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# A Contractarian Defense of Nuclear Deterrence\*

*Christopher W. Morris*

It is widely believed that killing the innocent is morally wrong. A widely accepted moral principle is, It is wrong to kill the innocent. Yet this is precisely what we threaten to do in the event of an enemy nuclear attack. This is an essential part of nuclear deterrence. Is nuclear deterrence then immoral? Many in the peace movement—as well as some in the Reagan administration—appear to think so.

The principle prohibiting killing the innocent as stated above is implausible, as it does not make allowances for accidental and unintended killings. Thus many moral philosophers distinguish between “direct” and “indirect” killings and argue that indirect killings are not always wrong. One very influential way of drawing the relevant distinctions is the traditional “doctrine of double effect.” According to this doctrine, only acts of direct killing are morally prohibited; acts of indirect killing are morally permissible. According to the doctrine, an act of killing is indirect and morally permissible if and only if

- 1) the act in itself is not impermissible,
- 2) the bad effect of the act is not the means to the good effect,
- 3) the good but not the bad effect is intended, and
- 4) the good effect is proportional to (i.e., not outweighed by) the bad effect.<sup>1</sup>

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1. See G. E. M. Anscombe, “War and Murder,” in *Collected Philosophical Papers* (Minneapolis: University of Minnesota Press, 1981), vol. 3, pp. 51–61; Philippa Foot, “The Problem of Abortion and the Doctrine of Double Effect,” in *Virtues and Vices* (Berkeley and

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Killing some civilians while bombing an enemy military installation might thus be permissible if the bad effect (killing the civilians) is neither intended nor the means to the good effect (destroying the installation) and if, say, the number of lives saved by the bombings is greater than the number of civilian casualties. The doctrine would thus justify killings where the deaths are unintended side effects of permissible acts.

Appeal to the doctrine of double effect may not, however, help the defender of nuclear deterrence. For the innocent slaughtered by nuclear retaliation surely would not be killed indirectly in the relevant sense. Consider "countervalue" retaliation, the nuclear targeting of enemy centers of population. Such bombings clearly would involve acts of direct killing. For conditions 2 and 3 would not be satisfied: the bad effect (killing massive numbers of innocent civilians) would be both intended and a means to the good effect (making good on a threat, "punishing" enemy aggression, deterring future aggression, or whatever).

Some therefore counsel that we use only "counterforce" strategies, aiming our missiles at military targets. However, given the huge numbers of Soviet casualties to be expected at present from counterforce retaliatory strikes,<sup>2</sup> condition 4 surely is not satisfied: counting lives equally, the good effect surely is outweighed by the bad.

Lest anyone believe that counterforce strategies are nonetheless more appealing morally, let us note how destabilizing they are, especially given recent developments in weapons technology and the current climate of distrust. Accurate missiles aimed at enemy missiles for purposes of defense may be used for offensive first strikes as well as for retaliatory second strikes. Part of the instability of our current situation might be attributed to the claims of each party that the other possesses or is acquiring offensive weapons. The present U.S. administration, for instance, accuses the Soviet Union of seeking to build up what is called a "first strike capacity," that is, the capacity to destroy much of the adversary's (land-based) nuclear force in a swift blow. The Soviet leaders point out that the United States (and NATO) refuse to renounce first strikes. A counterforce strategy, then, even if intended for retaliatory use only, may appear offensive to a suspicious (but rational) adversary.

Countervalue strategies (with limited counterforce capacities), by contrast, when bilaterally adopted, render first strikes extremely improbable. Should one side attack, the other's nuclear forces would be able to retaliate. Such strategies, when bilateral, are inherently stabilizing. Further, they greatly decrease the chances of an "accidental" nuclear

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Los Angeles: University of California Press, 1978), pp. 19–32; L. W. Sumner, *Abortion and Moral Theory* (Princeton, N.J.: Princeton University Press, 1981), pp. 115ff.; Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 152ff. See also Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 157ff.

2. Ground Zero, *Nuclear War: What's in It for You?* (New York: Pocket Books, 1982), pp. 126ff.; Albert Carnesale et al., *Living with Nuclear Weapons* (New York: Bantam Books, 1983), pp. 117–18.

conflict since a retaliatory strike, in the unlikely case one would be provoked, would not have to be “launched on warning,” as would a response to a counterforce attack. So countervalue strategies (with limited counterforce capacities) may be preferable to counterforce strategies insofar as we are concerned with reducing the likelihood of nuclear conflict.<sup>3</sup>

In any case, both deterrent strategies, as well as mixed strategies, involve threatening to kill directly massive numbers of innocents. Such acts of killing could not be justified by the doctrine of double effect.

Threatening to kill, however, is not the same as actually killing. Perhaps we are justified in threatening nuclear retaliation, as long as we do not intend to carry out our threat (and as long as we do not in fact carry it out). That is, perhaps the morally appropriate deterrent strategy is bluffing. Let us say that a “sincere threat” to do  $x$  (if  $C$ ) carries with it an intention to do  $x$  (if  $C$ ) and that an “insincere threat” lacks such an intention. Then sincerely threatening nuclear retaliation would not be justified but insincerely threatening might be. Naturally, we should not expect a threat of the latter sort to be credible once our moral reluctance became known to our adversaries. The effectiveness of such a bluff depends on our adversaries’ belief that we would (or might) launch a retaliatory second strike in the event of nuclear attack. Such a policy depends on deception or at least dissimulation for its effectiveness, and this may be impossible to achieve in an open society. Moreover, it should be noted that such a policy is inconsistent with the values of such a society. Finally,

