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Defining Terrorism

Ordinary Use

What is terrorism? Current ordinary use of the word displays wide variety and considerable confusion; as a result, discussing terrorism and an array of moral, political, and legal questions it raises is difficult and often frustrating. Only two things stand out clearly in most instances of this use: terrorism is, or has to do with, violence and terror, and it is a bad thing, not something to be proud of or to support. Virtually nobody applies the word to their own actions or to the actions of those with whom they have sympathy or whose struggle they support. As the cliché has it, one person's terrorist is another's freedom fighter. This suggests that in discussions of terrorism, as in so much public debate, a double standard is at work: one of the form "us vs. them."

Another type of double standard, less obvious and thus perhaps even more of an obstacle to coming to grips with the notion of terrorism, is the tendency to accuse insurgents who resort to violence of resorting to terrorism, without pausing to take a closer look at the type of violence employed and just who its victims are, coupled with an unwillingness to mention terrorism when talking about violent actions and policies of a state, especially one's own state – even when *what* is done is the same. This indicates a double standard of the form "state vs. non-state agents" – the assumption that, whatever it is, terrorism is by definition something done by insurgents, and never by the state.

Much of this is apparent in the public debate about the use of terrorism in the Israeli–Palestinian conflict, for example. Both Palestinians and Israelis are committing what many among the uninvolved would

call terrorism; both sides deny that they are engaging in terrorism; each accuses the other side of doing so; and both attempt to justify the violence they employ, wholly or in part, by the terrorist acts of the other side. Palestinians claim that theirs is a just struggle to put an end to occupation and oppression and to attain self-determination. We are morally and legally entitled to use violence to this end, they say. That is not terrorism, but rather fighting for freedom. Israelis retort that the state of Israel is certainly not engaging in terrorism. It is rather facing a terrorist onslaught, and is merely doing what any state in such circumstances would be morally and legally entitled and indeed obligated to do: it is using its armed forces and security services in defense of the country and the security of its citizens.

Those speaking on behalf of Palestinians are thus assuming that the decisive criterion of terrorism is the ultimate goal of the agent who resorts to violence. If it is a legitimate goal, such as national liberation, that cannot be terrorism. From their point of view, "terrorists fighting for freedom" is a contradiction in terms.

A classic statement of this position is given in Yasir Arafat's speech at the United Nations General Assembly on November 13, 1974:

Those who call us terrorists . . . seek to hide the terrorism and tyranny of their acts, and our own posture of self-defense. The difference between the revolutionary and the terrorist lies in the reason for which each fights. For whoever stands by a just cause and fights for the freedom and liberation of his land from the invaders, the settlers and the colonialists, cannot possibly be called terrorist; otherwise the American people in their struggle for liberation from the British colonialists would have been terrorists, the European resistance against the Nazis would be terrorism, the struggle of the Asian, African and Latin American peoples would also be terrorism, and many of you who are in this Assembly Hall were considered terrorists. [Ours] is actually a just and proper struggle consecrated by the United Nations Charter and by the Universal Declaration of Human Rights. As to those who fight against the just causes, those who wage war to occupy, colonize and oppress other people – those are the terrorists, those are the people whose actions should be condemned, who should be called war criminals: for the justice of the cause determines the right to struggle. (Arafat 1995, pp. 334–5)

On the other hand, those speaking on behalf of Israel typically assume that it is the identity of the agent that determines whether some act or policy of violence is terrorist or not. This is apparent in the policy of both government spokespersons and the media of por-

traying as terrorism all violence on the part of Palestinians, whether directed at common Israeli citizens, at holders of high political office, or at members of military and security agencies. If an act or campaign of violence is carried out by insurgents, then it is terrorism; if by the state, then it is either a policing action or warfare. From their point of view, "state terrorism" is a contradiction in terms.

Moreover, this game of denying that one's own side is guilty of terrorism while accusing the other side of resorting to it, in a conflict in which both sides engage in the same type of violent activity, suggests that an additional assumption may be at work. Both sides may well be assuming that, if there is a violent conflict between two parties and one is guilty of terrorism, the other party is thereby absolved of the charge. If *they* are terrorists, *we* cannot be.

Efforts by the United Nations to develop a definition that could be accepted universally and open the way to dealing with terrorism by means of international law seem to have fallen victim, at least so far, to the same sort of relativism and confusion. Trudy Govier describes the impasse these efforts have reached:

The United Nations has been trying to define terrorism for some thirty years, and has given up in its quest for a definition that everybody can agree upon. A major problem is that Western governments wanted to make sure that state agents could never be considered terrorist, while Islamic countries wanted to make sure that national liberation movements in the Middle East and Kashmir could never be considered terrorist. (Govier 2002, p. 89)

Once they are brought into the open, none of the three assumptions seems plausible. There is no reason whatsoever why two parties to a conflict cannot both be using terrorism, just as two criminals can be at each other's throats, or two states at war can both be waging an unjust war, whether in terms of *jus ad bellum* (justice of going to war) or *jus in bello* (justice in fighting) or both. The bias in favor of the state and against insurgents will not withstand scrutiny either. Although there is much to be said for having a state rather than living in a "state of nature," that is not to say that, in any conflict between a state and an insurgency, we should be on the side of the state. We sometimes find that an insurgency is morally justified and the attempts of the state to put it down are not; this is typically the case in a struggle for national liberation. Even in such a struggle, however, not every means will do, morally speaking. We sometimes have much sympathy with a people fighting to push out the occupying power, but still

object if its fighters seek to achieve that by attacking enemy civilians rather than the military.

These remarks suggest that we will be in a better position to understand and therefore also to evaluate terrorism if we discard all three assumptions and try for a definition that does not define terrorism in terms of the agent or the agent's ultimate goal, and which allows for the possibility that victims of terrorism might themselves make use of it in response. Such a definition should focus on just what is done and what the proximate aim of doing it is, and put to one side the identity of the agent and their ultimate and allegedly justifying aim.

Terrorism and Violence

Etymologically, "terrorism" derives from "terror." Originally the word meant a system, or regime, of terror: at first that imposed by the Jacobins, who applied the term to themselves without any negative connotations. Subsequently it came to be applied to any such policy or regime and to express a strongly negative attitude, as it generally does today. Since I am seeking a definition that will cover both a single act and a policy of terrorism, I propose to put aside the notions of "system" and "regime" but preserve the connection with terror. Terrorism is meant to cause terror (extreme fear) and, when successful, does so. But if someone did something with a view to striking terror in the hearts of others with no further aim, just for the fun of it, I think we would not see that as a case of terrorism. Terrorism is intimidation with a purpose: the terror is meant to make others do things they would otherwise not do. Terrorism is coercive intimidation.

This is just the definition offered in one of the early philosophical discussions of the subject, Carl Wellman's paper "On Terrorism Itself": "the use or attempted use of terror as a means of coercion" (Wellman 1979, p. 250). Wellman remarks that violence often enters the picture, as it is one of the most effective ways of causing terror, but hastens to add that "the ethics of terrorism is not a mere footnote to the ethics of violence because violence is not essential to terrorism and, in fact, most acts of terrorism are nonviolent" (ibid., p. 251).

The ethics of terrorism is indeed more than a footnote to the ethics of violence, but not for the reason given by Wellman. Moreover, it seems to me that it does not make much sense to speak of "nonviolent terrorism" (taking this to exclude threats of violence as well). Wellman has three counterexamples, none of which strikes me as

convincing. One is a judge who sentences a convicted criminal to death in order to deter potential criminals. I should think that execution is one of the more violent things we can do to a person. Then there is blackmail, in which the prospect of exposure is used as a means of intimidation and coercion. I think we would need to know just how serious the harm caused by the exposure would be in particular cases. If the harm threatened were great, and if we understand acts of violence as acts that characteristically inflict great harm in a striking manner, as Wellman does, then such instances of blackmail might indeed qualify as threats of violence. Finally, Wellman says:

I must confess that I often engage in nonviolent terrorism myself, for I often threaten to flunk any student who hands in his paper after the due date. Anyone who doubts that my acts are genuine instances of the coercive use of terror is invited to observe the unwillingness of my students to hand in assigned papers on time in the absence of any such threat and the panic in my classroom when I issue my ultimatum. (1979, p. 252)

This seems quite fanciful. But if Wellman's students were indeed as given to panic and terror as he suggests, and if to be failed in his course was indeed such a great and dramatically inflicted harm that their reaction becomes understandable, then his threat was a threat of violence after all. It was not terrorism, though; nor is blackmail, or the meting out of the death penalty to a convicted criminal – but not for the reason adduced by Wellman.

A more radical version of Wellman's position on the definition and moral wrongness of terrorism is offered in Robert E. Goodin's book *What's Wrong with Terrorism?* While Wellman's understanding of terrorism is broad enough to allow for both political and nonpolitical terrorism, Goodin emphasizes its political role. He finds both its "analytic core" and its "core wrong" in the use of terror as a means for achieving a political purpose. Terrorism, he writes, is "fundamentally a political tactic, involving the deliberate frightening of people for political advantage. That is not the worst thing that terrorists commit. But it is the *distinctive* wrong that terrorists commit, making them terrorists and not mere murderers" (Goodin 2006, p. 49). On Wellman's account, one can commit an act of terrorism without using or threatening to use violence and without inflicting any great harm in some nonviolent way, merely by threatening to inflict such harm (see Wellman 1979, pp. 253–4). On Goodin's account, one need not even make a threat of any sort: one acts as a terrorist merely by issuing a warning about the acts of *others* that is meant to intimidate

and thereby procure one's own political advantage. Thus Goodin casts his net widely enough to catch both many of those who would be generally perceived as terrorists and a relatively small, yet highly significant group of those who would not be so perceived: those who do not engage in violence of any sort, but do engage in the politics of fear. Accordingly, "if (or *insofar as*) Western political leaders are intending to frighten people for their own political advantage, *then* (to *that extent*) they are committing the same core wrong that is distinctively associated with terrorism" (2006, p. 2). When committing this wrong, they stimulate visceral responses instead of rational thinking, and thereby undermine democratic self-government. This is "a capital crime against democratic politics" (*ibid.*, pp. 179–80). Osama Bin Laden is guilty of this crime; apparently, George W. Bush, too, should be charged with it. For, in many of his speeches, he was "clearly himself acting with the intention of instilling fear of terrorism to advance his own political agenda" and, on Goodin's definition, "that would count as an act of terrorism in itself" (*ibid.*, pp. 169–70).

