

“Lesser Evils” and “Dirty Hands”: A Response to Asta Maskaliunaite

By *Irfan Khawaja* *

*...the implication that something can be right without being expedient,
or expedient without being right, is the most pernicious error
that could possibly be introduced into human life*
Cicero, *De Officiis*, II.9

*This therefore is the first precept of law, that good is to be done and pursued, and bad is to be
avoided. And on this all other precepts of the natural law are founded.*
St. Thomas Aquinas, *Summa Theologica* I-II, Q. 94, Art 2

On May 2nd, 2004, *The New York Times Magazine* published a controversial essay by Michael Ignatieff called “Lesser Evils” (Ignatieff, 2004a), intended as a companion piece to his book *The Lesser Evil: Political Ethics in an Age of Terror*; published later that month by Princeton University Press (Ignatieff, 2004b). In the article, Ignatieff had revived a mode of argument advanced by the social theorist Michael Walzer in a 1974 essay called “Political Action: The Problem of Dirty Hands,” and had applied it to the contemporary context of the U.S. “war on terrorism.”¹ About two weeks later, I wrote a response to Ignatieff’s essay, published on the website of the History News Network, in which I took issue with three distinct themes in it: first, that liberty was inherently opposed to security; secondly, that imminent threats are the only ones that justify pre-emptive action; and thirdly, that unsavoury methods of self-defence can accurately be described as “lesser evils” (Khawaja, 2004, referred to hereafter in the text as “the HNN Critique”): “It was the last of these three issues that I regarded as fundamental: The proper function of government is to secure our liberty. If liberty is the end of government, that end (sincerely pursued) really does morally justify whatever means are required to secure liberty. If an act is justified in this way, it cannot be accurately described as ‘evil’, however bloody or repulsive it might be”. I ended by suggesting that the Walzer-Ignatieff thesis was “deeply confusing and profoundly demoralizing to a population at war” and ought to be abandoned.

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Asta Maskaliunaite's essay "Protecting Democracy from Terrorism: Lesser Evil and Beyond" (Maskaliunaite, 2007) is in large part an attack on Ignatieff's views, including the *New York Times* essay I had discussed in my HNN Critique. In the course of her criticisms of Ignatieff, however, Maskaliunaite offers the following comment on my essay:

While Khawaja is right in pointing out a possible influence of Walzer on Ignatieff, his further criticism, it must be said, does not have much value. It completely mixes up the morality of means and that of ends with its principal argument that "what is genuinely 'necessary' to preserving rights is not a necessary or lesser evil; it's not an evil at all." In addition, the author claims, it is "profoundly demoralizing to a population at war" because "it's not clear that anyone can sustain a long-term commitment to policies and principles avowed as 'evil' or to do so in a consistent and clear-headed way." This, I would argue, is a completely Machiavellian argument. It is dressed in the rhetoric of "good" and "evil," which is a mark of ethics, but these robes only conceal the reality that these are the political reasons of expedience, not the moral reasons of right and wrong. In some circumstances we could possibly be convinced that the tactics employed in a dirty war are necessary and useful, but that killing, maiming, or torturing human beings can be anything more than a lesser evil cannot be assumed by any ethical system on which democratic governments are based. This argument is the same as to say "in order to protect democracies, anything goes" which leaves a question – what would be left of the democracies if anything goes in their protection. And this question invites a very gloomy answer (Maskaliunaite, 2007: 19-20).

My HNN Critique was a very brief and programmatic outline of an alternative to the Walzer-Ignatieff conception. In the present essay, I propose to respond to Maskaliunaite's criticisms, and elaborate on aspects of my own view. I count four distinct criticisms in Maskaliunaite's argument:

1. Khawaja inappropriately equates necessity, utility, and expediency with moral rightness.
2. Khawaja confuses issues concerning ends, means, and liberty.
3. Khawaja's view is Machiavellian.
4. Khawaja's view entails that "anything goes in defence of democracy.

In my judgement, none of these criticisms succeeds. The first two make undefended, and I think, indefensible assumptions about the nature of morality, practical necessity, and liberty. The third misreads Machiavelli and likewise misinterprets my argument. The fourth misunderstands the implications of my argument, but also rests on questionable assumptions about the requirements of an effective counter-terrorist policy. In what follows, I take each criticism in order, and end with a critique of some of Maskaliunaite's policy recommendations.

1. Practical necessity and moral rightness

As just remarked, in my HNN Critique, I had equated “what is necessary” to preserving liberty with “what is morally right” and on that basis rejected the Ignatieff-Walzer thesis that what is practically necessary is a lesser evil. In the view I was defending, what is genuinely necessary (or useful or expedient) is in *no* sense an evil, *a fortiori* not a lesser evil. Thus my view entails that the supposed distinction between the necessary, useful, and expedient on the one hand, and moral rightness on the other is a mistake: it misconceptualises both necessity and morality. As we’ve seen, Maskaliunaite distinguishes what I equate. In her view, there is an *obvious* distinction to be drawn between necessity and moral rightness, and a theorist’s failure to observe this distinction entails the wholesale failure of his theory.

This is, obviously, a fundamental normative disagreement. In philosophical terminology, the dispute between us concerns *teleological* versus *deontological* moral conceptions: teleological conceptions (like mine) equate morality with practical necessity; deontological conceptions (like Maskaliunaite’s, as well as Walzer’s and Ignatieff’s) distinguish them.² Lacking the space here to offer a full defence of my view, I’ll sketch the basic features of teleology and deontology with a view to demonstrating the coherence of my equation of morality and necessity, and the incoherence of the attempt to distinguish them.

