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Human Rights and Terrorism: A Comparative Security Analysis

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Understanding the Universality of Human Rights

The evolution of modern human rights regimes began roughly around the period of WWII and the establishment of the United Nations (UN). However, the concept of human rights has existed well prior to the UN and related institutions such as the Office of the High Commissioner for Human Rights (OHCHR) or the International Court of Justice (ICJ). Krasner characterises the evolution of rights as shifting from religious tolerance, to minority rights in its protection of specific ethnic groups, to its current form of universal human rights.[1] The Universal Declaration of Human Rights (UDHR) serves as a reminder of the idealistic objectives for the collective good of humanity, in enshrining 'pre-legal' ethical standards, which manifest as rights and freedoms for all of humanity, irrespective of nationality, creed, ethnicity, gender, religious beliefs or any other status.[2] Its declarations act as a "moral guide of world order, governance, moral, and normative standards, international law, and individual interactions".[3] It is distinguished by its unprecedented aspirations to conceive human rights applicable to all in a universal and indivisible fashion.[4] The UDHR has inspired more than 80 international human rights treaties, conventions, and declarations.[5] Much like the American Declaration of Independence, its fundamental precepts establish the self-evident principle that all human beings are born equal. No human being can be excluded due to political, civil, cultural, or socioeconomic status, 'moral worth' or conduct, or any other justification to deny the protections and applications of HRL.[6] As early as 1970, the ICJ recognised that "all states can be held to have a legal interests in" the "protection" of basic human rights, in that such rights are "obligations *erga omnes*"[7][8] Human rights represent the ideal of liberal democracy[9][10], where *all* are afforded the minimum guarantees "recognised by the international community as necessary for a life of dignity in the contemporary world" [11]. We, the People of Earth, are fundamentally, self-evidently, equal.

Historically, there has been tension due to North-South contrasts on the emphasis of different elements of HRL regimes. [12][13] The three-phase model characterises the first generation of civil and political rights in the socio-political realm, with the second generation focusing on economic, social, and cultural rights, and the third, most recent phase, described as 'solidarity rights', encompassing the right to development, to the environment and to peace and self-determination.[14][15] Negative rights are often associated with the first generation, while positive rights are associated with the second and third. Seen in documents such as the European Convention of Human Rights (ECHR) and the United Kingdom's Human Rights Act 1988, Western jurisdictions have largely realised the socio-political rights and freedoms outlined in the International Covenant on Civil and Political Rights (ICCPR).[16][17][18][19]

Considered a 'Third World-led' initiative, the 1966 emergence of the International Covenant of Economic, Social, and Cultural Rights (ICESCR) led to further commitments by the UN to acknowledge and promote second and third generation rights.[20][21] North-South tensions were epitomised by ideological and developmental differences; developing states emphasised the ICESCR, while developed nations promoted the ICCPR. Recognising the interdependence of socio-political and socioeconomic rights in the decades after the formal adoption of the ICESCR, Western governments moved towards more Keynesian forms of economic organisation. With the de-escalation of East-West tensions in the post-Cold War era, the emergence of neoliberal-neorealist intersections came to dominate

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foreign and domestic policy discourse. Neoliberal theorists such as Thomas Friedman, politicians such as Reagan and Thatcher, and the dominant 'Chicago School' represented the neoliberal ideal of proliferating economic freedom to achieve political freedom.[22]

Murphy notes that critical theorists including Noberto Bobbio, Jurgen Habermas, and David Held have observed that the neoliberal mode of globalisation has severely undermined the "democratic gains won over the last century".[23] Neo-neo approaches coerce the integration of emerging Global Southern economies into a great-power dominated international system. According to Cox and Gill, neoliberal internationalisation favours the interests of transnational and domestic business and political elite at the expense of state and individual actors, while undermining the capacity of emerging markets to 'catch up' to 'First-World' levels of development.[24][25] The co-option of neoliberal market strategies by illiberal states has resulted in neo-authoritarian regimes as evidenced by the PRC and Russia.[26][27] As transnational organisations accumulate greater economic and socio-political capital to the extent of overriding the agency of weak states, individual actors in the Global South lose their capacity to fully realise their human rights.

Non-Western perspectives have challenged the universality of HRL on the basis of its Eurocentric origins and potential neo-colonial utility. In the early 1990s, the 'Asian values' argument was used by South-east Asian governments with poor human rights records to "privilege political and cultural diversity over universalist claims, and saw the expansion of the normative [human rights] agenda as an unwelcome imposition at a time of post-Cold War western triumphalism." [28] During the same period, the Cairo Declaration on Human Rights in Islam was adopted by the Organisation of Islamic Cooperation (OIC).[29][30] Among leaders of many Muslim-majority and formerly 'second world' or communist countries, many have opined that "while human rights are universal in nature", they must also account for "the significance of national and regional particularities and various historical, cultural and religious backgrounds." [31] The Muslim-majority nations of the OIC have long held the belief in propagating the principles of Islam and the "spread of its culture, glory...rich heritage, spiritual strength, moral values and laws". [32] The contrast between OIC's religiously themed *Cairo Declaration* and the pluralistic UDHR is summated in Article 25, which "very expressly and firmly states that its foundations are in the doctrines of Islam...to be subject to Shari'a." [33]

