

ETHICS OF TERRORISM & COUNTER-TERRORISM

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Scientific Organisation
GEORG MEGGLE (Leipzig)

Abstracts

including also Abstracts of envisaged Proceedings-Contributors who will, unfortunately, not be able to attend the conference – though they had originally intended to do so

PER BAUHN (Lund)

Political Terrorism and the Rules of Just War

Political terrorists often conceive of themselves as warriors, as can be seen from the names their groups adopt: *Rote Armee Fraktion*, *Brigate Rosse*, *Jihad*, and so on. Likewise, the most recent effort to eliminate international terrorism, following the events of September 11, has been designated as a *war* against terrorism. Hence, for terrorists and anti-terrorists alike, it has seemed appropriate to adopt the terminology of war.

In this context, it could be worthwhile to examine to what extent the ideas and principles inherent in the just war theory may apply to an analysis of the moral problems of the acts of those who perform acts of political terrorism, as well as of those who try to fight political terrorists, especially when fighting political terrorism requires attacking areas where there are also innocent civilians.

In this essay, the focus will be on the Principle of Non-Combatant Immunity (which holds that innocent bystanders should not be victimized) and the Doctrine of Double Effect (which may justify certain unintended cases of victimization).

RÜDIGER BITTNER (Bielefeld)

Morals in Terrorist Times

It is wrong to kill 3000 people for a political purpose; and if ever there was a statement about moral matters evidently true, here it is. Given its evident truth, two questions are natural to ask: why do people do what is evidently and massively wrong? and why do other people find it worthwhile and indeed important to say that it is massively wrong? While touching on the former, I will focus on the latter question. That is to say, I will try to elucidate the political function of moral judgment in the current world-political situation.

MICHAL CHOROSNICKI (Cracow)

Informational Freedom and Counter-Terrorism-Measures

It is a common opinion that the media more or less stimulates terrorism, because it provides the public with specific details about a given event and, hence, can sometimes play the role of “spokesman” for various terrorist groups. But the media can also be a useful tool for antiterrorist measures. A statement by Theodore Kaczynski (Unibomber) published by the Washington Post, finally helped the police to recognize the author and jailed him. In 2001 Afghan leader Massud was killed by suicidal journalist whose camera was loaded with explosives, not the film. This is also dangerous for real journalism. On the other side, is ethically ambiguous when in 1977 in Germany Hans Jürgen Wischnewski was begging press “do not inform that GSG unit just left Frankfurt and is on his way to Mogadishu”. The BBC with their “D” system, though not perfect, successfully blocks terrorist propaganda, and simply provides the public with facts. This is an example of compromise.

Is it possible to create an “honor code” for the media and create a situation in which the media not only informs but also supports antiterrorist actions and measures when necessary? Is it ethically tolerable?

C.A.J. (TONY) COADY (CAPPE, Melbourne)

Terrorism, Just War and Right Response

In getting a moral grip on the problems posed by terrorism we need to achieve some clarity about what is meant by terrorism and some moral perspective to judge of it. Of course, we also need a lot of empirical facts about terrorist and counter-terrorist activities, proposals and prospects, but we cannot focus properly on the facts without some reasonable grasp of the concepts in play and the place of terrorism in our moral landscape. But the initial problem is that the debates about terrorism, both scholarly and public, are replete with contested definitions of the topic. It has been estimated that there are well over 100 definitions about in the scholarly and political literature, many of them in conflict with others and even internally inconsistent. This disarray reflects the fact that the idea of terrorism operates in polemical and highly politicised contexts. This paper will offer a definition of terrorism that catches one central element in this complex conceptual web and helps link the moral evaluation of terrorism with the moral framework of the just war tradition. It will be argued that it is a mistake to treat all revolutionary or insurgent violence as terrorist (even where it is unjustified) and that what is wrong in the activities of non-state terrorists is also wrong in the parallel activities of states. Defences of state terrorism that rely upon necessity or “dirty hands” are discredited by the fact that they seem equally available to non-state terrorists. The paper will also raise serious moral doubts about the style of response to terrorist attacks that currently goes under the title “war against terrorism”.

MARCELO DASCAL (Tel Aviv)

The Rhetoric of Terror:

Miscommunication and Ethics in the Dialectics of Terrorism and Counter-Terrorism

Terrorism and counter-terrorism involve actions that, in addition to their unbearable price in bloodshed and suffering, purport to be communicative acts. Their performers and those who stand behind them intend to convey to the victims of their attacks and counter-attacks, or to those responsible for their security and well-being, certain “messages”, which their respective

“addressees” are supposed to interpret and understand. Such an “understanding”, in turn, is supposed to be facilitated by a host of other communicative acts, in the more strict sense of the word: declarations, warnings, interviews, and sometimes also secret negotiations, both direct and mediated. A “conversation” involving a full range of violent and less violent communicative acts thus takes place between the opponents. The purpose of this paper is to analyze this peculiar kind of communicative interaction, highlighting its paradoxical nature. In so doing, it tackles an important dimension of the terrorism/counter-terrorism problem that has been generally overlooked. The paradoxes revealed by the communicative analysis, in turn, shed light on what should be expected from the analysis of the other dimensions – notably the ethical – of the problem, suggesting guidelines for the kind of intervention required for its solution.