3. For a recent defense of Mutual Assured Destruction (MAD), see Robert J. Art, “Nuclear Strategy: The Search for the Middle Road,” in this issue. I have relied on Thomas Schelling’s writings for much of my understanding of classical notions of nuclear deterrence (see his *Strategy of Conflict* [New York: Oxford University Press, 1960]). For a historical account of deterrence, see Lawrence Freedman, *The Evolution of Nuclear Strategy* (New York: St. Martin’s Press, 1983); and for a game-theoretical account, see Alan Vick, “Some Thoughts on Deterrence,” Rand Paper P-6916 (Rand Corp., Santa Monica, Calif., October 1983). The stability of MAD, however, requires that both superpowers possess invulnerable retaliatory systems. Recent developments in weapons technology may make that a thing of the past. For an accessible account of some of these developments, see James Meacham, “Another Age? The Technology of Nuclear Weapons: A Survey,” *Economist* (September 1, 1984). For a discussion of the moral implications of these developments, see Albert Wohlstetter, “Bishops, Statesmen, and Other Strategists on the Bombing of the Innocent,” *Commentary* 75 (1983): 15–35. In addition to preventing a nuclear conflict between the superpowers, there are other concerns that we might have, for instance, forestalling a Soviet attack on Western Europe. “Extended deterrence” may require limited counterforce capabilities (including some sort of “flexible response”), as a MAD threat may not have sufficient credibility during a crisis as Warsaw bloc tanks prepare to roll into West Germany. The general problem here is that we seek (1) to reduce the likelihood of (a) nuclear and (b) nonnuclear war as well as (2) to reduce the costs (human and other) should war occur. (Also, we seek [3] to reduce the peacetime costs of defense.) But striving toward 2—e.g., by developing our capacity for “war fighting”—may lead us further from 1. Thus the cycles in strategic debates. These issues are complicated, and I shall leave them to military strategists and defense planners. My concern is to provide a general defense of nuclear deterrence, including MAD. Should some counterforce strategy prove more effective at forestalling nuclear as well as conventional conflict between the superpowers, my argument should not be affected.

it seems incredible that the most effective means of national defense should depend on deception. So I do not think that this approach will salvage our deterrence practices.<sup>4</sup>

A variant on this suggestion is the idea that we should retain some nuclear weapons while refraining from threatening, sincerely or insincerely, to use them. It might be argued that our mere possession of them would suffice to deter Soviet nuclear attack even if we did not explicitly threaten to retaliate.<sup>5</sup> For instance, Israel (it is widely believed) possesses some nuclear weapons. It need not explicitly threaten its adversaries; mere possession of such weapons may be sufficient deterrent against a repetition of 1973.

Note that this suggestion depends for its effectiveness on the Soviets' belief that we might retaliate in the event of attack. By retaining these weapons would we not intend that the Soviets come to believe this? Further, this approach, like the last, requires deception and is thus vulnerable to some of the objections made above. It is possible that this strategy might be even less workable than the last. How is it to be implemented? Are soldiers to be trained to maintain and fire the weapons? That would blur the distinction between the mere possession of and the insincere threat to use nuclear weapons. Are the weapons merely to be stored in strategic depots, without trained personnel to maintain them for use? It is hardly credible that this would amount to much of a deterrent.<sup>6</sup>

Faced with the conclusion that threatening to use nuclear weapons is morally unjustifiable, some moral theorists counsel unilateral nuclear disarmament. I cannot argue here against this alternative. However, I should note that I find it unacceptable for a number of reasons. The claims of some proponents of unilateral nuclear disarmament, that the dangers of Soviet domination or Soviet nuclear blackmail are small, simply lack credibility. And many cases for unilateral nuclear disarmament depend on such a claim. To disarm unilaterally would be to make ourselves vulnerable to domination and exploitation. Note that to date nuclear weapons have only been used against a nation that did not possess any. It is not to attribute especially malevolent motives to Soviet leaders to

4. "Deterrence is not, and cannot be, bluff," according to the Scowcroft Commission (see *Report of the President's Commission on Strategic Forces* [Washington, D.C.: Government Printing Office, April 1983], pp. 2-3). Some critics have argued that many failures of American foreign policy are due to the propensity of our adversaries to call our bluff (see Harry G. Summers, Jr., "Critics Say Pentagon Is Dovish," *Los Angeles Times* [May 6, 1984]). In any case, it may simply not be possible to set up institutions none of the members of which possessed the relevant intention (see Jeff McMahan, "Deterrence and Deontology," in this issue).

5. See Paul Ramsey, *The Just War* (New York: Charles Scribner's Sons, 1968), pp. 253-58. I also owe this suggestion to Gerald Dworkin.

6. Adapting a remark Thomas Schelling makes about impetuosity, irrationality, and nuclear retaliation, we might say that we ought to get something a little less idiosyncratic for three hundred billion dollars a year of defense expenditure (see *Arms and Influence* [New Haven, Conn.: Yale University Press, 1966], pp. 39-40).

believe that they would be willing to do as we did in Hiroshima and Nagasaki.<sup>7</sup>

Suppose then that unilateral nuclear disarmament is unacceptable; how is it possible to justify nuclear deterrence? Nuclear deterrence involves threatening to kill directly massive numbers of innocents in the event of an enemy nuclear attack, an act not justified by the traditional doctrine of double effect. Is nuclear deterrence then morally impermissible? I shall argue that it is not impermissible.

Let us now state clearly the moral principle and notions involved in this issue. Nuclear deterrence involves threatening to kill directly massive numbers of innocents. Directly killing the innocent is thought to be morally wrong. The relevant moral principle would thus seem to be:

It is wrong directly to kill innocent human persons,

where the technical terms should be understood as follows. An act of “direct” killing is one that is not an act of indirect killing as defined by the doctrine of double effect. A “person” is any creature that possesses moral standing; any creature that is owed (some) moral consideration has (some) moral standing. An “innocent” person is someone who is not threatening another.<sup>8</sup> This principle—let us call it P—prohibits the killing of nonthreatening human persons except in those cases of indirect or unintentional killing justified by the doctrine of double effect.

