

The Ethics of Retaliation

Judith Lichtenberg

From the very first hours after the September 11 attacks on New York and Washington, President Bush vowed to retaliate against those responsible. The American public supported him overwhelmingly, and continues to do so. But what does retaliation mean, and what does it allow? What kinds of actions are appropriate, and on what basis can we justify them? Some people will be impatient with such questions—feeling that, in the wake of these wrenching events, justification is either unnecessary or plain obvious. But the risks surrounding what we do—or fail to do—are great, so it is worth thinking about the moral dimensions of our responses.

Two Rationales for Retaliation

Philosophers have traditionally distinguished between two different sorts of justifications for retaliation or punishment. One is “backward-looking,” the other “forward-looking.” The backward-looking approach looks to what has already happened: it justifies retaliation purely in terms of the justice of meting out punishment to one who has deliberately caused harm to others. This rationale, which philosophers call *deontological* (from the Greek word for necessity), is often linked with the popularly expressed goals of retribution, revenge, vengeance, an eye for an eye. The idea is that one who does harm *deserves* to suffer, that punishment is just and even necessary to “right the wrong” and restore the moral balance. The terrorists, like other criminals, must be brought to justice; justice must be brought to the terrorists.

To describe this approach as backward-looking is not to criticize it. It is only to recognize that what justifies retribution is not any supposed good consequences, such as deterring similar acts in the future, but simply that the guilty party has done wrong and deserves to pay. From the point of view of retribution, it doesn’t matter if any further good comes of punishment; punishing the guilty is inherently right and just, and that’s all it needs to be. Forward-looking justifications, by contrast, are *consequentialist*: they justify punishment or retaliation as a means of bringing about some supposed good consequences, such as prevent-

ing or deterring further violence, or (in some cases) reforming or rehabilitating the wrongdoer.

Our institutions of punishment generally combine a backward-looking retributivist justification and forward-looking consequentialist ones. Most people find the retributivist argument compelling: they think that it’s inherently wrong for people to get away with murder and that we must serve justice by giving people what they deserve. But it is clear that we do, and must, inflict punishment also for forward-looking reasons: primarily to remove dangerous people from society (domestic or international) so they can do no further harm, and to send a message to other potential criminals that such behavior will not be tolerated. We can think of these forward-looking considerations—sometimes called specific and general deterrence, respectively—broadly in terms of self-defense. It’s hard to imagine a system that didn’t combine backward-looking with forward-looking elements.

Retribution: A Closer Look

But matters are more complicated than these remarks might suggest, as we can see if we examine the notion of retribution more carefully. Note first that

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retribution is popularly associated with revenge and vengeance, which, despite their near-universality as emotions and motives to action, have some explaining to do. Two wrongs, we know, don’t make a right, so retributivists have to explain why the second “wrong” is *not* wrong and thus *can* make a right. Typically they do this by invoking the idea of balance, of inflicting suffering on the criminal as a counterweight to the suffering he inflicted on the victim—something that raises the victim’s stature to what it was before the crime, or

that lowers the wrongdoer's to what, in light of his crime, it should be.

Revenge also suggests the unleashing of powerful emotions that may not be easily contained: the punishment may exceed the crime, and violence may continue and even escalate. The Hatfields and the McCoys, the Israelis and the Palestinians. Defenders of retribution answer this objection by distancing it from its suspect cousins revenge and vengeance. Two features can tame retribution and render it respectable. One is the idea that the punishment must fit the crime, an idea that is essential to retribution but not necessarily to the emotionally-based revenge and vengeance. And while it is common to emphasize that the punishment must be severe enough to fit the crime, it is equally crucial, retributivists insist, that punishment not exceed the crime in severity.

Furthermore, while the principle of retribution says that the guilty must be punished, equally important is its demand that *only* the guilty may be punished. Punishment must be tailored to reach those who have done wrong and leave untouched those who have not.

Despite these crucial qualifications, retribution still seems to some people pointless and incomprehensible. Why add injury to injury? Unless punishment does some good, what rationale can be given for it? Ironically, when we consider crimes on the scale of the September 11 attacks, retribution can seem especially meaningless. Many of the criminals are already dead, and moreover they and their allies seem not to regard death—for most of us the worst punishment—as punishment at all. Even if they did, the deaths (or other punishment) of a few score guilty murderers pale in comparison with the crimes they have committed.

