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2. The definition of terrorism

Seumas Miller and Jonas Feltes

1. INTRODUCTION

It is often suggested that ‘one man’s terrorist is another man’s freedom fighter’, but in fact, defining terrorism is both possible and desirable, for only then can the term ‘terrorist’ cease to be used purely in the context of ideological name-calling. A number of academically serious definitions of terrorism are already on offer. These definitions tend to fall into two camps. Some, such as that offered by Igor Primoratz (2013), define terrorism, in part, in terms of killing innocent persons. Others, such as that offered by Angelo Corlett (2004), define terrorism, in part, in terms of killing civilians, or at least *some category of persons that is not, by definition, or not necessarily innocent*. This issue is discussed in Section 2. A feature of most definitions of terrorism, irrespective of the camp to which they belong, is the failure to specify which of the necessary conditions that constitute the definition, including the political effects, have to be both intended and realized for the action to count as terrorism. For instance, the intentional killing of an innocent person in the service of a political purpose would normally count as an act of terrorism, but what if the action goes unreported to the public at large and, therefore, fails to have any publicity-driven political impact, although it does send its intended message to members of the security forces? This issue is discussed in Section 3. A further problem in relation to definitions of terrorism is the divide between those offered in the philosophical-ethical literature, on the one hand, and legal definitions, on the other (see Chapter 1 in this collection). Accordingly, there is a need to specify the relationship between moral and legal definitions; for example, should they simply be synonymous? This issue is discussed in Section 4.

In this chapter, a definition of terrorism is provided, but it is presented in the context of the following six assumptions (Miller 2009): (1) Terrorism is a strategy that principally consists of violent actions aimed at harming persons (directly or indirectly). Accordingly, it involves such methods as assassination (targeted killings), indiscriminate killing, torture, hostage taking, kidnapping, ethnic cleansing, and the use of chemical, biological or nuclear weapons; (2) The persons harmed are innocents or non-combatants – that is, some category

of persons of whom the deliberate killing or harming is generally regarded (albeit not by the terrorists) as an act of unjustified moral wrongdoing, for example, the deliberate bombing of a marketplace; (3) Terrorism is a means to achieve political ends (even if these are ultimately in the service of, for instance, religious ends, and even if the terrorist actions in question serve proximate ends, for example, military ends, the realization of which are a means to the political ends in question); (4) Terrorism involves terrorizing or instilling great fear in one group (typically, members of the public) in order to cause some other group (for example, their political leaders) to do what they otherwise might not have done; (5) Terrorism relies on the violent acts receiving a high degree of publicity; (6) Terrorism is a strategy that can be used by either state actors (for example, Stalin's reign of terror against his own population) or non-state actors (for example, al-Qaeda).

The first, second and third assumptions (in one form or another) feature in most definitions of terrorism. Regarding the first assumption, there is a residual issue as to whether or not violent actions directed solely at property – for example, blowing up an empty building – could count as acts of terrorism. Since this is controversial and marginal to our concerns here, we assume that such acts are not integral to the meaning of the term terrorism. Accordingly, we restrict terrorist acts to violent actions that, directly or indirectly, harm persons. Naturally, an attack on, for example, a dam that provides a city's water supply would be a terrorist attack if its intention was to indirectly harm persons by cutting off their access to water.

While the second assumption is relatively uncontroversial, the precise specification of the category of persons deliberately harmed is problematic and will receive detailed treatment in the following section.

The third assumption, that terrorism is an activity performed to realize political ends, is necessary to distinguish terrorism from other sorts of violent actions used to instil fear. Criminals, for example, sometimes use the methods of terror to achieve their criminal ends; clearly some criminals kidnap to extract a ransom, torture to instil fear and thereby extort money, and so on. On the other hand, it needs to be noted that sometimes terrorism has multiple ends; for example, the Islamic State's (ISIS) terrorist methods in theatres of war in Iraq and Syria serve military, political and religious ends.

The fourth assumption is essentially a conceptual claim. For an activity to count as terrorism, someone has to be trying to terrorize someone else, and for terrorism to be a strategic activity – as opposed to, for example, merely an expressive activity – it has to be in the service of some further end, that is, changing the attitudes and/or behaviour of some group.

