

Chapter 1

Violence, terrorism, and justice

R. G. FREY and CHRISTOPHER W. MORRIS

Unless one is a pacifist, one is likely to find it relatively easy to think of scenarios in which the use of force and violence against others is justified. Killing other people in self-defense, for example, seems widely condoned, but so, too, does defending our citizens abroad against attack from violent regimes. Violence in these cases appears reactive, employed to defeat aggression against or violence toward vital interests. Where violence comes to be seen as much more problematic, if not simply prohibited, is in its direct use for social/political ends. It then degenerates into terrorism, many people seem to think, and terrorism, they hold, is quite wrong. But what exactly is terrorism? And why is it wrong?

Most of us today believe terrorism to be a serious problem, one that raises difficult and challenging questions. The urgency of the problem, especially to North Americans and Western Europeans, may appear to be that terrorism is an issue that we confront from outside – that, as it were, it is an issue for us, not because violence for political ends is something approved of in our societies, but because we are the objects of such violence. The difficulty of the questions raised by contemporary terrorism has to do, we may suppose, with the complexity of issues having to do with the use of violence generally for political ends.

The first question, that of the proper characterization of terrorism, is difficult, in part because it is hard to separate from the second, evaluative question, that of the wrongness of terrorism. We may think of terrorism as a type of violence,

Cambridge University Press

978-0-521-40950-6 - Violence, Terrorism, and Justice

Edited by R. G. Frey and Christopher W. Morris

Excerpt

[More information](#)*R. G. Frey & Christopher W. Morris*

that is, a kind of force that inflicts damage or harm on people and property. Terrorism thus broadly understood raises the same issues raised generally by the use of violence by individuals or groups. If we think of violence as being a kind of force, then the more general issues concern the evaluation of the use of force, coercion, and the like: When may we restrict people's options so that they have little or no choice but to do what we wish them to do? Violence may be used as one would use force, in order to obtain some end. But violence inflicts harm or damage and consequently adds a new element to the nonviolent use of force. When, then, if ever, may we inflict harm or damage on someone in the pursuit of some end? This question and the sets of issues it raises are familiar topics of moral and political philosophy.

Without preempting the varying characterizations of terrorism developed by the authors in this volume, however, we can think of it more narrowly; that is, we can think of it as a particular use of violence, typically for social/political ends, with several frequently conjoined characteristics. On this view, terrorism, as one would expect from the use of the term, usually involves creating terror or fear, even, perhaps, a sense of panic in a population. This common feature of terrorism is related to another characteristic, namely, the seemingly random or arbitrary use of violence. This in turn is related to a third feature, the targeting of the innocent or of "noncombatants." This last, of course, is a more controversial feature than the others, since many terrorists attempt to justify their acts by arguing that their victims are not (wholly) innocent.

Thus characterized, terrorism raises specific questions that are at the center of contemporary philosophical debate. When, if ever, may one intentionally harm the innocent? Is the justification of terrorist violence to be based entirely on consequences, beneficial or other? Or are terrorist acts among those that are wrong independently of their consequences? What means may one use in combating people who use violence without justification? Other questions, perhaps less familiar, also arise. What does it mean for people to be in-

Violence, terrorism, and justice

nocent, that is, not responsible for the acts, say, of their governments? May there not be some justification in terrorists' targeting some victims but not others? May terrorist acts be attributed to groups or to states? What sense, if any, does it make to think of a social system as terrorist?

Additionally, there are a variety of issues that specifically pertain to terrorists and their practices. What is the moral standing generally of terrorists? That is, what, if any, duties do we have to them? How do their acts, and intentions, affect their standing? How does that standing affect our possible responses to them? May we, for instance, execute terrorists or inflict forms of punishment that would, in the words of the American Constitution, otherwise be "cruel and unusual"? What obligations might we, or officials of state, have in our dealings with terrorists? Is bargaining, of the sort practiced by virtually all Western governments, a justified response to terrorism? How, if at all, should our responses to terrorists be altered in the event that we admit or come to admit, to some degree, the justice of their cause?

Considered broadly, as a type of violence, or, even more generally, as a type of force, terrorism is difficult to condemn out of hand. Force is a common feature of political life. We secure compliance with law by the use and threat of force. For many, this may be the sole reason for compliance. Force is used, for instance, to ensure that people pay their taxes, and force, even violence, is commonplace in the control of crime. In many such instances, there is not much controversy about the general justification of the use of force. The matter, say, of military conscription, though endorsed by many, is more controversial. In international contexts, however, the uses of force, and of violence, raise issues about which there is less agreement. Examples will come readily to mind.

