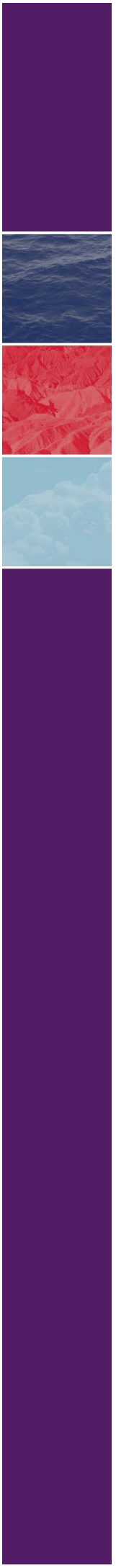


2023 Grey Oration: Ethics for Emergencies

David Whetham, King's College London



It's a great privilege to be here. I'm very grateful to the War College for inviting me, and also to the ADC for hosting me so well over the past two weeks. I have been very well looked after. I know that some of Professor Grey's former students are here today. His enormous contribution to Defence, and the importance of understanding its context and history, lives on in them just as much as in his books – something that all academics hope for.

I needed a lens, or even a muse for this lecture theme today - someone to focus the ideas and help me present them in a coherent form. There were a few obvious contenders here in a military teaching institution. Clausewitz was a very good call; a philosopher of war himself. He seems an obvious candidate; he likes to think in terms of extremes. So maybe he kind of fits with the emergency theme, and then I thought, while he's the philosopher of war, other philosophers have also thought long and hard about these issues. Aristotle himself, the father of virtue ethics, was in pursuit of the golden mean between the extremes. Perhaps he would be more appropriate to frame my thinking and the way that I structured my talk today, but ultimately, after much reflection, I decided that what we really needed was an expert on emergencies. Someone whose very existence seems to be inseparable from trying to do the right thing even in extreme situations. That person would be Jack Bauer.

Now, there's nothing Jack doesn't know about emergency ethics. He wrote the book. Well, rather, somebody else wrote the book about him at least, and his emergencies: *24 and Philosophy: The World According to Jack*.¹ It's actually a rather nice, accessible collection exploring different types of philosophical traditions through the lenses of the various adventures that Jack has through his multiple series. It's popular philosophy, as some serious academics will tell you, perhaps with a slight sneer. Philosophers writing for other philosophers may keep academic departments going, but it's hardly changing the world. I don't see “popular philosophy” as a criticism at all. If you're not writing for the people who need to read it and need to understand it, then what on earth are you doing? You're kind of missing the point, I think. But, before we get on to Jack, let's start with some other types of emergencies.

Emergency Medicine seems to be a good starting point for us. First responders have to react to a huge variety of different challenges. And of course, the recent experience around the world of the pandemic has brought emergency considerations into places that certainly weren't expecting to be faced with those kinds of decisions: allocation of scarce resources, civilian medics making the type of decision that you'd have expected military medics in wartime to make, but not civilian ones, perhaps having to decide who would live and who would die because there's only one ventilator.² Military Medical Ethics is a subject used to that kind of challenge, of course. It's one of the reasons there's an app free to download.³ Please have a look for it on the App Store; it's completely free.⁴ But the idea of this tool was to help military clinicians prepare for the ethical challenges that they might face, provide guidance, and best practice should the worst happen. Actually, this is also accessible philosophy we hope, and it's actually useful, and that's kind of the point.

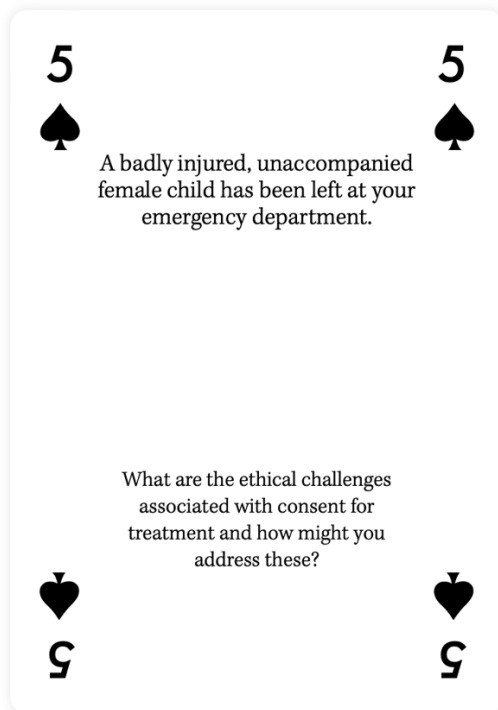
¹ Jennifer Hart Weed, Richard David, and Ronald Weed, *24 and Philosophy: The World According to Jack* (Blackwell 2008).

