Terrorism's Path: The Protection of the People in the Violence of our Era

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IS A STRATEGY AND/OR POLICY OF DETERRENCE POSSIBLE IN COUNTER-TERRORISM?

There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things.
– Niccolò Machiavelli

This paper is an investigation on the conflict of our generation. On a bright September morning, airliners ploughed into the New York skyline, fear was born and hope erased. Such an act, in an era that George Bush had labelled the 'new world order', was meant to be a time to mark a rebirth of the "affirmation of the strengths and power and vitality of government by the people" in the fulfilment of a period of peace, freedom and prosperity "as history has never before witnessed".[1] Yet emulating from the rubble of that autumn morning was the sad reality that violent conflict, acts of inhuman cruelty and destruction remain not only confined to the developing world, but can target the very heart of the world's great cities. In Shakespeare's *Julius Caesar,* Mark Antony proclaims, "Cry 'havoc' and let slip the dogs of war," as this embodiment of violence is not only a component of "domestic fury and fierce civil strife," but also a warning as to the danger of violence itself.[2] It is in this era in which the public have become terrorized by terrorism, that the world came to a sudden halt when planes fell from skies and into building. A war on terror, seemingly without end, was launched to redress suffering and to intervene against those perpetrators of not just criminal acts but of terror itself.[3] From the ashes of this violence arises the need to not only investigate the course of our actions, but also our understanding of those forces and phenomena to which we are committing both blood and treasure. When confronted with not only a crime, but also a challenge that affects life itself, what is there to do?[4]

The challenge of combating terrorism forces us to not only examine past attacks, but also to understand the need to prevent, arrest and reconcile future transgressions against ordinary and innocent people. When those states that profess freedom fight terrorism, they are defending the proposition that individual private political life should be publicly protected. Yet does such prevention and protection require us to use "coercion, deception, secrecy" and the violation of the rights that we hold paramount?[5] The question forces us to not only examine the lengths to which society will go to combating a political evil, but also to what extent we are willing to invoke the 'lesser evil' in countering terrorism. The wars against terror, however, have already begun and it might take "some time before the nature and composition of these wars are widely understood."[6] Unlike previous conflicts that marked battle between neighbours against neighbour over questions of territory, these news wars seek to provide international security and "make it impossible for our enemies to impose or induce states of terror."[7] What is at issue is not only the actual counter-terrorism practices, but the legitimacy of their very enforcement. This debate centres not only over the liberal qualities of the international order, but also the willingness of agents within that order to overcome questions of moral hazard. If the study of International Relations is an enquiry to find solutions to conflicts besides war, challenges around our responses to terrorism go to the heart of our academic enterprise.[8]

Such an investigation will not, however, be easy. Ours is already an "epoch in which the brutality of humankind has erupted and flowed more expansively than ever before."[9] The purpose of this assessment is to gain an appreciation of how terrorism operates and the extent to which it can be prevented or deterred from impacting the ordinary. On

both fronts, we do not have the audacity to claim that our analysis will stand the test of time. What has been attempted is an exploration of those issues that determine our policy alternatives, as we offer but possible solutions and leave readers to determine their validity. If we wish to reposition the debate on counter-terrorism three steps are required. Firstly, we must construct a framework for understanding terrorism. It is difficult to analyse and overcome a threat when such challenges are obfuscated by a litany of various competing definitions. In having identified a new understanding of terrorism, we must then examine the nature of its violence in the context of a changing pattern of conflict that is likewise reframing the sovereignty discourse. As such, sovereignty cannot exist in a vacuum, but is rather a conditional concept that requires consent, legitimacy and acceptance. In redrawing the nature of sovereignty, we can lastly provide prescriptive elements that allow for the defence of individuals from terrorism. It is only then that we can "leash the dogs of war" and transform our antiquated approaches to counter-terrorism.

Terrorism's Definition

When the ignorant are taught to doubt they do not know what they may safely believe.
– Justice Oliver Wendell Holmes, Jr.

In the hours after the attacks on the twin towers, the world witnessed not only a political attack of barbaric proportions, but also the proliferation of a phenomenon that remains as poorly understood as overused. On any given day, one can read the newspaper headlines of "economic terrorism," the threat of "telephone terrorism," or our personal favourite, "sun-tanning terrorism".[10] The public discourse that has emerged since al-Qaeda's strike on the United States remains as hotly contested in bars and pubs as it does in the academic arena. Terrorism, if anything, has become so ingrained in our discussions that Arnold Schwarzenegger may have best highlighted this growth in interest when he remarked, terrorism "it's just like I use my muscles as a conversation piece, like someone walking a cheetah down 42nd Street." The problem is that whilst we can all denounce terrorism, we cannot agree on what it is. Might Louise Richardson be right when she simply asks "is terrorism like pornography: we know it when we see it?"[11]

If it is, we have all seen it far too often. There has always existed confusion and charge with the very use of the word 'terrorism' or 'terrorist'. In speaking at the UN General Assembly in 1974, Yasser Arafat sought to infuse the concept of justice within the distinguishing features of those mislabeled terrorist fighters:

The difference between the revolutionary and the terrorist lies in the reason for which each fights. For whoever stands by a just cause and fights for the freedom and liberation of his land from the invaders, the settlers and the colonialists cannot possible be called terrorist, otherwise the American people in their struggle for liberation from the British colonialists would have been terrorists; the struggle of the Asian, African and Latin American peoples would also be terrorism, and many of you who are in this Assembly Hall were considered terrorists… As those who fight against just causes, those who wage war to occupy, colonize and oppress other people, those are the terrorists. Those are the people whose actions should be condemned, who should be called war criminals: for the justice of the cause determines the right to struggle.[12]

The problem we have is that in failing to compile a universal definition that can be applied to terrorism, the divide between combatants in any political order will always come down to questions of legitimacy. Who is a freedom fighter and who is fighting freedom itself? Such uncertainty allows for the exploitation of the emotive reaction when confronted with possible acts of terrorism and leads those seeking nuances to be denounced as being in a "terrorist free-zone unacceptable to decent people."[13] How can terrorism and terrorists ever be fully understood or examined, if our understanding into their motives, groups and structures – their identity – is subject to such incendiary language? If we wish to deter terrorism, we must first understand it.

