

Sovereign States & State Terrorism

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NEIL BRAYSHER, AUG 3 2011

How can the actions of states be described as terrorism, given state monopolies on the legitimate use of violence?

The German sociologist Max Weber claimed “the state is the form of human community that (successfully) lays claim to the monopoly on legitimate physical violence.”[1] This is essentially a statement about state sovereignty; Weber’s definition is hugely influential and has bordered on orthodoxy ever since he suggested it.

A similarly orthodox conception of terrorism is “[the use of] premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”[2] Despite the problem of finding an internationally agreed definition of terrorism, this formulation is relatively uncontroversial. The central elements (politically motivated violence against non-combatants by non-state actors), for example, would probably be acceptable to the permanent five members of the UN Security Council.

If we accept these conceptions of sovereignty and terrorism, a reasonable though uncritical reading would suggest that the concept of state terrorism is a contradiction in terms and that the use of violence by a non-state actor cannot but be terrorism. A more critical reading, however, reveals several problems with these conceptions.

To begin with, it will be suggested that neither Weber’s nor a competing conception of sovereignty preclude the possibility of acts of state also being acts of terrorism. Next, two categories of (potential) state terrorism – terror bombing campaigns during the Second World War and revolutionary violence during the consolidation of the French revolution – will be examined as test cases to see if a history-based arguments support the case for state terrorism. Finally, it will be suggested that while only the most extreme and systemic examples of a state abusing its power could properly be called state terrorism, the concept is not a contradiction in terms when derived from dominant conceptions of sovereignty.

Conceptually Analysing Weber:

The idea that Weber’s conception of a sovereign state does not preclude the idea of state terrorism will be taken up in two areas.

The first will accept the accuracy and normative desirability of Weber’s conception of sovereignty while highlighting the scope for illegitimate state violence within this conception. The second will argue that the Anglo-American contract-based conceptions of sovereignty implicitly contest Weber’s, and that neither conception rules out the possibility of state terrorism.

Sovereign States

In *Politics as a Vocation*, Weber defines his conception of the state as a prelude to the bulk of the lecture (largely concerned with the character and desired characteristics of political systems and politicians.)[3] Choosing to define a state by its means as opposed to its ends, Weber approvingly quotes Trotsky’s observation that “every State is based on force.”[4] However, force is not enough; Weber argues that it must (as much for pragmatic as normative reasons) be seen to be legitimate. Locating legitimacy in custom, rule by consented-to leaders and the law, Weber

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closes his definition of the state by observing that the (now legitimated) ends of society can only be realised through the use of a (now legitimised) monopoly on violence – hence his definition of the state.[5]

What is crucial here is that according to Weber law and custom circumscribe what the state, run by consented-to charismatic leaders, may legitimately do. Accepting Weber's assertion that states have a monopoly on legitimate violence does not mean all violence the state undertakes is legitimate – if leaders use violence in violation of the laws or customs of that society then the people cannot be presumed to consent to it, providing both normative and practical difficulties. It therefore seems impossible to assert that acts of state cannot be acts of terrorism on the basis of Weber's conception of sovereignty; his definition simply doesn't address the issue of terrorism, state or otherwise.

Sovereign Peoples

Contrasting Weber's explicit definition of state sovereignty to implicit Anglo-American ideas is helpful in this context. The important point of departure between Weber's and Anglo-American contract based conceptions of sovereignty is the foundation of individuals' rights. Weber's definition of statehood appears to be based upon or at least tolerant of legal positivism. He makes no provision for inalienable rights or even an hierarchy of values; like Machiavelli and Rousseau, Weber's conception of sovereignty is fully vested or at least unconcerned with regards to the fully vesting of sovereignty in the state.

By contrast the contract theories of Locke[6] and Rawls[7] are premised upon the idea of inalienable rights derived (implicitly in Rawls' work, explicitly in Locke's) from natural law. Even authoritarian thinkers like Hobbes allow an inalienable right of resistance in limited circumstances grounded in natural law as a guide to rational action.[8] As a result, there is a tendency among the most influential Anglo-American political theorist to argue that in the final analysis "the people" retain some residual sovereignty; and that as a corollary some acts of state are always illegitimate.