According to the natural law tradition, killing the innocent directly is absolutely wrong, that is, impermissible whatever the consequences.<sup>9</sup> But I reject the interpretation of P as absolute. Unless we engage in what

7. See Douglas Lackey, “Missiles and Morals: A Utilitarian Look at Nuclear Deterrence,” *Philosophy & Public Affairs* 11 (1982): 189–231; Russell Hardin, “Unilateral versus Mutual Disarmament,” Gregory S. Kavka, “Doubts about Unilateral Nuclear Disarmament,” and Douglas Lackey, “Disarmament Revisited: A Reply to Kavka and Hardin,” *Philosophy & Public Affairs* 12 (1983): 236–54, 255–60, 261–65. See also Jeff McMahan, “Nuclear Blackmail,” in *Dangers of Nuclear Deterrence*, ed. N. Blake and K. Pole (London: Routledge & Kegan Paul, 1983), pp. 94–111. Many defenses of unilateral nuclear disarmament are conditional on a simultaneous buildup of conventional military forces to deter conventional (and nuclear) attack. But citizens of the Western alliance are notoriously unwilling to shoulder the costs of such a rearmament program, especially were it to include military conscription. It is often forgotten that nuclear weapons are inexpensive by comparison to conventional weapons and forces.

8. Sometimes this is called the “causal” sense of innocence, to be contrasted with the “moral” or “juridical” sense, according to which innocence is equivalent to absence of guilt. See Anscombe, p. 53; Sumner, pp. 109–11; Jeffrie G. Murphy, “The Killing of the Innocent,” *Monist* 57 (1983): 527–36. See also George I. Mavrodes, “Conventions and the Morality of War,” *Philosophy & Public Affairs* 4 (1975): 117–31; and Robert K. Fullinwider, “War and Innocence,” *Philosophy & Public Affairs* 5 (1975): 90–97. Judith Thomson’s well-known argument in “In Defense of Abortion,” *Philosophy & Public Affairs* 1 (1971): 47–66, can be restated using the causal sense of “innocence.”

9. See G. E. M. Anscombe, “Modern Moral Philosophy,” in *Collected Philosophical Papers*, vol. 3, pp. 26–42; Alan Gewirth, “Are There Any Absolute Rights?” in *Human Rights* (Chicago: University of Chicago Press, 1982), pp. 218–33. See also Murphy; and Donagan; as well as Anscombe, “War and Murder.”

Elizabeth Anscombe has called “double-thinking about double effect,”<sup>10</sup> interpreting P as absolute commits us to refrain from using (or threatening to use) nuclear weapons. Given what I have said above, so interpreting the principle would commit us to bluffing or, more likely, to unilateral nuclear disarmament, and that, I am assuming, is unacceptable in the present circumstances.<sup>11</sup>

Further, insofar as the practice of nuclear deterrence actually reduces the chance of nuclear domination and conflict, absolutist interpretations of P do not enable us to take advantage of these means of averting nuclear war. Any ethical tradition that does base the moral worth of actions largely (though not exclusively) on their consequences will find such implications of absolutist interpretations of P grounds for rejecting these traditions. Given that some deterrent strategies reduce considerably the likelihood of nuclear conflict<sup>12</sup> and that absolutist interpretations of P commit us to rejecting such strategies, then surely that is a (partial) reason for rejecting such traditions.<sup>13</sup>

I reject, then, the absolutist interpretation of P. Insofar as such an interpretation of P commits one to unilateral disarmament or a total abandonment of nuclear deterrence, it is unacceptable. Natural law (and natural rights) moral theories often interpret P as absolute, so my rejection of this interpretation of the principle commits me to rejecting (most) such theories.

Let us note the nature of my rejection of absolutist natural law (and natural rights) ethics. Natural law (and natural rights) theories, as I understand them, suppose that we have certain basic natural duties (and natural rights) from which our moral obligations flow. Such moral theories generally evaluate agents not by (exclusive) attention to the consequences

10. The phrase is from Anscombe, “War and Murder,” p. 58.

11. The American Catholic bishops would appear to disagree, given their conditional justification of some forms of deterrence. However, I cannot find in their text any argument in support of this claim—which is not surprising, given their natural law premises. (See National Conference of Catholic Bishops, *The Challenge of Peace* [Washington, D.C.: United States Catholic Conference, 1983], esp. pp. 44–62.) William Shaw has recently argued that “deontologists” can justify nuclear deterrence with the use of a threat principle which he constructs. He argues that the threat to retaliate need not be immoral while assuming that the act of retaliation would be. The deterrent threat he thus justifies, however, should have the same efficacy as a bluff. (See “Nuclear Deterrence and Deontology,” *Ethics* 94 [1984]: 248–60.)

12. *Contra* Lackey, “Missiles and Morals.” See Gregory S. Kavka, “Deterrence, Utility, and Rational Choice,” *Theory & Decision* 12 (1980): 41–60, or just about any of the essays in this issue written by political scientists or defense planners.

13. William Shaw notes, “Many will simply see the endorsement of unilateral disarmament as a *reductio* of the absolutist position” (p. 259). Note that, if it is thought that the doctrine of double effect does not rule out counterforce retaliation, then the absolutist interpretation of P may commit us to deploying increasingly accurate and sophisticated nuclear weapons and to adopting counterforce deterrent strategies (see Wohlstetter). Defenders of the absolutist interpretation of P might also welcome President Reagan’s “Strategic Defense Initiative” (or “Star Wars” proposal) (see Colin S. Gray, “Strategic Defense, Deterrence, and the Prospects for Peace,” in this issue; and Gregory S. Kavka, “Space War Ethics,” in this issue).

of their actions but by their degree of moral responsibility for these actions. Should our acts lead to the death of innocent people, we are morally culpable, according to these traditions, only to the degree that we are morally responsible for the consequences, such responsibility being determined by reference to our basic moral duties (and the rights of others). That nuclear conflict or nuclear blackmail are made more likely by holding P to be absolute would not in itself make us morally responsible, in this view, for the harm unless we also violate some basic duty (or right). Thus my criticisms of these traditions are external.

Does my rejection of “absolutism,” the position that P is absolute, commit me to interpreting P as defeasible? A moral principle is defeasible when it may be overridden in certain circumstances by certain other moral considerations. Thus we might say that P is defeasible and may be overridden in contexts of nuclear war.

Utilitarian interpretations of P are likely to suggest themselves to contemporary readers at this point. Utilitarianism is the moral theory that supposes that all our duties are derived from the principle, Maximize the total quantity of the good, where the good is identified with happiness, well-being, or utility. According to such a view, all our duties are defeasible since whatever may maximize aggregate happiness in one situation may very well not do so in another. This and other features of the theory are, of course, familiar to students of contemporary ethical theory.

