

## **Moral Tragedies, Supreme Emergencies and National-Defence**

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**ABSTRACT** *Assume that some group, A, is under a serious threat from some other group, B. The only way group A can defend itself is by using lethal force against group B, but the standard conditions for using force in self-defence are not met. Ought group A to avoid the use of force even if this means yielding to an aggressive, evil power? Most people would resist this conclusion, yet given the violation of essential conditions for self-defence, this resistance is hard to justify. The aim of this paper is to point to an interesting yet unnoticed move made by some philosophers to find a way out of this problem, a move which relies on construing the situation at hand as a tragic dilemma. I show the attractiveness of this solution and argue that in the end it fails.*

### **I. Introduction**

Consider the following situation: Some group, A, is under a serious, unjustified threat from some other group, B. The only way group A can defend itself is by using lethal force against group B. Alas, the standard conditions for using force in self-defence are not met here, either because this use of force necessarily involves the intentional killing of the innocent, or because the harm and death it will cause would far exceed the harm and death which its use would prevent, thereby violating the proportionality condition. What should group A do? Ought it to avoid the use of force even if this means yielding to an aggressive, evil power? I think most people would resist this conclusion, yet given the violation of essential conditions for self-defence, this resistance is hard to justify.

The aim of this paper is to point to an interesting yet unnoticed move made by some philosophers to find a way out of this problem, a move which relies on construing the situation at hand as a *tragic dilemma*. Accordingly, I shall call the solution they offer to the above predicament, the 'Tragedy Solution'. It is utilized to help solve two disturbing problems, that of supreme emergencies, and that of national-defence wars. I am not suggesting that the philosophers in question explicitly make this argument, but that it is the argument that they would have made had their arguments been cast in the most plausible light given their broader philosophical commitments. This is close to saying that the Tragedy Solution is the most charitable reading of a certain argument made by these philosophers.<sup>1</sup>

I begin with a discussion of supreme emergencies, which I use as my primary illustration of the Tragedy Solution. I then turn to discuss its application to the problem of national-defence wars. In both contexts, I show that the proposed solution does not work.

## II. The Tragedy of Supreme Emergencies

Almost everybody agrees that there are moral limits to what might be done in the waging of war. In particular, there is general consensus that a distinction between combatants and noncombatants must be maintained. Yet, many also agree that if the threat from the enemy is grave enough, then most, if not all, rules of war can be broken. Even some moral philosophers hold this view, notably Michael Walzer, who, in *Just and Unjust Wars*, refers to such cases as cases of ‘supreme emergency’.<sup>2</sup> Walzer’s well-known example of such an emergency is the situation of the UK in the days of the *Blitz* during World War II, when the bombing of German cities seemed to be the only available way to stop, or at least to slow down, the Nazi aggression. On Walzer’s view, because in those days (though not later in the war) the situation was one of supreme emergency, Churchill was justified in ordering such bombing in spite of the fact that it involved a direct and intentional attack on the innocent. Let us call the assumed permission to carry out such attacks, or, more generally, to use measures that would be forbidden in non-emergency situations, ‘Special Permissions’.

In another paper, I discuss at length possible justifications for such permissions, and show how problematic they are.<sup>3</sup> I argue there that the best route to take in order to establish a moral justification for Special Permissions is based on a collectivist ethics, but that this ethics has serious flaws that make it quite unattractive. It is, thus, not surprising to find philosophers trying an altogether different route, namely, an attempt to justify the use of Special Permissions *without presuming to show that such use is in itself morally justified*. The Tragedy Solution is part of this attempt.

To get an initial grasp of the kind of solution under discussion, let me start with the way it is formulated by Brian Orend.<sup>4</sup> According to Orend, Walzer’s doctrine of supreme emergencies is either a form of consequentialism (‘only a matter of arithmetic’),<sup>5</sup> or a form of moral paradox (‘In supreme emergencies, our moral judgments are doubled . . . we say yes *and* no, right *and* wrong’)<sup>6</sup> neither of which is consistent with other doctrines held by Walzer. A different way of understanding such situations is needed, and here is what Orend proposes:

