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THE ETHICS OF TERRORISM*

Georg Meggle’s essay on “Terror and Counter-Terror: First ethical reflections” is probably the most important philosophical contribution made thus far in the German-language discussion of the problems of terrorism and counter-terrorism since September 11th.1 Meggle approaches the topic systematically and wins his argument with analytical acumen and by means of the unambiguous manner in which he makes his political position explicit. His contribution is a piece of politically engaged philosophy in the best sense of the word. Despite these merits, it is nevertheless to be criticized that Meggle does not take his analysis far enough. On the one hand, Meggle comes to the conclusion that terrorism in the “strong” sense, i.e. terrorism directed against innocents, is always morally reprehensible and never to be morally condoned (in fact, according to a widely-held interpretation of the term “terrorism” which I too endorse, one can only speak of “terrorism” in the case that is directed against innocents). Nevertheless, Meggle is complacent to found this conclusion (that terrorism is morally reprehensible and to be forbidden) by invoking just-war theory. Yet, under secular conditions, a reference to the moral theories of medieval church fathers will not do. These theories are bound to theological and metaphysical suppositions which became dubious during the Enlightenment, at the latest – a fact which many modern theorists of just war who seek authority in the Catholic tradition tend to ignore.2 We must therefore place the question once more, and with emphasis: Could terrorism be justified under certain circumstances after all?

Nowadays, whoever seriously poses this question runs a good chance of being excommunicated from the so-called discourse community, and of not even being listened to in the first place. This explains why several pre-existing philosophical analyses of the phenomenon of terrorism, some of which well antedate September 11th, are paid practically no attention at all in the current public debate. The reason they are ignored is this: these philosophical investigations have as their goal the critique and questioning of socially promoted modes of discussion and prejudices, not: their docile acceptance.

In the following I will attempt to defend such analyses and bring out that which is valid in them – for they are valid, and useful as well. To this end one can appeal both to a sense of justice, as well as to reason. The appeal to reason may be made with the simple remark that abstinence from reflection surely cannot be an appropriate method for solving problems. The appeal to a sense of justice may be made with reference to, for example, public opinion in the United States, which denounces terrorism as unjustifiable on the one hand, but, when it comes to the moral questions surrounding the dropping of the Atomic bomb on Nagasaki and Hiroshima, sees the matter quite differently. When, therefore, certain analysts in the United States are given ample

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opportunity in the serious press to develop alternative views to a moral condemnation of the directed mass-killing of civilians in Hiroshima and Nagasaki, or when in Germany ample space is provided to explain why the United States should be given unconditional solidarity in its so-called “War against Terror”, though it shows no mercy to civilians – positions for which good arguments might speak and which one cannot at all reject out of hand --: if, then, those who hold these positions are given ample opportunity to be heard, one should not be wroth to grant a similar freedom of speech and opportunity to speak also to those philosophers who seek to approach the phenomenon of terrorism as soberly as possible, even when it happens to be directed against the West.

