

**CONTEMPORARY TERRORIST ORGANIZATIONS AND THE THREAT TO
MICHAEL WALZER'S DEFENSE OF A SUPREME EMERGENCY
EXEMPTION FROM JUS IN BELLO**

A Thesis

by

THOMAS HARRISON ELLIS III

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of
MASTER OF ARTS

August 2009

Major Subject: Philosophy

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ABSTRACT

Contemporary Terrorist Organizations and the Threat to Michael Walzer's Defense of a
Supreme Emergency Exemption from *Jus in Bello*. (August 2009)

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Chair of Advisory Committee: Dr. John J. McDermott

Michael Walzer has forwarded an argument that defends an exemption from adherence to *Jus in Bello* when a state finds itself in a situation of "supreme emergency." The argument is morally problematic due to the fact that it defends the direct and intentional targeting of non-combatants, a restriction which has traditionally been considered as inviolable in the Just War tradition. This thesis seeks to demonstrate a further problem for Walzer's position, the fact that his argument is sufficiently broad that it may be co-opted by parties whom Walzer wishes to exclude, practitioners of contemporary terrorism. My method will be to demonstrate certain deficiencies in Walzer's argument, through analysis of the paradigm case he presents. I will then proceed to present two cases for the adoption of his "supreme emergency" defense by the terrorist organizations Al Qaeda and Hamas. I will show that both of these cases may ultimately fail under closer scrutiny, but will conclude that the ability for two such cases to be constructed demonstrates the ability for Walzer's defense to be adopted by an entity which does not suffer these same failings, ultimately dooming Walzer's argument.

For my mother,
who never once doubted me.

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CHAPTER I

INTRODUCTION

Michael Walzer's 1977 *Just and Unjust Wars* has been hailed as a modern classic. In clear and well reasoned prose, and through the use of historical example, Walzer develops a defense of the Just War tradition from the perspective of modern rights theory. Based upon the assumption that the fundamental human rights are a right to life and to liberty, Walzer develops a case for the state based *Bellum Justum* on the understanding that the principal rights of states are premised upon the relation of the state to the political body it represents. In particular, Walzer argues that the moral justification for the rights of states is grounded in each state's role as protector and defender of the common life of the community for which it is responsible. If no common life exists, the state ceases to be in possession of any rights. With this foundation, Walzer then goes on to articulate a defense for each of the categories and proscriptions of the just war framework in relation to this claim.

The *Bellum Justum* has traditionally been divided into two broad areas of concern: *Jus ad Bellum*, which is the justification for states resorting to war, and *Jus in Bello*, which details the just conduct of states once engaged in war. It is this latter area of concern, and more specifically an argument which Walzer forwards in regards to the overriding of the tenets of *jus in bello*, which is the primary focus of this thesis. In spite of all the praise that Walzer's work has received, one argument in his work has been the

This thesis follows the style of *The Chicago Manual of Style*.

center of wide spread criticism. That argument involves the construction of a moral defense for a state's overriding of *jus in bello* during situations of extreme duress. The name which Walzer gives to this defense is "supreme emergency". Walzer borrows this name from a term used in a speech given by Winston Churchill in 1940 to describe the situation Britain found itself in as it faced the stark threat of Nazi aggression. Walzer borrows not only the term, but also the actions of Britain during that period in order to construct his defense. The specific action in question is the decision by British leaders to engage in an area bombing campaign of German cities in which civilians were the primary victims of attack. This decision by British leaders is morally problematic due to the inviolable restriction in the just war tradition against the direct and intentional targeting of noncombatants, individuals traditionally termed as "innocents".

Walzer's defense of "supreme emergency" is grounded in his fundamental concern with the primacy of political community. Given the importance of community to Walzer's overall project, he argues that the defense of community is what allows a state to override adherence to *jus in bello* when the political community it represents is in grave danger. In particular, Walzer argues that when a state is in possession of just cause, is faced with imminent defeat, and that defeat would entail the destruction of the community it represents, the state may exempt itself from adherence to *jus in bello* until the threat is averted.

My interest in this specific argument of Walzer's is the apparent broadness of the defense. It is my contention that the broadness of his defense allows Walzer's argument to be co-opted by parties which Walzer wishes to exclude, and the ability of these parties

to adopt Walzer's defense allows the argument to provide a moral defense for actions which Walzer categorically denies as defensible. I specifically argue that Walzer's argument in its present state may be adopted as a defense for contemporary terrorism. I argue that, given the public statements of Osama bin Laden, a case can be made for the adoption of Walzer's "supreme emergency" defense by groups such as Al Qaeda, and this being the case, the repercussions for Walzer's project are dire.

My route towards this end will take the following path. In chapter two I will present a detailed review of Walzer's "supreme emergency" defense, noting areas and issues which I believe weaken Walzer's claims. I will pay special attention to the sole historical example which Walzer utilizes to illustrate his case, and will note that a closer inspection of the facts surrounding that case significantly weaken Walzer's claims regarding Britain's ability to adopt the defense. In chapter three I will construct a case, based upon the public statements of Osama bin Laden and noting similarity to the British case, which would allow for the adoption of Walzer's defense by Al Qaeda, the terrorist organization which bin Laden heads. In chapter four I will proceed to rebut certain features of the argument presented in chapter three in order to see if Walzer's argument may be salvaged in its present form. The specific means of attacking the argument developed in chapter three will be related to the conception of community with which bin Laden is working. In undermining that argument I will note that even though that argument may falter, a modified version may be adopted by another terrorist organization, Hamas, which does not suffer the same failings. I will argue that that argument may ultimately fail as well, but the ability for two such arguments to be

constructed paves the way for the adoption of Walzer's "supreme emergency" defense by an entity which may not suffer such failings. I will conclude that this ultimately dooms Walzer's argument in its present form.

CHAPTER II

SUPREME EMERGENCY: ITS DEFINITION AND APPLICATION

In his *Just and Unjust Wars*, Michael Walzer presents a clear and well argued defense of the just war framework from the perspective of modern rights theory. Indeed, his work has been so influential that it has come to be regarded as a modern classic, and has served as the touchstone for most contemporary discussions of just war. In his book, Walzer defends all of the traditional categories and proscriptions of *Jus ad Bellum* and *Jus in Bello* by grounding them in the fundamental human rights to life and to liberty. However, while Walzer's work has met with much praise, there is one particular component of his discussion which has met with significant criticism, and that is his defense of a state's exemption from adherence to *Jus in Bello* during situations of extreme duress. The name that Walzer gives to such a defense, and which he borrows from Winston Churchill, is "supreme emergency" (Walzer 2006, 251). According to Walzer, a "supreme emergency" is one in which a state is out of options and fighting for the very existence of the political community it represents. Given such a situation, where the state essentially has its "back against the wall", Walzer contends that it is possible to give a moral defense for actions that according to *jus in bello* would be strictly prohibited. The nature and scope of this defense is what I will examine here.

Traditionally, the just war framework has been viewed as a middle position between two very different political viewpoints, political realism and pacifism. States are usually defined as those institutions of government which are put in place to protect the rights of a people in a given territory, and political realism denies the claim that the

actions of states are analogous to the actions of persons, and thus denies that moral concerns have any place in discussions of state actions or in discussions of the interaction between states. From the perspective of political realism, morality is solely the concern of persons, and as states are not persons, the use of violence by the state is not subject to the same restrictions as the use of violence by persons because states do not exist within the moral realm. The sole concern of states is the maintenance and protection of the state, and sometimes violence is a tool towards that end, nothing more and nothing less. From the perspective of pacifism, violence is never justifiable, and therefore the use of violence by states can never have any defense. The just war framework developed as a compromise of sorts, an understanding that sometimes states cannot resolve their differences without resorting to violence. Given this sad fact, just war theorists, grounded in the belief that it is sometimes morally permissible for states to wage war, developed a set of criteria aimed at limiting the harm of state violence. Towards this end, just war theorists have identified two broad areas of consideration, *jus ad bellum* and *jus in bello*, and have historically modeled the defense of these criteria upon common law conceptions of interactions between individual persons.

Jus ad Bellum, consistent with the aim of minimizing the harm of war by limiting the occasions when states can justifiably enter into hostilities, concerns itself with the requirements a state must satisfy prior to engaging in war. There are many requirements for the satisfaction of *jus ad bellum*, such as the resort to violence being a matter of last resort, deriving from right intention and with an aim towards peace, the declaration of war coming from legitimate authority, there being a probability of success, and justness

of cause. Of these, justness of cause is seen as the principle consideration and is traditionally defined as a response to aggression, where aggression is generally defined as the use of force in violation of the basic rights of another.

Jus in Bello becomes a consideration once states find themselves engaged in war, and finds as its principle concern the proper conduct of states and their agents in the waging of war. Given the just war aim of containing and curtailing the violence of war, the two principles of *jus in bello* are: 1) proportionality of means and ends, which aims at limiting the application of force solely to what is necessary to achieve legitimate military objectives, and 2) discrimination, which aims at distinguishing legitimate from illegitimate targets of attack. Of these two, discrimination is viewed as the primary consideration, as it aims at guaranteeing that violence is only directed at those institutions and persons who are directly engaged in harming. What allows the application of force against those engaged in harming is a forfeiture of the right to not be attacked as a consequence of their belligerence. Non-combatants, those persons who are not engaged in harming, are to be exempt from attack because they are free from any actions which have caused them to lose their rights. In fact, from the just war perspective, non-combatants are to be protected as much as possible from attack, and this point is emphasized in the traditional labeling of non-combatants as “innocents.” The extent to which innocents must be protected is somewhat a matter of dispute, with theorists such as Grotius arguing that non-combatant immunity is a principle so inviolable that it “cannot be changed, even by God” (Orend 2006, 141), but the vast majority of theorists allow for occasional harm towards non-combatants so long as that

harm is not intentional and is consistent with the doctrine of double-effect. The protection of innocents is considered as foundational to the just war framework, and hence why Walzer's defense of an exemption from *jus in bello* requires scrutiny since this defense allows for the direct, intentional targeting of innocents.

Walzer's defense of a "supreme emergency exemption" to *jus in bello* has three requirements, two explicit and one implied. The explicit requirements are that the threat of defeat is imminent, and that defeat brings with it the very real threat of destruction of the political community for which the state is responsible. The implied requirement is that the state making the appeal to "supreme emergency" has justness of cause on its side. It is this implied requirement which I will address first.

