

THE MORAL ARGUMENT FOR A POLICY OF ASSASSINATION

Stephen Kershnar
SUNY - Fredonia

I. The Ban on Assassination

One policy that could be holding back the United States's ability to strike back at aggressor governments is Executive Order 12333 of 1981, a Reagan administration update of an executive order from President Ford in 1976. The regulation states: No person employed by or acting on behalf of the United States government shall engage in, or conspire to engage in, assassination. The proper interpretation of this order is somewhat controversial. For example, former president Bill Clinton asserted that the order is a narrow one, applying only to heads of state and not to terrorists or wartime heads of state. Even if this narrow interpretation is correct, the issue arises as to whether the US should have such a regulation, i.e., whether there is anything morally wrong with a policy of assassinating certain heads of state. This is particularly relevant since the US has acted, whether directly or indirectly, to remove various leaders from power and since this can be done via military invasion, support of a civil war, or assassination, and the first two would likely produce many casualties. Note this paper does not take any position with regard to whether the particular killings that the US attempted, committed, or encouraged were just or prudent, e.g., Saddam Hussein, the Taliban leaders, Fidel Castro, Ngo Dinh Diem, or Salvador Allende.

There are three main theories about the way in which war may be fought. My strategy will be to try to show that all three allow that in some cases national leaders may be disabled or killed. The first approach, the immunity thesis, focuses on whether the person to be killed or disabled is a combatant. Here I argue that some national leaders who lead unjust campaigns are combatants because they are both causal and logical agents of an unjust military campaign. However, I argue that the immunity thesis itself should be rejected since it rests on dubious claims about the constitutive conditions of roles such as a combatant. The second approach, the self-defense theory, focuses on the distinction between threats and non-threats. This approach differs from the first since the combatant/non-combatant and threat/nonthreat distinctions differ. I argue that some national leaders may be killed because they are threats and that because they are threats, they forfeit those moral rights that protect them against injurious action. On the third approach, the consequentialist theory, I argue that such a policy would likely bring about the best consequences since it would be help to

prevent genocide, unjust military aggression, and other horrendous state actions.

II. THEORY #1: Some National Leaders are Combatants

At the heart of the immunity thesis is the notion that it is morally wrong to intentionally kill noncombatants.¹ Immunity thesis proponents think that justice prevents the intentional killing of noncombatants for one of three reasons. First, some theorists argue that noncombatants are morally innocent and that it is always wrong to kill innocent human beings.² Second, other theorists argue that the principle of self-defense does not allow the killing of innocents since they are not a direct threat to others.³ Third, some theorists argue that the United State's promise to other countries not to intentionally kill innocents generates an obligation not to do so. On this last account, the obligation is either promised-based or rests on the utility of keeping promises.⁴

Just-war theorists also assert that it is permissible to kill combatants only where the killing achieves consequences that are on balance desirable.⁵ In addition, some recent proponents of immunity thesis assert that combatants can

¹ Under the immunity thesis, combatant immunity might be viewed as prima facie rather than absolute. Such an account can be seen in James Childress, "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," in Malham M. Wakin, ed., *War, Morality, and the Military Profession* (Boulder: Westview Press, 1986), pp. 256-276.

² Elizabeth Anscombe, "War and Murder," *Ethics, Religion and Politics* (Basil Blackwell: Oxford, 1981), pp. 43-50.

³ For a self-defense account see, e.g., Robert K. Fullinwider, "War and Innocence," *Philosophy & Public Affairs* 5 (1975): 90-97.

⁴ This sort of convention-dependent defense of the immunity of noncombatants can be seen in George Mavrodes, "Conventions and the Morality of War," in Louis P. Pojman, ed., *Life and Death* (Boston: Jones and Bartlett Publishers, 1993), pp. 491-501. Mavrodes then defends the value of the convention on utilitarian grounds. Others defend particular applications of non-combatant immunity via the value of avoiding harmful consequences. For example, Courtney Campbell summarizes some of the forward-looking reasons against assassination. Courtney Campbell, "Irregular Warfare and Terrorism," in James Turner and John Kelsay, eds., *Cross, Crescent, and Sword* (New York: Greenwood Press, 1990), 116-119. Still other defenses of non-combatant immunity are available. On some accounts what makes certain wartime killings wrong is the agent's objectionable attitude toward the victim. An example of this approach can be seen in James Turner Johnson, "Why We Shouldn't Assassinate Muammar Qaddafi," *The Washington Post*, April 20, 1986, pp. C1, C2. I leave such accounts aside since assassination can be done without such attitudes and since the mere presence of an objectionable attitude does not by itself make an act wrong.

⁵ A Kantian defense of one version of the doctrine of double effect can be seen in Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," *Philosophy & Public Affairs* 18 (1989): 334-351.

be killed only in ways designed to eliminate their capacity as combatants and that additional harm cannot be intentionally inflicted even where doing so aids in the war effort.⁶

The issue thus arises as to whether national leaders of countries that engage in unjust aggressive wars are combatants and, if so, whether they may be killed.

A. National Leaders of Unjust Aggressive Wars are Combatants

National leaders who help to launch unjust aggressive campaigns should be considered combatants. A combatant is a person who is a causal and logical agent of the project to destroy his enemy or his enemy's capacity to fight.⁷ The causal condition ensures that a person is a combatant with regard to the relevant aggressive campaign, the logical condition ensures that the person has a role closely connected to the aggression. The notion here is that certain roles have necessary conditions and these conditions affect the moral status of intentionally killing or disabling the role occupant during a military campaign. The leaders sometimes cause the attack on others. This can be seen in that but for their actions, the aggressive campaign would not have occurred. Also, in virtue of their role in intentionally promoting unjust aggression the leader has adopted a role that is inextricably military aggression.

The logical role of a leader might be thought to exclude him from being a combatant since the constitutive conditions of his position are unrelated to aggression. Two influential accounts of the constitutive conditions of a position

⁶ Thomas Nagel, for example, argues that weapons must aim to stop a person qua combatant and not inflict unnecessary harm upon him. Thomas Nagel, "War and Massacre," in Samuel Scheffler, ed., *Consequentialism and Its Critics* (New York: Oxford University Press, 1988), p. 70.