But can we really make this comparison; was the dropping of the Atomic bomb really an act of terrorism? In posing this question we already find ourselves in the midst of the discussion and have arrived at a second philosophical question which -- as Meggle himself emphasizes -- must be handled before this first one, to wit: What is terrorism? According to the definition given by the U.S. State Department -- a definition apparently shared by the better part of the Western press in the current debate -- acts of terror can only be committed by sub-national or underground organizations. The Nazi regime would not have been, according to this definition, a regime of terror. But such a conclusion hardly corresponds to our linguistic and moral intuitions. Therefore we must reject as inadequate such a definition of terrorism which gives states the right to apply a double standard. Whether an act is one of terrorism or not, is a question to be decided by the act itself, and not with reference to the perpetrator. Here we may cite Bruce Hoffman, whose view is representative of that of others as well, and who enjoins that such a position plays “into the hands of terrorists and their apologists who would argue that there is no difference between the ‘low-tech’ terrorist pipe-bomb placed in the rubbish bin at a crowded market … and the ‘high-tech’ precision-guided ordnance dropped by air force fighter-bombers from a height of 20,000 feet or more that achieves the same wanton and indiscriminate effect on the crowded market-place far below.” But in fact, whoever does not apply a double standard plays only into the hands of objectivity and universalism, whereas Hoffman himself plays into the hands of partisanship and state terrorism. This partisan attitude is manifest in his distorting comparisons. Thus he explains that, although armies too have attacked civilians, oftentimes legal steps were taken in order that the delinquents might be made responsible for their actions. “By comparison, one of the fundamental raisons d’être of international terrorism is a refusal to be bound by such rules of warfare and codes of conduct.” Firstly, we also notice such a refusal in the handling of the Taliban prisoners by the United States, as well as in the extreme hostility on the part of this state towards the international criminal court. Secondly, Hoffman is comparing apples and oranges when he seeks to compare legal possibilities with the disposition of perpetrators. If we avoid this skewed view, we will have no difficulty in recognizing that not just crimes of war, but also sub-national acts of terror are pursued legally (the latter even more frequently). We will also see clearly that there are instances both of armies as well as of sub-national groups which accept certain rules waging war and applying force. (In fact, Hoffman himself stresses
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the fact that ethno-nationalistic and separatist groups and, in particular, left-winged terrorists are also subject to certain ethical constraints in their choice of targets.6

Hence it remains the case that terrorism is to be defined as a method. C. A. J. Coady offers a classical definition. Under “terrorist act” he understands:

“A political act, ordinarily committed by an organized group, which involves the intentional killing or other severe harming of non-combatants or the threat of the same or intentional severe damage to the property of non-combatants or the threat of the same.”7 (Coady’s further remarks suggest that he does not mean just any political acts, but rather acts of violence.)

This definition did not escape criticism, even outside of objections in the style of Hoffman. Thus Virginia Held warns that, according to Coady’s definition, the 1983 bombing of US Marine barracks in Lebanon in which 241 people died, most of them US soldiers, would not be an act of terrorism. But this, so Held, would be arbitrary.5 In fact it is really consistent. If American attacks on military targets in which primarily soldiers are killed are celebrated in the media as “surgical operations”, then we cannot suddenly speak of terrorism when the situation is simply reversed. Held is thus rather alone in her criticism. Things stand differently with the wide-spread objection that the intention of spreading terror, i.e. fear and panic, is not to be found in Coady’s definition as a necessary component of terrorism. Coady’s procedure is nevertheless justified. As Thomas C. Schelling or Annette C. Baier (among others) remark, the motivation behind terrorist acts such as attacks on civilian skyscrapers or airplanes can lie for example therein, that these acts strengthen the enduring will of a group or direct the attention of the world on a certain problem by means of shock.9 Nevertheless, we still usually assume that, at least in the paradigmatic case of terrorism, the intention of intimidation and the targeting of innocents are defining characteristics; and it suggests itself to begin the ethical analysis of terrorism with such paradigmatic cases of terrorist acts. Meggle calls them terrorist acts in the “strong sense” and defines them as “acts in which an effecting of ends is attempted by means of terror-inducing violence against certain innocents”.10 In contrast to Coady’s definition, here violence against innocents includes not only that violence which chooses innocents as a direct target, but also such violence which takes the harming of innocents into account and accepts the possibility of making them victims. In this context, Meggle speaks of “Highly Imputable Collateral Damage”.11