In recent years, the challenge to human rights as a universal concept has lost much of its legitimacy, with greater acceptance of universal rights, despite acknowledgement that such rights have their origins in the West.[34] These extend to recognise the proliferation of Western interests in the Global South under the guise of human rights regimes.[35] Absent moral distinctions on the basis of culture, modern human rights promote the tolerance and reasonable accommodation[36] of derogating views. [37] In contrast, the 'Asian values' and OIC arguments exclude universality on the basis of assumed ethno-cultural and religious supremacy. Oftentimes, these positions serve to justify human rights abuses and derogations by appropriating constructs of cultural relativism,[38] which were advanced by leftist groups in the West in conjunction with Global Southern heads of states and public intellectuals.[39] On the floor of the Vienna Conference, then U.S. Secretary of State Warren Christopher declared that, "we cannot let cultural relativism become that last refuge of repression." [40] Liberal pluralism recognises that the proliferation of universal human rights must be facilitated in diverse contexts. [41][42] Perspectives based on individual status (i.e. religion, gender, sex, age, ability, ethnicity, race, nationality, etc.) are demarcated from HRL regimes, ensuring that the public state does not impose the private beliefs of one or more groups onto the entire polity. Current debates now focus on legitimate avenues of proliferating universal rights and determining the conditions whereby humanitarian intervention is justified.[43]

In the aftermath of the terrorist attacks on the World Trade towers in New York on 9/11, illiberal states have taken to emulating the U.S. response to terrorism in their restraint of civil and political liberties.[44] [45][46] Despite purported advocacy of proliferating liberal democratic values[47] (i.e. Democratic Endowment for Democracy[48]), the United States continues to pursue a dogmatically self-interested realist approach to the War on Terror and in the process, legitimate human rights atrocities prevalent in illiberal states.[49] This includes torture, cruel and unusual punishment, institutionalisation of *posse comitatus*[50], the revocation of *habeas corpus*, aggressive search and seizure powers, warrantless invasions of privacy, unchecked police powers, and indefinite and arbitrary detention.[51] While acknowledging Global Southern perspectives, the main focus of this essay is to explore the relationship between liberal democratic principles of human rights and terrorism. This serves to streamline the scope

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of investigative research and provide a more common theoretical and political reference point for comparative study.

International Law and Non-derogable Rights

International human rights regimes recognise that there may be times of national emergency or crisis necessitating the temporary suspension of and legitimate derogations from certain human rights protections. Piazza and Walsh define two sets of rights; 'empowerment rights', which can be justifiably suspended for a temporary period as deemed appropriate for a democratic state; and 'physical integrity rights', which are absolutely non-derogable.[52] Examples of the former are found in documents such as the ICCPR, which reaffirm the UDHR and further clarify the specificity of civil liberties and freedoms – of association, movement, speech, political participation, and religion.[53] Juxtaposed are 'physical integrity' rights, which include freedom from torture, extrajudicial killing and disappearances, and political imprisonment.[54] Physical integrity rights are distinguished in that there are no permissible circumstances in which derogation is justified. There is a marked overlap between HRL and IHL regimes, where immunity from torture, cruel and unusual punishment, the illegal infliction of death, or the violation of civilian immunity are collectively prohibited under the UDHR, ICCPR, Geneva Conventions, Genocide Convention and CAT.[55][56][57] It is this overlap that affirms the application of physical integrity rights to every person[58], all the time, everywhere.

In the post-9/11 era, there has been a range of reactions among liberal democracies, with some form of legislative restriction on civil and political liberties, shaped within a counter-terrorism narrative. The US Patriot Act is often portrayed as inconsistent with international human rights norms, and has been criticised by major INGOs for its violation of civil and political liberties. The dichotomy between liberty-security has perpetuated inequality via an emergence of a Eurocentric in-group, out-group paradigm. These attitudes prevalent among the American polity only serve to normalise mistreatment of non-citizens, which in turn serves to breed radicalism and potential terrorism.[59] The indefinite institutionalisation of expanded state powers contained in the Authorisation of the Use of Military Force (AUMF) act by Executive order in 2012 deviates from the temporary nature of legitimate derogations. Since 9/11, human rights advocates in the U.S. have observed the restriction of civil and political liberties of non-citizens, an expansion of detention and surveillance powers by law enforcement, the illegal torture of detainees, and the 'tightening' of government secrecy; all carried out under the umbrella of 'counter-terrorism'.[60]

