

Is terrorism morally distinctive from war?

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RICHARD J. VALE, FEB 6 2011

Goodwin argues that “trying to shoehorn the analysis of what is morally wrong with terrorism into [just war] theory seems [...] a step too far” (Goodwin 2006, p.13) and it is certainly true that discussing the morality of terrorism within a just war framework pigeonholes terrorist actions and serves to limit debate. This is especially true given the use of language and terminology often associated with definitions and dialogue of terrorism; it is more often than not emotive, pejorative and morally subjective and this in itself makes moral evaluation of terrorism an impossible task. For instance, when defining terrorism, Teichman uses “violent”, “atrocities”, “cruel” and “mutilation” (Teichman 1989, p.513) to take but one example.

Nevertheless, although such an approach has been criticized, such “shoehorning” is necessary in order to directly contrast war and terrorism; a common framework for analysis allows for direct comparisons between the moral justifications of both war and terrorism with the highest degree of consistency and fairness. Furthermore, when taking a step back, the fact that one can ask whether or not war and terrorism are morally distinct suggests that there is a considerable degree of similarity between the two and so making use of just war theory principles to contrast the two seems far from objectionable.

Those who contest the morality of terrorism frequently point to the intentional use of, or threat of the use of force against non-combatants or innocents by terrorists as an intrinsic part of achieving their goals (Coady 2003, p.13; Rodin 2004, p.752; Teichman 1989, p.513). This, it is argued from desert-based and rights-based approaches respectively, is morally abhorrent since it harms individuals when they have done nothing to warrant the receipt of such harm and violates inviolable human rights afforded to all non-combatants. In fact, in war, one of the very few circumstances in which the killing of human beings is deemed unavoidable and justified, there are strict rules governing the non-targeting of those who are judged not to be involved in the conflict. This notion of discrimination is one of the foundations of *jus in bello*.

In applying just war theory to terrorist activities, Fotion *et al* (2007, p.142) claim:

If there is nothing morally wrong, at least in principle, with terrorist (and insurgent) behaviour on the jus ad bellum side of just war theory, the wrongness (if it is present) must be on the in bello side.

With this in mind, and in order to present a much more comprehensive argument, the focus here will be on dispelling the claim raised by Rodin that “terrorism is given its distinctive moral character by the fact that it uses force against those who should not have force used against them” (Rodin 2004, p.752). In locating his argument within just war theory, Rodin makes the implicit assumption that the moral character of terrorism is distinctive from that of war which, under the most common approach to just war theory, uses force against only those who should have force used against them (dubbed ‘combatants’ in just war terminology) and spares those who should not (non-combatants). In other words, Rodin believes terrorism to be morally distinct from war because it does not meet the discrimination criterion of *jus in bello*. It will be contended here, however, that it is not the case that terrorism fails to satisfy the discrimination requirement of *jus in bello* but that terrorism differs from war in that it interprets the notion of innocence and what constitutes a non-combatant more narrowly than war. Such an argument relies on extending the doctrine of double effect to apply to terrorist activities which, it will be shown, is perfectly legitimate. Terrorism, then, is morally distinctive from war in that it can justify the use of force against a greater number of individuals, some of whom

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cannot be justifiably targeted in war.

Of course the large-scale loss of life often caused by acts of terrorism is abhorrent and wholly undesirable. Likewise for the acts of war that have been initiated in the name of banishing terrorist organisations from the world (the legitimacy of which shall not be debated here). However, both terrorism and war have very much become a part of everyday reality even for those who feel relatively unaffected by the violence going on in other parts of the world and so simply stating that acts of terrorism and war are undesirable and should be stopped will, unfortunately, achieve nothing; we must understand why such acts are deemed necessary by those who initiate them and seek to address those root causes to prevent future catastrophe.

Depending on the approach adopted, the principle of discrimination is undermined or supplemented somewhat by the doctrine of double effect, which has been widely interpreted as applying to states in wars against other states only. Under the doctrine a state is justified in killing enemy non-combatants if the killings are the foreseen, but directly unintended consequence of an attack on a legitimate target providing that the action is necessary and that “the evil consequences [of killing non-combatants] are not disproportionate to the intended good” (Rodin 2004, p.762). The doctrine is defended by many just war theorists who view it as an undesirable, but sometimes necessary consequence of war to kill innocents in order to make great gains against an evil enemy, locating such defences in the pragmatic or realist ‘dirty hands’ tradition. It is often claimed that the loss of civilian life in acts with double effect is less than that which would have been incurred had the act not been carried out. C.A.J. Coady goes beyond this and suggests that “all moral constraints are simply ‘rules of thumb’ that can and should be overruled” in such situations (Coady 2003, p.15). Indeed, such an argument was used to justify the bombing of German cities during World War II and dropping the atomic bomb on Hiroshima in 1945. In seeking to employ such an argument it is clear that states are attempting to absolve themselves of all liability and responsibility for the killing of innocent people and from this it can be inferred that instances of war are special circumstances under which certain actions can be performed which are exempt from usual moral considerations. This, it seems, is the crux of Rodin’s argument; whereas war is sufficiently unusual or irregular as to warrant a unique morality governing actions committed during its duration, acts of terrorism are afforded no such luxury.