Justness of cause is usually defined as a response to aggression, either in self defense, or in defense of another who is a victim of aggression. Aggression is usually defined as the use of armed force against another's basic rights, with the principle rights of states being the right to territorial integrity and political sovereignty. Traditionally, this rights violation has been seen as taking the form of classical military strikes, such as the invasion of Poland by Nazi Germany in 1939 or the invasion of Kuwait by Iraq in 1990. In the commission of an act of aggression the aggressive state is viewed as forfeiting its own rights and thus subject to attack in response, either by the party that is the victim state, or by third parties acting on behalf of the victim state. Walzer, however, in arguing for the defensibility of preemptive strikes, extends the definition of aggression to include not only the actual use of force, but also the anticipation of the use of force in violation of a state's rights. According to Walzer, when a state takes up an aggressive

posture, and manifests an intention to act upon this posturing, the state is already guilty of aggression and hence has forfeited its right not to be attacked. Many contemporary theorists agree with Walzer on this point, but it is a position that is at odds with some classical theorists such as Vitoria who insists that one must wait for an actual attack before going to war to fend off the attack (Orend 2006, 77). Given the traditional modeling of just war criteria upon interactions between individuals, Vitoria's position is understandable as it is often the case in conflicts between individuals that aggressive rhetoric and posturing never actually manifests into actual violence. But given the level of violence that states can bring to bear, Walzer's defense of anticipatory strikes seems to have much merit. In a conflict between individuals a melee will rarely entail death, but in conflicts between states death and destruction on a grand scale is often the case. The issue, however, is that Walzer's defense of preemptive attack hinges upon a wider conception of the definition of aggression, one which opens up a significant gray area in terms of interpretation, and may give states grounds for resorting to violence under the impression that they have justness of cause, when in fact the resort to violence may not be necessary and may actually be at odds with the just war aim of an eye towards peace. An example of this may be seen in the current situation in Iraq. Prior to the March 2003 invasion of Iraq, the United States made a compelling case to the international community that Iraq, under Saddam Hussein's regime, posed a credible and imminent threat to the United States. The argument was made that the Hussein regime had access to a considerable store of weapons of mass-destruction, was guilty of a history of aggressive policies against its own people and other states, such as its attack upon the

Kurds in Northern Iraq and its invasion of Kuwait in 1990, and had thereby demonstrated a willingness to deploy such weaponry in violation of the rights of others. In addition, it was argued that the Hussein regime was forming alliances with groups, such as Al Qaeda, who had no qualms with employing those weapons against western states such as the United States and this served to further magnify the threat that Iraq posed. Thus, the Hussein regime was portrayed as posing a grave and imminent threat, and this threat justified a preemptive strike by the United States and its allies. After the invasion, of course, much of this evidence has been shown to be in error, and thus the United States's justness of cause in this particular situation has come into question. This may not, in and of itself, undermine Walzer's extending the definition of aggression in order to justify preemptive first strikes, and may in fact simply require the addition of a significant "due care" component, but it does raise questions of how states acquire justness of cause in situations where they have not yet been directly attacked.

States, by definition, only gain their rights from the rights of those for whom they are responsible. States thus have an obligation to safeguard the rights of their people. If the basic rights of their people are a right to life and to liberty, surely the right to safely pursue those rights must also be guaranteed, and thus the state must do all within its power to guarantee the safety of those whom it represents. But in guaranteeing the safety of the governed, the question arises as to how much leeway we are to afford states in protecting the safety of their people when the state's protecting the rights of its citizenry may come at the expense of the rights of others. Walzer is clear that fear alone is not sufficient to justify preemptive action under the guise of justness of cause, that there

must also be credibility of threat in order to gird the appeal to justice, but we cannot dismiss the fact that fear plays an important role in the interpretation of threats, and thus may be an issue in how states come to view themselves in possession of justice when they resort to violence. Fear is difficult to quantify, and its effect upon how states perceive and interpret threats cannot be disregarded. It is the fact that fear plays a crucial role in how states and their representatives interpret and respond to threats which I believe may pose considerable issues for other components of Walzer's theory, such as his defense of a "supreme emergency" exemption to *jus in bello*, for fear may cloud the interpretation of what counts as aggression, and with it a state's understanding of its possession of justness of cause.

A state's understanding of its own justness of cause is significant due to Walzer's appeal to a "sliding scale" of justifiable means, which helps to buttress his defense of "supreme emergency." As he puts it, "the truth about war rights is best expressed in terms of a sliding scale: *the more justice, the more right*" (Walzer 2006, 229). What this means is that, according to Walzer, justness of cause grants a state considerably more discretion in the actions it may perform in defense of its rights, and thus a state which considers itself as in possession of justice may employ significantly more violence in relation to its perception of its possession of justice. The reasoning behind this is closely allied to Sherman's famous dictum that "war is hell," and with it his view that "war is entirely and singularly the crime of those who begin it, and soldiers resisting aggression (or rebellion) can never be blamed for anything they do that brings victory closer" (Walzer 2006, 32). Walzer's sliding scale is a bit more refined than this,

but the idea is essentially the same in regards to what a state which considers itself a victim may do in its own defense. The implications of this putative possession of justice must therefore be factored into any understanding of Walzer's theory if it is to serve as a normative guide for the application of political violence.

Turning aside further considerations of justness of cause for the moment, let us consider the other criteria Walzer requires for an appeal to "supreme emergency." The first of these two explicit criteria is the imminence of defeat. In order to justify abandoning the war convention, by which is meant "the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct" (Walzer 2006, 44), defeat must loom as a real and close threat. The proximity of defeat is required in order to justify "fighting dirty", as the closeness of defeat is, in Walzer's view, what magnifies the threat faced by the victim state. When the very real threat of defeat by a hostile and aggressive enemy looms near, the necessity of staving off defeat is what justifies the resort to otherwise impermissible action. The imminence of defeat is what puts a state under the rule of necessity, and, as Walzer notes, "necessity knows no rules" (Walzer 2006, 254). But what does it mean for defeat to be imminent? For Walzer this is a situation when a state has its "back against the wall", a situation "when conventional means of resistance are hopeless or worn out, anything goes (anything that is necessary to win)" (Walzer 2006, 252). But this, too, seems to contain an implicit perceptual component. The example that Walzer uses as his sole paradigm case of a justified appeal to "supreme emergency" is the decision by Britain during World War II to utilize

indiscriminate bombing of German cities as an offensive weapon. I will examine this example in greater detail below, but it is worth noting here that the apparent imminence of defeat which framed Churchill's description of Britain's predicament in 1940 may not have been as dire as his rhetoric seemed to convey. If defeat was not as close as it might have seemed, and this historical event serves as the paradigm case for normative guidance, then we find another possible extension of the application of Walzer's "supreme emergency" doctrine to cases which Walzer may not have intended. Just such an application will be the subject of the next chapter.

Let us, however, assume that imminent defeat is faced. Does this alone justify appeal to extraordinary measures? According to Walzer it does not. Imminence of defeat must be conjoined with a grave threat of what that defeat would entail before an appeal to "supreme emergency" can be satisfied. The threat must be severe, and its nature of a sort that it threatens not only the state which faces defeat, but also the very political community that state represents. It is the nature of the threat faced, a threat which must be "of an unusual and horrifying kind," (Walzer 2006, 253), that when coupled with the closeness of defeat grants a moral defense for an otherwise immoral action, and hence accounts for the paradoxical nature of Walzer's defense, a moral defense for an action that remains immoral. So, what types of threats count? Walzer admits that it is difficult to give a definitive account, and thus he is only able to paint the "rough contours of the map" (Walzer 2006, 253). He uses the example of the threat to Britain during World War II posed by Nazi Germany, which he admits lies at the far end of the spectrum, as a clear example of the type of threat severe enough to warrant appeal to "supreme

emergency,” and thus that threats of a lesser degree may also count if they are sufficiently like the Nazi case to bring the victim state under the rule of necessity. Even though Walzer gives us only one example, we see in it the nature of the threats that he has in mind and those are threats which attack at the core of political communities, threats which endanger the very *ongoingness*¹ of the political community, “the survival and freedom of political communities – whose members share a way of life, developed by their ancestors, to be passed on to their children – are the highest values of international society” (Walzer 2006, 254). Thus it would seem that any threat which seeks to undermine a political community’s way of life, its very conception of self, seems to count. It is this characterization which, given that it also implies a certain subjective conception of identity, opens Walzer’s doctrine to greater application than he might have intended.

Having now reviewed the conditions required for appeal to “supreme emergency,” we must examine how it is put into use as Walzer intends this doctrine to serve not only as a theoretical exercise, but also as a normative guide for political leaders during wartime. As stated above, Walzer only gives us one example, the decision by British leaders during World War II to carry out a campaign of indiscriminate bombing of German cities. With this as Walzer’s sole example, it must serve as the paradigm case, and thus any deficiency in the example may reveal deficiencies in Walzer’s defense.

¹ This term is Walzer’s. He uses it when referencing the importance of historicity and continuity to community.

The situation that Britain faced in 1940 was indeed dire. With the fall of France in 1940, and with the United States and the Soviet Union not yet in the fight, Britain remained the sole European state fighting against Nazi aggression and thus was left to shoulder the full weight of all the Nazi war machine could bring to bear. Having failed to stop the Nazi invasion of Norway, and with it Nazi access to the supply of iron ore shipping from Norwegian ports which allowed Nazi Germany to maintain its accumulation of war materiel, the question British leaders faced involved what means they had available to prevent defeat by Nazi Germany and how best to respond to the threat that they faced. The answer they came up with was the use of air power. British leaders viewed Bomber Command as the sole effective offensive weapon available to them and thus decided to utilize it to initiate a bombing campaign directed at German cities. What this decision entailed was significant, for it required abandonment of the war convention.

At the time British leaders made their decision to bomb German cities the accuracy of navigational equipment was severely deficient, and this impacted bombing precision: Bomb hits within a 5-mile radius of the intended target were the norm and considered as a success. In addition, German air defenses were strong enough to make daylight attacks virtually ineffectual and therefore requiring bombing raids to be run at night, which increased the likelihood of errant delivery of ordnance. Given these realities, the decision by British leaders to adopt a heavy air offensive against German cities was made with the full knowledge that primarily non-combatants would fall victim to the bombing. This knowledge did not dissuade British leaders, and in fact, attacks

against non-combatants formed part of the intention behind the decision. A significant component of the strategy was an attack against the morale of the German people, an attempt to undermine their support of the aggressive Nazi regime. In addition, the attack against the German people was viewed as justified as a reprisal for the *Luftwaffe* attacks on London and Coventry, which gave British leaders apparent further justification for their decision to employ methods in which civilians would suffer the greater harm. This decision, however, given it involved the direct and intentional targeting of non-combatants, was directly at odds with the war convention, and thus at odds with morality. The issue before us, then, is might some moral defense be given for the decision by British leaders to pursue this bombing campaign against the largely innocent German populace? According to Walzer the answer is yes.

The reason for Walzer's claim that a moral defense for the decision by British leaders to bomb German cities can be given is his claim that this was clearly a case which falls under the "supreme emergency" exemption. If he is correct, then Britain at the time must have satisfied all three conditions for the application of this defense. There is little doubt that Britain possessed justness of cause. Britain entered the war in response to the Nazi invasion of Poland, and thus the justness of cause requirement would clearly be met under the auspice of "other defense against aggression." The issue then is whether or not Britain fully satisfied the other two conditions of "supreme emergency": 1) imminence of defeat and 2) gravity of threat faced.

There is no question that the threat Britain faced at the hands of Nazi aggression was of an "unusual and horrifying kind," and one that would annihilate the political

community of Britain. Nazi occupation of the British islands would have entailed the undermining of all basic norms of the British people as they had developed over hundreds of years, and there is sufficient evidence that Hitler intended to remake Britain in line with his conception of a New Order in Europe. This would likely have manifested first with the systematic elimination of all the leadership elements in Britain, as had been the case in Poland after the Nazi invasion there, to be followed by the employment of more draconian measures against the rest of the British populace. There were plans in place by the Nazis for the mass deportation of British workers to Germany to work in factories and on farms - part of this plan stipulated that the entire “able-bodied male population between the ages of seventeen and forty-five will ... be interned and dispatched to the Continent with the minimum of delay” - as well as a strict requisition of foodstuffs and raw material well beyond that required for the bare subsistence of the population (Fleming 1957, 260-264). It goes without saying that a Nazi invasion of the British homeland would have also entailed the deportation of all British Jews to European concentration camps to join their continental brethren. Thus it is clear that the gravity of threat criterion was safely satisfied by the British as they assuredly faced slavery and massacre at the hands of the Nazis should Britain fall. This leaves us with one final consideration, was the threat of defeat imminent?

