

## Regulating Terrorism

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This essay argues that both the war and criminal justice models are too crude, particularly in their theory of deterrence, for responding to the problem of global terrorism. An alternative regulatory model is advanced that overlays the public health concepts of primary, secondary, and tertiary prevention with other older ideas of containment of injustice and enlargement of justice. An interconnected web of controls might enable an over-determined prevention of terrorism that, in spite of its redundancy, could be more cost-effective than the war model, because the principle of responsiveness means parsimony in resort to expensive coercion. It is possible to have an evidence-based approach to regulating rare events like 9/11 terrorism by applying the principles of evidence-based regulation to micro-elements that are constitutive of macro-disasters. Viewed through this lens, support for pre-emptive wars on terrorism is not evidence-based, but grounded in other public philosophies, notably retribution.

### RECONSIDERING DETERRENCE

An early version of this paper was presented at some conferences and published on the Internet in March 2002. The opening paragraph began: “Both the war model for confronting a transnational problem and the criminal justice model share a central commitment to the deterrence doctrine.” There is surely an important role for deterrence in confronting terrorism, especially if we deploy the more sophisticated models of deterrence of international relations (IR) theory, as opposed to those of criminology or law and economics. IR

deterrence is more dynamic than the models that now dominate criminology. This is the legacy of criminology and the economics of law from Bentham: Deterrence means statically projecting the product of a probability and a severity of punishment that makes compliance rational. With regard to terrorism, a dynamic enforcement pyramid approach to deterrence is favored that is more akin to IR thinking about deterrence and compellence.

But first consider a psychological model of deterrence that is critical of both the criminal justice and IR models. This is Brehm and Brehm's (1981) theory of Psychological Reactance. It is a theory grounded empirically in a large number of psychological experiments. These show that when deterrent threats are escalated, you get a deterrence curve with a positive slope as predicted by deterrence theory. But you also get a reactance or defiance curve with a negative slope. Escalating threat simultaneously delivers more deterrence and more defiance (on defiance theory, see Sherman [1993]; on deterrence and defiance with terrorism, see Frey [2004a]). Whether deterrence works depends on the positive slope of the deterrence curve being steeper than the negative slope of the defiance curve. The net effect of escalating threat is formally the sum of these two curves.

What is especially interesting about the psychological reactance literature is that it also reveals some important insights about the conditions where the deterrence curve will be steeper than the defiance curve. Experimental research suggests that deterrence is stronger than defiance when the freedom we seek to regulate is not very important to the target of deterrence (Brehm and Brehm 1981; Braithwaite 2002: 102–110). Hence if we think of a freedom that is not so critical to us, like the freedom to park our car wherever we like, defiance is minimal. We do not explode when we confront a sign that says, "No parking 9 A.M. to 5 P.M." Because the defiance curve is minimal in slope here, deterrence of parking violations with fines works almost exactly as rational choice theory in economics predicts. If on the other hand, we seek to regulate a freedom as important as freedom of religion by throwing Christians to the lions, we may then find, as the Romans did, that because defiance is so great with such a freedom, Christianity actually grows as a result.

It seems possible that Osama bin Laden and Hamas have an intuitive understanding of this theory. Their game is perhaps not so different from that of martyrs like St. Peter. It is to provoke deterrence that is rendered counterproductive by defiance. For bin Laden, it is to provoke a pan-Islamic, not just pan-Arab, consciousness of oppression of their freedom. It is to portray the war on terrorism as another Christian crusade. If the United States no longer believes in deterring terrorism, clearly Israel does. In general, it does not assassinate Hamas leaders to prevent terrorism as soon as it acquires intelligence about them; instead it murders them, and whoever is with them, as soon as possible after an act of Hamas terrorism occurs. There is a place for deterrence in a strategy to defeat terrorism. It is just that for Israel, and the White House in supporting Israel, it may be the wrong place. In their strategy, deterrence is positioned to engender defiance that continues cycles of tit-for-tat terror.

### RECONSIDERING JUSTICE

A second important empirical result from the psychological literature comes from Tom Tyler's (1990) work. Tyler finds that criminal enforcement and other forms of social control work when they are administered in a way that their targets perceive as procedurally fair. This research shows a surprising capacity of people to buckle under to social control that delivers bad outcomes to them so long as those outcomes are dispensed through processes they accept as fair. Marrying these results to defiance theory, we might say that deterrence effects will exceed defiance effects when sanctions are seen as an outcome of fair procedures, a critical part of which is genuinely listening to the point of view of the other. This implies listening rather than just blustering at the United Nations. Furthermore, it might mean being unwilling to go to war without a UN resolution that specifically legitimates the war. I will come back to the importance of the procedural justice results and this important question of legitimacy with wars on terrorism.

