

## Commentary

# ON THE MORAL JUSTIFIABILITY OF TERRORISM (STATE AND OTHERWISE)<sup>©</sup>

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### I. INTRODUCTION

A discussion of terrorism should begin by settling on some at least working definition of what constitutes terrorism. At the outset, it is also helpful to characterize some of its species: state terrorism, sub-state terrorism (carried out under the aegis of an organized group with determinate, usually political, goals), and individual terrorism. My interest is principally in state terrorism. State terrorism—or so I shall argue—is the main engine for creating and sustaining the other forms of terrorism. Take away the brutal repressiveness, the grave injustice, and the exploitation and crushing of people's lives that is endemic to a state that practices state terrorism and, in time, other forms of terrorism will eventually wither away. Where some instances of sub-state terrorism remain, they will be much diminished in force, for the simple reason that they will no longer have the tacit support of vast numbers of brutalized and savagely exploited victims of state terrorism. Some acts of individual terror and individual terrorism will probably always be with us, but these will also become more infrequent in the absence of state terrorism. Stated otherwise, *in order to achieve*

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*something approximating a terror-free world, state terrorism must be confronted and eliminated.*<sup>1</sup>

I should make one further preliminary set of remarks. We should distinguish war from terrorism. We could have war without terrorism, even state terrorism. War, particularly modern war, usually brings along with it terrorism, but, at least conceptually speaking, it need not. War, even a very dirty war, may involve no terrorism. Combatants may be killed in all sorts of devious ways, but still we might not have terrorism. But where we have violence employed against non-combatants or civilians to further political, religious, or ideological ends or to undermine the political, religious, or ideological positions of others, then we have terrorism. But we *need* not have war when we have terrorism. However, such terror is sometimes used as a device to trigger a war or as a tactical device in fighting a war. Sometimes very weak nations use terrorism as a tactic in fighting a stronger nation. But terrorism can be used in a war by a strong nation in an attempt to push into surrender a weaker nation. While war is one thing and terrorism is another, it is often the case that terrorism is a tactic of war and with the ubiquity of undeclared wars there is no sharp or clear dividing line between terrorism as a tactic to start a war and terrorism that is part of the tactics of war. There are, however, clear paradigms of each type; the bombing of a purely military airport is not terrorism though it may provoke a terrorist response, and the killing of the young children of a diplomat—clearly, a terrorist act—may lead to war although it is not an act of war.

In this commentary, I shall do two things. First, I shall characterize and discuss terrorism in general, in order to clarify this otherwise ill-defined concept. Second, I shall discuss when, if ever, terrorism might be morally justified.

## II. WHAT IS TERRORISM?

At the outset, it is necessary to settle on an acceptable definition of terrorism, whether state or otherwise. Of course, we are likely not going to be able to give a definition or characterization that tracks completely and exclusively all and only those actions that are reasonably called acts of terrorism. We are not going to get what philosophers call necessary and sufficient conditions for the concept of terrorism. However, this does not

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<sup>1</sup> I do not wish for a moment to deny that states need to find ways to protect people living in their territories from terrorist attacks. This need will be particularly acute in the dangerous time before the good effects of the ending of state terrorism will take effect. But both out of prudence and decency it must do so in ways that do not revert to state terrorism.

reveal anything particularly unusual or troublesome about terrorism, for it is true of all concepts with any content. There is no essence of terrorism or anything else. However, there are a number of definitions that, while sufficiently different and indeterminate so as not to yield a single definition free of all ambiguity, are sufficiently determinate, particularly when taken together, to deliver us from the fog of Bushian blabber about “the War on Terrorism.”<sup>2</sup> For my purposes, it is sufficient to cite six particularly illustrative definitions of terrorism:

1. “Terrorism is the use of coercive means aimed at civilian populations in an effort to achieve political, religious or other aims.”<sup>3</sup>
2. Terrorism is the tactic of intentionally targeting non-combatants with lethal or severe violence for political purposes.
3. “[Terrorism is] the use of more or less random violence against whole populations.”<sup>4</sup>
4. “Terrorism is the deliberate killing of innocent people, at random, in order to spread fear through a whole population and force the hand of its political leaders.”<sup>5</sup>
5. “Terrorism is the deliberate use of violence, or threat of its use, against innocent people, with the aim of intimidating them, or other people, into a course of action they would otherwise not take.”<sup>6</sup>
6. “Terrorism consists in *aiming* specifically at civilian targets

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<sup>2</sup> Alex P. Schmid, *Political Terrorism: A Research Guide to Concepts, Theories, Data Bases and Literature* (New Brunswick, NJ: Transaction, 1983). Appendix I at 119-58 provides 109 different definitions of terrorism given between the years 1936-1981.

<sup>3</sup> Noam Chomsky, “U.S.—A Leading Terrorist State” (2001) 53(6) *Monthly Rev.* 10 at 19 [Chomsky, “Leading Terrorist State”]. Chomsky’s definition was taken from a U.S. Army manual. He points out that this definition is “almost the same” as the United States’ characterization of low-intensity warfare.

