

Chapter 34

Prevention of Human Rights Violations and Violations of International Humanitarian Law while Fighting Terrorism

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“The ‘security forces’ set about their work in a manner which might have been deliberately designed to drive the population into our arms. On the pretext of searching they burst into people’s homes by day and night, made them stand for hours with their hands up, abused and insulted them... Anyone who protested had scant hope of getting justice.”²

- EOKA commander General Georgios Grivas

“Every fella who gets his head cracked open by a [policeman’s] baton is a potential recruit.”³

- Provisional IRA Volunteer Des Long

Terrorism is a contingent political strategy. At the outset, terrorist groups are by their very nature marginal, lacking in popular support, and limited in terms of the physical force they can project. Even the weakest states are powerful in comparison, blessed with far more substantial resources in terms of men, material and treasure. Left to their own devices, terrorists will rarely possess sufficient force to successfully attain their political goals. The genius of generations of terrorist planners has been to explicitly seek to turn the state’s strength to their advantage, provoking government after government to overreact to the threat they pose by introducing draconian security measures, curtailing civil liberties, and infringing established human rights protections. This in turn results in a greater polarization of the population, the radicalization of greater numbers of the terrorists’ potential constituents, and the undermining of the state’s legitimacy both at home and abroad. This strategy has been appositely described as “political jujitsu.” Furthermore, contemporary social science research into individual processes of radicalization suggests that witnessing or experiencing abuse at the hands of state officials is a leading driver of violent extremism. Adhering to international human rights law can help prevent states from falling into the terrorists’ trap, and making a bad situation commensurately worse.

Keywords: detention, human rights, overreaction, targeted killing, terrorism, torture, SITs.

¹ Tom Parker is the author of *Avoiding the Terrorist Trap: Why Respect for Human Rights is the Key to Defeating Terrorism*, and selected passages from the book appear here with the kind permission of World Scientific Press.

² Grivas-Dighenis, George and Foley, Charles, *The Memoirs of General Grivas*. Longmans, 1964, p. 53.

³ Quoted in Macintyre, Darragh, *Spotlight on the Troubles: A Secret History*, BBC, Episode 1

The “war of the flea” metaphor popularized by Mao Tse-tung and Robert Taber to explain the asymmetrical challenge guerrilla warfare poses to government authority has endured because it works on several levels. A single flea, like a single terrorist, is itself relatively inconsequential, although acting in concert with other fleas it can become a serious irritant for the host. However, the real damage is done not by the flea’s bites but by the host’s response – the self-inflicted wounds caused by scratching at the bites, which may even become infected leading to serious illness. Terrorism operates on the same principle. It is a contingent political tactic. The uncomfortable reality is that the existential threat posed by terrorism is not posed by the attack itself - it is posed by how we respond. The temptation for states is to reach for the coercive tools in the tool box, to fight fire with fire, to turn, in former US Vice-President Dick Cheney’s memorable phrase, to the dark side. When states give into this temptation, which they invariably do, they are falling into the trap that has been set for them.

While a terrorist attack may have devastating implications at the individual level, in strategic terms a terrorist event – even one of the unprecedented magnitude of the September 11th attacks - rarely poses a meaningful challenge to the survival of the state. However, by reacting as if it does, States often overturn established norms of behavior, longstanding social compacts, and erode hard won civil liberties protections that shield their citizens from a far more ubiquitous set of social ills such as public corruption, miscarriages of justice, the abuse of power by government officials, and systemic discrimination. This can change a society far more dramatically than any terrorist attack. Terrorists understand this dynamic all too well and they calibrate their attacks to exacerbate this effect. Indeed, terrorist groups actively seek to put the coercive organs of the state to work on their behalf — as the terrorism researcher Louise Richardson has noted, “part of the genius of terrorism is that it elicits a reaction that furthers the interests of the terrorists more often than their victims.”⁴

There is nothing particularly new about Louise Richardson’s insight – governments have simply chosen to ignore it. As early as 1975, the writer and historian David Fromkin published an important, but sadly now neglected article, in *Foreign Affairs* entitled *The Strategy of Terrorism* in which he argued that “terrorism is the indirect strategy that wins or loses only in terms of how you respond to it.” Even though Fromkin was writing primarily about the Marxist terrorist groups that plagued Western Europe in the 1970s, like the German *Rote Armee Fraktion* and Italian *Brigate Rosse*, as well as earlier anti-colonial movements such as the Algerian *Front de Libération Nationale* (FLN) and Zionist group *Irgun*, his analysis remains as relevant today as the day he penned it. Critically, he understood that “terrorism wins only if you respond to it in the way that the terrorists want you to; which means that its fate is in your hands and not in theirs. If you chose not to respond at all, or else to respond in a way different from that which they desire, they will fail to achieve their objectives.”⁵ He also warned that “brutality is an induced governmental response that can boomerang. It is this ability to use the strength of repression against itself, in many different ways, that has enabled terrorist strategies to succeed.”⁶ Fromkin christened this strategy “political *ju-jitsu*.”⁷

⁴ Richardson, Louise, *What Terrorists Want: Understanding the Enemy and Containing the Threat*. Random House, 2007, p. 103

⁵ Fromkin, David, ‘The Strategy of Terrorism’, in: *Foreign Affairs*, Vol. 53, No. 4, July 1975, p. 697

⁶ *Ibid*, p. 687

⁷ *Ibid*, p. 688. See also McCauley, Clark, ‘Jujitsu Politics: Terrorism and Responses to Terrorism’; in: Kimmel, Paul and Stout, Chris (Eds.), *Collateral Damage: The Psychological Consequences of America’s War on Terrorism*. Praeger Publishers, 2006

Political *ju-jitsu* is a martial art that terrorist groups have long understood. In *A General Theory of Power Control*, the influential military strategist Rear-Admiral Joseph C. Wylie wrote that “the primary aim of the strategist in the conduct of war is some selected degree of control of the enemy for the strategist’s own purpose.”⁸ By crafting attacks designed to provoke a draconian state response, this is precisely what terrorists aim to do, and, by exploiting the inevitable societal polarization that results, they hope to attract new recruits to their banner while undermining the state’s own claim to be acting legitimately. This specific intent can be found clearly expressed in numerous internal terrorist group documents, memoirs, political communiqués and manifestos. In fact, there is more than enough evidence to suggest that this strategic approach amounts to what might legitimately be described as terrorist doctrine. The fields of sociology, anthropology, and political science have all generated similar theories about the contagiousness of ideas to explain the diffusion of innovative practices across societies.⁹ Peter Waldmann, Martha Crenshaw and Mia Bloom have all applied this concept to suggest variously that a “contagion” or “demonstration” effect acts to spread ideas from terrorist group to another, arguing that the perceived success of some groups attracted others to emulate aspects of their approach.¹⁰ Intuitively anticipating this effect, early modern terrorists expressed the hope that they would set an example for others to follow, with the Russian populist Nikolai Morozov observing that “when a handful of people appears to represent the struggle of a whole nation and is triumphant over millions of enemies, then the idea of terroristic struggle will not die once it is clarified for the people and proven it can be practical.”¹¹ In July 1881 the anarchist congress in London passed a formal resolution agreeing “it is absolutely necessary to exert every effort towards propagating, by deeds, the revolutionary idea and to arouse the spirit of revolt in those sections of the popular masses who still harbor illusions about the effectiveness of legal methods.”¹²

Even the most cursory inspection of the historical record confirms the suggestion that terrorists learn from the experiences of their peers, that they read material generated by other militant groups, even across ideological divides, and that they are enthusiastic consumers of the tactical and strategic primers produced by their predecessors. For instance, the Indian nationalist Barin Ghose, jailed for his role in a 1909 conspiracy to assassinate a member of the British government administration in Bengal, wrote that his “cult of violence” was “learnt from the Irish Seinfenners [*sic*] and Russian secret societies.”¹³ The Egyptian theocrat Sayyid Qutb urged his fellow Islamists to learn from the success that the Jewish terrorist groups *Lohamei*

⁸ Wylie, Rear Admiral J. C., *Military Strategy: A General Theory of Power Control*. Rutgers University Press, 1967, p. 91.

⁹ See Levitt, Barbara and March, James G., ‘Organizational Learning’; in: *Annual Review of Sociology*, Vol. 14, 1988, pp. 319–340; March, James G., ‘Exploration and Exploitation in Organizational Learning’, *Organization Science*, Vol. 2, No. 1, 1991, pp. 71–87 (*Special Issue: Organizational Learning: Papers in Honor of (and by) James G. March*); Winthrop, Robert, *Dictionary of Concepts in Cultural Anthropology*. New York: Greenwood, 1991; Rogers, Everett, *Diffusion of Innovations*. New York: Free Press, 2003; Duverger, Maurice, *Political Parties: Their Organization and Activity in the Modern State*. London: Methuen, 1954; and Katz, Richard S. and Mair, Peter (Eds.), *How Parties Organize: Change and Adaptation in Party Organizations in Western Democracies*. London: Sage, 1995.

¹⁰ See Waldmann, Peter, ‘Social-revolutionary terrorism in Latin America and Europe’; in: Bjørge, Tore (Ed.), *Root Causes of Terrorism: Myth, Reality and Ways Forward*. London: Routledge, 2005, Crenshaw, Martha, ‘The Causes of Terrorism’; in: *Comparative Politics*, Vol. 13, No. 4, 1981, p. 389, and Bloom, Mia, *Dying to Kill: The Allure of Suicide Terror*. New York: Columbia University Press, 2005, p. 122.

¹¹ Morozov, Nikolai, *The Terrorist Struggle*; in: Laqueur, Walter (Ed.), *Voices of Terror: Manifestos, Writings and Manuals of Al Qaeda, Hamas, and other Terrorists from Around the World and Throughout the Ages*. Naperville: Reed Press, 2004, p. 81.

¹² Siljak, Ana, *Angel of Vengeance*. Griffen, 2009, p. 351/507

¹³ Heehs, Peter, ‘Terrorism in India during the Freedom Struggle’; in: *The Historian*, Spring 1993, p. 474.

