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Terrorism and Relative Justice

Mark Findlay¹

Introduction

This essay explores representations of justice and terror that demonstrate, through the contextual dependence of both phenomena, some under-theorised and largely misconstrued connections. Such relationships tend to explain the less effective or sometimes exacerbating outcomes of certain control responses to terror². In particular, through the criminalisation of terrorism and the criminal justice processing of control responses, both terrorism and justice are essentially re-interpreted within wider agendas for global governance³.

Criminal justice processing of terrorist violence is not exceptional, particularly where jurisdiction is uncontested. Margaret Thatcher declared the Irish para-militaries as ‘criminals’ and internment converted to imprisonment overnight. Timothy McVeigh, judged responsible for the second most deadly terror attack in contemporary US experience was treated as a criminal despite his religiously grounded right-wing ideology. Even, as with the trial of the Lockerbie bombings, where jurisdiction and dominion were complex, a specially constituted criminal justice resolution was a primary control response. This paper is more interested in the ‘post 9/11’ predilection for violent reactions to terrorist incursions. Whether this violence is eventually tempered by a criminal justice context does not diminish the significance of violent retribution as the response of first call.

The following ideas are formative and presented in order to stimulate a more detailed empirical examination of the relationships suggested between terrorism and violent justice. The less ambitious agenda for this paper is to identify and outline some critical dimensions of the justice/terror nexus, and to propose possible ways it can be re-imagined so as to sharpen the prospects for both legitimacy and control potential.⁴

At the outset I disclaim, for the purposes of this paper at least, any direct engagement with the rich literature about state crime as terrorism. Much of this is undervalued in a political climate that would rob terrorism of meaning or would even wrongly equate

¹ Professor of Criminal Justice, Law Faculty, University of Sydney; Senior Associate Research Fellow, Institute of Advanced Legal Studies, London University.

² Braithwaite J. (2005) ‘Pre-empting Terrorism’ *Current Issues in Criminal Justice* 17/1: 96

³ Discussed more generally in Findlay M. (2006) ‘Governing through Globalised Crime’ (unpublished conference paper).

⁴ The limits of the paper do not allow for a fully developed critique of contested legitimacies, as these exist in both justice and terror contexts. Suffice to say that misunderstandings about the relativity of justice, and the crude de-legitimisation of terrorism underlie much of the political discourse around the *war on terror*.

an attempt to critically review the abuse of state power, with support for the terrorist project.

In addition, while the history of retributive punishment grows out of contexts where justice was terror, and its merciful avoidance added power to judicial authority⁵, the present paper accepts the justice/punishment alliance. Punishment is often violent, and justice in its retributive form relies on punishment outcomes⁶. Punishment, be it for deterrence or retribution, is a powerful purpose for justice as it confronts terrorism, in any control strategy.

This is not an empirical substantiation of the relationship between terrorism and violent justice responses. There has as yet been insufficient research into such connections, particularly from the perspective of intervention strategies employed by states and alliances to counter real or perceived terrorist threats.⁷ The discourse on terrorism today, largely journalistic, or political considerations, or 'insider stories'⁸, is not well supported by hard data on human and organisational behaviours, or by the manner in which these form patterns and reactions. We would suggest that besides the practical barriers to research in the area, without well-developed theoretical dimensions for analysing this relationship, the discourse remains confined to journalistic assertion and political critique.⁹

More than this, it might be said that the predominating 'mythologies' explored in the rest of this paper deny the necessity in the mind of politicians and governments at least to gain an empirical understanding of this relationship. It suits political discourse rather to deny the existence of any such relationship in the context of legitimate governance. Therefore, if a sound theoretical connection is proffered, the researcher may still battle for access to the data which would enable empirical analysis. This data is all too often concealed within military intelligence and hidden in the partial consciousness of contesting agencies and institutions with a real interest in seeing it remain secret, or misconstrued.

