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978-1-107-04093-9 - Terrorism and the Right to Resist: A Theory of Just Revolutionary War

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Excerpt

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Introduction

It was odd how like the Lime he knew was to the Lime I knew: it was only that he looked at Lime's image from a different angle or in a different light.

Graham Greene¹

As impostors seldom make lies to pass in the world, without putting false names upon things, [...] to persuade the people they ought not to defend their liberties, by giving the name of rebellion to the most just and honourable actions that have been performed for the preservation of them; and to aggravate the matter, fear not to tell us that rebellion is like the sin of witchcraft. But those who seek after truth, will easily find [...] that rebellion is not always evil.

Algernon Sidney²

1.1 Revolutions armed and unarmed

As a branch of normative political theory, contemporary just war theory's chief purpose is to think critically about the forms of violence that are unavoidable in world politics, not to dream up new possibilities or to indulge in nostalgia for older and seemingly obsolete ones. It was therefore a worry when I began work on a philosophical account of the right to engage in just, revolutionary war against oppression during the summer of 2010 that its theses were rather hypothetical in nature. While the persistence of political oppression in many parts of the world meant that the very idea of legitimate armed resistance could hardly be dismissed out of hand, fewer people were likely to be convinced of its practical relevance then than now.

¹ Greene (1977: 24–5). ² Sidney (1996: 519).

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The phenomenon of violent revolution seemed to have played a relatively marginal role in the politics of the post-Cold War era, encouraging some to believe that a model of democratic transition brought about through nonviolent action and political negotiation was the new norm that should and could be followed universally.³ The same period saw a dramatic rise in the prominence of ‘terrorist’ violence by groups committed to religiously inspired goals that had little or no sympathy amongst those committed to variants of liberal, democratic politics. By contrast, some of the most emotive cases where violence was used to pursue ‘liberation’ of one sort or another entered new phases in which the major protagonists abandoned the use of armed force: the Palestine Liberation Organization put both guerrilla war and terrorism behind it; the African National Congress ended Apartheid through political negotiation; and the Provisional Irish Republican Army (rightly or wrongly seen by many as a legitimate national liberation movement) signed a peace deal that ended its participation in the Northern Irish Troubles.

Even as the first drafts of early chapters neared completion, however, things changed quite suddenly. The swift and relatively nonviolent transition in Tunisia initiated an Arab Spring that would lead to the considerably less peaceful confrontation between the democrats (and others) of Tahrir Square in Cairo and the security forces of Hosni Mubarak’s regime. In Libya and Syria, demonstrations for democratic reform were overtaken by armed rebellion and civil war. And, in Europe, whereas the Orange Revolution of 2004 had been hailed as confirmation of the new post-1989 model, the Revolution of the Maidan a decade later recalled the armed confrontations of an earlier era, complete with barricades, petrol bombs, and shootings on both sides. Soon afterwards, the Russian occupation of Crimea and the threat of further expansion into eastern Ukraine prompted talk of a ‘partisan’ war against foreign rule, should regular forces and diplomacy fail to hold off the threat of wider annexation.⁴ As Timothy Garton Ash writes in a recent newspaper article, ‘I have argued that, in our time, 1989 has supplanted 1789 as the default model of revolution’ but the new model ‘has taken a battering of late’.⁵

³ Garton Ash and Snyder (2005); Garton Ash (2009); see also Schell (2005) and the excellent collection of studies in Roberts and Garton Ash (2009).

⁴ *The Economist* (2014).

⁵ In reference both to Ukraine and the aftermath of the Arab Spring, Garton Ash (2014).

So things look quite different post-2011 compared with before. Whatever the merits of political change might turn out to be in Libya or Egypt and whether or not Ukrainian sovereignty is successfully defended, not only have the words ‘rebellion’ and ‘revolution’ gained a renewed prominence in the vocabulary of contemporary world politics, but so has the question of armed ‘resistance’. An attempt to remedy the lack of an in-depth, systematic study of this question in political theory now seems timely. To that end, this book offers an account of the ethics of armed force as it might justifiably be employed in the course of a legitimate struggle to secure human rights against the oppression of domestic tyranny and injustice in their many forms and the impositions of colonial rule or wrongful foreign occupation.

