

Terrorism and Torture

An Interdisciplinary Perspective

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CONTENTS

Preface

The terrorism-

torture, terror

The equivalent
of moral monst

War versus crim
the losing logic

Reducing the m
of situational

Even the terror
of the staircase

If they're not ex
approaches to te

The cycle of righ
perspective on te

Misinformation
into fact

Icons of fear: terro

What explains ter
answers

Reversed negative

terrorism and TV

Terrorism, anxiety

Am right, you're de

Reducing terrorist
approaches

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4 War versus criminal justice in response to terrorism: the losing logic of torture

Clark McCauley

Osama bin Laden and other terrorists are still in hiding. Our message to them is clear: "No matter how long it takes, we will find you, and we're going to bring you to justice." ... We can have confidence in the outcome of the war on terror because our nation is determined.

President George W. Bush (2006)

In his speech to the Reserve Officers Association, President Bush joined two ways of thinking about the response to terrorism. Most commonly the President refers to the War on Terror (nine references), but he also promised justice: the terrorists will be brought to justice (one reference).

I review here the ways in which these two responses to terrorism are in conflict, and suggest the advantages of greater emphasis on criminal justice against a threat that is expected to continue indefinitely. Since 9/11, success against terrorism has come from police work embedded in a rights-oriented criminal justice system; failure has come from attempts to use military force that is not subordinated to a political framing of the problem. Torture is part of this failure.

The competing implications of war and justice for responding to terrorism

Inter-group violence, including war, is often launched in response to perceived injustice and violation perpetrated by the enemy (McCauley, 2006). It might seem, therefore, that war and justice are complementary or at least consistent responses to terrorist attacks. On the contrary, I argue that the practical implications of war and criminal justice are in many ways inconsistent (see McCauley, 2007, for a more expansive version of this discussion).

Beginnings and endings

War and criminal justice begin differently. War begins in a declaration by one state that it is at war with another, whereas criminal justice begins with a violation of the criminal code. War and criminal justice also have different endings: wars end with winning or losing marked by some kind of treaty and exchange of prisoners, but criminal justice is always a work in progress.

al-Qaeda's attacks on the United States began with the 1993 attack on the World Trade Center in New York City. This attack was treated as a violation of the criminal code; suspects were located, charged, tried, convicted, sentenced, and imprisoned. After the September 11, 2001 attacks on the World Trade Center and the Pentagon, President Bush declared war on al-Qaeda and on terrorists everywhere. From these different beginnings flow many other differences.

Individual vs. group targets

War and criminal justice differ in the nature of their targets. A violation of the criminal code is specific: an individual or individuals commit or cause a particular crime to be committed at a particular place at a particular time. The target of war is an enemy group, usually a group too large to be enumerated individually.

Declaring war on terrorism has the unfortunate consequence of magnifying the perceived size and importance of the enemy. al-Qaeda was once an organization numbering in the thousands, still minuscule in relation to a declaration of war from a superpower. Today what remains of al-Qaeda is on the run and reduced from organizing to inspiring terrorism. Since 9/11, terrorist attacks and attempted attacks in Madrid, London, Dortmund, Toronto, and New York City have been the work of small, self-organizing groups.

Nevertheless, a group enemy is required in order to maintain the rhetoric of war. As the enemy looks less like a corporation and more like a franchise, even naming the enemy has presented increasing difficulties (McCants, 2006). The enemy cannot be Muslims; most Muslims do not support killing civilians. The enemy cannot be Salafi Muslims; those who aim to recreate the seventh-century lifestyle of the Prophet's companions are as likely to withdraw from the world as try and change it. Nor can the enemy be Wahhabi Muslims, many of whom support the Saudi monarchy and oppose terrorism. Some refer to the enemy as *Islamists*, but this locution comes unfortunately close to making Islam the enemy. Muslims who attack the USA and other Western

nations call themselves *jihadis*, but Western analysts are often loath to use a term that has positive connotations in the Muslim world, not least because it can refer to interior struggle as well as armed struggle.

In contrast to the rhetoric of war that requires an enemy group, the rhetoric of justice can focus on particular individuals who have committed violent acts. Even when it is a criminal group or gang that is the focus of investigation, prosecution targets individual not group actions.

Stereotypical vs. atypical perpetrators

Linked to the difference in targets, war and criminal justice differ in their potential for stereotyping the group from which the terrorists come. Criminals are seen as aberrant and atypical; soldiers are seen as normal and representative of the group they come from.

The rhetoric of war is historically associated with foreign enemies, and foreign enemies who are different in appearance and ethnicity are particularly easy prospects for negative stereotyping. The potential for this kind of hostility is evident in surveys of US soldiers during World War II that asked "What would you like to see happen to the Japanese after the war?" Forty to sixty percent of soldiers in different samples favored the option "Wipe out whole Japanese nation" (Chirot and McCauley, 2006, p. 216). Treating terrorists as criminals helps to avoid this kind of categorical hostility. Although most members of the crime families involved in Cosa Nostra are of Italian origins, few Americans are thereby led to feel fear and hostility toward Italians.

Avoiding broad negative stereotyping can be particularly important for securing the cooperation of moderate Muslims against terrorists. As described in later sections, this is a crucial part of successful counter-terrorism operations.

