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Chapter One:

Liberal Democracy and the Lesser Evil

1. The Lesser Evil in Moral Life.

If our moral life as individuals presented us with clear choices between good and evil, these choices would not be as anguished as they often are. Our moral life is commonly lived in an ill-lit realm of ambiguity where we struggle to distinguish among shades of grey. The anguish we feel when faced with these choices does not arise from our inability to distinguish, in the abstract, between good and evil, but from the difficulty between choosing, in specific circumstances, between courses of action, both of which will result in harm. Doing some kind of wrong in these circumstances is necessary: we cannot see any other way to proceed rightly. Our concern is to choose the lesser of these necessary evils, the course of action likely to cause least harm.

These moments when we do wrong are disturbing precisely because we discover that it is possible to do evil ourselves, and to do so despite good intentions. We would like to comfort ourselves with the notion that evil is a word reserved for the extreme cruelties and diabolical violence of the intrinsically wicked. We would like to associate evil with the idea of the Devil himself and by virtue of this invention to distance ourselves and other human beings from our intrinsic capacity to do harm. But we learn painfully that evil is actually in us, and not by virtue of our nature so much as by virtue of the weakness of our reason, our capacity to deceive ourselves and our inability to anticipate the consequences of our action. For what is evil but the infliction of irremediable harm or damage to those who do not deserve it? Why should we deceive

ourselves into thinking evil is the monopoly of monsters or devils? We know there is a gradient that runs from an honest mistake, through an unintended harm, to a downright evil, committed by deliberate malice or by grossly negligent intention. If we are truthful, we know that we have slipped down this gradient and that a few of our actions have been more than mistakes or harms. We are capable of evil and have committed it more than once. Most of our ethical life is therefore a struggle against this capacity to harm those we ought to cherish and save, to minimize it when it is necessary, and to justify it when we cannot avoid it.

The avoidance of evil is difficult because all we have to go on are our good intentions. We know we lie to ourselves about how good our intentions are and we also know that good intentions are not much of an excuse for bad consequences. Choices among lesser evils require us to predict these consequences and our predictive capacity is notoriously unreliable. We cannot be sure, when we start, that the harm we are certain to do to others will actually result in any certain good in the future. It is possible that we will choose the lesser evil only to see the action miscarry, with the result that we will produce only more harm. Yet we must act, since inaction in itself will cause harms that are just as great.

Sometimes the choices involve deciding which of two means are the least hurtful; sometimes choosing which of two ends is least destructive, but in all cases we are aware, as we make these choices, that both the means and the ends are wrong, in some way, and our moral reasoning focuses on how to minimize harm to ourselves and others. But minimizing harm is not the only problem. If it were, deciding would be easier, because we could calculate: we could balance anticipated harms against expected benefits and come to a clear conclusion about which side outweighed the other. But since we are talking about human beings and their fate, the question arises whether there are some harms, some consequences which we should never even entertain when human beings are involved.

Euripides gives us a particularly unsparing account of the dilemmas of the lesser evil in *Medea*. It is a play about a woman who kills her two children, in order, so she claims, to spare them the horror of being killed by strangers:

Women, my task is fixed: 'as quickly as I may
To kill my children, and start away from this land,
And not, by wasting time, to suffer my children
To be slain by another hand less kindly to them.
Force every way will have it they must die, and since
This must be so, then I, their mother, shall kill them.

But since she also wants to kill them to revenge herself on the father of the children, who has abandoned her, it is impossible to see *Medea* in an unqualified moral light. She may be sparing her children, but she may also be sacrificing them to her own fury at desertion and rejection.

I know indeed what evil I intend to do,
But stronger than all my afterthoughts is my fury,
Fury that brings upon mortals the greatest of evils.

The greater evil of murder can only be palliated into the lesser evil of mercy if we believe that her intentions are unmixed. But we cannot be sure how to regard her. Moreover, from the standpoint of her children, who is to say that being murdered at the hands of your own mother is a mercy compared to being murdered at the hand of strangers? Only on certain assumptions about the future of these children, does her act qualify as a lesser evil: that they would be tortured, or abused or held in degrading captivity before death and so on. Because Euripides is a very great playwright, he leaves us—the audience—alone with the full burden of evaluation, which is why, two thousand years later, we still leave the theater wondering whether she is a self-justifying monster or a tragic angel of mercy.

As Euripides also shows us in *Medea*, human beings can justify anything as a lesser evil if they only have to justify it to themselves. A mother can even justify the

murder of her own children. In Medea's case, the audience sees more clearly than Medea ever does, even if they cannot disentangle her motives. In this play, evil appears as the incapacity to take any distance—through reason—from the primal force of emotion, so that all strong emotion becomes automatically self-justifying. The horror of human life, Euripides seems to say, is that our reasons are such pitiful puppets of our emotions. This is as true in the political realm as in the personal. Evil appears here in the hysterical closed cycle of self-justification. But evil can also appear in rational form, too, in the careful and deliberate choice to do harm, motivated by an equally rational but ultimately mistaken calculation of anticipated good. Either way, in hysterical grief or in cold calculation, the course of the lesser evil can lead to tragedy or to crime. But as Euripides insists, these choices, however unendurable they may be, are unavoidable elements of human experience.

Medea is both a queen and a mother, both a political and a personal figure. The play refuses to draw any boundary between personal and political realms, and refuses the convention according to which politics is uniquely the realm of the lesser evil, since it is the place of deception, force and coercion, while the personal is, as the saying goes, 'a haven from the heartless world.' While it is true that political leaders have means at their disposal—armies, police-forces, interrogators—capable of evil on a massive scale, the dilemmas they face are just like those faced by their fellow citizens: how to gain truthful access to one's own intentions, how to establish rational grounds for believing that a course of action, evil in itself, will eventually result in good and how, when faced with painful alternatives, to choose the lesser evil.

