

Blame for Nazi Reprisals¹

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Abstract: I examine the blameworthiness of the resistance for Nazi reprisals in three morally disturbing cases which occurred in Nazi occupied Europe. I have organized my argument in the following way. After describing the cases, I propose a set of criteria for assessing the degree to which actors are blameworthy for the deaths of innocents. Using these criteria, I then explore the blameworthiness of the resistance members in these cases. I follow this analysis with an application of the doctrine of double effect. My conclusion that some resistance members are blameworthy using my criteria is confirmed by the application of the doctrine of double effect.

Keywords: blame, blameworthiness, murder, resistance movements, Nazi reprisals

This paper explores the question of whether the resistance in Nazi occupied Europe shared some blame in certain circumstances for Nazi reprisals following their operations, based on historical events Rab Bennett described in his monograph, *Under the Shadow of the Swastika*. He observes at the outset that

“[p]recisely because the moral case against Nazism was so overwhelming, there has been ... an understandable tendency to treat resistance as *a priori* right ... Resistance acquired ... an aura that became difficult to question” (Bennett 1999, 29).

Of course, the Nazis’ murders of innocent hostages are unjust, but Bennett emphasizes the morally relevant fact that the Nazis made it clear beforehand that innocents would be murdered in reprisal for the specific actions which the resisters undertook. This circumstance raises doubts about whether the resisters are blameless for the Nazis’ inevitable murderous reactions. In light of Bennett’s research, I offer some answers to the difficult question of the extent to which the resisters may have been blameworthy.

I examine two of the many disturbing reprisals he recounts, as well as a third case, not of a specific operation, but of a subset of ideologically motivated resisters. In the first case, the Nazis carried out a threat they issued in advance using hostages they were already holding and then murdered more hostages when the resister did not surrender as they demanded. In the second case,

¹ This is a revised version of the presidential address which I delivered on December 27, 2014 at the American Society for Value Inquiry annual meeting in Philadelphia. It benefited from comments from attendees, especially Professor David Benatar (University of Cape Town, South Africa) and from subsequent criticisms of Professor Stephen Kershner (State University of New York, Fredonia).

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reprisals were not threatened ahead of time but easily predictable given the Nazi track record. Third, I examine the blameworthiness of resisters for whom the reprisals had instrumental value in achieving their long-range goals. I have organized my argument in the following way. After describing the cases, I propose a set of criteria for assessing the degree to which actors are blameworthy for the deaths of innocents. Using these criteria, I then explore the blameworthiness of the resistance members in these three cases. I conclude that some resistance members are blameworthy using my criteria.

I. Cases

Case 1. In August, 1941, after the killing of a naval cadet in occupied Paris, the Nazis warned, via infamous black and red posters displayed throughout the city, that an appropriate number of hostages would be shot should there be a recurrence. The ratio was officially set at ten to one. Subsequent to the display of the posters, a Nazi commandant was murdered. Given the high rank of the officer, fifty hostages were rounded up and shot. Another fifty hostages were threatened with death unless the perpetrator came forward. This did not happen, so a total of 100 innocents perished (Bennett 1999, 131-132).

Bennett raises the question of whether in such a case the resister had a moral obligation to surrender and thereby save the lives of the hostages (Bennett 1999, 132). Given that the resister did not surrender, the murders of 100 hostages actually raises two questions: whether the resistance members who carried out the murder can be blamed for the deaths of the first fifty innocents in view of the threatened and entirely predictable reprisal, and whether the assassin can be blamed for failing to save the second set of hostages. I address the first question, but not the second (since it raises blameworthiness for an omission rather than for overt planned action which is my focus here). I will henceforth refer to this case as the "Nazi officer case."

Case 2. The sabotaging of railway lines in Ascq in 1944 was a more nuanced case, in which the Nazis made no threats in advance as in the Nazi officer case, but three preceding acts of sabotage at this location made it clear that a fourth instance would surely result in reprisals against nearby villagers. Bennett describes the appalling fallout from the operation.

