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CHEYNEY RYAN (iD)

THE HARD HAND OF WAR

Symposium on Seth Lazar

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> The difficulty of distinguishing combatants and non-combatants is characteristic of most wars nowadays. Does that not call into question whether we can even continue to talk about just war?
> - Mary Kaldor[1]

> **The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.**
> **- The Lieber Code, Article 21**

The Napoleonic wars of the late 18th and early 19th centuries profoundly impacted thinking about war. They inspired the first peace movements, dedicated to the abolition of all war on the grounds that modern war was among other things indiscriminate in its killing. One response to this pacifist skepticism was renewed interest in constraining war, including interest in refining the so-called laws of war and their basis. The emergence of modern 'total war', with World War I and World War II, only increased this urgency.[2]

Some wars had always been fought indiscriminately. European imperialist wars against native peoples never distinguished soldiers and civilians in decimating whole populations. But this expressed the racism of those fighting, as by contrast 18th century wars between Europeans were measured affairs. Developments in war technology made killing civilians more *likely*, insofar as it was harder to discriminate in their use; a shift in wind could quickly transform a poison gas attack on soldiers into one on civilians. But the biggest

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[1] Human Security (Cambridge: Polity Press, 2007), p. 172.

[2] Here, and throughout, I rely on two works by Geoffrey Best, Humanity in Warfare (New York: Columbia University Press, 1980) and War and Law Since 1945 (Oxford: Clarendon Press, 1994).

problem posed by total war, for political philosophers at least, was its threat to make harming civilians more *legitimate*.

Before, the major reason for sparing civilians was their detachment from the conflict. It is striking how complete this was. Frederick the Great boasted that ideally his subjects would not even know their country was at war. Laurence Sterne's Sentimental Journey recounts traveling from London to Paris and only afterwards learning the two countries were at war. So it made no more sense to attack Englishmen for what English soldiers did than it made to attack Italians for what English soldiers did. They played no role in how it was fought; they had no say in whether it was fought. Attacking them was a total waste of resources.[3]

Total war reflects the democratization of warfare that began with the Napoleonic conflicts and continued through the two world wars. It means the involvement of the entire population in two senses. 'The people' all contribute to the war effort: this is its more military side, crucial to its efficiency. And 'the people' all authorize the war effort: this is its more political side, crucial to its legitimacy. Both are implicit in Winston Churchill's characterization of it as 'wars between peoples'.

The relation in total war between popular contribution and popular authorization has been explored extensively by political sociologists, who have placed it as the heart of the modern liberal state. Charles Tilly and others have suggested we see it as part of a larger bargain, we might call it 'the war contract': the 'people' are given political and economic rights as citizens in return for their contribution to war as soldiers. (Every significant expansion of the voting franchise in the United States has resulted from such a bargain.) Hence the irony that war has been the major factor in the expansion of rights in liberal states. The problem for political philosophers is that these are not just facts, but ideals. We find them, for example, in the picture of citizenship in the United States Constitution and similar Civic Republican-inspired documents. They hold that every citizen *should* have a say in whether a war is fought, and every citizen *should* play a part, when a war is fought.

But if peoples are so implicated in the wars their countries fight, why aren't they all liable for its costs? Do the values of democracy

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[3] The substantial harm to civilians in the Thirty Years War resulted from the logistical needs of militaries for food, etc., which they forcibly expropriated from local populations.

imply unlimited war (as some critics of 'popular sovereignty' have claimed[4])?

It's crucial that democratic war expands liability in *two* ways. One involves the vulnerability of people to an *enemy* state: popular contribution seems to make everyone a combatant, threatening to blur the distinction between who may be attacked and who not. The other involves the vulnerability of people to their *own* state: citizenship – as the right to authorize one's country's wars, among other things (hence: the right to vote) – renders one liable to be conscripted or compelled to participate in other ways, threatening to blur the distinction between who may be sacrificed in war and who not. Both blur the distinction between citizen and soldier. Today's political philosophers focus on the first type of liability over the second. They are preoccupied with the moral consequences of contributing to a war, hence what it means to be a soldier, and ignore the moral consequences of authorizing a war, hence what it means to be a citizen. We might say they are concerned with what soldiers *do*, but not who soldiers *are* – who becomes a soldier and how this happens, choosing to see this as an apolitical matter, as purely one of personal choice, like becoming a grocery clerk, baseball player, or college professor. This reflects the general discomfort privileged academics feel to the question of who fights their wars. I also think it reflects an excessive concern with the question of who is responsible for what happens *in* war, to the exclusion of the larger question: who is responsible for the war *itself*? One upshot is the preoccupation with the obligations of soldiers to resist doing things in an unjust war, and a complete indifference to the obligations of citizens to resist the unjust war itself.

