

Terrorism and 'Collateral Damage'

Written by Igor Primoratz

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IGOR PRIMORATZ, APR 28 2013

War and Terrorism

Everyday use of the term “terrorism” and much of the public debate about terrorism and responses to it are plagued by much inconsistency and several double standards. One salient example is the double standard of the form “us vs. them”. Another, related double standard is “state use of force vs. insurgent resort to violence” or, in a more specific version, “war vs. terrorism”. The latter is nicely encapsulated in the expression “the war against terrorism”. It suggests a conflict between states, each one separately or as a coalition, engaging in legitimate, essentially defensive warfare, and an array of insurgent organizations that won’t adhere to the legal and moral rules of warfare. The background of this contrast includes several simple, unexamined notions. One is the notion that the state is normally a morally justified institution that safeguards basic order and legitimately deploys force in self-defense, whereas insurgency is normally an enemy of order that illegitimately resorts to violence, which often takes on the form of terrorism. Another is the contrast between soldiers who identify themselves as such, thus putting themselves in harm’s way, and insurgents who act as a “secret army”, avoiding taking chances they impose on those they attack. Both these notions can be readily proven misguided.

There is, however, another way of contrasting war and terrorism: in terms of their targets. Roughly, whereas state armed forces, waging war, target legitimate military objectives – enemy soldiers and military installations, terrorists deliberately attack those who mustn’t be attacked – innocent civilians. This looks more promising. But the promise seems to fade away when we recall that in war the military, too, kill and maim innocent civilians: to be sure, not with intent, but as “collateral damage”, that is, as an unintended but foreseen (or foreseeable) consequence of their actions that are otherwise quite legitimate.

Killing the Innocent with and without Intent

According to a widely (although by no means universally) accepted understanding of terrorism – an understanding I endorse – all terrorism is deliberate violence against the innocent. This is the worst thing about it, morally speaking. In this sense I agree with Stephen Nathanson that with regard to terrorism, the deliberate killing and maiming of innocent people is “the heart of the matter”, morally speaking (Nathanson, 2010, pp. 33-34). However, there is still the possibility that the feature of terrorism that is the *worst* thing about it, morally speaking, isn’t morally *distinctive* of it, and doesn’t support the sharp moral contrast between war and terrorism. For it may not be significantly different, morally speaking, from a type of violence against innocent people we would not call terrorism, because the innocent are not killed or maimed with intent, but only with foresight, as a side-effect of otherwise legitimate acts of violence or war.

Is there, then, a significant moral difference between killing innocent civilian A with intent, and killing innocent civilian B without intent, but as a foreseen side-effect of an otherwise permissible act? Many, perhaps most people tend to say that there is such a difference: that killing A is worse, morally speaking, than killing B. This claim is sometimes elaborated by saying that A’s death is a reason for the killer’s action, part of his plan, something he values and is committed to bringing about. None of that applies to B’s death, which the killer rather sees as a condition in spite of which he acts (Boyle, 2001, pp. 15-16). Yet all this, it seems to me, merely explains the conceptual distinction between the two types of killing, rather than showing that one type is morally worse than the other. And the latter

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claim certainly needs to be supported by argument.

The claim proves difficult to justify. B is just as dead as A. If we want to deal with the morality of killing human beings in terms of a right to life all human beings have to start with, then B's right to life has been violated just as A's right to life has.

It is sometimes said that a moral evaluation of an act of killing a human being must take into account the attitude to human life, or to the right to life all humans have, that comes to the fore in the act. A person who kills another without intent, as a foreseen side-effect of an otherwise morally permissible act, does so with regret, and would prefer to carry out the act without bringing about this side-effect, if that were possible. But there is no reason why a person who kills another intentionally, as a means of achieving a morally legitimate objective, should not do so with regret as well, and should not prefer to achieve that objective by other means, if that were possible. In both cases, the killing is the direct outcome of a free and considered choice made by the killer. Neither the regret nor the preference for achieving the end in a different way is reason enough not to kill. In both cases, the life of the person killed is treated as dispensable: an acceptable price for achieving one's end, rather than something valuable enough to constrain the pursuit of that end. Looking at the matter from the point of view of the victim, suppose you were bound to be killed, but could choose between being killed with intent and being killed without intent, but as a side-effect of the killer's pursuit of his end. Would you have any reason for preferring the latter fate to the former?

Using Others as Mere Means

Thomas A. Cavanaugh has argued that the claim of moral asymmetry between intention and foresight should be tied to Kant's famous principle of humanity as end in itself. The principle prohibits treating others as mere means. "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end" (Kant, 2005, pp. 106-7). Cavanaugh argues that "the intended/foreseen distinction does not account for its own ethical relevance, but relies on the end-not-means principle to do so" (Cavanaugh, 1999, p. 185). The direct victim of terrorism is reduced to mere means to the terrorist's pursuit of his end, whereas the person killed as a side-effect of an otherwise legitimate act of war is not used as a means to anything. That, Cavanaugh says, is what makes the former case of killing morally worse than the latter.

Yet it is not clear why it is morally worse to kill an innocent person as mere means to one's end than to kill an innocent person as an unintended but foreseen side-effect of the pursuit of one's end. Jonathan Bennett makes the opposite claim: what the person who kills another as an unintended but foreseen effect of his act does "is in a way worse than treating them as means. He is treating them as nothing; they play no part in his plan; he is not *even* treating them as means" (Bennett, 1995, p. 218).

I would not go quite as far as this. But I fail to see a difference of degree of wrongness or evil. Again, the person concerned is dead in both cases, and her right to life has been violated in both cases. Again, in both cases the killing is the direct result of the killer's free and considered choice. In both cases, this result may be regretted, and the killer may prefer to achieve his end without killing, but neither the regret nor the preference prevents him from killing. The life of the person killed proves equally dispensable in both cases. Again, from the point of view of the victim, there seems no reason for preferring being killed without intent, but with foresight, as a side-effect of the killer's pursuit of his end, to being killed with intent, as mere means to the killer's end.

Cavanaugh's proposal is vulnerable to another objection. At a minimum, Kant's prohibition of treating another as mere means requires that the other should be able to "share in the end" of our action, that is, to consent to it (Kant, 2005, pp. 107-8). But if the possibility of the other person's consenting to our action affecting her is the touchstone of not treating her as mere means, that does not help establish and clarify, but rather tends to blur the moral difference between reducing the other to mere means and harming the other as a side-effect of our action. The other can't "share in the end" of our action that reduces her to mere means, that is, can't consent to our action. But can the other "share in the end" of our action that inflicts major harm on her without intent, but with foresight, as a side-effect, that is, can she consent to our action? Cavanaugh illustrates his argument with a typology of bombing, in which the

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central distinction is that between terror bombing and tactical bombing, that is, bombing that focuses on military targets. Normally, an innocent civilian to be killed by terror bombing can't "share in the end" of the bomber's action, that is, can't consent to it. But is an innocent civilian to be killed as a foreseen side-effect of tactical bombing normally in a better position to "share in the end" of the bomber's action, that is, to consent to it?

Conclusion

It seems, then, that we don't have a good explanation why killing innocent civilian A with intent would be significantly worse, morally speaking, than killing innocent civilian B without intent, but with foresight, as a side-effect of our action. If so, the deliberate killing of innocent people isn't, after all, what makes terrorism distinctively morally wrong, and much, much worse than the kind of war that allows for extensive "collateral damage" (including the current "war on terrorism" and the amount of such "damage" it brings about).

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