

Rethinking Noncombatant Immunity

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Abstract Contemporary just war theorists claim that it is unethical to target non-combatants such as civilians because non-combatants are neutral and innocent. I sketch out the specifics of this argument, revealing its feudal-era roots, and then argue that it does not apply to citizens within liberal political theory and liberal societies. Liberal political theory is fundamentally premised on the idea that the citizens of a particular society consent to and authorize the actions their sovereign makes. This, I hold, strips them of any neutrality or innocence they could claim to have with respect to the decision of their sovereign to go to war.

Introduction

Contemporary just war theorists argue that attacking non-combatants is unethical. Non-combatants, they claim, ought to be immune from attack because non-combatants are not substantively involved enough in violent conflicts to warrant being targeted. The most prominent contemporary justifications for this view converge around two main concepts: neutrality and innocence. Non-combatants, such as civilians, are depicted as functionally neutral with respect to the armed conflict that is surrounding them; and, they are depicted as innocent insofar as they do not decide to go to war or decide how a war is fought. In this paper, I argue that the neutrality/innocence justification (NIJ) for non-combatant immunity does not apply to citizens within ideal liberal political theory and functioning liberal states. Because liberal theory is fundamentally premised on the claim that legitimate governments are those to which individuals consent, individuals within liberal political states do not possess the innocence and neutrality necessary to make them ethically immune from attack.

Within the historical development of arguments for non-combatant immunity, the NIJ is first articulated in the Middle Ages. Leaders of the Peace of God Movement, writing in the 10th century, “forbade all acts of warfare or vengeance against clerics, pilgrims, merchants, Jews, women, and peasants” (Bellamy 31). The motivation for these novel wartime prescriptions was the

“increasingly violent nature of feudalism towards the defenseless and the Church especially” (Bellamy 31). The unifying properties that the immune groups shared in were innocence and neutrality. No group on the list participated in the decision to make war, nor the mechanics of warfare itself.

After the Peace of God Movement, other Middle Age scholars expanded upon their list of immune groups, and Thomas Aquinas finalized the articulation of the NIJ. Writing three centuries after the scholars of the Peace of God Movement, Aquinas argued that justice in war requires a “complete prohibition on killing the innocent” (Bellamy 40). In making his argument, Aquinas completed the logic of the Middle Age scholars that came before him. Instead of iterating larger and larger lists of immune people, he considered what traits the listed groups had in common -- neutrality and innocence -- and argued that all who share in those traits ought to be immune from attack.

Contemporary just war theorists still provide the NIJ for non-combatant immunity developed by Middle Age scholars even though the feudal political institutions that the NIJ was constructed as a response to no longer exist. Brian Orend writes that terrorist attacks aimed at non-combatants “*is always an impermissible tactic, since it involves the deliberate killing of innocent civilians*” (Orend 70). Nicholas Fotion writes “Only certain people should be attacked intentionally. [...] Those who should not be attacked include children, old people, mothers, secretaries, musicians, medical personnel and so on” (Fotion 116). Alex Bellamy gives seven reasons why non-combatant should be immune from targeted attacks, the first two of which are “non-combatants have committed no wrong” and “they are not participating in the fighting” (Bellamy 132). James Turner Johnson writes “what noncombatants do *not* do -- participate in the making of war -- means that they should not have war made against them, whatever their beliefs,

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ethnicity, religion, or sympathies" (Johnson 87). Finally, Michael Walzer argues that non-combatants are "*innocent* people, a term of art which means that they have done nothing, and are doing nothing, that entails the loss of their rights" (Walzer 146).

In addition to their positive affirmations of the NIJ, the only significant modification to the principle of non-combatant immunity made by contemporary scholars further illustrates their reliance on the NIJ. Specifically, contemporary scholars such as Fotion and Walzer argue that there ought to be some non-combatants that are legitimate targets of attack. Specific examples of these non-immune non-combatants include bomb factory workers, munitions truckers, and generally people whose social role involves a contribution to the war effort (Fotion 116; Walzer 160-175). This is clearly an appeal to the generally accepted NIJ. Workers in bomb factories, it is argued, cease to be neutral and thus, the arguments of the NIJ do not apply to them. This demonstrates that the generally accepted contemporary framework for non-combatant immunity debates is the NIJ first worked out in the Middle Ages; even disputes about the particular application of non-combatant immunity terminate with appeals to neutrality and innocence.