Now it is one thing to argue that deliberate generation of terror (great fear) is *one* defining trait of terrorism, and another to argue that doing so for the sake of coercion (Wellman), or for one's own political advantage (Goodin), *sufficiently* defines terrorism. The latter claims are quite implausible; they confuse terrorism and terrorizing. But, while terrorism is meant to terrorize, not every type of terrorizing with a view to coercion or to gaining political advantage is tantamount to terrorism. The terrorizing must be achieved by violence, whether actual or threatened. From the point of view both of history and of current use, "nonviolent terrorism" looks much too odd, and neither Wellman nor Goodin give us good reason to think of terrorism in a way that allows for it.

Whatever else it is, terrorism is (a type of) violence. But the notion of violence is itself in need of clarification. Just like "terrorism," "violence" has no universally accepted definition and tends to be used in a string of different senses. Just like "terrorism," "violence" is very much a contested concept, and its ordinary use often indicates confusion and displays double standards. This is not the place for an extended, systematic discussion of the subject; for the purposes of this chapter (and the book), some brief remarks must suffice.¹

One characteristic way of defining violence is in terms of force. Of course, a simple equation of the two will not do: we do not want to say that every use of force is an instance of violence, and therefore also *prima facie* morally wrong. We can act firmly yet gently to restrain someone from doing something desperate, thus using force,

but not violence, and doing the right thing under the circumstances rather than something wrong. Therefore we might define violence as "the illegal use of force, or threat of such force, against person or property" (Miller 1984, p. 403). But this implies that, whatever state agents do, as long as they are acting within the bounds of law, they can never be charged with violence – surely an unwelcome implication. A street brawl will count as violence, but a war between two states will not. Replacing "illegal" by "morally illegitimate" does not help. Given the amended definition, a fight between two persons that is clearly violent in the usual sense of "violence" cannot be described as such; we must find out first who is attacking and who is merely defending himself. Only the former is using violence, whereas the latter, while giving as good as he gets, is not. The same goes for war: the side fighting an unjust war is using violence, while the side fighting a just war is not. Both "legalistic" and "legitimist" definitions of violence are overly narrow, run together conceptual and normative considerations, and are bound to generate much too much relativism in discussions of the subject.

There is a different and broader approach to violence – broad enough to include a wide range of oppression and injustice in society. It is argued that these should count as violence because of their consequences. These consequences are not less damaging, and tend to be more pervasive and long term, than the application of brute physical force, which is commonly taken as the paradigm of violence. The fact that they are less dramatic, indeed less palpable, should not make us blind to the fact that they are often as pernicious as violence in the more usual, narrow sense. Thus John Harris argues that, when people are injured or made to suffer, it does not really matter just how that is done; what counts is the result, the injury or suffering caused. He proposes the following definition: "an act of violence occurs when injury or suffering is inflicted upon a person or persons by an agent who knows (or ought reasonably to have known) that his actions would result in the harm in question" (Harris 1980, p. 19). It is not important even whether people are injured by someone's action or as a consequence of failure to act; accordingly, the word "actions" in his definition is to be taken broadly enough to include omissions as well. This helps highlight "the violence of normal times" or "structural violence," the type of violence that is impersonal and psychological, rather than personal and physical, and results largely from people's inaction rather than from their positive actions. In this way, it may be possible to conscript the widely felt repugnance towards, and opposition to, "rape, murder, fire-and-sword"-type violence in the struggle

against “structural violence” involved in injustice and oppression. That, indeed, is the main point in adopting a broad conception of violence.

However, it is not clear that much will be achieved along this path. Murder and rape, on the one hand, and injustice and oppression, on the other, are similar in that they are all brought about by human action (or inaction) and that they are all great wrongs; but they are also dissimilar in some important respects. For one thing, there is not only general agreement that murder and rape are wrong, but also a wide consensus on what clear-cut cases of murder or rape are. There is general agreement, too, that injustice and oppression are wrong; but there is very little consensus on what clear-cut cases of injustice or oppression are. Some would go further and say that both “injustice” and “oppression” are *essentially* contested concepts, and that we should not expect ever to reach much consensus on their application (see Gallie 1956). This makes the prospect of any great advance in eliminating or greatly reducing injustice or oppression by this particular method rather dubious. Moreover, we can run together things such as murder and rape, on the one hand, and injustice and oppression, on the other, under a single conceptual and moral heading of “violence” only if we ignore the distinction between acts and omissions. But it is not clear that we should do so. Surely there is a moral difference “between what is done, on the one hand, in stabbing a beggar to death and, on the other hand, in ignoring his plea for assistance” (Coady 2008, p. 31).

Yet another way to understand violence is to focus on the notion of force and qualify it in terms of its direct effects rather than, as in the first approach, in terms of its legality or moral legitimacy. Definitions along these lines reflect common use much better than the previous two approaches, and accordingly are often found in dictionaries. Thus the *Oxford English Dictionary* defines “violence” as “the exercise of physical force so as to inflict injury on or damage to persons or property.” This is on the right track, but it raises two queries. Are the words “so as” to be taken in an objective sense, as “apt to,” or in a subjective sense, as “meant to”? It seems to me that, if someone were to exercise physical force of the sort likely to cause injury or damage upon someone else, and did so without meaning to do so, that would still count as violence. If the idea of unintended violence makes sense, we should take the words “so as” in the objective sense. The other query is: Must violence always be physical? It would seem not: one can readily think of cases where injury or damage to a person is done by forceful psychological pressure rather than by physical force.

One type of such psychological violence is bullying at school or in the workplace; another is psychological battering that characterizes some intimate relationships. When the *OED* definition is amended to allow for such cases, it reads: "the exercise of physical or psychological force so as to inflict injury on or damage to persons or property."

Unlike definitions produced by the first approach, this one does not preempt discussion of the legality and moral justification of violence. Unlike definitions offered by the second approach, it does not run together injury or damage inflicted by humans on humans with intent, directly, by physical or psychological force, with moral wrongs or states of affairs that fall short of the ideal and are caused unintentionally, indirectly, without the use of force, by omission. I find the definition quite helpful, and will be assuming it throughout the book whenever I refer to violence.

Indiscriminate Violence

It is often said that the most distinctive characteristic of terrorism is that it employs violence indiscriminately. This is certainly not true if construed literally: terrorists do not strike blindly and pointlessly, left and right. They plan their actions carefully, weighing the options and trying for the course of action that will best promote their objective at the lowest cost to themselves. But the claim is true, and of crucial importance, if taken to refer to the terrorists' failure to discriminate between those who are and those who are not innocent and to direct their violence only at the latter while respecting the immunity of the former.

Terrorism has a certain structure. It has two targets: the immediate, direct target, which is of secondary importance, and the indirect target, which is really important. This indirect strategy is a feature of everyday life, and there is nothing wrong with it as such. But when the indirect, but really important, aim is to force someone to do something they would otherwise not do, when that is to be achieved by intimidation, and when intimidation is effected by using violence against innocent people – by killing, maiming, or otherwise severely harming them – or by threatening to do so, then the indirect strategy is that of terrorism. The primary and secondary targets are different persons or groups of people. The person or persons who constitute the primary but indirect target of the terrorist may or may not be innocent themselves; what is essential is that those who are made the terrorists' secondary but direct target are. Thus terrorists may

attack a group of civilians with the aim of intimidating the civilian population at large and getting it to leave a certain area. Or they may attack such a group with the purpose of cowing the government into accepting their demands, as is usually the case in airplane hijacking. Those attacked are people who are innocent and who, by virtue of this innocence, enjoy immunity against attack. In war, these are innocent civilians: everyone except members of armed forces and security services, those who supply them with arms and ammunition, and political officials directly involved in the conflict. In political conflict that falls short of war, this class has a similarly wide scope: it includes everyone except certain government officials, police, and members of security services.

What is the sense in which the direct victims of the terrorist are "innocent"? They are not guilty of any action (or omission) the terrorist could plausibly bring up as a justification of what he does to them. There is nothing those victims have *done* (or failed to do) that makes them deserve, or liable, to be killed or maimed. They are not attacking him, so he cannot justify his action as one of self-defense. They are not waging war on him or on those in whose behalf he presumes to act; therefore he cannot say that he, too, is merely fighting a war. They are not responsible, on any credible understanding of responsibility, for the (real or alleged) injustice or suffering that is inflicted on the terrorist or on those whose cause he has adopted, an injustice or suffering so enormous that it could justify a violent response. Or, if they are, he is not in a position to know that. They are, therefore, morally protected from violent attack: as innocent civilians rather than soldiers, if the context is one of war, or as common citizens rather than those devising or implementing policy, if the conflict falls short of war.

Notice that I am not making the sweeping claim that the direct victims of terrorist violence are not responsible in any way and to any degree for the injustice or suffering the terrorist fights against, and that they are accordingly not liable to criticism or other unfavorable response of any sort. I am rather saying that they are not responsible, *on any credible understanding* of responsibility and liability, for the injustice or suffering the terrorist fights against – not responsible at all, or at least not responsible to the degree that makes them liable to be killed or maimed on that account. Moreover, the injustice or suffering at issue need not be *real*; it may be merely *alleged*.

