

Introduction

This book is a contribution to the literature on the ethics or morality – I use the terms interchangeably – of terrorism and counter-terrorism from the standpoint of applied philosophy. Accordingly, its focus is not terrorism or counter-terrorism *per se*; it is not a descriptive or explanatory account of instances and forms of terrorism, or of the various tactical and strategic responses available to security agencies seeking to combat terrorism. Rather, I deal with a number of the profound moral issues that terrorism and counter-terrorism give rise to, including the moral permissibility/impermissibility of terrorists using lethal force against non-combatants in the service of (possibly morally justifiable) political goals, the practices of assassinating and torturing terrorists, and the infringement of civil liberties by security agencies, e.g., detention without trial, intrusive surveillance, for the purpose of protecting the lives of citizens against terrorist attacks. More specifically, my focus is the moral problems that terrorism and counter-terrorism present for the contemporary liberal-democratic state.

Moreover, this book is philosophical or ethico-analytic in character; it does not simply seek to offer a descriptive account of the various moral problems that terrorism and counter-terrorism give rise to, much less to survey the various *de facto* moral attitudes that different groups might have to these problems and any proposed solutions. Rather, I seek to analyse these moral problems, and identify the moral considerations that ought to inform – albeit not fully determine – public policy and legislation in relation to terrorism and counter-terrorism. In so doing I apply specific philosophical theories and perspectives and, more generally, employ universally accepted procedures of human reasoning. So the book is an exercise in applied philosophy. Needless to say, as such, it helps itself

to relevant empirical, public policy and legal literature on terrorism and counter-terrorism, as required.

Chapter 1 sets the stage for the ethico-philosophical analyses in Chapters 2 to 7 that constitute the essence of the book. Chapter 1 traverses the landscape of terrorism as it pertains to the contemporary liberal-democratic state by offering a brief account of five salient (real and alleged) terrorist groups and their associated campaigns. They are: (1) Al-Qaeda; (2) terrorism and counter-terrorism in the Israeli–Palestinian conflict; (3) the Irish Republican Army’s (IRA) campaign of violence in the 1970s, 1980s and 1990s in Northern Ireland; (4) the African National Congress’s (ANC) armed struggle against the apartheid state in South Africa; (5) terrorism and counter-terrorism in India in recent times.

Each of these five groups involves a contemporary liberal-democratic state, either as the *target* of terrorism, e.g., Al-Qaeda’s attack on the World Trade Center in New York on September 11, 2001, the *perpetrator* of terrorism (a species of state terrorism), e.g., the Indian security forces’ policy of torturing and killing (‘disappearances’) Sikh militants/separatists/terrorists in the Punjab in the 1980s, or as the *political goal* of the terrorist activity, e.g., the ANC’s armed struggle to establish a liberal-democratic state in South Africa.

Note that in selecting these five groups I am not necessarily labelling all of them as terrorists. Al-Qaeda is self-evidently and quintessentially a terrorist group, but the ANC arguably was not. Nor am I seeking to ignore the manifest deficiencies of some of these nation-states as liberal democracies. Israel, for example, has since the Six Day War of 1967 been exercising *de facto* political control over the West Bank and (until recently) Gaza Strip (indirectly since the establishment of the Palestinian National Authority in 1994) while denying the Palestinian inhabitants their political and civil rights. Finally, it should be noted that the liberal-democratic states in question, i.e., the US, the UK, Israel and India, are, or have been at certain times, both the victims of terrorism and the perpetrators of terrorist acts.

Chapter 2 provides a discussion of the two most plausible kinds of definition of terrorism – albeit these two different kinds are often conflated – namely, those framed in terms of targeting innocents, and those framed in terms of targeting non-combatants. I argue for a third kind of definition, albeit a definition that builds on the strengths and weaknesses of the two identified defective kinds of definition. An important feature of my proposed definition is that it respects the conceptual distinction – as opposed to the exemplification in fact – between acts of terrorism *per se* and morally justified acts of terrorism. Even if in fact there are no acts of morally justified terrorism, it should not be part of the definition of

terrorism that this be so. A further important feature of my proposed definition is that acts of terrorism (thus defined) could, pragmatically speaking, be criminalized under international law; the utility of any definition of terrorism consists in part in its potential for being accepted by many or most national governments, and enshrined in international law.