The dynamic theory of social control illustrated here is justified in *Restorative Justice and Responsive Regulation* (Braithwaite 2002). Figure 16.1

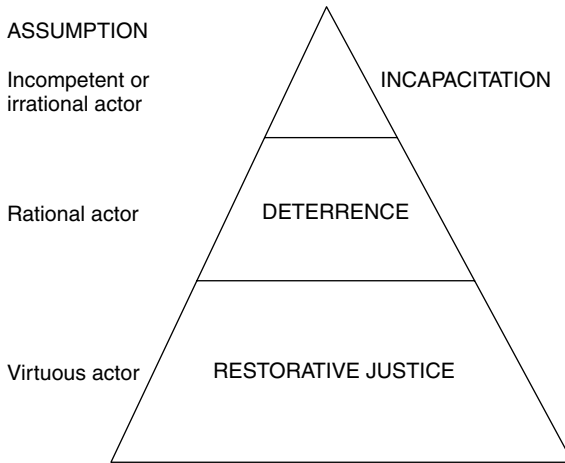


Figure 16.1. Toward an integration of restorative, deterrent, and incapacitative justice.

represents a responsive regulatory pyramid. It means you have a presumption in favor of starting at the base of the pyramid by trying dialogue, reconciliation, and creative problem solving (restorative justice) first. Then when that fails and fails again, you may be willing to escalate through a hierarchy of forms of deterrent justice. Then when deterrence fails, you become willing to resort to incapacitative justice – incapacitating terrorists by putting them in jail or killing them, for example. As you move up through escalated deterrence options to more incapacitative options, if a cooperative response is elicited, you must de-escalate your response. Here the explanatory and normative content of responsive regulation has a lot in common with Graduated Reduction in Tension (GRIT) theory in IR.

The presumptions of responsive regulatory theory are precisely the opposite of those expounded by Newt Gingrich during his 2002 speaking tour in Australia to sell the war on terrorism. Mr. Gingrich argued that the burden of proof is upon those who are against the war option for expanding the war on terrorism to new targets to come up with alternatives. Responsive regulatory theory imposes that burden on those who wish to escalate.

Following this line, my own view would not be to rule out the military option, but to be more circumspect about it than the Bush

administration was. So with the war on terrorism, when the Taliban announced that they were willing to negotiate with the United States about handing Osama bin Laden and his leadership over to a third nation to be tried in a court of law, the responsive regulatory presumption is that it is morally right to take up such an offer (see Pilger 2002: 103–104). Even if one had the belief, as I did, that the offer was likely not sincere, one should still negotiate. The reason is that it is procedurally just to listen to the perspective of the other before escalating. Even when one feels 90 percent certain that negotiations will fail, the arrogance of refusing to listen undermines the legitimacy of the war option, and will make it harder to win the peace. Grounded in procedural justice theory, the hypothesis here is that the Muslim world would be less resentful and defiant today about the war on terror if the United States had negotiated in good faith before bombing Afghanistan.

Responsive regulatory theory assumes that all individual and collective actors have socially responsible selves, rational selves, and irrational or incompetent selves (Figure 16.1). Moreover, it assumes that sophisticated diplomacy can often persuade actors to put their best self forward. This is one of the reasons I will argue that General George C. Marshall is a good candidate for the greatest American of the American century (Pogue 1966, 1973, 1987). He had the ability to persuade a socially irresponsible actor, such as Stalin, to put his socially responsible self forward, to be trustworthy with him; Stalin in turn said that Marshall was the one person in the West whom he did trust. Second, responsive regulatory theory assumes that when actors are being irrational or incompetent in their judgments, it is possible for good diplomacy to persuade them to be susceptible to rational incentives like deterrent threats. The psychological evidence on the capacity of human beings to abandon one kind of self, in favor of another that seemed utterly entrenched, never ceases to amaze (Turner et al. 1987).

## **CONTAINMENT AND ENLARGEMENT**

Enough of negative cases according to the theory. Heroes of the twentieth century by the lights of restorative and responsive regulatory

theory are Nelson Mandela and General George C. Marshall. Mandela overcame the peaceniks in the African National Congress (ANC) to take them into an unfortunately necessary armed struggle against Apartheid. It included attacks on civilian targets such as the power grid, but he also counseled against attacks directed at killing civilians. His escalation was very gradual and oriented to bringing the hearts and minds of the rest of the world with his just cause. When he prevailed politically, he proffered restorative justice to his enemies through the Truth and Reconciliation Commission. His jailers sat beside him at his inauguration as president.

General George C. Marshall equally understood the need to overcome the resistance of U.S. isolationists during the late 1930s to project deterrence to Hitler (Stoler 1989; Cray 1990). He led a reluctant United States and president to the view that it would have to build an army that could defeat Germany in a ground war in northwestern Europe, and project a capacity to do that – not just a capacity to defend itself through airpower (FDR’s late 1930s vision). It was Marshall who resisted Churchill’s “closing the circle” policy of 1942 – a bombing war plus scattered ground engagements at the periphery of Europe. Marshall saw the need for more decisive escalation to take some pressure off the Red Army by thrusting at the heart of Europe. Then after the war, it was Marshall as secretary of state who persuaded a punitive American people to learn from the mistakes of Versailles and heal Europe through the Marshall Plan – the finest moment of the American century (Ferrell 1966; Pogue 1987). Marshall was always more decisive in his support for escalation when that was what was needed, and likewise always more dramatic in his de-escalation than those around him.

