

Notes

Introduction

1. Wittgenstein 1953: 43.
2. I believe David Rodin to be right when pointing out that “The concept of terrorism has been so deformed by rhetorical usage that it is probably not possible to provide a full analysis of its use in common language” (Rodin 2004b: 752f).

1 On the Current Debate on Defining Terrorism

1. About the failure to distinguish classifying from evaluating an action in the discourse on defining terrorism see also Nathanson 2010: 11–23.
2. Meggle, Corlett, Honderich, Nielsen, Held, Sterba.
3. Stephen Nathanson claims that “The main reasons it has been difficult to define terrorism are political rather than theoretical” (Nathanson 2010: 13).
4. This is precisely the objective of Georg Meggle’s attempt to separate the evaluative from the denominative features of terrorism by introducing the term ‘t-act’ meaning an act of terrorism without its negative connotation (Meggle 2005a). See also Nathanson 2010: 15.
5. David C. Rapoport, for instance, made an effort to examine this development. According to him, the concept of terrorism has developed in four waves: the anarchist wave, the anti-colonial wave, the new left wave and the religious wave (Rapoport 2006). Though this classification well illustrates how the objectives of terrorist strategies changed, it is unfortunately incomplete and one sided. All four terrorism waves refer to non-state terrorist actors. The Jacobins are ignored as well as Stalin’s reign of terror in the Soviet Union. On the one hand Rapoport’s theses give evidence for the changing application of the term. On the other hand, his results may count as an example of how differently terrorism is and has been defined. For the development of the term ‘terrorism’ see also Waldmann 1998, Hoffman 2006, Townshend 2002, Laqueur 1987 and Shughart 2006.
6. See, for instance, Townshend 2002: 36ff.
7. See also Primoratz 2007a and 2007c.
8. Kapitan 2005: 37. Georg Meggle makes a similar point in Meggle 2005b: 16.
9. Wolfendale 2007. Tomis Kapitan has coined the term “terrorism”. (Kapitan 2003: 47).
10. Townshend 2002: 15.
11. Symeonidou-Kastanidou 2004: 17.
12. Ibid. p. 18.
13. See, for instance, Walter Laqueur 1987 and Alex P. Schmid 1988.

14. The results are cited in Alex P. Schmid and Albert J. Jongmann (1988): *Political Terrorism: A new guide to actors, authors, concepts, data basis, theories, and literature*. North-Holland: Amsterdam.
15. These elements were: (1) violence and force, (2) political, (3) fear and terror emphasized, (4) threat, (5) psychological effects and (anticipated) reactions, (6) victim-target differentiation, (7) purposive, planned, systematic, organized action, (8) method of combat, strategy, tactic, (9) extranormality, in breach of accepted rules, without humanitarian constraints, (10) coercion, extortion, induction of compliance, (11) publicity aspect, (12) arbitrariness, impersonal, random character, indiscrimination, (13) civilians, non-combatants, neutrals, outsiders as victims, (14) intimidation, (15) innocence of victims emphasized, (16) group, movement, organization as perpetrator, (17) symbolic aspect, demonstration to others, (18) incalculability, unpredictability, unexpectedness of occurrence of violence, (19) clandestine, covert nature, (20) repetitiveness, serial or campaign character of violence, (21) criminal, (22) demands made on third parties.
16. Weinberg, Pedahzur and Hirsch-Hoefler (2004).
17. One is surprised to see that there are more definitions than articles. Supposedly this is due to citations of various definitions in the same article.
18. The evaluated journals were: *Terrorism* (New York: Crane Russak & Company), *Terrorism and Political Violence* (London: Frank Cass) and *Studies in Conflict and Terrorism* (London: Taylor and Francis).
19. The authors and institutions whose definitions I took into consideration were: Coady, Dardis, Goodin, Held, Hoffman, Keller, Laqueur, Meggle, Mueller, Primoratz, Richardson, Rodin, Schmid, Steinhoff, Teichman, Thornton, Townshend, Waldmann, Walzer, Wardlaw, United Nations Office on Drugs and Crimes (UNODC), and FBI.
20. Up to 31.5% (Weinberg, Pedahzur and Hirsch-Hoefler) and, respectively, 30.5% (Schmid and Jongman) of the scholars did explicitly regard *strategy* or a *tactic* as a definitional element of terrorism.
21. Georg Meggle distinguishes between acts of terrorizing, for example, the exercise of violence in order to produce terror, and acts of terrorism, for example, the exercise of violence in order to produce terror in order to coerce someone and provoke a certain reaction (see Meggle 2003a). In the paragraph on the terrorist method, this will be explicated in further detail.
22. See, for instance, Primoratz 1990, 1997, 2004a, 2004b, 2007a and 2007c and Goodin 2006.
23. See section on "State and non-state terrorism".
24. See section "Innocent victims?".
25. Rodin 2004b: 753–755.
26. Rodin 2004b: 753.
27. Goodin 2006: 45.
28. Keller 2005: 58–60.
29. See Meggle 2003b: 33.
30. This has also been suggested by Georg Meggle and Grant Wardlaw.
31. Primoratz 2007c: 40.
32. Steinhoff 2007: 122.