Chapter 3 addresses the question of the moral permissibility/impermissibility of targeting various categories of non-combatants by (alleged) terrorist groups. I take it to be self-evidently morally wrong for terrorists to target innocent civilians, such as children. However, there are other civilian groups in respect of which matters are not so clear. Specifically, I distinguish non-violent rights violators from combatants (the category of combatants is taken to include the leaders of combatants and those who assist combatants *qua* combatants). Within the former category I distinguish perpetrators of positive (non-violent) rights violations, e.g., those who dispossess a group of its territory by fraud, and perpetrators of culpable omissions, e.g., state officials who refuse to distribute medical supplies to disease-afflicted children with the consequence that the children die. I argue that under certain conditions it might be morally justifiable to use lethal force against non-violent rights violators. The implication of this is that *some* forms of terrorism might be morally justified under certain circumstances. It goes without saying that many, probably most, forms of terrorism, e.g., those perpetrated by Al-Qaeda, are not morally justifiable.

The principal focus of Chapter 4 is the infringement of human rights, e.g., freedom of speech, freedom of action, right to privacy, within the liberal-democratic state during peacetime as part of a counter-terrorism strategy. I argue that notwithstanding the need to give police additional specific powers in relation to intelligence/evidence gathering in particular, the morally legitimate actions of a liberal-democratic state are significantly constrained by the human rights of its individual citizens, specifically the various rights to freedom. Accordingly, there are a range of in-principle limits to counter-terrorism strategies adopted to protect the lives of citizens; it is not simply a matter of weighing up, or trading off, the right to life of some citizens against the rights to freedom of others in the abstract. To put matters somewhat crudely, there are significant in-principle limits on what a liberal-democratic state is entitled to do, even in order to protect the lives of its citizenry. Thus it is morally unacceptable, for example, to detain terrorist suspects indefinitely without trial.

Here, as elsewhere, I note the importance of not confusing the following three different contexts: (1) a well-ordered, liberal democracy at peace; (2) a liberal democracy under a state of emergency; and (3) a theatre of war. Confusing these contexts leads to a dangerous blurring of the

distinctions, for example, between what is an appropriate police power of detention of suspects under a state of emergency, as opposed to normal peacetime conditions.

An important distinction in play here is that between a one-off action that is morally justified, all things considered, and a law, or lawful institutional practice, that is morally justified in the setting of a liberal-democratic state. A particular one-off action performed in a specific context might be morally justified, all things considered, without the action in question either being lawful, or being an action of a type that ought to be lawful, in a liberal democracy. In general, the law, especially the criminal law, tracks – and ought to track – morality; however, this is not necessarily or invariably the case. I make use of this distinction in a number of the chapters in this book.

Chapter 5 addresses a variety of moral issues that arise for a liberal-democratic state operating under a state of emergency or engaged in an armed conflict with a non-state actor in a theatre of war. A liberal democracy might justifiably be operating under a state of emergency because it is confronting a one-off disaster, e.g., the 9/11 attack on the World Trade Center, and/or because of a serious, ongoing, internal armed struggle, e.g., the IRA's campaign of violence in Northern Ireland in the 1970s.

If a state of emergency is to be morally justifiable, it must be comprehensively legally circumscribed, both in relation to the precise powers granted to the government and its security agencies, and in relation to the termination of those powers and their judicial oversight while in use.

A liberal democracy might be engaged in an armed conflict with a non-state actor in a theatre of war because of serious, ongoing, terrorist attacks on the part of an external, non-state actor, e.g., Hezbollah's rocket attacks on Israeli towns. In theatres of war, terrorists are *de facto* military combatants (terrorist-combatants). Moreover, since terrorist organizations are, or ought to be, unlawful, terrorist-combatants are unlawful combatants. Since the terrorism-as-war framework (as opposed to a terrorism-as-crime framework) applies to theatres of war, it is justifiable to implement (say) a shoot-on-sight policy in relation to known terrorists; moreover, it might be morally justifiable to deploy the practice of targeted killings (assassinations) of individual terrorists.

The terrorism-as-war framework should be applied only under the following general conditions:

- 1 The terrorism-as-crime framework cannot adequately contain serious and ongoing terrorist attacks.
- 2 The application of the terrorism-as-war framework is likely to be able adequately to contain the terrorist attacks.