Herut Israel (LEHI) and *Irgun Zvai Leumi* (*Irgun*) had enjoyed influencing the British policy in Palestine.¹⁴ LEHI's Avigad Landau in turn studied the operational practices of the Irish nationalist movement, *Narodnaya Volya* and the Serbian Black Hand, and Avraham Stern, out of whose eponymous militant group LEHI evolved, translated excerpts of P. S. O'Hegarty's book *The Victory of Sinn Féin* into Hebrew.¹⁵ The FLN bomber Zohra Drif recorded in her memoirs: "We read a lot and were very influenced by the writings of the Bolshevik Revolution, the Spanish Civil War, and the anti-Nazi resistance."¹⁶ Yasir Arafat's intelligence chief Salah Khalaf, better known to posterity by his *nom de guerre* Abu Iyad, noted in his memoirs: "The guerrilla war in Algeria, launched five years before the creation of *Fateh*, had a profound influence on us."¹⁷ Dimitris Koufodinas, Operations Chief of the Greek terror group November 17, taught himself Spanish in his prison cell so he could translate the prison memoirs of two *Tupamaros* leaders, Mauricio Rosencof and Eleuterio Fernández Huidobro.¹⁸ Provisional IRA commander Brendan Hughes reported reading speeches by Che Guevara and Fidel Castro in prison, while Provisional *Sinn Féin* President Ruairí Ó Brádaigh distributed seven copies of Robert Taber's classic study of guerrilla warfare, *The War of the Flea*, to each member of the Provisional IRA's Army Council.¹⁹ The current leader of *al-Qaeda*, Ayman al-Zawahiri, published a critique of the "shortcomings" of the Society of the Muslim Brothers in 1991 entitled *The Bitter Harvest*, and the Norwegian white supremacist Anders Behring Breivik quoted extensively from the Unabomber, Theodore Kaczynski, in his own political manifesto, telling his court-appointed psychiatrists that he had learned much from studying *al-Qaeda*.²⁰

The idea that the state could be deliberately provoked into acting in such a manner that would serve to give rise to further opposition was born on the revolutionary left. In a series of articles written between January and October 1850 for the *Neue Rheinische Zeitung's Politisch-ökonomische Revue* (and republished by Friedrich Engels in 1895 under the title *The Class Struggles in France 1848–1850*), Karl Marx reflected on the lessons revolutionaries could learn from the failure of the widespread uprisings that occurred across Europe in 1848, concluding that the socialist cause "made headway not by its immediate tragi-comic achievements, but on the contrary by the creation of a powerful, united counter-revolution, by the creation of an opponent, by fighting which the party of revolt first ripened into a real revolutionary party."²¹ Pierre-Joseph Proudhon's influential *General Idea of the Revolution in the Nineteenth Century* published a year later in 1851 was even more explicit, in an opening section entitled *Reaction causes Revolution* the French anarchist philosopher wrote

"a revolution cannot be crushed, cannot be deceived, cannot be perverted, all the more, cannot be conquered. The more you repress it, the more you increase its rebound and render its action irresistible... Like the *Nemesis* of the ancients, whom

¹⁴ Calvert, John, *Sayyid Qutb and the Origins of Radical Islamism*. New York: Columbia University Press, 2010, p. 122

¹⁵ Frank, Gerold, *The Deed*. Simon and Schuster, 1963, p. 131 and Hoffman, Bruce, *Anonymous Soldiers: The Struggle for Israel, 1917–1947*. New York: Knopf, 2015, p. 105.

¹⁶ Drif, Zohra, *Inside the Battle of Algiers: Memoir of a Woman Freedom Fighter*. Charlottesville VA: Just World Books, 2017, p. 139

¹⁷ Iyad, Abu and Rouleau, Eric, *My Home, My Land: A Narrative of the Palestinian Struggle*. New York: Times Books, 1981, p. 34.

¹⁸ Kassimeris, George, *Inside Greek Terrorism*, Oxford: Oxford University Press, 2013, p. 33.

¹⁹ Moloney, Ed, *Voices from the Grave: Two Men's War in Ireland*. Public Affairs, 2010, p. 196, and McGuire, Maria, *To Take Arms: A Year in the Provisional IRA*. London: MacMillan, 1973, p. 74.

²⁰ Calvert, John, *supra* note 14, p. 223; Seierstad, Åsne, *One of Us: The Story of Anders Breivik and the Massacres in Norway*. Farrar, Straus and Giroux, 2013, p. 366 and p. 425; and Ramm, Benjamin, 'The Unabomber and the Norwegian mass murderer'; in *BBC Magazine*, 28 May 2016.

²¹ Adoretzky, V. (Ed.), *Marx and Engels, Selected Works II*. London: Lawrence and Wishart, 1942, p. 192.

neither prayers nor threats could move, the revolution advances, with somber and fatal step, over the flowers cast by its friends, through the blood of its defenders, across the bodies of its enemies.”²²

One of the first apostles of terrorist violence to avowedly adopt this strategy was the Russian anarchist Sergei Nechaev whose *Catechism of the Revolutionist* advises readers that violent officials should be “granted temporary respite to live, solely in order that their bestial behavior shall drive the people to inevitable revolt.”²³ Nechaev also notes in his *Catechism* that once the government in power begins to realize the inevitability of a popular revolt it will use “all its resources and energy toward increasing and intensifying the evils and miseries of the people until, at last, their patience is exhausted and they are driven to a general uprising.”²⁴ Nechaev developed a theory of political provocation in which he aimed to push young radicals into direct confrontation with the authorities resulting in “the traceless death of the majority and a real revolutionary formation of the few.”²⁵ As he told one public meeting in Russia:

“I have only one, though strong, hope in the government ... Let it imprison more students, let students be expelled from universities forever, let them be sent to Siberia, thrown out of their tracks, be stunned by the persecution, brutality, unfairness and stupidity. Only then will they harden in their hatred to the foul government, to the society which heartlessly watches all the atrocities of the government.”²⁶

Nechaev’s theme was picked up by other anarchist militants including the anarchist prince Peter Kropotkin who wrote in another influential text, *The Spirit of Revolt*:

“The government resists; it is savage in its repressions. But, though formerly persecution killed the energy of the oppressed, now, in periods of excitement it produces the opposite result. It provokes new acts of revolt, individual and collective, it drives the rebels to heroism; and in rapid succession these acts spread, become general, develop. The revolutionary party is strengthened by elements which up to this time were hostile or indifferent to it.”²⁷

In the aftermath of the Easter Uprising in 1916 the British General Sir John Maxwell was dispatched to Ireland to impose order and he took the view that it was “imperative to inflict the most severe sentences” on the organizers of the uprising and the commanders who took part “to act as a deterrent to intriguers and to bring home to them that the murder of His Majesty’s subjects or other acts calculated to imperil the safety of the realm will not be tolerated.”²⁸ Fourteen ringleaders of the uprising were sentenced to death in Dublin, and also two other conspirators, Thomas Kent and Roger Casement, in Cork and London, respectively. But all that General Maxwell actually managed to achieve, in the words of one of the pioneers of urban

²² Pierre-Joseph Proudhon, *General Idea of the Revolution in the Nineteenth Century* (University Press of the Pacific; 2004), reprint of the 1923 edition translated from the French by John Beverley Robinson, at 15

²³ Nechaev, Sergey, ‘Catechism of the Revolutionist’; in: Laqueur, Walter (Ed.), *Voices of Terror: Manifestos, Writings and Manuals of Al Qaeda, Hamas, and other Terrorists from Around the World and Throughout the Ages*. Naperville: Reed Press, 2004, p. 74.

²⁴ Ibid, and Nomad, Max, *Apostles of Revolution*. Collier Books, 1961, p. 234.

²⁵ Nechaev, Sergey, *supra* note 23.

²⁶ McCauley, Clark, and Moskalenko, Sophia, *Friction: How Radicalization Happens to Them and Us*. Oxford University Press, 2011, p. 152.

²⁷ Kropotkin, Peter, *The Spirit of Revolt*. Dover, 1971, p. 39.

²⁸ Coogan, Tim Pat, *1916: The Easter Uprising*. Cassell, 2001, p. 143.

guerrilla warfare, Michael Collins, was to awake “the sleeping spirit of Ireland.”²⁹ When Irish nationalists launched new attacks against the British authorities in 1919 the British again turned to coercive measures to try to put down the revolt, including the creation of a Special Reserve of temporary constables recruited from the ranks of World War I veterans who became known as the Black and Tans and were associated with some of the worst excesses of British rule, and again these measures backfired. The IRA had learned from Easter Uprising and were quick to exploit British brutality to grow their ranks. An incident in December 1920 illustrated the IRA’s strategy in operation. A company of Royal Irish Constabulary Auxiliaries responded to an IRA ambush that killed one officer and wounded eleven others by sacking the center of Cork in an orgy of looting and violence. An IRA man who witnessed the destruction told the reporter James Gleeson: “We could have shot most of them that night if we had wanted to ... but it would have ruined the whole show. They were doing all they could to help us.”³⁰ The IRA gunman Dan Breen would later note in his memoirs: “The frightfulness of the Tans proved a boomerang against those who had cast it, for the people were finally goaded into such fury that they made up their minds, ‘come hell or high water’, never to give way before such tyranny.”³¹ The IRA would go on to formally integrate the lessons of the 1919–1921 Anglo-Irish War into its operational doctrine. The *Handbook for Volunteers of the Irish Republican Army* issued during the 1956–1962 cross-border campaign established three main strategic goals for the nationalist movement:

“(1) Drain the enemy’s manpower and resources; (2) Lead the resistance of the people to enemy occupation; (3) Break down the enemy’s administration ... [The volunteer] achieves the second by remembering that the people will bear the brunt of the enemy’s reprisal tactics and inspiring them with the aims of the movement.”³²

In British Mandatory Palestine, Zionist militants adopted a similar concept of operations to the IRA, whose successful independence struggle they had closely studied. David Fromkin recalled attending a meeting in New York City in 1945 as a youth where he heard “one of the founders of the *Irgun*” explain how the organization expected to defeat the British:

“To do so... his organization would attack property interests... This, he said, would lead the British to overreact by garrisoning the country with an immense army drawn from stations in other parts of the world. But postwar Britain could not afford financially to maintain so great an army either there or anywhere else for an extended period of time. Britain urgently needed to demobilize its armed forces. The strain would tell; and eventually economic pressure would drive the Attlee-Bevin government either to withdraw from Palestine or else to try some reckless and possibly losing gamble in an effort to retrieve the situation.”³³

The leaders of *Irgun* also understood the propaganda value of highlighting any abuses committed by the British security forces and were not shy exploiting British missteps to draw unflattering comparisons between British rule and Nazi Germany on the international stage.

²⁹ Collins, Michael, ‘The Proof of Success: What the Rising of 1916 did’; in: Collins, Michael, *The Path to Freedom*. Welsh Academic Press, 1996, p. 53.

³⁰ Hittle, J. B. E., *Michael Collins and the Anglo-Irish War: Britain’s Counterinsurgency Failure*. Potomac Books, 2011, pp. 179–180.

³¹ Breen, Dan, *My Fight for Irish Freedom*. Anvil Books, 1981, p. 104.