This is not a vacuous observation or a philosophical nicety; this principle has been given concrete effect in the property rights and constitutional law of both Britain and the US since 1688. It explains why Louis XIV could say

"L'état, c'est moi"[9] when British judges were striking down the concept of raison d'état and compelling the King's agents to appear in court.[10] This kind of distinction still survives in the difference between civil and common law systems; to generalise, civil law systems grant rights and freedoms alongside duties and obligations, whereas common law systems hold that as rights inhere to individuals and are delimited via consent whatever is not specifically imposed or proscribed is legal.[11]

Implications for the concept of state terrorism

This is not to suggest that Weberian and Anglo-American conceptions of sovereignty are incompatible; in all but extreme cases they coincide quite easily. State terrorism, however, is an extreme case. To link this analysis to the question posed both Weber's formulation and Anglo-American conceptions are capable of legitimizing or delegitimizing state violence. Further, the Anglo-American natural rights grounded conception will *always* delegitimize some forms of state violence (extrajudicial killing of noncombatants for example) irrespective of whether it was undertaken by a state or non-state actor with or without the consent of the population.

We can draw two conclusions from this. Firstly, some acts of state violence are morally privileged vis-à-vis those of non-state actors while others are not. As a corollary, we cannot conclusively argue for or against the existence of state terrorism on the grounds of sovereignty.

Historical examination of the state use of Terror

Regardless of whether or not state terrorism is a contradiction in terms, states have attempted to impose political ends by inducing fear through the use of violence. This can be legitimate or illegitimate; states may legitimately impose a political end through the use or threat of violence during an armed conflict *if* they meet certain normative

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and legal requirements.[12]

The idea of acts of state as terrorism will be discussed with reference to two distinct settings: terror as a method of warfare and revolutionary terror as a method of political control.

Terror as a means: strategic bombing in the Second World War

Arguing that the strategic bombing campaigns of the Second World War could amount to state terrorism is controversial. Three objections suggest themselves: firstly, that states cannot commit acts of terrorism;[13] secondly, these states were in a state of declared war and hence the bombing campaigns were, if illegitimate, war crimes, not terrorism; and that thirdly, the strategic bombing campaigns were directed at legitimate military targets by military forces and were therefore legitimate acts of war.[14]

The first objection does not stand; it has already been shown that definitions of terrorism excluding the state premised on a Weberian definition of sovereignty are unsustainable. If they are not premised on this conception of sovereignty they simply fall outside scope of the current discussion.

The second and third objections are more sustainable. According to Clausewitz, states should determine their political interests and decide if going to war is necessary. They should then formulate their war aims to prevent the hostilities undermining their reasons for going to war in the first place. Finally, they should identify their enemies' "centre of gravity" and destroy or damage it so badly they capitulate out of fear or necessity.

During the Second World War, the major belligerents were heavily industrialized and aimed for the unconditional surrender and occupation of enemy states;[15] this led to something approaching Clausewitz's total-war ideal where the enemies society, including civilian population, factories and infrastructure as well as the military became the centre of gravity to be destroyed or scared into submission. In this context, the strategic bombing campaigns in the Second World War were broadly accepted to have had three primary goals: to destroy enemy military forces, to cripple the infrastructure supplying these forces, and to scare the enemy population into surrender.[16]

The third objection (that the bombing campaigns were conducted by military forces against military objectives [factories, railways etc[17]]) and were hence legitimate military actions can be assessed with reference to international humanitarian law.[18] Provided the doctrines of non-combatant immunity, proportionality and double effect were respected, we can unequivocally say the strategic bombing campaigns were legitimate military actions.

At least two cases fail to meet these criteria; Dresden and Hiroshima. Dresden had limited strategic value and was bombed with the express intention of breaking the morale of the civilian population;[19] the only difference with Hiroshima was the target (Japanese government) and the means (atomic weapons.)[20]

Under the Clausewitzian logic outlined above, terrorizing a civilian population would be a valid means of achieving a political end. As these bombings fall outside the laws of war but were committed in the context of an armed conflict (they fail to pass the discrimination and double effect tests, though Hiroshima was arguably proportionate), it seems reasonable to suggest they are war crimes, not terrorism.

But why can they not be both? There is nothing in the Weberian or Anglo-American conception of sovereignty to discredit the concept of state terrorism. If Dresden and Hiroshima were destroyed to shorten the European and Pacific wars hence saving lives (and bombing Hiroshima arguably did)[21], surely the state is employing illegitimate violence to instill terror as a means to a political end, irrespective of the legitimacy of those ends.