1.2 Armed resistance and the concept of terrorism

Armed groups that identify their goals with freedom, democracy, and self-determination and their mission as ‘resistance to oppression’ have often elicited a profoundly ambivalent moral reaction amongst observers committed to human rights. This is expressed in the widely felt uncertainty about what to call them. The contentiousness of such choices is familiar – as witness the resilience of the truism that one person’s terrorist is another person’s freedom fighter. The account I offer will do something, I hope, to dispel some of the fog that has surrounded debate about political violence in recent decades, particularly when it has been employed by non-state groups variously characterized as ‘rebels’, ‘terrorists’, ‘national liberation movements’, and so on.⁶

The term ‘terrorist’ as it is usually understood has an important relationship with the idea of legitimate armed resistance, rebellion, and revolution, but it is a complicated one, fraught with ambiguity. Sometimes the two categories are treated as if they were mutually exclusive: either a group is engaged in legitimate armed resistance *or* it is a terrorist organization. Others maintain that there is *no* difference between the two; rather, the different terms we sometimes use merely reflect a subjective attitude of approval or disapproval that is largely determined by context and perspective: as the epigraph to this chapter says, it varies when you look at things ‘from a different angle or in a

⁶ See William V. O’Brien quoted in Buchanan (2013b, 291–2) and Begby, Reichberg, and Syse (2012: 331). The deficiency has received attention in some important recent work, most notably from Bufacchi (2007: Chapter 9), Lovett (2010: Part 7.4), Fabre (2012), and Buchanan (2013b).

different light'. The opportunities that such ambiguity offers for those willing to exploit it are wonderfully illustrated in an instruction cited by Max Boot that the British government issued in 1944 after it withdrew support from Mihailović's Chetniks in Yugoslavia and offered it to the partisans of Tito: '[I]n future Mihailovitch forces will be described not as patriots but as terrorist gangs: we shall also drop the phrase "red bandits" as applied to partisans, and substitute "freedom fighter."' ⁷

Like Graham Greene, however, I think it is possible to have greater moral clarity than this. The sort of view hinted at in the words Greene gives above to his narrator, Major Calloway, is one that my account is intended to challenge. I seek to develop a third possibility, which is that 'terrorism' refers to something that some otherwise legitimate armed movements use but not others (as well as being a feature of other groups that cannot claim to be engaged in legitimate resistance). As Jeremy Waldron writes, 'An individual can be *both* a freedom-fighter [...] *and* a terrorist [...] if he uses terroristic means in his struggle for freedom; or he can be one or the other or neither of these things.' ⁸

One way or the other, the concept of 'terrorism' and the idea of legitimate armed resistance clearly have what Quentin Skinner would call a 'neighbourly' relationship, such that how we define and use one will affect how we understand the other. ⁹ But while much attention has been given in recent years to the question of terrorism, relatively little has been given to the concept of legitimate armed resistance. My hope is that delineating in a persuasive way the category of legitimate forms of armed resistance, whether terrorist or not, will help clarify and, perhaps, stabilize the concept of 'terrorism' since both are constructed partly within a wider moral discourse concerning the norms governing non-state violence in particular and war in general. In order to begin, however, it is necessary to establish a foothold in moral discourse concerning political violence by noting some features of the idea of terrorism.

One thing on which almost everyone agrees is that 'terrorist' is a pejorative characterization. But just as the best way to define the term has long been a matter of dispute, likewise there is disagreement about what its 'distinctive wrong' is (and, indeed, about whether or not it

⁷ Boot (2013a: xxiii). ⁸ Waldron (2004: 24).

⁹ Skinner (2002: 182), on neighbourliness and Saul (2006: 5, 82), on the interrelatedness of concepts of terrorism and other forms of violence.