To take up the latter point first, I am not speaking of innocence of injustice or infliction of suffering and the immunity that comes with it from a point of view independent of that of the terrorist. Adopting

such an approach would introduce an unacceptable degree of relativity into discussions of terrorism. For example, the killing of Italian politician Aldo Moro by the Red Brigades would be seen as a case of terrorism by most of us. For, whatever we might think of Moro's policies, most of us do not consider them so extremely unjust and morally intolerable as to make him deserve to die on account of them; that is, most of us think of Moro as innocent in the relevant sense and therefore immune against killing. But the Red Brigades would deny that, and claim that what they did was political assassination, not terrorism; for they judged his policies quite differently. In general, if we adopted this approach, whether we thought an act of violence was a case of terrorism or not would depend on whether we thought the actions and policies of its direct victims were causing great injustice or suffering; and that, of course, would normally be open to much disagreement. The bottom line would be that, to paraphrase *the* cliché about terrorism, one person's terrorist would be another's political assassin. In order not to have to grant that, I am saying that being responsible for a merely alleged great injustice or suffering – a great injustice or suffering that is alleged by the terrorist, but not considered as such by others – is enough to lose one's immunity against violence. This is in line with the view adopted in mainstream versions of just war theory and international laws of war that one does not lose one's immunity against acts of war only by fighting in an unjust war, but rather by fighting in any war. Similarly, one does not lose one's immunity against political violence only by holding office in a gravely unjust government or implementing policies of such a government, but by holding office in or implementing policies of any government. As King Umberto I of Italy said after an unsuccessful attempt on his life, this kind of risk is part of the job.

Members of these two classes who fall victim to violence are not considered innocent and morally protected against violence by those attacking them. The latter rather think of their acts as acts of war or political assassination, respectively. I submit that we should grant that. In other words, I submit that the terrorist's victim is innocent *from the terrorist's own point of view* – that is, innocent even if we grant the terrorist her assessment of the policies at issue. Of course, this should not be thought to imply that, if someone holds that a government is being gravely unjust to, or is inflicting intolerable suffering on, its subjects, they have a moral license to kill its officials, but only that, if they do so, that will not be terrorism but, rather, political assassination. We can still condemn their actions as harshly as we feel we should if we reject their judgment of the policies at issue. We can

do so even if we accept that judgment, if we believe that they could and should have opposed those policies by nonviolent means. We will not be condemning their actions *qua* terrorism. But to say of an action that it is not terrorism but political assassination is neither to justify nor to excuse it.

This means that, if the terrorist subscribes to some credible understanding of responsibility and liability, she kills or maims people she herself, in her heart, believes to be innocent. By a credible view of these matters I mean a view that, first, grounds a person's *responsibility* for some state of affairs in that person's acts or omissions that are significantly voluntary – that is, informed and free – and have a sufficiently strong connection with that state of affairs. Second, I mean a view that requires an intelligible and morally acceptable proportion between what a person is responsible for and the unfavorable response to which he or she is *liable* on that account.

This fact – that the terrorist kills and maims people she herself thinks innocent – goes a long way in explaining why most of us view terrorism with such repugnance. To be sure, there are terrorists who adhere to crude notions of collective responsibility and liability that take membership in an ethnic or religious group or citizenship of a state as a sufficient ground, or an indication of a sufficient ground, for ascription of such responsibility and liability. For example, the perpetrators of the attacks in New York on September 11, 2001, seem to have held such views. I will discuss several instances of such views in chapter 3. Still other terrorists are amorlists and will not be bothered by questions of responsibility and liability. Terrorists belonging to these two classes do not believe their victims to be innocent. The atrociousness of their type of terrorism must be located elsewhere: in their preposterous views of responsibility and liability and the gory consequences these views have in their practice.

Since terrorism is indiscriminate in the sense specified – since it does not discriminate between the guilty and the innocent – it is also unpredictable. One can never count on keeping clear of the terrorists by not doing the things the terrorists object to: for example, by not joining the army or the police, or by avoiding political office. One can never know whether, at any time and in virtually any place, one will become a target of a terrorist attack.

Walter Laqueur objects to accounts of terrorism as indiscriminate violence:

Many terrorist groups have been quite indiscriminate in the choice of their victims, for they assume that the slaughter of innocents would sow

panic, give them publicity and help to destabilize the state and society. However, elsewhere terrorist operations have been quite selective. It can hardly be argued that President Sadat, the Pope, Aldo Moro or Indira Gandhi were arbitrary targets. Therefore, the argument that terrorist violence is by its nature random, and that innocence is the quintessential condition for the choice of victims, cannot be accepted as a general proposition; this would imply that there is a conscious selection process on the part of the terrorist, that they give immunity to the "guilty" and choose only the innocents. (Laqueur 1987, pp. 143–4)

Neither of the two objections is convincing. To take the latter first, the way Laqueur presents it contains a contradiction: if it is claimed that terrorist violence is *random*, then it cannot also be claimed that it is directed *solely* against the innocent, while the guilty are given immunity. What is claimed is that the defining feature of terrorism, and the reason why many of us find it extremely morally repugnant, is its failure to discriminate between the innocent and the guilty, and its consequent failure to respect the immunity of the former and to attack only the latter. Terrorists do not take on the army or the police, nor do they attempt to kill a political official, but choose, say, to plant a bomb in a city bus, either because that is so much easier or, perhaps, because that will better serve their cause. They know that their victims are innocent civilians, but that is no good reason for them not to do it. If a couple of soldiers get on the bus along with the civilians and get killed as well, they will not see that as a fly in the ointment, but will either consider it irrelevant or welcome it as an unexpected bonus. As for Laqueur's first objection, it is predicated either on a definition of terrorism that includes political assassination, and is thus question-begging, or on the assumption that every act of a terrorist is a terrorist act, which is absurd. The Red Brigades, for instance, were a terrorist organization, for they committed many terrorist acts; but when they abducted and killed Aldo Moro, that was political assassination, not terrorism.

This targeting of the innocent is the essential trait of terrorism, both conceptually and morally. The distinction between guilt and innocence is one of the basic distinctions in the moral experience of most of us. Most of us require that the infliction of serious harm on someone be justified in terms of some free, deliberate action, or culpable inaction, on their part. If this cannot be done, people are innocent in the relevant sense, and thus immune against the infliction of such harm. A discussion of the way terrorism should be defined is not the right context for establishing this claim. But I would not

be greatly tempted to try to prove it in any context. The belief that innocence implies a far-reaching (though perhaps not absolute) immunity against the infliction of severe harm is a brute fact of the moral experience of most of us. For those who find it compelling, it is as simple and compelling as anything, and more so than anything that might be brought up as a supporting argument. Accordingly, as Michael Walzer puts it, "the theoretical problem is not to describe how immunity is gained, but how it is lost. We are all immune to start with; our right not to be attacked is a feature of normal human relationships" (Walzer 2000, p. 145 n.). One may lose this immunity by attacking someone else, or by enlisting in the army in time of war, or by joining security services, or by holding office in a regime or an organization that is resisted by violence because of its unjust, or allegedly unjust, policies. But one who has done none of the above is innocent of anything that might plausibly be brought up as a justification for a violent attack on her, or a threat of such an attack, and is thus immune against it. When she is attacked nevertheless, with the aim of intimidating someone else and making them do something they otherwise would not do, that is terrorism. Terrorism is different, both conceptually and morally, from violence employed in self-defense, from war in general and guerrilla war in particular, and from political assassination.

My account of terrorism is motivated by the need to overcome relativism that infests most debates about the subject and makes them barren. I have argued that, in order to arrive at an understanding of terrorism that is not plagued by relativism, we must put aside both the identities of those employing terrorism *and* their ultimate aims and the related issue of the moral standing of the policies and practices they oppose. We must focus instead on *what is done* and what is the *proximate aim* of doing it. The conceptually and morally salient trait of terrorism is that it is violence against the innocent: against those who, on any credible understanding of responsibility and liability, are not responsible, or not responsible enough, for the real or alleged injustice or suffering the terrorist fights against. Since not only real, but also merely alleged, injustice or suffering should count in determining the innocence of the direct victims and deciding who is a terrorist, my account does not make this decision hostage to endless debates about the moral standing of contested policies and practices. My conception of terrorism and its application does not presuppose any particular type of agent, any particular ultimate aim, any particular moral and political views. It presents terrorism as a way of acting that could be adopted by different agents and could

serve various ultimate objectives (most but perhaps not all of them political). It can be employed by states or by non-state agents and may promote national liberation or oppression, revolutionary or conservative causes (and may possibly pursue some nonpolitical aims as well). One can be a terrorist *and* a freedom fighter; terrorism is not the monopoly of enemies of freedom. One can hold high government or military office *and* design or implement a terrorist campaign; terrorism is not the preserve of insurgents. In this way much of the relativism concerning who is and who is not a terrorist that has plagued contemporary public debate can be overcome.

However, there is a residuum of relativity: my account does presuppose a certain understanding of responsibility and liability, whereby a person is *responsible* for a state of affairs only by virtue of that person's voluntary – that is, informed and free – act or omission that has a sufficiently strong connection to that state of affairs, and thereby becomes *liable* to some proportionately unfavorable response. Given this understanding of responsibility and liability, the victims of terrorist violence will be found innocent from the terrorist's own point of view. Yet when an individual or group resorts to violence which we perceive as terrorist, but rejects the label by deploying a view of responsibility and liability based on some extremely far-fetched connection between states of affairs and human choices and actions, and argues that entire social classes or nations are responsible for certain policies and practices and liable to be attacked by deadly violence, I can only discount such arguments as preposterous. I will then insist on describing and judging their actions as terrorist, although they reject this label. I do not see how this last remnant of relativity can be eliminated; we may have to live with it.

Further Issues

The next three points are suggested by C. A. J. Coady's definition of a terrorist act as "a political act, ordinarily committed by an organized group, which involves the intentional killing or other severe harming of noncombatants or the threat of the same or intentional severe damage to the property of noncombatants or the threat of the same" (Coady 2008, p. 159).

While Wellman and Goodin want to preserve the connection between terrorism and terror, but to disconnect terrorism from violence, Coady's definition suggests the opposite: terrorism is a type of violence which, indeed, often causes terror, but this is "an important

insight into the sociology of terrorism” and should not be included in the definition. The connection is merely contingent (2008, p. 162). Moreover, do not all uses of political violence effect some degree of fear?