"The forgotten epilogue to such tales of derring-do was the list of names of hostage and reprisal victims: for example, the 15-year-old boy, and the 76 other innocent reprisal victims killed after an act of railway sabotage at Ascq in 1944. This particular stretch of track on the main line from Antwerp to Paris had been sabotaged three times at the same inhabited spot. Even the most unimaginative resisters must have realized that their actions endangered the local population. It has been suggested that they could have considered moving their operations to the forests south of Lille where the Germans had no easy pretext for reprisals" (Bennett 1999, 34).

The resistance knew that Nazi reprisals for sabotage were visited upon inhabitants living near the site, so, had they blown up the track in an unpopulated area, they would have spared the lives of the victims of the Nazi reprisal. Henceforth, I will refer to this as the “rail sabotage case.”

Case 3. Here my focus is not on one operation but on a philosophically interesting group of resisters with a shared ideological orientation. The communist faction of the resistance did not simply carry out operations to weaken the Nazi occupying powers but also regarded the Nazi reprisals for their operations as a method of recruitment of new members to the communist cause. Their reasoning was that the severity of the Nazi reprisal policy would alienate the population and produce ten new members for every hostage the Nazis murdered (Bennett 1999, 136). Though that result did not seem to have materialized, nevertheless the communist faction regarded the Nazi reactions to their operations as a recruitment tool.

One example was an action in Rome, thirty-three SS men and ten civilians were killed by a bomb which was most likely detonated by the communist faction of the Italian resistance. Not all passers-by were warned, to avoid the German troops being alerted by an evacuation of the densely populated section of Rome in which the explosion occurred. The non-communist members of the resistance disclaimed responsibility for the attack.

Hitler’s immediate reaction was to order that section of the city to be destroyed and fifty hostages be shot for every German soldier killed. This was reduced to a ten to one ratio, so 330 people were chosen, the youngest being 15, the oldest, 74. The Vatican denounced both the bombing and the reprisal (Bennett 1999, 137-138).

Leaving aside the question of blame for loss of those passersby whom the communists left in the dark, does all the blame for the 330 innocents whom the Nazis murdered in retaliation lie with the Nazis? Or can the communist resisters be blamed as well? I will henceforth refer to the resisters who carried out these kinds of operation (resulting in the deaths of innocents due to reprisals) with the long-range goal of increasing recruitment to the resistance as the “communist resistance” or sometimes as “communist resisters.”

A major stumbling block in answering these questions is whether the resistance can be blamed for the hostage murders without also finding them responsible for the resulting injustice. It seems odd to conclude that they did not act unjustly but were morally blameworthy for the reprisals, but, on the other hand, it seems odd to say that they along with the Nazi enemy were to blame for the murders. Despite the oddity, the rightness or wrongness of an act depends in my view on whether the consequences of the act are good overall in the real world, whereas blameworthiness depends on the reasonableness of the beliefs of the actor. An act is wrong, in other words, when there is an alternative act that brings about the same amount of overall good but reduces the bad consequences, regardless of whether the actors examined alternatives before acting. The

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blameworthiness of actors depends on whether they either intended the bad results—as the Nazis clearly did—or perhaps not intending them carried out the action knowing Nazi reprisals would occur.

II. Criteria for Moral Blameworthiness

Specifically, one is morally blameworthy for the deaths of others, when one intentionally brings about those deaths without justification or excuse. Intentional mental states include purpose, knowledge, or recklessness. An actor who unintentionally causes the death of another may, on some accounts, be morally blameworthy to an even lesser extent, where one's negligence causes the death. I am unsure about using negligence as a basis for blameworthiness for deaths of innocents, but I will include it for the sake of completeness. Before setting out the criteria, let us make some preliminary remarks about the scope of this inquiry and my terminology.