² For example, see the Australian Government's COVID-19 Health Management Plans as a central response to the new challenges: <https://www.health.gov.au/resources/publications/national-covid-19-health-management-plan-for-2023>

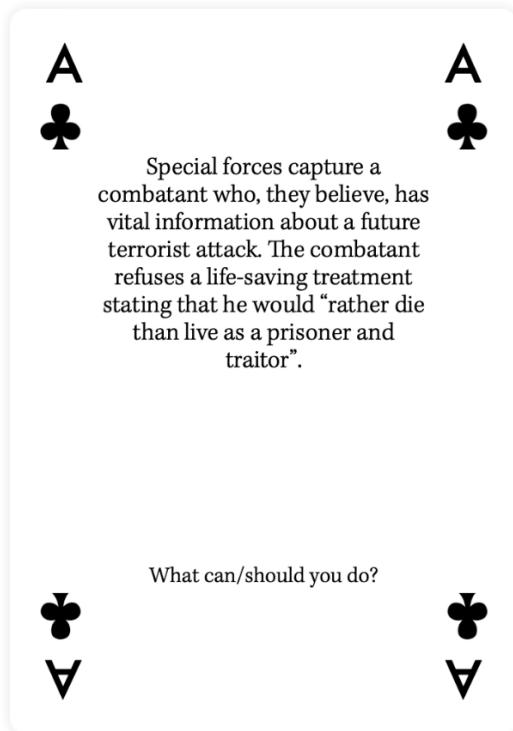
³ <https://militaryethics.uk/en/playing-cards>

⁴ <https://apps.apple.com/gb/app/military-healthcare-ethics/id1498078547> & <https://play.google.com/store/apps/details?id=com.corvita.r4hcmena&pli=1>

This is an example of some of the questions from the deck.



An example of the very real challenges that military medics may face whilst on deployment. There's a sense of particular urgency given the emergency context, and action needs to be taken, but what should you do? What are you permitted to do? A badly injured, unaccompanied female child has been left at your emergency department. What are you going to do? Now, a lot of people say, "Oh, it's ethics. There are no right answers, no wrong answers. It's all relative." Nonsense. The question here is, there might be different right answers, but there are also many wrong answers in this situation: answers that could get your patient in trouble, could kill your patient. They could get you into trouble too; get you struck off, could get you prosecuted. There's an awful lot of things that could go wrong in this situation. So, the idea that ethics is all relative frankly doesn't bear scrutiny. Professional Ethics has answers. There are expectations. How to understand what you're supposed to do in that situation is part of professional competency. It's part of what you need to be trained to do. Whilst not common, a military medic on deployment might well be faced with this kind of challenge.



Or how about this one? Special Forces capture a combatant who they believe has vital information about a future terrorist attack. The combatant refuses life-saving treatment, stating that they would rather die than live as a prisoner and a traitor. What do you do? What *can* you do? There can be profound ethical challenges, and those challenges could involve risk to many people, not just to the patient and the medic in this situation, as you can see. So, this was the kind of thinking that we were engaging with when we wrote this book, which is due out next week: the *Ethics of Special Ops*.⁵ I've written it with your very own Dean Peter Baker. Our co-author was Roger Herbert, a retired Navy SEAL. That gives it the practical element. It's not just philosophers writing here. It's a practical book about practical issues, and it explores the argument made by some that Special Forces need special rules. More on that later. But obviously, it's an excellent stocking filler. Unfortunately, due to its price, you won't be able to afford to buy anybody else any other Christmas presents, but it is still an excellent buy.