Top priority vs. competing priorities

A declaration of war asserts that the survival of a nation is at stake. For the duration of the war, every other public goal or public good must be sacrificed or put on hold until the war is won. In contrast, the criminal justice system – police, judicial, and penal – is an everyday part of government. The criminal justice system must compete with other priorities – pensions and anti-poverty programs, roads and bridges, health and education. Despite the competition, support is forthcoming every year for the police, attorneys, judges, prisons, and parole boards.

Especially in a democracy, where citizen fatigue or hopelessness can affect policy, a state of war is difficult to maintain. The Vietnam War, from 1964 to 1973, is the longest ever fought by the USA; efforts to recruit national priority with the rhetoric of war have generally not been effective for more than a few years. This was the fate of the War on Poverty and the War on Drugs, except to the extent that the War on Drugs has been recruited into the War on Terrorism. This joining of wars will be discussed later; here it is only necessary to note that no one is predicting that the threat of terrorism against the USA will end anytime soon. But if counter-terrorism operations succeed in preventing another terrorist success as big as 9/11, the war on terrorism will lose its priority. In contrast, the criminal justice response to terrorism can continue indefinitely, as it must continue against every form of criminal violence.

Military vs. criminal-justice values

Closely related to the difference in priorities is a difference in values. When survival is at stake, only victory matters. This single standard of value permeates military culture: the mission comes first. The criminal justice system, in contrast, offers an institutionalized balancing of the rights of the accused and the society's right to security.

Putting victory first means that other values must be sacrificed. The war on terrorism has been associated with the deaths of civilians that we call collateral damage, increased reach of government into the privacy of citizens, and decreased civil rights for those suspected of terrorism. These are not independent policy choices but the unavoidable consequences of putting victory first.

Prohibitions against mistreatment and torture of prisoners are among the public values of civilized nations that can seem too expensive to maintain when survival is at stake (Saul, this volume; Bellamy, this volume). A kind of schizophrenia is likely. Some argue explicitly that law and moral judgment must give way to survival. Law professors offer learned arguments about how much torture should be legalized. Others argue that law and moral judgment against torture should be maintained, but space must be left for a few scapegoats who will take on themselves the burden of doing ugly things to save others. Jack Bauer, the torturing but tortured hero of *24* is the model of this kind of anti-hero (Mayer, 2007).

The criminal justice system offers a very different kind of contest. The war between prosecution and defense is carried out before a judge and jury. Prosecutors, defense counsel, and the judge share the same legal training, with its emphasis on balancing the prerogatives of prosecution and defense. Victory cannot be the only value for either side;

rules are enforced by the judge and reinforced by legal career paths in which the same lawyer may at different times appear in court as prosecutor, defense attorney, and judge. The criminal justice system practices balancing values, the military practices to win.

Judicial mistakes vs. jujitsu politics

Mistakes in the criminal justice system are limited in two ways. As noted above, the targets of the criminal justice system are individuals. When mistakes are made in accusation or even in verdict, the mistake and the cost of the mistake is limited to the individual accused. A further limitation is that the criminal justice system seldom executes even the most extreme offenders, and when it does execute someone it is only after a considerable delay in which correction of error is possible.

In contrast, the group-targeted response of a war on terrorism leads to mistakes at the group level, or at least mistakes perceived by those who suffer them as injustice at the group level. Collateral damage to civilians is likely to occur to families, neighborhoods, and villages who feel collective injustice. Profiling an ethnic or religious group leads to the whole group feeling mistreated. Imprisoning and deporting Arab and Muslim illegal immigrants in a way that does not happen to Hispanic immigrants produces a sense of group stigma and group injustice.

Group-targeted errors are precisely what terrorists hope for in response to their attacks (McCauley, 2007). In *Knights under the Banner of the Prophet*, Ayman al-Zawahiri, bin Laden's right hand, put al-Qaeda's hopes explicitly. If the shrapnel of war reach American bodies, he opined, the USA will have to come out from behind its puppet regimes in Arab countries to attack Arabs directly. And then, he promised, we will have jihad.

This is jujitsu politics, using the enemy's strength against it. Attack the enemy so as to elicit a response that will strike many more than the attackers; the victims and all who sympathize with the victims will be mobilized behind the attackers. In al-Qaeda's case, the strategy meant eliciting a US response that would do what bin Laden and al-Zawahiri had failed to do at home in Saudi Arabia and Egypt: mobilize Muslims for jihad against Americans.

This strategy works because it taps into one of the strongest mechanisms in group dynamics: shared outgroup threat produces ingroup cohesion (Lewis, this volume; Moghaddam, this volume). With increased ingroup cohesion comes the "authoritarian triad" of increased authority for ingroup leaders, idealization of ingroup values, and increased sanctions for ingroup deviates (Duckitt and Fisher, 2003). The US response

to the attacks of 9/11 – patriotism, increased support for the President, increased rhetoric of freedom and democracy, and hostility toward Arabs and Muslims in the USA – provides a thumbnail summary of the research literature on this point (LeVine and Campbell, 1972; McCauley, 2006).

Jujitsu politics failed in Afghanistan, where the US forces routed the Taliban with only a few thousand civilian casualties – an awful total for the victims but surgical precision in comparison with the Afghan experience of the Russian army. Firm statistics are difficult to come by, but Kaplan (1990) suggests a million Afghans died in the Soviet–Afghan War, with perhaps five million Afghan refugees in neighboring countries and two million displaced internally.