1.1 Teleology and its implications

“Teleology” refers to a family of moral theories opposed principally to “deontology.” Very broadly speaking, whereas teleological theories regard moral norms as *promotive* of beneficial consequences, deontological theories regard them as *constraints* on the promotion of what is beneficial.³ Understood in this way, “teleology” is the prior and conceptually self-sufficient concept, “deontology” the posterior and parasitic one: the concept of a beneficial consequence is obviously prior to the concept of a constraint on the pursuit of a benefit. We thus need a prior account of teleology in order to understand the claims of deontology.

The rationale for teleology may be stated as follows. Each person is an *agent* with a capacity to initiate and be responsible for his or her voluntary

actions. This capacity gives us a range of possible courses of action, or options. Each option, in turn, would, if acted on, lead to a distinctive set of consequences, and each consequence, or set of them, can in principle be ranked by the benefit or harm it can be expected to produce. Suppose that there is something about the world that *requires* us to bring about benefits and avoid harms. Think of this “something” as a fixed, higher-order goal – an ultimate value – that lies behind the discrete options, benefits, and harms that we face. This value would be a source of practical necessity, but it would also, given its connection to benefit, have moral significance: it would oblige us to rank our options from best to worst, and oblige us to act on our rankings. The best action would be the one expected to be most beneficial; the worst, the one expected to be least so, or most harmful.

Physical health provides a clear example of teleology in an everyday setting. We all face options that bear on the preservation of our health, and we can in principle rank those options by their conducivity to health. Assume for argument’s sake that health is a goal across a person’s lifespan. In that case, it would require the person to choose between health-relevant options in such a way as consistently to promote health and rule out non-health across his or her lifespan. Notice that health becomes both means and end in this enterprise: health is a future consequence we aspire to bring about (hence an end), but once produced, it is on a given occasion the present means of reproducing itself in the future (hence a means). Notice also that in this respect health-based norms can, with perfect accuracy, be described as “constraining” us: they can tell us to stop smoking, stop drinking alcohol, stop eating unhealthy foods, and so on. But when they do, they do so in the name of a greater benefit, i.e., better health. So a teleological constraint constrains in one respect while benefitting in another; it never simply constrains in the name of constraint.

Teleological conceptions differ on *how* they conceptualise benefit, and whom they identify as the beneficiaries of individual action. *Egotic* conceptions identify benefit with individual well-being, and enjoin each individual to be the ultimate intended beneficiary of his or her own actions. *Classical utilitarian* conceptions identify benefit with the maximisation of pleasure, and enjoin each individual to bring about the greatest pleasure for the greatest number. And so on. What all teleological conceptions share in common is the idea that moral rightness consists in selecting the best of the available options under the circumstances that confront the moral

agent. And the best option is the one that produces the most beneficial consequences.

Though this may sound to some like mere common sense, teleology has several non-trivial implications for ethics. For one thing, it entails by definition that “the end justifies the means.” In a teleological view, some (complex) end is taken as fixed and objectively valuable, and its fixity and value determine the place and value of all subordinate means and ends. Thus “teleological justification” is equivalent to demonstrating something’s propensity to promote some ultimate end: no norm or action is justified unless it is a means to that end.

Second, most teleological systems involve a complex end with multiple interconnected facets (more complex than health, which is itself far from simple). Given this, most teleological theories are in effect integrated *systems* of means and ends. So conceived, the ultimate goal in such a system generates subordinate goals, which function as means to the ultimate goal; these subordinate goals, in turn, generate further subordinate goals which function as means both to the subordinate goals and the ultimate goal; and so on. The more complex the end, the more complex the system of means to which it gives rise.

However complex the system, though, some norms will fail to find a place in it – i.e., fail to promote the end – and will, of course, thereby fail to be justified. On a teleological view, there is no way to pronounce on the moral rightness or wrongness of an act independently of its place in a hierarchy of means and ends. The rightness of an act consists, in a given case, in its conducivity to the ultimate goal identified by the theory’s standard of value. The wrongness of an act consists in its failure to do so.

We can, of course, make generalisations about the relationship between types of act, types of circumstance, and types of expected consequence. Acts of a certain type, performed in a certain circumstance, may be expected – with high likelihood or even certainty – to yield consequences of a certain variety. If these consequences promote the relevant goal, we can know ahead of time that the act will be right; if the consequences subvert the relevant goal, we can know ahead of time that the act will be wrong. Further, some goals are, logically and practically, constituents or parts of other goals, so that there is no way to perform the one goal

without performing the other (think of the relation between metabolism and health). And some means are, in effect, the only or best routes to certain goals in almost all situations, making those particular means causally indispensable to effectuating the goals (think of the relation between aerobic exercise and cardiac health).

What we cannot do on a teleological ethic is to generate an acontextual list of moral duties and prohibitions such that any duty on that list must be performed regardless of the circumstances or consequences, and any prohibition must be observed in the same way. There are, in a teleological view, no “musts” apart from the benefits that make them necessary. Thus a teleological ethic demands that any candidate norm be demonstrated to promote benefits. A norm that lacks any relation to benefit has no legitimate claim on our credence or our sense of obligation – something as true of the norms offered up during wartime as it is in any other context. We have, in this view, no reason to affirm or comply with norms that (say) enjoin us to obey international law *unless* it can be shown that affirmation or compliance with such norms promotes benefits of the relevant kind. Of course, when this *is* shown, affirmation and compliance become mandatory.

Given the foregoing, I think we can now see that Maskaliunaite’s bifurcation of the necessary and useful on the one hand and moral rightness on the other simply asserts what a teleological conception of morality denies. For on a teleological conception – as my epigraph from Cicero suggests – there is no such distinction to be made. Given a justifiable goal, rationality requires our taking the necessary and available means and ends for promoting it, consistent with the full system of means and ends brought into existence by some ultimate value. An action so described is simultaneously morally right and practically necessary. Indeed, it is right *in virtue of* being necessary, and necessary in virtue of being right. So Maskaliunaite is not entitled to dismiss my view merely by asserting that what is necessary and useful must be distinguished from what is right. That is precisely the distinction I reject.

