

Casting the First Stone: Who Can, and Who Can't, Condemn the Terrorists?¹

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'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 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 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

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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,² and I thank you for allowing me to present some of that rumination to you today.

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

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 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

² Perhaps I should define the word 'overdog'. On September 4, 2003, just before 1.30 p.m., U.K. 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 follows: 'Not at all. British people are proud when they see Harriers and Tornados 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.

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

he displayed, and in the posture of judgment that he struck.⁴ 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 terrorism whatsoever? I try to answer that question here.

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.⁵

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* counterproductive, 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 *counterproductive* terrorism. But note that anybody who condemns terrorism *only* on the ground that it is counterproductive has conceded a large point of principle to the terrorists. The criticism that terror is counterproductive doesn't criticize it *as* terror.⁶ More approved forms of violence are also sometimes

⁴ 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*.

⁵ 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.

⁶ 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

counterproductive, and Shtauber's complaint was not that a course of action that includes terrorism⁷ 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 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

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.

⁷ 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.

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 that the Israeli position, on all the major issues, is uncontroversially correct, 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.⁸ 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 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.

⁸ 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.)

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.⁹ 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

⁹ 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 were which acts are right and which 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, Inequality, and Community’, in *The Tanner Lectures on Human Values*, Volume XIII, Grethe Peterson (ed.) (Salt Lake City: Utah University Press, 1992), 280ff.)—which is not employed in the present paper—has non-interpersonal moral implications.) 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 ‘Incentives’, and the theme was subjected to further study by Jerry Dworkin in an article called ‘Morally Speaking’ (in *Reasoning Practically*, E. Ullmann-Margalit (ed.) (Oxford University Press, 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.’ (*Ibid.*, page 273: a number of illustrations of the ‘general point’ follow the quoted paragraph.)

I hope to say more about these matters in a paper called ‘Ways of Silencing Critics’, a draft of which I shall send on request.

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.

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.¹⁰ What I mean is that there are facts about the critic that

¹⁰ My topic is not when it's morally permissible or obligatory to condemn, and it is not part of my view that it is always bad or wrong for someone who is not in a position to condemn 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!' It may be better that villainous superpowers condemn one another's villainies than that they remain silent about them,

compromise her utterance considered as, what it purports to be, a *condemnation*: the focus is on that intended role, or illocutionary force,¹¹ of the utterance. If Shtauber had said, 'By the way, I think what the Palestinians are doing is morally horrendous', then what I 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 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'.¹²

because that way we learn about the villainies on both sides (and, hence, *inter alia*, how poorly placed the superpowers are to condemn each other). I think one can say: 'He has no right to condemn, but let us hope he does condemn', and maybe even 'but he ought to do so ...'.

¹¹ The phrase 'illocutionary force' is J. L. Austin's: see his *How to Do Things with Words* (Oxford: Oxford University Press, 1962), Lectures VII-XII.

¹² 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

An ambiguity in the word ‘criticize’ may cause you to resist the distinction that I have sought to substantiate. 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’, or, indeed, ‘I *know*’, ‘that 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, from which it follows—this is, roughly speaking, the contrapositive of the key point—that being in a position to utter a well-grounded truth does not suffice for being in a good position to condemn. *Exactly* what ‘I am not in a position to criticize’ means I do not (yet) know: I have not to date produced an explication that specifies, with satisfying precision, and in general terms, the nature of the defect in speech-acts of condemnation that is my topic, but I am confident that the quoted words signify an *explicandum* that is eminently worth explicating.¹³

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.

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

would-be condemner. But you might accept that 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.

¹³ For some further attempts at explication, see my ‘Ways of Silencing Critics’: see footnote 9 above.

not the criticism he originally made of Goldstein was sound.¹⁴ 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 putatively black 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 look upon on its own hue rather than on mine.¹⁵

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,¹⁶ he was invoking *tu*

¹⁴ Yet both Goldstein and Shapiro could, of course, be condemned by the conscientious club-attender Hockenstein.

¹⁵ 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: '... Ricks said Eliot's clearing Wyndham Lewis of having fascist 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 fascist 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, January 29, 2005, 23)

Worthy of narration here is the following joke: The rabbi has left the synagogue to do some shopping, and the *shammás*, or, if you must, the verger, is in charge. The rabbi returns unexpectedly early, and, entering the synagogue, finds the *shammás* on the floor, in prayer: 'Oh, Lord, thou art everything and I am nothing!' Says the rabbi: 'Hah! Look who says he's nothing!'

Nietzsche said it quicker: 'He who despises himself still esteems the despiser within himself.'

¹⁶ 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.

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 judgment he was forbidding 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.¹⁷

For that first 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 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 type. I shall name the second type 'You're involved in it yourself', but if anybody can think of a better name, then suggestions are welcome.

¹⁷ 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). Compare the discussion of the 'inconsistency explanation' of *tu quoque* in my 'Ways of Silencing Critics': see footnote 9 above.

There is some further investigation of *tu quoque* in my 'Ways of Silencing Critics' (see footnote 9 above). And 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 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?

In this second 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 the second type of silencing in section c.

The first 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. Was I angered by 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 saying to us: '*Join me*¹⁸ 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 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 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.

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

¹⁸ 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 *tu quoque* applies to condemners, there are reasons for third parties to refuse to join them.

