

G. A. Cohen  
All Souls College  
Oxford

**Casting the First Stone:**  
**Who Can, and Who Can't, Condemn the Terrorists?<sup>1</sup>**

“No matter what the grievance, and I’m sure that the Palestinians have some legitimate grievances, nothing can justify the deliberate targeting of innocent civilians. If they were attacking our soldiers it would be a different matter.” (Dr. Zvi Shtauber, Israeli Ambassador to the United Kingdom , BBC Radio 4, May 1, 2003).

a. Preliminaries. In April 1997 my son Gideon was dining out with his then wife-to-be in the Blue Tops restaurant in the centre of Addis Ababa. Suddenly, a hand grenade sailed into the room. The explosion killed one woman and it severely injured other people, but Gideon and Carol protected themselves by pushing their table over and crouching behind it. While Carol was physically unharmed, shrapnel hit and entered Gideon’s right temple. It

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was removed three-and-a-half years later, after it had caused bad headaches. Not only the identity but even the inspiration of the Blue Tops terrorists remain, up to now, unknown.

One year later and one country away, in the Sudan in 1998, my daughter Sarah was less anonymously menaced. For she was one mile from the Khartoum factory that was said by President Clinton to be producing chemical weapons and that was bombed by Clinton in what was presented as an appropriate response to then recent anti-American terrorism in Africa. Whatever may have been the motive, or mix of motives, behind Clinton's action, the bombing of the pharmaceutical facility (which was merely maybe also a weapons factory) with Sarah nearby enabled me to identify with the victims of superpower military force more than a Western person normally might. Hundreds of miles away, I could fear for Sarah's fate under possible further Khartoum bombing.

These experiences caused me to ruminate more than I otherwise would have done on the similarities and differences between the little bombs of the underdog and the big bombs of the overdog,<sup>2</sup> and I thank you for allowing me to present some of that rumination to you today.

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<sup>2</sup> Perhaps I should define the word "overdog". On September 4, 2003, just before 1.30 p.m., UK time, the World at One, a British news programme, interviewed a spokesperson for the British arms industry (whose name I did not catch) about the then current International Arms Fair in London. The spokesperson was asked whether he did not agree that, although arms exports made money for Britain, and British people might welcome that, they would nevertheless be happier still if the same amount of money were being made through some form of non-arms export. He replied more or less as

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On May the 1<sup>st</sup> 2003, Dr. Zvi Shtauber, who was then Israel's ambassador to Britain, said this on British radio:<sup>3</sup>

No matter what the grievance, and I'm sure that the Palestinians have some legitimate grievances, nothing can justify the deliberate targeting of innocent civilians. If they were attacking our soldiers it would be a different matter.

Shtauber's statement made me angry, and I want to explain why it did so. I was not angry because I disagreed with what he said, and, in fact, I shall not challenge the truth of what he said in this paper: I shall neither deny it nor affirm it, and everything that I shall say is intended to be consistent with the claim that the deliberate targeting of innocent civilians is never justified. Yet while I shall not deny what the ambassador said, I shall raise some questions about his right to say it, with the vehemence and indignation that he displayed, and in the posture of judgment that he struck.<sup>4</sup> A lot of people who think it impossible to justify terrorism nevertheless find condemnations of terrorism by some Westerners, and by some Israelis, repugnant. Yet if terrorism is impossible to justify, why can't just anybody at all condemn any

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follows: "Not at all. British people are proud when they see Harriers and Tornadoes being used in far-flung places. Of course, if we were selling small arms, like Kalashnikovs, that would be a different matter". That man was a spokesperson for overdogs.

<sup>3</sup> To his Today programme interviewer, John Humphrys, at 8.15 a.m. , U.K. time.

<sup>4</sup> Voltaire famously said, "I disagree with what you say, but I shall defend to the death your right to say it". I am saying something closer to "I agree with what you say, but I shall attack your right to say it". OK, maybe not to the death."

terrorism whatsoever? I offer an attempt to answer that question this evening.

There has been a certain amount of discussion in the literature about how to define the word “terrorism”. But my topic is not the definition of the word. For my purposes, we can let terrorism be what Shtauber objected to, namely, the deliberate targeting of innocent civilians, for military and/or political purposes. If that is not what terrorism is, it is certainly what most people object to when they object to what they call “terrorism”. And most people think, as Shtauber manifestly does, and as I do too, that deliberately targeting innocent civilians is, other things equal, morally worse than deliberately targeting soldiers.<sup>5</sup>

A final preliminary point. I shall assume throughout that terrorism, or at any rate the terrorism that concerns us here, effectively serves the terrorists’ aims. If terrorism, or a given case of terrorism, is anyhow counter-productive, with respect to the aims of the terrorists themselves, then, for practical purposes, no questions of principle arise, since no sane person, or anyway nobody that I want to argue with, would say that some principle justifies counter-productive terrorism. But note that anybody who condemns

<sup>5</sup> You might nevertheless have wanted me to say what I think terrorism actually is. But there is, in a sense, nothing that I think terrorism is, where “is” is the “is” of identity: I would affirm no English sentence of the form “Terrorism is ....” of which I would say that anybody who denies that that is what terrorism (“is” of identity) is says something false. The behaviour of the word “terrorism” is too disorderly for us to be able to identify a range of its uses that could serve as canonical tests of proposed definitions of the term.

terrorism only on the ground that it is counter-productive has conceded a large point of principle to the terrorists. The criticism that terror is counterproductive doesn't criticize it as terror.<sup>6</sup> More approved forms of violence are also sometimes counter-productive, and Shtauber's complaint was not that a course of action that includes terrorism<sup>7</sup> [READ THE FOOTNOTE] will not succeed, or that terrorism makes it harder for Israel to agree peace terms, though he would no doubt have added such claims, had the distinct question of the efficacy of Palestinian terror been raised. Shtauber's judgment was one of principle, and it is issues of principle, not difficult questions of fact, that fall under my inspection here.

The rest of my discussion is inspired by reflection on the Israeli-Palestinian conflict, although some of it has application to the confrontation between the United States and Al-Qaeda. As a left-wing Jew whose Jewishness matters to him, I am exercised, indeed, I am agonised, in the

<sup>6</sup> It is, moreover, false that terrorism is never productive, as Michael Ignatieff economically shows: "As for the futility of terrorism itself, who could say with confidence that Jewish terrorism – the assassination of Lord Moyne and then of Count Bernadotte, the bombing of the King David Hotel, followed by selective massacres in a few Palestinian villages in order to secure the flight of all Palestinians – did not succeed in dislodging the British and consolidating Jewish control of the new state? Though terror alone did not create the state of Israel – the moral legitimacy of the claim of the Holocaust survivors counted even more – terror was instrumental, and terror worked". 'The Lessons of Terror: All War Against Civilians Is Equal', The New York Times Book Review, 17 February 2002.

<sup>7</sup> Note that the proper object of assessment is not terrorism but a course of action that includes terrorism, which covers courses that also include negotiation. Pure negotiation is not the only alternative to terror: the efficacy of the good cop/bad cop strategy is well understood.

particular way that many left-wing Jews whose Jewishness matters to them are agonised, by the Israeli-Palestinian conflict. But although what I shall say is a response to the Israeli-Palestinian conflict, I offer no conclusions about that conflict: people who agree with my observations would apply them in different ways, according to their divergent further convictions. I model certain aspects of the conflict, more particularly, some aspects of the discourse that surrounds it, for the sake of philosophical discussion. But the further significance of what I have to say will depend on the answers to controversial questions of fact and principle about which I shall say nothing. I have in mind controversial factual questions about what happened in 1948 and in 1967 and earlier, and later, and other factual questions about what the intentions of various parties to the conflict are now. I also have in mind difficult questions of principle, such as whether a people, or, at any rate, a massively abused people, has a right to a state, and, if so, at whose expense, and at how much of their expense. All that will be set aside here. What will not be set aside - it is crucial to the case that I shall build - is that the rights and wrongs of the Israeli-Palestinian conflict are deeply controversial: that much is surely uncontroversial. If you disagree with that assessment, if, in particular, you think the Israeli position is uncontroversially correct on all the major issues, then you will find it difficult to sympathize with the line of argument in this paper.

b. Who Can Criticize Whom: “Look Who’s Talking”.

Before we think hard about the implications of what we are saying, we may be disposed to affirm that certain conditions of extreme injustice need not be tolerated, that people may do everything within their power to remove them, or, at any rate, that the sufferers of that extreme injustice may themselves do anything that they can do to remove them.<sup>8</sup> But we are also inclined to affirm that certain means of fighting injustice should never under any circumstances be used. Yet what can we then say when our two inclinations come together because we are asked to consider circumstances that display the contemplated conditions of extreme injustice, in which the forbidden means are the only means available? When we acknowledge that such circumstances are possible, we are forced to revise some of our convictions about what morality says.