⁷ The idea for this definition comes from Jeffrey Murphy, "The Killing of the Innocent," *Retribution, Justice, and Therapy* (Boston: D. Reidel Publishing Co., 1979), pp. 7-8. On Murphy's account, we should focus on a chain of agency in which each link is identified logically and not merely causally. He suggests that we focus on whether a person's role is logically separable from the waging of war. A similar account can be found in Michael Walzer who argues that workers at a manufacturing plant are not combatants if they are not part of the process that supplies what soldiers need qua soldiers but rather what they need qua human beings. This suggests some connection to the conceptual role of a worker and not her causal role. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 145-146. Courtney Campbell similarly fills out a combatant as one who occupies a functional role of either posing a lethal threat or serving the fighting needs of others who pose such a threat. Campbell, "Irregular Warfare and Terrorism," 116. This connection is not merely causal because those who serve a soldier's human needs, e.g., medical care or food, may causally contribute more to unjust endangerment than those who serve his fighting needs.

are that they are determined by the social understanding of the position or its internal goal.⁸ The difference between the two accounts is the former account makes a position's constitutive conditions depend on some feature of a collection's belief whereas the latter makes it depend on the type of good brought about by persons in that position. On these accounts, for example, a doctor's logical role is to heal sick persons or to alleviate their suffering and a farmer's role is to grow food. This is a result of the how the relevant community understands the position or its internal nature. In the context of wartime leader, it might be argued that the leadership position does not have as its constitutive condition the causing or directing of aggressive military projects. This is because a leader's role in promoting international aggression does not seem to be an obvious part of either the community's social understanding of her position or an internal goal of that position. For example, a leader of a pacifist nation does not seem to occupy a different sort of role from one who leads a non-pacifist nation. This is similar to the way in which the farmers of both countries occupy similar roles. On a third account, the constitutive conditions of a position are picked out by a counterfactual test since this test is linked to our knowledge of what lies at the heart of a position.⁹ On this last account, a leader is not a combatant if he would not occupy the same leadership position in the absence of his connection (or control) of the military or perhaps some more general military goal (e.g., the defense of the homeland). On this third account, a national leader might not be thought to be a combatant since he would occupy the same leadership position if he had no connection to the military or his country did not even have one.

On all three accounts, the constitutive conditions of a leadership position are context-specific. A leadership position has features that are characteristic of a property. In particular it is capable of being occupied by different persons. It can also have temporal and spatial gaps in that there may be space and time intervals between occupants. Such gaps can occur, for example, where there is a civil war that prevents a successor from taking office or where a person assumes the office from outside a country's borders. In contrast, a leader, rather than the leadership position, is a concrete particular. For example, the President of the United States is treated as a fitting object of obedience and it is not clear how duties could be owed to a mere property. In addition, it is necessarily particular in that in some systems there can be only one leader at one point in time, e.g., there can't be more than one President at a time. If a person who is the leader does not

⁸ The social understanding of the constitutive conditions of a job can be seen in Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), p. 88n. The internal goal account can be seen in Bernard Williams, "The Idea of Equality," in Joel Feinberg, ed., *Moral Concepts* (New York: Oxford University Press, 1970), pp. 163-164.

⁹ The but-for account of a combatant can be seen in the article by George Mavrodes who argues that noncombatants are persons engaged only in the sort of activity that would be carried on even if the nation were not at war. Mavrodes, 492.

necessarily occupy this role, then it is hard to see how he, rather than the position, can have position-specific constitutive conditions. However, if it is merely the leadership position that has the position-specific constitutive conditions then the property is likely conventional rather than natural. By conventional I mean that it is a result of a social practice. This is because the notion of a leader seems to depend on the way in which a community has organized itself via the allocation of communal- or promise-based duties and powers.¹⁰ This will be true so long as a position's constitutive conditions are a result of collective understanding, the goal that the occupant is assigned to accomplish, or the way in which the collective thinks about the relevant counterfactual. Since the leadership position is conventional, its constitutive conditions are context-specific.

The above accounts of roles are not merely context-specific but also nation-specific. Since the leadership position is a national one, at least in the assassination context, the convention that determines its constitutive conditions will relate to the collective understanding. The collective understanding in turn will be a function of the country's central projects or organizing goals. Where these include violence, whether as a means or an end, the position will have a necessary link to violence. This is because the position will necessarily refer to an entity that has a conceptual link to violence. For example, the Nazi regime was conceptually linked to certain political doctrines and to protecting, and likely promoting, these doctrines via intra- and international force. Almost all leadership positions have such a link to violence since one of the main reasons for a forming a state is to protect its citizens against external and internal aggression. Hence, upon the onset of violence the leader of a warring country is a combatant because he has the proper logical and causal link to the violence.

The reasons behind noncombatant immunity also support identifying leaders of unjust aggressive campaigns as combatants. First, the leaders are often not morally innocent in that in many cases they have voluntarily chosen to enable violent attacks on other countries to take place. Second, defeating them is an integral part of self-defense in the same way that shooting a person whose job it is to direct mortar fire is a legitimate part of self-defense. In addition, since the US has not signed any international treaty banning the assassination of foreign leaders, a promise-based account of ban on assassination does not apply. The case for leaders of just aggressive campaigns is considerably more complex. If there are any reasons, and I doubt that there are, to treat soldiers who are part of a just campaign as being legitimate targets, these will also apply to the leaders of the campaign. One explanation of why these soldiers are not legitimate targets is that in the context of war their moral rights are weakened or lost (relative to their opponents) only if they are both combatants and participants in an unjust

¹⁰ I wish to leave open the question of whether the relevant duties are the result of associative political obligations, the duty of fair play, consent, or something else.

campaign.

A problem with these accounts of a combatant relates to the underlying idea: namely that soldiers have a moral status in virtue of occupying particular roles. I shall argue that this notion should be rejected.

B. Reject the Combatant/Noncombatant Distinction

In this section I shall argue that the combatant-noncombatant distinction is untenable. My strategy is to first argue that job types don't have contract-independent conditions. I then argue that since the notion of a combatant role rests on contract-independent conditions and since this role is analogous to a job type, it is untenable.

(1) Job types don't have contract-independent conditions

Certain activities seem to have an internal goal.¹¹ For example, medical care should be given out on the basis of ill health. Since activities have internal goals, it is argued that it is a necessary truth that the activity should be arranged so as to fulfill that goal. Similarly, it is argued that since certain goods (and jobs) have a social meaning, the distribution of them (or the tasks that constitute them) should be in accord with this social meaning.¹² The social meaning of an activity is the type of good that the activity produces in the life of a particular collection of people. This account is similar to the internal-goal account except that the tasks constituting a job are society-specific rather than universal. This account of jobs views certain tasks as constituting a job. This constitutive account provides a unified account of the particular tasks that constitute a job. A physician's job tasks may include such things as diagnosing disease, investigating family medical history, eliminating bacterial infection, and setting broken bones. On a constitutive account, these tasks are unified by a particular goal, e.g., the promotion of health.