<sup>4</sup> Norman Geras, “Our Morals: The Ethics of Revolution” (1989) *Socialist Reg.* 185 at 199.

<sup>5</sup> Michael Walzer, “Five Questions about Terrorism” (Winter 2002) *Dissent* 5 at 5.

<sup>6</sup> Igor Primoratz, “What is Terrorism?” (1990) 7(2) *J. Applied Phil.* 129 at 135.

not directly involved in the opposing side's war effort in order to spread massive terror among the general population in furtherance of whatever political result is being pursued."<sup>7</sup>

These definitions, with their differing though overlapping emphases, provide a reasonable initial understanding for our purposes of what we are talking about in speaking of terrorism.

Terrorism, as both Chomsky's and Primoratz's definitions make clear, is not limited to political terrorism, although in this commentary I shall consider only political terrorism. For the arguments I shall make, any of the above six definitions will suffice. However, in order to simplify matters I shall have in mind principally Geras' rather simple definition, namely that terrorism is "the use of more or less random violence against whole populations," as well as Chomsky's.<sup>8</sup> When the popular media has anything even somewhat clear in mind, when they discuss terrorism, they usually have in mind sub-state terrorism carried out by an organized group for certain determinate political or religious ends. However, it is *state* terrorism that is actually the more important phenomenon. As I remarked initially, there probably would be very little sub-state terrorism if it were not for the pervasiveness and intensity of state terrorism, and therefore I shall focus on state terrorism. In speaking of state terrorism, I shall be speaking of the use by a state of strongly oppressive and typically violent means or the threat of violent means against civilian populations (either their own or others) in an effort to achieve political aims.

### III. CAN TERRORISM EVER BE MORALLY JUSTIFIED?

I now turn to the tangled question of whether terrorism can ever be justified. Conventional wisdom and much of Marxist doctrine holds that it can never be.<sup>9</sup> Of course, the killing of innocent individuals is always wrong, but the serious question remains—while killing innocent individuals is wrong, a horrible almost unmentionable wrong, is it always wrong, all things considered, where the occurrence of something evil is inescapable and we are caught in trying to decide between relative evils? When we are in a situation where we cannot avoid setting evil against evil, is terrorism

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<sup>7</sup> Danny Goldstick, "Defining 'Terrorism'" (1991) 4(3) *Nature, Soc'y, & Thought* 261 at 265.

<sup>8</sup> I also use Chomsky's definition precisely because it is a definition used in U.S. Army manuals, *supra* note 3. In this way, there can be no accusations that I am not talking about the same thing as the American officials are talking about in speaking of terrorism.

<sup>9</sup> *Supra* note 7.

always wrong? To use philosophers' jargon, terrorism is always *prima facie* wrong, but is it, all things considered, always something that must not be done? Is it always *categorically* forbidden no matter the consequences of engaging in or letting (where we can stop it) a terrorist act happen? Conventional wisdom, I repeat, has it that terrorism is never justified or even excusable. Should we, with conventional wisdom, be so categorical? Or should we, as in most moral matters, examine the question on a case by case basis, avoiding claims of absolute unconditionality? It may well be, notwithstanding Kant, that there are no sound categorical imperatives.

It would seem at least that the government of the United States, its explicit condemnation of terrorism notwithstanding, actually thinks that terrorism is sometimes justified for it believes that the bombing of Dresden and the dropping of atomic bombs on Japan were justified. U.S. government officials think that these acts were justified, in spite of being clearly aimed at civilian populations, in order to induce, or to contribute toward inducing, their enemy to surrender. But, given our common understanding of terrorism, these events, whether justified or not, whether carried out as an act of war or not, clearly constitute terrorist acts. Therefore, the United States clearly must believe, if its officials have any clear awareness at all of what they are doing and saying, its public condemnations of terrorism notwithstanding, that *sometimes* terrorist acts are justified.

In order to defend the United States from these allegations of terrorism, various arguments are deployed. All of these arguments seem to me to be—though some more obviously so than others—transparently mistaken. Sometimes it is said that there is no such thing as *state* terrorism, for genuine terrorism is only undertaken by *sub-state movements* bent on the intimidation of people, and most importantly of governments.<sup>10</sup> But this “defence” of U.S. actions is only a stipulative re-definition. None of the standard definitions of “terrorism” given above—one of which was formulated by the U.S. Army—admit of such restrictions. Then there is the claim that the civilians among the Germans and Japanese were all in one way or another complicit in the war effort and thus were not, after all, innocent. While some individuals, of course, were complicit, to hold that everyone, including children and even babies, were not innocent has no credibility at all. Even to hold that all adults were complicit is absurd. It is

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<sup>10</sup> Walter Laqueur, *Terrorism* (New York: Little Brown, 1977). Edward Herman claims that Laqueur's definition of terrorism means that there is no such thing as state terrorism. Herman indicates that Laqueur does not cover the whole spectrum of terror, and characterizes Laqueur's ideas as “absurd” and illogical. See Edward Herman, *The Real Terror Network: Terrorism in Fact and Propaganda* (Boston: South End Press, 1982) at 22 [Herman].

to, in effect, invoke something absurd, and indeed morally offensive, like the inheritance of the original sin of vicious German-ness or vicious Japanese-ness for these national populations.

