

***The Lesser Evil:  
Political Ethics in an Age of Terror***

by Michael Ignatieff, Edinburgh University Press, 2004, 212 pp.

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How can democracies defend themselves against the threat presented to them by terrorist attacks, while still remaining recognisably liberal? Terrorism is hard for democracies to fight – defeating it, or even resisting it, requires violence, secrecy, abrogation of rights. But democracies are committed to the removal or at least the reduction of these things in civil life, so the attempt to defend themselves against terrorism seems to involve some loss, maybe a catastrophic loss, of the very features which make democracies worth defending. Democratic self-defence seems in this case to be self-defeating: how, if at all, can this apparent paradox be understood and overcome?

This is the central question raised by Michael Ignatieff in his book ‘The Lesser Evil,’ and in the course of trying to provide an answer to this question he traverses a wide range of issues raised by the phenomenon of modern terrorism. He also draws on a wide range of disciplines to help him answer the question, so history, literature, moral philosophy, and political theory (and science) all contribute to his treatment of the issues he addresses. His principal concern is the tension he discerns between the demands, especially the security demands, of the general good, and the moral importance of respect for human rights; and the way in which he construes this tension shapes his whole discussion of the issues which terrorism raises.

Liberal democracy, as Ignatieff points out, is much broader than the majoritarianism which is its most obvious feature; broader even than the checks and balances which are so essential a part of it. Along with these features is another, core, element: the idea of rights. Rights act as a constraint on the demands of the general good: there are some things which, in a democracy, the executive power must not do to people, even if it would enhance the welfare of the majority to do them. Rights protect each individual from certain kinds of harm and restriction, regardless of the consequences of this protection. Furthermore, rights are not to be construed just as a useful device to ensure that executive power is not abused; their role is far more ethically significant than that. Rights are fundamentally an expression of the profound liberal democratic conviction that each individual matters intrinsically,

is intrinsically worthy of respect, is not to be used just as a cog in the wheel of the production of good for others, even if the others are the majority. But in the face of a terrorist threat, these rights – typically, various kinds of liberty – may have to be infringed or abrogated if security for the majority is to be preserved. Our right to free speech, sometimes our right to freedom of movement, may have to be limited and constrained as part of the effort to prevent terrorist attacks and thereby protect our security. Which is most important, security or rights?

Ignatieff's answer is to find a middle way: neither rights nor security, he thinks, is always most important, can always act as trumps. The violation of rights is always morally wrong, in his view, but nonetheless it is sometimes necessary to preserve democracy against those who would bring it down. If it's necessary, we ought to do it, but all the same there remains something wrong in such decisions, and we must hedge about the policy of temporary rights-infringement with constraints and limitations (he particularly emphasises the need for ongoing adversarial review of such measures), to prevent us entirely losing our grasp of what it is we're trying to defend. This is the 'lesser evil' which he sees as an alternative to the two greater evils which, in his view, threaten us as we respond to terrorist attacks. One of these greater evils flows from the adoption of a purely consequentialist view of defence against terrorism, in which any action which protects democratic society should be adopted, no matter what rights it violates, since preserving democracies will ultimately give rights their best protection. Ignatieff quite plausibly argues that, given some well-known and pessimistic facts about human nature, this view will rapidly lead to the destruction of respect for rights and human dignity. The other greater evil which he discerns results from what he calls perfectionism – the view that rights must act as absolute constraints on action, so that we are never justified in violating them. The perfectionist believes that any failure to respect rights, particularly at the level of policy, is morally unacceptable, and will probably take us down a slippery slope to unrestrained tyranny. We must set our face against any weakening of our commitment to rights and liberties, and maintain our full array of liberal democratic practices unchanged by the threat from terrorism. Ignatieff thinks (again quite plausibly) that this approach will be so ineffective at protecting security that it will yield democracies up to destruction at the hand of terrorists. Rather than incurring either of these greater evils, Ignatieff argues that we should adopt a lesser evil approach, in which we allow some trade-off of rights against increased security, so long as we do this in ways which limit the threat to rights and human dignity as much as is compatible with effectiveness against terrorism.

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This argument is really the core of the book. It is buttressed by (and in turn deployed in) detailed consideration of a range of cognate (and extremely interesting) issues: the ethics of emergencies, and whether rights and rules must be regarded as invariant and absolute to have moral force; the way in which democracies have tended to over-react to terrorist threats, and the implications of so doing; the nature of different kinds of terrorism, and various arguments offered to justify it, particularly the claim that it's the only weapon which the weak have to resist oppression by the strong. (The careful treatment of the flaws in this claim, and how those elements in it which do have moral force should be handled by liberal democracies, is of particular ethical interest). The chapter on the descent into nihilism (by which Ignatieff means the embracing of violence for its own sake, or for reasons of self-aggrandisement) and how this descent tempts and threatens terrorists and counter-terrorist forces alike, is particularly notable for a morally serious discussion of torture. Ignatieff argues that it can never be justified, since invasion of physical integrity is the ultimate violation of the individual; but given circumstances in which lives may be saved by the acquisition of information from the prisoner, some forms of psychological pressure might be legitimate. Again, this is a lesser-evil argument: he thinks that such pressure might be necessary to save lives and hence what we ought to do, but still be wrong, since it's a signal failure to respect the human dignity of the individual – to be deplored even if it ought to be performed. (Many people would not regard this as a stable position – how can an act both be one which we ought to commit, and also one which is wrong? I'll return to this below.) The final chapter of the book is an extended discussion of the possibility of terrorists acquiring weapons of mass destruction, of the forms of resistance by democracies that might be called for in that eventuality, and of the likelihood (or otherwise) of democratic success or defeat. He concludes with a qualified optimism on this chilling topic, an optimism which it is not entirely easy to share.

