

Terrorism, Innocence, and Justice

Gabriel Palmer-Fernandez

On May 21, 1856 proslavery forces from Missouri attacked the antislavery town of Lawrence, Kansas, looting stores, burning buildings, and beating residents. Three days later, John Brown, proclaiming himself the servant of the Lord, along with his group of antislavery fighters, known as the Free State volunteers, sought revenge by killing five proslavery farmers along the Pottawatomie Creek. At the Doyle farm, James and his two sons were hacked to death. Mrs. Doyle, a daughter, and a fourteen-year-old son were spared. Brown and his fighters then moved on to a second farm, where Allen Wilkinson was taken prisoner, and finally to a third where William Sherman was executed. The attack on Lawrence and the subsequent killings at Pottawatomie Creek sparked a guerilla war between proslavery and antislavery forces in Missouri and Kansas that lasted several months and cost nearly two hundred lives.

Brown's campaign against slavery won him many supporters in the North, particularly among a group of wealthy New Englanders. With their help, Brown moved to Virginia where he hoped to start a slave rebellion. In 1859 he raided the United States armory in Harper's Ferry and held some sixty hostages. He was defeated, arrested and charged with inciting a slave insurrection, murder, and treason. In a plea for Brown's life, Henry David Thoreau said Brown "was like the best of those who stood on Concord Bridge . . . [You who pretend to care for Christ crucified, consider what you are about to do to him who offered himself to be the savior of four millions of men." On December 1859, Brown was hanged. But in the North, church services and public meetings glorified his deeds. Ralph Waldo Emerson, for example, said that Brown's execution would "make the gallows glorious as the cross." Some years later, in an address given at Harper's Ferry, Frederick Douglass praised Brown's unequalled dedication to the cause of abolition by saying, "I could live for the slave, but he could die for him."

The activities of John Brown and his militia have been repeated countless times throughout the world, particularly in the past few decades. Individual men and women organize themselves into a group and

engage in acts of violence for a political objective. Sometimes they wish to have their own separate homeland or defeat a foreign aggressor—the IRA in Ireland, ETA in Spain, Irgun in Israel, Tamil Tigers in Sri Lanka, FLN in Algeria, Hezbollah in Palestine. At other times they wish to overturn an unjust, tyrannical government and establish, as the Constitution of the United States declares, a "more perfect union." Such violence is almost always illegal. No state or system of law could long endure should it tolerate private violence, even for an important political objective. By almost all accounts, it is irregular violence, like vigilante justice, often biased in its own favor. Even when it elicits our sympathies, we regret if not fear this kind of violence. How, then, shall we think of John Brown? Was he a criminal, murderer, traitor, a religious zealot who killed and held hostage ordinary people? Was he a martyr whose selfless sacrifice contributed to the liberation of millions of children, women, and men from slavery?

Terrorism

One response is that John Brown killed innocent civilians. That makes him nothing less than a murderer. And it doesn't matter that he was motivated by a strong sense of justice, abolishing that horrible institution of slavery. That is a view that is well established in international law and that long tradition of moral reasoning called the just war theory. Among the important provisions of that theory is the principle of noncombatant immunity. It says that civilians are innocent and on that account they are to be spared the ravages of war. They are immune from deliberate attack and killing them is, as moral philosopher Elizabeth Anscombe puts it, "always murder." But what is the meaning of innocence in war? Why may we kill soldiers but never the ordinary citizen? Were Douglass, Thoreau and Emerson wrong about making Brown's "gallows glorious as the cross"? Was Brown, in today's language, a terrorist or a freedom fighter?

We do well first to come to some conceptual understanding of terrorism. What is it? How does it differ from other forms of political violence? When we define

terrorism we need to be careful not to confuse the conceptual with the moral issues. Some writers do just that, giving a definition of terrorism that makes terrorism always by its very nature an immoral activity. This makes any disagreement about the morality of terrorism a disagreement about its nature. Although it is difficult, we can distinguish one from the other.

In a recent article, C. A. J. Coady gives the following definition: terrorism is "the organized use of violence to target noncombatants ('innocents' in a special sense) for a political objective." At first sight this seems a very useful definition. It covers a broad range of relevant phenomena and allows us to distinguish political from criminal violence, and more important to recognize that terrorism is a tactic used not only by nonstate groups (Aum Shinrikyo, al-Qaida, the Klu Klux Klan), but also by states themselves as a way of governing their citizens. Such an understanding is compatible with much of the history of terrorism. For example, the first English-language use of the word dates from 1795 and, like the French use that appeared a few years earlier, describes a mode of governing aimed to suppress political dissent. Examples of state terrorism abound: the mass-drowning and massacre of helpless prisoners during the Reign of Terror under Robespierre in France; executions in the former Soviet Union under

This understanding of terrorism continued well into the twentieth century. For example, in an entry in the *Encyclopedia of the Social Sciences*, published in 1934, indiscriminate violence was not yet a defining feature of terrorism: "Terrorist acts are directed against persons who as individuals, agents or representatives of authority interfere with the consummation of the objectives of group."