Robert Nozick notes that one problem with these internal-goal accounts is that there needs to be a defense of the claim that goods ought to be distributed in accord with their internal goal or social meaning.¹³ Yet it is not clear why this should be the case. Couldn't a person set up a practice that provides medical care (called 'schmoctoring') to those clients who can maximize the schmoctor's profits rather than providing medical services to those with ill health? Promoting

¹¹ This idea can be seen in Bernard Williams, "The Idea of Equality," in Joel Feinberg, ed., *Moral Concepts* (New York: Oxford University Press, 1970), pp. 163-164

¹² This idea can be found in Walzer, *Spheres of Justice*, 88n.

¹³ The criticisms in this paragraph all come from Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 232-235.

health might be the means to making profits, but it would be the former that would be the fundamental goal. Nozick notes that in some cases the notion of that distribution should track an internal goal produces absurd results. For example, is it wrong for a barber to provide his services to those who pay him rather than those who need their hair cut?¹⁴ It may be that the titles of certain jobs are used as shorthand for a particular stated goal in which case it is the job occupant's implicit promise that creates the duty to pursue certain goals. For example, the label 'doctor' or 'barber' might indicate the occupant's promise to promote certain ends, e.g., promoting health and cutting hair. This, however, introduces another problem.

A second problem is that these internal-goal accounts are that there are reasons of autonomy that conflict with the underlying accounts of goods and of a job. Reasons of autonomy involve a sphere in which a person has no (non-volunteerist) duties owed to others. That is, she has a Hohfeldian liberty to pursue her own ends. This sphere gives a person the space in which to pursue her desires, projects, and personal relationships, thereby carving out a space by which she is able to shape her life free from interference by moral claims from others.¹⁵ Yet if the occupation of a job obligates a person to serve others without those others contracting for such services or without the person promising to provide such services, then the area in which the person can shape her own life is lessened. Hence, assuming rights to autonomy, persons ought to be able to attempt to create jobs that have demands that do not track the internal goals or social meaning of that position. For example, a person should be permitted to try to be a schmooctor rather than a doctor.

An objector might still assert that an internal goal or social meaning determines the tasks that constitute a job, but think that there should be a fine-grained individuation of job-types. The notion that the social meaning should determine the tasks that constitute a job but that there should be an almost endless array of different job-types for a person to adopt, is nearly indistinguishable from the view that persons can construct the demands that constitute a job. The social-meaning account is misleading since it fails to draw attention to the control an individual has over the tasks that constitute a job and for that reason it should be set aside.

¹⁴ Ibid., p. 234.

¹⁵ This notion can be seen in Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), pp. 164-188. The other type of reason Nagel brings up is a deontological reason, which is an agent-relative reason not to maltreat others in certain ways. Despite the confusing labels, both types of reason might be thought to rest on the value of autonomy, which is a person's shaping himself through the selection of his beliefs and desires.

¹⁶ The idea for this point comes from Richard Epstein, *Forbidden Grounds* (Cambridge: Harvard University Press, 1992), p. 302.

One might wonder whether job types have contract-independent constitutive conditions at all, rather than merely having multiple conditions that reflect the deal struck by the contracting parties.¹⁶ One should view jobs as having constituent tasks that are relative to the purposes for which they are done. The purpose or purposes for which a job is done does not seem to depend on some internal feature of the job type or on the general communal understanding of it. Rather, the purpose or purposes for which it is done seem to be a function of the demands of the employer or perhaps both contracting parties. These contractual conditions are constitutive conditions of the contract and are merely contract-based duties that are not unique to the job context. And since they are owed only to the other contractors and not third parties, although their content may refer to actions involving third parties, they do not seem capable of grounding the broader social duties that characterize the above sorts of job theories.

(2) The constitutive accounts of a job type and a combatant have the same difficulty

If the constitutive account of a job type fails then it is likely that the constitutive account of a combatant similarly fails. This is because the military purchases the services of persons under different contracts, some of which are required to be members of it while others are not. For example, the army might hire a supply sergeant or instead form a contract with a private individual to supply certain goods. There is nothing about the contract that would seem to make the former a legitimate target unless the former consented to be made a more legitimate target than civilians or unless it is fair that he be made so. However, it is not clear that either is correct. Prospective soldiers do not consent to be more permissible targets than civilians are. This is because their promises and the conditions to which they consent do not contain this condition. For example, this is not part of the oath taken by persons joining the army.¹⁷ Nor does fairness support the notion that they should be treated as such where they are not part of an unjust aggressive campaign. A similar thing should also be said of

¹⁷ For the United States, consider 10 USC Sec. 502. - Enlistment oath: who may administer

Each person enlisting in an armed force shall take the following oath: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God." This oath may be taken before any commissioned officer of any armed force.

national leaders.

I have argued that non-combatant immunity is dubious insofar as it rested on non-contractual conditions. An objector might note that it is open to the immunity theory proponent thinker to deny that there are necessary conditions to non-combatancy. Instead, she might assert that this is a fluid category with various satisfaction conditions that leave considerable gray area surrounding a fairly clear core. To see where this goes wrong, consider the immunity theorist's argument. She argues that in virtue of occupying a position, certain general duties or permissions are generated with regard to various persons in other countries during wartime. Three assumptions underlie this position. First, persons are distinct from the positions they occupy. This can be seen by the fact that a person can occupy a position at some times but not at others. Also, some positions can have multiple occupants (e.g., soldier) and spatiotemporal gaps (e.g., a country can temporarily have no secretary of state). Second, some attribute or attributes of the position (or of the person in virtue of his occupying the position) ground the relevant moral relations. This is required if the occupation of a position is to explain why certain persons are immune from direct attack during wartime while others are not. Third, the position has conditions that differentiate it from other positions. In the context of the immunity thesis, there must be some attributes in virtue of which a person is a non-combatant. These conditions may be a loose cluster of conditions some percentage of which must be satisfied or a straightforward set of individually necessary and jointly sufficient conditions.

The constitutive conditions mentioned in the third assumption cannot be the result of contractual agreement between warring parties. This can be seen in that just-war theorists do not think that the immunity thesis becomes morally invalid once one side violates the agreement even though this is true of contracts. In addition, just-war theorists sometimes assert that the immunity thesis applies even to countries that have not entered into the relevant international contracts. Nor can the constitutive conditions be the result of a contractual agreement between one warring party and its soldiers since this would not affect the moral relations between the soldiers and persons whose countries do not sign on to the agreement.