- 3 The application of the terrorism-as-war framework is proportionate to the terrorist threat.
- 4 The terrorism-as-war framework is applied only to an extent, e.g., with respect to a specific theatre of war but not necessarily to all areas that have suffered, or might suffer, a terrorist attack, and over a period of time, that is necessary.
- 5 All things considered, the application of the terrorism-as-war framework will have good consequences security-wise and better overall consequences, e.g., in terms of loss of life, restrictions on freedoms, economic impact, institutional damage, than the competing options.

Notwithstanding the possible moral acceptability of such counter-terrorism measures in a theatre of war and/or under a state of emergency (but not otherwise during peacetime), fundamental moral principles concerning human rights must be respected. In particular, it is not morally permissible for a government to discount the lives of innocent non-citizens in favour of protecting the lives of its own non-combatant, let alone combatant, citizens (as has been argued by some theorists in relation to the Israeli counter-terrorism strategy). Nor is it morally permissible for a government to possess the legal power (say) intentionally to kill one cohort of its (innocent) citizens in the service of some (alleged) larger purpose, such as (say) the protection of a second, but larger, cohort of its (innocent) citizens. Someone might suggest that a government ought to have the legal power to order the mid-air destruction of an aircraft under the control of terrorists, but whose passengers were innocent civilians, if the government deemed this necessary to prevent the aircraft crashing into a large building and killing a much larger number of innocent civilians. Such scenarios raise the related questions of the moral permissibility of legalizing: (a) the unintended (but foreseen) killing of persons known to be innocent; and (b) the intentional killing of persons known to be innocent. I argue that the legalization of (a), but not (b), is (under certain circumstances) morally acceptable.

Chapter 6 concerns a specific counter-terrorism measure, namely, torture. The chapter is in four parts: the first part addresses the question, 'What is torture?'; the second, 'What is wrong with torture?'; the third, 'Is torture ever morally justifiable?'; and the fourth, 'Should torture ever be legalized or otherwise institutionalized?' I argue that in certain extreme circumstances, the torture of a person known to be a terrorist might be morally justifiable. Roughly speaking, the circumstances are that: (1) the terrorist is in the process of completing his action of attempting to (say) murder thousands of innocent people by detonating a nuclear device, and is refusing to provide the information necessary to allow it to be defused;

and (2) torturing the terrorist is necessary and sufficient to save the lives of the innocent people in question. However, I also argue that torture should not under any circumstances be legalized or otherwise institutionalized. Here I invoke again the above-mentioned distinction between a morally justified, one-off action and a morally justified law, or lawful institutional practice. The legalization of torture, including use of torture warrants, is unnecessary, undesirable and, indeed, a threat to liberal-democratic institutions; as such, it is not morally acceptable.

In the final chapter of this book I turn to the matter of the potential use of weapons of mass destruction (WMDs) by terrorists and, more specifically, to the so-called 'dual-use dilemma' confronted by researchers in the biological sciences, and by governments and policymakers. Techniques of genetic engineering are available to enhance the virulence, transmissibility, and so on, of naturally occurring pathogens such as Ebola and smallpox; indeed, recent developments in synthetic genomics enable the creation of pathogens *de novo*. The unfortunate consequence of these scientific developments is that the means are increasingly available to enable terrorists to launch bioterrorist attacks on populations that they consider to be enemies. Accordingly, there is a dual-use dilemma. On the one hand, research in the biological sciences can, and does, do a great deal of good, e.g., by producing vaccines against viruses; on the other hand, the results of such research can potentially be used by terrorists to cause enormous harm by, for example, the weaponization of infectious diseases against which there is no vaccine.

This chapter attempts to steer a middle course between an irresponsibly permissive approach to the regulation of research in the biological sciences that would allow research to continue (more or less) unimpeded, and an unrealistic and probably counter-productive approach which would seek to subject it to the kind of heavy-handed, top-down, governmental regulation characteristic of nuclear research. It recommends, among other things, the setting up of an independent authority, mandatory physical safety, education and personnel security procedures, the licensing of dual-use technologies, and various censorship provisions.

Liberal-democratic societies tend to view terrorism, whether perpetrated by state or non-state actors, as both morally repugnant and deeply irrational. This is no doubt especially true of bioterrorism and other forms of politically motivated mass murder. However, as has often been pointed out, the counter-terrorist response of a liberal democracy needs to be governed by principles of morality and rationality if it is not to prove more damaging than the terrorist attacks themselves. Hence Goya's famous painting (reprinted on the cover of this book) is doubly salient: *The Sleep of Reason Produces Monsters*.