But jujitsu politics is succeeding now in Iraq, where US forces are increasingly seen as an occupying army to secure Iraqi oil. Whether jujitsu politics will undermine counter-terrorism efforts in the USA remains to be seen, as security forces focus special surveillance on US Muslims. More certain is the advantage of the criminal justice system as a response to terrorism that is less likely to mobilize Muslims against the West.

Summary brief for criminal justice

War is a convulsive effort for survival. It has a clear beginning and a clear end, gives top priority to the war effort, makes victory the measure of all values, and mobilizes sacrifice from citizens and support for government. These virtues begin to fade if the threat continues over many years. Other priorities are reasserted, the threat begins to look less deadly. For responding to a chronic terrorist threat, the everyday virtues of the criminal justice system become more apparent: focus on individual rather than group enemies, institutionalized balancing of group security and individual rights, and avoidance of negative stereotyping, profiling, and collateral damage that can make the threat bigger than it is. The capacity for long-term response to terrorism emerges from the fact that the criminal justice system is part of business as usual.

If war and criminal justice have, as described, many competing implications, then both cannot be pursued equally at the same time. Striking the right balance requires consideration of lessons learned since 9/11.

War versus criminal justice: lessons since 9/11

A look at the numbers

One way to look at the relative importance of war and criminal justice in the US response to terrorism is to compare the US budget for national defense with the budget for homeland security. Following Williams

(2006), national defense spending includes not only the Defense Department but nuclear activities of the Department of Energy and other military-related programs. Before September 11, 2001, national defense spending was \$318 billion; for 2006 the estimate is \$560 billion, including about \$100 billion for military operations in Iraq and Afghanistan. Homeland security spending includes law enforcement (especially the FBI); border and aviation security; protection of critical infrastructure (e.g., nuclear plants); and support for public health, police, and fire response to terrorist attacks and other disasters. Homeland security spending was \$17 billion in 2001 and \$55 billion in 2006 (all figures from Williams, 2006).

Thus, national defense spending has increased by about \$240 billion while homeland security spending increased by about \$35 billion. As Friedman (2005) notes, states and corporations also spend on homeland security. On top of federal funds, the fifty states together spend \$1–2 billion a year. Private corporations spend perhaps as much as \$10 billion a year for increased security. Even if we add these totals to the federal spending, spending on homeland security since 9/11 has increased by about \$45 billion while military spending has increased by \$240 billion. These figures indicate that, since 9/11, the USA has spent five additional dollars for the military for every additional dollar for homeland security.

What does effective counter-terrorism look like in an occupied territory?

Schultz and Godson (2006) have recently sought out and summarized the lessons learned from British and Israeli counter-terrorism programs. Modern UK experience began with anti-colonial terrorism and insurrection after World War II (Palestine, Malaya, Kenya, and Cyprus); many of the lessons learned had to be re-learned in Northern Ireland. The Israeli experience began in Gaza and the West Bank when these territories were occupied after the 1967 war. Godson and Schultz interviewed former intelligence and security officers in the UK and in Israel, and, more unusually, interviewed former terrorists as well. From these interviews comes a converging story of expert opinion about what works in counter-terrorism.

The first step was to divide the targeted territory – neighborhood, sector, even individual street – into grids. The next step was to assign to each grid an intelligence unit with responsibility for collecting basic, infrastructure, and target intelligence and turning it into operational assessments that could be used to weaken and undermine all armed groups active in that locale. (Schultz and Godson, 2006, p. 3)

Basic intelligence is the big picture of daily life in the area. Interpersonal relations are important: who knows whom, who is related to whom, who is feuding with whom. Material structure is important: buildings; businesses; sources of food, water, and health care; means of transportation; and traffic flow at different times of day. Especially important are the nature and membership of organizations in the area, including political, religious, civic, business, and neighborhood associations. Knowledge of daily life is important as a baseline against which to see change: new people, new money, new organizations that might be related to terrorist activity or might be employed in support of terrorist activity. The British anti-terrorism effort in Malaya famously profited by controlling sales of rice and canned goods so that these supplies could not be used to support insurgent forces in the bush (Joes, 2006).

Basic intelligence is labor-intensive. One Israeli intelligence officer suggested that as many as 40% of collection capabilities are devoted to this level. Operatives responsible for this level develop networks of local people to whom they talk regularly. These local sources are not covert agents and usually not even paid. They are acquaintances or even friends of the collector. Thus, "an operative functions somewhat like the policeman on the beat – constantly talking to, interacting with, and keeping tabs on the people in his neighborhood and, most of all, keeping his eyes open for slight changes or new developments in the neighborhood" (Schultz and Godson, 2006, p. 3).

Infrastructure intelligence is the picture of the human and physical resources of terrorist groups. Group leaders are identified, including their family, neighborhood, educational, and political background. The structure of group organization is uncovered, including communication channels, linkages with other groups or states, and any indications of conflict or division among group members. The resources of the group are mapped: weapons caches, safe houses, technical skills such as counterfeiting or bomb-making. The ideology of the group is determined; public statements, no matter their truthfulness, are important for understanding the appeal of the terrorists to the pyramid of sympathizers and supporters on which the terrorists depend for cover and resources, especially new recruits.