The argument for the fifth assumption is as follows. If fear is to be instilled in some group – for example, members of a community – as a consequence of the harm done to some other group or subgroup – for example, victims of

bombings – then the first group needs to know that the second group has in fact been harmed. Accordingly, the terrorist strategy relies on a high degree of publicity. Indeed, it might well be that, other things being equal, the higher the level of publicity, the more successful the terrorist strategy is. This certainly was the case with al-Qaeda's terrorist attack on the Twin Towers on 11 September 2001.

The sixth assumption is controversial. Some definitions, particularly those offered by nation states – for example, the United States – restrict terrorism to non-state actors. However, terrorism is a strategy that is available to both state and non-state actors; indeed, historically, it is a strategy that has been used on a larger scale by state actors than by non-state actors (Primoratz 2013, Ch. 2). Accordingly, the decision to exclude state actors from the definition is either gratuitous or, more likely, based on political motives, for example, a desire on the part of nation states not to implicate themselves.

In light of these six assumptions, we offer the following preliminary definition of terrorism.¹ By definition, terrorism is a strategy that (Miller 2005, 2009, Ch. 2):

1. Consists of state or non-state actors deliberately perpetrating acts of violence aimed at (directly or indirectly) seriously harming persons, the deliberate harming of whom is (other things being equal) generally regarded as morally wrong, for example, children;
2. Is a means of terrorizing the members of some social, economic, political, ethnic or other group to achieve a political end; and
3. Relies on the violence receiving a degree of publicity, at least to the extent necessary to engender widespread fear in the target group.

2. TERRORIST TARGETS: INNOCENTS AND CIVILIANS

The first condition in our preliminary definition of terrorism is problematic in that it does not sufficiently specify the category of persons against whom violence is deliberately used. However, as mentioned above, definitions typically specify the category of persons in question as either being innocents or as being civilians, that is, non-combatants. Let us consider each of these two types of definition beginning with the one related to innocents.

This type of definition is open to counterexamples (Miller 2009). Imagine a non-democratic, indeed highly authoritarian, government pursuing policies that are widening the gap between the rich and the poor. Assume that well-intentioned democrats with a social conscience attempt to mobilize opposition to the government – opposition in the form of non-violent protests, strikes, boycotts, dissemination of anti-government material, passive

non-compliance, and so on. These opposition elements are seeking to overthrow the government, indeed the system of government, albeit by non-violent means. The African National Congress (ANC) in its initial *non-violent* phase prior to the 1960s is a case in point. Accordingly, they are not innocents in the required sense (indeed, from the perspective of the authoritarian government, these opposition forces are engaged in attempting to overthrow the *legitimate* government of the country). Moreover, they may well succeed if harsh countermeasures are not introduced. Accordingly, the government embarks on a campaign of killings ('disappearances') and torture of opposition elements to instil fear in the opposition forces as a whole, and thus put an end to the 'insurrection'. Surely this is state terrorism of the kind practised by the Argentinian generals in the 1980s and (to a lesser extent) by the apartheid government in South Africa against the ANC. Nevertheless, it remains the case that the opposition forces are responsible for attempting to overthrow the government, and the government believes itself – and is believed by many, let us assume – to be legitimate. Based on the definition of terrorism in terms of innocents, the killings and torture perpetrated by the government are not terrorism since the opposition forces are not innocent in the required sense.

What of the definition of terrorism in terms of civilians, that is, non-combatants (Miller 2007, 2009)? Consider corrupt senior government officials and civil servants who fail to organize the distribution of aid in the form of medicine and food to their starving, disease-afflicted fellow citizens, but rather sell it to line their own pockets. Suppose the foreseen consequence of this corruption and dereliction of their humanitarian duty is that tens of thousands of the needy die. These officials are not combatants in the required sense; they are not, themselves, soldiers engaged in an armed attack, nor are they the leaders of such combatants or assisting such combatants *qua* combatants. Accordingly, targeting these public officials would be, according to the definition before us, terrorism. But these officials are guilty in the sense that they are morally responsible for ongoing, widespread and serious rights violations. Moreover, using lethal force against some such officials to instil fear in their fellow guilty officials, and thereby bring about a cessation to these ongoing, widespread and serious rights violations, may well be, under certain circumstances, morally justifiable. It seems that such actions should be regarded as protection measures against rights violations rather than terrorism.

