

# Vulnerable Children and Moral Responsibility: Loss of Humanity

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Fig. 1: Girl crying at the USA border. Photo: John Moore<sup>1</sup>

## INTRODUCTION

In 1990 I attended my first PES Conference, as a doctoral student, seven months pregnant with my 4th child. I had just taken an ethics course in the philosophy department at my university and was troubled by the extreme examples used to consider ethical dilemmas, as we debated what were the right decisions to make and courses of action to take in regards to them. Audrey Thompson gave a paper that year titled, “The Baby with a Gun,” and I laughed out loud when I attended her session and heard her describe the kinds of dilemmas considered in her “young acquaintance’s” undergraduate ethics class on war and nuclear deterrence, as they were exactly like the ones in my graduate class.<sup>2</sup> The extreme examples in my course were used to test out various principled approaches to ethics (such as Kant’s categorical imperative, Mill’s utilitarianism, and Rawls’s distributive justice theory), and they always seemed to end in

violence, involving someone being killed, and/or raped.<sup>3</sup> The class explored through the examples: when was it morally justified to commit such violence? I remember asking in class, can we talk about ethical dilemmas concerning peace and love instead of war and murder? Cheating on one's partner, maybe? Neglecting one's child or elder abuse?

Thompson's paper was my first introduction to the ethical care theory that Carol Gilligan, Sara Ruddick, and Nel Noddings were developing (Thompson refers to their work as "feminine" and contrasts them to "feminist" standpoint theories such as Chris Weedon's and Alison Jaggar's).<sup>4</sup> It was a much welcomed breath of fresh air, and I came home from PES with a list of feminine/feminist scholars whose work I began reading (none were cited in my ethics courses, as an undergraduate philosophy or graduate philosophy of education student).

Fast forward to spring and summer, 2018: the President of the USA (POTUS) and his attorney general (AG), have created another extreme moral dilemma concerning babies and guns. Only now the story is real rather than fictional, the violence is against innocent children, whose confused and vulnerable parents face border control officers with guns, and instead of laughing I am crying, feeling sick to my stomach. I am moved to act, yes, with signs at local protests, and donations to legal service groups trying to reunite parents with their children taken by the US government, but also through writing. The POTUS/AG's newly enforced "zero tolerance" border policy "justified" the removal of children from parents, who were seeking asylum in the US. To compound this injustice, the children were removed geographically from the USA-Mexican border entirely, creating a situation where neither parents nor children knew the location of the other. Some of the children were too young to even say their names. Over three thousand children were affected by this policy, the youngest sent to "fragile age facilities" for children five years old and under.<sup>5</sup> I seek to try to address this heart-breaking situation, knowing that children's and parents' worst nightmares are that they might lose one another. How could we do this kind of unspeakable violence to innocent children, in the name of whatever policy we seek to enforce or fears we may harbor against "illegal immigrants"? Is this my country?

I use this article as an opportunity to consider the arguments made in favor of “zero tolerance” for immigration at the USA-Mexico border, as an example of principled ethics, and contrast this position with a caring ethical response (similar to Thompson’s paper on moral responsibility). I compare this current “zero tolerance” policy to another “zero tolerance” policy, the US’s response to violence in its public schools. The school policy will serve as a strong illustration of the moral dilemmas created by zero tolerance policies as a whole. Both examples illustrate the same problems of lack of attention to context, subjectivity, positionality, and institutional power in moral responses to ethical dilemmas.

I begin with more description of POTUS’s policy in regards to immigration, then say more about Thompson’s original argument and recommendations. I next describe educational zero tolerance as an example of principled ethics (pros and cons), then connect back to POTUS’s zero tolerance policy. We will find that there are logical fallacies in both zero tolerance examples, as well as a lack of moral responsibility. The federal policy makers use extreme fears to push for policies that are racist, targeting non-white parents, and immoral, in terms of using innocent children as fodder to deter families from seeking to immigrate to the USA. At the same time, the policies do not address the underlying concerns that create the problems and dangers the policies seek to address. And, what about the children?

