Introduction

In the days following September 11, 2001, many foreign nationals paid homage to New York’s victims by laying wreaths and writing inscriptions in memorial books. Among those paying their respects and offering condolences were a large number of Israeli visitors and ex-patriots who, whether individually or collectively, had already experienced several decades of terrorist atrocities. While the collapse of the twin towers was indeed a uniquely momentous event—a horrific spectacular carried out on the world’s largest stage—the Israeli New Yorkers had already witnessed the essence of this horror before. They had smelled the smoke and witnessed the carnage. They had seen such devastation and destruction—the bodies, the families, the loss, the death, and the bereaved. They had already buried many victims of terrorism and embraced many survivors. No one could have been more sympathetic to New Yorkers on that fateful day.

One Hebrew inscription attached to a wreath sticks in the mind. Summoning up the words of the prophet Jeremiah, one anonymous Israeli in the crowd wrote of her pre-September 11 American friends: “they had eyes, but could not see.” 1 A week later, former Israeli Prime Minister Benjamin Netanyahu expressed similar sentiments when addressing the US Congress. He said America had received a wake-up call from hell. 2 His words were received with loud, unanimous applause by members of the House. America may once have been blind, but now could see.

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1 The reference is to Jeremiah 5:21, KJV: “Hear now this, O foolish people, and without understanding; which have eyes, and see not; that have ears, and hear not.”

Let there be no misunderstanding from the outset. This is a book about terrorism, but it is also, and most definitely, an argument against terrorism. It draws on the existing theoretical, primarily philosophical, literature on terrorism, and argues with much of it. The first part of the book argues against a growing academic reluctance to define terrorism as a specific and fiendish deed. Later, it offers a systematic normative evaluation of the phenomenon of terrorism and of various forms of contending with it from the perspective of liberal morality. Beginning with the definition of terrorism, proceeding to its possible justifications, and culminating in proposals for combating it, this book suggests that regardless of its professed cause, terrorism is diametrically opposed to the requirements of liberal morality and can only be defended at the expense of relinquishing the most basic of liberal commitments. It argues against a considerable body of literature that expresses sympathy, and at times outright justification, for Islamist (particularly Palestinian) terrorism and terrorism allegedly carried out on behalf of developing nations. It takes on the apologists for terrorism and refutes their arguments.

On the other hand, and not one whit less important, this wholehearted call for a unanimous liberal front against terrorism does not bear the practical implications that some self-interested state leaders wish to accord it, nor should it always supply them with the legal and political license they seek to acquire when confronting terrorist threats. Part II looks to liberal democracies and asks how the freedom and security of their citizenry, as well as the rights of suspected terrorists, should be handled by liberal democratic legal systems in an age of terror. Domestically, it questions whether civil libertarians ought to resist any readjustment of civil liberties, even at times of grave security threat, but at the same time argues against those who would tolerate any diminution of civil liberties in exchange for greater security. I sketch my argument on this internal issue in terms of classic social contract theory, which I believe contributes to an illumination of the frequent debate on the supposed tension between liberty and security, particularly in times of crisis.

Part II also offers an analysis of the debate over the legal status of terrorists and their rights. It defends the contemporary American labeling of irregulars as “unlawful combatants” and offers an argument for denying them prisoner of war status as well as the rights of internal due process accorded common criminals. On the other hand, I also argue
adamantly for upholding the basic human rights of irregular combatants and against the more draconian measures implemented by the US Bush administration against terrorists and terrorist suspects.

Internationally, Part III defends particular methods of combating terrorism which are often objected to by liberals. In particular, it defends targeted assassination, and entertains the possibility of employing harsher interrogation techniques for questioning terrorists in life-threatening situations. Crucially, however, the last two chapters deal at length with the specific issue of torturous investigations and with arguments from extreme emergency, and ultimately uphold and defend the age-old liberal commitment against outright torture.

Finally, the outcome is a complex set of views, but hopefully not an incoherent one. Our views on these various issues should be complex and perplexing, not necessarily sitting well with any one political party, state agenda, or world leadership. We live in truly complicated times, and should think accordingly.
PART I

Defining and Defending Terrorism
Defining terrorism – a typology

As the leaders of Western democracies and their security forces increasingly struggle with terrorism, their lawyers and philosophers continue to struggle with its definition. Several recent studies point to the inconsistencies and inadequacies of existing legal definitions, as well as to the contradictions among them. C.A.J. Coady suggests that there are more than a hundred modern definitions of “terrorism.” George Fletcher mentions only dozens, concluding that no one of them is definitive. Consequently, there is no globally agreed, unambiguous definition or description of terrorism – popular, academic, or legislative. Igor Primoratz complains that “Current ordinary usage of the word displays wide variety and considerable confusion; as a result, discussing terrorism and the array of moral, political and legal questions it raises is difficult and often frustrating.” Wilkins does not altogether exaggerate when he writes that the number of definitions of terrorism equals the number of works dedicated to the subject. By 1984, Alex Schmid had collected 109 different definitions of terrorism. Later, he states that he “cannot offer a true or correct definition of terrorism” and that “[t]errorism is an abstract phenomenon of which there can be


4 Primoratz, Terrorism, p. xi.


no essence which can be discovered or described,” commenting that “authors have spilt almost as much ink as the actors of terrorism have spilled blood.” Indeed, to date, academic standpoints remain diverse.