Inapplicability

There appears to be a significant error in assuming that the NIJ actually applies to citizens in modern liberal societies. Initially, the NIJ was used as an argument to grant ethical immunity to the subjects of feudal systems. It was the specific role of peasants, women, and others within feudal society that mandated that they be immune from targeted attacks. Wars of the feudal era were largely between unelected feudal lords and were mainly conducted by mercenary armies.

The subjects of feudal systems did not decide to go to war, did not elect the feudal lord that made those decisions, and were not involved in the conduct of wars themselves. These subjects, because of the way feudal society worked, were genuinely neutral and innocent. The NIJ undeniably applied to them. However, the role of citizens within ideal liberal theory and within modern liberal societies is significantly different from the role of the subjects in feudal societies. The role of the citizen in

liberal society, both in theory and application, is a role which involves active consent to the decisions of the sovereign. Such a role strips liberal citizens of their neutrality and innocence, and therefore makes the arguments of the NIJ for non-combatant immunity inapplicable to them.

One of the cornerstones of liberal political theory is its novel depiction of individuals within society as active citizens, instead of merely subjects. The justness of government actions, laws, and the structure of society is derived in liberal theory, not from the dictates of a divine king or some other arbitrary ruler, but from the active -- even if hypothetical -- consent of all of the individuals within society. This holds true across the spectrum of liberal thinkers, from Hobbes to Rawls.

Hobbes' social contract theory appeals to the hypothetical consent of rational self-interested individuals to justify the legitimacy of government actions. For Hobbes, the individuals in a society are authors of "every thing their representative saith, or doth in their name" (Hobbes 132). The stream of authority begins with citizens and terminates in the sovereign's actions. According to Hobbes, the authorization is given at the hypothetical start of the society by consenting to the social contract, but nonetheless, the authorization is present at all times and always comes from the individual citizens. Thus, the individuals are not neutral or separated from the actions of their sovereign like subjects of a feudal system; instead, individuals are the initial source of all of the actions. Hobbes himself recognizes that the logical consequence of this is that the participants "[own] all the actions the representer doth," meaning they are responsible, non-neutral, and non-innocent (Hobbes 124).

Locke's social contract provides a similar account of the authorization of government actions. For Locke, when individuals hypothetically enter into the social contract, they consent to transfer the "Executive Power they had in the State of Nature, into the hands of the society" (Locke 353). Locke further clarifies what he believes to be the root of authority and legitimate government when he defines the

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specific roles of government. He writes that the “Legislative [...] is the supreme power of the Commonwealth” precisely because the individuals within society placed the power there through consent (Locke 356). Locke continues, saying that no other decisions or laws constructed by any other body can be legitimate because in such a case “the law could not have that, which is absolutely necessary to it being a law, the consent of the society” (Locke 356).

Locke takes further pains to justify sovereign actions as consent-based when he sketches out his picture of tacit consent. Locke argues that simply “enjoy[ing] any part of the Land” of a state entails consent to the sovereign and the content of the social contract (Locke 348). This clarification allows Locke to claim that all citizens are consenting to



sovereign actions even if they never formally entered into a contract to do so. Finally, Locke makes it undeniably clear that he views consent to the basis of all legitimate government actions when he denounces the right of a state to possess arbitrary power (Locke 357). Legitimate exercise of power, within Locke’s theory, must flow from the consent and authorization of individuals within society.

Rousseau also depicts individuals within society as active citizens. For Rousseau, the social contract is stated as follows: “Each of us puts in common his person and all his power under the supreme direction of the general will; and in return each member becomes an indivisible part of the whole” (Rousseau 164). Rousseau’s theory more thoroughly commits individuals to an active role in society, for it not only requires the consent of individuals to enter into the society, but also the ongoing participation of individuals in the decisions of the state. Rousseau’s distinction between citizen and

subject is one of the clearest articulations of the way authority in liberal political theory works. Rousseau writes that the people in a state “are called individually *citizens*, inasmuch as they participate in the sovereign power, and *subjects*, inasmuch as they are subjected to the laws of the State” (Rousseau 164). For Rousseau and other liberal theorists, sovereign action derives its authority from the individuals of society and consequently individuals in society are bound to the

consequences of sovereign actions. Citizens thus are not neutral towards, nor innocent of the actions their sovereign makes.