Utilitarian interpretations of P are but one way of rendering the principle defeasible; other moral theories may do this as well. But understanding the inappropriateness of utilitarian accounts helps to set the stage for the interpretation of P that I wish to defend.

Utilitarianism would have us consider in our moral deliberations the welfare of all individuals that could be affected by our actions. Further, not only are we to do this, but we are also to count their well-being equally with ours (“each to count as one”). Utilitarianism has often been criticized as too “flexible” a moral theory; depending on the circumstances, it justifies too much that we think wrong. It is not always clear that such criticisms are correct, but they seem beside the point here. What is striking about utilitarianism applied to matters of conflict and war is not how flexible but how demanding a theory it is. It requires us to count our adversary’s welfare equally with our own.

Sharing and extraordinary self-sacrifice are often to be found among family and friends or in small communities. Utilitarianism would have us guide our conduct toward all people (and sentient creatures) by such ideals. Countless critics have remarked on the inappropriateness of founding justice on such values, the social virtue of individuals who do not necessarily, to use Rawls’s phrase, take an interest in each other’s interests. This much is true. What needs to be emphasized is the irrationality of utilitarianism in contexts of major or total conflict, such as nuclear war. While most wars are not zero sum—that is, both sides have some interests in common—it is doubtful that any argument could be given for the

rationality of accepting the principle of utility in such situations, at least if we understand rationality in the usual way, as (allowing but) not requiring total self-sacrifice.<sup>14</sup> The interests in conflict in war may be too important to be constrained or abandoned in the manner required by utilitarianism. It is one thing to commit oneself to the principle of utility when one anticipates that others will do so and that the result will be mutually beneficial. It is completely different to commit oneself to the principle of utility in contexts of war.

There is another criticism that may be made of the utilitarian as well as of other defeasible interpretations of P, which leads us naturally to a contractarian account of P. It might be argued that those extreme circumstances in which P might justifiably be overridden, according to utilitarianism (or some other theory), would be circumstances in which one would be tempted to say that all principles of justice had been suspended. Thus in such circumstances P would not be defeasible; it (and other principles of justice) would simply cease to be requirements of morality.

Normally, in moral theory, it is thought that 'absolute' and 'defeasible' are contradictories; that is, it is assumed that a principle is absolute if and only if it is not defeasible. However, 'defeasible' and 'absolute' may merely be contraries. I shall argue that, even though P is not absolute, it is not defeasible, for there may not be any moral considerations that could override P.

I wish to defend the position that, contrary to the views criticized above, P is neither absolute nor defeasible. I shall argue that, in certain circumstances where respecting P would be irrational, P (and other principles of justice)<sup>15</sup> no longer is (are) rationally binding. Thus in such circumstances directly killing the innocent would not be unjust because nothing would be unjust.<sup>16</sup> Such circumstances, which I shall call "Hobbesian states of nature," are, I believe, exceedingly rare in the modern world, the behavior of nation-states to the contrary. However, an enemy nuclear

14. The notion of rationality I am using here is basically that widely used in the social sciences, especially in economics and game theory, where (roughly) a person is rational insofar as she maximizes the satisfaction of her preferences. I would want, however, to amend this conception in the manner suggested by David Gauthier, "Reason and Maximization," *Canadian Journal of Philosophy* 4 (1975): 411–33, so as to handle certain types of problems of strategic interaction (namely, Prisoner's Dilemmas, for readers familiar with these issues). See David Gauthier, "Deterrence, Maximization, and Rationality," *Ethics* 94 (1984): 474–95; and Peter Danielson, "Rationality and Ultimate Commitment" (York University, 1984, typescript), for amendments necessary for the rationality of deterrence. (Game theorists unfamiliar with moral philosophy might find it useful to think of the contractarian account of justice developed in this essay as a rational choice theory of ethics.)

15. My concern in this essay is with justice. I am assuming that what is true of justice need not be true of the other virtues. For instance, the virtue of benevolence may compel in situations where justice no longer binds. On the differences between justice and some other virtues, see Foot, *Virtues and Vices*; and John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), esp. pp. 3–17.

16. The 'nothing' will be qualified later, with regard to uninvolved third parties; see also n. 39 below.

attack would bring about such circumstances, or I so shall argue. Therefore massive nuclear retaliation would not, in those circumstances, be unjust. P, on this account, would not be absolute, for it would not be the case that it would be wrong to do what P prohibits, regardless of the consequences. But neither would P be defeasible, I shall claim, for there would be no moral considerations that could override the principle.

Principle P is a "basic" moral principle, I will assume. A moral principle is basic in some theory if it is not derivable from any other moral principle in that theory. A moral principle grounded only on nonmoral principles or propositions would be basic. For instance, moral principles such as, One ought to keep one's promises, or, It is wrong to steal, are not usually considered basic, as they are, in most moral theories, derived from some prior moral principle and hence defeasible. Natural duty and natural rights theories, respectively, take certain duties and rights to be basic. For such theories all other moral notions and principles are derived from the basic duties and rights. This does not entail that such duties and rights are absolute, though many such theories claim this as well. It does entail that a defeasible but basic duty or right (or principle) is not overrideable except by another basic duty or right (or principle), for the overriding considerations cannot have their source in a less basic duty or right. Thus I shall say that P is basic and derived from no other moral principle.

Principle P is not absolute. We have rejected natural law and natural rights interpretations. However, this does not entail that P is defeasible in the usual sense, for P may not be justifiably overridden by other moral considerations. If P is basic, it is likely that there are no overriding moral considerations since we would expect that these would themselves be derived from basic principles.<sup>17</sup> What I shall argue is that some of the circumstances in which utilitarians are likely to say that P is justifiably overridden are circumstances in which justice has been dissolved.