At its most basic level, terrorism is asymmetric violence but that does not mean that all violence is inherently terrorism.[14] Such irregular violence has been with us since at least David took on Goliath. Similarly, the use by religious, ethnic and political groups to inspire fear through violent actions has been with us for as long as violence itself has been a part of the human condition. "In the first-century Judea, Jewish terrorists struggled against the Roman occupation. One such group known as the Sicarii (dagger wielders) often attacked Jewish collaborators,"

while yet another group, the Zealots, "brazenly slit the throats of Roman officials."[15] By striking their opponents in open markets in broad daylight, the Zealots were able to not only attack their enemies but also blend into the fabric of the crowds upon completion of their attack. Their protection from retribution was in the nature of the fear they imposed upon any potential Jewish informants. In other words, they terrorized those not even directly subject to their violence. This desire to create a culture of fear and terror within a society is a trademark of modern terrorism that itself can be directly tied to seventh-century India, where the Thuggee cult ritually strangled travelers as sacrifices to their Hindu God of Kali.[16] Over the course of some six centuries, this cult not only exploited innocent travelers for a religiously inspired political exercise, but also perpetrated the mass murder of some 500,000 persons.[17] Yet it took until the eleventh-century's Ismaili Fedayeen to merge the religious terror of the Zealots and Sicarii with the mass-casualty rates of the Thuggee. This essentially Shi'a sect of Islam attacked Christian occupiers and Sunni officials who refused to adopt their prescriptions of Islam. In not only kidnapping and murdering their targets, they also adopted an early form of suicide attacks as their victims became increasingly better protected by bodyguards, resulting in the need for a cult of martyrdom that promised "the abundant companionship of virgins" in death.[18] Our point is not however to examine the history of these groups, but rather to recognise that they have entered into the lexicon of mankind – assassins, thugs, zealots – and can have parallels drawn between these historical groups and modern terrorists. The references to "empire, religious fanaticism, the targeting of collaborators, ritual killings, suicide missions, and the rest will be familiar to anyone who has lived in the first decade of the twenty-first century."[19]

This does not, however, mean that terrorism has remained unchanged during the course of its history. First appearing in the 1798 *Dictionaire de l'Académie Française*, terrorism was defined as the "système, régime de la Terreur" – the Terror that had marked the Jacobean call to arms during the French Revolution.[20] It was not until Edmund Burke wrote of the "thousands of those hell hounds called terrorists" that the term developed its present negative connotations.[21] Although history has by its wayside various terrorist groups, from those already mentioned to the more modern incarnations of the Peruvian Shinning Path, Aum Shinrikyo and al-Qaeda, we remain at a crossroads over who and what is a terrorist. In the most widely cited study on defining terrorism, Alex Schmid and Albert Jongman identify 109 different definitions, with an equally diverse range of qualifying elements.[22] Yet such a range has not stopped actors from attempting to define terrorism, including Schmid and Jongman themselves who view the phenomenon from the lens of both a tactical and strategic means to achieving a particular mission:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organisation), (imperilled) victims and main targets to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.[23]

Although Schmid and Jongman's definition achieves a wide-ranging nature, there appears to be a growing movement in academia to shift the focus away from the impact of terrorism upon the targeted population and towards a focus on the morally unrestrained means of achieving a particular end. Such a change seems to reinforce the image of terrorism presented by Brian Jenkins that we should identify it "by the nature of the act, not by the identity of the perpetrators or the nature of their cause."[24] It is not, however, just academics that cannot agree on what constitutes terrorism, as the wide range of both domestic and international legal definitions of terrorism can attest towards. Where the United Nations is concerned, terrorism is a non-state activity conducted by individuals operating outside the auspices of the accepted international order:

Criminal acts, including against civilians, committed by non-states with the intent to cause death or series bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act.[25]

This contrasts with those definitions applied by many member states of the United Nations, including the United

Kingdom and United States, who instead allow for state-led terrorists from operating against a "politically motivated violence perpetrated against noncombatant targets by groups or clandestine agents."[26] The only agreement we seem to have is that we do not like terrorism – whatever it is.

Our dislike of terrorism however does not abdicate our responsibility to define it still. As Rosalyn Higgins, the immediate past-president of the International Court of Justice, wrote: "Terrorism is a term without any legal significance. It is merely a convenient way of alluding to activities widely disapproved of and in which wither the methods used are unlawful."[27] If our aim is to create a means of either preventing or deterring terrorism, we must have some international agreement on the nature of that definition. Carlos Diaz-Paniagua, who coordinated the negotiations of the proposed United Nations Comprehensive Convention on International Terrorism, noted, on his part, the need to provide a precise definition of terrorist activities in international law is essential to prevent, condemn and punish such actions:

The definition of the offence in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society's condemnation of the forbidden acts. Second, it facilitates agreement. Since states tend to be reluctant to undertake stringent obligations in matters related to the exercise of their domestic jurisdiction, a precise definition of the crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogeneous application of the treaty's obligations on judicial and police cooperation. This function is of particular importance in extradition treaties because, to grant an extradition, most legal systems require that the crime be punishable both in the requesting state and the requested state. Fourth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts defined in the treaty in conformity with their human rights' obligations. The principle of *nullum crimen sine lege* requires, in particular, that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts.[28]

In order to create such a global counter-terrorism regime, we must be willing to provide a definition that can be applied internationally. Modern terrorism might well be most closely identified with the image created by Tamar Meisels, "the international random murder of defenceless non-combatants, with the intent of instilling fear of mortal danger amidst a civilian population as a strategy designed to advance political ends."[29] Even with such variance across the academic and political spectrum, we believe that there are three principle objective criteria that best identify terrorist activity. Firstly, terrorism is political.[30] Through having goals, which might be as simple as the creation of fear or as fanatical as the rebirth of a pan-Islamic caliphate, terrorists aspire to a change of the political status-quo. Their acts and existence challenge not only the state's monopoly of violence but also the claims to legitimacy that justify and permit state action. Terrorists are political, if they were not they would be mere criminals.[31] Secondly, terrorists use violence as an instrument of fear upon an unsuspecting and indiscriminate population. They seek to instill "fear, dread, panic, or mere anxiety" through the propagation of destruction and the uncertainty of future attacks.[32] Lastly, only non-state actors can practice terrorism. Although states can provoke and sponsor terrorism, such individuals and organisations operate in "clandestine groups" that are outside the sphere of state authority.[33] In taking these contributing characteristics of terrorism, we would define the phenomenon as:

The imposition of violence by sub-state actors, using means that society deem to be illegal, to create a culture of fear amongst a general population for the purpose of advancing a political motive that remain undefined or unrealistic.