A complete theory of liability in and responsibility for war would address both questions together.

I. THE PRINCIPLE OF MORAL DISTINCTION

Seth Lazar's Sparing Civilians is typical of today's discourse in focusing only on the first issue – Who is liable to be attacked in war? – identified with the problem of 'discrimination', to the exclusion of the second issue – Who is liable to be sacrificed in war? Accordingly,

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[4] See, for example, Bertrand de Jouvenel, On Power (New York: Liberty Press, 1993).

this will be the focus of these remarks, though the other issue will appear at times.

I begin with some more historical context.

The term 'total war' first gained currency during World War I. It referred to war that was both indiscriminate and unending. Its indiscriminate character had two dimensions, related to the two different roles the 'principle of distinction' plays in just war thinking. One pertains to belligerents, i.e. states in modern warfare. It holds that in waging war, states must distinguish between belligerents and neutrals, based on who has given them cause for war. This is implicit in the *jus of bellum* principle of 'just cause', and is embodied in the law of neutrality. The other pertains to individuals. It holds that in waging war, militaries must distinguish between soldiers and civilians. This is a central principle of *jus in bello*, and is contained in the law prohibiting targeting of noncombatants. World War I seemed to augur the demise of both principles. The war began with a blatant violation of Belgian neutrality by Germany, provoking Great Britain to enter the war. That war was then conducted by constantly targeting civilians as well as soldiers – most significantly, in the British policy of starving Germany into submission by blockade. In ignoring the belligerent/neutral distinction, total war expanded *extensively*; in ignoring the soldiers/civilian distinction, it expanded *intensively*. Resisting total war means reaffirming these two distinctions.

Lazar's aim in *Sparing Civilians* is to affirm the second of these: the soldier/civilian distinction and the restraints on war it implies. His premise is that this distinction has been under significant pressure – he focuses on internal developments in just war thinking rather than larger developments in war itself. He offers several arguments to support this distinction, two of them being that killing civilians involves a more serious type of harm, and it is generally unnecessary. I will suggest that neither addresses the indiscriminateness of modern warfare because they fail to address how indiscriminate warfare is a reflection of the democratization of warfare. Specifically, his discussion of harming fails to capture the most important type of harming in modern warfare – indeed, what Clausewitz considered the essence of all warfare – what I term 'persuasive harming'.

Lazar begins, 'Killing civilians is worse than killing soldiers. If any moral principle commands near universal assent, this one does'.

Indeed, 'It is an irreducible feature of our moral landscape. And killing civilians is worse than killing soldiers, no matter how just or unjust the cause. 'Yet' its foundations are shallow and cracked'. So he sets out to defend the principle of *Moral Distinction* (hereafter: MD): 'In war, with rare exceptions, killing noncombatants is worse than killing combatants'. [1–4]

Lazar overstates the allegiance to this principle in the past. Since the Greeks, Europeans have invoked this distinction in war against people like themselves, but ignored it when warring against people they considered 'barbarians', 'savages', etc. Vattel, a founder of just war theory, held that the 'monstrousness' of 'savages' rendered them 'the scourges and horror of the human race', 'savage beasts, whom every brave soldier may justly exterminate from the face of the earth'.[5] As late as 1914, the official British manual on military law stated: 'It must be emphasized that the rules of International Law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out. They do not apply in wars with uncivilized states and tribes'.[6] One way to understand the wars of the 20th century is that so-called 'civilized' people started treating each other as they'd previously treated so-called 'savages'. The 'chickens came home to roost', in the words of Mark Mazower.[7] The universal assent to which Lazar refers is a recent phenomenon, and a response to this history.

I also wonder if, as stated, MD is sufficient to counter skepticism about 'just war'. The worry about modern war is it has rendered combatants and noncombatants equally fair game. But killing P may be 'worse' than killing Q – while both remain equally fair game. The age of German soldiers dropped dramatically at the end of World War II. Discussions bemoaning this presumed that the killing of 16-year-old soldiers was worse than killing 30-year-old soldiers – while never doubting that killing both was equally permissible. What must be shown, then, is that killing noncombatants is worse than killing combatants in ways that render one impermissible, the other not. (This is important for understanding the disagreement with pacifism.