In light of these counterarguments to the definitions of terrorism in terms of violence directed at innocents and non-combatants, how do things now stand?

Let us begin by making the point that violence directed at *military* combatants (including the leaders of military combatants) in theatres of war is not terrorism even if it otherwise meets our definition of terrorism. This thought is one of those motivating the definition of terrorism in terms of targeting non-combatants. Secondly, violence directed at state or non-state actors who

are perpetrating serious, ongoing and widespread human rights violations is not necessarily terrorism – for example, the ANC's early-1960s switch to the use of violence against apartheid state actors who were engaged in ethnic cleansing (forcible removals), torture of activists and so on. While there is obviously a grey area here in relation to human rights violations, we can distinguish between, on the one hand, human rights violations at the extreme end of the scale and perpetrated on a large scale, (for example, genocide, ethnic cleansing, mass starvation) and, on the other hand, curtailments of civil and political rights and perpetrating social and economic injustices that stop short of human rights violations at the extreme end (for example, inequalities of wealth and opportunity). Thirdly, state actors who use violence against *violent* revolutionary non-state actors are not necessarily terrorists, even though the violence of these state actors might meet the other conditions of our definition. Indeed, some violent revolutionary non-state actors are de facto military combatants, for example, ISIS.

Accordingly, we suggest that terrorists direct violence at persons who are *not* military combatants, human rights violators (perpetrating large scale, ongoing, serious human rights violations) or violent revolutionaries. Therefore, our definition of terrorism becomes (Miller 2005, 2009, Ch. 2):

Terrorism is a strategy that:

1. Consists of state or non-state actors deliberately perpetrating acts of violence aimed at (directly or indirectly) seriously harming persons who are *not* military combatants, human rights violators or violent revolutionaries;
2. Is a means of terrorizing the members of some social, economic, ethnic, political or other group to achieve a political purpose; and
3. Relies on the violence receiving a degree of publicity, at least to the extent necessary to engender widespread fear in the target group.

3. INTENTIONS OF TERRORISTS²

An issue or, rather, set of issues that now arises concerns the intentions of the terrorists; specifically, do all of their intentions need to be realized for their actions to count as instances of terrorism? Here, there are three main intentions of interest: the intention to use violence against persons; the intention to create widespread fear (and to do so relying, in part, on the violent act and harm done being made public); and the intention to achieve some political purpose. Accordingly, three corresponding questions arise. Is it necessary to actually perform an act of violence against a person, for example, against an innocent non-combatant? Is it necessary to actually instil fear in the target audience? Is it necessary to achieve the political outcome aimed at? Let us discuss these three questions in order.

Presumably, a group of would-be terrorists who fail to perform their intended act of violence because, for instance, the bomb they planted fails to detonate have not, thereby, performed the terrorist act in question; rather, they have merely *attempted* to do so (and failed in that attempt). The would-be terrorists have not performed a violent act, and the violent act *is* the terrorist act. Naturally, even attempted terrorist actions could be criminalized (as, for instance, is attempted murder), but that is a different matter. Attempted murder is not murder, and attempted terrorism is not terrorism.

What of the intention to instil fear in the target audience (relying, in part, on the violent act and harm done being made public)?³ Does this intention need to be realized for an act of violence to count as a terrorist act? Consider the following example.

On 17 October 2015, the German right-wing extremist Frank S. attacked the candidate for mayor of Cologne Henriette Reker at a rally in Cologne Braunsfeld with a bowie knife. After stabbing the politician in the neck, S. assaulted and wounded four bystanders (Rath 2015; *The Irish Times* 2015). The assault was stopped by German federal police officers. After his arrest, the attacker repeatedly named the refugee-friendly policies of Reker, German chancellor Angela Merkel, and other German politicians as a motive for the attack. During the trial against S., the German Federal Prosecutor General characterized the attack as ‘intended to create a climate of fear among all persons engaged with refugee affairs’.⁴ S. was sentenced to 14 years in prison for attempted murder and grievous bodily harm in four cases (Deutsche Welle 2016).