CAROLIN EMCKE (Hamburg)

War against Terror and the Crisis of the Political

The paper deals with the form the war against terror calls into question: not only the ethical norms for the treatment of prisoners of war, the limits of just wars, but also our understanding of the justifiability of politics. Once "under attack", the western world responded with a wide-spread, multifaceted, multi-front war, transgressing a set of international norms and laws with reference to a "state of emergency" and "self-defense". I will argue that in the wake of 9/11 the application of "self-defense" and "state of emergency"-logics has triggered a twofold paradigmatic shift that can be considered a legitimacy crises of the political:

- a) in the national context, the political was reduced to carl schmitt's understanding of politics in state of emergency that allows to trump ethical or moral concerns limitlessly.
- b) in the international context a historic abandonment of the classical "no-first-strike-doctrin" is about to be established. "self-defense" is used as a justification for military action. The legitimation-discourse on all sides in the middle east can serve as an example for the dangerous use of the topos of "self-defense" for actions that range from self-defense to preventive attack, to aggressive attack, to terrorist action. The american nuclear plans can serve as another.

The paper reflects on the crises of the political in times of "self-defense" and will try to offer a normative criterion to judge and criticize political or military action.

HANS J. GIESSMANN (Hamburg)

Media Coverage of Terrorism

While terrorist attacks have formerly focussed primarily on opening up informal communication channels by using innocent victims and, at the same time, on extended media coverage to put additional pressure on the addressed opponent, it is often the scope of action itself that most recently has become the focus of terrorists' intentions. The media has become more a platform for terrorist action than a supportive tool. Furthermore, the role of the media has transformed itself from that of an observer into that of a key actor. The more people are killed or wounded and the more the media sketches horrific scenarios about possible subsequent threats, the better the main message can be spread to the public, and the more likely opponents will be put under pressure.

However, all opponents in a conflict relationships – despite their awareness of the enormous public influence (CNN-Factor) contemporary media reporting has – try to make use of media

by creating self-supportive images or images demonising the enemy. In any case, they succeed in fostering the legitimacy of their respective action or counteraction.

The combination of a highly competitive market of information with a deepening atmosphere of fear and uncertainty challenges media coverage to be serious and professional. On the one hand, freedom of the press and pluralism are fundamental to functioning democracies, on the other hand, “irresponsible”, headline-running journalism may contribute to undermining the integrity of democratic societies. In order to prevent media from being misused for illegitimate activities, a voluntary international code of conduct for dealing with terrorism and the media is required. The essence of such a conduct will be dealt with in my paper.

PAUL GILBERT (Hull)

Counter-Terrorism and the Politics of Role

Terrorism can usefully be viewed, I have previously argued, as violence intended as war but treated as crime. Counter-terrorism must therefore conceive itself as the punishment and prevention of crime, which creates a mismatch between the two sides' conceptions of what is involved in a conflict between them. So long as counter-terrorist agencies limit themselves to policing methods, as is usual in domestic counter-terrorism, neither side need be confused as to the roles they are assuming, though there will be temptations to depart from them. However, when counter-terrorism takes on a military complexion, as happens in foreign actions, confusion is inevitable and it becomes unclear how the rules of war are to be applied. The alternative, it would seem, is to adopt a purely military response to violence which is no longer categorised as terrorist. The nature and aims of the relevant violent groups renders this problematic. Nonetheless, I wish to argue that only a rigid adherence to what I term a 'politics of role', with its transcultural standards and procedures, has any chance of countering the unrestrained violence of the identity politics espoused by these violent groups.

RALF GRÖTKER (Berlin)

Looking for Mohammed. Data Screening in Search for Terrorists

Data screening in search for terrorists is a violation of informational privacy. Why is this so? And should we promote it anyway?

After September 11th, police departments all over Germany (and elsewhere) have started a terrorist search relying on methods of data screening: the "Rasterfahndung". I will briefly explain how this approach works and how it differs from other methods also based on data processing (e.g., the screening of flight passengers in the US). My main concern is the ethical legitimacy of this search method: In what regard does it cause harm to those whose data have been fed into the search process? Starting with an philosophical outline of the value of "informational privacy", I will explore what exactly is at stake in such a search and consider the arguments raised pro an contra the "Rasterfahndung". I will close by asking if there is any rational method or standard by which to decide whether or not the expected increase of security outweighs the damage to informational privacy.

