

Responses to uncertainty

TERRORISM AND CIVIL LIBERTIES*

by

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I. Introduction

In the wake of terrorist attacks in New York City, Washington, Madrid and elsewhere, many traditional questions of political philosophy have taken on a new urgency. The relation between terrorism and civil liberties, in particular, has been the subject of intense discussion. Most frequently, people ask whether the curtailment of civil liberties or the violation of civil rights can be justified by the terrorist threat. Before addressing that question, I shall discuss whether there is a causal relation between terrorism and these liberty-depriving actions. I believe that some of the causal links between terrorist attacks and the responses by governments are of a kind that makes it somewhat unlikely that those responses are in fact justified.

The discussion can be organized around two concepts of innocence. First, there is the class of people we may call innocent residents,

who may or may not be citizens and may or may not be members of a suspect group. They live in the country targeted by the terrorists, but do not support the terrorist cause. We may ask whether the acts of the terrorist organization cause state action to deprive these individuals of their liberties. The state might engage in secret electronic surveillance of a person who belongs to a suspect ethnic group, for instance, even though he or she is in fact innocent of terrorist affiliations. In addition, as just noted, we may ask whether the terrorist acts justify such surveillance.

Second, there is the class we may call innocent civilians, who also may or may not be citizens. These are individuals who live on the territory of the state targeted by the terrorists, but are not complicitous with the acts of the state that make the terrorist attack it. The passengers who were victims of the bombs in Madrid were innocent in that sense - they were not combatants in a war against Islam or against Arab countries. At the very least that must be true of the children who were killed. We can ask, therefore, whether terrorist attacks on these persons are caused by liberty-depriving actions taken by their country against members of the community on behalf of which the terrorists are fighting. And, as with respect to the first issue, we may ask whether these attacks can be justified as a response to such liberty-depriving actions.

I shall return to the question of innocent victims at the end of my talk. Not all the agents involved are innocent, however. We must also ask whether terrorism entitles the government to deprive terrorists of their civil liberties. Would maltreatment of a suspect for the purpose of extracting information be justified retrospectively if it turns out that he or she did in fact possess vital knowledge? Is maltreatment of known terrorists prospectively justified? The converse question, whether liberty-depriving

actions justify terrorist acts against citizens that are fully complicitous with their state, does not arise, since I shall define terrorism to exclude this case.

To summarize, then, I shall address four questions:

- Does terrorism cause civil liberty curtailments?
- Does terrorism justify civil liberty curtailments?
- Do civil liberty curtailments cause terrorism?
- Do civil liberty curtailments justify terrorism?

The second question, whether terrorism justifies civil liberty curtailments, is at the heart of the talk. I believe, however that it has several close links to the other questions. Causality and morality turn out to be closely connected, as do terrorism and counterterrorism. But before I can proceed to make that argument, I must clarify some of the key concepts.

II. Conceptual preliminaries

Discussions of terrorism often suffer from essentialism, in the sense of assuming that there is an objectively correct definition of the idea. Definitions can only, however, be more or less useful for a given purpose. Let me first state some meanings that I shall exclude. What one might call state terrorism (e.g. massive bombings to demoralize civilian populations) does not enter into any of my questions, so I shall ignore it. Nor shall violence targeting high public officials or military personnel count as terrorism for my purposes here. If Pentagon had been the only target on September 11 2001, "terrorism" would not be a good characterization of the attack. I shall also exclude the killing of innocent civilians as a collateral effect of attacks on military targets.

A useful way to think about terrorism is in terms of targets, audiences and goals. I shall follow the bulk of the literature in defining the target as random groups of innocent civilians. This target may also be the main audience, but need not be so. The audience can be the constituency of the terrorist organization rather than the enemy population. An organization may initiate or escalate suicide bombings, for instance, to gain an ascendancy over other organizations.¹ In that perspective, the number of suicide attackers who die may be more important, as a sign of strength of commitment, than the number they kill.² That is even more true if the audience is a significant segment of world opinion, which may be repelled by the killings but impressed by the sacrifices. In other cases, what looks like irrational revenge may be a calculated act to cement the legitimacy of the leadership.³

The ultimate goal may be to force the enemy government to make irreversible policy concessions, to take over that government, or to destroy the enemy nation altogether. On one interpretation, nothing short of the destruction of the West would satisfy al Qaeda. Officially, at least, the Hamas demands the elimination of the state of Israel. The proximate goal, which is more relevant for my purposes, varies. It may be to spread fear in the enemy population, in the hope that this will induce policy concessions. It could also be to trigger anger in the enemy population, in the hope that this will induce the government to overreact, or sympathy in world opinion. As noted, the goal may also be to enhance the legitimacy of the organization.

The choice of terrorist methods rather than non-terrorist violence or non-violent methods is in part dictated by considerations of audience and goal. If world opinion is the main audience, self-immolation might be more effective than suicide missions.⁴ Spectacular hijackings, too,

might attract more attention to the cause. If one wants to change the mind of policy makers, political assassinations might be thought to be more effective than attacks on civilians. At the same time, the choice of methods is to some extent dictated by the constraints the organization faces. High officials, military personnel and airplanes may be too well protected. Non-violent collective action may not be tolerated by the government. The community from which the organization springs may be disenfranchised or too small to have an impact on elections. Sometimes, therefore, there may be some truth in the cliché that resorting to terrorism is the only option - except that of accepting the status quo.

The phrase “civil liberty curtailments” covers reductions of civil liberties by legislative acts, such as the lesser protection against government search introduced by the US Patriot Act. It also covers executive decisions that limit the rights and freedoms of individuals, such as the right to have the case against oneself heard in court. Like “terrorism”, the phrase is intended to be value-neutral. Sometimes, however, the curtailment of rights may be seen as a rights violation. It has been argued that clauses of the Patriot Act violate the Fourth Amendment, and that parts of the British Anti-Terrorism, Crime and Security Emergency Bill violate the European Convention of Human Rights. In other cases, the curtailment of rights does not violate any legal or moral principle. The requirement that passengers show their shoes for inspection before entering an airplane is an example. The requirement that Muslim women in France use a photograph for their identity card or passport in which they do not wear a veil is another, perhaps more controversial one.