Nor, as I’ll argue in what follows, can a teleological ethic be accused of claiming that “anything goes.” “What goes” is what is required by some ultimate value, and not everything qualifies as a candidate for ultimacy. Further, the teleologist’s equation of morality and necessity implies that

necessity can neither be set up as a rival to morality, nor invoked as an excuse for choosing lesser evils or dirtying our hands. A teleological moral conception demands that we *always* do what is right, self-consciously describing it as “right,” and never indulge what we take to be wrong regardless of the temptations for doing so. It follows that what a teleological morality requires of us can be difficult to discover and perform, but is always straightforward: if something is right, it is obligatory; if it is wrong, it is impermissible. This apparently trivial claim has momentous implications for the ethics of warfare.

1.2 Deontology and dirty hands

A deontological conception of morality is the contrary of a teleological one. Where teleological theories focus above all on the promotion of valuable goals/consequences, deontological theories focus instead on constraints on the pursuit of such things (Nozick, 1974:28-42). Thus where teleological theories advise agents to identify the optimal outcome, deontological theories restrict the pursuit of optimal outcomes in favour of principles that produce explicitly suboptimal outcomes.

I defined teleology as the view that every act ought to promote the best of the expected consequences from among the options available to the agent at a given time. Deontology, then, is the view that *not* every act ought to do this; some acts ought to be performed for their own sake, and in no sense for the consequences they produce. In other words, certain acts ought not to be performed even if their performance *would* promote the best expected consequences, and some acts ought to be performed even if their performance *would not* promote the best expected consequences. Deontologists are therefore concerned to generate a roster of duties – both injunctions and prohibitions – that are morally obligatory regardless of the consequences of performing them. Much of the just war tradition as well as international war law take deontology so construed as a basic axiom (see McMahan, 1991).

A commitment to deontology is an explicit feature of Walzer’s, and an implicit feature of both Ignatieff’s and Maskaliunaite’s theorising on the topics under discussion (Ignatieff, 2004b:7, 24). Such a commitment is, in any case, a logically necessary condition of espousing the “lesser evils” or “dirty hands” conception of morality that all three of them end up

espousing. The point is most clearly described by Walzer, who describes the dirty hands dilemma as follows:

In modern times the dilemma [of living a moral life in politics] appears most often as the problem of 'dirty hands' and it is typically stated by the Communist leader Hoerderer in Sartre's play of that name: "I have dirty hands right up to the elbows. I've plunged them in filth and blood. Do you think you can govern innocently?" My own answer is no, I don't think I could govern innocently; nor do most of us believe that those who govern us are innocent – as I shall argue below – even the best of them. But this does not mean that it isn't possible to do the right thing while governing. It means that a particular act of government (in a political party or in the state) may be exactly the right thing to do in utilitarian (i.e., teleological)⁴ terms and yet leave the man who does it guilty of a moral wrong. The innocent man, afterwards, is no longer innocent. If on the other hand he remains innocent, chooses, that is, the 'absolutist' side of (the) dilemma, he not only fails to do the right thing (in utilitarian (teleological) terms), he may also fail to measure up to the duties of his office (which imposes on him a considerable responsibility for consequences and outcomes). Most often, of course, political leaders accept the utilitarian (teleological) calculation: they try to measure up... Nevertheless we would not want to be governed by men who consistently adopted that position. The notion of dirty hands derives from an effort to refuse 'absolutism' without denying the reality of the moral dilemma. Though this may appear to utilitarian (teleological) philosophers to pile confusion upon confusion, I propose to take it very seriously" (Walzer, 1974:63-64 footnote omitted).

In other words, the politician gets his hands dirty when, faced with a conflict between what teleology requires and what deontology prohibits, he performs the action teleology requires but accepts deontology's verdict on his having done so. In such a case, the Walzerian politician chooses the lesser of the two evils (the first), and is therefore obliged to pay a moral "price" for having done so (Walzer, 1974:68, 82).

Walzer is right to suggest that a teleologist/utilitarian would regard his account as confused – indeed, as completely incoherent. For one thing, without quite defining either "teleology" or "deontology," or announcing a definite adherence to either, he attempts to combine them while flouting the incompatibility between them. Without explaining why, he assumes that teleology is incompatible with the requirements of rights and justice, and that deontology is their precondition. Having set up what he himself describes as a "dilemma," he "resolves" it arbitrarily by choosing the teleological side of it against the deontological side of it, offering no reasons for doing so. Having made these entirely unargued stipulations, he

is predictably led to a *reductio ad absurdum* of his own argument: that it is wrong to do what is right, and right to do what is evil; that a politician who does the right thing should feel guilty for doing it; and that a person who regularly violates his own moral principles can achieve “salvation” by engaging with equal regularity in a secular version of penance, knowing full well that he will repeat the process after having repented (Walzer, 1974:66, 68, 79-80). The essential contradiction, however, comes with the first step of the argument: the self-contradictory attempt to combine teleology with deontology.

Maskaliunaite does not discuss the underlying logic of the dirty hands dilemma as explicitly as Walzer does, but her acceptance of the legitimacy of that logic is clear. Recall her claim: “In some circumstances, we could possibly be convinced that the tactics employed in a dirty war are necessary and useful, but that killing, maiming, or torturing human beings can be anything more than a lesser evil cannot be assumed by any ethical system on which democratic governments are based” (Maskaliunaite, 2007:19). This passage implies that a teleological approach to warfare can require “dirty” tactics that violate deontological strictures. Because deontology dictates the content of morality, the tactics are evil. But because deontology conflicts with practicality, morality’s verdict is, practically speaking, inconclusive. We’re therefore permitted to do what is evil, fully recognising it as evil, so long as we admit that it is evil, and so long as the evil is “lesser.”⁵ Thus, despite her strenuous disagreements with Ignatieff, Maskaliunaite is in fact in fundamental agreement with both Walzer and Ignatieff on the underlying issue. All three are conflicted deontologists who regard evil as useful and morality as impractical.