Can terrorism thus defined ever be justified? Meggle denies this, which leads him to condemn both the attack on the World Trade Center, as well as the “Counter-Terror” measures of the United States in Afghanistan. What eludes him, however, is this: According to his own definition of terrorism, those legislators who employ a system of justice with penal and process law in order that they may punish criminals and deter delinquents from committing crimes, commit thereby themselves a terrorist act in the strong sense. For even if they take precautions to minimize the danger of killing innocents by their acts, they know very well that this danger can never be completely removed, and what is more: they know that innocents will ever and again be affected. This risk – the risk of “conscious collateral damage in a strong sense”, to
use Meggle’s own terms – is one which such legislators clearly take. The applicability of Meggle’s definition to a system of criminal justice does not at all show that this definition is faulty, however. As Agnes Heller has ascertained: “Terror does not originate in totalitarianism. Rather, it has its origin in the principal of deterrence …, which has also been introduced in the legal procedures of democracies.”12 But since it is counter-intuitive to deem such acts of positing penal law as per se morally contemptible, Meggle’s thesis on the categorical illegitimacy of (“strong”) terrorism remains unconvincing.

To the contrary: The analogy with a system of criminal law for punishment and deterrence rather opens a line of argument for the justification of terrorism, where possible. Let us suppose, for example, that the attack on the World Trade Center was an act of punishment for the policy of Israel and the United States toward the Palestinians. (In the United States there recently appeared a collection of essays from American dissidents; on the cover of the book the remains of the World Trade Center are pictured, and in the foreground we read: “A Just Response”.) Human rights organizations such as Human Rights Watch have made reference to the fact that civilians have been (and continue to be) targeted in diverse Israeli military actions. In this sense, we are indeed dealing with Israeli state terrorism, which is also supported by the United States, and to which we may add the non-state terrorism of Israeli settlers. This Israeli-American terrorism has caused more casualties than all the Arab strikes of retaliation taken together. But would this justify a retaliatory strike on the World Trade Center, assuming that the attack really was such a strike? Even if one were to assign many of the victims a partial responsibility for American policy in the Middle East – the United States is, after all, a democracy –, their responsibility could hardly be large enough to warrant the death penalty. Nevertheless, one could argue – in the sense of Meggle’s definition of terrorism – that the victims of the attack on the World Trade Center are meant only as a kind of means: to punish either all American and Europeans, or at least as many as possible, namely by means of a growing feeling of fear and uncertainty. Surely innocents were also affected (for example people who were engaged in the struggle for the rights of the Palestinians) or guilty parties were punished too severely, but this is a risk which one also takes in a system of penal and criminal law with the principle of deterrence. The difference between the two would no longer be one of principle, but would rather lie in the dimensions and appropriateness of the attack. And if, as certain Israeli and US governments have believed and continue to believe, those so-called acts of retaliation by the Israeli army which terrorized the entire Palestinian population are justified; or if Clinton’s strike against Sudan – which, according to the report of the German ambassador there, caused thousands of deaths – was justified; or even if the sanctions against Iraq are justified, though they have caused some half million civilian deaths, of which half have been those of children: if all these acts are justified, then it is not at all clear why the attack on the World Trade Center should not be justified, if it is in fact understood as an act of retaliation as well.