The question of justification is subject to intense philosophical controversy. As in other contexts, both consequentialist and non-

consequentialist arguments are available. It seems obvious to me that neither type of argument by itself will be sufficient. Purely consequentialist arguments such as utilitarianism can lead us to ignore the separateness of persons (Rawls) or to treat individuals only as means, not also as ends in themselves (Kant). Purely rights-based arguments may allow for the heavens to fall as long as justice is served, but, as Justice Robert Jackson said, the bill of rights is not a suicide pact. Each line of argument thus needs to be tempered by the other. Ideally, we would want to go beyond this truism to formulate a theory of how they constrain each other. I do not know whether any successful theory will ever be forthcoming, and I certainly cannot offer one.

I cannot see, for instance, how the introduction of a national identity card that would have to be worn at all times could be accepted or rejected on the basis of reasoning from first principles. Although the card would represent a limitation on civil liberties, we have no metric for measuring how severe it would be. It is equally hard to assess how effective it would be in fighting terrorism. And even if these questions could be sorted out, we have no algorithm that can tell us whether a given degree of effectiveness in fighting terrorism would justify a given severity of human rights violations. These are issues on which reasonable people can disagree.

III. Does terrorism cause civil liberty curtailments?

The answer to this question is obviously a resounding Yes. While terrorism is not a necessary condition for curtailment of civil liberties, it seems to be a sufficient one. In the wake of terrorist attacks, governments invariably tighten up security procedures in ways that infringe on the civil liberties of citizens and resident aliens alike.

As a putative case of measures directed at citizens, we may consider the French law of March 15 2004 against wearing the veil and other “ostensible” religious symbols in public schools. The causal link between this law and the threat or fear of Islamic terrorism in France cannot be proved, but seems highly plausible.⁵ Prima facie, the ban of the veil would seem to curtail civil liberties in at least two ways, by infringing on the freedom of the person and by denying freedom of expression. The Stasi commission whose recommendations were behind the law argued, however, that the ban would have the effect of liberating young Islamic women from the pressures of their communities, and assimilated the wearing of the veil with such practices as genital mutilation or polygamy.⁶ The law might, therefore, be seen as an expression of state paternalism on an analogy with obligatory schooling, which is a way of protecting children against pressure from their parents to get a job rather than go to school. In debates over the law, however, the emphasis focused mostly on the claim that wearing the veil was “an act of aggression” (President Chirac) or, in a more commonly used phrase, “an act of proselytizing”, implying that those who wear it are perpetrators rather than - or as well as - victims. To use less intentional (and more plausible) language, one might say that the veil has negative externalities since the more girls who wear it, the harder it is for any given girl not to do so. The appropriate analogy might then be the mandatory wearing of school uniforms to block social pressures stigmatizing those who do not follow the fashion.

These defenses of the law are not intrinsically implausible. It is hard not to suspect bad faith, however. One aspect of the law that very strongly suggests bad faith is the pseudo-universality of including (large) Catholic crosses as well as the Jewish yarmulke among the practices covered

by the ban. Also, if we take seriously the idea of a causal link between terrorism and the law, as I think we should, it is hard to see how the liberation of young Islamic women by itself would contribute to the fight against terrorism. For the law to make sense as an anti-terrorist measure we must require an additional premise, namely that their liberation will undermine the formation of closed Islamic communities that can be a breeding ground for terrorism. Without that tacit premise, it seems highly unlikely that the law would have been proposed and passed.

As an instance of measures directed against non-citizens, we may consider the case of Imam Bouziane, who was expelled from France on April 21 2004.⁷ It seems clear that the actual ground for the expulsion was his alleged affiliation with French terrorist groups. He is also alleged to have issued a fatwa calling for a jihad against American interests in France. In the debate over his expulsion, however, this aspect has been overshadowed by his statements justifying the stoning of adulterous women and defending a husband's right to beat his wife or wives (he also defends polygamy), as long as he does not hit them in the face, but only on the legs or the stomach. In a press conference on April 30 2004, President Chirac condemned these statements as "an attack on human rights". The Imam's lawyer, by contrast, claimed that the expulsion on these grounds would be an attack on the fundamental rights of his client, who has lived in France for 25 years and has 16 children, 14 of whom have French citizenship. It seems in fact that under current French law his statements would at most justify jailing the Imam for defending criminal behavior, but not expelling him. If he could be credibly linked to terrorist groups, expulsion would not violate his rights, but I assume that the evidence for that connection was so weak that the government instead rested his case on his public statements

concerning women. As with the ban on the veil, the official argument is both somewhat plausible and deeply misleading.

A word that might characterize these legislative and executive decisions is panic. Haste, needless haste in fact, seems to be a very general feature of the process of adopting anti-terrorist measures. Concerning the Patriot Act, it has been said that “In legislative time, [it was enacted] virtually overnight. Attorney General John Ashcroft, its principal proponent, exerted extraordinary pressure, essentially threatening Congress that the blood of the victims of future terrorist attacks would be on its hands if it did not swiftly enact the Administration’s proposal. [...] It is virtually certain that not a single member of the House read the [final] bill for which he or she voted.”⁸ The legislation introduced in Britain, France and Germany after September 11 2001 has been characterized as “panicked, ineffective, exaggerated [and] authoritarian”. The “sudden frenzy” of the legislatures is shown by “the speed with which they were rushed through the national legislative processes, a procedure that would normally, and certainly in cases where civil liberties were about to be restricted, involve years of negotiations”. In this case, too, the legislatures were “pushed by impatient governments”.⁹

This tendency to speed up the decision-making process can be linked to the highly emotional state of key actors. Whether it is anger or fear, emotion tends to induce urgency, defined technically as an enhanced preference for earlier action over later action.¹⁰ Strong emotions create a momentum towards immediate action that can be almost impossible to resist. It is important to note that the urgency of emotions can be highly adaptive. In the presence of a potentially dangerous threat, such as a snake-like shape on the road, it makes sense to run away quickly rather than waiting to find

out whether it is in fact a snake or simply a bent stick. When the expected opportunity costs of waiting are high, immediate action is of the essence.

