other task ought to be addressed by individuals and various companies of individuals without invoking any kind of coercion, not even taxation. This is not, as some claim, blind ideology or rationalist political thinking, but a principled approach to public affairs in terms of which significant matters of social and personal life are off-limits to coercive power. The libertarian sees the right to liberty of all individuals no less in need of principled protection than the feminist sees a woman’s body as not subject to occasional aggressive intrusion, so now and then rape or other types of assault might be acceptable—as if one needed “to take such cases one at a time to see whether they might have merit.” No, and neither is this the case with the other basic rights of individuals, including that to what they produce or what they make of their lives, be it good or bad.

Rights, Just War, and National Defense

Eric Mack

I believe that it is possible for modern war to be waged within the limits set by the laws of morality. [But if] anyone were to declare that modern war is necessarily total, and necessarily involves direct attack on the life of innocent civilians, . . . my reply would be: So much the worse for modern war. If it necessarily includes such means, it is necessarily immoral itself.

—John C. Ford

1. The Political Morality of the Free Society

Each individual is a moral end-in-himself and each individual’s moral standing as an end-in-himself is manifest in his possession of moral rights over his life, his liberty, his labor, and his justly acquired property. These are rights that all other people and institutions are obligated to respect. To affirm these general natural rights (and the more specific rights that may arise through the exercise of general rights) is to recognize the moral sovereignty of each person. It is to recognize that each person is his own person. To deny these rights is to assert that, at least in some respects, individuals are to be viewed and treated as objects available for the use of others. To deny these rights is to assert that, at least to some degree, persons are natural servants or slaves of others.

These rights to life, liberty, one’s own labor, and property, if coherently interpreted, are all negative rights. They only imply that others are obligated to leave the right-holders in peaceful enjoyment of their rights. Negative rights do not impose upon others positive obligations to provide the right-holders with any particular goods or services or any level of income or
utility. Persons can and usually do acquire an array of specific positive rights, e.g., rights to this good from B or that service from B*. Thus, B may bestow a positive right upon A by freely promising to provide A with a particular good or by voluntarily placing A in a situation in which A will suffer grievous injury unless B provides A with certain assistance (as when B lowers nonconsenting A down a well or brings A*, a helpless newborn, into the world). In the absence of such special voluntary acts by B, A has no rights against B except her negative rights to her life, liberty, labor, and duly acquired property. A free society is one in which everyone's natural and acquired rights are respected. There are no "higher" ends beyond the individual and his rights, such as the aggregate happiness, the prestige of the presidency, or global order that can authorize the infringement of these rights. If political and legal institutions have any legitimate authority, they have the strictly limited authority to secure the rights of those individuals on whose behalf they claim to have authority. By securing these rights, political and legal institutions sustain a framework within which individuals, families, and other associations can pursue their respective ends either singly or in voluntary cooperation.

While the natural rights to life, liberty, and property are negative rights, which merely require that others forego trespass upon them, the right to the protection of these rights by others is itself a positive right. Such a positive right can come into existence only through voluntary actions performed by the individuals or agencies bound to satisfy it. Since there has been no general agreement among members of this society to bestow positive rights to protection upon individuals or groups in other societies, neither individuals at large within this society nor this society's government have any obligation to protect the rights of those foreign individuals or groups. Nor do we nor our government violate any rights in declining to expand the protection of rights to those foreign individuals or groups. Thus, it cannot be part of the mandate of a duly limited government to protect the rights of other peoples, however worthy their protection is of our individual, freely chosen, support.

Since large-scale defensive activity requires resources, and resources come from people and do not (for the most part) grow on trees, and individuals are not naturally bound to supply others with these resources, we cannot avoid questions about how defensive systems may plausibly be staffed and funded. The general answer is that people may be called upon to contribute only what they have freely agreed to contribute, as in the staffing or funding of any other mutual endeavor. But have we agreed to (or otherwise voluntarily incurred) obligations to staff or fund our society's military structure? It seems not. Moreover, the tacit or hypothetical agreements that some philosophers appeal to are not worth the paper they are not written on. So one striking implication (or apparent implication) of our fundamental rights is the moral impermissibility of coercing individuals, through taxation, to pay even for their common defense.

A fully free society would finance national-scale defense voluntarily, presumably in large part through the sale of this protection to individuals and associations who would remain legally free not to purchase this service. The special problem with such voluntary financing is that national-scale defense is, in the technical economic sense, a public good. It is a good the enjoyment of which cannot feasibly be withheld from anyone within a given area if it is produced at all. Since particular individuals do not face the likelihood of being denied national-scale defense should they decline to purchase it, the normal direct incentive to purchase the good is absent. This may lead to so few people offering to pay for the good that it will not be produced even though (nearly) all would be better off securing defense at some financial cost to themselves. The public goods problem is not that some will free-ride on the services financed by others, but that certain of commonly beneficial services will not be funded at all (or will be greatly underfunded). A complete vindication of the ideal of a free society must address this issue. It must indicate how, by noncoercive means, the incentives of individuals can be structured so as to generate sufficient voluntary support for public goods such as national-scale defense or must explain why, contrary to appearances, coercive taking to finance the good of defending rights does not truly contravene libertarian strictures.

