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## **Ethics on the radar: exploring the relevance of ethics support in counterterrorism**

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### **Citation**

Kowalski, M. (2020, March 12). *Ethics on the radar: exploring the relevance of ethics support in counterterrorism*. Retrieved from <https://hdl.handle.net/1887/86282>

Version: Publisher's Version

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**Note:** To cite this publication please use the final published version (if applicable).

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**Issue Date:** 2020-03-12

#### **4. Contribution of compromise to the practice of counterterrorism**

The above discussion has shown that none of the three key philosophical approaches provide an ultimate or final solution for counterterrorism professionals. Moral orientations might often be a mixture of the major approaches considered, without a clear hierarchy between them (Ross in Perry, 2009: 18). Here arises a question of what other options are available and how useful they are to counterterrorism professionals. As was previously mentioned, intelligence services are key to counterterrorism. Since there is more literature on the ethics of intelligence than on the ethics of counterterrorism, I will make use of the still meagre literature on the ethics of intelligence (De Graaff, 2019; Olson, 2006; Omand, 2010; Omand and Phythian, 2018; Perry, 2009). From the field of intelligence I will introduce two suggestions of ethical guidance: first, an ethical compass, and second, a combination of approaches. This is done in order to explore potential contributions from the field of intelligence to the practice of counterterrorism.

The question remains of how to navigate, in an ethical sense, through these different approaches. The reason for that is twofold. First of all, the challenge to strike a compromise between opposing principles and underlying values of key ethical approaches persists, as demonstrated in the previous chapter. Second, the two options of ethical guidance from the field of intelligence imply inherent limitations themselves, as will become clear in the remainder of this chapter. Given my interest in the contribution of ethics to the practice of counterterrorism, I will put two suggestions from the (practical) field of intelligence into the perspective of compromise. Doing so, I will offer a closer exploration of the concept of compromise as developed by Benjamin (Benjamin, 1990). This implies that I will not focus primarily on the potential of compromise as understood as negotiation. The research question of this chapter is: What can the concept of 'compromise' contribute to the handling of ethical dilemmas in 'counterterrorism as practice'?

#### **4.1 Ethical compass and combination of approaches**

The first major contribution from the field of intelligence has been put forward by the retired high-ranking British intelligence professional-turned-scholar Sir David Omand. Based on his experiences, he suggests eight components of an ethical compass: first, there must be sufficient sustainable cause to launch policies or actions, checked against national security and fundamental rights. Second, there must be integrity of motive and the involved professionals must be able to do their assessment without fear of favor. Third, policies or actions must be proportionate to the harm they seek to prevent and should, fourth, be based on the right authority. Fifth, there should be a reasonable prospect of success. At the same time, sixth, the recourse to secret intelligence should be considered as a last resort. Two more practical guidelines are, seven, the idea that one should be able to defend any secret measures or actions in public, and finally eighth, Omand suggests that in any case, an adequate consideration of the strategic long-term considerations should have taken place, since perceived shortcuts can make for long delays (Omand, 2010: 286-287).

This ethical compass provided to intelligence professionals can be of use to counterterrorism professionals as well. The compass is comprehensive, suitable to guide political considerations and at the same time applicable in practice. The ethics of intelligence is in general crucial in a democracy if the government wants to maintain legitimacy for intelligence policies and practices (Omand and Phytian, 2018). In the field of intelligence there is an increasing interest in professional ethics that can be facilitated by codes of conduct or principles (De Graaff, 2019). A compass could be another means to advance professional ethics. The effectiveness of any compass, however, depends on the level of acceptance and implementation in the relevant organizations. Furthermore, a compass – unless developed in an interactive manner together on the work floor – is or can be perceived as a body of principles proposed from the top. The quality depends heavily on the intellectual authority of the originators, the support given by the professional community and the role that the compass has been given from a legal or organizational point of view. In sum, although an excellent ethical compass like the one developed by Omand could be a promising way to guide counterterrorism professionals, concerns remain about the very method of the

compass itself. There are uncertainties about the quality, acceptance, and factual importance of any ethical compass, including that of Omand's or others.