For there to be an affirmative response to the question of imminence of defeat, British leaders would have had to have no other military means of resistance available other than the indiscriminate bombing campaign they proposed, and a Nazi invasion of Britain would have also needed to be a real and close threat. The certainty of both of

these is questionable. While Nazi Germany did devise a plan for an invasion of the British islands, Operation Sea Lion, its ability to execute this plan would require air superiority over Britain, as well as either a significant increase in its naval power, or some other means to minimize the superior capabilities of the British navy. A successful amphibious invasion of Britain would have required overcoming the vast disparity between the British and German navies. The British navy was significantly stronger than the German navy, and this strength was magnified by the fact that the German *Kriegsmarine* had lost a large part of its destroyer fleet in the invasion of Norway, either to direct loss or battle damage. Furthermore, the strongest arm of the German *Kriegsmarine* was its U-boat fleet, but this would be of little use in the relatively shallow and narrow British Channel and thus their strength in this regard could not be considered as a factor. In addition, the German *Kriegsmarine* was not in possession of any specialized landing crafts that would be required for an amphibious invasion of Britain, the requirement for such vessels a fact which Nazi Germany recognized after the invasion of Norway in 1940. The construction of the specialized landing crafts needed would have taken a considerable amount of time. Thus, during the planning stages of Operation Sea Lion, small merchant vessels and river craft were modified for use while plans for the specialized landing crafts required could be drawn up and put into production. Without access to vessels specifically designed for the task, however, the probability of a successful amphibious invasion of Britain rested squarely upon air superiority to support a channel crossing through Britain's defenses. The question of dominance of the air over Britain was effectively settled during the Battle of Britain,

which led to the indefinite shelving of Operation Sea Lion on 17 September, 1940. Thus the imminence of defeat criterion may be called into question, as it appears that an air campaign directed against German civilians was not necessarily the only means available to British leaders to protect the British homeland. Of course, one could argue that the difficulty of a successful amphibious invasion of Britain, coupled with the British victory of the Battle for Britain, was not sufficient to negate the threat that Britain faced, but it does call into question the proximity of defeat, and that proximity is required for Walzer's argument to hold.

Perhaps, however, protection of the British islands was not the sole obligation faced by British leaders in 1940. In order to salvage the argument for their appeal to "supreme emergency," and thus give a moral defense for the actions they took in waging an air campaign against German civilians, we need to extend the obligation of British leaders not only to their own people, but also to the peoples for whom they initially took up arms in defense. Walzer does not argue this point, but given the realities of the strategic situation presented above, I believe that such an expansion of responsibility may be required in order to maintain the imminence of defeat criterion. If no extension is added, the argument falters. Thus this extension, it could be argued, would make the British leaders responsible not only for the protection of their own citizenry, but also for those who had already been conquered by Nazi Germany. If this is correct, as I believe it is, it would make British leaders responsible for lands far beyond their own borders. The addition of this extension, which in effect is an expansion of the political community for whom the leaders are responsible, in turn also makes British leaders responsible for a

larger portion of territory, and we can then imagine their understanding of the situation as akin to that faced by a government whose territorial rights have been trampled and, though their capital (the British Islands) may be safe, is nonetheless on the verge of defeat given the loss of all territories surrounding the capital. It is not hard to imagine the leaders of Britain viewing themselves as in just such a situation. Britain entered the fight on behalf of Poland, in response to Nazi aggression there. This justness of cause via “other defense against aggression” presented a willful assumption of responsibility for those conquered peoples in Poland who had been wronged, and as the war proceeded also for those peoples in the conquered lands of their allies. The assumption of that responsibility, based perhaps on a “people like us” notion of community, may be what is crucial to maintaining the satisfaction of the criterion of imminent defeat. In the apparent need of this assumption of responsibility to maintain the success of Walzer’s defense in this paradigm case, we see an implication of responsibility which Walzer does not address. I believe the absence of any address of this requirement opens up Walzer’s defense to far greater adoption than he anticipates, given the multiple ways this extension of responsibility may be construed. In the extension of areas of responsibility, the door is opened for states to assume rights violations against themselves and their political communities which do not fit the generally understood conception of the relation between states and those they are legitimately charged with protecting.

In the discussion above, I believe it is clear that there are certain assumptions in Walzer’s defense of “supreme emergency” that he does not directly address. The notion of justness of cause of course carries with it a certain subjective component. I doubt that

any nation that wages war views itself as lacking possession of justice, even if their perception of that justice is in error. Given the classical conception of justice in war, however, it is easy to see who is actually in possession of justice, the one who was initially attacked and anyone who comes to the defense of another that has been the victim of initial attack. The wrong is seen as being the first to resort to violence, for this commission of violence necessarily is in violation of another's rights. But Walzer's expansion of the definition of aggression, by the addition of the criteria for the justification of anticipatory attack, widens that definition to also sometimes include the party that initiates the resort to violence. When one factors in the role that fear plays in the interpretation of perceived threat, which is critical to an expanded definition of aggression, the notion of justice is no longer as black and white an assessment as previously conceived. This is significant, because the "sliding scale" grants greater discretion in the application of violence to those who are in possession of justice. Thus any ambiguity in the possession of justice needs to be clarified beyond any doubt. Coupling this vagueness in regards to the possession of justice with the idea of expanded responsibility noted above, which I believe is best premised on the notion of an extended conception of political community, we can see further issues for Walzer's defense. If I am correct that this expansion of responsibility is best construed as an extension of the role of community, based on an understanding of Britain as taking up arms on behalf of others with whom they shared at least some similarity in regards to resistance to Nazi aggression, a further broadening of the appeal to "supreme emergency" can be seen in its adoption by those who may perceive themselves as acting on behalf of others who are

unable to resist those who are believed to be acting against their fundamental rights. This would further open up the path to adoption of this defense by parties Walzer might wish to exclude. An example of this will be given in the next chapter as we direct this discussion to the nature of the failings of Walzer's current defense of "supreme emergency" by construction of an argument that allows for the adoption of his defense by the terrorist organization Al Qaeda. Walzer has categorically denied that any defense for terrorism can be given. As we shall see, however, a plausible defense of contemporary terrorism can be given. That defense is Walzer's own.

CHAPTER III

TERRORISM, OSAMA BIN LADEN, AND SUPREME EMERGENCY

September 11, 2001 is a date that brought the names of Osama bin Laden and Al Qaeda, the organization he heads, into the collective consciousness of all Americans, as well as the rest of the world. Prior to that date, for most Americans “terrorism” was a term that cropped up occasionally, usually only in passing due to a story on the nightly news regarding goings on in distant lands, and thus rarely with any sense of urgency and without any sense of shared victimhood. On the morning of September 11, 2001 however, the world saw a coordinated attack on multiple high-visibility targets, perpetrated by a group of extremely motivated individuals which resulted in the deaths of thousands of unsuspecting victims. The world was changed, and we with it.

Shortly after the attacks on the World Trade Center and the Pentagon, and the crash in Pennsylvania of a fourth hijacked airliner re-routed towards Washington D.C. by its hijackers, American leaders rapidly identified those behind such heinous crimes. The group they identified as the culprit was known as Al Qaeda and this group’s leader a man by the name of Osama bin Laden. The Bush administration was quick to liken the attacks of September 11, 2001 to the attack on Pearl Harbor on December 7, 1941, which initiated the entrance of the United States into World War II. With this characterization of the attacks, the Bush administration thus declared that we were now at war, a “war against terrorism.” I do take some issue with the defining of this conflict as a “war against terrorism.” It is, after all, hard to wage war against such a nebulous

entity, let alone make it conform to the traditional tenets of the *Bellum Justum*. That issue notwithstanding, I believe that the administration had it at least partially correct. We were and are at war, for this is how our enemies view the conflict, and thus how they define and defend the actions that they take. It is crucial that we understand this, for if we do not understand our enemies and their motivations, viewing them only in caricature, we may never hope to resolve the issues which underlie the current conflict and hence find no end to this terrible situation that we currently find ourselves mired in. More importantly, if this is indeed a war, then it stands to reason that the just war framework can serve as a guide to our moral understanding of the relevant issues at hand: the principle issue before us being whether or not there can be any justification for the moral permissibility of acts deemed as “terrorism.”

Before addressing the issue of whether or not “terrorism” can have any moral defense, some agreement on terminology must be found. There is not yet any universally accepted definition of the term, but it may be possible to come up with something which is sufficient to the task before us. Walzer states that terrorism’s “purpose is to destroy the morale of a nation or a class, to undercut its solidarity; its method is the random murder of innocent people. Randomness is the crucial feature of terrorist activity” (Walzer 2006, 197). Will this characterization do? I do not believe that it will. This characterization is problematic for two reasons. First, it undermines the possibility of moral assessment of acts labeled as “terrorism” due to the fact that the definition labels such acts as murder, as unjustified killings, in the definition itself. It begs the question of whether or not the killings committed can have any justification by assuming that they

have no justification at the outset. As Andrew Valls notes, “the trouble with this approach is that it prejudices the substantive moral issue by a definitional consideration” (Valls 2002, 564). Secondly, this definition is problematic because it hinges on the randomness of the targets. It might appear that the victims of such acts are random, but it very well could be the case that the victims are no more random than the targets of legitimate acts of war. Randomness is, after all, a matter of perspective. Terrorists often take great pains to choose their targets for maximum effect, and thus the killings of workers at a ball-bearing factory during a militarily legitimate bombing raid could be seen as just as “random” as the killing of the workers in the Pentagon on September 11, 2001, depending upon which viewpoint one takes. In addition, Walzer’s definition fails to note any political motivation, and political motivation seems to be a key component of most, if not all, acts that fall under the heading of “terrorism,” as it is now generally understood from the contemporary practice of this form of violence. Thus Walzer’s definition seems insufficient to the task.

Valls, in noting the deficiencies in definitions such as the one posed by Walzer, offers the following: “my stipulative definition of *terrorism* ... is simply that it is violence committed by non-state actors against persons or property for political purposes” (Valls 2002, 565). This definition captures the political motivation which seems characteristic of all contemporary acts of terrorism, but is not without its own problems. First, it is extremely broad. Under the definition offered by Valls, many actions which we would not generally conceive of as acts of terrorism would be labeled as such. For example, Scott Lowe notes that under Valls’ working definition the

destruction of a mayor's mailbox by a group of rebellious teens upset over her support of some local ordinance they disagree with would be labeled as a terrorist act. This of course seems absurd, as most would view it simply as an act of vandalism and nothing more (Lowe 2003, 102). The broadness of Valls' definition therefore seems at least somewhat at odds with ordinary usage of the term, and that will not aid us in coming up with a term sufficiently useful for moral assessment. Further, one glaring omission in Valls' definition is any note of the fact that states, too, can commit acts of terrorism. This omission, however, is noted by Valls as its exclusion was on purpose. The goal of his paper was an attempt to argue that at least some acts of "terrorism," specifically those committed by non-state actors, can conform to the just war framework, and thereby have some justification or be open to moral consideration. He assumed that acts of terrorism by states would fall under the scrutiny of the just war framework, and the morality of those actions judged from that perspective. Valls' approach in that paper is not our primary purpose here, and I believe we can safely expand his definition to include states, though that expansion will require further amendment in order to differentiate state terrorism from other legitimate acts of war. Any such amendment to include state sponsored terrorism will not get us around the issue of broadness without even further revision.

How then to define the term "terrorism"? Our discussion so far has found fault in the definitions offered by Walzer and Valls, but those failings have at least provided some insight into what a working definition must include. Any working definition must include that terrorist acts can be committed by both state and non-state actors. It must

further include the stipulation that the objective is political in nature, the intent must be towards achieving some political aim, and is also usually aimed at innocents. Some may wish to be more forceful, and state that *only* acts of violence against innocents count, but I think that would be too restrictive. Limiting our definition to include only attacks against innocents would require us to exclude attacks against military targets, such as the bombing of the U.S.S. Cole in Yemen on October 12, 2000 or the bombing of the Marine barracks in Beirut on October 23, 1983. Both of these attacks are generally viewed as acts of terrorism, and thus if we are to aim for a working definition that comports with ordinary usage, we must be careful to not limit our definition solely to attacks upon innocents. Thus I believe we may arrive at a working definition of “terrorism” as “indiscriminate violence committed by state or non-state actors against property or persons with the intent of affecting political change.”

