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***Redefining Legitimate Authority:
Just War in the Era of Terrorism****

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ABSTRACT

Recent attempts by political philosophers to determine if terrorism can be morally justified have analyzed terrorist groups from a just-war perspective; however, many times, these philosophers have subordinated the principle of legitimate authority to the other just-war principles or have neglected legitimate authority outright. Thus, the issue of who decides when, under what circumstances, and how to make war has been relegated to a secondary interest behind the issue of how war is made. This article fills the resulting hole in contemporary just-war literature by reevaluating the principle of legitimate authority. A proper, up-to-date definition of legitimate authority is here established which includes the right of non-state political communities to have agents with legitimate authority and the necessity for those agents to have consent. Although this updated definition opens up the possibility for terrorist groups to be considered legitimate authorities, it also places new restrictions on those groups because neither authority that is not exercised over a political community nor authority exercised without the consent of that community is to be considered legitimate—such authority is illegitimate. Illegitimate authorities are morally unjustified both in their existence and their actions; their wars are unjust.

Just-war theorists make the case that warfare must be analyzed from within the just-war framework, a set of criteria based on the principles of *jus ad bellum* (justice of war) and *jus in bello* (justice in war), in an attempt to determine whether actions taken during war are morally justifiable (Walzer 1977; Coates 1997; Steinhoff 2007). Terrorism is one area upon which just war theorists focus; however, in determining the moral justification for terrorist acts, one

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principle is continually neglected from such analyses: legitimate authority (Coates 1997:123–45). Not only has this principle been neglected, but when it has been defined by theorists, it has been left inchoate and ill suited to the needs of a contemporary just-war framework. The simple scrutiny and investigation of a terrorist group's claim to legitimate authority can immediately resolve the question of justification—while also allowing for moral limits to be set on the terrorist group as a war-making agent—and, thus, this principle must be defined in a comprehensive and contemporary manner so as to increase its usefulness to just-war theorists. Criticisms are here leveled at current definitions. More importantly, however, this article analyzes the various arguments within just-war literature and proposes that a new definition of this principle should hold that legitimate authority (1) is not relegated to a state-centric model, (2) may only be exercised over a political community, and (3) may only be exercised when consent from that community is given to the agent.

THE SIGNIFICANCE OF LEGITIMATE AUTHORITY

The term “legitimacy”—including its adjectival derivatives—is often used in one or both of two distinct fashions: to refer either to an action that is in compliance with the law or to an action that is morally just or right irrespective of its legality (Wilson 1988:13). This article focuses primarily on the latter use of the word, yet because law often reflects moral thought, legal legitimacy is looked at here as well. What is more, “authority” is something that can be exercised both in moral fashion (legitimate authority) and in immoral fashion (illegitimate authority).

Though the principle of legitimate authority is often viewed through a secular moral tradition, the foundation of this principle is composed within the just-war doctrine of the Catholic Church, which has incorporated the philosophies of St. Augustine and St. Thomas Aquinas. St. Aquinas, drawing on his predecessor's thoughts, writes “[T]he ruler under whom the war is to be fought must have authority to do so...[S]ince the responsibility for the commonwealth has been entrusted to rulers it is their responsibility to defend the city or kingdom or province subject to them” (1988:64–65). The *Catechism of the Catholic Church* further states that “the evaluation of [the] conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good” (Holy See 1994:556). Thus, historically, the moral right to make war and to decide when to make it is vested within the leader of the political community, a public agent. This authority is derived from the responsibility of the agent to defend that unit. Although the other just-war principles are important in their own right, the existence of the rigorous qualifications that one must meet to have one's war justified certainly merit a deeper look into *who* decides when and how war should be made. Whether a situation is grave enough to meet the just-cause criteria (that principle absolutely necessary for a just war to be made) has to be authoritatively determined, and this is the function of the legitimate authority in the community (George 2000:83).