Fortunately, the problem of financing a defense system in a manner compatible with a free society can be set aside for the purposes of this essay. This is because we can distinguish between the justice of military policies and actions and the justice of their financing. No matter what our judgment about the funding of military forces, we must independently inquire about the justice of their deployment and use. Nevertheless, there is one implication of the libertarian understanding of people's rights that is so direct and manifest that it cannot be put aside. This is the impermissibility of conscription and all measures preparatory to conscription, such as mandatory registration. Conscription is a form of involuntary servitude. It can be acceptable only to those who deny that people are moral ends-in-themselves or who make a fantastic appeal to tacit or hypothetical consent or to some nonconsensual process by which individuals are supposed to have become indebted to society or to the state. It has often been argued, for example, that since the government has bestowed upon us the protection of our rights, all or at least some of us have become reciprocally bound to pay for
this benefit in the form of service in the government’s protective endeavors. But even if we allow that the government’s military engagements have in the recent past actually effectively enhanced the security of our rights in morally permissible ways, the conclusion that those who have benefited may now be forced to serve the benefit-bestowing institution does not follow. Though each of us benefits enormously and in all sorts of ways from many activities and institutions in which we play no direct part, this does not make those who directly and freely participate for their own chosen purposes our victims with enforceable claims, in compensation, upon our lives or fortunes. To those individuals who have defended our freedoms, we owe an unending gratitude. Yet it would be a sad irony for that past defense of freedom to be interpreted as a vindication for present involuntary servitude.

We turn, then, to the primary question of what people may do or have done for them in the way of forcibly defending their rights.

2. Theories of Justice in War

Moral theorizing about war usually focuses on two distinct questions. What ends, if anything, can justify war? What means may be employed in the pursuit of that justifying end? As it is often put, we are concerned both with justice of the war and with justice in the war. On the principles of a free society, the only end that vindicates a society’s limited government in preparing for, supporting, and conducting war is the protection of the rights of its particular citizens. But the question remains how, if at all, do the rights of all those individuals who may be injured or killed in the course of defending rights constrain what may be done in defense of rights? This section surveys eight doctrines about justice of and justice in war. The first six doctrines accept the basic proposition that the end that vindicates defensive force, if any end does, is the protection of rights. These doctrines diverge on the question of what constraints, if any, there are on the pursuit of this justifying goal. The seventh and eighth doctrines are reminders of goals that are often invoked to justify war contrary to the principles of a free society. This survey provides the background for the defense of the just war doctrine that appears in section 3.

1. Principled pacifism. Defensive force is just as immoral as the violence against which it is directed. The former violates rights as surely as the offensive use of force.

According to principled pacifism, the prospect of suffering rights violations does not absolve one from any of one’s previously identified obligations not to use deadly or injurious force. These obligations stand and bind one to pacifist submission (or nonviolent evasion if that is possible). Moreover, it is better to suffer a wrong (to oneself) than to be the agent of necessarily wrongful violence (even against an aggressor).

2. Strict defense. Defensive force may be used against guilty aggressors and only against guilty aggressors.

Guilty aggressors are those who set out intentionally or recklessly to perform actions that violate the rights of some (non-aggressing) second party. Often the view that defensive force against guilty aggressors, but only against them, is permissible is associated with the view that the guilty aggressor, through his guilt, forfeits his right against harmful force.

3. Broad defense. Defensive force may be used against innocent aggressors as well as guilty aggressors.

Innocent aggressors (or “innocent threats”) are those whose action or behavior threatens to infringe upon someone’s rights, but who are not themselves responsible for their threatening action or behavior. Common examples of innocent threats are psychotic aggressors or children unaware of the dangerous character of their actions. Conscripts in an aggressor’s army who themselves are acting under serious duress are also innocent threats. A doctrine of forfeiture of rights cannot be used in the vindication of broad defense, since forfeiture is, presumably, a function of blameworthiness.

4. Just war defense. Defensive force may be used against guilty and innocent aggressors even if this force (also) inflicts losses on innocent bystanders.

Innocent bystanders are those who themselves pose no threat to the party under attack but who will be harmed or killed by the use of defensive force against the attacker, e.g., the civilian refugees who happen to be living in the immediate vicinity of an aggressor’s artillery. When an attacker consciously makes use of such bystanders in order to inhibit counterattack against his tools of aggression, e.g., by locating his weapons among them, those bystanders become innocent shields. (Those who are guilty of voluntarily supporting the aggression, such as civilian war planners, do not count as mere bystanders or shields.)