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[5] Emer de Vatell, The Law of Nations (New York: Liberty Press, 2008), Book II, Chapter 1 'Of the Common Duty of a Nation Towards Others'.

[6] Cited in Thomas Hippler and Milos Vec, ed. Paradoxes of Peace in 19th Century Europe (Oxford: Oxford University Press, 2015), p. 235.

[7] Mark Mazower, Dark Continent: Europe's Twentieth Century (New York: Vintage Press, 2000), p. 112.

Pacifists grant that some killings in war are worse than others, but to them, this is like granting that some rapes are worse than others. It does not follow that some are permissible, others not.)

Why does Lazar regard MD's foundations as 'shallow' and 'cracked'?

Michael Walzer began things by arguing that killing combatants was permissible due to the threat they posed – in today's parlance, combatants were 'liable' to be killed, as noncombatants were not, due to their threat or their contribution to a threat. Post-Walzer theory has amended this picture by, among other things, stressing the importance of responsibility. Lazar puts it thus: 'When killing someone is a necessary and proportionate means to avert an unjustified threat, for which she is sufficiently responsible, then she is liable to be killed and killing her does not infringe her right to life; killing her does not wrong her at all'. [4]

Fine, but what do we mean by 'threats'? Lazar notes they can be construed in two ways. They can mean the micro-threats that individuals pose to each other, e.g. soldiers threatening each other, or the macro-threats that belligerent states pose to each other. [11] Individual noncombatants do not threaten the individual soldiers of another state, but they may certainly contribute to the threat their belligerent states pose. Are they differently responsible for the threatening role? Lazar says 'no': 'Even in the 'best' wars, a morally significant proportion of enemy soldiers and civilians will be responsible to just the same degree for contributing to unjustified threats'. [16] Hence there is a *dilemma*: if we raise the bar of responsibility to spare civilians, we exclude many soldiers from legitimate attack, but if we lower the bar of responsibility to include those soldiers, we fail to spare civilians. We are caught, as it were, between the devil and the deep blue sea.[8]

Lazar provides several responses to this dilemma, of which I shall consider two. One holds that killing noncombatants is worse because it is typically so ineffective that it fails to satisfy the necessity constraint on permissible killing. [19] Call this his *Necessity Argument*. The other holds that the *way* in which noncombatants are harmed is different from, and worse than, the way combatants are harmed.

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[8] There is a difference in their relation to the threats that might speak to Lazar's dilemma: while both may contribute to the larger threat, a soldier embodies that threat as the civilian does not, hence the soldier is a threat, while a civilian merely contributes to it.

Specifically, noncombatants are 'opportunistically' harmed, because killing them is part of 'punishment' strategies, while combatants are 'eliminatively' harmed, because killing them is part of 'denial' strategies – and the first is worse than the second. Call this his *Harm Argument*.

I shall consider them in reverse order.

II. THE HARM ARGUMENT

There is no 'war' in the abstract, any more than there are 'families' in the abstract. To keep things grounded, we must focus on modern warfare and the problems it raises. Lazar's discussion references the Allied bombing of the Germans in World War II. I worry that the futility of this particular action, both militarily and politically, makes the case against harming civilians too easy. A more challenging case of civilian victimization is the aforementioned Allied blockade of Germany in World War I. (It is challenging in part because the tactic is explicitly endorsed in the Lieber Code, Article 17: 'War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy'.) 'On November 11, 1914', one historian writes, 'the British set out in the most literal sense to starve the German people into submission; an idea best described by First Lord of the British Admiralty Winston Churchill himself when he stated, 'The British blockade treated the whole of Germany as if it were a beleaguered fortress, and avowedly sought to starve the whole population – men, women and children, old and young, wounded and sound – into submission''.[9] The blockade was Britain's principal contribution to the war, consuming more energy and materials than all its storied battles put together. It caused about 400,000 civilian deaths. And unlike the later bombing policy, it was a 'success' – as well as highly controversial, due partly to its ironic consequences: Britain went to war from outrage over Germany's attack on neutral Belgium, so it proceeded to blockade Germany in ways that meant starving Belgium as well!

