

The Anti-Terrorism Act And Its Ethical Value

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Abstract: This paper seeks to answer one main question: whether or not the Anti-Terrorism Law is moral using the framework of Immanuel Kant with the application of his first two Categorical Imperatives – specifically, “One should operate on a maxim that one can also deem to be universal” and “One should treat humanity never as means but always as an end”. Once this is extrapolated, the just application can be in question as well. This paper seeks to answer the problem in the negative sense: firstly, on the lack of the possibility of this law being universal due to the inherent contradiction of the claim to protect rights while in the same breath seeking to possibly restrict the same rights on the basis of “social peace” and differing agenda; secondly, would be to claim that the Anti-Terrorism Law seeks to use humans as a means to an end to maintain a vague notion of “law and order”, which disrespects the innate human dignity and autonomy of individuals. This is done, not out of a sense of duty, but a utilitarian benefit which is speculative in nature. Given these two standards, the Anti-Terrorism Law is immoral.

Keywords: Anti-Terrorism Act, Categorical Imperative, Kantian Ethics, State, Rights

1. Introduction

Globally, several efforts to combat terrorism relies on the restriction of civil liberties. I point to the National Security Law in Hong Kong, the Ethiopia Anti-Terrorism Proclamation of 2009, suppression of Foreign and International Terrorism Act of 2011 in Zimbabwe, and around one hundred forty other variations of an Anti-Terrorism Act all around the globe (HRW, 2012). Much more recently on July 18, 2020, the Anti-Terrorism Law was placed into effect despite massive critique and dissent from multiple individuals on the basis of the possibility of an unjustifiable expansion of executive and possibly judiciary power (International Federation of Journalists, 2020; Aspinwall, 2020; McCarthy, 2020).

The issue then lies with the possibility of civil liberties being curtailed, such as the freedom of speech and assemblies – the ability to speak without hesitation and to critique the government. This exists due to five main elements: first, the overly broad definition of a terrorist; second, designation and the eminent crackdown of these groups, an element that is arguably less controversial; third, to ensure that funding is not given to these groups, and that materials are not readily available and accessible to members of these organizations; fourth, the limitation of the freedom of assembly, including the ability to impede in the private affairs and conversations of individuals who may support these groups if deemed necessary; lastly, the expansion of police power and the ability to conduct warrantless arrests (HRW,2012). All of these elements exist and are clearly present in the Anti-Terrorism Act.

Firstly, the definition of a terrorist – and by extension, terrorism – lies in Sec.4- *Terrorism* , which includes items such as engaging in acts which may cause or intend to cause death and serious injuries to other individuals, property damage, and generally uncontroversial concepts (Anti-Terrorism Act, 2020).

The vagueness lies in the concept of intention. For example, the subtext under section four states that terrorism as defined herein “shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death, or endanger a person’s life or to create a serious risk to public safety” (Anti-Terrorism Act, 2020, p. 9). The third criterion is quite vague. Despite the attempts to ensure that protections are guaranteed, what constitutes a “serious risk to public safety” cannot be determined objectively. For instance, a mass protest wherein individuals may or may not observe social distancing during the COVID-19 pandemic may pose a threat to public safety due to the increased likelihood of infectivity, but it is still in an individual’s right to do so.

Secondly, in terms of cracking down on attempts to recruit individuals, this is problematic as well. This is dealt with in Sec 10- *Recruitment to and Membership in a Terrorist Organization*. The issue with this particular portion of the law would lie in the second clause, which states that “Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force” (Anti-Terrorism Act,2020,p.12) is a proper criterion in order to be considered committing a terrorist act or colluding with terrorists. The issue with this is the same with the former section – that the line that we draw on what is propaganda and what is not is extremely unclear.

Thirdly, on providing materials to terrorists, this is tackled in Section 12, which states that “Any

person who provides material support to any terrorist individual or terrorist organization, association or group of persons committing any of the acts punishable under Section 4 hereof or knowing that such individual or organization, association, or group of persons is committing or planning to commit such acts, shall be have as principal to any and all terrorist activities committed by said individuals or organizations” (Anti-Terrorism Act, 2020, p. 14). The issue with this is again the intention to possibly commit such acts, which can then be used as a rationale to seize private property under the suspicion that whatever materials one has may be used for a terrorist act.