War seems to be all about emergencies. It is an exceptional situation, after all, and it has exceptional rules as a result. It's strange to many people that it has rules at all, but it does. And that's not a new idea; it's not a creation of lefty academics or Guardian-reading, tofu-munching liberals. It's a remarkable agreement across time and cultures that war is something, it is an exceptional activity, and it must be restrained in some way. It must be restrained in how you embark on it, when you embark on it, and what you do once you're there.

⁵ Baker, Deane-Peter; Herbert, Roger; Whetham, David *The Ethics of Special Ops: Raids, Recoveries, Reconnaissance, and Rebels* (Cambridge: Cambridge University Press, 2023).

The just war tradition, which many of you will be familiar with, sets out what is and is not acceptable. It's a body of thought that's been around for at least two millennia, I would argue closer to three at least. It is contributed to by key figures in the West, who many will be familiar with Cicero, Augustine, Thomas Aquinas, Hugo Grotius, and the great Michael Walzer, whose seminal work I will return to over the course of this evening - *Just and Unjust Wars*, written in 1977 towards the end of the Vietnam War. All of these people have contributed to this tradition and its growth, and it is a living subject. Although all of those names might sound very Western, the recurring themes occur in all major cultures and religions. They might not be articulated in quite the same way, but you will find the same ideas popping up again and again, which is one of the reasons that the Just War Tradition underpins international law, the law of armed conflict, and international humanitarian law.⁶ It's there as a guide. Some people suggest that it's meaningless; international law and ethics are utter rubbish, it's all about winning. But if it is utterly meaningless, then states spend an enormous and inordinate amount of time referring to it, arguing about it, and justifying their actions in terms of it, which doesn't sound like something that's utterly meaningless to me.

So, what does the Just War criteria tell us? I'm not going to go through those in detail. But on the left, you have the *jus ad bellum*; on the right, you have the *jus in bello*.

Jus ad Bellum

- Just Cause
- Declaration by a Legitimate Authority
- Right Intention
- Proportionate Response
- Reasonable Prospect of Success
- Last Resort

Jus in Bello

- Proportionality
- Discrimination
- Nothing 'malum in se' (evil in itself)

The former is about when you can go to war, and the latter is about what you can do when you get there. It's a set of principles. It's a very handy guide. The key bit that I want to refer to here, though, is the idea that different people are responsible for different elements of it. The *Jus ad Bellum* and what is actually required to justify going to war is deliberately kept separate from what you can do once you get there. It's not a new idea. Again, as I said, the Just War tradition has been around for a very long time. And this way of thinking is immortalized even in something like Shakespeare. In *Henry V* (Act 4, Scene 1), on the eve of the Battle of Agincourt, Shakespeare has the protagonist, the king, a very good modern commander, touchy-feely, putting on a disguise to gauge the morale of his troops. Wandering around, he comes across his two lieutenants, and this is the discussion that he overhears:

BATES ...we know enough, if we know we are the kings subjects: if his cause be wrong, our obedience to the king wipes the crime of it out of us.

⁶ See: 'The Just War Tradition: A Pragmatic Compromise', in David Whetham (Ed), *Ethics, Law and Military Operations* (Palgrave, 2010); Richard Sorabji & David Rodin (Eds), *The Ethics of War: Shared Problems in Different Traditions* (Routledge 2006).

WILLIAMS But if the cause be not good, the king himself hath a heavy reckoning to make, when all those legs and arms and heads, chopped off in battle...

Who is responsible for the war? Well, it's the king. The responsibility is not theirs. Is the war just? Well, that's a decision and challenge for the king, because it is the king's concern. Our job is to fight it for the king. And that idea is obviously not a new one. We deliberately separate those two layers of moral responsibility. You don't hold the soldiers responsible for the decision to go to war, because it's not their decision to make.