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has one). Some emphasize the use of fear for political purposes, others the status of the agent, and occasionally an attempt has been made to identify it as war fought simply for an unjust cause.¹⁰ I will have a good deal more to say about political status (which I believe to be important) later in the book and I accept that the creation and exploitation of fear is commonly part of the strategy of groups that might be characterized appropriately as terrorist. But I will generally use the term ‘terrorism’ to refer to a range of different types of *indiscriminate* violence.

‘Indiscriminate’ can refer to a number of importantly different things. First, it can refer to a failure to discriminate at all, that is, a use of violence that reflects no particular standard about who might or might not be a legitimate target. More often, however, it refers to the deliberate or reckless infliction of harm on individuals who are regarded as *immune* from offensive attack in armed conflict.¹¹ The relevant group might be characterized as ‘civilians’ or ‘non-combatants’; and commonly people qualify this further with the term ‘innocent’ yielding two further categories, ‘innocent civilians’ and ‘innocent non-combatants’ (each of which leaves open the question of whether there might sometimes be ‘guilty’ or otherwise ‘non-innocent’ civilians or non-combatants). In ordinary speech, these categories are not often distinguished clearly but rather are used more or less interchangeably to refer to those who ought not to be harmed deliberately. Nevertheless, when used in a stricter sense, the terms may be taken to indicate quite different categories of people and very different assumptions about what counts as a legitimate – that is, morally or legally permissible – tactic in a particular conflict. Strictly speaking, the category of ‘non-combatants’, for instance, might *include* soldiers and other armed personnel in a context where there is no valid or recognized *legal state of war*, that is, if the situation is one in which peacetime rules apply and in which, therefore, there are no *combatants* as understood in the International Law of Armed Conflict (LOAC). The category of ‘innocent civilians’, by contrast, might *exclude* some civilians on grounds of non-innocence – if they were morally responsible for upholding a human-rights-violating regime or for starting a war of aggression, for

¹⁰ For the latter, see Yasser Arafat’s speech to the UN in November 1974. On fear and terror, see Waldron (2004), Scheffler (2006), and Goodin (2006).

¹¹ I say ‘offensive’ attack here because justified self- or other-defensive violence will presumably not be ‘terrorist’ even if the attacker is a civilian or non-combatant. On recklessness, see Rodin (2004).

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instance – and thus yield a smaller group of illegitimate targets compared with ‘civilians’ simpliciter.¹² I will leave these subtler distinctions aside for now and save them to be picked up in later chapters. My concern to begin with is the common intuition that in any conflict there are some groups of people who are *not* legitimate targets; and I will generally use the term ‘terrorist’ to refer to the tactics of armed groups – particularly non-state organizations – that direct violence against them (regardless of the justice of their cause).¹³ And this leads directly to some of the central questions of the inquiry: who *is* a legitimate target for rebels to attack, for what purposes, and in what circumstances?

The ethical frames of reference that I argue are relevant to terrorism, resistance, and revolutionary war must, if they are to be persuasive, be such that they could, in principle, be followed by revolutionaries or partisans of a resistance organization. But the reader to whom the book is chiefly addressed in the first instance is the citizen who views such movements and the conflicts in which they fight from an impartial point of view and who needs a theoretical framework in which to interpret and judge the partisan’s tactical practices and the strategic sequences in which they are put to use. The framework needed by that reader, however, is also necessary at a higher level and is linked to the practice of war in a different way, for those who help determine policies and who make decisions that shape the approach of the international community towards sites of conflict where human rights are widely endangered. Moral evaluation of rebel groups, domestically or internationally, is likely to be a persistent problem in the era of the Responsibility to Protect, the Arab Spring and ensuing wars in Libya and Syria, and so on.¹⁴ While this book does not discuss interventions directly, it offers a contribution to the wider field of concern by providing a theoretical framework within which to make more nuanced critical judgements about the claims made by rebel groups engaged in armed conflicts that might require foreign intervention. Perplexity about how to adjudicate between accusations of ‘terrorism’ and claims about the right to rebel and resist oppression

¹² See, for instance, Jeff McMahan’s discussion in 2009a (Chapter 5).