The entire just-war framework rests on the principle of legitimate authority because no acts of war may be justified lest the agents making the decisions and leading the action are legitimate authorities in their own right. The failure to first determine whether a group is a legitimate authority before making moral decisions on the actions or aims of the group has enormous repercussions in both legal and moral practice. Especially in dealing with terrorist groups, this principle of legitimate authority is habitually overlooked; the distinction between outright murder and war is convoluted by this oversight, bringing researchers and judges to evaluate the actions of terrorist groups as actions of legitimate authorities fighting to uphold a public good rather than illegitimate authorities partaking in violence for private reasons (Coates

1997:123–24). The difference is difficult to ascertain, yet it is of extreme significance because, as David A. George points out, legitimate authority is the qualification that directly determines when terrorist violence is morally justifiable; if terrorist violence is perpetrated by a public body with legitimate authority, then the actions of the terrorist group may be considered just, pending its adherence to the other principles of *jus ad bellum* and *jus in bello* (2000:83).

THE CONCEPT OF TERRORISM

For the sake of clarity, it should be noted that this analysis borrows from Andrew Valls' definition of terrorism when describing terrorist groups: Non-state groups that use violence, including damage to property and people, to achieve political goals (2000:67). As opposed to other definitions that claim that terrorism is inherently illegitimate or evil, this definition is clear in its objectivity, as it makes no judgment of such groups but simply describes the tactics that these groups use. Indeed, terrorism is seen here as a *set of tactics* that may be used by states and by non-state groups. To differentiate between these two groups (state and non-state), "terrorist" will be the label given to non-state groups that use these tactics as their primary style of warfare. This by no means dictates that such groups always use these tactics, nor does it mean that all such tactics are the same. Terrorism can have limits; it does not always aim to kill noncombatants, and it does not always disregard the criteria of just war. Understanding terrorism in this way—as a set of not absolutely unjustifiable tactics that may be used by a variety of groups—is necessary for the development of a better definition of legitimate authority. For instance, both A. J. Coates (1997:123) and Janna Thompson (2005:151–52) view terrorism as dependent upon legitimacy. Terrorism, to them, is a term given to illegitimate authorities. As this article argues, however, not all terrorist groups are illegitimate authorities. Terrorism and legitimacy must be seen as independent of one another.

ISSUES WITH THE STATE-CENTRIC PARADIGM

Traditionally, the agent that exercises legitimate authority is the government and the political unit that the government serves is the sovereign state; however, state sovereignty has been the focus of the legitimate-authority debate for centuries and remains an issue of contention even today (George 2000:85; Johnson 1981:163). For instance, Michael Walzer, in *Just and Unjust Wars*, addresses the main issues of contemporary just-war theory, including civil war, secession, intervention, and terrorism, yet he deals almost exclusively with state agents as the only wielders of legitimate authority. His chapter on self-determination views non-state political communities as simply undiscovered or unrecognized states, giving credence to their future goals but stripping them of any real present legitimacy (1977:86–90). Valls argues that "[Walzer] never considers the possibility that stateless communities might confront the same 'supreme emergency' that justified, in his view, the bombing of innocent German civilians [in World War II]" (2000:66). George remains in the state-centric paradigm also. He does admit that moral communities may exist, within which a political agent may have legitimate authority; however, he does not take up this line of argument in favor of non-state political communities (2000:87–88). George neglects the fact that many moral and political communities exist that perceive themselves, for whatever reasons, as living outside of the state and perhaps residing within a separate political unit of their own with their own agents.

Coates's Definition of Legitimate Authority

Coates's definition of legitimate authority is difficult to ascertain, as he does not really put forth a definition of what it is or how it should be determined. It may be surmised, however, that, given Coates's enmity toward revolutionary groups and his belief in the international community, legitimate authority depends on two basic qualifications: the public monopoly of force and membership within the international community (Steinhoff 2007:12). On this first qualification, Coates makes the case that the public monopoly of force has remained the major reason for putting forth legitimate authority as the primary just-war principle. Accordingly, by morally condemning private force, moral philosophers have been able to place limits on violence and usher in civilization. Coates promotes violence for public ends, and he does not completely discount the idea of non-state units maintaining agents that have such ends in mind; however, he is highly critical of such units. This is because, to him, these units often undertake revolutionary action, which is primarily, if not always, "countervalue" warfare perpetrated by an authoritarian elite (1997:125–33). Thus, Coates finds that non-state units have a propensity to pursue private objectives as opposed to public ones, yet he seems to take a narrow view of what public means.