2. Liberal Democracy and the Lesser Evil.

The content of the words used here—good and evil—are dependent upon their contexts, within certain institutions and types of states which give them fixed meanings. All states, as Max Weber famously said, seek to establish and maintain a monopoly over the legitimate means of force within their territory. Only liberal states go on to seek to eliminate violence altogether from the political realm, that is, from the public arena

where opinions are formed and expressed, where coalitions of citizens assemble to press for public solutions, and where parties compete for political power. They go even further, seeking to keep even the necessary and justified coercion of the state to a minimum.²

Only liberal states make violence and coercion in political life morally problematic, that is, construe the use of these means as justifiable only if they are a lesser evil. In Hitler's Germany or Stalin's Russia, law, politics and culture were all ordered so as to eliminate the very idea that killing class enemies and Jews were in any way problematic. Far from being lesser evils, these acts of extermination were heralded as necessary to the creation of a utopia: a world of perfect class unity and social justice, or in the case of the Thousand Year Reich, a nation purified at last of the racial enemy that had sapped its unity and frustrated its rise to greatness. ³If such were the utopia that class warfare and racial extermination were supposed to serve, violence in their service could hardly be a crime. Hence the very use of the idea that violence can be a lesser evil has meaning only in societies very different from these.

The context that I am concerned about here is my own, the world of constitutional democracies. Thanks to the rights they entrench, the due process rules they observe, the separations of power they seek to enforce, liberal democracies are all guided by a constitutional commitment to minimize the use of violence, force, coercion and deception in the government of citizens and to minimize these evils, through an elaborate structure of adversarial justification. By adversarial justification, I mean the institutions that put the use of coercion to the test, whether by jury trial, parliamentary scrutiny of executive measures or judicial oversight of laws. In a democracy, the claim that an act of coercion is a lesser evil is, or ought to be, subjected to the test of reasonable doubt. The coercions in question range from collection of taxes, the imposition of fines, as well as punishment for criminal or civil liability. The upper limit of the state's coercive power, of course, is capital punishment. Put simply, if coercion must be used against a human being, the action must be grounded in reasons, backed

by evidence, consistent with the procedures laid out in the law, all of this subjected to adversarial review by those who stand to be coerced. The point here is definitional of liberal democratic constitutionalism as a form of government: coercion may be necessary to maintain social order, but it is an evil, and it must be kept to the absolute minimum.⁴ Why would a liberal society put such store in rights, if it did not believe that coercion is in itself an evil, even when a necessary one?

It might be asked whether a necessary evil, like justified punishment according to due process of law, deserves to be called an evil at all. The answer again makes sense only within the moral meanings commonly promoted in constitutional democracies. These societies believe, as an institutional commitment, that deprivation of liberty, no matter how just, always causes pain and suffering. The fact that it is necessary and the fact that it is just do not make it any less painful. It is important in these societies to distinguish between justifying the necessity of that suffering and justifying the suffering itself. It is a lesser evil that criminals should be punished than that they should escape punishment, but the punishment remains an evil nonetheless. What can be justified is the justice of the punishment. What justification can extenuate but not exculpate is the pain that punishment causes.

It might be said that this example is confusing harm with evil, failing to distinguish between justified and necessary actions that cause harm from unjustified and unnecessary actions caused by malice or gross negligence. Another way of saying the same thing is that a necessary evil cannot really be an evil at all, since it is a characteristic of evil that it is not necessary, but gratuitous.

I would concede these points, yet I still want to hold onto the idea of the lesser evil, because I think it captures the idea, central to liberal theory, that all coercion and violence, however necessary, however justified, remains morally problematic and can only be deployed with a full consciousness of moral hazard. If liberal theory starts from a foundational commitment to human dignity, it is difficult not to see this point: that the coercion and force necessary to maintain social order are difficult to reconcile with a

commitment to dignity. One way to do this is to hold onto the awareness that even justified and necessary acts of coercion are evils—when held up to the standard of dignity we believe we want to uphold.

To insist that justified exercises of violence can be defined as a lesser evil is to say something paradoxical: that evil can be qualified. The word does not easily admit of qualification. If two acts are evil, how can we say that one is the lesser, the other the greater? Qualifying evil in this way would seem to excuse the lesser portion of blame. Yet it is essential to the idea of a lesser evil that one can justify resort to it without excusing it, without denying that it is evil, justifiable only because others means would be insufficient or unavailable. Using the word evil rather than the word harm is intended to highlight the elements of moral risk and hazard intrinsic to the maintenance of order in any liberal order premised upon the dignity of individuals.

A further way to capture the essential point—that the defense of necessity does not change the moral character of coercion and violence—becomes clear if we look at the role of necessity defenses in law. Very briefly, claiming that an action was absolutely necessary—sacrificing one life to save another, for example—is an excuse in mitigation *ex post facto*. The law will not accept it as grounds to eliminate a finding of wrong-doing altogether. Thus the Israeli Supreme Court has ruled that an agent of the state might be entitled to make a defense of necessity if accused of torturing someone: this excuse might mitigate the penalty for violating the law of the state in respect of interrogation, but it would not excuse the action itself, which remains criminal. These distinctions, it seems to me, are central to the way a liberal democracy reconciles the contradiction between its foundational commitments to dignity and its recognition of the necessity of force and violence. It does not reconcile these by pretending that violence and coercion are anything other than lesser evils.⁵

Finally, the actions we will be examining—suppression of civil liberties, surveillance of individuals, pre-emptive arrests, targeted assassination, torture, up to an including pre-emptive war—are different in kind from the example we have been

considering—just punishment. They put liberal commitments to due process, accountability and dignity under such obvious strain, and the harms they entrain are so serious, that it seems justified to speak of them in the language of evil, even if, as we shall see, the evil can be justified.

We make the distinction between greater and lesser by anticipating harms and come to a rational anticipation of which course of action is likely to inflict the least harm. When we have done this carefully, we have chosen the lesser evil, and we are entitled to stick to it as the right course even if the price proves higher than we anticipated. But not indefinitely so. At some point—when we “have to destroy the village in order to save it”—we may conclude that we have slipped without wishing or anticipating it, from the lesser to the greater.

It is tempting to suppose that moral life can avoid this slope simply by avoiding evil means altogether. It is essential to the idea of the lesser evil in moral life that no such angelic option exists. We either fight evil with evil or we succumb. So if we resort to the lesser evil, we should do so, first, in full awareness that evil is involved. Second, we should act under some justifiable, explicable state of necessity. Third, we should only chose evil means, as a last resort, having tried everything else.

The question at the heart of this book is how liberal democracy can defend itself when it is faced with enemies who do not regard violence as a lesser evil, who do not scruple to use violence to bring it to its knees.