The second major contribution from the field of intelligence to be discussed here is that of a combination of approaches. This approach has been suggested by David Perry who, an academic himself, has inspired many ethics deliberations in the US military and intelligence world (Perry, 2009). Perry reviews major ethical approaches and different claims of the perceived relativism of these approaches, ending up disappointed about the power of ethical theories. Nevertheless, Perry still upholds ethical principles like compassion, fairness, respect for individual autonomy, respect for laws, honesty and courage in opposing injustice and integrity (Perry, 2009: 13). But from a theoretical point of view, he follows the British philosopher Ross (Ross, 1930/2002), who suggested a mixed theory of all ethical approaches. This implies that moral duties are determined situationally and that absolute moral principles do not exist (Perry, 2009: 17-18).

The practice of counterterrorism could benefit from such a situational approach, in which the shortcomings of individual ethical approaches would be overcome in accordance with the relevant context. At the same time, two crucial issues remain ambiguous when embarking on such a course. First, the democratic legitimacy of this course might be at stake. The assumption that there are no absolute moral principles to be observed challenges the idea of fundamental rights and values that are fundamental to constitutional democracies. Second, there are still some complicated challenges to practically implement such a course. Such as, how to evaluate different values at stake, and how to guarantee that the views and expertise of both political and public leaders, and professionals, are taken into consideration?

## 4.2 Compromise

Now let us look into the possibilities of an ethical framework for counterterrorism professionals. In the theoretical literature on handling ethical dilemmas there appears to be one ethical concept that provides both a theoretical and practical bridging of differences: the notion of compromise, as elaborated by Benjamin:

“Successful navigation in life, as on the sea, requires knowing when and how to tack between viewpoints. ... The capacity to view the world from these two standpoints is what underlies our capacity for critical self-reflection, freedom of the will, and self-direction” (Benjamin 1990: 98).

This approach seems to be a promising one for application in the field of counterterrorism. Compromise has, throughout history, often been understood as result of legal mediation (Fumurescu, 2013), the outcome of sometimes “rotten” political negotiations (Margalit, 2010) or even betrayal (Benjamin, 1990). The concept of compromise is not extensively discussed by philosophers (Golding, 1979), especially when compared with its reception by game theorists. Benjamin focuses on compromise in the standard sense as outcome and process and applies it to “conflicts rooted in opposing ethical considerations” (Benjamin, 1990: 23).

### Circumstances of compromise

The conditions that provide motivation and grounds for solutions are coined by Benjamin as the ‘circumstances of compromise’ (Benjamin, 1990: 26). The five circumstances of compromise thus identified will be briefly evaluated in terms of their relevance to the practice of counterterrorism.

Factual uncertainty about many variables in a specific case is the first circumstance of compromise (Benjamin, 1990: 26). This point seems to be quite relevant, since the issue of uncertainty is one of the key elements of counterterrorism. Moral complexity is the second circumstance of compromise, which, like the previous point, has also been considered as a key feature of the human condition (Benjamin 1990: 29). Counterterrorism is not only part of the modern human condition, but also very much characterized by complex moral issues, as the above example of a hijacked commercial airliner has shown.

A continuing, cooperative relationship has to be considered as the third circumstance of compromise (Benjamin 1990: 30). Parties to an ethical conflict are often doomed to continue their cooperation in the future. This holds true for the field of counterterrorism as well, as the parties, both on a national and international level, are bound to cooperate in the future, whether they like or not. An impending, non-deferrable decision affecting both parties refers to the fourth circumstance of compromise (Benjamin 1990: 30). Similar to the previous points, this holds true in many situations of counterterrorism cooperation in our liquid world risk society. The national and international interconnectedness of counterterrorism operations implies that one can easily affect the other.

The scarcity of resources touches upon the fifth and final circumstance of compromise (Benjamin 1990: 31). Such scarcity seems to be common to many areas of life and especially to counterterrorism. Operational capacities of counterterrorism authorities are, by nature, limited in democratic settings that intrinsically limit operational choices.

