

COVERT OPERATIONS: JUST WAR OR DIRTY HANDS?

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Pictures of persons missing after the 1973 Chilean coup. 2003. Marjorie Apel. Salvador Allende Foundation, Santiago, Chile. Source: Wikimedia Commons.

Russia's attempt to tamper with the United States Presidential election in 2016 has generated an enormous amount of controversy, and rightly so. Tampering with another nation's elections is an act of force against that country's sovereignty. As such, doing so is forbidden in peacetime by international law. Nevertheless, what has been absent in most media coverage is a reckoning with both the US' own attempts, some of them quite successful, to tamper with the elections of other countries, as well as with whether or not such actions are ever justifiable. In any case, most heads of state, including the President of the United States, have the legal authority, and in the US case constitutional responsibility, to ensure national security, including through the utilization of secret operations in support of foreign policy objectives. Covert operations that seek regime change in adversary nations can, under certain conditions, find legal sanction under this mandate.

In figuring the ethics of such an endeavor, two primary Christian schools of thought that might support covert

operations, albeit in very different ways, include the just war tradition and a kind of "dirty hands" moralism. The latter

holds that, given the way the world is, all those in political power must unavoidably resort to evil for the common good.

Against this allowance, the just war tradition places more exacting moral constraints on acts of force. Thus, when it comes to considering the justifiability of covert operations, a great deal rides on which moral scheme we choose to guide our action.

The term “dirty hands” first came into being as the title of a Jean-Paul Sartre play, but it didn’t become the philosophical coin of the realm until the publication of political theorist Michael Walzer’s essay *Political Action: The Problem of Dirty Hands*. Walzer argues that political office unavoidably involves struggling against adversaries whose malevolent tactics make it necessary to do evil that good might come. When political leaders and those who carry out their orders do evil in a good cause, they incur moral guilt and so need to repent of it. But they did the right thing.

Dietrich Bonhoeffer is a famous example. Bonhoeffer, a theologian and an agent for German counter-intelligence in World War II, also acted as a courier for those involved in the plot to assassinate Hitler—so Bonhoeffer knew what it meant to justify illegal activities for a greater good. He also knew what was morally at stake. Following just war thinkers like Augustine and Luther, Bonhoeffer grounded Christian political action in love of neighbor. But he departs from them when he insists that responsible Christian action, in moments of real crisis, requires being free from *all* normal ethical criteria.

In such circumstances, human action becomes a kind of *ultima ratio*—ultimate necessity—bound by no law and in which doing the right thing makes us guilty of evil. Of course, there are limits even here. Dirty

hands justifications must be constrained by considerations of justice and love. For instance, even when necessary to protect our interests, we must dirty our hands only to the degree proportionately necessary to achieve our goals. Still, while it is neighbor love that compels the limited use of evil in the defense of the common good, Bonhoeffer insists (as the dirty hands moralist must) on the real nature of the resulting guilt—the actor *really is* guilty of doing moral evil. While a tragedy, because the moral actor takes the tragedy upon himself, it is a heroic tragedy.

The presence of guilt reminds us that we have committed an exceptional act that can never become a normative standard of ordinary action. A follower of Bonhoeffer might therefore reason that if a covert operation is really necessary to protect vital national interests then we should carry it out but, after doing so, admit we have crossed a line and committed a moral wrong. We then must do something to reaffirm the threshold we have crossed. Bonhoeffer himself does not specify exactly what the heroic actor’s reaffirmation of the law would look like. It would probably resemble Winston Churchill’s decision at the conclusion of WWII *not* to honor the architect of indiscriminate area bombing Sir Arthur Harris—pejoratively nicknamed “Bomber” and sometimes “Butcher”—despite the fact that Churchill had approved of Harris’ policy as the right and efficacious thing to do. Similarly, nation state leaders who initiate certain kinds of covert operations would have to come clean, at least post-facto, with a public admission of guilt and give their justifications for why they had to get their hands dirty.