When survival appears to be at stake, all societies, whatever their constitutional form, will fight. It is important to stress, from the outset, that the political character of a society does not appear to impose any limit, in principle, on its willingness to use extreme measures to defend itself. Nor do extreme measures inherently tarnish liberal democracy. We should rid ourselves of the notion that to be a committed liberal democrat is to be committed to clean hands. On the contrary, the defense of a liberal democracy may require us to get our hands dirty indeed.⁶

The reluctance of liberal democracies to go to war against Hitler in the Thirties might suggest that liberal democracies, because they allow and encourage opposition and because citizens themselves bear the cost and the burden of defense, can be more reluctant to confront aggression or to engage in it than authoritarian regimes whose decisions to go to war depend only on the calculus of a single leader or a small elite. But once war has begun, there is no evidence to show that liberal democracies are more circumspect in the use of violence than non-democratic societies when faced with threats to their existence. It was a democratically elected leader, not a dictator, who ordered the nuclear attack on Hiroshima and Nagasaki, justifying it as a lesser evil, to spare the greater number of casualties that he felt certain would result if a land assault were necessary.⁷ To this day Truman's decision remains controversial, as does Churchill's decision to order the bombing of Dresden and Hamburg.⁸ While these decisions haunt the historical reputation of both leaders to this day, the decisions themselves had no negative institutional consequences for the liberal democracies these leaders were defending. Democratic leaders may exercise dictatorial authority in war-time, but this need not alter permanently the constitutional balance of power. The use of extreme measures in war-time did not result in a permanent increase in executive power in either society, and one of the leaders, Churchill, was voted out of office within weeks of peace. The entire apparatus of war-time controls over the economy, politics and civil liberties was dismantled and both democracies resumed their normal adversarial course, renewed rather than distorted by the struggle against dictatorship and tyranny.⁹

3. Liberal Democracy and Terror

Matters stand differently with the challenge presented to liberal democracy by terrorism, especially by the terrorist attacks launched against the United States on September 11. The threat comes from within as well as without, and since terrorists within exploit the freedoms of liberal democracy to plot attacks and evade detection, an effective response to their threat may require serious, and possibly, permanent

abridgements of the liberties of all. Moreover, unlike aggressive war against states, the threat of terrorism has no certain duration, and hence the abridgements of liberties, and the mobilization of national resources required, may extend indefinitely. The paradox is that the threat of full-scale war and actual invasion by another state poses less of a long-term challenge to the constitutional identity of a liberal democracy, (provided of course it repels such an invasion) than the indefinite pin-prick attacks of a terrorist enemy. While total war poses temporary challenges to the identity of a liberal state, terrorism poses a permanent challenge. So the question becomes: how does a liberal democratic state combat terrorism without violating the ends for which liberal democracy itself stands?

Terror is explicitly intended to delegitimize liberal society, by inciting it to abandon the constitutional restraints imposed on the use of force. Since the very beginning of mass suffrage liberal democracy in the mid 19th century, terrorism has shadowed it as a mocking and provoking twin, taunting it in the hope that it will abandon the restraints that are definitional of its identity, throw off “the hypocritical mass of bourgeois legality” as 19th century Marxist terrorists used to say, and reveal itself as an order, not of law and consent, but of pure coercion.¹⁰ Terrorism puts liberal democracy’s core commitments under pressure, and is intended to do so. Since terrorists work and live among citizens, detecting them and preventing their attacks may require restrictions on the freedoms of the law-abiding. Transparency in government and freedom of information, under the adversarial pressure of a free press and a free legislature, are the life blood of a democracy. Yet it is not always possible to avoid deceiving an electorate for the purpose of accomplishing a secret operation that will save their lives; not always possible to avoid entrapment, deception and violence to catch and neutralize terrorists. A liberal constitutional democracy is also a limited government, and seeks, through the checks and balances which give countervailing powers to each branch, judiciary, executive and legislature, to prevent power accumulating in any one set of hands. Yet terrorist emergencies invariably force power

into the hands of the executive, which alone commands the military, police and security apparatus necessary to repel the threat. Terrorist emergencies, if they are sufficiently protracted—and in Britain, for example, the emergency has been going on for thirty years—they can leave behind a permanent increase in executive power at the expense of legislative and judicial branches of government. The question to ask, therefore, is which of the various responses of liberal democracy to a terrorist threat are a necessary evil and which damage its very nature?

These lesser evils range through a gradient, beginning with the suspension of civil liberties, through secret uses of executive power, to torture of suspects, as well as targeted assassination, right up to pre-emptive war to destroy terrorist bases and also to prevent the development or deployment of weapons which may be used by terrorists or states that support terrorist aims. The question of whether any or all, or only some of these means, can be justified is urgent and in successive chapters I will take up each of these issues in turn.

The challenge in assessing these questions is to find a viable position between cynicism and perfectionism. Cynicism would maintain that ethical reflection is irrelevant: the agents of the state will do what they will do, and the terrorists will do what they will do, and force and power alone will decide the outcome. The cynics are wrong. All battles between terrorists and the state are battles for opinion, and in this battle, ethical justifications are critical, to maintain the morale of one's own troops, to hold the loyalty of sheltering or supporting populations and to maintain to international political support. A counter-terror campaign probably can only be run by cynics, by professionals schooled in the management of moral appearances, but even cynics know that some moral promises have to be kept if they are to be believed at all.

As for perfectionism, this would be the doctrine that there are some acts which a liberal democratic state should never contemplate, let alone commit. Thus, for example, a perfectionist commitment to human rights might preclude any taking of life in response to terrorist attacks and restrict our response to judicial pursuit of offenders

through process of law. Such adherence to absolute standards would achieve moral consistency at the price of leaving us defenseless in the face of evil-doers. Moreover, perfectionist commitments themselves contradict each other. Security is a human right, and thus respect for one right might lead us to betray another.

It does not follow that the threat of terrorism justifies anything. The question remains what exactly can be allowed, but I do not think a liberal democracy has ever defended itself against terrorism without at least some sacrifice of its liberties. This in itself is a controversial concession in the eyes of many civil libertarians. They believe that liberty is an indivisible unity and that temporary infringement of the rule of law, for any category of person, risks damaging the integrity and legitimacy of the whole. In later chapters, we will examine in detail the question of whether exceptions to the rule of law compromise it, or whether such exceptions enable it, on the contrary, to survive.

