

Is it Possible to Ethically Evaluate Terrorism by Employing Just War Principles?

Written by Adam Groves

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ADAM GROVES, DEC 2 2007

The Just War tradition has been seen as a leading perspective on the ethics of war since the writings of St Augustine were rearticulated by Thomas Aquinas. It attempts to provide a framework which validates just conflicts, whilst at the same time applying limits so as to prevent unrestrained warfare. Today, its core principles can be divided into two broad categories: '*jus ad bellum*' (just resort to war) and '*jus in bello*' (just conduct in war). For a war to be just, numerous criteria must be satisfied within these categories.

In recent decades non-state terrorism has become increasingly high-profile; indeed, in the twenty first century it has dominated the global political agenda. It is pertinent therefore, to question whether terrorism can be ethically assessed using the Just War tradition. In this essay, I will argue that it is possible to ethically evaluate terrorism by employing Just War principles. I will show that terrorists can satisfy the most important criterion of the Just War tradition. Firstly, they can represent a 'legitimate authority' and can have a 'just cause'. Secondly, terrorism can be a 'last resort' and offers a 'reasonable prospect of success'. Finally, whilst many terrorists do adhere to the principle of 'discrimination', the notion of 'non-combatant immunity' and civilian innocence is over-simplified. Furthermore, terrorists may perceive themselves to be in a 'supreme emergency', therefore meaning the rules of war cease to exist. Terrorism can satisfy the principle of proportionality.

However, before I begin my argument, I must establish a working definition for 'terrorism'; an important and controversial issue in itself. Walzer describes it as 'like rape and murder... an attack upon the innocent' (2005: 51). However, as Fullinwider cautions, 'we cannot define terrorism into a moral corner where we do not have to worry any more about justification' (1988: 257). Bearing this in mind, I will define terrorism as: 'premeditated, politically motivated violence' (US State Department, 2005), perpetrated with the aim of evoking a 'state of fear (or terror) in a particular victim or audience' (Crenlinsten, 1987) 'in order to achieve political aims' (Ganor, 1998). I will not be looking at state-terrorism because it raises different questions for the Just War tradition.

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Legitimate Authority and Just Cause:

In 'Summa Theologiae', Thomas Aquinas argues that only the 'right authority' may wage war without sin. He reasons that 'as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them' (Aquinas, 1947). In the contemporary international system the 'right authority' is understood to be the state, meaning that according to the Just War tradition it is the only actor which can legitimately engage in conflict. The state's monopoly on violence is necessary, according to Augustine, in order to maintain 'the natural order conducive to peace among mortals' (in Aquinas, 1947). Keith Pavlischek argues that 'the free-lance terrorism of the late twentieth century' threatens to 'encourage the proliferation of disorder and barbarism' and therefore cannot satisfy the requirements of the Just War tradition (2001).

However, it is widely acknowledged that many states do not represent the best interests of their people. Burma and Syria have been cited as contemporary examples where repression is either 'evident in its own right' or where 'active resistance' by substantial sections of the population suggest that the government is not recognised by the people as legitimate (Buzan, 2002: 88). Valls argues that if we can reject some states as illegitimate, then we should 'also ask if some non-states may be legitimate authorities' (2000: 71). The contemporary international system appears to yield numerous examples which show 'it is not only sovereign governments that can function as the true representatives of the interests of a people' (Lowe, 2003: 49). Well known cases where non-state actors have plausibly claimed to represent the population in a manner comparable to a state include the PLO in Palestine, the Zapatistas in Mexico and the IRA in Northern Ireland. These organisations not only claimed representative status but are also seen to have that status by the population they act on the behalf of. The PLO was also recognised by the international community, as seen when it was granted observer status by the UN in 1975.

Valls argues that if 'we acknowledge that stateless peoples may have the right to self-determination' we must also logically accept that this right can be 'defended and vindicated by some non-state entity' and that this entity should be able to 'act as a legitimate authority and justly engage in violence on behalf of the people' (2000: 71). It does not make sense to deny legitimate authority to such groups simply because 'through some historical accident, they lack the formal character of states' (Coates, 1997: 128).