More narrowly understood, involving some or all of the three elements mentioned earlier (the creation of terror, the seemingly random use of violence, and the targeting of the innocent or of noncombatants), the justification of terrorism is more problematic, as a brief glance at several competing moral theories will reveal.

Cambridge University Press

978-0-521-40950-6 - Violence, Terrorism, and Justice

Edited by R. G. Frey and Christopher W. Morris

Excerpt

[More information](#)*R. G. Frey & Christopher W. Morris*

Act-consequentialists, those who would have us evaluate actions solely in terms of their consequences, would presumably condone some terrorist acts. Were some such act to achieve a desirable goal, with minimal costs, the consequentialist might approve. Care, however, must be taken in characterizing the terrorists' goals and means. For contemporary consequentialists invariably are universalists; the welfare or ends of all people (and, on some accounts, all sentient beings) are to be included. Thus, terrorists cannot avail themselves of such theories to justify furthering the ends of some small group at the cost of greater damage to the interests of others. Merely to argue that the ends justify the means, without regard to the nature of the former, does not avail to one the resources of consequentialist moral theory.

Two factors will be further emphasized. First, consequentialist moral theory will focus upon effectiveness and efficiency, upon whether terrorist acts are an effective, efficient means to achieving desirable goals. The question naturally arises, then, whether there is an alternative means available, with equal or better likelihood of success in achieving the goal at a reduced cost. If resort to terrorism is a tactic, is there another tactic, just as likely to achieve the goal, at a cost more easy for us to bear? It is here, of course, that alternatives such as passive resistance and nonviolent civil disobedience will arise and need to be considered. It is here also that account must be taken of the obvious fact that terrorist acts seem often to harden the resistance of those the terrorists oppose. Indeed, the alleged justice of the terrorists' cause can easily slip into the background, as the killing and maiming come to preoccupy and outrage the target population. Second, consequentialist moral theory will focus upon the goal to be achieved: Is the goal that a specific use of terrorism is in aid of desirable enough for us to want to see it realized in society, at the terrible costs it exacts? It is no accident that terrorists usually portray their cause as concerned with the rectification and elimination of injustice; for *this* goal seems to be one the achievement of which we might just agree was desirable enough for us to tolerate significant

Violence, terrorism, and justice

cost. And it is here, of course, that doubts plague us, because we are often unsure where justice with respect to some issue falls. In the battle over Ireland, and the demand of the Irish Republican Army for justice, is there nothing to be said on the English side? Is the entire matter black and white? Here, too, a kind of proportionality rule may intrude itself. Is the reunification of Ireland worth all the suffering and loss the IRA inflicts? Is this a goal worth, not only members of the IRA's dying for, but also their making other people die for? For consequentialists, it typically will not be enough that members of the IRA think so; those affected by the acts of the IRA cannot be ignored.

Finally, consequentialist moral theory will stress how unsure we sometimes are about what counts as doing justice. On the one hand, we sometimes are genuinely unsure about what counts as rectifying an injustice. For instance, is allowing the Catholics of Northern Ireland greater and greater control over their lives part of the rectification process? For the fact remains that there are many more Protestants than Catholics in the North, so that *democratic* votes may well not materially change the condition of the latter, whatever their degree of participation in the process. On the other hand, we sometimes are genuinely unsure whether we can rectify or eliminate one injustice without perpetrating another. In the Arab–Israeli conflict, for example, can we remove one side's grievances without thereby causing additional grievances on the other side? Is there *any* way of rectifying an injustice in that conflict without producing another?

Thus, while consequentialist moral theory *can* produce a justification of terrorist acts, it typically will do so here, as in other areas, only under conditions that terrorists in the flesh will find it difficult to satisfy.

It is the seeming randomness of the violence emphasized by terrorism, understood in the narrower sense, that leads many moral theorists to question its legitimacy. Many moral traditions, especially nonconsequentialist ones, impose strict limits on the harm that may be done to the innocent. Indeed, some theories, such as those associated with natural law and

R. G. Frey & Christopher W. Morris

Kantian traditions, will impose an indefeasible prohibition on the intentional killing of the innocent, which “may not be overridden, whatever the consequences.” Sometimes this prohibition is formulated in terms of the rights of the innocent not to be killed (e.g., the right to life), other times in terms merely of our duties not to take their lives. Either way the prohibition is often understood to be indefeasible.