In other cases, however, emotionally induced urgency can make for irrational decisions. Generally speaking, rationality requires agents to invest in new information before they form beliefs that are to serve as premises for behavior. How much to invest, depends on the expected benefits of the information and the expected costs of gathering it, including opportunity costs. When little will be lost and much could be gained by gathering more information, one should do so. Yet as suggested by the proverb “Marry in haste, repent at leisure”, emotional urgency may short-circuit rationality. As Seneca noted, the urgency of emotion detracts from the efficacy of belief-formation: “Reason grants a hearing to both sides, then seeks to postpone action, even its own, in order that it may gain time to sift out the truth; but anger is precipitate.”¹¹

The Yokohama war trials offer a legal example of the impact of urgency. The trial of General Yamashita, in particular, ignored due process and mens rea requirements in favor of strict liability.¹² In his dissenting Supreme Court opinion, Justice Frank Murphy observed that

No military necessity or other emergency demanded the suspension of the safeguards of due process. Yet [Yamashita] was rushed to trial under an improper charge, given insufficient time to prepare an adequate defense, deprived of the benefits of some of the most elementary rules of evidence and summarily sentenced to be hanged. In all this needless and unseemly haste there was no serious attempt to charge or prove that he committed a recognized violation of the laws of war.¹³

The question is obviously whether the post 9-11 decisions were an instance of “needless haste”. I return to that issue in the next Section. We

may note, however, that if that was indeed the case it would not be the first time that panic and urgency induced drastic decisions that, in retrospect, did not correspond to any comparable danger. The internment of the American Japanese during World War II is only one of many examples. Although the system of checks and balances is supposed to counteract urgency¹⁴, it is not clear that it works well in practice. “[T]he judiciary is not immune from popular panic and [...] in times of emergency it usually proves itself ‘more executive-minded than the executive’”.¹⁵ The Senate, too, has been known to fail to perform its cooling-down functions, the Gulf of Tonkin resolution being one example.¹⁶

IV. Does terrorism justify civil liberty curtailments?

The value of civil liberties, and hence the cost of sacrificing them, are hard to specify. The benefits of measures that curtail them are hard to estimate. The tradeoff between costs and benefits is conceptually opaque. It is not even certain that the language of tradeoffs is the right one. I shall discuss some of the costs and benefits, without aiming at a precision I believe to be unattainable. This stance does not imply that I think it is impossible to draw any policy conclusions, only that a certain kind of fine-tuning is chimerical.

The costs of curtailing civil liberties have two sources. On the one hand, a given liberty may be intrinsically or instrumentally valuable. On the other hand, it may be protected by the law (statute, the constitution or international conventions) in such a way that its violation (not simply “curtailment”) can undermine respect for the protecting framework as a whole. The violation may be direct or indirect. A direct violation occurs when the law tells us to respect the uncurtailed right without any exception.

An indirect violation occurs when the law allows for exceptions under certain circumstances, but the government abuses its power by claiming that those circumstances obtain when they manifestly don't.

Many liberties are valued on intrinsic grounds because they are a condition for peace of mind, which in turn is the condition for many other things. The "right to peace of mind" underlies the ban on arbitrary search and seizure, freedom to travel, freedom of speech and similar constitutional provisions. As I see them, privacy and unimpeded activity cannot be conceptualized as positive goods. Like good health, we do not enjoy them for their own sake; rather they are a condition for enjoying positive goods. The importance of being able to talk and act without having to worry about being overheard, to ask for permission or to take precautions is hard to exaggerate.

The debates over the national identification card may be seen in this perspective. In its more invasive form, there would be an obligation to carry the card on one's person at all times.¹⁷ It would indeed undermine my peace of mind if I couldn't move my car to the other side of the street without remembering to take my ID card. In that sense it would be a cost, although, as I said, one that might be justified by the benefits to society. A less invasive form would simply require presentation of the card before engaging in optional activities such as applying for a job in a security-sensitive sector or boarding an airplane. Having to apply for the card might be an inconvenience but not a cost, as I use the term here.

The right not to suffer physical pain is also intrinsically valuable. The deliberate infliction of pain, as in torture, carries a high cost indeed. The cost may vary, however, with the status of the torturee. Some of those who would accept torturing a known terrorist in an unambiguous

“ticking bomb” case (assuming they exist) would be hesitant to torture the terrorist’s small child in front of him in order to make him talk. In fact, I have not seen any defenders of torture in the fight against terrorism, such as Alan Dershowitz or Richard Posner, extend their defense to the latter case.¹⁸ Perhaps they would respond that the benefits would be too uncertain. That may or may not be so; if they are free to stipulate a ticking bomb case I must be free to stipulate that it might be prevented by torturing the child. I suspect a response of that kind would be an instance of what utilitarians often do when confronted with unpalatable implications of their doctrine, which is to claim that the case would never arise in practice.¹⁹

A final reason to attach intrinsic value to certain rights is that they can be desirable as opportunities, even if never exercised. If the government forbids me to travel abroad I can never be sure whether my lack of desire to travel isn’t due to some unconscious adaptation to constraints which detracts from my autonomous agency. This example illustrates the more general point that the value of a right cannot be determined simply by the number of occasions on which people choose to exercise it. Value attaches to opportunities as such, no merely to opportunities that people choose to take up. Freedom does not consist merely in being able to do what one wants to do, but also in being able to do a great number of things one doesn’t want to do and perhaps never will. Unimpeded movement is valuable even for those who choose to stay put. Conversely, the cost of curtailing a right cannot be measured by the number of rights-exercises that are prevented.

Among rights valued on instrumental grounds, freedom of speech (also valued for its own sake) and of association stand out as essential means for those who want to bring about change in one way or

another. There is, to be sure, no right to be a member of a terrorist group or organization fighting against one's country. Yet between the winding down of the Cold War and the passage of the Patriot Act Americans had a right to support non-terrorist activities of such groups, e.g. by donating medicine or blankets to their hospitals.²⁰ The Patriot Act does away with that right. The government's argument is not simply that any donation to a Hamas-run hospital might be diverted to fund terrorism, but that even if used as intended it will free up resources for terrorist activities.²¹ As noted below, however, the language is so vague that it covers many activities beyond such "objective assistance" to terrorism.

Some legislative or executive liberty-depriving acts have been in flagrant or at least arguable violation of the law. The expulsion of Imam Bouziane, later reversed by a court, is an example. It has been argued that the Patriot Act stands in violation of the First, the Fourth and the Fifth Amendments. The most compelling example may be the provisions of the Act allowing secret searches and searches authorized neither by probable cause nor by a determination that the targeted person is an agent of a foreign power.²² In January 2004 a federal judge in Los Angeles ruled that the Act's ban on providing "expert advice or assistance" to terrorist organizations was unconstitutionally vague. In February 2005, a federal judge in South Carolina ruled that President Bush had greatly overstepped his authority by detaining an American citizen, José Padilla, without filing criminal charges.