If the constitutive accounts of a combatant fail, then we need another analysis of when, if at all, it is permissible to kill a person in wartime. I will argue that we should use the same sort of analysis that is found in the context of self-defense and that this relates to whether a person is a threat. On some accounts, the self-defense analysis is a type of immunity thesis rather than a competitor theory.¹⁸ I leave aside this issue of taxonomy and note that the above role-based

¹⁸ The U.S. Catholic Bishops interpret the immunity thesis to require immunity for those not *directly* involved in a war effort. U.S. Catholic Bishops, "The Just War and Non-Violence Positions," in Maltham Wakin, ed., *War, Morality, and the Military Profession* 2nd ed. (Boulder: Westview Press, 1986), 239-255, esp. 250-251. Among the examples

analysis of a combatant differs from the self-defense analysis in that the former has both causal and logical conditions whereas the latter merely has a causal condition.

III. THEORY #2: Some National Leaders are Threats

A. The Threat/Nonthreat Distinction

A threat is a cause of a part of a process that will infringe on another's rights and likely physically damage him. My usage of 'threat' differs from ordinary usage in a couple of ways. First, my definition excludes certain types of proposals as threats (e.g., "Your money or your life"). Second, my use of a threat is a moralized (or, more accurately, a justice-specific) notion in that threats are never part of a just causal process. Thus, on this account, a person using significant force, e.g., a knife, to defend herself against rape is not a threat to her attacker. To the extent that one dislikes this usage, he should substitute 'unjust causal threat' where I have used 'threat'. It should also be noted that my usage of 'threat' relates to whether certain acts are just, it does not address whether these acts are efficacious deterrents.

Unlike a combatant, a threat need not be a logical agent of certain project types. Thus, we escape the problems that characterized the emphasis on whether a person is a combatant. This is relevant since it opens the door to the issue of whether paradigmatic non-combatants, e.g., farmers and physicians, are threats.

A threat may also be innocent as in the following case: *psychotic aggressor*.

A person in an elevator goes berserk and attacks you with a knife. There is no escape: the only way to avoid serious bodily harm or even death is to kill him. The assailant acts purposely in the sense that his means further his aggressive end. His actions are frenzied and it is clear that his

they provide is the immunity that is owed farmers who produce goods not *directly* related to military purposes. However, the criterion for non-combatant is probably not causal since the Bishops explain this immunity, at least in part, in terms of innocence and this can and often does diverge from causal contribution to a threat. They do, however, note the need for further discussion of the notion of a non-combatant.

Reason Papers Vol. 27

conduct is non-responsible. If he were brought to trial for his attack, he would have a valid defense of insanity.¹⁹

This is particularly relevant in the context of war since many soldiers lack the information and in some cases the reasoning capacity by which to understand the unjust nature of their side's actions. This is particularly true where the soldiers are young, illiterate, or where the state controls the information available to them. A person may be a threat even though he does not even perform an action. Consider innocent threats, which are persons who innocently are a causal element in a process such that he would be an aggressor had he chosen to become such an element.²⁰ Such threats are legitimate targets of self-defensive force. Consider the *innocent projectile*.

Someone picks up a third party and throws him at you down at the bottom of a deep well. The third party is innocent and a threat; had he chosen to launch himself at you in that trajectory he would be an aggressor. Even though the falling person would survive his fall onto you, you may use your ray gun to disintegrate the falling body before it crushes and kills you.

The unifying feature of such blameworthy and innocent aggressors and innocent threats are their role in causing unjust harms or a great risk of them. This intuition rests not merely on the *psychotic aggressor* and *innocent projectile* cases but also on a wide range of related cases in which it intuitively seems that innocent persons whose actions endanger others may be violently prevented from doing so.

The notion of a threat differs from a combatant since threats need not be persons who are logical agents of the project to destroy his enemy or his enemy's capacity to fight. For example, farmers delivering food and ammunition to the front lines and doctors treating soldiers so that they may return to the battlefield are threats but lack the logical role of a combatant.²¹

The notion of a threat needs to be broadened to include not only those participating in the causal process but also those enabling the causal process to continue.²² To see this, consider the case of the innocent shield, which is an

¹⁹ This example comes from George P. Fletcher, "Proportionality and the Psychotic Aggressor: A Vignette in Comparative Criminal Theory," *Israel Law Review* 8 (1973): 367-390. A similar example occurs in Sanford H. Kadish, "Respect for Life and Regard for Rights in the Criminal Law," *California Law Review* 64 (1976): 889.

²⁰ This notion and the following example come from Nozick, *Anarchy, State, and Utopia*, p. 34.

²¹ A similar point can be found in Lawrence Alexander, "Self-Defense and the Killing of Noncombatants: A Reply to Fullinwider," *Philosophy & Public Affairs* 5 (1976): 408-415.

²² Larry Lombard's taxonomy on causes and enablers is useful here. A disposition is

Reason Papers Vol. 27

innocent person who is by herself a nonthreat but is so situated that she will be damaged by the only means available for stopping the threat.²³ Consider the *tank shield*.

Innocent persons are strapped onto the front of tanks of aggressors so that the tanks cannot be hit without also hitting them are innocent shields of threats.

In this case, it seems that you can shoot through the innocent shield to protect your own life or that of others.

Now others may not share my intuition here or at least may think that it is not in which we are confident. I think this intuition is similar to our intuitions in a range of cases where aggressors protect themselves by ensuring that any defensive action will directly bring about the death of innocent persons. For example, I see no difference between the case where the innocent persons are tied up inside the tank and where they are tied up in front as opposed to the case where they are tied up inside. On doctrine of double effect grounds it may matter whether the innocent is used to target the antitank gun but let us assume that this is not the case. If the intuitive case for shooting the attacking tank that contains an innocent person inside is clear, and I don't know if this is the case, then the above intuitions in *tank shield* are likely secure. But even if this argument is mistaken, this does not weaken the case for the threat/non-threat distinction so much as show that the notion of a threat does not include innocent shields.

However, the line is not always a clear one since the participation in the causal process is a matter of degree. Consider the *homicidal diabetic*.²⁴

A diabetic is chasing you through the woods of an enclosed game preserve, attempting to kill you for sport with a pistol. However, because of his medical condition, he must return to a cabin in the middle of the preserve every hour in order that his aged mother can give him an insulin shot. Without it, he will take ill or die and will thus be forced to abandon his attempt to kill you.

merely the capacity of a thing to change in a certain way; and no thing changes simply because it has the capacity so to change. Dispositions and capacities are thus enabling conditions, i.e., states whose presence makes it possible for some event to cause a change in that thing. Enablers are events that cause things to be in an enabling condition. Some threats are enablers where others are causes of unjust harm.

²³ This definition and the following example come from Nozick, 35.

²⁴ Jeffrey G. Murphy, "The Killing of the Innocent," in Maltham M. Wakin, ed., *War, Morality, and the Military Profession* (Boulder: Westview Press, 1986), p. 361 n. 15.