It should be clear, however, that a lesser evil morality is anti-perfectionist in its assumptions. It accepts as inevitable that it is not always possible to save human beings from harm without killing other human beings; not always possible to preserve full democratic disclosure and transparency in counter-terrorist operations; not always desirable for democratic leaders to avoid deception when dealing with their own electorates; not always possible to preserve the liberty of the majority without suspending the liberties of a minority; not always possible to anticipate terrible consequences of well-meant acts and so on. Far from making ethical reflection irrelevant, these dilemmas make ethical realism all the more essential in guiding democratic reflection and good public policy. The fact that liberal democratic leaders may order the surreptitious killing of terrorists, may withhold information from their voters, may order the suspension of civil liberties need not mean that “anything goes”, that liberal democracies are incapable of setting any limits in principle to the means employed for their defense. These limits must be derived from the character of the society that is being defended, from the type of freedom the society stands for and the view of human dignity that it seeks to defend. It is obvious that a liberal society can

defeat evil with means which compromise its nature, can survive terrorism in a manner that would amount, essentially, to defeat.

The question of what these limits are is also a question about how they are arrived at, and who decides where to place the limits. The ethical commitments of liberal society –to respect individual liberty and dignity–will not answer every question. In practice, what is allowable in every instance depends on how individual citizens construe their own personal relation to these constitutional commitments, and how the institutions allow the adversarial justification of necessary if painful measures through public discussion and debate. Liberal democracy deals with moral uncertainty through democratic deliberation and through a strongly articulated conception of individual responsibility, which is supposed to restrain the actions of public officials even when they are safe from public scrutiny. In practice, one of the challenges posed by terrorism to a liberal order is that the necessities of secrecy force some of these crucial ethical dimensions out of the public realm altogether into the nebulous realm of the state’s most secret agencies. In later chapters we will have to consider how far the democratic requirement of public regulation of these ethical decisions—about torture, interrogation, targeted assassination and so on—can be met in times of terrorist emergency. Again, even when standard democratic procedures of oversight and accountability are not possible, in relation to secret anti-terrorist operations, the agents themselves remain citizens, and their responsibility to the constitutional order they defend remains the tribunal of last resort which is supposed to save us from a descent into barbarism.

But the national democratic electorate and the conscience of public servants are not the only relevant moral participant in these decisions. Internationally ratified human rights instruments, together with the UN Charter and the Geneva Conventions governing the conduct of hostilities widen the audience of justification beyond the electorates of democratic states who feel they are under attack, to a wider network of states and international bodies, whose views must be taken into account. International standards

and international opinions matter but we should take care not to make these more authoritative than they are. Nor should we assume that these standards are universally accepted. As we know, European countries disagree with the United States about the legitimacy of the death penalty, and they have refused to extradite suspects to the United States where capital punishment may be the penalty. There are few non-controversial, universally valid ethical standards to guide a war against terror. International conventions prohibit torture, but the exact point at which intensive interrogation measures pass over the invisible red line into torture is a matter of dispute. The Geneva Conventions prohibit the deliberate targeting of civilians, and the idea of civilian immunity is definitional of what terrorism is, but who counts as a civilian, and who is entitled to the immunities and protections of the Convention remains controversial. The conventions here are useful guides, but they are not peremptory, definitive or clear. As troubling as it may be to say so, the ethical standards by which a terrorist campaign is judged are determined politically. It all depends on what an electorate and international public opinion can be persuaded or induced to accept. But a political standard is not necessarily an ethically normless or relativist one. The normative standards a society lives by are hammered out in an antagonistic dialogue. The norms are susceptible to influence by moral entrepreneurship, by human rights and civil liberties NGO's who want to raise the barrier of the morally permissible, and those groups, representing the military and the police, for example, who may want to lower it. In any liberal democracy, standards for a war on terror will be set by adversarial moral competition. These standards will not be a set of perfectionist benchmarks, but a complex set of choices, essentially between evils, with the purpose of using violence to prevent greater violence and to do so without descending into barbarism.

4. Terrorism as Politics.

To frame a democracy's choices as a choice of lesser evils is to assume that terrorism is a greater evil. It is time, therefore, to define terrorism more carefully and establish exactly why it qualifies as a greater evil.

First, a comment about the use of the word evil. To employ the word, of course, is to pronounce an anathema, and moral anathema are both an obstacle to clear thought as well as a license to extremity. There is no greater temptation to commit evil acts than the conviction that we are faced with a greater evil. The ethics of the lesser evil is a slippery slope, and especially so in a war against terror, because it appears to inhabit a dark moral realm outside the criminal laws of peace-time and the laws and customs of war. A war without end involving secret means and unaccountable agents, ceaselessly justified in absolutist moral terms, constitutes a standing temptation to barbarism.

Yet it simply seems an evasion of the moral gravity of the issues to avoid using the word evil when referring to terrorism, even if it is true that the word demonizes acts that need to be understood and not merely condemned.

So let us be clear, therefore, about why terrorism constitutes the greater evil. Terrorism is as a form of politics which uses the deliberate targeting of non-combatant civilians in order to kill, terrify, humiliate and in so doing extort political gains from¹¹ some type of political authority or to subdue a civilian population and coerce it into obedience. Acts of terrorism can be committed both by non-state actors (cells, insurrectionary groups and full scale parties to a civil war) and by states, as when states bombard or attack civilians in order to cow them into obedience or to punish them for lending support to insurgent groups.

These acts are evil because they result in death or harm to people who can claim that they are taking no active part in hostilities, even if they may share the political objectives of the state or of the terrorist group. That is to say, the evil consists not just in killing or harming people, but also in punishing them for allegiance, for belief, for support, for adhesion to a political cause.

It is essential to put the moral emphasis on the political character of terrorist acts. They are the greater evil not just because they kill innocent human beings, but because terrorism, as a form of political action, strikes against a universal human interest, namely the adjudication of human disputes through negotiation and

compromise. This universal human interest can be achieved through many forms of government, not all of them liberal democratic, but a liberal democracy is by its very essence committed to the eradication of force in political discussion, and for this reason terrorism challenges its very reason for being.

Acts of terror replace persuasion with coercion, argument with force. Terrorism attacks the idea that human beings can be persuaded to live together in peace and reason out their disputes through shared institutions. Terrorism is thus an offense not only against the lives and liberties of its specific victims, but against the unique propensity of human beings to act together as political creatures. Terrorism is also an offense against the idea of society as an institution which ensures our collective survival by means of political institutions to adjudicate our differences.