If intentionally killing the innocent is indefeasibly wrong, that is, if it may never be done whatever the consequences, then many, if not most, contemporary terrorists stand condemned. Killing individuals who happen to find themselves in a targeted store, café, or train station may not be done, according to these traditions. Contemporary terrorists, who intend to bring about the deaths of innocent people by their acts, commit one of the most serious acts of injustice, unless, of course, they can show that these people are not innocent. Much turns on their attempts, therefore, to attack the innocence claim.

Just as natural law and Kantian moral theories constrain our behavior and limit the means we may use in the pursuit of political ends, so they constrain our responses to terrorists. We may not, for instance, intentionally kill innocent people (e.g., bystanders, hostages) while combating those who attack us. Our hands may thus be tied in responding to terrorism. Many commentators have argued that a morally motivated reluctance to use the nondiscriminating means of terrorists makes us especially vulnerable to them.

Some natural law or Kantian thinkers invoke the notions of natural or of human rights to understand moral standing, where these are rights which we possess simply by virtue of our natures or of our humanity. Now if our nature or our humanity is interpreted, as it commonly is in these traditions, as something we retain throughout our lives, at least to the extent that we retain those attributes and capacities that are characteristic of humans, then even those who violate the strictest prohibitions of justice will retain their moral standing. According to this view, a killer acts wrongly without thereby ceasing to be the sort of being that possesses moral

Cambridge University Press

978-0-521-40950-6 - Violence, Terrorism, and Justice

Edited by R. G. Frey and Christopher W. Morris

Excerpt

[More information](#)*Violence, terrorism, and justice*

standing. Terrorists, then, retain their moral standing, and consequently, there are limits to what we may do to them, by way either of resistance or of punishment. Conversely, though there is reason to think consequentialists, including those who reject theories of rights to understand moral standing, would not deny terrorists such standing, what may be done to terrorists may not be so easily constrained. For harming those who harm the innocent seems less likely to provoke outrage and opposition and so negative consequences.

Certainly, not every member of these nonconsequentialist traditions will agree with this analysis. John Locke, for instance, believed that a murderer has “by the unjust Violence and Slaughter he hath committed upon one, declared War against all Mankind, and therefore may be destroyed as a *Lyon* or a *Tyger*, one of those wild Savage Beasts, with whom Men can have no Society nor Security.”¹ It may, however, be argued that the analysis accords with many parts of these traditions, as well as with much of ordinary, commonsense morality.

Whether we follow these theories in understanding the prohibition on the intentional killing of the innocent to be indefeasible or not, this principle figures importantly in most moral traditions. Care, however, must be taken in its interpretation and application. Even if we understand terrorism narrowly, as involving attacks on the innocent, it may not be clear here as elsewhere exactly who is innocent. As made clear in the just war and abortion literature, the term “innocent” is ambiguous. The usual sense is to designate some individual who is not guilty of moral or legal wrongdoing, a sense usually called the moral or juridical sense of the term. By contrast, in discussing what are often called “innocent threats” – for instance, an approaching infant who unwittingly is boobytrapped with explosives, a fetus whose continued growth threatens the life of the woman – it is common to distinguish a “technical” or “causal” sense of “innocence.” People lack innocence in this second sense insofar as they threaten, whatever their culpability.

Determining which sense of “innocence” is relevant (and

Cambridge University Press

978-0-521-40950-6 - Violence, Terrorism, and Justice

Edited by R. G. Frey and Christopher W. Morris

Excerpt

[More information](#)*R. G. Frey & Christopher W. Morris*

this is not to prejudge the issue of still further, different senses) is controversial. In discussions of the ethics of war, it is often thought that “noncombatants” are not legitimate targets, because of their innocence. Noncombatants, however, may share some of the responsibility for the injustice of a war or the injustice of the means used to prosecute the war, or they may threaten the adversary in certain ways. In the first case, they would not be fully innocent in the moral or juridical sense; in the second, they would lack, to some degree, causal innocence.