That is true, but there is an important difference between the sort of violence most of us would want to call terrorist and other kinds of violence, where the fear caused is either a less important objective or not an objective at all, but merely a welcome byproduct. In terrorism proper, the causing of fear and coercion through fear is *the* objective. Even if in certain contexts coercion through fear may not seem important enough to single out this particular type of violence, things look different from a moral point of view. Most of us feel that terrorism is so very wrong primarily, but not solely, because it is violence inflicted on the innocent; intimidation and coercion through intimidation are *additional* grounds for moral condemnation, an insult added to injury.

This should not be taken to suggest a simplistic, overly rationalistic picture of terrorism: a picture of the terrorist making a clearly specified threat to his primary target, who then rationally considers the matter and comes to the conclusion that it pays to comply. This picture may fit some cases of terrorism – for instance, airplane hijacking – but it certainly does not fit others. For terrorism often aims at generating long and complex social processes, involving much irrational behavior, that are meant to disorient the public and destabilize various social arrangements and institutions, if not social life in general. However, intimidation plays a central role in such cases as well, while the ultimate aim of the terrorists is, again, to make those who constitute their primary target do things they otherwise would not do. Therefore such cases do not call for a revision of the definition of terrorism as a type of coercion through intimidation.

The violence perpetrated by terrorists is typically killing, maiming, or otherwise severely harming their victims. Must terrorist violence be directed against persons? According to Coady’s definition, it need not be. Suppose a terrorist organization decided to stop killing and maiming people and took to destroying valuable works of art instead. Or suppose it started destroying the crops that are the only source of livelihood of a village. Would that mean giving up terrorism for a non-terrorist struggle, or would it rather be substituting one terrorist method for another? In the latter case, I think, we would still speak of terrorism – because the destruction of property would threaten people’s lives. In the former case, however, the word “terrorism” might no longer seem clearly appropriate. As Jenny Teichman puts

it, "it may indeed be grossly unfair and unjust to destroy the property of non-combatants, but unless that property is needed for life itself it isn't terroristic. For one thing it is not likely to produce terror – only fury" (Teichman 1986, p. 92).

Terrorism is often defined in various overly restrictive ways. The identification of terrorism with political terrorism, as in the definition offered by Coady, is quite typical. Yet the method of coercive intimidation by infliction of violence on innocent persons has often been used in nonpolitical contexts: one can speak of religious terrorism (e.g. that of the Hizballah) and criminal terrorism (e.g. that of the Mafia). Much of the former type of terrorism can perhaps be subsumed under political violence, if "political" is understood broadly enough; but the latter cannot. Philosophical discussion of terrorism, in particular, should allow for its nonpolitical varieties. Such discussion aims at determining the moral status of terrorism, and that need not depend on whether it is employed for political or nonpolitical purposes. It might be said that, other things being equal, the use of violence is morally worse if its aim is self-interested, as in criminal activities, than if it is other-regarding, as it is in politics. On the other hand, some political views and practices are so morally repugnant that violence used in implementing them may be morally worse rather than better on that account.

Even more restrictive are definitions couched in terms of *who* uses terrorism. Terrorism is often presented as a method employed solely by rebels and revolutionaries, and state terrorism is thus defined out of existence. This may be good propaganda, but it is poor analysis. As I remarked at the outset, the word "terrorism" was used originally to refer to the reign of terror set up by the Jacobins – that is, to a case of *state* terrorism. And liberal and democratic states too have engaged in terrorism: witness the bombing of Hamburg and Dresden, Hiroshima and Nagasaki. In all these cases the targets were neither military nor industrial, but rather major centers of civilian population of enemy countries. The objective was to destroy the morale and break the will of the population and in that way either secure capitulation of the enemy (Germany) or shorten the war (against Japan). This kind of bombing has come to be known as "terror bombing." Furthermore, there is a type of state – the totalitarian state – whose most fundamental principle is permanent, institutionalized terrorism. For nothing less than such terrorism, exercised by the omnipotent state and, in particular, its secret police, would do as a means of an attempt at total domination of society. (I will have to say more on state terrorism in the next chapter.)

The preceding discussion results in the following definition of terrorism: the deliberate use of violence, or threat of its use, against innocent people, with the aim of intimidating some other people into a course of action they otherwise would not take.

Let me summarize the most important points about this definition.

- Terrorism has a certain structure. It has two targets, the primary and secondary. The latter target is directly hit, but the objective is to get at the former, to intimidate the person or persons who are the primary target into doing things they otherwise would not do.
- The secondary target, which is hit directly, consists of innocent people. Thus acts of terrorism are distinguished from acts of war proper – whether conventional, civil, or guerrilla war – in which innocent civilians are not deliberately attacked. They are also distinguished from acts of political assassination, whose victims – political officials and police officers – are responsible for certain policies and their enforcement. This, of course, does not mean that an army cannot engage in terrorism; many guerrilla and even conventional armies have done so. Nor does it mean that political assassination does not often intimidate the government or the public, or is not often meant to do so.
- The definition preserves the connection of “terrorism” with “terror” and “terrorizing,” which has a long history and is well entrenched in current ordinary use.
- The definition covers both political and nonpolitical (e.g. religious or criminal) terrorism.
- With regard to political terrorism, it makes it possible to speak both of state and non-state terrorism, of revolutionary and counter-revolutionary terrorism, of terrorism of the left and of the right. The definition is politically neutral.
- The definition is both narrower in some respects and wider in others than ordinary use might warrant. Attacks of insurgents on holders of high political office, soldiers, or police officers, which the authorities and the media portray, and the public perceives, as terrorist, would *not* count as such, but rather as political assassination or guerrilla warfare. The bombing of German and Japanese cities in World War II, or numerous Israeli army attacks on Lebanon, on the other hand, are commonly presented as acts of war, but *would* count as terrorism on my definition. That, I submit, is just as it should be. A helpful definition of “terrorism” should not depart from ordinary use drastically and for no good reason. At the same

time, if we hope for more discerning and critical moral understanding of terrorism, we cannot be unduly bound by such use. What matters here is that, in attacks of the former type, the targets are holders of high political office, soldiers, or police officers, and not innocent people. In attacks of the latter type, innocent people are deliberately targeted with the aim of intimidation and coercion. On the other hand, whether the bomb is planted by hand or dropped from an aircraft or who does or does not wear a uniform can hardly be decisive, morally speaking.

- By highlighting the innocence of direct victims of terrorism, the definition helps relate the debate about the morality of terrorism to the traditional discussion of the morality of war, and in particular connects it with just war theory. The main provision of that theory under the heading of *jus in bello*, the morality of ways and means of fighting in war, is the principle of discrimination, enjoining belligerents to discriminate between military and civilian targets and to refrain from intentionally harming innocent civilians.

Definitions and Justifications

Can terrorism be morally justified? There is no single answer to this question, since there is no single understanding of what terrorism is. The focus of any attempt at answering it will be determined by the conception, or definition, of terrorism that is adopted at the outset.

Philosophical literature on terrorism offers a wide variety of definitions of the term, as almost every philosopher starts with at least a brief discussion of the question of definition and proffers his or her own answer to it. The definitions on offer – those I have and those I have not discussed – differ in various respects and can be classified in more than one way. But the most important difference is between definitions that might be termed, respectively, narrow and wide: those, such as my own, C. A. J. Coady's, and many others, that restrict terrorism to violent attacks on innocent people (civilians, noncombatants, common citizens) and those that do not. There are many examples of the latter, too. Thus Georg Meggle defines acts of terrorism as “acts that (attempt to) achieve aims by means of terror induced by violence” (Meggle 2011, p. 133). Another good example is the definition proposed by J. Angelo Corlett:

Terrorism is the attempt to achieve (or prevent) political, social, economic, or religious change by the actual or threatened use of violence

against other persons or other persons' property; the violence (or threat thereof) . . . is aimed partly at destabilizing (or maintaining) an existing political or social order, but mainly at publicizing the goals or causes espoused by the agents or those on whose behalf the agents act; often, though not always, terrorism is aimed at provoking extreme counter-measures which will win public support for the terrorists and their goals or causes. (Corlett 2003, pp. 119–20; emphasis deleted)

Both Meggle and Corlett bring up reasons for rejecting narrow definitions and adopting a wide one instead. Meggle does not want to be prevented from following traditional use of the term and applying it to such activities as assassination of holders of high political office, which was the preferred type of political violence on the part of some nineteenth-century Russian revolutionary organizations (Meggle 2011, p. 138 n. 13). Corlett insists that we keep the question of the nature of terrorism and that of its moral justification separate. In order to do so, we must have a morally neutral definition of terrorism, and that means a wide one. Narrow definitions “unwarrantedly sneak into the construal of terrorism” a feature that is obviously morally unjustified. This makes terrorism morally wrong by definition and preempts all discussion of its moral standing (Corlett 2003, pp. 114–21, 135).

Let me address Corlett's objection first. In one sense, he is right: one might be tempted to move from an understanding of terrorism as violence against the innocent to the moral conclusion that terrorism is obviously and always wrong. Thus Rüdiger Bittner starts an essay written for a collection on the ethics of terrorism by claiming that there is no such ethics. “There is nothing worth asking here. It is wrong, and obviously wrong . . . to kill innocent people, for political aims without political authority. [. . .] Terrorism . . . is a matter as clear as can be. [. . .] The ethics of terrorism is a subject as interesting as the ethics of murder” (Bittner 2005, p. 207). However, this move is invalid: it is predicated on the confusion of “intrinsically wrong” and “absolutely wrong.” If a way of acting is absolutely wrong then it must be wrong in itself; bad consequences can make a way of acting only conditionally wrong – wrong on condition that they indeed follow (or are rationally expected to follow). But the converse does not hold: a way of acting may be wrong in itself, yet not wrong absolutely, always, in any actual or possible circumstances. It may be wrong as long as there are no other moral considerations that tell in its favor and are weighty enough to override its intrinsic wrongness. That is, a way of acting may be wrong *prima facie*, some or most of

the time, even almost all the time, rather than wrong all things considered and always.