More indirectly, legislative or executive acts may be unlawful if they rest on arbitrary determinations of fact. The declaration of a state of emergency is one that, because of its inevitably discretionary nature, easily lends itself to abuse. For the reasons spelled out towards the end of the previous section, the combination of emergency and discretion can be a

recipe for disaster. In Sri Lanka, the response to terrorism has been to issue emergency regulations that “have often been unfairly disproportionate to the actual situation”.²³ Following September 11 201, Great Britain enacted emergency-based legislation with little basis in the facts.²⁴

It seems plausible, quite generally, that respect for and compliance with the law will be undermined if there are rights on the book that are not enforced. It has been argued, for instance, that positive rights such as the right to work or the right to a clean environment impose negative externalities on other rights, since the existence of unenforceable rights will lead to underenforcement of the enforceable ones. Similarly, a single rights-violation by the government could remove a mental barrier to violations in general and increase the probability that more violations will follow. At the same time, the legitimacy of the state and the willingness of the citizens to abide by the law can be undermined.²⁵ This slippery-slope argument has undeniable force. How much force it has is hard to assess. As with many of the benefits of curtailing rights, some of the costs are shrouded in uncertainty.

A further cost of civil liberties curtailment is that terrorist risks might actually increase as a result of measures taken to curb them. Suppose for instance that whatever its obfuscations the French government had a credible witness linking the Imam Bouziane to terrorist groups, but that the production of that witness in open court, and even in a closed hearing in the presence of the Imam’s lawyer, would have ruined his usefulness in identifying other terrorist activities and put his life in serious danger.²⁶ Under these assumptions, the violation of the Imam’s civil liberties would seem to yield a clear benefit. Yet although expulsion of the Imam might well foil an action of which he was the instigator, it might also enflame the

French Muslim community and attract new adherents to the terrorist cause who might engage in other and perhaps more serious actions.²⁷ A similar argument was made by Nicholas Sarkozy, as Minister of the Interior when the law banning the veil was adopted. In an interview, he stated his “fear that a law adopted in such a hurried way (dans l’urgence) would be viewed by the Muslim community as a punishment or a humiliation. This would only produce the opposite of the desired effect, and might risk triggering confrontation or radicalization. [...] Let us not open up a new war of religion.”²⁸ As I argued above, decisions taken in a state of emotional urgency may work against their purpose.

Punitive actions may have two rational aims: deterrence or incapacitation.²⁹ A classical dilemma of deterrence is whether the anger it inspires may not in the end more than offset the fear it is intended to cause.³⁰ When the French Communist resistance advocated the killing of Germans for the purpose of provoking reprisals, it was on the assumption that these would make the population more willing to stand up to the occupant, not less. Some Palestinian attacks on Israel may have the same rationale. Because terrorists by and large cannot be deterred³¹, the goal of any measures aimed at them must be incapacitation. Once again, however, the effect of foiling one attempt by expelling, killing or jailing its instigators must be held up against the possible effect of motivating more attempts by others. The net effect could in principle go either way.³²

I shall return to this crucial question shortly. First, however, I want to turn to the general question of the possible benefits of liberty-curtailement. To ask whether the benefits are sufficient to justify the curtailment, we need to compare them, not only with the cost of curtailment but with the benefits that might be produced by alternative methods.

Specifically, one might put in place measures of physical protection that might create inconvenience for many people and be a drain on the national budget, but not involve curtailment of civil liberties. These measures would include stricter airport control, stricter border control and physical protection of vulnerable targets.³³

Suppose, for example, that the most efficient way of detecting potential terrorists at airports would be to use an algorithm relying on “gender (male), ethnicity (Middle Eastern), demeanor (nervous), frequent flyer membership (no), date of ticket purchase (last minute), time of check-in (late), form of purchase (cash), use of travel agent (no), and type of luggage (carry-on only)”.³⁴ Suppose, moreover, that because of the salience of ethnicity or feelings of racial hostility, security agents will rely too heavily on the ethnic factor and pay too little attention to the others. As a result, the civil liberties of Middle Easterners may be violated through harassment and stigmatization over and above what might be justified on the basis of the algorithm.³⁵ Another effect may be loss of efficiency, if terrorists who only match the other criteria slip through the net. Assume, however, that mandatory non-use of ethnicity would in fact be less efficient than excessive use. In that case, one might choose to achieve the desired security level by subjecting everyone to heightened scrutiny rather than relying on an algorithm that will in practice violate civil liberties of some groups.³⁶

Politicians may be reluctant to put their voters to great inconvenience. Whereas most Americans would be affected by longer airport delays, only a few are subject to intrusive government behavior. Also, opponents of “big government” may prefer an option with intangible costs (curtailment of civil liberties) over one with large tangible costs (physical protection). The disgraceful behavior of the Republicans in the

House of Representatives in voting against federalizing airport security suggests that this motivation may have been a factor.³⁷ Be this as it may, it is striking that those who emphasize the high tangible costs of a successful terrorist action are so reluctant to incur high tangible costs in preventing it.

Let me put this issue aside for now, and focus on the effect of civil-liberties curtailment on the risk of a terrorist attack. This is not an issue that can be discussed in the abstract, since the forms and scale of terrorism vary so widely. I shall limit myself, therefore, to disaster scenarios involving huge number of victims in a Western country. For reasons to be made clear presently, the case of France is especially important and perplexing.

In addressing this issue, we face a generic cognitive difficulty that can be introduced using Pascal's wager as an example.³⁸ Suppose there is a "real possibility" that God exists. It may not be quantifiable with precision, but we believe that it is more than a merely conceivable (i.e. non-contradictory). Given the payoffs of eternal bliss and eternal damnation, the rational action would seem to be "wager on God", that is, to cause oneself to believe. But then we have to face Diderot's objection: "An Imam could reason just as well this way".³⁹ Does not the fact that a Pascal of Muslim persuasion could make identically the same argument for wagering on the truth of Islam as the real Pascal offered for wagering on the truth of Christianity refute both conclusions?