I realize that this definition may still be disputed by many, particularly because I have failed to include the inducement of terror or fear as a component of the definition, which many authors believe a requirement. I agree with Valls that such an explicit inclusion is not necessary to a working definition of “terrorism.” Even if it were, any such qualms would be sufficiently addressed by the stipulation that the intent is to affect political change, as the inducement of fear could be a means towards that end. Therefore I believe this definition will suffice for the remainder of this discussion.

Having arrived at a working definition of “terrorism,” the question before us now is whether or not any act of terrorism may be morally permissible? The definition I have offered stipulates that terrorist acts are acts of political violence, and as such fall under

the purview of the just war framework. The definition also specifies that the acts must be indiscriminate in nature, which would place such acts at odds with the *jus in bello* requirement for discrimination, that is the avoidance of directing violence at those not directly engaged in harming. It would seem that these acts must necessarily be viewed as immoral due to their indiscriminate nature. Does this mean that no moral defense can be given? I believe the answer to this question is no. A moral defense can be given, as evidenced by Walzer's defense of Britain's terror-bombing of German cities during World War II. The indiscriminate bombing of German cities by Britain clearly counts as an act of terrorism under the definition I have forwarded above, and as such would be classified as an immoral action. Walzer does not deny this, yet he maintains the claim that a moral defense of this action may still be given in the form of his "supreme emergency" exemption from the requirements of *jus in bello*. It might be argued that Walzer's defense of "supreme emergency" seems inconsistent. After all, Walzer admits that his defense of the British terror-bombing of German cities does not remove the immorality of the decision to directly target innocents, but merely provides a moral defense for the British leaders who made that decision. He admits to no inconsistency, but simply states that any apparent inconsistency is due to the paradoxical nature of the defense, a defense for those "special cases where victory is so important or defeat so frightening that it is morally, as well as militarily, necessary to override the rules of war" (Walzer 2006, 132). I will not at this point address this particular concern, but will simply accept Walzer's classification of "supreme emergency" as paradoxical.

If a defense of Britain's use of terrorism may be given, would such a defense work in other cases? I believe the answer to this question is yes. Surely any state that finds itself in essentially the same situation as Britain faced in 1940 would be able to appeal to Walzer's "supreme emergency" doctrine. In fact, as there is no explicit component in Walzer's defense that stipulates "supreme emergency" as available only to states, his defense may also extend to non-state actors, provided that they, too, are able to satisfy the criteria that Walzer has put forth. What, then, would such an argument look like?

The application of Walzer's "supreme emergency" defense rests upon three requirements. First, the agent or agents appealing to "supreme emergency" must have justness of cause. Second, defeat must be imminent and no other practical means of resistance available. Finally, the defeat must entail a significant harm, a threat which will undermine the very character of the political community at risk, and not solely a threat to the state which is responsible for that political community. If these three criteria are satisfied, an appeal to "supreme emergency" may be made. Unfortunately, Walzer gives us but one example of a clear appeal to this doctrine, the case of British area bombing during World War II. This case, then, will serve as the paradigm against which to gauge other appeals to Walzer's doctrine.

Having defined a working definition of "terrorism," and provided a brief overview of the fundamental requirements for appeal to "supreme emergency," I now wish to see if Walzer's defense would apply to at least some terrorist activity. I believe it will, for it is my contention that Walzer's defense is not as restrictive as he believes, and

thus is open to adoption in a far larger number of cases than he would wish to admit. If his argument for the overriding of *jus in bello* does cover at least some of these cases, then it may reveal more significant problems for Walzer's argument than the mere appearance of inconsistency.

The specific case I have in mind is adoption of a "supreme emergency" defense by the terrorist organization known as Al Qaeda. I believe, based upon the public statements of the leadership of this organization, that they view themselves as facing a threat sufficiently like the one faced by the British in 1940, and based upon this they might likewise be able to make appeal to the same defense for their targeting of innocents. A review of these public statements, and the statements of Osama bin Laden in particular, reveal a rhetoric which ostensibly is couched in just war terminology. There are frequent references to rights vindication, to being victims of aggression, and to attempting to save the *umma*, the nation or community of Islam, from extinction. It could be argued that the usage of these terms is purely a form of rhetorical flourish, and does not necessarily reveal their motivations, but the same could be said of the usage of this terminology by any state or political figure, and thus I see no initial grounds for dismissing them.

Before presenting a parity case from the public statements of Al Qaeda's leadership to Walzer's defense of the decision of British commanders during the darkest days of World War II, it might help to first briefly review the history of the rise of Islamic fundamentalism in order to better understand the context from which Islamist appeals to violence against innocents arise. The growth of Islamic fundamentalism has

its roots in the fall of the Ottoman Empire following its defeat at the end of World War I. After the dissolution of the Ottoman Empire, Arabic-speaking peoples sought to form an independent Arab state or states. During the interwar years, they were subject to British and French colonialism, but this did not quell their desire for independence. In fact, this Western influence brought with it notions of secular nationalism and modernity which further spurred many Arab thinkers' drive for independence. This independence came in the years following World War II, and with it expectations of modern societies with dynamic economies and powerful armies as a result of adherence to the values gained from this Western influence. These expectations were not met, and the early years of independence were marred by autocratic leaders, repressive governments, overcrowded cities and failed economies. The rise of the state of Israel furthered this disillusion with Western ideals. The failure to achieve an independent Arab state in Palestine due to Israel's victory in the Arab-Israeli War of 1948-49, and with it the expulsion of close to three-quarters of a million Palestinian Arabs from their homes, followed by the crushing defeat of a coalition of Arab states in the Six-Day War of 1967, was viewed as catastrophe, which is evident in the terming of the creation of the state of Israel and all that it entailed as *al Nakba*, the "catastrophe." This view was further exacerbated by the loss of Jerusalem, the third holiest city in Islam, in the 1967 Six-Day War

In the aftermath of these events, Arab scholars attempted to analyze the cause behind these failings. Some argued that the issue was not a failing of the adoption of Western secular ideals, but the failure to effectively and efficiently modernize. In short, the more modern state won. This view, however, was overshadowed by the views of a

group of thinkers who came to be known as Islamic Fundamentalists. These Islamic Fundamentalists argued that Israel won the 1967 war because they had stayed true to their faith, while the Arab states had failed precisely because they had not. Still other Islamic Fundamentalist thinkers took it further, and argued for the abandonment of Western ideologies and a return to Islam. The continued failings of these secular governments in the years that followed the 1967 defeat did nothing but fuel the flames of this movement, and the growing popularity of this viewpoint is a critical component of the understanding of community, embodied in the *umma*, that has shaped the view of Osama bin Laden and the members of Al Qaeda. The situation was succinctly expressed in an article which appeared in the *Economist* shortly after the attacks of September 11, 2001:

The past three decades have provided fertile ground for these ideas. Nearly every Muslim country has experienced the kind of social stress that generates severe doubt, discontent and despair. Populations have exploded. Cities, once the abode of the privileged, have been overrun by impoverished, disoriented provincials. The authoritarian nature of many post-colonial governments, the frequent failure of their great plans, and their continued dependence on western money, arms and science have discredited their brand of secularism. The intrusion of increasingly liberal western ways, brought by radio, films, television, the Internet and tourism, has engendered schism by seducing some and alienating others ... The Palestinian struggle, in particular, has stoked rage against not only Israel and its backers, pre-eminently the United States, but also the feebleness of Arab and Muslim governments in the face of them.²

Before we proceed to the construction of a “supreme emergency” parity case for the actions of Al Qaeda, a few words regarding Islam seem necessary to further fill in

²Enemies within, enemies without. 2001. *Economist*, 22 September.

the context of the arguments forwarded by Al Qaeda. Islam is both a religion and a sociopolitical system. There is no separation of mosque and state in Islam. This has its foundation in the life of the Prophet Mohammed, who served not only as a religious leader, due to his receiving of the Koran via divine revelation, but also served as a political figure. He conducted affairs of state, engaged in diplomatic interactions with its neighbors, and fought wars against its enemies. His life serves as the model for Islamic fundamentalists who argue for *hakimiyat Allah*, God's rule, under which *shari'ah*, divine law, holds sway. *Shari'ah* is a comprehensive body of laws which is drawn primarily from commandments, precedents and prohibitions found in the Koran and the *Sunna*. The *Sunna* is a collection of the words, practices, and habits of the Prophet Mohammed as recorded in the *Hadith*, which are collections of the words and deeds of the Prophet Mohammed as transmitted by reliable witnesses. Emulation of the Prophet Mohammed is seen as fundamental to living a life in accordance with God's rule, which entails adherence to *shari'ah*, and hence is the basis for Al Qaeda's insistence that any Islamic state which usurps *shari'ah* with secular law ceases to be legitimate.

Now that we have addressed necessary background considerations, we may return to the issue at hand, which is the construction of a case for the adoption of a "supreme emergency" defense for Al Qaeda's actions. In order to construct this defense it will be necessary to show that, from the perspective of Osama bin Laden and Al Qaeda, all three requirements for appeal to "supreme emergency" have been met. These requirements are justness of cause, imminence of defeat, and defeat entailing dissolution

not only of the state, but the political community that it represents as well. Of these, justness of cause is primary.

In the just war framework, justness of cause is traditionally viewed as a response to aggression, where aggression is usually defined as the use of violence against the rights of another. It is obvious from bin Laden's words, such as when he states "The latest aggression was one of the worst catastrophes to befall the Muslims...It was the occupation of the land of the two holy mosques" (bin Laden 2004,14), that this is exactly how he perceives the issue. He elsewhere argues:

For over seven years the United States has been occupying the lands of Islam in the holiest of places, the Arabian Peninsula, ... and turning its bases in the Peninsula into a spearhead through which to fight the neighboring Muslim peoples...The best proof of this is the Americans' continuing aggression against the Iraqi people (bin Laden 2004, 57)

Bin Laden views the state of Israel as built upon wrongful acquisition of Muslim lands, by violation of the rights of Palestinian Muslims who were displaced in 1948, and more specifically by Israel's occupation of Jerusalem. By extension, he would appear to view the United States strong and continued support of Israel as making the U.S. complicit in these putative acts of aggression. This is evident in his common reference to the "Jewish-Crusader alliance," a view which was no doubt reinforced by President George Bush's unfortunate choice of words when on September 16, 2001 he characterized the newly christened "war on terrorism" as a "crusade" in an off-hand comment to reporters. It is not only U.S. support of Israel, however, that bin Laden views as making the U.S. guilty of aggression, but also the continued presence of U.S. troops in Saudi Arabia which he specifically cites in the *fatwa*, a legal opinion or decree, he issued in 1996, and

again in the *fatwa* he issued in 1998.³ To bin Laden, it makes no difference that the US was invited by Saudi leaders prior to the first Gulf War, an invitation extended in 1990 to assist in the security of Saudi Arabia from possible Iraqi aggression and repel the Iraqi invasion of Kuwait. The Saudi government is a secular government, and thus in bin Laden's eyes an illegitimate one. Therefore their invitation does not excuse the presence of U.S. troops on Saudi soil, land which bin Laden views as sacred given the presence of Islam's two holiest sites, Mecca and Medina, within its territorial boundaries. In bin Laden's eyes, the continued U.S. presence in Saudi Arabia counts as an occupation, as evidenced in the 1998 *fatwa* wherein he states, "for over seven years America has been occupying the lands of Islam in its holiest of places, the Arabian peninsula" (bin Laden 2004,57). Thus it would appear that bin Laden views himself, and all members of the *umma*, as victims of aggression and therefore in possession of justness of cause.

Justness of cause, however, needs to be supplemented by imminence of defeat and gravity of threat faced before an appeal to "supreme emergency" may be adopted. Demonstrating imminence of defeat, however, is often difficult to prove, especially in the case of bin Laden and Al Qaeda. The reason for this is due to bin Laden and his followers' absolute belief in the justness of their cause, and the belief that they are acting in accordance with God's command. They firmly believe that victory will be theirs if they and their fellow Muslims stay the course and adhere to a strict doctrine of *jihad*.