TOMIS KAPITAN (Illinois)

'Terrorism' as a Method of Terrorism

Since September 11 and the onset of the U.S. "war on terrorism," increased attention has been given to the very concept of terrorism. What exactly is terrorism? Who practices it and why? What are the appropriate responses to this form of violence? I contend that these issues, particularly the last, are obscured by the prevalent rhetoric of 'terror,' a discourse that is routinely employed to dehumanize selected groups and to deflect attention away from a critical examination of the moral and political issues underlying their grievances. The rhetoric has thereby contributed to the increasing spiral of hatred and atrocity in the world and, in many cases, has only prepared the ground for further terrorism. I illustrate this thesis by focusing on the development of the Israeli-Palestinian conflict, and argue that use of the term 'terrorism' and its derivatives ought to be severely curtailed, if not dropped entirely, if conflicts like this are to be resolved in an intelligent and just manner.

PHILIPP KELLER / FABRICE TERONI (Geneve)

Just Peace and its Enemies

We will try to develop and flesh out a positive notion of just peace, both within and between states, by a distinction between military and police measures and an analogy to interpersonal relations. We will distinguish between different forms of abusing civil peace and try to assess to which extent symbolic violence may testify to or bring about its absence. Terrorism, conceived of as a one-sided war of clans, is distinguished from ordinary war by its attacking civil, rather than interstate peace. We will apply the criteria developed to recent inner- and interstate conflicts and argue that morally justifiable counter-terrorist measures should enhance, rather than endanger the just civil peace of a functioning society. Responses to terrorist threats and acts therefore ought to comply not only with the ethics of war but with the stricter rules applying to the exercise of the state monopoly on violence. We will thus conclude that the struggle for civil peace cannot be won by a war against terror.

HAIG KHATCHADOURIAN (Mitwaukee)

Counterterrorism: Torture and Assassination

In „On Terrorism And Political Assassination“ Kai Nielsen considers the question whether political assassinations are ever morally justified, and argues that „there are circumstances in which they are justified and that this is generally recognized.“ Later I shall examine his reasons for this claim; but what needs to be noted at this point is that, unlike Nielsen, who is concerned with assassinations committed *by* terrorists among others, one of the two themes of this paper concerns the ethics of the assassination *of* suspected terrorists, as a form of or element in counterterrorism, by the military forces of a country that is attacked by presumed terrorists. I have in mind, of course, Israel's „targeted killing“ of Palestinian militants in the ongoing al-Aqsa intifada. As far as I know, that is an entirely new putative form of counterterrorism, not witnessed prior to the intifada.

The second main theme of this paper is the ethics of a country's use of torture of suspected terrorists in custody, as a further way of combating terrorism.

WOLFGANG LENZEN (Osnabrück)

Muddy Ethics

It's a plain truism that not only terrorism, but almost each other form of war and violence, including anti-terrorism, is a dirty business as well. Furthermore, political attempts to "justify" terrorist or anti-terrorist acts usually are nothing but muddy propaganda. Although this does not entail that ethical reflections about the justifiability of war and violence would themselves constitute a dirty business, I've got the impression that colleagues engaged in those discussions are often fishing in troubled waters.

This suspicion may, of course, be due to my own subjective ignorance. My previous studies in applied ethics were basically restricted to "classical" bioethical problems, while my scattered knowledge of the literature on the ethics of war and violence remained at best superficial. Yet it seems to me that there exist also some objective reasons for the rather imperfect, or – to say the least – not entirely satisfying present state of moral theories in this field.

The morality of a warlike act of one *group* (nation, country, society, ethnic group, ...) G_1 towards another group G_2 is usually conceptualised in strict analogy to the attack of one *individual* I_1 against another individual (or perhaps, set of individuals) I_2 . The crucial notion involved in the latter domain is that of I_1 's *right of self-defence* (and, occasionally, also that of I_1 's right – or perhaps even *duty* – to help others in emergencies). Such rights may be conceived of either as juridical or as moral rights. As a philosopher, though, I will only deal with the moral aspects of the right of self-defence and discuss two sets of questions.

The first group of problems relate to the fundamental question of the precise *justification* of the individual right to self-defence. At first sight it seems obvious that – in a situation where some individual I_2 threatens the life of I_1 , – I_1 is morally entitled to defend his life "by all means", i.e., if necessary, even by *killing* I_2 . But what about a situation where killing I_2 entails (or is at least likely to entail) that a third "innocent" person I_3 be killed (or at least be seriously harmed), too? Furthermore it is not entirely clear by means of which general ethical *theory* (e.g., the Golden Rule, the Principle Neminem laedere, Utilitarian Ethics, etc.) such measures of self-defence really can be justified. And what about the morality of lynching; what about the moral justifiability of death-sentence; etc?