¹³ ‘Terrorist’ may be used to characterize either the armed group as such or its actions. I have argued elsewhere that speakers often use a form of synecdoche when negotiating the relationship between them, in 2009b (pp. 756–7).

¹⁴ The importance of this issue is highlighted by the questions raised by Kuperman (2005, 2008, 2013). See also Dobos (2012).

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clouds judgement in practical deliberations just as it does in public debate. Theorists of humanitarian intervention are inclined to assume rebellion to be justified across a wide range of cases. I seek to temper such optimism, indicating significant limitations to the right of armed resistance while specifying more clearly the range of cases across which the right is likely to arise. I leave it for others – or another day – to consider the implications of the theory of armed resistance for theories of outside intervention.¹⁵

The first and most important way to alleviate ambivalence and confusion about ‘terrorist’ violence, I believe, is to address the lacuna in normative political theory and the ethics of war by offering a theory of legitimate, armed, *non*-terrorist resistance to oppression. But there is also a second worry needing to be addressed that commonly exacerbates the first, which is that even if we did settle on a principled understanding of what should be characterized as terrorist, we cannot always simply assume that these more extreme methods are unjustified in what may be exceptional cases. The thought that terrorism even understood as the deliberate infliction of violence on the wholly innocent could conceivably be justified in some extraordinary circumstances is a familiar one to many democratic citizens (particularly since the Second World War). To alleviate this worry, we have to make sure that the theory of justifiable armed resistance and revolution is able to indicate as clearly as possible whether such exceptions could occur and, if so, precisely what form they would take. Only by specifying in this way the shape and scope of the exception can people feel confident in using the word ‘terrorist’ to condemn with its full pejorative force the instances where these tactics are used without justification, which I presume will be true of the vast majority of real historical cases.

Yet even while I think it is necessary work with the concept, recognizing its prominence in public and popular political discourse, ‘terrorism’ becomes less central as a marker between legitimate and illegitimate violence as a result of my analysis. Non-state political violence can be justifiable in a variety of different ways and in a variety of contexts. But it can also, by the same token, be illegitimate or unjustified in just

¹⁵ On the general acceptance that rebellion is justifiable against any illiberal government and its relation to the more restricted scope of humanitarian intervention according to many accounts, see *ibid*.

as wide a range of ways. Using terrorist methods outside the very narrow range of cases in which it might conceivably be justifiable is the wrong for which many real groups ought to be chastised. But those who resort to force and claim the right to engage in war for a cause that those they supposedly represent have not generally endorsed or are not prepared to face risks or shed blood for are also guilty of a crime in any but the most acute cases of emergency. In general, so too – I will argue – are those who use techniques of deception or human shields while taking advantage of a good faith commitment by their enemies to the principle of non-combatant immunity (NCI). At the same time, terrorism could, in principle, be justifiable in some imaginable cases along with at least some of these other tactics: but for all such exceptional tactics, an exceptional context must demonstrably be present justifying a special ethical code.

Before turning to the outline of my argument, I must add a caveat. Throughout the book I have endeavoured to show how the theory bears on – and reflects – something of the realities of conflict by citing historical examples. Moreover, where historical movements and their leaders have sought to justify their decisions and actions by reference to a particular principle or framework of rules, it tends to express a belief that these are principles or rules that people widely recognize and accept. This closeness of theory and historical practice is important, I believe, as evidence of the relevance and feasibility of the principles and ideals that I set out. Having said that, however, I must emphasize that unless I have specifically indicated otherwise, no such citation from historical practitioners of political violence should be taken to imply that I think the cases in question were justified. Precisely which (if any) historical instances of armed resistance were justified, in exactly which way and to what extent, are questions of historical judgement that are beyond the scope of this book. Rather, I hope that its readers will find themselves better able to form such judgements for themselves.