³ The 1996 *fatwa* is commonly referred to as the "Declaration of Jihad Against the Americans Occupying the Land of the Two Holy Mosques," which is a shortening of its full title and may be found on pp. 13 – 28 of the FBIS compilation in the reference section. The 1998 *fatwa* is commonly referred to as "Al-Qaeda's Declaration of War Against Americans" and it may be found on pp. 56-58 of the FBIS compilation in the reference section.

Nevertheless, in bin Laden's appeals to Muslims to take up the cause of *jihad*, his rhetoric continually seems to emphasize the urgency of the situation and thus the need for Muslims throughout the world to take up arms in defense of the *umma*. His rhetoric constantly emphasizes the urgency with which the *umma*, the community of Islam, needs to take up the cause of *jihad* to avert disaster. This apparent urgency, this appeal to fellow Muslims to fly to the banner of *jihad*, lest they too fall victim to the "Jewish-Crusader alliance," I believe, reveals a perceived understanding of the precariousness of their situation, and thus the imminence of threat to the *umma* should swift action fail to be taken. And it is in language of this sort that I believe bin Laden reveals his perception of the putative threat to the *umma* as akin to that faced by Britain in 1940. An example of such appeals based upon urgency may be seen in statements such as that found in a tape released by bin Laden in January of 2004 wherein he states:

The occupation of Iraq is a link in the Zionist-Crusader chain of evil. Then comes the full occupation of the rest of the Gulf states to set the stage for controlling and dominating the whole world...O Muslims: the situation is serious, and the misfortune is momentous" (bin Laden 2004, 273)

In other portions of this tape he argues that the rulers of the Gulf states are incapable of repelling any American attack. Conjoined with his characterization of the situation above, I believe a case can be made that bin Laden views the threat of defeat as imminent, at least as much as the British did in 1940 in their war against Nazi Germany, and thereby would satisfy the second criterion required for appeal to "supreme emergency."

The final requirement for appeal to “supreme emergency” is related to the gravity of the threat faced. In order to successfully appeal for an exemption from *jus in bello*, the threat faced must be of an unusual and horrific kind. It must be of the sort that it is a threat to the very *ongoingness* of the community under attack. The threat faced by Britain was one of enslavement and massacre, and there is little doubt that this is exactly how bin Laden perceives the situation. His language is fraught throughout with references to massacre and horrific injustice, such as seen in his appeal to the Muslim community in the *fatwa* issued in 1996 wherein he states:

You are not unaware of the injustice, repression, and aggression that have befallen Muslims through the alliance of Jews, Christians, and their agents, so much so that Muslims’ blood has become the cheapest blood ... your blood has been spilled in Palestine and Iraq⁴ ... and all false claims about human rights fell under the blows and massacres committed against Muslims everywhere. (bin Laden 2004, 14)

That bin Laden perceives the threat faced exactly as of the sort Walzer cites is no clearer than when he states “the Zionist-Crusader alliance against the Islamic nation today is the most dangerous and rabid ever, because it threatens the entire Islamic nation, its religion and existence” (Bernier 2007, 103). Thus it would appear that, from the perspective of bin Laden and his followers, the threat they face is of the sort that overriding traditional just war restrictions on conduct is a matter of necessity.

⁴ Bin Laden is likely here referencing attacks upon retreating Iraqi soldiers during the final days of the Persian Gulf War along the so-called “Highway of Death.” The heavy toll exacted upon the retreating Iraqis was much publicized in the media, and is frequently invoked as an example of an apparent violation of the principle of proportionality called for by *jus in bello*.

The argument constructed above suggests that bin Laden does in fact believe his community to be in a situation of “supreme emergency” consistent with Walzer’s conception of the term. This is problematic for Walzer because he has invoked a categorical denunciation of contemporary forms of terrorism when he states that “the practice [of terrorism] is indefensible now that it has been recognized, like rape and murder, as an attack upon the innocent ... it cannot be defended” (Walzer 2004, 51-52). For Walzer, terrorism cannot be defended, even by appeal to “supreme emergency.”

Against the imminent threat of political and physical extinction, extreme measures can be defended...But this kind of threat has not been present in any of the recent cases of terrorist activity. Terrorism has not been a means of avoiding disaster but of reaching for political success (Walzer 2004, 54).

How then are we to reconcile the apparent inconsistency here? Some critics have argued that this is simply due to Walzer being unwilling to follow through with what is entailed by his position. I, however, believe that this apparent inconsistency is based upon two things: 1) Walzer’s defense of “supreme emergency” being broader than he recognizes, and thus encompassing a defense of actions which Walzer does not wish to defend, and 2) a fundamental misunderstanding upon the part of Walzer of the argument(s) forwarded by bin Laden. The first issue I believe has been made clear by the ability to frame a defense of Al Qaeda’s actions in the paragraphs above. The second needs further addressing.

As noted in the passage quoted above, Walzer does not believe that contemporary forms of terrorism can ever be justified due to his contention that they are not attempts to fight for freedom in the face of disaster, but are instead attempts to

achieve “political success” through coercion. He views contemporary Islamic terrorists not as freedom fighters, but as “revolutionary terrorists” who indiscriminately kill innocents in order to “spread fear through a whole population and force the hand of its political leaders” (Walzer 2004, 130). To emphasize this point, he further states that “Islamic terrorists don’t call themselves freedom fighters; they have a different mission: to restore the dominance of Islam in the lands of Islam” (Walzer 2004, 133). This view is, however, problematic. Osama bin Laden frequently invokes the cause of freedom, arguing that Muslims are fighting for their freedoms, such as when he states “We have been fighting you because we are free men who do not remain silent in the face of injustice. We want to restore our Muslim community’s freedom” (Berner 2007, 58). Thus Walzer’s claim that Islamic terrorists do not call themselves “freedom fighters” seems mistaken. They do, in fact, conceive of themselves as such. Furthermore, based upon bin Laden’s conception of community, the claim of response to rights violation does have some basis in light of the Palestinian situation. Even if Israeli and Palestinian descriptions of the “Palestinian exodus” differ,⁵ one cannot simply overlook the claims of close to three-quarters of a million displaced Palestinians Arabs, especially in light of continued Israeli rebukes of the two-state solution to the Israeli-Palestinian conflict, and failure to halt continued construction in the contested settlements. There appears to be a legitimate rights claim at issue here, and under bin Laden’s conception of the *umma*, a

⁵ The “Israeli Government claimed that the Palestinian Arabs left because they were ordered to and were deliberately incited into panic by their own leaders, who wanted the field cleared for the 1948 war”. While “The Palestinian Arabs charge that their people were evicted at bayonet-point and by panic deliberately incited by the Zionists” (Childers 1970, 183).

unified Islamic community, an attack upon the rights of Palestinian Muslims is conceived of as an attack upon the rights of all Muslims. In light of this, it would not appear that bin Laden's claims of being a "freedom fighter" can be so easily dismissed, nor with it the arguments he forwards. Further, it would seem that the aims of Islamic terrorism are in fact *political* in nature, a fact which Walzer appears to fail to recognize. In particular, given the priority which Walzer places on political communities, it is odd that he apparently overlooks this political appeal to defense of community.

Walzer also claims that contemporary terrorism should be categorically denounced because it is "commonly the first resort of militants who believe from the beginning that the Enemy should be killed and who are neither interested in nor capable of organizing their own people for any other kind of politics" (Walzer 2004, 135). From Walzer's perspective, the British bombing of German cities was an actual last resort, but terrorism seems to be the first resort of Islamic terrorists. It is easy to understand how Walzer may have come to that conclusion. After all, Al Qaeda does not appear to have made any overt appeals to political discourse prior to engaging in acts of violence. But this is, once again, where the notion of political community comes into play. Bin Laden conceives of himself and Al Qaeda's members as fighting on behalf of a political community that *has* attempted to resolve their grievances politically, only to have those attempts fail catastrophically. He thus does at least appear to perceive of the resort to violence as a matter of last resort. Bin Laden's perception of the failure of alternative political methods is evident when he stated in a 1999 *Time* interview:

the PLO in Palestine, or the so-called Palestinian Authority—have been trying

for tens of years to get back some of their rights. They laid down arms and abandoned what is called “violence” and tried peaceful bargaining. What did the Jews give them? They did not give them even 1% of their rights (bin Laden 2004, 86).

He believes that attempts to work through the political process in Muslim countries have failed precisely because the rulers of those countries are mere puppet dictatorships who are operating on behalf of Western interests and not due to any unwillingness or inability to participate in the political process. They have, in bin Laden’s view, lost their sovereignty. Bin Laden is clearly operating under the perception that terrorism is a matter of last resort when he states it became “impossible to repel these Americans without assaulting them” (bin Laden 2004, 84). If bin Laden perceives the resort to violence as a matter of last resort, he is again making arguments that are consistent with the just war framework and which would seem to buttress any appeal to “supreme emergency.”

Finally, Walzer believes that contemporary Islamic terrorism can have no justification because it is characterized by a desire to eliminate an enemy that has been “radically devalued,” and is

directed against entire peoples or classes, [tending] to communicate the most extreme and brutal intentions—above all, the tyrannical repression, removal, or mass murder of the population under attack (Walzer 2006, 203).

According to Walzer, the message that contemporary terrorists are communicating is therefore “a denial of the peoplehood and humanity of the groups whom [they] find victims” (Walzer 2004, 59). This seems too facile an understanding of the claims of contemporary terrorists such as bin Laden, for it is not exactly clear that his aims are

based upon a denial of the peoplehood or humanity of Americans. In his October 2004 appeal to the American people,⁶ bin Laden explains his reasons behind his role in the attacks on the World Trade Center and repeatedly makes claims that the American public has been misled by the Bush administration. He implores the American public to carefully consider all that he has to say. Many of the claims he makes in this address may be spurious, but the fact that he is at least attempting a reasoned appeal to those who are the primary targets of his attacks seems to undermine Walzer's claim that contemporary terrorists are communicating a "denial of personhood" of those against whom they are directing violence.

It seems, therefore, that Walzer is operating under a fundamental misunderstanding of the backgrounds and motivations of contemporary terrorists. The language they use and the reasons they present are entirely consistent with appeals to the just war framework in defense of a resort to violence. Frequent appeals to defense of community, vindication of rights, failure of non-violent methods to resolve claims and disputes are issues that cannot be overlooked without at least some investigation to determine their validity. Walzer's misunderstanding, in turn, allows him to overlook the fact that they are forwarding arguments, not merely presenting excuses. More importantly, the fact that they are forwarding arguments, and arguments that cannot simply be dismissed outright, opens the path for their adoption of his "supreme emergency" defense. Thus, if Walzer wishes to contest their adoption of his doctrine, he

⁶ The full text of bin Laden's speech is available on-line at the following URL: <http://english.aljazeera.net/archive/2004/11/200849163336457223.html>

will need to shore up his defense in order to prevent its assumption by parties he wishes to exclude.

Before closing this chapter, I should note one possible objection to the discussion above, and that is that regardless of bin Laden's perceptions, there may be facts regarding the state of affairs in the Middle East that call into question many of his basic assumptions, and with them any appeal to Walzer's "supreme emergency" doctrine. I believe, however, that even if the argument presented above in support of the Islamic community being in a state of "supreme emergency" falters under closer scrutiny, the fact that a *prima facie* case can be constructed at all has serious repercussions for Walzer's doctrine. In the next chapter I intend to more fully explore this possible objection. I believe that in carefully considering how the argument forwarded above may be undermined, possible avenues of salvaging Walzer's doctrine from abuse may be revealed. It is to this examination that I now turn.

CHAPTER IV

IS SUPREME EMERGENCY A SUSTAINABLE DOCTRINE?