I have in a way already responded to this view, but two further observations are worth making. First, it is worth bearing in mind that “killing” and “maiming” are necessary concomitants of ordinary self-defence even outside of the context of warfare. If I am faced with an armed attacker and happen to be armed myself, the right of self-defence – a central principle of liberal democratic theory – dictates that I can kill or maim him without regret. (In the U.S., one is generally entitled to shoot *any* intruder in one’s home after dark.) There is no clear reason to describe such acts as “dirty” or “evil.” They are more accurately described as the justified (if unfortunate) consequences of justified actions. The same point holds, I would argue, of warfare. Second, Maskaliunaite fails to see that her

view leads to a serious dilemma. If we bifurcate the necessary from the moral as she thinks we should, then in any case where they conflict (as on a non-teleological view, they systematically will), we have to choose which of the two will govern our decision in a given case. Either we choose for morality against necessity, or vice versa. But what principle dictates how this decision is to be made?

Maskaliunaite not only offers no such principle, but faces absurdity in either direction. If she chooses necessity in defiance of morality, she is led to a view according to which we are “required” to commit evil. She is also led to the very concept of Ignatieff’s that she claims to deplore, namely, dirty hands. But if she chooses morality in defiance of necessity, she is led to a view that constrains us from doing what is necessary to defend ourselves against evil. This choice contradicts her own repeated claim that counter-terrorist tactics must be chosen by the pragmatic standard of what “works” (Maskaliunaite, 2007:6, 11, 23). A view that admits that evil must be done is ipso facto incoherent: regardless of its quantity, evil is by definition what should *not* be done. But a view of warfare that prohibits doing what is necessary to defend against evil is also deficient: it counsels surrender to evil in the name of morality. Given the bifurcation of morality and practicality required by deontology, however, this bind is as debilitating as it is unavoidable.

2. Human flourishing and liberty

I turn now to the second of Maskaliunaite’s objections: that I confuse issues of ends, means, and liberty. In fact, what Maskaliunaite describes as a “mix up” is a self-conscious theoretical commitment on my part: what I espouse is a morality of ends that dictates the preservation of liberty (or rights)⁶ as an indispensable means.

In section 1.1, I offered a generic account of teleology and remarked that specific conceptions of the doctrine differ on how they conceptualise benefits and beneficiaries. My own brand of teleology might well be described as an *objective egotism*, according to which each individual is the ultimate intended beneficiary of his own actions, and benefit consists in the promotion of one’s *flourishing* as an ultimate value.⁷ The word “flourishing” comes to modern English by way of the old English word *florissen*, meaning “the blossoming of a flower.” In ethical contexts, an ethics of

flourishing is one that supposes that human beings possess certain natural powers which exist to promote their long-term survival and happiness, conceived a certain way. “Flourishing” in this context denotes the lifelong pursuit of those goals and inculcation of those traits and principles which, over a lifespan, *do* in fact promote survival and happiness: “the terms, methods, conditions, and goals required for the survival of a rational being through the whole of his lifespan – in all those aspects of existence which are open to his choice” (Rand, 1964:26). Thus “flourishing,” by analogy with health, is a specific instance of the “fixed higher-order goals” or ultimate values to which I referred in section 1.1. (For a much fuller discussion, see Smith 2000, chs. 5-6, and 2006).

The basic social principle of this ethic has nicely been stated by Ayn Rand: “(J)ust as life is an end in itself, so every living human being is an end in himself, not the means to the ends or welfare of others...therefore...man must live for his own sake, neither sacrificing himself to others nor sacrificing others to himself. To live for his own sake means that the achievement of his own happiness is man’s highest moral purpose” (Rand, 1964:30).

I’ll call this *the principle of ends*. The principle has two basic implications. The first is that as a rational agent, I am obliged to treat my life as an end-in-itself, and to demand that others do so as well: my own flourishing or happiness is my highest moral purpose, and not one that I ought to sacrifice or allow to be attacked by others. The second is that in dealing with other rational agents (*qua rational*), I am obliged to respect their obligation to follow the same principle: their flourishing or happiness is their highest moral purpose, and not one they ought to sacrifice, or allow to be attacked. Nor is sacrifice something I can expect or demand of them, or impose on them.

This latter implication may perhaps be counter-intuitive to some. Our lacking an interest in self-sacrifice is perhaps obvious. But according to objective egoism, it is equally true, though perhaps less obvious, that we have nothing to gain from violating *others*. When I violate another, I subvert his capacity to act on the principle of ends. I thereby subvert his ability to act for his highest purposes. But (on the view in question) I am obliged always to seek the greatest benefits in every action I take, and the *greatest* benefits can only be gotten from dealing with others acting at their

best, i.e., for their *highest* purposes. By contrast, the values to be gotten from the subversion of another's good are suboptimal as compared with those to be gotten from his or her compliance with the principle of ends. If this is so, insofar as possible, we should strive to interact with others by treating them as ends and interact only with those who will deal similarly with us.

There are many ways of violating the principle of ends in one's interactions with others, but one violation belongs in a category of its own: the initiation of force against them. To initiate force against someone is by definition to prevent that person from exercising independent judgement, and thus by definition to treat her as a means, and subvert her capacity to act for her own survival and happiness. Confronted with a force-initiation against me, it is rational for me to respond in such a way as to neutralise it, so as to restore the status quo prior to the initiation, and thereby restore my capacity to act in an untrammelled fashion for my own ends.

Given the very nature of force – namely, its liability to spiral out of control, and the stakes involved when it does – it is in our interest to regulate it in a systematic manner. And so the principle of ends leads to the principle of rights/liberty: the principle of rights defines and sanctions each person's freedom of action in a social context, identifying the acts she can legitimately take without initiating force, and the rectificatory actions she (or her agent) is entitled to take if force is initiated against her. Thus while an egoistic ethic forbids the *initiation* of force, it takes seriously the threats posed by aggressors, and seeks to ensure that defenders prevail against aggressors (on rights generally, see Smith, 1995).