Infrastructure is uncovered mainly by recruited agents, who may be paid or blackmailed for their cooperation. The case officer who runs an agent is often a "hybrid" of policing and intelligence work, combining both law enforcement skills and clandestine tradecraft. Both basic and infrastructure intelligence require an intimate knowledge of the language and culture of the target area.

Target intelligence aims at developing opportunities for action against terrorists. The most obvious success of target intelligence is to pinpoint the habits and movements of terrorist leaders or to uncover plans for terrorist attacks. This kind of intelligence produces dead or captured terrorists. But other kinds of success may be easier and equally important in the long term. Cleavages and competitions within the terrorist group can be encouraged, for instance by planting false information about the actions or ambitions of one faction to threaten another faction (Schultz and Dew, 2006). Support from the pyramid of sympathizers can be undermined by publicizing terrorist mistakes, especially mistakes that kill members of the same group the terrorists claim to be representing.

Particularly important is the integration of different sources of intelligence. Within its area, the intelligence unit must join the three levels – basic, infrastructure, and targeting intelligence – with military and police operations in the area. What soldiers find or police interrogations learn must be put together with the knowledge of the intelligence unit. This needs to happen in real time, such that the intelligence unit can provide questions and interpretations during interrogation of a just-captured suspect. Across areas, different intelligence units must join what they know about their areas, and regional intelligence units must integrate across many area-specific intelligence units.

In sum, expert opinion describes successful counter-terrorism in an occupied territory as street-by-street and village-by-village knowledge of local communities, terrorist organization, and terrorist movements. Schultz and Godson (2006) do not distinguish between short-term success and long-term success, and the experts' prescriptions will be reconsidered later in this discussion.

What does unsuccessful counter-terrorism look like in an occupied territory?

The kind of anti-terrorism intelligence just described is not easy to organize, and obvious difficulties have handicapped US forces in Afghanistan and Iraq (Hoffman, 2006). In both cases, the required depth of knowledge of language and culture is not easy to find in a military organized and trained to defeat heavy enemy forces on defined battlefields. In both cases, Americans cannot easily take even the first step toward street-by-street and village-by-village intelligence. Under uniforms and flak jackets, under helmets and goggles, with weak language skills and little knowledge of the local culture, American soldiers are ill-prepared to develop local contacts and an everyday picture of the local area.

Despite these handicaps, American forces in Iraq have sometimes succeeded in developing local intelligence, such as, for instance, that leading to the capture of Saddam Hussein and the killing of Abu Musab al-Zarqawi. On-the-job training for developing local intelligence is difficult and risky, and it is a credit to US forces that they have learned as much as they have (Hoffman, 2006). But US military units do not stay long in one area. They are moved to new areas of Iraq or Afghanistan as new violence breaks out. They are rotated back to the USA for rest, refitting, and replacements. When a unit leaves an area, their hard-won lessons move with them, the experience of the local area that represents the basic level of intelligence is lost, the personal contacts with sources and agents in the area are weakened or lost. The US military is not prepared for indefinite occupations, but the kind of counter-terrorism that works is dependent on long-term investments in local experience.

Insurgents in Afghanistan and the Iraq are aware that US forces must depend on local translators and the local police and military for local intelligence. Insurgents target these "collaborators." News reports tend to emphasize attacks on important individuals. For instance, a provincial governor in Afghanistan was assassinated on September 10, 2006, and a suicide bomber killed five policemen and two children at the governor's funeral. In Iraq, the brother-in-law of the new presiding judge of Saddam Hussein's genocide trial was killed on September 29, 2006. But the toll on Iraqi police and national guard forces is perhaps a more serious indication of the importance insurgents attach to discouraging collaboration. Between March, 2003 and February 2008, US forces in Iraq lost 3973 killed by insurgent attacks, but Iraqi police and military lost 7945 (O'Hanlon and Campbell, 2008).

Another indication of the importance of collaborators is an unusual offer of amnesty from the new leader of al-Qaeda in Iraq, Abu Ayyub al-Masri, the successor of Musab al-Zarqawi. In an audiotape released on September 28, 2006 (Rising, 2006), al-Masri offered amnesty to Iraqis who had cooperated with their country's "occupiers," calling on them to "return to your religion and nation" during the Muslim holy month of Ramadan, which began for the Sunni two days after the tape was posted. "We will not attack you as long as you declare your true repentance in front of your tribe and relatives," he said. "The amnesty ends by the end of this holy month." Willingness to offer amnesty suggests that al-Qaeda in Iraq is concerned about the number of Sunni who are making some compromise with Coalition forces.

The difficulties noted in organizing effective counter-terrorism in an occupied territory are multiplied when the terrorists use suicide terrorism. When every passing civilian is a potential mortal threat, the result

is fear and anger. Fear leads to mistakes that kill innocent locals, as soldiers resolve doubtful situations in favor of their own safety. Anger leads to more mistakes, as soldiers who cannot see the enemy that has killed their friends take out their frustration on civilians they can reach. Particularly when there are obvious differences in appearance between soldiers and locals, fear of suicide bombers produces ethnic hostility in which all of "them" are bad.

The prolonged threat of suicide bombers produces a state of mind in which even basic-level intelligence is impossible. No one is going to walk around chatting up the locals when any one of them could be death. Interviews with US soldiers in Iraq give an idea of this state of mind (Partlow, 2006).

"Honestly, it just feels like we're driving around waiting to get blown up ... You lose a couple of friends and it gets hard."