33. Georg Meggle, for instance, distinguishes up to three different target groups. See Meggle 2005a, 2005b and 2006.
34. This is indeed a common feature of definitions of terrorism as both the 1988 Schmid and Jongman and the 2004 Weinberg, Pedahzur and Hirsch-Hoefler surveys show. This view is also shared by Simon Keller (Keller 2005: 61) and Robert Goodin (Goodin 2006).
35. I will briefly comment on this argument, but give a more detailed account of the differences between war and terrorism in section “War, Guerrilla and Political Assassination” in [Chapter 2](#).
36. Primoratz 2004a: 22.
37. See, for instance, Waldmann 1998: 13.
38. Baudrillard said on the World Trade Center attacks on 11 September 2001: “It is not ‘real’. In a sense, it is worse: it is symbolic” (Baudrillard 2002: 29). See also Thornton 1964: 73, or Coady 2004a: 5. In the Schmid and Jongman survey this feature ranked 17th.
39. Even though I agree that the 9/11 attacks were also symbolic, I would strongly object to Jean Baudrillard’s claim that they were not ‘real’ (Baudrillard 2002: 29). They were certainly just as real as anything that happens or has happened at a great distance to us and is brought to our knowledge by means of mass communication. If there is something not real about it, then perhaps it is the televisually created proximity.
40. For both quotations, see Rodin 2004b: 752.
41. See, for instance, Coady 2004b, Dardis 1992, and Steinhoff 2007. Primoratz 2007 and Teichmann 1989 hold that violence against property may only be called terrorist if “that property is needed for life” (Teichman 1989: 92).
42. See Coady 2005, Meggle 2005a, Primoratz 2004b, Rodin 2004b, and Wardlaw 1989.
43. To Bruce Hoffman, director of the RAND Corporation, a U.S. American think tank consulting the U.S. military and government, it is clear “that terrorism is [...] perpetrated by a subnational group or non-state entity” (Hoffman 2006: 40). This seems to be in line with the definition of the United States Code used by the U.S. State Department, according to which terrorism is: “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents [...]” (Hoffman 2006: 31).
44. Operation Condor: clandestine plan and organization implemented in 1975 by a group of right-wing South American governments (mainly Argentina, Chile, Uruguay, Paraguay, Bolivia and Brazil) with the aim of deterring and eliminating political opponents. This may even be a border case between occasional use and substantial use of terrorist means.
45. Contra – Contrarevolucionarios – (Counter-revolutionists) armed groups supported by the U.S. government with the aim of overthrowing the Sandinista’s government in Nicaragua from the early 1980s to 1990. The Contras employed mainly guerrilla but also terrorist tactics.
46. AUC – Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia).
47. It might not be a well-known case, but not a long time ago the Spanish government was involved in terrorist practices through creating terrorist groups under direct command of government officials. These militant groups

- were meant to combat ETA terrorists (and supposedly left-wing activists in general) with terrorist means. The groups were known as the GAL, Grupos Antiterroristas de Liberación (Antiterrorist Liberation Groups) and were active in the 1980s, killing 27 persons, kidnapping and maiming more.
48. Igor Primoratz does so (Primoratz 2004a: 23), as well as Tony Coady 2008. Douglas Lackey and Robert Goodin hold a similar position (Lackey 2004, Goodin 2006: 63).
 49. Terrorist tactics employed by one state against another are sometimes also called 'state-sponsored terrorism'.
 50. See Primoratz 2004b: 115.
 51. Sproat 1997: 118.
 52. Wardlaw 1989: 9.
 53. Primoratz 2004a: 22.
 54. This view is advocated for instance by Bruce Hoffman. See Hoffman 2006 or <http://www.nytimes.com/books/first/h/hoffman-terrorism.html>.
 55. Clearly, the rejectionist scholars' claim that the nature of the state and the nature of terrorism impede the former's involvement in the latter is a conceptual problem which does not occur with most of the common definitions of terrorism, that is it can be easily avoided. This is why I will not pursue this issue any further but instead point to the detailed analysis of this problem by Peter Sproat (1997).
 56. See Waldmann 1998: 15, Townshend 2002: 36ff, Laqueur 1987: 186, Hoffman 2006: 40. G. Bowen argues that "[S]tate terror is internal, within a state, between rulers and their subjects, and is a technique of ruling. State-sponsored terrorism is a tool of interstate conflict [...]." Cited according to Sproat 1997: 129.
 57. Amongst others by Waldmann 1998, Young 2004 and Hare 1979.
 58. I therewith follow Georg Meggle's postulate of agent-neutrality and purpose-neutrality in definitions of terrorism. See Meggle 2005b: 17 and 2006. I also agree with his postulate of neutrality of point of view even though I do not explicitly discuss this issue here.
 59. For example, Waldmann 1998 and Thornton 1964.
 60. For an interesting and illuminating parallel to the definition of 'piracy' under U.S. law, which was explicitly framed as an act committed by private agents and exempted state agents from committing piracy, see Goodin 2006: 54–55.
 61. Laqueur 1987: 186–187.
 62. Thornton 1964: 42.
 63. Waldmann 1998: 17.
 64. See Waldmann 1998: 15–16 and Laqueur 1987: 186.
 65. I will go into more detail on this distinction in [Chapter 3](#).
 66. So do Louise Richardson 2006 and Paul Wilkinson 1974.
 67. Coady 2004a: 5.
 68. Walzer 2006.
 69. Primoratz 1990.
 70. See, for instance, Coady 2004a, Nathanson 2010, Primoratz 2004a, Rodin 2004b, Sproat 1997, Steinhoff 2007, Teichmann 1989, and Walzer 2002.
 71. See Corlett 2003, Dardis 1992, Held 1970, Keller 2005, Meggle 2006, Miller 2005, Müller 2005, Young 2004.