It may seem puzzling how a teleological ethic like objective egoism can accommodate such strict norms as the principle of ends and that of rights. But there is no incompatibility here. A teleological ethic is incompatible with norms that make no contribution to valuable goals. But it is perfectly compatible with stringent norms that *do* make such a contribution. The contention here is that the principles of ends and of rights are inherent parts of the goal of human flourishing (as metabolism is to health), and so are essential and indispensable means of bringing it about. This implies that in order to flourish in a dignified way, we are obliged to treat others as ends, and to respect their rights. The claim here, against deontology, is that our doing so promotes our flourishing, and is justified because it does;

rights are not a set of norms that bind us independently of the consequences they promote.

It is an implication of the preceding view that the principles of ends and of rights privilege those who affirm and comply with them. We are to treat as ends those who treat us as ends (insofar as they do), and we are not to initiate force against others. But when others mistreat us, they are not entitled to be well-treated in return, and when they initiate force, they are not entitled to the same protections as those who respect rights.

In the current war against Islamist terrorism, we face (outrageously) non-compliant parties who intend our subordination or destruction on the basis of a series of ultimatums and demands generated by supposed claims of supernatural justice. As Osama bin Laden puts the point: “Every Muslim...hates Americans, hates Jews, and hates Christians. This is a part of our belief and our religion. For as long as I can remember, I have felt tormented and at war, and have felt hatred and animosity for Americans” (Bin Laden, 2005:87). On this basis, Al Qaeda has called for a “balance in terror” involving the deaths of four million Americans (Bin Laden, 2005:114; Abu Gheith, 2002). It has demanded the “subjection of the entire Earth” to Islamic rule (Abu Gheith, 2002), and has repeatedly insisted that supernatural considerations take precedence over earthly considerations in the effectuation of its ends: “We love this kind of death for God’s cause as much as you like to live. We have nothing to fear for. It is something we wish for” (Bin Laden, 2005:56). There can be no question of treating *such* people as ends, and whatever rights they have must be understood in the context of their commitment to a wholesale violation of ours.

The relevant question, then, concerns the norms by which we justify the use of retaliatory force on behalf of those who wish to flourish in a rationally justifiable manner. And it is perfectly consistent to say that we must conceive of the norms of retaliatory force to be consistent with our ethics as a whole, but likewise effective at neutralising the threat posed by those who would, if they could, make human flourishing impossible. On a teleological ethic, morality itself can demand that we do what it takes to preserve the requirements of flourishing – among them liberty or rights – against aggressors. It thus makes perfect sense to think of our liberty or rights as among the things it is both necessary *and right* to defend.

3. Machiavellianism?

With the preceding in place, we can, I think, dispense relatively easily with Maskaliunaite's claim that my view is "Machiavellian." This topic may seem to be a digression, but I think the contrast between my view and Machiavelli's is worth identifying, if only because (ironically enough) it throws light on the similarities between Machiavellianism and the view Maskaliunaite herself espouses. The superficial similarity between my view and Machiavelli's arises from Machiavelli's notorious assertion, in chapter 18 of *The Prince*, that "the end justifies the means." But a look at the context of this assertion makes clear that Machiavelli's understanding of that claim is incompatible with mine:

A prince must take great care that nothing goes out of his mouth which is not full of the above-named five qualities, and to see and hear him, he should seem to be all mercy, faith, integrity, humanity, and religion. And nothing is more necessary than to seem to have this last quality, for men in general judge more by the eyes than by the hands, for every one can see, but very few have to feel. Everybody sees what you appear to be, few feel what you are, and those few will not dare to oppose themselves to the many, who have the majesty of the state to defend them; and in the actions of men, and especially of princes, from which there is no appeal, the end justifies the means (Machiavelli, 1950:65-66).

This conception differs from mine in three essential respects: its conception of ends, of means, and of justification. First consider ends. In the view I have defended, a single fixed and ultimate end determines a single objectively right system of means which are justified by their conducivity to that end. Ends that conflict with any part of this system are all morally impermissible. For Machiavelli, by contrast, no single end is fixed, no end is impermissible, and there is in consequence no single system of ends or means that can claim authority as morally right. It is the prince who decides such things on entirely subjective grounds, which is why (Machiavelli says) "there is no appeal" from his actions.

Now consider means. In the view I've defended, some means are indispensable to or constituents of the end of human flourishing, and are thus inviolable, including what I earlier called the principle of ends and the principle of rights. Machiavelli, by contrast, espouses no conception of inviolability, and upholds no stable principles of justice or rights. Though he has a conception of liberty, his conception (unlike mine) is avowedly

illiberal, and is a necessary condition not of individual human flourishing but of politics abstracted from individuals (Skinner, 2000, ch. 3).

Finally, consider justification. In the view I've defended, justification is a complex but still intelligible affair: an ultimate end sets a hierarchy of means conducive to the end, and thereby justifies them. By contrast, though he uses the word "justifies," it is unclear whether Machiavelli has any conception of justification or any genuine interest in the topic. Thus he tells us, in a notoriously tangled passage in chapter 15 of *The Prince*: "it is necessary for a prince, who wishes to maintain himself, to learn how not to be good, and to use this knowledge and not use it, according to the necessity of the case" (Machiavelli, 1950:56). Machiavelli distinguishes sharply here between what is practically necessary and what is morally justified, suggesting that practical necessity must *sometimes* override moral justification. He then tells us in the next breath that "the necessity of the case" is what ultimately dictates how one acts, so that necessity *always* overrides morality. But if the prince were to ask whether he was *justified* in systematically overriding morality, Machiavelli appears to have nothing to say, offering up the cryptic response that the topic of discussion is "how we live" as opposed to "how we ought to live" (Machiavelli, 1950:56). It's not clear that Machiavelli's claims here are coherent, much less that they involve a clear conception of justification.