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.¹⁹ 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 motivating 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 our bombing destroyed not only the Hamas leader that we were aiming at but also fifteen people that lived near him, because we merely *foresaw* that effect, without intending it. 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 yet to be utterly reckless of their safety, and it seems pretty clear that Israeli soldiers have become more reckless, in some cases wilfully reckless, as the conflict has deepened.²⁰ 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

¹⁹ The diagnosis of those judgments, and whether or not they really support double effect, is controversial.

²⁰ 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.

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 Palestinians claim that they are *aiming* only at the *complicit* citizens in the Tel Aviv bars, 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 involved in it yourself'

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 to answer under the contrasting 'You're involved in it yourself' challenge. Let me first say something about 'You're involved in it yourself' in general terms. After that, I'll return to Shtauber, and the two subtypes of this second type 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 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. The functionary who obeys Nazi orders can't be condemned for obeying those orders by the superior who

issues the orders;²¹ he can nevertheless be condemned by us. (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?')

Note, now, how this second type of challenge, 'You're involved in it yourself', 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?'²² In 'You're involved in it yourself' the responding criticized person need make no judgment about whether her critic has *herself* done something similar or worse. Instead, 'You're involved in it yourself' says: 'How can you condemn me when you are *yourself* responsible, or at least co-responsible, for the very thing that you are condemning?' That responsibility can run from physically forcing at one end to merely abetting at the other. 'You criticize me for robbing the bank, but why, then, did you willingly give me the number on the lock on the safe?'²³

The general form of 'You're involved in it yourself' 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 involved in it yourself' 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 spokesperson

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

²² On 'similar *or* worse', see 'Ways of Silencing Critics', section (1).

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

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 is not Israel that thus constrains 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 a particular response as *disproportionate*. If, in response to my callous snub, you shoot me in the foot, that your shooting is a response to my callous snub does not disable me from condemning it. And one might say that terrorism, because always wrong, is *a fortiori* always disproportionate, and therefore condemnable by anyone.

To this objection I have two replies. First, that the objection over-generalizes. For, if the grievance I impose is spectacular, one that is as absolutely condemnable as is the terrorist response to it, then the fact that the latter is morally excluded does not seem to me to show that it is, in particular, a *disproportionate* response. (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 severity which runs from 1 to 10, and, in a particular case, anything over 5 would be 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 this

further reason, I do not bow to the suggested vindication of Shtauber's right to say what he did that I sketched two paragraphs back.

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 constringer, makes particularly eligible, from the point of view of the aims of the constrained. (Recall that we have legitimately supposed—see page 115 above—that the terrorist option is a particularly good one for Palestinians).

Consider a Wild West parallel. A certain varmint is deprived of his gun, when everybody else has one, because 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 somebody 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 you rule over a people who have no citizenship in your country, and whom you therefore deny civil democratic means of redress, 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 constringing 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 the capacity to acquire 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 the Palestinians have a legitimate grievance, then it is against an Israel that *both* created their grievance *and* restricts their practical options of response.²⁴ 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.

The two charges against Shtauber that belong under the 'You're involved in it yourself' heading—'You caused our grievance' and 'You forced us to use terrorist means'—do not simply lie side by

²⁴ Suppose some oppressed opponents of a state begin a campaign of liberation by attacking soldiers. But then the state gives its soldiers bulletproof 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 condemn *both* co-responsible sides: the state for its armour policy, the oppressed for now attacking civilians. But how can the state condemn the oppressed, *unless* the state can impugn their grievance?

side. Though logically and practically independent, in the general case,²⁵ they are, in a certain manner, fused here. For consider. If the Palestinians had normal democratic sovereignty and normal civil liberty they would have a normal army which is not equipped merely to police its own people.²⁶ It is central to their grievance that they lack a *state*,²⁷ 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.²⁸

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 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

²⁵ By that I mean that the grievance-causer need not be the options-restrictor, or vice versa: 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. The force of each consideration is indeed normatively dependent on the force of the other.

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

²⁷ 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.

²⁸ To be sure, there exist non-violent unconventional means, and they are sometimes more effective than terrorism, but recall our decision (see page 115) to face the challenge of a terrorism that is distinctively productive. In any case, Shtauber wasn't forbidding violence, just violence against non-soldiers, and violence, to similar effect, against soldiers, is harder for Palestinians to achieve.

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 a certain thing does not entail being *justified* in doing that thing,²⁹ supposing that one *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 alternative to 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. That my only way out is forbidden does not forbid me to reject *his* condemnation of me if I take that way out.

Shtauber supposes himself entitled to condemn terrorist means *even if* the Israelis have made a course that includes terrorism the

²⁹ 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.

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 continuation of our occupation.' And each accuses the other of worse acts than what they themselves commit. These claims raise charges of 'You're involved in it yourself' and '*Tu quoque*' that cannot 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 further 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.³⁰ 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 semi-apartheid-semi-colonial status that they are coming to 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

³⁰ 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).

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in a position to condemn it. But equally, so it follows, 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 present Israeli government 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.³¹

APPENDIX—Israel and me

I can explain something, quite a lot, of my attitude to Israel by taking you through some of my personal 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 enough³² 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, upon 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 Grunzweig, who was the first Jew to be killed (the second was Yitzhak Rabin) by a Jew because assassin

³¹ 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 a disqualified attitude.

³² The end of what the Jesuits consider to be a person's most impressionable age.

and victim held different views of the Palestinian-Israeli conflict, Grunzweig'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 Grunzweig had been 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 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 had beard stubble. He explained that he was unshaven because he was in mourning, and that Emil Grunzweig 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 Grunzweig 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, and many places that were now Arab-*rein* that had been 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.

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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.