Now, contemporary terrorism differs from its predecessors in an important way. Perhaps as early as 1940, it emerged as a way of fighting by acts of indiscriminate violence with the goal of intimidating, creating fear, and undermining the morale of a population. The paradigm case is the intentional indiscriminate aerial bombardment of German cities during World War II, where it was thought that subjecting large segments of the population to the terror of aerial bombardment would produce domestic unrest and widespread opposition to the war. The use of terror by revolutionary or insurgent groups (as some in Iraq today) differs from indiscriminate aerial bombardment only in degree, not in kind. Both aim for the same objective, to undermine civilian morale for the sake of arousing political opposition, and employ the same means, random killing and other acts of indiscriminate violence.

Second, contemporary terrorism is not restricted solely to targeting persons. Several groups have emerged in the past decades that strike only at property. Radical elements of the environmental and animal rights movements have engaged in a wide range of violent actions aimed to change social policies and practices that pollute water and air, and destroy forests and animal species. In the 1980s, for example, some of these groups spiked trees in public lands in Maine, Maryland, and North Carolina, others firebombed research facilities at Oregon State, Michigan State and Washington State Universities, and still others sabotaged and sunk whaling vessels in Iceland.

The above concerns can easily be incorporated in Coady's definition. However, it has a further problem: by his account, terrorism targets the noncombatant—the ordinary civilian. This is problematic because there are many cases of killing soldiers that have a strong resemblance to terrorism. Consider the suicide bombing on October 1983 in Beirut that killed 241 American soldiers and 58 French paratroopers, or the identical attack on the US military barracks at Khobar Towers in Saudi Arabia on June 1996. What about killing soldiers on leave as they dine with their families, or go to the grocery store, or drink a beer at the local bar? Or soldiers sent on humanitarian missions after natural disasters, like the recent tsunami in South Asia? Not the happiest way of putting it, but perhaps if we distinguish between soldiers, who are military personnel not in a condition of war, and combatants who are soldiers in war, we can understand why killing the

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Stalin and in Haiti under "Papa Doc" Duvalier; the killing fields under Pol Pot in Cambodia; or the recent wave of torture, rapes, and arbitrary arrests in Equatorial Guinea, to name a few.

Coady's definition captures this important dimension of terrorism. However, there are a few problems with it. First, it does not address an important development in the history of terrorism. The emergence of anarchist movements in Russia, France, Spain, Italy, and the United States in the 19th century brought a new type of violence not by states but, as we say today, "from below," intended to bring about political change. Terrorism in this period referred to a way of fighting rather than governing and was largely restricted to the assassination of highly placed political figures. There was during this period hardly a trace of indiscriminate violence or the desire to intimidate and create fear in a civilian population for a political objective. On the contrary, a crucial feature of terrorism during this period was the attempt to arouse the spirit of revolt by highly selective violence and assassinations.

French paratrooper or American soldier in Beirut and killing him on the battlefield are very different things. Combatants are soldiers in war. They are legitimate targets and killing them is an act of war. But soldiers (not in war) are much closer to civilians and killing them is an act of terror.

I propose, then, the following definition of the core feature of terrorism. Terrorism is the organized use of violence against civilians or their property, the political leadership of a nation, or soldiers (who are not combatants in a war) for political purposes. On this account, Robespierre, Stalin, Pol Pot, the radical environmentalists, the suicide bombers in Beirut and Saudi Arabia were terrorists. So, too, was John Brown. They killed civilians or destroyed their property or held hostages for a political purpose. We need now to determine whether what John Brown and other terrorists do is immoral. To do so, I first take up the question of innocence.

Innocence

For Coady and many other writers, terrorism is immoral because it deliberately kills persons who are illegitimate targets, persons who are, Coady says, innocent in a special sense, and those persons who are innocent in a special sense are the noncombatants. But these terms—illegitimate targets, innocence, and noncombatants—do not jibe. Furthermore, conflating them, as Coady does, confuses the conceptual and moral issues in terrorism. It smuggles the moral appraisal of terrorism into its definition, motivating the unavoidable conclusion that terrorism is, by definition, immoral.