And, in what turn out to be the convictions about morality upon which we come to settle, morality might say, to some victims: “Sorry. Your cause is just, but you are so effectively deprived of all decent means of resistance by your oppressor that the only means of resistance that remain open to you are morally forbidden means.” Morality might say that, because that might happen to be the sad moral truth of the matter. But can just

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<sup>8</sup> The implications of the proposition would make most people recoil from it. Andrew Williams spells them out: “The view contemplated here seems to me to imply that there is an injustice so burdensome that if the only way in which I can escape it is by imposing it on others then it is permissible for me to do so no matter how many individuals I might have to sacrifice and how little threat they pose to me.” (Private Communication).

anyone at all say that on morality's behalf, in a posture of moral admonition?

Can the oppressor herself strike that posture? Can the oppressor, whoever that may be, and I make no assumptions about who qualifies as an oppressor here, can the oppressor get away with saying: "I am sorry. Your cause is just, but you are so effectively deprived (as it happens, by me) of all decent means of resistance that the only means open to you are morally forbidden?"

As the example of the oppressor suggests, the force, the effect, of a moral admonition varies according to who's speaking and who's listening.<sup>9</sup>

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<sup>9</sup> The question, "Who can say what to whom?", goes largely unexplored in contemporary moral philosophy. To be sure, if all that moral philosophy were interested in was what acts are right and what wrong, then this phenomenon might deserve little attention. ("Might": I do not myself believe that the phenomenon carries no lessons as to what is morally right, because I believe that what I call the "interpersonal test" ("Incentives", p. ...) has non-interpersonal moral implications. But the interpersonal test is not employed in the present paper.) But, insofar as moral philosophy seeks to reconstruct actual moral discourse, the widespread neglect by moral philosophy of the phenomenon described in the sentence to which this footnote is attached is unjustified, since it looms very large in moral discourse.

I myself began to examine the interpersonal dimension of moral utterances in lectures called "Incentives, Inequality and Community" that I delivered in 1991, and the theme was subjected to further study by Jerry Dworkin in an article called "Morally Speaking" that appeared in Edna Ullmann-Margalit (ed.), Reasoning Practically, OUP, 2000. As I said: "A [moral] argument will often wear a particular aspect because of who is offering it and/or to whom it is being addressed. When reasons are given for performing an action or endorsing a policy or adopting an attitude, the appropriate response by the person(s) asked so to act or approve or feel, and the reaction of variously placed observers of the interchange, may depend on who is speaking and who is listening. The form, and the explanation, of that dependence vary considerably across different kinds of case. But the general point is that there are many ways, some more interesting than others, in which an argument's persuasive value can be speaker-and/or-audience-relative, and there are many reasons of, once again, different degrees of interest, why that should be so." (The Tanner Lectures on Human Values,

Admonition may be sound, and in place, but some may be poorly placed to offer it. When a person replies to a critic by saying: "Where do you get off criticizing me for that? ", she is not denying (or, of course, affirming) the inherent soundness of the critic's criticism. She is denying her critic's right to make that criticism, in a posture of judgment. Her rejoinder achieves its effect without confronting the content of her critic's judgment. She challenges, instead, her critic's right to sit in judgment, and to pass judgment. She could not similarly challenge a critic whom she had overheard saying, to a third party: "I of course agree that what she did was morally wrong, but I'm not myself in a position to criticize her. (It's not for me to cast the first stone)".

Let me step back a bit. We can distinguish three ways in which a person may seek to silence, or to blunt the edge of, a critic's condemnation. First, she may seek to show that she did not, in fact, perform the action under criticism. Second, and without denying that she performed that action, she may claim that the action does not warrant moral condemnation, because there was an adequate justification for it, or at least a legitimate excuse for performing it. Third, while not denying that the action was performed, and that it is to be condemned (which is not to say: while agreeing that it is to be condemned), she can seek to discredit her critic's assertion of her standing as a good faith condemner of the relevant action.

Grethe Peterson (ed.) p. 273: a number of illustrations of the "general point" follow the quoted paragraph.)

See, further, Appendix I below.

I should make clear what I am not claiming, when I say that a critic may be disabled from condemning, and, therefore, in the relevant sense, may be unable to condemn, the agent under judgment. I do not mean that the critic cannot be speaking the truth when she condemns the agent: it is central to the interest of the phenomenon under exploration here that she might well be speaking the truth. Nor do I mean that the critic should be forbidden, under whatever sanction, to make the relevant utterance. Whether there ought to be a legal prohibition, even whether there is a moral prohibition, on the utterance, is a somewhat separate matter.<sup>10</sup> What I mean is that there are facts about the critic that compromise her utterance considered as, what it purports to be, a condemnation: the focus is on that intended role, or illocutionary force,<sup>11</sup> of the utterance. If Shtauber had said, "By the way, I think what the Palestinians are doing is morally horrendous", then what I

<sup>10</sup> It is not part of my view that it is always wrong for someone who is not in a position to condemn to condemn. My topic is not when it's morally permissible (all things considered) to condemn. I could agree with a person who said: "I really wasn't in a position to condemn him, but issuing that savage condemnation was the only way to rally others and/or to get him to stop, and that was more important than making sure that my speech-acts were in accord with my 'standing'".

I believe that lying is in itself wrong, and that it therefore counts against an act that it is a lie, which is to say that there is something wrong with lying because of its nature, whatever its typical, or unusual-case, consequences may be. But sometimes those consequences can make it all right, or even imperative, to lie. So, similarly, here: I believe that there is something wrong with condemning unless certain presuppositions are fulfilled, but if dodgy condemning is going to save the children, then I say: "Condemn away!"

<sup>11</sup> The phrase "illocutionary force" is J. L. Austin's: see his How to do Things with Words.

shall say about his actual and differently toned utterance would not apply. It is material to the contention that I shall lay before you that Shtauber was not merely seeking to speak the moral truth, but, precisely, to condemn, and the question is: was he well placed, as a spokesperson for Israel, to engage in that particular speech-act of condemnation? Did he have the right, the requisite standing, to condemn the Palestinian terrorists, in the terms in which he did?

This third way of deflecting criticism, that is, by impugning the right of the critic to condemn, is of great importance in the political world, where it matters enormously who can say what to whom, credibly and sincerely: that consideration helps to determine the fate of would-be critical political interventions. The world of politics is not populated by saints with spotless track records, but by non-saints who have a better hope of deflecting criticism not by trying to justify what they themselves did but by implicating their criticizing fellow non-saints in the same or similar charges.

We often implicitly acknowledge the force of the third form of response to criticism. When someone says "I'm not in a position to criticize him", and cites some relevant morally disabling fact about herself, people do not say: "But anyone can criticize anyone regardless of their own track record". If you, reader, are indeed disposed to say the latter, then you disagree with me at a very fundamental level. If you do not recognize a difference between expressing a negative moral belief and condemning, then I

do not know how you would account for the peculiar force of the disavowal that is expressed by the words, “I’m not in a position to criticize her”.<sup>12</sup>

An ambiguity in the word “criticize” may cause you to resist the distinction that I have sought to labour. There is certainly a sense of “criticize” in which, if I express a negative moral opinion about some person, then I count as criticizing that person: the word “criticism” can be used to name a form of opinion. But it can also be used to denote speech-acts that are, or are akin to, acts of condemnation; otherwise, so I claim, it would not make sense to say, “I think what he did was wrong, but I’m not in a position to criticize him”. The key point is that, when the moral capacity to criticize or condemn is undermined, the capacity to perceive and register and speak the truth is not undermined with it.

Two ways of discrediting a condemning critic’s standing will concern me here. They both occur widely in moral discourse, and they occur saliently in exchanges of condemnation about terrorism, and, in particular, in exchanges between Israelis and their supporters on the one hand and Palestinians and their supporters on the other.

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<sup>12</sup> It may be worthwhile to distinguish some distinct ways of resisting the claims of this paper. You disagree with me most fundamentally if, as I have said, you deny the very existence of the sort of transgression of which I accuse Shtauber, if, that is, you deny that the capacity to engage in good-faith condemnation is relative to the record and/or posture of the would-be condemner. But you might accept the relativity thesis yet insist, against what I have said, that absolutely excluded acts can be condemned by anyone: Shtauber might then be immune to my critique. And he might also be thought immune to it for some other reason, even if one’s standing does bear on one’s capacity to condemn absolutely excluded acts.