The most plausible defence of acts such as the bombing of Dresden or the dropping of atomic bombs on Japan, combined with a denial that these were terrorist acts, is accomplished by invoking the venerable scholastic principle of double effect. It is a principle that seeks to provide criteria for determining when it is morally permissible to perform an action in the pursuit of a good end with the full knowledge that the action in question will also bring about bad results.<sup>11</sup> Put otherwise, it is a principle attempting to articulate when an action that has both good and bad results is morally permissible. Can this doctrine be legitimately used to provide a justification or at least an excuse for some forms of the killing of the innocent in some circumstances? In order to see whether the principle of double effect can in some contexts legitimize such actions, it is first necessary to state the principle. In its standard form, the principle can be stated as follows: *when an action that is not wrong in itself has both good and bad results, results that are commensurate (the good result being proportionate to the bad result), when the good itself is not the result of bad consequences, when the person so acting does not intend the bad result but, while foreseeing it, lets it happen, even when he or she could prevent it, his or her action still can be morally permissible.*

In order to apply the principle to terrorism, we must make one modification, thereby weakening the standard formulation, namely, we must broaden the definition to include not only actions that are “not wrong in themselves” but also those that may indeed be wrong in themselves. The non-standard, weakened version can be stated as follows: *when an action has both good and bad results, results that are commensurate (the good result being proportionate to the bad result), when the good itself is not the result of bad consequences, when the person so acting does not intend the bad result, but, while foreseeing it, lets it happen, even when he or she could prevent it, his or her action still can be morally permissible.*

The principle in either form can be and has been challenged.<sup>12</sup> However, for my particular purposes here, I shall set those challenges aside and assume for the sake of argumentation that the principle is sound, even in its weakened form. On this assumption, I would then like to consider

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<sup>11</sup> *Supra* note 7.

<sup>12</sup> See H.L.A. Hart, “Intention and Punishment” (1967) 4 *Oxford Rev.* 5, reprinted in *Punishment and Responsibility* (Oxford: Clarendon Press, 1968) at 113. See also Philippa Foot, “The Problem of Abortion and the Doctrine of the Double Effect” (1967) 5 *Oxford Rev.* 5, reprinted in *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press, 1978) at 19.

whether the principle can ever be used to justify (a) the killing of the innocent while (b) denying this killing of the innocent is an act of terrorism.

Certainly, the principle of double effect does indeed have some problematic conceptions such as “wrong in itself,” “commensurate results,” “proportionate results,” and the appeal to intentions. The problematicity of this appeal to the latter conception is sometimes exacerbated by appealing to the putatively apparent distinction between what is directly intended and what is indirectly intended. But again I shall put aside these considerations for the moment and, assuming that a reasonably clear and charitable reading can be given to both the standard and non-standard formulations of the principle of double effect, consider whether either formulation can be legitimately used to justify the killing of the innocent. Remember the principle of double effect seeks to give us criteria, or at least a rationale, for when an action that has both good and bad results is morally permissible. Killing of the innocent, sometimes, has both good and bad results. So it looks, at least, as if killing of the innocent could be a legitimate *candidate*, on the non-standard form of the principle of double effect, for being something that is sometimes morally permissible. However, there can be no justification of, or excuse for, such killing on the standard form of the principle of double effect, for it proscribes from justification or excuse any action that is *wrong in itself*; on any reasonable understanding, the killing of the innocent is wrong in itself. The principle of double effect in its *non-standard form* does not have this restriction. Can we, if we accept the non-standard formulation of the principle, make the case that there are *some* acts of terrorism that are justifiable? Someone using the non-standard formulation is very likely to think that something “being wrong in itself” *sans* context has little sense. Or, one may even think that nothing can be wrong in itself. Could, given such a way of looking at things, the killing of the innocent be justified? Could such acts perhaps even be justified on a weakened understanding of the principle of double effect?

