

**“The Enemy We Dare Not Kill in the War We Must Not Lose: The Inverted  
Battlefield Moral Logic of the Justly Fought War On Terror”**

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**Extended Abstract:**

It is standardly thought that, in a just war against an unjust enemy, it is appropriate for the enemy combatants to be the first ones killed (for aggressing in an unjust cause), followed by the non-enemy combatants (who must risk death to protect their innocent civilians), then enemy civilians (who are presumptively complicit in the unjust aggression, and so liable to being killed collaterally in militarily necessary operations against enemy combatants), then non-enemy civilians (who are presumptively completely innocent and unable to defend themselves). Indeed, the correctness of the foregoing hierarchy appears to be thought virtually a necessary truth, and one known a priori.

Yet it is also widely thought that, in the war on terror, killing terrorists only makes more terrorists, since it confirms the (arguably correct) perception of the West as unjustly hegemonic, and so recruits yet more people into its terrorist resistance. And that results in yet more non-enemy civilian deaths.

But then the war on terror cannot be won by violent means. Such means can only make terrorism manageably chronic rather than acute, like an incurable infection, except one fought by drones instead of anti-bodies in a slow-motion slaughter without end. This is problematic for proportionality and necessity justifications of violence in the war on

terror, since it entails that the number of casualties will be infinite. If there is any alternative with any non-zero probability of only finite casualties, it must be preferred.

At any rate, the war on terror can be won outright only by addressing the root causes of the radicalizing of people into terrorism. Accordingly, the West must stop behaving hegemonically, must make amends for past such behaviour, and must help eliminate the poverty and lack of education which are inducing people in the East towards a religious fundamentalism which further portrays the West as an evil to be violently resisted. The West must also become more pro-active in preventing the principle cause of self-radicalization into terrorism, namely, the alienation of citizens both abroad and at home from the benefits of society, an initiative that will probably require a move towards greater equality.

As part of behaving less hegemonically, the West must cease trying to defend itself from terrorists by the method of taking the battle overseas with things like drones and the de-stabilizing of foreign regimes. Instead, it must retreat to a non-sovereignty-violating, less resentment-inducing, more passive, defensive strategy, one prosecuted only within its own borders. This it can do without making things worse, for no one begrudges the West for defending its homelands in its homelands.

But this withdrawal will likely mean a temporary increase in terrorist attacks against the West. For attacks being plotted overseas would no longer be pre-empted by anti-terrorist offensives overseas.

And a perverse and repugnant consequence of this being the strategically and morally correct path is that it in effect inverts the hierarchy of the order of proper liability to death by people involved in the conflict. That is, it means, at least for a while, that the

first to be killed should be our own innocent civilians (in whatever terrorist attacks we can't prevent by filtering out terrorists at our borders), the second, our own just combatants (who will die in defending civilians from these attacks and in capturing fleeing terrorists), the third, the terrorists themselves (who may die in resisting capture), and, lastly, the civilians on the terrorist side (whom we must not harm with collateral damage on pain of fanning the resentments that gestate yet more terrorists).

I've just said that the West should refrain from killing more terrorists (or at least from doing so overseas in ways that make martyrs of them) and from killing civilians on the terrorist side, and should instead absorb harms to its own citizen populations while it endeavors peaceful solutions. But isn't this tantamount to the imposition of an immoral level of risk on our innocent citizens? No. In fact, it is the only course that is morally responsible to our own citizens. For as we've just seen, killing terrorists and their civilian sympathizers is self-defeating, since for every terrorist we kill, we create yet more terrorists, and so indirectly wind up killing yet more innocents in the West. (Thus I think what I'm proposing would pass Haque's proportionality criteria, for we get to put some portion of our citizens at risk only if we expect this to lower the total risk to civilians over the course of the conflict. And I think this is an interesting test case for his theory: can it explain what sorts of harms we can morally put our own citizens at risk of?)