Faced with the apparent choice between interpreting P as absolute (as recommended by many natural law and natural rights theories) and the demand to accord equal weight to the welfare of the enemy (as recommended by utilitarianism), some counsel retreat into moral nihilism: in war, anything goes, nothing is prohibited. In the social sciences and in politics, such a position often goes under the name "realism."<sup>18</sup>

Such talk is dubious as well as dangerous. For one, it contradicts seemingly entrenched patterns of ordinary discourse.<sup>19</sup> In war, as well as other times, most people attempt to justify their actions by reference to moral standards. It is extremely difficult to talk about war without

17. The discussion of basic principles and of overriding moral considerations given here is, needless to say, a mere sketch.

18. For some recent accounts and criticisms, see Walzer; and Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979). Different species of "realism" are represented by some of the political scientists' essays in this issue.

19. Essentially this is Walzer's argument.

using moral language. Even appeals to "tough-minded" slogans such as "war is hell" do not usually allow us to dispense with moral categories.<sup>20</sup>

Equally important, however, is the danger of destabilization that comes from nihilism in these contexts. Nihilism may reinforce mutual suspicion. Recall my account of our current situation. The United States and the Soviet Union greatly distrust each other, and each appears to believe that the other is acquiring or already possesses offensive nuclear weapons. Should either party come to believe, or be reinforced in its belief, that the other thinks that nothing is forbidden, then that party could with difficulty trust the other to refrain from seeking to acquire first strike advantage. Assurance that the other is capable and willing to impose constraints on his or her behavior is crucial to stabilization. Since abstention from first strike advantage is stabilizing, retreat to nihilism may have a significant destabilizing effect. Suspicion that the other seeks to use allegedly defensive weapons for offensive, first strike ends can only be enhanced by skepticism.

Nonetheless, the retreat to nihilism has an important grain of truth to it. And this is the truth expressed in Thomas Hobbes's account of the relations between nations. According to Hobbes, nations find themselves in a state of nature in which there are no binding moral obligations. Relations between nations thus are relations of power, unconstrained by moral rules. Relations between individuals in a state of nature are also mere relations of power, unconstrained by moral considerations. The difference for Hobbes is that individuals have the possibility of establishing an enforcer or sovereign and thus of escaping from their plight. No such escape from the world of nations seemed possible to Hobbes.<sup>21</sup>

Now Hobbes's account here may be defective. It may be possible to accept his analysis of the problem facing rational individuals in such a state of nature without accepting his solution of absolute and unconstrained sovereignty, that is, without accepting his view that only the establishment of an all-powerful and indivisible ruler can end the state of nature. These issues cannot be explored here, but they are familiar to students of Hobbesian thought.<sup>22</sup>

Further, it is not clear that Hobbes's application of his basic analysis of international relations must be accepted.<sup>23</sup> I shall not pronounce on the accuracy of his account of the relations between nations in the seventeenth century. Nations today, however, are interdependent in ways which relevantly transform their situations.<sup>24</sup>

20. On the uses of General Sherman's phrase by some of the defenses of the atomic bombings of Hiroshima and Nagasaki, see Walzer, p. 265.

21. See Thomas Hobbes, *Leviathan* (1651), ed. C. B. Macpherson (Harmondsworth: Penguin Books, 1968), esp. chap. 13.

22. See, e.g., David Gauthier, *The Logic of Leviathan* (Oxford: Oxford University Press, 1969), esp. chap. 4, sec. 4.

23. See H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), pp. 208–31.

24. See Beitz, although I do not endorse his entire account.

According to contractarian ethicists, relations of justice obtain only between parties that find themselves in certain situations. Following John Rawls, we may call these the “circumstances of justice.”<sup>25</sup> According to this tradition, relations of justice obtain only between parties that are interdependent in certain ways. Individuals in the circumstances of justice are roughly equal in physical and mental powers and thus unable to dominate one another and vulnerable to attack; resources are moderately scarce (relative to needs and wants); needs and wants, although in conflict to some degree, are such as to allow for mutually beneficial interaction. The most important condition here for our purposes is that of mutual advantage: individuals find themselves in the circumstances of justice only if there exists the possibility of mutually beneficial interaction. In the absence of possible mutual advantage, in this view, there is no place for justice as individuals have no (nonmoral) reason to constrain their self-interested activity.

“Cooperative interaction,” I shall say, is mutually beneficial interaction made possible by constraints on self-interested behavior. Between interdependent nations today there appears to be room for (at least some) mutually advantageous interaction. Thus, we have one of the most important conditions for cooperative interaction. In such a situation, assuming the remaining circumstances of justice to obtain, norms of cooperation such as Hobbes’s first few “laws of nature” are rationally binding.<sup>26</sup> If we do not follow Hobbes in requiring an absolute (international) sovereign but instead require only some weaker system of enforcement (see the next paragraph below), then it would seem that certain norms of cooperation, for example, “seek Peace, and follow it,” are morally binding on nations in situations of interdependence.<sup>27</sup>

Such norms, exemplified by Hobbes’s laws of nature, morally bind only insofar as others are willing to abide by them.<sup>28</sup> The problem in international contexts, of course, is to obtain assurances that others are willing to abide by norms of cooperation. Between nations there is no Leviathan or absolute sovereign capable of impartial enforcement of agreements. Some system of enforcement, however, is necessary if cooperation in international contexts is to be rational.

25. See David Hume, *Enquiry Concerning the Principles of Morals* (1777), in *Enquiries*, 3d ed., rev. by P. H. Niddich (Oxford: Oxford University Press, 1977), sec. 3; and Rawls, pp. 126ff.

26. The first few laws require that one pursue peace, be willing to give up an equal amount of natural liberty on the condition others do so as well, and keep agreements. Hobbes believed that the laws of nature are summarized in the counsel, “Do not that to another, which thou wouldest not have done to thy selfe” (chap. 15, p. 214; see generally chaps. 14, 15).

27. Hobbes, chap. 14, p. 190.

28. “. . . be willing when others are too . . .” (Hobbes, chap. 14, p. 190). (Supposing the Hobbesian state of nature to be an  $n$ -person Prisoner’s Dilemma, then acceptance of the laws of nature might be thought to transform the situation into an Assurance Game. The sovereign is then required to stabilize the latter.)