72. See Corlett 2003 and Young 2004.
73. Young 2004: 57.
74. Rodin 2004b: 753.
75. Primoratz 2004a: 24.
76. Rodin 2004b: 755.
77. Primoratz 2007c: 40ff.
78. Tony Coady shares this view.
79. Primoratz 2007c: 41.
80. Primoratz 2007a.
81. Rodin 2004b: 755.
82. Rodin 2004b.
83. See Shughart 2006, Hoffman 2006 and Townshend 2002.
84. See Shughart 2006 and Terrorist Knowledge Base (www.tkb.org).
85. See Shughart 2006, Hoffman 2006 and Terrorist Knowledge Base (www.tkb.org).
86. See, for example, Michael Walzer who thinks that “randomness is the crucial feature of terrorist activity” (Walzer 2000: 197).
87. See Dardis 1992: 94.

2 What Is Terrorism?

1. The definition I suggest is inspired by Uwe Steinhoff’s definition of terrorism. He argues that “Terrorism is a strategy of influencing the behaviour, perceptions, beliefs or attitudes of others than the immediate victims or targets of its violence by the threat, made credible by a corresponding act or series of acts, of the repeated killing or severe harming of innocents or the repeated destruction or severe harming of their property. Terrorist acts are such severe attacks on innocents or their property that are part of such a strategy” (Steinhoff 2007: 122). However, in contrast to Steinhoff, I chose not to limit the applicability of the term to strategies consisting of attacks on innocents, and I explicitly included the political nature of the objectives in the definition.
2. For a comprehensive account of the meaning of the ‘war on terror’ see Keller 2005.
3. Orend 2008.
4. On this point see also Nathanson 2010: 27.
5. Many philosophers consider the Allied bomb attacks on German cities during World War II a terrorist strategy, for example, Coady, Primoratz, Fritze.
6. Sproat 1997: 126.
7. Townshend 2002: 6.
8. This is similar to the way Clausewitz defined war: as a duel on an extensive scale (Clausewitz 1982: 101).
9. Townshend 2002: 7.
10. Original quotation: “Der Guerilla Kampf will den Raum, der Terrorist will dagegen das Denken besetzen” [translation by the author] (Wördemann 1977).
11. For a more detailed comparison of terrorism and guerrilla warfare see Messelken 2005.

12. If inventing terms we may define these as we please. Yet terrorism is a term that already comes with a particular – albeit imprecise – meaning.

3 Innocents and Non-innocents

1. McPherson 2007: 524.
2. The only kind of terrorism that comes close to war with regard to casualties is state terrorism such as practiced by the Stalinist regime, which resulted in an estimated 20 million deaths. Non-state terrorism, in contrast, is responsible for only a fraction of fatalities caused by military action.
3. This implies that the distinction between innocents and non-innocents does not equal the distinction between non-combatants and combatants, an unconvincing view that, for example, Troy Jollimore holds (Jollimore 2007).
4. Moreover, in contrast to the conventional view of Just War Theory I hold that in order for a person to be legitimately targeted, not only *in bello*-criteria, but also *ad bellum*-requirements must be satisfied. The term ‘legitimate target’, however, often indicates a separation of *jus in bello* and *jus ad bellum*, which I do not approve of. I will go into more detail on this in section “Terrorism as just war” (Chapter 4).
5. One of the few philosophical reflections on this issue which does not exclude terrorism against non-innocents is by Angelo Corlett. He holds that terrorist acts should be directed “only against those clearly guilty of significant injustice” (Corlett 2003: 127). In contrast to the view presented here, he links justifiable violence to desert and not to liability.
6. Primoratz 2007c: 42. I quote Igor Primoratz despite the fact that he does not consider what I call ‘terrorism against non-innocents’ to be terrorism at all; rather, he asserts that only what I call ‘terrorism against innocents’ is actually terrorism. However, this is irrelevant for my argument on responsibility and liability here.
7. There is one exception to this, however, which will be discussed in Chapter 5.
8. Bauhn 2005: 125.
9. Corlett 2003: 117.
10. See, for example, Cooper 1968; Feinberg 1968; French 1979, 1984; Gilbert 2006; Held 1970; May 1987, 1992; May and Hoffman, eds. 1991; Miller 2004; Miller 2001, 2006; Miller and Makela 2005; Schweikard, David, and Schmid, eds. 2009.
11. Quotation according to Lawrence 2005: 140.
12. This view is also shared by Tony Coady and Igor Primoratz (see, for instance, Coady 2005 and Primoratz 2007c). For a contrasting position, see Barry Buzan, who argues that citizens in democracies deserve their government and may therefore be rightfully targeted (Buzan 2002). For a detailed refutation of Buzan’s account, see Coady 2004b: 52ff.
13. Miller 2002: 52ff, 2005 and 2006.
14. Miller 2002: 53.
15. Miller 2006: 177ff.
16. While May looks at both inactions and omissions, Miller only focuses on omissions (May 1992, Miller 2002).

17. Miller 2002: 56.
18. On the particular question of the permissibility of forced assistance, see Øverland 2009.
19. May 1992: 85.
20. Even though this is an abstract description, the case clearly resembles Nazi Germany's genocide against German Jews and German Roma people.
21. See, for example, Steinhoff 2008; McMahan 2008. I will briefly consider this debate in the section on "Terrorism as just war" (Chapter 4).
22. At this point, I do not agree with Igor Primoratz, who maintains that even conscripts have a choice, namely between fighting and deserting (Primoratz 1997: 227). Often, the price for deserting is far too high to count as a real choice.
23. The same argument applies to child soldiers and other persons who have been forced into any sort of military service.
24. With regard to the German armed forces (Bundeswehr), for instance, see § 11 SG (German criminal law), § 22 WStG (German military criminal law).
25. Nagel 1972: 133.
26. Nagel 1972: 136.
27. Nagel 1972: 134.
28. Primoratz 2005: 47.
29. Rodin 2002.
30. The most detailed and thorough debate of this issue can be found in McMahan's 2009 book *Killing in War*.
31. One could also argue on a rights-based account that hostilities against an innocent person fail to respect that person as a holder of rights. As such, an innocent has the right not to be maimed or killed. A right, however, that may be overridden under certain circumstances, as we shall see in Chapter 5.