⁵ For instance see Thompson E.P. (1975) *Whigs and Hunters; the origins of the Black Acts*, Harmondsworth: Peregrine; Hay D., Linebaugh P and Thompson E.P (1975) *Albion's Fatal Tree*, London, Allen and Lane

⁶ For a critical discussion of this see Braithwaite J. and Pettit P. (1990) *Not Just Deserts: A republican theory of criminal justice*, Oxford: Clarendon

⁷ Some exceptions to this are represented by Silke A. (2003) 'Retaliating Against Terrorism' in A Silke (ed.) *Terrorists, Victims and Society: Psychological perspectives on terrorism and its consequences* Chichester: Wiley; 93; Silke A (2003) 'Fire of Iolaus: The role of state counter-measures in causing terrorism and what needs to be done' in T. Bjorgo (ed.) *Root Causes of Terrorism: Proceedings from an international expert meeting in Oslo* Oslo: Norwegian Institute of International Affairs; 179.

⁸ An example is Heffelfinger C. (2005) *Unmasking Terror: A global review of terrorist activities'* Washington: Jamestown Foundation.

⁹ We are not suggesting that theorising on either component of the relationship is absent. The work of Crenshaw M. ((1994) (ed.) *Terrorism in Context*, Pittsburgh: Penn State Press), Mc Cauley C. ((1991) (ed.) *Terrorist research and Public Policy* London: Frank Cass) and Silke .((2004) 'The Road Less Travelled: Trends in terrorism research' in A. Silke (ed) *Research on Terrorism: Trends, achievements and failures* London: Frank Cass; 186) presents supportive arguments for analysis. What they do not fully achieve is a detailed interrogation of the connections between terror and justice responses in the broadest sense.

This does not mean that the empirical enquiry is futile. As the current 'war on terror'¹⁰ lurches from disaster to disengagement, more is becoming known of the utility of violence and its contextualisation, despite the efforts to restrict the flow of knowledge. Electorates, and referential communities are becoming cynical and disenchanted with the perceived wisdom of their ideological champions and therefore are keener to seek out and receive another story. The other story of Guantanamo Bay, of weapons of mass destruction, secret prisons and rendition, of liberation movements in Lebanon, the Sudan and East Timor, and the actual threats of nuclear proliferation, are in the public domain. However, I suspect 'the facts' are will remain contested. This being so, the analysts' task is more than finding and formulating data. It also requires a conscious campaign to counter the misrepresentation of the other side. In this way the empiricist cannot resile from the role of advocate for more reasoned, even if still partial, representation.

The paper makes its contribution through the utility of the following dimensions representing important but often unexplored features of the proposed relationship. The application of these dimensions to particular case-studies should offer more than empirical enhancement. The paper will only indicate appropriate contemporary examples of the relationship and suggest foundations for their more detailed exploration. After all, this is the purpose of a theoretical overview.

While the discussion to follow remains more philosophical than sociological, more conceptual than historical, it follows that for the theorising to form a foundation of empirical enquiry then the disciplinary influences over that enquiry may also benefit from a more rigorous structure. Such a structure is laid out around the relational dimensions discussed below.

The initial dimension is violence, its purposefulness, the relativity of this, and the manner in which both terror and justice interventions employ and justify violent incursion. Implicit in this dimension is the common practice within dominant political alliances, denying purpose to the terrorist, or at least any purpose which can claim rationality, and hence that it is legitimate. The segregation of the purposefulness of violence introduces considerations of legitimacy and with them the foundations of international authority. Further, terrorism becomes redefined not only in terms of its violence, but also more against its mindless or malicious irrationality.

This moves into the next dimension, where the meaning of violence is contested in the violent event. Considerations of 'truth' naturally follow, as the prize for the contest and the purpose for violence. Truth here is obviously a relative concept and in order that its legitimating potential is resonant across opposing but supportive referent communities, truth is seen to encapsulate common values which bridge the violent divide.

In any violent struggle there is the victor and the vanquished. The contemporary political context within which international terrorism and hegemonic justice responses are played out is itself predetermined by victory and subjection in a wider and deeper historical sense. Victor's justice may pre-determine the authority foundation through

¹⁰ For a charting of the post 9/11 'war on terror' see International Peace Research Institute Oslo (2006) *Report from the Conference '9/11 Five years After: Values, Risk and Identity in the War on Terror'* Oslo: PRIO.

which further justice responses are advanced. Terror on the other hand is a response to victor's justice as much as it is its precipitant. Attendant on 'victory' is the 'morality' of the struggle. This is also conceptually connected to interpretations of truth and the legitimacy/authority these convey.