Another set of problems arises if one tries to apply the moral criteria for killing in self-defence – as done by some individual I_1 – to the field of warlike actions executed by some *group* G_1 . What is the analogue of an imminent loss of life of I_1 – is it really necessary that the *life* of (each, or many, or at least one) of the members of G_1 is threatened by G_2 ? Which other material or ideal goods and values are important enough to justify a war against G_2 ? Is every soldier or combatant of group G_2 to be considered as equivalent to the killer I_2 ? One particularly urgent question to be considered in this connection, of course, is: What exactly is a *collateral damage*? Under which circumstances is it allowed that "innocent" members of G_2 will be killed? How many, and with which probability? What kind of (utilitarian?) war-ethics might possibly give us an answer?

In my contribution I will try to solve at least some of these problems by focussing on the conceptual framework developed in Meggle's "Logic of Terror and Terrorism".

CHRISTOPH LÜTKE (Munich)
Terrorism and Global Justice

Fighting terrorism means fighting the surrounding field. While military measures are unavoidable against 'hardcore' terrorists, their surrounding field can only be dealt with by changing the rules of the global social contract. The rich countries cannot afford to ignore the situation of the losers of globalization, as these provide the ground for terrorism. A more just global social contract therefore lies in the own interest of the rich. Morality and politics, global justice and global stability, can only go hand in hand.

LAURENCE LUSTGARTEN (Southampton)
National Security, Terrorism & Constitutional Balance

This is to look at the way the UK courts, the European Court of Human Rights, and the Supreme Court of Canada have responded to legal challenges to acts of the executive and to legislation purportedly designed to protect national security or to combat terrorism. It is less about rationalising specific court judgements than about analysing judicial attitudes and notions of the constitutional role of the judiciary. It will involve considerable discussion about procedural issues which some participants might find technical.

GEORG MEGGLE (Leipzig)
The Logic of Terror and Terrorism

At present, 'we' are at war with Terrorism (T). But although this warfare is backed up by billions of dollars and euros, there is – apart from condemnation – no consensus about what T is supposed to *be*. And so far, not even philosophers have seemed to care very much about this conceptual disaster. This is something I just can't accept. So let's (follow the initial sketches by Bauhn, Coady, Khatchadourian and Primoratz and) do our job – and start off with a definition of "T" which will then enable a substantive and comprehensive T-critique – i.e. a definition (i) without condemnation already built in and (ii) without excluding by fiat one's own organisations from T-actorship. And then let's see what the *differentiae specificae* of T-Acts vs. terror-acts in general are. For terror-Acts to be T-acts, the intended terror has to be a means to an additional ends; and so in T-Acts we have two instrumental aspects (or two rational calculi) which are essentially interconnected. Getting a better idea of how this link works is the topic of my paper, in which I will (in analogy to my *Logic of Deterrence* – see my online-publications via www.uni-leipzig.de/~philos) again make use of some strongly idealized action concepts. In the end, we will have a variety of T-concepts, rather than just one. Maybe this is a better starting point for critical thinking – even in times of Counter-T-Wars.

See also my Public Lecture *Terror & Counter-Terror. Initial Ethical Reflections* in:
<http://ontology.buffalo.edu/smith/sources01/rtrw/meggle.pdf>
and my draft-notes on *Terror-Logic* via Entry (2002n) of my online publications in my website as given above.

THOMAS MERTENS (Nijmegen)
Criminal Justice after 9-11: ICC or Military Tribunals?

Whether one considers this appropriate or not, the political world has changed since the events of September 11. After a short era in which the "end of history" was proclaimed, the

Schmittian "political" has reaffirmed its existential character, both in the acts and the rhetoric of fundamentalists such as Bin Laden and U.S. president Georg W. Bush, who proclaimed in the extra "State of the Union" of September 20: "either you are with us, or you are with the terrorists". On this occasion, President Bush announced that the U.S. would direct every resource to combat terrorism, and this would entail "every instrument of law enforcement". During the ensuing months, the implications of these words have become clear. In the legal "War on Terrorism", the establishment of military tribunals to try terrorists has attracted the most public attention.

In my contribution, I aim to give an historical account of the institution of military tribunals first. After that, I want to sketch the main elements of military tribunals that have been installed in the war on terrorism. Finally, I want to evaluate these newly-established tribunals: to what extent do they fit with principles like due process and fair trial? This evaluation must, I think, necessarily take into account such principles of criminal procedure as developed in modern legal systems and embedded in important documents like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention of Human Rights.

SEUMAS MILLER (CAPPE, Canberra)

Osama bin Laden, Terrorism and Collective Responsibility

The definition of terrorism is problematic. Roughly speaking, it is the intentional killing, or otherwise seriously harming, of innocent people to achieve political or military purposes. On this account al-Qaeda is a terrorist organisation. But so are many others friendly to the West.

This definition of terrorism raises issues concerning the 'innocence' of various categories of person who are not combatants or the military or political leaders of combatants, but who nevertheless might be responsible for the real or imagined injustices suffered by those in whose name the terrorist organisations are acting.