This raises some interesting questions, because surely sometimes it *does* matter who starts it. The idea is supposed to be that soldiers on both sides in a conflict are equal because they're both doing what their king has told them. The people fighting on behalf of the king, or the prince, or the prime minister, or the president, are doing so because they trust that prince, and both sides think they're doing the right thing as a result. But surely, we know that objectively, one side must be in the right and one side is in the wrong. Why do they both have to adhere to the same rules *in bello*? If one side is right and one side is wrong, surely the side that's in the right should have more freedom of action, should have more permissions as to what they can do. The revisionist scholars thinking about the Just War Tradition, pose exactly that question. Why would you treat bank robbers the same as the police? They're not morally equal. If the bank robbers are armed and the police turn up and they are also armed, and then there is a firefight - you wouldn't consider them as moral equals. If the robbers managed to shoot a police officer, you would consider that to be an even more heinous crime than simply robbing the bank, whereas if the police were to engage with and perhaps hurt or kill one of the bank robbers, we wouldn't think that they've done anything wrong. Surely there is not a moral equivalence between these two actors. And it's a powerful argument; intuitively, there seems to be something in that. Why would you treat baddies as morally equal to goodies?

But the problem is, how confident are you that you *are* one of the goodies? How do you objectively know you're on the right side? In the event of robbing a bank, the pulling on the balaclava is probably a bit of a clue. But when it comes to states, how do you know that you're not the one doing the equivalent of robbing the bank? Traditionally, "trust your prince" has been the answer to that. If your leader has told you "That's our bank and they have stolen it", clearly, *you're* not now robbing the bank, *you're* liberating it. Who are you to question the king if the king says it's their bank? There's a problem there a profound epistemological problem about what it is possible to know.

It also inevitably means both sides will consider themselves to be in the right. So if you introduce the idea that one side should have different rules to the other, they'll still end up with the same rules because they both think they're the ones that should have the rules relating to the side that's in the right. One of the challenges that can be caused by thinking that you are absolutely in the right and the other side is absolutely in the wrong, is that that *they* therefore shouldn't have any protection afforded by the rules at all. We call that a crusade where the other side is so wrong that you don't apply any rules to them. They're automatically wrong. Everything they do is wrong. No rules should apply in that situation. Crusades have a long and bloody history. It's not somewhere we want to return to.

But what about if the only way that you can fight is by violating the rules? What about if the only way that you can actually fight and protect your people, using the tools at your disposal, require you to break some of the rules? What might justify, on the *ad bellum* side, setting aside some of the rules? How much of an emergency would be required to say that a rule such as proportionality or discrimination could be set aside or overruled?

This was exactly what Churchill was engaging with as a challenge during the Second World War. He is quoted as saying a German victory in World War Two “would be fatal not only to ourselves but to the independent life of every small country in Europe”.⁷ A supreme emergency was coined here: a threat of enslavement or extermination. What Michael Walzer calls the “ongoingness” of a political community being at threat.⁸ If those kinds of situations arise, Churchill argued, the letter of the law must not be allowed to obstruct those who are charged with the state’s protection when the stakes are this high. Humanity, rather than legality, must be our guide. The context within which Churchill is making this argument is intense. Operation Seaford is very, very real - that is the German threat of invasion of the United Kingdom. Operation Seaford is there, waiting to go. America is not yet in the war. The Russian front is retreating hundreds of kilometres a week. It's an extremely bad situation. The only victories that we can refer to is frankly an extremely minor engagement somewhere in North Africa, which we make a great deal of, of course (and it was a big deal to the people involved), but in the greater scheme of things, it was most definitely a sideshow. What tools have we got? What tools are available at this point to continue the fight? The only substantive tool that is available that can hurt the Third Reich is Bomber Command, built up during the 1930s for precisely this purpose. The problem with Bomber Command is it's not very accurate. It's really not very accurate, and people are horrified when they find out just how inaccurate it really is. The threat environment means that you have got to bomb at night; very obviously, if you try bombing during the day, you are looking at over a 50% attrition rate. The Butt report, released internally in 1941, demonstrated that on average, only one in three bombing raids were getting within five miles of their intended target.⁹ The technology that is available to you at this time means that you're lucky to hit the right continent, let alone a military target.

What is the smallest viable target that Bomber Command can realistically hit? A city. However, you're not supposed to bomb cities; we know we're not supposed to bomb cities. The principles of proportionality and discrimination tells us this, common humanity tells us that you're not supposed to bomb cities, maybe a military target *within* the city, but you can't hit a military target within the city - you'll be lucky to hit the city frankly, but you've at least got a chance of hitting the city if that is your target.