Fourthly, on the infringement of rights and intrusion in public affairs, this law gives military personal and police officers the ability to wiretap and “overhear and listen to, intercept, screen, read, surveil, record or collect, with the use of any mode, form, kind or type of electronic mechanical or other equipment or device or technology” (Anti-Terrorism Act, 2020, p. 16). This authority is gained through the authorization of a judge, but one only needs to be suspected of committing a terrorist act to be wire-tapped for data to be extracted and for private messages to be read.

Lastly, and arguably most dangerously, the ability for the police to arrest without warrant is provided in Sec 29-*Detention without Judicial Warrant of Arrest* which states that arrest is possible if this is done on the basis of a suspicion that this individual may be a terrorist or in the process of committing an act that can be defined as terrorism as per the law (Anti-Terrorism Act, 2020, p.31). In normal circumstances, a warrant is required in order to be arrested as per one’s rights. This section removes that. Additionally, if one were to be arrested without a warrant, which is possible if an individual is caught during the act of committing a crime for instance, the waiting period goes as follows: “12 hours for crimes or offenses punishable by light penalties; 18 hours for crimes or offenses punishable by correctional

penalties; and 36 hours for crimes or offenses punishable by capital penalties (Philippine National Police Human Rights Office, 2008, p. 5). However, this is in fact extended to a maximum of ten days, thus clearly expanding the police power. Granted there are checks and balances to this – that the arresting officer and the precinct in question must still report to the judge in terms of the mental health of the detainee – but this is a requirement that should be provided in terms of a regular arrest; therefore, it does not provide much solace.

There are three key conclusions that should be noted here. First, the criteria that have been set by the Anti-Terrorism Act is subjective in nature. The bar to what is deemed to be suspicious is quite low and can be used against individuals who attempt to freely exercise their right to free speech, private property, and freedom of movement. The protections that are in place, such as ensuring that this Act will not be used to infringe on individual rights, historically have not worked, and the system tends to favor those in power – that is to say, police officers, politicians as opposed to the accused as the accused will be branded as a terrorist. I therefore argue that it is far more likely for an innocent man to be condemned as guilty. Second, rights are inalienable in nature, but assuming the necessity to take away these rights, it cannot be done so on the basis of suspicion, but rather on concrete evidence and with proper due process.

Lastly, this paper does not seek to defend terrorism, but the fact is that rights are representations of human dignity, of autonomy, and the guarantee that these ideals are to be respected. These are the fundamental principles that Kantian Ethics and what its subsequent categorical imperatives are based on. This Anti-Terrorism Law seeks to take away these rights. Whether or not this Law is moral is a question of human dignity, of autonomy, and the extent of state power. The importance of this justification cannot be overstated.

2. The Philosophical Framework

There are two Categorical Imperatives of importance when discussing and answering the question of whether or not the Anti-Terrorism Law is moral. The first is “Act as if the maxim of your action were to become through your will a universal law of nature” (Kant, & Paton, 2005 p.30). This imperative rests on three key premises: firstly, that the only thing that is good without qualification or restriction is the good will (i.e., good will alone is good in all circumstances). The reason for this, as Kant claims, is that the will is purely in one's control as opposed to the outcome based notions of other contemporary philosophers. Secondly, under human conditions wherein we need to struggle against “unruly impulses and desires”, a good will is manifested in acting for a sake of duty – that is, an act out of reverence for law, which means that any other reasons for acting in accordance to the law, such as selfish desires, apathy or otherwise, is neutral at best and immoral at worst as the action is not rooted in good will. Thirdly, this law is the law of nature – that is, the principle of noncontradiction must be valid for all individuals to follow and must be the objective standard leading to the rationale and the validity of the proposition. This must also not defeat itself or contradict its initial purpose from a pure rational standpoint (Kant & Paton, 2005). That is the first step. The second step is the application of the maxim, which can be summarized into four parts: first, extrapolate the inherent reasoning for the maxim that you wish to propose; second, reinvent that maxim as a universal law which governs all rational agents; third, consider whether or not the world is possible rationally speaking; fourth, ask whether you could rationally will to act on the maxim in such a world. If all the above are satisfied, the action is morally permissible.

The example Immanuel Kant gives to illustrate this point would be the concept of suicide. The maxim in place with regards to suicide is that of

self-love – that is to say, I will choose to shorten my life to end my immense suffering. The second question to ask is if this is in line with the laws of nature, and if so, can it be universal, which is the third step. Moving on to the fourth step, Kant answers in the negative sense. Due to the fact that the self-love and the will to be free from suffering comes from the inherent will to survive. This same will cannot cause the death of an individual. That is a contradiction opposing the initial rationale, which allowed the maxim to exist; therefore, suicide cannot be rationally willed and is therefore immoral. (Kant & Paton, 2005, p. 31).