Now violence against the innocent is wrong in itself, and obviously so, if anything is. If that is what terrorism is, then it is indeed obviously wrong intrinsically, because of what it is. But to say this amounts to saying that it is *prima facie* wrong – to stating a general presumption against terrorism, not its sweeping moral condemnation in each and every actual or possible instance, whatever the circumstances and whatever the consequences of desisting from it. A narrow definition, then, does not rule out that in certain circumstances terrorism might not be wrong, all things considered. It does not preempt ethical investigation of the subject: particular acts and campaigns of terrorism still have to be judged on their merits. Many, perhaps most, will turn out to be wrong both *prima facie* and all things considered. But we do not know that this will always be the case: that we will never come across an act or campaign of terrorism that is wrong *prima facie*, but is not wrong all things considered.

Meggle, too, has a point: a wide definition has the advantage of being faithful to ordinary use, both historical and current, whereas a narrow one has a more restricted application. Large-scale terrorism in the sense captured by a narrow definition is very much a phenomenon of the twentieth and twenty-first centuries. To be sure, the targeting of the innocent as a means of coercive intimidation was occasionally advocated and practised in the nineteenth century as well: advocated, for instance, by the radical democrat Karl Heinzen (see Heinzen 1978) and practised in particular in the last decades of that century by some Irish nationalists and some of the anarchists who believed in “propaganda by deed.” But most of those who were called, and often called themselves, terrorists throughout the nineteenth century – most anarchists, various revolutionary groups in Russia – did not practise terrorism in this sense, but rather engaged in political assassination. Russian revolutionaries in particular were given to constant probing of the moral questions raised by their struggle. They accepted the use of violence only unwillingly and generally insisted that it be employed sparingly; in the words of Peter Lavrov, “not one drop of unnecessary blood shall be spilled” (quoted in Ivianski 1989, p. 232). They considered assassination of some of the most prominent officials of the oppressive regime as a grave sin that must be committed, but must also be expiated by dying on the gallows. They would never contemplate deliberate killing and maiming of the innocent. If a planned assassination turned out to involve deaths of innocent people as an inevitable side effect, they called off the action,

even if that meant taking an extreme risk to themselves (see Ivianski 1989). The moral distance between them and present-day terrorists is immense. This may not be decisive for those engaged in historical or social science research of terrorism; they may well prefer a definition that applies to the entire range of practices termed "terrorist" throughout history. Philosophers, however, are interested above all in ethical assessment of terrorism, and therefore are better off adopting a narrow definition and focusing on contemporary terrorism and its morally salient traits. That is best done by restricting the term "terrorism" to the latter, rather than applying it to both types of violence and then distinguishing between them in some such terms as "direct" and "indirect" or "individual" and "mass" terrorism.

I need not go into the causes of the shift from assassination of chiefs of state and other high political officials to indiscriminate attacks on the innocent which took place at the beginning of the twentieth century. At the practical level, the explanation may well be that "mass" terrorism promises to be much more effective than the "individual" variety. As Edward Hyams has written, "chiefs of state are more carefully guarded than they used to be, and revolutionaries have learnt that the elimination of individual leaders is apt to resemble driving out Satan with Beelzebub" (Hyams 1974, p. 166). At a more general level, one might cite Walter Laqueur, who points out that, "in the twentieth century, human life became cheaper; the belief gained ground that the end justified all means, and that humanity was a bourgeois prejudice" (Laqueur 1987, p. 84).

In this connection, it is telling that, more often than not, philosophers who adopt a wide definition normally do not mean to deny or belittle the difference between violence against the innocent and violence against those who cannot claim innocence of the wrongs at issue. This difference is fully acknowledged in Meggle's account of terrorism: it is the basis of his distinction between "terrorism in the strong sense," which deliberately, recklessly, or negligently harms innocent people, and "terrorism in the weak sense," which does not (Meggle 2002). Corlett distinguishes between terrorism that is selective – that is, directed "only against those clearly guilty of committing acts of significant injustice" (Corlett 2003, p. 127) – and terrorism that is not selective in this way. Moreover, both philosophers see great *moral* difference between the two types of what they call "terribly harms, innocent persons – that is, terrorism in the strong sense – is morally prohibited without any exception. On the other hand, terrorism that does not culpably cause harm to the innocent – that is,

terrorism in the weak sense (which does not count as “terrorism” on a narrow definition of the term) – may live up to the requirements of the ethics of violence and war and thus be morally justified (Meggle 2002, pp. 155–7). Corlett presents a list of conditions on which terrorism might be morally justified; the condition to the point here is that it be “as conscientiously selective as possible.” That means that only “selective” terrorism (which, again, does not qualify for “terrorism” on a narrow definition of the word) can be morally justified, whereas terrorism that is not selective cannot (Corlett 2003, pp. 126–7). In a similar vein, Robert Young rejects wide definitions of terrorism as “moralized” and question-begging, and adopts a narrow characterization. He then submits that “it is a general truth that the more indiscriminate the terrorist action the harder it will be to give a moral defense of it” (Young 2004, pp. 56–7). He goes on to argue that, on certain conditions, terrorism of the discriminating kind – that is, directed at those who cannot claim innocence of the wrongs at issue (which does not count as terrorism on a narrow definition) – may be morally justified.

This, too, is a possible way of approaching the problem of moral assessment of violence in general and terrorism in particular, for it does not deny or obfuscate, but rather takes into account, the crucial moral difference between killing or seriously injuring those deeply involved with a government, war, or policy considered to be gravely unjust and killing or seriously injuring innocent civilians or common citizens. But I find this approach unnecessarily roundabout. It seems more helpful to highlight the immense moral difference between the two types of violence by reserving the term “terrorism” for the latter and describing the former as political assassination – that is, to opt for a narrow definition of terrorism such as the one I have proposed here. Accordingly, my discussion throughout the book will focus on terrorism in the narrow sense of violence against innocent civilians or common citizens, intended to intimidate and coerce.

2

State Terrorism and Counterterrorism

Varieties of State Involvement with Terrorism

The upshot of the preceding chapter was that, for the purposes of philosophical discussion, terrorism is best defined as the deliberate use of violence, or threat of its use, against innocent people, with the aim of intimidating some other people into a course of action they otherwise would not take. The definition says nothing about the identity of terrorists: they can be rebels or revolutionaries, or criminals, but they can also be soldiers of a state at war or members of a state security organization. Indeed, when it first appeared in political discourse, the word “terrorism” was used to describe a case of state terrorism – the “Reign of Terror” imposed by the Jacobin regime. Historians of the French Revolution have analyzed and discussed that case in great detail. There are also historical studies of some other instances of state terrorism, most notably of the period of “the Great Terror” in the Soviet Union.

Closer to home, however, state terrorism is apparently much more difficult to discern. Discussions of terrorism in social sciences and (to a lesser degree) in philosophy tend to focus on insurgent terrorism. In common parlance and in the media, terrorism is as a rule assumed to be an activity of non-state agents in virtue of the very meaning of the word. If one suggests that the army or security services are doing the same things that, when done by insurgents, are invariably described and condemned as terrorist, the usual reply is: “But these are actions done on behalf of the state, in pursuit of legitimate state aims: the army, waging war, or the security services, fending off threats to our security.” As British poet Roger Woddis put it in “Ethics for Everyman” (quoted in Coady 2008, p. 154),

Throwing a bomb is bad,
Dropping a bomb is good;
Terror, no need to add,
Depends on who's wearing the hood.

As far as everyday discourse and the media are concerned, this can perhaps be explained by two related tendencies. One is the widely shared assumption that, at least normally, what the state does has a certain kind of legitimacy, while those challenging it tend to be perceived as forces of disorder and destruction, engaged in clearly unjustifiable pursuits. The other is the double standard of the form "Us vs. Them." In states facing insurgency, more often than not, the general public and the media take the side of the state. This tends to affect the usage. An offshoot of this tendency is that, when insurgents abroad are sponsored by our state, we do not call them terrorists but, rather, guerrillas or freedom fighters.

The focusing on non-state terrorism in social sciences is given a different explanation: that whatever the similarities between state and non-state terrorism, the dissimilarities are more prominent and instructive. Walter Laqueur, a leading authority on the history and sociology of terrorism, tells us that the two "fulfil different functions and manifest themselves in different ways" and that "nothing is gained by ignoring the specifics of violence" (Laqueur 1987, p. 146). I am not convinced that this approach is to be preferred in social sciences.² But, be that as it may, this certainly will not do in philosophy. If some acts of state agents are basically similar to and exhibit the same morally relevant traits as acts of non-state agencies commonly termed terrorist, that will clearly determine our moral judgment of both. Accordingly, philosophers have been less reluctant than sociologists and political scientists to recognize and discuss state terrorism (see Glover 1991; Ryan 1991; Gilbert 1994; Ashmore 1997; Lackey 2004).

But the philosophical work on the subject done so far leaves room, and indeed suggests the need, for a typology of state involvement in terrorism. There is also a need for a fuller statement of the argument for a claim philosophers sometimes make in passing: that state terrorism is worse, morally speaking, than terrorism by non-state agents. In this chapter, I discuss these two topics. I also briefly consider some issues raised by counterterrorism.

Philosophers are given to introducing all manner of distinctions where none were acknowledged before. With respect to state terrorism, this has been the case to a lesser degree than on most other

issues. Thus Alan Ryan discusses the claim that "a terrorist state" is logically impossible by virtue of the definition of "state," and brings up Stalin's Soviet Union and Nazi Germany as obvious counterexamples. Further on he writes: "If Syria paid for, protected, equipped, and assisted hijackers and would-be bombers of El Al aircraft, that makes the Syrian regime a terrorist regime" (Ryan 1991, p. 249). For the purpose of moral assessment, this is clearly much too rough. However repugnant Syria's sponsorship of Palestinian terrorism may have been, it is certainly not in the same moral league as the regimes of Stalin and Hitler. Surely we ought to differentiate more carefully.

With regard to state involvement in terrorism, there are distinctions to be made both in terms of degree of such involvement and with regard to its victims.

Concerning the degree of state involvement in terrorism, we should resist the temptation to classify every state that has made use of terrorism, either directly or by proxy, as a terrorist state. I suggest that we reserve this label for states that do not resort to terrorism merely on certain occasions and for certain purposes, but employ it in a lasting and systematic way, and indeed are defined, in part, by the sustained use of terrorism against their own population. These are totalitarian states, such as Nazi Germany or the Soviet Union in Stalin's time.