I take these differences to be incorrigible and grant that the resort to terror arises when groups conclude that no properly political means exist to recognize their own grievances. Terrorism is commonly justified as a means of last resort when peaceful political means of attaining freedom, self-determination or liberation from alien rule are closed off. In the next chapter, I will consider these justifications in detail, but for the moment, it is important to stress that while terrorists usually claim that they resort to violence as a last resort, the historical record shows that they usually resort to it as a first resort, that is, as a concerted attempt to pre-empt peaceful political solutions. This is another sense in which they are an attack on politics, that is, an attempt to substitute the argument of force for the force of argument.

To call terrorism evil is not to claim that there cannot ever be justifications for the use of force in human affairs. As we shall see, in the next chapter, where no properly political, i.e. peaceful means exist for the redress of grievance, violence directed at state or military targets may be a justified instrument of last resort. But the test of last resort should be a strict one, and the conditions of civilian immunity should be respected. Those who resort to armed struggle as a genuine last resort, and confine

their use of force to military or state objects deserve the name of freedom fighters. Those who do not respect these two rules deserve the name of terrorist.

Terrorists who use the language of freedom and self-determination to justify civilian attacks as a first resort, as a pre-emptive alternative to peaceful politics, constitute a menace to free politics everywhere. Both their acts and their verbal justifications constitute a crime, not only against the particular individuals who are harmed, but against a collective human interest in always exhausting non-violent forms of political deliberation and struggle before force is used. The same strictures must apply to states, who when they use force to subdue, humiliate, and coerce civilian populations into obedience or to punish them for giving their allegiance to resistance groups are violating the very essence of their own legitimacy, which is to maintain civil order through consent rather than violence.

Terrorism is an evil both from the standpoint of its victims and its supposed beneficiaries. Terrorism invariably betrays those in whose name it acts. In any society suffering oppression, whether it be illegal occupation, racial discrimination or colonial rule, there will be a debate between those who favor violent solutions and those who believe peaceful ones still have a chance. But once terrorist acts begin in the name of liberation, they are quickly directed not just at the oppressor, but at all those, within the oppressed group, who had sought peaceful outcomes. A war against “traitors”, “informers” “fellow travelers”, “fifth columnists” and “spies”, a war against your own, in other words, is an inevitable and necessary feature of any terrorist campaign directed against an oppressor. Terrorists will argue that their acts “express” the will of the people they support: in reality, violence confiscates, expropriates and then silences the will of the people in whose name the acts are justified.

Seen in this way, the resort to violence by oppressed groups is usually a pre-emptive strike by the terrorist group against free political expression within the population as a whole. Once underway, terrorist campaigns—in Algeria, the Basque country, in Northern Ireland, in Palestine, in Sri Lanka—do not merely seek to terrorize

the “oppressor” or “occupier”. They seek to hold in coercive silence, to take hostage, the entire population in whose name they purport to act. Terrorist groups seek by violence what their own minority position within an oppressed population could never achieve through properly political means: hegemony. This hegemony, reinforced by fear and acts of reprisal against their own population, makes them the “legitimate voice” of the oppressed, only by suppressing the voices of the oppressed majority altogether. The suppression of the voices of the group a terrorist campaign purports to represent becomes all the more essential since this population, and not just the terrorists alone, have to pay the price of the reprisals and counter-repression inevitably visited upon the population. Thus the civilian population of Palestine, of the Sri Lankan Tamil area, of the Basque country find themselves caught between the anvil of the state and the hammer of the terrorists, or to change the metaphor, taken hostage twice, first by the terrorists and then by the state seeking to repress them. In the process, terrorism exposes them not merely to the horror of reprisal violence, but worse, it confiscates and silences their political capacity to articulate their own demands, in their own voice.¹²

This is the essential evil of terrorism—the expropriation of political voice by violence and intimidation—and it does not end, even if terrorism wins a political victory and secures freedom for the oppressed group. Peoples that use terror to win freedom risk losing it to violence when they win their struggle. The use of terrorist violence by the Algerian freedom fighters in the 1950’s burned political killing into the culture of post-liberation Algeria, so that in 1992 when the ruling elite disallowed an election which would have brought the Islamists to power, both the state and the insurgents had no threshold of repugnance to overcome in resorting to terrorism in the resulting struggle, which eventually claimed many thousands of lives.¹³

A similar case might be made about the state of Israel. Here the Zionist struggle for statehood in 1947 and 1948 involved acts of terrorism, directed at targets like the King David Hotel, which housed both British military personnel and civilians. Terror attacks were also directed at Arab villages, like Dir Yassein, in order to force Palestinians

to flee. While effective, these tactics created a norm of political violence which then taught Palestinians a lesson in the usefulness of political terror. It would be an exaggeration to claim that when Fatah resorted to terror, it did so thanks to Israeli lessons. Palestinians embraced terrorism from sources all their own, especially the example of colonial liberation movements elsewhere. But the Palestinian legitimation of terror tactics was made easier because they could claim that they were fighting a society who had used terror to secure their own state.¹⁴ Having used forms of ethnic cleansing to secure land, as the Israelis did with the massacre at Dir Yassein, the Israelis legitimized a norm of conduct which was then used against them, as Palestinian terrorists seek to kill civilians in Israeli settlements in order to expel settlers from the West Bank. The use of terror in the Zionist struggle, specifically the assassination of Lord Moyne did long term damage to domestic Israeli politics. It helped to establish assassination as a threshold norm, which rebounded against Israeli democracy itself when Yitzhak Rabin was felled for accepting peace with the Palestinians.

It is the ethics of fools to claim that if one side uses methods of terror, the other is justified in doing so in reply, since there is never a justification for terrorist violence. Yet it remains true that if you resort to political violence, you will reap what you sow. Political struggles that kill innocents to achieve freedom recurrently find it difficult, once freedom has been won, to erect effective barriers to the institutionalization of violence in their new state or to prevent their enemies from using their own actions to justify the use of it against themselves.

In conclusion, terrorism is both a politics and at the same time a deadly attack on the essence and purpose of politics which is to replace violence with consent in the adjudication of human affairs. For this reason, it must be combated by all societies that wish to remain political: otherwise both we and the people terrorists purport to represent are condemned to live, not in a political world of deliberation but in a pre-political state of combat, a state of war.