Here one might object that both Israeli and Arab terrorism are illegitimate and that both are very well to be distinguished in principle from criminal and penal law, to the degree that the latter does not intend to affect innocent victims, but rather only takes
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them into account. This distinction, which goes back to Thomas of Aquinas’ theory of double effect, strengthens Coady’s definition against Meggle’s. But, first of all, we are also accountable for the collateral damages we cause. For whether one employs the death of civilians as a means to attain certain ends, or only as a coincidental result, in both cases one pursues one’s goals in walking over the corpses of innocents. Admittedly: according to Kant, one should never use anyone exclusively as means, but also see the person in question as an end. Yet it is not quite clear to what degree one deems another as an end in itself when one accepts the death of that other as a secondary effect, i.e. as an acceptable result which one effects in the pursuit of one’s own goals. Secondly, the moral relevance of the distinction between intention and the conscious acceptance of risk is interpreted incorrectly as soon as one claims that this distinction corresponds to that between means-ends deliberation on the one hand and secondary effects on the other. As for Thomas of Aquinas, in his well-known remarks on the right to self-protection (ST II-II, 64.7) he himself allows that one may intend something bad (in this case, the death of people, namely the attacker) in order to achieve something good (namely one’s own survival). (He expressly permits this to officials in public service, and seems at least not to forbid private persons from intending and causing the death of an attacker in order to protect an innocent third party.) When, however, a court servant secures his own survival by intentionally killing another person, then this act of killing is clearly the means by which his own survival was achieved. All that Thomas actually forbids is only that defenders let themselves be determined by “personal passions”. Thus he does not distinguish sinful actions from those which are without sin by the question as to whether the specific intentions and expectations were directed towards something bad as a means, or only as a secondary effect. Those actions which are without sin because they aim for a good, though they achieve it by means of an ill, are rather distinguished by the emotional tenor of the intentions and expectations behind them. And in fact it is this distinction which corresponds to the one between intention and the conscious acceptance of risk. For someone who employs as means the death of innocents, but finds this bad and does so only after much deliberation and as a last possibility for the accomplishment of her goals, can be said to have only accepted an evil; inversely, someone who sees certain inevitable consequences as a pleasing surplus can be said to actually intend them. In other words, the morally relevant difference does not lie in the question as to whether someone employs the death of innocents as a means to his ends or foresees it as a consequence, but rather whether the person in question welcomes the death of the innocents or regrets it. But this is not a difference between terrorists on the one hand and legislators on the other; it is rather one between different kinds of legislators and/or terrorists.

Coady’s definition of terrorism must therefore be revised accordingly. For an act is not then non-terrorist when the death of innocents is only accepted as a risk. This can be easily illustrated with many appropriate examples. It is, for example, often emphasized that the attackers on September 11 chose the World Trade Center because of its symbolic character. It may, however, be the case that their intention was directed toward the collapse of the buildings, and that they simply accepted that those working within them would die. Admittedly: according to Coady’s definition,
such an attack would still be terrorist in nature, since the building, as one could say, belonged to innocent civilians. But if we were to discover that the building was in fact in the possession of the Pentagon, although only as an object of financial speculation and without any military use whatsoever, would we classify the attack as non-terroristic in retrospect? Probably not. Or, to mention a further example, would we call that attack non-terroristic which would be directed against a building which coincidentally belonged to the Pentagon, and in which a kindergarten was located, if the attack had as its primary objective the destruction of the physical building, and only accepted the foreseen death of those inside? Most certainly we would not call such an attack non-terroristic. Hence: the attempt to construe a categorical difference between the punishing and deterring violence of penal law and similar violence in certain terrorist acts, and hence to block the outlined legitimation strategy for terrorist acts, fails when this attempt is made with reference to the presence or absence of a direct intention to violently harm innocents.

Another possible legitimation of terrorism is given by Virginia Held.

“It seems reasonable, I think, that on grounds of justice, it is better to equalize rights violations in a transition to bring an end to rights violations than it is to subject a given group that has already suffered extensive rights violations to continued such violations, if the degree of severity of the two violations is similar. … If we must have rights violations, a more equitable distribution of such violations is better than a less equitable distribution.”

The attack on non-combatants would be legitimized here by means of reference to groups as recipients of a supposedly just distribution of rights violations. Since Held explicitly understands this strategy of legitimation as based on rights and not on utility, a question from the logical point of view suggests itself right away: How can one have recourse to rights in order to legitimize their infraction? This is a difficulty which Held could solve simply by giving a more carefully worded version of her argument. But perhaps it is also appropriate, especially in light of certain extreme situations, to re-think the logic of rights. Be that as it may, one may readily assume that a position such as Held represents would not be unattractive for many members of groups which fall victim to oppression and rights violations. The concept of “poetic justice” plays a certain role here. The ethnologist James C. Scott reports the reaction of many black people to the sinking of the Titanic:

“The drowning of large numbers of wealthy and powerful whites … in their finery aboard a ship that was said to be unsinkable seemed like a stroke of poetic justice to many blacks. … ‘Official’ songs about the loss of the Titanic were sung ironically (‘It was saaad when the great ship went down’).”