The American approach to counter-terrorism has been routinely exercised through military force, or what Schorlemer describes as a 'repression strategy'.[61] In its application of an unprecedented 'hybrid law-war' model, the newly minted category of 'unlawful combatants' renders such persons captured without the rights of either 'unlawful' criminals in a civil (to mean non-military) court, or as Prisoner of War (POWs), where the entirety of *jus in bello* principles would apply.[62] Prisoners currently held in Guantanamo Bay exist in legal limbo as they are robbed of their criminal law rights as 'unlawful' combatants – without "the presumption of innocence, the right to a hearing to determine guilty, the opportunity to prove that the authorities have grabbed the wrong man".[63] For all legal intents and purposes, 'unlawful combatants' cease to be human, devolving the treatment of detainees into a constraint-free environment of barbarism.[64] This hybridised model allows for a far greater use of lethal force projection (i.e. armed UAV drones) without the Geneva Conventions or CAT constraints and was ruled unconstitutional by the U.S. Supreme Court[65] in 2006.[66]

In line with post-9/11 U.S. leadership, the limitless geographic nature of the 'Bush Doctrine' and its adoption by the Obama administration have emboldened the United States to expand and obfuscate the meaning of 'imminence' to serve national interests in justifying pre-emptive attacks under the auspices of pre-emptive self-defence.[67] International law is clear; military action "prior to the existence of an actual armed attack or the initiation of a process of armed attacks" are not recognised as legal or legitimate and may be very reasonably responded to under the collective defence clause (Art. 51) of the UN Charter.[68] As the United States continues to operate on the basis that "legitimate targets are those who are in the course of combat who *might* harm us, not those who *have* harmed us,"[69] such self-interested unilateralism only serves to undermine and threaten over "50 years of international law"[70].

Across the Atlantic in the United Kingdom, proscription of groups have been portrayed as a "proactive" counter-terror

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response; and one that violates 'empowerment rights', such as the freedom of speech, assembly and association.[71] Control orders, which allow for the warrantless detention of suspect non-British individuals, were found to be in violation of the fundamental right to liberty under Article 5 of the ECHR, and failed to pass the 'proportionality' test as established by the UK House of Lords.[72] In issuing its judgment, the European Court of Human Rights found that control orders did not meet the criteria for ECHR derogation in times of emergency under Article 15 of the Convention.[73] Most states in continental Europe were not subject to the massive loss of life as experienced by the Americans during the 9/11 attacks, and have thus taken an approach which could be characterised as a 'civil reaction' (to mean non-military).[74] The European response is a police-based strategy, supplemented by legislative avenues that reasonably expand the state's coercive powers in areas of surveillance, detention, and other derogations from 'empowerment' rights – however, such derogations are far less severe than its British counterparts and do not require declarations to the European Court as per the ECHR.

Despite British involvement in American military operations, the primary response to terrorism remains 'civil'. Acts of terrorism are criminalised as purposeful, malicious, and premeditated acts of human rights violations, warranting separate legislation to enforce harsher punishments and more effective law enforcement powers within the criminal justice system.[75] In conjunction with increased state powers to prevent and prosecute acts of terror, the widespread belief in Europe is that terrorism cannot be solely defeated by military force and that it will only be curbed "through a policy of prevention, if we manage to take a new joint approach to effectively fighting its many different causes...this includes above all protection of human rights, civil, political as well as socioeconomic and cultural rights." [76]

Terrorist groups account for material deficiencies by applying asymmetric strategies including the exploitation of human rights freedoms to profess their cause, attract supporters, and conceal their activities.[77] In this context, the collective welfare of the state and those it protects may benefit from governmental pressures to limit derogable human rights in response to acts of terrorism. The liberty-security 'trade-off' can be observed in the UK where the government outlawed "speech that incites hatred based on religion, and in the post-9/11 introduction of anti-terror legislation by Western governments in Europe, Australia, Canada, US, UK, New Zealand, which limited privacy rights and enhanced search and seizure capabilities. Lethal force must only be used as a last resort, and with full regard to international law and non-derogable rights.[78] Temporary and legitimate derogations must be proportionate to the threat of terrorism where it is so great that it threatens the inviolability of those rights for all.

While the U.S. pursues a military approach to counterterrorism, European perspectives acknowledge human security concerns in their exercise of joint law enforcement and prevention. The state's pre-commitment to human rights principles serve to purposefully restrict its behaviour, thus providing guarantees that certain rights and freedoms are absolute and non-derogable during both peacetime and in war.[79][80][81][82] In an era of global terrorism, the instinctual resort to dehumanise the treatment of enemies is checked by a contiguous pre-commitment from human rights to humanitarian principles and the laws of war.