The first of these techniques for compromising a critic's voice was signalled in my childhood by the retort "Look who's talking!" Shapiro might say, "Hey, Goldstein, how come you didn't come to the club last night? All the guys were expecting you." And Goldstein might reply: "Look who's talking. Twice last week, you didn't show up". Unless Shapiro could now point to some relevant difference, his power to condemn was compromised, whether or not the criticism he originally made of Goldstein was sound.<sup>13</sup> In places that are more genteel than the immigrant streets of post-war Montreal where I grew up, people do not say, "Look who's talking", but "That's the pot calling the kettle black". If I, the putative kettle, make that reply, under criticism, to the putative black pot, I am not denying (or, necessarily, accepting) that I am tarnished. I am saying that, since the pot is even more whatever it is that leads it to condemn me than I am, the pot, on its own express view of the matter, should focus on its own hue rather than on mine.<sup>14</sup>

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<sup>13</sup> Yet both Goldstein and Shapiro could, of course, be condemned by the conscientious club-attender Hockenstein.

<sup>14</sup> This is not to deny that what the pot says is true, and in some contexts, its truth will be all that matters. If the kettle had said that it was clean, what the pot says to the kettle might pass muster. But in political contexts, in contexts of political enmity, what the pot says is often discredited even if it is preceded by a rosy and false self-appraisal on the part of the kettle.

Compare Christopher Ricks' quip about T. S. Eliot "...Rick said Eliot's clearing Wyndham Lewis of having faschist sympathies was like the pot calling the kettle white. "I was right and wrong to make the joke, which was quite a good joke," says Ricks. "If you follow it remorselessly it suggests Eliot was a facist which I don't think he was. But he also wasn't in a position to clear other people of the accusation. There is too much that Eliot is associated with that is not without its links to fascism." (Profile of Christopher Ricks by Nicholas Wroe, Guardian newspaper Review section, 29/1/05, p. 23.

And a still more elevated epithet that occurs in the contemplated range of disabling replies is more elevated still because it is in Latin. I have in mind the sentence, "Tu quoque", which means, "You, too."

When Jesus said "judge not, that ye be not judged", and when he allowed only the sinless to cast the first stone,<sup>15</sup> he was invoking tu quoque in an extreme form. But he was not saying that the compromised judgment would be mistaken. He was, on the contrary, implying that the forbidden judgment would indeed be correct, yet one that you are not well placed to make, because it also applies to, and against, you. "Judge not, that ye be not judged" is extreme because it disempowers me as a critic as long as I am not entirely sinless. Contrast the other Jesus statement, about not pointing out the mote in my brother's eye when there is a beam in my own eye. Beams are larger than motes, so if, somewhat unrealistically, we take the beam/mote statement au pied de la lettre, then we may say that the beam/mote statement relaxes the Jesus view a bit, because it condemns judgment only from judges whose sins are worse than the sins of those whom they seek to judge.<sup>16</sup>

Compare Dubin's Lives rabbi story, Nietzsche: "He who despises himself still esteems the despiser within himself".

<sup>15</sup> I presume here that, despite the context of that remark, Jesus intended it as advice not only about literal but also about metaphorical stone-throwing.

<sup>16</sup> Would Jesus have allowed you to cast a stone if you first signed up for being the next victim of stone-casting? Consider monks who flagellate each other. Why shouldn't the fact that we are all sinners mean that we should all criticize each other, rather than, as Jesus says, that no one should criticize anybody? (I thank Marshall Berman for that pregnant counter-suggestion).

For that first sub-type of would-be discrediting response I have three good labels: "look who's talking", "pot calling the kettle black", and "*tu quoque*". For my contrasting second sub-type I have no good vernacular or Latin tag. But I will point you in the right direction by reminding you of retorts to criticism like "you made me do it", and "you started it", even though those phrases don't cover all the variants of the second sub-type. I shall name the second sub-type "You're involved in it too", but if anybody can think of a better name, then I welcome suggestions.

In this second sub-type of silencing response you are disabled from condemning me not because you are responsible for something similar or worse yourself but because you bear at least some responsibility for the very thing that you seek to criticize. My Nazi superior cannot condemn me for doing what he orders me on pain of death to do, even if I should disobey, and accept death. I return to that second sub-type of silencing in section c.

The first sub-type, *tu quoque*, clearly plays a large role in Palestinian responses to Israeli criticism of Palestinian terrorism, and also some role in Israeli responses to Palestinian criticism of Israelis.<sup>17</sup> Was I angered by

Compare the discussion of the consistency explanation of *tu quoque* in Appendix I below.

<sup>17</sup> We should also consider what might be called counterfactual tu quoque: "You'd do this, or worse, if you were in my shoes". Can American neo-cons put their hands on their hearts and declare that if their own weapons of mass destruction were somehow immobilized, say, by computer hackers, then they would nevertheless refrain from using terrorist means against their opponents, even if they thought them effective? (I set aside the claim that they have non-counterfactually used, and nourished the use of, such means in Latin America). Can they deny that what are now terrorists might prefer to

Ambassador Shtauber's statement because it is vulnerable to the "look who's talking" reply? In part yes, not because I am confident that what Israel does is as bad as terrorism is, but because Israel so clearly has a case to answer under *tu quoque* that setting aside possible comparisons with Israeli behaviour, as Shtauber sought to do, is unacceptable. He was asking others to "Join me"<sup>18</sup> in condemning them regardless of whether we're just as bad, or worse, than they are", and that is not an invitation that anyone should accept.

The Israelis have a *tu quoque* case to answer, because they kill and maim many more people, and deprive many more still of their homes and livelihoods, than Palestinian terrorists do. To be sure, there are many Israelis who are oppressed by that fact and who are highly critical of their own government, but who believe that that government may nevertheless credibly condemn Palestinian terrorism because that terrorism is morally much worse than any violence that the Israeli government itself commits. In response to the claim that Israeli condemnation of Palestinian terror is silenced by the fact that Israelis kill many more Palestinians, and a lot more children, these Israelis argue that Israeli killing is not as bad as Palestinian killing.

use approved weapons of mass destruction, in acceptable ways, as the United States may be presumed to have done in discussions with terror-condemning Americans who do not condemn the United States, at Hiroshima and Nagasaki?

<sup>18</sup> I italicize those words, because they point to a theme that occurred to me late in the course of my work on this paper, and that needs further development. In some fashion condemners invite third parties to join them in condemning the condemnable, but when condemners are subject to *tu quoque*, there are reasons for third parties not to do precisely that.

Some of these Israelis invoke the principle of double effect, which distinguishes between killing innocent people as an unintended but foreseeable side-effect of otherwise targeted action, and killing innocent people who are your target, people, that is, whom you hope and intend to kill. "Our government can condemn them", these Israelis might say, "because although our government kills more innocent people than they do, our government does not aim to kill innocent people".

Now I myself believe in the principle of double effect, or at any rate in the judgments about cases that are meant to illustrate that principle.<sup>19</sup> But I also believe that the only sane form of the principle of double effect is comparative, rather than absolute. I believe, for example, that, holding everything else equal, such as, for instance, the amount of justice that there is in the cause, killing two hundred innocents through foreseeable side-effect is actually worse than killing one innocent who is your target. It seems to me ludicrous for us to say that you committed an outrage when you set your sights on, and killed, a civilian with your petrol bomb but that we did not commit an outrage when, and because, we merely foresaw that our bombing would destroy not only the Hamas leader that we were aiming at but also many of the twenty-five people that lived near him. And we also have to take into account how careful combatants are to avoid killing civilians. It is possible not to aim at killing them but to be utterly reckless of their safety,

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<sup>19</sup> The diagnosis of those judgments, and whether or not they really support double effect, is controversial. See Alison McIntyre (cited in B. Williams, Truth) and Tim Scanlon.

and it seems pretty clear that Israeli soldiers have become more reckless, in some cases wilfully reckless, as the conflict has deepened.<sup>20</sup> And worse still than (merely) reckless side-effect killing is side-effect killing that is still not aimed at, that remains “mere” side-effect, but that is expected and welcomed, because it deters potential terrorists who care about their families and their neighbours.

So it is not at all clear that Israeli criticism of Palestinian terrorism can escape the *tu quoque* rebuke by sheltering under the doctrine of double effect. But Palestinian terrorists and their apologists also face a powerful *tu quoque* challenge.

Palestinians complain that they lack a state. They complain that their rights are denied. But how can they then justify a terror that denies the right to life of innocent others? Is not the right to life more precious still than the right to a state?