In the previous chapter I presented a case, based upon the public statements of Osama bin Laden, for the adoption of Michael Walzer's "supreme emergency" defense by the terrorist organization known as Al Qaeda. I noted that Walzer's argument, as it currently stands, could be adopted by Al Qaeda if we take bin Laden at his word and assume that his statements reveal his perception of the situation in the Middle East, and thus his organization's apparent grounds for resorting to violence. I also noted that the argument from bin Laden's perspective that I presented might ultimately fail in light of a more critical interpretation of the situation in the Middle East, for regardless of bin Laden's perception of the situation there may be facts which would undermine the validity of his perceptions. If his perceptions do not comport with the facts, then the argument falters. Nevertheless, even if that argument ultimately fails, I believe the fact that a *prima facie* case such as this can be constructed forces a more critical review and possible reconstruction of Walzer's doctrine. The fact that such an argument could be forwarded, I believe, reveals the broadness of Walzer's argument. This broadness, when coupled with other issues noted in chapter one, opens Walzer's defense up to abuse, and if "supreme emergency" is to stand as a normative guide for political leaders in desperate times, it behooves us to make sure that the doctrine is clear. Given the implications of its application, there simply is no room for ambiguity.

The argument forwarded in the previous chapter can be attacked on two possible fronts: 1) the legitimacy of bin Laden and his organization to make decisions regarding overriding of *jus in bello* restrictions, and 2) bin Laden's conception of community being insufficient to count for the defense. Of the two, legitimacy is likely to be the first means of attack from the just war perspective. The ability to declare and wage war, after all, is reserved to the sovereign by the *jus ad bellum* requirement of right authority. According to the just war framework, only the state has the authority to declare and wage war, and in Walzer's defense of "supreme emergency" it falls to the state to make the decision to invoke the overriding of *jus in bello* when the three necessary criteria of "supreme emergency" have been met. How then can Osama bin Laden and Al Qaeda purport to make this decision in light of the fact that they apparently are not duly authorized to do so? The answer lies in the fact that Islam makes no clear distinction between mosque and state, Islamic law is supreme. The state, according to Islamic fundamentalism's strict interpretation of Islam, is merely a tool of Allah, and the state only gains legitimacy through governance in strict accord with the divine law as revealed in *shari'ah*. Every facet of life is to be governed in accordance with *shari'ah*. Bin Laden and Al Qaeda thus view themselves not as the authors of the decision to wage war and attack innocents, but merely as enforcers of what they view as divine fiat. They might thus respond to this criticism by arguing that the failure of their own legitimacy is not the issue, for they view the authority for their actions and proclamations as coming directly from God. He is the author. When they issue declarations of war, such as the 1996 and 1998 *fatwas*, these are seen not as the issuance of orders deriving from Al Qaeda's authority, but

rather as interpretations of divine decree revealed by them. This is evident in release of these proclamations as *fatwas*, which are scholarly rulings upon divine law. Al Qaeda might therefore deny the charge of illegitimacy in regards to their authority to issue a call of the faithful to *jihad*, and insistence of the validity of directly targeting innocents in the name of *jihad*, on the basis that they are not bound by this particular requirement given their position as agents, not authors. This view could be buttressed by an appeal to Walzer's defense for the classification of guerilla forces as legitimate agents of a political community. In addressing the classification of guerilla forces, and thus their treatment under the war convention, Walzer argues that the war rights of guerrilla forces would be equivalent to the war rights afforded uniformed soldiers should the guerilla forces possess sufficient support from the populace. It is the support of the populace that makes the guerilla forces an instrument of the people. As Walzer argues:

Soldiers acquire war rights not as individual warriors but as political instruments, servants of a community ... Guerillas take on a similar identity whenever they stand in a similar or equivalent relationship (Walzer 2006, 185)

Al Qaeda, as an organization operating independently of any recognized state, may believe itself in possession of this popular support given the apparent wide acclaim in the Muslim community for their leader, Osama bin Laden,⁷ and claim that this

⁷ In the aftermath of the September 11, 2001 attacks there was a wide-spread outpouring of support for Osama bin Laden in many corners of the Muslim world. The news was rife with images of massive rallies and parades expressing admiration and support for bin Laden and Al Qaeda's successful attack on the United States. That support has not appeared to have declined significantly. An Al-Jazeera survey of 41, 260 of its readers released on the fifth anniversary of the 9/11 attacks revealed that 49.9% of those polled

strengthens their position as agents of the Nation of Islam. Whether or not this would be sufficient to undermine the legitimacy attack on the ability of Al Qaeda to adopt Walzer's "supreme emergency" defense would require more space than I wish to dedicate here as I do not believe that an attack upon bin Laden's authority as an agent of the Muslim nation will prove sufficient to save Walzer's doctrine in its current form. My reason for abandoning this particular approach is due to the fact that a modified version of the argument forwarded in the last chapter could be adopted by either Hamas or Hezbollah. Both of these organizations have similar aims as Al Qaeda, yet also serve as apparently legitimate political entities in their respective territories and thus might be able to circumvent any appeals to authority in order to deny access to a "supreme emergency" defense. I therefore believe that even if bin Laden and Al Qaeda fail the *ad bellum* legitimacy requirement, Walzer's doctrine still stands in jeopardy. It would thus seem that the more promising means of attacking the argument forwarded in the last chapter is an attack upon Al Qaeda's conception of community. Before attempting that, however, we must consider the notion of community that is relevant to Walzer's position.

The importance of community to Walzer's thought cannot be underestimated. It is the foundation upon which his framing of the *Bellum Justum* is built. Given the importance of this concept, it is a shame that Walzer fails to give us a specific definition, instead opting only to paint the rough contours. There may be reason behind this, of course, for too restrictive a definition may undermine his project of building a general

supported bin Laden. <<http://terrorism.about.com/b/2006/09/11/al-jazeeras-readers-on-911-499-support-bin-laden.htm>> (28 May 2009).

defense of the just war framework based upon rights theory and premised upon the relation between community and state. If he forwards a definition of community that is limited to only a small set of political communities, his overall project in regards to the *Bellum Justum* is significantly weakened. The issue before us in this discussion, however, requires a clear understanding of what qualifies as a political community for Walzer, due to the fact that so much hinges upon his conception. In particular, the value of community is what provides the basis for appeal to the “supreme emergency” defense. As Walzer writes:

When our community is threatened, not just in its present territorial extension or governmental structure or prestige or honor, but in what we might think of as its *ongoingness*, then we face a loss that is greater than any we can imagine, except for the destruction of humanity itself. We face moral as well as physical extinction, the end of a way of life as well as a set of particular lives, the disappearance of people like us. And it is then that we may be driven to break through moral limits that people like us normally attend to and respect (Walzer 2004, 43)

We here see the criticalness of community to our discussion, and with it the need to understand exactly what Walzer is identifying as community. Without a solid grasp upon what does and does not count in this regard we are left to find significant fault in Walzer’s argument. We must therefore examine more carefully the characterization of community that Walzer presents in order to see how an attack on the conception of community that bin Laden is using may be framed.

The principle good of community, for Walzer, is the common life which it represents. This common life is a function of the historical development of the people that form the community, a product of their combined experience. “Over a long period

of time, shared experiences and cooperative activity shape a common life” (Walzer 2006, 54), and this common life acts as a covenant between past, present, and future members of the community. It is akin to “Edmund Burke’s description of the political community as a contract between ‘those who are living, those who are dead, and those who are yet to be born’” (Walzer 2004, 42-43). Walzer notes, however, that the term “contract” is an inappropriate metaphor since it is impossible to conceive of how such a contract could have been agreed to. In referencing Burke, he notes that:

there is an important truth here nonetheless: we do try to carry on, and also improve upon, a way of life handed down by our ancestors, and we do hope for recognizable descendants, carrying on and improving upon our own way of life. This commitment to continuity across generations is a very powerful feature of human life, and it is embodied in the community (Walzer 2004, 43).

From this it is clear that Walzer conceives of community as an historical entity, its value born of the labor and input of the members over time to develop the unique character of the community. This unique character then becomes incorporated into the individual members and frames their world view. As Walzer notes:

The political community is probably the closest we can come to a world of common meanings. Language, history, and culture come together (come more closely together here than perhaps anywhere else) to produce a collective consciousness. National character, conceived as a fixed and permanent mental set is obviously a myth; but the sharing of sensibilities and intuitions among members of a historical community is a fact of life (Walzer 1984, 28).

The political community is, for Walzer, where a significant notion of identity is born, where “individuals compose and from which they derive some portion of their character, practices and beliefs” (Walzer 2004, 42). The community is thus central to identification, and represents something above and beyond the set of its members. This notion of

identification is important to Walzer's overall theory, for it forms the basis for the relationship between the rights of individuals and the rights of states. Walzer identifies the basic rights of all individuals as a right to life and a right to liberty. The rights of states to political sovereignty and territorial integrity are based upon these individual rights. It is not necessarily a direct transfer, but rather a function of the role of community. The rights of the state are born out of the union of the rights of the collective individuals that form the political community which the state represents.

The right to political sovereignty is grounded in the right of the people to decide how they wish to be governed, and this right is consistent with the "common life" which is the core of community as Walzer conceives it. But what are we to make of the right to territorial integrity? The answer is that it "derives from the common life [the state's] members have made on this piece of land" (Walzer 2006, 55). What we see here is an acknowledgement of a close connection between community and territory. Surely the members of a community need somewhere to live, but the right to territorial integrity is more than that. It is about the specific relationship to the land. It is not unlike the connection between house and home. A house is merely a structure, but a house becomes a home as a product of the experiences of its occupants. Similarly, the right to territorial integrity is based upon the community's history of shared experience within a given region. This emphasis upon a common life in a specific area of territory may prove beneficial in attacking the argument forwarded in the last chapter, but it may not be sufficient to save Walzer's defense of "supreme emergency" without significant revision.

From this brief discussion we now have a better grasp upon what Walzer means by community, and political community in particular. We are able to identify its key components for Walzer's project, the most relevant characteristic being the common life shared by its members. This common life is born over time, through shared experience and cooperation. It is identified with a given territory, through the relation of the people to the land, which is likewise a function of the common life. Given this characterization, it would appear that the closest manifestation of this type of community is the modern nation-state. The question before us then, having identified the characteristics of political community as Walzer conceives it, is does the *umma* of bin Laden possess these characteristics?

The primary weakness in the bin Laden argument is the conception of community that bin Laden is using. Bin Laden frames virtually all of his arguments and appeals upon protection and advancement of the *umma*, the nation or community of Islam. His notion of community encompasses all the people of Islam, viewing them as a unified whole, where commonality of religion overshadows anything else, and this allows him to overlook any differences that may to others seem significant. His working conception of community allows him to view an affront to any subgroup as an offense to the community at large. This, in turn, permits him to view himself as a vindicator for rights abuses against any portion of the *umma*. This is seen in his frequent references to the Palestinian issue, to embattled Bosnian Muslims, and other Muslim groups throughout the world who find themselves in conflict. It is this emphasis upon community, coincidentally, which allows his adoption of Walzer's "supreme

emergency” defense as Walzer’s doctrine is premised upon the prominence of community. As Walzer notes:

If the political community were nothing more than a neutral framework within which individuals pursued their own versions of the good life, as some liberal political theorists suggest, the doctrine of supreme emergency would have no purchase. (Walzer 2004, 44)

The notion of community therefore is critical, and the ability of bin Laden and Al Qaeda to adopt Walzer’s doctrine hinges upon the *umma* satisfying Walzer’s conception of political community. There are, however, some difficulties with this, for while the members of the *umma*, as bin Laden conceives it, may share a commonality of religion, that alone may not be sufficient to satisfy the notion of a common life which is critical to qualification of the sort of political community that Walzer has in mind.