This distinction is relevant to the moral evaluation of terrorist acts aimed at noncombatants. Sometimes attempts are made at justification by pointing to the victims’ lack of innocence, in the first sense. Perhaps this is what Emile Henry meant when he famously said, in 1894, after exploding a bomb in a Paris café, “There are no innocents.” Presumably in such cases, where the relevant notion of innocence is that of nonculpability, terrorists would strike only at members of certain national or political groups. Other times it might be argued that the victims in some way (for instance, by their financial, electoral, or tacit support for a repressive regime) posed a threat. In these cases, terrorists would view themselves as justified in striking at anyone who, say, was present in a certain location. The distinction may also be of importance in discussions of the permissibility of various means that might be used in response to terrorist acts. If the relevant sense of innocence is causal, then certain means, those endangering the lives of victims, might be permissible.

Of course it is hard to understand how the victims of the Japanese Red Army attack at Israel’s Lod airport in 1972 or of a bomb in a Paris department store in 1986 could be thought to lack innocence in either sense. In the first case, the victims were travelers (e.g., Puerto Rican Christians); in the second case, the store in question was frequented by indigent immigrants and, at that time of year, by mothers and children shopping for school supplies. It is this feature of some contemporary terrorism that has led many com-

Violence, terrorism, and justice

mentators to distinguish it from earlier forms and from other political uses of violence.

The analogies here with another issue that has preoccupied moral theorists recently, that of the ethics of nuclear deterrence and conflict, are significant. The United States, of course, dropped atomic weapons on two Japanese cities at the end of the last world war. For several decades now, American policy has been to threaten the Soviet Union with a variety of kinds of nuclear strikes in the event that the latter attacked the United States or its Western allies with nuclear or, in the case of an invasion of Western Europe, merely with conventional weapons. These acts or practices involve killing or threatening to kill noncombatants in order to achieve certain ends: unconditional surrender in the case of Japan, deterrence of aggression in that of the Soviet Union. The possible analogies with terrorism have not gone unnoticed. Furthermore, just as some defenders of the atomic strikes against the Japanese have argued, those we attack, or threaten to attack, with nuclear weapons are themselves sufficiently similar to terrorists to justify our response.

A still different perspective on these issues may be obtained by turning from the usual consequentialist and natural law or Kantian theories to forms of contractarianism in ethics. Although this tradition has affinities with natural law and Kantian theories, especially with regard to the demands of justice or the content of moral principles, there are differences that are especially noteworthy in connection with the issues that are raised by terrorist violence.

According to this tradition, justice may be thought of as a set of principles and dispositions that bind people insofar as those to whom they are obligated reciprocate. In the absence of constraint by others, one has little or no duty to refrain from acting toward them in ways that normally would be unjust. Justice may be thus thought, to borrow a phrase from John Rawls, to be a sort of "cooperative venture for mutual advantage." According to this view, justice is not binding in the absence of certain conditions, one of which would be others' cooperative behavior and dispositions.

R. G. Frey & Christopher W. Morris

Adherents to this tradition might argue that we would be in a “state of nature,” that is, a situation where few if any constraints of justice would bind us, with regard to terrorists who attack those who are innocent (in the relevant sense). As Hume argues in the *Second Enquiry*, when in “the society of ruffians, remote from the protection of laws and government,” or during the “rage and violence of public war,” the conventions of justice are suspended:

The laws of war, which then succeed to those of equity and justice, are rules calculated for the *advantage* and *utility* of that particular state, in which men are now placed. And were a civilized nation engaged with barbarians, who observed no rules even of war, the former must also suspend their observance of them, where they no longer serve to any purpose; and must render every action or rencounter as bloody and pernicious as possible to the first aggressors.²

Unlike the earlier views, then, this view holds that terrorists who, by act or by intent, forswear the rules of justice may thereby lose the protection of those rules, and so a major part of their moral standing.

Similarly, partisans of terrorism might argue that it is the acts of their victims or of their governments that make impossible cooperative relations of fair dealing between themselves and those they attack. The acts, or intentions, of the latter remove them from the protection of the rules of justice.

In either case, the acts of terrorists and our response to them take place in a world beyond, or prior to, justice. Students of international affairs and diplomacy will recognize here certain of the implications of a family of skeptical positions called “realism.”

Consequentialists, it should be noted, are likely to find this exclusive focus on the virtue of justice to be misguided, and they are likely to be less enamored of certain distinctions involving kinds of innocence or types of violence that are incorporated into contractarianism. In general, they will argue, as noted earlier, that terrorism *can* be justified by its