Ignatieff provides a really interesting and rich treatment of each of these various aspects of his overall topic, integrating the empirical material required by his concern about the likely effectiveness of various democratic defensive measures with the more purely philosophical considerations supporting his lesser-evil approach. On every page there are arguments which are worth consideration (though not necessarily endorsement) by anyone who takes seriously the threat to democracies from terrorism. But the linchpin of the book is the claim that security and rights must be traded-off against each other, that such trade-offs are necessary to preserve democracies but must always be as limited as possible consonant with effective self-defence, and that necessary though they are, they're still in some way wrong. This is

his conception of the lesser evil: it's preferable to the greater evils which are likely to follow from pure consequentialism or pure perfectionism, but it's evil nonetheless. The whole of the rest of the book stands or falls with this conception. It's not clear, however, that it can stand in the terms in which Ignatieff presents it.

Firstly, it's not at all obvious that the contrast Ignatieff draws between security considerations and respect for rights can really be sustained. The rights which are immediately threatened by increased security measures are liberties of various kinds, and liberty and security needn't be seen as entirely different kinds of things. After all, security protects people's liberty to exercise their rights, and indeed can be regarded as a necessary precondition of that exercise. So the trade-off between the two on which Ignatieff places so much weight may be better seen as a choice between different ways of promoting rights and liberties. If that is so, then there is no profound conflict here, and no tragic dilemma of the kind which might prompt thoughts about lesser evil. [1]

As far as it goes, this objection seems cogent. But even if its understanding of the relation between security and liberty is correct, the problem Ignatieff focuses on does not dissolve. There remains a tension between the provision of the conditions for the exercise of rights, and that exercise itself, and Ignatieff is right to treat it seriously. Perhaps we should see it as arising within the domain of rights, rather than between rights and a different domain of security, but nonetheless it remains a very real tension, particularly in circumstances where those whose security is strengthened (and hence whose rights are to that extent protected) are a different group of people from those whose rights are abridged. And this is often the case – stop-and-search measures, for example, may perhaps increase the security of most of us, but they are very likely to bear most heavily on particular minorities suspected of harbouring or at least sympathising with terrorists, and members of those minorities who do not give such support pay a disproportionate price for the increase in security of the rest of us.

A more important objection to Ignatieff's position is the claim that the idea of the lesser evil, like its close relative the idea of 'dirty hands' in politics, is either unnecessary or incoherent. The concept of lesser evil, as Ignatieff presents it, involves the idea of actions and policies being what we ought to do, but still being somehow wrong, and one objection to this concept is that morality can't contain this kind of internal conflict – if an action is what we ought to do, then however unpleasant it is, there is no room for the thought that it's wrong to do it. This is

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a conceptual matter, it is argued – actions are either right (i.e. what we ought to do), permissible (i.e. morally neutral), or wrong (i.e. what we ought not to do), and to think that something can be both what we ought to do and yet wrong is a contradiction in terms.

Against this charge of incoherence it can be pointed out that the moral phenomenology – the way in which we experience morality – suggests otherwise. Those who actually have to take these hard decisions (e.g. to sacrifice one to save many; to lie and cheat in order to protect a life, to abandon or even betray private obligations for the sake of public duties) find that there's an ineliminable residue of regret and a sense of moral pollution, even when they are sure that the action they took was morally necessary. This suggests that something like the idea of a lesser evil is needed to explain this feature of our moral lives.

Appeal to the phenomenology is not a very reliable move, since there are often purely psychological explanations which can be provided for the theoretically discordant experience, which enable us to preserve the theory though at the expense of dismissing part of the phenomenology. Perhaps our sense of moral pollution in these hard cases can be explained away in terms of psychological association with other, more normal, cases in which the type of action in question would indeed have been wrong, even though here in the hard case it is in fact right. Nonetheless it would be a brave (or possibly just ethically insensitive) moral theorist who dismissed out of hand the existence of tragic dilemmas, whose resolution in either direction leaves the agent with a lasting sense of being degraded by what morally she had to do. It is a strength of the lesser evil conception that it provides a place for such experiences in our understanding of morality. More worrying for Ignatieff's view is the possibility that appeal to the idea of the lesser evil is not so much incoherent as unnecessary, and that the problems which motivate the appeal can be better handled by other theoretical means.