Closer to the case at hand, suppose there is a plausible model of the atmosphere in which global warming will lead to the extinction of mankind unless the consumption of fossil fuel is reduced drastically. Even though the probability of this outcome is small or indeterminate, it is in the same hard-to-explicate sense a "real" one. The implications for action seem compelling: even if the use of fossil fuel has many indubitable benefits, it

ought to be curtailed drastically. No finite gain can outweigh the “real” possibility of the extinction of mankind. On reflection, however, this conclusion is too quick. For suppose there is also a plausible socio-economic model in which reduced use of fossil fuel leads to global economic collapse, which leads to nuclear war and to a nuclear winter that causes the extinction of mankind. Now, what do we do?⁴⁰

The risk of a major terrorist attack has a similar structure. There is no way of quantifying the probability that an attack will occur if we do nothing to prevent it beyond what we can do with existing procedures. This impossibility does not imply, however, that we are in a state of uncertainty, in the technical sense of the term. To use an example I have employed elsewhere⁴¹, the question whether Norway in year 3000 (or year 30 000) will be a democracy or a dictatorship is one of absolute uncertainty. We simply have no grounds for having an opinion. The risk of a terrorist attack is not like that. We have a great deal of information that we can draw on to form an opinion about the capacities and motivations of terrorist organizations. Because of the diffuse structure of this information, the opinion does not lend itself to quantification, but it is more than idle speculation. Exactly what this means, remains elusive, but I believe the substance of the point is hard to deny.⁴²

If we accept that the risk of a major disaster is a real possibility in this sense, one may argue that any action that could reduce its likelihood is justified. Suppose we grant that argument in the case of a nuclear suitcase that could destroy Paris. Suppose we grant, moreover, that drastic curtailment of the civil liberties of French Muslims would have a real chance of foiling any such plans that were afoot. It does not follow, however, that this action would be justified, any more than it follows that the risk of global

warming justifies reduction of fossil fuel consumption. As I already argued, the curtailment or violation of civil liberties might motivate French Muslims to make new and perhaps more ingenious plans that are more likely to succeed. The argument does not apply in the same form to American Muslims or Americans of Arab origin, since they do not form an organized community to the same extent. Yet it is entirely possible (and not merely conceivable) that mistreatment of this group by the American government will further inflame their co-religionists or co-ethnic members in the Middle East. I submit that in cases like these we have no grounds for asserting that the primary effect of the measures (foiling attempts) will dominate the secondary effect (generating attempts).

Joseph Schumpeter wrote, “A system - any system, economic or other - that at every given point of time fully utilizes its possibilities to the best advantage may yet in the long run be inferior to a system that does so at no given point of time, because the latter’s failure to do so may be a condition for the level or speed of long-run performance.”⁴³ I believe his argument applies directly to the case at hand. Urgency tends to generate a desire for immediate action, at the expense of reflection. If the government brings all its forces to bear at existing terrorist threats, it may at every given point of time be more efficient in dealing with them than a system that pulls its punches by respecting civil liberties. Yet in the long run respect for the rule of law and due process are likely to reduce the level of threats the government faces.

One might question the relevance of this argument in the case of justified feelings of urgency. Doesn’t an imminent threat, however uncertain, take priority over an uncertain future threat? The imminence of the threat is just as uncertain, however, as its occurrence and magnitude. The

very lack of information that prevents us from forming a quantified opinion about the likelihood and magnitude of a disaster prevents us from forming a quantified opinion about when it will occur if it occurs. Or to put it the other way around, it is hard to imagine that the structure of our information would allow us to form a probability distribution over the timing of disaster conditional on a disaster occurring at some time or other, without enabling us to form a distribution over the likelihood of disasters of varying magnitudes. We cannot exclude that severe curtailment of civil liberties might, by the mechanism I have sketched, cause attacks to occur earlier than they might otherwise have done.

By contrast, measures that aim at physical protection are not likely to have the side effect of generating more need for protection. Although such measures may thwart the terrorist intentions, they do not offend anyone or violate anyone's rights. As I have mentioned and shall further argue in the next section, the deliberate violation of rights is likely to generate humiliation and resentment with explosive potential. Although the cost of physical measures can be enormous, they do not impose costs on innocent residents, undermine respect for the law, or fuel resentment in groups with terrorist potential. A scrupulous and visible respect for civil liberties and due process might on the contrary have a de-motivating effect on terrorists.

V. Do liberty curtailments cause terrorism?

Although the focus of my talk is on civil liberties, I shall begin by considering whether terrorism might be caused by the violation or, as I prefer to say, non-provision of welfare rights. I shall also retain this concern in the next Section. The asymmetric treatment, compared to the two previous

Sections, seems justified by the nature of the case. Whereas it would be hard to make the argument that terrorism causes governments to suspend welfare rights or would justify such suspension, a prima facie case can be made out for the idea that the perceived non-provision of these rights might cause or justify terrorism. When people lack food, health care, education or work and perceive these deficiencies as caused by a hostile government, they might turn to terrorism to overthrow that regime. When peaceful means of protest seem unavailable, terrorism might even appear to be justified.

The non-provision of welfare rights causes objective deprivation. The crucial question is under which conditions and by which mechanisms this objective fact might be transformed into a subjective motivation to engage in extreme forms of action. I submit that a main lesson from the social sciences is that deprivation by itself is insufficient to trigger protest. Human beings, it seems, are subject to a “hedonic treadmill: if people adapt to improving circumstances [...], the improvements yield no real benefits”.⁴⁴ The effect works in both directions, as shown by the finding that not only are lottery winners less happy but paraplegics more happy than most of us would expect. In the special case of suicide missions⁴⁵, it was widely believed for a while that young Palestinians volunteered for this task because they were in such a state of extreme poverty that they had little to lose. Because of the hedonic treadmill argument, this claim was always dubious on theoretical grounds: poor people find their lives as worth living as anyone else. In addition, there is now evidence that terrorists do not in fact come from the most disadvantaged group of the population.⁴⁶

We need to distinguish, however, between two ways in which poverty might enter into the motivation. People might respond to the poverty they experience, or to the one they can observe. For a precedent, we may

note that the founders of Marxism, coming themselves from the upper bourgeoisie, were directly motivated by the poverty they could see around them. It seems quite plausible that ceteris paribus suicide attacks are both more likely to occur in poor and illiterate societies and more likely to be carried out by the better-off and most educated members of those societies. The effect of education might come out in two ways. On the one hand, as in the case of Marx and Engels, education can provide information, causal understanding and moral ideals that serve as premises for action. On the other hand, and this may be the more common effect among the young Palestinians, education may provide expectations of a high income that, when frustrated by reality, might make them embrace the terrorist cause. In the second case, we are not dealing with non-provision of welfare rights, which are usually understood in terms of an absolute threshold rather than measured against the expectations of the individual.

