

# Was the Afghan conflict a just war?

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An analysis of the “just war” theory poses questions about US action in Afghanistan

Wars fought to redress grievous wrongs or put a stop to evil have been termed “just wars.”<sup>1</sup> The concept has its origins in classical and theological philosophy and was explicit in the Christian ethics of Saint Augustine.<sup>2</sup> Just war theory describes narrow circumstances and tight constraints on the ends and means that are required to apply this term.<sup>3</sup> Although Western law has slowly come to accept war as an inevitable instrument of national policy<sup>4</sup> and turned its attention to setting standards for the conduct of war, important echoes of just war theory remain. A distinction was made at Nuremberg,<sup>5</sup> and later embedded in articles 2 and 51 of the United Nations charter, between unacceptable aggressive war and acceptable wars of self defence. Contemporary arguments about particular wars still rely on the seven main principles of just war theory (box 1). Application of these principles to the conflict in Afghanistan does not settle the debate but it might help to structure the discussion.

## The cause must be just

In modern interpretations of just war theory there are two legitimate reasons for aggressive war: self defence against an aggressor and humanitarian intervention against a sovereign state in response to acts that shock the moral conscience of mankind. A military response to the massive attack on the United States on 11 September could arguably be justified in terms of self defence. A case could convincingly be made that a malevolent global network of terror was responsible and ready to attack again. Intervention in the sovereign affairs of Afghanistan to pursue al-Qaeda could also be seen as legitimate. A counter to this position would either have to dismiss the gravity of the threat to the United States or to assert that the shocking act was insufficient to warrant intervention in Afghanistan.

## A lawful authority must decide to resort to force

The higher (and more international) the authority, the stronger the standing. President Bush used his executive power to activate US armed forces without formally seeking a congressional declaration of war against Afghanistan. NATO and the UN were asked to support this decision and they did. This question of lawful authority will undoubtedly return if the current campaign extends in terms of time or geography.

## The intention of the war must accord with international law

Legitimate intentions for a just war include removal of threat and restoration or establishment of a lawful regime likely to uphold human rights and international law. Evidence of ulterior motives (such as securing access to oil reserves or fulfilling a need for revenge) would undermine assertions of legitimate intent.

### Box 1: Seven principles of just war

- The cause must be just
- A lawful authority must decide to resort to force
- The intention of the war must accord with international law
- The use of force must be a last resort
- The probability of success should be high
- The cost benefit ratio should be positive
- The means used must conform with international humanitarian law

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Intention to remove the threat of international terrorism led to action against al-Qaeda. Although a war against non-state actors does not (in theory) provide legal justification for an attack on a sovereign state, it was unavoidable when it became clear to what extent al-Qaeda had infiltrated the leadership of the Taliban. The United States found that, to remove the threat, it was necessary to overthrow the Afghan government. The rapid rout of the Taliban allowed the United States to slip rapidly in and out of the uncomfortable legal position of overthrowing a sovereign regime. Official international reaction has been muted, if not supportive, of this illegal interlude, partly because it was brief and partly because the repressive internal policies of the Taliban had rendered it a pariah state.

The primary war aim remains unsatisfied, however, and the quest continues to hunt down and destroy the terrorist network. Provided that the government installed in Afghanistan acquiesces in this campaign, the United States has some legal latitude in which to pursue its military strategy.



Hugo Grotius and his theory of the just war

In terms of restoration of a legitimate regime, the results so far would accord with just war precepts. The Afghan people are in general relieved to be rid of the Taliban. An interim national government, with strong international backing, is trying to fill the political vacuum. An international peace keeping force has been organised; desperately needed humanitarian aid programmes have started again; and the international community is planning sustained reconstruction.

#### **The use of force must be a last resort**

All reasonable political and economic means to effect the desired ends must be shown to have been seriously attempted and exhausted.

It could be argued that from the outset the terrorist attack against the United States should have been defined as a criminal rather than a military threat, requiring a political and diplomatic response, including extradition manoeuvres, economic and political sanctions, and judicial proceedings. Military build up and deployment in this context could then have had a relatively minor tactical role.