"There is no enemy; it's a faceless enemy. He's out there but he's hiding."

"At this point, it seems like war on drugs in America ... It's like this never-ending battle, like, we find one IED [improvised explosive device], if we do find it before it hits us, so what? You know it's just like if the cops make a big bust, next week the next higher-up puts more back out there."

In sum, *unsuccessful* counter-terrorism in an occupied territory takes the form of military patrols and search-and-destroy missions without local knowledge or community contacts.

What does counter-terrorism look like in democratic countries?

The Madrid bombings on March 11, 2004, are generally seen as a major intelligence failure. Ten bombs planted in four different commuter trains went off during rush hour, killing 191 and injuring hundreds. Less well known is an element of success following the Madrid bombings: the bombers had plans for additional bombings and did indeed plant a bomb that was found before it could derail the high-speed train linking Madrid and Seville. But the crucial break in the case was a bomb that did not go off on March 11 (Alonso and Reinares, 2006). The bag containing the bomb led to Jamal Zougam, who had purchased the phone cards used in the attack. The phone cards led to the terrorists, holed up in an apartment on the outskirts of Madrid. When surrounded, the terrorists blew themselves up. This was April 3, 2006. A search of the wreckage turned up detailed plans for more attacks that were to begin the next day, April 4; the investigators had been barely in time.

The London-based plot to destroy civilian aircraft on their way to the USA offers a similar picture of successful police work. Twenty-five

suspects were arrested in the UK on August 10, 2006; seven were later released. Another seven suspects were arrested in Pakistan. The plot involved use of liquid or gel explosives that could pass through airport security. It was reported by CNN (2006) that an undercover British agent had infiltrated the group, but whether or not this report is correct there is no doubt that the police had been watching the plot for months. In his "Six lessons from the London Airline bombing plot," Tirnan (2006) notes that "First, what stopped this plot was law enforcement ... Old-fashioned surveillance, development of human sources, putting pieces together, and cooperation with foreign police and intelligence services."

In Canada, seventeen terrorist suspects were arrested in the Toronto area on June 2, 2006. They are accused of planning ammonium nitrate truck bombs to attack targets that included the Canadian Security Intelligence Service (CSIS) Headquarters in Toronto and the Parliamentary Buildings' Peace Tower. The arrests were carried out by an inter-agency task force, the Integrated National Security Enforcement Team (INSET), which coordinated the activities of the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service, the Ontario Provincial Police (OPP), and other police forces. The arrests involved 400 police from several different jurisdictions in southern Ontario near Toronto.

The case began with the CSIS monitoring of internet websites in 2004, with the RCMP entering the case when a criminal investigation began in 2005. On July 13, 2006, the *Toronto Star* reported that a member of Toronto's Islamic community had infiltrated the alleged terrorist cell while on the police payroll; the informant was later revealed as Mubin Shaikh, a Canadian-born Muslim of Indian heritage. Another police agent was involved in receiving the ammonium nitrate (which was replaced with a harmless substitute before delivery). Like the previous cases then, this plot had been under surveillance for many months before being rolled up with the help of electronic surveillance and paid agents.

In the USA, Shahawar Matin Siraj and James Elshafay were arrested on the eve of the 2004 Republican National Convention in New York, carrying crude diagrams of the subway station in Herald Square. Elshafay immediately agreed to cooperate with the government but Siraj went to trial. The issue at trial was the extent to which Siraj was incited by a government informant – that is, the extent to which he was a victim of entrapment. Successful contradiction of the entrapment defense required the testimony of both a paid informant and an undercover police officer.

The case began, not with any connection to al-Qaeda, but with the anti-American ranting by Siraj in an Islamic bookstore; many such

conversations were recorded by the informant, a US citizen born in Egypt. The undercover officer, born in Bangladesh, described being recruited out of the police academy in 2003 and given orders to become a "walking camera" among Muslims. He recalled a conversation on the second anniversary of the 2001 destruction of the World Trade Center in which Siraj complimented Osama bin Laden's talents and hoped that bin Laden was planning something big for the USA.

In short, successful counter-terrorism operations in Madrid, London, Toronto, and the USA are successful police work. Substantial resources have been devoted to trolling through Islamic websites and Islamic communities; undercover agents have been recruited and undercover officers assigned. These operations depend on the same local knowledge that has already been described for successful counter-terrorism in occupied territories. The parallel to street-by-street and village-by-village intelligence is website-by-website, bookstore-by-bookstore, and mosque-by-mosque intelligence in the major cities of Western democracies. Intelligence operations in both occupied territories and Western democracies are long-term and culture-focused, in contrast to military operations that are intended to be short-term and focused on conventional opposing forces.

What does successful counter-terrorism look like in a Western democracy? Website-by-website, bookstore-and-mosque-by-bookstore-and-mosque knowledge of Islamic communities, individuals, and grievances. This picture will be familiar to anyone who watches police-procedural dramas on television, except that, at least until recently, the typical plot line had to do with the War on Drugs rather than the War on Terror. Also related to this picture are the issues of situational crime prevention raised by Clarke and Newman (this volume). Indeed, the relation between terrorism and crime deserves further attention.

How are criminal gangs and terrorist groups alike?

Kaplan (2005) has argued that the similarity between criminals and terrorists is strong and growing. Terrorists, like other criminals, need money, weapons, safe houses, false papers, and secure communications. These are not easy to come by without state sponsorship, and state sponsorship of al-Qaeda terrorism was lost when the Taliban were driven from power in Afghanistan.