#### Pursuing compromise

Practically speaking, what would it mean to pursue compromise? Before turning to the concept of compromise in detail it is important to note that compromise here is not considered as a negotiation between parties but rather as an encounter between different principles and underlying values. According to Benjamin, when pursuing the path of compromise, not all circumstances have to be at stake at once (Benjamin 1990: 32). Therefore, what would we have to do once we have embarked on the path towards compromise? Roughly speaking, three elements would be important. First, parties to the ethical conflict would have to rethink their dispute in a respectful discussion. Second, all parties would have to detect the shortcomings of their own views and the strengths of the views of the others. Third, a synthesis or new middle position would have to be identified. All views would be changed and compromised due to the acceptance of new views or positions, thus also excluding the risk of potential betrayal of positions or even of ethical values (Benjamin 1990: 35).

What would the concept of compromise mean in the case of the hijacked airliner that we applied so far? First of all, there are a couple of practical issues which

arise. Given the dynamics of air traffic, speed would play an important role. Especially in a smaller country like the Netherlands, little time would remain for moral considerations and decision-making. Therefore, compromise on those cases starts long before the incident itself through the development of policies, guidelines and the training of the capacities and virtues of decision-makers. This is not to say that thinking about ethical issues is only feasible in moments that lack the extreme pressure of time constraints. On a more general level, it seems that being trained in, and familiar with, handling ethical dilemmas can also create capacities to handle ethical issues when complex processes of decision-making occur, as in the case of the hijacked airline. The virtue ethics approach would offer rich opportunities here.

Transferring this fictional drive towards compromise to our example of the hijacked airplane would mean that we need to consider an open outcome instead of following a certain path (like opting to down the airplane) blocking such a path categorically, or letting the decision depend on the quality of the virtues of those individuals involved in the decision-making process. Such an open attitude allows us to review all facts, circumstances and assumptions involved, as they still do matter in the light of the final assessment to be made. An important challenge to this approach would be the risk that routinely reaching out for compromise could lead to a reduction of quality during the developmental process. Another challenge would be that of grounding or rooting the rather flexible sounding approach of compromise into the soil of the democratic legal order. This challenge is likely to be surmounted, as the circumstances and factors in cases like that of the hijacked airplane are likely to have enough in common to allow us to develop general outcomes of compromise.

Nevertheless, it remains doubtful whether compromise in such an extreme case is really possible. In addition, there are many layers of potential compromise attached to this example: compromises with hijackers, crew and passengers, colleagues in counterterrorism and politicians. However, counterterrorism practice shows that different approaches are established: from shooting (Netherlands) to not shooting (Germany). Those counterterrorism professionals are not in the luxurious position to turn down deliberation of a contested ethical issue on the grounds of complexity. To them it is real. Discussing an extreme case here can also sharpen the debate on ethics and counterterrorism, clarify the



consequences of ethical choices within the practice of counterterrorism and indicate both prospects for, and limitations of, compromise.

The ethical frameworks available to counterterrorism professionals and their key characteristics are summarized in Figure 2. Although they are presented in one table, they are not considered as equals. Differences in appreciation are expressed by differentiating between the strengths and weaknesses of their relevance to counterterrorism professionals.