1.3 Outline of the argument

This book is intended as a contribution to the growing revisionist literature led by Jeff McMahan, Cécile Fabre, and David Rodin, that is defined by the aim of rethinking the relationship between war and morality and, particularly, between liability to harm in war and moral responsibility for certain kinds of wrong. It is deeply indebted to the

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work of McMahan in particular. Besides extending just war theory in its revisionist mode into the domain of revolutionary wars, I hope that its contribution will prove distinctive in three further ways, the foundations of which are developed in Part I of the book and then applied to the ethics of armed conflict in Parts II and III.

The first is to draw out some of the potentially radical consequences of a commitment to human rights. Quentin Skinner remarks that a 'legitimate aspiration of moral and political theory is surely to show us what lines of action we are committed to undertaking by the values we profess to accept'.¹⁶ In the field of armed force and revolutionary politics, Slavoj Žižek puts the point provocatively: 'Radicals', he writes, distinguishing them from conservatives and 'liberals', 'are [...] possessed by what Alain Badiou called the "passion for the real": if you say A – equality, human rights and freedoms – then you should not shirk its consequences but instead gather the courage to say B – the terror needed to really defend and assert A.'¹⁷ My hope is that the book maps out in a nuanced, careful way the complex relationships between the human rights commitments designated by 'A' and the series of permutations through which permissible violence might occur before culminating at the extreme point of 'B'.

Second, I propose a distinctive basis for thinking about liability to harm in war generally and revolutionary war in particular, which emphasizes the distributive effects of allocating liability to attack in contexts where security from violence is avoidably scarce. Some of the claims I make on this basis that are likely to be most at odds with traditional views concern the way in which rules guiding the conduct of participants – and the judgements of observers – have to derogate from human rights, abridging, trading off, and sometimes overriding altogether the rights of individuals as a means of optimizing the scale and distribution of human rights protection. The idea that human rights give way to the laws of war in cases of armed conflict is relatively uncontroversial but involves, at least according to a revisionist analysis, a trade-off in the legal immunities of innocent persons. My further claim is that different circumstances will dictate the adoption of different sets of rules – or normative codes – for the regulation and evaluation of armed force, giving rise to different allocations of immunity and liability. The degree to which these

¹⁶ Skinner (1998: 79). ¹⁷ Žižek (2012: xii).

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strain against moral claims expressed as human rights varies from code to code.

Third, a theme that runs throughout the book but which receives more explicit and detailed treatment in Chapters 5, 6, and 7 is the importance of *politics* in the ethics of armed resistance. Questions of the sort this book analyzes cannot, I argue, be answered by considering them from an abstract and purely moral point of view and cannot be determined fully in advance. In fact, morality itself demands that those attempting to answer them in any concrete case pay close attention to irreducibly political matters: to take account of popular preferences, registering what Hobbes calls the ‘Desires, Aversions, Hopes and Fears,’ of the beneficiaries of resistance and, in particular, of the willingness or reluctance of individuals to face risks and bear heavy burdens in pursuit of political aspirations.¹⁸

Chapter 2 offers what I call an ‘opportunistic’ account of the right to resist as such (setting aside, that is, the question of resorting to arms). I offer an account in which an all-things-considered justification can be claimed for radical confrontation with the government and institutions of rule where doing so is the most proportionate strategy for securing human rights, that is, where it offers a sufficiently favourable balance between the expected gains in human rights compliance, and the equivalent harms and risks likely to arise from resistance. Human rights specify, I argue, a more general Right of Resistance against Oppression that is normally claimed against the state but that defaults to the individual in circumstances where government fails to discharge the duties it entails to the fullest possible degree. Human rights also empower individuals to identify and pursue common causes in social justice and self-determination that may justifiably be pursued by resistance movements.

A right to resist is one thing; to do so using armed force is another, as I argue in Chapter 3. Some scholars challenge the permissibility of taking lives for the purposes of securing civil and political liberties, arguing that it violates a requirement of narrow proportionality. I argue that a *prima facie* case for *armed* resistance generally occurs only where it is directed against an unjust regime that uses credible threats of unjustified lethal force to try to prevent people from exercising rights. On this account, violence may be justified against regimes that are

¹⁸ Hobbes (1996: 44).