What seems to drive Ignatieff's view is an underlying picture of our reasons for action in the political domain, a picture of them as being divided into two classes: prudential (or pragmatic or consequentialist) considerations, and absolute moral prohibitions or obligations. Security concerns fall under the heading of prudential considerations, and are subject to strictly consequentialist reasoning – actions are justified if and only if they produce good outcomes, which in this context means promoting our security. Rights, however, are moral considerations, and hence form the subject-matter of absolute moral principles. And he feels that conceding

anything to the former, prudential kinds of reasons derogates from the latter moral ones, and takes us out of the domain of morality into some lesser region. Any abrogation of rights in order to produce prudential outcomes is going to seem at best a lesser evil, since morality is being neglected in the name of pragmatic concerns. But once we drop this deeply implausible picture, we don't have to see things quite like that. And the picture is implausible – for a start, why would we think of the production of good outcomes as falling outside of morality? The pure consequentialism which Ignatieff so distrusts is, after all, a moral theory, however unsatisfactory a one; and any moral theory whatever is going to have some place in it for producing good outcomes. Even if we want to insist that there's more to morality than good consequences, we do at least want to acknowledge that they have some moral significance. So the erosion of morality which Ignatieff seems to feel is involved in privileging prudential over rights-based considerations doesn't really occur. What we have is a tension within morality, about which kind of moral consideration should take precedence when moral principles conflict.

Ignatieff sees moral principles as being absolute, and hence if we allow exceptions to them this will take us into the area of lesser evil. But again this is a most implausible understanding of the nature of morality. We have good reason not to construe moral principles as exceptionless absolutes, since if we do, we will find that we have irresolvable conflicts whenever two of them come into conflict (as they frequently will.) A far more convincing picture of moral principles is to see them as specifying *prima facie* duties, none of which always takes precedence over the others. One (but only one) of these principles will be a duty to produce good consequences, and there are many others. In all cases they'll need to be weighed and balanced against each other, and which one is most important will depend on the details of the particular case. Even rights, whose role in morality is to block the demands of the general good, need not be seen as absolute side-constraints on action, and many moral theorists have not seen them in that way. Rights can constrain the demands of the general good in many situations without constraining them in all – they can win out sometimes, maybe many times, in cases of moral conflict even if they don't always count as trumps. This picture of what's going on in our moral judgements [2] is far better at capturing the complexity of our moral thought than any absolutist account, and it allows exactly the kind of weighing and balancing which Ignatieff rightly wants to see between principles enjoining protection of security and principles enjoining respect for specific rights.

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In many ways this is the kind of picture Ignatieff is actually working with, and recommending against the perfectionism which would deny the legitimacy of any trade-offs between different values [3][4]; but he still supposes that treating moral principles as absolute is in some way a more 'perfect' approach to morality, and hence deviations from it are 'lesser evils.' But absolutism isn't a more perfect approach to morality, it's a worse one, since it leads us either to irresolvable moral impasses, or to actively immoral acts (like resolutely telling the truth to someone who will use it to kill innocents.) Hence treating moral principles as non-absolute needn't be seen as the road to lesser evil in the political context, but rather as a better way of construing moral principles right across the board.

This objection, however, leaves a great deal of Ignatieff's work still in place. The method he proposes (restricted trade-offs between different values) for dealing with the ethical problems raised by terrorism seems by far the most ethically persuasive one, even though his reasons for adopting it may not be entirely satisfactory. So his substantive conclusions remain largely unaffected by this theoretical glitch. And even the most committed prima facie ethicist can accept that there is and should be a residue of deep regret for those who suffer from a particular outcome of the necessary weighing and balancing of different prima facie duties, and that their needs and interests should be harmed as little as possible. Not all goods can be simultaneously realised, and Ignatieff's strictures about the possible damage to democratic structures and practices of abridgements of rights are all ones which we pressingly need to bear in mind. In particular, his emphasis on the need to retain democratic legitimacy by minimising injustice and unnecessary rights-violations is especially valuable, as we try to make the peculiarly difficult moral calculations which the threat of terrorism forces on us.

In focussing on problems with Ignatieff's basic theoretical commitments, I haven't really done justice to the richness and range of his discussion of the nature of terrorism, the kinds of threat to democracy which it presents (and the kind which it doesn't present), and the importance of recognising and redressing the injustices which sometimes (though not always) gain terrorism its support. I strongly recommend this book to anyone who is concerned with defending liberal democracy in the face of these most recent manifestations of the problem of violence – it will be of value even to those (perhaps especially to those) who disagree with its approach.

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### Notes

- [1] For a lively presentation of this objection, see Khawaja 2005.
- [2] It derives from the work of W.D. Ross; for a more recent version see McNaughton 1988.
- [3] See, for example, the (seriously confused) criticism of Ignatieff by Conor Gearty 2005.
- [4] Much more remains to be said about moral residues, tragic dilemmas, and the nature of moral integrity than can be covered in a review, and Ignatieff's position could be defended in ways which I can't address here.