When it comes to defining terrorism some, like Walter Laqueur, seem to forego analysis in favor of platitudes, in the belief that “[a]ll specific definitions of terrorism have their shortcomings simply because reality is always richer (or more complicated) than any generalization.”

At least one reason for the disparity of definitions stems from the variety of objectives we have in defining terrorism. Lawyers desperately require definitions in order to prosecute and sanction “terrorists.” They must distinguish terrorism in precise legal terms from other forms of crime. Social scientists aim to describe this phenomenon in a way which will better our sociological and psychological understanding of it and enable us to face this modern challenge more successfully. Heads of state and politicians often adopt definitions that serve their national, political, or ideological agendas. Naturally, they usually define terrorism as a form of violence that is carried out exclusively by non-state groups. As Primoratz puts this: “Nobody applies the word to oneself or one’s actions, nor to those one has sympathy with or whose activities one supports.”

Recently, both George Fletcher and Jeremy Waldron have questioned whether we should spend time worrying about definitional issues at all. Fletcher suggests that, “when it comes to terrorism, we know it when we see it – as Justice Stewart famously said about pornography.” According to Fletcher, while people have strong intuitions about what is and what is not terrorism, no definition of terrorism can be filtered from a specification of necessary and sufficient conditions. Specific forms of conduct, he claims, cannot be identified as terrorism by simply running a relevant test on them. Instead, he probes the relevance of eight variables on the contours of terrorism: violence, intention, the victims, the wrongdoers, just cause, organization, theater, and what he calls the “no guilt, no regrets” of the

perpetrators. Drawing on Wittgenstein’s “relationships of family resemblance,” Fletcher argues that terrorist acts do not presuppose necessary and sufficient conditions. Instead, a given terrorist act may resemble a second terrorist act in some respect, and a third terrorist act in another. The features of the second and third terrorist acts that resemble one another may be different as well. There is, however, no common denominator for all acts of terrorism, apart, perhaps, from their theatrical nature.

In “Terrorism and the Uses of Terror,” Waldron pursues some interesting distinctions among, for example, “terror,” “terrorism,” and “terrorization,” and reveals some psychological insights into the fearful elements of terror, but he concludes that no canonical definition emerges from these observations. In one such invaluable insight, Waldron ascribes the term “terrorization” to the type of action that induces desperate panic and overwhelms a person’s rational decision-making capability, and distinguishes it from coercion, which concerns actions that leave room for rational deliberation on the part of the victim. Nonetheless, he argues ultimately that defining “terrorism” is difficult and not an enterprise worth undertaking, except for specific legal purposes. While Fletcher and Waldron both expend the necessary effort in investigating this definitional question, they essentially concur that, in the end, “The quest for a canonical definition of terrorism is probably a waste of time.” This book argues, to the contrary, that a canonical and consistent definition of “terrorism” can and should be pursued, particularly by philosophers.

In his recent and provocative book, What’s Wrong with Terrorism? Robert Goodin humorously accuses political theorists, myself included (in a slightly different connection) of having “a limited range of tools in their intellectual toolkits. Presented with real world events, they rummage around to see what among their standard equipment best fits this occasion, rather than necessarily doing any first order philosophy on the situation at hand.” Goodin is probably right, and it is not
surprising then that we have in recent years witnessed a veritable slew of academic writing on the definition of terrorism. Political philosophers are rather fond of framing classifications and typologies, and categorizing and defining. Contra Waldron and Fletcher, however, I do not consider this a waste of time. If we are to fruitfully pursue the further moral issues regarding the changing character of modern war, we must first agree on a canonical definition of terrorism. As Coady observes, “There are two central philosophical questions about terrorism: What is it? And what, if anything, is wrong with it?” We must deal with the first question because of the importance of the second.20