To assess it, we must first understand the aims of the Allied policy.

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[9] David A. Janicki, 'The British Blockade During World War I: The Weapon of Deprivation', in Inquiries 2014 Vol. 6 No. 6 pp, 1–5.

Those aims were twofold. One was a more military aim. It sought
to degrade Germany's ability to wage war, primarily by denying
foodstuffs to the soldiers doing the fighting. The other was more
political. It sought to undermine Germany's will to wage war pri-
marily by denying foodstuffs to those on the home front. The one
addressed popular contribution to the war, the other popular
endorsement of the war. In reality, things were mixed together. A
soldier's ability to fight can be hampered by worrying about his
family starving back home; a family's endorsement of the war can be
weakened by knowing the military cannot feed its son. But the
difference is evidenced in how the policy played out.[10]

At the start of 1918, Germany had the military advantage, in no
small part due to Russia's withdrawal from the war, freeing up
soldiers in the East. So Germany launched a major offensive, which,
like previous ones, succeeded at first but was then bogged down. At
that point, Germany's leaders concluded what they could have
concluded years earlier, that the war was militarily unwinnable. But
it didn't follow that the war was lost. True, fresh American troops
were on the way, but other factors balanced this. For example,
French army morale had unraveled to the point of widespread
mutinies along the front. The decisive factor was the impact of the
Allied blockade on the population back home. Average Germans
were sick of the war, to the point that a popular revolution of the
type provoked by the war in Russia now seemed a possibility in
Germany. Or at least, its leaders thought so. So they asked for an
armistice to preserve the army so that it could be used against
popular revolution at home, if need be. There's some truth to the
claim that the German military was not defeated, insofar as its troops
were never driven from France. Indeed, the fighting never reached
German soil. But Germany was defeated all the same.

It's possible that Allied starvation policy could have degraded
German war making capacity by impacting the physical condition of
its troops, such that it could not have continued even if the political
will was there. But that's not what happened. Its principal impact
was political, not military. The German people no longer regarded
the war as worth fighting. The same thing happened in the Vietnam
War with the American people's attitude. There, the turning point

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[10] Needless to say, my account of these matters is subject to disagreement, as are any other claims
about this – or any – war.

was a Vietnamese military action (the Tet Offensive) that was a catastrophic failure militarily, but a decisive success politically.

How should we assess the harm this inflicted on ordinary Germans?

Lazar frames things via a distinction drawn by the strategic theorists between 'denial' and 'punishment' strategies. In his words, 'Denial strategies deny the adversary victory on the battlefield. Punishment strategies coerce the adversary into surrender by inflicting heavy losses off the battlefield'. I have termed one more military, the other more political, and suggested that Allied strategy involved both. Is one worse than the other? Lazar says yes, because while denial strategies primarily involve 'eliminative' harming, punishment strategies primarily involve 'opportunistic' harming. For Lazar, the paradigm of eliminative harming is killing a soldier running at you with a bayonet. In treating them as a threat to be removed, your killing is eliminative insofar as it aims only at an end you could just as easily have realized had they been absent. [60] By contrast, his paradigm of opportunistic harming is a terrorist killing an innocent bystander, like Ahmed Omar Saeed Sheikh's beheading of Daniel Pearl, to send a message to both his supporters and his enemies. In treating them as a tool to be used, 'a prop in your horror show', it kills opportunistically insofar as it derives a benefit from harming that could not have been achieved in the victim's absence. [56, 59]

I don't see how this distinction in harms captures the problem in the Germany case, or in total war generally insofar as this case is typical. To explain, let me distinguish two types of responsibility.

One type of responsibility is playing a role in the waging of a war. This is the sense in which, if I am asked of a broken lamp, say, 'Who's responsible for this?' I am being asked who did it, or who was involved in doing it. Responsibility here is responsibility as a *contributing* agent. Lazar's discussion, and that of most other just war theorists, focuses almost entirely on this type of agency and its related notion of responsibility in addressing combatant/noncombatants – the problem in modern war being that both can be equally contributing agents hence equally responsible in this regard.