Here it becomes less clear as to whether one can kill the mother. However, whether you can kill her or not intuitively seems to depend on the strength of her causal role. It does not seem to depend very much on whether she knows about his activity. This is because the degree of culpability seems to affect her desert and thus whether she deserves punishment, rather than the permissibility of self-defensive force. Nor does it depend on the way in which she is connected to his threatening action. For example, the permissibility of disabling her does not intuitively seem to depend on whether she is injecting him with insulin or cleaning and reloading his gun.

Hence, it seems that a threat is one who has a close causal (or enabling) connection to unjust harm. If threats forfeit some of their rights (at least temporarily), then in some cases they may be justly disabled and in some cases killed. I shall now argue that national leaders are threats and that this forfeiture notion is correct.

B. National Leaders are Sometimes Threats

In some cases, national leaders are not merely causal links in an aggression campaign but intentionally originate (or co-originate) an unjust military campaign. If persons intentionally originate an unjust military campaign against others then intuitively they seem to be unjust threats. This is similar to the way in which Mafia leaders who hire subcontractors who hire contractors who hire hit men intuitively seem to be legitimate targets of self-defense (at least where disabling them will eliminate the threat). There is a difficult question of why the many intermediate agents who plan and carry out the campaign do not result in the leaders being insufficiently close to the threatened harm. However, our intuition that the persons who intentionally originate aggression are threats is so strong here that the criterion for closeness should be chosen, at least in part, by its ability to classify such persons as threats.

C. Threats Forfeit Some of Their Rights

If threats, including leaders of unjust campaigns, forfeit their rights (at least temporarily), then it becomes much more likely that they may be permissibly disabled or killed as part of a defensive war effort. Note that rights forfeiture does not by itself warrant aggressive action, since a person's lacking moral rights is not a reason to injure him, but it does involve the elimination of a major reason not to injure someone. The notion here is the Kantian one that it is important that we do not violate the rights of non-threats regardless of whether or not we intend to do so.²⁵

²⁵ Robert Holmes, for example, focuses on the killing of innocents rather than the

Persons who act on (or are used on) an unjust side are threats. Hence, we need a theory of what happens to a threat's moral rights when the state or a private party kills him as part of its attempt to defend its citizens.²⁶ On one view, the state permissibly infringes upon the threat's rights. The idea here is that the threat retains her ground of rights but the more stringent right of the state overrides them (or perhaps the victim on whose behalf the state acts).²⁷ The problem with this account is that right infringements give rise to a duty to pay compensation. This is why we think that right infringements that produce harm, even justified ones, ground a duty to compensate the injured party. For example, consider the *desperate hiker*. Here a hiker in order to avoid a blizzard and save her life breaks into another's cabin and eats the cabin owner's food and burns the owner's furniture.²⁸ Here the hiker owes compensation even though her action was permissible. This is due to a respect that must be given to a person even where circumstances make it permissible to trespass upon her rights. This duty underlies the particular legal duties in tort and contract law. Since it intuitively seems that there is no duty to pay compensation to the threat for disabling or killing him, this account should probably be rejected.

On a second account, the threat's rights have a narrow scope and hence are not infringed on by justified self-defense.²⁹ The idea here is that self-defense has the following conditional format: a person ought-not-be-given-harsh-treatment-unless-... Here the ... condition may involve a moral condition (e.g., when self-defense is morally permissible) or a non-moral condition (e.g., when a person threatens to harm others in certain ways). This account may rest on the notion that the threat retains the ground of her rights, the notion that rights are not capable of being overridden, or the notion that threats are not owed compensation. The problem with this account is that we often think that rights should explain when harsh treatment is permissible. On this account, however,

intentional killing of innocents. Robert Holmes, *On War and Morality* (Princeton: Princeton University Press, 1989), ch. 6. It should be mentioned that Holmes's work is part of a broader pacifist program.

²⁶ In a different context, e.g., self-defense, Judith Jarvis Thomson lays out these three accounts of what happens to a person's rights. Judith Jarvis Thomson, "Self-Defense and Rights," in William Parent, ed., *Rights, Restitution, and Risk* (Cambridge: Harvard University Press, 1986), pp. 42-47.

²⁷ Philip Montague defends such an account in *Punishment as Societal Defense* (Boston: Rowman & Littlefield Publishers, Inc., 1995), ch. 5.

²⁸ This example comes from Joel Feinberg, "Voluntary Euthanasia and the Right to Life," *Philosophy & Public Affairs* 7 (1998): 93.

²⁹ Such an account is suggested by Joel Feinberg's analysis of a right which he views as a claim which the balance of reasons support recognition, although this may not be entirely fair to Feinberg since he views validity as a justification within a set of rules. Joel Feinberg, "The Nature and Value of Rights," in Steven M. Cahn et al., eds., *Reason at Work* (New York: Harcourt Brace, 1996), pp. 247-261.

the need to fill in the ... condition suggests that we must first determine when self-defense is permissible before we can determine the scope of the right, thereby preventing rights from having an explanatory role. In particular, we would need to fill out the various conditions for harsh treatment in general, e.g., when punishment and self-defense are justified. In addition, to the extent that this account rests on the notion that rights may not be overridden, it rests on an account that will be unattractive to those who reject this notion.³⁰

An objector might claim that the narrow-scope account can provide a condition under which the ... condition can be filled in that will match our intuitions about self-defense, allow the right to explain when harsh treatment is permissible, and not ground a right to compensation. The objector has in mind substituting she-deserves-punishment for the ... condition, thus producing the following conditional right: a person ought-not-to-be-given-harsh-treatment-unless-she-deserves-it.³¹ The problem with this is that there are cases where we think that a person loses the protection of a right but does not deserve harsh treatment. In particular we think that in some cases a person, at least temporarily, forfeits some of her rights in some cases where she is an innocent threat. For example, where a psychotic aggressor attacks a person, the intended victim may if necessary use great force against the aggressor without violating her rights and without owing the aggressor compensation. Once we expand the categories of forfeitures beyond the desert condition, the narrow-scope account will again posit rights that are unable to do the desired explanatory work.

On a third account, the threat forfeits some of her moral rights through her act.³² This account has a number of advantages. First, unlike the first account, it explains why the threat need not be compensated for being disabled. Second, unlike the second account, it allows rights to in part explain why self-defense is permissible and it does so in a way that is compatible with both backward- and forward-looking justifications. Third, the forfeiture account correlates with the creation of a right in another to act in self-defense in a particular context. If the moral right against intentional injury consists of a power (or a claim) over it then

³⁰ The logic of a conditional right is also not obvious. If we conjoin the statements (1) a person A has a right to not-be-treated-harshly-unless-A ... and (2) A ..., it is not clear what follows. This is because the disjunction is contained within the scope of the operator 'has a right to' and this makes the logic less transparent than if rights are forfeited. The idea for this point comes from Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988), pp. 118-122.