Ironically, this very passage from Machiavelli brings home the affinities between his view and the one espoused by Walzer, Ignatieff, and Maskaliunaite. In self-conscious opposition to Cicero, Machiavelli bifurcates what is "necessary" from what is "good," and in so doing, inaugurates the idea that it can be evil to do what is necessary—precisely the distinction between necessity and moral goodness that, as we've seen, lies at the heart of the Walzer-Ignatieff conception. And both Walzer and Ignatieff explicitly recognise this. As Walzer puts it, Machiavelli is perhaps the first philosopher to be led to the dirty hands thesis, and he is led there because while his political judgments are teleological, his moral judgments are deontological, and he insists on affirming both simultaneously (Walzer, 1974:77).⁸ In consequence, Ignatieff tells us, Machiavelli is led to a view that makes politics unavoidably amoral: "as Machiavelli understood a long time ago, [morally] dubious decisions are not just accidental incidents in political life; they are intrinsic to political action" (Ignatieff, 2004:15). Thus Machiavelli affirms precisely what I have been at pains to deny.

When Maskaliunaite writes that “we could possibly be convinced that tactics employed in a dirty war are necessary and useful” and thus justifiable as lesser *evils*, the irony is that she is echoing Machiavelli’s rhetoric in the act of accusing me of Machiavellianism. She is telling us – siding with Machiavelli against Cicero and Aquinas – that we have to “learn how not to be good.” But as I’ve argued, I take precisely the reverse view.

4. “Anything goes in defence of democracy”

The preceding discussion has been highly abstract, focused primarily on conceptual and textual issues. A reader might well agree in a general way with everything I’ve said so far, and yet still sympathise with Maskaliunaite’s objection that in a view like mine, “anything goes in defence of democracy.” In other words, one might wonder what my view entails in the way of specific restrictions on the use of force in counter-terrorist operations. In what follows, I offer a clarification about “liberty” and “democracy,” and sketch an account of some of these restrictions. Though I cannot offer a full theory of self-defence and warfare, what I say should make clear that my view does not entail that “anything goes.”

Democracy, as Maskaliunaite correctly points out, has a narrow sense and a broad one (Maskaliunaite, 2007:7-9). In the narrow sense, it merely means majority rule. In the broad sense, it includes a form of constitutionalism that involves the protection of liberty. Just as “democracy” has both a narrow and a broad sense, so does “liberty.” In the narrow sense associated with Hobbes, “liberty” denotes the absence of impediments to acting on one’s desires. In the broader sense associated with Locke, “liberty” denotes the absence of impediments to acting on one’s moral rights, where these rights identify individual entitlements to independence of action, but are not reducible to desires. In the Hobbesian view, because our desires are inherently conflictual, so are our liberties: my liberty conflicts with yours whenever our desires conflict (see Steiner, 1991). In the Lockean view, because our rights are inherently compossible, so are our liberties: rights are conceived in such a way that all moral agents have the same rights; neither rights nor liberties conflict (see Smith, 1995, ch. 6).

Maskaliunaite clearly takes herself to understand “democracy” in the broad sense, and “liberty” in the narrow sense (Maskaliunaite, 2007:9-11). Thus in her view, the aim of a counter-terrorist policy is to protect a form of

constitutionalism expressing a Hobbesian, desire-based conception of liberty. It follows from such a view that our desire for security might well conflict with our desire for liberty, and when it does, we must choose between two distinct and conflictual values.

My HNN Critique took a different view. I was not strictly speaking discussing the defence of democracy at all. I was discussing the defence of liberty in the broad sense. Thus in my view, the aim of a counter-terror policy is to protect those regimes – democratic or not – that value liberty on the Lockean interpretation (contrary to Ignatieff, 2004:3-5; see Zakaria, 2003, for further discussion). It follows from my view that security and liberty are two aspects of the same value, and that we have no need to choose between them. In this respect, I took myself to be following (and defending) the view of the American founders and the U.S. Constitution, which aims, in the words of its Preamble, to “*secure* the blessings of liberty” (my emphasis). Or, in the words of the Fourth Amendment (my emphasis): “The right of the people to be *secure* in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....”

As I said in the HNN Critique itself, the requirements for the preservation of liberty set the terms of our war against aggressors against that liberty. I should perhaps emphasise that “the preservation of liberty” means the preservation not just of American, but of *human* liberty. Though a nation has a special and overriding obligation to “provide for the common defense” of its own citizens, I do not take this obligation to nullify the more general obligations it has to respect the rights of non-citizens, whether domestically or abroad. Of course, it bears repeating that a right to common defence entails the right to use sufficient force against aggressors so as to prevail against them. An aggressor has no right to immunity from such force.

A full theory of self-defence would provide an integrated account of all of the factors mentioned in the preceding paragraph. I cannot provide such a theory here. Instead, I enumerate three restrictions on the use of force that follow from the principle of rights mentioned above. Recall that in the view described there, rights-violations are initiations of force against rights-respecting parties. In that case, force can be used in retaliation against

aggressors, subject to the following (somewhat overlapping) considerations:

1. When force is used in a retaliatory fashion, it must be used as narrowly as possible to target those responsible for initiating force – though as broadly as is necessary for victory against them – and it must do so in order to protect those who have been aggressed against. Thus initiatory force can *never* be justified and retaliatory force must never be gratuitous.
2. The use of retaliatory force should be sufficient to neutralise threats to liberty, but to the extent possible, should neutralise such threats without undermining the liberty of those who pose no threat. Thus collateral damages can be justified, but must be *minimised* (consistently with the requirements of victory).
3. Retaliatory force should be used in such a way as to aim at a maximally durable and maximally liberty-respecting peace once victory against aggression has been achieved. This provision minimises collateral damage, like (2), but it also implies that war-fighters should not be expected or permitted to take actions that would be incompatible with their living liberty-respecting lives once they return.