4 Terrorism against Non-innocents

1. For more details on this distinction, see Schroth 2009.
2. Immanuel Kant (1797): "Über ein vermeintes Recht, aus Menschenliebe zu lügen" (Kant 1998).
3. See Tony Coady, Georg Meggle, Thomas Nagel.
4. An aggressor can be morally innocent, if he is forced to attack, or if he is drugged or otherwise restricted concerning his judgement without being responsible for that restriction, or if he triggers a fatal chain of incidents without knowing it and without being in a position to know it. He is not responsible for constituting a threat to someone, and is thus morally innocent with regard to that particular threat.
5. For a more detailed account on the innocent attacker, see, for example, Fritze 2004; Fullinwider 1985; McMahan 1994a; Steinhoff 2007; Thomson 1991; Uniacke 1994.
6. Fotion 2004; Goodin 2006; Hare 1979; Honderich 2003a, 2003b and 2006; Nielsen 1984, 1981 and 2003.
7. For a rule-utilitarian approach to the ethics of killing in war and terrorism, see Stephen Nathanson's 2010 book *Terrorism and the Ethics of War*.

8. For example, by Yassir Arafat in his speech before the UN General Assembly on 13 November 1974. He clearly considers Palestinian terrorism just resistance and self-defence against unjust oppression and aggression: "Those who call us terrorists wish to prevent world public opinion from discovering the truth about us and from seeing the justice on our faces. They seek to bide the terrorism and tyranny of their acts, and our own posture of self-defence" (Arafat 1974).
9. This is how Richard Norman characterizes self-defence (Norman 1995: 127). For the purpose of this discussion, I will work with Richard Norman's concept of self-defence, not because it contains no moot points whatsoever, but because while containing those commonly accepted characteristics of self-defence my argument focuses on, it does not presuppose an ample conceptual introduction. For a very detailed rights-based account of self-defence, see David Rodin's *War and Self-Defence* (Rodin 2002). Another account of self-defence and war endorsed by Suzanne Uniacke comprises three criteria: (1) unjust threat, (2) necessity, and (3) proportionality. However, her view is not substantially different from the one endorsed by Richard Norman, which combines Uniacke's criteria (2) and (3) in the first requirement "forced choice between two lives." In contrast to Norman, Uniacke does not consider immediacy a necessary requirement for justifying self-defence, but only a frequent characteristic (Uniacke 2003: 66–67).
10. This is a view argued for by Jeff McMahan (McMahan 1994a). McMahan establishes that there is no morally significant difference between the innocent attacker and an innocent bystander. He argues that attacking the former could only be justifiable on conventional grounds, but not on the basis of a plausible moral argument. However, I hold against him that on an agent-centred account it is entirely obvious that the victim of the aggression may defend herself as soon as the criteria for a self-defence situation are met. For the innocent attacker, this is merely bad luck.
11. Robert Fullinwider also holds that one may justifiably kill an innocent in self-defence under certain circumstances (Fullinwider 1985). In his thought experiment, Smith is coerced into physically attacking Jones, who is then justified in using self-defence against Smith, because Smith poses an immediate threat to Jones's life. Jones, Fullinwider argues, may kill Smith in self-defence even though he is morally innocent.
12. For a detailed account on the relation between self-defence and war see Rodin 2002.
13. Norman 1995: 153. Rodin makes a similar point (Rodin 2002: 5).
14. Norman 1995: 134.
15. *Ibid.*
16. Rodin 2002: 140.
17. Norman 1995: 135.
18. Rodin 2002: 139.
19. For a brief summary of the history of the tradition, see Orend's "A Sweeping History of Just War Theory" (Orend 2006: 9–30).
20. See Walzer 2000; Orend 2005 and 2006; Coady 2002, 2005 and 2008; Steinhoff 2007; Rodin 2002; McMahan 2009; Norman 1995.
21. These distinctions refer to the philosophical discourse on war and combatants, not to the terms as they are coined in the Geneva Convention.

22. Represented, for instance, by Michael Walzer 2000.
23. See Steinhoff 2007 chapter 4, Primoratz 1990 and 2005.
24. Primoratz 2002: 239.
25. For example, Kamm 2005: 392.
26. For example, McMahan 2004, 2009.
27. Igor Primoratz considers being a contributor to harm the relevant feature for becoming a legitimate target. See Primoratz 2005. On this issue see also Gerhard Øverland 2006.
28. Walzer 2000.
29. McMahan 1994b and 2004.
30. See, for instance McMahan 2009.
31. So does Brian Orend (2006).
32. In the early days of the just war tradition, the principle of discrimination in war was founded in a similar way. McMahan quotes the late Spanish scholastics Vitoria (1483–1546) and Suárez (1548–1617) who in their works on law and war spoke of innocents instead of non-combatants and who held *jus in bello* and *jus ad bellum* principles to be interdependent. Both argued that one who fights for a just cause is not liable to attack, and hence no legitimate target. See McMahan 2005.
33. This analogy could also be drawn for terrorism against innocents interpreting the terrorists as a war party attacking the other party's civilian population. Yet, it is not promising to tackle the problem of whether killing in the course of an act or a campaign of terrorism against innocents could be justifiable from just war theory; terrorism against innocents would never satisfy the criterion of discrimination and would hence never be justified. That the doctrine of double effect does not change this either will be shown in [Chapter 6](#).
34. Goodin 2006: 14.
35. The 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 states: "In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
 - (a) During each military engagement, and
 - (b) During such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate" (PAGC).
36. There are some accounts, though, which consider non-combatants potential legitimate targets, too. Igor Primoratz argues that there can be responsible bystanders who, due to their contribution to the respective belligerent conflict, are not immune against attack. He argues, however, that this claim has little impact on the reality of war as in military actions it is not possible to distinguish those responsible from the mere bystanders and ensure only the former are hit (Primoratz 2002 and 2005). Jeff McMahan argues that non-combatants can be legitimate targets if they bear responsibility for the injustice the violent acts are a response to (McMahan 2004).