This justification of dirty hands moralism is what just war thinkers like Augustine and Luther take pains to deny. The Augustinian stream of the just war tradition holds that force can be deployed to protect the common good. We ought never do moral evil that good may come. Luther, for example, was adamant about this in his famous treatise *Whether Soldiers, Too, Can Be Saved*. In his typically blunt manner, Luther insists that when we have right authority, a just cause, and good intentions, we can be righteous before God and have a clean conscience—and hands—even when we are “stabbing and killing, robbing and burning.” Luther was claiming nothing extraordinary here. Augustine and Aquinas, standing at the headwaters of the tradition, had said much the same thing.

While dirty hands moralists like Bonhoeffer believe an act can be both rooted in love and morally evil at the same time, the traditional just war position—also based upon love of neighbor—holds, as ethicist Paul Ramsey put it, that Christian political action motivated by love of neighbor is incompatible with doing moral evil. Not even love can detach from our comprehensive understanding of what it means to do good. Love cannot somehow operate freely and compel its own abandonment—love cannot overrule love. It is not enough to say that love, when it compels us to take off our gloves and dirty our hands, will also qualify our evildoing—restricting its dimensions only to what’s necessary, what’s proportional, and by a gauzy commitment to avoid tactical overkill.

Luther set the right course in thinking about how just war reasoning may necessitate an

illegal act when he pointed out the impossibility of formulating laws to cover all circumstances. There must always be room for the exceptional act. But the exception here is to the positive law, not moral norms. Luther helpfully refers to the just war criterion of right intention as a guide. Legality may be pitted against morality in certain circumstances, but there is no circumstance in which the morally right act should be pitted against the very moral principles that define what right action is in the first place. Put differently, it makes no moral sense to violate moral principles.

We should avoid the impression that dirty hands moralists like Walzer are entirely at odds with the just war tradition. Indeed, Walzer has made valuable contributions to the tradition. Moreover, the just war defender can agree with the dirty hands moralist that we live in a world in which we may have to achieve justice by doing what we would rather not do. But the just war defender holds that the commitment to use force for the common good is not the same thing as a commitment to do anything necessary in order to preserve that good. The just war criteria draw boundary markers around the decision to use force, and covert operations must conform to them. These include the primary requirements of **rightful authority, just cause, and right intention**, as well as prudential considerations such as **likelihood of success and due diligence in seeking peaceful alternatives**. Once a covert operation is sanctioned, two additional criteria guide its execution: **proportionality and discrimination (noncombatant immunity)**.

When acts of force are the right thing to do, we ought to be able to offer good, rational reasons for doing them. The just war criteria help us do so. We may be acting in the arena of the *ultima ratio*, but *ultima*, rightly understood, does not mean “out of” but only “at the edges” of normative morality. In other words, when we use force against others, we are at the very limits of a rational act, but it *is still* rational because we can offer good, moral reasons for doing so. A covert operation may be illegal, but it may also be the just and morally good thing to do. We will know when it is because it will conform to the just war criteria.

The ability to demonstrate right intention with a covert operation is very tricky because we are faced with strongly conflicting moral obligations, one of which we must forgo for the other: the duty to protect our own national interests and the duty to obey international law. When we are trying to justify why one moral obligation trumps another, we need more than a bare assertion that our intentions are pure. Right intention demands that we be able to demonstrate—by what we do—that we are seeking the common good of peace. Additional moral checks that support right intention are helpful when our obligations conflict. We would also want to be reasonably certain that this infringement of the law has a realistic prospect of achieving its objective, that there are no morally preferable alternatives, that we have chosen the least severe law-breaking act to get the job done, and that we have sought to minimize the negative effects that come with breaking the law. When we have done all these things, we can demonstrate right intention and carry

out the operation with a clear conscience.

Let’s now turn to two famous US covert operations in order to draw the contours around what sorts of operations are morally licit and what sorts are not. First is the notorious 1970 Track II operation in Chile to prevent a communist government from taking power, and second is the 1980s effort in Poland to undermine the Soviet Union’s hold on the country and region.