Since 9/11 the USA has put pressure on banking networks and Islamic charities to reduce the flow of funds to al-Qaeda and other jihadist terrorists, and has driven bin Laden and the remaining al-Qaeda leaders into hiding. In the absence of state and organizational support, jihadist

attacks now come from small, self-organizing groups such as those that planted bombs in Madrid and London, and planned bombs in Toronto and New York City. The result is that the small terrorist groups inspired by al-Qaeda must depend on their own fundraising.

The terrorist gang behind the [2004] train bombings in Madrid ... financed itself almost entirely with money earned from trafficking in hashish and ecstasy [trading \$50,000 worth of hashish for explosives]. al-Qaeda's affiliate in Southeast Asia, Jemaah Islamiyah, engages in bank robbery and credit card fraud; its 2002 Bali bombings were financed, in part, through jewelry store robberies that netted over 5 pounds of gold. In years past, many terrorist groups would have steered away from criminal activity, worried that such tactics might tarnish their image. But for hard-pressed jihadists, committing crimes against nonbelievers is increasingly seen as acceptable. As Abu Bakar Bashir, Jemaah Islamiyah's reputed spiritual head, reportedly said: "You can take their blood; then why not take their property?" (Kaplan, 2005).

Drug trafficking is particularly lucrative, and the US Drug Enforcement Administration (DEA, 2005) has estimated that nearly eighteen of the forty-odd Foreign Terrorist Organizations (designated for their special threat to US interests) are involved in drug dealing (Committee on International Relations, US House of Representatives, 2005). Although al-Qaeda has kept clear of the drug trade, other jihadist groups, such as the Islamic Movement of Uzbekistan, have found the money irresistible.

An example of jihadist rationale for dealing in drugs is offered by Baz Mohammad, who was extradited from Afghanistan in 2005 to stand trial for conspiring to import \$25 million worth of heroin into the USA. Baz reportedly said that selling heroin in the United States is a form of jihad because it took the Americans' money at the same time that the heroin they were paying for was killing them (DEA, 2005).

As Bjornehed (2004) notes, there are limits to the parallel between terrorist groups and criminal gangs. Of the three elements of establishing a criminal prosecution – means, motive, and opportunity – it appears that the means of violent crime are very similar for criminal gangs and terrorist groups, but that motive and opportunity are importantly different.

It is possible to see a motivational dimension of criminality that runs from purely economic goals to purely political goals. Terrorists have political goals, criminal gangs want money. A particular group can be placed on this dimension according to what it says and what it does. A purely criminal gang seldom issues a political statement after one of its operations; a purely terrorist group is very likely to take credit and link the operation to some political goal. A purely criminal gang goes where the money is; a purely terrorist group attacks the sources and symbols

of enemy power. Thus differences in motive can be observed in and around the commission of the crime.

Similarly there are differences in opportunity (see Clarke & Newman, this volume, for an in-depth focus on using situational crime prevention to reduce the opportunity for terrorist acts). Opportunity for criminals is an easy mark, a target that promises big returns for small risk. Such targets include drugs, gambling, prostitution, and fraud – so-called victimless crimes in which the political support of patrons is likely to reduce the fervor for criminal prosecution. But opportunity for terrorists is a difficult target, a big score that makes evident that all the power of the state cannot provide protection. Such targets include prominent political figures, prominent business people, and prominent members of the criminal justice system charged with fighting terrorism – judges, police, intelligence officials.

Consider the following targets of the Tamil Tigers:

1. the May 1991 assassination of former Indian Prime Minister Rajiv Gandhi at a campaign rally in India;
2. the May 1993 assassination of Sri Lankan President Ranasinghe Premadasa;
3. the July 1999 assassination of a Sri Lankan member of parliament, Neelan Thiruchelvam, an ethnic Tamil involved in a government-sponsored peace initiative;
4. a pair of December 1999 suicide bombings in Colombo that wounded Sri Lankan President Chandrika Kumaratunga;
5. the June 2000 assassination of Sri Lankan Industry Minister C.V. Goonaratne;
6. the August 2005 assassination of Foreign Minister Lakshman Kadirgamar.

These were not easy targets with big money attached to success. By this measure we know that the Tigers are more a terrorist than a criminal group.

Consider the 1978 abduction and killing of Aldo Moro, five-time prime minister of Italy, by the Red Brigades. His five security guards were killed in the abduction. There was no financial profit, rather, according to Red Brigade leader Mario Moretti, a sense of desperation and doom (Katz, 1980).

Consider the attacks on the World Trade Center and the Pentagon on 9/11. Financial profit is an implausible explanation for sacrificing one's life; suicide terrorism implies more terrorism than criminality. In general, difficult and unprofitable targets, especially targets reached only by suicide attacks, are an indicator that a group is more terrorist than criminal.

The distinction between terrorists and other criminals in terms of motivation and opportunity is important because failure to recognize this distinction leads to an attempt to create a unified front against terrorism and drugs – a war on narco-terrorism – that misses opportunities against both terrorism and drug trafficking (Bjornehed, 2004).