Yet most people find in the idea of retribution something satisfying and morally sound. Clearly they are more justified in this opinion once the strict requirements of retribution are understood. The fit of punishment to crime (not too little, not too much) and the requirement of guilt transform retribution from a potentially brutal idea to one constrained by strict limits. Indeed, the principle of retribution can be conceived to be as much about the limits of punishment as about its necessity. So it's not as ironic as it may seem that, despite its usual associations with a certain

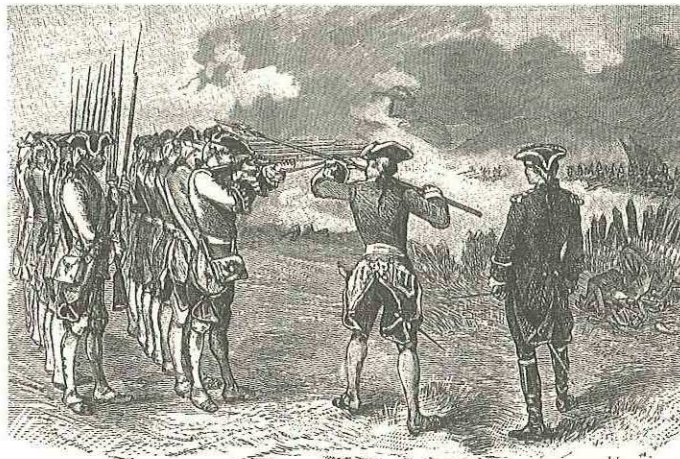
unflinching hardness, retribution is inadequate to justify the broad actions that have in fact been undertaken since September 11. These actions and their clearly foreseeable consequences—the waging of war and the suffering and hardship it imposes on many people not guilty of terrorism—are much too indiscriminate to be justified in terms of retribution.

Making the World Safe

But retribution is only part of what the current retaliation efforts—and most retaliation efforts—are about. Here we may note a certain ambiguity in the word “retaliation.” Much of the post-September 11 rhetoric suggests that the goal of retaliation is identical with the goal of bringing the terrorists to justice. But clearly there is another goal: to reduce the threat of terrorist attacks as much as possible. We retaliate not only to punish, but also to prevent: to disable potential terrorists from successful action, to deter them if possible, to make the world safe from terrorist violence. Indeed, even those who care nothing for retribution are concerned about prevention. We are engaged in acts of collective self-defense.

Few people would disagree that preventing such violence is a legitimate and worthy goal. But prevention raises questions very different from those confronted by retribution. One is *how* to prevent such violence. We know much better how to punish than how to prevent. If, as some people argue, violence breeds violence, then war is not the way to achieve our goals. Even if this pacifist view is wrong, the policy of employing war as a tool involves countless guesses and gambles about just which of myriad possible causal chains our actions will set off. It thus raises empirical questions whose answers we can never be certain of. Retribution, by contrast, raises no comparable questions of fact.

But the goal of prevention also raises an explicitly moral question: what means may be employed to prevent terrorism? We can imagine extinguishing it by indulging in a degree of violence that would be excessive and reprehensible. “By any means necessary” is not an adequate answer.



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Despite its harsh reputation, the principle of retribution imposes strict moral limits—the requirement to punish only the guilty and to do so in proportion to the crime. But it's not clear what limits the goal of prevention imposes. It suggests only that the actions contemplated have the desired effect, and that could sanction the unleashing of great brutality and violence. In the domestic context, the preventive aims of the criminal justice system are for the most part constrained by respect for the civil rights and liberties of American citizens. Excessive and invasive means to prevent or reduce crime would evoke sharp reactions from many quarters. But when the goal of preventing violence involves action beyond our borders, respect for the rights and welfare of other countries' people looms much less important—if it figures at all.

Just war theory—the accumulated body of thought regarding the moral constraints on the conduct of war—offers two relevant principles. One is the principle of proportionality. The other is the principle of non-combatant immunity.

Proportionality demands that we weigh means against ends. Which ends justify which means? When a country is attacked, and the end in question is a nation's survival or the survival of its people, proportionality may seem to rule out very little. For what can

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be a more worthy or legitimate end? Spelling out the meaning of proportionality, the nineteenth century philosopher Henry Sidgwick argued that in the conduct of war it is not permissible to do "any mischief which does not tend materially to the end [of victory], nor any mischief of which the conduciveness to the end is slight in comparison with the amount of the mischief." As Michael Walzer points out, Sidgwick's argument seems to rule out only purposeless or wanton violence. Although, as Walzer also notes, in war this is no small achievement, still it does not take us very far in limiting the conduct of war.

Noncombatant Immunity

Much more central to limiting the destructiveness of war is the principle of noncombatant immunity. The core idea is that in war one may not target civilians. In keeping with this principle, President Bush at the beginning of the war in Afghanistan made "low collateral damage"—the military euphemism for civilian casualties—a criterion for the conduct of the war. At

the same time, since September 11 a large majority of the American public has favored military action even if it means the killing of civilians.