A neglected category of such 'guilty' persons are those who collectively committed sins of omission, rather than sins of commission. This paper explores this issue.

OLAF L. MÜLLER (Göttingen)

Benign Blackmail.

Cassandra's Plan *or* What Is Terrorism?

In its reaction on the terroristic attacks of September 9th, 2001, the US-government threatened Afghanistan's Taleban with war in order to force them to extradite terrorist leader Bin Laden; the Taleban said that they would not surrender to this kind of blackmail – and so, they were removed from Kabul by means of military force.

The rivalling versions of this story depend crucially on notions such as "terrorism" and "blackmail". Obviously you'll gain public support for your preferred version of the story if you are able to determine how those notions are to be used. So we had better reflect about their very meaning and about the moral implications of their proper usage. To gain a deeper understanding of our notions of "blackmail" and "terrorism" I shall propose an extreme thought experiment: Cassandra's plan.

Cassandra foresees that sooner or later one of the nuclear powers might take the liberty to use atomic bombs. From fright she founds an NGO for blackmailing the statesmen who are in

charge of nuclear weapons; she announces in public that all ministers and leaders of any government shall be hunted down, and executed, whose soldiers drop but one atomic bomb. (Cassandra's NGO keeps killer teams in constant training so as to increase the effect of the threat; this is being financed from private donations).

In my talk I shall raise two questions (without claiming to provide definite answers). *First*, would we have to say that Cassandra's NGO was a terrorist organisation? *Second*, would it be morally wrong if Cassandra blackmailed statesmen in the way indicated?

ALEXSANDAR PAVKOVIC (Melbourne)

Towards Liberation: Terrorism from the Perspective of a Liberation Ideology

An ideology of liberation is a set of beliefs, value judgements and exhortations which provides a framework of justification of political action aiming at the liberation of an oppressed group from its oppressors. In order to control the oppressed, their oppressors use both random and targeted violence against them. In response to this violence, the oppressed are also justified in using violence in order to remove oppression. Within the liberation ideologies framework, terrorism against the oppressor group is thus primarily justified as an effective and 'low cost' instrument of the liberation of the oppressed. The paper explores the liberation ideologies' normative justification of the use of terrorism and contrasts this type of justification with that of universal humanism which asserts that each human life is of equal and supreme value.

WALTER PFANNKUCHE (Konstanz)

The Concept of Terrorism and the Problem of Collective Responsibility.

A terrorist is a person who seeks to change either the legal system of some country or the actions of those representing that system, but does so through unjustified violent actions. His actions are unjust insofar at least the means used or even the aim of the actions are morally unjustifiable.

For declaring an action to be terroristic it is therefore crucial to have reasonable standards which specify in which circumstances violent actions can be morally justified and when they are unjustified.

Theses:

1. There certainly are circumstances in which violent resistance against a legal system is justified – e.g. if that system aims at the extinction of some group of a society. Resistance to suppression is bound to a principle of symmetry: The intensity of damages caused by violent resistance must not exceed the intensity of harm done in the first place.
2. The violent resistance against suppression may be directed against those who do not belong to the immediate suppressors. But this collective responsibility is mediated by a principle of different involvement: The harm done to persons must stand in relation to their degree of involvement into the practice of suppression.
3. The principle of symmetry and the principle of different involvement can be justified within a consequentialist type of ethics.

4. The consequentialist point of view originates a further constraint for those who decide to resist in a violent way: They must take into consideration how the other side will react and how other members of the suppressed group will think about these reactions which are likely to worsen their situation at least for some time.

BRIAN O'CONNOR (Dublin)

Outside the Social Contract: Terrorism and the Rights of the State

The spectrum of counter-terrorism acts is apparently co-extensive with the spectrum of terrorist forms: terrorism about specific domestic policies – e.g. anti-abortion activists in the USA – is likely to be handled by the authorities as a policing matter; terrorists seeking radical changes to a state – secessionists or ideological revolutionaries – are likely to be met with by highly aggressive counter terrorist acts which are virtually indistinguishable from military action. Why is this? The answer, I suggest, goes beyond practical necessity. My argument is that terrorism as part of a programme which attempts to bring into doubt the legitimacy of the state is regarded as placing itself outside the rules of the social contract. The consequence of this self-exclusion is that anti-state terrorists – in contrast to criminals – deprive themselves of the advantages of the social contract; ‘alien’/‘foreign’ terrorists similarly operate outside the ‘contracts between states’ (such as the Geneva Convention) and are treated accordingly. I want to question the basis of these assumptions, suggesting alternative ways in which counter-terrorism acts might be legitimated.

IGOR PRIMORATZ (Melbourne)

State-Terrorism and Counter-Terrorism

I suggest that, in the context of philosophical discussion, terrorism is best defined in terms of the nature and aims of the act, rather than with reference to the agent. Contrary to the presumption prevalent in everyday discourse and the media, acts of terrorism can be perpetrated not only by non-state agencies, but also by states. The paper gives a basic typology of state involvement in terrorism, and offers four arguments for the claim that state terrorism is, by and large, morally worse than terrorism employed by non-state agencies. It ends with some remarks on counterterrorism and the current „war against terrorism“ waged by the US and its allies.