The other type of responsibility is playing a role in the authorizing of a war. This is the sense in which, if my dean asks of a particularly

idiotic course in my department, 'Who's responsible for this?' he is
not asking who is actually teaching it – the idiocy may partly reside
in who that is; rather, he is asking who authorized its being taught.
He presumably wants to know this so that he can *stop* it. Respon-
sibility here is responsibility as the *authorizing* agent.[11] Here, too, the
problem in modern war is that both combatants and noncombatants
can be authorizing agents in so far as they are citizens, hence equally
responsible in this regard.

The relation between these two types of responsibility has been a
concern of political philosophers since the emergence of popular
sovereignty, if not before. Civic Republicans have always argued for
a close relation between the responsibility for contributing to a war,
with one's bodies or money primarily, and the responsibility for
authorizing the war, i.e. deciding both when to start a war and when
to stop it. The latter is of paramount importance because to
authorize the war is to empower society to compel people to con-
tribute to it with their bodies or treasure. Such authorization is only
legitimate if it is grounded in the citizenry, plus it will only be
prudent if the citizenry itself bears the cost. The relation between
these two types of responsibility has also played a lively role in
modern political culture. A much noted fact about British soldiers in
World War I is how they came to hate civilians back home. The poet
Charles Sorley wrote as early as November, 1914: 'I should like so
much to kill whoever was responsible for the war'. He didn't mean
just politicians. 'The visiting of violent and if possible painful death
upon the complacent, patriotic, uncomprehending, fatuous civilians
at home was a favorite fantasy indulged by the troops'.[12] Those
'responsible for the war' were not those contributing to its fighting,
on the contrary the problem was they weren't doing so. They were
those who authorized it. More recently, the disconnection between
those who decide and those who fight has been a heated topic in the
United States with the so-called 'chickenhawk syndrome'.[13]

These two types of agency/responsibility are easily muddled to-
gether. 'Supporting' a war can mean both assisting it or endorsing it,

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[11] One might distinguish them by saying that a contributing agent enables the doing of X, an
authorizing agent empowers the doing of X.

[12] Paul Fussell, The Great War and Modern Memory (New York: Oxford University Press, 1975), p,
83.

[13] See my polemic, The Chickenhawk Syndrome: War, Sacrifice, and Personal Responsibility (Ro-
man and Littlefield, 2009).

and some actions do both – paying war taxes, for example. Still, they are distinct, and not reducible to each other, i.e. the importance of authorizing war does not reduce to contributing to it. North Korea only invaded the South because Stalin authorized it, and his doing so was a turning point in the Cold War, but the Soviet Union made *no* significant contribution to the actual fighting. Yet questions about how war is authorized, and the importance of popular involvement in it, are absent from contemporary political philosophy. You can read hundreds of pages on 'deliberative democracy', or on the revival of Republicanism, without encountering a single discussion of the most significant decision in a state makes: whether to wage war.

Let me relate this to Lazar's discussion.

The German people, or a great many of them, obviously played a role in waging the war, hence were responsible as contributing agents, with the liability that carried. Were they also responsible as authorizing agents? This is not a simple question; quite the contrary, Civic Republicans and others have long debated what precisely it means to vest the power of authorizing war in 'the people'. But let's stick to the Germany case. The German people played little role in the start of the war. This was true for the British people as well. Neither country's constitutional arrangements required a formal declaration of war by the nation's legislative branches, as the United States Constitution does. But Germany's constitutional arrangements were such that *continuing* to wage war required the support of popular representatives to vote for war credits, etc. This is why the support of the German Social Democratic Party was such a crucial part of the story. And the war's dénouement showed that these formal mechanisms were just part of the story. The disappearance of popular *support* made continued fighting unfeasible, just as it did in America with the Vietnam War, in ways only partly evident in formal elections, etc.

Not all authorizing agents were full citizens. Women could not vote in Germany (they couldn't vote in Great Britain either). But in practice the support of women was crucial in the early stages of the war, just as their opposition was crucial at the end of it. (The leading antiwar figure was a woman, Rosa Luxemburg.) Of course, total war has been fought by states with little if any formal democracy. But that should not blind us to the essential role of popular support.

Czarist Russia's war effort collapsed when it lost such support. Hitler went to great pains to ensure the German people remained well fed during World War II. Political sociologists argue that, whatever the differences in political systems, success in modern war has required the contribution and endorsement of the populace.

Let's assume that a great many Germans, most of them non-combatants, were authorizing agents. What follows for the harm inflicted on them by the blockade?