The *Washington Post* reported that "as many as 10 times" in October and November "the Air Force believed it had top Taliban and al Qaeda members in its cross hairs in Afghanistan but was unable to receive clearance to fire in time to hit them because of a cumbersome approval process" and disagreements with the U.S. Central Command "over how much weight to give to concerns about avoiding civilian casualties." Now it's clear that at least part of the reason for American leaders' concern about protecting noncombatants is strategic. They understand the importance of winning—certainly of not losing—the war for public opinion in the Muslim world. They know that nothing is more likely to turn opinion further against the United States, and to disturb the fragile relationships the U.S. has with its Islamic allies, than the killing of civilians. But even this strategic reason rests at bottom on a moral one: it is because people believe it is morally wrong to kill noncombatants that it is useful to respect the prohibition. There is another important moral consideration: our condemnation of terrorist attacks on civilians would ring hollow if we ourselves committed such acts.

But the principle of noncombatant immunity raises several questions. First, how should we draw the line between those who are legitimate targets of military attack and those who are not? Second—and this question is inseparable from the first—*why* should we draw such a distinction? Third, just what does the principle of noncombatant immunity prohibit and what does it allow?

In ordinary discourse we often use the terms "non-combatants," "civilians," and "innocent people" synonymously. What makes such people morally immune from attack? In "War, Innocence, and Terrorism," (published in this issue) and elsewhere, Robert Fullinwider has noted an important ambiguity in the word "innocent." We tend to use the word to mean "morally guiltless" or "morally good." In this sense it is clear that the distinction between combatants and noncombatants is perfectly distinct from the class of noninnocents and innocents. Some combatants are morally good, some noncombatants are morally bad. Some conscripts are unwilling soldiers who do not support their country's cause; some civilians applaud their country's murderous actions from the sidelines. But the relevant meaning of "innocence" in war, Fullinwider suggests, has to do with the absence or presence of threateningness, not moral guilt. Typically, combatants are threats—they have and use weapons to try and kill their enemies—while noncombatants are not. It is because they are nonthreatening, not because they are morally innocent, that noncombatants are morally immune from attack.

It's easy to confuse moral guilt and threateningness, because in typical crimes the two go together. The ordinary murderer threatens his victim, and he is morally guilty. But in war and some other situations the two concepts can come apart. Philosophers once had to dream up fantastic examples to illustrate this point, but recent events have rendered the examples merely realistic. Passengers on the planes that crashed into the World Trade Center were what philosophers call innocent threats or shields. Through no fault of their own, they threatened the lives of those in the buildings. It is plausible to think that if government officials could have prevented the deaths of thousands inside the buildings by shooting down the planes, they would have been justified in doing so. The passengers on the plane (minus the terrorists) were—we may suppose—morally unstained, but they posed a mortal threat to the lives of other people, and this rendered them legitimate targets.

So we can draw the line between legitimate and illegitimate targets via the notion of a threat. Combatants are ordinarily armed and threatening, noncombatants are not. (There will, of course, be borderline and unclear cases.) Another basis for the distinction can be found in an intriguing discussion by the philosopher George Mavrodes. Mavrodes argues that the distinction between combatants and noncombatants depends not on an intrinsic moral difference between the two groups but on a convention: a pragmatic calculation that in the long run less carnage and destruction will result if we limit battle to a circumscribed class of people. It's as if warmakers got together and agreed that they could achieve the same goals at lesser cost by playing the war game in a restricted rather than an unlimited way, declaring some people players and others off limits. More specifically still, we can imagine the leaders of each nation consenting to such an agreement on the grounds that if they vowed not to target the other side's civilians, their enemies might do so as well.

The idea that war is a rule-governed activity and not a free-for-all has always seemed somewhat strange, but the conduct of states in the international arena shows that, fortunately, it is accepted most of the time. The particular rule limiting combat to agreed-upon players is one of the most important, preventing war from infiltrating every corner of people's lives.

So we find two bases for the immunity of noncombatants: one resting on threateningness as the central justification for violence in war, and the other on a pragmatic calculation that a rule protecting noncombatants can reduce the carnage and destruction of war. Still, war is messy, and inevitably military actions will sometimes kill civilians. And so the question is how to decide when such actions are justified.

The Doctrine of Double Effect

Catholic theologians in the Middle Ages devised the "doctrine of double effect" to answer this question. According to the doctrine, it is never permissible to kill civilians directly; one may never aim at or intend their deaths. But suppose some civilians are killed in the course of a legitimate military operation—an operation directed only at a military target. Suppose also that one knows or foresees that they will be killed. Whereas intending to kill civilians is never permissible, according to the doctrine of double effect, foreseeing civilian deaths as an effect of a permissible action (such as aiming at a military target) is not prohibited.