The distinction between legitimate and illegitimate targets of attack has a long history. For example, the Hebrew Bible contains at least one passage that spares children and women from death in war, as well as livestock and fruit-bearing trees (Deuteronomy 20). The fourteenth century text by Honoré Bonet, *Tree of Battles*, explicitly prohibits the killing of ploughmen, laborers, pilgrims, and clerics (so, too the ox and the ass) because, Bonet writes, “they have no concern with war.” They lack responsibility for, and so are illegitimate targets of, war. In the sixteenth century the word “innocent” came into use to describe the civilian or noncombatant. “The basis of war is a wrong done,” writes the Spanish theologian Victoria. “But a wrong is not done by an innocent person. Therefore war may not be used against him.” For Victoria, innocents include children, women, old men, peasants, farmers, foreign travelers, literary men, clerics, and “the rest of the peaceable population.” All of them, Victoria says, must be “presumed innocent” unless they bear arms and pose a danger. But for Victoria, soldiers in war can also be innocent when, for example, they fight “in

good faith” or when their cause is just, or when they have been defeated. And these soldiers, he says, “may not be killed . . . Not even one of them.” Killing any one of them is on par with killing children, women, and old men.

When Coady says that noncombatants are innocent in a “special sense,” it is not that understanding he has in mind. For him, innocence refers to the role one plays in the prosecution of a war. Noncombatants are innocent in the special sense that they do not bear arms, are not directly engaged in the prosecution of a war, and do not pose a danger of imminent death to enemy combatants. But this notion of innocence makes no moral sense, for at least two reasons. First, it assumes that the role of the civilian is much like that of the medieval serf who toils the soil now for this lord and later for another, as the knightly class competed for honor, status, glory, and land. If there is any moral sense to the notion of innocent civilian it is here that we find it: harmless persons alienated from the source of political power, lacking any responsibility for the war. Under the political conditions of the time, there were hardly conscripts, volunteers, or citizen-soldiers. Armies consisted of hired guns or foreign mercenaries with little if any loyalty to a nation, but to the spoils and other material rewards of war. For them, war was not a political act or a form of public service. Civilians were immune from war only because they would later provide the source of labor the victor would need to profit from the newly conquered land. They were property, much like Bonet’s ox and ass.

But the nature of war changed dramatically with the French Revolution. Political power went from the monarchy to the people. Consequently, war was no longer the king’s or the knight’s concern. It became the people’s business. “The young men shall fight,” the French National Convention declared in 1793, “married men shall forge weapons and transport supplies; women will make tents and clothes and will serve in the hospitals; the children will make up old linen into lint; the old men will have themselves carried into the public square to rouse the courage of the fighting men, to preach hatred of kings and the unity of the Republic.” To assume that civilians are passive bystanders who, as Bonet puts it, “have no concern with war,” fails to recognize that for modern democracies war is a complex institution in which civilians play a crucial role. They provide not only the public spirit essential for war, but also the material necessities for success.

Second, if civilians cannot be killed in war because they are innocent, we must recognize that innocents are always killed in war—not civilians, but morally innocent soldiers. Coady alludes to this point when he says that what is important is “the role the individual plays in the chain of agency directing the aggression or

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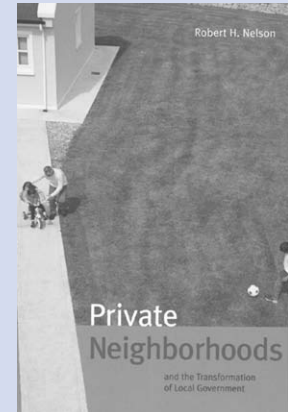
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wrongdoing." Those who are in that chain directing aggression or wrongdoing are guilty and may (perhaps must be) be killed. Some soldiers will surely be in that chain. But others fighting on behalf of justice and acting in self-defense are innocent and morally may not be killed. Suppose you unjustly attack me and I defend myself. Though I use lethal force against you, I am innocent of any aggression or wrongdoing. You do not have open to you to say that because I employ lethal force against you, you may do likewise and that killing me would not be wrong. Now, there are many soldiers who fit this description—innocent combatants fighting a war of self-defense. There will also likely be very many innocent combatants in totalitarian regimes whose leadership is guilty of aggression or wrongdoing, for example, for ced conscripts in Baathist Iraq under Hussein in the 1991 Persian Gulf War. They were more cannon fodder than anything else. Combatants of totalitarian states hardly have any responsibility for the wars they fight and even when they fight an unjust war (like Hussein's aggression against Kuwait in 1990) seem more like Bonet's serf, ox or ass having no responsibility for the war. But civilians of democratic nations are not like Bonet's serf,

mere property used now by this lord and then the other, or combatants of totalitarian regimes removed from the source of political power. Citizens of democratic states fighting an unjust war have a measure of responsibility for the injustice. Are they, therefore, legitimate targets of attack?