Even modern liberal theorists, such as John Rawls, rely upon the consent of individuals to justify the actions of states. Rawls holds that a just society is one whose basic structure would be chosen by rational self-interested people behind a veil of ignorance (Rawls 12).

From this basic premise he derives principles which he argues people behind a veil of ignorance would adopt. Regardless of the principles he ends up constructing, the basic premise of his theory of justice is the basic premise of liberal theories in general: authority, social structures, and sovereign decisions are legitimate because they are rooted in the consent of individuals. In the case of Rawls, it is hypothetical consent derived in a hypothetical thought experiment, but it is consent nonetheless.

In ideal liberal theory, citizens themselves are the source of all governmental actions in one form or another. This is a unifying principle of what makes a liberal theory a liberal theory, at least for the contractarians. The conclusion then that citizens within liberal societies are not covered under the NIJ follows in a fairly straight-forward fashion. If a government decides to go to war, that decision only comes about as a result of the citizens authorizing the government to do so. The citizenry’s role in the war is as the originator of the action

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towards war. This might happen electorally or it might happen by consenting to a societal structure that allows wars to be waged. Regardless of which one happens to be the case, the citizens are necessarily participating in the process of waging war. Thus, the citizens are not innocent of the decision to pursue war, for it is they who are authorizing the decision; and, the citizens are not neutral towards the war effort because it is their actions (consent) that causes the war to occur. Because the citizens are non-neutral and non-innocent, the NIJ cannot apply.

Perhaps a hypothetical case will better clarify how liberal theory requires this conclusion. Let us say that the prime minister of the liberal democratic country Foo declares war on some other country. The prime minister of Foo was duly elected and thus the war is considered a legitimate exercise of sovereign authority. In this case, liberal theory holds that the citizens of Foo authorize the war in two ways. First, the citizens of Foo authorize the war because they consent to the basic structure of society that permits the prime minister to declare war. Second, by electing the prime minister into office, the citizens of Foo provided a more specific instance of consent and authorization when casting their votes. Had the citizenry of Foo not consented to a society that makes declaring war possible, or had they consented to a society that makes declaring war harder, then the war could not have occurred. Because the citizens of Foo did neither and consented to the present society instead as well as voted in the current prime minister, they can be considered authors of the war and are entirely responsible for it.

This conclusion holds no matter what kind of liberal society is in question. Consent-based governance is the essence of liberalism; as a result, liberal political theory requires that all actions of the state come from the citizenry, and that citizens must subject themselves to the consequences of those actions. It is precisely the presupposition that citizens are non-neutral and non-innocent that drives the mechanics of governmental legitimacy in a liberal state. Consequently, when a war is waged, the citizens of the society waging it are an indispensable part of the decision-making process. The claim that the citizens in

such a society ought to be immune from attack for the same reason that feudal peasants ought to be immune from attack -- the NIJ -- does not follow.

The inapplicability of the NIJ to liberal citizens not only holds in ideal theory and hypothetical examples, but also holds in existing liberal societies. Citizens of liberal societies such as the United States of America, the United Kingdom, and Spain really do participate in the actions their governments make. They elect representatives according to platforms and other metrics, and agree to authorize the policies those legitimately elected representatives make. The role of the citizen is not a bystander, but as an active agent in the decisions of the sovereign. Citizens can and do affect the policies pursued by the state which ought to make them culpable for those policies, even when those policies include war.

The circumstances surrounding the Madrid train bombings of 2004 illustrate how citizens in a liberal society occupy non-neutral, non-innocent roles in the execution of war. Spain is a liberal democracy whose government is run using a parliamentary system. The citizens directly elect the representatives in the Spanish parliament and those representatives form policies and take positions that are supposed to reflect the will of the population. In short, the Spanish government acts by the authority and consent of its citizen population in a fashion which makes it a real world application of liberal political theory. Thus, it should follow that when the popularly elected Spanish government decided to participate in a war of aggression against Iraq, that decision ultimately derived its authority from the citizens of Spain themselves. Thus retaliatory attacks against the authors of the invasion should be considered justified self-defense and not an attack against innocent or neutral bystanders.