Dresden and Hiroshima are ambiguous cases. The purpose of the attacks were primarily to terrify and subdue a political unit for a political end, but they happened in the context of an armed conflict between states; coherent arguments can be made suggesting the attacks were anything from state terrorism to legitimate warfare.

Terror as an End – States of Terror[22]

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Terror bombing was purely instrumental – a military means to a political end. After the surrender of Germany and Japan state administered reprisals from bans on holding public officer to death sentences followed judicial proceedings in regularly constituted courts.[23] Terror had no place in allied occupation plans.

When arguing that all societies are based on force,[24] Weber adds the significant caveat that the most of the time compliance with state authorities will derive from consent not fear.[25] Yet some states have maintained control through the threat of violence to the extent that terror becomes an end in itself; revolutionary France and the USSR under Stalin are two such examples.[26]

When determining what might constitute an act of state terrorism, two questions arise. Firstly, if definitions of terrorism that specifically exclude states are in the context of the question posed irrelevant or unsustainable, how can we define terrorism?[27] Further, how can we distinguish repressive acts of state (which all states occasionally resort to) from those properly labeled state terrorism?[28]

If we can show that some acts of state violence are illegitimate – as both Weberian and Anglo-American contract theories of sovereignty suggest – it seems fair to use the criteria we would apply to non-state groups. This is itself hazardous; even ignoring the state/non-state controversy definitions of terrorism are contentious. The American legal and strategic theorist Phillip Bobbitt suggests this definition:

“...the pursuit of political goals through the use of violence against noncombatants in order to dissuade them from doing what they have a lawful right to do.”[29]

Bobbitt's formulation is highly useful for a number of reasons. Firstly, although his political-theoretical worldview is rooted in the Anglo-American tradition identified above, the definition with its (deliberate) emphasis on legality is compatible Weber's positivist conception. Secondly, it is deliberately constructed to be applicable to both State and non-state actors. On top of this, it ties in neatly to the problem of determining the threshold of state terrorism.

Rosemary O'Kane argues that the French revolution and Stalinist Russia provide two seminal examples of state terrorism. In repressive or revolutionary societies one can know and follow the law to avoid punishment but that “in all terrorist states, some arbitrariness must remain.”[30] The method of defining legitimate and illegitimate acts of violence by reference to the law recognizes the incredibly strong normative force of law. Weberian and Anglo-American conceptions see it as the means of creating legitimacy[31] and a mechanism for indicating or withholding consent[32] respectively. Groups as disparate as contemporary Chinese political theorists[33] and senior Al-Qaeda leaders[34] have affirmed their allegiance to varying conceptions of the rule of law. By stipulating that state terror must contain an element of arbitrary unlawfulness we can distinguish it from other categories of illegitimate violence.

Combining Bobbitt's definition with O'Kane's test of arbitrariness give us a rather restrictive definition that both Stalinist Russia and revolutionary France meet. The course of “the Terror” saw initially reasonable laws aimed at preventing armed counter-revolution expanded to the point where an individual could be executed within 24 hours of arrest by state authorities because of the suspicions of a single official. Trials presumed the guilt of the accused who had no access to legal council – presuming such individuals survived long enough to be tried.[35] Show trials in Stalinist Russia were similarly unreasonable. Despite a façade of due process it was common knowledge even to moderately informed contemporaries the process was a sham. [36]

It seems reasonable to conclude that both these examples represent extreme arbitrariness and a complete absence of a credible legal process, resulting in the application of violence against unarmed civilians with the purpose of politically subduing a population, and that as such constitute state terrorism.

Conclusion

Can the actions of states ever be terrorism? Two conclusions suggest themselves.

Firstly, Weber's formulation of sovereignty in no way precludes states committing acts of terrorism. To be relevant to

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state terrorism, Weber's definition of sovereignty must be read in the context of the rest of *Politics as a Vocation*; and even in this context it is only tangentially relevant in that it suggest the criteria that legitimate a states monopoly on violence.

Secondly, we can draw some tenuous suggestions vis-à-vis state terror from Weber's conception of sovereignty. Resting upon a base of legal positivism, Weber's state could either support or repudiate the concept of state terrorism depending on the positive laws passed by the consented-to rulers. On top of this, there are competing conceptions of sovereignty. The Anglo-American conception presents a serious challenge to Weber, and could coherently support a conception of terrorism that does not exclude acts of state.