Palestinians might protest that they do not aim at innocents but only at Israelis who are complicit in causing their grievance. But no defensible doctrine of complicity, however wide may be the criteria for complicity that it proposes, will cover everybody in those Tel Aviv cafés, including the children, and the non-citizens of Israel. In face of that fact, can Palestinian claim that they are aiming only at the complicit citizens in the Tel Aviv bars,

<sup>20</sup> If some amount of side-effect killing n is just as bad as some lesser amount of aimed-at killing m, then some lesser amount of side-effect killing p (m<n<p) where recklessness is displayed would surely be just as bad as that amount (m) of aimed-at killing.

and that the other deaths are side-effects? I, for one, do not find that posture credible. But how does it differ from the posture of Israeli assassination squads who blow up houses because Hamas supporters live there even when they know that innocent people who also live there will lose their homes and their livelihoods and even their lives?

In sum: I'm not sure who can point the finger at whom here, but I'm sure that it's absurd, given the uncontested facts, for either to point the finger at the other with no comment on his own glass house: and that was undoubtedly one provocation to the anger that I felt when I heard Shtauber's statement. (I should also have been angry if a Hamas leader had accused Israeli soldier-killers of a callous disregard for human life: but that isn't the example on the table.)

c. Who Can Criticize Whom: "You're also involved in it". So much for the case to answer that faces Shtauber under *tu quoque*: that case puts his right to condemn in question. But he has two further cases [SELF: LL-C: namely (i) and (ii)] to answer under the contrasting "You're also involved in it" challenge. Let me first say something about the "You're also involved in it" challenge in general terms. After that, I'll return to Shtauber, and the two species of this second genus of silencing that I want to distinguish.

I said earlier that among the variants of this second way of deflecting criticism (*tu quoque* was the first) are "You started it" and "You made me do

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it": the reply has many variants, with "it's your fault that I did it" at one kind of extreme and "you helped me to do it" at another. And note that if it's your fault, in whole or in part, that I did it, then it can be your fault for structurally different reasons. Here's part of the relevant wide array: you ordered me to do it, you asked me to do it, you forced me to do it, you left me with no reasonable alternative, you gave me the means to do it (perhaps by selling me the arms that I needed). When such responses from a criticized agent are in place, they compromise criticism that comes from the now impugned critic, while leaving third parties entirely free to criticize that agent. When, as a child, I tried to excuse an action on the ground that someone else had told me to perform it, my mother, a third party, could and did reply "So, if they told you to jump off the Empire State Building, you would do that too?" The functionary who follows Nazi orders can't be condemned for following those orders by the superior who issues<sup>21</sup> the orders; he can nevertheless be condemned by us.

Note, now, how this second genus of challenge, "You're also involved in it", differs from "Look who's talking". "Look who's talking" says: "How can you condemn me when you are yourself responsible for something similar, or worse<sup>22</sup>?" In "You're also involved in it" the responding criticized person need make no judgment about whether her critic has herself done

<sup>21</sup> Note the present tense: I do not say that a reformed Nazi superior cannot condemn an unreformed lesser functionary for having obeyed him.

<sup>22</sup> On "similar or worse", see Appendix I, section (1), below.

something similar or worse. Instead, “You’re also involved in it” says: “How can you condemn me when you are yourself responsible, or at least co-responsible, for what you are condemning?” That responsibility can run from physically forcing at one end to merely abetting at the other. “If you criticize me for robbing the bank, why did you willingly give me the safe lock number?”<sup>23</sup>

The general form of “You’re also involved in it” is this: you are implicated in the commission of this very act, as its co-responsible stimulus, commander, coercer, guard, assistant, or whatever (whether or not what you did was wrong, or similar to what I did, or worse than what I did). ”

Let me now consider Ambassador Shtauber’s statement within the “You’re also involved in it” framework. I focus first on the concession at the opening of Shtauber’s statement, the concession which says “Your grievance may be just.” That concession is often heard from Israelis who speak about Palestinian terror. But I believe that there can be a problem about proceeding to condemn the terrorist means after you have expressed a willingness, in principle, to concede just grievance, when you, the critic, are the source of the grievance, if there is one. I believe that whether or not the Palestinians have a legitimate grievance, and whether or not those Palestinians who use terrorism in pursuit of a supposed grievance are justified in doing so, Shtauber’s statement is indefensible, on his lips, because they are the lips of a

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<sup>23</sup> Also worthy of exploration is how and under what circumstances your involvement imposes on you a duty to condemn. There may be cases in which you both have a duty to condemn and no right to do so.

spokesperson for Israel: an Israeli spokesperson is not morally qualified to make the “no matter what the grievance” concession when it is followed by the “nothing can justify” condemnation. For you are yourself more or less implicated in the act you seek to condemn if you caused a legitimate grievance to which the act is a response. And how, therefore, can you reasonably expect your condemnation of the act to be received as made in good faith, unless you address the grievance of those you condemn? How can you suppose yourself to be free to set aside the size and character of that grievance, and your putative role in causing it, and proceed to condemn the responsive terrorist act, as a third party freely might? If the Palestinian grievance is large, and Palestinians have no effective way of pursuing it save through a strategy that includes terror, then, even if it were not Israel that thus constrained their practical options, the putative Israeli responsibility for the grievance itself compromises what Shtauber says after he has made his concession.

One might mount the following objection to what I have claimed. Someone who imposes a grievance and thereby induces a violent response might not be able to complain that there was some sort of aggressive response, but could still condemn the response as disproportionate. If, in response to my callous snub, you shoot me in the foot, that you are responding to my callous snub does not disable me from condemning that

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shooting. And one might say that terrorism, because always wrong, is a fortiori always disproportionate.

To this objection I have two replies. First, that the objection overgeneralizes. For, if the grievance I impose is particularly spectacular, one that is as absolutely condemnable as is the terrorist response, then the fact that the latter is morally excluded does not seem to me to show that it is, in particular, disproportionate. (Suppose, for example, the imposing of the grievance is itself a disproportionate response to a still previous insult: the power of tu quoque then joins the present different disabling fact to condemn the condemnation).

And a further reply to the objection is that some sort of discount rate applies here. Suppose responses can be calibrated on a scale of 1 to 10, and, in a particular case, anything over 5 is disproportionate, and the response under examination is 6 or 7. Then a third party can, ex hypothesi, condemn that response, but one might nevertheless think that it needs to be, say, 8, for the provoker herself to condemn it. For these reasons, I do not bow to the suggested objection in vindication fo Shtauber's right to say what he did.

But there is a second and distinct way in which Israelis might be thought implicated in the terrorism that they seek to condemn. For whoever caused a particular grievance, and whatever the weight of that grievance may be, an agent who unjustifiably constrains the practical options that are available to the putatively aggrieved is not well placed to condemn the choice of an option (in our case, terrorism) that he, the constrainer, makes

particularly eligible, from the point of view of the aims of the constrained. (Recall that we have legitimately supposed – see p. 4 above – that the terrorist option is a particularly good one for Palestinians).

Consider a Wild West parallel, in which a certain varmint is not allowed to own a gun, when everybody else has one, when guns are standard equipment for wild westerners. Suppose it was Cal who removed the varmint's gun. If Cal now seeks to condemn the varmint's recourse to whatever it is that is worse than a gun - maybe a hand grenade - that the varmint perforce uses instead, then Cal must either justify his removal of the varmint's gun or show that its removal, even if unjustified, didn't effectively drive the varmint to his alternative course. If you've got someone up against the wall, don't complain if he kicks you in the balls, unless you are prepared to say something about your own act of putting him up against the wall. (You can protest when a homicidal criminal that you have disarmed tries to strangle you, but that is because disarming him was justified. After all, he made you do it.)

Let me now pursue the putative – putative is enough – parallel between Cal and the Varmint on the one hand and Israel and the Palestinians on the other. If it is you who deny civil democratic means of redress to a people, if it is you, moreover, who disarmed them, and you who deprive them of weaponry that is effective against your soldiers, or at least ensure that they cannot get such weaponry, then you in particular cannot complain if they use unconventional weaponry against non-soldiers, unless you can

justify your constraining action, or show that the constraint was not substantial enough to make their action understandable. Israelis ensure that Palestinians cannot acquire conventional means of combatting Israeli forces, and they therefore cannot complain that the Palestinians use other ones, if the Palestinians have a legitimate and sufficiently substantial grievance. If B claims to have a legitimate grievance, and A, who may not have caused that grievance, leaves B no effective recourse except horrible violence, or even if A makes such violence a strategically attractive recourse, then how can A in particular complain about that horrible violence, without commenting on the justifiability of his, A's, constraining B's options, and therefore on the status of B's putative grievance (again, whether or not it was A himself who caused that grievance)? Because other people routinely carry guns, Cal has to explain why he removed the varmint's, if he wants to condemn the varmint's use of a hand grenade. And when other peoples, Israelis, Americans, British and so forth, have "superguns", true weapons of mass destruction, then those who deprive the Palestinian people of similar weaponry must explain why they did so if they seek to condemn the Palestinian recourse to unsimilar weaponry.