Through this theoretical lens we can see more clearly the virtues of the containment theory of the Truman Doctrine that incubated during the decade or so when Marshall was the most dominant influence on U.S. strategy. In the crafting of the Truman Doctrine of containment, one must give substantial intellectual credit to George Kennan (1947), who drafted the first version of it after Marshall appointed him head of a new Policy Planning Staff in the State Department. Containment was mostly sustained by all U.S. presidents until George W. Bush. It meant refusing to bring on a full-scale war with the Soviet

Union or China, even when the United States had nuclear weapons and the Communists did not, but rather containing them from occupying new territory such as South Korea or Taiwan. It meant containing the spread of nuclear weapons through the Nuclear Non-Proliferation regime initiated on Marshall's watch. In retrospect, the accomplishments of nuclear non-proliferation are fairly remarkable, as were the accomplishments of deterring invasion of South Korea and Taiwan without a massive conflagration. Again, it was Marshall as defense secretary during the Korean War who got the job of containment done. He calmed the megalomania of his commander, Douglas MacArthur, who would have brought on a war with the People's Republic of China, a scenario that Marshall regarded as a Russian trap. It was this policy position even more than his constructive relationship with Stalin that later caused Senator Joseph McCarthy to vilify him. The Truman Doctrine was premised on a prudent patience. Part of that prudence in Korea was institutionalizing the principle of seeking the authority of the United Nations for military containment. Containment would at times take bold resolve to deter expansion. However, so long as totalitarianism was contained, in the long run it would prove to have more internal contradictions than liberal market democracies. In the long run, contained totalitarianism is more likely to self-destruct than contained democracy.

The genius of Marshall was not only that he had a clear vision of the strategic role of deterrence in a policy of containment, but that he also had a vision of what the Clinton administration later came to describe as enlargement – enlargement of the space on the globe secured by democratic institutions. But Marshall extended a level of U.S. generosity toward the former fascist states that Clinton never persuaded the United States to extend to former Communist societies. Since Marshall, U.S. foreign policy seems never to have gotten the balance so right between investment in containment and investment in enlargement. John Foster Dulles, Marshall's successor as U.S. Secretary of State, embarked on many ill-conceived adventures in containment that in fact crushed the enlargement of democracy, especially in Latin America (e.g., the U.S.-orchestrated Guatemalan coup of 1954). For all the foreign aid the West poured into the Middle East – most of it U.S. weapons for Israel – Britain, France,

and the United States failed massively to promote the enlargement of democracy in the Arab world, and did much to bolster tyrannical puppets resented by the ordinary people of the region.

### **THE TORN WEB OF U.S. CONTROLS ON TERRORISM**

This analysis of containment and enlargement failure is also true of the U.S. strategic response to terrorism. The containment failures included U.S. opposition to an anti-terrorism treaty during the 1990s that might have criminalized the funding of terrorist organizations (see also Clarke [2004: 98] on domestic sensitivity to upsetting Arab investors in the United States), the abysmal intelligence failures, and failures of target hardening against hijacking that allowed the September 11 attacks to succeed. Frontline managers of airline security – flight captains – were not even put on alert after intelligence of planned hijacks associated with al Qaeda were deemed serious enough to warrant distracting the president from his long summer holiday with a briefing. It was known that unlike the U.S. security establishment from the time of Dulles and CIA Director George H.W. Bush, al Qaeda was a learning organization, one that learned from its mistakes. The fact that it had failed to topple the World Trade Center once, and that a previous attempt by Islamists to topple the Eiffel Tower with a hijacked aircraft had failed, should not have constituted assurance for assuming it would continue to fail at such known objectives. When various elements of the intelligence establishment reported deep suspicions over the flight training of certain characters who were actually known by other elements of U.S. intelligence to be associated with al Qaeda, there was reason to believe that al Qaeda had not given up on its ambition of crashing aircraft into major public buildings in the United States (see U.S. Congress 2004: xi, xiii, 85). Then there was the explicit warning from the Taliban foreign minister two months before September 11.

George W. Bush was presented as a consummate delegator to a world amazed at the thought of the new CEO of any major organization taking a full month's holiday six months into starting the job. While he was at the Crawford ranch, something went wrong with this system of delegation that future public inquiry will hopefully fully lay



bare. If he was too busy to talk to the foreign minister of the country that was the greatest threat to his nation's security, then why was someone not reporting to him who was part of this conversation? Richard Clarke's (2004) White House insider account now makes it clear that whereas Clinton had been "hands on" with al Qaeda and had plans to assassinate or "snatch" bin Laden, Bush paid limited attention to the terrifying briefings he was given, and which detailed imminent plans for al Qaeda to attack America.

The enlargement failures related to the timidity in pushing for the enlargement of democratic sovereignty for the Palestinians; for enlarging opportunities for the bereft Muslims of the refugee camps of Pakistan and many other places that became breeding grounds for al Qaeda recruitment; for enlarging democracy in former Arab ally states like Iran under the Shah, Iraq before 1990, Afghanistan after the Soviet withdrawal, and Saudi Arabia today. Bin Laden understood that in a world where the majority of refugees in the twenty-first century had become Muslims, providing practical support for a more just future for them – such as the schools he supported in Pakistan and the orphanages he funded for Muslim victims of the Bosnian war (Jacquard 2002: 70) – was a good investment. In Urdu, Taliban means band of scholars, a reference to the way they were recruited – as poor children for whom Islamist madrassas were the only way they could afford an education. Saudi democracy might have integrated into its power structure many of the idealistic young Muslim men returning from victory against the Soviet Union in the Afghanistan war. Instead it treated them as dangerous elements, a threat to the total control of the royal family. Saudi institutions gave them no legitimate path to political voice, only the path of terrorism. Most bouts of terrorism in the twentieth century, after all, had ended with the integration of some terrorist leaders into democratic power structures – whether it was Northern Ireland terrorism, Israeli terrorism, South African terrorism, East Timorese terrorism, the terrorism of the Italian Red Brigades, or of the Baader-Meinhof gang in Germany (see Frey 2004a).