I have another piece of old equipment in my toolbox that I believe meets the occasion. Aristotle observed long ago that our definitional powers are essentially linked to our ability to distinguish good from evil. The gift of speech, Aristotle tells us, goes beyond the physical capacity to utter sounds and even the ability to recognize and name objects in the physical world. The essential attribute of human speech is captured by the ability to differentiate, categorize, and define a variety of incidents as belonging to a common genus, while excluding others. It is the capacity to distinguish and define which enables us to make ethical judgments.21 To bring this observation into the present, the twenty-first-century philosopher’s objective must be to define terrorism in order to identify its morally crucial features. Aside from pure moral inquiry, there are also other, more practical, objectives to be served by a clear definition of terrorism. As I have said, lawyers require definitions in order to prosecute terrorists. Chapter 4 of this book looks at the legal status of irregular combatants. Chapters 5 to 7 contemplate the appropriate attitude on the part of the international community towards certain modes of combating terrorism and terrorists, specifically towards the practices of targeted assassination and investigative torture. In view of recent events, there is a great need to adapt international law to the reality of modern warfare. Legislation on terrorism, and the legitimate modes of combating it, is sorely lacking. Legally defining terrorism would be a very good place to start. An orderly definition would specify the category of persons we call terrorists for the purpose of both prosecuting and fighting them, and distinguish them from those who would categorically be immune from such repercussions. A definitive description of terrorism would enable us

20 Coady, “Defining Terrorism,” p. 3.
to consider policies designed to combat it, such as targeted killing, without lending our hand to related practices, such as the murder of political enemies, which we ardently condemn. An internationally agreed-upon definition of terrorism is a necessary first step in the right direction.

Why are Western theorists having such a hard time agreeing on a definition of terrorism? Israeli legal theorist Alon Harel suggests that the various conflicting definitions fall roughly into two categories, each with a distinct political agenda. One large group of contemporary definitions seeks to highlight a specific aspect of terrorism that is said to single it out as a particularly fiendish and condemnable practice. In contrast, a second group of definitions aims to blur the distinction between terrorism and other violent acts, suggesting that terrorism is no worse than many forms of state-employed violence.\(^{22}\) While Harel never names particular scholars in each of his categories, most authors on terrorism do indeed fall distinctly into one of the two groups.

Throughout this chapter, I pursue this distinction between two broad categories of definitions based loosely on their respective goals. I refer to them as the “inclusive” and the “restrictive” definitions respectively. In the next section, after pursuing several paradigmatic definitions of the inclusive category, I criticize this type of definition, suggesting that it is entirely politically motivated, misguided, and normatively unhelpful in understanding the modern phenomenon that is terrorism. While authors of these wide, inclusive definitions accuse their opponents of begging important moral questions – allegedly defining terrorism as unjustified – they themselves advance their political agenda by shaping definitions that suit them. Chapter 2 offers a more detailed refutation of such political agenda. This chapter, as well as the next, suggests that a satisfactory definition of terrorism must specify its uniqueness and distinguish it from other types of human activity, specifically from other types of violent action. If terminology is to contribute to ethical judgment, the definition itself ought to highlight the characteristic normative aspect of the category in question. The term “terrorism” is derogatory, at least in ordinary usage. That is why no one applies it to themselves and practically everyone nowadays attempts to apply it to his or

\(^{22}\) Alon Harel, “Is Terrorism a Moral Category?” paper delivered at a conference on “Terrorism – Philosophical Perspectives,” at Tel-Aviv University (organized by the department of Political Science and the Minerva Center for Human Rights), March 2004.
her enemies. Therefore, I argue here, the characterizing features we are looking for are bound to be at least objectionable if they are to bear any connection with ordinary speech. Finally, I conclude the present chapter by siding with what has been dubbed a “tactical definition" of terrorism; tactical in that it focuses on the specific problematic tactic of terrorism as an action category.23 I do so without reference to the nature of the perpetrators of such a tactic or the justness of their goal and without rendering it morally and politically unjustifiable by definition. The following chapter looks more closely at political motivation and the question of justification.

Inclusive definitions

The Oxford Student’s Dictionary for Hebrew Speakers describes terrorism as merely the “use of violence and intimidation, especially for political purposes.”24 Interestingly, this was also Leon Trotsky’s understanding of terrorism: as violence intended to intimidate and thereby achieve political objectives.25 Quite obviously, many acts of conventional warfare can equally be described as violent and intimidating for political purposes. Several modern-day theorists adopt a variety of inclusive definitions of terrorism that blur, or deconstruct, the distinction between terrorism and other forms of political violence. This type of definition aims to obliterate the distinction between terrorism and other violent acts, with the clear implication that terrorism is, in and of itself, no worse than many other practiced forms of violence which are internationally sanctioned.

Many theorists believe that the very concept of terrorism, or at least its current usage, has been molded in a sinister way in order to serve the political interests of the stronger powers within the international community, specifically those of the United States. Hence, it is argued, the United States’ labeling of particular individuals, groups, states, and organizations as “terrorists” is biased and unjust.26 There is nothing

26 Virginia Held, for example, “Terrorism, Rights, and Political Goals,” in Primoratz, Terrorism, p. 65–79.