**Figure 2**

**Ethical frameworks of counterterrorism professionals**

<b>Framework</b>	<b>Key characteristics</b>	<b>Relevance to CT-professionals strengths</b>	<b>Relevance to CT-professionals weaknesses</b>
Compass (Omand)	<ol style="list-style-type: none"> <li>1. Sufficient sustainable cause</li> <li>2. Integrity of motive</li> <li>3. Proportionate</li> <li>4. Right authority</li> <li>5. Reasonable prospect of success</li> <li>6. Secret intel as last resort</li> <li>7. Defendable in public</li> <li>8. Strategic long term consideration</li> </ol>	<ul style="list-style-type: none"> <li>- Comprehensive</li> <li>- Practical</li> <li>- Applicable to counterterrorism</li> <li>- Being the best of all</li> </ul>	<ul style="list-style-type: none"> <li>- Dependence on intellectual quality of author</li> <li>- Dependence on level of acceptance and implementation</li> <li>- Risk of top-down</li> </ul>
Combination (Perry)	<ol style="list-style-type: none"> <li>1. Compassion</li> <li>2. Fairness</li> <li>3. Respect for individual autonomy</li> <li>4. Respect for laws</li> <li>5. Honesty</li> <li>6. Courage in opposing injustice</li> <li>7. Integrity</li> </ol>	<ul style="list-style-type: none"> <li>- Situational flexibility</li> <li>- Choosing the best from all</li> </ul>	<ul style="list-style-type: none"> <li>- Problem of legitimacy</li> <li>- Assumptions untested</li> </ul>
Compromise (Benjamin)	<ol style="list-style-type: none"> <li>1. Parties in ethical conflict rethink dispute</li> <li>2. Parties detect shortcomings in own and strengths in view of others</li> <li>3. Establishment of synthesis or new middle position</li> </ol>	<ul style="list-style-type: none"> <li>- Open attitude and outcome</li> <li>- Challenging assumptions</li> <li>- Integrating the best elements of all approaches</li> </ul>	<ul style="list-style-type: none"> <li>- Contested standards of quality</li> <li>- Getting rooted into legal order</li> </ul>

### 4.3 Analysis and discussion

Facing the limitations of each key ethical approach separately and evenly, compromise could also lead to a complete rejection of ethics. Such an attitude has been expressed within the literature as the notion of *aporia* or impasse. Given the complexity of the modern world on the one hand and law on the other, the philosophical contribution of *aporia* suggests that many issues and dilemmas are simply unresolvable (Macklin and Whiteford, 2012: 94-95). Such a perspective leads some scholars to the conclusion that there are no ethics at all, and that universal principles cannot guide moral judgments in daily life (Caputo, 1993: 240). Applying such a post-modern approach to complicated issues in the practice of counterterrorism in order to justify a diversity of actions with diverging ethical underpinnings may sound attractive. Within a democratic legal order, however, such an approach is not conducive to designing legitimate actions in the long run. Professional practice is an inexact science and requires the capacity to make judgements beyond the rules of science. Practice and practice environments are complex and unpredictable, requiring "wise judgment under conditions of considerable uncertainty" (Higgs, 2012: 79). Finding such wisdom is obviously not easy. Nonetheless, the next section will explore how such wisdom can possibly be gained.

From a counterterrorism perspective, the compromise approach offers both strengths and challenges. The strengths are threefold. One is the explicit space allocated to further investigating facts and assumptions. Second, while other approaches also offer the option of challenging assumptions, the compromise approach centers this challenge at its core without prescribing any ethical pathways to be followed in advance. The final crucial strength of this approach is its integration of the best elements of all major ethical approaches. This integration goes beyond a mere combination of elements because it strives for the establishment or synthesis of a new middle position.

At the same time there are challenges to this approach. Any implementation of an inquiry into compromise would be faced by expectations for a high standard, which might - at least in the beginning of its implementation - influence the quality of the outcome. This is especially relevant because, so far, only limited

experience in handling ethical dilemmas has been obtained in the field of counterterrorism, when compared with the established areas of applied ethics and ethics support. Compared with the contributions of Omand and Perry, Benjamin's approach seems to provide the greatest potential to avoid simply cherry-picking from the various ethical approaches. Instead, it seems to offer the potential to reconcile major ethical approaches on the one hand, and set out an actionable trajectory of implementation on the other. Since it is far from easy to test and implement this approach in a practical setting, it is necessary to further explore what options the practice of counterterrorism offers to ethics deliberation, reflecting at least some of the characteristics of compromise.