I argue that “zero tolerance” is a misguided approach to a serious, complicated problem that demands fair, humane, caring and just immigration policies. In our (USA) public schools, the evidence shows that zero tolerance policies did not make schools safer and they hurt low income, rural and urban, non-native English speaking, targeted students, especially black and brown boys, queer youth, and children with special needs.<sup>6</sup> The very children we claim to want to help in multicultural educational policies are the ones most hurt by zero tolerance policies, in terms of increased suspensions and lowered graduation rates. The students protected by the policy continue to be white children from families with higher income levels and access to legal protection. In reality, we find that none of the students are safer in schools due to lack of willingness by

the adults able to change gun laws and policies to take moral responsibility and address gun safety. Similarly, at our border, zero tolerance is a racist, discriminatory policy that feeds off of peoples' fears, and is based on lies and deceit—not the reality of peoples' lives. We can do better than this!

### PATH TO ZERO TOLERANCE

POTUS seeks to stir the fires of passionate hatred of “illegal immigrants”—telling us they take our jobs, and murder our family members. POTUS's attack on people from Mexico and other Central and South American countries started the day he announced he was running for the office of president (even before then). In his campaign speeches, and since being elected (with significant Russian influence)—he continues to use extreme examples of moral dilemmas to make his case for the need to build a very expensive border wall and increase the USA border patrol force. For example, in San Francisco (SF), a homeless person (Jose Ines Garcia Zarate) on the SF pier (Pier 14) picked up a discarded gun he found by the bench where he sat, not knowing the gun was loaded, and it went off, accidentally killing someone (Kathryn Steinle) on the pier with a ricocheted bullet from the gun.<sup>7</sup> Zarate was found not guilty of murder; it was proven in his trial that the shooting of someone was clearly accidental. However, POTUS used this case as an example of the dangers of not closing down the country's borders more securely.

POTUS: “This policy is simple; don't let anyone in anymore. If you do seek to enter the USA, illegally, we will punish you by taking away your children.” Latest estimates are that over 3,000 children were impacted by this policy, from teen-agers down to babies, before the moral outrage concerning this policy was so loud, across the nation and around the world, that the policy was stopped, and the courts ordered the USA government to return children to their parents by a set deadline, or face stiff penalties. The USA government then began charging deported parents to pay for the transportation costs to be reunited with their children. The problem with this policy is that the parents—those seeking political asylum from South and Central America (from

Guatemala, Costa Rica, Honduras, etc.)—have an internationally recognized legal right to seek asylum. For those crossing the USA border illegally, like the mother in the opening photograph, she went to the legal entry point for the border first and found that it was closed. She traveled from Honduras with her child, trying to reach the safety of the USA, and the only options left to her were to try another (illegal) route, or give up. Her right to seek asylum is still recognized under those conditions, internationally.

In regards to border control, the concern is double-sided as we recognize the need for general laws to guide the asylum application process. And, on the other side, we acknowledge the inability of general laws to address the many layers of context involved in particular ethical dilemmas. There are basic, international guidelines that have established, for example, the right to provide parental care for one's children and to have fair, legal representation in a country's court system, as recognized by the United Nations Human Rights Principles. The UN also recognizes a variety of reasons that a family may seek asylum, in an effort to protect their children from violence due to gangs or civil war, or geographic disasters like hurricanes or volcanic eruptions, for example.

As critics of ethical care theory have argued successfully, care theory cannot address social problems on a large scale or in a timely manner, as each unique situation is messy and complex and takes time to try to understand.<sup>8</sup> Principled approaches to ethics can be more efficient in terms of offering guidelines for addressing large-scale problems in a timely manner, but they also can easily become a way of avoiding the difficult conditions that create the problems to begin with, such as poverty and climate changes that are causing more natural disasters. Immigration policy is a complex, complicated problem with infinite possible variables that cannot be solved easily by existing, overly politicized systematic processes. Those that pay the price for the lack of a caring, morally responsible approach to ethics in the zero tolerance border policy are the most vulnerable, the children, and their parents who do not speak English, do not know the country's laws and policies, have lost their resources due to natural disasters and violence in their home countries, and have no choice but to trust the authorities they face at the border, after they have attempted to cross

legally and/or illegally into the USA. They are the huddled masses, yearning to be free, that the USA is famous for welcoming to become citizens, historically. Most of us, or our ancestors, traveled to America, as voluntary and involuntary immigrants; only First Nations peoples can claim native citizenry.<sup>9</sup>