5. Responding to Terrorism: Politics or War?

A liberal democracy stands for the conviction that there are possible political, i.e. non-violent solutions to all human conflicts, that injustice and oppression are not fates to be endured but conditions to be changed by collective action in the political realm. This commitment to politics is put to the ultimate test when opponents of a liberal state resort to violence. It is inevitable that, in response to such attacks, liberal democracies should pronounce a moral anathema on those who resort to them. Yet the consequence of an anathema is to pronounce an end to the very political processes of engagement, negotiation, compromise and discussion that a liberal democracy stands for. To declare a war on terrorism risks, in itself, compromising the political values that should guide relations even with a liberal state's enemies.

The issue here is not—at least not for the moment—whether a liberal state is justified in going to war against terrorist groups. Where, as in Afghanistan, terrorist groups have organized encampments and training grounds that can be reliably said to be the source of attacks directed against a liberal state, a military response is fully justified as a measure of self-defense. Even pre-emptive self-defense may be justified. Nothing in a liberal democratic creed or in international law requires a state to passively await attacks on its own civilian population. The test of justification for pre-emption is whether imminent hostile intent can be discerned and whether there are any viable alternatives to a military strike. In a later chapter I will examine the ethics of pre-emptive war more carefully.

The deeper problem is whether— if terrorism is actually a politics, representing grievances and if liberal democracy is committed to political solutions to these problems—liberal democracy risks sacrificing its basic commitment, which is to meet political demands with political solutions, when it declares “a war against terror.”

There cannot be any doubt that force is an inadequate response to grievance, and that where terrorism feeds on grievance, a properly political response must accompany any military one. This is obvious. What is less obvious is whether terrorist

groups have a right to regard themselves, and to be treated by their opponents as, the legitimate representatives of these grievances.

For a liberal democracy, the criteria for legitimate representation are clear enough: a legitimate representative of a people's grievances is someone who has been duly appointed or elected by those people to serve their interests. No such process of election, delegation or appointment legitimizes the terrorist appropriation of the right to represent the oppressed. They do not so much represent a people's grievances as hijack them, appropriating the right to represent their claims by virtue of an implicit threat of intimidation or a promise that violence will achieve redress faster than peaceful political means.

Even when terrorist demands are explicitly in the service of an oppressed people pursuing a self-determination claim to a specific piece of territory, terrorists are expropriating a right of representation they would only be entitled to if they were elected or delegated or chosen by their own people. But this false appropriation is even more flagrant in cases of terrorism which bear no direct relation to a specific group or a specific territorial claim. This is the case with the terrorist attacks of September 11. The attackers did not even present demands and did not even purport to represent the grievances of particular groups. Once their bloody deeds had resounded around the world, however, their acts were appropriated, by Palestinians and others, as authentic representations of their political demands. While the political character of the attacks of September 11 will be considered in detail in a later chapter, it is enough to argue here that it would be an elementary mistake, on the part of liberal democracy, to consider the hijackers as authentic representatives of any cause whatever, and to make political concessions to groups who have not the slightest right to claim they represent anyone.

The dilemmas raised by terrorism as a political act—whether they represent grievances, and if so how to respond to these grievances—crystallize around the issue of whether liberal democracies should ever negotiate with terrorists. Moral anathema says No, but the political values of liberal democracy say Yes. In practice, this apparent

contradiction is resolved as follows, in most liberal democracies: they do not explicitly or publicly negotiate with actual terrorists, though their security forces may maintain surreptitious contact. To negotiate with anyone, after all, is an act of recognition, to grant them the privilege of dialogue with you, and this is possible only if the dialogue is conducted according to basic rules of politics, which exclude violence, intimidation or force. It is impossible to negotiate with violent groups without according them this recognition, and without running the risk, that they will merely use this recognition to lure you into damaging concessions and then humiliate or further intimidate you. Hence, there are good reasons never to negotiate with terrorist groups. But most liberal democratic states, while refusing direct negotiation with men of violence, simultaneously open channels of political dialogue with any group committed to non-violence who can drain away the terrorists' constituency of support. This has been the tactic followed in Northern Ireland, in the Basque country, and to a different extent in dialogue between the government of Sri Lanka and moderate non-violent Tamil nationalists. These strategies, which amount to competing politically for support with terrorists have had some success, provided that the dialogue results in real redress of the grievances upon which terrorists feed.

Inevitably, terrorist groups respond to these political gambits by forming political fronts of their own in order to infiltrate the legitimate political process and fight off the competition that is draining away popular support for violence. In northern Ireland, Sinn Fein seeks to present itself as a legitimate non-violent political representative of the nationalist cause, even though its leadership maintains links with men of violence. In the Basque country, political parties with terrorist affiliations competed for power throughout the terrorist campaign, profiting from the violence of their secret allies to intimidate the electoral preferences of voters. Similar shadowy linkages exist between terrorist groups and ostensibly non-violent political parties elsewhere.

The core of a properly political strategy against terrorism, in societies facing an internal terrorist threat, is to preserve the political system from violence, to keep electoral preferences safe from intimidation and fear. Yet this core commitment of liberal democracy is difficult to fulfill when ostensibly constitutional political parties expressly exploit the freedoms of the political sphere to conceal their links to terrorist groups.

At some point, every liberal democracy has to face the dilemma of whether to ban political parties in the interest of keeping electoral competition free of intimidation. Yet in doing so, liberal democracies expose themselves to the charge that they are guilty of intimidation, rigging the political process to suppress legitimate preferences and driving this support “into the arms of the terrorists.” Faced with this dilemma, democracies each follow their own road. Spain has recently banned a political party associated with terrorism, while in Britain, the government has resisted repeated calls by Ulster Unionists to ban Sinn Fein.

Elsewhere from Sri Lanka to Palestine, a political strategy against terror, focused on opening up a space for peaceful political dialogue inevitably results in cynical abuse of the opening by violent groups who seize the opportunity to masquerade as properly political organizations, even providing social welfare benefits for adherents, while using political space, not to seek accommodation or compromise, but to prepare the ground for further violence. This has been an observable pattern with Hezbollah in Lebanon, and with Hamas in the occupied territories.