The counter argument, bolstered by the early military success, was that the Taliban was not seriously interested in negotiating, and only an all out military assault would expel the al-Qaeda network from Afghanistan.

#### **The probability of success should be high**

Determining whether a cause is just includes a practical determination of its likelihood of success.

There was never any serious concern that the supremacy of the US military would be challenged in Afghanistan. After three months of conflict the local al-Qaeda network in Central Asia has now been extensively disrupted. But the capacities of a far flung shadowy terrorist network are difficult to gauge. Further, if these networks are viewed as being fed by disparate strains of fanaticism and political alienation, then a successful antiterrorist campaign must also deal with the intangible global battle for hearts and minds. From this perspective, there is concern that the current strategy is inadequate and that the aerial bombardment and civilian casualties in Afghanistan risk further incitement of anti-Western sentiment.

#### **The cost benefit ratio should be positive**

In just war theory, the notion of proportionality boils down to saying that the good sought by the war must outweigh the evil it will produce.

This difficult analysis requires balancing incommensurable goods (Afghan civilian lives lost versus al-Qaeda network disrupted; civil liberties curtailed versus security enforced). Only people with similar world views and value systems will find this precept useful in assessing the current international and domestic campaigns.

#### **The means used must conform with international humanitarian law**

Just war theory insists that the means used in any war accord with the rules defined in international law, such as the Geneva Conventions.<sup>6</sup> These rules apply to states when they engage their forces in combat, whether the targets are states or non-state actors, and they set high standards for civilian protection, design

and use of weapons, and treatment of combatant prisoners of war.

The term "war" carries great potential for political, economic, and military mobilisation, which the United States has used to full effect, but it also has great responsibilities. These cannot be evaded, despite US avowals that this is a "new kind of war." Although there have been advances in pinpoint targeting and "smart bomb" technology, there is nothing novel about this conflict in Afghanistan that allows it to slip outside the frame of international laws of war. These legal responsibilities apply without question to Afghan civilians and combatants, including Taliban soldiers. It is questionable whether the United States has fully upheld the spirit as well as the letter of the Geneva Conventions (box 2).

The legal status of al-Qaeda troops is less clear. Terrorists and mercenaries are not afforded the same protection as regular soldiers or non-state actors waging a rebellion or civil war. However, as there is no official definition of terrorist in international law<sup>7</sup> and it can be argued that non-Afghan members of the Taliban are not mercenaries but volunteers, the default legal position is to treat them as legitimate within the terms of the Geneva Conventions. This means that they should be afforded full protection when taken prisoner "until such time as their status has been determined by a competent tribunal" (article 5 (2), Geneva III).<sup>6</sup>

When the United States characterises these al-Qaeda forces collectively as "terrorists," "foreign" Taliban, or "unlawful combatants," who are "hiding in caves" (a devious sounding stance) it casts doubt on the extent to which it will feel bound to use only legal means to defeat, capture, and hold them. What agents

#### **Box 2: Criteria for war under the Geneva Conventions**

- *Civilians are not to be targets of hostile fire*  
Yet overconfidence in the precision of "smart bombs" has resulted in the United States destroying civilian homes and civilian lives in isolated attacks remote from enemy action, where civilians had no clear warning that they might be at risk.
- *The choice of weapons should permit discrimination between combatants and civilians*  
Yet the United States has scattered landmines and dropped cluster bombs (initially similar in size and colour to the food packets that they dropped) on many fronts across which civilians are still moving and incurring injury and death.
- *Military action should remain clearly separate (in terms of geography, timing, visual identification, and line of authority) from humanitarian relief*  
Yet at the same time US military planes were dropping bombs they were also dropping emergency food packets.
- *Explicit standards exist for the lawful surrender, detention, and treatment of large numbers of prisoners*  
Yet, instead of adequately instructing and supporting its northern Afghan allies in these principles, the United States first allowed them to amass a combustible mix of hundreds of armed and hostile men in an insecure setting and then quelled the murderous uprising with an indiscriminate aerial bombardment of an entire prison compound.

or methods are being used to “smoke them out?” What kinds of force will be tolerated in extracting information from them? What licence will be given to intermediaries so that the United States can claim clean hands? These ambiguities are heightened by the presidential order establishing a special class of military tribunals for the leaders of these forces—which may subject them to denial of standard rights established for prisoners of war.