Consider this parallel. The heads of New York's five Mafia families decide to wage an all-out war on the police. The Mafia has 'soldiers' who are the principal contributing agents, by doing the actual killing. The Mafia bosses are the principal authorizing agents, though they might be quite disengaged from the actual killing. Suppose someone on the police force proposes killing one or two of the Mafia bosses, to compel them to stop the war. They assume that the Mafia bosses make decisions on a cost–benefit basis, so will be influenced by raising the cost. Now I assume there are lots of reasons why New York City might refuse to do this. But it's hard to imagine anyone objecting to it on the grounds that it treats Mafia bosses as 'tools to be used', that it is 'opportunistic harming' insofar as it 'derives a benefit from harming that could not have been achieved in the victim's absence'. (I'm not sure what the latter would even mean in this context.) Of course, killing one of their daughters to change their mind *would* be opportunistic harming. But that's because she's not an authorizing agent. Lazar's Daniel Pearl case is like killing the Mafia daughter. But harming the deciders is another matter entirely, which might be termed *persuasive* harming.

War, said Clausewitz, is the continuation of politics: all politics is about persuasion, war is about persuading through inflicting harm. I don't think the notion of 'opportunistic' harming captures this, insofar as it is aimed at authorizing agents. I wonder about talk of 'punishment' strategies as well. Insofar as it aimed to degrade the German military, Allied starvation policy was a 'denial' strategy. But in targeting the citizenry, its aim was not to punish them any more than the aim of killing one or two Mafia bosses would be to punish them. It is more accurately termed a *persuasive* strategy – persuasion through harming.

The idea that people are liable to be harmed by virtue of endorsing a war is disturbing. Lazar cites Osama bin Laden's arguments to that effect in his 'Letter to America'. More eloquent versions of the same argument could be found in the wartime speeches of Prime Ministers Asquith and Lloyd George. But that makes it all the more imperative to clarify what *kind* of harm it is. The idea that all harming of citizens is 'opportunistic' harming seems linked to the idea that all of it aims to 'send a message' to someone *else*, the 'politicians' that decide about war and peace; so someone might argue that persuasive harming may be directed against them, as the political Mafia bosses if you will, but nothing follows for the citizenry generally. This picture of things undoubtedly has a certain salience in today's conditions of what I've called 'alienated war', where ordinary citizens see themselves as detached from the decision to wage war. But this is not how things really work. Politicians may begin a war indifferent to popular support, but they cannot continue it, as American presidents learned in Korea, Vietnam, and Iraq. More importantly, for political philosophers, it's not how things ought to work. Our discussions of responsibility in war cannot presume a political culture hopelessly corrupt and a political system hopelessly broken.

Finally, the two types of agency/responsibility raise questions of fairness. Victor Tadros has advanced a very interesting argument about noncombatant liability.[14] He suggests that noncombatants are vicariously liable for the cost of war in virtue of the general benefits they derive from their nation's military apparatus, especially security. So it's unfair to impose all the costs of war on combatants, as we do if we hold only soldiers liable to be harmed. My argument does not rest noncombatant liability on the benefits they derive from war. Rather, their liability derived from their endorsement of the war, necessary to its being waged. But I can imagine in my Mafia example a Mafia soldier thinking it's unfair that he can be harmed for carrying out in order, but those who give the order cannot. Surely this is part of the aforementioned hatred of soldiers for those back home. I suppose this is why I've always found the current preoccupation of just war theory with the responsibility of soldiers to be a bit one-sided, if not offensive. Soldiers were the principal contributing agents

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[14] Victor Tadros, 'Orwell's Battle with Brittain: **Vicarious Liability for Unjust Aggression**' Philosophy & Public Affairs Volume 42, Issue 1.

in Vietnam, but the authorizing agents were the American people and the politicians they elected. The vast majority of soldiers had little or no choice in becoming contributing agents, while the American people had complete choice as authorizing agents.

Authorizing agency poses questions similar to contributing agency. Who, precisely is liable to be harmed? (Young children are not, obviously – hence British starving of them could not be justified by their authorizing agency.) How significant must one's authorization be to generate liability? (Here, as with contributing agency, any particular individual's role seems unimportant, or important only as part of a larger group. Politicians often play a special authorizing role, but even that presumes a group context, as Asquith learned when replaced by Lloyd George.) The biggest question – in relation to MD, that is – is whether persuasive harming is worse than eliminative harming, for if it is Lazar's claim that the harm directed at civilians is worse than that directed at soldiers still stands.