HUBERT SCHLEICHERT (Konstanz)

On Arguing with Terrorists.

One of the most typical (but completely neglected) characteristics of the "relation" between governments and terroristic groups is the complete absence of communication and argumentation. Governments try to catch, to imprison, or rather to kill every member of terroristic groups. Argumentation, investigation into the causes for terrorism, are not even "postponed"; it seems that there is simply no need for it. T-groups are taken to be simply criminals, and one does not enter into a rational discussion with murderers. (Yet even this is not true: In normal court cases one tries to understand WHY a crime had been done.) It seems that the same is the case from the other side: terrorists terrorize, they don't argue. It seems, the only thing they understand, is to threaten and to kill.

I want to analyze the reasons for this complete silence between states and T-groups, and I want to examine the consequences of this situation, where both sides take each other as something like the "radical evil". Finally, I shall make an investigation of the possibilities of entering into a rational discourse with potential terrorists. The aim of such a discourse would be, of course, to reduce the amount of violence on both sides.

PETER SIMPSON (New York)

The War on Terrorism: its Moral Justification and Limits

The evil of terrorism, I mean the evil of such attacks as those on the US of September 11 last year, is a clear and manifest fact. There is no good reason to deny this, despite what some have said to the contrary. Still it is a fact that admits of examination and analysis. A definition of terrorism is first needed. For the sake of clarification (and not for the sake of excusing or condoning) I exclude as a misnomer the term of state-terrorism. I define terrorism as: *acts of violence committed by private individuals or groups of individuals, having no political authority or pretense of political authority, and directed indiscriminately against civilian or at least non-hostile populations and institutions so as to spread fear and terror there in order to achieve some limited goal short of the immediate overthrow of the existing government.* That terrorism is evil is an implication of this. Justice means giving each their due, but deliberately attacking the innocent, as terrorism does, is manifestly not due to the innocent. Therefore terrorism is unjust, and it will remain unjust whatever grievances are alleged in its excuse. Terrorism is as such a threat to decent and civilized living. It needs to be suppressed, peaceably if possible, but by force if need be. Force is, like tolerance, neither good nor bad in itself but only relative to what it is used for. To those who would use force against the innocent force is itself due, provided there is no other way to stop them and the use of force would not cause worse damage. The current war on terrorism, initiated and led by the US, has so far fallen under this idea of justice and has thus itself been just. Continuing the war into other parts of the world would remain just provided the same conditions were met. These conditions are, however, probably not met by the recent armed incursions into Palestinian areas undertaken by Israel.

RON SMITH (Waikato, NZ)

Terrorism and Responsibility

Terrorism is a problem because it targets the innocent and because those who use it often go to considerable lengths to conceal their participation. In the case of international terrorism, there are particular difficulties in securely identifying those who are responsible for specific actions and in bringing them to account. This is partly a problem of jurisdiction and partly a problem of evidence (which the jurisdictional difficulties tend to exacerbate). Either way it can render states that are the victims of international terrorism relatively powerless. In regard to atrocities planned beyond their borders they can neither prevent the planning and organization of fresh assaults nor effectively pursue the perpetrators of earlier actions. Evolving international law (for example the Convention on Terrorism Bombing) is providing clear duties for states in respect of terrorist activities planned within their borders but equally clearly many states are choosing to ignore these duties. In these circumstances, those responsible for the planning and execution of international terrorist acts are likely to go free and to be free to continue their activities. The situation is analogous to that which became evident in respect of war crimes after World War Two. There was perceived to be a particular problem in holding to account those who were administratively and organisationally

responsible for what seemed to be a general policy to commit such crimes. To deal with this, the various tribunals established at that time (at Nuremberg and Tokyo, for example) adopted a doctrine of strict (command) responsibility in respect of war crimes, under which it was not necessary to establish that a particular person or persons gave specific orders in respect of specific actions. All that was required with respect to a particular individual or group of individuals was to show that crimes were being planned and committed and that they did nothing to prevent their planning or commission. This principle of Command Responsibility was subsequently taken into international law (it is now to be found in the 1998 Statute of the International Criminal Court). States which allow terrorists to train and plan operations on their territory may be held liable in a similar way even if it cannot be securely shown that specific individuals amongst the terrorists were responsible for specific actions and that other specific individuals (such as the Prime Minister or President of the state concerned) had knowledge of those actions.