One of the spoils of victory is vengeance. Crucial for the direction of violent vengeance (in the guise of retributive justice) is the innocent victim, and the monopoly over claims of innocence and the parallel apportioning of guilt. However, as with truth, innocence is both partial and relative. In turn, blame is vehemently contested like any other element of the struggle. The power to apportion blame is evidence of authority, and the resistance against blame in referent communities is a profound challenge to legitimacy.

Legitimacy, a binding theme in the struggle for truth over innocence, and to lay blame, is relative to *actual* communities. Crucial communities for the legitimacy of the justice response in particular, are those who would otherwise be resistant to this authority. They are the alternative audience both to the message of justice and the irrationality of terror. They are the conscience to be won over or at least alienated from the terrorist mission.

Essential to the version of justice currently marketed against international terrorism, is the protection of the individual. Victimisation, like citizenship and the right to be protected is primarily individualised. Terror on the other-hand is both discounted and demonised by devaluing the individual and destroying the innocent victim. But this is a more complex dimension of contest. Whose value of whose life are crucial questions, the answers to which further divide justice and terror, in contesting the right to life or its destruction.

These dimensions lead back to the image of contest and struggle over legitimacy, authority, versions of truth, rights to innocence and its protection, the power to blame or deny its force, and the price of life. The terrain of distinction, and the prospect of reconciliation and restitution remain over the determination of rationality

Purposeful violence¹¹ ? The utility of justice and terror.

The utility of terrorism is something that tends to escape consideration in responding to the violence essential for its existence¹². At the same time utilitarian considerations drive retributive and deterrent paradigms for justice responses to terror¹³.

However, it might be seen as too relativist and subjective to confine our conception of terrorism here to claims and counterclaims concerning utility. The same reservations might be directed to measuring terrorism against relative considerations of rationality. Particularly when put against the proportional application of violence in order to

¹¹ For a discussion of the psychologies of terrorist violence see McCauley (2005) *The Psychology of Terrorism New York: SSRC*

¹² See Rotman E. (2000-2001) 'The Globalisation of Criminal Violence', in *Cornell Journal of Law and Public Policy* 10/1:1-43

¹³ As discussed by Braithwaite J. (2005) 'Pre-empting Terrorism', in *Current Issues in Criminal Justice* 17/1:96-114

achieve stated aims many terrorist endeavours are excessive and irrational against any measure.

The quest for an encompassing and more universal definition of terrorism is itself misdirected. Even with their faults, the features of rationality and utility will generate contested meanings for terror depending on the nature of the referent community and the violent acts perpetuated. These communities (proponents and victims) are crucial to the determination of the cause and cost of terrorism.

In any dialectical sense there is a need to accept, interrogate and employ the relative meanings and constructions of terrorism. In so doing there is a parallel requirement to discriminate interpretations of terrorism based on purpose and reason. As Tamanaha argues¹⁴, any such approach will return the analysis to fact/value debates. Avoiding the relativist limitations of value judging terrorism or justice, we can follow Tamanaha's invocation to examine value-based interpretations, grounded firmly in the factual experience of actual social situations.

In any case, for the purposes of this paper terrorism (and for that matter justice) are not encountered on their own. It is the relationship between terror, and violent justice responses that most clearly requires an appreciation of relativities within particular community contexts. Therefore, the social context of processes such as punishment is as significant to the investigation of this relationship as might be the supervening definitional framework.

Retributive international criminal justice focuses on the punishment of prominent perpetrators and if this produces positive consequences for victim communities then it is through the legitimate rendition of vengeance on their behalf, as well as the symbolic significance for future deterrence, indeterminate as this may be. So saying, victims or their communities are not the central focus for international criminal trials¹⁵. In matters before the International Criminal Tribunal for the Former Yugoslavia, for instance, there are statutory protections of victim interests but these do not go so far as providing independent victim representation, or formal consideration of victim impact.¹⁶

In the show trials of Saddam Husssein and Slobidan Milosovic the prosecutions were presumed to profoundly benefit identified victim communities, as well as potential future victims. There is little empirical evidence that from the victim perspective, beyond collective vengeance, the impact of these trials would be deeply felt, or long-lasting. Therefore, the question remains regarding the foundations of authority for the application of retributive (and eventually violent) justice responses to terrorist acts and actors.