Justice

There are many things any one of us may not have caused but which were nonetheless under our power to influence or control. Insofar as such things were under our power, we share some responsibility for them. And if such things bring harm to others, we are (partially) responsible for the harm. Suppose you endorse a political candidate by voting for him. This candidate declares that once elected he'll balance the federal budget by (among other things) slashing college financial aid, adversely affecting, discriminating against, harming, say, Chicanos and African Americans, but not white Americans. Are you by voting for that candidate responsible for discrimination, for the harm? Surely not, you will say, since you did not cause the policy nor wish to discriminate against

Chicanos or African Americans. But still you support him. He's your man in Washington. Four more years! That view of responsibility is very short sighted. It fails to see that government policies in a democracy are joint ventures. They are never the result of any one individual, but of many acting in concert for a common purpose. In such ventures, individuals play a necessary role by endorsing, contributing, or participating in them. By playing a necessary role in any one of those ways, each individual shares responsibility for the venture.

Those statements invite some general queries: What responsibility do citizens bear for their government's actions? Suppose a democratic regime, like ours, wages an unjust war. Just who is responsible? Are we morally responsible for the injustice of that war? Are we legitimate targets of deliberate attack? Would killing any one of us be an act of injustice?

Coady, the law of war, and the just war theory are firm in the opinion that regardless of the injustice of a government's actions, civilians are immune from deliberate attack. Individuals can lose their immunity in a number of ways, for example, by becoming soldiers, working for the war machine, or bearing arms. War is, however, never an individual, private, or personal enterprise. It is not something you or I do. But something we do together for a common purpose. It is a joint venture, a national activity. If we are engaged in grave injustice, say, a war of aggression, do those who endorse, contribute, or participate in the venture, as soldiers or civilians, lose their immunity from attack? How shall we think about this?

Suppose there is a gang of thieves headed by George and Tony who are in competition for territory and resources with another gang, headed by Boris and Jose. George and Tony decide to eliminate the competition and send their best hit men to kill Boris and Jose. Of course, Boris and Jose can defend themselves by killing the hit men, who are engaged in a criminal, immoral activity. But may they also kill those who sent them, George and Tony? After all, the hit men can botch their mission and then George and Tony will send their second best. Would it not be preferable for Boris and Jose to remove the danger by killing George and Tony rather than the hit men? Or do we say that since George and Tony are not bearing arms only the hit men may be killed? Who is responsible for the danger imposed on Boris and Jose?

In a democratic system like ours, given the possibility of free action, civilians bear a high burden of responsibility. When we support an unjust war, does it really make any sense to say that we are immune from attack because we are not bearing arms? Do we say only our soldiers can be killed, even when we, and not they, are responsible for an illegal and unjust proceeding? Are those who support an unjust war really innocent?

The fact is that not everyone will support an unjust war. And so, we have to distinguish between those who do and are therefore morally responsible, like George and Tony, and those who do not, who may not be killed because they are innocent of injustice. But it seems correct to say that George and Tony along with those who support, encourage, and send out the troops to wage an illegal and unjust war may morally be killed. If we take the idea of democratic popular sovereignty really seriously, then it is difficult to avoid that conclusion.

But there's at least one problem here: those who would attack a people waging an unjust war may kill only the guilty, otherwise they commit murder. Yet, there is no practical way by which one can do that. Bombs and bullets cannot read the bumper stickers on our cars that say "Not In My Name" and "Regime Change Begins At Home"; bombs and bullets do not know that some of us have organized anti-war demonstrations and that we know and have declared that this is an immoral, illegal, and criminal war. Nonetheless, suppose in some (very rare) circumstances the guilty can be distinguished from the innocent. When possible, then, the guilty may be morally killed.

We might, however, retreat from this view, even when we agree that it is correct. Perhaps morality is not always the best guide. Sometimes it demands too much. In the present case, it demands (at least permits) killing those responsible for grave injustice, the guilty. Of them, there will be very many and most of them will be found among the civilian population. But for the sake of reducing the carnage of war, we might let most of the guilty go free and restrict legitimate targets of attack to soldiers in war. But we do so not because civilians are innocent. Rather we do so because without limiting the range of legitimate targets to soldiers, there would be no room for war in this world. That might be a very good thing. But in the world as I know it, we must make some room for various forms of political violence as they can secure important moral goods—insurrection and revolution, for example, to free the slave and defeat tyrants, and war to defend the nation against those who would unjustly attack us.