Let us first note some important places where the principle will not yield anything that is even remotely permissible, though taken to be justified by U.S. policy. The bombing of Dresden, Hiroshima, and Nagasaki fail to meet the conditions specified in even the weakened version of the principle. It is highly implausible to say the bad effect was not intended. Military targets were incidental in these places for there were very few of them. It was the civilian population that was the main target of the bombing. The massive and terrible killing of innocent people terrorized the populations of Hiroshima and Nagasaki and beyond. The central aim was to force the government of Japan to surrender. This could hardly be credibly classified as an unintended effect—as just massive collateral

damage—for the aim was to cause the surrender of the government by killing masses of innocent people. But, even if that is not accepted, the act was avoidable for the good effect could have been achieved without such an act of carnage, an act that I am claiming was state terrorism. At that stage of the war Japan was on its knees, incapable of inflicting any serious damage on the Allies. A demonstration of the bomb's power could have been arranged at sea to convince the Japanese government of the reality and awesome power of atomic bombs. If still the Japanese did not surrender, conventional bombing could have continued, aimed only at military targets, government buildings, and the emperor's residences while Allied naval forces continued to surround and blockade Japan. Even with the prolongation of the war, it is plausible to believe that it would have resulted in few Allied casualties. It would, of course, have been more expensive for the Allies but that expense surely could neither justify nor excuse the infliction of such an unprecedented horror. Finally, to take the worst case scenario, short of deciding to drop the bomb, even if Japan did not surrender (something very improbable), then an invasion of a crippled enemy, though it would have cost U.S. lives, would surely not have been as devastating—have killed so many people in total—as the dropping of those atomic bombs. Furthermore, such an invasion would not have involved the deliberate killing of innocent civilians and would not have established such a horrible precedent.

Thus, even if we accept the principle of double effect, such bombings—whether *called* terrorist or not—are not justifiable. Similar observations can be made for the bombing of Dresden. The grounds for justifying the use of what I have called state terrorism therefore do not stand up to scrutiny. They are rather flimsy rationalizations for extremely brutal acts carried out on civilian populations. Similar things should be said for the other state terrorist activities carried out by the United States or its clients and proxies. Of course, it should be noted that there is seldom an attempt to defend them. They are usually denied, covered up or re-described so as to look good, for example terrorists re-described as freedom fighters.<sup>13</sup> Remember Osama bin Laden was a freedom fighter for Reagan and a terrorist for Bush. One can change sides without changing tactics—tactics Osama bin Laden learned from the Central Intelligence Agency—it is just a simple matter of reclassification.

This setting aside of the principle of double effect with respect to U.S. state terrorism does not, however, answer the question of whether terrorism and the killing of the innocent can *ever* be justified. The above

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<sup>13</sup> See Herman, *supra* note 10 at 21.



discussion simply shows that what the U.S. has done cannot be justified, with or without double effect arguments. Moreover, there is an ambiguity that should be noted when we speak of justification here. On the one hand, something may be *tactically justified* or, on the other, *morally justified* and, of course, justified in either or both or neither of these ways. I am principally interested in whether terrorism in any form, as characterized by the non-eccentric definitions I have given above, can ever be morally justified. I think that *any terrorism that can be morally justified (if any can) must also be tactically justified*, but I do not wish the two forms of justification to be run together. Most importantly, I would argue that terrorism—more accurately some instances of it—*might be tactically justified without being morally justified; when that is the case, such acts of terrorism are not justified in the broad sense, since moral justification is the critical issue here.*

Marxists—most prominently Vladimir Lenin, Leon Trotsky, and Rosa Luxemburg—were opposed to terrorism, because they thought that it would not work. They thought terrorism was a bad (counterproductive) tactic for either making or sustaining a socialist revolution. What it lacked was a *tactical* justification. Michael Walzer scorns this purely tactical analysis, for it suggests that if a terrorist act would work, i.e. be an effective tactic, it would, moral considerations notwithstanding, be justified full stop.<sup>14</sup> Despite being a Marxist, I contend that for terrorism to be justified, it must be both tactically *and* morally justified. Like G.A. Cohen and Geras, I think and argue that Marxists or Marxians should not be what has been called Marxist amoralists.<sup>15</sup> Morality is not always mere ideological twaddle serving the interests of a determinate class or classes under the guise of answering to universal human interests. Much of what passes for morality is indeed ideological twaddle, functioning, typically by mystification, to keep the subordinate classes in line. But not all morality is such double-talk; indeed, no genuine morality can be. And there can be and is genuine Marxist moral commitment. Lenin, Trotsky, and Luxemburg were Marxist amoralists in their conception of themselves, and in their conception of what it was to be a Marxist. They would deny there was or even could be, at least in class societies, such a thing as *genuine* morality. For them, it was ideology all the way. But in their lives and in their political actions they showed themselves to be persons of strong moral convictions, tempered (I believe rightly) by a steadfast recognition of the need to be

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<sup>14</sup> Walzer, *supra* note 5 at 7.

<sup>15</sup> Kai Nielsen, *Marxism and the Moral Point of View: Morality, Ideology, and Historical Materialism* (Boulder: Westview, 1989) at 117-35.

tough-minded. Thereby, their practice was better than their theory about their practice.