37. Goodin 2006: 15.
38. For example, in McMahan 1994b, 2004, 2005, and 2009.
39. A number of scholars would not agree with the orthodox view and its moral implications such as Uwe Steinhoff (2007), Thomas Hurka (2005), Gerhard Øverland (2006), Jeff McMahan (2004, 2005, and 2009), Larry May (2005), Lionel McPherson (2007), and Igor Primoratz (2002).
40. If a particular terrorist group is in fact comparable to a regular army with regard to hierarchies, strict regime and disciplinary measures, my argument does not apply.
41. One of the few such accounts is J. Angelo Corlett's, which is based on just war criteria (Corlett 2003). Robert Young justifies terrorism as a means for the politically powerless to fight injustice (Young 2004).
42. McMahan draws a distinction between just war and morally justified war, which I find neither defensible as such nor adoptable to my reflections on justified terrorist killing of non-innocents (McMahan 2005: 13). He holds that while all just wars are morally justified, there may also be morally justified wars which are not just wars as they lack a just cause even though satisfying all other requirements of just war theory. These wars are fought for a cause not significant enough to be secured by war, but they can still be morally justifiable. I will not go into detail on McMahan's argumentation, but I think it neglects the morally highly relevant fact that people are being killed in the course of war. It is difficult to see how killing could be justified in the absence of a just cause. According to my account, lethal terrorism against non-innocents may never be morally justified without a just cause.
43. McMahan 2005: 9.
44. See Rome Statute of the International Criminal Court, Part 2, Article 7: Article 7 Crimes against humanity
 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
 2. For the purpose of paragraph 1: (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to

commit such attack; (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above (RSICC).

45. McMahan 2005: 12.

46. See also Steinhoff 2007: 28.

47. See Rodin 2004b.

48. This could be further differentiated. States employing substantial terror upon their citizens do certainly act on those citizens’ expense and rely on their resources to a significant extent. However, given that I mainly focus on non-state terrorism in this book I will not go into more detail on this.

49. See, for example, Orend 2008; Thompson 2005. For a critical discussion of Thompson see Steinhoff 2007.

50. See, for example, Held 2005; McPherson 2007

51. McPherson 2007: 542.

52. McPherson 2007: 544.

53. Press release of ICC 27th June 2011. <http://www.icc-cpi.int/NR/exeres/D07229DE-4E3D-45BC-8CB1-F5DAF8370218.htm>.

54. This view is shared, for example, by Finlay (2010); McPherson (2007).
55. This is what all those terrorist actors do who claim that their direct targets were not innocents, but persons responsible for the injustice the terrorists are fighting against.
56. The requirement of proportionality *post bellum* will not be considered in this book given that it is concerned with the proportionality of peace treaties ending a war and the ruling out of unconditional surrender. For a detailed account of *jus post bellum* see Orend 2006.
57. For both quotations, see Orend 2008.
58. In the following, I will use the terms 'positive' and 'negative' results not in a relative way, but in the sense of an 'objective' universal good or universal evil, as Brian Orend introduced them. This is equivalent to the distinction between moral benefits and moral costs.
59. See Forge 2009; Hurka 2005; McMahan 2005.
60. Jeff McMahan comes to a similar conclusion (McMahan 2005: 15f).
61. See Steinhoff 2007: 30. This view is also shared by Thomas Hurka (Hurka 2005: 37).
62. With regard to terrorism, one could argue that terrorism does not always have to do the job all by itself. It could form part of a strategy that is mainly belligerent or guerrilla. Hence, in order to consider a terrorist act successful, it need not be the employment of terrorism alone that procures the desired end. Instead, terrorist acts could be successful in the sense that they contribute to a desired end. This would lower the threshold for satisfying the condition of likelihood of success. I agree that insofar as the terrorist act(s) is an indispensable way to the desired end(s), one may call it successful even if it achieves its objectives only in combination with other strategies. Certainly, in most cases, such judgements will be possible in retrospect only.
63. Steinhoff 2007: 29.
64. With regard to war see Norman 1995; Rodin 2002.
65. Forge 2009: 31. Forge furthermore claims that weapons innovation in contemporary wars makes it impossible to determine the cost of such wars. However, this problem is not as relevant for terrorist attacks on non-innocents as it is for contemporary wars. Not only are the former usually conducted with more conventional means, but they consist of selective attacks on a much smaller scale than militant attacks. Hence, it cannot be maintained that the cost to human lives for terrorism against non-innocents is indeterminable. This is certainly different for non-selective terrorism and for terrorism involving nuclear weapons, such as an atomic bomb or the so-called dirty bomb. Yet, many scholars consider the much-feared and oft-proclaimed dirty-bomb/nuclear-terrorism-scenario to be a chimera of political manipulation and argue that such cases are highly unlikely at the moment. (For the latter claim see, for example, Masala and Sauer 2008.)
66. Rodin 2002: 40.
67. Orend 2006: 119.
68. See Protocol I to the Geneva Convention of 1949, Art. 51 (5b) according to which military actions must not be "excessive in relation to the concrete and direct military advantage anticipated" (PAGC).