³² *Handbook for Volunteers of the Irish Republican Army: Notes on Guerrilla Warfare*, 1956 Edition. Paladin Press, 1985, p. 9.

³³ Fromkin, David, *supra* note 5, pp. 687–688.

The Head of *Irgun*, and subsequent Prime Minister of Israel, Menachem Begin, later wrote: “We knew that *Eretz* Israel, in consequence of the revolt, resembled a glass house. The world was looking into it with ever-increasing interest and could see most of what was happening inside.”³⁴ The cumulative effect of this strategy was not lost on the British themselves. The Joint Planning Staff of the British War Office concluded in a March 1947 assessment of security options for confronting Zionist terrorism in the British Mandate of Palestine that both *Irgun* and LEHI “wish to force us to employ sterner measures which can be represented as punitive against [the] community, thereby swinging moderate opinion against us and obtaining more recruits for themselves.”³⁵ Yet, despite some apparent awareness of the trap they faced, the increasing tempo of attacks nevertheless still propelled the British headlong into it.

Georgios Grivas, the commander of EOKA, the Greek-Cypriot movement that campaigned for union with Greece during the 1950s, was also quick to understand how the strength of the British forces could be turned to his advantage as he sought to bring British colonial rule on the island to an end:

“[T]here went on a continuous struggle as to which of the two opponents would win the population over to his side. The weapon used by the British was force. But it was found that the harsher the measures resorted to by the British, the more the population became estranged from them and inclined to our side... The representatives of Britain in Cyprus, both soldiers and civilians, behaved towards the inhabitants with an animosity which was far from politic.”³⁶

In his primer on guerrilla tactics, *Guerrilla Warfare and EOKA's Struggle*, Grivas stressed the importance of mobilizing the youth — as “a testing ground and nursery from which I selected fighters for my groups of guerrillas and saboteurs” — describing in detail the effect of the so-called “Battle of the Flags” waged by Greek Cypriot schoolboys against the British authorities. When the British banned any public display of the Greek national flag, Grivas issued an order designed to bring schoolchildren into the struggle for union: “See that the Greek flag is flown from all elementary schools and is kept flying.”³⁷ The British responded by closing schools, detaining those responsible, and sometimes their teachers, as well as by doling out beatings on the spot. Grivas scornfully recalled, “this stupid and ill-advised action on the part of the British was exploited by me for the purpose of exciting still further the fanaticism of the young pupils,” and he described how this fanaticism enabled him to use schoolboy recruits between the ages of fourteen and seventeen to undertake dangerous missions “such as blowing up aircraft at the British airbases, the laying of mines and blowing up of police stations.”³⁸

During the Algerian war of independence, the FLN's leading military strategist, Ramdane Abane, promoted an approach designed to provoke the French authorities to “accelerate repression” arguing that harsh French counter-terrorism measures would force the Algerian population to turn to the FLN for protection.³⁹ Abane believed that only the way to separate the Algerian population from the French colonial system, with all its cultural baggage, was to

³⁴ Begin, Menachem, *The Revolt: Story of the Irgun*. Steimatzky's Agency Ltd., 1977, p. 56.

³⁵ Bruce Hoffman, *supra* note 15, p. 601/1042.

³⁶ Grivas-Dighenis, George, *Guerrilla Warfare and EOKA's Struggle*. Longmans, Green and Co. Ltd., 1964, p. 11.

³⁷ Grivas-Dighenis, George and Foley, Charles, *supra* note 2, p. 62.

³⁸ Grivas-Dighenis, George, *supra* note 36, p. 15

³⁹ Fromkin, David, *supra* note 5, p. 694

precipitate, in Martha Crenshaw's words, a "sharp and brutal break."⁴⁰ Ramdane understood that attacks on civilian targets were the quickest way to achieve his goal and coined the cynical and much repeated aphorism, "one corpse in a jacket is always worth more than twenty in uniform."⁴¹ The historian Alastair Horne has described the "Philippeville massacre" of 20 August 1955 as a textbook example of a terrorist group deliberately setting out to provoke an overreaction from the authorities.⁴² This was especially true of the murders that took place in the small pyrite mining settlement of El-Halia where thirty-seven French nationals, including ten children, were butchered by FLN cadres in bestial fashion. El-Halia had enjoyed a reputation for excellent relations between the local French and Muslim residents and was deliberately targeted for this reason — to create a climate of distrust between the two communities. The viciousness of the killings, with bodies dismembered and desecrated, was intended to provoke a furious response from the French authorities and further polarize the population. The French response did not disappoint and the FLN later claimed almost 12,000 local Arabs had been killed in reprisal.⁴³ This in turn had the anticipated effect of boosting the FLN's recruitment efforts - by October 1955, the FLN's strength in the North Constantine region where the atrocities had occurred had increased from 500 to 1,400 regular volunteers.⁴⁴

Zohra Drif recalled being told by another key leadership figure in the FLN, Larbi Ben M'hidi, of the group's intention to forcibly expose the true nature of French colonial rule and the oppression suffered by the native population of Algeria to the international community:

"Never lose sight of what we are - political activists whom the colonial regime's arrogance has forced to become fighters in a war of national liberation... "[W]e will oblige France to meet us on a different battlefield - the political one, where it can never win. That is why our ambushes, our attacks, our bombs, and all the rest must help us to defeat France politically and to diminish it morally and symbolically... That is why each of our attacks. Each of our ambushes, each of our lives sacrificed must serve to unmask France before the world, to show that our people are at war against a foreign power occupying us by force... That is the meaning of the primacy of the political over the military, which is a fundamental principle of our revolution."⁴⁵

As the French writer and philosopher Raymond Aron succinctly observed: "Even though the FLN had written the script, the French, with suicidal logic, went ahead to play the role for which they had been cast."⁴⁶

Another key theorist of provocation was the Basque nationalist Federico Krutwig. In 1963, Krutwig published *Vasconia*, a treatise on Basque nationhood that would become a key text for the Basque separatist group ETA, despite the fact that Krutwig himself was not a member of the movement. José Luis Álvarez Enparantza, one of the original founders of ETA who was better known by his pseudonym Txillardegui, called *Vasconia*, "the most important book on *Euskadi* [the Basque homeland] published in this century" and it was endorsed by ETA's

⁴⁰ Crenshaw, Martha, 'The Effectiveness of Terrorism in the Algerian War'; in: Crenshaw, Martha (Ed.), *Terrorism in Context*. Pennsylvania State University Press, 1995, p. 487.

⁴¹ Horne, Alastair, *A Savage War of Peace: Algeria 1954–1962*. New York Review Books Classics, 2006, p. 132.

⁴² *Ibid*, p. 118 and p. 123.

⁴³ *Ibid*, p. 122.

⁴⁴ *Ibid*, p. 123.

⁴⁵ Drif, Zohra, *supra* note 16, pp. 231-232

⁴⁶ Fromkin, David, *supra* note 5, pp. 689-690

Second Assembly.”⁴⁷ Krutwig placed great emphasis on popular action and outlined in *Vasconia* what he termed his “Action–Repression–Action” theory of violence. In stage one, “the guerrillas” carry out a provocative violent action against the state; in stage two, the state responds in a heavy-handed fashion with repression against “the masses”; and in stage three, “the masses” respond in turn with a mixture of panic and rebellion, at which point “the guerrillas” carry out a new attack to begin the cycle again and push “the masses” into further acts of insurrection.⁴⁸ José Luís Zalvide synthesized the passages on armed struggle in *Vasconia*, along with liberal contributions from Mao and Guevara, into an operational manual entitled *Insurrección en Euskadi* that was also formally adopted by ETA. Hardliners within ETA began to argue in favor of attacking senior regime figures in the hope of provoking Franco’s government into “excessive and non-discriminatory retaliation against all Basque residents,” and in 1964, ETA celebrated the success of this approach, crowing:

“We have achieved one of our major objectives — to oblige the enemy to commit a thousand wrongs and atrocities. Most of his victims are innocent. Meanwhile, the people, more or less passive until now, become indignant against the colonial tyrant and, in reaction, come over entirely to our side. We could not have hoped for a better result.”⁴⁹

A former ETA activist elaborated further to the researcher Fernando Reinares:

“If killing a Civil Guard or twenty Civil Guards every other week is to serve any purpose of all... it was to bring about the Ulsterization of *Euskadi*, which was the theory that the *milis* [militants] were spouting around that time. The Ulsterization of *Euskadi* would mean [the Spanish government] putting soldiers on every street corner and then the people would witness the contradictions of power and see the true face of the oppressor and all that.”⁵⁰

The Marxist terrorist groups that rose to prominence in Latin America and Western Europe in the 1960s and 1970s were guided in large part by the writings of three theorists of guerrilla warfare: Mao Tse-tung, Ernesto ‘Che’ Guevara, and Carlos Marighella. Mao and Che were both somewhat skeptical about the strategic utility of terrorism – for Mao it was a transitory phase of People’s War intended to grow the revolutionary movement, and Guevara was initially concerned that was likely to provoke police oppression making the task of organizing the masses and other clandestine activity more difficult.⁵¹ While Mao remained true to his original vision, over time Guevara began to revise his opinion. Of the three, it was the Brazilian communist Marighella who most enthusiastically embraced terrorism as a strategic tool, and

⁴⁷ Conversi, Daniele, *The Basques, the Catalans, and Spain: Alternative Routes to Nationalist Mobilisation*. University of Nevada Press, September 2000, pp. 92–93.

⁴⁸ Woodworth, Paddy, ‘Why Do They Kill? The Basque Conflict in Spain’; in: *World Policy Journal*, Spring 2001, p. 5.

⁴⁹ Zirakzadeh, Cyrus, ‘From Revolutionary Dreams to Organizational Fragmentation: Disputes over Violence within ETA and Sendero Luminoso’; in: *Terrorism and Political Violence*, Vol. 14, No. 4, 2002, pp. 73–76; Wieviorka, Michel, ‘ETA and Basque Political Violence’; in: Apter, David (Ed.), *The Legitimization of Violence*. New York: New York University Press, 1997, p. 300; and Sterling, Claire, *The Terror Network: The Secret War of International Terrorism*. Holt, Rinehart and Winston, 1981, p. 191.

⁵⁰ Reinares, Fernando, ‘Exit From Terrorism: A Qualitative Empirical Study on Disengagement and Deradicalization Among members of ETA’; in: *Terrorism and Political Violence*, Vol. 23, No. 5, 2011, p. 784.

⁵¹ Guevara, Ernesto, ‘Guerrilla Warfare’ (1960); in: Guevara, Ernesto, *Guerrilla Warfare*. Souvenir Press, 2003, p. 22.

his *Mini-Manual of the Urban Guerrilla* would become a bible of sorts to a generation of Marxist-inspired terrorists from Montevideo to Berlin.