Against drug trafficking, the war on terrorism does not easily extend to developing alternative sources of income for poor farmers – even in Afghanistan, where the War on Terror and the War on Drugs come together most obviously. Indeed reduction of supply is likely to increase the price for drugs, as happened in Afghanistan in 2000 after the Taliban discouraged growing poppies, and higher prices can mean higher profits for the remaining drug producers and more support for terrorists. Similarly the war on terrorism offers little support for the reduction in demand for drugs in Western countries.

An additional concern is that the war on terrorism may take more than it gives to the War on Drugs (Bjornehed, 2004). A hundred DEA agents were assigned as marshals on airplanes after 9/11, and another forty were assigned to work with the FBI on drug-related terrorism cases. Seventy-five percent of Coast Guard forces working on drug interdiction were re-assigned to anti-terrorist patrols after 9/11. It seems likely that these and other shifts in resources from drugs to terrorism are related to reports of increased drug trafficking in the Caribbean after 9/11.

Against terrorism, the War on Drugs fails to recognize or respond to the political grievances that are the support base for terrorists. Politics is the key to understanding what criminal justice can do against terrorism, and this point will be emphasized at the conclusion of this chapter.

What does the Pentagon think is needed to succeed against terrorists?

In his *US News & World Report* “Bad Guys Blog”, Kaplan (2006) highlights a new recruiting initiative from the Pentagon.

Imagine The Untouchables joining up with Delta Force. That’s what seems to be happening out on the cutting edge of US counterinsurgency strategy: The Pentagon is asking organized crime investigators for help in battling the stubborn insurgencies in Iraq and Afghanistan. Turns out that the networks of insurgents, terrorists, and criminals faced by US soldiers bear more resemblance to organized crime and narcotraffickers than to the military’s traditional adversaries.

Recruiting is being handled by Military Professional Resources Incorporated (MPRI), a division of the giant defense contractor L-3 Communications. MPRI was founded in 1988 by retired military

officers; its current president, Carl Vuono, was chief of staff for the US Army from 1987–1993. Job openings on the MPRI website (<https://app.mpri.com/IIF/jobs/jobsummary.html>) include # 2378, *Embedded Law Enforcement Professional*.

Requirements: “Must possess a minimum of 10 years experience in Criminal Investigations. Must be a US citizen in possession of a current US Tourist Passport, and able to communicate in fluent English. Must be capable and experienced in the collection of evidence to assist determination of criminal identity, networks, gangs and activities. Ability to examine records and files to find identifying data about suspects is required. Ability to analyze event statistics to determine patterns and methods of criminal enterprise is required. Ability to develop and maintain case files involving criminal events is required. Must be in good health and fitness to be able to deploy globally, to include non-permissive environments. Must possess an unblemished law enforcement background. Documented investigation experience in Organized Crime, gangs, and complex drug investigations is desired.”

Job description: “Assist select US Army and Marine brigade, regimental and division headquarters in Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) [Afghanistan] to investigate, analyze and understand the nature of the threat of networked criminal activities in the area of operations. Assist select unit staffs in the compilation and analysis of information about organized criminal groups, and advise in the investigative direction, attack and neutralization of complex criminal enterprises.”

In short, the US military seeks to integrate the policing skills that it currently lacks in Iraq and Afghanistan. It remains to be seen whether expertise in dealing with US criminal organizations can be translated into useful intelligence in a very different culture, but it is noteworthy that those responsible for prosecuting the war on terrorism are ready to see the enemy as a criminal gang.

Terrorism as Politics: War, Justice, and Torture

The discussion thus far may be summarized as follows. In response to terrorism, war and criminal justice have importantly different implications. The US has emphasized war over justice, but successful counter-terrorism emphasizes police work over war. Successes against terrorists in Western countries are the result of police work. Success against terrorists in occupied territories takes the form of policing rather than war, especially insofar as policing avoids the jujitsu politics in which terrorists profit from an over-response to terrorism. Unsuccessful counter-terrorism looks more like war than policing, especially insofar as war produces the collateral damage that jujitsu politics depends on. The Pentagon believes that success in Iraq and Afghanistan requires

importing police skills into the military. Police skills will be valuable because terrorist groups resemble criminal gangs, especially drug trafficking gangs; similarities include cellular organization and the basic requirements of a violent underground such as weapons, money, safe houses, false papers, and secure communications. These similarities are reinforced by the fact that many terrorist groups solve their money problem by trafficking drugs.

Many of these ideas are embodied in a new US Army and Marine Corps manual for counterinsurgency operations. Here are five of the nine "paradoxes" described in the manual (Department of the Army, 2006, pp. 1-26 - 1-28).

7. *Tactical success guarantees nothing.* Military actions by themselves cannot achieve success.
8. *Sometimes, the more you protect your force, the less secure you may be.* If military forces stay locked up in compounds, they lose touch with the people, appear to be running scared and cede the initiative to insurgents.
9. *Sometimes, the more force is used, the less effective it is.* Using substantial force increases the risk of collateral damage and mistakes, and increases the opportunity for insurgent propaganda.
10. *Sometimes doing nothing is the best reaction.* Often an insurgent carries out a terrorist act or guerilla raid with the primary purpose of causing a reaction that can then be exploited.
11. *The more successful counterinsurgency is the less force that can be used and the more risk that must be accepted.* As the level of insurgent violence drops, the military must be used less, with stricter rules of engagement, and the police force used more.