It may be a mistake to think that the requisite enforcement mechanism in international contexts is a supranational state, as "realists" generally suppose. In many relations between individuals, where police protection is unavailable, norms of cooperation are often adequately enforced by the parties themselves. The threat to retaliate can, in many situations, provide adequate enforcement. So with international contexts, we may suppose that threats to retaliate can provide the requisite enforcement mechanism. If such threats are morally permissible, then we need not search for an international sovereign to ensure international cooperation.

We want, I am assuming, to make nuclear as well as nonnuclear conflict between the superpowers extremely unlikely (extended deterrence). What strategies might enable us to do this? Following a recent popular defense of deterrence, let us suppose that "in the long run, insofar as nuclear weapons are concerned, what each superpower needs for the deterrence of nuclear and conventional attacks on itself and its main allies is the capacity for assured destruction . . . and a *limited* capacity for actual warfare. A complete counter-force capability would be disastrous for crisis stability if it consisted of vulnerable forces; and even a complete invulnerable counter-force capability might incite the opponent to strike first in order to use his vulnerable weapons."<sup>29</sup>

However, a threat to retaliate with massive strikes is a morally acceptable means of deterrence only if not morally impermissible. For the purposes of my argument let me invoke a weak principle concerning the justification of threats. We are justified in (sincerely) threatening to do  $x$  under certain conditions if we are not wrong in doing  $x$  under those conditions. More precisely:

*Weak Threat Principle.*—A (sincere) threat to do  $x$  in circumstances  $C$  is morally permissible if doing  $x$  in  $C$  is not morally impermissible.<sup>30</sup>

29. Carnesale et al., p. 250. We need not suppose that the United States should adopt a policy of "no first strike," although bilateral adoption of the recommendations quoted above—maintaining the capacity for assured destruction—might assure each party that the other renounces striking first (see McGeorge Bundy et al., "Nuclear Weapons and the Atlantic Alliance," *Foreign Affairs* 60 [1982]: 753–68; and Josef Joffe, "Nuclear Weapons, No First Use, and European Order," in this issue).

30. A "sincere" threat is a threat that one intends to carry out. I am assuming that, if an act is not impermissible, then neither is threatening that act. This is the Weak Threat Principle. It may be the case that sincerely threatening an act is not impermissible if and only if the act itself is not impermissible. Call this the "Strong Threat Principle." The latter is much more controversial, and my argument in this essay does not require it. On this issue, see Gregory S. Kavka, "Some Paradoxes of Deterrence," *Journal of Philosophy* 75 (1978): 285–302; Gauthier, "Deterrence, Maximization, and Rationality"; and Gregory S. Kavka, "Deterrent Intentions and Retaliatory Actions," in *The Security Gamble*, ed. D. MacLean (Totowa, N.J.: Rowman & Littlefield, 1984), pp. 155–59. See also Warren Quinn, "The Right to Threaten and the Right to Punish" (University of California, Los Angeles, 1984, typescript), for a discussion of these issues in the context of punishment. The Weak Threat Principle is not adequately stated. Threats may have consequences or meaning independent of their relation to the action threatened. Thus, there may be circumstances in which it is wrong to threaten something that is permissible. I am not yet sure how to qualify the

Since P is, I have assumed, basic and not overrideable by other moral considerations, a (countervalue) nuclear strike is not prohibited only if norms of justice no longer bind, that is, if cooperation between the two parties no longer is possible. In the event of any enemy attack, cooperative relations have in fact ended. Effectively, in such an event, the parties are back in a Hobbesian state of nature. Thus, in such a state, a (countervalue) nuclear strike would not be morally impermissible; thus threatening to retaliate with such a strike in a state of nature is morally permissible.

In the event of an enemy nuclear attack (or a massive attack on NATO forces), not only have cooperative relations in fact ended, but cooperative relations are also no longer possible on terms acceptable to rational agents. This latter point is controversial and is not a feature of Hobbes's contractarian theory. Cooperative relations presuppose a baseline for determining terms of cooperation. I suppose, *contra* Hobbes, that such a baseline precludes worsening the position of the other prior to negotiating a cooperative agreement.<sup>31</sup> Should another first worsen one's position before endeavoring to cooperate, then cooperation is no longer possible on terms acceptable to rational agents. Cooperation is rational only from a baseline of noncoercion.

Let me expand here. Contractarian moralists suppose that principles of justice are rationally acceptable only if it is advantageous to live in a world where individuals thus constrain their self-interested behavior. Thus to be acceptable to all members of a society, such principles must be mutually beneficial. Advantage in this tradition is to be determined by reference to some nonmoral state; otherwise no claim could be made about the (nonmoral) rationality of moral practices that was not question begging.

Hobbes supposes that the baseline from which contractarian moralities are determined is one in which individuals interact noncooperatively. Thus, if one party, holding a pistol to another's head, secures the latter's "consent" to enslavement, genuine moral obligations are created; the deal is mutually advantageous. Now we need not follow Hobbes here; we need not suppose that such a baseline is the proper starting point for the conventionalist's construction of morality. For would it be rational for someone to comply with an "agreement" that had been secured by coercion? Clearly not, once the means of coercion had been withdrawn.<sup>32</sup>

Thus we shall say that the proper baseline for adoption of principles of justice is one of noninteraction. Such a standpoint precludes one party worsening the position of another immediately prior to agreement. I

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principle so as to handle such cases. I am indebted to David Gordon, Martin Hahn, and Thomas Hill for useful discussions about this principle.

31. This account is developed in David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1985), chap. 7. See also Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), chaps. 2, 3, 7, for a noncontractarian account of such a condition on cooperation.

32. See Gauthier, *Morals by Agreement*, chaps. 6, 7.

shall suppose, then, that the baseline of contractarian cooperation precludes coercion.