The Madrid train bombings were arguably just such an attack. On March 11, 2004, ten bombs were set off on commuter trains in Madrid which killed 191 people and injured at least 1,800 more ("Timeline: Madrid Investigation"). Three days after the attack on March 14, a videotape was released by Al Qaeda which claimed responsibility for the attack and said that it had been carried out as retaliation for Spain's involvement in the Iraq War ("Timeline: Madrid Investigations"). On the

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very same day as the tape's release, Spain held its parliamentary elections and the Spanish Socialist Party secured a "surprise victory" ("Timeline: Madrid Investigation"). Of particular importance here is that the man set to become prime minister in a Socialist Party victory, Jose Zapatero, ran on a platform of withdrawal from Iraq and after being elected did precisely that ("Spain PM"). While multiple explanations for this electoral upset have been offered, one dominant and plausible explanation is that Spanish voters switched their vote in response to the bombings and the tape.

The specific series of events of the Madrid attacks makes them an especially compelling example of citizens participating in society in a way to further war involvement that would otherwise not occur. Not only were the citizens causing the war to begin due to the way liberal theory constructs consent and authority, but according to Sigma Dos polling information, the citizens of Spain were also ready to re-elect the very same government that got the country into Iraq and that sought to continue the war ("Elecciones Generales"). Seven days before the bombings, the sitting government held a 6.2 point lead in the polls. The day after the bombings, that lead narrowed to 0.7 points, and on election day, the sitting government was defeated by 5 points ("Elecciones Generales"). This represented a 11.2 point swing from a pro-war candidate to an anti-war candidate. To claim then that the citizens were neutral or innocent in this case would be on its face absurd. Through a simple vote, they were able to decide to continue a war or end a war and the polling trends suggest that as a collective whole, they intended to choose continuation until the bombings occurred. Under the prevailing theory that immunity is to be granted solely on the basis of neutrality and innocence, it would seem to follow that these citizens -- lacking such traits -- were ethical targets of attack.

Objections and Alternatives

An intuitive objection to this analysis is that not all victims of the attacks or similar attacks that might take place elsewhere support the war. Those who do not support the war, it might be argued, do not deserve to

be targets of attack. This objection misunderstands the nature of a liberal society and especially the nature of electoral governance. In a liberal society, individuals authorize a war legitimately waged by the sovereign if they authorize the basic structure of society that allows that war to occur. If we allow that majority rule should dictate policies, then at a deeper level, we are authorizing and consenting to a popular war to which we may claim personal opposition. Or at least, that is what liberal theory requires of citizens. To object to this conclusion is to object to the fundamental idea of liberal political theory: citizens who consent to the structure of society are subject to the consequences of that structure. That is not to say that there are not valid reasons to object to liberalism's view of consent; however, any objection to this portrait of consent is an objection to liberal political theory itself, not just this application of it.

It might be further objected that there is an obvious gap between the extent to which different citizens really further a war effort. For instance a pro-war activist surely does more to further a war than a pacifist working in a grocery store. To understand why this objection fails, it is necessary first to recognize the binary nature of non-combatant immunity. Someone either ought to be immune or ought to not be immune; there is no possibility of a sliding scale. The NIJ holds that those who are neutral and innocent ought to be immune and those who are not neutral and innocent ought to not be immune. In the case of liberal societies, all citizens fall into the latter camp because of their role as citizen, not their specific occupational role in society. One might categorize these non-immune citizens further by occupation, separating those who are extra deserving of an attack from those who are less deserving. But any taxonomy that is derived from such an effort should be considered a subset of the larger set called citizens, and it is belonging to that set which dictates non-immunity.

Lastly, it might be objected that a person who consents to the structure of a liberal democracy at war does so, not because they support the war necessarily, but because they prefer the current structure over some other structure or a civil war. I argue that when making the calculation to prefer to existing structure, there should be the understanding that consenting to the structure of a

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liberal democracy means simultaneously consenting to the consequences of the policies that structure leads to. The consequence of a war policy is openness to attack. If it is determined that such a consequence is almost never worth contending with, then perhaps war should almost never be pursued. Additionally, it might suit a society that did not want to be open to attack to require higher margins of support for a war policy to pass or take some other measure to make war less likely to occur. If the basic structure of society is set up in a way that makes warring easy, then those who consent to that structure are culpable for that choice.