In his analysis of the potential weaknesses of the Japanese army occupying Chinese territory in *On Guerrilla Warfare*, Mao Tse-tung identified Japan's "cruelty to the inhabitants of conquered areas" as a major area of vulnerability.⁵² Mao noted that because the Japanese soldier was both "a foreigner and a barbarian" Chinese guerrillas could "gain the confidence of millions of their countrymen."⁵³ He urged guerrilla commanders to intensify this effect by conducting "intensive guerrilla warfare" in areas controlled by the Japanese so that "in order to subdue the occupied territory, the enemy will have to become increasingly severe and oppressive," ensuring that the gulf between occupied and occupier widened still further.⁵⁴ Mao understood both the strategic importance of winning and maintaining public support, and also how easily security force personnel could be provoked into abusing the local population and so undermining their own position: "It is only undisciplined troops who make the people their enemies and who, like the fish out of its native element, cannot live."⁵⁵

Following his successful experience with the Cuban Revolution in the Sierra Maestra, Guevara was unsurprisingly an enthusiastic proponent of the rural *foco* approach to insurgency also championed by his sometime comrade-in-arms, the French philosopher and activist Régis Debray. However, in his 1963 essay *Guerrilla Warfare: A Method* Guevara did acknowledge that urban fighters could also "perform actions of the greatest importance" and stressed the need to push the state to break its own rules:

"[W]e are passing through a stage in which pressure from the masses is very strong and is straining bourgeois legality so that its own authors must violate it in order to halt the impetus of the masses. Barefaced violation of all legislation or of laws specifically instituted to sanction ruling class deeds only increases the pressure from the people's forces... The people no longer support the old, and much less the new, coercive measures established by the dictatorship and try to smash them."⁵⁶

His hope was that by stripping the "mask of democracy" from the state he could expose the true nature of the underlying oligarchy which he believed actually exercised power. By 1967 his views had hardened still further and he seemed to embrace the need for terrorist action, urging militants to "carry the war into every corner the enemy happens to carry it: to his home, to his centers of entertainment; a total war." In *Message to the Tricontinental* Guevara wrote:

"It is necessary to prevent [the enemy] from having a moment of peace, a quiet moment outside his barracks or even inside; we must attack him wherever he may be; make him feel like a cornered beast wherever he may move. Then his moral fiber shall begin to decline. He will even become more beastly, but we shall notice how the signs of decadence begin to appear."⁵⁷

⁵² Tse-tung, Mao, *On Guerrilla Warfare* (translated by Brigadier General Samuel B. Griffith II). University of Illinois Press, 1961, p. 99.

⁵³ *Ibid*, p 100.

⁵⁴ *Ibid*, p 107.

⁵⁵ *Ibid*, p 93.

⁵⁶ Guevara, Ernesto, *supra* note 51

⁵⁷ Guevara, Ernesto, 'Message to the Tricontinental' (1967); in: Guevara, Ernesto, *Guerrilla Warfare*. Souvenir Press, 2003, p. 173.

He believed the repression that resulted would not only provoke greater resistance to authoritarian rule, but would also harden rebels' resolve by giving birth to "a relentless hatred of the enemy, impelling us over and beyond the natural limitations that man is heir to and transforming him into an effective, violent, selective and cold killing machine."⁵⁸

Marighella was the only one of the troika to focus on operations conducted in an urban environment, arguing that in the face of urban terrorism "the government has no alternative except to intensify its repression ... The people refuse to collaborate with the government, and the general sentiment is that this government is unjust [and] incapable of solving problems."⁵⁹ Marighella theorized that a repressive state response would alienate the government from its population generating support for the terrorists, and that declining governmental legitimacy would strengthen the terrorist cause, as "the political situation in the country is transformed into a military situation in which the [government] appear more and more to be the ones responsible for the violence, while the lives of the people grow worse."⁶⁰ Practicing precisely what he preached, the Brazilian leftist group *Ação Libertadora Nacional*, established by Marighella in 1967, actually went so far as to spell out its intention to create a crisis that would provoke a military response in its founding manifesto.⁶¹ Marighella also demonstrated a particularly sophisticated understanding of public relations, writing that urban guerrillas should exploit by every possible means "the mistakes and the failures of the government and its representatives, forcing them into demoralizing explanations and justifications."⁶² Like Begin and M'hidi, Marighella appreciated the significance of the international dimension, and suggested making use of civil society organizations to put pressure on authoritarian rulers by "presenting denunciations to foreign embassies, the United Nations, the papal nunciature [*sic*], and the international judicial commissions defending human rights or freedom of the press, exposing each concrete violation and use of violence by the military dictatorship."⁶³

In Uruguay, the *Tupamaros* set out deliberately to provoke a repressive response from the state and thus achieve the "transformation of a political situation into a military one."⁶⁴ They succeeded in achieving this goal, but subsequent events did not then turn out in their favor — in 1973, the Uruguayan military deposed the democratically elected civilian government and established a military *junta* that remained in power until 1985. Where the *Tupamaros* led others followed. Giangiacomo Feltrinelli, one of the founders of the *Gruppi di Azione Partigiani* (GAP), a precursor of Italy's *Brigate Rosse*, circulated a paper entitled *Italy 1968: Political Guerrilla Warfare* in which he urged leftist militants to "violate the law openly ... [by] challenging and outraging institutions and public order in every way."⁶⁵ He added: "When the state intervenes as a result, with police and the courts, it will be easy to denounce its harshness and repressive dictatorial tendencies."⁶⁶ Renato Curcio, one of the early leaders of the *Brigate Rosse*, later echoed Feltrinelli's insight in a public communiqué, explaining: "Faced with working-class terror, the bourgeoisie by now has an obligatory course — to reestablish control by intensified repression and progressive militarization of the state."⁶⁷ The Italian left labeled this concept of advancing revolutionary change "*tanto peggio, tanto meglio*," literally

⁵⁸ Ibid.

⁵⁹ Marighella, Carlos, *Minimanual of the Urban Guerrilla*. Havana: Tricontinental, 1970, pp. 35–36.

⁶⁰ Ibid, pp. 35–36.

⁶¹ Louise Richardson, *supra* note 4, p. 199.

⁶² Marighella, Carlos, *supra* note 59.

⁶³ Ibid.

⁶⁴ Sterling, Claire, *supra* note 49, p. 163.

⁶⁵ Ibid, p. 38.

⁶⁶ Ibid.

⁶⁷ Ibid, p. 163.

“the worse, the better.”⁶⁸ Amir Parviz Puyan, a prominent member of the *Fadaiyan-e-Khalq*, a Marxist–Leninist guerrilla group established in Iran in 1971, advanced much the same argument:

“By extending the violence against the resistance fighters, creating an unanticipated reaction, the repression inevitably hits all other oppressed milieus and classes in an even more massive way. As a result, the ruling class augments the contradictions between the oppressed classes and itself and creates a climate which leads of necessity to a great leap forward in the consciousness of the masses.”⁶⁹

In a *Rote Armee Fraktion* pamphlet entitled *Serve the People: The Urban Guerrilla and Class Struggle*, that first appeared in April 1972, the authors outlined the group’s commitment to the Marxist concept of the dialectic of revolution and counterrevolution, quoting the North Korean communist leader Kim Il Sung:

“It isn’t a question of whether we want the reactionary militarization or not; it is a question of whether we have the conditions necessary to transform the fascist militarization into a revolutionary mobilization, whether we can transform the reactionary militarization into a revolutionary one.”⁷⁰

The pamphlet argued that the Federal Republic of Germany’s reaction to the RAF’s activities was playing straight into the group’s hands as those in power

“are obliged to violate their own system, and in so doing they show their true colors as enemies of the people — and the left creates accurate propaganda at a high dialectical level, as ought to be the case, when they say: ‘this terror is not directed against the RAF, but rather against the working class.’”⁷¹

Ulrike Meinhof returned to the same theme in a statement she made at her trial in September 1974 alongside Hans-Jürgen Bäckler and Horst Mahler:

“The enemy unmask itself by its defensive maneuvers, by the system’s reaction, by the counterrevolutionary escalation, by the transformation of the political state of emergency into a military state of emergency. This is how it shows its true face — and by its terrorism it provokes the masses to rise up against it, reinforcing the contradictions and making revolution inevitable.”⁷²

The idea that West Germany had never truly broken with its national-socialist past, and, that by engaging the security apparatus of the state, the RAF would force this hidden reality into public view, was one of the central operational principles underpinning the organization’s almost three-decade long campaign.⁷³

⁶⁸ Ibid, p. 162.

⁶⁹ Meinhof, Ulrike, ‘On the Liberation of Andreas Baader’; in: Smith, J. and Moncourt, André, *The Red Army Faction A Documentary History: Volume 1 — Projectiles for the People*. PM Press, 2009, p. 369.

⁷⁰ Rote Armee Fraktion, ‘Serve the People: The Urban Guerrilla and Class Struggle’; in: Smith, J. and Moncourt, André, *The Red Army Faction A Documentary History: Volume 1 — Projectiles for the People*. PM Press, 2009, pp. 141–142.

⁷¹ Ibid.

⁷² Meinhof, Ulrike, *supra* note 69, p. 368.

⁷³ *The Urban Guerrilla Is History*, The Final Communiqué From The Red Army Faction, 1 March 1998 at <http://germanGuerrilla.com/1998/03/01/the-urban-guerrilla-is-history/>.