But in a Marxist amoralist mindframe, where morality is *nothing but ideology*, one can understand that the only coherent talk of the justification of terrorism will focus on the *tactical*. If some violent action works—if it serves the revolution—it is good and if not, it is bad. Other talk of moral, non-tactical justification for a consistent Marxist amoralist would be just spitting into the wind.

In line with what I have said above and what I have argued elsewhere, I will assume that there can be genuine moral claims—some claims about justice for example—that can be justified or unjustified in an objective fashion. I will also assume that Marxists can consistently make such claims and have such beliefs—the talk of some of them *about* their beliefs to the contrary notwithstanding—and indeed that they *should* have such beliefs.<sup>16</sup> Fortified with these moral convictions, Marxists should investigate whether there are cases where terrorism is not only tactically justified but where terrorist acts are also morally justified.

That is exactly the possibility that I wish to consider. I think (despite conventional Marxist wisdom) that there may be some situations where terrorism may be both tactically and morally justified.<sup>17</sup> I could start, as I have elsewhere, by giving an abstract characterization of a situation in which it is at least arguable that terrorism would be justified and then go on to argue that it actually would be justified in such a situation.<sup>18</sup> However, I shall proceed here by considering a situation currently much under discussion and contestation and usually said to be the opposite of anything that could be justified or even excused. I have in mind the terrorist Palestinian suicide bombers. Indeed, it is usually said that the Palestinian suicide attacks on Israel, often attacks on innocent civilians, are brutal acts of insane fanatics. But could they in the present situation, or in any situation, be justified, both tactically and morally? Most people would say certainly not. Is it so certain that they would be right?

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<sup>16</sup> *Ibid.* The objectivity I have in mind here is the coherentist intersubjectivity of wide and general reflective equilibrium. For an explication of this idea see Kai Nielsen, *Naturalism without Foundations* (Amherst, New York: Prometheus Books, 1996) at 12-21.

<sup>17</sup> *Supra* note 9 at 264-66.

<sup>18</sup> Kai Nielsen, "On the Ethics of Revolution" (1973) 6 *Radical Phil.* (1973) at 18 [Nielsen, "Ethics of Revolution"].

#### IV. ARE PALESTINIAN SUICIDE ATTACKS IN ISRAEL MORALLY JUSTIFIABLE?

In examining this question, I shall make certain factual assumptions that, of course, are challengeable, but assumptions that I think are born out—or largely born out—by the facts.<sup>19</sup> However, if these assumptions prove to be incorrect, my argument here that terrorism may sometimes be both morally and tactically justified would collapse. It may collapse anyway, but it would certainly collapse if my assumptions about the Israeli-Palestinian conflict are not largely right.

In World War II, with an unprecedented cruelty exceptional for even the pervasive anti-Semitism of many Christians, some six million Jews were methodically and coldly murdered in an effort by the Nazis to gain a *Juden-frei* world. After the liberation of the concentration camps, many Jews, utterly understandably, sought to gain a homeland for themselves where they could finally be safe and live in community with each other determining their own affairs. That would be as legitimate as any claim could be, if they had not come to a land settled by others, or if they had been invited there by the people living there, or if they had purchased the land from those living there not in a piecemeal fashion but by Jews as a people from Palestinians as a people. But nothing like any of these things was possible. The Palestinians were under the control of the British at that time. What actually happened is that the Palestinians were conquered by the Jews, driven from their homes or killed in what was in effect an invasion followed by a dispersion, or made to live in Palestine as a subdued people. Israel is a settler country that gained its land in the usual way settler countries gain their land, namely by the brutal dispossession of Palestinians who had lived on that land for centuries. It is perfectly understandable that Jews did not want to come to Palestine simply as immigrants to live in what many of them regarded as their own homeland—a land that nevertheless was the centuries old homeland of the Palestinians. Still it is the case that Jewish people had been brutalized for centuries, sometimes with more intensity than others. They wanted to be free at long last of that brutalization. They wanted rightly to be able to live free of fear and to live together as a people where they were acknowledged as such and respected. But it was the Palestinians' land and, moreover, why should the Palestinians, most of whom were Muslim, be made to pay for Christian

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<sup>19</sup> See Edward W. Said, *The Politics of Dispossession: The Palestinian Struggle for Self-Determination, 1969-1994* (New York: Pantheon Books, 1995); Moustafa Bayoumi & Andrew Rubin, eds., *The Edward Said Reader* (New York: Vintage Books, 2000) [*Edward Said Reader*]; and Edward W. Said, *Power, Politics and Culture* (New York: Pantheon Books, 2001).

crimes?