At the very least, this seems like a harder case to make. One reason is that society regularly practices persuasive harming in practices like incarceration, aimed at changing the attitudes of prisoners. Churchill's remark at the start describes British policy as aiming to turn Germany into one big prison. A critique of British starvation policy might begin by showing it lacked the legitimacy persuasive harming possesses in cases of punishment. One reason starving someone to change their mind seems worse than killing them as they charge you with a bayonet is that the former looks a lot like torture. Thus John Keegan writes of the American Civil War (one of the first modern wars), 'The whole point of the war was to hold mothers, fathers, sisters, and wives in a state of tortured apprehension, waiting for the terrible letter from hospital that spoke of wounds and which all too often presaged the death of a dear son, husband, or father'.[15] Torture *can* be opportunistic harming, as in Daniel Pearl-type cases, but not always. If instead of killing one or two Mafia bosses, you starved them into calling off the war, I don't think this would be treating them as 'tools to be used' given their authorizing agency, though I suspect we'd reject it on other grounds. But what if the only way to avert the threat that Mafia soldiers posed was starving those that gave the orders?

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[15] *The American Civil War* (Nw York: Vintage Books, 2009), p. 319.

III. THE NECESSITY ARGUMENT

This brings us to the necessity of harming civilians.

The Necessity Argument holds that harming civilians is worse than harming soldiers because it is unnecessary, either because it is ineffective or less effective than harming soldiers. The arguments for this mainly focus on the effectiveness of harming civilians as a way of degrading the military. Lazar raises the bombing of German civilians in World War II to break their morale, which he notes did not occur. But he does acknowledge the success of the Allied blockade in World War I.

I have always felt the necessity argument related to combatant/noncombatants as contributing agents was rather trivial, at least applied to traditional states and their militaries. If states come to recognize certain noncombatants as essential to their war enterprise, they tend to make them an official part of that enterprise bringing them under combatant status. An example is the nationalization of industries during wartime. So killing noncombatants is not as necessary as killing combatants for military purposes of degrading enemy forces. Is killing noncombatants necessary for political purposes of breaking the enemy's will?

It's important to note that killing combatants may also be persuasive harming. Killing enemy soldier P impacts the enemy's ability to fight. But insofar as P has family members and friends at home who will grieve over his loss it may undermine their support for the conflict, hence impact the enemy's will to fight. For any given war, or even an episode in a war, the comparative importance of these two types of killings may vary. In the Vietnamese Tet Offensive, the killing of American soldiers impacted the American military's ability to fight, but that was less important than the impact of the grief those killings generated among families and friends back home, undermining support for the war. World War I witnessed several epic conflicts, most notably the Battle of Verdun, where Germany's principal aim was not degrading the French military so much as undermining the will back home. Conversely, states sometimes take military actions that have little if any military value but much political value in bolstering the will back home. Allied actions in North Africa in World War II are often seen this way. (An interesting

question is whether a state opportunistically harms its own soldiers
when it sacrifices them solely to send a message back home.)

By itself, then, the necessity of persuasive harming does not
establish the necessity of killing large numbers of civilians if the
requisite persuasion can be achieved by killing soldiers. But there is
little reason to believe that it can, especially given the practice of
states to hide the harms to soldiers. Militarily, World War I on the
Western Front was a stalemate almost from the first months of the
war. Until the very end, no one expected this to change. Quite the
contrary Allied leaders planned for it to continue at least another
three years. The grief over lost sons, brothers, and fathers had some
impact on the will to fight, but just for this reason contending
governments did everything they could to hide the fate of soldiers.
(In World War I, criminal sanctions prohibited any photographs of
dead soldiers. The United States only allowed such photographs in
the waning years of World War II, but still prohibited any pho-
tographs of dismembered soldiers – about 50 percent of casualties
included dismemberment.)

The argument, then, is that undermining the enemy's will to fight
means taking the war directly to civilians.

Necessity arguments are often put in terms of what is required to
'win' a war, what is required for 'victory'. Lazar speaks of it thus. I
question this as a general way of framing things. The key issue is
achieving war aims: this may require winning/victory, but history
shows that as often as not states can achieve their aims to negotia-
tion well short of this. No one won the Korean War, but America
achieved its aims. But posing things in terms of victory illuminates
why strategic thinkers like Clausewitz have argued modern war
invariably requires attacks on civilians later on.