The preceding rules may strike many readers as too minimal or abstract to be sufficiently restrictive of retaliatory force. It is, I admit, a very brief and non-exhaustive list. But it is enough to indicate that my view does not literally entail that *anything* goes in defence of the national security of a democratic nation. At a bare minimum, rules (2) and (3) condemn such crimes as those committed by U.S. soldiers at Abu Ghraib Prison, and generally condemn actions prosecutable under the Uniform Code of Military Justice, as well as policies like those legitimated by the notorious *Korematsu* decision (justifying mass internment of Japanese Americans during World War II). As I have argued elsewhere, I am inclined to think that other aspects of proposed and actual U.S. counter-terrorist policy violate the provisions as well (see Khawaja 2005, 2007, and 2008).

5. Policy issues

Though my principal aim here has not been policy analysis, it might be appropriate briefly to apply the preceding framework to issues of policy, if

only to indicate the policy implications of the theoretical views I've defended, and to indicate how those views differ from Maskaliunaite's. An initial issue is the need to be clear about the sort of threat we face from terrorism. On this point, it seems to me that Maskaliunaite's analysis has two clear deficiencies.

For one thing, her examples of terrorism and counter-terrorism are remarkably Eurocentric, and offer no extended discussion of the nature of contemporary Islamist terrorism. It is not at all obvious that we can understand Islamist terrorism by analogy with secular European terrorism of the last several decades, as Maskaliunaite does. Islamist fundamentalism is a distinctive political force with worldwide scope and ambitions, with millions of adherents, and with access to military weaponry and powerful capacities for military-scale operations.

Maskaliunaite suggests that such terrorism can be handled as though it were on par with ordinary crime, by the methods of law enforcement of the variety appropriate to the criminal justice context. But the example of September 11th suffices to demonstrate the ineffectuality of a law enforcement, or even paramilitary, approach to terrorism. (Put aside the fact that in many countries, including the U.S., criminal law enforcement has of necessity *become* a paramilitary endeavour.) The September 11th attacks were designed by conspirators in Afghanistan, themselves protected by tens of thousands of heavily armed militants in a country existing at the time in a virtual state of anarchy. Even if we imagined that the task of dealing with Al Qaeda in the wake of the attack was a matter of bringing criminal indictments against individual members of the organisation, the task of doing so far exceeded the capacities of any strictly police-level apparatus. It was obviously a military task, and one at which, to date, U.S., Afghan, Pakistani, and NATO forces have yet to succeed (see National Commission, 2004, ch. 1; Yoo, 2006, ch. 2).

Related to the preceding is the unclarity of Maskaliunaite's account of threat assessment. She is committed in her paper to the following set of claims (Maskaliunaite, 2007:12-17):

1. All threat assessments are subjective.
2. Governments exaggerate threat levels.
3. Since terrorists use a spiral-of-violence strategy, it is counterproductive to confront them.

4. Car accidents and natural disasters are worse than terrorism.
5. Terrorists may develop the capacity to use weapons of mass destruction, and in doing so, would constitute an important threat to constitutional democracies. But this set is multiply inconsistent.

First, and most obviously, claim (1) contradicts claims (2), (3), (4), and (5). If threat assessments are subjective, it is not possible to say that governments *exaggerate* threat levels, that confrontation of terrorism is counterproductive in *reducing* threat levels, that terrorism is *less threatening* than other events, or that terrorism could be an *important* threat. If threat assessments are subjective, we have no objective standard by which to measure their significance. But each of the italicised words presupposes an objective standard of measurement. One can't affirm the subjectivity of claims about threat assessment while making objective claims about it. One has to choose.

Second, claim (2) is true, but incomplete. It omits the fact that governments not only overstate threats, but understate them and state them accurately (National Commission, 2004, ch. 3). Maskaliunaite does not offer evidence for a blanket statement about exaggeration. The same might be said about claim (3). Terrorists use a spiral-of-violence strategy, and when they do, it is indeed counterproductive to confront them. But terrorists also prey on appeasement, and when they do, the failure to confront them emboldens them, and leads to more terrorism (National Commission, 2004, chs. 3-8).

Claim (4) is what logicians call a red herring – an irrelevant issue that functions to distract attention away from a relevant one. Even if car accidents and natural disasters produced more deaths than terrorism, we would still have to deal with terrorism; we would have to deal with all three things simultaneously. (After all, if accidents turned out to be worse than natural disasters, would Maskaliunaite argue that we should ignore natural disasters?) The fact remains that terrorism is a threat to which we must respond with force; accidents and natural disasters are not. Since the fundamental question at issue concerns the proper use of force, government policy concerning accidents and natural disasters is beside the point.

Finally, despite admitting its cogency, Maskaliunaite does nothing to deal with claim (5). But the truth of claim (5) affects that of all the other claims. As Ignatieff soundly points out, the use of WMD by terrorists would represent a fundamental evolution for the worse in the war on terror (Ignatieff, 2004b, ch. 5). Given the preceding, I find Maskaliunaite's discussion of specific counter-terrorist tactics questionable and oversimplified.

She tells us that the case against indefinite detention is "closed" because we can surveil suspected terrorists upon release (Maskaliunaite, 2007: 20). But this ignores the fact that surveillance is extremely difficult, that it can and often does fail, and that it is practically guaranteed to fail when a prisoner is released to an inaccessible foreign country where we have few reliable intelligence assets (for a notable example, see National Commission, 2004: 181-82). It also ignores the standard argument for indefinite detention: the individuals detained are enemy combatants who lack the status of prisoners of war, but can, like prisoners of war, be held until the end of hostilities.