Deeply influenced by Maoist People's War theory — Palestinian cadres even received military training in China⁷⁴ — Yasir Arafat's *Fateh* evolved an explicit concept of operations that came to be known as *al-taffir al-mutasalsil* or "consecutive detonation."⁷⁵ Khalid al-Hasan, who had been with *Fateh* more or less since its foundation, explained the logic of this strategy: "Our military action provokes an Israeli action against our people, who then become involved and are supported by the Arab masses. This extends the circle of conflict and compels the Arab governments either to join us or stand against us."⁷⁶ As one early *Fateh* publication, entitled *A Statement on Timing*, noted: "Any act of liberation that does not take conscious entanglement of the masses into account will fail at the outset because it has overlooked the strongest active force in the battle."⁷⁷ The Popular Front for the Liberation of Palestine (PFLP) took a similar view — when the Israeli air force raided Beirut International Airport in December 1968 destroying thirteen Middle East Airlines passenger jets in reprisal for the attack on El Al Flight 253 in Athens two days earlier, the PFLP "thanked the Israelis for enlisting Lebanese support for the revolution," concluding they "had helped the cause more than we dared contemplate by their prompt and decisive 'reprisal'."⁷⁸ Harsh Israeli counter-terrorism measures also served to bolster the "narratives of brutality and injustice" that psychologically enable individuals to embrace violent opposition and endure the privations of clandestine warfare.⁷⁹ Many Israeli security officials have come to appreciate the dilemma they face — Ami Ayalon, who served as the Head of *Shin Bet* in the late 1990s, has implicitly acknowledged the effectiveness of consecutive detonation as a strategy: "War against terrorism is part of a vicious cycle. The fight itself creates ... even more frustration and despair, more terrorism and increased violence."⁸⁰

When the Provisional IRA split from the Official IRA in December 1969, its newly constituted Army Council, led by Seán MacStiofáin, adopted a plan of action built around a three-stage approach to ending British rule in Northern Ireland: first, the defense of Catholic communities; second, a combination of defense and retaliation against the loyalist community and the British authorities; and third, a sustained offensive engagement with the British in a guerrilla campaign.⁸¹ The initial problem facing PIRA commanders was that the British Army had been deployed to Northern Ireland in August 1969 by the Labour government of Prime Minister Harold Wilson to restore order, after a summer of rioting and sectarian violence in which the local police force, the Royal Ulster Constabulary (RUC), had abandoned any pretense of impartiality and had sided wholeheartedly with the loyalist community. As such, even Joe Cahill, the Officer Commanding the PIRA's Belfast Brigade and a member of the ruling Army Council, admitted, that when the British Army first deployed to Northern Ireland, "people were glad to see them because the [Official] IRA had betrayed them [by failing to protect Catholic neighborhoods]."⁸² The researchers J. Bowyer-Bell, M. L. R. Smith and Rod Thornton all note that the Provisional IRA began a strategy of deliberate provocation of the British Army in early

⁷⁴ Iyad, Abu and Rouleau, Eric, *supra* note 17, p. 66.

⁷⁵ Sayigh, Yezid, *Armed Struggle and the Search for State: The Palestinian National Movement, 1949–1993*. Oxford University Press, 2011, p. 120, and Byman, Daniel, *A High Price: The Triumphs and Failures of Israeli Counterterrorism*. Oxford University Press, 2011, p. 32.

⁷⁶ *Ibid.*, p. 120.

⁷⁷ *Ibid.*, p. 119.

⁷⁸ Khaled, Leila and Hajjar, George, *My People Shall Live: The Autobiography of a Revolutionary*. Hodder and Stoughton, 1973, p. 112.

⁷⁹ Lewis, Jeffrey William, *The Business of Martyrdom: A History of Suicide Bombing*. Naval Institute Press, 2012, p. 199.

⁸⁰ Byman, Daniel, *supra* note 75, p. 365.

⁸¹ English, Richard, *Armed Struggle: The History of the IRA*. Oxford University Press, 2004, p. 125.

⁸² Smith, M. L. R., *Fighting for Ireland: The Military Strategy of the Irish Republican Movement*. Routledge, 1995, p. 85.

1970.⁸³ Gerry Adams' biographer Colm Keena noted that as PIRA commander in Ballymurphy Adams' tactics was "to prod the British Army into acting as an army."⁸⁴ Rod Thornton reported "another ploy designed to poison minds against the Army... was the supplying of bogus intelligence to soldiers about certain – innocent – individuals. These would then be wrongly arrested raising levels of local antipathy."⁸⁵ Tommy Gorman, a member of PIRA's 1st Battalion in Andersonstown, explained the rationale:

"We were creating this idea that the British state is not your friend ... and at every twist in the road they were compounding what we were saying, they were doing what we were saying, fulfilling all the propaganda ... The British Army, the British government, were our best recruiting agents."⁸⁶

From July 1970 onwards, the battle lines were drawn and the British Army increasingly began to employ the same tactics it had used in counter-insurgency operations overseas. In the face of escalating violence, and the first British military casualties, the government introduced internment — open-ended detention without charge for suspected terrorists — in August 1971, which only served to further alienate the Catholic population, as did the news that some of the internees had been subjected to coercive interrogation techniques including hooding, wall-standing, the use of "white noise," withholding food and water, and sleep deprivation.⁸⁷ This alienation was made complete on 30 January 1972 when British paratroopers fired on an anti-internment protest in Londonderry ultimately killing fourteen demonstrators and wounding twenty-eight, an event immortalized in the public consciousness as Bloody Sunday.⁸⁸ The Provisional IRA's tactic had worked like a charm and Gerry Adams, who commanded PIRA's 2nd Battalion in Belfast during this period, would later acknowledge that the attitude and presence of British troops had resulted in a "resurgence of national consciousness and an almost immediate politicization of the local populace."⁸⁹ The operational manual first distributed to volunteers by the Provisional leadership in 1977, known colloquially as the *Green Book*, drew a similar lesson: "We exploit the enemy's mistakes by propagating facts. So it was with their murderous mistakes of the Falls Road curfew, Bloody Sunday and internment."⁹⁰

Shaul Mishal, Avraham Sela and Andrea Nüsse have similarly argued that part of the motivation for *Hamas* in mounting attacks against Israeli targets during the First *Intifada* was to provoke a repressive response, thus further radicalizing the Palestinian population and

⁸³ Thornton, Rod, 'Getting it Wrong: The Crucial Mistakes made in the Early Stages of the British Army's deployment to Northern Ireland (August 1969 to March 1972)'; in: *Journal of Strategic Studies*, Vol. 30, No. 1, February 2007, p. 81; Smith, M. L R., *supra* note 82, pp. 94-95; and Bowyer-Bell, J., *The Irish Troubles: A Generation of Violence 1967-1992*. St. Martin's Press, 1993, p. 191.

⁸⁴ Keena, Colm, *A Biography of Gerry Adams*. Mercia Press, 1990, pp. 44-45.

⁸⁵ Thornton, Rod, *supra* note 83, p. 89

⁸⁶ English, Richard, *supra* note 81, p. 122.

⁸⁷ Jackson, Donald, 'Prevention of Terrorism: The United Kingdom Confronts the European Convention on Human Rights'; in: *Journal of Terrorism and Political Violence*, Vol. 6, No. 4, Winter 1994, p. 509.

⁸⁸ Newsinger, John, *British Counter-Insurgency: From Palestine to Northern Ireland*. Palgrave, 2002, p. 166.

⁸⁹ *Ibid.* Since entering party politics Adams has consistently denied that he was an active member of the Provisional IRA but his role as a prominent early leader of the organization has been well documented, perhaps most notably by one of his closest allies during this period, former Belfast Brigade stalwart and senior republican Brendan Hughes.

⁹⁰ Provisional IRA, *Green Book*, 1977 ed. quoted in German, Mike, *Thinking Like a Terrorist: Insights of a Former FBI Undercover Agent*. Potomac Books, 2007, p. 167.

boosting international support for the Palestinian cause.⁹¹ Beverley Milton-Edwards and Stephen Farrell have also described how *Hamas* exploits Israeli reprisals carried out in response to its operations — such as home demolitions — to stoke community anger and build its base.⁹² In August 2014, the Israeli Defense Forces published excerpts from a *Hamas* manual on urban warfare reportedly recovered during an offensive conducted against the Shuja'iyah Brigade of the Al-Qassam Brigades. While the authenticity of the manual has been questioned in some quarters, it does seem to tally closely with the reported behavior of *Hamas* units on the ground in Gaza. A section of the manual notes that the destruction of civilian homes “increases the hatred of the citizens towards the attackers [the IDF] and increases their gathering [support] around the city defenders (resistance forces).”⁹³ *Hamas*' well-documented use of locations typically protected from being targeted under the laws of armed conflict, such as schools and hospitals, would also seem to fit this strategy — hostile fire originating from such a location can void its protection under international law, but the public relations fallout from shelling or bombing a school or hospital typically overshadows the potential legitimacy of a decision to retaliate against an enemy firing position.⁹⁴

But perhaps the most successful example of a terror group deliberately setting out to provoke a counterproductive state response is also one of the most recent. The US journalist Alan Cullison scored a major scoop when he purchased two abandoned *al-Qaeda* computers from a “semiliterate jewelry salesman” who had looted them from *al-Qaeda*'s central office in Kabul. Reviewing the contents, Cullison came across internal communications discussing the likely outcome of the 9/11 attacks which made it clear that the strike was intended to have a unifying effect on the many disparate *Mujahedin* factions and that, recalling the war in Afghanistan against the Soviet invaders, *al-Qaeda* leaders hoped 9/11 would have a galvanizing effect on the Arab world.⁹⁵ In this respect at least, the attacks were profoundly successful. In a broadcast in November 2004, Osama bin Laden gleefully compared President George Bush to the cantankerous goat who according to an ancient parable willfully dug up a lost knife buried in the ground that was later used to slaughter it.⁹⁶ Ayman al-Zawahiri had also long believed that drawing America's Muslim allies into a wider conflict would be an effective strategy for mobilizing domestic resistance to their rule, writing in *Knights under the Prophet's Banner*:

“We win ... by exposing the regime to the Muslim people when it attacks us in defense of its masters, the Americans and the Jews, showing thereby the ugly face, the face of the policeman, the faithful hireling in the service of the occupier, the enemies of the Muslim *umma* (the community of the [Muslim] faithful).”⁹⁷

⁹¹ Mishal, Shaul and Sela, Avraham, *The Palestinian Hamas: Vision, Violence, and Coexistence*. New York: Columbia University Press, 2006, p. 62 and Nüsse, Andrea, *Muslim Palestine: The Ideology of Hamas*. Harwood Academic, 1998, p. 166.

⁹² Milton-Edwards, Beverley and Farrell, Stephen, *Hamas*. Polity Press, 2010, p. 113.

⁹³ IDF Blog, *Captured Hamas Combat Manual Explains Benefits of Human Shields*, 4 August 2014. Available at: www.idfblog.com/blog/2014/08/04/captured-hamas-combat-manual-explains-benefits-human-shields/.

⁹⁴ Milton-Edwards, Beverley and Farrell, Stephen, *supra* note 92, pp. 150–152.

⁹⁵ Alan Cullison, ‘Inside Al Qaeda's Hard Drive’; in: *The Atlantic*, 1 September 2004.

⁹⁶ Ibrahim, Raymond, *The Al Qaeda Reader, The Essential Texts of Osama Bin Laden's Terrorist Organization*. Broadway Books, 2007, p. 218

⁹⁷ Ryan, Michael, *Decoding Al Qaeda's Strategy: The Deep Battle Against America*. New York: Columbia University Press, 2013, p. 77.