Supreme emergencies, I believe, are not instances of genuine paradox. They are, rather, cases of moral tragedy. A moral tragedy occurs when, all things considered, every viable option one is confronted with involves a serious moral violation. In a supreme emergency, this is clear: if one violates *jus in bello*, one commits murder and perhaps other crimes. On the other hand, if one does not violate *jus in bello*, one’s omissions may contribute causally to the death and devastation of one’s people at the hands of a brutal, rights-violating aggressor.<sup>7</sup>

Perceiving supreme emergencies as cases of moral tragedy implies that, in such cases, one faces a ‘moral blind alley’ (ibid.), with nowhere to turn, and no way to stay morally clean. But precisely because the alley is blind, i.e. all options are morally unacceptable, one cannot be blamed for choosing one option (committing murder or other crimes) over the other (negatively contributing to the death of one’s own people and the devastation of one’s own land), because such choice does not amount to neglecting the right course of action. The Tragedy Solution, then, offers the following argument: (1) In moral tragedies, the agent cannot be blamed for any course of action she chooses, because no respectable course of action is available; (2) Supreme

emergencies are cases of moral tragedy; (3) Hence, in supreme emergencies, the political and military agents cannot be blamed for killing the innocent, or for committing other problematic actions against the enemy (given that such actions are necessary for victory). On Orend's view, then, Walzer might have been right in assuming that Churchill's bombing of German cities was immune to moral reproach, but for reasons different to those he mentioned. The immunity is not the result of some kind of utilitarian calculus, but an implication from the tragic nature of the situation.

The attraction of the Tragedy Solution can easily be appreciated. It allows you to have your cake and eat it too: On the one hand, you can fully maintain the conviction that innocent human beings ought never to be directly targeted. On the other, you are allowed to kill many innocent people, if necessary, to prevent the nightmare of 'entire peoples being enslaved and massacred'.<sup>8</sup>

In reconstructing Orend's argument, I have ascribed to him the view that killing the innocent in supreme emergencies is *permissible*. But, in fact, Orend does not use this language, but rather says that such killing is *excusable*. In supreme emergencies, he says, a just state will commit actions which are morally wrong in order to save itself: 'While wrong, such actions may nevertheless be excused on grounds of extreme duress'.<sup>9</sup> But if all Orend had in mind was an *excuse*, his argument would offer no solution to the problem at hand. As Hare emphasizes throughout his moral writings, a moral question arises when one must choose between two or more options, because if a person is forced to do something, no such question arises. The situation of politicians and generals in supreme emergencies is definitely not one in which they can be said to be *forced* to choose the option of killing the innocent, in such a way that a moral question does not arise at all for them. As they can choose, they ought to prefer the morally better option, and to do that, they need some kind of justification, not excuse. To say that an excuse is granted to some action concedes that the action is wrong, but if it is wrong, it cannot be approved of prospectively. Thus, even if Orend is right in arguing that supreme emergencies provide an excuse for killing the innocent, if they provide no justification, he should speak unequivocally against such killing. But he doesn't.

Moreover, as pointed out by Rodin, duress is not generally thought to provide a legal or moral excuse for wrongful *killing*. When threatened with death, the moral and legal expectation is that one would die rather than commit a wrongful act of killing.<sup>10</sup> Finally, the idea of duress in supreme emergencies is, in any case, distinct from and independent of the idea of tragedy. Orend might be right in suggesting that a state would be excused for the use of immoral measures to save itself, but that doesn't presuppose that all of the options faced by the state were wrong. Immoral behaviour, such as killing somebody in order to harvest his heart, might be excused as 'extreme duress' even when, in the circumstances, a perfectly acceptable moral option is available (not killing that somebody and dying of heart problems).<sup>11</sup>

This ambiguity between justification (or permission) and excuse can be found in all the writers discussed here. On my reinterpretation of their views, they want the Tragedy Solution to provide more than a mere excuse to do otherwise wrongful actions, such as killing the innocent. They want it to ground an *ex ante* permission for doing so. If some politician came to them and asked whether it was morally okay to kill the innocent in supreme emergencies, or go to a national-defence war, their answer wouldn't be, 'No, overall this is morally not permissible, hence *don't do it* (though *post factum* you

might be excused, under duress, from reproach or punishment)', but rather something like, 'It is indeed awful to do such and such. Nevertheless, in the circumstances, it is morally okay for you to do so'.