Thinkers such as Wilkins go further, and claim that 'it might... be enough for a terrorist movement simply to claim to represent the aspirations or the moral rights of a people' (1992: 71). He argues that 'moral authority may be all that matters' to legitimate an actor (1992: 72). It is worth noting that elections (i.e. popular support) are not pre-requisites

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to legitimacy when the Just War tradition is applied to states (Valls, 2000: 72). This opens up the possibility that vanguardist terrorist movements (for example, the Red Army Faction of the late twentieth century) could be legitimate authorities even in the absence of popular support. Wilkins argues that 'although not the chosen representatives of their constituency', such terrorists 'can nevertheless represent its interests, and thus preserve, however tenuously, some claim to legitimacy' (1992: 155).

In summary, there are numerous non-state organisations which clearly represent legitimate authorities and it is not logical to deny them the right to use violence. Furthermore, it is possible to argue that terrorist movements could be legitimate authorities even without the support of their constituency.

However, some academics argue that even if terrorists can be legitimate actors, they cannot have a just cause. In his work 'Terrorism: A critique of excuses', Michael Walzer 'take[s] the principle for granted: that every act of terrorism is a wrongful act'. He argues that because there is never a 'moral justification' for terrorism, 'ideological excuse and apology' are used to try and satisfy the principle of just cause (2005: 52).

Yet, as Fullinwider observes, 'we excuse people by arguing that they acted in ignorance or under compulsion'. There are certainly no terrorist groups which justify their actions on these grounds; terrorists argue that they 'did not act wrongly' (1988: 249). Indeed, 'what is often scary about terrorists', Fullinwider believes, 'is that they appeal to morality without appealing to law' (1988: 251). Nonetheless, when non-state actors resort to the use of force their cause is often automatically dismissed as unjust. This stands in stark contrast to state-violence, where 'our assessment tends to be quite permissive' (Valls, 2000: 65).

Numerous academics accept however, that there are circumstances, at least in principle, where terrorists might have a just cause. These may include defence of the right to self determination; defence of a group which is seriously threatened; an effort to draw attention to the plight of the 'Third World'; or an effort to topple an oppressive regime (Smilansky, 2004: 797-798; Valls, 2000: 70; Lowe, 2003: 48-49).

Having argued that terrorist groups can satisfy the criterion of 'legitimate authority' and 'just cause' (and therefore, logically, also 'right intention'), I will now argue that they can comply with the principles of 'last resort' and 'reasonable prospect of success'.

Last Resort and Reasonable Prospect of Success:

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Just War tradition requires that violence is only used as a 'last resort'. As Walzer observes, the claim that terrorism is a 'last resort' is familiar to us because it is often made by terrorists themselves (2005: 53). For example, following Israeli attacks on the 'Popular Front for the Liberation of Palestine' (PFLP), a leading figure from the organisation claimed that they only had one possible way of retaliating; to 'transform ourselves into human bombs'. 'We have no choice' he declared (in Daly, 2001). Similarly, Burke reports that a central factor which unites many Islamist groups behind terrorism is the belief that they have no other option (2004).

However, Walzer argues that terrorism cannot satisfy the Just War principle of last resort because the 'resort to terror is ideologically last' only (2005: 54). He asserts that to actually fulfil the principle, 'one must indeed try everything (which is a lot of things)'. For Walzer, 'politics is an art of repetition' (2005: 53).

This argument is deeply hypocritical. Walzer 'clearly endorses the resort to war by states' in some circumstances, even to the extent of justifying 'violence against innocent civilians' (Valls, 2000: 73). Yet he appears to dismiss the possibility that bodies other than states could ever reach a stage where violence is legitimate.

Non-state actors may find it difficult to explore all the possible alternatives to violence, because they have less resources and less influence than states within the international system. It might therefore be the case that terrorist groups tend to resort to violence more quickly than states, and Smilansky may be right when he argues that it is 'relatively uncommon' for terrorism to have been a last resort (2004: 798). However, this does not preclude the possibility that terrorists can satisfy the principle. There is no reason why states should be able to 'arrive at last resort, while stateless nations cannot' (Valls, 2000: 73). Interestingly, Ganor reports that the 'moral dilemma' of whether to resort to terrorism is taken very seriously by organisations such as the PFLP and Hamas. He notes that they only resort to violence after extensive internal debate (1998).

Walzer's definition of terrorism as 'the random murder of innocent people' (1992: 198), which he takes for granted as a 'wrongful act' (2005: 52) does cause problems if terrorism is to satisfy the last resort principle. Given this 'understanding of terrorism as murder, it can never be a justified last resort' (Valls, 2000: 72).