³¹ The idea for this objection comes from Neil Feit.

³² Such a forfeiture account can be seen in Vinit Haksar, "Excuses and Voluntary Conduct," *Ethics* 96 (1986): 321-324; Alan Goldman, "The Paradox of Punishment," *Philosophy & Public Affairs* 9 (1979): 43; A. John Simmons, "Locke and the Right to Punish," in A. John Simmons et al., eds., *Punishment* (Princeton: Princeton University Press, 1995), pp. 238-252; Judith Jarvis Thomson, *The Realm of Rights* (Cambridge: Harvard University Press, 1990), pp. 365-366.

its forfeiture involves the creation of a power (or a liberty) in another. Fourth, the limited scope of forfeiture can explain certain restrictions on self-defense. In particular, it helps explain why self-defense is just only if it is proportional to the threatened harm, necessary to prevent it, and the threatened harm is itself unjust. These restrictions come about because the forfeiture is a limited, temporary, and grounded by participation in an injustice. Fifth, if one thinks that rights are in effect owned by the agent, then it fits with the notion that the agent has the ability to dispossess herself of them through voluntary action in the same way that she can do so with regard to other forms of property. Sixth, this last point also meshes with a view of rights as functioning to protect autonomy, a view that can explain why rights are often concerned with non-interference and why they can be waived or forfeited. This can also account for why innocent projectiles, and perhaps innocent shields, forfeit rights. Such cases involve conflicting spheres of autonomy and our intuitions suggest that the sphere of the person who is part of an unjust threat gives way, however unfair to him.

On this threat-based approach to wartime killing, the assassination of a national leader will be an act of self-defense only if the leader is a threat and the killing or disabling is necessary to prevent an equal or greater unjust harm that the leader helped to set in motion. These conditions will obviously depend on the circumstances but there is no reason in principle that they will not be met.

A concern that might be raised with regard to my argument is that it is unclear how innocent threats could forfeit their rights. An innocent threat is not morally responsible for any action that would result in a right forfeiture and hence it is hard to see why she would forfeit her rights. We need to address two different issues here: whether innocent threats forfeit their rights and why they do so. Evidence for innocent threats forfeiting their rights comes from our intuitions about compensation in such cases such as the *innocent projectile*. Remember this is where you are at the bottom of a deep well, an innocent person is thrown at you, and you defend yourself by disintegrating the falling person with your ray gun. Here it intuitively seems that we do not owe compensation to the projectile (paid to his estate) or his dependents or otherwise respond to him. Right and claim infringements when linked to harm generate a duty to compensate, although an other-things-equal one, or in some other way respond to the residue of the infringed duty. Similar intuitions occur in the *psychotic aggressor* case and cases like it. The best explanation of these intuitions is that no right has been infringed because it has been forfeited (at least temporarily).

The explanation for this forfeiture involves the idea that rights are designed to protect autonomy. The content of a particular right (the persons it relates and its object) is a result of the initial distribution and content of rights as well as the way in which these original rights have been transferred. As a result of this historical process, persons end up with rights to things that they may not deserve. For example, a person may end up via gift or inheritance with a right to

land that he does not deserve.³³ A right to compensation is designed to preserve areas of autonomy (or provide equivalent areas) where there has been an incursion into the perimeter of rights. To see this, let us revisit the *desperate hiker* case, where a hiker breaks into another's cabin in order to avoid a freak blizzard and save her life. There she eats the cabin owner's food and burns his furniture. Here our intuitions are that the hiker owes compensation even though her action was permissible. In having a duty to pay compensation, the hiker in effect forfeited her right against paying money to the cabin owner or otherwise putting the cabin owner in qualitatively the same situation she was in before the break-in. The hiker does not deserve to pay for these things for she has not acted in a blameworthy manner. Nor does the duty to compensate follow from some notion of the comparative virtue of the two parties since for all we know the hiker might be the more virtuous. A rule requiring her to pay is not obviously efficient since under some conditions efficiency favors a negligence rule.³⁴ In addition, formal notions like fairness or equality are incapable of supporting such results in the absence of an underlying argument involving another moral entity like desert or rights. Rather, the best explanation of the hiker's duty to pay compensation is the fact that she infringed on another's property rights. The notion that autonomy, and not desert, grounds rights accounts for this explanation at a more fundamental level by. Desert might still be relevant though in explaining why the hiker should not be punished.³⁵

³³ Here I am assuming that there are pre-institutional rights to property and that these rights can be alienated. Stephen Kershnar provides an autonomy-based argument for these assumptions in "Private Property Rights and Autonomy," *Public Affairs Quarterly* 16 (2002): 231-258. The notion that the function of rights is to protect autonomy is usually linked to the will theory of rights, whereby rights are composed primarily of powers plus other Hohfeldian elements, as opposed to the benefit theory, whereby rights are claims that protect interests. The classic statement of the will theory occurs in H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175-191 and H. L. A. Hart, "Bentham on Legal Rights," in *Oxford Essays in Jurisprudence*, ed., W. A. B. Simpson (Oxford: Clarendon Press, 1973), pp. 171-201. Examples of the benefit theory include David Lyons, "Rights, Claimants, and Beneficiaries," *American Philosophical Quarterly* 6 (1969): 176 and Joseph Raz, "On the Nature of Rights," *Mind* 93 (1984): 370.

³⁴ For example, a negligence rule is preferable to a strict liability rule where the tort victim's level of activity is of greater concern than the injurer's level but where the latter is still relevant. A. Mitchell Polinsky, *An Introduction to Law and Economics* 2d ed. (Boston: Little, Brown and Company, 1989), ch. 6.

³⁵ A further advantage of this account is that it coheres with internalism about forfeiture. This is the notion that the ground of a right forfeiture depends only on internal facts about that person or relations that held between the right-holder and the damaged party. The idea for this notion comes from Shelly Kagan, "Causation, Liability, and Internalism," *Philosophy & Public Affairs* 15 (1986): 51 and 56. This internalist feature is characteristic of an autonomy-based system since it establishes a desirable balance between persons having the liberty to pursue their projects and having protection against invasions of their

D. The Notion of a Threat is not Vague

One objection that might be raised against this focus on threats is that the notion of a threat is a vague one, i.e., it admits of borderline cases. The idea behind this objection is that if a property like being-a-threat admits of borderline cases, then it cannot do the work my theory requires of it, which is to determine whether a person or class of persons has immunity. Consider a farmer who grows wheat that is used to feed an aggressor army and whose agricultural skills make him invaluable to his side. It is unclear the extent to which he endangers the army's targets and thus unclear whether he is a threat.