The "Reign of Terror" the Jacobins imposed in France from the fall of 1793 to the summer of 1794 was a precursor of full-fledged totalitarian terrorism employed by those states. The ultimate aim of the Jacobins was the reshaping of both society and human nature. That was to be achieved by destroying the old regime, suppressing all enemies of the revolution, and inculcating and enforcing civic virtue. These tasks were to be carried out by a revolutionary government, which is by its very nature transitory, and whose radical methods would be inappropriate, indeed intolerable, in normal times, but are indispensable in revolutionary situations. French citizens were considered to fall into one of two groups: "good citizens" or "patriots" – that is, active supporters of the revolutionary regime – and "enemies of the people." The latter group was taken to consist not only of active opponents of the revolution, but of all those who were not seen to be "good citizens." This left no room for neutrality or an apolitical stance. As E. V. Walter explains, the revolutionary regime

was concerned not only with active hostility against the state but also with various kinds of passivity and noncooperation, which were also interpreted as resistance. The well-known Law of Suspects . . . marked

as subject to arrest not only émigrés and unreconstructed persons associated with the nobility but also anyone who by conduct, connections, remarks, or writing showed himself a partisan of tyranny, federalism, and the enemies of liberty, as well as anyone who could not demonstrate . . . active patriotism, and a positive contribution to the revolution. (Walter 1967, pp. 139–40)

Whereas the Law of Suspects determined who could be interned, the next major step in revolutionary legislation, the Law of 22 Prairial, provided for setting up revolutionary tribunals. These tribunals had wide authority, were constrained by very few rules of procedure, and saw their task as implementing revolutionary policy rather than meting out legal justice of the more conventional sort. They went after “enemies of the people” actual or potential, proven or suspected. The law on the basis of which they were operating “enumerated just who the enemies of the people might be in terms so ambiguous as to exclude no one” and “to include whosoever might need to be so identified” (Carter 1989, p. 142). The standard punishment was death; as Robespierre said, “to good citizens the revolutionary government owes the nation’s every safeguard; to enemies of the people it owes only death” (quoted *ibid.*, p. 140).

Trials and executions were meant to eliminate all “enemies of the people.” If that were all, the “Reign of Terror” would not qualify as terrorism on my definition; it would rather constitute large-scale political murder pure and simple. But that was not all; the trials and executions were also meant to strike terror in the hearts of all those in the public at large who lacked civic virtue, and in that way coerce compliance with, and indeed active support of, revolutionary laws and policies. Michael Phillip Carter is right to point out that the direct victims of the Terror, who were sent to the guillotine, were not *mere* scapegoats (1989, p. 146). But the vast majority *were* innocent in the sense assumed in the definition of terrorism I work with: nothing they had done or had failed to do could, on any credible understanding of responsibility and liability, make them deserve, or become liable, to die on the guillotine. That is what makes the “Reign of Terror” a case of state terrorism. Jacobins believed such terrorism was a necessary means of consolidating the new regime. As Robespierre put it, terror was but “an emanation of virtue”; without it, virtue remained impotent. Therefore the Jacobins applied the term to their own actions and policies quite unabashedly, without any negative connotations.

The terrorism employed by the Bolsheviks during the Russian Revolution and Civil War was in important respects a throwback to

that of the Jacobins. The government they set up in Russia was totalitarian. So was the Nazi regime in Germany. Both sought to attain total political control of society and to impose total political unanimity on its members. Such a radical aim could only be pursued by a similarly radical method: terrorism inflicted by an extremely powerful political police on an atomized and utterly defenseless population. Its efficiency is due, for the most part, to its arbitrary character: to the unpredictability of its choice of victims. In both countries, the regime first brutally suppressed all opposition; when there was no longer any opposition to speak of, political police took to persecuting "potential" and "objective" enemies. Those were not persons who had engaged in opposition activity, voiced opposition views, or even entertained such views. They were rather persons who, for objective reasons such as race (in Nazi Germany) or social background (in the Soviet Union), *might* hold opposition views and eventually act on them – persons seen as "carriers of undesirable tendencies," rather like carriers of a disease – and in any case would not really fit in the projected national community or communist society, respectively. In the Soviet Union, terrorism was eventually unleashed on masses of victims chosen at random (see e.g. Weissberg 1952, chapters I and X). Its direct victims were subjected to investigations that more often than not involved extreme pressure or outright torture; they were tried, convicted, and sentenced for imaginary crimes in procedures that fell short of the requirements of basic legality and finally punished – or, more accurately, "punished" – by death or by years of forced labor in camps.

In the words of Carl J. Friedrich and Zbigniew K. Brzezinski, totalitarian terrorism

aims to fill everyone with fear and vents in full its passion for unanimity. Terror then embraces the entire society . . . Indeed, to many it seems as if they are hunted, even though the secret police may not touch them for years, if at all. Total fear reigns. [. . .] The total scope and the pervasive and sustained character of totalitarian terror are operationally important. By operating with the latest technological devices, by allowing no refuge from its reach, and by penetrating even the innermost sanctums of the regime . . . it achieves a scope unprecedented in history. The atmosphere of fear it creates easily exaggerates the strength of the regime and helps it achieve and maintain its façade of unanimity. Scattered opponents of the regime, if still undetected, become isolated and feel themselves cast out of society. This sense of loneliness, which is the fate of all but more especially of an opponent of the totalitarian regime, tends to paralyze resistance . . . It generates

the universal longing to "escape" into the anonymity of the collective whole. (Friedrich and Brzezinski 1965, pp. 169-70)

Totalitarian terrorism is the most extreme and sustained type of state terrorism. In Hannah Arendt's words, "terror is the essence of totalitarian domination," and concentration and extermination camps are "the true central institution of totalitarian organizational power" (Arendt 1958, pp. 464, 438). While students of totalitarianism talked of terrorism as its method of rule, representatives of totalitarian regimes, sensitive to the pejorative connotation of the word, portrayed the practice as defense of the state from internal enemies.

Only totalitarian states use terrorism in this way and with such an aim. But many states that clearly are not totalitarian, including democratic and liberal states, have used terrorism on a much more limited scale and for more specific purposes. They have done so directly or by sponsoring non-state organizations whose *modus operandi* is, or includes, terrorism. But, as their resort to terrorism is occasional rather than sustained, let alone essential, they should not be termed terrorist states. When they are, an important moral, political, and legal divide is blurred.

Another distinction is that between the use of terrorism by a state against its own citizens and the use of terrorism beyond its borders, as a means of foreign policy, war, or occupation. Other things being equal, state terrorism of the former type seems worse, morally speaking, than that of the latter type. For in the former case the state is attacking the very population for which it should be providing order, security, and justice.

Quite a few non-totalitarian states have made use of terrorism against their own population. Some have done so directly, by having state agencies such as the armed forces or security services employ terrorism. Many military dictatorships in South America and elsewhere are examples of this; the most extreme cases are Chile under Pinochet and Argentina under the generals. Other states have done the same indirectly, by sponsoring death squads and the like.

Many states, both totalitarian and non-totalitarian, have used terrorism abroad as a means of achieving foreign policy objectives, in the course of waging war, or as a method of maintaining their occupation of another people's land.

These types of state involvement in terrorism are not mutually exclusive; actually, they are often complementary. A terrorist state will see no moral reason for hesitating to make use of terrorism beyond its borders too, whether in the course of waging war or in

peacetime, as a means of pursuing foreign policy objectives. Both Nazi Germany and the Soviet Union provide examples of that. The same is true of states that do not qualify as terrorist, but do resort to terrorism against their own population on certain occasions and for some specific purposes. Such states, too, are not likely to be prevented by moral scruples from using terrorism abroad as well, whether directly or by proxy, when that is found expedient.

On the other hand, the fact that a state has resorted to terrorism in the international arena need not make it more prone to do the same at home, as there is a fairly clear line between the two. But it might. Since its establishment, Israel has often made use of terrorism in its conflict with the Palestinians and the neighboring Arab states. The suppression of the second Palestinian uprising (*intifada*) was carried out, in part, by state terrorism. (Israel's neighbors, on their part, have supported Palestinian terrorism against Israel.) The way Israeli police put down the demonstrations of Palestinians living in Israel proper, as its citizens, in October 2000 – by shooting at them with rubber-coated and live ammunition and killing thirteen – may well qualify as state terrorism. If it does, that shows how the willingness to resort to terrorism abroad can eventually encourage its use at home.

To be sure, in practice the dichotomy of state and non-state terrorism does not always readily apply. Attempts at drawing hard and fast lines cannot succeed because of the widespread phenomenon of terrorist organizations receiving various types and degrees of support from states. Since in such cases a simple division of terrorism into state and non-state is no longer feasible, the moral assessment too becomes much more complex.

State Terrorism Is Morally Worse than Non-State Terrorism

All terrorism is *prima facie* extremely morally wrong. But not everything that is extremely morally wrong is wrong in the same degree. State terrorism can be said to be morally worse, by and large, than terrorism by non-state agents. There are several reasons for this claim.

One is sheer scale of killing and destruction. Although unwilling to extend the scope of his discussion of terrorism to include state terrorism, Walter Laqueur remarks that “acts of terror carried out by police states and tyrannical governments, in general, have been responsible for a thousand times more victims and more misery than all actions of individual terrorism taken together” (Laqueur 1987, p. 146).

He could also have mentioned terrorism employed by democracies (mostly in wartime), although that would not have affected the striking asymmetry very much. Now this asymmetry is not just another statistical fact; it follows from the amount and variety of resources that even a small state normally has at its disposal. No matter how much some non-state terrorist groups have managed to enrich their equipment and improve their organization, planning, and methods of action, none has ever come close to changing the score. No insurgent, no matter how well funded, organized, determined, and experienced in the methods of terrorism, has ever come close to the killing, maiming, and overall destruction on the scale the Royal Air Force and United States Army Air Force visited on German and Japanese cities in World War II, or to the psychological devastation and physical liquidation of millions in Nazi and Soviet camps.