In having arrived at an understanding of terrorism, we can now examine how such actions relate to the changing nature of warfare. We are at a time in the development of the history of man where terror is spread not just for territorial gain, where combatants cannot be distinguished from civilians and when the nature of these "bad, mad, or sad" perpetrators of terror threaten the valuation that all people are equal in all places.[34]

The Nature of Violence: Death and Disorder's Path

Then came the barbarians. They too valued highly the little God. Only they would crush him under their heels and add him to their dishes.

"From Mythology" Zbigniew Hebert[35]

In *The Aardvark is Ready for War*, James Blinn's modern take on *Catch 22*, the hero is asked about fear in the days of the Gulf War:

I am afraid of everything. You think war scares me? It does but so does nuclear winter, and fall out from Chernobyl, and Legionnaire's disease and killer bees… and crude nuclear devices and strip mining, and vanishing rainforests and AIDS … and rising interest rates and failing interest rates and people with accents and Third World population growth… and botulism and E. Coli and unnamed Amazonian viruses and the little petro-skin floating on my coffee. I am afraid of my ignored and things I can't see. But the main thing that frightens me is fear. Fear of fear, that is what I am suffering from.[36]

In the days and years since the towers fell and the threat of terrorism intoxicated our senses, the world of today is one where we are all products of an age of risk. Our fears are not of what we know, but the possibility of the unknown occurring. As terrorism itself is conducted through acts of chance upon an otherwise unprepared people, the fear that we have from it is a direct by-product of the age in which we now live.

Given the vastness and apparent vulnerability of us all and the seeming dedication of the terrorists… one would expect there to be a massive number of terrorist attacks… What's to stop terrorists from shooting at people in shopping centres, collapsing tunnels, poisoning food, cutting electrical lines, derailing trains, setting forest fires, blowing up pipes, causing massive traffic jams?[37]

The challenge of the threat that we now face is not only limited to actual attacks, but also our perceived thinking that attacks will indeed occur. "We think terrorists will attack; so they think we think terrorists will attack; so they think we shall intervene; so they will attack; so we must."[38]

The pre-emptive nature of such thinking has become embedded in our narratives over the threat posed by modern international terrorism. The fear felt in New York, Washington, Madrid and London after those cities were attacked reverberated with countless more than just the millions of local residents. In this age of terror, we have become afraid of terrorism and terrorists.[39]

Terrorists have access to more powerful technologies, more targets, more territory, more means of recruitment, and more exploitable sources of rage than ever before. The West's twentieth century approach to terrorism is highly unlikely to mitigate any of these long-term trends… The means and ends of terrorism are changing in fundamental, important ways; but the means and ends of the strategy being crafted in response are not.[40]

The wars of today are, however, wars of terror. Just as past warfare affected the development of the state's constitutional powers, modern warfare, aided by the revolution in military affairs, has reformulated the nature of war and peace. Today's wars are fought with machetes against limbs, bombs on buses and poison gas in subways. The jungle camouflage of old wars has been replaced by those that use the camouflage of cities to perpetrate mass crimes against those innocent enough to use mass transit. The nature of warfare, like its cousin terrorism, is being supplanted by the victimization of the civilian as the direct objective of violence, rather than as a collateral cost. The purpose of this warfare is not first to seize territory, but rather to terrorize a civilian population into acquiescence.[41]

Since the emergence of modern states, only they could make war. While others could battle, the necessity of resources, the attempts to claim (or reclaim) capitals, the enemy armies to capture and capitulate, and the citizens to then control were options available only to states.[42] War for many centuries has been seen as "a matter between states – constitutional entities created by and wielding law – and war carries with it the constitutional evolution of five centuries of interstate conflict."[43] The monopoly on legitimate uses of violence has its roots in the Clausewitzean insistence that war is a "rational instrument for the pursuit state interest: 'the continuation of politics by other means.'"[44]

With this pursuit of violence, there arouse a socially acceptable and sanctioned activity of killing that was to be

governed by certain principles:

To distinguish war from mere crime, it was defined as something waged by sovereign states and by them alone. Soldiers were defined as personnel licensed to engage in armed violence on behalf of the state… To obtain and maintain their licence, soldiers have to be carefully registered, marked and controlled to the exclusion of privateering. They were supposed to fight only when in uniform, carrying their arms 'openly' and obeying a commander who could be held responsible for their actions. They were not supposed to report to 'dastardly' methods such as violating truces, taking up arms again after they had been taken prisoner, and the like. The civilian population was supposed to be left alone, 'military necessity' permitting.[45]

Such principles are premised upon the long-standing tradition of limits on warfare, prescribed not only to limit the actions of sovereigns, but also to protect those in and subject to conflict.[46] It was, as Shakespeare wrote, to safeguard those "expressively against the law of arms."[47] Today's new terror wars are, as Mary Kaldor argues, but:

[a] phenomenon of our time, just as the great conflicts between national armies dominated the first half of the century and ideologically-fuelled guerrilla wars the post-1945 decades… In a 'new war' a motley mixture of paramilitary groupings, local cadres, and army units with no defined command structure [skirt] major battles, but seek… control in different ways: they shape the local population in their own image… by terrorising [them] or by killing en masse… The militias pay their own wages by extorting money … by looting, by trading on the black market, but also exploiting the opportunities of an increasingly global community, for example in gifts from wealthy émigrés abroad or by diverting humanitarian aid.[48]