Maskaliunaite asserts categorically that torture is wrong regardless of the circumstances (Maskaliunaite, 2007:20-21). Though I agree that there ought to be a presumption against torture, Maskaliunaite ignores the remarkable vagueness of the definitions of the relevant concepts ("torture," "coercive interrogation," "cruel and unusual treatment," "demeaning treatment," etc.; see Wittes, 2005/2006 and Yoo, 2006 ch. 7). She also ignores the difficult scenarios that might make coercive interrogation plausible (cf. the interrogation scenes in Winterbottom, 2007).

She likewise asserts that targeted killing is ineffective, but her argument is quite one-sided (Maskaliunaite, 2007:21; contrast Kershner, 2004; Yoo, 2006, ch. 3). For one thing, in relying on a pragmatic standard, she offers no in-principle argument that assassination is morally wrong. As for the pragmatic standard itself, since she offers no baseline for comparison, she offers no convincing empirical evidence that assassination of terrorists leaves us worse off than letting them live. Put bluntly, she offers no argument to show why the assassination of Al Qaeda operatives by the U.S. or Hamas operatives by Israel, has made things any worse than if those operatives were still alive. Commonsensically, the death of terrorist operatives diminishes the threat that comes from them.

Finally, on the question of pre-emptive strikes, she suggests that they cannot work because the targets of such strikes are fanatically motivated to fight back (Maskaliunaite, 2007:22). But this argument ignores the fact that no matter how fanatically motivated they may be, they cannot do so if they lack the material infrastructure to engage in combat. If pre-emptive strikes destroy that infrastructure, they destroy the enemy's material capacity to fight regardless of his motivation to do so. For all their zeal, the Afghan *mujahidin* would not have prevailed against the Soviets had they not been supplied by the U.S. with Stinger missiles, a material resource (Coll, 2004:11-13, 149-51). Even the most fanatical members of the Iranian military were forced to a stalemate in the Iran-Iraq war by the superior firepower of the Iraqi military (Pollock, 2002: 24). For all their motivation, the Nazis and Imperial Japanese were forced to surrender after facing a sufficiently powerful onslaught of physical force.

When a definite terrorist threat materialises, it has the same moral status as any threat (e.g., an ultimatum issued by a gunman): it is an initiation of force. It is therefore morally justified to respond to it with force. Al Qaeda issued its first threat against the U.S. in 1996. Had a pre-emptive strike destroyed the entire organisation at that time, it would have precluded the several Al Qaeda attacks that materialised thereafter. That by itself should show that pre-emptive strikes can in principle be justified.

Despite the length of my discussion, I am well aware that I have merely sketched a position that would take a great deal more elaboration to answer all reasonable objections. A sceptical or critical reader might, with perfect justification, demand a more detailed account of flourishing, justice, and rights than I have given here, and a more detailed account of how I would deal with apparent conflicts between rights and security. He or she might justifiably wonder about similarities between objective egoism and Machiavellianism not discussed here, and also wonder precisely how far I would be willing to go in defending indefinite detention, coercive interrogation, assassination, and pre-emptive strikes. These are legitimate questions, but they are questions at a different level of abstraction from the present essay, and have to be deferred for another occasion.

What I have been principally concerned to dispute here are the too-easily-accepted dichotomies that govern discourse on counter-terrorist policy and the ethics of warfare. It is much too quickly assumed in such discussions

that morality must be contrasted with practicality, that a concern for consequences conflicts with a concern for principle, that respect for rights necessarily conflicts with the requirements of security, and ultimately, that a concern for morality conflicts with a desire for victory. Such dichotomies, in my view, add nothing but confusion to a topic that is difficult enough to make sense of without them. Having said that, I would insist that the arguments for the dichotomies I challenge are weaker than the arguments I have presented. My aim here has been to push the burden of proof back toward those who espouse them, and offer a friendly challenge to them to meet it.

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¹ Walzer, 1974, which develops themes in the writings of Sartre, Camus, Machiavelli, and Weber.

² I prefer the term "teleology" to the more commonly-used term "consequentialism," as "teleology" more explicitly ties the view in question to its ancient sources in the writings of Plato, Aristotle, Cicero, and Aquinas. See Pettit, 1991. Some philosophers equate "consequentialism" with "utilitarianism" and thereby contrast "deontology" with "utilitarianism," but as the text makes clear, this is a mistake.

³ Some philosophers define "deontology" in terms of "intrinsically wrong acts," where the act is wrong in virtue of its "inherent nature," and this inherent nature is (supposedly) describable independently of its consequences. I confess to being unable to make any coherent sense of this idea: as far as I can see, the inherent nature of an act is tied to the consequences it either invariantly or characteristically brings about. It is one thing to say that certain consequences are part of the very identity of the act and another to say that the act is to be conceptualized independently of *any* consequences. The latter idea, central to a standard approach to deontology, strikes me as unintelligible, as is the idea of a theory based on it.

⁴ See note 2 above.

⁵ In fact, the very distinction between "lesser" and "greater" evils presupposes a teleological perspective, and so introduces yet another complication, and another incoherence, into the mix. A "lesser evil" is "lesser" in the sense of *producing less evil*. But "production of less evil" is by definition a teleological consideration, not a deontological one. In any case where the agent chooses the lesser over the greater evil, then, he or she is, as far as action is concerned, guided by teleological considerations. If teleological considerations guide the action, why think that the deontological verdict on the action has any significance?

⁶ I take "liberty" and "rights" to be essentially interchangeable: a right is a type of liberty, and a liberty is the freedom to act on one's rights. For the rationale for this sort of view, see Smith, 1995, chs. 6-7.

⁷ I take "survival," "flourishing," and "happiness" to be essentially interchangeable. For an excellent discussion of the rationale for this, see Smith, 2006:31-2

⁸ In fact, Walzer uses the term "consequentialist" instead of "teleological"; see note 2 above.