There is guilt and there is punishment. It may be that a doctrine of strict responsibility will justify the attribution of blame in such cases as that of the Al Qaeda organization and the Taliban administration of Afghanistan but without some process there is no punishment and no protection for the innocent. Simple justice requires that those who commit evil acts should be punished, partly as a matter of retribution but also as a measure of protection for other innocent parties who may be affected in the future. Without an effective judicial or quasi-judicial process, there is clearly a moral right for those who are harmed to seek justice for themselves. There may even be a moral obligation on those that have the power to do it, to seek such justice. Certainly, the Principle of Strict Responsibility and the requirements of natural justice supply a substantial moral justification for the actions of the American led coalition in Afghanistan since 11 September of last year.

ULRICH STEINVORTH (Hamburg)

On the Moral Logic of Collaterally Damaging Justice Enforcement

- (1) I raise the question whether there is a difference of legitimacy between case A when the use of violence (by military or other means) for the enforcement of justice kills *n* innocent people and justice *is* enforced and case B when the same use of violence kills the same number of innocent and justice is not enforced.
- (2) I argue from reasons of prudence (prudence is a legitimacy condition of the use of force, and prudence is judged by success) that (i) there is a difference, that (ii) legitimacy of collateral damage is a function of success, but (iii) of another important condition as well, that of the importance of the cause of justice.
- (3) I draw some practical conclusions from my theses: (a) the end of any justice enforcement operation must be clearly recognizable to any observer, (b) it must be as modest and easily attainable as possible, (c) the cause of the justice enforcement operation must be as important to most observers as is demanded by the probable amount of collateral damages.

In order both to illustrate and test the theses and the practical conclusions, I apply them to historical and imagined cases of war, rebellion, terrorism and counter-terrorism.

RALF STOECKER (Bielefeld)

**Terror as a Means for a Good End?
Reflections on the Moral Assessment of Terrorism**

Terrorists are people who terrorize other people in order to achieve political ends. Accordingly most terrorists are political rulers, terrorizing their own people. Clearly, however, their doing so cannot be justified morally, and there is no more to be said about it, from a moral perspective.

Terrorists in this sense can also be soldiers, terrorizing a foreign population to gain military advantages. As part of an unjust war such measures certainly would be unjust, too, but usually they are also regarded as unjust when carried out in waging a just war. The end does not justify the means: according to the rules of *ius in bello*, military attacks on the civilian population *aimed at* frightening them, in contrast to *causing fright* as a side effect, are never permitted.

Normally though when we talk about “terrorists” we don’t refer to politicians or soldiers, but to non-official agents who use terror for the pursuit of their political ends. Again, if their aims are vicious, so are their means. But the question is whether a sufficiently good aim could ever legitimate their terrorist action. Is every means justifiable in a just fight for freedom, human dignity, self-determination or justice, or are there moral laws of war for guerrillas and *résistance* fighters too, forbidding them to attack and terrorize non-combatants? In short: may non-official terrorist sometimes do things that soldiers must not do even in A just war? In my contribution I shall try to answer this question.

FABRICE TERONI (Geneve)
see PHILIPP KELLER / FABRICE TERONI (Geneve)

JANNA THOMPSON (Melbourne)

Terrorism and the Right to Wage War

Terrorist acts are often condemned for violating just war restrictions against harming non-combatants. However, another criticism of terrorism focuses on the question of whether terrorists have a ‘right to war’ – whether they violate the just war requirement of ‘right authority’ to engage in war. To answer this question it is necessary to consider the purpose just war theory has traditionally served and whether, and to what extent, its function has changed. In particular, I will discuss the relation between terrorism and what some people call ‘the crime of war’ and how judgements about whether terrorists have a right to war should affect how they are regarded and treated.

IVAN VUKOVIC (Belgrade)

Terrorist Groups and Popular Support

The killing of civilians in public for political purposes are acts of terrorism. Those acts are morally wrong and cannot be justified under any circumstances. If possible, terrorist groups should be isolated and destroyed, and terrorists should be imprisoned and punished, whether by domestic, or by international tribunals. However, fighting terrorism very often takes a long time and requires complex strategies. Though they use unjustified means, many terrorist

groups are fighting for justifiable political aims, such as the liberation of a population from an oppressor. Those groups can get a wide support from the oppressed people, which makes anti-terrorist activities extremely difficult. Furthermore, the rise of support from civilian population tends to enlarge the group itself, to change its structure and to rise doubts concerning the classification of the group as a terrorist one.

In such cases, it is my opinion, the following strategy should be adopted. If the group really gets a wide support, if it shows that it is not exclusively committed to terrorist methods and if it is able to articulate its political goals, it should be encouraged to do so by the opposing party, supposedly a state or a group of states. It should be encouraged to create a "political wing", to isolate the fanatics within itself and should be offered a chance to negotiate. The question of punishment of those who committed acts of terrorism should not be forgotten but it should be postponed in order to give time to negotiators. However, the group should not be allowed such a soft treatment unless it fulfills one more condition: we should recognize as rational negotiators only those groups that do not tend to acquire popular support by the use of terrorist methods against the very population for whose freedom they proclaim to fight. Many terrorist groups fulfill first three conditions, but do not fulfill this fourth one. It would be interesting to see how Al Qaeda will behave in this respect. The question still seems to be open.