So, can you justify deliberately setting out to hit the city?

That is the question. And that was the argument that Churchill was regrettably forced to make. Going back to Aquinas, the principle of double effect says that you are not to deliberately target non-combatants. It doesn't mean that they can't be hurt. It doesn't mean that you can't hurt a great deal of them, sometimes as long as the military necessity can justify it. But you can't deliberately seek to harm them. Their deaths might be foreseeable, but they must not be what you actually seek to do - that cannot be your intention.

⁷ Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992): 252-3.

⁸ Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992): 251-68.

⁹ Longmate, Norman, *The Bombers: The RAF offensive against Germany 1939-1945*. (Hutchinson, 1983): 121.

Referring to Churchill's conundrum, Michael Walzer says, "Can soldiers and statesmen override the rights of innocent people for the sake of their own political community?" Faced with some ultimate horror, their options exhausted, they will do what they must do to save their own people. We might better say that it is possible to live in a world where individuals are sometimes murdered, but a world where entire peoples are enslaved or massacred is literally unbearable.¹⁰ That is the argument that justifies a "supreme emergency". It is a contentious idea, philosophically it's extremely contentious, but not just philosophically, because even the British public at the time were not entirely convinced by this at all. It does, though, have an extremely high threshold, a very, very high threshold. The Supreme Emergency is not easy to satisfy. In fact, in all the examples that Michael Walzer looks at, the only one that satisfies the supreme emergency argument is during a very narrow time period between 1940 and 1942, during the Second World War.

The mere recognition of such a threat is not itself coercive; it neither compels nor permits attacks on the innocent so long as other means of fighting and winning are available. Danger makes only half the argument; imminence makes the other half. Now, let us consider a time when the two halves came together, the terrible two years that followed the defeat of France from the summer of 1940 to the summer of 1942. When Hitler's armies were everywhere, triumphant.¹¹

So, Walzer frames the whole supreme emergency idea based on Churchill's dilemma. In this case, the argument is that actually, you know what you're doing; that an unintended effect isn't unintended at all. You can dress it up how you like, but some 300,000 Germans, most of them civilians, were killed and another 780,000 seriously wounded. Officially, we were pursuing a de-housing strategy aimed at crippling the industrial war machine and destroying civilian morale. But it was a euphemism. We knew what we were doing. We were deliberately targeting a civilian population. Could it be justified? Was it justified? This argument continues, even today.

Invoking the idea of a dirty hands context, Walzer wrote 'when rules are overridden, we do not talk or act as if they had been set aside, cancelled, or annulled. They still stand and have this much effect at least: that we know we have done something wrong, even if what we have done was also the best thing to do on the whole in the circumstances'.¹² It's a contentious argument. Is it convincing? Well, was it justified at the time? It's got an intuitive appeal; the supreme emergency in extreme situations, maybe you have to set aside some of the rules, but supreme emergencies are extremely controversial, and one contemporary jury for the British government's decision at the time, could be seen as the British public, on who's behalf the policy was enacted. This statue stands opposite my university. It's a statue of Sir Arthur Harris, on the Strand, commissioned in 1989, five years after his death, finally erected in 1992; the memorial to Bomber Command was only unveiled in 2012, 67 years after the end of World War Two. Everybody else in the senior command was elevated to the House of Lords, not Harris. Every other fighting unit was celebrated after the war, but not Bomber Command. Why? Because perhaps we

¹⁰ Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992): 253.

¹¹ Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992): 253-4.

¹² Walzer, Michael, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1992): 171.

were a bit ashamed. I'd suggest maybe it needed to be done. But that doesn't mean that we're proud of it. And it doesn't take anything away from the bravery of the bomber crews, the only people in the Second World War who had a higher attrition rate than those bomber crews were the U-boat crews. Incredibly brave people doing something terrible.

Why did it take decades before the memorials were erected? The fact that they are still controversial today is down to a combination of factors that must at least in part be attributed to a public disquiet about what was done in the people's name. There is also a fear about what might be called the slippery slope about relaxing rules even in the face of a supreme emergency. If the stakes are that high what can't be justified if you can convince the people that they are at imminent risk of destruction, not just being attacked, but being enslaved or exterminated. That's the rhetoric we see again and again, from military leaders and political leaders to justify extreme acts even today. If you can securitize an issue, if you can demonstrate that the very survival of your people is at stake, then you can justify extraordinary actions. However, most often, while the rhetoric seems to land here, the situation is nowhere near the level of a genuine supreme emergency and the freedoms it might permit are simply not warranted by the real situation.