However, the Tragedy Solution cannot provide the goods expected from it. To see its main defect, let me start with a general point about moral tragedies. Such tragedies occur, assumes Orend, when an agent has no acceptable moral route to take, when all available options are wrong. But according to a central position in the philosophical debate about moral dilemmas, dilemmas might be real and tragic, even when one option is morally preferable to the other.<sup>12</sup> Raz, for instance, who agrees that moral dilemmas are cases of 'choice between evils',<sup>13</sup> contends that, nonetheless, in many dilemmas, the choice is 'between a lesser and a greater evil'.<sup>14</sup> The point of saying that such a situation represents a real dilemma is to emphasize that the intrinsically evil character of the lesser evil option is not erased by the overall judgment that, in the circumstances, it should be preferred over the other (the greater evil) option. An action may be both justified and intrinsically bad.<sup>15</sup> But if that is so, then the claim that some choice represents a moral dilemma, or a moral tragedy, says nothing about how it should be solved, hence in itself it can provide no excuse, and definitely no justification, for preferring one option above the other. This means that premise (1) of the Tragedy Solution argument is false. The fact that all available options are morally wrong does not mean that they are *equally* wrong, and when they are not, then the agent *is* culpable for failing to choose the one that is less wrong.

Elsewhere I have shown that it is quite rare to find a dilemma where the options are morally equal in a way that blocks in advance criticism of the agent for failing to take the morally preferred (=less unacceptable) path.<sup>16</sup> At any rate, the claim that two options are *equally* wrong requires additional evidence beyond the evidence required to claim that they are both *wrong*. To assume that if A and B are wrong they are necessarily equally so is to assume that wrongness is an all-or-nothing notion, which allows for no degrees. But that is a misconception. An action might be more or less wrong, and more or less right, depending on the nature and significance of the values violated or promoted.

The upshot of the considerations is that the fact that a situation is a moral tragedy does not mean that the agent cannot be advised to take one course of action rather than the other, or that he cannot be criticized *post factum* for failing to do so. The implications for the problem of supreme emergencies are clear. Even if supreme emergencies are moral tragedies, in the sense of offering no morally acceptable option, one option, e.g. killing the innocent might still be morally worse than the other, with the implication that such killing would be overall *forbidden* in the circumstances — contrary to what Orend wanted to establish.

Furthermore, Orend assumes a non-consequentialist ethics, which means that he accepts the existence of deontological constraints. Once such constraints are assumed, they imply that the onus is on the shoulders of those who wish to violate them, and if the onus cannot be met, then the default position is to regard these constraints as binding. Because of its agent-relative nature, a deontological position is essentially biased towards the avoidance of wrongful acts, particularly acts involving killing the innocent, over the prevention of unwanted results stemming from the acts of others, or from nature. Hence, granted that both options in supreme emergencies are evil, i.e. the situation is tragic, a non-consequentialist would be expected to stick to his or her

principles and refrain from killing the innocent, unless overwhelming reasons could justify defying them, reasons that Orend fails to produce.

Orend probably sensed that the idea of tragedy is insufficient to do the required work in the argument, hence he briefly points to another direction.<sup>17</sup> He says that we should understand supreme emergencies ‘as a case where we exit the moral realm and enter the harsh Hobbesian realm of pure survival’. But that is far too permissive, and could easily be applied to ordinary wars too. In fact, it comes very close to the moral realist view on wars, according to which wars lie outside the realm of morality. Moreover, if supreme emergencies mark an ‘exit’ from the moral realm, then in this new (or old) territory, neither justification nor excuse are in place, because moral distinctions do not hold ‘out there’ (see chapter 14 of the *Leviathan*), and certainly there is no possibility of moral *tragedy*.

Having explained the structure and motivation of the Tragedy Solution, we can now realize that it is endorsed by other writers too. A rather surprising instance is Nagel’s by now classic article, ‘War and massacre’, first published in 1972.<sup>18</sup> It is surprising because Nagel’s main purpose in this paper is to establish the validity of moral constraints, and show that ‘there is a moral basis for the rules of war’,<sup>19</sup> and, indeed, the article earned a reputation as a powerful defence of such constraints. Against what Nagel saw as the apathetic reaction to the atrocities committed in Vietnam by the USA, he seeks to put down a clear argument for the morality of warfare, based neither on pragmatic considerations nor on utilitarian calculations. Problematic acts, such as murder and torture, says Nagel:

... are not just supposed to require unusually strong justification. They are supposed *never* to be done, because no quantity of resulting benefit is thought capable of justifying such treatment of a person.<sup>20</sup>

Defending oneself by targeting the wives or children of one’s enemy is no less than ‘Hiroshima on a smaller scale’,<sup>21</sup> and is therefore strictly forbidden.