"Public" is not determined by state sovereignty but by the people who make up a unit. Even a state may pursue a goal that it sees as public while its citizens do not share that sentiment. Indeed, it is no hard task to find communities within states that do not see themselves as part of that state, have their own public aims, or see the aims of their state as primarily private ventures. Public force, therefore, is not limited to states but is something that may be exercised even by revolutionary groups.

Notwithstanding his criticism of non-state units, Coates is not an advocate of the state-centric paradigm. In fact, he argues against such an obdurate view of legitimate authority by claiming that this view is responsible for the undermining and diminishing of the influence of this principle. To him, legitimate authority may be exercised by agents of non-state units, but both such units and states should be scrutinized and held to the qualifications of this principle if this principle is to maintain its integrity and continue serving as a valid qualification for the justification of violence (1997:125–26). If legitimate authority is to be used as a qualification of just war, it only makes sense that its use remains consistent amongst all political units.

Coates's latter proposition, however, is his faultiest in that he puts too much faith in the international community and in states' membership in that community. In support of this proposition, he states:

The state's right to war derives not from its *de facto* or "coercive" sovereignty—that would be to accept the realist contention that international relations constitute a state of war—but from its membership of an international community to the common good of which the state is ordered and to the law of which it is subject. (1997:127)

Coates here forgets that the state is not created for the benefit of the international community or its members but for the benefit of that state's own citizens; the moral imperative of its agent is in the protection of its citizens' natural rights and not the happiness or well-being of other states. Coates may wish to contend with the realist theory of international relations, but in so doing, he discounts reality, that being that states are beholden to only those within their borders because they owe their existence and legitimacy, in large part, to their inhabitants, not to other states or

units. No state would voluntarily give away its sovereignty to an international body, nor would state agents worry more about the international community than about their own political communities. The right to war comes not from without but from within the political community and must, therefore, not be restricted to states.

Thompson's Definition of Legitimate Authority

Thompson, attempting to revise Coates's take on legitimate authority, proposes three distinct qualifications for this principle. She states:

A group will count as terrorist if it fails to meet at least one of the three conditions for legitimacy: if it either fails to be an organization accountable for the violence of its members, or it refuses to recognise the restraints of just war theory and international law, or it is not the agent of the people in whose name or for whose sake it claims to act. (2005:155)

The first of these qualifications is quite limpid in its implication that the agent must have a public monopoly of force. This idea is similar to that of Coates's take on public force, and it, likewise, evinces Thompson's underlying state-centric bias. Thompson feels that if violence is uncontrolled, making and keeping the peace becomes extremely difficult (2005:155), yet this qualification seems irrelevant to the discussion of legitimate authority if only because it is difficult to ascertain the amount of control an agent has over its members. Even within a state army, members may desert, switch sides, become double-agents, or even refuse to follow orders. Moreover, there have been many historical instances in which small military units continued fighting even after their commanders surrendered. It seems that Thompson uses this qualification to disqualify non-state agents, and especially terrorist groups, from legitimate authority, yet state agents are no better at controlling their members than are terrorist groups.

Moving Past the State

Other philosophers, nevertheless, clearly view legitimate authority as a principle that may transcend the state and be exercised by non-state agents, *including terrorist groups*, which act on behalf of some political unit. Heather Wilson admits that "recognition of an entity representing a people is still a very primitive and tenuous development for which definitive rules do not exist," but she points out that contemporary international law has often acknowledged the right of many of these groups to exist, recognizing them as legitimate representatives of their respective political communities (1988:91–92, 117, 138; Held 2008:53). If agents of non-state political units may obtain *legal recognition* as legitimate authorities of their political units, such agents may be *morally justified* in exercising authority. Certainly, in the field of international law, these terrorist groups have been viewed for some time as possessing the ability to be considered legitimate.