The Palestinians, with the help of other Arab nations, fought several wars attempting to regain their land. They were repeatedly defeated and decisively so in the 1967 War where Israel increased its borders and widened its areas of control. Many Palestinians ended up in wretched refugee camps deprived of what was legitimately theirs or they were incorporated into Israel as second-class citizens without the same rights as other Israelis and discriminated against in various subtle and not so subtle ways.<sup>20</sup> Palestinians justifiably have tried to fight back in different ways. This Palestinian resistance has led Israel, for the sake of its own security, to occupy more Arab territory (for example, the Golan Heights) and to invade Lebanon; many people who opposed Israel were killed or tortured and held in prisons where they were sometimes brutalized. Palestinian refugee camps in Lebanon were raided at the behest of Ariel Sharon and many of the refugees were killed.<sup>21</sup> And repeatedly, up to this day, Israel has continued to take Palestinian land, driving the Palestinians from it. Without a lot of other changes, there would be little progress if the Palestinian Authority with *its present borders* became a state. With the settlements remaining in place and with Israeli controlled access routes to the settlements criss-crossing Palestine, a Palestinian state would not be a viable nation-state.

Faced with Israel's continued expansionism, the seizure of more Palestinian lands, and the exploitation of Palestinians in Israel, the Palestinians began to fight back with the feeble resources they have. And in this uneven struggle, where Israel has vastly superior firepower, as well as support from the United States, Israel has continued to oppress and humiliate Palestinians and not only those doing the fighting.

Gradually coming to recognize the farce of the Oslo accords, accords designed for the stronger party that held most of the cards in the negotiations, and as well facing unremitting ill-treatment on Israel's part, Palestinians resorted to a grisly sort of response, namely that of Palestinian militants blowing themselves up in crowded places in Israel and by doing so, killing innocent men, women, and children.<sup>22</sup> These are clearly terrorist acts by any reasonable definition of terrorism. These acts have been described in accurate and graphic terms. We are treated to accounts of body parts being scattered all over the place and of people gravely wounded in the attacks crying out in intolerable pain. The killing and maiming of

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<sup>20</sup> Avi Schlaim, "Violent Means, Violent Ends" (2002) 166(17) *The Guardian Weekly* at 12.

<sup>21</sup> *Ibid.*

<sup>22</sup> See *Edward Said Reader*, *supra* note 19 at 382-91.

innocent people to achieve the political ends of the Palestinians are, by any account, extreme, desperate, terrorist acts. Most of their political ends are indeed justified, but can such means of fighting for them possibly be justified?

Unless we adopt something like pure pacifism, and take as *categorical* that we may never do evil that good may come, we cannot take an *a priori* road (moral or otherwise) to the rejection of terrorism. But such a pacifism (religious or secular) is untenable. If it were justified, we would never be justified in using even the slightest violence. We would not be justified in using violence against a person in order to stop him from machine gunning a group of unsuspecting and innocent people, even if that were the only way to stop him. Similarly, a categorical pacifism would not allow for the killing of a crazed President of the United States who was about to release a signal that would set off the delivery of an array of hydrogen bombs that would very likely destroy most human and animal life on earth. But to refrain from violence in such situations is an extreme form of moral irresponsibility—indeed moral insanity—that no reasonable, morally serious person, clear about the consequences, could even seriously contemplate. It is a *reductio* of pacifism.<sup>23</sup>

To think seriously about the Palestinian suicide terrorists, we need to fully recognize and take to heart that modern war (perhaps all war) is a very dirty business indeed, where terrorism, and particularly state terrorism, is utilized routinely by almost all the combatants. Fascist Spain and Italy used it, as did Apartheid South Africa, as did Nazi Germany, as did Japan against China, the Philippines, and Korea. France employed state terrorism in its war with Algeria. The Soviet Union used it against its own population as did China. Israel used it against Lebanon and is using it against the Palestinians. Latin America, Chile, Argentina, Uruguay, Colombia, and Guatemala have used state terrorism. Russia has employed it in Chechnya. And the United States wins the prize for using it.<sup>24</sup>

Moreover, and crucially for our considerations here, in fighting state terrorism, counterterrorism is not infrequently deployed, as exemplified by the Algerians in their fight against French state terrorism. It seems as if modern war is unavoidably terroristic: in certain situations

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<sup>23</sup> See Kai Nielsen, "On Terrorism and Political Assassination" in Harold M. Zellner, ed., *Assassination* (Cambridge, Mass.: Schenkman, 1974) at 107-09 [Nielsen, "Terrorism and Political Assassination"].

<sup>24</sup> See Chomsky, "Leading Terrorist State," *supra* note 3; Herman, *supra* note 10. See also Michael Parenti, *The Terrorism Trap: September 11 and Beyond* (San Francisco: City Lights Books, 2002); Rahul Mahajan, *The New Crusade: America's War on Terrorism* (New York: Monthly Review Press, 2002).

civilians are deliberately killed for political ends. This fact, horrible as it is, just goes—or at least seems to go—with modern war. If pure pacifism is untenable (as it must be), then, given the nature of modern war and the justifiability of some wars, for example, the war against the Nazis, terrorism must be justifiable in some situations. We have learned that to will the end is to will the necessary means to the end. Still there are things that cannot rightly be done under any war circumstances, even those. Captured enemy soldiers cannot be shot, nor can wounded enemy soldiers just be left on the battlefield to die. Yet, sometimes even these things cannot be avoided, though they are always very wrong.<sup>25</sup> It is without the slightest doubt a terrible thing to kill innocent people. Killing is itself terrible and the killing of the innocent is much worse. In this context, can Palestinian terrorist tactics possibly be justified or even excused?