Schmidt and Jongman show that the concept of 'terrorism' is highly contested; in a survey of leading academics they found 109 different definitions (1988: 5). In contrast to Walzer, the definition which I have used, does not restrict terrorism to an attack against 'innocent' civilians, but may also include targeted violence. For example, I would consider the 1983 Beirut suicide bombing, which killed over 200 US marines, to be a case of terrorism. However, I will argue later that the entire notion of 'non-combatant immunity' and civilian 'innocence' is simplistic and

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problematic. Therefore, the case can be made that even terrorist attacks on non-military targets, which Walzer denounces as 'indefensible' (2005: 51), could be justified as a last resort.

To adhere to the Just War tradition though, Terrorism must also have a 'reasonable prospect of success'. The aim of this criterion is to prevent 'futile' acts of 'mass violence' (Orend, 2005). Thinkers such as Laqueur argue that whilst terrorism 'can undermine a weak government', it is on the whole, 'politically ineffective' (in Freedman, 1994: 330). Walzer goes further, and 'doubt[s] that terrorism has ever achieved national liberation' (2005: 56). If the resort to violence is futile, then it cannot be deemed just regardless of whether it is a last resort.

I will argue that it is impossible to claim that terrorism can never have a reasonable prospect of success. This is, in part, because 'success' is not something which can be easily defined or measured (Crenshaw, 1983: 5). Merari demonstrates that whilst terrorists rarely achieve their 'goals in full, they 'have more often succeeded in accomplishing partial objectives' (1993: 238). This may include attracting 'international attention', achieving 'international legitimacy' or 'gaining partial political concessions from their adversary' (1993: 239). However, he believes that 'the struggles of the Ethniki Organosis Kypriahou Agoniston in Cyprus and the Mau Mau in Kenya against British rule and the FLM in Algeria against the French, are well know examples' of terrorism which 'fully accomplished' its goals (1993: 238). Not only then can terrorism be a last resort, it can also be a successful tactic.

Discrimination and Proportionality:

The principle of 'non-combatant immunity' (or 'discrimination') is perhaps the most controversial issue which terrorism must overcome if it is to be deemed just. According to this principle 'the only permitted intentional targets are combatants' because 'it is only they who have in some sense forfeited the universal human right of security, by seeking to endanger others' (Smilansky, 2004: 791). Thinkers such as Neier (1978) and Walzer (1992; 2005) appear to support this standpoint, and therefore categorically reject terrorist acts which target 'innocents' as unjust.

Applying the definition which I have used, targeted terrorist attacks on military personnel pose little problem to the principle discrimination. Indeed, as Gilbert observes, 'it is hard to see what else could constitute a legitimate target if not security forces' (1994: 13). Whilst it is interesting to note that indiscriminate attacks are 'less typical' than targeted attacks 'during the last one hundred – or even the past twenty years' (Fullinwider, 1988: 250) issues still arise with regards to violence against politicians, workers and children; surely they are civilians, and therefore such aggression is unjust?

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I will argue that the concept of civilian innocence is simplistic and problematic; a spectrum of responsibility is more appropriate. Furthermore, terrorists may perceive themselves to be in a supreme emergency, which, in Walzer's own words, 'bring[s] us under the rule of necessity (and necessity knows no rules)' (1992: 254).

In a recent work entitled 'Who May We Bomb?', Barry Buzan argued that 'to delink people from their governments, when they are in fact closely linked, is to undermine the point of resorting to war in the first place' (2002: 91). In democracies, he argues, 'the demos... shares some responsibility for the government's foreign policy, whether people bother to vote or not' (2002: 87). This clearly draws into question the concept of 'non-combatant immunity'; if people are passively responsible for, or actively supportive of, their government's actions are they innocent? Buzan highlights the case of the bombing of Serbia in the late 1990s. He argues that if 'civilians stood on bridges as a demonstration of support for the Milosevic government then they made themselves legitimate targets' (2002: 91). Such an argument has clear repercussions for the idea of 'non-combatant immunity' in democracies.