The essence of this change is to highlight the relationship between the general shifts in warfare with those practices of terrorism. The increasing barbarity of either is a pattern of the age in which we live. The risk, however, from transnational terrorism, "as represented by al-Qaeda" has the potential to "undermine the integrity and value of the state itself," as its course seeks to destroy the social contract of the state by undermining "its ability to protect its citizens from direct attack. This form of terrorism is a threat to sovereignty and the legitimacy of the state itself."[49] Such transformations in the practice of violence force us to re-examine the nature of sovereignty in the international order. The problem is that the sovereignty discourse presupposes a degree of autonomy between member states that simply no longer exists in an inter-connected and inter-vulnerable world. Modern violence often begins in one state, is planned in another and can end with body bags in yet another. Just as the commoditisation of the international capital markets has diversified the spread of finance, the globalising nature of violence has followed in lock-step fashion. This is the dilemma of spillover in the age of risk. In such a time as ours, our preconceptions on state sovereignty must be re-examined. Sovereignty must be seen not as an absolute concept, but rather one that has limits placed upon it. Although many would deny such conditioning on the concept itself, we, to use Nicholas Onuf's helpful phrase, live "in a world of our own making" and can thus examine and re-examine concepts of our own construction, should we wish to reframe a particular idea's understanding.[50]

It was this concept of sovereignty that sought to address the challenges of an international order founded on the premise that when the "will to power is transferred from small and frustrated individuals to the collectivity of the state," it takes on ever greater threat, until forming "an all-round struggle for survival".[51] It is from within this struggle for not only power, but influence from the "insecurity of an anarchical system of multiple sovereignty" that we recognise three principle types of global interaction: the Hobbesian order of perpetual hostility between actors; the Lockean system of mutual recognition but constant rivalry; and the Kantian vision of conflict resolution without violence.[52] The problem, however, with contemporary discussions on the origins of sovereignty is that they mostly ignore the people. As men are makers and practitioners of the environment in which they operate, we should instead view sovereignty as acts of people, by people and against people. Although man was originally constructed as "thankless, fickle, false and greedy of gain", we require an order that in exchange for our oath of service, forces our actions to operate within boundaries.[53] As such are our actions that absolute sovereignty implies that the right to liberty is the right to do wrong.[54] Such wrongs, however, are not without limitations. The "true source of political power" is to act with informed consent, as the "state of Nature has a Law of Nature to govern it, which obliges everyone to consult reason," which limits the scope of state action within the framework of rationalised, reasonable limits.[55] The point of natural law is not to embolden the conditions of human sociality or even the common good, but

rather that any form of the social contract is an exchange between the rights and remedies sought between governors and the governed.**[56]** The provision and exercise of state powers must be viewed within the limits afforded to the ruler by those she rules over.

The crisis, however, within sovereignty, as Kofi Annan argued, is that it was "never meant as a license for governments to trample on human rights and human dignity."[57] A right to rule has always been premised upon the right of responsibility. Governing is a matter of maintaining the legitimacy of the state.[58] Although the consequences of membership within any political community have always been involving, the limits placed by the international community, as represented by the United Nations, has long been premised on the vision credited to Emmerich de Vattel: an injury to the citizen is an injury to the state.[59] The litmus test applied to state action is not if it can be done, but if it will be accepted. We should thus re-read the preamble of the American Declaration of Independence accordingly:

We hold these truths to be self-evident: that all men are created equal [that is, that no man can be another's sovereign]; that they are endowed by their Creator with certain inalienable rights [that is, that certain powers inhere in the individual and cannot be sold or given away – alienated to the State, which as a consequence can therefore never be more than a limited sovereign]; that among these rights are life, liberty and the pursuit of happiness [that is, that a partial list of the necessarily retained rights over which the government cannot be sovereign are those personal decisions that govern individual identity – whom to marry, where to live, what livelihood to pursue, how to worship, what to think and write, etc.]; that to protect these rights, governments are instituted among men [that is, that the purpose of government is not to grant rights, but to protect them], deriving their just powers from the consent of the governed [that is, only those delegable powers that are in fact allocated to government by the People can serve as the basis for legitimate action by the State].[60]

The key sentence is "that to protect these rights, governments are instituted among men, deriving their just powers from the consent of the governed."[61] The nature of sovereignty and its legitimate exercise forces states to act in ways commiserate with a relationship that bases acceptability upon acceptance. The appropriate exercise of power by the state cannot come at the expense of the rights of people.[62]

Even if, however, the domestic relationship between citizen and ruler were to be set aside, the international order itself is similarly conditioned and constrained. Such an order operates in an environment of "less than full anarchy," for even the most powerful states recognise the necessity of international practices and policies that are meant to limit their freedom of action.[63] Sovereignty is limited not only by the thoughts of citizens, but because the abilities of classical sovereignty is itself constrained by the actions, decisions and choices of every other sovereign within the international system. This leads to challenges not only over legitimacy but also of acceptance. As "the custodian of the seals of international approval and disapproval," through the representation of existing states, membership in the international community is bestowed as the "definitive acknowledgment of independence" and sovereignty, and can only be so decided by the collective voice of the existing international community, the United Nations.[64] This entry into the community of states is predicated upon an adherence to the values of the international order.