Naturally, similar reactions could be seen in wake of the destruction of the World Trade Center – and in fact, such reactions are indeed natural. In reaction to them certain persons, especially in the German and American press, pointed the moral finger and condemned the lack of compassion on the part of many in the Arab world.
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(thel level of compassion in a significant portion of the Latin-American population was not much greater, but this the established press chose to keep silent about). Herein is another injustice to be found: the oppressed not only have to bear an unequal distribution of rights violations, one also demands of them more compassion for those who profit from this unequal distribution than the privileged are required to show for the oppressed. Thus Ron Hirschbein remarks on public opinion in the United States during the second Gulf War: “There was no public outcry, for example, when the popular press cited the conclusion of a Harvard Medical School study: 75,000 Iraqi children would die due to the destruction of the Iraqi infrastructure. The civic celebration continued as Bush’s popularity soared.”17 And yet, though such a lack of compassion in the public opinion of the United States was manifest, moral fingers were pointed neither there, nor in Germany. Apparently Americans who do not let the death of 75,000 children rain on the parade for their bombs are more acceptable than Arabs who, in view of 3,000 American casualties, are glad that misfortune hit the other side for a change. Such discrepancies understandably increase the willingness of oppressed peoples to see whole groups as enemies and thus to have recourse to an argumentative strategy such as Held’s.

A further strategy for the legitimization of terrorism may be developed from considerations forwarded by Michael Walzer, though very much against his intentions. He thinks that sub-national terrorism is neither to be legitimated, nor to be excused. In accordance with this position is the manifesto signed by 58 scholars in the United States, in which we read that “no appeal to the merits or demerits of specific foreign policies can ever justify … the mass slaughter of innocent persons.”18 And yet, in his book on Just and Unjust Wars, he considers the mistakes committed by the German government as sufficient justification for the terror bombing of German cities (Walzer himself uses this term). Supposedly, German policy threatened the survival and freedom of the political community of Britain in such a way as to justify this use of the only potent offensive weapon which the British possessed in the years 1940 and 1941.19 “But why is it”, asks Andrew Valls, who criticizes Walzer’s double moral standard, “that the territorial integrity and political independence of, say, Britain, justify the resort to … violence that targets civilians – but the right of self-determination of a stateless nation never does? ”20 Apparently there is no reason for this, especially since Walzer explicitly deduces the rights of states from those of communities, and the rights of these from those of individuals.21

Whoever seeks to legitimize certain particular acts of terrorism carries the burden of proof, for the protection of innocents is indeed an extraordinarily precious right and legal good. To outweigh this right in any particular situation there must be very good and very carefully examined reasons. On the other hand, whoever claims that terrorism can never be justified also carries the burden of proof, as shown by the fundamental disposability of such legitimization strategies as the ones just outlined. This claim – that terrorism is never justified – would only be valid under the ethical premise that direct attack on civilians in acceptance of risking the lives of innocent victims is absolutely forbidden. Sorry to say, such a premise is hardly plausible in the context of an ethics of responsibility; and this premise is also rejected by the great
majority of those who now loudly denounce terrorism as absolutely evil and bad. For when such persons want to justify the terrorism which they think is good, they often have recourse to one or the other of the patterns of argumentation described above, often in combination. Of course they do not call it terrorism – they may call it a “war against terror”, as in the case of the massive bombing in Afghanistan or Clinton’s rocket strike in Sudan, or they may also call it a “war-shortening measure”, as in the case of the dropping of the Atomic bomb on Hiroshima and Nagasaki.