We need to bear in mind that this is not a general inquiry into blameworthiness for just any act but a narrow inquiry into the use of deadly force against regimes using terrorist tactics by resisters who plan their operations in advance. What applies here may not apply to acts or omissions causing deaths in other situations, such as, operation of heavy machinery or motor vehicles. There is no question, for example, that a resister can at the time appreciate the wrongfulness of the act, unlike other cases where impairment may be an issue.²

When I refer to a resister who causes the death of another (who is a member of the regime), I have in mind one who, acting alone or engaging in a joint effort, directs deadly force (which is known to kill or seriously injure others) toward another, and the other dies as a result.³ An excuse for an act (such as, provocation or duress) reduces the blameworthiness an actor would otherwise have for the act. Justification for an act (such as self-defense or defense of others) changes the nature of the act or renders it morally permissible. I take it for granted that one is justified in using deadly force to protect oneself or others from the threat of death by an unjust aggressor.⁴

A resister may *arguendo* be negligently blameworthy as well for the deaths of civilians. If so, the resister is blameworthy to a lesser extent for failing

² Appreciation of the wrongfulness is sufficient for blame but not necessary, because in other cases, such as, intentionally failing to take medications resulting in unconsciousness while operating a motor vehicle, one may still be said to have had a fair opportunity to exercise one's capacity to appreciate the wrongfulness of one's actions and be held criminally liable for the injuries to others, as Hart argued in *Punishment and Responsibility* (Hart 1968, 152). However, no scenarios like this are at stake in the actions of the resistance under discussion here.

³ This is sufficient but not necessary since one can cause the death of another by setting in motion a sequence of events not known to cause death or serious bodily injury, but a case like this is not at issue in resistance actions, all of which involve the use of deadly force.

⁴ Where the aggressor is a just defender then deadly force is not a permissible response.

in the planning of the use of deadly force to take precautions against the deaths of innocent civilians when those deaths could have been avoided without altering the reasonably perceived balance of good and bad consequences of the act. Following H.L.A. Hart, I dub this a “fair opportunity to avoid the deaths of the innocents” (Hart 1968, 152). The act itself is of course right or wrong depending on the overall consequences, but the negligence of the planners is limited to the consequences which we can reasonably expect them to foresee. Consequences occurring decades later, for example, may render their act or omission wrong in the long run, but would not render the actors blameworthy so long as these consequences were not foreseeable at the time. Given the controversy over Hart’s theory of liability here, I only note in passing how resisters can be blamed for negligence; my interest is limited to the basis for holding them blameworthy for intentional acts.⁵

In assessing blame for the reprisals, I ignore the real-world complication of the actors’ and planners’ differing intentions and extent of their knowledge of relevant facts and future consequences. Aside from a common commitment to drive the Nazis out of occupied countries, different resisters undoubtedly had different intentions and varying amounts of information, so I can only reach hypothetical conclusions about blame. I presume the individual actors have certain morally relevant mental states and degrees of knowledge. Aside from the shared commitment of the communist resisters to establishing a society consistent with Marx’s vision, it would be unrealistic to make further assumptions about shared intentions and the extent of information available to the resisters.

Here, then, are the criteria that capture an intuitively plausible set of elements of moral blameworthiness of resisters for deaths of innocents. A resister whose actions result in the deaths of innocents:

1. is fully to blame if she intentionally caused their deaths without sufficient justification or excuse (I refer to this as “level 1 blameworthiness”),
2. but is not fully to blame if she, *ceteris paribus*, had a partial excuse, such as, provocation or duress, or, without intending their deaths, either knew the innocents would die or recklessly caused their deaths (“level 2 blameworthiness”).

Taken together, these are sufficient for moral responsibility for such deaths. It might also be noted that an actor can be blameworthy for trying unsuccessfully to kill innocent people, but my focus is on the successful cases.

Before we focus on the resistance, we should note that it is quite clear that the Nazis met all the conditions of joint intentional action to kill innocents; they have level 1 blameworthiness of intentional actors. We will assess the

⁵ See for example Claire Finkelstein, “Responsibility for Unintended Consequences” (Finkelstein 2005).

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blameworthiness of the resistance by resolving the following issues: whether the resisters can be said to have caused the deaths of innocents; whether the resisters have a justification for their actions; whether they have an excuse available; whether the foreseeability of the Nazi reprisals constitutes an intervention which reduces or vitiates blameworthiness.