To maintain international peace and security… to take effective collective measures for the prevention and removal of threats to the peace… [And] to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction to race, sex, language, or religion.[65]

In these words, written by a generation destroyed by wars, are embodied those values that "we, the people" hold as paramount. The "universal respect, for and observance of, human rights" that are fundamental to the "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations".[66] This is not a doctrine of Western triumphalism, but shibboleths born out of the recognition of man's propensity for evil.[67] It was from the horrors of war and carnage, that "outraged the conscience of mankind," that the creators of the United Nations imposed limits on our barbaric possibilities.[68]

Our ability to decipher what constitutes a wrong, what celebrates right, and what warrants a punishment speaks volumes to the existence of a global system of rights, wrongs and remedies. The violations of yesterday and yesteryear are but testaments to our inaction and the violation of not only global values but of the system itself. Such crimes against men like our fathers and women like our mothers are perpetrated not just against individuals but also humanity itself. If sovereignty is to have value, we must propose a rule: "a state of terror can never be sovereign".[69] Those leaders that seek to enact or sponsor the spreading of fear should never be permitted to hide behind the impunity of sovereignty. Neither should, however, the international community fail to respond to challenges that warrant its attention simply out of an outdated respect to sovereignty. The challenge of international terrorism is of such consequence to all states and their people that effectively combating this new type of violent conflict will require a global effort of resolution. As the British statesman Douglas Hurd put it:

The world is run on a paradox. On the one hand, the essential focus of loyalty remains the nation state and there are nearly two hundred of these. On the other hand, no nation state, not even the single superpower the United States of America, is capable of delivering to its citizens single-handed the security, the prosperity and the decent environment which the citizens demand.[70]

It is within this world that we must confront the challenge of terrorists not seeking "freedom in the democratic sense of the term, but rather their own freedom to use the gun and the bomb to impose their own petty minority tyranny on the majority."[71] When confronted with terrorism, how can we combat it?

Ending Inaction: A Call to Action

Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, in order to assure the survival and the success of liberty.
– John Fitzgerald Kennedy

When speaking about state responses to terrorism there is always one question at the heart of any discussion: How far will the state go? Pierre Trudeau, the-then Canadian prime minister, set the stage for such debates when, during the worst moments of the October Crisis of 1970, he was asked the extent to which the Government would enact measures contrary to civil liberties to combat terrorism. His instantly immortal response of "just watch me" has become as much a part of Canadian folklore as it has transformed our understanding of state reactions to terror.[72] The question, however, is as old as the state itself. In writing on the decline of the Roman Empire, Edward Gibbon presents us with antiquity's challenges that are as eerily familiar to our own today.

On the appointed day the unarmed crowd of the Gothic youth was carefully collected in the square or forum; the streets and avenues were occupied by Roman troops, and the roofs of the houses were covered with archers and slingers. At the same hour, in all the cities of the East, the signal was given of indiscriminate slaughter and the provinces of Asia were delivered, by the cruel prudence of Julius, from a domestic enemy, who in a few months might have carried fire and sword from Hellespont to the Euphrates. The urgent consideration of the public safety may undoubtedly authorize the violation of every positive law. How far that or any other consideration may operate to dissolve the natural obligations of humanity and justice is a doctrine of which I still desire to remain ignorant.[73]

The question that arises is what lesser evils may a society commit when it believes it faces the greater evil of its own annihilation? This remains one of the "oldest questions in politics and one of the hardest to answer."[74] If we are to

deter terrorism, we must examine it.

Although many popular commentators denounce terrorism and terrorists, as "semi-literate at best," such a manipulation of the causal and individual rationality for violence belies the seriousness of the threat that we are facing.[75] We must likewise not ignore the rational relationship between state thinking and state action. If we are to understand the nature of terrorism and counter-terrorism, we must recognise the justifications of action (agency) within a particular environment (structure). Examining both the privatisation of violence and the security dilemma provides us with a great value of insight into the rationalisation of the terror wars. In both cases, we should remember that a pure model of rationality would dictate that actors would prefer to strike a bargain in advance of war, thereby achieving goals without any costs.[76] Such a model, however, assumes a fully functioning order that is unlikely to be operating effectively when one group is attempting to replace the legitimacy of another and where there exists the incentive to misrepresent, a lack of credible commitment between parties and certain indivisible issues that fail to allow for civilised redress.[77] Unlike murder, terrorism is a political crime committed for a political purpose that utilizes the masses to perpetrate its terror. This creates a "breakdown of authority and subsequent anarchy" as terrorists and often state-responses to them privatize violence and transform it into a society-wide manifestation of the Hobbesian "war of all against all".[78] This allows for collective action to induce the "tipping phenomenon, where individual identities are gradually enmeshed with group identities" that allow for the exploitation of evil actions by rational means.[79] Such an acute feeling of vulnerability highlights not only the result of the personalisation of violence but also the challenges arising from the security dilemma in a state's counter-terrorism techniques. What is being challenged is what Martha Crenshaw has correctly identified as part of the spiral model of counter-terrorism: "the population's tolerance for both insecurity and repression."[80] The problem with both terrorists and counter-terrorists is that "the utter impossibility of deciding who are guilty and who [are] innocent" can facilitate trigger-happy reactions that not only deepens the conflict but also realigns individual incentive structures away from an otherwise peaceful resolution.[81] Such a reframing of the incentive environment can result in "individuals co-ordinating around focal points… and resorting to pre-emptive violence, or aligning with… [terrorist] leaders who do so, because of security fears."[82] This allows for incentives to violence to be compounded by uncertainty and the high costs of inaction: "they must kill so as not to be killed" themselves.[83]

The result of both the personalisation of violence and the security dilemma is the transformation of our understanding of terrorism and counter-terrorism violence. Violence does not break out without a catalyst, an initial terrorist attack for instance, but people can be seen to react to an incentive structure created within their environment. Their individual or group goals might be irrational in themselves but their actions might be rational if they are reacting in an efficient way to their incentives. What both the terrorists and the counter-terrorists are hoping to exploit is the support of the people. When either launching or combating terrorism, we are faced not with a spiral of violence but rather a cycle of violence that depends on the support of the masses to ensure success on either front. Governments that fail to have the support of their people, fail in their efforts to combat terrorism effectively. When the Spanish government of José María Aznar sought to portray the March 2004 terrorist attacks in Madrid as an act by ETA, irrespective of the evidence to the contrary, the electorate swiftly moved against the ruling People's Party.[84] When the providers of the government's legitimacy – the electorate – had seen the extremes of Aznar's approach to counter-terrorism, they concluded a change in strategy was needed and the opposition exploited that political desire.[85] Similarly, the backlash in the 2006 mid-term American elections can likewise be seen, in part at least, as a shift in the people's disappointment of the incumbent Republican party's counter-terrorism tactics.[86] Although state reactions to counter-terrorism are significant, terrorists themselves often run the risk of overplaying their hands and losing any support they might have had in any given environment. The greatest hope, however, of using rational choice in reducing violence was seen during the recent Iraqi insurgency. As the extreme actions of al-Qaeda proved to disenfranchise supporters, and in turn create Sunni paramilitary forces, the popular legitimization of violence ceased when it lost the support of the people.[87] In having overplayed their hands, al-Qaeda and its allies lost the support of its enabling community, as the Coalition's 'surge' sought to reshape the incentive structure within the Iraqi theatre. By having an increase in soldiers and a renewed political will, the Coalition raised the costs of supporting the insurgency relative to supporting the Coalition and the government in Baghdad. Although this particular example might be one of counter-insurgency, one cannot effectively remove the similarity between the spreading of fear found in terrorist attacks and those used by the insurgents (many of whom were affiliated to domestic and international terrorist groups) in Iraq.[88] The result of this action and reaction to violence is not a continuing spiral towards ever-greater violence, but rather a

