Introduction

> "America must maintain our moral clarity … Murdering the innocent to advance an ideology is wrong every time, everywhere."
>
> *President George W. Bush, farewell address*

This book, like many others, owes its existence to the terrorist attacks of September 11, 2001. Nonetheless, the problems that it deals with existed long before these attacks. Many of these problems have been preoccupations of mine for a long time. Although I have never fought in a war or lived in a war zone, war, violence, and threats of destruction have loomed large throughout my life.

While many questions can and should be asked about war and political violence, my main focus will be on moral questions. Because of the September 11 attacks and the subsequent "war on terrorism," I begin with moral questions about terrorism. Much of the book, however, deals with more general moral questions about war and violence. The reason for this is that we cannot have morally credible views about terrorism if we focus on terrorism alone and neglect broader issues about the ethics of war.

My aim in this book is to answer five questions:

1. What is terrorism?
2. If terrorism is especially wrong, what features of terrorism make it especially wrong?
3. If terrorism is especially wrong, why do moral condemnations of terrorism often lack credibility? Why do they evoke cynical responses rather than affirmations of respect for human life?
4. What conditions must be met in order for condemnations of terrorism to be morally credible?
5. Is terrorism always wrong, or can it sometimes be morally justified?

The methods I use to answer these questions draw on traditions of philosophical analysis that go back to Socrates. Underlying these methods is the belief that difficult questions require careful thinking and that we can best

understand issues by trying to state beliefs clearly and examine the reasons for and against them.

My perspective on these issues is also influenced by my being an American and by my long-standing skepticism about the use of war and violence. While I am not a pacifist, both temperament and experience have made me wary of war and wary of people who are too eager for violent responses to problems. Officially, of course, almost everyone is against war. In fact, war is often attractive to political leaders and to ordinary people. The deep appeal of war, its great legacy of suffering, and the frequency of unnecessary wars have made me skeptical about arguments for going to war. Nonetheless, I accept that there are times when the arguments for war are compelling.

Like others, my immediate responses to the September 11 attacks were shock, horror, and fear. While I worried about the possibility of additional attacks against us, however, I also worried about what we Americans or – more accurately – our political leaders would do in response to the September 11 attacks. And, however our leaders might choose to act, what should we, ordinary citizens, want them to do?

It took time to get from the stunned horror and moral confusion that the September 11 attacks generated to a point where I could start to construct a coherent response.[1] While Socrates says that philosophy begins with wonder, I agree more with the American pragmatists William James and Charles Sanders Peirce, who thought that philosophical reflection grows out of feelings of conflict and confusion. Because confusion is an uncomfortable state, it generates a desire for the feeling of stability that we have when our ideas fit together coherently.[2] When confusions are generated by traumatic events, we have to recover before we can think clearly about the meaning of these events and their implications for our beliefs and our actions.

The responses to the September 11 attacks are now history. President George W. Bush and his advisors saw the attacks as acts of terrorism, committed by evil people who sought to destroy the United States, its values, and its way of life. The Bush administration decided that the proper response was a global war against terrorism. Moreover, because they saw the terrorist threat as new and unique, they believed that traditional moral and

[1] My first effort was a public talk entitled "Is the War on Terrorism a Defense of Civilization?" This appeared in *Concerned Philosophers for Peace Newsletter*, Vol. 22 (Spring/Fall 2002), 19–27.

[2] For these ideas, see Charles Sanders Peirce, "The Fixation of Belief," Parts III and IV, and William James, "What Pragmatism Means," Lecture II of *Pragmatism*, both reprinted in H. S. Thayer, ed., *Pragmatism: The Classic Writings* (Indianapolis: Hackett Publishing, 1982).

legal restraints on the conduct of war were no longer applicable. They saw the war on terrorism as a no-holds-barred struggle.