Just war defense requires that defensive force be directed only against
guilty or innocent threats. It prohibits the direction of force at innocent bystanders. But it allows force directed at aggressors to proceed even if innocent bystanders will be killed as a “by-product” or “second effect.” The just war doctrine would, for example, prohibit the World War II Allied especially British Bomber Command obliterating bombing of German cities, which was designed to undercut German war production by disrupting civilian life and morale through the destruction of the densely populated, blue-collar sections of German cities and the inhabitants there. The injury and death of these civilians, many of them not involved in war production, were not by-products of force directed against aggressors or even the machinery of aggression. Instead, these injuries and deaths were the specific intended means by which Bomber Command sought the further end of incapacitating genuine threats.

Just war defense replicates central features of traditional just war theory. The key and controversial distinction within this theory is between untoward intended consequences of one’s defensive actions and untoward foreseen but unintended consequences of one’s defensive actions. If an injury or death suffered by bystanders is a foreseen but unintended result of one’s defensive force, then one’s moral responsibility for this injury or death is at east of a lesser order than if the same injury or death was intended. An agent’s intention is not a matter of what particular images or feelings he manages to conjure up or banish from his mind at the moment of action. The bombardier on an obliterating mission cannot prevent the deaths of the bystanders from being his intended means by focusing his mind on something else as he releases his bombs e.g., the well-being of the people or whom he is fighting. The death of those bystanders is his intended means as long as their prospective death or injury plays an illuminating role in explaining why the bombardier is releasing those bombs at that place and time.

Advocates of just war theory usually also hold that the production of an evil effect will remain morally impermissible if the evil effect, even if unintended, is disproportionate to the good intended (or intended and accomplished) by the action. For example, it may be claimed that the evil involved in the death of 100 refugees in whose midst the aggressor’s artillery has been placed is so disproportionate to the enhanced security that the counterattacking forces will enjoy if that artillery is destroyed by air attack that it would be morally impermissible for that air attack to proceed. Unfortunately, crucial as proposed principles of proportionality are to a full account of just war defense, their final role, if any, within a correct theory of defense cannot be explored here. Whatever that role, it is a maxim of just war defense that a defender must choose the prospectively successful defensive tactic that minimizes unintended bystander injury and death. (Just war defense prohibits tactics that will involve bystander causalities, or perhaps even innocent threat causalities, if those tactics offer no significant prospect of success.)

5. Necessary force defense. Defensive force may be used in the protection of rights, and it is not worse to direct force against (innocent) bystanders than against (innocent) aggressors.

Necessary force defense repudiates the proposition, central to just war defense, that the intentional killing of nonthreats is a special evil that may not be engaged in even in order to protect one’s own rightful claims. To see how necessary force defense diverges from just war defense consider this simple example. There are only two ways to eliminate an aggressor’s artillery battery. One way is the (counterforce) method of obliterating the artillery, and this has the added consequence that an innocent refugee living in its vicinity is killed. The other way is the (countervalue) method of eliminating an innocent refugee who is safely distant from the artillery but who is so cherished by the artillery crew that his death will destroy their fighting morale. Doctrines (1), (2), and even (3) prohibit both defensive tactics. Just war defense sharply distinguishes between the two tactics. It allows the attack upon the artillery (which kills both the nearby refugee and the crew), but prohibits the attack on the more distant yet cherished refugee. In contrast, when only the two refugees are taken into account, necessary force defense is neutral between the two methods. But if any among the crew are innocent threats, necessary force will endorse the second, morale-destroying, method of defense.

6. Limitless defense. While there may be some moral limits upon what may be done in self-defense of rights in small-scale or intrasocietal situations, no such moral limits make sense in the case of large-scale conflict.

Limitless defense still requires that war be defensive, i.e., that it be fought to protect against the violation of rights. But it denies that there are any moral constraints on one’s conduct within a just war. Advocates of limitless defense argue that once war comes the only value is winning; it is nonsense or moral hypocrisy to pretend that any gentlemanly moral rules remain in place. Or they may argue that in modern warfare all distinctions between threats and nonthreats, between combatants and noncombatants, and so on, break down. Everyone under the sway of the aggressor state must
be treated as an enemy open to unconstrained attack. Collectivist thinking also contributes to limitless defense by encouraging us to perceive all individuals as functional parts of the (aggressor) state. We are not attacked by certain individuals, some of whom are guilty aggressors, others innocent aggressors, and so on. Rather, we are attacked by some holistic entity, the enemy state or nation in which all individuals are subsumed.

7. National interest aggression. War is an expression of the interests of peoples. A rational war is one that advances the interest of the nation for whom and by whom it is fought.

The shift from limitless defense to national interest aggression greatly expands the grounds for morally permissible warfare by substituting interests—indeed, the collective interest—for individual rights. We reach a point at which the use of the term “defensive” is clearly inappropriate. Interests are to be advanced by whatever effective means lie at hand. Nor are the occasions for justified war restricted by any merely bourgeois notion of individual interests. The state’s or the people’s or the class’s interest may be served even though (or precisely because) people’s individual interests are annihilated.