All of this is further evidence of the extent to which the cardinal sin of terrorist groups is their attack on politics, either directly through intimidation and violence directed at those seeking negotiation or compromise, or indirectly through a game of ruses which seeks to use peaceful politics only to recruit for terror. If this is the case, a liberal democracy cannot hope to prevail through purely political means alone, since these means are inevitably compromised by their enemies.

In the end, the only possible reaction to those who use violence against a peaceful constitutional order is to combine political action with robust counter-insurgency actions. These actions will be led by the civilian police where the context demands, and by the military, where there are training camps, military units and capabilities that can only be eliminated by the use of military force. In other cases, as in Northern Ireland, police and military combine forces, with the military acting constitutionally “in aid to the civil power.” But in all cases, terrorist emergencies will force democracies to revise the constitutional line (in the US called the posse comitatus rules) that is supposed to prevent the use of military from being used in domestic civilian contexts. This line, long articulated in the European liberal tradition as a suspicion of standing armies, can be preserved only if strict civilian control of military power is maintained and clear limits are imposed on military operation in domestic civilian contexts.

Thus terrorism poses a threat to constitutional liberty not simply because terrorist groups seek to infiltrate and subvert the political process itself, but also because in responding, the state may be tempted to overthrow peace-time distinctions between the jurisdiction of police and military power and habituate political leaders and their citizenry to the presence of military power in the civilian arena. Military powers first used against a bona-fide terrorist threat at home may eventually be deployed against civilian discontent at home. This is one chain of unintended consequences that could lead from the defense of liberty to its extinction. The only way it can be avoided is through consciousness of what constitutionalism absolutely mandates—the rigorous exclusion of military power from the civilian realm—and the willingness of the judiciary, the legislature and the citizens to resist when this premises of constitutional government is ever infringed.

6. Accountability, Impunity and Responsibility.

If the line between the greater and lesser evil is small, nevertheless the lines remain, and it is the very purpose of liberal democracy to keep them distinct. The

identity of liberal democracy lies in the idea that all uses of coercive power must be justified with reasons which are capable of satisfying reasonable citizens. Justification is required because of the shared understanding that coercion and force are evils that will destroy everything they touch unless they are restrained by law. This, more than any abstract standard, is the process which seeks to keep the lesser evil from becoming the greater.

The justifications of liberal democracy are adversarial: legitimacy is crafted out of an exchange of conflicting assessments of the facts and presumptions at stake in the case. Decision follows argument and closure follows from acceptance of the legitimacy of procedures not always from shared acceptance of the content of the decision itself. Wars of terror test this structure of decision-making. The lesser can only be prevented from sliding into the greater if those carrying out decisions know that they can be held accountable and if necessary punished for wrongdoing. What slides the lesser into the greater is impunity, and liberal democratic institutions can be destroyed for good if they allow evil actions impunity.

The liberal state and its terrorist enemy stand under a very different obligation to justify, limit and control violence. The agents of a constitutional state are aware that they may be called to justify their actions in adversarial proceedings. Terrorists do not stand in any institutional setting that requires them to justify their actions to those in whose name they act. It is true that liberation movements, whose political purpose is to win freedom for an oppressed group, will have some incentive to calibrate their acts of violence so as to minimize the possibility of revenge attacks on their own constituency of support. To paraphrase Mao Tse Tung, if you live like a fish among the sea, then it is foolish, to say the least, to take actions which will lead to the draining of the sea. Terrorists who do not live among the oppressed, who do not share their land and resources and their risks will have less reason to discipline their violence.

This absence of any institutional obligation to justify is what makes terrorism a unique danger. Yes, states can be guilty of acts of terror, but it is false to equate these

with the acts of non-state actors. Both may have terrible consequences, but state violence by liberal democracies at least admits the possibility of institutional accountability. Punishment shootings by the IRA in Northern Ireland occur without censure. Any punishment shooting by a British soldier is subject to disciplinary hearings. The IRA will torture and then execute informers. If allegations of torture are made against British forces, the allegations end up under investigation in the European Court of Human Rights [Ireland v. United Kingdom (1978) 2EHRR 25] The same relation of institutional accountability for violence is evident elsewhere. Those tempted, for example, to equate the violence inflicted by Israel with that inflicted by Palestinian suicide bombers should reflect that there are real differences in institutional accountability in the two cases. In the Israeli case, allegations of torture, house demolition, illegal detention, unjustified force have all ended up before the Israeli Supreme Court and in significant instances the conduct has been censured and stopped.¹⁵ This is not to claim that legal oversight is always effective or to acquit Israeli forces of blame when crimes are committed, as they have been. But it is to argue that all agents of force in a democratic state, like Israel, lie under a burden of justification, and the possibility of review and censure, that is almost entirely absent on the other side. Terrorists only have to justify their actions to themselves. To be sure, this does not mean there are no restraints upon their actions. The Palestinian populace may tire of paying the consequences of terror, and may put pressure on the terrorists to stop, but this is at best a non-binding and non-institutional form of restraint on the violence.

We cannot say that once the moral anathema of evil is pronounced, and war is declared against terrorism, that liberal societies always escape the hysterical closed cycle of self-justification. Majoritarian tyranny is precisely this. But it is the core of our suspicious and skeptical belief in our own institutions that they exist to save us from ourselves, exist to call coercion to the bar of judgment, insist upon those adversarial processes of justification and proof that alone stand a chance of preventing the lesser from becoming the greater evil.

The ethical position outlined so far was best stated at a moment of extremity for liberal democracy by the German sociologist Max Weber in 1918, at a lecture delivered right after the Kaiser's regime had succumbed to military defeat and the fledgling democracy of Weimar was fighting for its life. By then Weber was an old man, who had lived through the collapse of his world and the death of many of his dreams. He warned his young audience in Munich, "not summer's bloom lies ahead of us, but rather a polar night of icy darkness and hardness, no matter which group may triumph externally now." In the face of emergent fascism, civil war and the terrifying weakness of Weimar democracy, he warned his students to beware of putting their faith in "an ethic of ultimate ends", by which he meant any ethics which refuses in principle to admit "that in numerous instances the attainment of 'good' ends is bound to the fact that one must be willing to pay the price of using morally dubious means or at least dangerous ones—and facing the possibility or even the probability of evil ramifications." He warned them against "the need for pseudo-ethical self-righteousness" and called them to embrace an ethics of responsibility which accepts that sometimes violence must be met with violence. "He who lets himself in for politics, that is for power and force as means, contracts with diabolical powers and for his action it is not true that good can only follow from good and evil only from evil, but that often the opposite is true. Anyone who fails to see this is, indeed a political infant." To be responsible, Weber told his students, was to take on the burden of ambiguous means, without succumbing to the temptations of ruthlessness for ruthlessness sake. When Weber was speaking, Weimar was fighting for its life, against fascists of the right and revolutionists of the left, and it only prevailed through the determined use of force. Weber did not say what an ethics of responsibility should be responsible to, but we can: it is to be faithful to liberal democracy itself and to use only the force that is absolutely necessary to its survival. What keeps the lesser from becoming the greater evil in politics is a deep and abiding responsibility to the constitutional order that one is charged to defend.