In 2005, the *al-Qaeda* insider Abu Bakr Naji published *The Administration of Savagery*, serialized in seven installments in the online *Sawt al-Jihad*⁹⁸ magazine, to explain *al-Qaeda*'s strategy in detail to its supporters around the world. Naji wrote that *al-Qaeda* set "a trap" for the United States in Afghanistan, which it then fell into — by seeking revenge for the 9/11 attacks, Naji asserted, the United States had committed itself to operations that would inevitably intensify over time, provoking a backlash from the Muslim community.⁹⁹ Naji further argued that what had worked against the Soviet Union would work against the United States — indeed, he went on to suggest that it would actually be easier to defeat the "soft" United States because the Soviets had been much tougher opponents. Naji cited the Yale historian Paul Kennedy's influential study *The Rise and Fall of the Great Powers* in support of his central thesis: "If America expands its employment of military power and extends strategically more than necessary, this will lead to its downfall."¹⁰⁰ A copy of *The Rise and Fall of the Great Powers* was also found in bin Laden's hideout in Abbottabad. Naji also noted that *al-Qaeda* would be able to attract more recruits as a consequence of being able to demonstrate America's direct interference in the Islamic world.¹⁰¹ In much the same spirit, one *al-Qaeda* publication actually heralded the US invasion of Iraq with an article entitled *Thank You, Oh Zio-Crusaders*.¹⁰²

Quoting Osama bin Laden, the Islamic State in Iraq and the Levant (ISIL) articulated a similar strategy in an article entitled *The Extinction of the Grayzone*, published in the January/February 2015 issue of ISIL's glossy English-language magazine *Dabiq*: "The world today is divided into two camps. Bush spoke the truth when he said, 'either you are with us or you are with the terrorists.' Meaning, either you are with the crusade or you are with Islam."¹⁰³ To this end, ISIL has deliberately set out to "bring division to the world" and reduce the space for compromise, moderation and multicultural exchange — the "grayzone" of the article's title — which it dismisses as the hideout of hypocrites.¹⁰⁴ The article is explicit about ISIL's intention to provoke through its actions a draconian crackdown on the Muslim communities living in Western countries: "Muslims in the Crusader countries will find themselves driven to abandon their homes for a place to live in the *Khilāfah*, as the Crusaders increase persecution against Muslims living in Western lands."¹⁰⁵ The group's ultimate objective is to manufacture a clash of civilizations in which no middle ground remains: "Eventually, the grayzone will become extinct and there will be no place for grayish calls and movements. There will only be the camp of *īmān* versus the camp of *kufr*."¹⁰⁶ Another ISIL publication, *Media Operative, You Are a Mujahid Too*, acknowledged that part of the intent behind its terrorist operations was to "infuriate" governments into precipitous policy responses that would only further alienate their Muslim populations, and echoing Ramdane Abane, ISIL leader al-Baghdadi told his

⁹⁸ *Voice of Jihad*, published online by Al Qaeda in the Arabian Peninsula between 2004–2007.

⁹⁹ Michael Ryan, *supra* note 97, p. 175.

¹⁰⁰ *Ibid.*, p. 159.

¹⁰¹ *Ibid.*, p. 163.

¹⁰² Kurzman, Charles, *The Missing Martyrs: Why There Are So Few Muslim Terrorists*. Oxford University Press, 2011, p. 144.

¹⁰³ *Dabiq*, Issue No. 7, January/February 2015 [1436 Rabi' Al-Akhir], p. 54; accessed on 17 November 2015. Available at: <http://media.clarionproject.org/files/islamic-state/islamic-state-dabiq-magazine-issue-7-from-hypocrisy-to-apostasy.pdf>.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

followers in an August 2018 that one attack in the West was worth 1,000 in Iraq or Syria.¹⁰⁷ In December 2014, Ilich Ramírez Sánchez, better known as the notorious PFLP terrorist Carlos the Jackal who had been incarcerated in France since August 1994, sent the French academic and prominent terrorism expert, Gilles Kepel, a manuscript entitled *La guerre psychologique*, in which he cast an appreciative professional eye over the tactics adopted by *al-Qaeda*, ISIL and their affiliates:

“The jihadists have followed this line of psychological warfare with great success in the media. The decapitations now carried out openly by citizens of countries that are members of NATO, transmitted over the Internet, are a magisterial media coup with immense, unparalleled benefits... Now the imperialist states will be subjected to reprisal attacks within their borders against which they cannot defend themselves, leading to indiscriminate repression which will multiply the recruitment of volunteers for *jihād*.”¹⁰⁸

If the fact that terrorists have been explicitly open about their desire to provoke an aggressive state response to their actions is not in itself enough to give national security hawks pause, then the social science research into the drivers of violent extremism produced in the past two decades should be. Radicalization is admittedly an extremely complex phenomenon. As the founder of the CIA’s Center for the Analysis of Personality and Political Behavior, psychologist Jerrold Post, concluded after a lifetime spent studying terrorist profiles:

“There are nearly as many variants of personality who become involved in terrorist pursuits as there are variants of personality ... Yet, no matter how justified the cause, no matter how repressive the society, there are some who join and some who don’t. Not every son of a Basque joins ETA.”¹⁰⁹

However, while there is little prospect of a universal theory of radicalization emerging any time soon, there is general agreement among researchers that radicalization is a process variously impacted to a greater or lesser extent by a range of what are often termed push (personal) or pull (societal) factors.¹¹⁰ These factors can be grouped into five broad categories – the psychological process of self-actualization sometimes also called the quest for significance, the social networks an individual belongs to, empathy for the suffering of others, social exclusion and marginalization, and personal experience of state repression. It is this last factor that is most relevant for this article.

As outlined above, terrorist leaders have long intuitively understood that violence begets violence and that aggressive government action against their constituents can be a powerful recruitment tool. David Fromkin understood this too when he wrote, “terrorism generates its own momentum.”¹¹¹ Martha Crenshaw has argued that terrorist campaigns often come to resemble “a modern form of feuding” as action provokes reaction drawing more and more

¹⁰⁷ Winter, Charlie, *Media Jihad: The Islamic State’s Doctrine for Information Warfare*. International Centre for the Study of Radicalisation and Terrorist Violence, 2017, p. 18, and Munoz, Michael, ‘Selling the Long War: Islamic State Propaganda after the Caliphate’; in: *CTC Sentinel*, November 2018, p. 33.

¹⁰⁸ Kepel, Gilles, *Terror in France: The Rise of Jihad in the West*. Princeton University Press, 2017, p. 133.

¹⁰⁹ Post, Jerrold, ‘Notes on a Psychodynamic Theory of Terrorist Behavior’; in: *Terrorism*, Vol. 7, No. 3, 1984, pp. 242–243.

¹¹⁰ United States Agency for International Development, *The Development Response to Violent Extremism and Insurgency*. United States Agency for International Development, September 2011 and Report of the Secretary General, *Plan of Action to Prevent Violent Extremism*, A/70/674, 24 December 2015

¹¹¹ Fromkin, David, *supra* note 5, p. 688.

protagonists into the struggle and amplifying the anti-government frame within which militant groups operate.¹¹² Louise Richardson identified “revenge” as one of what she described as the “three Rs” of terrorism—the others being “renown” and “reaction”—and this seems a constant theme across the literature. Mia Bloom also identified a desire for “revenge” as one of four primary motivations that she repeatedly encountered in her case studies of women terrorists (along with redemption, relationships, and a thirst for respect).¹¹³ In his influential study of micromobilization processes in 1970s Northern Ireland, the sociologist Robert White found that personal experience of state violence appeared to be a major determinant of individual decisions to embrace political extremism. In a series of interviews with Provisional IRA volunteers, White found that their personal interaction with British troops was cited again and again as they explained their decision to take up arms.¹¹⁴ Furthermore, he noted that Provisional IRA violence increased significantly in months following incidents in which the security forces harmed civilians or carried out particularly emblematic acts of repression, such as the introduction of internment.¹¹⁵ The desire to avenge a personal loss or humiliation is a powerful *leitmotif* running through many terrorists’ stories, and the stated intent to retaliate directly in response to government action is a commonplace feature of terrorist claims of responsibility. The following are just a small selection of examples taken from across the temporal and geographic spread of terrorist activity.

Perhaps the most iconic revenge story in the terrorism literature is that of Udham Singh. Legend holds that Udham Singh was among the wounded in the Jallianwala garden in Amritsar, India, in April 1919 when British troops under command of Brigadier Reginald Dyer opened fire on a crowd of protestors killing at least 379, and possibly as many as 1,000.¹¹⁶ Dyer had been sent to disperse the crowd by the British Lieutenant-Governor of Punjab, Michael O’Dwyer. Although Singh himself claimed to be a survivor of the massacre historians have not been able to find any independent confirmation of this, but as his biographer Anita Anand has noted whether Singh was there or not, what is beyond question is that the massacre had a transformative effect on him.¹¹⁷ Singh embarked on a life of revolutionary activity aimed at overthrowing British colonial rule. He joined the Ghadar Party and became a close associate of the prominent socialist revolutionary Bhagat Singh. The colonial authorities jailed him for four years in the late 1920s for the illegal possession of firearms, and he was harshly treated in prison, but this did not deter him. Finally, on 13 March 1940, Singh walked into a public meeting at Caxton Hall in London where O’Dwyer was speaking and shot him dead. He also wounded the Secretary of State for India, the Marquess of Zetland. Singh was hanged for his crime, but he died content: “For a full twenty-one years, I have been trying to wreak vengeance. I am happy that I have done the job.”¹¹⁸

Udham Singh’s story is perhaps a little more epic than most, but his motivation is common enough and occurs again and again in personal histories of terrorist actors from the earliest anarchist revolutionaries to the modern era’s Islamist extremists. Gaetano Bresci was an Italian immigrant living in Patterson, New Jersey, earning a living as a weaver. He was active in local anarchist circles and helped found and support an anarchist newspaper called *La Questione*

¹¹² Crenshaw, Martha, *Explaining Terrorism: Causes, Processes and Consequences*. Routledge, 2011, p. 130.

¹¹³ Bloom, Mia, *Bombshell: Women and Terrorism*. University of Pennsylvania Press, 2011, pp. 33–249.

¹¹⁴ White, Robert, ‘From Peaceful Protest to Guerrilla War: Micromobilization of the Provisional Irish Republican Army’; in: *American Journal of Sociology*, Vol. 94 No. 6, May 1989, p. 1288.

¹¹⁵ *Ibid*, p. 1288.

¹¹⁶ Macintyre, Ben, ‘We can’t escape our bloody role in Sikh history’; in: *The Times*, 17 January 2014.