This objection can be divided into two parts. First, the objection might focus on the fact that there is no particular level of endangerment above which a person is a threat and below which he is not. Second, even if there was such a level, it is not possible to assign to the amount of endangerment to a person who is a causal agent in a joint project. The first objection need not trouble us since natural properties, e.g., height, can be a matter of degree. On this account, then, there are not borderline cases so much as different degrees of threats. The accompanying account of forfeiture may have to be modified to take this into account, perhaps by making the identity of the rights forfeited vary with the degree of threat, but I don't see why this should be problematic. A second response here is that there is some level of endangerment that constitutes a threat but that we don't yet have a theory to specify what this level is. The idea here is similar to the way in which we think that self-defense warrants lethal force only in response to certain attempted crimes, e.g., murder, rape, and not others, e.g., theft, but lack a clear theory as to what distinguishes the two categories. The second objection is not unique to this area. Many issues, e.g., deserved wages among factory workers, require that we assign levels of contribution to persons who contribute to a joint project. Whatever solution is present in these cases (perhaps marginal productivity) is available in this case as well.

E. Some Objections

One objection here is that my argument that vagueness is not a problem for threat/non-threat distinction, then it is also not a problem for the combatant/noncombatant distinction. My argument against the latter distinction, however, was that that the latter distinction failed because it places too much emphasis on the role that a person occupies. This argument is entirely independent of whether or not the combatant/noncombatant distinction admits of borderline cases.

autonomy.

A second objection is that if my account were internationally promulgated, it might cause great injustices to occur. The objector here might note that threats are not tied to specific activities, while the traditional analysis requires the targeted individual be part of the mechanism of war. For example, the objector might note, the Serbian justification for massacring older boys was that they constituted a threat because they were positioned to become combatants. But because they were not, in fact, combatants, the immunity thesis excluded them from direct attack and thus prevented such an injustice. However, under my account older boys are not threats but merely potential threats since they are not part of the causal process that endangers another. Since potential threats retain their rights, my threat-based analysis would not warrant their killing. The objector might be correct in asserting that international acceptance of the combatant/noncombatant distinction would have better consequences than the threat/non-threat distinction. However, my account is concerned with the true criterion for just killing during wartime rather than the account that will bring about the best (or the most just) results if promulgated.

A variant on the second objection is that my account leads to a promiscuous account of threats. The objector might argue as follows: suppose, for example, that the Cuban Revolution had been sustained with none of repressive measures actually used. It might then, be a successful alternative to American capitalism and would be a threat in that its continued existence would be a potential causal link in the chain of events leading to the overthrow of the capitalist system. This objection needs to be fleshed out. If the concern is that Fidel Castro was in the process of creating such an attractive economic state that the American citizenry would have chosen socialism, then neither he nor his fellow revolutionaries were a threat since they did not infringe on anyone's rights. Remember 'threat' here is being used in a justicized sense, by which I mean that includes only links in an unjust causal process. If the concern is that Castro and others were allowing Cuba to serve as a staging ground for missiles and bombers for a country that is waging an unjust aggressive campaign against the United States (and I am not saying this was the case), then Castro or others were threats. Here I would claim that this result tracks our intuitions.

A third objection is that the threat/non-threat distinction rests on the notion of a proximate cause. The idea here is that agents who are aggressors, command them, or supply ammunition to them are clearly causally linked to the unjust danger. The problem is that persons with only distant causal connections also have a causal link to the unjust danger. Consider, for example, the people who make the bolts that are used solely for the scaffolding that construction workers use to make the plant where crates are constructed for the safe transport of ammunition that is to be used in an unjust military campaign. These bolt-makers cause the unjust danger in that they in part bring about the use of ammunition as part of the unjust campaign. An analogous problem arises in tort

law, where a person is liable only if her negligence (or inherently dangerous activity) proximately caused a harm. The theories that explain this cutoff include ones focusing on the limited scope of duty, efficiency, and some feature of causation (e.g., the degree to which an event causes an effect or its necessary link to certain effects). I submit that whichever theory best explains the cutoff in the tort-law context should be the one we adopt in the context of war.

F. Conclusion

Hence, where national leaders are sufficient threats to others they forfeit their rights and may thus be justly disabled or killed. A different theory of assassination does not focus on combatants or threats but instead makes the permissibility of assassinating a leader depend on whether it brings about the best consequences. It is to this theory I now turn.

III. THEORY #3: Killing Some National Leaders Will Bring about the Best Consequences

In some cases the assassination of such leaders will bring about the best results. If a government ought to be removed from power, an assassination can save an enormous number of lives. For example, an early assassination of Adolph Hitler, Mao Tse-Tung, the leaders of the Pol Pot regime, or Saddam Hussein would each have saved hundreds of thousands of persons killed by internal policies, war or the effects of war. For example, in the 20th Century the governments of the Soviet Union, People's Republic of China, Nazi Germany, and Cambodia killed approximately 61 million, 35 million, 21 million, and 2 million respectively.³⁶ In addition, from 1900-1988, governments have killed nearly 170 million people, not counting killings that are part of a war effort.³⁷ These genocidal campaigns would probably have been avoided had the leader or small number of leaders been killed. For example, it is not clear that a leader other than Adolph Hitler would have so relentlessly pushed for the extermination of the Jews. And with the possible exception of Adolph Hitler, assassinations of such past leaders wouldn't have violated the people's right to self-determination since such leaders were not elected and in some cases it is controversial whether they would have had the support of the majority of citizens. Even if a person rejects the central tenet of consequentialism, i.e., she thinks that the right action is not that which maximizes the good, there still appear to be cases in which injustice is permissible where it prevents staggering levels of unjust slaughter. The assassination of tyrannical and dangerous foreign leaders would likely be a

³⁶ R. J. Rummel, *Death by Government* (New Brunswick: Transaction Publications, 1997), pp. 1-28, esp. 4.

³⁷ *Ibid.*, pp. 9, 15.

paradigm of such cases. This is not to argue that the consequentialist approach to assassination is correct, but merely to that to the extent to which consequentialist considerations are relevant they sometimes permit assassination. This relates to my strategy which to show that each of the three main theories about the way in which war may be fought allow that in some cases national leaders may be assassinated.