Mustapha Kamel Al-Sayyid (2003) has attempted to demonstrate that the evidence shows that Islamist organizations are more successful when they reject violence in favor of electoral politics. Al Qaeda's appeal will collapse only when Muslims who believe in the ideal of

an Islamic state turn on al Qaeda for using un-Islamic means for achieving the end they share (see Gunaratna 2002: 239). Of course the more injustice and humiliation the West hurls at Islamists, the less likely such a marginalization of al Qaeda will become. British Prime Minister Blair showed the wisdom of the democratic integration option when he released IRA terrorists from prison in 1998 so they could speak and vote when their political party decided whether to end armed struggle and support power sharing in Northern Ireland.

The returning veterans from Afghanistan were treated as dangerous elements in Saudi Arabia partly because they had already been made dangerous thanks to the cynical way the United States, France, Egypt, Pakistan, and others fostered Islamic extremism as a proxy against the pre-1989 Soviet Union. John Cooley's (2000) detailed account in *Unholy Wars* of the relationship between the U.S. intelligence establishment and Islamists as "a strange love affair that went disastrously wrong" is compelling. For instance, several of the 1993 World Trade Center bombers had received CIA training and had used a chemical formula for the huge bomb taught in CIA manuals, versions of which were found in the possession of some of the conspirators (Cooley 2000: 223, 243). During the Afghan war against the Soviets between 1979 and 1989, the CIA and the Pakistani military institutionalized training in terrorism and financed the propaganda of Islamic proponents of suicidal martyrdom. After the Soviets were defeated, these CIA-trained Islamists fanned out to create homicidal havoc in a dozen Muslim nations from the Sudan to Indonesia, and in the Philippines, France, the United States, Chechnya, Bosnia, Kosovo, Kashmir, across Africa and Central Asia, and more (Cooley 2000; Jacquard 2002).

U.S. encouragement of terrorism in one era that comes back to bite the United States in another is not a new phenomenon. The Nixon administration's CIA urged its Australian counterpart to refuse to hand over to Attorney General Lionel Murphy its files on Australian terrorist training camps of the fascist Ustacia for Croatians wishing to destabilize the Communist yet tolerantly multicultural Yugoslavian regime of Tito. The stand-off was resolved in a famous incident in 1973 when Murphy was forced to institute a raid on his own security

organization to seize the files. The United States has also allowed terrorist training camps to flourish in its own territory. The CIA organized a 1985 terrorist bombing in Beirut that was rather like the Oklahoma City bombing, though not as widely reported. CIA involvement was revealed years later by the same team at the *Washington Post* that broke Watergate. A truck bomb parked outside a mosque detonated as people left: Eighty were killed and two hundred and fifty were wounded, mostly women and children. A Muslim cleric believed by the CIA to be a dangerous character was the main target, but he was untouched (Chomsky 2001: 44). From the time of the Dulles brothers, a large number of terrorist incidents were sponsored by the CIA in Latin America. White House staffer, Colonel Oliver North, organized funding for the Nicaraguan terrorist group, the Contras, by selling arms to elements of the "Axis of Evil" in Iran. The aid swapped to the Contras for arms to Iran was laundered by the CIA through the Arab bank widely used to fund terrorist organizations, the Bank of Credit and Commerce International (BCCI). This same bank was used to launder money by other sometime U.S. allies of the 1980s, Saddam Hussein and Manuel Noriega, by drug lords laundering money from illegal arms trading, and for covert nuclear programs.

The United States has protected as well as funded terrorists who have sought to bomb and assassinate the political leaders of other nations, such as Fidel Castro. Indeed, the Reagan administration set a new benchmark by directly bombing the home of Libyan leader Ghaddafi two decades ago, though it only succeeded in killing his baby. Political assassination has been repeatedly proven to be a threat to peace in the modern world. Michael Ignatieff (2004: 21) argues for the balancing perspective: "The fact that liberal democratic leaders may order the surreptitious killing of terrorists ... need not mean that 'anything goes'." His view that the effects can be limited by allowing such measures only in temporary emergencies is hardly persuasive with regard to assassination. There would likely be peace in Palestine today if after the assassination of Prime Minister Rabin, the new Israeli Prime Minister Peres had not ordered the assassination of Yahya Ayyash, known as "the bombmaker." His assassination was reciprocated with a devastating round of Hamas suicide bombings in February and March 1996 that killed more than fifty Israelis (Quandt

2001). This allowed Benjamin Netanyahu to present himself as the “security” candidate and defeat Peres, who had until his ill-conceived assassination been way ahead in the polls. It was Netanyahu’s provocations that then unraveled the peace process.