However, although clearly intended by S., the attack did not create widespread fear in society. Reker was elected mayor of Cologne only one day later while still in a coma, and her political opponent, Jochen Ott, stopped his campaign on 17 October out of solidarity (Rath 2015). Furthermore, because Frank S. was arrested during the attack and was clearly identified as a lone operator, the citizens of Cologne did not expect further attacks. Not fear, but anger and outrage, dominated the public discourse after the attempted assassination of Henriette Reker. Thus, Frank S. committed an act of terrorism. Moreover, in performing his act of terrorism, he intended to cause widespread fear but failed to do so.

The example also serves to demonstrate that the political end that a putative terrorist act is intended to serve does not have to be realized for the act to constitute an act of terrorism. After all, Frank S.’s act clearly failed to achieve its political purpose and, indeed, might have strengthened the political forces he had hoped to diminish.

In concluding this section, we need to briefly mention the view that intentions are not necessary for acts to count as acts of terrorism. This view is surely false if it implies that an act of terrorism could be an act that was not

intended to terrorize and had no political end. However, some theorists (Kamm 2011, pp. 73–118; Rodin 2004, pp. 752–71) evidently hold that a violent act that caused *unintended harm* to a person or persons and was performed by members of a group who intended, in performing this act, to terrorize in the service of a political agenda might count as an act of terrorism. Consider the following example.

On the night of 23 August 1970, an explosive device detonated behind Sterling Hall at the University of Wisconsin in Madison killed the physicist Robert Fassnacht (Cronin and Jenkins 1999, p. 517). The perpetrators of this attack were later identified as Dwight Armstrong, his brother Karleton Armstrong, David Sylvan Fine, and Leo Burt. The Armstrong brothers planned and executed the attack together with their co-conspirators as members of the radical left-wing group the ‘New Year’s Gang’ (Cronin and Jenkins 1999, p. 517). According to the group, no civilians should have been hurt in the attack that was aimed at the Army Mathematics Research Center in Sterling Hall (New Year’s Gang 1970, p. 1). However, although the group executed a warning call, the detonation occurred prematurely and thereby killed Fassnacht, who happened to be in the building at that time (Bates 1993, p. 307; Fellner 1986).

This example is an interesting borderline case between sabotage and terrorism. Intuitively, many people would call – and have called – the New Year’s Gang a terrorist group despite the fact that the group *did not intend* to harm persons, but rather merely to damage buildings, to further their political aims. Evidently, the members of the group intended to promote their political aims via a well-publicized, fear-inducing act of violence. So the example meets all our conditions for a terrorist act other than the intention to harm persons. But was it an act of terrorism or merely a politically motivated act of sabotage that went wrong?

Shortly after the attack, the news media reported that the New Year’s Gang issued a warning call prior to the attack to avoid casualties. Moreover, when they claimed responsibility for the attack, the group also expressed regret over Fassnacht’s death (New Year’s Gang 1970, p. 1). While this latter piece of information did not extinguish the fear, anger and moral outrage felt by members of the community, it did mitigate, in particular, the fear that they could well be the targets of further attacks and that, as a consequence, further lives may be lost.⁵ Moreover, the fact that the killing of Fassnacht was *unintentional* was also the basis for the subsequent indictments against the group characterizing their crime as an act of sabotage with manslaughter (third-degree murder) – but not as terrorism. Accordingly, we conclude that intention to seriously harm persons is, after all, a necessary condition for an act to qualify as terrorism.

In light of this discussion, our definition of terrorism becomes:

Terrorism is a strategy that:

1. Consists of state or non-state actors deliberately performing acts of violence aimed at (directly or indirectly) seriously harming persons who are *not* military combatants, human rights violators or violent revolutionaries;
2. Is an intended means of terrorizing the members of some social, economic, ethnic, political or other group to achieve a political purpose; and
3. Relies on the violence receiving a degree of publicity, at least to the extent necessary to engender widespread fear in the target group.

4. TERRORIST ACTIONS: MORALITY AND LAW

At this stage of proceedings, our definition demarcates many, if not most, terrorist actions from both non-violent actions, and from violent actions that are not terrorist actions. Unfortunately, the definition is still incomplete by virtue of leaving a degree of indeterminacy, including in relation to legitimate types of violent attacks and also in relation to legitimate targets of violent attacks, for example, specification of the category of human rights violators. However, this is to be expected if we grant, as it seems we must, that the concept of terrorism is somewhat vague. Moreover, it has the consequence that there is some room for us to be stipulative in relation to types and targets of violent acts, in particular.

