pp. 4-5.

needed to establish the collective responsibility of Group A for the oppressive circumstances suffered by Group B. Under what circumstances can we say that some individuals *deserve* to be awakened from their passivity and neglect of the widespread suffering of disadvantaged individuals in their society? It must be the case that privileged persons collectively serve as an obstacle to the realization of a just regime under which the currently oppressed would be granted rights protection. Group A must, moreover, play a *necessary* role in blocking the realization of justice such that the ongoing injustice could not be stopped by a reasonable change in the behavior of members of Group B, or by other actors outside of Group A. Finally, the responsibility of members of Group A must be great enough to warrant their subjection to the harms of terrorism qua secondary targets.

Demonstrating that members of Group A collectively and culpably contribute to the perpetuation of an unjust regime can be an empirically demanding task. In most cases of the type Held has in mind, it would not be too difficult to show how the actions and omissions of the privileged class contribute to perpetrating injustice. Identifying who exactly should count as a member of a collective, however, is a challenging task. Various seemingly plausible criteria for determining group membership fall prey to different problems in establishing responsibility for a given harm *in virtue of* group membership.<sup>29</sup> Using subjective identification with a group entails that individuals who do not identify with a group cannot be held responsible for harms that they do play a role in perpetuating. Instead, we might use objective criteria, like skin color, to determine group membership.<sup>30</sup> Doing so would require holding individuals responsible for harms carried out by groups to which they involuntarily belong. It is irrelevant that such individuals may actively oppose their group's dominant norms and activities. Simply put, it is wrong-headed to attribute any relevance to an arbitrary matter, such as race, in the assignment of moral responsibility.

Group membership serves as a proxy for what genuinely matters: in this case, a person's culpability in perpetuating injustice, through her actions or omissions in conjunction with those of others. In any real-life society that fits Held's two-group model, some members of the privileged class will object to the injustice of their society and take steps to fight it. Other members of the privileged group will be ignorant of their role in perpetuating injustice in such a way that they cannot reasonably

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<sup>29</sup>Reiff discusses this issue in detail in "Terrorism, Retribution, and Collective Responsibility," esp. pp. 228-30.

<sup>30</sup>I set aside the serious difficulty of how to determine membership on the basis of objective criteria when concepts like race, nationality, and religion can be difficult to define and to apply.

be held responsible for it. I do not mean to suggest that all or even most ignorance mitigates responsibility. Arguably, much ignorance is blameworthy. Yet, surely it can be said that some individuals innocently enjoy the privileges of their group membership, even if at the cost of injustice. For the purposes of identifying legitimate terrorist targets, setting the bar for collective responsibility so low as to include persons who fight oppressive circumstances and young children seems wrong. To avoid this result, we can add a condition to the permissibility of terrorist acts along the following lines. It is up to terrorists to exclude completely innocent individuals both as primary and secondary targets. Can terrorists do this? Certainly, in conveying their political goals to the public, something any successful terrorist campaign should do, terrorists could make clear their intention to avoid harming such parties. The question is whether they also have the capacity to carry out these evaluations in order to make good on this stated intention. Here, feasibility is a real worry.

Independently of the concerns just raised, a more basic problem confronts this justification. To see the problem, let us set aside these difficulties. Imagine a situation in which we can demarcate a clearly bounded collective, all members of which can be held responsible for oppression to a degree that legitimately renders them secondary targets. A compelling case can be made here that these privileged individuals who show indifference in the face of ongoing oppression suffered by members of their own society deserve to be prompted to take action (even if this means subjecting them to feelings of terror for some period of time). Furthermore, as Held would put it, it can be construed as *fair* that such privileged individuals finally experience first-hand the threat of basic rights violations that have avoidably plagued others in their society for an extended period of time.

The harms suffered by secondary victims of terrorism are not, however, possible without attacks upon primary victims. Yet establishing the permissibility of terrorism targeted at its secondary victims does not also automatically establish the permissibility of those same acts directed at their primary victims. Given the arguments of the previous sections, in which justifications of attacks on primary victims grounded in fairness, punishment, and self-defense were rejected, the only remaining justification seems to be consequentialist. Unless the end justifies the means, then, the considerations above do not show that any member of Group A deserves to be killed or to suffer serious bodily injury for her role in the collective activity that perpetuates the oppression suffered by members of Group B. The intuitive appeal of Held's view that I have explored in this section only applies to the permissibility of harms inflicted on the secondary and not on the primary targets of terrorism.

### Conclusion

The problems facing Held's account can be summarized as follows. She either accepts or denies that responsibility factors into her defense of terrorism. Whichever horn of the dilemma she embraces, the deontological element of her argument fails to justify terrorism. On the responsibility-sensitive reading, the collective responsibility of privileged individuals for the circumstances suffered by the oppressed plays an important role in the argument. This position is untenable, though, in light of the wide variance of responsibility across members of the privileged group. Despite this variance, Held does not advocate choosing terrorist targets on the basis of their personal responsibility for oppression. For responsibility to factor into the justification, we require a more detailed explanation of the collective responsibility of the privileged so that the terrorist act is a justified response to their complicity in wrongdoing. This position would require further development to test its plausibility. Given the problems sketched above, its prospects of success seem unlikely.

On the version of her argument most likely favored by Held herself, responsibility does not play a role in justifying terrorism, nor does benefit in the sense in which it mimics responsibility. On this responsibility-insensitive reading, the ideal of fairness exhausts the deontological element of the justification of terrorism. Held contends that terrorism, understood in its capacity as a means towards a specified end, promotes fairness. I have argued that fairness fails to do the normative work ascribed to it since the institutional injustice that Held seeks to rectify requires an institutional solution. The desired solution in the case she discusses is greater equity in rights protection under a nondiscriminatory institutional order. Terrorist acts seeking to even out the score sheet of harms suffered by members of different social groups in transition to a just regime would simply introduce a new set of injustices rather than resolve the original ones. When terrorism is the only measure available to bring large-scale injustice to an end, the consequentialist part of Held's argument could succeed in justifying its use. Nevertheless, her account fails as a specifically deontological justification. I have shown, in the end, that it is difficult to defend terrorism on deontological grounds, although I acknowledge that such a position differing from Held's might be possible.<sup>31</sup>

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