The biggest tear in the U.S. web of controls against terrorism was therefore more than its undermining of the efforts of other states in the late twentieth century to negotiate an anti-terrorism treaty. It was that it actively promoted terrorism in this era; it actively used the same banks that should have been targeted by international cooperation to attack the financing of terrorism; and it actively undermined the rule of international law through foreign political assassinations.

At the same time the United States undermined the fundamentals of global containment of terrorism, it neglected enlargement. In the late twentieth century, the wealthiest nation in the world devoted the smallest proportion of its GDP to foreign aid. The nation that in Marshall’s era had wooed the UN to New York could no longer afford its membership dues. A Marshall plan for Afghanistan from the 1980s may have helped preserve their long-suffering people from totalitarianism, Talibanism, tribal warlordism, terrorism, American bombs, resurgent drug running, and the ungovernability that is their contemporary plight. But America had changed: George W. Bush was elected on a platform of opposition to the kind of nation-building in the world’s Afghanistans that won George Marshall his Nobel Peace Prize.

When security is threatened, it is natural to prioritize containment over enlargement. But this is a mistake because enlargement makes containment easier. Fortunately, the United States has not privileged containment over enlargement in all aspects of the war on terrorism. A nice case in point is the work of the Financial Action Task Force (FATF), which promulgates national policies to combat the money laundering that is the lifeblood of terrorist organizations. In its early years the FATF gradually expanded a so-called “white list” of states coming into compliance with its anti-money-laundering policies. The shift to sanctioning an unfortunately labeled “black list” of non-complying states was accelerated by September 11. But this “black listing” could be more effective because it built on the foundations of years of expanding “white listing.” Enlargement of the regime was a platform for the containment of money laundering in rogue states.

Some lawyers and criminologists are inclined to think that the criminal justice model is superior for combating terrorism to the war model. There is something in this. Criminologists believe it is better to nab organizational criminals alive than dead. Then when we arrest them, we let them know that the system will go easier on them, perhaps keep them out of jail altogether, if they provide evidence useful for catching bigger fish in the organization than themselves (Wilkinson [2000: 98] argues this worked particularly well with the Red Brigades in Italy). With Islamist terrorist organizations the more important evidence about bigger fish might relate to financiers of the networks. Al Qaeda cell leaders or the people they answer to may be fungible operatives who are as undeterrable as bin Laden himself in their willingness to die for their cause. It is likely, however, that many of the wealthy Saudi businessmen who seem to be among the funders of al Qaeda would be susceptible to deterrence, even if only by naming and shaming them, because of their dependence on trading with the West for their wealth.

With warlordism more generally in the contemporary world, World Bank regression analyses suggest that the existence of diasporas of wealthy funders in the West explains why war persists in some parts of the world more than others (Collier 2000). So, wealthy U.S. funders of the IRA and the protestant paramilitary organizations were one reason for the persistence of terrorism in Northern Ireland. Suicide bombers are often not only motivated by the embrace of their God in death as martyrs, but also by generous payments to the struggling families they leave behind. Herein lies further appeal of a criminal justice model that captures low-level offenders and then moves up organizations to deter financing of terrorism. This is a less clumsy model of pre-emption than the war model. Little to date has been achieved in using immunities to persuade smaller fish to give up bigger fish. Little wonder when even a Taliban foreign minister who sought to give up bin Laden before September 11 is rewarded by being touted as the most senior person they have "captured," and still being held in U.S. custody at the time of writing. The Bush Doctrine of military pre-emption is clumsy; more subtle models of pre-emption informed by corporate crime enforcement were quite beyond the Bush administration, which is why charges were not laid against any of the major funders of al Qaeda.

### THE PUBLIC HEALTH MODEL

One would not want to push hard for the superiority of a criminal justice model over a war model. A failing of the FBI before September 11, 2001, was that they had limited interest in intelligence that would not help secure prosecutions – their regulatory strategy with terrorism was far too preoccupied with one preferred tool – prosecution (see U.S. Congress 2004: 37,122). Instead of the nature of the problem driving the choice of tools, the tool of choice determined which problems and targets would be a priority (Sparrow, 2000; Brodeur, this volume). It may be that there is more appeal in the ideal of the public health model of integrating primary prevention (e.g., clean water for all), secondary prevention (vaccinating targeted at-risk groups), and tertiary prevention (treatment of those already ill). This approach to problems of violence has been developed by James Gilligan (2001: 14–17).

It might be attractive to examine the U.S. strategic goals of containment and enlargement manifest in the diplomacy of George Marshall. An attraction of this examination is that it helps us look more broadly than just at how we respond to terrorists once they have become terrorists (tertiary containment). Containment is bound to have more attraction than enlargement if we consider only how to respond to existing terrorists. This will cause us to over-invest in containment and under-invest in enlargement. As we have seen, enlargement of democracy, of the sphere of social justice, or of freedom from poverty or liberation from refugee camps may be the most important forms of primary prevention of terrorism. A positive example of post-September 11 primary prevention by enlargement is the funding the World Bank is providing to madrassas in Pakistan's North West Frontier Province on condition that they provide a quality educational curriculum to refugees and other poor children, as opposed to the doctrinaire education that fueled al Qaeda recruitment from the madrassas. Poor schools that receive funding by people of another religion are more likely to teach children religious tolerance.