Another relative measure of welfare involves the comparison with the welfare or living standard of other individuals (relative deprivation). There is some evidence that invidious comparison with the West entered into the motivation of some of the participants in the attacks on New York and Washington on September 11 2001.⁴⁷ Once again, however, this would not be an instance of terrorism caused by the non-provision of welfare rights.⁴⁸ I conclude, therefore, that the most plausible causal link between the non-provision of welfare rights and terrorism is that the unemployment and poverty of some might cause others to take up the cause of terrorism.

By asserting that this is the most plausible link., I am not claiming it is highly plausible. I believe, in fact, that the violation of civil and political liberties provides a much more important cause of participation

in terrorist activities. In French Algeria, Sri Lanka and South Africa, the denial of civil and political rights, including in the last country the practice of forced population removals, has generated intense resentment. In Gaza and on the West Bank, the daily humiliation that Palestinians experience in their encounters with the Israeli authorities is, by all accounts, a very forcible motivation behind the Intifada uprisings and the suicide missions.

There are two ideas I want to underscore. First, whereas absolute deprivation has little motivational power and relative deprivation (whether compared to expectations or to some other group) only moderate power, the experience of being the target of deliberate humiliation is immensely motivating. Interacting with others generates much more powerful emotions and motivations than merely comparing oneself to them.⁴⁹ Second, many violations of civil liberties are experienced and deeply resented as face-to-face humiliations. Recent events in Iraq, where sexual abuse of prisoners by American guards has created a fury throughout the Arab world, offer only the most recent example. Although reactions in (say) Saudi Arabia to events in Iraq are not literally triggered by face-to-face interactions, A's reaction to B's maltreatment of C is much the same as A's reaction to B's maltreatment of himself if A identifies with C.⁵⁰

The terrorism-triggering abridgment of civil liberties may or may not itself be triggered by terrorism. In French Algeria, Sri Lanka and South Africa, humiliating forms of discrimination were in place before the terrorist response. In the previous Section, I argued that the current situation in Western countries is different, in that the methods chosen to combat terrorism may in fact exacerbate it. The Palestinian conflict provides another instance of such escalation.

VI. Do civil rights curtailments justify terrorism?

For a positive answer to this question we would have to imagine, as a necessary condition, a scenario like the following. Members of a group A are second-class citizens within the larger community B (native Algerians or Vietnamese under French rule, blacks in South Africa under apartheid, Tamils in Sri Lanka) or are essentially stateless individuals subject to the domination of community B (Palestine). Members of A have no or limited political rights. Their civil liberties are routinely and arbitrarily violated. In myriad ways, they are subject to demeaning and humiliating treatment. They are also subject to economic exploitation, and live for the most part in abject poverty. Because the political system is rigged against them, they cannot use it to obtain full citizenship or independence. As they enjoy very limited freedom of association, they cannot organize for peaceful demonstrations, strikes or boycotts. The international community is either unwilling or unable to establish sanctions that are strong enough to force community B to give substantial concessions. Members of A thus find themselves in a no-exit situation, except for the resort to violence. Because military targets and prominent politicians are too well protected, random violence against civilians is their only option. Terrorism, moreover, holds out the prospect of success, since the members of community B will not accept to live in constant fear of violent death for an indefinite period. To sum up: the members of group A have a legitimate grievance and a legitimate goal, for the realization of which terrorism is both necessary and sufficient.

As a matter of fact, I do not think any of the cases I listed in parenthesis above fits this scenario perfectly. The Palestinians could have obtained substantial even if imperfect statehood had they accepted the

Israeli-American peace proposals of December 2000-January 2001. Also, the idea that Israel would cave in to Palestinian terrorism (or to the international pressure it might generate) is so unrealistic that it is hard to believe that any Palestinians would believe in it, unless they live in a delusional world of their own. South Africa might have crumbled under the impact of sanctions and pariah treatment.⁵¹ Algerian independence would have come about without terrorism.⁵² Movements of national liberation can succeed by guerrilla warfare without resorting to terrorism.

Let me assume, nevertheless, a case in which all the listed necessary conditions obtain. Even then, they might not be sufficient. Consider again the case of torturing a child to make a terrorist father provide vital information. The fact that nobody to my knowledge has defended this policy, assuming the requisite conditions to obtain, suggests the strong grip on the mind of the Kantian principle of never using other people merely as a means to an end.

Children are, in fact, unique in this respect. Among the adult members of society B, some take an active part in the oppressive regime that the terrorists are trying to bring down. Others know about these oppressive practices, but do nothing to stop them. Still others who do not know, but should have known. In no society known to me do these three groups exhaust the adult population as a whole, but suppose they did. There would still remain the young children. Of two possible justifications for killing them, one is morally objectionable and the other rests on a dubious factual premise. On the one hand one might say that children will grow up to fall into one of these three categories (“all Israeli children are future soldiers and oppressors”). But to hold individuals responsible for acts they have not yet committed is unacceptable. On the other hand, a terrorist organization might

claim that children are merely collateral victims, and that the intended target is the adult population. But if the aim is to create fear or anger in that population, killing the children is very effective. I have seen no evidence that terrorists refrain from using this means.

To focus our ideas, therefore, let us keep in mind these two children: the child of the terrorist and the child who is the victim of the terrorist. The first child is harmed to make his father talk, the second to create emotions of fear, or anger in some audience. If we accept that the treatment of the first is unacceptable, we should extend that conclusion to the second as well. If, however, we were to accept the torture of children, the stakes would have to be very high and our beliefs about the efficacy of the torture as certain as our belief that the sun will rise tomorrow. Anything short of that degree of certainty would be suspect.⁵³ Although the situation is extremely unlikely to occur, one can at least imagine a coherent hypothetical. By contrast, I cannot envisage even a hypothetical situation in which one could say with the same degree of certainty that terrorist attacks on children would prevent the loss of large number of lives that equally certainly could not have been saved otherwise.

References

Anderson, E. (1993), Value in Ethics and Economics, Cambridge, Mass.: Harvard University Press.

Barry, B. (2005), Why Social Justice Matters, Cambridge: Polity Press.

Biggs, M. (2005), “Dying without killing: self-immolations, 1963-2002”, in Gambetta, ed. (2005), pp.173-208.

Bloom, M. (2002). ‘Rational Interpretations of Palestinian Suicide Bombing: Market Share and Outbidding’. Unpublished manuscript.

