

# Just War, Ethics, and Terror

## *Intelligence In Recent Public Literature*

*Just War in the Age of Terror.* By Jean Bethke Elshtain. New York: Basic Books, 2003.

*The Lesser Evil: Political Ethics in the Age of Terror.* By Michael Ignatieff.

Princeton, NJ: Princeton University Press, 2004.

### **Reviewed by William Nolte**

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Right versus might, or norms versus realism, has been a central debate within Western political thought since Machiavelli, and, even more distantly, Augustine. The emergence of liberal democracies, defined for this purpose as states that renounce certain manifestations of power in deference to the declared rights and expressed positions of its population, has added to the debate. In the American experience, for example, a 20th century president won reelection on the moral (if not moralistic) claim that the United States was “too proud to fight.”

But fight for what and with whom? And under what conditions? Little more than a year after proclaiming that war was somehow beneath American standards, Woodrow Wilson led the United States into war, with an expansive message that the war we had been too proud to fight was now the “war to end all wars” and one that would “make the world safe for democracy.” The unfortunate result of World War I, we now know, was slightly less upbeat, in that it actually created conditions that made the world safe for Lenin, Hitler, and World War II.

By the end of the 20th century, a more cynical world seemed to prefer a more realistic view. The Cold War, with its emphasis on nuclear weapons and the ugliness of a defense policy based on mutually assured destruction, seemed to exclude moral arguments and such accompanying quaintness as the distinction between civilians (cannot shoot them) and combatants (go ahead, under the appropriate limitations). It also seemed to reduce the viability of the “just war” theory that had been at the center of the intermittent Western discussion on war dating to Augustine. On its face, “proportionality of response,” one of the considerations to be met before war could be just—the others being defense of self or others and at least a reasonable likelihood of success—seems out of the question when the method of warfare centers on the exchange of nuclear weapons resulting in hundreds of millions of deaths. The distinction between combatants and noncombatants likewise loses much of its saliency when the weapons of choice do not make that distinction.

The global war on terrorism has, if nothing else, renewed the discussion of when and how societies—especially those believing that they are constituted on some values more noble than the mere continuation of their governing regimes—can use violence or restrict (on security grounds) the liberties of their own citizens or persons they encounter from other countries, friendly, neutral, or hostile.

What actions or policies are permitted a country that has been struck by terrorism of the sort inflicted over the past 10 years or so on the United States? Or Israel? Or Spain? Does the infliction of a terrorist attack (or the existence of a terrorist threat) extend the range of options permissible to an attacked state or one that believes it is about to be attacked? Does the nature of terrorism itself expand the set of options morally and ethically available to real or potential targets? These questions and others like them have produced some striking responses, not least the hotly debated assertion by noted civil libertarian Alan Dershowitz that the inevitability of torture in the repertory of counterterrorist tactics demands the development of warrants permitting (but thus limiting) torture. Others have argued that post-9/11 concerns about the treatment of prisoners at Guantanamo and Abu Ghraib are irrelevant, because the prisoners in question are not soldiers of signatories of international standards and treaties on the treatment of prisoners of war.

In this latter view, the terrorist, by renouncing participation in the state-based system that defines protections for the likes of captured soldiers and noncombatants likewise renounces the protection of that system. Falling into neither category, terrorists could be said to be “outlaws,” in the literal sense of the term. In Medieval Europe and elsewhere, to be outlawed meant literally to be beyond the scope or protection of law; therefore, any member of a threatened community could deal with the outlaw in any way conceivable (and the human imagination is nothing if not fertile). So much for due process. Clearly, the war against terrorism has raised fundamental moral and ethical issues regarding states, their authorities, and limits on those authorities.

Among the recent books addressing these and related issues are Jean Bethke Elshtain’s *Just War Against Terror* and Michael Ignatieff’s *The Lesser Evil: Political Ethics in the Age of Terror*. Both books address the full set of issues involved in the violent aspects of the war on terrorism, with real and direct implications for intelligence. [1]

Elshtain, professor of ethics at the University of Chicago, argues for a set of positions that may startle some intellectuals: Good and evil exist; they can be defined within reasonably stable standards and norms; and individuals or states acting in pursuit of the good have, again under defined conditions, not just the right to struggle against evil, but the responsibility to do so. Within this framework, Elshtain (without apparent effort) identifies terrorists and terrorism as evil. Possibly blinded by this stunning conclusion, she throws caution to the wind and defines the West, especially the United States, as having the responsibility to engage and defeat terrorism. If this is the case—proceed slowly, now—the United States could be described as an agent of the good. Either Professor Elshtain has not heard of My Lai, Watergate, Iran-Contra, or other evidence of American depravity, or she has somehow concluded that these and other failings, when measured against the campaign against human slavery that was the Union cause in the Civil War, the defeat of Nazism, and the 40-year defense against communism, emerge as unfortunate, even tragic, failings within an overall record of the advancement of human liberty.