The imbalance between investment in primary prevention and tertiary prevention by containment was well illustrated by the Bush administration increases in the defense budget to fight its war on

terrorism, which made U.S. defense spending roughly equivalent to the rest of the world's nations combined; the 2002 *increase* alone was greater than the *total* expenditure of all the world's nations on foreign aid. Enlargement (democratic "nation building") seems expensive only when we forget to compare the costs of foreign aid to build democracies to the costs of over-investment in coercive control. Enlargement seems expensive when we forget how the Marshall Plan was a sound long-term investment for the U.S. economy because it fueled a long boom of U.S. exports to Europe and Japan.

Secondary prevention also suffers under-investment under the war model. For example, there is a dearth of investment in preventive diplomacy and enhancing capability for forms of secondary prevention such as research and development on target hardening on preventable problems like aircraft hijacking, cyberterrorism, or hoof-and-mouth disease attacks on the nation's farmers. Any one of a number of such forms of secondary prevention might have prevented September 11. This is the theme of redundant or over-determined controls to which we will return in the concluding pages of this essay.

As we move from tertiary to secondary to primary prevention, we move in a direction that makes enlargement more important in the balance between enlargement and containment. However, even with tertiary prevention, enlargement can be more important than containment. Most Americans believe that the bombing of Serbia was responsible for the fall of Slobodan Milosevic. Most Serbian opponents of Milosevic believe the bombing made their job harder. Milosevic was not overthrown during or after the bombing, but later by the progressive enlargement of a Serbian democracy movement. Led by NGOs, students, and other young people, they became more and more fearless in their campaigning in universities, schools, workplaces, and ultimately on the streets, eventually winning the hearts and minds of surging masses of Serbs. The triumph was not of NATO bombs, but was akin to the triumph of people power in the Philippines against Marcos in the 1980s, the people of Eastern and Central Europe against Communist states in 1989, and in the 2004–5 wave of democratic revolutions in Georgia, the Ukraine, and Kyrgyzstan. International NGOs played useful roles in supporting the Serbian NGOs; dollars from the West (particularly from George

Soros) flowing to those NGOs were also important. But it was indigenous Serbian politics that ultimately pried open the contradictions of Milosevic's totalitarianism, causing the military to switch allegiance from the tyrant to the people, as containment theory predicts.

Western governments have supported warlords when they fought the enemies of the West, even when those warlords crushed indigenous democracy movements and even when they supported themselves by trafficking drugs into the West. In the case of Saddam Hussein, the United States supported him militarily even when he used weapons of mass destruction against democracy movements. In *New and Old Wars*, Mary Kaldor (1999) suggests that in late modern conditions, the path to democratic transition for war-torn states is to identify "islands of civility" that always exist in such states and build out from them. Under the public health model, expanding civility in this way is akin to spreading good hygiene. Let us hope that is what the United States and UN ultimately achieves in Afghanistan, rather than assisting a new set of warlords to expand their sway and reestablish wider drug empires. In Israel, the long-term benefits of building peace and democracy in Palestine by the peace movements on both sides joining hands are profound, yet the prospects for such an outcome remain dim. The sad fact of the history of Palestine is that whenever there has been that bottom-up momentum for peace, top-down leadership has been missing; whenever there has been top-down leadership (perhaps as with the "roadmap"), bottom-up commitment to peace was missing. At times, when both seemed to be coming together, events like the assassination of Prime Minister Rabin have derailed either the top-down or the bottom-up leadership for peace.

So the prescription of this essay is to be reluctant to embrace wars on terrorism, but diligent at weaving a web of controls against terrorism, and firm in our resolve to escalate an enforcement pyramid until terrorism stops after it has broken out. This means tertiary containment delivering a ceasefire that exists as a platform for the other forms of containment and enlargement in the other five boxes in Figure 16.2. Instead of pre-emptive wars on terrorism, the prescription is for war as a last resort and a balance of primary, secondary, and tertiary prevention of terrorism, with each of these levels encompassing a balance of containment of violence and enlargement of democratic



	<b>Enlargement</b>	<b>Containment</b>
<b>Primary prevention</b>	Marshall plan, global democratic institution building, reform of the IMF/development banks, a West committed to social justice and dignity for the Muslim world.	A global peace movement that builds the consciences of citizens who reject violence. Reject bellicose strategies like assassination that engender defiance and assist terrorist recruitment.
<b>Secondary prevention</b>	Preventive diplomacy. Preventing the living of lives in refugee camps. Access to education for all children in Pakistan that teaches religious tolerance.	Financial action task force. Nuclear non-proliferation. Biological weapons treaties. Target hardening (e.g., airlines, anthrax vaccines).
<b>Tertiary prevention</b>	U.K. releases IRA terrorists from prison to vote on power sharing in N. Ireland. Mujahedeen returning from fighting Soviets (e.g., bin Laden) given a seat at the table of a Saudi democracy.	Intelligence cooperation on terrorism that leads to arrests. International Criminal Court.