Both limitless defense and national interest aggression can be quickly rejected by proponents of individual rights and the free society. Limitless defense is to be rejected because it turns on the false and dangerous premise that the state and its agents need not abide by the same moral rules that constrain the actions of ordinary individuals and groups. National interest aggression is to be rejected because it abandons all concern for justice among individuals and states and at least radically discounts concern even for individual interests.

8. Conflict management and humanitarian intervention. Among the legitimate purposes of a state’s military is the suppression of local conflicts around the globe and the provision of humanitarian aid, especially in circumstances that require the forcible suppression of those who would endanger the provision of that aid.

All individuals and voluntary associations should be free to offer military assistance to any of the many victims of aggression around the world. Moreover, all individuals and voluntary associations should be free to provide aid to people in distress wherever they may be. And those who are engaged in such humanitarian efforts have every right to secure for themselves the defense of their operations against local predators. But these propositions do not support conflict management and humanitarian intervention, which mistakenly assigns to the government of a free society tasks that are totally beyond its legitimate mandate.

3. Delineating Permissible Defense

The rejection of principles (6), (7), and (8) leaves us with the question of which position about permissible self-defense among doctrines (1) through (5) is most plausible. Unless a position at least as permissive as just war defense is adopted, all large-scale defensive measures, i.e., all wars, are sure to be morally impermissible no matter how just their ends. For any large-scale military measures, no matter how purely reactive to violations of rights, are certain to injure and kill innocent bystanders. In seeking to vindicate the forcible defense of rights, it is useful to begin with the case against principled pacifism. If pacifism is rejected, the next question will be: How far do the arguments associated with this rejection carry us toward necessary force defense, the doctrine that any use of necessary force in the protection of rights is morally acceptable? I contend that the most permissible acceptable principle for national-scale defense is the more stringent just war defense, which requires that all defensive force be targeted against aggressive force.

Against Pacifism.

In a forceful critique of pacifism, Jan Narveson focuses on the incoherence of ascribing rights to victims of violence while denying those victims rights to defend themselves against the violation of their rights.

What could that right to their own security, which people have, possibly consist in, if not a right at least to defend themselves from whatever violence might be offered them? . . . The prevention of infractiion of that right is precisely what one has a right to when one has a right at all. A right just is a status justifying preventive action. To say that you have a right to X but that no one has any justification whatever for preventing people from depriving you of it, is self-contradictory. . . . In saying that violence is wrong, one is at the same time saying that people have a right to its prevention, by force if necessary. 8

Rights are claims that people can insist others abide by. Such claims are to be contrasted with (mere) measures of moral stature that one person can apply to others, such as their degree of kindliness or integrity. One may
judge, quite correctly, that others have acted wrongly on some occasion because they have not displayed kindness or integrity. But in employing such judgments, one does not invoke the rights that one has against these other individuals. Kindness or integrity is not something that one can require of them. Rights must have more interpersonal force than this. They are the bases for demands one can make upon others, and not merely for judgments one can offer about their lives. The sense in which rights allow the right-holder to require or insist that others act or refrain from action must be more robust than that involved in being licensed merely to pass critical judgment upon them. What could this more robust sense be except that right-holders can require others in fact to conform their activity to respect these rights? This can only mean that right-holders may prevent, by injurious force if necessary, infringements upon their rights. The right to resist violations of one’s rights, to use injurious force if necessary to preserve one’s rights, is then an implication of one’s having a right against such violence and of this right’s being a moral claim against others for which the right-holder may require respect.

How much force (against those subject to permissible defense) may be used in defense of rights? Narveson’s own answer is “enough,” by which he means just as much as is necessary. The major alternative answer is that no more force may be used than produces injury proportionate to the unjust injury being protected against. This is an alternative because the force that produces a proportionate injury may be less than necessary to accomplish the defense. The type of argument for permissible forcible defense given by Narveson and myself points to the former, more permissive, answer. Endangered individuals need not weigh the loss that threatens them against the loss to those subject to their permissible defensive activity. They may, instead, stand on their right not to submit to a violation of their rights.

Toward Permissible (Counterforce) Defense.

The argument against pacifism focuses on the right-holder who is being threatened and not on the party whose actions threaten those rights. It does not rely upon the guilt of the threatening party. Thus, the argument that shows the permissibility of using harmful force when necessary against guilty aggressors also shows its permissibility when necessary against non-guilty aggressors, i.e., against innocent threats. If one has a right to one’s life, one cannot be obligated to allow another to be a causal agent in depriving one of that right. When necessary, such a deprivation may be resisted by means of harmful force. When under attack by a conscript, one may kill the conscript even though he is attacking only because were he not to do so his rulers would kill him or his family.