What about if we take it down a level and return to our friend Jack Bauer. One of the many infamous scenes in 24 is where Jack shoots a witness (Season 2, 8am-9am). But it's necessary, you understand? He says "That's the thing about people like you George, you don't want to get your hands dirty. I'd start rolling up your sleeves. I'm going to need a hacksaw." That's pure Jack. So maybe if you think Bomber Harris and Bomber Command's actions were justified in the context, maybe you believe that the idea of dirty hands is applicable. Perhaps Jack is a bit like Bomber Harris – we're sorry he has to do it, but secretly we are glad at the same time that somebody is prepared to do it. Now, the idea of dirty hands is just as problematic as a supreme emergency. It is based on a utilitarian type calculation: can the ends sometimes justify the means? In the case of dirty hands, the moral actor must appreciate that while the ends, if extreme enough, might mitigate or even excuse their actions, those actions are still wrong. Well, that's where we put Jack.

What about torture? Well, the rules are pretty straightforward – you can't argue with the rules. Every country represented here in the Blamey Theatre today has signed the anti-torture convention. We've all agreed that there are no circumstances under which torture can be justified. It's a categorical prohibition. It doesn't say "Asterisk except when..."; it is a categorical never under any circumstances ever.

Yeah... but what about if you are faced with a ticking bomb? What about if you can save lives by torturing someone? Most people intuitively go, "you know, maybe not one life, maybe not two, but if ten lives are at stake, maybe 100 lives? I know torture is prohibited, but you know, it can't be as wrong as letting people die, can it?" That sounds a little bit like a mini supreme emergency to me. Is this a circumstance in which you can perhaps set aside some rules? Jack Bauer is the poster boy of the ticking time bomb scenario, but Jeremy Bentham, the great utilitarian, is definitely the father of the ticking time bomb scenario. He wrote in an 1804 essay that basically, surely, it would be better to torture the one than allow the hundreds to die. It's an interesting thought experiment. What would be required for it to be real? What would be required for the ticking bomb scenario to actually happen? Intuitively, it makes sense. It challenges some basic ideas, but if an emergency was so extreme like that, surely different rules should apply. Surely, what is considered to be right and wrong is changed by the context, is it not? Maybe?

What is required in the ticking bomb scenario for it to be real? Well, you and the torturers would need to know with reasonable certainty that a deadly attack is imminent. Okay, that doesn't sound too hard. We can do that. What else would they need to know? They obviously must lack the crucial information about the location of the bomb; otherwise, you wouldn't need to do the torture in the first place. So that's the essential missing piece of information that is required. They must also have in their custody someone who they genuinely believe knows the answer to the location of the bomb. And they believe that that person will give up the information if tortured, and that you could actually act on that information in time, and that the information itself will clearly be accurate enough for you to make a difference - to actually be able to do something meaningful with that information. Plus, you can do all of this in the time that the ticking bomb is ticking; this is what is required for this thought experiment which sounds incredibly plausible when it's portrayed by Jack many times during the series, but this is actually what is required for that to be real. And those ticking bomb scenarios are always cast as one person's temporary pain versus hundreds or thousands of lives. And it appears that reason in this situation makes the answer obvious, but actually, there's an awful lot of things that taken together seem rather unlikely, as people have managed to demonstrate.¹³ It's an extreme hypothetical situation, but due to the slippery slope, you could also see how every situation certainly starts looking like a ticking bomb scenario very, very quickly. And there's a reason we don't teach the ticking bomb scenario as an extreme hypothetical philosophical exception routinely in our professional military training and education environments. It's because it normalizes something which should never be normalized. The idea of the exception being the norm starts to take over.