Although I hold that the NIJ is inapplicable to liberal citizens, that does not necessarily mean there are no other ethical justifications to fill its role. While I do not intend to provide an exhaustive analysis of other potential approaches to non-combatant immunity, a quick survey of the most likely alternatives shows that they also have their problems. For example, various schools of utilitarian thought might be used to construct different immunity principles. An act-utilitarian would only be able to argue for immunity if allowing an attack on civilians in a specific case would cause more suffering than it alleviated. In some cases, this would not actually lead to a requirement of immunity because it is possible that an attack on the civilians of a country might cause that country to pull out of a war (as with Spain), and save more lives overall. Some act-utilitarians might value the lives of their fellow citizens over the lives of others and consequently view an attack on their own civilians as always outweighing the lives lost from other countries.

However, these utilitarians would have no grounds to argue for a universal non-combatant immunity principle because they could not expect other countries to avoid targeting civilians if doing so saved the lives of more of their own citizens. Rule-utilitarians might have slightly firmer ground putting forth an immunity principle by arguing that as a general rule, allowing direct attacks on civilians will lead to more suffering than forbidding them. But this is debatable, as it seems that if we stipulate that going to war requires opening up the civilian population to direct attack, we would decrease the willingness of liberal states to

pursue war which would have a net positive effect. Additionally, it is hard to determine whether civilian attacks in general would cause wars to end more quickly or not, leaving a rule-utilitarian approach unable to yield a certain answer.

Another alternative would be to simply say that only those with very direct involvement in the war itself ought to be ethical targets for attack. However, this standard seems arbitrary and functionally amounts to protecting the same class of people the NIJ is supposed to protect but without replacing the NIJ with some other ethical justification. Its arbitrariness is evident in that it is not immediately clear what would make a soldier or a bomb maker any more morally culpable than a citizen whose voting preferences caused them to go to war. Does the reluctant conscript soldier really bear more moral responsibility for the war than the hawkish political activist at home that stirs up pro-war sentiment?

The only practical alternative that might plausibly immunize the same class of people the NIJ attempts to is a defense of immunity on the basis of international law. Since most states have contracted to avoid civilian targets in the process of warfare, then it could be argued that is unethical for states to breach their international agreements. This defense is radically different from the NIJ because it does not declare that citizens are inherently immune, just that we have agreed to treat them as such and that such an agreement carries normative force. Despite being the best candidate to replace the NIJ, even this approach experiences problems accounting for the behavior of states that have not signed on to international agreements and non-state actors.

Looming behind the search for alternatives is the question of whether we should even try to find a way to conclude that non-combatants ought to be immune from attack. Perhaps, there is no legitimate justification for holding such a view. Prior to the Middle Ages, ancient civilizations like Greece had codes of conduct for war that permitted the killing of non-combatants (Bellamy 16). It was only with the Middle Ages that non-combatant immunity, contrived as a response to the very specific conditions of feudal society, was initially justified. There is no reason we should immediately think that, absent the exact conditions of feudal society, non-combatant

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immunity must still hold. At minimum, we should not think, as many just war scholars do, that if it does hold, it should hold for the same reasons that it holds in feudal societies.

Conclusion

Ultimately, I have not tried to provide a definitive conclusion on whether non-combatant immunity is salvageable or deserves to be salvaged. Rather, I aim only to point out that the way it is currently justified does not hold up for citizens of liberal societies. In the feudal era, immunizing non-combatants on the basis of innocence and neutrality logically worked because they were actually innocent and neutral. Decisions made by feudal lords or divine monarchs did not receive their authority from the subjects of those societies and the subjects played no role in setting foreign policy agenda. However, liberal political theory significantly altered the role of individuals in society, transforming them from passive subjects to active citizens. Liberal political theories, across the spectrum, hold universally that citizens consent and authorize the actions of their government and that such consent and authority is the root of governmental legitimacy. Thus, when a government chooses war, that decision emanates from the consent of the citizenry, making any citizen claims of neutrality and innocence false. Other alternative theories of immunity might offer a way out. But as the theory stands, the overwhelming majority of contemporary scholars justify ethical immunity by appealing to innocence and neutrality, traits which it is hard to see how citizens in a liberal society could possess.

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Just War Theory, Political Liberalism, and Non-Combatant Immunity

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In "Rethinking Non-Combatant Immunity," Matthew Bruenig develops two themes in moral and political philosophy, both of which might benefit from a brief introduction. The first of these themes comes out of the tradition of just war theory. Suppose two countries, X and Y, are at war with one another. Now, just war theory has been primarily concerned with the questions about the situations in which it is permissible for the combatants, that is, the regular military forces, of X and Y to attack one another. In general, just war theory has held that it is not permissible for either side to attack non-combatants.