CHARLES P. WEBEL (Berkeley)

Terror and Terrorism: Who is Responsible? What is to be Done?

On Sept. 11, 2001, during the first year of this new millennium, the cities of New York and Washington D.C. were attacked by what most political and military leaders and Western citizens have described as "terrorists". The loss of life – approximately 3,000 civilians – was exceeded in American history only by battles during the Civil War, although cities in other countries experienced far greater civilian casualties during World War II.

How might we try to account for this lamentable state of affairs, unique in human history yet nonetheless illustrative of the usage of "terrorism" as a political tactic and of terror as a predictable human response to the violence, and threats of violence employed by terrorists against innocent people? Is "self-defense" a sufficient moral justification for the use of lethal force by the great powers against perceived terrorists, the states that harbor them, and, usually indirectly, against the civilians unfortunate enough to constitute the "collateral damage" of counter-terrorist operations?

What are the moral and legal responsibilities of state and non-governmental actors in the "war(s) against terrorism?" What rights are to be accorded those deemed "terrorists" and/or "criminals" by powerful state actors and by punitive non-governmental agencies, such as criminal courts and war crimes tribunals? Do states and non-governmental organizations that use lethal force – ostensibly to "eradicate terrorists" and/or to overthrow "criminal" governments that commit genocide and/or "ethnic cleansing" – have moral duties and legal obligations toward both the civilian and non-civilian populations of nations into which external military and/or police forces are inserted?

Finally, is there a common core experience of terror that links the victims of contemporary terrorist attacks to populations who were terrorized during the twentieth century? For example, are the survivors of bombing raids conducted during the Second World War psychologically, ethically, and/or phenomenologically similar to the concentration camp

survivors of the Nazi and Stalinist periods, and/or to the surviving victims of terrorism at the dawn of this new millennium? What, if any, obligations do the victors of counter-terrorist "wars" have to the often-traumatized victims of such terrorizing military operations as precision bombing? Do the norms and strictures of "just war" and international law apply equally to all violent conflicts within and between state and non-state actors? And what measures – psychotherapeutic, socioeconomic, legal, political, and diplomatic – should be taken to aid the victims of terrorism and to minimize the risks of future terrorist attacks?

In my talk, and in my forthcoming book (*Terror, Terrorism, and The Human Condition*) I will address these questions and will discuss a range of answers to these, perhaps the most pressing, issues of our time.

RAFAL PAWEŁ WIERZCHOSŁAWSKI (Lublin)

Can T-Acts be Prevented in the Framework of the Republic?

How can T not only be eliminated by military force (CT crusade), but also be prevented by means of non-military politics? Prima facie it is better to prevent T-acts than to apply CT military actions. In at least some cases, T-problems (i.e., problems which cause T-acts) could be better handled by more attentive political actions on the part of particular state authorities (governments). The question is: to what extent? What characteristics should the political authority possess in order to cope with T-problems successfully?

One possible non-military CT strategy is to be found in the Republican proposal of implementing the idea of political freedom as non-domination in the framework of the modern state – an Australian *liaison* (Philip Pettit, *Republicanism: A Theory of Freedom and of Government*, 1997). I shall briefly present the idea of political freedom as proposed by Pettit, and the republican aims and forms as implementation problems of the ideal. I shall focus on the contestability problem of the democratic state and on the attentiveness and responsiveness of the republic. The remaining problem is how to cope with those who neglect or who deny the public forum as a possible platform where grievances and causes can be presented, discussed and being tested for acceptance by the community. Some T-rising problems may be unresolved majority vs. minority problems (perhaps very eccentric ones), which should be taken into account by the ruling majority. A variety of republican recipes as to how to cope with the problem in question will be considered.

VERONIQUE ZANETTI (Fribourg/Tübingen)

After 9-11 – A Paradigm Change in International Law?

One of the ways that the loss of a state's sovereignty is discernable is through its loss of control over the origins of organized violence. Organized criminality such as the mafia and terrorist organizations bring new actors on the international scene, making states cancerous and wearing away their inner structures. The classical parameters of organized violence – i. e., its sources of financing, those who wield it, the aims they seek, and the means they use – changed and therefore call the traditional just-war criteria into question. In such situations, distinctions dissolve between a state of peace and a state of war, civilians and fighters, public and private fund raising to finance violence. As a result, traditional answers originating in international law, such as the right of self-defense (Art. 51 of the Charter) or the principle of non-intervention, are unavoidably thrown into question. The purpose of this paper is to focus on some of the fundamental changes in the classical paradigms of organized violence, and on

possible answers to them. Suggesting a definition of terrorism based on the existing consensus as to what constitutes a crime against humanity, this approach aims to render possible internationally recognized measures of defense.