III. Application of the Criteria

A. Causation

First, the Nazis certainly engaged in a joint effort, and innocent people died as a consequence. Given that the Nazis were the murderers, there is some question as to whether the resistance can be said to have caused the deaths. Clearly, one can be blameworthy for a murder without actually committing it, as is the case, for example, when a mafia don doesn't actually carry out a murder but with the use of mafia slang, such as, "put him on ice" or "whack him" or "do him up," make it clear to a contract murderer that he is ordering that a murder take place. Of course, I am not suggesting that the resistance did order the murders in this way; the point is that merely because they did not use deadly force against the innocents does not of itself show they had no causal role in the deaths.

One response to this is that the Nazis murdered the innocents, regardless of whether the Nazis issued advance threats of reprisals (as in the Nazi officer case). Merely because the resistance performed acts that resulted in the Nazis murdering innocent people does not show the resistance was to blame. The Nazis, not the resisters, it might be said, committed the murders.

This defense overlooks the high degree of probability that the resisters knew that the Nazis would, as a result of the resisters' actions, kill innocent people. At the very least, the resisters knew they were risking Nazi reprisals, even if they neither intended reprisals nor could be sure they would take place.

Despite the likelihood of the Nazi response, intuitively at least, the resistance's blameworthiness, if any, cannot rise to the level of blame they would have for directly killing the hostages. For example, let us suppose the resistance in Nazi disguise had staged a mass murder comparable to the St. Valentine's Day massacre, where they donned Nazi uniforms, used Nazi weapons, spoke in German, and so on, in hopes of bringing down the regime sooner. Their blameworthiness could only be distinguished from that of the Nazis themselves by the resisters' loftier intention of bringing down the Nazi regime. That is, given that blameworthiness is in part a function of intent, and the disguised resisters' intent of a massacre of civilians would be a speedier end to Nazi occupation, they might be less blameworthy than the Nazis whose intent is to kill civilians and continue repression. This suggests that blameworthiness of the resistance for any of the actions in the three cases cannot rise to the level of blameworthiness for the Nazi decision to carry out reprisals.

However, this defense loses plausibility in cases where the collaborationist Vichy regime invoked it. The Nazis went so far as to ask one official in the regime to approve a list of the hostages to be killed. He disapproved, but said nothing in response to a second shorter list which the Nazis presented to him. They of course interpreted his silence as assent (Bennett 1999, 59). He viewed himself as not participating in the murders (Bennett 1999, 60). Clearly, he could not plead that he was blameless because he did not shoot the hostages himself. Although the resisters were not collaborators, that the Nazis would murder innocents after Vichy assent to the list of names was equally as inevitable and certain as Nazi reprisals after the resistance operations.

Unlike the collaborators, the resistance was not given the opportunity to disapprove of Nazi murders of specific people; nor did they engage in a joint effort, as collaborators did. They may have a causal role in some indirect way, but it does not follow that for that reason alone they are morally blameworthy at any level. We will explore another basis for blameworthiness due to the predictability of the Nazi response when we consider whether the Nazis were interveners who were solely to blame (in D below), but for now the resistance cannot be said to have caused the deaths of innocents directly.

B. Justification

But do the resisters have an overriding justification for actions resulting in the murder of innocents? Surely, the resisters in all three cases would point to the innocent lives saved by the more timely defeat of the Nazis as the justification. The more quickly the Nazi occupation is ended, the more innocent lives will be saved (which would otherwise be lost by deportation to death camps), and the Nazis will be defeated more quickly if the resistance recruits more members.

If the resisters' actions are justified in this way, their operations must be a reasonable means to this end. If, for example, refraining from mounting these operations or mounting some alternative operations would *ceteris paribus* save more lives, then their actions could not reasonably be said to save more innocent lives.

It is not clear that the justification succeeds in the case of the communist resisters. Their intention was to recruit more members to the communist faction of the resistance and ultimately convert France to a communist regime. To the extent that this faction was Stalinist and ultimately committed to converting France into a Stalinist style regime, with all the horrors and innocent loss of life that this would entail, the long-term loss of innocent life would likely be as great for France as it would under Nazi occupation. To the extent that this faction of the resistance overlooked this or realized this but ignored the consequences, the saving of innocent life loses its appeal as an overriding justification.