Past legal recognition, however, is not a firm reason to accept non-state political units as legitimate authorities. Vastly more important than this is the pursuit of moral limitation of violence during wars. Indeed, Valls states that if any attempt is to be made to assess cases of political violence perpetrated by non-state political units and to place some moral limits on such violence, just-war theory must move beyond the state-centric paradigm and accept that even terrorist groups are not beyond the pale of moral justification (2000:65, 78). Thompson's second

qualification seems to support this exercise, as she makes a good point that the just-war principles should be followed by legitimate authorities (it can be assumed that state and non-state agents alike may be legitimate if they follow these principles). As Uwe Steinhoff notes, however, Thompson leaves this qualification open for interpretation, providing no real way to measure disregard for morality. Steinhoff states: “Thus one and the same course of action, for example the bombing of children’s homes, is not yet an act of terrorist violence when it is pursued for the first or second time, but only, perhaps, when pursued a forty-third time” (2007:17). Thompson includes this qualification only to put forth that not all breaches of just war should be considered illegitimate. This may be true, because it is difficult to rule on issues of such gravitas in absolutes, but if the just-war tradition is meant to limit violence—and this is really its primary purpose—then the criteria of this tradition must not be arbitrary.

The Political Community

Steinhoff, like Valls, wishes to move beyond the state-centric paradigm, yet he goes much further by claiming that legitimate authority may even be exercised by individuals and private groups. He states: “Contrary to the tradition of just war theory . . . every single individual is a legitimate authority and has the right to declare war on others or the state, provided only that the individual proceed responsibly in his or her decision process” (2007:3). Such an approach, however, would make the possibilities limitless for individuals and private groups concerned with their own individual agendas and not with the public good. The just-war tradition has always held that individuals retain a right to self-defense, and while communities—made up of these individuals—also retain this right, it is unfeasible for individuals or “more or less unorganized groups” to bear legitimate authority in waging public war as Steinhoff (2007:20) imagines. If, indeed, communal integrity should be respected by the individuals within the community and outside of it (and there is little evidence to prove that this integrity should not be respected, as, without the bonds of communal obligation and duty, the community would cease to exist), it must be considered immoral for any such private group to claim legitimate authority in any case where that group’s actions oppose the public good or cause harm to that community. Indeed, such a group would resemble James Madison’s “faction” in “Federalist #10,” a group that does not have the interest of the community in mind and is, by definition, completely opposed to it (Madison [1787–1788] 1982:43). To prevent such usurpations of authority, it is important to limit the types of units that may possess agents with legitimate authority.

National and ethnic communities have historically claimed the right to make just war and to have agents able to exercise legitimate authority in carrying out such wars. The community, the basis of identity for many people, is perhaps the best form of non-state unit to have an agent endowed with this right, but some sort of objective measure is needed to determine what constitutes a community. Beyond having shared beliefs, a common life and identity, and shared sacrifices and obligations toward comembers—which are all difficult to gauge—communities must also be aimed at some tangible public or political goal if they are to be considered qualified to have an agent with legitimate authority (Walzer 1977:54; Shanahan 2009:73). The existence of this public or political goal makes the community a political one, and it also provides for the empirical measurement of that community’s public aims, as it can easily be determined through community publications, election data, and opinion polls how strong the inclination of the community is toward those specific aims; therefore, only agents representing *political communities* may exercise legitimate authority, as these are the only communities with measurable public goals.