69. McMahan 2005: 6. See also McMahan 2004 and Hurka 2005.
70. See, for instance, Orend 2008.
71. See Michael Walzer 2005: 53.
72. Corlett makes a similar point when arguing that non-violent alternatives to terrorism only need be employed if time and circumstances permit. See Corlett 2003: 127.
73. Steinhoff 2007: 28.
74. *Ibid.*
75. *Ibid.*: 30.
76. *Ibid.*
77. Both S. Miller and Held call the ANC's violent struggle justified (S. Miller 2005; Held 2004).
78. See Volume 6, Section 3, [Chapter 2](#) of the 2003 report of the Truth and Reconciliation Commission of South Africa available at http://www.info.gov.za/otherdocs/2003/trc/3_2.pdf. The report also states that "ANC targets remained fairly constant and, with certain exceptions, MK operatives remained within these boundaries: a) economic, communications and energy installations and infrastructure (electricity substations, oil refineries, telecommunications structures, etc.); b) government buildings and infrastructure and other apartheid symbols (courts, post offices, government offices); c) security force targets (personnel and physical structures of the police and military); and d) individuals identified as 'collaborators' (councillors, state witnesses, suspected informers and defectors).; e) In addition, some targets related to specific campaigns being supported by MK, such as labour actions and anti-election campaigns."
79. Manifesto of Umkhonto we Sizwe. Leaflet issued by the Command of Umkhonto we Sizwe, 16th December 1961. See <http://www.anc.org.za/show.php?id=77&t=Umkhonto%20we%20Sizwe>.
80. Experts, however, remain suspicious of the finality of the ceasefire.
81. See Townshend 2002: 84.
82. Woodworth 2001: 5.
83. According to public opinion survey Euskobarómetro 2011, 64% of Basque people completely reject ETA, 10% approve of ETA's objectives but not of its means and 11% once approved of ETA, but no longer do. Only 1% of the Basques fully approve of ETA in these days (Available at <http://www.ehu.es/euskobarometro/>).
84. Townshend 2002: 84.
85. Townshend grants that "The killing of Carrero Blanco may have ended Francoism" (Townshend 2002: 86).
86. According to the Spanish Ministry of the Interior. Available at <http://www.interior.gob.es/file/11/11297/11297.pdf>.
87. According to a statistic by the Guardia Civil. Available at <http://www.guardiacivil.org/terrorismo/acciones/estadistica07.jsp>.
88. A large proportion of those targeted and killed by ETA were members of the Guardia Civil, a military-status police force. The Guardia Civil was used as an instrument of oppression by the Franco dictatorship and its members were well known for their brutality. Hence it can be said that members of this police force were no innocents for the duration of this dictatorship.
89. Fatah was founded in 1959, the PLO in 1964, PFLP in 1967, and Hamas in 1987.

90. Among those who argue that Palestinian terrorism is justified from a moral point of view are James Sterba and Ted Honderich (Sterba 2003; Honderich 2006). For a critique of Sterba's argument, see Nathanson 2010: 182ff.
91. Townshend 2002: 91–92.
92. See Palestinian Center for Policy and Survey Research (PSR) poll #39. <http://www.pcpsr.org/survey/polls/2011/p39e.pdf>.
93. Sterba 2003 and Honderich 2006.
94. See Walzer 2000 and 2005.
95. See Orend 2005 and 2006.

5 Terrorism against Innocents

1. For instance, Coady, Rodin, Sproat, Steinhoff, and Walzer.
2. On the problem of the innocent attacker, see earlier notes 4 and 5 as well as 10 and 11 in [Chapter 4](#).
3. An earlier version of this article was published in 1991 (Frey and Morris 1991). I will refer to a later version of the same article published in Primoratz (ed.) 2004; Held 2004.
4. Held 2004: 71–72.
5. Ibid: 72.
6. Ibid:72.
7. Ibid: 76.
8. Ibid: 75.
9. Ibid: 74–75.
10. I will remain agnostic here on the question of whether benefiting from an injustice would also increase an agent's duty to remedy it. This may well be the case, but the question is too complex to do it justice here. See, for example, Anwander 2005; Butt 2007.
11. Held 2004: 75.
12. Primoratz 1997: 230.
13. Held 2004: 77.
14. Steinhoff 2007: 128.
15. Ibid: 129.
16. Ibid: 129.
17. Ibid: 129–130.
18. Held 2004: 72.
19. Orend 2005: 134.
20. Walzer 2000: 253.
21. Ibid: 253.
22. Walzer 2005: 33.
23. See Walzer 2005: 46. This view is generally shared by Garrett and Primoratz, though their opinions differ concerning the moment the situation ceased to constitute a supreme emergency. Garrett argues that "At the dawn of 1942...it appeared that Russia had survived, the vast might of the Americans was now engaged, and the entire strategic situation had been dramatically transformed. Under the circumstances, the only supreme emergency that loomed was the one the Germans would face sooner or later...If any vestige of supreme emergency had passed by February 1942 then this concept cannot be used to justify the initiation of the area offensive" (Garrett 2004: 150).