In the event of an enemy nuclear attack (or of an enemy attack on important allies), the parties are back in a Hobbesian state of nature. In such a state of nature, the prohibition on the direct killing of the innocent, like all other principles of justice, becomes a mere counsel of (nonmoral) prudence. Threatening an adversary with (countervalue) retaliation in the event of a nuclear attack is permissible because, in the circumstance in which such a threat would rationally be carried out, it would not be impermissible to do so. The important assumption here is the Weak Threat Principle: a threat to do  $x$  in circumstances  $C$  is morally permissible if doing  $x$  in those circumstances is not morally impermissible.<sup>33</sup>

The prohibition against killing the innocent directly is, I assume, to be found in an acceptable contractarian morality. Rational agents, in a contractarian choice situation, would find such a prohibition mutually advantageous. Further, I suppose that it is a basic principle and that it binds as long as that morality is "in force." A morality is in force, I shall say, when rational agents are in the circumstances of justice and are not forced back into a state of nature; in those situations, such a morality is binding on rational agents.

Principle  $P$ , then, morally binds rational agents up until the point they are forced back to a state of nature. It is never morally permissible, I shall assume, to return unilaterally to a state of nature. This would violate Hobbes's first law of nature, which is to seek peace and to follow it. But should another unilaterally return to a state of nature, for example, by launching a nuclear attack, then  $P$  and all other principles of justice become mere counsels of (nonmoral) prudence. Thus massive retaliation is not, under such circumstances, morally impermissible. Thus a threat to retaliate massively is morally permissible.<sup>34</sup>

33. Note the analogy with punishment: one may legitimately threaten another some specified harm should this person commit some action if so harming her would not be impermissible in the event that she commits the specified action. See Quinn for the view that we are morally justified in punishing someone if we are morally justified in threatening her.

34. The account of the state of nature that I have sketched here is Hobbesian primarily in inspiration; in practice it departs from many features of his account. A pure Hobbesian state of nature is one with no moral obligation or rights (in the sense of Hohfeldian claim rights). In such a world nothing is morally impermissible. This corresponds to stage 1 of the state of nature in my account. At this stage, as with Hobbes, nothing is unjust (or just). I follow Gauthier, who argues that rational individuals will at this stage impose certain constraints on themselves in order to be able to negotiate (tacitly or explicitly) principles that will enable them to leave the state of nature (*Morals by Agreement*, chap. 7). Acceptance of such constraints as the appropriate baseline for determining binding principles of conduct constitutes stage 2 of the state of nature. *Contra* Hobbes, there are some moral constraints in the (second stage of the) state of nature. But *contra* Locke, these constraints are not derived from a law of nature but are conventional. A nuclear first strike or an unprovoked invasion of Western Europe by the Soviet Union would return us to stage 1 of the state of nature, as it would demonstrate that the Soviets are unwilling to impose on themselves

Such an account of P does not make it permissible to kill the innocent in any situation of conflict. The account that I have developed shows how P is suspended in certain situations, namely, when an adversary unilaterally returns to a Hobbesian state of nature. In the event, say, of an enemy nuclear attack (or of a massive strike against NATO forces), the United States (or, *mutatis mutandis*, the Soviet Union) would no longer be bound by P. This does not entail that P is suspended in all conflicts. For surely not all wars involve the complete return to a pure Hobbesian state of nature. In most wars there is an important residue of mutual interest, enough to generate binding rules of conduct—for instance, rules prohibiting certain weapons, protecting noncombatants, governing the treatment of prisoners, *et cetera*.<sup>35</sup> Thus this argument is not, for instance, a justification of obliteration bombing or terrorism. For instance, it is doubtful that the Allies during the latter years of World War II were in a situation in which P was suspended.<sup>36</sup> Certainly the bombings of Dresden and Tokyo, of Hiroshima and Nagasaki, could not be justified by the account I offer here; nothing has been said about suspending P in the pursuit of the unconditional surrender of an enemy state. Mere expediency in the conduct of war would not, in my account, warrant the suspension of P.

An important objection to my account deserves to be considered. In the event of an enemy attack, massive nuclear retaliation is not prohibited, I have argued, because P (and other principles of justice) no longer would be in force. Thus killing the innocent would not be wrong (or right). Now someone might grant that we would be in a state of nature relation with regard to the Soviet leaders and other officials involved in the decision to attack but demur at the idea that (causally) innocent Soviet citizens would be in a similar position. After all, inhabitants of uninvolved third countries would not be placed in a state of nature by Soviet aggression against us. We would not thereby be relieved of the prohibition on attacking them. Why should, for instance, Soviet children be different?

Such an objection to my argument is difficult to meet. For I do not wish to argue that all persons are plunged back into a state of nature by enemy aggression and that we would not be acting wrongly were we to

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the minimal constraints (of stage 2) that are necessary in order to determine the principles of interaction that would enable all parties to leave the state of nature. The nation attacked is not morally prohibited from nuclear retaliation since the aggressor has unilaterally returned to stage 1 and thus no longer avails itself of the protection of either the strong constraints of justice or the weak constraints of stage 2.

35. Richard Brandt, "Utilitarianism and the Rules of War," *Philosophy & Public Affairs* 1 (1971): 145–65. With regard to World War II, I might argue that some of the war conventions (e.g., those governing gas) were requirements more of prudence than of morality.

36. Although it is possible that the British were in precisely such a situation in the early years of World War II and that they were (only) then justified in suspending P and initiating the bombing of German cities. See Walzer's interesting account of "supreme emergencies" (pp. 255ff.).

use the occasion to drop bombs on other peoples. Yet I do want to hold that we would not be acting wrongly to retaliate against innocent Soviet citizens in the event of a Soviet attack.

May we deter, for instance, an enemy nuclear attack by threatening some third party about which enemy leaders happen to care? Would the inhabitants of this (otherwise) uninvolved nation also be in a state of nature with respect to us in the event of an enemy nuclear attack? If innocent Soviets may be held hostage,<sup>37</sup> then may we also threaten innocent third parties?

In my account, members of society A are not prohibited from deterring a nuclear attack by B by threatening to kill innocent members of B. Is A, however, not prohibited from deterring B by threatening to kill members of C, where C is an uninvolved third country? Should I agree, then am I not supposing that members of B are in some way collectively responsible for the aggressive acts of their leaders? It is hard to conceive of a plausible account of collective responsibility that could hold Soviet children responsible for the aggressive acts of Kremlin officials. Yet I must be able to distinguish between innocent Soviets and innocent third parties since I wish to hold that the latter are not placed in a state of nature by the aggressive actions of Soviet leaders. A reply to this objection requires further analysis of the nature of contractarian moral relations between individuals and groups.