This is perhaps why it may not seem strange that terrorists’ attempts to morally justify their actions are instantly dismissed on the grounds that they target non-combatants when the doctrine of double effect provides for instances in which states may legitimately do exactly that. However, Rodin himself stresses that “[u]niversality is a basic principle of moral rules” (Rodin 2004, p.758) and so if a doctrine can be applied to one group, there is no restriction on its application to another. What are states and nations if not groups of individuals sharing collective values and aspirations? Surely terrorist organisations, whilst on a much smaller scale, are also groups of such individuals. Furthermore, both states and terrorist organisations have leaders who are in some way accountable to their members and so, even though states have special status under international law, as far as morality is concerned there is no fundamental reason why states and terrorist groups cannot be treated as equals under the doctrine of double effect.

Goodwin (2006, p.11) certainly adhered to this moral reasoning when he suggested that the terrorist attacks on September 11 2001 can be justified through the application of the doctrine of double effect. The targets of the attacks, the Pentagon and the World Trade Centre, were considered the loci of US military and capitalist operations (respectively) and as such, from the perspective of the terrorists, the gains made by destroying, or attempting to destroy, such hubs of enemy activities justified the deaths of non-combatants. This is particularly true given that in labelling innocents as non-combatants, just war theory inevitably points to the existence of combatants, or non-innocents, who can be legitimately targeted and so in claiming that terrorism targets those ‘who should not have force used against them’, Rodin implies that there are those who terrorists could use force against. Corlett (2003, p.117) has been more explicit than most in noting:

[M]ost terrorist activity, whether morally justified or not, is aimed at a perceived wrongdoer or group of wrongdoers. In this way, terrorism contains, or may plausibly argued to contain, an essential element which would seek to avoid innocents as targets.

Following this assertion, then, it is evident that it is possible to extend the doctrine of double effect to terrorist actions;

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again using the September 11 attacks as an example, the legitimate targets of the attacks were the officials and staff of the Pentagon and the World Trade Centre who were directly involved in the decision-making and formulation of policy, the use of force against whom resulted in sufficient gains by the terrorists to morally justify the unintended, but foreseen deaths of a number of innocents. In this way, there appears to be no moral distinction whatsoever between terrorism and war.

However, even when such an argument is employed there remains a sense that terrorists are unjustified in targeting innocents, even indirectly, and some argue that the vast majority of so-called legitimate combatants targeted by terrorists are too removed from the actual combat and too far down the chain of causation for the combat that the use of force against them cannot be justified under just war theory. Perhaps this is because there is the sense that war is a reciprocal act in which both sides are aware of the other's intentions to inflict harm upon the other, especially given that war is usually openly declared by one nation against another. Terrorism, on the other hand, is something more of an assault in which the victims of the attacks are unaware of the impending danger and so have no chance to prepare. This is particularly evident in the case of the September 11 bombings and the infamous Lockerbie bombing in which an aeroplane was blown up over Scotland.

However, if this particular line of argument is followed, a significant problem is encountered; terrorism is a far from recent development and has been a very credible threat to nations for a great many years, much the same as war is a constant threat in a world of international anarchy. So, it seems that the argument that the victims of terrorism are completely unaware of the threat is a weak one; the victims may be unsuspecting or may not expect an imminent attack due to the assurances of their leaders that such an attack is a remote possibility, but the threat of such an attack ever present. Indeed, this is reflected in the language employed post-9/11 when a number of Western nations have declared a "Global War on Terror" suggesting that, even if it wasn't before, states are responding to non-state actors' terrorist actions at a reciprocal level. If this is truly the case, can the actions of terrorists be said to constitute sneak attacks against non-combatants and innocents? Is there still a moral distinction between a war between states and a war between states and terrorists?

We now arrive at the root of the moral distinction between terrorism and war. It seems that through their actions and from the objections made by those who contest the morality of terrorism that terrorists demonstrate a very limited interpretation of what constitutes a non-combatant or innocent. Such a restrictive interpretation stems not from a flagrant disregard for morality, however, but instead from the threats terrorist organisations perceive particular states pose to them. While it may not be a view accepted among a majority of scholars, terrorist organisations are more often than not created as a reaction to what they believe is the unjustified presence of another state or collection of states in their homeland or territory. For example, the Tamil Tigers, al-Qaeda, the Basque Separatists, the Irish Republican Army and Hamas all fit such a description. Such a presence is not merely an imposition to those who enter terrorist ranks, it is morally repugnant and tends to have been sustained for a lengthy period of time at the expense of the terrorist's state's autonomy. Of course, a natural conclusion to reach is that the forces of the imposing state present in the recipient state's territory are responsible for such an imposition and the infringement of national self-determination and so they are the legitimate targets of a terrorist assault. However, to terrorists, the concept of who constitutes a legitimate target extends much further than this; to the terrorist, the fact that a state feels it can impose itself upon the terrorists' homeland in such a manner is a reflection of the nature of that state and its society as a collective of individuals. In this way, it is not only soldiers, medics, generals, and so on, who are legitimate targets as combatants, but also the citizens of the state who are complicit in creating such a state. Whilst in war these individuals might be considered innocent and so have the status of non-combatants because it is generally accepted that the role they play in enacting the war is negligible or non-existent (Coady 2003, p.13), in an application of just war theory to terrorism these individuals are as legitimate a target as the soldiers in the terrorists' homeland.

Here, then, we have the moral distinction between terrorism and war; in the plights of terrorism, more individuals can be considered morally culpable for the state of affairs they are reacting to and so the concept of innocence, or what constitutes a non-combatant to use just war terminology, is greatly reduced when compared to that of war.

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