What about innocent bystanders? The argument against pacifism seems also to allow necessary defensive killing of them. It at least seems that the presence of an innocent bystander could not obligate one to submit to the violation of rights that will occur if an aggressor’s behavior is not thwarted. Although it is the aggressor and not the bystander who is engaged in a process that will violate one’s rights unless thwarted, one’s right not to submit to a deprivation of life is a right one holds against everyone. No one can demand that one not resist such a deprivation. Nevertheless, one’s right to resist violations of rights is not a sanction for engaging in aggressive behavior. And cannot the bystander, who would be killed by one’s resistance to the aggressor, insist on one’s abstaining from this action in the name of his right to life? The difficulty is that a particular course of action in this sort of situation is susceptible to the following two descriptions: (i) an exercise of one’s rightful resistance to the violation of rights; and (ii) an aggression against the bystander’s right to life. In virtue of description (i), the principle of self-defense applies, and one may proceed with the course of action. In virtue of description (ii), one’s obligation not to aggress applies, and one may not proceed with the course of action. Just war theory’s focus on the distinction between foreseen and intended effects is a basis for determining which description and associated principle (self-defense or non-aggression against rights) is the salient one for the purpose of establishing the permissibility of a given forcible act. That description is salient that explains the forcible action.

Recall the example discussed previously in comparing just war defense and necessary force defense involving the choice between the defensive counterattack against an artillery battery that foreseeably kills a nearby refugee and the demoralizing counterattack against the distant refugee cherished by the artillery crew. If one were to pursue the first alternative (with weapons designed for precision counterattack), the killing of a nearby refugee would in no way explain the course of one’s action. One would have acted exactly in the same manner had the nearby refugee not existed at all. The refugee’s death would not at all guide one’s action. Thus, the salient description of the counterattack would be in terms of its responsiveness to a threat to rights, and it would be vindicated by the counterattacker’s right to defend these rights. In contrast, if one were to pursue the second, anti-morale, alternative, one’s intermediate purpose would be the killing of the cherished refugee. One’s chosen course of action would be contoured to, and explicable only by reference to, the presence of this refugee. Such a targeting of this bystander would give salience to the description of one’s
action as an aggression against this refugee. Given this salience and the bystander’s right to life, this form of counterattack would be unjustified.

Just war defense incorporates into the overall theory of individual rights moral maxims that are naturally associated with an emphasis on individual autonomy and the separate and equal standing of each person’s life and purposes. Specifically, it incorporates the idea that it is supremely wrong to employ others as means, against their will and to the detriment of their well-being or freedom, for the sake of one’s own goals, no matter how natural or noble those goals may be. Although there is a broad sense in which any action that deprives a person of rightful possessions or conditions treats that person as a means, the use of people as means is most pronounced when the untoward result is not merely foreseen but intended. The direct intentional killing of a bystander as a distinct means to some further end violates this associated maxim about the wrongness of employing people as means, whereas the indirect, collateral killing of a bystander does not.

There is another line of consideration, indirectly connected with people not being obligated to forego resistance, which also suggests that the rejection of pacifism leads to just war defense, but no further. If pacifism is rejected, the person who eschews from verbal insistence that one surrender some rightful possession to seizing one’s rightful possessions forcibly can still be resisted in kind. He does not, by his escalation to forcible seizure, gain a moral advantage. His increased wrongdoing does not confer upon him any immunity. But if either the intended killing of innocent threats or the unintended killing of innocent shields or bystanders is proscribed, a potential violator of rights will be able to acquire moral immunity in his aggressive pursuits by escalating his wrongdoing. If the defensive killing of innocent threats is proscribed, then guilty aggressors can gain immunity for their aggressions by organizing their attacks upon others with innocent conscripts. If the defensive killing of shields or bystanders is proscribed, guilty aggressors can gain immunity for their aggressions by forcing bystanders into the vicinity of their weapons or by locating their weapons in the midst of bystanders. If either the killing of innocent threats or the collateral killing of bystanders is prohibited, the more morally indiscriminate the aggressor, the more moral immunity he will enjoy. Since the rejection of pacifism itself involves a refusal to grant the evil aggressor a moral cloak, it is plausible that, having rejected pacifism, one also should reject other doctrines—viz., narrow defense and broad defense—that allow an aggressor, through evil means, to gain moral immunity for his aggression.

This conclusion about a person’s right to use lethal force against innocent threats or in such a way as to endanger innocent bystanders does not imply that innocent threats or bystanders must submit to this permissible defensive force. Innocent threats or bystanders may have a right, under the circumstances, to defend themselves against the counterattacker’s permissible action. There can be cases in which two innocent parties, thrust into conflict with each other, permissibly battle each other to death.