It is worth noting that this conclusion does not have to be dramatically subversive to the authority or legitimacy of the state. We have to apply the work of individual theorists within this tradition to some of the most extreme and systemic acts of domestic political violence (Revolutionary France, Stalinist Russia) to be able to suggest that state terrorism may be a historical fact.

To close, states can be said to commit act of terrorism in the context of Weber; but this conclusion does not in and of itself validate the concept of state terrorism.

[1] Weber M (edited Owen D and Strong B; translated Livingstone R), *The Vocation Lectures* (Indianapolis, Hackett Publishing Company 2004) pg 33.

[2] US State Department press release via website accessed 15/04/2010 at (<http://www.state.gov/s/ct/rls/crt/2002/html/19977.htm>)

[3] Weber, *Lectures* pgs 32-94

[4] Weber, *Lectures* pg 33.

[5] Weber, *Lectures* pgs 33-6

[6] Locke J (edited Laslett P), *Two Treatises of Government* (Cambridge, Cambridge University Press 2004) pgs 269-278

[7] Rawls J, *The Law of Peoples* (Cambridge Massachusetts, Harvard University Press 2002) pgs 30-4

[8] Baumgold D writing in *Political Thinkers from Socrates to the Present* (edited by Boucher D and Kelly P) (New York, Oxford University Press 2003) pg 176.

[9] Bobbitt P, *The Shield of Achilles* (London, Penguin Books 2002) page 122

[10] Alder J, *Constitutional and Administrative Law* (New York, Palgrave Macmillan 2007) pg 161.

[11] G Slapper and Kelly D, *The English Legal System* (Oxon, Routledge-Cavendish 2009) pgs 102-29

[12] UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford, Oxford University Press 2005) pgs 21-6

[13] See footnote 2

[14] See footnote 14 for criteria regarding situational use of force.

[15] Bobbitt P, *Terror and Consent* (London, Penguin Group 2008) pg 352-3

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[16] Werrell K. P, *The Strategic Bombing of Germany in World War II: Costs and Accomplishments* in *The Journal of American History* Vol. 73, No. 3 (Dec., 1986), pp. 702-713 accessed at 16/04/2010 at <http://www.jstor.org/stable/1902984>.

[17] MOD, *Law of Armed Conflict* pgs 54-7

[18] See Geneva Conventions I-IV and additional protocols I & II at <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>; accessed at 17/04/2010

[19] Werrell K. P, *The Strategic Bombing of Germany in World War II: Costs and Accomplishments* in *The Journal of American History* Vol. 73, No. 3 (Dec., 1986), pp. 702-713 accessed at 16/04/2010 at <http://www.jstor.org/stable/1902984>.

[20] Nagasaki is not included as it was arguably bombed for different reasons.

[21] Campbell Craig H and Radchenko S, *The Atomic Bomb and the Origins of the Cold War* (London, New Haven University Press 2008) pgs 62-90

[22] Bobbitt, *Terror and Consent*, pg viii.

[23] Judt T, *Postwar* (New York, Penguin Group 2005) pgs 63-128

[24] See above, page 2 paragraph 1

[25] Weber, *Lectures* pgs 33-6

[26] O'Kane R, *The Revolutionary Reign of Terror* (Aldershot, Edward Elgar Publishing Limited 1991) pgs 16-24

[27] See page 2 paragraph 2

[28] O'Kane, *Reign of Terror*, pgs 18-20

[29] Bobbitt, *Terror and Consent*, pg 352

[30] O'Kane, *Reign of Terror*, pg 19.

[31] Weber, *Lectures* pgs 33-6

[32] Locke J *Two Treatise of Government* pgs 366-74

[33] Leonard M, *What Does China Think?* (London, HarperCollins 2008) pgs 60-79

[34] Al-Zawahiri A, quoted in a an article on the BBC News Website (no accredited author) accessed 18/04/2010 at http://news.bbc.co.uk/1/hi/world/middle_east/4775222.stm

[35] O'Kane, *Reign of Terror* pgs 57-84.

[36] Judt T, *Postwar* (New York, Penguin Group 2005) pgs 63-128

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