Thus, and for two reasons: even if it is the moral truth that one should never attack civilians, in terrorist fashion, the Israelis in particular can't condemn Palestinians for attacking civilians, regardless of the justice of their grievance. Even if terrorism is always wrong, Shtauber's stance in condemnation of Palestinian terror is unsustainable, in the absence of an

argued case against the Palestinian grievance, not because their grievance might justify terrorism (that being excluded by the protasis of this sentence), but because, if they have a legitimate grievance, then it is against an Israel that both created their grievance and restricts their practical options of response.<sup>24</sup> Accordingly, the question of the justice of the Palestinian grievance cannot be set aside by those who deprive them of conventional means of redress in a discussion of the particular unconventional means that they use to pursue their grievance, especially (but not only) if those who deprive them of conventional means are also the unjust causers of that grievance.

[OMIT LECTURE] The two charges against Shtauber that belong under the “You’re also involved” heading – “You caused our grievance” and “You forced us to use terrorist means” - do not simply lie side by side. Though logically and practically independent, in the general case,<sup>25</sup> they are, in a certain manner, fused here. For consider If the Palestinians had normal

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<sup>24</sup> Suppose some oppressed opponents of a state begin a campaign of liberation by attacking soldiers. But then the state gives its soldiers bullet-proof armour, and, needless to say, doesn't also issue such armour to its oppressed opponents. Suppose that, as a result, the oppressed can now have an effect only by attacking civilians. Can they not say, tellingly, that their oppressors, in adopting the armour policy, have left them with no other recourse? We, the bystanders, may be able to blame both co-responsible sides: the state for its armour policy, the oppressed for now attacking civilians. But how can the state blame the oppressed, unless the state can impugn their grievance?

<sup>25</sup> To clarify: I do not mean that “You caused our grievance” is powerful even if we have many good non-terrorist options, or that “You made terror a good recourse” is powerful even if we have no justified grievance. I simply mean that the grievance-causer need not be the options-restricter, or vice versa.

democratic sovereignty and normal civil liberty they would have a normal army which is not equipped merely to police its own people.<sup>26</sup> It is central to their grievance that they lack a state,<sup>27</sup> and, therefore, among other things, the approved means of violence that a state possesses. But the lack of what they would have, if they had a proper state, to wit, just such an army, contributes strongly to the explanation of their mode of pursuing their grievance. For it is only by unconventional means that you can pursue any grievance which includes the grievance that you lack conventional means of pursuing grievances.<sup>28</sup>

Let me expose and defend two conceptual claims that inform my thinking about the “You made it a good choice” part of the case that Shtauber

<sup>26</sup> An army which they would of course not need to use to seek to achieve an independence that they lack!

<sup>27</sup> Many Israelis would claim that both the Oslo agreement and Camp David offered the Palestinians a state, but that Arafat’s venality and incompetence lost it for them. Palestinians counterclaim that what was offered was both constitutionally and geographically inadequate: a set of powers that amount to less than full and rightful sovereignty, within a set of “Bantustans” that did not satisfy the full and rightful Palestinian territorial claim. I take no stand on these matters here. But the Israeli case, even if sound, cannot be pressed against my criticism of Shtauber, since to raise that case is to embark on the enterprise of assessing the Palestinian grievance – and that is what Shtauber thought and sought to avoid.

<sup>28</sup> To be sure, there exist non-violent unconventional means, and they are sometimes more effective than terrorism, but recall our decision (see p. 4) to face the challenge of a terrorism that is distinctively productive. In any case, Shtauber isn’t forbidding violence, just violence against non-soldiers, and violence, to similar effect, against soldiers, is harder for Palestinians to achieve.

has to answer. Each conceptual claim is a bit surprising, but each is, so it seems to me, incontrovertibly true.

The first truth is that your having left me with no reasonable alternative does not itself entail that I was forced to do whatever it was you left me with no reasonable alternative to, if only because I might nevertheless not have done that thing. If you think that sounds peculiar, then consider the following example. Suppose a highwayman credibly says “Your money or your life”, and thereby leaves his victim with no reasonable alternative to giving up his money. It does not follow that the victim will hand over the money: he might, instead, choose death, for example, out of defiance. If he hands over the money, then he does so because he is forced to, because he had no reasonable alternative. But he cannot be said to be forced to do it if he does not actually do it. Therefore having no acceptable alternative to doing something does not entail being forced to do that thing.

The second truth is that having no reasonable alternative to doing something does not entail that I was justified in doing that thing,<sup>29</sup> supposing that I did do it. Having no acceptable alternative to using terror may be a necessary condition of being justified in using terror, but it does not follow that it is a sufficient condition of being justified in using terror. For it might be true, I might be in the parlous position that, while I have no acceptable to

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<sup>29</sup> I think that one reason why colossal terrorism in response to colossal injustice perplexes us is that we commonly take a person’s lacking any reasonable alternative to an action A as justifying her doing A. It usually does. But not always. And realizing that helps us to think more clearly about terrorism.

terrorism, terrorism is nevertheless more unacceptable than one or more of my other unacceptable courses. I might have to choose between disaster for me and a course so morally horrible that the only decent thing I can do is to choose disaster for me. But how can you in particular condemn me if I refuse to choose disaster for me, when it was you who deprived me of all acceptable alternatives, unless you can justify your having done so? If someone has no acceptable alternative, then there is a case to answer against whoever made that true. If the sad moral truth is that, although all of my alternatives to terrorism are unacceptable, my terrorism is nevertheless unjustified, then how, even so, can the person who deprived me of acceptable alternatives, and so drove me to admittedly unjustifiable terrorism, condemn that resort, without justifying the action that thus disabled me? That person must respond to my grievance that he left me with no acceptable alternative to a morally heinous and forbidden action.

Shtauber supposes himself entitled to condemn terrorist means even if the Israelis have made a course that includes terrorism the best course of a sorely aggrieved people whose grievance, moreover, the Israelis themselves caused. But if that is actually so, then he could not condemn them. So he cannot set aside as an irrelevance the question of whether it is so, in his bid to condemn them.

The terrorists say: "Your brutal occupation makes us use these methods". The Israelis say: "Your terrorist methods necessitate the

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continuation of our occupation". And each accuses the other of worse acts than what they themselves commit. These claims raise charges of "You're also involved in it" and "Tu quoque" that can't be adjudicated in the absence of some view about who has what sort of justified grievance. But Shtauber affected a right to condemn that prescinded from all that controversial matter, and that, so I have sought to persuade you, is a right that he did not have.

d. Envoi.

Two final remarks.

(1) I have assumed, in order to expose some lines of moral principle, that Palestinian terrorism is an effective strategy. But certain non-terrorist strategies might in fact be more effective. Suicide protests which kill only the protesters might be far more effective, because of the reaction of world opinion.<sup>30</sup> But Shtauber couldn't decently recommend pure suicide as an alternative, even if third parties could do so. Or suppose that the Palestinians retire their anti-Israeli armed struggle and demonstrate wholly peacefully on a mass scale against the apartheid/colonial status that they are coming to

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<sup>30</sup> But straightforward suicide is forbidden by Islam, whereas suicide that also kills infidels or other legitimate opponents is honourable martyrdom: in which case it would be religious belief, not Israeli action, that blocks this more effective and, judged non-Islamically, more acceptable course. (I owe the suicide-without-homicide suggestion, and the comment on it in this footnote, to Diego Gambetta).

have under Israeli rule. Might this not, in time, produce a potent international, and Israeli, outcry against Israeli rule? Should Ambassador Shtauber recommend that Gandhian course?

(2) It has been a central claim of this paper that one consequence of the difference between an expression of moral opinion and a condemnation is that it might be true both that terrorism is to be condemned (moral opinion) and that some particular person is not in a position to condemn it. But equally, so it follows,<sup>31</sup> the fact that someone is not in a position to condemn something does not imply that the thing is not to be condemned. So if some leftist thinks that the Israelis cannot condemn the Palestinian terror, then I might agree with him about that, but if, as some leftists seem to think, he also thinks it follows that the Palestinian terrorist response cannot be condemned, then I part company with him at that point.

Both Shtauber and the imagined leftist believe, falsely, that, if the terrorist is blameable, then Shtauber can blame him. Shtauber concludes that he can blame the terrorist. The imagined leftist concludes that the terrorist is not blameable. Both make an invalid inference.<sup>32</sup>

<sup>31</sup> This is just the contrapositive of the stated central claim.