Igor Primoratz holds that “The supreme emergency argument may have been valid only during the first year of the campaign: in 1942, the victory of Nazi Germany in Europe – a major moral disaster by any standard – might have been thought imminent. However, after German defeats at El Alamein (November 6, 1942) and at Stalingrad (February 2, 1943), that was clearly no longer the case” (Primoratz 2004b: 120). A similar argument is made by Bryan Greetham (Greetham 2000: 7).

24. Walzer 2005: 40.
25. *Ibid*: 47.
26. *Ibid*: 37.
27. *Ibid*: 40.
28. *Ibid*: 34–35. Elsewhere he argues that one is allowed to resort to immoral response “every legitimate alternative having been exhausted” (Walzer 2005: 47).
29. Walzer 2000: 254.
30. *Ibid*: 268.
31. One of the objections which I will not discuss here is that Walzer’s World War II example does not, strictly speaking, satisfy the conditions for supreme emergency and thus undermines Walzer’s original argument. This has been argued by Coady 2004c; Cook 2007; Garrett 2004: 146.
32. Steinhoff 2007: 133.
33. *Ibid*: 132f; Valls 2000: 73; Coady 2002: 19, 2004c: 88, and 2008: 289ff; Cook 2007: 146ff.
34. Toner 2005.
35. A related point, which will not be discussed here, has been brought forward by Cook: “Walzer seems to be arguing that any time any community faces the loss of its way of life, it is faced with a supreme emergency, and therefore is entitled to disregard the war convention.... Given the historical reality that most human communities that have ever existed have at some point disappeared, often as a result of conquest, invasion, or loss of political autonomy, such a generalized permission would be a recipe for rather frequent supreme emergency” Cook 2007: 147.
36. Walzer 2000: 254.
37. Primoratz 2007a.
38. Brian Orend makes the same point in Orend 2001: 23.
39. Primoratz 2007a.
40. Orend 2000: 25.
41. *Ibid*: 26.
42. Orend 2005: 146.
43. Orend 2008.
44. Walzer 2005: 35.
45. *Ibid*: 40.
46. *Ibid*: 50.
47. Walzer 2000: 326–327.
48. Orend 2005: 147–148.
49. This is part of Orend’s analysis in which he singles out five different ways to conceive the concept of supreme emergency. (1) One can hold that the concept of supreme emergency constitutes a bastardization of just war theory and should be generally rejected. According to this perspective, there is no such thing as supreme emergency. (2) This view holds

in supreme emergency only *jus ad bellum* matters, but *jus in bello* may be set aside. Orend calls this “Churchill’s (Jus ad Bellum) Consequentialism.” (3) Even in supreme emergencies, the rules of *jus in bello* apply. Briefly summarized, Orend dismisses these three accounts as ignorant of the existence of real supreme emergencies (1); as ignorant of the rights violations against the innocents (3); and as unrealistic and irresponsible (3). (4) The “Paradoxical account of dirty hands” is what Orend considers Walzer’s actual approach. (5) Is Orend’s own account of supreme emergency. (Orend 2005: 146–151).

50. Orend 2005: 148–149.
51. See also Orend 2005: 151.
52. Nagel 1972: 143.
53. Coady 2004c: 780–781.
54. For a more detailed account on supreme emergency and dirty hands, see Coady 2004c: 781f.
55. Orend 2005: 149–150.
56. Walzer 2007: 168.
57. This view is held by Igor Primoratz (Primoratz 2007a and 2007c).
58. Walzer 2000: 197–206.
59. See, for example, Walzer 2000: 260.
60. Walzer 2005: 51.
61. Ibid: 54.
62. Walzer 2006: 7.
63. Walzer 2005: 53.
64. Walzer 2006: 7.
65. Walzer 2005: 33–50.
66. See note 33.
67. Orend 2005: 150.
68. Primoratz’ account of moral disaster is structurally similar to Walzer’s, but more restrictive. In contrast to Orend, he considers the employment of violence against innocents as justified in a morally disastrous situation, rather than merely excused. Primoratz considers only two situations a moral disaster: (the threat of) genocide and (the threat of) ethnic cleansing. In addition, he holds the satisfaction of the following two criteria necessary: (a) Last resort, (b) Prospect of success. (Primoratz 2005: 58).
69. See the discussion of this point in section “Criteria for assessing terrorism against non-innocents” in [Chapter 4](#).
70. Walzer 2005: 34.
71. Ibid: 35.
72. Orend 2005: 151.
73. The term ‘ethnic cleansing’ is usually applied to describe the practice of forced emigration in order to render an area ethnically homogeneous. However, the term’s definition is a moot point. See, for instance, Andrew Bell-Fialkoff’s “A Brief History of Ethnic Cleansing” (Bell-Fialkoff 1993). According to Article 2 of the UN Convention on the prevention and punishment of the crime of genocide, genocide is defined as: any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group. (CPPCG)
74. Coady 2005: 150. Stephen Nathanson shares his scepticism (Nathanson 2010: 157f).
75. Cook 2007: 140. Tony Coady has made a similar point against Walzer, whose concept he thinks too permissive, as it could be applied to completely different areas to justify violence against innocents, for example, for the sake of a corporation: "This brings me to my second difficulty with the category of supreme emergency. If we reject Walzer's attempt to restrict the supreme emergency exemption to states, the question arises whether the broadening of the potential application of supreme emergency considerations provides a reason for skepticism about the category itself. ... Why not allow that the exemption can apply to huge corporations, the existence of which is central to the lives and livelihoods of so many? ... Yet, in the context of public discourse about war and terrorism, we should be particularly worried about allowing exemptions from profound moral and legal constraints under categories that are, at the very least, so open to divergent interpretations" (Coady 2004c: 787). And indeed, if no longer restricted to states, Walzer's concept of supreme emergency could be extended to corporations. However, if applying the exemption to moral disaster only, as I suggested before, such abuses will be contained.