A first result of these considerations is that the inference from the terroristic character of an attack to its illegitimacy is not valid. At best, the inference of the probability of the act’s illegitimacy would be valid. But this in turn means that, according to the criteria of just war, if a state falls victim to a terrorist attack, it must first examine the reasons motivating the attack and can certainly not out of hand dismiss the question of motivation as irrelevant, before it has the right to take a bellicose counter-measure. And even if this examination is brought to the conclusion that the attack was illegitimate, it still opens the possibility to recognize that the perpetrators did not act out of purely evil intentions, but rather more probably out of desperation – a desperation for which the victim is perhaps not completely unaccountable. And this recognition could possibly lead to a certain amount of moderation in the application of counter-measures. Herein lies precisely the purpose and meaning of a theory of just war (or at least, it should do so today): to limit war – and not to promote self-justice and open warrants to destroy.

A second, substantial conclusion of these considerations results from the nature of the patterns of justification outlined. As previously mentioned, these are also used by the apologists for state terrorism. However, these patterns do not fail to recognize the validity of proportionality or just measure and of the probability of success as criteria in the judgment of the justification of an act of violence. It is not only, but also for this reason that the constraints of these schemes are not just difficult to fulfill, but in fact: they are more difficult for strong parties to fulfill than for weak ones. Let us take the pattern of argument borrowed from Walzer as an example. The freedom of the political community of the Palestinians is not only threatened by Israel, but has in effect been prevented for some decades, and the creation of a Palestinian state or even an autonomous region has been foiled. The Palestinians are not standing with their backs to the wall: they are being smashed against the wall. But has the existence of Israel ever been threatened by the Intifada or by the Palestinian Autonomy Authority, or would the existence of Israel be threatened by a Palestinian state? In consideration of the military might of Israel and its American ally, such a thought seems absolutely absurd. The idea that al-Qaeda or the Taliban could threaten the existence or freedom of the United States is just as absurd. A similar asymmetry is to be found in other patterns of argumentation, as could easily be shown. Nevertheless, most “serious” commentators tend to excuse the violence committed by the stronger party. (One could consider the mild, even positive reactions to the American bombing of Tripoli in 1986 and of a pharmaceutical factory in 1998; the frequent retaliation measures directed against civilians in Palestine; or the continuing sanctions against Iraq which, as previously mentioned, have already cost the lives of hundreds of thousands of civilians, of which half were of children. At least recent reactions to
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Israel’s youngest attacks against the Palestinians give occasion for some glimmer of hope.) This is not only immoral and hypocritical, it defies all logic.

Terrorism is not at all the instrument of the weak, as is often claimed, but rather the routinely employed instrument of the strong, and usually only the final resort for the weak. (This is true for secular terrorism, not for that kind of terrorism which is motivated by apocalyptic visions such as may be found in the Aum sect, certain racist militias in the USA and partially also in al-Quaida.) As such a final instrument terrorism is, to cite Baier, “a demonstration of this power to make resentment at exclusion felt”.22 We may add: resentment at exclusion from justice and freedom. Even if the United States were to succeed in their so-called “War against Terrorism” and were to annihilate all such terrorism which is neither promoted, supported or approved of by them, and thus were to remove the last resort of those who are excluded to put up some resistance – even then there would be only a little less violence in the world. There would certainly not be more justice. This “War against Terrorism” – waged by state terrorists and with terrorist means – does not have as its object universal values, but rather the undisputed power.

If strong states really want to fight terrorism, then there are only three legitimate and recommendable means at their disposal: the rejection of a double moral standard, focused persecution of crimes (insofar as the committing of a punishable crime – and not of an act of justifiable resistance – may be demonstrated) and, finally, the inclusion of the excluded.

Notes

* Translated by Colin King.
5 Ibid., p. 35.
6 Ibid., pp. 158 ff.
11 Ibid., p. 156.
14 Thomas of Aquinas, Summa Theologiae (Die Deutsche Thomas-Ausgabe, Bd. 18. Edited by the Albertus-Magnus-Akademie Walberberg bei Köln), Heidelberg und Graz 1953, p. 175.