President John F. Kennedy first authorized covert action in Chile in 1961 (Track I) to back a center Chilean Christian Democratic Party candidate against the Soviet-influenced Communist Party candidate. The Kennedy administration argued that the operation preserved Chilean constitutional order from extremists on the left and right and promoted the growth of democratic institutions in the region. The CIA initially rejected any plan to carry out a coup or use other means of overt force. Instead, it funneled in money and used propaganda and political influence. However, by 1970, the Christian Democratic Party was in trouble, and the Communist Party candidate won a new election. Fearing that Chile would quickly become a haven for communist operatives and undermine democratic institutions in the area, the Nixon administration wanted to prevent the candidate from taking office. Nixon ordered the CIA to assist in a military coup. CIA head Richard Helms balked but in the end agreed to an operation (Track II) that encouraged Chilean military officers to revolt. As a result, an extreme right-wing party took control, and it had little regard for Chilean democratically conceived constitutional order.

Let us assume for the sake of argument that the Nixon administration, like the Kennedy administration before it, could legitimately claim just cause—grounded in its justified Cold War fight against Soviet-backed communist influence in the region. Even so, the requirement of right intention is suspect, given the obvious disregard for the possible costs the Chilean people might pay depending on the kind of government they would get in place of the communists. Indeed, the prior-action CIA estimate doubted the operation afforded any real prospect of achieving its objective of encouraging and supporting democratic institutions in the region. As it happened, the Chilean people ended up with an extreme right-wing group that proved every bit as oppressive as the communists.

In short, Track II was either so disastrously incompetent or it was never really conceived or executed as a means to return Chile to a more justly ordered government. It was a way of preventing the communists from coming to power. In ignoring intelligence community concerns, the Nixon administration acted irrationally. US Cold War interests might have been met, but justice was not done to Chile. Everyone got their hands dirty. Nevertheless, dirty hands moralists would argue that, if truly necessary to protect our own narrow Cold War interests, an operation like Track II was the right thing to do.

In sharp contrast to the injustice of Track II, let us consider the Reagan administration's decision to provide covert aid to Poland's Solidarity movement in an effort to strengthen the movement's political hand and diminish the Soviet Union's influence in Poland and the

entire Eastern Bloc. The covert operation called for the CIA to provide Solidarity with the means to wage an underground political war, mainly with printing materials and communications equipment. The CIA also used tactics such as smuggling in postcards with a photograph of Father Jerzy Popiełuszko—a Polish Roman Catholic murdered by the communist security services—and copies of the infamous map used by Hitler and Stalin to divide up Poland between them. It also arranged a pro-Solidarity demonstration at a soccer match and made sure the cameras got a good view of the pro-Solidarity banners. It even transmitted speeches made by Solidarity leaders over the radio.

All of this was in violation of international law. But was justice done? It can be argued that Poland's sovereignty had already been compromised by the Soviet Union, so Poland was not a fully self-determining nation at that point. On this view, what the US did was a kind of counter-intervention to put right what the USSR had earlier compromised. The Solidarity movement was pro-democratic and popular with a majority of Poles. Thus, the US broke the law of non-interference in order to restore to Poland to a state of non-interference. Here the very act of breaking the law achieves what the broken law was meant to achieve but could not, given the circumstances. This is precisely what Luther was getting at when he pointed out how exceptions to the law must be made in order to preserve the justice the law is meant to achieve but cannot.

The Reagan administration possessed reliable intelligence (much of it arriving courtesy of Pope John Paul II, who was in

touch with all the major players) that gave them good reasons to believe that the Solidarity movement would prevail with adequate help. There was no alternative short of armed hostilities with the Soviet Union. In this case, the decision to avoid an open fight with the Soviet Union is an indication that the US chose the least infringement on the freedom of Poland in the circumstance. The US also chose the least possible infringement when it decided to aid the Solidarity movement rather than right-wing parties that might have been more malleable in US hands. Thus, the US can make a plausible case both that justice was done and that it was done with the right intent. The operation was a moral good. No one who ordered or carried it out need have a guilty conscience. No one got their hands dirty.