Jack Bauer faces these kinds of challenges every day, and this is one of the challenges of popular television. Following the terror attacks of September 11, the incidence of torture in television shows soared. In 2000, before the attacks, there were 42 scenes of torture on primetime US television, while in 2003, there were 228. And that's not all down to Jack Bauer. This is a quote from Brigadier General Patrick Finnegan who travelled to California from West Point to meet the producers of "24" in 2007 to tell them that promoting illegal behaviour in the series, which apparently was hugely popular in the US military at the time, was having a damaging effect on young troops:

"I'd like them to stop. They should do a show where torture backfires... The kids see it and say, 'If torture is wrong, what about 24'?...The disturbing thing is that although torture may cause Jack Bauer some angst, it is always the patriotic thing to do."¹⁴

Jack shows us every episode it's the patriotic thing to do. It's normal. It's obviously the right thing to do because Jack's doing it, as well as a real challenge with that. So there is clearly a problem there. There is an alternative approach, though, rather than normalizing it, or rather teaching the exceptions, why don't we just accept that, you know, sometimes this is going to happen. Sometimes this is going to happen, so and sometimes it might be necessary? So, rather than treating it as something that's bad, rather than having brigadiers worrying about teaching illegal practices across the military, why don't we just legalize it? Why don't we just accept that if push comes to shove, and we consider it necessary,

¹³ Hassner, Ron E. "The Myth of the Ticking Bomb" *The Washington Quarterly*. 41 (1): (January 2, 2018), 83–94.

¹⁴ *New Yorker Magazine* Feb 2007.

somebody's going to do it. So why would you criminalize them? Why would you make them have dirty hands when you could just legalize it?

This was Alan Dershowitz's argument. Dershowitz, a very famous lawyer and academic, made this argument just after the 9/11 attacks. He argued that the ticking bomb situation, if it's going to happen, torture is going to happen as well. So let's just be honest about it. Let's regulate it. What you could do is start off with the idea of a torture warrant. We don't want people just torturing anybody, of course; we'll make sure there's a judge involved and we'll make sure that you have to have an evidential base before you can go around torturing people. But if the evidential base is strong enough, you can put it in front of a competent judge and the judge can give you a torture warrant.¹⁵

Once you've made it legal, imagine you can do all sorts of things. You can have specialist medics involved in the process. You don't want anybody suffering long-term harm; you can just concentrate on the pain aspect. You can have medics involved to make sure that no real harm comes. And of course, we're a bit worried about the psychology of all this – the long-term effect of torture. So we can get some psychologists involved just so that we can help people; we could do the equivalent of torture triage or something afterwards. We will formalize it, we will legalize it, and we can have specific career paths. You know, after phase one training you can choose to go down the torture career path. It'd be great. If we're going to accept it's going to happen anyway, why not formalize it? Put it into the system? Stop pretending it's not happening. Let's legalize it. Why should we subject somebody to the dirty hands argument when we don't need to? We just say “this is just normal. Let's do it.”

I'm not convinced by this argument. This would be “special rules for special people”. This would be very, very special people who would have these special rules that are then allowed to do these terrible things under certain circumstances. Can you imagine what that would actually do to your society? Can you imagine what would actually happen? The desensitization necessary to be a professional torturer within the ADF. Think about that career path. What would that actually mean? Think about the professional ostracism of any psychologist or a medic who took part in that program; you'd have to have a completely separate new professional branch because the existing professions are never ever going to be cooperate with this. Whatever laws you pass, it would not be seen as right by those professions (and rightly so). I would think the cost to society would be profound. The credibility of your organization, I think, would be extremely damaged. I don't think Dershowitz is right.

So what else can we do? What other tools have we got? While torture is not one of the ethical challenges we focus on in our book, so this is not the link I'm making here, we do come down on the side that ultimately there are no special rules for Special Operations Forces.¹⁶ That doesn't mean that SOF, and indeed many other people, are not routinely faced with extremely hard ethical choices, and the need to navigate those within the same rules as everyone else, while recognizing the context, means that some of those answers are bound to be different. Just as a medic in an emergency situation might have to make decisions about who will live and who will die when allocating the last blood plasma. That decisions are not made using different rules. It's just the situation is not a normal situation. It's an

¹⁵ Alan M Dershowitz, ‘Want to torture? Get a warrant’. *SF Gate*, Jan 22, 2002.