Wilkins highlights civilian responsibility with terrorism specifically in mind. He asserts that terrorism is 'justified' when it is 'directed against members of a community or group which is collectively guilty of violence' towards those now considering terrorism (1992: 28). Wilkins justifies targeting 'members of the community' (rather than combatants specifically) because 'political inactivity' on the part of a community leaves them 'morally guilty (as individuals) and politically guilty (as a nation)' (1992: 7). According to this understanding, civilians who are either actively or passively supporting a state which is engaged in violence are a legitimate target. For example then, Aldo Moro (an Italian politician who was executed by the Red Brigade following a mock-trial) may not have been innocent in the sense that he was not 'convicted of any wrong by a duly authorised judge or jury' but it is more difficult to argue that he was 'not causally or morally responsible for the 'crimes' of Italy, not an accessory, nor complicit' (Fullinwider, 1988: 254). Similarly, passive supporters of a government (i.e. those who do not actively oppose it) are also legitimate targets if one subscribes to this argument.

Buzan and Wilkins appear to argue that it may not only be legitimate, but sometimes morally preferable to target those who are often considered 'innocent'. Buzan claims that if 'only the government is targeted, the country as a whole remains politically unreconstructed and thus a continuing danger to itself and to the international community' (2002: 90). Similarly, Wilkins asserts that 'terrorism aimed at members of the 'silent majority' might become morally appropriate and tactically necessary, as a reminder that no one is safe until the injustice in question is ended' (1992: 31).

Yet how can children be morally responsible for the actions of their government? Attacks such as those seen in

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Beslan, or on Israeli school busses are surely not legitimate? Wilkins concludes that a spectrum of responsibility may be appropriate, whereby the 'distribution of liability' is considered and terrorists should only target individuals who have either active or passive responsibility for the 'injustices' which the terrorists are aiming to end (Wilkins, 1992: 146). Violence against a politician would be more legitimate than violence against civilians not involved in politics. In turn, targeting adults would be more legitimate than targeting children. As Valls articulates, maybe: 'combatancy status, and therefore liability to attack, are matters of degree' (2000: 77). For example, the 9/11 attacks on the Twin Towers and the Pentagon (hubs of American financial and military power) might be considered to satisfy the principle of discrimination to a greater extent than the killing of school children in Beslan.

I have argued that those traditionally considered 'innocent' may not be so, and that targeting civilians may not necessarily mean the principle of discrimination cannot be satisfied. However, as I will now show, regardless of this argument, innocents can be killed according to the Just War tradition. As Walzer describes it: one must 'do justice unless the heavens are (really) about to fall'; this is the argument of 'supreme emergency' (1992: 231).

When considering whether a 'political community' (rather than a state specifically), may 'override the rights of innocent people if faced with destruction', Walzer 'answer[s] this question affirmatively, though not without some hesitation and worry' (1992: 254). He concedes that terrorism 'might be' justified in a condition of 'emergency ethics', but argues that 'this kind of threat has not been present in any of the recent cases of terrorist activity'. For Walzer 'terrorism has not been a means of avoiding disaster but of reaching for political success' (2005: 54).

Other academics might contest this assertion however. Roberts argues that 'serious students of the situation in the Israeli-occupied territories are not in doubt about the strength of the inhabitant's view' that they 'have a right to engage in desperate measures in response' to the 'illegitimate' nature of Israel's 'presence and actions' (1981: 57). Similarly, many Islamists conceive their religion to be under imminent threat as a consequence of an intentional western effort to eradicate Islam. 'Imam Samudra, the Bali bomber... saw the night clubs of Bali as part of a general cultural assault mounted by the West against the Islamic world' (Burke, 2004). Terrorism therefore, can remain within the constraints of the Just War tradition even if one conceives innocence as an absolute value rather than on a spectrum.

Finally then, it seems clear that terrorism has little trouble fulfilling the principle of 'proportionality'. Even the most dramatic acts of terrorism, for example 9/11, are on a far smaller scale than the wars seen in the last one hundred years. If some warfare is deemed proportionate, then violence on much a smaller scale can also satisfy the proportionality criterion.

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Conclusion:

I have argued that terrorism can (in principle) satisfy the most important requirements of the Just War tradition. Firstly, terrorists can be legitimate authorities and can have a just cause. Secondly, terrorism may be a last resort, and there is little proof that it cannot have a reasonable chance of (at least some) success; this is something which is difficult to define and measure. Finally, I have argued that many terrorists do discriminate, but regardless of this, the notion of non-combatant immunity is inadequate; a spectrum of responsibility is better. However, even if one rejects this, the resort to terrorism could be justified in a 'supreme emergency'. Terrorism can be proportionate if wars can; it kills far fewer people than warfare.

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