It might seem then that military restraint and police expertise can together provide successful counter-terrorism. But criminal justice is more than just avoiding damage and encouraging police skills. Effective criminal justice requires a legal code and a judicial system that is perceived as fair by the accused and their community. Effective criminal justice requires penalties and a penal system perceived as fair. In short, criminal justice requires trust – a relation of trust between community and the criminal justice system that includes not only the police but laws, judges, penal system – indeed the whole of local government.

In an op-ed in the *New York Times*, Max Boot (2007) has taken this argument to its logical if uncomfortable conclusion. He applauds forcing State Department Foreign Service Officers to serve in Iraq. He calls for an enlarged Agency for International Development to provide more government reconstruction experts. He suggests a federal police

force that can be deployed overseas, and legislation that would permit drafting civilian police officers to train Afghans and Iraqis. "Along with these police officers, we need a deployable corps of lawyers, judges, and prison guards who could set up functioning legal and penal systems abroad."

Boot's (2007) goal seems to be something very close to the ideal of community policing.

Effective community policing has a positive impact on reducing neighborhood crime, helping to reduce fear of crime and enhancing the quality of life in the community. It accomplishes these things by combining the efforts and resources of the police, local government and community members. ... Establishing and maintaining mutual trust is the central goal of community partnership. Trust will give the police greater access to valuable information that can lead to the prevention of and solution of crimes. It will also engender support for police activities and provide a basis for a productive working relationship with the community that will find solutions to local problems (Community Policing Consortium, 2006).

Building the political infrastructure and trust required for community policing should be easier by far in the US than in Afghanistan or Iraq, but the Community Policing Consortium – a partnership of five of the leading police organizations in the US – are clear that this is an ideal far from realization in many places in the US. Indeed policing of minority groups in the US may at some times and in some places look like the policing of occupied territories described by Schultz and Godson (2006). Heavy surveillance and undercover agents trolling through Muslim communities may succeed in the short term but fail in the longer term that involves politics and culture.

A new generation of American Muslims – living in the shadow of the Sept. 11, 2001, attacks – is becoming more religious. They are more likely to take comfort in their own communities, and less likely to embrace the nation's fabled melting pot of shared values and common culture. . . . The men and women I spoke to – all mosque-goers, most born in the United States to immigrants – include students, activists, imams and everyday working Muslims. Almost without exception, they recall feeling under siege after Sept. 11, with FBI agents raiding their mosques and homes, neighbors eyeing them suspiciously and television programs portraying Muslims as the new enemies of the West (Abdo, 2006).

If Abdo's impressions are correct, then the policing style that succeeds in occupied territories may not succeed in the US. Abdo's impressions can remind us that, after all, the methods described as successful counter-terrorism operations by the UK and Israeli officials were

not in the long term successful. The U.K. does not any longer control Palestine, Malaya, Kenya, Cyprus, or Northern Ireland. Israel has pulled out of Gaza and is walling itself off from Palestinian areas of the West Bank.

Effective policing has to be effective politics. This lesson can be summarized in the following syllogism. War is politics by other means; terrorism is the warfare of the weak; therefore terrorism is politics.

Terrorism is killing civilians for political goals. State terrorism killed about 140 million civilians in the twentieth century, whereas non-state terrorism killed about half a million (Rummel, 1994). As these totals suggest, the distinction between civilian and soldier has been eroding, at least since the French Revolution invented the nation-in-arms and the levee en masse (McCauley, 2005). In parallel, the moral superiority of the state in relation to non-state challengers has been eroding.

The terrorism at issue in this chapter has been non-state terrorism, "terrorism from below." The goals of non-state terrorists are broader than generally recognized (McCauley, 2007). Many definitions of terrorism focus on goals of frightening or coercing a target audience, usually a state's citizens or policy makers. But terrorist attacks often have other and more immediate goals. Terrorists may compete with other groups for support among those who sympathize with the cause the terrorists claim to represent ("outbidding"; Bloom, 2005). Terrorists may aim to elicit a state response that will strike and mobilize previously passive sympathizers with the terrorist cause (jijitsu politics). Terrorists may mount an attack in order to resolve ingroup dissension and bring together competing factions in common action.

Similarly, the state's goals in responding to terrorism are not just to suppress or eliminate terrorists. State responses may be aimed as well at domestic political goals that may include controlling risk perception as well as controlling risk. As for the US after 9/11, state responses may include diplomatic efforts to bring other countries into cooperation against terrorism. Similarly the US State Department has a program of "public diplomacy" aimed at moving the world's billion Muslims from support for jihadi terrorism.

Terrorism and state response to terrorism form a dynamic system of action and reaction that extends over time, in which bystander groups and countries make a difference in the long-term outcome. This many-player iterated game is none other than politics, a continuing competition in which there are no final victories.

It is within this understanding of terrorism and response to terrorism that torture is most obviously counterproductive. Torture is violence

and humiliation that does not kill. Victims of torture go home to their families, their friends, and their communities. Sometimes they appear in videos, on web sites, or on television. Whether guilty or innocent of whatever was elicited under torture, their experience undermines trust in police and security forces, undermines trust in the rule of law, undermines any hope of justice from the system that uses torture. Torture is the strongest kind of community grievance against state power. If community policing is the ideal form of counter-terrorism, torturing suspected terrorists is the strongest expression of the logic of war: to win at any cost. The experience that led to the new manual for counter-insurgency operations suggests that this is a losing logic.

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