### THOMPSON'S "THE BABY WITH THE GUN"

In Thompson's example, there is a toddler carrying a loaded gun, innocently pointing it at people in a crowded room (the baby does not own the gun, did not load it, and has no idea what a loaded gun is). We don't know how this baby came to have a loaded gun (isn't that where the moral responsibility lies?). The child has its finger on the trigger, and the question is: would someone be justified in shooting the child? The concern is that the baby could accidentally cause the gun to fire, either on its own or if shot in an effort to try to protect others, and the bullet would kill someone. The example differs from the one POTUS used when running for office in several ways: the person on the SF pier was a homeless adult, and he was an illegal immigrant from Mexico. The baby with the gun has no gender or race or social class background. As Thompson explores the moral responses available to us, she demonstrates that all moral responses are partial in the sense that they have a past and a future. She argues that there is not one methodology that will get us to the right answer and course of action. We need to explore moral concerns (not take them as given), make an effort to understand other points of view, and recognize diversity, fluidity, and plurality. She recommends: we cannot just ask how (why) we should conduct ourselves under the given situation; we need to look at the situation as well.

How do we look at the situations of over three thousand children taken from their parents by the US government? It is an overwhelming task, yet there have been efforts to do so, by reporters, photographers, case workers, and lawyers, all trying to get us to listen to the children's cries for "Mama," and "Papa," and "Please call my Aunt, she will pick me up, her phone number is: XXX-XXX-XXXX" (memorized by a five year old, recorded and released by a lawyer); hear the deported father's sobs on the telephone to his daughter still

in the US (as released by his lawyer), and see the images the government tried to hide, secretly recorded on personal cell phones by social workers, before quitting their jobs.<sup>10</sup> I am reminded of the 1930s and the heroic efforts people made to let the larger world know what was going on inside Germany, Hungary, and Poland in the ghettos and concentration camps.

The situation for the little girl and her mother, in John Moore's photograph, is this: the time of day was eleven p.m., and the little two-year old girl was very tired.<sup>11</sup> The mother and child had been on the road for a month, traveling from Honduras to seek political asylum, knowing that US policy historically has accepted claims from Central America for political asylum. However, the US Department of Justice, under the directive of the AG and POTUS, changed the policy and stopped accepting political asylum requests from Honduras. The mother did not know the policy had changed while she was traveling. She tried to enter the US at a legal border crossing but found that to be closed. So, mother and child crossed the Rio Grande River in a boat with a group of other women and children. To their relief, the border patrol was waiting for them on the other side of the river, near the town of McAllen, Texas. The mother put her child down for two minutes while the border control searched her, and the little girl sobbed. That is when Moore took his picture. When the search was over the mother was able to pick her daughter back up and comfort her. The toddler was not taken away from the mother, they were not separated, at least not then; yet her image has come to represent all the children who were separated as photographers were not given access to those children, or permission to take pictures at the time of separation. Those images are not available. How does POTUS's zero tolerance policy for immigration compare to the US's zero tolerance policy tried in our public schools?