However, in the last two pages of the paper, Nagel makes a rather unexpected move. He refers to situations of ‘deadly threat, particularly where a weaker party is threatened with annihilation or enslavement by a stronger one’. In such situations, which are precisely those that Walzer has in mind when talking about supreme emergencies, Nagel argues that the dilemma between the duty not to kill the innocent and the duty to protect a collective from enslavement or annihilation is irresolvable:

We must face the pessimistic alternative that these two forms of moral intuition are not capable of being brought together into a single, coherent moral system, and that the world can present us with situations in which there is no honorable or moral course for a man to take, no course free of guilt and responsibility for evil.<sup>22</sup>

The reality of tragic moral dilemmas, then, shows how it might be acceptable to violate binding deontological constraints in supreme emergencies. As the dilemma under discussion is irresolvable, it makes no (moral) difference which horn is taken by the political and military leaders, that of committing atrocities, or that of refraining from them. If they choose to keep their hands clean, that’s okay. If they choose to dirty them by the slaughter of thousands, that’s okay too.

Nagel is more explicit than Orend about the irresolvability of the dilemma, yet, he, too, makes no serious effort to establish it. At one point he seems to argue that what constitutes the irresolvability is the fact that the conflicting intuitions are so different that they 'are not capable of being brought together into a single, coherent moral system'.<sup>23</sup> That would fit Nagel's well-known view about the 'fragmentation of value', according to which the sources of value are plural, hence conflicts between fundamentally different values are not resolvable.<sup>24</sup> But Nagel surely doesn't subscribe to the view that incommensurability implies complete incomparability, because had he done so, he wouldn't have restricted the discussion to conflicts between the prohibition against acts like murder and torture and a 'very high' utilitarian cost. He would have said that *any* conflict between utilitarian gain and deontological commitments is irresolvable. But, of course, he doesn't, hence the doctrine at hand must be far more sensitive to the particularities of each situation in order to determine whether it is solvable or not. As Dworkin often reminds us, the claim that a dilemma is irresolvable is a positive claim that needs evidence to support it, no less than saying that it has such and such a solution.

Furthermore, given that such situations tend to be vague and ambiguous with respect to both their factual and their moral elements, one would have thought that the safest moral advice is: Do no harm. As I said earlier, to take seriously the agent-relative perspective means giving priority to the avoidance of evil actions over carrying out good ones, such as acts of rescue.

To this Nagel might reply by saying that though refraining from murder and torture are almost always mandatory, when the 'utilitarian cost' of such a restraint is too high, it overrides the former obligation. But, first, if that's the case, then the idea of a moral blind alley plays no role in establishing the permission to murder and torture. If the existence of the entire human race depended on the killing of one innocent person, then the dilemma *would* be solvable, i.e. to kill the innocent person. Second, though Nagel does at times depict the relevant conflict as one between deontological constraints and utilitarian gain, when he illustrates his general point he refers to a case in which 'a weaker party is threatened with annihilation or enslavement by a stronger one'.<sup>25</sup> I take it for granted that on his view (as on Walzer's), the right of the weaker party to defend itself from 'annihilation or enslavement' does not depend on such defence passing the utilitarian test. Moreover, Nagel might allow the weaker party to defend itself even if the deaths and damage it would be forced to bring about would be *greater* than those it would suffer if it refused to violate deontological constraints. As I show elsewhere,<sup>26</sup> the framework assumed here is not that of the lesser evil, but that of self-defence. But the right of self-defence is of course limited, particularly insofar as it concerns innocent bystanders. In the present context, the question is how it could be permissible for some collective to save itself by killing thousands of human beings who are neither materially nor morally responsible for the grave threat against it, and, in that sense, are just like innocent bystanders. Nagel's ideas about tragic conflict and about the fragmentation of value fall short of providing any satisfactory answer to this question.