Limitations of Liberalism

The study and practice of International Relations (IR) and related concepts are often taken-for-granted 'as is' by dominant Northern powers. Eurocentric notions of sovereign state-hood underpin the foundations of inter-state affairs. During the period of European colonisation[83], pre-European concepts of land ownership were simply dismissed as insufficiently civilised to exert claims of sovereignty, justifying *terra nullius* and consequent colonial bloodshed.[84] By conceptualising security primarily around the organisation of 'great power' politics at the expense of the interests of 'small' or 'weak' states, IR is underpinned by Eurocentric and racist assumptions.[85] Ken Booth remarked that the limited awareness of non-Western perspectives on global politics formulates IR as "ethnocentric, masculinised, northern and top-down".[86] Within the taken-for-granted historical geographies, Western constituted political sciences have for the most part ignored the interests of what we know call the 'Global South', in dismissing the postcolonial agenda and its impact on international norms and practices.[87][88]

The bidirectional proliferation of human rights and liberalism is not without its inherent limitations. This may extend to the violation of human rights through forms of otherisation, and the assumption of a taken-for-granted moral

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imperative to impose a 'superior' form of state organisation. Democratic Peace Theory (DPT) purports that liberal democracies are less likely to go to war with each other given the internal organisation of the state. In Immanuel Kant's essay, *Perpetual Peace: A Philosophical Sketch*, he asserts, "Republican states [should] enter into a pacific union with one another, in which they regulate their interactions and renounce war as a means of foreign policy." [89] DPT assumes that constraints placed on state conduct from the domestic electorate, judiciary, free press, civil institutions and legislative bodies; translate into an equally constrained and 'rationally' driven foreign policy. The assumption that democracies do not go to war with other democracies is fundamental to Huntington's controversial Clash of Civilisations thesis. [90] Liberal democracies are purported to choose cooperative, economic, political, diplomatic, negotiation and other soft power avenues of resolution to ensure that all-out war is avoided, presumably due to their domestic qualities and desire for international cosmopolitanism.

Ideals of equality (among all humans) do not extend to equality among forms of state organisation. Liberal institutionalism legitimates domination and coercion of the Global South. [91] Noted Orientalist scholar, Edward Said, commented that mainstream IR discourse often presents the world in binary opposition where the West are rational and disciplined, and the Orient impulsive and emotional. Where the West are modern and flexible, and the Orient slaves to ancient passions and routines. Where the West are honest and compassionate, and the Orient treacherous and uncultivated. [92] So committed is the liberal notion of ethical and moral superiority, challenges are often dismissed with Orwellian doublethink. The Holocaust represents a monumental test of liberal faith in the "Western myths of progress and ethical superiority". [93] To maintain consistency within liberal ideology, the "sins of Western civilisation" are displaced "onto an intrusive non-European Other...Germany, that quintessentially Western society, somehow becomes not Western". [94] As observed by Sven Lindqvist, "the Holocaust was unique – in Europe...but the history of Western expansion in other parts of the world shows many examples of total extermination of whole peoples". [95] Current constructs of the West have taken great lengths to distance themselves from the brutal slaughter and loss of civilian life during the period of European colonisation and violent territorial conquest of the non-Western world. [96]

Much like realist and neo-realist approaches that disregard Global Southern perspectives in its Eurocentric location of great power agency, liberal approaches are equally Eurocentric in defining the West in "ethical and progressive terms". [97] 'Weak' states are often perceived by liberals as "bearers of rights and objects of emancipation...for their normative value in Western political theoretic terms". [98] In the liberal mindset, the simultaneous exclusion of 'non-democratic' states and its inclusion of non-Western persons under international human rights regimes, are justified in its division of the world into those states that can be trusted with power, authority and legitimacy, and states that cannot. [99]

Liberal enlightenment derives its moral authority from purported adherence to the rule of law. [100] Liberal ideals state that we only respond to attacks as a last resort, in a proportionate manner and in self-defence [101]; we only target military threats; we win hearts and minds by liberating People from the cruel clutches of despotism; we rebuild states into shining examples democracies from the rubble of tyranny. Our enemy slaughters thousands of civilians by targeting buildings like the World Trade Centre; they sacrifice women and children to do their evil bidding; they run and hide in remote locations plotting suicide attacks; they target our soldiers for kidnap, ransom, torture and death; they fight for the illegitimate control of territory protected by our friendly troops at the invitation of their rightful government. We obey the rules of law; and they commit unspeakable crimes. If so, they deserve the same fate as those in Nuremburg and Tokyo. In our enlightened minds, we should provide them with the fundamental rights they so unjustly denied their victims. The competent judiciary International Criminal Court (ICC) [102] should determine beyond reasonable doubt, in a fair trial, that those deemed terrorists are criminal. [103]

Contrary to the ideal, liberal claims to moral superiority on the War on Terror find no basis in reality. [104] In over a decade since 9/11 and the start of the War on Terror, there has been no ICC trials, but rather an abundance of evidence indicating the torture of detainees and the targeting of civilians as 'collateral'. Western occupation of Afghanistan and Iraq has not only resulted in civilian death tolls far exceeding those under Saddam Hussein's regime and the Taliban, but also a level of state failure consistently ranked among the bottom 20 countries of the world [105]. The state of civil and political rights, [106] [107] equality for women, [108] sexual, ethnic, racial, religious and other minorities, and socioeconomic welfare [109] have worsened since the invasion and occupation of Iraq and

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Afghanistan. Neoconservative apologists can rest easy though, as Afghanistan and Iraq have now been installed with new 'democratic' constitutions and state polities driven by 'free', 'fair', and 'safe' elections[110]. Notwithstanding blatant realist or neo-neo-driven interests, the inherent Eurocentric assumptions of moral superiority in certain liberal mindsets feed into a cycle of "taken-for-granted politics that sides with the rulers, with the powerful, with the imperialists, and not with the downtrodden, the weak, the colonised, or the post-colonised".[111]