These reactions seemed so clearly right to some people that they experienced a feeling of moral clarity about what had happened and how we should respond. The attacks, they thought, showed that evil is real, that evil people must be resisted by military force, and that good people need to stand together to support our leaders in this effort. Because all of this seemed axiomatic, those who experienced moral clarity saw no need to debate, discuss, analyze, or ask questions. The important thing was to oppose the "unmitigated global evil" of terrorism by supporting the Bush administration's global war on terrorism.[3]

The moral clarity response to the September 11 attacks rested on a few main ideas about terrorism: Terrorism is a distinctive type of violence that is always morally wrong. Because terrorism is inherently evil, people who engage in terrorism are evil. Terrorists have no positive moral values and only seek to destroy what is good. Since there can be no compromise or negotiation with evil people, the only proper response to them is global war against terrorism.

Even before the effects of the Bush administration's actions began to play out, it should have been clear that claims to moral clarity about terrorism were illusory and dangerous. They oversimplified complex issues, encouraged support for destructive policies, and created obstacles to achieving security. We can see that claims to moral clarity about terrorism were illusory by noting the serious confusions that lie just below the surface of the moral clarity view of terrorism and the ethics of war. To see these confusions, consider the following puzzling facts.

Consider the fact that, while many people take it as axiomatic that terrorism is wrong, it is widely acknowledged that when people try to say what terrorism is, they generally fail to come up with an acceptable definition. But if we cannot say what features make something a terrorist act, how can we differentiate terrorist acts from other acts of violence? And if we cannot differentiate terrorist acts from other acts of violence, how can we know that terrorist acts are always wrong while other violent acts are sometimes morally right?

Consider the fact that, in spite of the allegedly axiomatic belief that terrorism is wrong, the most famous comment about terrorism is the cynical

[3] The idea of moral clarity and its related agenda appear in William J. Bennett, *Why We Fight* (New York: Doubleday, 2002), and in Jean B. Elshtain, *Just War Against Terror* (New York: Basic Books, 2003). The phrase "unmitigated global evil" occurs in "A letter from America," reprinted in ibid., 182–98.

slogan "one man's terrorist is another man's freedom fighter." The slogan's subversive message is that the labeling of people as terrorists is subjective, a matter of taste rather than an objective description. Terrorism, the slogan suggests, is in the eye of the beholder. But how can the wrongness of terrorism be a self-evident moral fact if the concept of terrorism itself is subjective (so that different people apply the terrorist label to different acts)?

Consider this: when we condemn terrorism, we expect all decent people to agree with our condemnation. Yet moral criticisms of terrorism are often turned back against its critics. Instead of seeing denunciations of terrorist acts as evidence of respect for human life, many people see them as hypocritical and self-serving. How can this be? Why do moral condemnations of terrorism often fail to generate sympathy and instead evoke cynical responses to this and other moral judgments?

Consider this: many people who condemn terrorism do so because the victims of terrorist attacks are innocent people who are going about the ordinary business of life. It seems so clearly wrong for innocent people to be killed and injured in this way. At the same time, most people who condemn terrorist acts believe that war is often morally justifiable even though wars generally result in many more deaths of innocent people than terrorist attacks. But how can this be? How can terrorism be wrong because it kills innocent people while war, which generally kills more innocent people, may sometimes be right?

Each of these problems casts doubt on the credibility of moral condemnations of terrorism. How can we confidently and credibly condemn terrorism if we can't say what it is, if terrorism is not an objective category but exists only in the eye of the beholder, and if our judgments about the wrongness of terrorist acts that kill innocent people are inconsistent with our belief that the killing of innocent people in war can be morally right?

My initial aim in this book was to answer these questions by clarifying what terrorism is, what makes it wrong, and what conditions must be met in order to make moral condemnations of terrorism credible. In trying to answer these questions, however, I found that I had to ask and answer other questions about the ethics of war. In particular, I had to ask whether the often-cited prohibition on killing civilians in war (which I myself accepted) is actually justified. And this led to further questions about the justification of moral principles and then to philosophical debates between rights theories and utilitarianism. The result of trying to follow these questions where they led is a longer, more complex, and more theoretical book than I originally intended to write. My hope, of course, is that it is a better book as well.

A PREVIEW OF WHAT'S AHEAD

The book is divided into four main sections.