This is likely true whether the value of consequences is a function of utility or a more complex function that includes such factors as desert, objective-list interests, and desire fulfillment. This is because the government killing or injury to innocent persons produces less objective-list elements and desire-fulfillment. This result occurs regardless of whether interest-satisfaction is calculated via a focus on average or total interest-satisfaction or a system that allows for the diminishing marginal value of persons (or, more accurately, the diminishing marginal value of the interest-satisfaction of successive persons).³⁸ This is true so long as the victims of government killing do not have less than average levels of interest-satisfaction.³⁹ Given the tendency of these governments to target groups that on average are flourishing, e.g., political opponents, rich farmland owners, Jews, this seems likely. Even rule-consequentialist theories might allow such assassinations since the best rule might be: assassinate leaders who are committing or highly likely to commit genocide or mass murder and whose killing will not cause a catastrophe or prevent the bringing about of some important set of benefits.

Such a policy puts U.S. leaders at risk but the expected loss (the value of a particular leader multiplied by the likelihood that he will be killed) pale in comparison to the lives that may be saved. This calculation does not significantly change when we also consider the damage to the US's international reputation, the likely misuse of the policy both by the US and others, and the internal strife caused by the use of assassination. My argument here rests on an empirical claim that there are enormous expected net gains to be had from a policy of permitting

³⁸ For a consequentialist account of desert-adjusted utility see, e.g., Fred Feldman, "Adjusting Utility for Justice: A Consequentialist Reply to the Objection from Justice," in Louis P. Pojman and Owen McLeod, eds., *What Do We Deserve?* (New York: Oxford University Press, 1999), pp. 259-270. An objective-list account of good consequences (which focuses on self-interest) can be found in Derek Parfit, *Reasons and Persons* (New York: Oxford University Press, 1984), pp. 493-502. The average utilitarian claim actually depends on the way in which the averaging is done, e.g., whether the averaging is done first over persons or first over times. The complexities of average utilitarianism are brought out in Thomas Hurka, "Average Utilitarianism," *Analysis* 42 (1982): 65-69.

³⁹ If the targets of genocide are richer than average there is reason to believe that they will not have less than average satisfaction with life as a whole. This is because there is a weak but positive correlation between well-being and wealth for persons within a nation and a stronger correlation between nations. David Myers, *The Pursuit of Happiness* (New York: Avon Books, 1992), pp. 34-41.

assassinations. This is particularly true where the targets are those reasonably believed to be likely to cause an unnecessary war, engage in genocide or other forms of mass killing, or promote catastrophic economic policies (especially agricultural ones).⁴⁰ For example, the leadership of Hitler caused the unnecessary death of millions and an incredible loss in well being for hundreds of millions. An extended defense of this claim would involve an empirical study of the expected costs and benefits of a policy of assassination. Such a study would have to take into account the reliability of the US government in identifying genocidal leaders and proponents of international aggression. Such an exploration is beyond the scope of this essay.

An objector might note that my consequentialist argument does not support my conclusion that the US should adopt a policy of assassination. He might claim that all I have shown is that in some cases the US should assassinate national leaders. A policy in contrast typically involves a legally valid rule that has been publicly announced, whereas a practice is a course of action that that need not have these features. The two have different consequences. For example, a practice but not a policy can be coupled with plausible deniability. I think that the word ‘policy’ is broad enough to include practices, but if not then the objector is correct and that my argument should be understood as an argument for the practice of assassination.⁴¹ Whether the option to assassinate some genocidal and aggressive leaders is best pursued via legally valid and publicly announced laws

⁴⁰ In 1959 to 1961, an estimated 20 to 33 million died in China due to famine. Jean-Louis Margolin, “China: A Long March into Night,” in Stephanie Courtois et al., eds., *The Black Book of Communism* (Cambridge: Harvard University Press, , 1999), 469 citing Justin Yifu Lin, “Collectivization and China’s Agricultural Crisis in 1959-1961,” *Journal of Political Economy* 98 (1990): 1228-1250; Jasper Becker, *Hungry Ghosts: China’s Secret Famine* (London: John Murray, 1996), 270-273. While this famine occurred, the government responded by increasing grain exports, refused aid from the United States, and gave little aid to the need in the countryside. Margolin, “China: A Long March into Night,” 495-496. In 1932-1933, 6 million died of famine in the Soviet Union. Nicholas Werth, “The Great Famine,” in Stephanie Courtois et al., eds., *The Black Book of Communism* (Cambridge: Harvard University Press, , 1999), 159-168, esp. 159 citing A. Blum, *Naitre, vivre et mourir en URSS 1917-1991* (Paris: Plon, 1994), 99. The worst affected were the regions that were the most dynamic agricultural regions. In these regions, the government refused to collect less food despite reports of the risk of famine. In 1931, for example, the government took 42% of the agricultural production from the Ukraine. The government also prevented persons from leaving these regions. Werth, “The Great Famine,” 160-161.

⁴¹ The different definitions of ‘policy’ differ with regard to whether they exclude practices. *Webster’s Ninth New Collegiate Dictionary*, 1990 ed., s.v. “Policy.” For example, among the definitions are “a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions” and “a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.”

involves the sort of empirical considerations that are outside the scope of this paper. In addition, the case for such laws increases if one views the satisfaction of democratic procedures as a side-constraint on the pursuit of national goals. This last assumption obviously takes us outside the realm of act-consequentialism. It is also worth noting that a just war might require a policy if justice in going to war requires a competent authority and democratic procedure is a prerequisite for competent authority (although this may be true in only some countries).

If my analysis is correct, then the good to be achieved through assassination will likely justify such a policy not just under a consequentialist system but also under a nonconsequentialist system that allows consequentialist gains to sometimes override deontological constraints. To achieve the best consequences, work must be done to determine the procedure by which targets are selected and pursued, but I leave such issues aside.

IV. Conclusion

In some cases, the US should adopt a policy of assassinating national leaders. On immunity thesis, national leaders are sometimes combatants. This is because some leaders are both causal and logical agents of an unjust military campaign. Such leaders occupy this logical role because in some cases their position has a necessary link to their nation's military projects. In addition, such a policy aligns with some of the policies that motivate the immunity thesis in that assassination does not target innocent persons, is connected to self-defense, and does not violate any international agreements. The immunity thesis should probably be rejected, however, since it rests on dubious claims about the non-contractual constitutive conditions of combatant. On a self-defense theory, some national leaders may be killed because they are threats. They are threats because they originate a causal process that will likely bring about large amounts of unjust harm. In so doing, they forfeit those moral rights that protect them against injurious action and thus remove one of the major constraints against violence and killing. On a consequentialist theory, such a policy would likely bring about the best consequences since it would be a vital tool in the protection against genocide, unjust military aggression, and other horrendous state actions that have characterized the twentieth century. It is unlikely that the harm that would result from such a policy (e.g., its misuse) would outweigh the expected gain from it.⁴²

⁴² I am grateful to Neil Feit, Louis P. Pojman, George Schedler, and the West Point Philosophy Society for their extremely helpful comments and criticisms of this paper.