<sup>32</sup> After writing this paper, I benefited from reading Tim Scanlon's "Blame", a work in progress that distinguishes three items: blameworthiness, (the attitude of) blame, and the act of blaming. One might say that I explore above certain contrasts between the first and the third of those. I should therefore note that, as it seems to me, much of what disqualifies the act would also disqualify the attitude, and that, as it also seems to me, a major reason why the act gets disqualified, in the relevant cases, is that it expresses the attitude.

### Points to Add

People intelligibly say: "You really shouldn't smoke. I know I do it, I'm weak-willed. But you should take my advice nevertheless". There is no equivalent to that in the intelligible utterances of a state. States can't be weak-willed.

### Appendix I – More on "Tu quoque".

Here are some preliminary notes that address two questions: (1) What, exactly, is the scope of tu quoque? When does it have force? (2) What explains that force? How, exactly, does tu quoque disable moral condemnation, in the general case?

#### (1) What is the Scope of Tu Quoque?

a. The Strong Jesus View. Tu quoque possesses very wide scope under the doctrine that Jesus affirmed when he said: "Let he who is without sin cast the first stone". By our current lights, that admonition against admonishing, taken literally,<sup>33</sup> disables too indiscriminately. Few of us think that no one can call the kettle black who has committed sin of any kind. Most people believe that I could say to you without strain "I know I'm not perfect,

<sup>33</sup> I shall interpret Jesus's utterances as literally as possible, within the bounds of reason. That is certainly one traditional way of interpreting him, and in any case what he meant doesn't matter, because I'm not claiming his authority for anything. Whether He (or he) was a true (or a false) Messiah is irrelevant to my purposes.

but I wouldn't do a thing like that": pace Jesus, I could willingly expose myself to the judgment the prospect of which is supposed by him to deter me from judging you, when he says "Judge not, that ye be not judged". And maybe I can, in some circumstances, call you a complete swine even when I confess that I'm one too.<sup>34</sup> But it is another matter, and this touches politics, whether I can do so with the vigorous indignation that would standardly accompany such a remark. Perhaps I could only say it cynically, and that has a strong bearing on how you could be expected to receive it.

I now consider two ways of narrowing the scope of *tu quoque*, each of which modifies and moderates the strong Jesus view.

b. The Modified Jesus's View: My Sins are Smaller. When speaking of casting stones, Jesus said that you must be sinless to condemn. The first contraction of the scope of *tu quoque* that I shall consider says that you can condemn only if your sins are smaller, perhaps substantially smaller, than those of the person you seek to condemn. Call that the "less sin" (or the "quantity") view. On the "less sin" view, we shall think that the boss who cheats on his income tax on a grand scale lacks the standing to condemn the secretary who pilfers petty cash insofar as we think of large scale income tax cheating as at least as bad as a little pilfering. The suggested scope of *tu quoque* is formulated in this principle, which is more permissive than the strong Jesus view, namely: criticize only those who sin more than you do, do not criticize if you sin more than the person you're criticizing does. If,

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<sup>34</sup> Quote Broderick Crawford, last line of Born Yesterday.

somewhat unrealistically,<sup>35</sup> we take Jesus literally, we may note (as I did at p. 14 above) that he also propounds the weaker, quantity, doctrine. For, after he has delivered the “Judge not” (at all) prescription, he says this, at Matthew, 7, 1-5:

And why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye? Or how wilt thou say to thy brother, Let me pull out the mote out of thine eye; and, behold, a beam is in thine own eye. Thou hypocrite, first cast out the beam out of thine own eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye.<sup>36</sup>

c. An unJesus View: My Sins are Different. An alternative narrowing of the don't-cast-stones doctrine says that you can condemn only if your sins are different in character from those of the person under judgment. Call that the “different sin” (or the “quality”) view. It says that I am entitled to criticize you as long as I'm not guilty of the same sin as you are, even if I commit a graver sin of another kind. On this view, I might credibly say, “Yes, I know that I raped, and I know that's worse, but I still think it was awfully shabby of you to pilfer”. Defending the quality view, Gerald Dworkin writes: “It is not a matter of one's relative purity, so that what is inappropriate is the less pure

<sup>35</sup> See the immediately following footnote.

<sup>36</sup> I presume, here, that beams are bigger than motes. But Jesus can't mean the mote/beam contrast literally (quite apart from the fact that he is not an ophthalmologist). For he seems to want nobody to condemn anybody, yet he can't think that each person's sins are worse than those of anybody whom he might seek to condemn.

criticizing the more pure. What seems crucial is that the fault one is criticizing is the very same fault one has.”<sup>37</sup>

I have two comments on Dworkin’s proposal. The first comment concerns the individuation of faults: note that, in order to apply Dworkin’s proposal, we have to know when to count faults as different (in kind<sup>38</sup>). And my second comment, which will be entered under heading (2) below, concerns Dworkin’s explanation of why fault-similarity generates moral incapacity, which I believe to be inconsistent with his view that identity and difference of fault are of the essence in *tu quoque*.

First, then, by what criterion do we decide that two or more actions display the very same fault? Pilfering from petty cash, it might universally be agreed, is the same fault as pilfering from the lunch fund, but are they also the same fault as cheating on income tax, which is pilfering from the public purse? And is pillaging a form of pilfering? Faults count as the same or not depending on the level of generality at which they are described. What’s the right level of generality, for the purposes of applying Dworkin’s same-fault test?

In response to this problem, Dworkin might abandon his claim that the fault has to be the same one in favour of a graded version of the “different

<sup>37</sup> “Morally Speaking”, p. . . Dworkin speaks of faults (presumably of character) rather than, as I have done, of sinful (or faulty) actions. I ignore this difference for the time being: but see p. 32 below.

<sup>38</sup> Dworkin means by “very same fault” “very same kind of fault”, rather than “very same metaphysically particular fault”: he discusses “*tu quoque*” only (and not also “you’re also involved”).

sin" principle. He might say that the higher the level of generality to which we must recede to affirm sameness of fault, the less damage there is to the critic's capacity to criticize that he commits the same fault. And perhaps that is a satisfactory reply to the individuation problem. It is not out of the question that the disablement that we are trying to characterize should come in degrees.

d. What, then is the scope of tu quoque? What is the truth of this matter, the quantity view, the quality view, or some hybrid?

Note, first, that sameness of fault, in a merely qualitative sense, can't be the whole story. For it surely bears on my capacity to criticize you that I have stolen or caused harm or created mayhem much less than you have. Quantity of sin certainly matters within a single category of sin. Is it plausible to think that it doesn't matter at all across categories?

Whatever the answer to that may be, sameness of sin seems also to play its own separate role. I criticize you for pilfering. You say: "But you're pilfering too." I can't now reply: "Don't change the subject." But if you say: "But you raped," maybe I can say: "Don't change the subject." If I can, then that supports Dworkin's quality view.

But we have to ask, as we have not done thus far, what is the subject that might or might not be changed, by various tu quoque ripostes? We have to distinguish, for example, between, on the one hand, a full review of your character (which will look ridiculous if I am sternly critical but also, and beknownst to both of us, a much worse person than you are) and, on the other

hand, evaluation of a particular act. I could say "Look, that's not the way to treat a beggar. Whatever the comparison between our characters in general may be, that's crass and contemptuous." Can't I say that even if I'm a bank robber who's willing to kill people (for whom I have no contempt) who are in my way?

## (2) What Explains the Force of Tu Quoque?

There is an inconsistency between Dworkin's "different fault" principle and his explanation of that principle. His account of why I am disabled from criticizing if I display the same fault seems to defeat the quality view.

Dworkin asks: "Why should moral discourse have this feature? What point or purpose is secured by requiring that the person launching a criticism not be guilty of the same fault?"<sup>39</sup> (p. 185). He answers as follows:

When the person who calls attention to my character fault suffers from the very same fault, this puts him on a par with me – with respect to this fault at least. If I lose respect in his eyes because of the presence of this fault, he must lose respect in my eyes as well. But this means that I do not care as much whether he disapproves of my conduct. And this means that the criticism cannot be as effective as it normally would have been. (p. 187).

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<sup>39</sup> I note in passing that Dworkin's second question is posed insufficiently generally, because the tu quoque device need not have a particular point or purpose: it might instead be justified by some form of incoherence in the stance it condemns. (Note that one would not ask what the point or purpose is of forbidding Mooreanly paradoxical utterances of the form "P, but I do not believe that P".) And in fact Dworkin's answer to his question seems to me to be of the latter kind: he doesn't purport to identify a purpose that the practice of not accepting criticism from co-offenders serves.

But, whether or not corrosion of respect is indeed the operative mechanism in *tu quoque* disablement, the respect consideration does not go well with the “different fault” account of the scope of that disablement, since a critic’s fault need not be comparable in character to that of the agent he criticises for the critic to lose that agent’s respect. If you raped, whereas I merely pilfered, I have better reason to lose respect for you than I would have if you, too, had merely pilfered.