The Palestinians, as everybody knows, are in a military sense, to understate it, far weaker than the Israelis. In a war where there is the terrorism of the powerful, there is also the terrorism of the weak.<sup>26</sup> The world is horribly awash with terrorism. In such a world where people are terrorized themselves, why are they not justified, where they cannot protect themselves without resorting to terrorism, in fighting terrorism with counterterrorism, particularly when it—or so it certainly seems—is the only weapon they have that will enable them to bring their enemies to accept their rights and to stop oppressing them? If there is some non-violent or less violent alternative, of course they should take it. One cannot simply say they should defend themselves and achieve their aims through peaceful negotiations; they have been trying that to no avail for years, but the Israeli occupation of their lands just continues.<sup>27</sup> But if this violent course is the only way to stop their oppression and to gain what they firmly believe is their right, why are they not justified in taking it?

If the response is that in so acting they kill innocent people and that such killing is evil, the proper reply to that response is in turn (1) that by not so responding, even more harm—more evil—will obtain and (2) that, whether they kill or not, the lesser evil should be done. If, where there is no other alternative, ten innocent people survive while one innocent person dies, that is the lesser evil and it isn't crude utilitarianism or necessarily

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<sup>25</sup> See Kai Nielsen "There is No Dilemma of Dirty Hands" in Paul Rynard & David Shugman eds., *Cruelty and Deception* (Peterborough, Ontario: Broadview, 2000) at 139-56.

<sup>26</sup> Noam Chomsky, "Terrorism, Weapon of the Powerful" *Le Monde Diplomatique* [English Edition] (December 2001) at 2-3 [Chomsky, "Terrorism"] .

<sup>27</sup> See *Edward Said Reader*, *supra* note 19.

utilitarian at all to believe that.<sup>28</sup> Even deontologists and Rawlsian egalitarians sometimes use consequentialist reasoning. The question is about the scope of consequentialist reasoning. Any reasonable moral theory must be consequence-sensitive. The reasoning in this case is that where, no matter what is done, some evil is unavoidable, it is better that the lesser evil be done. Everything that can obtain in these unavoidable circumstances is vile. The reasonable and right thing to do in those circumstances, where the doing or letting happen of some vile thing is unavoidable, is to do the least vile thing. To say “Never do vile things no matter what” is evasive. To do nothing and simply wring one’s hands over the problem of dirty hands is, as understandable as it is, romantic irresponsibility and a failure to face up to moral realities. Jean-Paul Sartre and Maurice Merleau-Ponty are better guides here than Walzer and Leszek Kolakowski.<sup>29</sup>

There are at least possible circumstances then where a terrorist act is the less evil alternative. And this lesser evil, in such a circumstance, is the alternative to be taken. That is where this analysis obtains, where the terrorist act is the less-evil act, the terrorist act should be done. We must not be evasive about this. It is, of course, morally wrenching when we have to make such choices. Not even a halfway decent person can accept with equanimity the killing or harming of the innocent. But are we going to accept with equanimity letting an even greater evil transpire where we can do something about it? That is a horrible choice with which we can in certain circumstances be faced. *Sometimes* no matter what we do or let happen we cannot but act arbitrarily. However, it is not always so. It is more likely to be the case, where we face an unavoidable choice between grave evils, where no matter what we do, we do something that is evil, there still remains a choice between a greater and a lesser evil. And in these situations we should choose the lesser evil.<sup>30</sup> Sometimes faced with two terrible evils, both of which cannot be avoided, we can ascertain the lesser evil. And there, where we choose the lesser evil, we in doing so act rightly and we do not act arbitrarily. To not accept this is to be evasive—indeed morally evasive.

What actually stands in opposition to terrorist suicide bombers, if the situation is as I described it, is not morality but tactics. Such terrorism, to return to our example, may only stiffen Israeli resolve—as seems to be happening as I write this commentary—and the Israelis by extreme,

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<sup>28</sup> See Kai Nielsen, *Ethics Without God* (Buffalo, NY: Prometheus Books, 1990) at 128-62.

<sup>29</sup> See Nielsen, “Ethics of Revolution,” *supra* note 18.