What do we mean by 'victory'? Clausewitz argued that degrading
an enemy's military, even destroying it entirely, is actually insuffi-
cient to eliminate the enemy's threat. He would claim it is a mis-
nomer, then, to characterize killing enemy soldiers and destroying
their equipment as 'eliminative' harming. Employing Lazar's dis-
tinction, it may eliminate the threat those particular soldier/assets
pose, but not the threat that belligerent states pose. This is because
the enemy is always capable of rejuvenating itself, finding new sol-
diers and new equipment – if the will to do so is there. True victory,

in other words, can never be achieved by military means alone. It requires not just bending the enemy's will, but *breaking* it – and this, Clausewitz held, could only achieved by rendering the full force of war against the home front. The same point was made by Gen. William Tecumseh Sherman in the American Civil War, when his 'March to the Sea' wreaked havoc on the civilian population. The Confederacy would truly surrender, he said, only if it felt the 'hard hand of war'.

If this seems like a rather dark conclusion, it was the basis of Allied strategy in the canonical 'good war' – World War II. Allied leaders concluded that World War I had bent the German will but not broken it, since Germany eventually set about rejuvenating its military forces. So, unlike the past, Allied leaders equated victory with unconditional surrender on the grounds that the German will to fight had to be be crushed. Victory required the German people feel the 'hard hand of war'. A similar logic informed the war with Japan. It is questionable whether the Japanese military *ever* posed a threat to the United States proper. (It posed a threat to Hawaii and the Philippines, obviously, but one was a colony, the other a 'protectorate'.) Certainly any Japanese military threat to the United States was ended at the Battle of Midway, six months after Pearl Harbor. But America forged on nevertheless, seeking unconditional surrender, because its enemy was not just the Japanese military but *Japan*, so victory meant not just degrading its ability to fight, but destroying its will to fight. (Only thus can the decision to drop the atomic bomb be understood: by then, Japan could have been easily starved into the submission, but the World War I precedent suggests that the starvation was not sufficient persuasive harm.)

IV. WAR AND DEMOCRACY

Persuasive harming is a distinctive, if not entirely unique, feature of modern warfare. When wars were under the sole authority of kings, were fought by mercenaries, and in ways that little impacted the populace, persuasive harming played a marginal role in shaping war. 17th and 18th century wars did not end because the populace, or even the soldiers, lost the will to fight. They typically ended because one or both sides ran out of money. Persuasive harming became central when the populace became citizens, the kings were replaced

by political representatives, and war became something that everyone was expected to both authorize and contribute to, if needed. Republican thinkers, Kant for instance, felt that democratizing war would make it less frequent. The problem is that by making war a more politically inclusive enterprise, you make it a more indiscriminate enterprise. This is how I frame the deepest challenge just war theorists like Lazar face.

A methodological point bears on how we theorize about war. Claims about, say, the relative responsibility of soldiers and civilians are always relative to a particular type of war (here, total war) and how political communities organize war (here, democratic warfare). The one requires attention to history, the other to political institutions. Plus the questions are not just empirical ones, as they engage our judgments and how war *ought* to be organized. After all, we *could* live in a society more like the 18th century, where our politicians functioned more like kings, where our soldiers functioned more like mercenaries, and where even financing wars did not require citizens' consent, if it were done by borrowing against our grandchildren's future. Some might say this is exactly where the United States of America – the world's major military power – is headed now. So one can develop just war principles for it that ignored the citizenry's role in authorizing war. But this would be a drastic departure from Amrican political traditions, ones as an American I think are worth cherishing.

Those traditions hold that, as war is the most serious business of the state, it should only be waged with the endorsement and participation of its citizenry. Conservative critics of democracy have argued that the upshot of its ideals is to undermine traditional constraints on war, like those grounded in the isolation of the citizenry from war. This is a very big claim, but I've tried to suggest some of the thinking behind it. I think these worries about democratic warfare are valid. The difference between the conservative critics and myself is that they would keep war and do away with democracy, I would keep democracy and do away with war.

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Program on Ethics, Law, and Armed Conflict
University of Oxford, Oxford, UK
E-mail: cryan@uoregon.edu