[Weber Politics as a Vocation]

¹ Euripides Medea , translated by Rex Warner (New York, Dover Publications, 1993),p. 40

² Isaiah Berlin, “Two Concepts of Liberty” in Four Essays on Liberty, (Oxford, Oxford University Press, 1969) p. 165

“If I wish to preserve my liberty, it is not enough to say that it must not be violated unless someone or other—the absolute ruler, or the popular assembly, or the King in Parliament, or the judges, or some combination of authorities, or the laws themselves—for the laws may be oppressive—authorizes its violation. I must establish a society in which there must be some frontiers of freedom which nobody should be permitted to cross. Different names or natures may be given to the rules that determine these frontiers: they may be called natural rights, or the word of God, or Natural Law, or the demands of utility or of the 'permanent interests of man'; I may believe them to be valid *a priori*, or assert them to be my own ultimate ends, or the ends of my society or culture. What these rules or commandments will have in common is that they are accepted so widely, and are grounded so deeply in the actual nature of men as they have developed through history, as to be, by now, an essential part of what we mean by being a normal human being. Genuine belief in the inviolability of a minimum extent of individual liberty entails some such absolute stand. For it is clear that it has little to hope for from the rule of majorities; democracy as such is logically uncommitted to it, and historically has at times failed to protect it, while remaining faithful to its own principles. Few governments, it has been observed, have found much difficulty in causing their subjects to generate any will that the government wanted. 'The triumph of despotism is to force the slaves to declare themselves free.' It may need no force; the slaves may proclaim their freedom quite sincerely: but they are none the less slaves. Perhaps the chief value for liberals of political—'positive'—rights, of participating in the government, is as a means for protecting what they hold to be an ultimate value, namely individual—'negative'—Liberty.

³ Michael Ignatieff “Genocide: An Essay “ in Simon Norfolk For Most of it I have No Words, (London, Dewi Lewis, 1998).

⁴ John Stuart Mill, “On Liberty” (1869) in Edward Alexander (ed.) On Liberty, (Ontario, Canada: Broadview Literary Texts, 1999): p. 51–52.

“The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the

moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.”

⁵ Israeli Supreme Court Judgment on the Interrogation Methods applied by the GSS, September 6, 1999:

“Moreover, the "necessity" defence has the effect of allowing one who acts under the circumstances of "necessity" to escape criminal liability. The "necessity" defence does not possess any additional normative value. In addition, it does not authorize the use of physical means for the purposes of allowing investigators to execute their duties in circumstances of necessity. The very fact that a particular act does not constitute a criminal act (due to the "necessity" defence) does not in itself authorize the administration to carry out this deed, and in doing so infringe upon human rights”

⁶ Michael Walzer, “Political Action: The Problem of Dirty Hands”, in Cohen, Marshall, Tom Nagel and Tim Scanlon, War and Moral Responsibility. Princeton: Princeton University Press, 1974 pp. 62–85

⁷ Gar Alperovitz, The Decision to Use the Atomic Bomb and the Architecture of an American Myth, (New York: Alfred A Knopf, 1995) pp. 515–530.
Ronald Takaki, Hiroshima: Why America Dropped the Atomic Bomb, (Boston: Little, Brown and Co., 1995) pp. 41–42.

⁸ W. G. Sebald, On the Natural History of Destruction, (New York, Random House, 2003) pp. 13–20

⁹ Clinton L. Rossiter, Constitutional Dictatorship: Crisis Government in the Modern Democracies, (Princeton: Princeton University Press, 1948) pp. 3–4, 202–205, 284–287,

¹⁰ Walter Laqueur, A History of Terrorism, (New Brunswick, Transaction Publishers, 2002)

¹¹ Omar Malik, *Enough of the Definition of Terrorism* (London: Royal Institute of International Affairs, 2000)

¹² Luis Marti Alvarez, "Collective Rights Vs. Individual Rights: The Case of the Basque Country, Final Paper for ISP 224, December 13, 2002; Michael Ignatieff, "Nationalism and Self-Determination: Is There an Alternative to Violence?," Neelan Tiruchelvam Millennium Lecture Series, March 19, 2000; Conor Gearty, *Terror*, (London: Faber and Faber, 1991) pp. 126-130; Paul Wilkinson, "The Challenge of Terrorism to International Society and the Rule of Law," Essex Hall Lecture, Unitarian Publications, p.7, Paul Wilkinson, *Terrorism and the Liberal State*, (London: Macmillan, 1986) pp. 165-166

¹³ Alastair Horne, *A Savage War of Peace: Algeria 1954-1962*, (London: Papermac, 1996) p.565

¹⁴ Caleb Carr, *The Lessons of Terror*, (New York: Random House, 2002), pp. 213-215

¹⁵ Israeli Supreme Court Judgment on the Interrogation Methods applied by the GSS, September 6, 1999; Israeli Supreme Court Judgment Regarding "Assigned Residence" (HCJ 7015/02; 7019/02); Israeli Supreme Court Judgment Regarding Use of Civilians as Human Shields (HCJ 2941/02); Israeli Supreme Court Judgment Regarding Civilian Targets in West Bank Region (HCJ 3022/02); Israeli Supreme Court Judgment Regarding the Detention Condition in "Kzoit' Camp (HCJ 5591/02); Israeli Supreme Court Judgment Regarding Operation Defensive Shield (HCJ 3116/02); Israeli Supreme Court Judgment Regarding Destruction of Houses (HCJ 2977/02)