¹⁴ See, Tamanaha B. (1997) *Realistic Socio-legal Theory : Pragmatism and a social theory of law*, Oxford: Clarendon Press

¹⁵ This is critically interrogated in Findlay M. and Henham R. (2005) *Transforming International Criminal Justice: Retributive and restorative justice in the trial process*, Cullompton: Willan

¹⁶ Henham R. & Mannozi G. (2003) 'Victim Participation and Sentencing in England and Italy: a legal and policy analysis' in *European Journal of Crime, Criminal Law and Criminal Justice* 11:278

It has been recognised that both terrorist acts and their punishment may be interpreted as purposeful violence¹⁷. Even so, as the violence associated with punishment increases in its scope and intensity, sometimes approaching the nature of the terrorist act, then its legitimacy¹⁸ comes under challenge, if not its utility¹⁹.

To justify an extreme punishment response, the violence and violent potential of terrorism is highlighted. However, a moral assessment of terrorism in terms of 'mindless' violence is compromised by any corresponding excessive violence of punishment, particularly where this has consequences for innocent communities, in a 'law of war' scenario. In addition, its 'mindlessness' challenges the deterrent impact of violent punishment.

Bentham's 'less eligibility' doctrine as a balance between the utility and humanity of punishment risks compromise through the suffering of innocent communities as a consequence of the harm caused from the punishment directed against the terrorist. In this situation the retributive rationale for meeting with violent punishment the violence of the terrorist against the innocent, is also challenged through the commonality of violent reaction.

Claims for utility are dependent on the context of the terrorist and the justice response. So that they are not lost in some confusion of subjectivity, these claims need to be reflected against representations of 'truth' and 'fairness' said to be essential for the legitimacy of justice responses. The morality of truth and fairness here, I would argue, depends on the innocence of victim communities which a justice response is supposed to champion. Innocence in turn is the foundation on which blame, responsibility and resultant punishment may be more objectively constructed. The problem with this is that convincing representations of innocence are also contextually relative²⁰.

Contested meanings? The battle for 'truth' or the battle over 'blame'

When it comes to considerations of 'truth' in the context of terrorist struggle, the contested nature of truth is obvious if also regularly glossed over. Truth is what the suicide bomber is said to die for and what the military and criminal justice responses are set to protect. Can it be the same truth? Obviously not. Then its relativity becomes a contested objective of the relationship between terror and 'justice' responses. This contested reality is an important theme for empirical inquiry. How is the subjectivity of truth here to be managed beyond the force-based authority and supremacy of victor's justice?²¹

¹⁷ See Butler P. (2003) 'Foreword: Terrorism and Utilitarianism: Lessons from and for the criminal law' in *Journal of Criminal law and Criminology* 93/1: pp.1-22

¹⁸ For a discussion of the issue of legitimacy in general see Crenshaw M. (1983) *Terrorism, Legitimacy and Power* Middletown: Wesleyan.

¹⁹ Gross E. (2002-2003) 'Trying Terrorists – Justification for Differing Trial Rules: The balance between security considerations and human rights', in *Indiana International and Comparative Law Review* 13/1:1-97

²⁰ See Gaita R. (2001) 'Terror and Justice' in P. Craven (ed) *The Best Australian Essays 2001*, Melbourne: Black Inc.; pp.19-36

²¹ There is a need here for a more detailed consideration of Weber's conditions for the authority of the state.

The para-military struggle in Northern Ireland has since the partition and the imposition of British rule, been a struggle over more than political legitimacy. Its violent ferocity on both sides of the sectarian divide and from the forces of the British state is selectively rationalised as the struggle for the truth of Irish nation-hood. True, the triggers for violent events may be religious or cultural bigotry, and the assertion of state authority, but the daily contextual reality of the struggle is contested 'truths'.