The justifications in the Nazi officer and the rail sabotage cases would not be ideological, so let us set the intention of establishing a Stalinist regime aside and ask whether the justification of shortening the Nazi repression and returning

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France to some form of consensual government (whatever that might be) is plausible. In the Nazi officer case, the Nazis killed ten times more innocents than they antecedently threatened to murder, so it is plausible to suppose that, had the officer been of a lower rank, or, even more likely, had the victim been a soldier of lower rank, the final ratio would only have been the officially promulgated at ten to one. Of course, the counter to this is that the death of a higher ranking officer is more disruptive to the Nazi regime, but the ultimate question is whether fewer lives are lost because of the assassination of a Nazi of such high rank. It is certainly not obvious that more lives were saved in the long run, and it is likely that the Nazis would have killed only ten had the soldier chosen been of a lower rank.

There is a bit more clarity in the rail sabotage case, because the Nazis routinely rounded up hostages in the locale where sabotage had taken place. They presumed that local residents must have cooperated with the resisters. The Nazis most notorious massacre, two years prior to the rail sabotage, was the reprisal for the fatal wounding in Prague of Reinhard Heydrich. The Nazis publicized the complete destruction of two nearby villages, which was roundly condemned worldwide, so the French resistance would have been aware of the Nazi practice (Bennett 1999, 261). Had the resisters chosen to sabotage the rail lines in a remote location, the sabotage would likely have been equally effective and deprived the Nazis of their usual source of hostages. Resisters in the rail sabotage case, then, by failing to avail themselves of the opportunity to reduce the risk to civilians, voluntarily put civilians at risk, knowingly or at least recklessly.

C. Excuse

If the justifications do not succeed, could the resistance, in all three cases above, be blameless or less blameworthy at level 2, due to an excuse? First, it might be argued that they acted under extreme duress, given the savagery of the Nazi treatment of the French populace.

One difficulty with this is the question of whether the members of the resistance acted under threats or duress in the usual sense. The usual cases of duress go something like this: Jones is properly said to have been under duress to do act X (such as, surrendering his own valuable property or performing some seriously morally wrong act), because he told that, if he refused to do act X, Jones (or some innocent third party) will in turn suffer serious bodily harm or be murdered. But the Nazis did not order the populace to engage in seriously morally wrongful acts; they simply demanded that the populace refrain from resisting the occupation. They made what might be called a conditional threat: if anyone engages in acts of resistance, innocent people will be murdered.

However, a close examination of the cases shows that the Nazi threats are just as coercive as the duress cases and similar in morally relevant respects to the usual cases of extortion and armed robbery. Consider how similar to the

threat in the Nazi officer case is to a loan shark's prediction that if Jones fails to repay his loan with interest on time, one of Jones's family members will suffer broken bones, or the armed robber's threat to shoot Smith's companion if Smith does not surrender her wallet. Let's consider how the loan shark's and robber's threats are just as conditional and equally as coercive as the Nazi threats of reprisals.

The threat in the Nazi officer case is clear: the Nazis publicize in advance that if a Nazi soldier is murdered, innocent hostages will be killed. In case 2, the rail sabotage case, we have no explicit threat as in Nazi officer case, but the Nazis' past practices of reprisals against local residents in other acts of sabotage combined with the pattern of sabotages at that location, make an implicit threat clear. The communist resistance is similar in this regard. So, the similarity between the usual hypothetical threats and our three cases is clear.

However, there is morally significant difference between compliance with robber's or loan shark's demands and the resistance which renders duress morally irrelevant to the resistance operations. Duress would be an excuse for compliance with Nazi threats; it cannot not be employed as an excuse for refusal for complying either with the robber's and loan shark's demands or Nazi demands, as in the three Nazi resistance cases. That is, if investigators should ask Smith why she surrendered her wallet to the robber, the excuse would be that the robber threatened to kill her companion. If Smith refused to surrender the wallet with the result that the robber carries out the threat to murder her companion, the excuse is unavailable. The question morally analogous to our Nazi cases is whether Smith or Jones would be to blame for the injuries to others if they did **not** comply with demands of the loan shark or the armed robber. (My intuition is that they would be.) Regardless of the answer, duress is not an appropriate excuse for refusal to comply with the Nazi threats, though it may be invoked by those who did not resist the Nazis, just as it can be invoked by those victims who comply with the robber or the loan shark.