Despite its relative permissiveness, just war defense may require that we forego the most effective available defensive tactics. Hence, this restrictive-ness may raise doubts about this doctrine. Imagine the sudden appearance of an assassin who will kill one’s child unless one distracts him by killing his child. Just war defense requires that one forego this tactic. But to many it will seem that, horrendous as it would be to kill this child directly, one could not be obligated to resign oneself to the murder of one’s own child. Whatever one’s sense of this case, however, there are reasons why such a case should not be taken as a basis for adopting a more permissive doctrine of national-scale defense than just war defense. As this case is presented, the threat is sudden, immediate, and absolutely certain. There is neither time nor room for the formation of alternative defensive tactics. Furthermore, the threat is removed immediately and with absolute certainty upon killing the aggressor’s child. The immediacy of the threat means that the use of this child seems less chosen than thrust upon one, and the immediacy of the relief from danger upon the killing of this child blurs the status of that killing as a separate intended consequence of one’s action. These immediacies and certainties help explain why killing the assassin’s child can be (perceived as) something less than thoroughly murderous. However, national-scale defense should not be modeled on such one-time emergencies. National-scale threats evolve over extended periods of time. We are not required, as in the child case, to react in a given moment to a situation the structure of which is simply presented to us. There are many long-term options. And because this is so, opting for one that involves the direct targeting of bystanders carries the burden of being a calculated choice of useful attacks upon these people. At the very least, a system of national defense whose operation would violate just war defense must be avoided if another system is available that accords with that doctrine and is likely to be comparably effective.

Just war defense requires more than that the weapons at hand at a given moment be directed, as best they can with the systems of delivery at hand, at the enemy’s means of aggression. Justice in the conduct of war requires that one’s weapons and methods of delivering them have been developed so as to strike as directly as possible against the means of aggression and with the minimum foreseeable collateral casualties. Only if the defending party has over time been committed to and constrained in its defensive preparations by allegiance to just war defense, and has been known to be
so committed and constrained, will the aggressor bear full responsibility for the collateral casualties that ensue because of the aggressor’s placement of its threatening forces in the vicinity of bystanders.

4. Policy Implications of Just War Defense

It is an enormously complex task to refine further the moral doctrine outlined here and to apply it, in the light of many difficult empirical questions, to the actual world. All that can be done here is to convey some further sense of just war defense by sketching its probable implications for certain broad categories of the defensive posture of United States, viz., strategic defense, military alliances, and local interventions.

Strategic Defense and Military Alliances.

By strategic defense, I mean defense involving major global engagement against other superpowers or aspiring superpowers of the sort that, since the 1950s, has involved the worldwide deployment of nuclear weapons with intracontinental and intercontinental delivery systems. I link the discussion of strategic defense with that of military alliances because, since the 1950s, military alliances have usually been sought either as a means to the worldwide deployment of nuclear weapons or as part of the geopolitical and conventional warfare dimension of that same global engagement. Of course, the mere existence of other globally significant military powers is not as such a threat to American lives, liberties, or property and does not as such justify any global engagement. Other powers may be benign (as U.S. military power is supposed to be) or, at least, sufficiently benign so that treaty constraints on armament and deployment can reliably and significantly defuse perceived threats and confrontation. But to engage in stupendous understate-ment, not all major military powers are benign or even relatively benign. Soviet power certainly was not benign and whatever efficacy U.S.-U.S.S.R. treaties had in defusing confrontation depended upon a back-ground of American resolve and defensive capabilities.

To say this is by no means to endorse, either in terms of justice or efficacy, the particular measures (including conscription!) that were employed in the name of defense against the Soviet threat. The strategy of massive retaliatory destruction of the Soviet population, which was the centerpiece of U.S. policy from the 1950s at least through the 1970s, was in violation of the crucial just war structire that a just defensive posture must not encompass the injury or death of bystanders within its guiding intentions and that the just defender’s weaponry, delivery systems, and war-making strategy must be entirely directed at the aggressor’s means of aggression. Only in the final five or ten years of our strategic confrontation with the Soviet Union did our nuclear weaponry and targeting policies begin to come into line with just war doctrine. Moreover, only during the last years of the Evil Empire did U.S. defensive policy appropriately attend to the primary end of legitimate governmental activity, viz., the actual protection of the lives, health, and property of that government’s citizens. Indeed, a reliable defensive shield (of the sort envisioned by the Strategic Defense Initiative and derided as “Star Wars”) should, if at all available, be the first priority of a morally upright defense policy. If such a shield is available, it renders unnecessary the defensive infliction of injury and death—most pointedly the infliction of injury and death upon innocent threats and on bystanders.

Furthermore, many of the alliances into which the United States entered during the confrontation with the Soviets either failed to enhance the security of the rights of Americans or brought the United States government into collusion with murderous and kleptocratic regimes or both. Arguably even the NATO alliance increased the likelihood of nuclear war between the United States and the Soviets over the fate of Western Europe beyond what that risk would have been had Western Europe itself been required to be more defensively self-reliant. More straightforwardly, U.S. alliances with Israel and South Korea increased the likelihood of a U.S.-Soviet nuclear engagement without providing any counterbalancing enhancement of American security. United States-Soviet competition for client states throughout the world led the U.S. government into often horribly costly support of brutal and plunderous “bulwarks of anticommunism” across Latin America, Africa, and Asia. In reality, support for these regimes served no justified end and embroiled the U.S. government in the violation of the rights of the many victims of those regimes.