<sup>30</sup> See *ibid.* and Nielsen, “Terrorism and Political Assassination,” *supra* note 23.

counter-terrorist methods may crush, though probably only for a time, the Palestinian resistance. In short, there may be good moral grounds for the Palestinians to so act *if doing so will be effective*. But if not, since doing so is a great *prima facie* wrong, its futility (if futile it is) would make it doubly wrong, all things considered. *But we will not find out whether that tactic is futile by moral reasoning*. That is an empirical matter; sometimes terrorist resistance works and sometimes it does not. That is another of the terrible difficulties in such situations. The Algerian resistance, after extreme provocation by France, resorted to terrorist tactics and was for a time crushed—effectively eliminated—by French elite troops.<sup>31</sup> The anger among the Algerian population was so great that, after a time, Algerian resistance rose again and guerrilla warfare replaced terrorism and eventually the French were defeated. Similar things, though not on such a scale, seem to have happened in Northern Ireland. But sometimes, as with the Red Brigades or with the Bader-Meinhof group, they were just crushed. Whether such terrorism will work is, to repeat, an empirical matter. What any group contemplating the use of terrorist tactics must clearly consider is (a) whether doing so, even if it will work, is morally justifiable and (b) whether it will work, or is tactically justified. The latter requires a clear understanding of the empirical possibilities, what is more likely to be the case, the costs of terrorist acts, and the predictable reactions to which terrorist acts give rise. The former requires a clear understanding of what morality requires and permits, and a clear grasp of where the greater evil lies.

If turning to terrorism will not work, if it will not achieve its goal, it is also clearly morally wrong under those circumstances. But if it will work, it does not follow that it is morally justified. To know whether it is justified is to have very strong reasons for believing that among the various possibly effective tactics, which ones (if any) are morally justified. That is a hard thing to know and, where there is reasonable doubt, a terrorist tactic should not be employed.<sup>32</sup> But, while it is difficult to determine, sometimes we can know, or at least have good reason to believe, that the tactic is morally justified. We can know that a person of sound moral principle will, if her or his will is strong enough, act in accordance with what she or he

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<sup>31</sup> On this topic, see the unforgettable portrayal in the film *The Battle of Algiers* (Casbah & Igor Films, 1965).

<sup>32</sup> Here I worry if I am *implicitly* backtracking on what I have argued here—blunting the force of it. Doing what philosophers are so prone to do, namely first you say it and then you take it back. This is surely not my intent here. I mean, though not without some ambivalence, to stick to my guns. Yet the qualification I have just made in my text also seems to me something that we should say and say with conviction.



knows she or he ought to do. But when our good reasons to believe do not add up to what we would take to be a well-grounded belief, we have an even more horrific situation. What is to be done remains wrenchingly problematic. Things are so vile that it is difficult to know even how to articulate them. It is tempting to throw up one's hands in such situations and say there is no rational or morally acceptable solution. But to acquiesce in letting, without a struggle, state terrorism continue, is to accept in that context the most horrible thing among the relevant horrible things. If we are moral beings, that acquiescence is something we must not fall into.<sup>33</sup>

One final caution. This discussion does not open up everything here to a kind of relativism, namely that Israelis might consider their own country's counterterrorism to be morally justified in countering Palestinian terrorism and Palestinians at the same time would consider Palestinian counterterrorism to be justified in countering Israeli terrorism, and that they are both right from their own points of view.<sup>34</sup> *Such* justifications are almost tautologically true. But it does not follow that there is nothing more to be said and that there is no objective point of view from where we can judge what is the right thing to do. We cannot do this, if we can do it at all, just procedurally or formally—we can have no procedural or methodological fix here—but it can sometimes at least be imperfectly ascertained that acting in accordance with one point of view rather than another will lead to the most suffering, the most injustice, the most extensive denial of rights, and the most humiliation and degradation of people. The alternative, even with its grave consequences, should be rejected and the other, as the lesser evil, should be the alternative to be accepted.<sup>35</sup> We cannot always make this distinction, but sometimes we can and it is part of the vocation of the moralist to try to increase the range of "sometimes."

## V. CONCLUSION

In summary, I have tried to do two things. First, I have tried to

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<sup>33</sup> Do not forget here Rudolf Carnap's point that "certain knowledge" is not pleonastic, see Rudolph Carnap, "Truth and Confirmation" in Herbert Feigl & Wilfrid Sellars, eds., *Readings in Philosophical Analysis* (New York: Appleton-Century-Crofts, 1949) at 119-227. However, our knowledge here, if it is to be something we are justified in acting on, must be very strong indeed.

<sup>34</sup> Though, of course, neither side will publicly call it that.

<sup>35</sup> I am neither a historian nor an expert on Israeli-Palestinian relations. Surely the account I give of them here is oversimplified and I may be mistaken in some of the details. But, I think I have got the essentials right and that I have not told what anthropologists call a just so story. As noted above, see *supra* note 19, my account depends, to a considerable extent, upon the work of Edward Said.

reveal something that is normally hidden from view in popular discussions of terrorism, namely that there is such a thing as *state* terrorism and that it is pervasive and the most pernicious form of terrorism that confronts us. Second, I have sought to show that it can be the case that in certain circumstances certain types of terrorism, utilized for certain purposes, can plausibly be claimed to be both morally and tactically justified.