There is, then, an inconsistency between Dworkin’s answer to his p. 185 question and his denial (see p. 30 above) of the relevance of relative purity. The inconsistency is that if I am less pure than you, because, for example, I raped and you merely pilfered, then my criticism of your pilfering should fail, even if I haven’t pilfered, since, according to Dworkin’s explanation of the force of *tu quoque*, the key point is that you have reason not to respect my moral voice. One cannot hold both that I may criticize as long as my sins are different and that I may criticize only if I can retain your respect. For you may have good reason to disrespect a critic who is generally a swine, even if she exhibits impeccable behaviour within the dimension in which she is criticizing you. If the facts about respect that Dworkin cites explain the force of *tu quoque*, then Dworkin’s “same fault” account of the scope of *tu quoque* can’t be correct.

But now let us ask: is respect of the essence? What role does it play in *tu quoque*? Note, first, that if I criticize you for a peccadillo that I too commit, it would be disproportionate to say that you should lose your respect for me:

we may all respect each other even though we all know we all commit peccadillos. But it might nevertheless be absurd to criticize you, in a certain style, for committing a peccadillo that I too commit.

And does it really disqualify me as a critic of your pilfering that I rape? (What if I'm raping while you're doing the pilfering that I'm criticizing?) And if it doesn't disqualify me, is that because disrespect doesn't disqualify or because, even if you have raped, you continue to merit my respect as a morally evaluating human being? On that view, disrespect of a kind that Dworkin cannot mean might well disqualify, but such disrespect is never in place: Dworkin cannot mean by "disrespect" that disrespect which consists in not giving the respect that is due to a person as such, since my moral track record does not affect my title to that respect.

Perhaps what explains the force of *tu quoque* is nothing directly to do with respect but something to do with a certain form of inconsistency. Suppose A and B have both committed the same crime, but I indignantly condemn A only. Isn't my right to condemn A suspect, unless I can supply a pertinent distinction between A and B? To what extent is the force of *tu quoque just* the force of rejection of that sort of arbitrary selection, in the special case where I am B? Is *tu quoque* forceful in just the way that *she quoque* is?

For an example of such arbitrary selection, consider the report on the front page of the Guardian newspaper for September 17, 2004, of the protest by some Tory MPs against the then recent rough handling of pro-fox(etc)-

hunting demonstrators<sup>40</sup> outside the Palace of Westminster and the reply it got from Peter Hain, the Labour Leader of the House of Commons: "Some are angry with what Tory Alan Duncan called the 'lippy, surly, provocative and menacing' way the police handled the pro-hunt demonstration. Sir Nicholas Winterton called the police tactics 'horrific, excessive'. Mr Hain said that if the protesters had been miners during the 1984-85 strike the MPs would not have condemned the police". No reply from Duncan or Winterton was reported.

The condemnation is rejected because of its motivated selectiveness: a condemnation that displays motivated selection condemns itself. Contrast the effect of such selectiveness when the self-same utterance is assessed for truth, namely, nil: you do not fail to state the truth by failing to state the whole (relevant) truth.

The 'inconsistency' explanation of the force of *tu quoque* locates that force in a certain form of hypocrisy. Dworkin calls "making a criticism of another along a dimension on which one is itself at fault" "hypocrisy" (p. 184). But he doesn't specify the sense of hypocrisy that he means, and, whatever the right explanation of the force of *tu quoque* may be, it's not clear that critics vulnerable to *tu quoque* are vulnerable because they display hypocrisy of one central kind, namely the hypocrisy that approximates, or is cousin to, lying. If hypocrisy in that sense were the issue, if the critic's moral incapacity related to his failure to avow that he himself commits a similar or

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<sup>40</sup> That is, anti-fox (etc.) demonstrators.

worse sin, then his moral incapacity should disappear, his standing should be restored, if he precedes his criticism with a concession, in which he confesses to a similar and/or greater sin.<sup>41</sup> But does he not still fall subject to the tu quoque charge if he admits his ongoing equivalent or worse sins, and thereby escapes this particular charge of hypocrisy? Is his stance now not just more manifestly absurd? Or is the disability under discussion indeed eliminated, or at least reduced, where appropriate self-criticism precedes (we could call it “pre-emptive me, or ego, quoque”) or accompanies criticism of the relevant other? If so, then it is an interesting question whether indignation can then be in place, and if so, against whom, where the possible answers are “nobody”, “oneself only”, “the other”, and “both”. At the high tide of Stalinism, Communist Party branch meetings in Montreal (and no doubt elsewhere too, but I’m telling you what I happen to know) would end with a (usually short) period called, on the agenda, “Criticism and Self-criticism”. As a small child I sometimes sat in the corner of such meetings, and I was amazed when, at one of them, a certain J. L. said, with some indignation, that the club had of late been quite bad at recruiting new members, and that he thought he himself in

<sup>41</sup> Dworkin doesn’t seem to address the strategy of concession. He considers additional remarks that might protect the critic against tu quoque (p. 184, 1 through 4), but not that one. In the light of the power of certain remarks to silence a tu quoque response, he writes: “A more accurate way of formulating the issue, then, is that there is an initial inappropriateness that calls for some kind of further clarification to remove. My question is what accounts for the initial situation”. But are we still in the “initial” situation when the concession (“of course, I’m just as bad”) has been added?

particular was one of the worst offenders. Was I right to be amazed, or should I have been merely surprised?

Whether or not an equal sinner can level criticism laced with an "ego quoque" with indignation, some will think that a critic like J. L. does indeed pre-silence the criticized person's tu quoque if he says "I know I'm just as bad, but I do think it was awful of you to do that". Even so, the criticism part is not acceptably utterable without the accompanying concessive admission, and that has some political relevance: for imagine the effect on politicians' criticisms of each other if politicians routinely added the fault-avowing concessive phrases. Such a practice might bring even politicians into disrepute! (Can one say: "Don't be a sinner like me. Don't attack non-combatants"? No Israeli politician could say that.)

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My discussion of tu quoque has rambled, but we should not expect a compelling account of tu quoque to be forthcoming in advance of some measure of debate about this largely undiscussed matter. At this stage, we are in danger of suffering from the philosophical disease that was diagnosed by Ludwig Wittgenstein at paragraph 593 of the Philosophical Investigations, the disease that is due to "a one-sided diet: one nourishes one's thinking with only one kind of example". In any case, it needs more imaginations than mine alone to generate the range of examples that we need to have before us if we are to extract good answers to questions (1) and (2). My own prediction is that, after appropriate discussion, a hybrid view, in which each of quantity

and quality plays some role, would emerge in answer to question (1), and that both respect and consistency would feature in an answer to question (2).

I remark, finally, that a general skepticism about the force of “*tu quoque*” might fix on the curious utterance “Do as I say, not as I do”. But is that really an acceptable thing to say, even when it means neither “Do as I (now) say, not as I did” nor “Our different positions entitle us to different behaviour. (I am, after all, your parent)? Consider the difference between “Do as I say, not as I do” and “I think you ought to do as I say, not as I do”. That is more coherent, because I am not now telling you to do it. For how can I credibly tell you to do it unless I also tell myself to do it, and how can I present myself as telling myself to do it, if I don’t do it? By contrast, I might certainly believe that I, like you, ought to do it, but fail, akratically, to do it.<sup>42</sup>

### Other Forms?

Are there forms of disablement other than *tu quoque* (“You’re responsible for something similar, or worse”) and “You’re also involved” (“You yourself bear some responsibility for my doing it”)? A partly independent third form might be “You did the same (or a relevantly similar) thing to me”.<sup>43</sup> In some circumstances I can say, potently, “You asked for it!”,

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<sup>42</sup> An unwillingness to acknowledge the asserted contrast is at the heart of R. M. Hare’s meta-ethics: see, especially, Chapter 3 of his Freedom and Reason.

<sup>43</sup> If each of Goldstein and Shapiro were supposed to get in touch with the other if the other did not get in touch, and neither got in touch, then neither could blame the other for not getting in touch, but Hockenstein would be free to blame both.

without claiming that my response was justified. (Note that “tu quoque” will apply where “you did it to me” does, and that “tu quoque” can apply where “you’re also involved” does. But “You did it to me” will only apply in special cases of “you’re also involved”, certain forms of collaboration: like a mutual suicide pact?)

Also consider the riposte: “It’s none of your business”. (Note that that couldn’t work against Shtauber. On the contrary: one could say that his plight is that he mistreats something that is his business as though it isn’t.)

Also consider “It’s all very well for you to talk”, as said, for example, by a poor shoplifter to a rich critic.<sup>44</sup> This gambit is plainly related to what I called counterfactual tu quoque in footnote 17 above.