The world has changed with the burial of the U.S.S.R. These changes make it more difficult to identify justifying ends for strategic defensive policy and more difficult yet to justify alliances as effective and morally permissible means for advancing those justifying ends. Still, it is not clear how fundamentally and permanently the world has changed. (Does it ever fundamentally and permanently change?) It is still easily conceivable that resurgence Russian imperialism of either a nationalist or a socialist hue will again constitute an aggressive nuclear threat to American lives, liberties, and property. And other parties may achieve the status of significant nuclear threat, such as a radically anti-Western Iran, an increasingly phobic North Korea, or even a radicalized China (not to mention the future course of Germany and Japan). Unfortunately, the more diffuse and nonsys-
tematic the threat, the more difficult and less cost-effective any pure defensive shield will be. Aggressors with only a few nuclear devices are almost certain to deliver them by mini-van rather than intercontinental missile. Nevertheless, it seems reasonable to continue to devote resources to the development and possible deployment of flexible SDI-type defenses. (However, it also seems increasingly important to create and sustain intelligence operations capable of identifying and intercepting free-lance nuclear and non-nuclear terrorists and of retaliating effectively and precisely against individuals responsible for attacks on Americans.) It is clearly reasonable to maintain and refine distinctly counterforce weaponry as a means, consistent with just war doctrine, for deterring whichever strategic threat against the people of the United States emerge in an unstable world of nuclear proliferation. There is, however, no good reason for the United States to continue to bear responsibility for providing strategic defense against present or emerging threats to such regions as Western Europe and Japan. Similarly, there is no good reason for the United States to bear the responsibility and associated risk of garrisoning Western Europe, South Korea, and Japan.

Given the legitimate goal of maintaining a flexible strategic defense capability, some limited cooperative arrangements with other governments would probably be advantageous and morally permissible. These might include arrangements for the deployment of early warning devices and communications facilities and for the servicing of a wide-ranging fleet of submarines as a relatively invulnerable base for counterforce strategic weapons. Similarly, overseas bases may be crucial for the gathering of intelligence about potential large-scale aggressors or more free-lance terrorists. Treaties designed for these genuinely defensive purposes will be justified as long as they do not themselves generate risky commitments or blameworthy support of unjust regimes.

**Local Interventions.**

"Local interventions" are military excursions against less-than-major powers (indeed, perhaps, against quite puny military forces) that, therefore, involve no prospect for the justified use of nuclear weaponry. Indeed, because of the opponent's lack of military power, local interventions cannot be justified as thwarting a threat against the United States proper. These, I also include under "local interventions" humanitarian expeditions where no or almost no hostile forces are present. If there exists no threat against the United States proper, what other justification could there be for the intervention of the U.S. military? One justification would be the provision of the protection promised to foreign individuals and agencies under treaties that themselves are warranted by their contribution to the defense of Americans against strategic and terrorist threats. I have suggested that the alliances that are currently warranted by their prospective contribution to the safety of Americans are quite limited in number and in scope. But when such limited alliances are undertaken, the provision of the protection promised to others is a justified end for U.S. military action—which action, of course, must conform to just war constraints.

One important justificatory possibility is the protection of American lives, liberties, and property outside of U.S. territory. In principle, this is an entirely legitimate goal of defensive force. The complication, however, is the disproportionate costs (in lives and material and economic resources) involved in defending the lives, liberties, and estates of those who have ventured into risky portions of the world. There is no good reason why the costs of intervening to come to the defense of vacationers who have chosen to go mountain climbing in Bosnia should be borne by those funding a system of common defense. Similarly, there is no good reason why contributors to the common defense should bear the extraordinary costs of protecting an international corporation's investment in some Third World country from the nationalizing impulses of that country's tyrant. The rough rule should be that protection should extend beyond U.S. territory only when the probable costs of that protection (in the form, e.g., of international coordination of police and courts) are comparable to the costs within U.S. territory. Those who choose to expose themselves to risks that are more costly to defend against are, of course, free to do so and free to reap the rewards of their extraordinary pleasures or profits. And, of course, they are free to devote their own resources to the justly conducted defense of their lives, liberties, and property.

Another putative justification for local intervention is American economic advantage. One of the arguments offered for the U.S.-dominated counterattack on Saddam Hussein's forces was that his seizure of the Kuwai oil fields along with his prospective seizure of the Saudi oil fields would have been very damaging to American economic interests (and even more damaging to the economic interests of many other nations who, therefore, were willing to fight to the last drop of American blood). But in itself economic advantage does not justify warfare, even if that warfare is carried on by justified means. And typically, when the economic advantage argument is advanced, the benefits to those who will actually have to bear the costs of the war (as opposed to those whose bacon will especially be saved) are systematically underestimated while the costs that will be borne if intervention is not undertaken are systematically overestimated. A complication in the Iraqi case is that Hussein would have been threatening
denial of access to a resource over which he had no just claim. The oil fields were stolen goods—indeed, have in large part been stolen goods for some time. The most morally upright response from a libertarian perspective would have been a voluntarily organized, private military expedition, abiding by just war strictures, for the commercial liberation of those oil fields.