cycle that limits that violence by influencing individual and collective incentive structures. The importance of this is that cycles of violence can be exploited for wider gain and that a timely counter-terrorism strategy can help re-shape the incentive structure within an environment away from the horrors of terrorist actions.

We should not, however, conclude from this that fighting terrorism is easy. The struggle we face in the terror wars will be a long-term challenge that demands multidimensional approaches.[89] In this fight against terror, our values and inclusive nature against an exclusionary partisan exercise of violence should prove victorious. If we are to combat terrorism, three steps are required. Firstly, terrorism should not be confused as either a tactic or a totalizing ideology. Terrorism is a strategy that uses various tactics (kidnapping, suicide attacks, assassinations, airline hijackings, etc) to influence and control a particular political agenda. Should we wish to be successful in combating terrorism, we must mitigate the impact that both the strategy has on our populations and the ability for particular tactics to be successfully implemented.[90] If we can recognise the strategic nature of terrorism, we can likewise implement counter-terrorism strategies of our own that seek to address human catalysts that can drive terrorist appeal (poverty, discrimination, religious subjugation, etc) and the weapons of terror that they use. Secondly, states must be more willing to co-operate with one another. As we have examined previously, modern violence ignores state borders. The threat and spread of terrorism is increasingly international in both nature and scope of operation. We must recognise that a terrorist in one place is most likely a terrorist in another, or as Paul Wilkinson argues, "one democracy's terrorist is another democracy's terrorist."[91] The challenges that the state system faces from international terrorism are too complex and global in nature to be limited by an antiquated evaluation of sovereignty. No option, including out-right intervention, should be removed from the public policy discourses required to combat terrorism. Lastly, if terrorism is to be combated or retarded it must be fought internationally with a coalition of those states opposed to groups of terror. If we wish to fight terrorism, we require a global anti-terrorism regime to achieve that end.

Three questions are central to our proposed programme:

(1) Is there a cause?

We cannot simply fight a universal terror war everywhere and anywhere. There are many states who themselves terrorise their citizens, but such actions are outside the scope of counter-terrorism policies as defined herein. This would make action warranted to avert future attacks (ie Afghanistan), stop the spread of weapons of mass destruction that can fall into the hands of terrorist groups (ie Iraq) or safeguard strategic interests that are necessary to fight terrorism (ie the Straits of Hormuz), but invalidate claims to protect politically sensitive areas (ie Tibet) or limit domestic police actions (ie Saudi Arabia).

We must likewise distinguish between international counter-terrorism approaches and those operations confined to the domestic realm.

(2) Is there a threat to 'international peace and security'?[92]

The wars on terror that warrant intervention are those that risk challenging global peace and security. There will always be conflicts with violence and universal peace is unlikely to ever truly exist. In the safest of states murders routinely occur, rapes often go unreported and the guilty can escape punishment. Those actions that warrant intervention are those that not only shock our moral fibre, but spillover into an even more deadly cycle of disorder. If the current era will be defined by challenges to the nature of world order, then such violence cannot be allowed to spread. Besides an obligation to uphold the principles of the global community, the UN Charter bestows upon those members of the legitimate international order the responsibility to confront challenges that threaten our peace and security. We have a duty to protect the system. As Lord Atkin ruled in establishing the duty of care:

We must take reasonable care to avoid acts or omissions, which we can reasonably foresee, would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that we ought reasonably to have them in contemplation as being so affected when we are directing our mind to the acts or omissions that are called in question.[93]

In this internationalised era, what the duty of care obligates is the recognition that although the costs of action might be high, the costs of inaction might be higher still.

(3) How will we achieve our ends?

Wilkinson best addresses the issue of attempts at counter-terrorism when writing:

The primary objective of counter-terrorism strategy must be the protection and maintenance of… the rule of law. It cannot be sufficiently stressed that this aim overrides in importance even the objective of eliminating terrorism and political as such. Any bloody tyrant can 'solve' the problem of political violence if he is prepared to sacrifice all considerations of humanity, and to trample down all constitutional and judicial rights.[94]

Such remarks point to the debate in counter-terrorism strategies between the 'war' and 'criminal justice' approaches. Both models, however, ignore the centrality of popular opinion in deterring terrorism. As examined previously, such popular demands will most likely play a role in which model a state chooses to enact in a given situation. Irrespective of such choice, we should not however allow for the qualification of terrorists or groups of terrorists. The use of political violence for the means of furthering a particular ideology can have no legitimacy in the current international system and should not be afforded such respectability by any actor in the system. There is no place for the builders of schools and hospitals to deprive others of learning or to cause new victims for other medical wards. The people themselves, however, must judge such acts. Clandestine acts of violence should not be met by equally clandestine acts of injustice. The victims of terrorism must have their right to confront the perpetrators of their suffering in a judicial setting that allows for the passing of judgement upon those who seek to challenge the foundations of a given society.