#### USA PUBLIC SCHOOLS' ZERO TOLERANCE POLICY

"Zero tolerance policies mandate predetermined consequences or punishments for specific offenses ..."<sup>12</sup> They do not allow for the context of situations to be considered. In 1994, under President Clinton, the US gov-

ernment passed a “zero tolerance” policy for public schools that required all states to expel for a year any student who brought a weapon to school. If the states did not adopt this policy, they risked losing their federal funding. Many states added to their policies not just weapons, but drugs and alcohol, as well as bullying behavior. The policy was embraced as a way to help keep children safe while at school, which they are required by law to attend. There were problems with this policy from the moment it was enacted. For example: states varied significantly in how they defined the offenses, even what is meant by “weapon.” It is not easy to define. Does this include: rubber bands? Squirt guns? Pocket knives accidentally left in one’s jeans pocket from this morning’s farm chores? A pop tart eaten into the shape of a gun? Even one’s finger used as a gun? All of these examples resulted in students being expelled from school.<sup>13</sup>

“Drugs” are not easy to define either: does this include pain medicine given to a friend having menstrual cramps? Does “violence” include a kindergarten giving a friend a kiss or hug? These acts (which many would interpret as acts of kindness) have gotten children expelled too. And, students who are guilty of bullying behavior are not necessarily caught and disciplined, as school officials struggle to define, and detect bullying behavior. Instead, it is often the students seeking to protect themselves from the bullying they are receiving who are caught and expelled from school. One clear result of the zero tolerance policy was that it denied students’ expelled an education. The research shows that “mandatory discipline can actually increase bad behavior and dropout rates in middle and secondary schools.”<sup>14</sup>

Since the zero tolerance policy was enacted, gun violence in public schools has actually increased in number of incidents and level of violence. Examples: the Columbine High School shooting (April 20, 1999), Littleton, Colorado, where thirteen people were shot by two high school students, before the shooters committed suicide; Sandy Hook Elementary School, Newtown, Connecticut (December 14, 2012) where twenty-seven people died, mostly young children; and a more recent example in Parkland, Florida (February 14, 2018), where seventeen people died at Marjory Stoneman Douglas High School. There were twenty-three school shootings where someone was hurt or killed in the

first twenty-one weeks of school in 2018 (more than one shooting per week).<sup>15</sup> The zero tolerance policy in public schools has not worked, and in 2016, under President Obama's administration, new guidelines were put in place to end zero tolerance policies and stem the school-to-prison pipeline.<sup>16</sup>

The students in the Parkland, Florida, incident are old enough and wise enough to make the case themselves that the problem is a complex, and complicated one, involving many factors, including a need for gun control in the USA (which points to a need for background checks at gun shows and on-line sales), so that people who are mentally unstable (which points to a need for better mental health services) are not be able to have access to guns (especially high powered guns meant for military use, not civilian use). The Florida high school students have teachers and parents helping them to find ways to have a voice as future voting citizens in the USA (some of them were already old enough to vote). They call on the policy makers to take moral responsibility and change the laws to help protect school children from gun violence, even as they/we acknowledge that there is not one solution to this complex, complicated problem. We need to acknowledge that rule driven zero tolerance policies don't work; there is no one method or policy that will get us the right answer and correct course of action. We need a multi-pronged approach. We need to look at the moral concerns from diverse perspectives, as well as look at the unique situations. The responses are not easy.

### POSSIBLE RESPONSES?

What are caring and just responses to illegal immigration problems at the USA's southern border? Even if we agree that there is a problem of border control (no one is in favor of there being no border or that anyone who wants in should be allowed entry; there is agreement that one of a government's vital roles is to protect its citizens from invasion and harm from violent, dangerous people), we should agree on caring and just grounds that it is not moral to use innocent children as fodder to scare families away from trying to immigrate to the USA. We do agree, within our legal system, that children cannot be held

accountable for what their parents do (or not), and that before the age of reason (commonly recognized to be at least six years old at an international level), children cannot be held accountable for their own actions. Taking children from their parents/extended families at the USA border is a form of kidnapping. These adults did not even receive a receipt for their children, thus treating children as having less value than a person's wallet, wedding ring, or shoelaces!

The evidence is so strong and thorough concerning the harm that occurs to young children who experience dramatic separation from their families, in terms of medical, psychological and child development research, that it is not possible to cite it all here. I do not have room. Nor do I have room to cite the harm done to the parents who lost their children—breaches of trust have been broken that will take years to recover from and heal, if ever. This kind of forced, dramatic separation of young children from their families impacts their development physically, emotionally, and psychologically for the rest of their lives.