In the terrorism/response context (both local and global) it is not so much the nature of truth but its contest which is the connection. The protection of truth is the common justification for the exercise of violence on both sides. Even violent retaliation against say 'genocide' through terrorism claims its legitimacy against 'guilty' or 'blameworthy' violence where truth is at risk. Yet again the relativity of guilt and blame challenge the advance and democratic dominance of a single 'truth' on which the justice response relies.

The recent conflict in Lebanon where the Israeli military allegedly attacked Hesbolah locations in response to the kidnapping of several Israeli soldiers was a stark interpretation by Israel and the UK and USA at least that truth remains on one side of the battle. This alliance initially resisted the declaration of a cease-fire even in the face of significant and disproportionate casualties because the 'terrorist violence' of Hesbolah needed first to desist. Despite the tragic consequences for referent victim communities in Lebanon resulting from the violence of the Israeli 'justice response' the alliance conceded no terror there. The same was not the view of international aid agencies and other national, regional and international institutions condemning the violence on both sides in terms of its impact on victim communities.

In contest, where responses to terrorism claim the legitimate use of violence, is 'moral standing'. Those on the other hand who promote re-integrative techniques as against retribution, to more effectively manage original violence, recognise that restorative justice relies on the context of a supportive community if shaming is to be positively applied to offenders.²² Without a supportive context, dependent on a common acceptance of the moral standing of the preferred response, attempts at shaming break down as stigmatic rather than re-integrative. Resort to violence is soon reiterated.

However, in the context of terrorism/response relationships moral standing is at the centre of the contest for legitimacy. Reflective communities in which both the terrorist and the justice responses are marketed, may oppose the moral legitimacy of each other. These are communities in part galvanised through resistance to the external and oppositional claims for moral standing.²³

Particularly damaging to the justice response is the resistance of terrorist 'communities' over the basis of moral standing. Dworking's components of the moral standing of law (determinacy, integrity, coherence and wholeness²⁴) are difficult for the violent justice response to export when new institutions and processes

²² See Braithwaite J. (1989) *Crime Shame and Re-integration* Oxford: oxford University Press.

²³ Moral standing as a legal/constitutional claim to legitimate voice is discussed in Winter S. (1988) 'The Metaphor of standing and the Problem of Self Governance', in *Stanford Law Review* 40: 1371

²⁴ For a discussion off these see West R. (1999) 'Taking Moral Argument Seriously', in *Chicago Kent Law Review* 74/2:499-562.

of incarceration, interrogation, trial and punishment are directed to the terrorist opponent. These novel entities generally contradict or at least strain some of the central protections which make criminal justice in general fair and 'just'.²⁵

Victor's justice? The authorised morality.

In opening the war crimes tribunal in Nuremburg the US Chief Prosecutor observed:

The five great nations flush with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of the law is one of the most significant tributes the Power has paid to Reason²⁶.

The Nuremburg and Tokyo trials established the courts (military tribunals) and the criminal trial as the legitimate arena for holding accountable those who the victorious in war determine as responsible for 'crimes against humanity'. The eventual limitations of the 'tribunal' approach, and the emergence of a 'second order' justice paradigm which investigates truth and responsibility as opposed to fact and liability, is a feature of the development of international criminal justice.²⁷

Narveson has identified three characteristics of 'immorality' in terrorism:

- The sense of risk it causes the public at large;
- The powerlessness people have from being put at risk; and
- The 'apparent absurdity' of attacking an innocent (and disengaged) victim for a political goal²⁸.

Again, the attribution of morality and immorality relies in part on the ascription of innocence and the status of victimisation. Concepts of 'risk', 'powerlessness' 'guilt', 'injury' and 'blame', are empowered where awarded on behalf of the innocent victim against the unjustified perpetrator. Terrorist communities become the victims in very similar contexts but from the perspective of victor's justice little regard is paid to their 'victimisation', evolving as a necessary consequence of that justice doing its job.

As mentioned above, the 'morality' of the justice response (or the terrorist act for that matter) requires *either* community respect *or* super-imposed violence (force) to condition its 'standing' and ensure compliance. If the claim for standing relies on force rather than respect then the resistance of recipient communities is an important consideration in fashioning the response and expectations for its effectiveness.