To sum up: In supreme emergencies, when collectives stand with their backs to the wall, many are inclined to accept Walzer's advice 'to do whatever is military necessary to avoid the disaster',<sup>27</sup> including the taking of many innocent lives. This permission is very hard to square with our fundamental moral doctrines; hence the following line of argument suggests itself:

‘True, ultimately such killing cannot be morally justified. But this is a tragic situation, in which *whatever* one does, one would be doing wrong. Hence, it makes no moral difference whether one chooses one option or the other, and one cannot be *condemned* for choosing the option of killing the innocent over that of refraining from doing so and letting the bad guys triumph’.

I tried to show that this line of argument fails. First, that a choice is (morally) tragic, in the sense that all the options it confronts are wrong, does not entail that all options are *equally* wrong, hence does not in itself license the option of murder and torture. Second, given a situation in which a weak collective is threatened by a stronger one, the appropriate normative framework to analyze it is that of self-defence, and within this framework it is even less likely that the dilemma can be presented as one in which all options are equally wrong. Abstaining from killing an innocent person, at the price of losing my own life, is no doubt a tragedy, but not a *moral* one. That’s how a decent person is expected to behave.<sup>28</sup> Why should things be different when it is not myself I’m willing to sacrifice (or not to save), but my group?

### III. The Tragedy Solution and Wars of National Defence

On common-sense morality, as well as on international law, nations have a right to use force in order to defend themselves from threats to their territorial integrity and political sovereignty. They may go to war even if it is not the lives of their individual members that they are defending (there is no threat of genocide), but rather, in some analogical way, the life of the nation. Yet this widespread view has been challenged in the last decade by several writers, notably Richard Norman and, more recently, David Rodin.<sup>29</sup> Their main argument is that the right to wage war in order to protect national sovereignty violates one of the central conditions for the legitimacy of self-defence, i.e. the condition of *proportionality*. Just as, in individual self-defence, the evil brought about by the defensive act must be proportional to the evil prevented, in national-defence too, the evil brought about by the act of war must be proportional to the values defended. However, these writers argue, this is simply not the case. As valuable as territorial integrity and political sovereignty are, they are not valuable enough to justify the large scale killing and the vast destruction involved in waging war. Traditional just war theory, concludes Norman, ‘does not succeed in its primary aim. It does not provide a way of rebutting the initial moral presumption against war in any form’, and Rodin reaches the same conclusion, asserting ‘that the conception of a moral right of national-defence cannot, in the final analysis, be substantiated’.<sup>30</sup>

The logical conclusion from these last statements seems inevitable. They imply that while nations are allowed to take up arms and go to war if the very existence of their members is in danger, namely to defend themselves from some kind of genocide (or a threat of a similar scale), they are not allowed to go to war to defend political sovereignty, a common way of life, or the right to self-determination, the values for which ordinary wars are fought. In other words, the bottom line of the analyses offered by Norman and Rodin should be an endorsement of pacifism.<sup>31</sup>

But it is not. At the very last minute, each of these writers steps back and ratifies, so to say, the just war theory permission to use force in national-defence. And the way they do so is by relying on versions of the Tragedy Solution. Or so I shall argue.

Let us start with Norman. After concluding that just war theory fails to justify ordinary wars, in the last chapter of his book, he then introduces the notion of a moral tragedy, which, following Nagel, he defines as ‘a situation where whatever one does, though one may feel morally compelled to do it, it is also wrong’.<sup>32</sup> Like Nagel, Norman believes that our fundamental moral values are incommensurable; hence their relative weight cannot be measured on a single scale of value.<sup>33</sup> Moral tragedies, then, are irresolvable, and this is precisely the category to which the dilemma of whether or not to go to war belongs:

There will be cases where the only way to resist aggression or oppression will be to engage in the wholesale destruction of human lives, but the refusal to fight and to kill will be a failure to resist intolerable evil.<sup>34</sup>

In such cases, no right answer exists:

Some will plausibly say that there is no choice but to fight, as the only alternative is to submit, and that is morally unthinkable. Because the pacifist can equally say that the wholesale slaughter which war involves is morally unthinkable, we are faced with a tragic conflict of values. The conflict is irresolvable in the sense that neither side can be convicted of error.<sup>35</sup>

One cannot fail to see the Tragedy Solution structure here: The dubious moral action, i.e. going to war, is perceived as morally wrong, but so is the other option. Opting for the former does not involve any *error*, and does not involve a failure to take the morally better (or less unacceptable) course of action. It is, as Norman puts it, a ‘personal decision’.