Two individuals who are in the contractarian circumstances of justice and who directly interact with one another are bound to one another by obligations of justice. This much is granted by all contractarian moral theories. What if the individuals are in the circumstances of justice yet do not directly interact with one another? Suppose two individuals, Ann and Boris, stand to benefit mutually from cooperative interaction yet do not interact directly because they live very far apart, Ann in Los Angeles, Boris in Leningrad. Yet the two are in the circumstances of justice. While Ann and Boris do not stand to benefit mutually from direct cooperative interaction (until they directly interact), they do stand to benefit from indirect cooperative interaction as members of different societies.

Cooperative relations can be direct or indirect. Obligations of justice can thus bind individuals directly, as natural individuals, or indirectly, as members of a group. Ann and Boris each have obligations of the first sort to the individuals with whom they directly interact, perhaps most members of their respective societies. But Ann and Boris have only obligations of the second sort to one another. Their obligations to one

37. Nuclear deterrence as an exchange of hostages was noted long ago by Thomas Schelling: "The balance of terror,' if it is stable, is simply a massive and modern version of an ancient institution: the exchange of hostages. . . . As long as each side has the manifest power to destroy a nation and its population in response to an attack by the other, the 'balance of terror' amounts to a tacit understanding backed by a total exchange of all conceivable hostages" (*Strategy of Conflict*, p. 239). See also Steven Lee, "Nuclear Deterrence: Hostage Holding and Consequences," in this issue.

another they have by virtue of their membership in societies that stand to benefit from cooperative interaction. Obligations of international justice thus bind individuals only qua members of a society; obligations of individual justice bind natural individuals.

Suppose that cooperative relations between two countries break down due to a nuclear attack of one on the other. Then Ann and Boris would find themselves in a Hobbesian state of nature with respect to one another. While it is possible that they would be able to return to civil society with greater ease than their aggressive leaders would, nonetheless relations of justice no longer obtain between the two.

Note, however, that, were Boris visiting Los Angeles when his leaders launch an attack, then each would be bound by justice to one another as natural individuals, even though neither would be bound to one another qua members of different societies. Ann, or any other American, would be bound by justice not to kill Boris (assuming his innocence in the relevant sense).

What distinguishes Soviet citizens from third parties is that we remain bound by justice to the latter even when our obligations to the former are dissolved. In the absence of aggressive behavior on their part, relations of justice continue between the United States and third party nations, thus rendering nuclear strikes against them morally impermissible.<sup>38</sup>

It is important to note that my account does not have the consequence that there are no moral constraints on nuclear retaliatory strikes. If we remain bound by justice to uninvolved third parties, then the doctrine of double effect (which I accept in some form) obligates us to minimize the adverse side effects of nuclear retaliation on third parties. Were massive nuclear retaliation against the Soviet Union to destroy human life on the planet, then the fourth condition of the doctrine of double effect would prohibit it. Note, though, that our obligations, in my account, would be to the third parties and not to Soviet citizens. My argument thus places some moral restrictions on the nature of a permissible retaliatory strike against an enemy nuclear attack. Such retaliation could not directly kill innocent third parties. If it is true that a single massive nuclear strike would destroy the planet in a "nuclear winter," then the fourth condition of the doctrine of double effect would make such a strike morally wrong. My argument could only show that a less massive strike was permissible.<sup>39</sup>

38. I am grateful to Dan Farrell for conversations which helped me to clarify the position I am developing here.

39. A nuclear strike that would bring about a nuclear winter would not be rational. *Contra* many defense theorists, my defense of deterrence is restricted to rational deterrent policies. By such a policy I mean a nuclear strategy with greater expected benefits (to the nation in question) than possible nonnuclear deterrent strategies would have. (It is crucial that the expected costs of carrying through on one's threat should deterrence fail be counted in the expected-benefit analysis. Thus the expected benefits of a policy should include the expected costs of compliance with that policy should deterrence fail. I assume that this would rule out threats to bring about nuclear winters.) This rationality constraint on deterrent strategies may be quite strong.

The distinction I made (in n. 34 above) between the two stages of the state of nature enables me to generate further constraints on nuclear retaliatory strikes. Suppose that we have a choice of two retaliatory strategies, one promising  $n$  enemy casualties, the other  $n$  plus a nonnegligible number of further casualties, most of which would be innocent. Supposing the deterrent effect of each is equal, should we not, other things being equal, adopt the first strategy? I have argued that in the event of a Soviet nuclear attack we would be freed of moral obligations toward members of that society; thus it would seem difficult for me now to argue that we would be committed to the first of the above strategies.

Our relation to all Soviet citizens may not, however, be the same. With regard to some (e.g., those in some way responsible for a nuclear attack), we would be in a pure Hobbesian state of nature. With regard to others (e.g., those in no way responsible for an attack), we could be in a stage 2 state of nature since cooperation with them might at a later date be possible. Thus were we able to constrain our behavior toward the latter without risking annihilation by others, we should do so. Should our choice of deterrent strategies be like that described above, we should adopt the first strategy. Thus our choice of strategies may be subject to some weak moral constraints binding in a (stage 2) state of nature.

I have sketched a contractarian account of the moral prohibition on the killing of the innocent. If my account should prove to be sound, then we shall have provided reason to believe that threatening massive slaughter of the innocent is not a morally prohibited response to enemy nuclear threat. Nuclear deterrence, as it has been traditionally understood, is under attack both on the left and on the right; defenders of unilateral nuclear disarmament and supporters of the current administration alike condemn it as immoral.<sup>40</sup> If one believes, as I do, that nuclear deterrence is a more promising means of avoiding nuclear (and nonnuclear) conflict between the superpowers than present alternatives are, then the argument of this essay may prove to be a useful contribution to current debates.

40. For the latter, see Wohlstetter. It is not clear, however, that these defenders of the current administration would be so enthusiastic in their moral condemnation of MAD and similar strategies were they not to believe that we have other alternatives, all of which are far preferable to unilateral nuclear disarmament.

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