'Standing' even in the legal, non-metaphysical sense has largely eluded analysis of the terrorism/response relationship. A reason for this is that if 'standing' is to have an essential influence over the prosecution of a particular version of truth or justice, then the arena within which it is claimed must be mutually respected. Particularly at this level, the 'morality' of victor's justice is contested by terrorist violence.

²⁵ For a discussion of the detail of these changes in US criminal justice and their impact on due process see, Gross E. (2002) 'Trying Terrorists – Justification for Differing Trial Rules: The balance between security considerations and human rights', in *Indiana International and Comparative Law Review* 13/1:1-98.

²⁶ Quoted in Ferencz B. (2003) 'The International Criminal Court: The first year and future prospects', in *American Society of International Law Proceedings v. 97*: p.259

²⁷ For a deeper discussion of this read Findlay & Henham. (2005)

²⁸ Narveson J. (2001) 'Terrorism and Morality' in R. Frey & C. Morris (eds) *Violence, Terrorism and Justice*, Cambridge: CUP:pp.116 at 124-125.

Credibility does not inextricably attend victory in armed struggle. This realisation, as much as any desire for justice and the rule of law lies behind the transfer of the 'enemy' from the battlefield to the tribunal. Paradoxically, the terrorist would hold victory against hegemonic domination in recent military conflict. At the same time the terrorist employs armed struggle in an effort at least to advance a cause to the point where its status in the contest is recognised as meriting a significant (if aberrant) justice response.

The ambiguity of violence as both a challenge to and a confirmation of hegemonic domination is widely apparent in the process of redefining statehood on 'the global periphery'. Here in transitional and separatist 'states' where 'global norms regarding the claims of armed groups to self determination and sovereign state-hood are changing',²⁹ violence is transacted from the status of terrorist coercion to legitimate armed struggle along with the transformation to political legitimacy and global recognition.

A difficulty with any dialectic between the terrorist and the legitimate state is the problematic composition of both entities, and not just their contested claims to authority. Conventional political theory, with its focus on the state as an arena and on its agents in domestic politics fails to consider the place of 'para-politics' and the 'deep state' within the transaction of terrorism.³⁰ Conventional international relations theory with its emphasis on sovereign states as coherent agents of international affairs, largely ignores the 'states-within-states' which are a feature of terrorist engagement in many transitional political and cultural locations. Para-politics by contrast is the consideration of 'divided sovereignty' with features such as illegal trade, substitute taxation, alternative 'armies' and mechanisms of violence. These operate beyond the reach of conventional state authority and as in Lebanon, may benefit from significant if clandestine sponsorship with the official organs of the state. These 'deep-states' make the discourse of 'victor's justice' and 'us-and-them' retaliatory control strategies anything but clear.

Victims' vengeance? The partiality of innocence.

It is the image of the victim that drives both the terrorist act and the justice response. Who has the legitimate claim to innocence is another matter in contest. The perspective from which it might be resolved depends essentially on relationships of violence which determine who is revenging whom. In this regard the connection is not only between the terrorist and the justice response but also between each and their respective 'victim communities'.

With no shared (if not common morality), and a resultant relativity in justice as a justification for violent response³¹, the struggle regresses to issues of guilt and

²⁹ For a discussion of separatist states and their application of violence to early state-formation see Reno W. (2006) 'Redefining Statehood in the Global Periphery' (unpublished conference paper).

³⁰ For a discussion of both concepts see Tunander O. (1997) *Geo-politics in Post Wall Europe: Security, Territory and Identity* London: Sage.

³¹ Up until now I have been connecting justice and violence in a fairly casual and erratic fashion. It is useful to recall particular forms of punishment as the legitimate inclusion of violence in justice.

innocence. However, as where due process at least uniformly evidences criminal justice, guilt is a consequence of the most convincing prosecution, and innocence is more a failure of proof than an absolute state. Even where the innocent victim is claimed as the vindication for violent vengeance, it is the guilt of the combatant which is more likely to move the violent response, than any deep empathy for the victim's situation. From this, violent retribution and deterrence feature more apparently in the global 'war against terror' than does any return to broader interests of human security.³²

Violent punishment as a feature of the justice response will comfort one victim community while at the same time alienating and enraging others. The divergent reception of such violent punishment either as justice or state terror, is determined by support or at least tolerance from one community, and the resistance of others.