Figure 16.2. Tying together the strands of a web of controls to prevent terrorism.

institutions of non-violence. With an effective web of controls against terrorism, each strand in the web might be easily broken, but when the strands of the web are tied together to produce an effective and mutually reinforcing redundancy of control, the risks to our persons

from terrorism can continue to be kept far below the risks of common crime. Although Dershowitz (2002: 2) believes religiously inspired international terrorism is the “greatest danger facing the world today,” many times more people are murdered every year in the United States than have been killed in international terrorist incidents throughout the globe in the last forty years (most of whom are, of course, not Americans).<sup>1</sup>

Even with the progress that has been made with nuclear safety regulation, a bigger Chernobyl remains a greater practical risk to the world than nuclear terrorism. With a tightly woven web of controls against terrorism, it can become a much lower risk. With international security threats of all kinds, if a nation like the United States makes the six-fold investment in an appropriate web of controls, it might find that halving its military spending would be responsible.

#### **TOWARD AN EVIDENCE-BASED POLICY ON EXTREMISM**

An alternative perspective on terrorism has been suggested by Peter Wilkinson of the British Health and Safety Executive: the “safety case” approach to offshore oil rig safety. The safety case idea is that instead of command-and-control inspection of oil rigs for compliance with rules, the company is asked to prepare a safety case on how it will manage the specific set of safety risks that confront a single rig – given the particular oceanographic and oil/gas production contingencies it confronts. Once approved by the state regulator, it is an offense for the company not to comply with the requirements of its own safety case. With occupational health and safety, we have evidence that command-and-control inspections of factories and mines to secure compliance with rules does improve safety, so is it responsible to abandon this in favor of a safety case regime in the absence of evidence that it will work better? Wilkinson pointed out that the disasters we try to prevent on offshore oil rigs are rare events, such as a “hundred year wave.” It

<sup>1</sup> Frey (2004b: 5) shows deaths from international terrorism ranging between a peak of 3,250 in 2001 and 34 in 1968; in most of these years more than 20,000 people were murdered in the United States; Hoffman (2002: 7) points out fewer than 1000 Americans were killed by terrorists either in the United States or overseas in the thirty-three years prior to 9/11.

follows that we can never have a credible evidence base for making such a policy shift. However, in a world where some airlines, some rail operators, some coal mines, and some nuclear power plants around the world adopt a safety case approach and others do not, it is possible to do systematic empirical research on the efficacy of the innovation, with matched controls where the outcomes are not major disasters, but smaller events that are known to be elements of disasters – like separation failures with aircraft, derailments, coal-mine-collapse injuries, and automated shut-downs of nuclear power plants.<sup>2</sup>

In other words, part of what regulatory research is about is assessing whether policies will work with big problems by being systematically evidence-based about how effective the policies are with smaller problems that are elements of the bigger problems.

The most dangerous characters in the world are those who respond to the “what works” conundrum with big problems by substituting an ideological commitment to a totalizing theory like rational choice as a guide to what to do. Of course, most practitioners of IR are not theoretically myopic in this way. They are students of history who analyze what has happened in past in crises that have some features in common with the unique crisis that today confronts us. Then they “think in time” about how circumstances are different today from what they were then, about how features of the current crisis might cause quite a different outcome than occurred with the like crisis from the past (Neustadt and May 1986). Understanding the ebb and flow of history helps us to be wise; it does not enable us to be rigorous scientists of IR.

As a patient, we would rather go to a doctor with the skills of a good clinician – who can discern what is different about our set of symptoms from the classic set in the textbook – than go to a good medical researcher. At the same time, we might not want the textbook to be written by doctors who spend all their time seeing patients. For this task we want experts who immerse themselves in the mountains of literature on the theory of disease and evidence on how to control it. We want the textbook to be evidence-based, whereas we want our doctor to be diagnostically detectivelike to come up with a treatment for our

<sup>2</sup> I am indebted to Andrew Hopkins for bringing this point to my attention.

particular symptoms and medical history. Like oil rigs that blow up, we die only once. But the difference is that there are millions of deaths each year for evidence-based medicine to study scientifically. Even so, we can have the benefits of a dual-track diagnostic and evidence-based regulatory policy by building our evidence base on more micro-incidents that are credibly constitutive of macro-disasters. Though we need the detective work of the intelligence community to diagnose specific threats of nuclear terrorism, we can also study systematically whether nuclear plants with safety case regimes have lower incidence of unaccounted loss of nuclear materials than command-and control-regimes. Figure 16.2 finds an important place for both in a prudent web of regulatory controls.

The art of intelligence should be guided by an evidence base on what kind of micro-intelligence analytics are more likely to connect the diagnostic dots, and which kinds recurrently fail to illuminate the bigger picture. We want creative intelligence analysts who look at the same phenomenon through many different analytic lenses, who can see it as different things at once. But we also want analysts who know from the literature on evidence-based intelligence that certain analytic lenses promoted by intelligence charlatans recurrently distort the truth in knowable ways. Or as French President Chirac put it, explaining his disbelief in 2002 and 2003 that Iraq had weapons of mass destruction, we need empirically educated political leaders who are wary of the history of how intelligence services “intoxicate each other” (Blix 2004: 128, 263).