## Conclusion

This brief application of modern just war theory to the Afghan conflict suggests that its value as an analytic moral or legal framework is limited. The difficulty in obtaining reliable information makes some assessments impossible. Political biases introduce further complexities. There is, however, one component of the just war theory—the means of war—where international standards and measures do exist and a provisional assessment can be made. This suggests that the United States has missed several opportunities to establish a reassuring normative tone and presiding presence in this conflict. Instead of rooting its engagement in international humanitarian law it has empha-

sised the dastardly outlaw nature of its enemy to justify a need to keep its tactical options open. With the whole world watching, persistence in this mode may prove to be shortsighted.

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## When I use a word Terrorist

There is much ambiguity associated with terror and terrorism. The Latin word terror came from the hypothetical Indo-European root TER, giving such words as terrible, deterrent, and perhaps turmoil. From its metathetical form, TRE, came other fearful words: the Latin tremere, giving tremble, tremendous, tremor, intrepid, and delirium tremens (first defined in 1813 by Dr Thomas Sutton as a form of delirium, not necessarily alcoholic, that was worsened by bleeding and improved by opium). Among tremulous flora and fauna are tremandra plants, with their shaking anthers, the gelatinous tremella fungi, and treron pigeons. And a vowel shift gives us tromometer, an instrument that detects earthly tremors.

Terror as a weapon has been wielded since early times, sometimes by insurgents, more often by governments. The early tyrants of ancient Greece and Sicily were benevolent rulers, who encouraged the development of democracy; the word tyrant probably came from the name of a Phrygian god and had nothing to do with terror. But by the 5th century BC despotic tyrants emerged who ruled by fear, and in the Greek city states that arose at that time tyrannicide was encouraged, although later Aristotle warned, in his *Politics*, that tyranny and extreme democracy could be equally degrading.

However, the first terrorists to be so called emerged only in the late 18th century. When a group of Dominican monks founded a house in the rue St Jacques in Paris they became known as Jacobins. Then when the Breton Club, a left wing political debating society, founded in Versailles in 1789, moved to an old Jacobin convent in the rue St Honoré, it became known as the Jacobin Club. Its members instituted the Reign of Terror, and so became known as terroristes, and their activities terrorism—terms that first appeared in 1794 in François Noël (“Gracchus”) Babeuf’s newspaper *le Tribune du peuple*. And, although there were already other verbs for what they did

(aterrer, terrorifier), a new verb was coined—terroriser. First the terroristes terrorised the aristocrats; then, having seized power themselves, they terrorised other “enemies of the people,” which meant anybody they found despicable, including each other. Robespierre, for example, had Hébert, Danton, and Desmoulins guillotined and then—along with Saint-Just, Couthon, and others—was dealt with similarly by Barras. Then, adding further ambiguity, the Jacobins’ Red Terror, as it was known, was followed by a royalist counterversion, the White Terror.

Although the word terrorist was invented in specific reference to the Jacobins, by the middle of the 19th century it came to have a more general meaning: “a member of a clandestine or expatriate organisation aiming to coerce an established government by acts of violence against it or its subjects” (*Oxford English Dictionary*); although nowadays, as ever, governments can also terrorise. Modern subtypes include ecoterrorists, bioterrorists, and agroterrorists. Intellectual terrorists terrorise figuratively, and in South Africa the word has even been used jocularly to mean a tourist.

But whom you call a terrorist depends on your point of view. Consistent with the equivocal dictum that one man’s terrorist is another man’s freedom fighter, the original terroristes wore the bonnet rouge, the Phrygian cap of liberty, or pileus, a brimless felt cap that was worn in ancient times by manumitted slaves and as a supposed cure for insanity. Today Western governments regard al-Qaeda as terrorists, but to al-Qaeda the terrorists are America and Britain. Joseph Conrad summarised this ambiguity well in *The Secret Agent*: “The terrorist and the policeman both come from the same basket. Revolution, legality—counter-moves in the same game.”

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