In some respects this mirrors the localised re-interpretation of political corruption against a wider contest for democratic legitimacy. For example, the recent history of 'democratic' presidential electioneering in the Philippines has been a history of moral paradox. The wider community and their political representatives are declared opposed to illegal lottery gambling (jueteng) and yet it was the slush funds behind the lottery that bank-roles presidential campaigning.³³ The electorate understands this corruption as much as it tolerates the lottery. The intersection is blatant and recurrent. It is only when this corruption spills over into violent reprisals or is exposed by political rivals that the power of community neutralisation gives way to calls for reform.

Communities of Resistance? The alternative audience.

In the terror/justice nexus, communitarian considerations do not feature anywhere to the same extent as does individual responsibility, outside the setting of terrorist victimisation. But one of the most significant dangers in ignoring communitarian interests when analysing terrorism and justice, is to confound and confuse the importance of resistance. Terrorism defined as political struggle rather than mindless evil, gains its credibility from support communities³⁴. These communities galvanise around the terrorist cause (if not the terrorist act):

- First in recognising the terrorist as the representative of their claims for vengeance and justice;
- Next as supporting the terrorist cause in resisting 'unjust' justice responses; and
- Finally, legitimating the ongoing terrorist struggle through resisting the imposition of competing and contested meanings about justice and terror.

This process of neutralisation/legitimation may even involve flirtation with organised criminal enterprise enforced through violence as a means to maintain economic

³² For a discussion of the potentials in a 'human security' approach to the pressures resultant from social development (often argued as fertile ground for terrorism) see Jones J. (2004) 'Human Security and Social Development' in *Denver Journal of International Law and Policy* 33/1:92-103.

³³ For a discussion of this history see McCoy A. (2006) 'Invisible Industry: Jueteng Gambling and Philippine Politics' (unpublished conference paper).

³⁴ The importance of victim communities as referents for terrorism is discussed in Silke A (2003) (ed) *Terrorists, Victims and Society: Psychological perspectives on terrorism and its consequences* Chichester: Wiley.

viability and to attack the social cohesion of rival states. Therefore, for instance, the recent opening up of drug trafficking routes from Afghanistan, through Tajikistan and into Russia has been fostered through unwholesome alliances between a fragile producer state, a compromised international presence, an unstable and economically non-viable transit state, and a well developed organised crime market in the reception state.³⁵ Each referent community along the way, and their governments, employ the negative back-drop of global political domination and economic/cultural imperialism as in part justifying what might otherwise be more objectively condemned.

Another consequence of ignoring the subjective meaning of resistance in 'terrorist communities' is that the potential to reverse the bonds of cohesion as part of the justice response will be overlooked in favour of punitive attacks on legitimacy. It is throughout the experience of social exclusion in general, that genuine and creative attempts to engage with oppositional communitarian meanings and to counter resistance through positive rather than negative interaction, can diminish or even reverse competing legitimacies.

Justice requires an audience. Punishments' *significant others*³⁶ may either justify and reward violence exercised in their stead, or alternatively reject violent punishment as a further injustice against the *innocent*.

Another important consideration for the nature and legitimacy of the *justice response* is to turn communities of resistance to the conviction of 'not in our name'. No community is homogeneous and even those clustered around a defensive or resistant ideology may at least divide around degrees of acceptable violence. If the justice response can expose (rather than emulate) the excessive violence of the terrorist act then such communities should fragment over the justification for violence and its alternative realities. The susceptible segments of these communities may become unwilling to legitimate terrorism in their name if it is clearly portrayed as excessive, disproportionate or ungoverned violence.

Primacy of the Individual? The value of life.