Granted that there is this room for stipulation, we need to determine what purposes would be served by this or that stipulative definition of terrorism (or definitional element thereof). We suggest that an important purpose in defining terrorism is to render it a serious crime – a serious crime both in terms of domestic and international law. Here, we are assuming that the notion of crime in play is (at least) that of a serious form of moral wrongdoing, objectively considered (obviously, crime is also a form of unlawful action). So murder is a serious crime, but shoplifting typically is not, and neither are homosexual acts between consenting adults. Shoplifting is not a sufficiently serious form of moral wrongdoing to count as a serious crime, and homosexuality fails the test of objectivity (albeit some people believe it is a serious form of moral wrongdoing).

However, we need to keep in mind that there is a distinction between the concept of a serious crime and the concept of a morally justifiable act. Accordingly, there is the conceptual possibility of some action being both a serious crime and being morally justifiable. Thus, torture is a serious crime; however, arguably, torture might be morally justifiable in some extreme circumstances. The point is that defining terrorism in such a way as to render it a serious crime (or at least an act that ought to be a serious crime) does not settle the question as to whether or not it is morally justifiable (at least in all

circumstances). Naturally, since criminal law tracks morality, the fact that some kind of act – for example, murder or torture – is a serious crime implies that *in general* – indeed, in all but the most extreme circumstances – it is morally unjustified.

The suggestion, then, is that we should further demarcate terrorist actions by insisting that they are violent acts that are or, more precisely, should be criminalized. Accordingly, as a preliminary, we should trawl through the statute books, human rights charters, and so on of *relevant* jurisdictions and identify the justifiably accepted – and de facto more or less universally accepted – set of serious violent crimes against the person, such as murder, torture, grievous bodily harm, rape and kidnapping (jurisdictions that are not relevant would include totalitarian states and other nation states that are beyond the pale).

This initial *long* list of existing serious violent crimes that are justifiably serious crimes is then cross-tabulated with our set of defining features and additional criteria of terrorist actions to generate a new (shorter) list of violent actions. This shorter list constitutes our initial set of terrorist actions; however, it should be added to if and when other violent crimes are justifiably legislated against as violent crimes, and meet the other criteria for being terrorist actions. Accordingly, we recommend that our above definition of terrorism be augmented by a fourth condition, namely, that the violent actions in question be ones that ought to be criminalized.

In light of the discussion in this section, our definition of terrorism becomes (Miller 2005, 2009):

Terrorism is a strategy that:

1. Consists of state or non-state actors deliberately performing acts of violence aimed at (directly or indirectly) seriously harming persons who are *not* military combatants, human rights violators or violent revolutionaries;
2. Consists of violent actions that ought to be criminalized;
3. Is an intended means of terrorizing the members of some social, economic, ethnic, political or other group to achieve a political purpose; and
4. Relies on the violence receiving a degree of publicity, at least to the extent necessary to engender widespread fear in the target group.

A final point in relation to the above definition arises from a consideration of the purposes of defining terrorism and, in particular, the purposes of legal definitions of terrorism. Accordingly, this point pertains to condition (2) above. One important purpose of criminalizing acts of terrorism is to combat terrorism. Hence, there are many terrorism laws that criminalize assisting terrorists, for example, by way of financing terrorist groups or training terrorists. This raises the question of the limits that ought to be placed on such laws. In liberal democracies, these limits are, in part, to be determined by recourse to individ-

ual rights, especially those pertaining to various freedoms, such as freedom of expression, of movement and so on (see Chapter 1 for a discussion of these issues). However, these complex matters cannot be pursued here.

NOTES

1. Earlier versions of these definitions of terrorism appeared in Miller (2009, Ch. 2).
2. This section is derived from Feltes's (2020) PhD submitted to the Delft University of Technology and titled 'CBRN Threats, Counter-Terrorism and Collective Responsibility'.
3. We assume public knowledge is intended since fear of something requires belief in at least its potential existence.
4. Translated from the original German: 'S. habe ein "Klima der Angst" bei allen in der Flüchtlingsunterbringung engagierten Personen erzeugen wollen'. See Rath (2015).
5. Yet, admittedly people might have been scared to a certain degree to fall victim to another failed act of sabotage by being in the wrong place at the wrong time.

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