As we noted above, the principle component of political community as Walzer conceives it is a common life. This common life is born of a history of shared experience and cooperative effort to construct a way of life consistent with the unique character of the community. How might Al Qaeda claim this of the *umma*? Their best claim to possession of something like this would be appeal to *shari’ah*. *Shari’ah* means “the path” or “the way”. It is a comprehensive body of laws which is drawn from the Koran and *Sunna* and which governs virtually all facets of Islamic society, including such everyday issues as finances, economics, dress codes, and familial obligations. Given Al Qaeda’s insistence upon the priority of adherence to *shari’ah* for identification as a Muslim, and in particular their insistence that the only legitimate governments are those which govern in accordance with *shari’ah*, they might thus insist that a common life is

found in adherence to *shari'ah* given this broad scope of its authority. Such an appeal would certainly satisfy the historical aspect, and given the widespread categories of application of *shari'ah* law might also capture other components of the way of life component that Walzer notes in his characterization of community, but I suspect that an appeal to *shari'ah* alone might not satisfy Walzer's conception sufficiently. Adherence to a system of rules and directives does not seem to fully express the idea that Walzer is getting at when he talks about the common life of a community as something that leads to identification with others in the community as "people like us". Though adherence to *shari'ah* might grant an apparent commonality to the community of Islam, I doubt that that alone will do. My reasoning here is because identification as a Muslim does not, in and of itself, seem to be sufficient to overcome other relevant differences in regards to political community, differences that transcend mere identity as a Muslim.

The Muslim world is comprised of a vast number of different ethnic groups, with unique languages, cultures, and histories. The conjunction of these elements forms a source of identification among these different peoples. They may be Muslims, but they do not define themselves by that fact alone. One need only look at the situation of the Kurds to see this. The Kurds comprise the fourth largest ethnic group in the Middle East, and for centuries have inhabited a region known as Kurdistan. During the breakup of the Ottoman Empire following the end of World War I, the territory of Kurdistan was broken up and divided between the modern countries of Turkey, Iran, and Iraq. The Kurds thus found themselves without an independent homeland, and as unwanted minorities in the countries which now exercise control over the territory previously

known as Kurdistan. The Kurds, however, have since maintained a strong sense of national pride and culture distinct from the Turkish, Persian, and Arabic cultures of the countries under whose rule they now find themselves. Recent years have found the Kurds fighting for their independence, for the restoration of a Kurdish state: a specific piece of territory they can call their own. They have, in short, been fighting for the autonomy of their political community, a community which seems based upon the common life that Walzer notes. If religious identification were the only thing that mattered, the Kurds in Turkey would likely not be fighting for independence since the vast majority of Kurds and Turks are both Sunni Muslims. They share a commonality of religion, but that apparently is not enough. The fact that even after decades of non-independent rule they still strongly identify themselves as Kurds, and continue to fight for the re-establishment of an independent Kurdish homeland would imply that there is more to community and a common life than simply religious affiliation, and that proves troublesome for an argument based upon the strength of the *umma* as a political community, as a unified whole who share a singular identity, a common life.

One could argue that the Kurdish example may weaken the identification of the *umma* with political community, and with it Al Qaeda's appeal to "supreme emergency", but not completely undermine it. The maneuver one might take in this regard is to state that the issue with the Kurds was related to ethnic differences that reach back for centuries and could eventually be overcome by appeal to religious brotherhood. I am not entirely convinced of the strength of this approach, but it is one parry that could be made nonetheless given statements by bin Laden such as this:

Despite what Islam and its people are suffering from at the hands of their enemies, the secularist movements, despotic governments, and infidel nations, and despite the calamities from which the nation is suffering, ... the Muslims are still wholly engaged in violent differences, blazing feuds, and issues and matters that are not part of the rules of religion or the consensus where differences are not permitted (bin Laden 2004, 233)

This appeal to look past differences and unite in Muslim brotherhood would also aid in dealing with a particularly thorny issue with the argument forwarded in the last chapter, the mistreatment of Palestinian Muslims by the vast majority of the Arab world.

The Palestinian issue is a significant one in this debate. Most of the vitriolic rhetoric spewed by bin Laden has been squarely aimed at what he terms the “Zionist-Crusader alliance,” by which he primarily means the states of Israel and the United States. Bin Laden’s principal issue with the United States is that there have been American troops stationed in Saudi Arabia since prior to the Persian-Gulf War in 1991, which he views as an occupation of the most sacred lands of the *umma* since the two holiest cities in all of Islam, Mecca and Medina, reside within the borders of Saudi Arabia. He takes further issue with the United States’ strong influence in the region and continued support of Israel as antagonistic to the nation of Islam. Israel, however, bears the brunt of bin Laden’s animosity. Bin Laden’s anger is directed at Israel for a host of ills, but especially for what he views as the “occupation” of Jerusalem, the third holiest city in Islam. Israel is also charged with further transgressions against members of the *umma* in Palestine - rights violations against Palestinian Muslims. Given bin Laden’s conception of the *umma*, rights violations against Palestinian Muslims are to be viewed as rights violations against all Muslims. This assumes, however, that the *umma* as a

political community currently exists. If it does not, then the transference of rights violations from one group to the entire community cannot take place. The Kurdish issue noted above is one problematic issue for the claim that the *umma* is a legitimate political community in the sense that counts, but the appeal to a process of overcoming internal strife might be seen as a means of circumventing this criticism. In my opinion what is more damaging, however, is the treatment of the Palestinians at the hands of fellow Arabs in the region. The Kurdish case can at least be dismissed on grounds of ethnic and cultural differences that may be overcome with dialogue and understanding over time. The same does not hold true here. What we see here is clear mistreatment of Arabs by fellow Arabs, Muslims by fellow Muslims. There is no obvious ethnic or cultural divide to utilize as an excuse.

For more than sixty years the Palestinian refugees have been relegated to life in camps near the Israeli border and have been denied support that could easily be offered by the host countries. The Palestinians have been denied access to state health, social and educational benefits and in many cases have had to rely upon the United Nations to provide when the host countries did not. Under the guise of protecting their right of return, Palestinians have also been denied the opportunity to own property or petition for citizenship in many of their host countries. These issues are rarely mentioned in the appeal to the violation of Palestinian rights usually offered as grounds for directing violence against Israel, but, when considered as a whole, it would appear that the Palestinians have been used as pawns by other Arab states in the continuing conflict with Israel, and this belies any appeal to a common life in the manner that Walzer envisions

as worthy of protection. This treatment of the Palestinians undermines, at least to some degree, the concept of a currently existing universal Muslim political community, and with it causes significant problems for the argument forwarded in the last chapter. It does not, however, fully salvage Walzer's doctrine.

Earlier in this chapter I stated that even if the argument for Al Qaeda's adoption of Walzer's "supreme emergency" defense failed, this would not save Walzer's doctrine. My reason for stating this is due to my belief that a modified version of the argument could be forwarded on behalf of Hamas or Hezbollah. Let us now consider what form this modified argument might take, using Hamas as our model.

Hamas is a Palestinian Sunni Islamist paramilitary organization and political party. Its name, in Arabic, means "zeal" or "enthusiasm", and is derived from the acronym for *Harakat Al-Muqawama Al-Islamia*, which in Arabic means "Islamic Resistance Movement". Hamas is reported to be divided into three wings: 1) a social and political wing, which is responsible for recruitment, social programs, and funding, 2) an intelligence wing, whose principal role is internal policing and the identification of Israeli collaborators, and 3) a military wing which has been responsible for conducting attacks, including the extensive use of suicide bombings, against Israeli military and civilian targets. It is the actions of the military wing which has been largely responsible for the identification of Hamas as a terrorist organization, especially due to Hamas' use of suicide-bombing as its primary offensive weapon. Their use of suicide-bombers, however, is not the sole application of violence to which they have resorted. Hamas has

also made frequent use of rocket attacks, and it is the use of these rocket attacks which Israel has blamed for its most recent military incursion into Gaza.

Hamas was formed in late 1987, at the start of the first Intifada, by members of the Palestinian arm of Egypt's Muslim Brotherhood, and began operations in early 1988. Its initial charter calls for the establishment of an Islamic state in Palestine, in place of Israel and the Palestinian territories, and for the destruction of Israel. From its inception Hamas has denied the existence of the state of Israel, calling for its destruction, but this call for the destruction of Israel has been muted in recent years, and was dropped from the 2006 election manifesto shortly before the elections where Hamas won 74 of the 132 seats in the Palestinian legislature, giving it majority control of the Palestinian government. The success of Hamas in the 2006 election is no doubt due in large part to the many social programs they support, such as the funding of schools, healthcare clinics, orphanages, and sports leagues, though these programs no doubt serve the purpose of recruitment as well as altruism. Hamas is particularly popular with Palestinian youths in Gaza, and it is from their ranks where many of the suicide bombers that Hamas has employed against Israel have come.

Having reviewed a small portion of the history of Hamas, in order to provide some context for the discussion to follow, I now will turn to the modified argument I alluded to above. If we are to construct for Hamas a version of the argument presented in the previous chapter, we will need to see if Hamas can satisfy the three conditions of Walzer's "supreme emergency" defense. Those conditions are justness of cause, imminence of defeat, and defeat entailing the destruction of the political community

facing defeat. Justness of cause, as we recall, is defined as the use of violence against the rights of another. In terms of Hamas, Israel is viewed as the aggressor state. Hamas' ground for identification of Israel as the original aggressor is tied to the establishment of the state of Israel. From 1922 until 1948, the territory of Palestine was administered by Britain under a Mandate from the League of Nations. This Mandate ended on May 14, 1948 when Britain relinquished control. In the months leading up to the termination of the British Mandate, the newly formed United Nations created a partition plan for Palestine that called for the creation of separate Jewish and Arab states in the Palestinian lands soon to be independent of British control. That plan included many provisions, but the critical provision was the division of the territory into separate Jewish and Arab states. The Jewish Agency accepted the partition plan, grudgingly due to restrictions on immigration, but the Palestinian Arabs and Arab states rejected it on the ground that the partition plan was in violation of the United Nations Charter. Thus, on May 14, 1948, when Britain relinquished its Mandate and withdrew its forces, the Jewish Agency proclaimed the establishment of the State of Israel upon the lands allotted them by the United Nations partition plan. The Palestinian Arabs, however, had not agreed to the partition plan, viewing it as a violation of their right to choose their own destiny as guaranteed in the United Nations Charter, and thus viewed the establishment of the Jewish state on lands they had not ceded as a violation of their territorial rights, which led to the first Arab-Israeli war. It is this set of events that is key to the Palestinians viewing themselves as victims of aggression, and the reason they do not accept the sovereignty of the state of Israel, but instead view it as an occupation of their lands.

Hamas, having won majority rule of the Palestinian legislature and with it able to make claim as the state representative of the Palestinian people, thus appears to have a claim to being the victim of a territorial rights violation, and with that justness of cause.

The imminence of defeat criterion will be a harder case to make, but one can be made, I believe, based upon the significant disparity in military power present in Palestine. The Israeli military is a fully modern military and if they so chose could bring a great deal of violence upon Hamas strongholds in Gaza and the West Bank in short order, as was made evident during the most recent conflict in Gaza during January of 2009.⁸ Hamas, by contrast, would not be able to respond with equivalent force. Hamas does not possess a tank force, is not in possession of an air wing, nor of any of the accouterments of a large modern military force. Their weaponry appears to be limited to basic infantry weapons, and supplemented by short-range rockets. Thus, if Israel so chose, I believe they could overwhelm Hamas forces with relative ease in a classic set-piece engagement. This enormous disparity in might that can be brought to bear may thus afford an analogy to the British case cited by Walzer in his defense of “supreme emergency”. I realize, of course, that in the British case there was no question of Nazi Germany’s intent to invade Britain, and that aggressive intent does not seem manifest here. As I noted in my first chapter, however, there are questions of Nazi Germany’s ability to fulfill that intent. No such questions of the Israeli Defense Forces ability to

⁸ The recent Israeli attacks inside Gaza were an attempt to quell increased rocket attacks by Hamas on Southern Israel. Israeli forces invaded Gaza on January 3, 2009, and withdrew on January 21, 2009. Prior to the ground invasion, an air campaign was started on December 27, 2008 utilizing F-16 fighter jets and AH-64 apache helicopters and very modern ordnance, weaponry which is not available to Hamas.

invade are present here. I argued that what allowed Walzer's case to stand, in light of the fact that a successful Nazi invasion of Britain was not as close a threat as Churchill's rhetoric might have led us to believe, was the perception of imminent defeat given the situation. If perception of threat is a factor in appeal to "supreme emergency", as I believe it needs to be in order for Walzer's case to stand, then perception may be appealed to here. We may thus, I would grant, have to factor in Palestinian perceptions of the threat posed to them by Israel. If they perceive the threat as imminent, which one could plausibly argue, and that perception is not wildly exaggerated, then I believe we can at least grant that they may have some justification for believing that the criteria of imminence has been met, at least until there is sufficient evidence to undermine that assumption.