<https://www.sfgate.com/opinion/openforum/article/want-to-torture-get-a-warrant-2880547.php>

¹⁶ Baker, Deane-Peter; Herbert, Roger; Whetham, David *The Ethics of Special Ops: Raids, Recoveries, Reconnaissance, and Rebels* (Cambridge: Cambridge University Press, 2023).

extreme situation. It's an emergency. But the answers have to recognize the nature of the situation and its context. It's not about different rules. It's about understanding those rules in the extraordinary context. Supreme emergencies and ticking bomb scenarios, even if accepted as potentially real, are not the norm, but tragic or forced choices are very, very real. Tragic choices come from the Greek idea that sometimes there is no good option. You just have to choose between two evils, the lesser of two evils if you can, but sometimes you just have to make a choice. And that is a tragedy. It's a tragedy for all those involved. Those choices might be about who gets the last space on the CASEVAC, because the one that doesn't get that space on the CASEVAC will probably die. Who lives and who dies at the medical station if you only have time to operate on one person? Who gets the scarce PPE in a pandemic? Very real choices have to be made.

What about adversaries who draw the foul? That's a basketball term where you place your opponent in a position where whatever they do, its going to lead the ref to blow the whistle and award you a penalty. In war its when you're fighting an opponent that deliberately uses the rules against you, making sure that whatever you do, it's going to look like you've broken them. There is no good option. Somebody's firing from out of an area crowded with civilians. You're out in the open with your squad. You can either return fire and kill a lot of people or not return fire and see your own unit destroyed. There's no good option there. There is no good choice. But you still have to make the choice. You have to choose – “we always get two options; bad or worse” - a familiar military refrain.

What does that mean for those who have to make the decisions? Well, that takes us back to Jack Bauer. At the end of the series, or the end of series eight, Jack is not in a good state. He is a wreck, an absolute wreck. Now it may be that what he did was necessary, but the cost on Jack has been immense. He is a tragic hero. Everyone that he has gotten close to, with love or enmity, is dead. The toll that all of those forced decisions have taken on Jack is profound. And ultimately, this is where we can leave so many of us service personnel. Their lives can feature intense periods where they're faced with forced choices, forced choices that come about through no fault of their own, but we put them in those emergencies. What can we do to help them? The pull-out from Afghanistan is a sad but very pertinent case study in this area. Translators and local staff abandoned by Western governments with little or no notice. Nothing that the deployed military or diplomatic personnel could do about it. The cost for those left behind is immense and still playing out. But it's easy to forget the cost to our own people as well. Those forced choices - knowingly having to do the wrong thing, even though you have no other choice.

There is no good choice here. Moral injury is a profound phenomenon. Your own Royal Commission on veteran suicide has been examining the links only very, recently. So what can you do about it? What can we as a society do about it? Well, firstly, don't send them in lightly. Don't send the armed forces in lightly. The decision to employ force on behalf of a political community should never be an easy one. It should be considered carefully. If you do send them, give them a clear goal, a realistic mission to achieve, and the right mandate to do it. Train and educate them. They are different things. They're both important. Train *and* educate them. Military ethics training and education is part of PME at all levels, not just officers; it can help. It's not just about compliance with International Humanitarian Law, it's about understanding how to apply rules and professional expectations in difficult emergency situations. It's never easy, but it is easier if you've prepared for it.

Provide the tools for the people that you send. It's not just about the shiny bits of kit but the right people as well. Give them the rules and the guidance to achieve it, and don't knowingly



hamper them, for example, by imposing a catch and release policy, which means that people risk their lives one day and then watch the people who have just been apprehended released the next day. If difficult situations arise like being expected to work alongside war criminals or child abusers because they're your local point of contact, provide policy and guidance. Don't hang the people out to dry; expect them to work through what on earth they're supposed to do in the absence of any leadership or guidance.

Finally, when they do come home, recognize that this was not a normal job. We chose to send them; recognize it will have changed them. That's not the same as treating our veteran community like victims, however. I think that is unhelpful. Their agency becomes removed. As a result, they become seen as objects rather than the subjects of their own destiny. And in my experience, that is not what those who have served their country want or deserve.