Terrorism: A Matter of Perspective

Western constructs of terrorism insist on assigning agency to non-state actors, thereby excluding any justifications of national self-determination. [112] The OIC have argued the moral validity of asymmetric warfare as a form of legitimate self-determination in response to violent state oppression, with particular interest in the ongoing Palestinian-Israeli conflict.[113] Ignatieff draws distinctions between legitimate self-determination and acts of terrorism by highlighting the non-violent and pacifistic nature of civil disobedience.[114] Yet most of the founding wars of independence in the West were anything but 'civil'. In his essay, *Two Treatises of Government*, John Locke affirmed the 'Right to Revolution' as a part of social contract theory[115], to enable non-state actors to guard against tyranny and respond to state-based repression and violence.[116] The *American Declaration of Independence* affirms the Right of the People to abolish a repressive government.[117] Revolutions in the West are portrayed as *just* acts of national self-determination carried out by non-state actors. These were not bloodless conflicts, where wigged men bid their opponents 'good day' and proceeded to parlay for armistice in the comfort of grand ambassadorial mansions. These and other revolutionary conflicts in the West were bloody, violent, brutal, and involved asymmetric warfare, where unarmed civilians and non-combatants were killed, raped, plundered, beaten and tortured in the most barbaric fashion. U.S. foreign policy attitudes to non-state actors and their responses to illiberal and undemocratic states appear to be inconsistent at best, and contradictory at worst.[118] While supportive of the Arab Spring, Washington was dissatisfied with the results of democratic elections, and quickly labelled groups such as the Muslim Brotherhood as 'Islamist', 'militant', and 'terrorists'. [119][120][121]

Attempts to find a universal definition for terrorism have been fraught with controversy, contention, and widespread disagreement.[122] Finding its epistemological origins in the French Revolution (1789-1789), the term "terrorism" referred to the intimidation of opponents[123], and was associated with defending novel notions of justice and democracy against the old tyranny of oligarchical monarchies.[124] In its contemporary usage, terrorism has highly pejorative connotations, and is often juxtaposed as "unjustified, destabilising, and threatening" in contrast to the legitimacy and justice of democratic institutions.[125] Schorlemer describes the aims of terrorism as "violating human rights".[126] USC Title 22[127] describes terrorism as the "premeditated, politically motivated violence perpetuated against non-combatant targets by subnational groups or clandestine agents usually intended to influence an audience." [128] Under U.S. federal law, terrorism is conceptualised as socially motivated violence, perpetuated against innocents in an indiscriminate manner.[129] Terrorism is pitted against the safety and stability of the world[130]. Acts of terrorism systematically employ violence and intimidation to "coerce a government or community into acceding to specific political demands"[131]. It aims to influence "ideological and political factors in order to impose its own model of society".[132] Such goals are often viewed in terms of civilian casualties, the destruction of infrastructure, and the disruption of the economy and daily life.[133]

The securitising 'speech act' of designating a non-state group with 'terrorist' status carries significant political gravitas, and its utility as a tool of statesmanship can be evidenced by the response of the UN in the aftermath of 9/11. State complicity in acts of terrorism have been recognised as a "denial of justice" defined as "assistance" to, "acquiescence" in, "encouragement" of, or "toleration" of terrorist conduct.[134] The landmark UNSC Resolution 1373 required that all member states take action to combat terrorism.[135] In an unprecedented motion, this bound all member states to uniform obligations requiring the suppression of safe havens, sustenance or support for terrorists, the sharing of information pertaining to planned or actual terrorist attacks, and the denial of all forms of financial or other support for terrorist groups. [136]

Terrorism manifests as a plethora of diverse forms, and are as heterogeneous as the geographies they operate within.[137] In July of 1993, a member of the Animal Liberation Front was suspected of setting fire to a Michigan State University research facility.[138] From its creation in December 1969 until 2001, the provisional Irish

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Republican Army (IRA) killed an estimated 1,640 civilians and members of paramilitary organisations with the goal of reunifying the majority Protestant North with the Catholic Irish Republic.[139] The October Crisis that grew out of the Quiet Revolution[140] in Quebec led to the kidnapping of James Cross, a British trade official in Montreal, by members of the Front de liberation du Quebec (FLQ) on Oct 5, 1970.[141] The ICJ declared the U.S. embassy hostage crisis in Iran and the deprivation of freedom due to physical constraint to be manifestly incompatible with the UN Charter and the principles of the UDHR.[142] In June 2006, 17 suspects were arrested in an alleged Islamist terrorist plot to detonate devices in prominent buildings in Toronto and Ottawa, and to behead the Canadian Prime Minister.[143]

Transcending political, cultural, religious or any other allegiance, common ground can be found in that “no political goal or cause justifies intentionally attacking civilians.”[144] There exists an inescapable link between terrorism and HRL, in that all forms of terrorism involve conduct proscribed by decades of international law, irrespective of the status of the actor.[145] The targeting of non-combatants distinguishes legitimate expressions of self-determination from acts of terrorism. Acts of terror aim to maximise civilian casualties, thereby violating the fundamental rights to life, liberty and security of their victims.[146] As expressed by IHL regimes, the moral distinctions governing belligerent conduct render the “targeting [of] civilians for death and destruction...as terrorism”.[147] Killing civilians is wrong.