The families are crossing the USA border illegally out of anxiety, even hopelessness, traveling great distances to do so, with young children in tow. This is not an easy thing to do; it is an act of desperation. US policy makers and citizens have a moral obligation to look at the conditions that are causing the families to make such a risky trip with their children accompanying them. They need to help address these conditions. It is a humanitarian concern requiring a humanitarian response. Contrary to numerous pleas by US citizens for the POTUS and AG to take moral responsibility for their actions and the impacts these are having on innocent children's lives, the US government's response was to charge the parents they deported for the travel costs to have the government return their children, the very parents who risked theirs and their children's lives due to devastation in their home countries. Once again, US citizens cried out in alarm, stepped forward, and began raising the money to pay the travel costs for families to be reunited. Governmental efforts to reunite families in a timely manner only began by court order, after the American Civil Liberty Union (ACLU) sued the USA government on behalf of the families. At the time of submission of this article, there were still over five hundred children not returned to their families, with over three hundred parents deported, and

the ACLU was trying to find them. The USA government was not looking for the parents, and was showing no contrition. Instead they were building more deportation holding facilities and looking for new ways to again separate children from their families. At the time of acceptance of this article, the US government was in its longest shut-down, with only a partial budget passed, as POTUS was using the budget to demand the funding of a border wall to be built between Mexico and the US.

POTUS's and the AG's zero tolerance immigration policy violates peoples' basic principles agreed to at an international level. Tragically, for the innocent children harmed by this policy, the results for them will likely fulfill the very fears POTUS and others worry about: gangs such as M13 will be able to step into the void created by loss of family and trust in the US government.<sup>17</sup> The basic need for belonging is strong in human beings, and we know that key reasons that children join gangs is to feel protected, cared for, and that they have membership in a "family" to whom they belong.<sup>18</sup>

A principled ethical approach alone will not solve the problem of controlling entry into our country. Improved immigration policy is needed, rules and guidelines to help those seeking asylum as well as those hired to protect the border. However, the policy needs to be nuanced, allowing for consideration of diverse conditions and contexts, and recognizing the need to continually revisit the policy as conditions change. The policy needs to be just and caring. It is a difficult problem that will take courage to seek to improve something our government leaders have resisted for fear of damaging their political careers. Or is it that they just do not care?<sup>19</sup> The solution is not fear-mongering, bullying, and kidnapping other people's children.<sup>20</sup> As citizens in the US, we must recognize our moral responsibilities to help care for innocent children, and support their families' efforts to take care of them, so that we don't have to worry about disarming teenagers with guns, someday.

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1 Image of crying girl at the USA-Mexico border, John Moore, "Image #973097552," 2018, photograph, *Getty Images* (copyright permission purchased).