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Sources: The quote from Henry David Thoreau occurs in http://www.sas.upenn.edu/African_Studies/Articles_Gen/Plea_Captain_Brown.html; accessed on 28 December 2004. The quote from Emerson can be found at: <http://www.loc.gov/exhibits/african/afam007.html>; accessed on 28 December 2004. The quote Douglass can be found at: <http://memory.loc.gov/ammen/today/oct16.html>; accessed on 28 December 2004. G. E. M. Anscombe, "Mr. Truman's Degree," in *Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press, 1981); C. A. J. Coady, "Terrorism, Just War and Supreme Emergency," in Coady and M. O'Keefe, *Terrorism and Justice* (Melbourne, Australia: Melbourne University Press, 2002). The *Oxford English Dictionary* provides the 1795 date for the first English-language use of terrorism, and still today defines terrorism as government by intimidation carried out by the party in power. For a discussion of state terrorism, see Morris Slavin, *The Left and the French Revolution* (Atlantic Highlands, NJ: Humanities Press International, 1995), Chapter 7; I am indebted to my friend and colleague, Morris Slavin, for many insightful discussions on revolution and terror. For a discussion of recent instances of torture, rape, and arbitrary arrest, see my "Justifying Political Assassination: Michael Collins and the Cairo Gang," *Journal of Social Philosophy*, vol. XXXI, no. 2 (Summer 2000): 160–177. The quote in the 1934 *Encyclopedia of the Social Sciences* is discussed in Walter Laqueur, *Terrorism* (Boston: Little, Brown and Company, 1976). The most comprehensive study of aerial bombardment used to break the morale of an enemy population is Robert A. Pape, *Bombing to Win: Air Power and Coercion in War* (Ithaca: Cornell University Press, 1996). In the 1920s, Giulio Douhet and Basil H. Lidell Hart articulated a doctrine of strategic air power, sometimes also called terror or obliteration bombing. "Take the center of a large city," Douhet wrote, "and imagine what would happen among the civilian population during a single attack by a sin-

gle bombing unit. . . . [I have no doubt that its impact on the people would be terrible. . . . [A complete breakdown of the social structure cannot but take place in a country subjected to this kind of merciless pounding from the air. The time would soon come when, to put an end to horror and suffering, the people themselves, driven by the instinct of self-preservation, would rise up and demand an end to the war." *Command of the Air*, trans. Dino Ferrari (New York: Coward-McCann, 1942). See also the US Air Force book, *Target Germany*: "The physical attrition of warfare is no longer limited to the fighting forces. Heretofore the home front has remained relatively secure; armies fought, civilian populations worked and waited. . . . [But now] we have terror and devastation carried to the core of a warring nation." (NY: Simon and Schuster, 1943). I give only the core of terrorism. That core can accommodate multiple layers: e.g., revolutionary or agitational and state or enforcement terrorism (i.e., the typical cases), war terrorism and religious terrorism, as well as the notion, common among political scientists, that terrorism targets a much larger group than the victim group and it does so, as some of the Anarchists of the late 19th century put it, a "propagandistic effect." The fundamental point of my definition is that terrorism is a tactic with or without an ideology of terror. Honoré Bonet, *Tree of Battles*, translated by G. W. Coopland (Liverpool: University of Liverpool, 1949). Francisco Victoria, "De Indis et de Iure Belli Reflectiones," in *Classics of International Law*, edited by J. B. Scott, translated by J. P. Bate (Washington, DC: Carnegie Institute, 1917); for a contemporary version of these matters, see my "White Flags on the Road to Basra," *Journal of Social Philosophy*, vol. XXXII, no. 2 (Summer 2001): 143–157. For a further discussion of civilians as property, see my "Innocence in War," *International Journal of Applied Philosophy*, vol. 14, no. 2 (Fall 2000): 161–174. The quote from French National Convention of 1793 occurs in Hoffman Nickerson, *The Armed Horde 1793–1939* (NY: Putnam's Sons, 1940). In my points concerning justice, I follow some ideas of Larry May, *Sharing Responsibility* (Chicago: University of Chicago Press, 1992). For a further discussion of democratic popular sovereignty (introduced in my George and Tony example), see Igor Primoratz, "Michael Walzer's Just War Theory: Some Issues of Responsibility," *Ethical Theory and Moral Practice* 5 (2002), especially section 3.