Within that record, Elshtain would reject any moral symmetry between the president of the United States and Usama bin Laden. But, one could ask, do we not have an obligation to look past bin Laden to the “root causes” of terrorism? What makes bin Laden and others hate us? More particularly, what do we say about Western colonialism, the post-colonialist establishment of the state of Israel, and other “root causes” that explain the anger and alienation of the terrorist? Elshtain’s thesis, without denying the existence of such “root causes,” is that these circumstances neither justify terrorism nor invalidate efforts to kill them and destroy their organizations.

At the same time, Elshtain is careful to note—brilliantly, in fact—that the presence of a just cause for action against terrorists cannot justify a regression to the standards and practices employed by the terrorists. Societies tempted to behave savagely in response to savagery ultimately betray themselves, and in the process reinforce the moral symmetry advanced by relativists. The good seeks justice, she argues, not revenge, and just societies discipline themselves to inflict violence without hatred. Citing Dietrich Bonhoeffer, Elshtain argues that the civilized world’s reaction to barbarism must be to chart a course between “corrupt inaction and action motivated by revenge.”

Michael Ignatieff’s *The Lesser Evil* offers a provocative complement to Elshtain’s primer on the application of just war theory to terrorism. One of the standard tricks theology teachers used to play in pre-Vatican II Catholic schools was the dilemma of “the lesser of two evils.” It was not morally permissible, those awake were told, to do evil in pursuit of good. The end did not and could not justify the means. If, on the other hand, one was confronted with a circumstance where the only options were two evils, one was permitted to choose the lesser of the two evils. [2]

Ignatieff, director of the Carr Center for Human Rights at Harvard, engages this distinction in the form of a lecture series presented in 2003. He virtually assumes that liberal societies confronted with attack, especially attacks by terrorists or others who seem to aim at the destruction of liberal society itself, will be tempted to adopt the tactics of their antagonists. At the same time, voices will be heard from within the society under attack to beware of the tendency, in defense of democratic and civilized values, to abandon those very values.

While acknowledging the tendency of democratic governments to deal with issues of this sort in ways reminiscent of the often-noted two speeds of Congressional action—*i.e.*, inaction and overreaction—Ignatieff argues that even overreaction can be adjusted. The key is to ensure that the overreaction does not include abolition of institutions of review and oversight that can permit a return to balance and the established order. So long as overreaction by one instrument or branch of the state can be reviewed and overridden by another, the threat to liberty can be, Ignatieff argues, limited in both extent and duration.

If one assumes that one of the purposes of terrorists (and anarchists and other nihilistic movements) is to force their enemies into overreaction, Ignatieff’s cautionary notes are worth heeding. Why address the human rights of people who would deprive us of ours? First, because the liberal, industrial societies, while vulnerable in any number of ways, are also extraordinarily resilient. Resilient enough, and strong enough, for instance, to acknowledge the human rights of even the worst humans. And second, because to do otherwise destroys our trump in the war against nihilism: that we do hold to a higher, better, and more humane set of standards for human conduct.

It has long been recognized that the ethics of public policy involve something more than the extrapolation onto collective decisions of premises and conclusions applied to personal morality and ethics. At or near the center of Augustine’s view of just war, for example, is the idea that one may sacrifice one’s own life for a cause, but that a public official who chooses to sacrifice not his or her own life but those of others—especially innocent others—enters a very different moral and ethical universe. Albert Weinberg and others decades ago developed this line of argument: One may apply in a public setting the same moral and ethical premises applied in personal life and yet obtain a public outcome at odds with that achieved in a personal setting. [3] In personal expression, for example, the impulse to altruism generally induces self-sacrifice. In a public setting, an expressed altruistic motive may (not, must) lead to

self-aggrandizement.

Beyond the difference between self-sacrifice and indifference to the sacrifice of others, Ignatieff endorses Elshtain's dismissal of those who appear more eager to explain terrorism than to combat it. In the end, both would argue, the plight of the Palestinians or the shame felt by the Muslim world at the reverses experienced at the hands of the West are interesting and important. They are also largely irrelevant to the question of how zealots motivated by such history should be dealt with. In an earlier time, European appeasers were only too happy to explain Hitler's expansionism in terms of the shame of Germany's treatment at Versailles or the irredentist plight of the Sudeten Germans. Neither "root cause" *explained away* the threat a resurgent Germany posed to its neighbors. The democracies should deal, Ignatieff accepts, with injustice, in their own societies and in the rest of the world. But injustice can neither excuse the activity of the terrorist nor condemn action—even violent, life-taking action—by legitimate regimes against outlaw organizations or regimes.