In able to consolidate a global regime of enforceability, we must gain the support of those states of consent that are instrumental to the creation of the proposed doctrine. We must play a two-level game, where there are both foreign (Level I) and domestic considerations (II).[95] The institutionalisation of this regime would provide a credible commitment by proscribed states against "supporting, endorsing, or facilitating any group" that unleashes terror on people.[96] In forming this commitment, those states that proclaim international values but fail to practice them can be effectively marginalised. An international regime, however, would allow states to lower their costs in the domestic realm (Level II) by ceding that their actions are necessary to remain a legitimate international player. As no state wishes to be associated as a supporter of terror, such an action might alleviate injustice domestically, strengthen the forces of moderation and modernisation, and remove pockets of protection for international terrorist groups that hide behind the protection of a state. If states co-opt into the regime, it likewise makes it more costly for other states to resist joining (Level I). As no one wants to be left on the playground alone, the compelling logic of belonging to a cause that embodies the values of the international system would also bring those states at risk of terrorist attacks into a community that guarantees its intervention to address the potential for such violence. We can therefore eliminate the accusation of unjust and unwelcome counter-terrorism practices as membership itself in the regime prescribes the ability for its actors to be judged if they fail to abide by the conditions of the regime.

Conclusion: An Era's Hope

It is not the function of the poet to relate what has happened, but what may happen that is possible according to the law of probability or necessity. The poet and the historian differ not by writing in verse or in prose… The true difference is that one relates to what has happened, the other what may happen.
– Aristotle, *Poetics*, IX[97]

The purpose of this paper was to investigate the nature of counter-terrorism in the violence of our age. Maybe it is the curse that all contemporary politics is not a creation of a Clausewitzean experiment in war, but rather a journey into things that we can only begin to understand. As Tony Blair remarked, we might well only be "at the beginning of the end of the first phase."[98] From the toils of terrorism, many of us have been affected by the loss of loved ones or the

creation of fear in our lives. Such distinguishing features point to the increasingly personalised nature of violence operating in a globalised era. Attacks against infrastructure, symbols of power and culture, as well as centres of celebration are all attempts to instil fear, panic and desperation amongst people. As these are forces driven against people, by people, it is only people themselves that can combat and overcome terrorism and terrorists. This paper has sought to review the nature of terrorism and its often-complicated competing series of definitions. We have attempted to qualify terrorism as a political activity conducted with the provision of violence upon an unsuspecting population. This increasing personalisation of violence is but a component of not only terrorism but of a new series of terror wars that seek to spread fear in an age of risk where sovereignty is no longer absolute in nature. As such threats are increasingly international, we purposed the creation of a global anti-terror regime that seeks to exploit the nature and incentives of violence with the provision of global security to all persons in all places. It is only with such new thinking that we can safeguard the majority from the tyranny of the minority.

We recognise that this call to shield others from violence is but one solution on offer in the wars against terror.

The death and destruction caused by twenty-first century terrorism have thus far been negligible compared to those of twentieth-century conventional wars. When we finally determine to take up the terror wars in earnest, we will face a threat to mankind that is unprecedented and is potentially measureless in tragedy. Having prepared, however, we will act to preclude such tragedies; having acted in time we will have preserved our liberties despite the historic suffering we could not in the end prevent; having protected our liberties while enduring such awful pain, we will have prevailed. In heaven, there will be no terror, and the lion will lie down with the lamb. In Hell, there will be nothing but terror, and every generation unto the last will proffer its lambs.[99]

We live today in a world where terrorism is present and its dangers real. Tomorrow will likewise be the same. Our capacity to meet our challengers, to fight our foes, and to remain beacons of prosperity in the minds of all those that suffer in hope of a better tomorrow will remain our call to action. In an age where violence spreads, risks proliferate and disorder already affects far too many is the time for reaction with a sense of purpose to these unprecedented challenges. Our shields might not be enough to safeguard all, protect our interests and proclaim victory in the terror wars. But hope, after all, springs eternal.

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[5] Ibid.

[6] Bobbitt, *Terror and Consent*, p. 3.

[7] Ibid.

[8] In maintaining the convention, I will separate international relations, as the study of global interactions, from International Relations, the academic subject, through capitalization; *see*: Nicholas Rengger, "Political Theory and International Relations: Promised Land or Exit from

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[17] Bobbitt, *Terror and Consent*, p. 24.

[18] Bobbitt, *Terror and Consent*, p. 24; Rappport, "Fear and Trembling," p. 658-677.

[19] Bobbitt, *Terror and Consent*, p. 25.

[20] One should note that whereas we today apply a pejorative qualifier on terrorism, it was originally seen to be a positive act conducted against an oppressive regime. Walter Lacquer, *The Age of Terrorism* (Boston: Little Brown and Company, 1987), p. 11.

[21] Ibid.

[22] In all these definitions the following contributing dimensions of terrorism are represented: use of violence (83.5%), political purpose (65%), fear/terror (51%), threat (47%), psychological effects (41.5%), victim-target differentiation (37.5%), purposive planned action (32%), and method combat/strategy (30.5%). Alex P. Schmid and Albert J. Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature* (London:

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[41] Bobbitt, *Terror and Consent*, p. 133.

[42] Kaldor, *New Wars*, p. 15-33.

[43] Bobbitt, *Terror and Consent*, p. 80-125.

[44] Kaldor, *New Wars*, p. 19.

[45] Martin van Creveld in Ibid., p. 21.

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[53] Niccolò Machiavelli, *The Prince* (Oxford: Oxford University Press, 2005), Chapter XVII, p. 43-44.

[54] Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996), Chapter XIII, p. 60; See for an outline of this concept: Henry Shue, "Limiting Sovereignty" in Jennifer Welsh, *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p.

11-29. See for a wider ranging debate of the claims: Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103:1 (1992), p. 48-75.

[55] Robertson, *Crimes Against Humanity*, p. 9; John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), Chapter II, section v-vi.

[56] Brown, *Sovereignty*, p. 30.

[57] Kofi Annan in Bruce W. Jentleson, "Humanitarian Intervention and the Challenges of 'Never Again,'" in Crocker et al., *Leashing the Dogs*, p.280.

[58] Ibid., p. 242.

[59] Ian Brownlie, *The Principles of Public International Law* (Oxford: Oxford University Press, 2008), p. 519.