Before I turn to Rodin, let me register two critical comments which apply specifically to Norman. First, a word on incommensurability. According to Norman, the reason that the dilemma under discussion is irresolvable is that the options are incommensurable. But, again, I wonder how seriously the notion of incommensurability is taken here. If incommensurability is taken to imply total incomparability, then Norman would be committed to the position that regardless of the stakes at both sides, one can never make a rational decision in a dilemma between fighting or not fighting, because any such options would be incommensurable. That would imply that however we play with the stakes — raising them higher on the one side and lowering them on the other — the same answer would be given. But that is unreasonable. Surely the worse the expected evil from the aggressor, the stronger the reason to prefer the path of war. If the expected evil is massacre and enslavement, then the justification for war is far stronger than if the expected evil is mere loss of territory. Similarly, such justification depends on the expected losses incurred by war: The fewer the human beings expected to be killed, the more tolerable the option of war seems. If Norman really believed that incommensurable options could not be compared, that would lead to permissive implications of a kind he would never accept. If there were no way of comparing killing human beings and yielding to evil, then even if the evil is minor, and the killing massive, the killing might still be all right, which runs against the spirit of his entire book.

It seems that Norman implicitly acknowledges this point, because when he describes the dilemma at hand, he assigns to one side of the scales ‘the wholesale destruction of human lives’, while to the other ‘a failure to resist *intolerable evil*’ (italics added). The problem is that the detailed argument Norman develops in chapter four of his book



strongly undermines this last assumption by showing that the life of a political community is not, in its own right, so valuable as to justify killing in its defence. The loss of political sovereignty, so he argued, is no doubt an evil, but not an *intolerable* one that could compete successfully with the *really* intolerable evil of the wholesale killing involved in war.

A different argument suggested by Norman to justify going to war despite the assumed defects of just war theory is based on the idea that one is allowed not to take the morally preferred course of action if such an action constitutes an attack on one's *integrity*. Norman makes this point rather briefly saying that for some people to submit 'would be to abandon one's deepest moral convictions, those convictions which are a precondition for making any moral choices at all'.<sup>36</sup> In a footnote, he refers to Williams's famous discussion of integrity in his criticism of utilitarianism, where Williams argues that to avoid an attack on one's integrity, one is allowed not to carry out the preferred moral action (not to kill the one Indian in order to save the nineteen). But even if this view is granted, I doubt whether it can help Norman in the present context. A central point in Williams's account of integrity is the distinction between what one *does* and what one merely *lets happen*. Norman, too, emphasizes this point, arguing that actions play a much stronger role than omissions in our sense of what we are, and that there is 'a deep connection between agency and identity'.<sup>37</sup> This means that integrity is typically violated when an agent is required to *act* contrary to his basic convictions, like Jim killing the innocent person, not when he is required to let some evil happen, like Jim standing by while Pedro kills the twenty. The problem is that in the present context, namely, going to war, what Norman presents as 'abandoning one's deepest moral convictions' is not an action like killing innocent people, but rather an omission, namely, *not* fighting against an aggressive country, thereby letting the enemy win the day. The analogue to Williams's Jim in the international arena would be someone who refuses to dirty his hands by participating in the wholesale destruction of human life, in spite of his assumed negative responsibility to prevent evil. Therefore, in Norman's own terms, the value of integrity seems to support, rather than limit, the pacifist conclusion of the argument.

I turn now to Rodin. As mentioned above, Rodin's main thesis is the repudiation of the category of national defence as a legitimate moral category. And the basic lesson he draws from this thesis is that our traditional conceptions of international law and international ethics need to be fundamentally re-thought. As Rodin himself notes, that may sound like a messianic expectation. What are we to do in the meantime? Must we refrain from using military force in the face of aggressions threatening our collectives? Rodin refuses to answer in the affirmative to this last question as the reader would expect, and, instead, in the last two pages of his book, he argues that the situation presents us with a 'terrible dilemma'. On the one hand, fighting a war of national defence is 'deeply problematic'. On the other, failing to resist aggression is 'morally unacceptable', probably because of a 'consequentialist concern for the costs of not resisting aggression'.<sup>38</sup> The costs are so appallingly high, especially in case of aggressors like Nazi Germany or Stalinist Russia, that one may come to the conclusion that one simply *must* fight, that there is 'no choice'.