Also warranting consideration is what might be called self-refuting tu quoque, as in (sneeringly) “Contempt is never justified!” or (very loudly) “Don’t ever shout, never, not even [voice rising in volume] now”, or “God, you’re judgmental!”

Is there also a self-refuting form of the first variant of “You’re also involved”? “I suppose that if I punched you in the nose you’d be violent enough to punch me back, you bastard.”

“If you’re an egalitarian, how come you’re so rich?”, asked merely rhetorically, suggests that you can’t advocate a principle if you don’t practise

<sup>44</sup> Or by a person whose local state schools are poor and who consequently sends her children to a private school, to a censorious liberal who happens to live next to Holland Park Comprehensive, in the old days.

it. Is this a form of tu quoque? It's close to saying: you can't criticize what causes inequality because you cause inequality. And that pretty well is tu quoque.

## Appendix II – The Terrorist Threat in Liberal Democracies

Many people who live in what are called (albeit, often, optimistically) liberal democracies now ask themselves this question: how much restriction on civil liberty does the threat of terrorism justify? I have not considered that question in this paper, nor have I considered questions in the neighbourhood of that question, questions about the meaning and value of security. Instead, I entered the neighbourhood of, without frontally addressing, a different question, one that faces many of those who live in what are uncontroversially non-liberal non-democracies. The question they face is not: how much restriction on civil liberty does the threat of terrorism justify, but: how much terrorism does lack of civil liberty justify? If you lack civil liberty, and therefore cannot pursue your political goals by civil means and methods, how uncivil are your means and methods allowed to be? That question arises more sharply for Palestinian people than it does for British people.

Let me now, however, offer some reflections about the thus-far-unaddressed question, to wit, how much restriction on civil liberty does the threat of terrorism justify?

In order to answer the stated question, in its general form,<sup>45</sup> we have to decide the right rate of exchange, as far as our values are concerned, between amounts of security, at various levels,<sup>46</sup> and amounts of civil liberty. We need at least part of the answer to the general question in order to answer this more particular question: if, before 9/11, we had this much security and that much liberty, and if that constituted the right balance, then how much liberty should we now be willing to sacrifice to ensure how much security?

Now, there are three possibilities here. The first possibility is that we can express both the value of liberty and the value of security in the currency of a common further value, or further values, values that will settle the proper exchange rate between liberty and security. Perhaps, for example, each of liberty and security are valuable because they serve the value of human welfare, or the values of human welfare and human self-realisation. But it is also, and contrastingly, possible that we cannot so reduce the competing values of security and liberty to more fundamental ones, because each of security and liberty is fundamental for us. (The third possibility is that one is fundamental and one is not. I ignore that intermediate case, because it raises no issues of independent interest.) If we cannot effect the mooted reduction, then the exchange rates of security and liberty are not only independent of

<sup>45</sup> As opposed to in its particularized form, where it asks, how much restriction on civil liberty the threat of terrorism justifies here and now.

<sup>46</sup> “At various levels”: the phrase is required because the relevant function is pretty certainly not rectilinear, with, for example, one unit of loss of liberty always requiring two units of gain in security, regardless of how much liberty and security we currently have.

further value but also, and consequently, independent of fact: I say “consequently” because facts settle general trade-off rates between values only in the light of further values.<sup>47</sup> And, after general trade-off rates have been settled independently of fact, the facts then weigh in, to determine what is the best actualizable package, in the light of those general trade-off judgments that have nothing to do with actuality, just as properly formed indifference curves across bundles of commodities are independent of their prices.<sup>48</sup> If, on the other hand, the first possibility is satisfied, and the contemplated reduction to further value(s) is sound, then facts affect both the general trade-off judgments between liberty and security, and, as before, the actual determinate choice, and the a priori component in the judgment relocates itself at the level of affirmation of the governing more fundamental value(s) (or some even ur-er value(s) that it (or they) reflect).

There is a facile view of these matters of which the following statement is representative, a view that tends towards a denial that a trade-off between liberty and security might be necessary:

The only way to fight terrorism is surely not to become like the states and organisations that seek to destroy us: what good is victory if all we have done is become just like our opponents?<sup>49</sup>

<sup>47</sup> See my “Facts and Principles” unpublished version, Appendix, [CHECK THAT OUT]

<sup>48</sup> See ibid., p. ...

<sup>49</sup> Professor Conor Gearty, Professor of Human Rights Law, LSE, Guardian, G2, p. 9, December 3, 2002.

Before the recent prodigious terror, before 9/11, we already had a security problem, because we had to protect ourselves against crime, and, for that matter, against the threat of non-prodigious terror, and we consequently already had less civil liberty than we might have allowed ourselves if we had had no security problem: our rules of civil liberty were already shaped in deference to the need to contain the pre-9/11 less awesome menaces. Now if the trade-off that we struck in the pre-9/11 past was right, then it would surely be rational, if the gain in security were sufficiently great, to give up a bit more civil liberty now that the threat to security is more severe. Few people could think that we had already in the past reduced liberty to a lexically prior minimum, that is, that we had expanded restrictions on liberty to the maximum that is morally tolerable.

Civil liberty isn't something we either simply have or simply lack. Like security, there can be more or less of it. To be sure, it is possible that the right exchange rate between liberty and security in our present more testing circumstances justifies no further reduction in liberty, or even an enhancement of it. But that has to be shown by sober judgments of what's worth sacrificing for what, and measured judgments of fact. Yet if Gearty's statement were true, all the difficult questions that consequently arise could be swept aside.

### APPENDIX III - Israel and me

I can explain something, quite a lot, of my attitude to Israel by taking you through some history.

Israel was founded in 1948, when I was seven years old, old enough to understand what it meant that Israel was being founded, young enough<sup>50</sup> to be enthralled by that in a childlike way. My parents were Stalinist communists, but the Soviet Union blessed Israel at its inception, and it was with no ambivalence at all that I walked beside my father, hand in hand, to the Montreal Forum, in the summer of 1948, on which some 15,000 of Montreal's then probably about a hundred thousand Jews were converging, to celebrate the glorious event. Hatikvah, the Israeli national anthem, was sung in the Forum. It affected me profoundly.

We shift to 1983, my first visit to Israel, now with my son Gideon, who was then sixteen years old. We arrived just a few days after the assassination of Emil Brunschveig, who was the first Jew to be killed (the second was Yitzhak Rabin) by a Jew because assassin and victim held different views of the Palestinian-Israeli conflict, Burnscheivg's being to the left of his assailant's. I had been invited by the Van Leer Institute to give a lecture and I was quite unaware when we arrived, I hadn't known, that Brunschveig was an active member of that Institute.

Gideon and I were taken by taxi to our billet, an apartment near the Ramban. We were greeted in the apartment by a young man called "Adeeb". He gave us a note from the Director of Van Leer, which said, with real

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<sup>50</sup> The end of the Jesuits' most impressionable age.

warmth, that we were most welcome, and that he greatly regretted that we were coming at such a terrible time.

We began to talk to Adeeb. I, in my ignorance, one could even say in my stupidity, did not realise that Adeeb was an Arab: his name should have told me that. Adeeb was unshaven in a rough way. He explained that he was unshaven because he was in mourning, and that Emil Brunschveig had been his best friend. It dawned on us somehow, or maybe the further conversation implied, it, that Adeeb was a Palestinian. This made the whole context of our visit that much more weighty and moving.

The next day there was in the evening an outdoor memorial meeting for Emil Brunschveig which was held near the Knesset. Gideon and I went with Adeeb. At the end of the meeting it was time to sing Hatikvah, the Israeli national anthem, which I had heard sung so joyously in 1948. I was conflicted. Had Adeeb not been beside me, I would have sung the song with my fellow Jews, and I wanted to sing it, but I also thought that I should not, because how could Adeeb fail to experience the song as celebrating the event that dispossessed his people? I decided it would nevertheless be dishonest not to sing, and I sang.

We come to 1998, in the month of June, when I was travelling in a car with my friends Dani Attas and Avner de Shalit from Jerusalem to Haifa. We talked about the conflict all the way up to Haifa, and I was shown countless Israeli achievements, countless places that were now Arab-rein that had been

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summarily confiscated, and I learned a lot that I had not known about the treatment of Arabs within the pre-1967 borders. As we travelled up to Haifa I felt swells of pride, and of shame, sometimes about more or less the very same thing.

If I were in Israel today, and there was a demonstration by progressive Jews, and Adeeb and I were side by side at the demonstration, and Hatikvah was to be sung, I would not, I could not sing it, I could not dream of singing it.

I have not tried to justify anything here, not any past or present attitude of mine. But I believe that my present attitude is amply justified.