¹¹⁷ Anand, Anita, *The Patient Assassin: A True Tale of Massacre, Revenge, and India’s Quest for Independence*. Scribner, 2019, p. 109–111.

¹¹⁸ Macintyre, Ben, *supra* note 116.

Sociale. In May 1898, Bresci's sister was one of at least 118 protestors cut down by canon fire in Milan during a protest against high bread prices, an incident that became known in Italy as the Bava-Beccaris massacre after the general who had ordered his troops to fire on the protestors.¹¹⁹ King Umberto I had subsequently awarded General Fiorenzo Bava-Beccaris the Great Cross of the Order of Savoy in recognition of his "brave defense of the royal house" prompting Bresci to mark the King as the target of his revenge. Bresci raised the money for a ticket home and traveled to the Lombard city of Monza where, in July 1900, he shot the King four times with a revolver he had brought with him from the United States, killing him. The leading Italian anarchist Errico Malatesta had long worried that personal motivations were beginning to overwhelm the principled ideological commitment of his comrades, commenting sadly: "It's no longer love for the human race that guides them, but the feeling of vendetta joined to the cult of an abstract idea."¹²⁰ The most famous anarchist bomber of the *belle époque*, Émile Henri, was similarly motivated by a strong desire for revenge, for his father's exile to Spain after the defeat of the Paris Commune where he died in penury, for the harsh treatment of striking miners by the Carmaux mining company, and for the execution of Auguste Vaillant following his attack on the Chamber of Deputies of the French National Assembly. Henri explained to the court during his trial for the February 1894 Café Terminus bombing:

"The bomb in the Café Terminus is the answer to all your violations of freedom, to your arrests, to your searches, to your laws against the Press, to your mass transportations, to your guillotinings... You have hanged us in Chicago, decapitated us in Germany, garroted us in Xerez, shot us in Barcelona, guillotined us in Montbrison and Paris, but what you can never destroy is anarchy."¹²¹

A member of the Zionist Stern Gang detained by the British Mandate authorities in Palestine, Yitzhak Reznitsky, offered a strikingly similar rationale to his interrogators to explain why the group had mounted a flurry of bomb attacks on the Palestine police in April–May 1942:

"The severe methods employed by the police... including the shooting of Zak, Amper, Sevorai [*sic*], Levshstein [*sic*] and Stern himself... convinced the members of the group of the Government's intention to crush their organization at any cost, and it was decided to fight back."¹²²

Another leading member of the Stern Gang, Nathan Yellin-Mor, later wrote: "The first goal for a revenge attack was perfectly clear — Geoffrey Morton, the murderer of Yair [Stern]."¹²³ Morton narrowly escaped an IED explosion along his route to work, and other devices targeted the Inspector General and Deputy Inspector General of the Palestine Police. Likewise, the May 1947 murder of Alexander Rubowitz, a young Jewish *Brit Hashmonaim* activist, snatched off the streets by the British undercover unit led by Major Roy Farran, prompted LEHI to mount a wave of reprisal attacks that included the shooting of four British soldiers on a Tel Aviv beach, the murder of a British officer in a restaurant in Haifa, and the mailing of a parcel bomb to

¹¹⁹ Butterworth, Alex, *The World That Never Was: A True Story of Dreamers, Schemers, Anarchists and Secret Agents*. Pantheon Books, 2010, p. 371.

¹²⁰ Jensen, Richard Bach, 'Daggers, Rifles and Dynamite: Anarchist Terrorism in Nineteenth Century Europe'; in: *Terrorism and Political Violence*, Vol. 16, No. 1, Spring 2004, p. 126.

¹²¹ Émile Henry, *Defence*, April 1894, and Merriman, John, *The Dynamite Club: How a Bombing in Fin-de-Siecle Paris Ignited the Modern Age of Terror*. Houghton Mifflin Harcourt, 2009, p. 187.

¹²² Bishop, Patrick, *The Reckoning: How the Killing of One Man Changed the Fate of the Promised Land*. William Collins, 2014, p. 197.

¹²³ *Ibid*, p. 198.

Farran's family home in Staffordshire, which detonated killing his brother Rex.¹²⁴ An *Irgun* statement issued in August 1939 proclaimed: "A hitting fist must be answered with two hitting fists – a bomb explosion has to be replied with two bomb explosions."¹²⁵

The French decision to execute two *Front de Libération Nationale* members, Ahmed Zabana and Abdelkader Ferradj, led to the outbreak of the Battle of Algiers on 19 June 1956. FLN commander Ramdane Abane ordered his subordinate in Algiers, Saadi Yacef, to "kill any European between the ages of eighteen and fifty-four. But no women, no children, no old people" and within seventy-two hours, forty-nine French civilians had been murdered in retaliation.¹²⁶ Saadi Yacef later told the French intellectual Germaine Tillion: "It was the day when France decided to guillotine our fighters that the FLN and ALN decided to escalate the fight. Denying us dignity, even in death, is the ultimate provocation. We want to face death. We want to die standing up, not cut in two!"¹²⁷ White French settlers hit back with a series of bombings of Muslim neighbourhoods — including most notoriously the detonation on 10 August 1956 of a large explosive device in the *Rue de Thèbes* by former French intelligence officer André Achiary and members of the *Union Française Nord-Africaine*, which killed seventy-three local Arab residents. Just ten days after the *Rue de Thèbes* attack, the FLN, urged on by Ramdane Abane, adopted an explicit policy of indiscriminate terrorism at the Soummam Conference.¹²⁸ Zohra Drif recalled:

"Before Rue de Thèbes, neither the FLN nor ALN had any bombs, explosive labs, specialists in the explosives field, or activists prepared to place bombs in public places... [O]ur bombings were a response – completely necessary but not premeditated – to the bomb attacks perpetrated by European civilians against our people."¹²⁹

Martha Crenshaw has noted how in the Algerian War of Independence, the term *engrenage* — literally "the engaging of gears" — was used to emphasize the self-perpetuating nature of the conflict.¹³⁰ It's an apposite image.

Systemic police brutality is often cited in personal histories as a radicalizing factor. Dieter Kunzelmann, one of the leaders of *Tupamaros West Berlin* who was jailed for five years in the early 1970s for terrorism-related offenses, recalled in an interview with the BBC that it was the experience of routine police violence that pushed him and many of his comrades into taking up arms: "The debate over violence in the anti-authoritarian movement which led to armed resistance in the urban guerrilla movement was a result of us getting beaten up such a lot [by the police]. That goes without saying." His observation was echoed by the RAF's Horst Mahler: "We marched in the streets against the genocide in Vietnam with the belief that we were doing the best thing in the world. Then, there was the massive aggression of the state apparatus, and there was one death [of the student Benno Ohnesorg]."¹³¹ Michael Baumann also described the impact Ohnesorg's death had on him: "Benno Ohnesorg. It did a crazy thing

¹²⁴ Cesarani, David, *Major Farran's Hat: The Untold Story of the Struggle to Establish the Jewish State*. Cambridge MA: Da Capo Press, 2009, pp. 138–139 and 193.

¹²⁵ Hoffman, Bruce, *supra* note 15, p. 161/1039

¹²⁶ Horne, Alistair, *supra* note 41, pp. 183–184.

¹²⁷ Drif, Zohra, *supra* note 16, p. 339.

¹²⁸ Horne, Alistair, *supra* note 41, p. 184.

¹²⁹ Drif, Zohra, *supra* note 16, pp. 144–145.

¹³⁰ Martha Crenshaw, *supra* note 40, p. 475.

¹³¹ Della Porta, Donatella, *Clandestine Political Violence*. Cambridge University Press, 2013, p. 45.

to me. When his casket went by, it just went ding, something got started there.”¹³² Baumann joined *Bewegung 2. Juni*, an anarchist terrorist group formed in direct response to Ohnesorg’s death that took the date of the incident as its name. An Italian militant active in the *Movimento Comunista Rivoluzionario* also blamed aggressive police tactics for escalating tensions between left-wing protestors and the ruling establishment in same period:

“It is first of all a problem of suffered violence. The first images are linked to the police charges. The first strong signs of an unsustainable situation, a situation which really had to be changed, comes those years from Avola and Battipaglia. They came from those demonstrations, by the way not student ones, that were hit and repressed, with the death of people who had demonstrated.”¹³³

For November 17 member Patroklos Tselentis, it was the violent suppression by the Greek authorities of a student demonstration in 1980 that made the critical difference: “The events at the Polytechnic had a radicalizing effect on me. I was lucky not to have been hurt in the clashes, but many friends of mine, and many friends of theirs, sustained serious injuries at the hands of the police.”¹³⁴ Likewise, Carlos Marighela’s ALN October Revolutionary Group declared in September 1969: “Finally, here is a warning to those who torture, beat and kill our comrades. We shall not allow these atrocities to continue. This is a last warning. Anyone who persists should beware. Now it is an eye for an eye and a tooth for a tooth.”¹³⁵

The experience of being detained, or of seeing a loved one detained, especially if that detention seems unjust, is also a commonly reported radicalizing experience. Nicos Sampson was one of EOKA’s leading operatives and by January 1957, he was said to have participated in at least twenty-five murders and attempted murders.¹³⁶ However, he didn’t start out as a hardened criminal or street thug: “I was the best reporter in Cyprus when the police arrested me in Famagusta. I was innocent. I was sent to prison for three months on a false charge and when I came out I began working for EOKA.”¹³⁷ *Fuerzas Armadas Revolucionarias de Colombia — Ejército del Pueblo* (FARC-EP) cadre Yurluey Mendoza told the reporter Nick Miroff that she had joined the movement after witnessing her father being beaten by Colombian police officers. When she was seven-years-old, she had attended a festival in her local town with her father. He had requested that a band playing in the plaza play a popular folk ballad that referenced one of FARC’s founders, Manuel Marulanda Vélez. He was arrested, beaten and locked up in the local jail overnight. Mendoza sat all night outside his cell:

“There was a space under the door, and I put my hand under it so he could touch my finger. We sat like that on the floor for a long time. I remember how badly I wanted to be big at that moment when they were beating my father, I think that’s when I decided I wanted to be powerful, or to be part of something powerful. To make them know they could never do that to us again.”¹³⁸

¹³² Baumann, Michael, *Terror or Love?* Pulp Press, 1977, p. 40.

¹³³ Della Porta, Donatella, *supra* note 131, p. 42.

¹³⁴ Kassimeris, George, *supra* note 18, pp. 39–40.

¹³⁵ Marighela, Carlos, *For the Liberation of Brazil*. The Pelican Latin American Library, 1974, p. 27.

¹³⁶ French, David, *Fighting EOKA: The British Counter-Insurgency Campaign on Cyprus, 1955–1959*. Oxford University Press, 2015, p. 54.