But focusing on leaders like Hitler and Stalin is misleading in the present context, as the threat they posed was a threat to the life, dignity and freedom of many *individuals*, hence self-defence against Hitler and Stalin could have been justified on the basis of

*individual* self-defence. The whole point of Rodin's project is to show that national defence cannot be reduced to a collective application of personal rights of self-defence, but rather seeks to defend the existence of a *nation* — its way of life, sovereignty, and autonomy. And the conclusion he arrives at is that these values are not as important as they are thought to be. Hence, to conclude the discussion by saying that the cost of not defending them by force is 'appallingly high' is inconsistent.

This brings me to the last point I would like to raise against the Tragedy Solution to the problem of national defence. Both Norman and Rodin draw an analogy between the idea of a right to national defence and that of individual self-defence. With respect to the latter right, it is obvious that if the conditions for its application are not met, then the potential victim is simply forbidden to use force in order to defend him- or herself, even if that means suffering great harm or death. Thus, if the only way to save my life is to kill an innocent bystander, I should die and not kill the person.<sup>39</sup> Similarly with the condition of proportionality: Taking this condition seriously means that even if my attacker is morally culpable, if the threat is not that severe, and if the only way to defend myself from it is by killing the aggressor, I am not allowed to do so, even if that means suffering painful harm or offence. This distribution of harm looks unfair — why should *I* suffer rather than the aggressor? — and indeed it has led some thinkers to cast doubt on the very validity of the proportionality condition.<sup>40</sup> But as both Norman and Rodin accept it,<sup>41</sup> these doubts can be put aside in the present context. My point is that once they accept this condition *and* believe that it is not fulfilled in the case of wars of national defence, then, just as with individual self-defence, they should conclude that the attacked nation has no choice but to suffer the harm incurred by the aggressive country.

What does such suffering have to do with *moral tragedy*? That an individual suffers because the proportionality condition prevents her from killing the aggressor is unjust and distressing, though to describe it as a tragedy would probably be an exaggeration (if it were a tragedy, then the proportionality condition probably would be met). In any case, there is no *moral* tragedy here because the victim violated no moral principle by not killing the aggressor.<sup>42</sup> The same holds true for the defence of nations. *If* the price of defending the nation from an aggressive attack exceeds the worth of the values under threat, as both Norman and Rodin argue, then the attacked nation has no choice but to give up the use of military force, which, in reality, almost necessarily means surrender to the aggressive side. As such surrender will have a negative effect on the lives of millions, the term 'tragedy' seems more appropriate here than it did in the context of individuals. Still, there is no *moral* tragedy, for exactly the same reason: Collectives are not at moral fault for refusing to go to war in cases where doing so is incompatible with the conditions of self-defence. In such cases, they have no other moral choice than to surrender (or, at any rate, to avoid *violent* resistance). If just war theory fails in justifying wars of national defence, pacifism is inevitable. The Tragedy Solution is, then, no solution to the problem of national-defence, just as it is not a solution to the problem of supreme emergencies. Whether or not there is some other escape route from pacifism, or from passivity in the face of genocide, is a question that is beyond the scope of the present paper.<sup>43</sup>

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## Acknowledgements

I am very grateful to Colleen Murphy, David Rodin and Saul Smilansky for helpful comments on earlier drafts of this paper.