This leads to the second Categorical Imperative, which states that “One should treat humanity as an end in itself never as means” (Kant & Paton, 2005, p.30). This means two distinct obligations. First, we must respect the inherent rationality and autonomy which exists in our common humanity. The reason for this is because we can only treat an object as a means to an end if and only if there is something that is of equivalent value to the object traded. Given that there is none that can rival the value of human autonomy and dignity, it must be treated as an end. Secondly, that respect of humanity should be treated as an absolute, which is an *a priori* good. If one fails to uphold the categorical imperative, the individual or the concept as a whole is immoral.

3. Application of the Framework on the Anti-Terror Law

Given that I have established the framework and the standards by which we can assess whether or not the Anti-Terror Law is moral, I argue that the Anti-Terror Law does not fulfill the requirements of both Categorical Imperatives in application.

On the first Categorical Imperative, we can apply the steps stated above as follows. First, the reason for why the Anti-Terror Act exists is for the protection of the basic rights of individuals – that of

life, liberty and property – against the horrors and the atrocities of terrorism. The Anti-Terror Law, I argue, does not fail, morally speaking in the second step or the third step. We can envision a world where this is universal – wherein the Anti-Terror Law is enacted upon every single country and is imposed and applied between nations. That being said, where it does fail in terms of the first categorical imperative is the fact that this cannot be willed rationally. The ultimate reason for this is because the Anti-Terror Law quite clearly infringes on these rights that it seeks to protect. It fails to protect the right to liberty as it expands the time of constriction of an arrested individual. Furthermore, it fails to protect the basic right to property and to privacy as the law expands state power to seize property and to meddle in private affairs. The crucial point to note here is that this is all done without due process. As I can concede, the state can take away these rights in some instances, but only with the proper process – only with warrants and a trial. This is removed due to the Anti-Terror Law. This is a clear contradiction to the inherent principle the Anti-Terror Law stands for. It takes away rights that it claims to defend. As such, this cannot be willed rationally as it is a clear contradiction. Therefore, the Anti-Terrorism Act is immoral.

On the second Categorical Imperative, I argue that this is violated as well due to the fact that rights exist as guarantees to protect the inherent human dignity and autonomy of individuals. This law restricts that autonomy by virtue of the fact that it may stop individuals from protesting since they may fear that the pamphlets containing their message may be seen as propaganda, thereby restricting their free speech. It leads to fear in terms of having a private conversation with a friend about controversial issues and about dissent in public opinion because if you are deemed suspicious enough, individuals from the military can now go to a judge, ask for a warrant to wire-tap and steal your data quite easily.

Furthermore, the reason for the restriction, (i.e., to be able to promote social peace and to preemptively snuff out terrorists in practice) while noble is an insufficient justification to utilize and restrict autonomy and strip individuals of their dignity, which exists in their privacy and in their ability to remain innocent until proven guilty if used in this manner. The Anti-Terror Act uses humanity as a means to an end, which is immoral in itself as these rights are the bastions of hope and the symbols of protection, for the value of humanity infringement of these rights is akin to bartering and attempting to trade these off.

4. Conclusion

The Anti-Terrorism Act, while still new in legislation and while noble in theory, would lead to a state with power beyond what individuals consent to. The Act is ultimately self-defeating and creates more problems than it solves. I argue that we are lucky that at the time of this writing, there is no surplus of cases for the use of this Act as a rationale to silence dissenters and to jail politicians who do not uphold the ideal state interest under the guise of trying to uproot the social order. Other countries with similar Anti-Terrorism Laws/Acts are not so lucky. The same types of laws, protections, or promises are made to them, and the state does not provide, and those who are sworn to protect them become their worst oppressors.

Assuming but not conceding to the effectivity of this Act in curbing terrorism and in being able to ensure public safety, there is no reason to assume that it is a justified imposition using the fundamental framework of Kantian Ethics as there is a more fundamental right we must protect – principles that we must uphold and protect at all costs. This, in principle, is categorically different from any form of pragmatic benefit for the citizens of the Philippines since if there is even one individual who is unjustly jailed, sentenced to life in prison, and socially

ostracized due to this Act, then progress is no longer an overriding good, as it came at the cost of damaging the very essence of democracy: the preservation of rights and the promise of a good life.

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