The terrorist attacks in the United States carried out on September 11, 2001, were in some respects rather unlike what we had come to expect from non-state terrorism. The number of victims, in particular, was unprecedented. Mostly because of that, I suspect, the media have highlighted these attacks as "the worst case of terrorism ever." So have quite a few public intellectuals. Thus Salman Rushdie, in his monthly column in the Melbourne daily *The Age* (October 4, 2001, p. 15), wrote of "the most devastating terrorist attack in history." The number of people killed, believed to be approaching seven thousand at the time, was indeed staggering. Yet "the worst case of terrorism ever" mantra is but another instance of the tendency of the media to equate terrorism with non-state terrorism. When we discard the assumption that it is only insurgents who engage in terrorism, as I submit we should, the overall picture changes significantly. Let me give just one, admittedly extreme, example from the Allies' terror bombing campaign against Germany. In the night of July 27–8, 1943, the RAF carried out the second of its four raids on Hamburg, known as the "Firestorm Raid." In the morning, when both the attack itself and the gigantic firestorm it had created were over, some forty thousand civilians were dead.³

But it is not only its scale that makes state terrorism morally worse than terrorism employed by non-state agents. In one way or another, state terrorism is bound to be compounded by secrecy, deception, and hypocrisy. When involved in terrorism, whether perpetrated by its own agencies or by proxy, a state will be acting clandestinely, disclaiming any involvement and declaring its adherence to values and principles belied by its actions. Or, if it is impractical and perhaps even counterproductive to deny involvement, it will do its best to

present its actions to at least some audiences in a different light: as legitimate acts of war or acts done in defense of state security. It will normally be able to do that without much difficulty, given the tendencies of common use I mentioned at the beginning of this chapter.

Those engaging in non-state terrorism, on the other hand, need not be secretive, need not deceive the public about their involvement in terrorism (except, of course, at the operational level), and need not hypocritically proclaim their allegiance to moral principles violated by their actions. Some of them are amorlists. Others exhibit what Aurel Kolnai termed "overlain conscience" – conscience completely subjected to a non-moral absolute (the leader, the party, the nation), which will permit and indeed enjoin all manner of actions incompatible with mainstream moral views, including terrorism (see Kolnai 1977, pp. 14–22). Still others adhere to some version of consequentialist moral theory, which will readily justify terrorism under appropriate circumstances. In none of these cases will there be a need for deception and hypocrisy concerning the performance of specific terrorist acts or the adoption of policies of terrorism.

A further argument for the claim that state terrorism is worse, morally speaking, than terrorism employed by non-state agents has to do with certain international commitments by which contemporary states are bound. Virtually all actions that constitute terrorism are prohibited by one or another of the various international human rights declarations or conventions and agreements that make up the laws and customs of war. The latter provide for immunity of civilians in armed conflict and thus prohibit terrorism by belligerent parties. Most, if not all, remaining types of terrorism – terrorism in wartime perpetrated by groups not recognized as belligerent parties, and terrorism in time of peace perpetrated by anyone at all – are covered by declarations of human rights. Now those engaging in non-state terrorism are not signatories to these declarations and conventions, while virtually all states today are signatories to most if not all of them. Therefore, when a state is involved in terrorism, it acts in breach of its own solemn international commitments. This particular charge cannot be brought against non-state agents resorting to terrorism.

Finally, non-state terrorism is often said to be justified, or at least that its wrongness is mitigated, by the argument of no alternative. In a case where, for instance, a people is subjected to foreign rule with the usual attendant evils of oppression, humiliation, and exploitation, when that rule is utterly unyielding, and when it deploys overwhelming power, a liberation movement may claim that the only effective method of struggle at its disposal is terrorism. To refrain from using

terrorism in such circumstances would be tantamount to giving up the hope of liberation altogether.

This argument is exposed to two objections. Since terrorism is extremely morally wrong, the evils of foreign rule, grave as they may be, may not be enough to justify, or even mitigate, resort to it. After all, its victims would by definition be innocent people rather than those responsible for such evils. Moreover, one can hardly ever be confident that terrorism will indeed achieve the aims adduced as its justification or mitigation. What people has ever succeeded in liberating itself by terrorism?

This brings up the question as to whether terrorism – that is, deliberate killing and maiming of innocent persons for the sake of intimidation and coercion of others – can ever be morally justified and, if so, just what would it take to justify it. This question is the subject of the next four chapters of this book, and there is no point in anticipating the outcome of that discussion. At this stage, let me just say, provisionally, that the two objections to the argument of “no alternative” are weighty and may well be enough to dispose of most attempts at justifying particular cases and policies of terrorism; but they do not show that the argument will *never* apply. Perhaps persecution and oppression of an ethnic, racial, or religious group can reach such an extreme point that even a resort to terrorism in response may properly be considered. And the question of its efficiency, being an empirical one, cannot be settled once and for all. So it is possible that a national liberation movement should be facing such circumstances where resort to terrorism is indeed the only feasible alternative to the continuation of persecution and oppression so extreme as to amount to an intolerable moral disaster. In such a situation, the “no alternative” argument might provide moral justification for terrorism or, at least, might mitigate somewhat our moral condemnation of its use. On the other hand, it seems extremely unlikely that a state should find itself in such circumstances where it has no alternative to the use of terrorism.

One counterexample to this claim that is sometimes cited is the terror bombing campaign of the Allies against German cities in World War II. The campaign, a clear case of state terrorism, is sometimes said to have been morally justified as the only possible way of preventing victory of Nazi Germany, which would have ushered in a period of Nazi rule in most of Europe – surely a prospect that had to be prevented at any cost. The Allies had no alternative. I will discuss this campaign in some detail in chapter 8 and will try to show that none of the attempts at its defense can withstand critical scrutiny.

If so, it does not provide a counterexample to my argument that, in contrast to an insurgent movement, it is extremely unlikely that a state could morally justify or mitigate its resort to terrorism by the argument of no alternative.

Another way of challenging my argument might be to point out that what I have called terrorist regimes can maintain themselves only by employing sustained, large-scale terrorism against their own population. Furthermore, a state that would not qualify as terrorist in this sense may be waging a war whose aims can be achieved only by means of terrorism. The successive Serbian onslaughts on Croatia, Bosnia-Herzegovina, and Kosovo in the 1990s present a clear example. Their aim was conquest, "ethnic cleansing," and annexation of territories whose inhabitants included a non-Serb majority or large minority. Under the circumstances, and given the constraints of time, the "cleansing" had to be accomplished by large-scale terrorism. The Serbs had no alternative (see e.g. Danner 2009).

All this is true, but not to the point. In such cases terrorism is indeed the only efficient option and, if the aim is to be achieved, there is no alternative to its use. But in such cases, unlike at least some conceivable cases of non-state terrorism justified or mitigated by the "no alternative" argument, the aim itself – the continuation of a Nazi or Stalinist regime or the setting up of a greatly expanded *and* "ethnically homogeneous" Serbia – can justify or mitigate nothing. Its achievement, rather than failure to achieve it, would amount to an intolerable moral disaster.

Yet another objection would refer to the "balance of terror" produced by the mutual threat of nuclear attack that marked the Cold War period. The type of such threat relevant here was the threat of attacking the other side's civilian population centers. (In Cold War jargon, this was known as "countervalue deterrence.") If that threat was morally justified, it was a case of state terrorism justified by the "no alternative" argument.

I am not convinced that it was justified. Clearly, carrying out the threat and actually destroying major population centers of the enemy and killing hundreds of thousands, if not millions, of enemy civilians could never be morally justified. But does that mean that a threat to do so – made with the aim of preventing the chain of events that would make such destruction a serious option – is also morally impermissible? A positive reply to this question assumes that, if it is wrong to do X, it is also wrong to intend to do X, and therefore also to threaten to do X. This assumption has been questioned (see e.g. Kavka 1978). I have not made up my mind on this matter. Perhaps

the problem can be circumvented by arguing that the threat need not involve the intention of ever carrying it out; a bluff will do. Yet one might well wonder if a threat of this sort can be both credible and a bluff. Of course, if the threat is not credible, it will not be morally justified either.

But this is too large a subject to go into here. Therefore I will only say, in conclusion, that, even if the "balance of terror" generated by the threat of use of nuclear weapons against civilian targets turned out to be a convincing counterexample to my fourth argument for the claim that state terrorism is, by and large, morally worse than terrorism employed by non-state agents, the first three arguments would still stand and, I trust, suffice.

Counterterrorism

This discussion of state terrorism has some fairly straightforward implications with regard to moral assessment of and constraints on counterterrorist measures in general and the "war against terrorism" the United States and its allies have waged since the fall of 2001 in particular.

One concerns the moral high ground the state usually claims in the face of insurgent terrorism. What is at issue is a certain policy contested by the insurgents or a certain political setup the state wants to maintain and the insurgents want to do away with. But at the same time the conflict is seen as much more basic: since the insurgents have resorted to terrorism, the conflict is also about the very fundamentals of the political and social order, and indeed about certain moral values and principles, which terrorists are challenging and the state is defending.

Now it is true that terrorism challenges some of our fundamental moral beliefs and rides roughshod over some highly important moral distinctions. Therefore opposition to terrorism can and should be motivated, above all, by moral concern. But that is not the only condition for claiming the moral high ground in the face of terrorism. The other, equally necessary condition is that of moral standing. A thief does not have the moral standing required for condemning theft and preaching about the paramount importance of property. A murderer does not have the moral standing necessary for condemning murder and pontificating about the sanctity of life. By the same token, a state which has made use of terrorism, or sponsored it, or condoned it, or supported governments that have done any of the

above – in a word, a state which has itself been involved in or with terrorism to any significant degree – lacks the moral standing required for *bona fide* moral criticism of terrorism. Those speaking on behalf of such a state would do better to leave such criticism to others, whose record with regard to terrorism is different.

This simple point bears emphasizing. More often than not, it is completely ignored. As a result, we are treated, time and time again, to moral condemnations of terrorism by representatives of states that have much to answer for on the same count. Much of the quaint moralistic rhetoric that accompanies the “war against terrorism” currently waged by the United States and its allies is as good an example as any.