In Part I, "Terrorism: what's in a name?," I discuss the vexing question of what terrorism is. Which acts of violence should we call "terrorism"? Since attempts to define terrorism have been undermined by political motives and biased moral judgments, I offer a definition that is politically and morally neutral and thus avoids the problems raised by the slogan "one man's terrorist is another man's freedom fighter." One of the distinctive features of terrorism is that it is violence directed against innocent people, and this fact is what best explains why it is condemned so harshly by many people. An important virtue of the definition I defend is that it does not build this negative moral judgment into the definition of terrorism. Even if all terrorist acts are immoral (which is the view I defend), we cannot simply assume that. We need to at least consider whether terrorism can be morally justifiable, and we can only do that by using a definition that leaves open this possibility.

After giving my own definition, I consider several challenges to it. Responding to these challenges requires me to discuss what it means to say that the victims of terrorism are *innocent* and whether actions that kill innocent people *unintentionally* (as side effects or collateral damage) qualify as terrorist acts. It also requires me to criticize the influential view that we should apply the word "terrorism" only to actions carried out by non-governmental groups. An implication of this view, which I shall reject, is that governments cannot engage in terrorism acts.

In Part II, "Why moral condemnations of terrorism lack credibility," I show that many familiar views about the ethics of war imply that terrorism is not always morally wrong. I briefly discuss political realism, common-sense morality, some versions of utilitarianism, and Michael Walzer's theory in his influential book *Just and Unjust Wars*. I argue that people who hold these views cannot credibly condemn all terrorist acts for killing innocent people because these views approve of killing innocent people in at least some circumstances. I also show that traditional just war theory's condemnation of all terrorist acts lacks credibility. The credibility of just war theory is undermined by its reliance on the "principle of double effect" and its overly permissive approach to "collateral damage" killings of civilians (i.e., killings that are not aimed at civilians but that may be foreseen). I will show that some collateral damage killings are morally on a par with terrorism. Because these actions are permitted by just war theory, just war theory's credibility in condemning terrorism is undermined.

In Part III, "Defending noncombatant immunity," I defend the view that it is always wrong to attack civilians in war. In my view, we can only credibly say that terrorism is always wrong if we believe that deliberate attacks on civilians are always wrong. Having described several views that reject an absolute ban on attacking civilians, I show why each of these views is defective. I show why realists are wrong to reject the idea that morality applies to war and why Walzer is wrong in approving attacks on civilians in the circumstances that he calls "supreme emergencies."

In considering how we might justify an absolute ban on killing civilians, I begin with Walzer's claim that noncombatant immunity cannot be justified on utilitarian grounds but must be based on a theory of individual rights. Against this widely held view, I show why rights theories do not necessarily support strong rights of noncombatant immunity. I then challenge the view that no utilitarian theory could justify noncombatant immunity by developing a rule-utilitarian justification for the view that it is always wrong to attack civilians in war.

I respond to several challenges to my rule-utilitarian defense of absolute noncombatant immunity, including the argument that rule utilitarianism itself would support a "supreme emergency" exception to noncombatant immunity and the argument that it would support the view that we should minimize the total casualties of war but give no special status to civilians. Finally, I rebut the charge that the noncombatant immunity principle, when supported by utilitarian reasoning, is a merely conventional rule that cannot support serious moral demands on people engaged in war or political conflict.

In Part IV, "How much immunity should noncombatants have?," I discuss the difficult question of collateral damage. These are harms to civilians that are not intended but that occur as side effects of attacks on legitimate targets. These deaths and injuries of civilians are almost inevitable in any war. The challenge in dealing with this problem is to find a principle that is permissive enough to allow fighting a war while being restrictive enough to provide serious protection to civilians. The standard approach to this problem relies on the principle of double effect. It says that while killing civilians intentionally is wrong, actions that kill civilians may be morally justified when they do not intentionally kill the civilians. I show why this focus on intention is mistaken, in part by drawing on the legal concepts of negligence and recklessness to show that actions that cause bad consequences can be wrong even if the harms caused are not intended.

After rejecting the principle of double effect, I go on to consider three principles, each of which tries to draw the line between unintended civilian

deaths that are permissibly caused and those that are wrong. These are the foreseeable harm principle, the precautionary principle, and the proportionality principle. In considering these principles, I discuss the rules of war found in international law, Walzer's views on collateral damage killings, and parts of a Human Rights Watch evaluation of the first stage of the US war in Iraq. I argue that the precautionary principle plays a central role in the ethics of inflicting collateral damage and defend it against both the foreseeable harm principle and the proportionality principle.