Cohen, D. (1999), “Beyond Nuremberg: Individual responsibility for war crimes”, in C. Hesse and R. Post (eds.), Human Rights in Political Transitions, New York: Zenith Books, pp.53-92.

Cole, D. (2003), Enemy Aliens, New York: The New Press.

Cole, D. and Dempsey, J. (2002), Terrorism and the Constitution, New York: The New Press.

Coomaraswamy, R. and Reyes, C. (2004), “Rule by emergency: Sri Lanka’s postcolonial constitutional experience”, International Journal of Constitutional Law 2, 272-95.

Crenshaw, M. (1995), “The effectiveness of terrorism in the Algerian war”, in M. Crenshaw (ed.), Terrorism in Context, University Park P: Pennsylvania State University Press, pp.473-513.

Descartes, R. (1985), “Passions of the soul”, in The Philosophical Writings of Descartes, vol.I, Cambridge University Press.

Elster, J. (1983), “Risk, uncertainty and nuclear power”, in J. Elster, Explaining Technical Change, Cambridge University Press, pp.185-208.

Elster, J. (1999), Alchemies of the Mind, Cambridge University Press.

Elster, J. (2003), “Pascal and decision theory”, The Cambridge Companion to Pascal, Cambridge University Press , pp.53-74.

Elster, J. (2004 a), "Emotion and action", in R. Solomon (ed.), Thinking about Feeling: Contemporary Philosophers on Emotion, Oxford University Press.

Elster, J. (2004 b), Closing the Books: Transitional Justice in Historical Perspective, Cambridge University Press.

Elster, J. (2005), "Motivations and beliefs in suicide missions", in Gambetta, ed. (2005), pp.233-58.

Fields, C. (2004), "The threat of Islamic radicals", International Herald Tribune, May 3.

Frederick, S. and Loewenstein, G. (1999) "Hedonic adaptation", in D. Kahneman, E. Diener and N. Schwartz (eds.), Well-Being: The Foundations of Hedonic Psychology, New York: The Russell Sage Foundation, pp.302-29.

Gambetta, D. ed. (2005), Making Sense of Suicide Missions, Oxford University Press.

Hacking, I. (1975), The Emergence of Probability, Cambridge University Press

Haubrich, D. (2003), "September 11, anti-terror laws and civil liberties: Britain, France and Germany compared", Government and Opposition 38, 3-28.

Holmes, S. (2005) "The suicide mission of 9/11", in Gambetta, ed. (2005), pp.131-72.

Huyse, L. and Dhondt, S. (1993), La répression des collaborations, Bruxelles: CRISP.

Kahneman, D. (1999), "Objective happiness", in D. Kahneman, E. Diener and N. Schwartz (eds.), Well-Being: The Foundations of Hedonic Psychology, New York: The Russell Sage Foundation, pp.3-25.

Krueger, A. and Maleckova, J. (2003). "Education, poverty, political violence and terrorism: Is there a causal connection?", Journal of Economic Perspectives 11, 119-44.

Levenson, S., ed. (2004), Torture, Oxford University Press.

Manson, N. (1999), "The precautionary principle, the catastrophic argument, and Pascal's wager", Ends and Means 1, 412-16.

Mueller, D. (1996), Constitutional Democracy, Oxford University Press.

Porta, D. (1995), "Left-wing terrorism in Italy", in M. Crenshaw (ed.), Terrorism in Context, University Park P: Pennsylvania State University Press, pp.105-59.

Ricolfi, L. (2005), "Palestinians, 1981-2003", in Gambetta, ed. (2005), pp.77-130.

Roemer, J. (1984), "Rationalizing revolutionary ideology", Econometrica 53, 85-108.

Sandler, T. and Siqueira, K. (2003), "Global terrorism: Deterrence versus presumption", paper presented at the International Peace Research Institute, Oslo.

Scanlon, T. (1998), What we Owe to Each Other, Cambridge, Mass.: Harvard University Press.

Scarry, E. (2004), "Five errors in the reasoning of Alan Dershowitz", in S. Levenson (ed.), Torture, pp.281-90.

Schauer, F. (2003), Profiles, Probabilities, and Stereotypes, Cambridge, Mass.: Harvard University Press.

Schumpeter, J. (1961), Capitalism, Socialism and Democracy, London: Allen and Unwin .

Taylor, R. (1981), A Trial of Generals, South Bend, Indiana.: Icarus Press

Waldron, J. (2003), "Security and liberty: The image of balance", Journal of Political Philosophy 11, 191-210.

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¹ Bloom (2002).

² Ricolfi (2005).

³ Crenshaw (1995), p.486.

⁴ Biggs (2005).

⁵ Among those who testified to the commission behind closed doors was Yves Bertrand, Director of the state security service. From sources close to the commission I know that his testimony made a deep impression. His public testimony to a commission of the National Assembly is found at http://www.assemblee-nationale.fr/12/rapports/r1275-t2-2.asp#P1439_246722.

⁶ <http://www.laic.info/Members/webmestre/Folder.2003-09-11.4517/rapport-stasi.pdf>

⁷ <http://www.les4verites.com/libreinformation/recherche.php?recherche=bouziane&opérateur=AND>.

⁸ Cole and Dempsey (2002), p.151.

⁹ Haubrich (2003).

¹⁰ Elster (2004 a). Urgency thus defined is not to be confused with impatience, defined technically as an enhanced preference for earlier reward over later reward.

¹¹ On Anger I.xvii.

¹² Cohen (1999).

¹³ Cited after Taylor (1981), p.163; italics added.

¹⁴ Haubrich (2003) sees the lack of checks and balances in the British system as one of the three main causes why the British reactions to 9-11 stand out as disproportionately strong.

¹⁵ Waldron (2003), p.191.

¹⁶ Mueller (1996), pp.196, 203.

¹⁷ In Germany, “failure to carry the [ID] card with you at all times has been subjected, since the mid-1990s, to a fine of € 30” (Haubrich 2003).

¹⁸ See their essays in Levenson (2004).

¹⁹ Anderson (1993), p.69.

²⁰ Cole (2003), Ch.4.

²¹ Similarly, in trials after World War II Belgians who had cleaned the barracks for German troops were accused of “bearing arms against Belgium”, since if they had not performed that task it would have tied down some Germans whom they thus enabled to fight instead (Huyse and Dhondt 1993, p.64).

²² Cole and Dempsey (2002), pp.159-62.

²³ Coomaraswamy and Reyes (2004), p. 273.