## NOTES

- 1 I'm indebted to David Rodin for his insistence and assistance in clarifying this methodological point.
- 2 M. Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), chapter 16, and, more recently, his chapter on 'Emergency ethics' in M. Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004). See also John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 98–99.
- 3 D. Statman, 'Supreme emergencies revisited', *Ethics* (forthcoming).
- 4 B. Orend, 'Just and lawful conduct in war: Reflections on Michael Walzer', *Law and Philosophy* 20 (2000): 1–30. See also his 'Is there a supreme emergency exemption?' in M. Evans (ed.) *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005).
- 5 Walzer op. cit., p. 254.
- 6 Op. cit., p. 326.
- 7 Orend op. cit. p. 20.
- 8 Walzer op. cit., p. 257.
- 9 *Ibid.*
- 10 D. Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002), p. 171.
- 11 I am assuming that by refraining from killing an innocent person in order to save my life (e.g. by using his heart), I am not making even a minimal *moral* concession, neglecting, as it were, the moral obligation I have to save my *own* life.
- 12 I'm assuming there are only two options, in accordance with the etymology of 'dilemma', though this, of course, is not necessarily so.
- 13 J. Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 359.
- 14 Op. cit., p. 365.
- 15 Op. cit., p. 405.
- 16 See chapter 3 of my *Moral Dilemmas* (Amsterdam: Rodopi, 1995). The problem of irresolvable dilemmas in moral philosophy is analogous to that of hard cases (or 'ties' in Ronald Dworkin's terminology) in legal philosophy. For a systematic comparison of these two problems, see D. Statman, 'Hard cases and moral dilemmas', *Law and Philosophy* 15 (1996): 117–148.
- 17 Orend op. cit., p. 29.
- 18 T. Nagel, 'War and massacre', *Philosophy & Public Affairs*, 1 (1972); reprinted in T. Nagel, *Mortal Questions* (New York: Cambridge University Press, 1979), ch. 5. All references are to this latter source.
- 19 Op. cit., p. 53.
- 20 Op. cit., p. 73.
- 21 Op. cit., p. 69.
- 22 Op. cit., pp. 73–74.
- 23 Op. cit., p. 73.
- 24 T. Nagel, 'The fragmentation of value', in *Mortal Questions*, ch. 9, esp. p. 134.
- 25 Op. cit., p. 73.
- 26 'Supreme emergencies revisited', op. cit., section II.
- 27 Walzer (2004) op. cit., p. 40.
- 28 It should come as no surprise to find that some version of the Tragedy Solution would become attractive within the context of individual self-defence too, as a way of accounting for the assumed permission to kill an innocent attacker. See Y. Benbaji, 'Culpable bystanders, innocent threats and the ethics of self defense', *Canadian Journal of Philosophy* (forthcoming).
- 29 R. Norman, *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995); Rodin op. cit.
- 30 Norman op. cit., p. 206; Rodin op. cit., p. 196.
- 31 See Norman op. cit., p. 207 ('The failure both of utilitarian arguments and of "just war" arguments seems to be pushing us in the direction of a pacifist conclusion') and Rodin op. cit., p. 163 ('It might be supposed that the only conclusion we can draw from this result will be a form of pacifism').

- 32 Norman op. cit., p. 223.
- 33 Op. cit., p. 226.
- 34 Op. cit., p. 223.
- 35 Op. cit., p. 230.
- 36 Op. cit., p. 219.
- 37 Op. cit., p. 91.
- 38 Rodin op. cit., pp. 198–9.
- 39 For those philosophers who believe that innocent attackers (always, or in some cases) have the same moral status as innocent bystanders (e.g. McMahan, Otsuka and Rodin), this requirement would apply to them too, namely: If the only way to save my life is by killing an innocent attacker, I have no (moral) choice but to let the innocent attacker kill me.
- 40 See esp. L. Alexander, 'The doomsday machine: punishment, proportionality and prevention', *Monist*, 63 (1980): 199–227, and idem. 'Self-defense, punishment, and proportionality', *Law and Philosophy*, 10 (1991): 323–328.
- 41 Norman op. cit., pp. 118–119, 30–131; Rodin op. cit., pp. 40–48 and 124 ('defensive rights are governed by an intrinsic limitation of proportionality').
- 42 The victim's situation here is different from that of a third party, who might be said to have a *moral* duty to intervene in order to prevent an immoral attack. This raises a problematic self-other asymmetry which I cannot discuss here. See M. Slote, *From Morality to Virtue* (New York: Oxford University Press, 1992), pp. 39–44.
- 43 For a recent potential solution, see S. Smilansky, 'Some thoughts on terrorism, moral complaint, and the self-reflexive and relational nature of morality', *Philosophia* (forthcoming), who explores the idea that those who use terror cannot complain when terror is used against them, hence nations that use (or are about to use) terror against some other nation or collective cannot complain when this other group (or a third party) utilizes Special Permissions in self-defence. While this idea might help with supreme emergencies, it doesn't seem to offer any rescue with regard to national-defensive wars. A state that violated the political sovereignty of another state might be said to have thereby 'invited' a similar violation of its own sovereignty, but it cannot be said to have 'invited' the wholesale killing of war, hence it has not lost its right to complain about such killing.