D. Foreseen Intervention

If duress is not available to the resisters as an excuse, their blameworthiness could at least be reduced by arguing that the Nazis' intervention brought about the deaths of innocents. The reasoning would be that when a consequence, C, occurs as part of a causal sequence resulting from the action of an initiating actor, but part of the sequence is an intervener's independent, voluntary action resulting in C, then, even if the initiating actor foresees C, the initiating actor is not to blame for C. A variation on an example Warren Quinn offers about intentional action will shed light on this. Smith is using a loud mower on his lawn. If his response to the question of what he intends to be doing by riding his mower is "mowing the lawn," or "cutting the grass," then we can posit that as his intention (Quinn 1989, 340). If we were to point out that the noise disturbs his neighbor, he would presumably say that it is not his intention to cause that even

though it has happened in the past. Such a response would be comparable to the non-communist resisters' avowal that they intend to disrupt the Nazi supply lines in the railroad sabotage case or to disrupt the Vichy regime by killing a Nazi officer, but they can foresee reprisals in both cases.

However, the communist resisters' intent to increase recruitment to their cause through the inevitable reprisals would be comparable to something like the following twist on the lawn mowing story. In the past, Jones always became so upset by the Smith's mowing that afterward he played heavy metal music so loud that it disturbed the entire neighborhood. Smith's intention in riding the mower is not only to maintain his lawn but to turn the entire neighborhood against his next door neighbor, Jones, by moving Jones to play loud heavy metal music. If Smith can be blamed for Jones's retaliatory blasting of loud music, then it would seem that the communist resisters can be blamed for the reprisals, given that the reprisals are just as much a part of the aim of recruitment for the communists as is Jones's loud music a part of Smith's plan to turn the neighborhood against Jones.

A slightly different argument can be made for finding the resisters in the Nazi officer case to blame for the deaths of the hostages. Even though the resisters did not intend that the hostages be sacrificed, they nevertheless murdered the officer despite the threats and likelihood the Nazis would follow through. The resistance could have passed up this opportunity and saved the hostages.

There is a slightly different analogy which offers a rationale, however attenuated, for blaming the resisters in the rail sabotage case. Suppose that Smith could cut his lawn equally effectively if he installed a muffler on his mower (at no cost to him and with no detrimental effect on the machine), with the result that Jones would not be driven to blast loud music. Smith doesn't install the muffler because he is indifferent to the mower's upsetting effects on Jones. But his indifference shows that he knows these ill effects would not occur if he installed the muffler, so he is to blame in part for the ill effects on the neighbors. Jones, of course, is also blameworthy for his failure to control himself.

Similarly, as Bennett suggests, the resisters could have equally effectively sabotaged the rail lines south of Lille, so their failure to do so renders them blameworthy at level 2, given that they knowingly ignored this in their planning. If the resisters in rail sabotage case never considered the risk to civilians living nearby, they were negligent because of the predictability of Nazi reprisals against the nearby local populace. The same can be said *mutatis mutandis* in the Nazi officer case: if the resisters considered murdering a lower ranking officer but rejected it, they were blameworthy at level 2, given the likelihood of an excessively brutal Nazi response. If the possibility did not occur to them, they were blameworthy for their negligent failing to consider the effect on civilians

IV. Conclusion

Therefore, despite the absence of a direct causal sequence between reprisals and resistance operations, we can blame the communist resistance for the deaths of hostages, given the integral role of reprisals in recruitment to their cause. The noncommunist resisters who could have made different choices in the location or target of their operations share some blame for the loss in the reprisals of some innocent lives. In the Nazi officer case, for example, knowing the threats which the Nazis issued in advance, the resisters are blameworthy in part at least for the number of murders which the Nazis threatened ahead of time, though arguably not for the unpredictably excessive murders consequent on the resistor's refusal to surrender. The resisters in the rail sabotage case share some blame, assuming they recklessly or knowingly chose to ignore the risk to the local populace. Alternatively, if the resistance in the rail sabotage and Nazi officer cases did not consciously ignore the risk of reprisal, it can be blamed for neglecting to consider such obvious risks.

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