[60] Commentary by Philip Bobbitt in Bobbitt, *Terror and Consent*, p. 243.

[61] Ibid.

[62] Ibid., p. 243-250.

[63] Bobbitt, *Terror and Consent*, p. 243.

[64] Inis L. Claude, "Collective Legitimisation as a Political Function of the United Nations," *International Organisation* 20:3 (1966), p. 367-379.

[65] Section 1, "The Charter of the United Nations," <http://www.un.org/aboutun/charter/> 1 April 2010.

[66] Article 55(c) of the UN Charter, see: "The Charter of the United Nations" in Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p. 64.

[67] David Rieff, "A New Age of Liberal Imperialism?" *World Policy Journal* 16:2 (1999), p. 1-11.

[68] The UN Declaration as cited in Ibid., p. 64;

[69] Bobbitt, *Terror and Consent*, p. 481.

[70] Ibid., p. 12.

[71] Paul Wilkinson in Martin Warner and Roger Crisp, *Terrorism, Protect and Power* (Aldershot: Edward Elgar, 1990), p. 48.

[72] Pierre Trudeau interview on 13 October 1970 on the steps of Parliament Hill, Ottawa, Canada. See: "Just watch me," in the digital archives of the Canadian Broadcasting Corporation, accessed: 10 April 2010. <http://archives.cbc.ca/war_conflict/civil_unrest/clips/610/>.

[73] Edward Gibbons, *The Decline and Fall of the Roman Empire* (1776) as quoted in Ignatieff, *The Lesser Evil*, p. 1.

[74] Ibid.

[75] If the terrorism is to be understood better it is important that we do not lose sight of the very fact, irrespective of mass levels of violence and wanton destruction, that these individuals remain rational actors. It is a sign of sheer ignorance to treat such individuals that are confronted with both rational and emotional reasons for violence, to be disregarded as "semi-literate at best". Trivializing identities is not a means to understanding the motives for violence. See: Edward Luttwak, "Iraq: The Logic of Disengagement," Foreign Affairs 84:1 (2005), p. 27; Richardson, *What Terrorists Want*, p. 40-57; Michael Boyle, "Do counter-terrorism and counter-insurgency go together?" *International Affairs* 86:2 (2010), p. 333-355.

[76] James D. Fearon, "Rationalist Explanations for War," *International Organisation* 49:3 (Summer 1995), p.379-414.

[77] Ibid.

[78] Stathis Kalyvas, *The Logic of Violence in Civil Wars* (Cambridge: Cambridge University Press, 2006), p. 376; Barry Posen, "The Security Dilemma and Ethnic Conflict," *Survival* 35:1 (1993), pp. 63-65; John Mueller, *The Remnants of War* (Ithaca, New York: Cornell University Press, 2004), p. 37-49.

[79] Russell Hardin, *One for All: The Logic of Group Conflict* (Princeton: Princeton University Press, 1995), p. 13-15.

[80] Martha Crenshaw as quoted in Tellidis, Ioannis "Preventing Terrorism? Conflict Resolution and Nationalist Violence in the Basque County," *University of St Andrews digital research repository*, p. 88.

[81] Kalyvas, *The Logic of Violence*, p. 69.

[82] Ibid., p. 61.

[83] Ibid.

[84] Richardson and Art, *Democracy and Counter-terrorism*, p. 105-113.

[85] Raj Chari, "The 2004 Spanish Election: Terrorism as a Catalyst for Change?," *West*

European Politics 27:5 (2004), p. 954-963.

[86] "War on Terror Update: Spikes in War on Terror confidence fades," *Rasmussen Reports*, 7 November 2006.

[87] Brian Fishman, "Dysfunction and Decline: Lessons Learned from Inside Al-Qa'ida in Iraq," *The Harmony Project at The Combating Terrorism Center at West Point*, 16 March 2009; "Is it really coming right?", *The Economist*, 27 November 2008; Michael Boyle, "Bargaining, Fear, and Denial: Explaining Violence Against Civilians in Iraq 2004-2007," *Terrorism and Political Violence* 21:2 (2009), p. 1002; James Fearon, "Rationalist Explanations for War," *International Organization* 49:3 (1995), p. 137; Howard, "Are we 'at war'?", p. 6-7; James Fearon, "Iraq's Civil War," *Foreign Affairs* 86:2 (2007); "Bad blood again," The Economist, 2 April 2009; David Petraeus, ""Counterinsurgency Concepts: What We Learned in Iraq," *Global Policy Journal* 1:1 (January 2010), p. 116-117; Michael J. Boyle, "Counter-terrorism and counter-insurgency tradeoffs," *International Affairs* 86:2 (March 2010), p. 333-355.

[88] Boyle, "Counter-terrorism and counter-insurgency," p. 333-355.

[89] Philip H. Gordon, "Can the War on Terror be Won?," *Foreign Affairs* 86:5 (2007), p. 55.

[90] Many scholars disagree with our assessment that terrorism is a strategy and not a tactic. Our favourite for this particular exercise is Louise Richardson, who spends a fair amount of energy disapproving our theory above. Richardson, *What terrorists want*, p. 209-243.

[91] Wilkinson, *Terrorism versus Democracy*, p. 207.

[92] One of our questions was adapted from those proposed by Oliver Ramsbotham and Tom Woodhouse in Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, p. 12.

[93] Lord Atkin ruling in *Donoghue v Stevenson* [1932] AC 562

[94] Paul Wilkinson in Ami Pedahzur and Magnus Ranstorp, "A Tertiary Model fro Counter-terrorism in Liberal Democracies: The Case of Israel," *Terrorism and Political Violence* 13:2 (2001), p. 1.

[95] Robert Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games" in Michael Boyle, "The War on Terror in American grand strategy," *International Affairs* 84:2 (2008), p. 200.

[96] Ibid.

[97] Aristotle in Bobbitt, *Terror and Consent*, p. 521.

[98] Tony Blair in Williams, *Liberalism and War*, p. 203.

[99] Bobbitt, *Terror and Consent*, p. 547-548.

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