These are not easy questions. They do not lend themselves to simple answers. Ignatieff, in particular, takes a hard look at the issue of preemption and discovers, to no surprise, that it is both difficult and complex. Even where he and Elshtain have left such questions only tentatively or partially answered, these books provide important, provocative assessments of ethical issues that should be addressed in the professional education of all those who serve—whether as diplomats, warriors, or intelligence officers—the coercive power of the state.

As such, intelligence officers need to address, individually and collectively, the issues of the ethics of their profession. For the case officer suborning a foreign national to commit espionage, ethical issues have always been of central concern. Counterintelligence techniques, especially, but not exclusively, those involving the treatment and interrogation of prisoners, have a similarly obvious ethical profile. But changes in technology require that all intelligence professionals should spend some time thinking through the ethics of what they do for a living. [4] A biographer of the great cryptologist William Friedman once argued that Friedman's emotional problems resulted from anguish over the use (reading other people's mail) to which his art was put. I have always doubted that Friedman was so naïve.

But the reality is that most American intelligence professionals deal in analysis or technical collection, not in the "up close and personal" world of HUMINT collection or prisoner interrogation. Back at the far end of the collection process, many of us could, even up to the recent past, feel that we were comfortably removed from the manipulation of assets or the direct application of lethal force. In some respects, the analogy is that of killing in combat with a bayonet versus dropping ordnance from 30,000 feet: The effect may be the same, but with a decent interval attached.

All this may change in an age when the sensor-to-shooter cycle is reduced to real-time. Once the first hellfire missile was loaded onto an intelligence-collecting drone, the decent interval diminished rapidly. When the director of the National Security Agency told his employees, in late 2001, that their work had put "heat, blast, and fragmentation" to effect in killing members of Taliban, the cheers were muted by a somber recognition that the answer to "Do we do that?" is "Yes." We have in recent years added a whole new meaning to the old AT&T slogan: "Reach out and touch someone."

Such considerations aside, intelligence as a profession is ethically charged. And members of that profession need, for their own sakes and for that of the democratic, lawful society they serve, to spend time thinking about the ethical considerations involving their profession. Even if

we are not dealing with the application of lethal force, the issues of providing public service in ways that put the public's needs ahead of our own, and that put the national need ahead of our agencies' interests, is enough of an ethical burden. On the last point, we are not even speaking of truly venal parochialism. The greater concern, in fact, may be what a member of this year's Intelligence Fellows class described as "well-intentioned parochialism." [5]

The best defense for the analyst who feels pressure to reach a certain judgment, or the case officer pressured to "bend the rules," is the ethical recognition that no one—analyst, interrogator, or policymaker—is well served by such corruption. That may seem a strong word, no money changing hands or anything like that. But corruption it remains, of the intelligence officer's fiduciary responsibilities to speak truth to power and to understand that American intelligence, unlike traditional "secret services," exists within a structure of law and regulation. In the end, as professionals, we are left not just with an external check of such formal rules, but with an internal sense of right and wrong. The schools of the intelligence community would be well advised to find ways to introduce the Elshain and Ignatieff books into their curricula.

### **Footnotes:**

[1] Many commentators reject the accuracy or at least the utility of the term "war on terrorism." Its use here is a matter of convenience, not an endorsement.

[2] This high moral principle was reduced to the finest pun in Patrick O'Brien's *The Fortune of War* when Captain Jack Aubrey notes two weevils emerging from a piece of hardtack and asks his colleague, Stephen Maturin, which of the two weevils he would select. Maturin ultimately decides on the larger of the two, falling into Aubrey's trap and receiving the reprimand that in "the Service one must always choose the lesser of two weevils."

[3] Albert K. Weinberg, *Manifest Destiny* (Baltimore: Johns Hopkins University Press, 1935).

[4] Readers should see Jim Burrige's article on intelligence, ethics, and the novels of John Le Carré, "SIGINT in the Novels of John Le Carré," in *Studies in Intelligence* 37, no. 1 (1993): 11–18.

[5] Our brethren in the military services have faced transformational decision points for centuries. See Williamson Murray and Allan Millet, editors, *Military Innovation in the Interwar Period*, and Edward Coffman, *The Regulars: The United States Army, 1898–1941*, for provocative and sympathetic discussion of how the right path to innovation, so easy to define in hindsight, frequently proves "too hard to do" even for devoted and capable professionals trapped in a framework of institutional loyalties and structures. Coffman's discussion of the Cavalry's efforts to find a future in the 1930s is especially instructive.

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