Another point has to do with the nature of counterterrorism. Insurgency that makes use of terrorism poses a difficult challenge to the state. Not only does it contest the state’s monopoly of violence – any violent opposition activity does that – but it also demonstrates that the state is no longer capable of performing efficiently enough its most important task, that of providing basic security to its citizens. For the indiscriminate nature of terrorism poses a threat of deadly violence to virtually everyone; there is next to nothing a citizen can do to ensure his or her lasting physical security.

Faced with such a challenge to its very *raison d’être* and the difficulties of fighting terrorism while remaining within the bounds of morality and the law, the state may well be tempted to resort to terrorism itself, as Israel has done in response to Palestinian terrorism. Since the 1950s, a central part of Israel’s response to terrorism has consisted of reprisals in which civilian targets in the neighboring countries were attacked in order to force their governments to restrain Palestinian terrorists operating from their soil. Israel occasionally acknowledged the terrorist nature of its strategy, most memorably when its prime minister (and defense minister) Yitzhak Rabin explained that the aim of shelling and bombing south Lebanon was “to make it uninhabitable” and thereby force the Beirut government to suppress the activities of the Palestinian liberation movement on its territory. Israel has also made extensive use of state terrorism in its rule over the Palestinian territories occupied in 1967 and its fight against Palestinian resistance terrorism. But the temptation to fight terrorism with terrorism ought to be resisted. This type of counterterrorism may well prove a failure in political terms, as it has done in the Israeli case. More to the point, it is utterly indefensible in moral terms. Israel has certainly had other options, and so does virtually every state. (I will have more to say on this in chapter 9.)

What of the current “war against terrorism” prosecuted by the United States and its allies? It raises an array of moral, political, and legal concerns about citizens’ rights at home and the treatment of enemies taken prisoner. At a more basic level, it raises questions about the nature and point of the whole enterprise.

Very soon after the attacks on September 11, 2001, a number of states passed laws and introduced policies considerably expanding the authority of state agencies with regard to surveillance, coercive interrogation, and detention. The rationale for these measures was simple: the dangers posed by global terrorism that was at work in those and subsequent attacks were unprecedented and required a new balance to be struck between liberty and privacy, on the one hand, and security, on the other. Yet critics have questioned both the claim about radical novelty of the “new terrorism” (see e.g. Coady 2006) and the “new balance” that was being struck in response (see e.g. Dworkin 2006, chapter 2).

Beyond these specific concerns to do with the right response, there are questions about the character of the response and the constraints to be placed on it. How should the “war on terrorism” be understood: as a kind – possibly, a new kind – of war, as the term suggests, or as law enforcement? From an early stage there has been lack of clarity on this point. In his first response to the attacks on September 11, President Bush announced: “The search is underway for those who are behind these evil acts. I’ve directed the full resources of our intelligence and law enforcement communities to find those responsible and to bring them to justice. We will make no distinction between the terrorists who committed these acts and those who harbor them” (quoted in Lackey 2006, p. 77). At that point, the terrorists were seen as criminals, and the announced response was to be that of criminal justice. But in the president’s subsequent speeches and the policy statements of his administration, the focus shifted from the terrorists themselves to the states that were sheltering them and the threats those states posed to the rest of the world: that of developing and then using weapons of mass destruction, or supplying their terrorist proxies with such weapons and unleashing them on other countries. Accordingly, the understanding of the required response changed too; it was no longer, straightforwardly, law enforcement but also war or, more specifically, preventive war – first on Afghanistan, and then on Iraq (see *ibid.*, pp. 77–81).

Yet the two activities differ in important respects, and so do the rules those engaged in them are supposed to follow. In war, there is a presumption that soldiers will be using lethal force – that is what

makes them soldiers. To be sure, this presumption will be rebutted in certain circumstances. There is no such presumption in police work. On the contrary, the norm is that the use of such force should be avoided if at all possible, and resort to it can be justified only on certain strictly specified conditions. Both main approaches in the ethics of war, consequentialism and just war theory, as well as the laws of war, allow for a certain degree of "collateral damage" – that is, of killing or injuring civilians that is not intended, but is a foreseen or foreseeable side effect of attacks on legitimate military targets. Rules regulating police work do not permit incidental killing or injuring of bystanders in the course of pursuing (suspected) criminals. Both consequentialist ethics of war and the mainstream version of just war theory, as well as the laws of war, accord certain minimum legitimacy to soldiers fighting on both sides in a war, whereas criminals compound their crimes when they resist police officers who are trying to apprehend them. The liabilities and rights of those at whom these two activities are directed are different too. Enemy soldiers are liable to be killed or wounded at any time, except when they are *hors de combat*, no longer able to fight, whether because wounded or because they have surrendered. When *hors de combat*, they have certain rights: they may not be tried and punished merely for having fought in the war, treated harshly or threatened with harsh treatment, or held prisoner after the war has ended. Suspected criminals, on the other hand, are liable to be apprehended, tried, and punished. But they are not liable to be targeted with deadly violence, except in certain tightly specified circumstances in which the use of potentially deadly force is considered both necessary and reasonable. And they have rights to be presumed innocent until proven guilty in a fair trial and, if convicted, not to be subjected to "cruel and unusual" punishments.

In the current "war on terrorism," the United States government has run together the two practices, waging war and enforcing criminal law. It has introduced the notion of "unlawful combatants" – those who are neither enemy combatants in the sense the term has in the ethics and laws of war nor criminal suspects pure and simple – and applied it to the enemy it is fighting in this war. In an essay titled "The War on Terrorism and the End of Human Rights," David Luban summarizes the consequences of this approach:

By selectively combining elements of the war model and elements of the law model, Washington is able to maximize its own ability to mobilize lethal force against terrorists while eliminating most traditional rights of a military adversary, as well as the rights of innocent bystanders caught

in the crossfire. [. . .] The legal status of al Qaeda suspects imprisoned at the Guantanamo Bay Naval Base in Cuba is emblematic of this hybrid war-law approach to the threat of terrorism. In line with the war model, they lack the usual rights of criminal suspects – the presumption of innocence, the right to a hearing to determine guilt, the opportunity to prove that the authorities have grabbed the wrong man. But, in line with the law model, they are considered *unlawful* combatants. Because they are not uniformed forces, they lack the rights of prisoners of war and are liable to criminal punishment. [. . .] Neither criminal suspects nor POWs, neither fish nor fowl, they inhabit a limbo of rightlessness. (Luban 2003, p. 53)

But whatever its flaws from a moral and legal point of view, it will be said that at least the “war on terrorism” is not an instance of state terrorism. There have been civilian casualties in the course of attacks on the Taliban and Al-Qaeda targets in Afghanistan. But the innocent have not been attacked intentionally; civilian casualties have been foreseen, or foreseeable, but not intended side effects of attacks on legitimate military targets. Such “collateral damage” is widely considered inevitable in modern war. Actions that bring it about do not qualify as terrorism, on my own or any other definition of “terrorism” I find helpful.

It is true that the United States and its allies are not guilty of state terrorism, since terrorism is by definition *intentional* attack on the innocent. But that is not the end of the matter. Concerns about the scale of “collateral damage” the “war on terrorism” has been inflicting surfaced early on, as the war was initially conducted exclusively from the air, and from very high altitudes at that. By January 2002, it was clear that these concerns were based on good grounds. Under the heading “News of Afghan Dead Is Buried,” Gay Alcorn, the United States correspondent of *The Age*, reported (January 12, 2002, p. 17):

University of New Hampshire economics professor Marc Herold was so disturbed by the lack of coverage of civilian deaths in the war in Afghanistan that he began keeping a tally. [. . .] Professor Herold says, on average, 62 Afghan civilians have died each day since bombing began. The total was now close to 5000, far more than the 3000 killed in the terrorist attacks in America on September 11. [. . .] According to Professor Herold, America’s strategy of using air strikes to support local ground forces is designed to minimize American casualties. Only one American soldier has died from enemy fire.

News of innocent civilians being killed or maimed as “collateral damage,” often out of any proportion to the military advantage to

be achieved by the actions that caused it, have been coming from Afghanistan ever since. They have been coming from Iraq too. And they are still coming at the time of writing.

Now just war theory does not prohibit harming the innocent *simpliciter*, but rather harming them deliberately, with intent. With regard to harming civilians incidentally, without intent, mainstream just war theory applies the doctrine of double effect. According to this doctrine, causing harm to civilians incidentally, as a side effect – that is, an unintended but foreseen consequence of an act of war directed at a legitimate military target – may be permitted if that harm is proportionate to the importance and urgency of the military objective sought. It will not do, say, to shell a village in order to take out a handful of enemy soldiers who have taken up position there if that also involves the unintended but foreseen killing of scores of innocent villagers.

This much is clear in any mainstream version of just war theory. The version advanced by Michael Walzer adds an important qualification. When carrying out an act of war that will also have the unintended but foreseen consequence of harming the innocent, we must seek to reduce that harm to a minimum, and must accept risk to life and limb of our own soldiers in order to do so. The right of the innocent not to be harmed is the centerpiece of the *jus in bello* part of just war theory. It is the soldiers who put the civilians' life and limb in danger; therefore they should accept some risk in order to minimize that danger (Walzer 2000, pp. 155–6).

Now our repugnance of terrorism is motivated, primarily, by the value we place on human life and physical security, and in particular by our commitment to the right of the innocent not to be killed or maimed. This right is violated when the terrorist intentionally kills or maims them in order to achieve his or her aims. But it is also violated when their death or grave physical injury is not brought about as a means, but as a foreseen (or foreseeable) side effect. That violation is compounded when those who do the killing and maiming refuse to take any chance of being harmed themselves in the process. That is not terrorism, but it is not much less repellent, morally speaking, than terrorism proper.⁴

If this is granted, it means that terrorism may not be fought by terrorism. Nor may it be fought by means of a strategy that does not amount to terrorism, but must be condemned on the ground of the same moral values and principles that provide the strongest reasons for our rejection of terrorism. In this respect, so far the record of the “war on terrorism” has been very poor indeed.⁵