Understandings of terrorism and its motivations, particularly of suicide bombing are often muddled by misconceptions over the value of life. The suicide bomber is dehumanised by accusations of having no respect for the lives of innocent victims. More so, the self-centredness of the act is emphasised through mocking the rewards of martyrdom. As with the earlier discussion of contested meanings, restricting the representation of victim communities to the dead and injured from a suicide bomb, ignores the more powerful justification for the terrorist act, that being revenge for other communitarian interests. In the words of one of the co-conspirators in the bombing of the World Trade Centre in 1993:

The American people must know that their civilians who got killed are no better than those who are getting killed by American weapons and support³⁷.

³⁵ This is well documented in Paoli L., Rabkov I. & Reuter P. (2006) 'Heroin Trafficking in Tajikistan: A case-study in the interaction of weak government and illegal markets' (unpublished conference paper)

³⁶ These may be both significant individuals, or referential communities.

³⁷ Parachini J. (2001) 'Religion isn't Sole Motivation of Terror', in *LA Times* 16/9/2001: M7

The respect for human life is impugned against the suicide terrorist who sacrifices himself and takes along the innocent victim as well.

With the protection of human life as an essential motivation broadcast with the justice response, the terrorist's apparent disregard for individual and general deterrence denies the instrumentalist potential of the ultimate punishment. Where the terrorist rejects the influence of punishment, only the lives and futures of the communities of resistance remaining become bargaining currency if deterrence continues crucially connected to individualised notions of the value of life.

The 'law of war' which features both in terrorist ideology and in unique justice responses to global terror, recognises the utilitarian justifications for sacrificing the innocent. Yet, on which side the sacrifice should be made in order that it is represented as either 'friendly fire' or terrorist atrocity, presents a subjective evaluation even of the sanctity of human life.

Maintaining Dichotomies? The 'us and them' story.

Definitions of terrorism as illegal and immoral, and representations of terrorists as irrational and inhumane, perpetuate the essential divide between good and evil, war and terror, legal and illegal, so essential for the 'righteousness' of a justice response. However, it is important to contest these dualities if justice control strategies are to avoid further galvanising the divide which in turn justifies terrorist communities:

In the absence of specific evidence to the contrary, it is reasonable to impute to terrorism no lesser rationality than that which social analysts routinely ascribe to other actors and which, in any event, is requisite for the conduct of their operations. Rational agents are not systematically unable to distinguish efficacious from inefficacious activities³⁸.

Dichotomies also lie at the heart of definitions which see terrorism as illegitimate 'war', aberrant politics, or misguided morality: Lomsky continues:

...any purported definition of terrorism will itself be laden with moral and political baggage. Most individuals who employ violent means in their political activities prefer to speak of themselves as 'urban guerrilla', 'revolutionary' or some such. Thus the bromide 'one person's terrorist is another's freedom fighter'. One need not accede to the implied relativism to acknowledge the absence of firm and generally accepted criteria of application for 'terrorism' and its cognates³⁹.

From this too can be drawn a more complex image of the terrorist struggle and the 'corrective' response, beyond the realm of bilateral military analogy. This is not simply a tension between states or separatists, cultures or counter-cultures, ideologies and hegemonic alliances. It is, through terrorist violence and the violent 'justice' response that the democratic state and the 'deep state' contest. It is where the 'deep state' employs terrorist violence (and its infra structure and foot soldiers), as a

³⁸ Lomasky L. (1991) 'The Political Significance of Terrorism' in R. Frey & C. Morris (eds) *Violence, Terrorism and Justice*, Cambridge: CUP:pp.86-115 at 87

³⁹ Lomasky (1991): pp.86-87

precursor to manipulating the justice response to confuse and violently undermine democracy as the functional authority for apparent state governance.⁴⁰

The suggestions that there can be, or are meaningful relationships between terrorism and justice responses verges on the heretical in a political climate where truth is no longer marketed as relative, justice is only subject to a single 'democratic' morality, blame travels in only one direction and innocence crosses no violent divide. Yet, this simple and singular political reality seems incapable of promoting easy effective or lasting victories in the war on terror. Such may depend on a more realistic recognition of the place of violence in struggles for global governance that recognises and explores symmetries as well as difference.

⁴⁰ Recent histories of 'deep state' subversion are contained in Tunander O. (2006) 'Democratic State vs Deep State Approaching the Dual State of the West' (unpublished conference paper).