Another argument offered for intervention in the Iraqi case was the restoration of Kuwaiti rights—albeit this justification has less resonance when it is spelled out, not in terms of individual human rights, but rather in terms of national collective sovereignty or the rights of the Kuwaiti sheiks to tyrannize without outside interference. We have already noted, however, that even the protection of the correctly identified rights of victims of regional aggression is not within the mandate of a duly limited U.S. government, nor is military protection for humanitarian aid.19 The members of a large and highly diverse free society will have radically divergent views about which victims of which aggressions or disasters should receive military or militarily-protected humanitarian support. There can be no justification consistent with libertarian principles for some members of such a society imposing, through coercive political means, the costs of their cherished military or humanitarian ventures on other members of that society.

Furthermore, to accept the principle of conflict management and humanitarian intervention is to encourage in practice the commitment of the society’s military resources on the basis of contingencies of political influence. The U.S. military intervenes in Haiti, but not in Bosnia, in part because there is a powerful Black Caucus, but no Bosnian Muslim Caucus, within the party of a politically weak and desperate president. Such politically selective interventions typically lack the extent and depth of public support that they will need if they encounter any significant resistance. Thus, these interventions typically invite resistance (from local warlords who are tuned in to CNN) and when that resistance occurs, the only politically acceptable course is ignominious withdrawal—as in Lebanon in the 1980s and Somalia in the 1990s. And typically, these withdrawals generate a chorus of demands for new, and equally controversial, interventions to re-establish global credibility.

Belief in these further and divisive ends for U.S. defense policy has the overall effect of harmfully expanding governmental power and discretion and distracting attention from the special legitimate role for the governmental use of force, viz., the common defense of its citizens’ rights.

Notes


3. For one statement of libertarian rights theory, see my essay “Moral Individualism and Libertarian Theory” in this volume. For other statements, see the works cited in note 2 of that essay.

4. Foreigners will have rights to protection from our government only in the special cases in which treaties that accord with the core mandate of our government—viz., to secure our rights—bestow those rights to protection. The extent of such treaties is discussed briefly in section 4.


6. The so-called Principle of Fairness on which this sort of argument turns is subject to a powerful critique in Robert Nozick, Anarchy, State and Utopia (New York: Basic Books, 1974) 93–95.


9. Especially during the years of the Cold War, some libertarians, being appropriately sensitive to the aggressive propensities of all states and being subject to the somewhat puzzling tendency to find most blame with one’s own government, were eager to perceive the U.S. government as the primary instigator of this confrontation. In rejecting this analysis, I do not deny the injustice (and plain stupidity) of much of what was done in the name of resisting Soviet domination.

10. Or this vital structure would have been violated were the threat of retaliatory destruction ever to have been carried out. The complicating issue is whether it is always impermissible merely to threaten to do what it would be morally impermissible to do. In any case, the strategy of mass retaliation was not mere bluff. Mechanisms were in place such that, had the United States been attacked by the Soviets, this retaliation against bystanders would very likely have been carried out.

11. For one study, see Jonathan Kwitny, Endless Enemies (New York: Cogdon and Weed, 1984).

12. Terrorist attacks originating abroad against American lives, liberty, and property within U.S. territory were dealt with briefly under Strategic Defense and Military Alliances.
13. I see no decisive reason why, in humanitarian emergencies, such as the flood of Rwandan refugees into Zaire, the U.S. military should not hire itself out on very generous terms to relief organizations as long as its activities will constitute good logistical practice and engagement in these activities will not cloud the recognition that the raison d'être of the U.S. military is to protect the rights of Americans—through the use and threat of deadly force.

“Righting” Civil Wrongs: Toward a Libertarian Agenda

Steven Yates

1. Introduction

The civil rights movement is off-course. Affirmative action, understood here as government mandated preferential treatment for members of groups officially designated as American society’s victims, has been one of the most conspicuous features of civil rights since the late 1960s. Its advocates defend it as making reparations to minorities and women for past discrimination (the “backward-looking argument”), or offering assistance that would help them catch up, supplying role models for black students, etc. (the “forward-looking argument”). A litany of objections, however, continues to haunt affirmative action. (1) Its benefits go disproportionately to those in targeted groups who are either already well-off or well-connected and, hence, in a position to benefit from the programs. (2) It has placed people in positions for which they are often marginally qualified or even unqualified, and, therefore, in danger of failing; colleges and universities offer a host of examples. (3) It further stigmatizes minorities and women by insinuating that they cannot succeed without government assistance; making them wards of the state helps reinforce, not reduce, racial stereotypes. (4) It has sabotaged language and introduced a world of Orwellian newspeak, with equal opportunity meaning preferential treatment and discriminatory meaning lacking officially approved race and gender balance. (5) It has created a climate of secrecy, dishonesty, and distrust, both to keep white male job seekers and the public as much in the dark as possible and to protect affirmative action from serious investigation, criticism, and legal challenge. (6) It manufactures “problems” out of whole cloth (e.g.