Next, it is not just from moral duties to our own citizens that we must undertake this course. For there is the additional fact that the terrorists have a point, morally speaking: the West has been unjustly hegemonic; and therefore the terrorists are not straightforwardly or purely wrong-doers. Instead, they are trying to induce a correcting of injustice, a correcting we have a duty to uptake, one making it morally problematic for us

simply to kill those who are trying to induce this. Some subtlety is needed in analysing the conflicting moral claims of the West and of the terrorists. The West behaved badly in the East in the past, and profited from this behaviour; so it owes apologies and amends. The terrorists, meanwhile, behave in ways that, taken in isolation, are immorally harmful, and more recently immorally harmful than the historical such actions of the West. But we must de-prioritize recency of harm (perhaps contra Frowe?) as the decisive feature of a harm that determines whether it is morally appropriate to meet it with defensive violence. Instead, the theory of justice that should prevail in these matters is whatever one maximizes expected utility for all by minimizing violence in the long run, and which brings as many human affairs as possible into a mutually beneficial deal, minimizing externalities; and this theory of justice will require non-retaliation against some of the more recent harms from terrorists. Nevertheless, even if the West started this conflict, the West has the moral right to prevail in it, on account of the moral superiority of its vision of a justly organized polity, and the intellectual superiority of its metaphysical world-view.

But a further factor reducing our moral justification for simply killing terrorists is that, by virtue the extremity of their poverty and hopelessness, their lack of an emancipating education, and their indoctrination into a self-oppressing, fundamentalist religious world-view, terrorists are not straightforwardly fully responsible for their actions and therefore are not straightforwardly wrong-doers. (The last two points and the next are in the spirit of Barzagan.)

The foregoing two factors – that the terrorists have some morally legitimate claims, and that they may not be fully responsible for their extreme behaviours, suggests

that we need some new legal categories for them other than the categories of criminal or enemy combatant, e.g., the category of quasi person-having-the-excuse-of-ignorance-of-materially-relevant-facts, or the category of quasi juvenile (both of these categories applying in virtue of the terrorists' lack of education, their unawareness of other ways of living, their subjugation to religious dogma and their lack of training in critical thinking). There could also be the categories of quasi civil disobedient (for their engaging in protest against Western immorality), quasi psychiatrically-non-responsible patient (for them having suffered extreme, psycho-socially damaging trauma in their rearing), quasi person-under-duress (for the poverty and social pressures motivating them), and quasi person-having-the-defense-of-necessity (ditto). These new legal categories give us a paternalistic obligation to accept greater risks to ourselves in dealing with the oppressed populations of the East, including the terrorists themselves; for the new categories properly class these people as in various senses victims -- very fragile victims whom we have a duty to nurture. (Contra Bohrer and Osiel, it isn't so much the soldiers who are our children in the war on terror; it is the terrorists and the civilian populations from which they spring. But what of the soldiers? Doesn't my proposal ask a lot from them? Indeed it does. And we should be sure that we only ask them to take reasonable and necessary risks, that they be well-compensated for these risks, and well-insured in them. Ditto for our civilians.)

A final argument against simply killing terrorists speaks to our self-interest: killing terrorists and further alienating the members of the societies from which they spring, foregoes the opportunity of co-operative surpluses in the use of the manpower they represent and the resources they control in arrangements of high expected utility for

all parties – better to seek to make amends with terrorists and their home societies and to partner with them in future co-operative ventures.

I have proposed a kind of partial pacifism as the means to winning the war on terror, a means whose implementation by a leader may seem to involve the leader failing his duty to protect his citizens. But I suggest that we need to re-conceive the responsibilities of political leaders in these situations. Their responsibilities are not to preferentially protect their own citizens and soldiers from harm in the short term (that would be the worst sort of nationalism), but to work towards arrangements that have the highest expected utility for all parties going forward in the long term, regardless of nation of residence. For like it or not, all citizens and all soldiers are now globally interconnected; and peace will come only from the adoption of arrangements of mutual benefit. Likewise, the citizens -- and soldiers -- of all countries in turn have the duty to demand this of their leaders, and to absorb such vestigial harms as they may experience without retaliation until there is enough faith in the new indisposition towards violence of all parties for there to be a trusting peace.