To maintain ‘moral clarity’, one must deny any recognition that human insecurity, such as poverty, demographic factors, social inequality, exclusion, dispossession, and political grievances, enable or otherwise precipitate conditions for terrorism to flourish.[148] [149] This is driven by the very real fear of having to confront those deemed terrorists and civilian bystanders (i.e. collateral) as human beings, who by the self-evident nature of being human have inalienable rights, which obligate protection, especially during wartime. Given the use of lethal force (i.e. drones) against terrorist targets, and subsequent ‘collateral’ damage, *jus ad bellum* justifications can best obscure the deaths of unarmed civilians, resultant from the inherent[150] risk of lethal action to the civilian populace of any target.[151] The distinction between ‘collateral’ damage and targeted killing of civilians is intent.[152] If a liberal democratic state or any state actor knowingly kills unarmed non-combatant civilians, such action would have state-wide implications in the context of IHL and ICC jurisdiction.[153] The justness[154] of a war does not, in any manner, affect the justness of conduct; it does not make belligerents less belligerent (or human), and it does not allow for the known known of targeted de-individualized killing.[155] States are held to a higher regard than non-state actors for their conduct. Sovereignty endows states with great power and greater responsibility. This includes the responsibility to protect civilians from human rights abuses; the responsibility to deny terrorists safe haven; and the responsibility to regulate the conduct of one’s military forces. It takes a true leap of double-plus good-think to master the American justification of pre-emptively killing civilians with no regard to international law in a geographic limitless manner to stop the killing of civilians with no regard to international law in a geographic limitless manner.[156]

Understanding why people resort to terrorism is imperative in determining how to best respond.[157] There is no evidence to suggest that terrorists suffer from any form of atypical psychopathology.[158][159] “People are not born terrorists and do not wake up one morning and suddenly decide to start planting bombs in public streets.”[160] Why would rational human beings choose to override their most basic human instinct to survive, by committing heinous crimes against humanity, such as suicide bombings? Why do People support these illegitimate actors? Why do 62% of Palestinian Muslims[161] agree that suicide bombings[162] can be sometimes or often justified?[163] Why do 48% of Palestinian Muslims support Hamas?[164] Why do 89% of Shia Muslims in Lebanon support Hezbollah?[165] These numbers would suggest electoral legitimacy for groups designated as ‘terrorists’ by the U.S. state department.

Terrorists originate from diverse socioeconomic backgrounds including highly educated, financially comfortable, and well-integrated individuals.[166] A broad inventory of terrorist groups including the Palestinian Liberation Organization (PLO), provisional IRA, and Red Brigades of Italy, suggest the underlying motivation is perceived injustice.[167] “Responding to the root causes of terrorism does not, in any event, necessarily mean surrendering to terrorist demands.”[168] The neglect or disregard for all grievances of terror groups, whether legitimate or not, narrows military approaches through sheer faith in moral supremacy.[169] This renders the enemy less human and blurs the distinction between combatant and civilian. The death of civilians cannot be justified, and drives those we

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are supposed to be helping to the causes of terror groups.[170] Effective counterterrorism can only be achieved on the basis of equality of humanity. A person is equal to a person is equal to a person. The threat of human insecurity, irrespective of geography, represents a threat to international and domestic security.[171]

Conclusion

The liberal legacy of international law and human rights regimes, stem from the basic premise of equality for humankind.[172][173][174] The killing of civilians is wrong, irrespective of the actor.[175] States are held to an even higher regard of upholding international law and respecting non-derogable physical integrity rights.[176] Civilian immunity is paramount, as is the freedom from torture, cruel and unusual punishment, collective punishment, and inhumane treatment constituting crimes against humanity and war crimes. The non-derogability of these rights is absolute.

The U.S. government has distinguished itself by appropriating the War on Terror narrative[177] to exist in a unique position of engaging in lawful self-defence against 'non-belligerent' belligerents in a just, proportionate, last resort manner, where lethal force is used in response to a general non-specific threat of 'continually planning' terrorists with absolutely no evidence of when, where, how, or from whom an 'imminent' attack will take place.[178] This stands in contrast to the European approach of acknowledging human insecurity as a potential precipitant for terrorism and the need to account for the fulfilment of all rights for all people. Counter-terrorism strategies must be reconciled to reflect the practice of our purported values.[179]

This essay began as a search for the defence of liberal values while under siege of terrorism. However, it has raised significant questions about Eurocentric notions of terrorism, and the source of supposedly illegitimate violence. Rather than dehumanising the 'barbaric Other', should we not examine our own conduct to better grasp how to best respond to threat of terrorism? "Until we understand the sources of terrorism and do something about them, we can arm ourselves to the teeth, rampage across the planet with our militaries, suspend many of our civil liberties, and still not protect ourselves from this menace." [180]