Since the discussion of philosophical approaches has brought us as far as considering the approach of compromise to be an interesting and feasible method for counterterrorism practitioners, it will be considered next what philosophy can contribute to its implementation. In philosophy, the wisdom of practitioners in the field refers to that type of wisdom called '*phronesis*' (practical wisdom), one of the three approaches of knowledge developed in Aristotelian ethics. The other two approaches are '*episteme*' (science) and '*techne*' (craft, art), which are, of course, crucial in providing scientific and technical support to the efforts of counterterrorism. In general, *episteme* and *techne* are more widely used and institutionalized in the modern era. "Despite their importance, the concrete, the practical, and the ethical have been neglected by modern science" (Flyvbjerg, 2001: 59). In his plea for applying *phronesis*, Flyvbjerg especially cherishes its capacity to contribute to ethics deliberations that can guide practical action. Although Flyvbjerg does so from a social sciences perspective, his ideas can inspire an application of *phronesis* outside the social sciences itself, or within one of the many research fields of social sciences, like professional practices. This could be achieved through "a combination of concrete empirical analyses and practical philosophical considerations" or, to put it differently, "fieldwork in philosophy" (Flyvbjerg 2001: 168).

What is the application of *phronesis* and how would it fit within the practice of counterterrorism? In their edited volume on the concept, Kinsella and Pitman (2012) considered *phronesis* as professional knowledge and the role of practical wisdom in the professions. Although their focus was foremost on education and

healthcare, their findings might be relevant for the practice of counterterrorism as well. They defined *phronesis* as “practical wisdom or knowledge of the proper ends of life, ...an intellectual virtue that implies ethics ... (and) ... involves deliberation that is based on values, concerned with practical judgement and informed by reflection” (Kinsella and Pitman, 2012: 2). To place *phronesis* into the context of a professional practice would mean to apply its characteristics of being “pragmatic, variable, context-dependent, and oriented towards action” (Kinsella and Pitman, 2012: 2). In the field of public administration the ethics triangle has been brought into practice. This ethics triangle implies that public administrators should strive towards a balance of virtue, principle and good consequences, all seen from the perspective of the duty of the public interest (Svara, 2007: 67). Another relevant contribution comes from the field of moral philosophy addressing global challenges to our civilisation by a plea and quest for common ground based on virtues, individual training, moral imaginative capacities and universal ethical considerations (Pelluchon, 2019).

*Phronesis* has not been applied in the context of counterterrorism yet, but has the potential to contribute to the dealing with ethical dilemmas for counterterrorism professionals. This research will explore the effects of applying *phronesis* within the practice of counterterrorism. Focusing on practical wisdom and engaging counterterrorism practitioners in ethics can contribute to the development of professional ethics in security in a broader sense. From a broader perspective in security ethics, three potential benefits to the *phronesis* approach can be mentioned here. First, it is crucial to constantly reflect on the powers allocated to professionals. Second, it is vital that justice is considered the fundamental precept underlying daily work. Third, professionals must be taken care of in order to avoid stressful situations that could result in harm to society and the professionals as well (Ammicht Quinn, 2016: 131). The application of practical wisdom to the practice of counterterrorism requires taking the context of the professional field and the contemporary situation of the field into account (Weidema and Molewijk, 2017: 101). Before turning to the application of practical wisdom in the practice of counterterrorism, I will explore what ethical issues counterterrorism professionals are dealing with.

#### 4.4 Conclusions

The objective of this chapter is to clarify what the concept of 'compromise' can contribute to the handling of ethical dilemmas in 'counterterrorism as practice'. The overall assessment is that there are many fruitful points of reference that make the concept of compromise useful to the practice of counterterrorism. From the theoretical perspective of the concept of practice it becomes clear that practical wisdom or *phronesis* can offer useful insights to the practice of counterterrorism. Although there are no documented empirical experiences with ethics support in the field of counterterrorism thus far, *phronesis* can be applied to the practice of counterterrorism. The total rejection of ethics due to the perceived contemporary complexity is not an option for the practice of counterterrorism, as ethics is inherent to counterterrorism. The complexity and secrecy of the practice of counterterrorism makes the creation of an experimental lab-setting to test compromise unlikely, but the potential to create room for ethical guidance to counterterrorism professionals remains.

The next chapter will provide a better understanding of the ethical dilemmas that counterterrorism professionals are facing.