It is true, of course, that there are exceptions to this rule. For example, many just war theorists hold that the non-combatants who are voluntarily engaged in directly supporting their country's war efforts are, at least while so engaged, legitimate targets of attack. But the point to note is that cases of this sort are *exceptions* to the rule. Bruenig calls this the "neutrality/innocence justification" for non-combatant immunity or "NIJ."

The second theme in Bruenig's paper concerns the legitimacy of liberal governments. As Bruenig points out, many moral philosophers and political theorists contend that the consent of the governed is essential to the legitimacy of any liberal polity. To be sure, consent is understood in different ways by different authors. Some authors favor explicit consent. Others favor implicit consent, and still others favor hypothetical consent. Nevertheless, consent of one kind or another does appeal central to liberalism. In his paper, Bruenig brings these themes together in a novel

and interesting manner by asking whether NIJ has a place within the context of liberal political thought. His answer is that it does not. Instead, NIJ, Bruenig argues, "does not apply to citizens within ideal liberal political theory and functioning liberal states" (pg. 1).

We can call this the "Liberal Non-Immunity

Thesis." Why think the Liberal Non-Immunity Thesis is correct? Bruenig's argument is worth quoting at length: "The subjects of feudal systems [about whom NIJ was first explicitly formulated] did not decide to go to war, did not elect the feudal lord that made those decisions, and were not involved in the conduct of wars

themselves. These subjects, because of the way feudal society worked, were genuinely neutral and innocent. The NIJ undeniably applied to them" (p. 4).

But matters are apparently different when it comes to the subjects of liberal polities. On that issue, Bruenig contends that

"The role of the citizen in liberal society, both in theory and application, is a role which involves active consent to the decisions of the sovereign. Such a role strips liberal citizens of their neutrality and innocence, and therefore makes the arguments of the NIJ for non-combatant immunity inapplicable to them" (p. 4).

In short, Bruenig would extend non-combatant immunity only to those who have not, or cannot, consent to being governed. The citizens of a liberal state can, and do, consent to being governed. Therefore, non-combatant immunity does not extend to such citizens.²

This position seems to me to raise a few



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questions. To a large extent, the plausibility of the Liberal Non-Immunity Thesis turns on the matter of how we understand the concept of consent. While it is often impractical to make explicit all of the rules, conditions, etc. that govern the use of the concept of consent, it does not follow that these rules, conditions, etc. do not hold. For example, consider Alice, whose 5-year-old daughter Barbara has an infected appendix. Suppose Alice gives her consent to Camilla, Barbara's physician, to perform an appendectomy. Can one conclude that Alice thereby consents to allowing Camilla to perform this procedure *by any means she might choose*? Certainly, Camilla would be acting wrongly if she performed the appendectomy on Barbara without the use of anesthetic. Yet would Alice's consent thereby open her up to a warranted claim about responsibility for Barbara's misdeeds?

I have my doubts whether, by consenting to X, one *ipso facto* consents to X's being done in a manner whatsoever. It certainly does not appear to extend to doing X in a way that is illegal, unethical, gratuitously painful, or even violent. This seems no less true when we turn from personal cases to political cases. By using U.S. highways and paying my federal taxes, do I give consent to my government's treatment of prisoners being held in Guantanamo Bay or to its discrimination against homosexual men and women?

Suppose, as is true, that I actively oppose such behavior. Can I reasonably be accused of self-contradiction because of this fact? Do I consent to the very thing I protest? Could I still be blamed for my government's actions in such cases? Would it be appropriate for others to protest these unjust actions of the government in front of my house or to organize a boycott against my business simply because I am a citizen of a liberal polity which engages in unjust actions?

I am inclined to answer these questions in the negative. Consent may be a necessary condition for the legitimacy of a liberal polity, but it is not a sufficient condition for the legitimacy of all of its actions. Moreover, the citizens of such a polity are not responsible for a government's illegitimate actions

unless they have a realistic chance of preventing them. And if such citizens are not responsible, it is unclear how they can lose their right not to be attacked, in war or otherwise. Such thoughts raise problems for the Liberal Non-Immunity Thesis that Bruenig describes.

Notes

1. Note that non-combatant immunity would still presumably extend to those who are too young to consent, those who are not mentally competent to consent, etc. The brief nature of these comments do not provide me with room to discuss these cases in any depth, so I ignore them here.