- 2 Audrey Thompson, "The Baby with a Gun," in *PES Yearbook 1990*, ed. David Ericson (Normal, IL: Illinois State University Press, 1991): 239-249.
- 3 Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. Thomas Kingsmill Abbott (Peterborough, ON/Orchard Park, NY: Broadview Press, 1785/2005); John Stuart Mill, *Utilitarianism*, 2nd ed. (London: Parker, Son & Bourn, 1863); John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971).
- 4 Carol Gilligan, *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982); Alison Jaggar, "Love and Knowledge: Emotion in Feminist Epistemology," in *Gender/Body/Knowledge*, ed. Alison Jaggar and Susan Bordo (New Brunswick, NJ: Rutgers University Press, 1989); Nel Noddings, *Caring* (Berkeley, CA: University of California Press, 1984); Sara Ruddick, *Maternal Thinking* (Boston, MA: Beacon Press, 1989); Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Oxford: Basil Blackwell, 1987).
- 5 As reported by MSNBC, summer 2018. The reported number has increased since then.
- 6 James Banks and Cherry McGee Banks, *Multicultural Education: Issues and Perspectives, 9th Ed.* (Hoboken, NJ: Wiley & Sons, 2016).
- 7 Daniel Arkin and Corky Siemasko, "Shooting of Kathryn Steinle: San Francisco Pier Killing Suspect Found Not Guilty of Murder, *NBCNews*, November 30<sup>th</sup>, 2017, [www.nbcnews.com/news/us-news/jose-ines-garcia-zarate-san-francisco-pier-killing-suspect-found-n823351](http://www.nbcnews.com/news/us-news/jose-ines-garcia-zarate-san-francisco-pier-killing-suspect-found-n823351).
- 8 Seyla Benhabib, *Situating the Self* (New York, NY: Routledge, 1992).
- 9 John Ogbu, "Immigrant and Involuntary Minorities in Comparative Perspective," in *Minority Status and Schooling*, eds. Margaret Gibson & John Ogbu (New York, NY: Garland, 1991), 3-33; John Ogbu and Herbert Simons, "Voluntary and Involuntary Minorities: A Cultural-Ecological Theory of School Performance with some Implications for Education," *Anthropology & Education Quarterly* 29, no. 2 (June, 1998): 155-188.
- 10 As reported by MSNBC, summer 2018.
- 11 "Story Behind Viral Photo of Crying Toddler," video, 2:21, [www.cnn.com/videos/world/2018/06/18/child-crying-border-photograph-john-moore-intv.cnn](http://www.cnn.com/videos/world/2018/06/18/child-crying-border-photograph-john-moore-intv.cnn).
- 12 John H. Holloway, "The Dilemma of Zero Tolerance," *Educational Leadership* 59, no. 4 (December 2001/January 2002): 84-85.
- 13 "Zero Tolerance Policies Are Not as Effective as Thought in Reducing Violence and Promoting Learning in School, Says APA Task Force," August 9<sup>th</sup>, 2006. <http://www.apa.org/news/press/releases/2006/08/zero-tolerance.aspx>.
- 14 Ibid.
- 15 Saeed Ahmed and Christina Walker, "There has Been, on Average, One School Shooting Every Week this Year," *CNN*, May 25<sup>th</sup>, 2018, [www.cnn.com/2018/03/02/us/school-shootings-2018-list-trnd/index.html](http://www.cnn.com/2018/03/02/us/school-shootings-2018-list-trnd/index.html).
- 16 Christopher Zoukis, "New Guidelines Target Ending 'Zero-Tolerance' Policies, Aim to Stem School-to-Prison Pipeline," *The Blog*, November 29<sup>th</sup>, 2019, [www.huffingtonpost.com/christopher-zoukis/new-guidelines](http://www.huffingtonpost.com/christopher-zoukis/new-guidelines).
- 17 M13 is short for Mara Salvatrucha, a gang that first started in El Salvador and has spread to the US. POTUS often refers to M13 to stoke fears against immigrants

from Central America, “M13,” *Urban dictionary*, March 30<sup>th</sup>, 2005, <https://www.urbandictionary.com/define.php?term=m13>.

18 See for examples: Lisa Dietrich, *Chicana Adolescents* (Westport, CT: Praeger, 1998); *Effective Programs for Latino Students*, eds. Robert Slavin & Margarita Calderón (Mahwah, NJ: Lawrence Erlbaum, 2001); Carola Suárez-Orozco & Marcelo Suárez-Orozco, *Transformations: Immigration, Family Life, and Achievement Motivation Among Latino Adolescents* (Palo Alto, CA: Stanford University Press, 1995); Guadalupe Valdès, *Con Respeto* (New York, NY: Teachers College Press, 1996).

19 First Lady Melania Trump wore a jacket that said “I really don’t care. Do U?” when visiting immigrant children being held in Texas. Katie Rogers, “Melanie Trump Wore A Jacket Saying ‘I Really Don’t Care’ on Her Way to Texas Shelters,” *The New York Times*, June 21<sup>st</sup>, 2018,

<https://www.nytimes.com/2018/06/21/us/politics/melania-trump-jacket.html>.

20 Lisa Delpit, *Other People’s Children* (New York, NY: The New Press, 1995).