THE ISSUE OF CONSENT

If terrorist groups may claim legitimate authority over a political community, it must be determined whether this right is bestowed simply by some unilateral exclamation by the agent or by some measure of consent from the people of the community (Held 2008:53). Valls argues that legitimate authority “requires not merely claiming to represent a people but also being seen by the people themselves as their representative,” and if those people view an agent as having legitimate authority, that is all that is needed for such authority to exist (2000:71–2). Indeed, Thompson’s final qualification for legitimate authority (and the only one that has merit) claims that consent is necessary, yet some groups, as Coates observes, assert authority even without consent. They often claim justification based on the general lack of “revolutionary consciousness and will” of the community (1997:136–37). Burleigh Taylor Wilkins (1992) notes that this nonconsensual assertion of authority may be morally wrong, yet he offers no real criticism of such “vanguard” groups. He states:

It might, for example, be enough for a terrorist movement simply to claim to represent the aspirations or the moral rights of a people, or a group within a country, without much, if any, attention being paid to the question of how, by what legal or quasi-legal steps, it came to represent these aspirations or rights. (1992:71–2)

It is the position of this article, however, that war-making agents must have consent of their political communities for their authority to be considered legitimate. Coates points out that many schools of thought make the case for unpopular revolution but their arguments are morally flawed because their methods can be seen as no less than methods of manipulation aimed not at educating or promoting autonomy among the people but at advancing a private agenda that may actually be destructive to the community (1997:138–39).

It stands to reason that if Government A rules over its citizens through coercion and Government B rules over its citizens through consent (some form of democratic constitution in which the people can vote, directly or indirectly, on government policies), Government B is the morally justified agent because its citizens have given voluntary consent to be ruled over and represented by that government. This does not mean that each and every citizen, every day, gives some form of consent to the government, but in liberal democratic societies, citizens do have the opportunity to give their consent in free and open elections. A coercive government does not allow this and instead uses coercion to gain support, which is immoral because such coercion may force people to support things that they morally repudiate, such as putting their own lives or property in danger, bequeathing their most fundamental rights. Many terrorist organizations claim legitimate authority even while they gain their support through coercion. These groups do not represent their political communities and, thus, are illegitimate.

Consent versus Support

Consent is often confused with support by political theorists, yet there is an important difference between the two that must be noted: Although consent must *always*, by definition, be given freely, support may be gained by an authority either freely or through coercion (force of arms, intimidation, fraud, etc.). Consent cannot exist without some support, though support can exist without consent. Consider this: A man gives his *consent* to a government to protect him in

exchange for some of his individual sovereignty. Though he does not always agree with every law that the government enacts, he *supports* the right of that government to pass some unlikeable laws as long as that government does its duty to him. He understands that the government, more often than not, serves its purpose even if it sometimes passes laws that he disagrees with. This man, however, would not support that government if it repeatedly enacted laws that were inextricably opposed to his beliefs or put him in harm's way. In such a case, this man would not only refuse to support the government but would withdraw his consent as well because that government would be both failing to do its service to him (protect his natural rights) and enacting laws that repulse him. In this case, the government could not gain the man's consent without changing its laws; however, it could use some form of coercion to gain strong support from the man, either making the man believe that the government's laws are actually beneficial to him or by forcing him to outwardly support the government regardless of his feelings.

CONCLUSION

Just-war theorists have long disregarded the principle of legitimate authority and have misinterpreted its qualifications by defining it in incomplete and peculiar fashions. Given the significance that this principle is meant to play in the determination of the moral justification of wartime actions, a new definition must move past the state-centric paradigm and acknowledge the ability of political communities to grant legitimate authority to their own agents. This ability, however, must be restricted to only political communities because it is imprudent to grant moral legitimacy to units that are not political or based on any communal bonds. Furthermore, agents without consent from such political communities must be seen as illegitimate, because they cannot truly be considered representatives of their communities.

In-depth investigation of terrorist groups and of the amount of public consent they hold proves to be both dangerous and difficult, given the ferocity of some of these groups, the nature of their regional terrain, and, especially, the lack of trustworthy public opinion polls and election data, yet the definition of legitimate authority proposed here allows for the proper investigation of terrorist groups' claims to moral justification and may be used with great success in analyzing terrorist groups as diverse as the IRA, the PKK, Hamas, and ETA, all of which hold or have held significant authority over their respective populations despite unpopularity and the use of coercion. Given the steep rise of terrorist activity in the past half century, just-war theorists have a lot to learn from analyzing terrorist groups using this definition. Hopefully, their findings will engender wider and deeper international moral condemnation for those illegitimate authorities and more respect and support for those legitimate ones.

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