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- [32] Kevin J O'Toole, "Islam and the West: The Clash of Values," *Global Change Peace & Security* 20, no. 1 (2008): 32.
- [33] Ibid.
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- [35] Ibid.
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- [38] Amartya Sen, "Human Rights and 'Asian' Values," *Peacework* 35, no. 386 (2008): 16.
- [39] Etzioni, "Obama's Implicit Human Rights Doctrine," 94.
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- [50] To mean the deployment of soldiers for foreign defense on domestic soil.
- [51] Luban, "The War on Terrorism and the End of Human Rights," 9-14.
- [52] Piazza and Walsh, "Transnational Terror and Human Rights," 126-35.
- [53] Ibid.

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[54] Ibid., 126-35.

[55] Foot, "Collateral Damage: Human Rights Consequences of Counterterrorist Action in the Asia-Pacific," 424.

[56] Ignatieff, "Human Rights, the Laws of War, and Terrorism," 1139-40.

[57] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," 278.

[58] The literal meaning thereof; every person in the world.

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[63] Luban, "The War on Terrorism and the End of Human Rights," 9.

[64] Ignatieff, "Human Rights, the Laws of War, and Terrorism," 1143-49.

[65] *Hamdan v. Rumsfeld*, 548 U.S. 557, 126 S. Ct. 2749 [June 29, 2006]

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[69] Luban, "The War on Terrorism and the End of Human Rights," 9.

[70] Lisa Schirch, "9 Costs of Drone Strikes," (2012).

[71] Fenwick, "Proactive Counter-Terrorist Strategies in Conflict with Human Rights," 261.

[72] Ibid.

[73] Ibid., 243.

[74] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," 267.

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[77] Piazza and Walsh, "Transnational Terror and Human Rights," 127.

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[79] Foot, "Collateral Damage: Human Rights Consequences of Counterterrorist Action in the Asia-Pacific." 424.

[80] Ignatieff, "Human Rights, the Laws of War, and Terrorism." 1139-1145.

[81] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism." 278.

[82] Colin Warbrick, "The European Response to Terrorism in an Age of Human Rights," *ibid.* 15, no. 5 (2004). 1003.

[83] The exact period marking the 'end' of the 'colonial era' is in great dispute. The establishment of the *Special Committee on Decolonisation* by a resolution of the UNGA (1514 XV) on 14 December, 1960, indicates the delegitimisation of colonial hegemony. However, the UNGA celebrated the first *International Decade for the Eradication of Colonialism* in 1990. At present, 17 'non-self governing territories' (NSGTs) remain to be decolonised. Thus, the period of colonisation as written, is meant to indicate the period prior to the *de jure* acknowledgment of decolonisation in reference to both the UNGA resolution and the celebration of the first International Decade.

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[94] *Ibid.*, 341.

[95] *Ibid.*, 343.

[96] *Ibid.*, 343.

[97] *Ibid.*, 340.

[98] *Ibid.*, 333.

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[109] "Decromacy Index 2012: Democracy at a Standstill," (London: The Economist Intelligence Unit, 2013), 1-42.

[110] The proliferation of civil and political rights as per the ICCPR does indeed refer to voting as a fundamental right under Art. 25. Voting is crucial to the functions of liberal democracies in ensuring that the *demos* are heard and the state kept accountable. There are a total of 53 articles in the ICCPR, Art. 25 is *one* of them. The interdependence and provision of the totality of civil and political (and socioeconomic and cultural) rights underpins the functions of a liberal democracy. Simply ensuring that the polity may vote, does not immediately transform an illiberal state into a liberal democratic state.

[111] Barkawi and Laffey, "The Postcolonial Moment in Security Studies," 344.

[112] Warbrick, "The European Response to Terrorism in an Age of Human Rights," 992.

[113] Sabine Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," *ibid.* 14, no. 2 (2003): 272.

[114] Ignatieff, "Human Rights, the Laws of War, and Terrorism," 1148.

[115] In the *Two Treatises of Government*, Locke affirmed, "*whenever the Legislators endeavour to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whensoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavour to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty.*"

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[116] Jim Powell, "John Locke: Natural Rights to Life, Liberty, and Property," (New York: The Foundation for Economic Education (FEE), 1996).

[117] That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness.

[118] Bekir Çınar, "The Root Causes of Terrorism," *ODTÜ Gelişme Dergisi* 36, no. 1 (2009): 93-119.

[119] "Divergence and Decline: The Middle East and the World after the Arab Spring," 1-24.

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[122] Hoffman, "Human Rights and Terrorism," 936.

[123] Many of who were supporters of the old monarchy.

[124] Ziad Munson, "Terrorism," *Contexts* 7, no. 4 (2008): 78-79.

[125] Ibid.

[126] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," 265.

[127] USC Title 22, Sec. 2656f(d)

[128] Brian T. Bennett, "Terrorism," *Professional safety* 48, no. 10 (2003): 31.