A great deal has been written both defending and criticizing the doctrine of double effect. On the one hand, much about the doctrine seems highly suspect and sophistical, and almost all the examples used to illustrate it outside the war context (concerning abortion and euthanasia, for example) only heighten that suspicion. On the other hand, its use in making moral distinctions in war seems almost indispensable. Military personnel intend to hit military targets, but they know that some civilians in the surrounding area will be hit as well. If killing civilians were sufficient to render such missions morally impermissible, wars could not be fought. But wars will be fought and must be fought; therefore some way of making the distinction must be allowed.

Michael Walzer has done much to remove the aura of sophistry surrounding the doctrine of double effect. The original doctrine distinguishes between an action one intends (say, the bombing of a munitions factory) and an effect one foresees as the result of this action (say, the killing of civilians who live in the neighborhood). It says that the action is allowable, as long as you don't intend the other effect—the deaths of the civilians. But as Walzer argues,

Simply not to intend the death of civilians is too easy; most often, under battle conditions, the intentions of soldiers are focused narrowly on the enemy. What we look for in such cases is some sign of a positive commitment to save civilian lives. . . . And if saving civilian lives means risking soldiers' lives, the risk must be accepted.

To illustrate the point, Walzer recounts a World War I soldier's story: when they were about to toss a bomb into a cellar or dug-out, he and his comrades would first shout down to make sure no civilians were inside, thereby jeopardizing their own safety.

Walzer's proviso saves the doctrine of double effect from abuse and trivialization. Properly understood, the doctrine does not allow people to escape responsibility for the fatal effects of their actions simply by averting their minds. It's not enough not to try to kill civilians; you have to try *not* to kill them.

Graceful Simplicity: Toward a Philosophy and Politics of Simple Living

Jerome M. Segal

In *Graceful Simplicity*, Jerome M. Segal expands and deepens the contemporary discourse on how to achieve a simpler, less harried way of life. He articulates a powerful conception of simple living—rooted in beauty, peace of mind, appreciativeness, and generosity of spirit. At the same time, he criticizes much of the “simple living movement” for believing that we can realize this conception as isolated individuals if only we free ourselves from overconsumption. Segal argues that, unfortunately, we have created a society in which human needs can be adequately met only at high levels of income. Instead of individual renunciation, he calls for a politics of simplicity that would put the facilitation of simple living at the heart of our approach to social and economic policy.

“*Graceful Simplicity* is a marvelously textured analysis of the elusive ideal of simple living. For those eager to find a way to get off the “more is better” treadmill, Jerome Segal offers insight and hope. Drawing upon philosophy, history, economics, sociology, and psychology, he explains why simplicity is not a simple concept and reveals why it retains its perennial allure. A must read.”

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How hard do you have to try? How radical Walzer's proviso is depends on how great the risks we think soldiers must take to minimize civilian casualties. Walzer doesn't say, and clearly there is no simple answer. But it is crucial to see that his proviso requires our soldiers taking risks to protect *their* civilians. Given the chauvinism that often comes in war's wake, that sounds like a radical idea.

What justifies it? If all human beings are equal, it may be argued that our people are no more valuable than their people and that therefore we must treat human beings without regard to nationality. But few will be convinced by such reasoning, especially in times of war. More persuasive is a Mavrodes-like pragmatic account of the rules of war. Mavrodes's argument suggests that the best way to avoid annihilation is to observe certain rules—against targeting civilians, in favor of protecting civilians, against nuclear, chemical, and biological weapons—and to treat these rules as nearly sacred. They are not in fact sacred—their justification is largely consequentialist—but the risks that come with their violation are so great that we are better off treating them as more than rules of convenience.

There are other reasons to observe such rules as well. One is the sort of strategic consideration mentioned earlier. Appearing to be sensitive to humanitarian concerns is an important element in persuading the international community, especially those inclined to distrust us, that we are not simply self-interested. We need to ensure that our actions don't create more terrorists than they destroy. But it's not simply a matter of appearances. It's crucial that our conduct not blur the line between ourselves and those we condemn. If we abandon the moral high ground, we risk corrupting the standards that render our country worth defending.

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Sources: Robert Fullinwider, “War and Innocence,” *Philosophy & Public Affairs*, vol. 5 (1975) and “Terrorism, Innocence, and War,” *Philosophy & Public Policy Quarterly*, vol. 21, no. 4; Judith Lichtenberg, “War, Innocence, and the Doctrine of Double Effect,” *Philosophical Studies*, vol. 74 (1994); George Mavrodes, “Conventions and the Morality of War,” *Philosophy & Public Affairs*, vol. 4 (1975); Thomas E. Ricks, “Target Approval Delays Cost Air Force Key Hits,” *Washington Post* (November 18, 2001); Henry Sidgwick, *Elements of Politics*; Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977).