A difficulty with this approach is in establishing which ingredients are best targeted for small-scale work. Root cause analysis of terrorism does not have the scientific respectability and ideological neutrality that it does in health and safety (New South Wales Department of Health 2004). Conservatives like to argue that poverty is not a root cause of terrorism because most poor people do not become terrorists (Dershowitz 2002: chapter 1), whereas safety scientists are not prone to reject water as a cause of death by drowning because most people who are immersed in water do not drown. In a more fundamental challenge, Dershowitz (2002: 28) contends that “to understand and eliminate the root causes of terrorism ... is exactly the wrong approach”:

The reason terrorism works – and will persist unless there are significant changes in the responses to it – is precisely because its perpetrators believe that by murdering innocent civilians they will succeed in attracting the attention of the world to their perceived grievances and demand that the world “understand them” and “eliminate their root causes.” (Dershowitz 2002: 28)

This might make sense if what we were considering as root causes to be eliminated equated to demands to release political prisoners. But a World Bank initiative to reduce poverty that is motivated by a number of factors including a desire to reduce terrorism hardly seems to imply the Dershowitz moral hazard.

The web of controls idea is that we make up for the inferiority of a micro-evidence base for macro-problems by greater redundancy in the web of controls. Let me summarize the set of empirical claims about the conditions for micro-regulatory success that we might seek to deploy for the problem of global terrorism (citing the micro-regulatory research where a more detailed case is made for each claim).

1. Success in reducing risk more likely comes from an integrated web of regulatory controls that is redundantly responsive to the multiple explanatory theories grasped as relevant to the control problem. It is less likely with a singular control strategy based on a single theory (Braithwaite 1993; Braithwaite and Drahos 2000: especially chapter 23).
2. Intelligence experts undisciplined by evidence sufficiently decisive to refute their most erroneous analyses tend to “intoxicate each other.” Just as we need doctors who do contextually wise detective work grounded in a reading of texts written by scholars with the best grasp of the theory and systematic evidence to test it, so we need terrorism intelligence that is literate in its responsiveness to regulatory theory and evidence at the same time as it is artful in its detective work (Braithwaite 1993).
3. Responsive regulation that is dynamic tends to control risks more effectively than static command-and-control regulation (such as the Benthamite deterrence of setting static expected punishments that exceed average expected benefits) (Ayres and Braithwaite 1992; Braithwaite 2002: especially chapters 1, 2 and 4; Braithwaite, 2003a).

4. In international affairs, top-down preventive diplomacy works in limited but important ways in forestalling armed conflict (Touval and Zartman 1985, 1989). In resolution of more micro-forms of violence (e.g., school and workplace bullying/sexual harassment), top-down preventive diplomacy works much better when it is complemented by bottom-up restorative justice (Braithwaite 2002: chapter 3). Therefore, we might improve our effectiveness in responding to global terrorism by complementing Camp David-style elite preventive diplomacy over Palestine with bottom-up restorative justice in refugee camps that links ever-widening islands of civility there to ever-widening islands of civility in Israel (Kaldor 1999; Braithwaite 2002: chapter 6).
5. In addition to the embrace of diplomacy that prevents armed conflict, states should eschew diplomacy that provokes it – as I allege the United States and the Soviet Union each did in the Middle East and Afghanistan in an attempt to embroil the other in armed conflict with third parties, including terrorists. These terrorists then came back to bite the shortsighted states that enabled their original terrorist provocations – bin Laden being an example. This means turning away from the politics of recurrently humiliating the Muslim world as playthings of major powers, in favor of a politics of dignity and respect for the social justice claims of the Muslim world.
6. Webs of controls are best when they conceive justice as holistic (Braithwaite 2002: 150–158). Social justice for blacks in South Africa creates the conditions for the restorative justice of the Truth and Reconciliation Commission (Tutu 1999). Procedural justice prevents violence (Tyler 1990; Braithwaite 2002); and restorative justice creates superior conditions of procedural justice (Barnes 1999). This means theorizing enlargement of democracy as enlargement of justice as non-domination (Pettit 1997). This normative theory can be refined by iterative adjustment to the explanatory theory that domination induces defiance (often accompanied by violence) (Braithwaite and Parker 1999; Braithwaite and Pettit 2000; Braithwaite 2003b).

## CONCLUSION

In the end, the theory of how to design webs of regulatory containment is less persuasive than the evidence of the failures of Bush I in the Gulf War and Bush II in the war on terrorism. These were failures of under-reaction, followed by coercive over-reaction, followed by a failure to de-escalate by decisively substituting investment in enlargement for investment in containment. These doctrines are less persuasive than the contrast of the American regulatory praxis of George Marshall: contestation of under-reaction to Hitler before World War II, prudent advocacy of escalated containment that prevented successful invasions of South Korea and Taiwan a decade later, and the visionary de-escalation of a Marshall Plan that enlarged democracy and justice as a response to the injustice of fascism. Marshall was not without flaws, such as his complicity in following the Nazis into the bombing of civilian populations on a shocking scale, even if less shocking than under Churchill's preferences. He suffered some large diplomatic failures, such as failing to broker a peace between Mao Zedong and Chiang Kai-shek; likewise, he failed to dissuade Truman from establishing a state of Israel in a way that would suit Stalin – through destabilizing Western influence in the Arab world. It is impossible to love the introspective general as much as Mandela's more contagious compassion. Yet humanity owes Marshall no less homage. That homage is due because of his grasp of enlargement as well as containment, of the detailed networking of primary, secondary, and tertiary prevention that is the stuff of global security.

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