The gravity of threat criterion will be even harder than the imminence criterion to satisfy, but it is possible that an appeal to satisfaction of this criterion can be met given Walzer's insistence upon relationship between community and territory. If Walzer insists upon communal identity being tied to shared experience within the confines of specific territorial boundaries, then an appeal to satisfaction of this criterion may be made given Israeli denial of the "right of return" which Palestinians insist upon. This appeal, however, is a weak one, especially in light of Israeli Prime Minister Netanyahu's recent address wherein he stated that Israel would be willing to accept "a demilitarized Palestinian state" alongside Israel.⁹ Nevertheless, even with Netanyahu's concession that

⁹ CNN, "Israel PM calls for demilitarized Palestinian state," (14 June 2009).
<<http://www.cnn.com/2009/WORLD/meast/06/14/israel.netanyahu/index.html>> (14 June 2009).

Israel will accept an independent, demilitarized Palestinian state as a neighbor, he premised that concession upon Palestinians recognition of Israel as a Jewish state with Jerusalem as its capital, and further denied the right of return which Palestinians insist upon. Thus, based upon the relationship between community and territory that Walzer appears to insist upon, we may grant that the third criterion has been met, albeit weakly. What then does this imply for Walzer's defense of "supreme emergency"?

Earlier in this chapter I noted that there were two possible ways to attack the argument for Al Qaeda's adoption of Walzer's "supreme emergency" defense: 1) an attack upon Al Qaeda's authority to issue the appeal to "supreme emergency", and 2) an attack upon the conception of community which formed the basis of their claims. I granted that Al Qaeda might ultimately fail the appeal to legitimate authority, but that is not the case here. In 2006 Hamas won majority rule of the Palestinian legislature and with it status as the ruling party. Their victory in a fair election seems to deny any undermining of their claim of access to "supreme emergency" via an attack upon the legitimacy requirement of *jus ad bellum*. Hamas is in a much stronger position here than Al Qaeda, and thus can easily repel this particular attack upon their appeal to "supreme emergency". The same is true of the notion of community. Hamas, in its initial charter, identifies itself as a distinct Palestinian movement, and while the charter also identifies Hamas as connected to the larger world-wide *jihad* of Islamic fundamentalist groups with which it is allied, its cause is primarily a Palestinian one. The arguments and appeals that Hamas makes rely solely upon the Palestinian community meeting Walzer's conception of community, whereas Al Qaeda's arguments require this of the *umma* of

Islam. It would thus appear that the community attack which was successful against Al Qaeda's adoption of "supreme emergency" will not work here. Does this mean that their use of terrorism can have a moral defense? I don't believe so, and my grounds for this belief are related to Walzer's categorical denunciation of terrorism due to the failure of most contemporary practitioners to satisfy the *jus ad bellum* requirement of "last resort". In the Al Qaeda argument forwarded in the last chapter, it appeared that bin Laden did conceive of Al Qaeda's use of indiscriminate violence as a matter of last resort. His appeals to the *umma* to answer the call to *jihad* at least referenced the apparent failures of other means of conflict resolution. Hamas, however, has made no such appeal, in fact Hamas denies the validity of any attempt at peaceful resolution in its charter, and has resorted to the use of terrorist tactics from its inception. Thus we could argue that ultimately their appeal to "supreme emergency" falters due to failure to satisfy the *jus ad bellum* requirement of last resort. Does this undermine a *prima facie* appeal to "supreme emergency" on Hamas' behalf and in so doing salvage Walzer's argument? I do not believe so.

In this chapter and the previous chapter I have constructed two cases for the adoption of Walzer's "supreme emergency" defense which, if successful, would have provided a defense for contemporary terrorism, a practice which Walzer has categorically denied as defensible. Under closer scrutiny the arguments did ultimately falter, but it is conceivable that not all such appeals would. It very well could be the case that some militant group could be found that was sufficiently like Al Qaeda or Hamas that their resort to violence would without a doubt be classified as terrorism. It could

likewise be the case that this militant group was sufficiently different from Al Qaeda and Hamas so as to not succumb to the same failings that they do. If such a group should ever surface, they would then be in a position to adopt an argument similar to the two forwarded above, and that would lead to serious inconsistency in Walzer's overall project, an inconsistency which is not merely a mirage produced by the supposed paradoxical nature of Walzer's defense. I therefore believe that Walzer's doctrine is seriously problematic, and its survival would require significant revision. That such revision is possible, however, appears unlikely. The apparent best appeal towards this end would be a much clearer and stricter definition of political community. As I noted above, however, that could lead to a definition which is too restrictive, and thus problematic for Walzer's larger project. A clearer definition of the types of threat which qualify for appeal to this doctrine might also be a means of salvaging "supreme emergency", but given that the threat Walzer envisions as sufficient for appeal to "supreme emergency" must be threats to political community, it would seem that threat and community are related, and any restriction upon threat type might also require revision of the conception of community. It is therefore questionable if the appeal to "supreme emergency" that Walzer champions is sustainable.

CHAPTER V

CONCLUSION

When I began this project, I had hoped to discover a means of salvaging Walzer's defense of "supreme emergency" from the problems I saw. It was my belief then, as now, that situations of "supreme emergency" sadly do sometimes manifest, and thus some means of providing a moral defense for actions which are deemed as necessary during such extreme situations could be given. I saw Walzer's argument as a well-reasoned defense of the old adage "desperate times call for desperate measures", and took comfort in his "dirty hands" approach which required that the actions themselves do not cease to be immoral. It was the appeal to necessity which was being defended, not the action itself. I agreed with Walzer that in extreme situations, those which would require good people to do bad things, the agents in these cases *should* feel guilty. It is a natural part of the human experience, and Walzer's argument maintained this component. I was nevertheless troubled by the apparent inconsistency in this approach, a fact noted by many of his critics, and was unsure at the outset how he was able to respond that no such inconsistency was present. The appearance of inconsistency, according to Walzer, was a product of the "paradoxical nature" of the defense. After reviewing his work in detail, I now understand why he concludes that there is no internal contradiction. His argument is not a defense of immoral action, but a defense solely of the *resort* to immoral action when no other options exist. I thus sought some means of salvaging his argument from the significant problems I found.

My initial intuition was that the broadness I found in the “supreme emergency” defense might be resolved with further restriction of one or more of the key elements of the argument. I thought that perhaps a clearer definition of “community” or a stricter interpretation of threats sufficient for the appeal might resolve the dilemma I found. I now see, however, that such is not possible.

I noted that the conception of community with which Walzer is working is vague. He does not present any strict definition of the term “community”, instead opting to focus upon the “common life” which he views as the fundamental basis of community. The “common life” is the defining feature, and it is insistence upon this point that makes further restriction impossible. The basic human right to liberty enjoyed by all members of the community entails the autonomy of the community to come together under whatever political structures they see fit. To attempt to restrict the conception of community in a fashion that might salvage Walzer’s “supreme emergency” defense would undermine this basic communal autonomy, and with it impinge upon the fundamental rights that the members enjoy. Thus attempting to modify the notion of community in order to rescue this small facet of Walzer’s project would undermine Walzer’s project as a whole. I therefore do not believe that a stricter sense of community is available which would save the “supreme emergency” defense without seriously damaging Walzer’s larger project of defending the *Bellum Justum*.

I find a similar difficulty in attempting to more carefully define the threats sufficient for appeal to the “supreme emergency” defense. My reason for concluding this is tied to the fact that the types of threats which allow appeal to Walzer’s defense are

related to community. The only threats sufficient to justify appeal to the overriding of *jus in bello* are threats to the character of the community under attack. Any attempt at a stricter definition of threats sufficient to count for appeal to the doctrine of “supreme emergency” must therefore necessarily be tied to the conception of community. The nature of the threats must be of the sort that they attack the common life of the community and that conception of a common life, as noted above, must be left broad in order to preserve the autonomy of the community’s membership. I thus see no purchase in attempting to salvage “supreme emergency” through refinement of the nature of the threats sufficient for appeal to Walzer’s doctrine.

Given the inability to refine either of these two fundamental concepts in a manner sufficient to protect Walzer’s defense of “supreme emergency” from attacks such as those I have levied in this thesis, I must conclude that the doctrine cannot be maintained. There simply is no way that I can find of salvaging Walzer’s argument as it is presently constructed. It may stand as an excuse for the resort to immoral action, and thus allow us to view those who are in crisis with a greater degree of sympathy should they find no other course of action, but Walzer’s argument for a “supreme emergency” exemption from *jus in bello* cannot stand as a moral defense.

REFERENCES

- Berner, Brad K. 2007. *Quotations from Osama bin Laden*. Temecula, CA: Peacock Books.
- Bin Laden, Usama. 2004. *Compilation of Usama bin Laden Statements: 1994 – January 2004*. Washington D.C.: Foreign Broadcast Information Service, <<http://www.fas.org/irp/world/para/ubl-fbis.pdf>> (7 May 2009).
- Childers, Erskine. 1970. The Other Exodus. In *The Israel-Arab Reader; a Documentary History of the Middle East Conflict*, revised edition, edited by Walter Laqueur. Gretna, LA: Pelican Books.
- Fleming, Peter. 1957. *Operation Sea Lion*. New York: Simon and Schuster.
- Lowe, Scott. 2003. Terrorism and Just War Theory. In *Understanding Evil: an Interdisciplinary Approach*, edited by Margaret Breen. New York: Rodopi.
- Orend, Brian. 2006. *The Morality of War*. Peterborough, Ontario: Broadview Press.
- Valls, Andrew. 2002. Can Terrorism be Justified? In *Political Philosophy: Classic and Contemporary Readings*, edited by Louis Pojman. New York: McGraw-Hill.
- Walzer, Michael. 1984. *Spheres of Justice*. New York: Basic Books.
- . 2004. *Arguing about War*. New Haven: Yale University Press.
- . 2006. *Just and Unjust Wars*, fourth edition. New York: Basic Books.

Supplemental Sources Consulted

- Coady, C.A.J. 2004. Terrorism, Morality, and Supreme Emergency. *Ethics* 114(4): 772-789.
- Cook, Martin. 2007. Michael Walzer's Concept of 'Supreme Emergency'. *Journal of Military Ethics* 6(2): 138-151.
- Duquette, David. 2007. From Rights to Realism: Incoherence in Walzer's Conception of *Jus in Bello*. In *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory*, edited by Steven P. Lee. Netherlands: Springer.

Frey, R.G., and Christopher Morris, ed. 1991. *Violence, Terrorism, and Justice*. New York: Cambridge University Press.

Toner, Christopher. 2005. Just War and the Supreme Emergency Exemption, *The Philosophical Quarterly* 55(221): 545-561.

Primoratz, Igor, ed. 2004. *Terrorism: The Philosophical Issues*. New York: Palgrave Macmillan.

Statman, Daniel. 2006. Supreme Emergencies Revisited. *Ethics* 117(1): 58-79.

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