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[131] Anne Rathbone and Charles K. Rowley, "Terrorism," *Public Choice* 111, no. 1 (2002): 1-10.

[132] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," 269.

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[136] Ibid.

[137] Bennett, "Terrorism," 33.

[138] Ibid.

[139] Ignacio Sanchez-Cuenca, "The Dynamics of Nationalist Terrorism Eta and the Ira," *Terrorism & Political*

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Violence 19, no. 3 (2007): 289-306.

[140] Francophone Quebecois independence movement in Canada with quasi-Marxist origins in the 1960s

[141] J. L. Granatstein and Norman Hillmer, "Standing up to the Flq Terrorists [Canada's Century]," (Toronto: Rogers Publishing Limited, 1999).

[142] Paust, "Link between Human Rights and Terrorism and Its Implications for the Law of State Responsibility, The," 41-54.

[143] S. Mueller Robert, III, "Homegrown Terrorism and the Radicalization Process," *Vital speeches of the day* 72, no. 20/21 (2006): 562.

[144] Malone, "Terrorism," 55-61.

[145] Paust, "Link between Human Rights and Terrorism and Its Implications for the Law of State Responsibility, The," 41-42.

[146] Warbrick, "The European Response to Terrorism in an Age of Human Rights," 994.

[147] Hoffman, "Human Rights and Terrorism," 937.

[148] Çınar, "The Root Causes of Terrorism," 93-119.

[149] Edward Newman, "Exploring the "Root Causes" of Terrorism," *Studies in Conflict and Terrorism [H.W.Wilson – SSA]* 29, no. 8 (2006): 749-72.

[150] As a function of the frequency and caliber of lethal means; as the duration of a conflict increases over linear time, the probability of civilian casualties approaches 1.

[151] "Lawfulness of a Lethal Operation Directed against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force," 5-12.

[152] Çınar, "The Root Causes of Terrorism," 42.

[153] Otto Triffterer and Kai Ambos, *Commentary on the Rome Statute of the International Criminal Court* (Nomos-Verlag-Ges., 2005), 13-20.

[154] Just cause is mentioned in the R2P *Principles of Military Intervention*, requiring a 'large scale' loss of life – genocide, ethnic cleansing, war crimes, and crimes against humanity. It operates in tandem with the principles of right authority; right intention to avert large-scale human suffering; last resort; proportional means; and reasonable prospects of success.

[155] Jasmine Moussa, "Can Jus Ad Bellum Override Jus in Bello? Reaffirming the Separation of the Two Bodies of Law," *International Review of the Red Cross* (2005) 90, no. 872 (2008): 963.

[156] "Lawfulness of a Lethal Operation Directed against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force," 1-16.

[157] Çınar, "The Root Causes of Terrorism," 93-119.

[158] Kate Hilmy and Andrew Blakely, "Root Causes of Terrorism," *Washington Report on Middle East Affairs* 29, no. 3 (2010): 42.

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[159] Newman, "Exploring the "Root Causes" of Terrorism," 749.

[160] Çınar, "The Root Causes of Terrorism," 93.

[161] Asked of Muslims only.

[162] Or 33% in Lebanon, 27% in Malaysia, 25% in Egypt, 18% in Senegal, 16% in Turkey, 12% in Tunisia and Jordan, 8% in Nigeria, 6% in Indonesia, or 3% in Pakistan

[163] "Muslim Publics Share Concerns About Exterme Groups: Much Diminished Support for Suicide Bombing," 1-26.

[164] Ibid.

[165] Ibid.

[166] Robert, "Homegrown Terrorism and the Radicalization Process," 562.

[167] Çınar, "The Root Causes of Terrorism," 93-119.

[168] Ibid.

[169] Joseph F. Pilat, "The Causes of Terrorism," *Organisational Transformation and Social Change* 6, no. 2 (2009): 171-82.

[170] Newman, "Exploring the "Root Causes" of Terrorism," 749.

[171] Daniel Baldino et al., "Contemporary Challenges to Australian Security: Assessing the Evidence," (2011): 43-69.

[172] Hoffman, "Human Rights and Terrorism," 951-55.

[173] Von Schorlemer, "Human Rights: Substantive and Institutional Implications of the War against Terrorism," 265.

[174] Colin Warbrick, "The European Response to Terrorism in an Age of Human Rights," *ibid.* 15, no. 5 (2004): 989.

[175] François Bugnion, "Jus Ad Bellum, Jus in Bello and Non-International Armed Conflicts," *Yearbook of international humanitarian law* 6 (2003): 167.

[176] Ibid.

[177] Lygutas, "Human Rights in the Context of Counter-Terrorism Measures: United States of America," 145-61.

[178] "Lawfulness of a Lethal Operation Directed against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force," 5-12.

[179] John Von Doussa, "Reconciling Human Rights and Counter-Terrorism-a Crucial Challenge," *James Cook UL Rev.* 13 (2006): 104.

[180] Çınar, "The Root Causes of Terrorism," 96.

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