²⁴ [I]n order for the [British Anti-Terrorism, Crime and Security Emergency Act] to pass and to meet its international treaty obligations on human rights, Britain was required to proclaim a case of public emergency or war so as to be able to derogate from article 5 of the ECHR, which prohibits imprisonment without a fair trial. The derogation is allowed for by article 15 of the ECHR “at times of war or other public emergencies”. The opt-out was necessary to prevent one of the Act’s provisions - the detention of suspected terrorist refugees without trial - to violate the Convention. In the ECHR, a public emergency is defined as a situation that threatens the life of a nation and is, as such, just one notch down from a full-scale war, a revolution or a civil war. In derogating from the ECHR, the British government announced an emergency state despite repeated confirmations by politicians to the contrary and despite the assurances, continuously made to citizens by the country’s secret services in the months following the attack, that there was no indication of an immediate threat to the British public. [...] Clearly, the imprisonment of people without clear evidence or access to proper trial represents probably the most

outstanding single infringement of civil liberties surveyed in this article” (Haubrich 2003).

²⁵ The worst case arises when anti-terrorist measures have large legitimacy costs and no instrumental efficacy, as may have been true of the emergency measures the Italian state adopted in its fight against the Red Brigades (Porta 1995, p.118).

²⁶ In such cases, respect for the civil liberties of the suspect might endanger

²⁷ Fields (2004), writes that decisions “of the Bouziane kind [...] always help the enemy, for they weaken political will, sow doubt at operational level and play into the hands of government critics”.

²⁸ <http://www.nouvelobs.com/articles/p2032/a220625.html>. He added that he would not be against legislation if pragmatism and dialogue turned out to be insufficient.

²⁹ In addition, punitive action may be motivated for the sake of vengeance. It can be misleading to say that such actions can be counterproductive, if they are not undertaken for reasons of instrumental efficacy in the first place. Like deterrent measures they can, however, have the effect of triggering more attacks

³⁰ Roemer (1984) refers to this dual effect of repression as an aspect of the “psychology of tyranny”.

³¹ I simplify. Sandler and Siqueira (2003), intense anti-terrorist activities in one country may cause (and may be intended to cause) terrorists to displace their activities to another site.

³² In the terminology of Elster (1999), p.8, this is a mechanism of type B₂.

³³ One might also try to attack the problem at the roots, by acting on the causes of terrorism. I shall ignore this option, partly because it is politically unthinkable in the current climate and partly because it is not clear what it would imply in practice.

³⁴ Schauer (2003), p.186. The following owes much to this insightful discussion.

³⁵ I assume that rigorous use of an optimal algorithm that includes ethnicity as one factor would not be an infringement of civil liberties. In the terminology of Scanlon (1999),

Middle Easterners cannot reasonably complain of being singled for scrutiny to an extent justified by the algorithm although they would have grounds for complaint over more intensive (differential) scrutiny.

³⁶ “Put starkly, the question of racial or ethnic profiling in air travel is not the question of whether racial and ethnic sensitivity must be bought at the price of thousands of lives. Rather, it is most often the question of whether racial and ethnic sensitivity should be bought at the price of arriving thirty minutes earlier at the airport” (Schauer 2003, p.190).

³⁷ Their argument was that the Democrats supported federalization only because people employed in the public sector tend to vote with the Democrats. In striking contrast, the Senate voted 100 to 0 for federalization.

³⁸ See Elster (2003) for details and references.

³⁹ Cited after Hacking (1975), p.66.

⁴⁰ Manson (1999).

⁴¹ Elster (1983), p. 199.

⁴² The main cognitive stances discussed in the literature are certainty, risk, uncertainty, and ignorance. Risk exists when we know the possible events (whether exogenous to the actor or outcomes of action) and their likelihood, uncertainty when we know the possible events but not their likelihood, and ignorance when we know neither. Prior to September 11 2001, almost all experts as well as the public were in a state of ignorance, since almost nobody envisaged the possibility of a kamikaze strategy used against a high-rise building. (If the event is described more abstractly, as the killing of a large number of person by Islamic terrorists, it was of course within the perceived possibilities.) The example in the text of the future political regime in Norway may also be seen as a case of ignorance, since new modes of governance could arise that we cannot imagine at present. The idea of uncertainty is somewhat artificial, since it is often hard to imagine that the information and causal theories that would allow us to give an exhaustive enumeration of all possible outcomes would not also enable us to have some notions about how realistic or unrealistic they are. These notions are constrained by the limited ability of the human mind to make fine distinctions among levels of subjective probability. From

introspection, I may be able to distinguish eight levels: impossible, from zero to 5%, from 5% to 20%, from 20% to 40%, from 40% to 60%, from 60% to 90%, from 90% to 100% and certainty (my confidence that the sun will rise tomorrow). If I believe that a given terrorist risk is between 0 and 5%, it is a “real possibility”.

⁴³ Schumpeter (1961), p.83. .

⁴⁴ Kahneman 1999), ; see also Frederick and Loewenstein (1999).

⁴⁵ For the following, see Elster (2005).

⁴⁶ Krueger and Maleckova (2003).

⁴⁷ Holmes (2005).

⁴⁸ It would be wrong to view the standard of living in absolute terms only. There is a conventional element in any conception of poverty. Adam Smith pointed out that “the ability to appear in public without shame” requires more in a more wealthy society: at a certain point, he suggested, a man needs a linen shirt to be respectably dressed. Barry (2005, p.174), from whom I take this quote, adds that when everyone else has a TV set not to have one would imply exclusion from many social interactions. Yet I doubt that the non-provision of such socially defined elements of an acceptable standard of living would cause anyone to engage in acts of terrorism.

⁴⁹ See also Elster (1999), p.143.

⁵⁰ Descartes (1985), art. 2011; Elster (2004 b), p.229-33.

⁵¹ South Africans would eventually have become demoralized because their cause was not one in which they could believe without being in bad faith. Therefore, terrorism was not needed. Unlike the South Africans, with whom they are often compared, Israelis will not become demoralized because they have a cause in which they can believe without falling into bad faith. (I intend this as a purely descriptive statement.) Therefore, terrorism will not be successful.

⁵² Crenshaw (1995), p.513.

⁵³ For a related point, see Scarry (2004), p.283. She argues that before engaging in torture for the purpose of gathering information, the agent should ask himself whether “I am confident enough that he holds this knowledge that I am willing to forfeit my liberty and possibly my life in order to procure that knowledge”.