6 Collateral Damage

1. See, for instance, Coady 2008: 133.
2. The only exception I know being Meggle 2005a.
3. Article 51, §5(b) PAGC
4. The formulation of this scenario is borrowed from Meggle 2005: 168. In contrast to Meggle for the sake of clarity and consistency, I will focus on the problem of killing, that is lethal collateral damage, only.
5. See §2.02 of the American Law Institute's Model Penal Code (MPC).
6. A related suggestion has been made by David Rodin. Yet, he brought up the concepts of negligence and recklessness in the context of his criticism of the doctrine of double effect. Furthermore, he considers these to be essential characteristics of terrorism, which I do not agree with (Rodin 2004b). I will address his position further down.
7. See Tony Coady 2008: 133.
8. One might argue that acting recklessly should be considered a form of accidental damage, as the damage is not foreseen, but merely a certain probability is. However, I hold that as soon as an actor knows about the possibility of a certain outcome, he can no longer claim to have been unaware of this risk as the negligent actor can. In contrast to the latter, the former acts even though he knows that there is a risk. The reckless actor, when acting despite the risk of affecting innocents, makes a completely different decision from that of the ignorant negligent actor.

9. That the collateral damage was ‘innocently’ caused does not mean that the terrorist actor in general is morally innocent but rather that he is not to blame for the occurrence of the collateral damage.
10. Meggle 2005b: 168ff.
11. Coady 2008: 135.
12. Meggle 2005a and Coady 2008.
13. See, for example, Kamm and Harris 2000; Kamm 2000, 2005, 2006; Steinhoff 2006 and 2007: 33–61; McIntyre 2001.
14. Coady 2008: 137. There exist various versions of DDE. This is Tony Coady’s formulation; he is an adherent of the doctrine.
15. Coady 2008: 143.
16. See also Orend 2006: 118.
17. Coady 2008: 138. This reference to George Orwell’s 1984 was originally used in this context by Elizabeth Anscombe in her 1970 article “War and Murder” (Anscombe 1970: 50).
18. Lewis 1989.
19. Coady 2008: 138.
20. *Ibid.* p. 139.
21. Coady 2008: 143. Michael Walzer has come up with a similar point and Coady explicitly refers to him: “What we have to look for in such cases is some sign of a positive commitment to save civilian lives. Not merely to apply the proportionality rule and kill no more civilians than is militarily necessary – that rule applies to soldiers as well; no one can be killed for trivial purposes. Civilians have a right to something more. And if saving civilian lives means risking soldier’s lives, the risk must be accepted. But there is a limit to the risks that we require.... It is best, I think, to say that civilians have a right that ‘due care’ be taken” (Walzer 2000: 155f).
22. Coady 2008: 144.
23. See Scanlon and Dancy 2000, Thomson 1991. Scanlon argues that the permissibility of an action does not depend on the intention of the agent in the way the DDE suggests. According to him, what makes an action wrong are the decisive reasons against it, not the intention of the agent: “If a doctor were to withhold medicine from me in order to make my organs become available for transplant, what would make this action wrong would not be the fact that the doctor intends that I should die, but rather the fact that what he does violates his duty to treat my illness (a duty to which the need for transplants does not justify an exception)” (Scanlon and Dancy 2000: 316).
24. McIntyre 2001: 220.
25. Rodin 2004b: 764.
26. However, it needs to be said that Rodin’s concepts are not entirely equivalent to mine. He distinguishes between (1) subjective recklessness, in which the agent consciously foresaw the risk of harm, (2) objective recklessness, in which the agent did not foresee the risk but where a reasonable person would have done so, and (3) negligence, which is the failure to take reasonable precautions in the face of a foreseeable risk. Yet, Rodin’s concept (1) is what I call the knowing and the reckless agent, depending on the risk. (2) is what I call negligence. I have no separate term for (3), as I assume that if the agent took sufficient precautions and the harm occurred nonetheless he

is innocent. If he took insufficient precautions but without being to blame for the insufficiency, he is also innocent. If the agent took insufficient or no precautions because he did not bother, he is negligent. If he took no precautions, he is either reckless or knowing.

27. Rodin 2004b: 765.
28. Rodin 2004b: 766.
29. On the issue of terrorism, there is a fundamental difference between David Rodin's approach and mine. He considers the reckless and negligent harming of non-combatants in war to be terrorist. However, this is due to his definition of terrorism, which is very different from mine. This difference, nevertheless, is not relevant to the arguments presented here.
30. Certainly, the satisfaction of the proportionality criterion is always very difficult to assess. See also the debate on proportionality in [Chapter 4](#).
31. The point about insufficient attempts to consider less harmful alternatives could be made about contemporary wars in general. In contemporary warfare, the idea of remote precision weaponry banks on the impression that collateral damage is minimized, and only military targets are hit, but the reality shows otherwise. Remote weaponry often misses its legitimate targets or is directed against illegitimate targets. Furthermore, the enormous distances between operators of remote weaponry and those whom they attack leads the former to a mistaken impression of war without atrocities, and a growing detachment from their targets. So, instead of actually minimizing collateral damage, such new technologies merely create the illusion of a "clean" war and therewith lower the threshold for the decision to resort to war. The ethical challenges of remote weaponry have been examined, for instance, by Suzy Killmister (Killmister 2008).
32. Primoratz 2007c.
33. Held 2005: 183.

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