What about when innocent people are harmed in covert operations? Solidarity's actions could have garnered a brutal response from the Soviet-backed security forces. Innocent family members of Solidarity agents, even those merely suspected of being Solidarity agents, would be placed in harm's way. How can we avoid getting our hands dirty when we foresee that harm could come to them?

The question comes down to whether or not we are intentionally targeting the innocent. Here the classic moral principle of double-effect gives us guidance, for it enables us to clarify when the foreseen consequences of our actions are intentional—and thus morally imputable to us—and when they are unintended—and therefore not morally imputable to us. Put as simply as possible, double-effect recognizes the obvious reality that our intentional

act may have an effect we do not actively desire, though we may foresee it.

In Poland, the US intended to gain more political power for Solidarity and to loosen the Soviet stranglehold on the country. Washington knew, but did not desire, that the Soviet-backed response might be horrifically brutal. Whether the US could be held responsible for these unintended effects depends, first, on whether or not it took due diligence to mitigate violent response. Carelessness in planning or in carrying out even just plans can mar the justice of an operation. Second, the foreseen but unintended bad effect must not be the means by which we achieve the intended good effect. So, the US could not plan actions in which success depended upon innocent people being brutalized. Clearly, if the bad effect is the means, then we desire that bad effect.

I wish to end with a hypothetical case that may one day present itself to the US or any state concerned about the Middle East. Let us suppose that it was possible to tamper with elections in Iran (the US and the United Kingdom did it once before in 1951). Assume the goal would be to achieve a more democratic Iran, free from the oppressive rule of clerics, friendlier to the West, less likely to seek nuclear capabilities, and less likely to support terrorism. The operation would involve aiding a candidate (or candidates) who is likely to work toward these goals. The methods would be financial aid, spreading unfavorable but factual reports about the current government's methods of governing, and fomenting disruption of the current President's speeches and unrest in the Iranian military. Is

there a just war case to be made for such an operation?

The just war moralist would recognize from the beginning that such an operation is likely illegal, though, as with Poland, this might be complicated by questions regarding the legitimacy of the Iranian regime and whether it is meeting its sovereign responsibilities for the Iranian people. This, in turn, would partially depend on whether the majority of the Iranian people desire the current regime.

Beyond equivocations regarding legality, all the primary just war criteria would next have to be met. The requirement of right authority can be satisfied if a lawfully elected sovereign governing body orders the operation. Just cause can be met because it is clearly in the interest of the region and of many nation states around the world to have a freer, less belligerent Iran that does not continually disrupt the region, seek nuclear weapons capabilities, or harbor and provide aid to terrorists. Right intention can be demonstrated by aiming at the justice, order, and peace of the Iranian people and wider region.

Secondary concerns can be satisfied if alternative lawful means, such as diplomacy, are not viable. Proportionality can be met if more good than harm comes from the operation—as is likely if a covert operation can avoid invasion or large-scale air strikes—and discrimination can be met if innocent people are not targeted with violence. The infringement has a real chance of succeeding if the Iranian people and—crucially—the Iranian military really want the change. Having the popular support, the proposed operation—while an infringement—would be the

smallest possible infringement commensurate with achieving the goal. By not needing to avail itself of other possible infringements that would have been more severe—such as stuffing ballot boxes, using smear tactics against the current President, or using force to prevent pro-President voters from voting—the interfering nation can prove itself in support of the will of the people. The negative effects of the infringement are lessened if the candidates backed by the operation are truly popular among the people and not perceived as puppets of an external power.

If the US (or any other nation state) could achieve the goal of a more ordered and peaceful Iran, a covert operation that could bring about that goal would be illegal but just. As a just act, those involved in the operation would not dirty their hands so far as the actions performed to carry out the operation are themselves just. In such a case, the actors are morally praiseworthy. There is no call for regret or repentance.

None of this is to say that we expect moral purity, which is impossible to achieve for fallen creatures. But such an operation could be attempted in a way that the people involved need not get their hands dirty. It should be obvious that the just war criteria place tight restrictions on such operations and, therefore, could make them less likely to succeed. But that is how it should be. That is what we expect from effective moral principles. P

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