In the concluding chapter, I review the answers to the questions I had raised about terrorism and return to the role of utilitarian reasoning in the development of an ethic of war. I defend the utilitarian approach against several important objections and try to strengthen its credibility as a basis for the principle of noncombatant immunity and the condemnation of terrorist acts.

PART I

Terrorism: what's in a name?

CHAPTER 1

The problem of defining terrorism

For decades prior to the September 11 attacks, a frustrating debate went on about the definition of terrorism. The mere existence of this debate presents a serious challenge to the claims of moral clarity associated with proponents of the "war on terrorism." How can we know that terrorism is always wrong if we can't say what it is? The confusions generated by the definition debate are nicely captured in remarks by Christopher Joyner. He writes:

> Politically, academically, and legally, the phenomenon of terrorism eludes clear and precise definition. In a real sense, terrorism is like pornography: You know it when you see it, but it is impossible to come up with a universally agreed-upon definition. The hackneyed bromide "One man's terrorist is another man's freedom fighter" still remains a truism in international political perceptions. "Terrorism" lies in the eye of the beholder.[1]

Three competing views appear in Joyner's account: the confident claim that we know terrorism when we see it, the distressing idea that it is impossible to agree on a definition of terrorism, and the surprising conclusion that terrorism has no objective reality but exists only "in the eye of the beholder."

The second and third points shake the moral clarity view at its foundations, criticizing its proponents for literally not knowing what they are talking about. But they also challenge anyone who believes that terrorism is wrong to "put up or shut up." Either we should define terrorism or we should keep our condemnations to ourselves. If we can't define terrorism but condemn it nonetheless, we should acknowledge that our condemnations have no moral validity but only express our personal distaste for terrorism.

I will try to show that none of the three views is true. Most important, because it is possible to define terrorism by specifying a set of objective features that all terrorist acts possess, there is no reason to think that it exists

[1] Quoted in Charles Kegley, "The Characteristics of Contemporary International Terrorism," in Charles Kegley, ed., *International Terrorism* (New York: St. Martin's, 1990), 11–12.

only in the eye of the beholder. While such a definition makes objective identifications possible, it does not show that we know terrorism when we see it. Given the inflammatory nature of the word "terrorism" and the selective, propagandistic uses of the terrorist label, it is easy to be confused. We may fail to notice terrorism when it is staring us in the face and think we see it when it is not there.

THE DEBATE ABOUT DEFINITIONS

The problem of defining terrorism is not merely academic or theoretical. For years, efforts to oppose terrorism have been stymied by disagreements about how to define it. While there are United Nations resolutions against terrorism, there is disagreement about who and what they apply to. Charles Kegley, after surveying various definitional problems, concludes pessimistically that

> It is not certain that the analytic issues facing the accurate characterization of international terrorism can be satisfactorily overcome. It may be that, as a committee of the French Senate concluded in 1984, "any definition is practically guaranteed to fail."[2]

Even if efforts to arrive at a consensus have failed, however, we should not conclude that terrorism cannot be defined unless we understand why it is indefinable.

Although Kegley tries to explain why terrorism can't be defined, his account fails. Kegley stresses the great diversity of groups that have "waged" terrorism, noting that they have been leftist, rightist, autocratic, liberationist, religious, nationalist, etc. From this, he concludes that terrorist groups share no common feature and explains that our "inability to arrive at a consensus about terrorism's characterization stems from the great variety of aims, actors' motives, and practices that are associated with it."[3]

This diversity of aims, motives, and practices, however, fails to explain the lack of a definitional consensus. Many concepts apply to diverse instances that nonetheless share some common, essential features. We have no trouble defining "theft," for example, even though people who commit thefts have diverse motives, use diverse means, and steal vastly different kinds of things. People steal for money, for the pleasure of possession, to hurt the owner, or to reclaim what they think is rightly theirs.

[2] Ibid., 12. [3] Ibid., 16.