¹³⁷ *Ibid.*, p. 63.

¹³⁸ Miroff, Nick, ‘Do you know what it’s like to spend 20 years at war?’ in: *Washington Post*, 30 September 2016.

The Provisional IRA intelligence officer Eamon Collins wrote that he was radicalized by the experience of being detained and beaten by British paratroopers, along with his father and brother, after a police dog wrongly confused the odor of creosote in his father's car with that of explosives. After a terrifying and humiliating spell in Bessborough Barracks, the family was released, but the psychological damage was done: "I would feel a surge of rage whose power unbalanced me; I would sit alone in my room and think with pleasure of blowing off the heads of those Para scum."¹³⁹

The Northern Ireland conflict abounds with stories of personal outrage, loss, and radicalization. The hunger striker Bobby Sands wrote that his nationalist sentiments had become aroused after watching a unionist mob ambush a Catholic civil rights march at Burntollet Bridge, with apparent police connivance, commenting: "That imprinted itself in my mind like a scar, and for the first time I took a real interest in what was going on. I became angry."¹⁴⁰ Tony Doherty was just nine-years-old when his father, Patrick, was shot dead by British paratroopers in Londonderry/Derry on Bloody Sunday in 1972.¹⁴¹ Patrick Doherty had been a steward on the march. In 1981, Tony joined the Provisional IRA. When first asked by a PIRA recruiter his motivation for joining, his answer was unequivocal: "I wanted to get revenge for the death of my father."¹⁴² Within a year, he had been arrested in possession of explosives while planning to bomb a British government building. He was sentenced to eight years in prison. A senior member of Provisional IRA told the psychologist John Horgan: "For me anyway, the sight of the B Specials and the Royal Ulster Constabulary beating nationalist people off the street in Derry was a big factor in joining the republican movement."¹⁴³ PIRA veteran Anthony McIntyre explained: "Why did I become involved in the IRA? It was because of a process of British state repression as clearly distinct from any sort of attachment to republican ideology."¹⁴⁴ Another former PIRA man told the researcher Richard English that one reason he joined the Provisionals was that he came from a republican family but then added:

"Another reason — and this cannot, *cannot* be overestimated — was, when the troubles did break out, the reaction of the security forces within the nationalist areas ... So those are basically the two reasons, and mostly I would say the latter — to strike back at what was going on in those districts."¹⁴⁵

Seán MacStíofáin, the first Chief of Staff of the Provisional IRA, once reflected on the early years of the conflict with the observation, "it has been said that most revolutions are not caused by revolutionaries in the first place, but by the stupidity and brutality of governments. Well, you had that to start with in the north all right."¹⁴⁶

The Palestinian experience is little different. *Hamas* co-founder Dr. Abdel Aziz al-Rantisi lost his uncle, grandfather, and three cousins to fighting with the Israelis. He told the terrorism researcher Mark Juergensmeyer that the suicide bombings carried out by *Hamas* were intended to make Israelis feel the same pain they had inflicted on Palestinians: "We want to do the same to Israel as they have done to us... It is important for you to understand that we are the victims

¹³⁹ Burleigh, Michael, *Blood and Rage: A Cultural History of Terrorism*. Harper, 2009, p. 310.

¹⁴⁰ Sands, Bobby, 'From a nationalist ghetto to the battlefield of H-Block'; in: *An Phoblacht*, 16 December 1978.

¹⁴¹ Moseley, Ray, 'Ex-IRA Recruit Is Ready To Put Bitterness Aside'; in: *Chicago Tribune*, 20 May 1998

¹⁴² 'Witness: Bloody Sunday', *BBC World Service*, 30 January 2012.

¹⁴³ Horgan, John, *The Psychology of Terrorism*. Routledge, 2005, p. 86.

¹⁴⁴ English, Richard, *supra* note 81, p. 123.

¹⁴⁵ *Ibid*, pp. 122-123.

¹⁴⁶ *Ibid*, p. 134.

in this struggle not the cause of it.”¹⁴⁷ Al-Rantisi recalled that his group had initially restricted its attacks to Israeli military personnel and only extended its attacks to encompass civilian targets after the massacre perpetrated at Hebron’s Tomb of the Patriarchs by Dr. Baruch Goldstein in February 1994.¹⁴⁸ Another senior *Hamas* figure, Imad Faluji, also commented on the same incident: “The Israelis killed our women and children during the holy month of *Ramadan*, we wanted to do the same to Israel, to show them that even their women and children are vulnerable — none are innocent.”¹⁴⁹ After the killing of senior *Hamas* member Salah Shehada in a July 2002 Israeli air strike that also claimed the lives of thirteen members of his extended family including several children, al-Rantisi issued a statement in which he warned: “There will be no peace initiative after today. We will chase them in their houses and in their apartments, the same way they have destroyed our houses and our apartments.”¹⁵⁰ Little over a week later, a *Hamas* operative left a bomb in a cafeteria on the campus of Jerusalem’s Hebrew University, which exploded without warning killing nine students and staff, and injuring 100 more. At a *Hamas* rally in Gaza City celebrating the attack, one speaker told the crowd: “We give this gift to the soul of Sheikh Salah Shehada and we say to the al Qassam Brigades we are waiting for more.”¹⁵¹ Commenting on the attack, a senior *Hamas* official, Ismail Haniyeh, told the *Los Angeles Times*: “If [the Israelis] are going to attack our children, then they will have to expect to drink from the same poison.”¹⁵²

One particularly emblematic Palestinian case is that of Hanadi Jaradat, a twenty-nine-year-old lawyer from the Palestinian West Bank town of Jenin, blew herself up in a restaurant in Haifa in October 2003 killing twenty-one people and injuring fifty-one others. Her fiancé had been killed by the Israeli Defense Forces in 1997, and in June 2003, both her brother and cousin had also been killed during a raid by an undercover unit from the Israeli Border Police.¹⁵³ The cousin had been a senior member of Palestinian Islamic Jihad (PIJ) and was a wanted fugitive, but Israeli sources could not agree on whether her brother was an active member of PIJ or not. The Jordanian newspaper *Al Arab al-Yum* reported that, in her eulogy for the two men, Hanadi vowed that their blood would not be shed in vain: “The murderer will yet pay the price and we will not be the only ones who are crying ... If our nation cannot realize its dream and the goals of the victims, and live in freedom and dignity, then let the whole world be erased.”¹⁵⁴ Hanadi’s father, Taisir, told the *Al Jazeera* television network:

“My daughter’s action reflected the anger that every Palestinian feels at the occupation. The occupation did not have mercy on my son Fadi, her brother. They killed him even though he was not a wanted person, they murdered him in cold blood before Hanadi’s eyes, I will accept only congratulations for what she did. This was a gift she gave me, the homeland and the Palestinian people. Therefore, I am not crying for her. Even though the most precious thing has been taken from me.”¹⁵⁵

¹⁴⁷ Juergensmeyer, Mark, *Terror in the Mind of God: The Global Rise of Religious Violence*. University of California Press, 2003, p. 75.

¹⁴⁸ *Ibid.*, p. 74.

¹⁴⁹ *Ibid.*, p. 137.

¹⁵⁰ Goldenberg, Suzanne, ‘12 dead in attack on Hamas’; in *The Guardian*, 23 July 2002.

¹⁵¹ Dunn, Ross, ‘Palestinians celebrate revenge attack’; in *The Age*, 2 August 2002.

¹⁵² Wilkinson, Tracy, ‘Blast Kills 7 at University in Jerusalem’; in *Los Angeles Times*, 1 August 2002.

¹⁵³ Kruglanski, Arie, Gelfand, Michele, Bélanger, Jocelyn, Sheveland, Anna, Hetiarachchi, Malkanthi and Gunaratna, Rohan, ‘The Psychology of Radicalization and Deradicalization: How Significance Quest Impacts Violent Extremism’; in *Advances in Political Psychology*, Vol. 35, Suppl. 1, 2014, p. 75.

¹⁵⁴ Levy-Barzilai, Vered, ‘Ticking Bomb’; in *Haaretz*, 15 October 2003.

¹⁵⁵ *Ibid.*

PIJ claimed responsibility for the attack in Haifa, and the cycle of violence continued when two weeks afterwards the IDF arrived to demolish the Jaradat family's home. Hanadi was the eldest of nine children. The former Head of the Israeli security service *Shin Bet*, Yaakov Peri, admitted: "The *Intifada* stirred in many young persons a desire to take revenge of the Israeli authorities for a long list of issues: prolonged detention in difficult conditions, the loss of a family member or a close friend in one of the clashes, humiliating conduct during a search and much more."¹⁵⁶

Finally, the transnational Islamist movement inspired, and to a certain extent led, by *al-Qaeda* and ISIL throws up many familiar narratives of suffering and revenge. Montassir al-Zayyat, Ayman al-Zawahiri's biographer, maintains that it was "the traumatic experience suffered by Zawahiri in prison [that] transformed him from being a relatively moderate force in *al-Jihad* into a violent and implacable extremist."¹⁵⁷ The current Head of *al-Qaeda* was detained in Egypt in 1981 following the assassination of Anwar Sadat and jailed until 1985 during which period he was, by his own account, subjected to coercive interrogation methods by the Egyptian security forces: "There they kicked us, they beat us, they whipped us with electric cables, they shocked us with electricity... And they used the wild dogs... And they hung us over the edges of the doors with our hands tied at the back!"¹⁵⁸ *Al-Qaeda* in the Arabian Peninsula (AQAP) bombmaker Ibrahim al-Asiri likewise told an interviewer that he turned against the Saudi state after he was interdicted and imprisoned while trying to make his way to Iraq to join the insurgency against US forces: "They put me in prison and I began to see the depths of [the Saudi] servitude to the Crusaders and their hatred for the true worshippers of God, from the way they interrogated me."¹⁵⁹ Sajida al-Rishawi, an aspirant suicide bomber recruited by Abu Musab al-Zarqawi to take part in the November 2005 Amman hotel bombings, had lost two brothers and a brother-in-law to US forces in Iraq. Al-Rishawi took part in the attack at the Radisson Hotel, but her suicide vest failed to go off and she fled the scene. When she was captured by the Jordanian authorities two days later, she told her interrogator: "They told me I would be killing Americans. All I wanted was to avenge the deaths of my brothers."¹⁶⁰

But perhaps the most telling example of all comes in a videotaped speech broadcast by *Al Jazeera* in November 2004 in which Osama bin Laden explained why *al-Qaeda* had launched its operation against New York and Washington on 11 September 2001:

"Allah knows that it had never occurred to us to strike the towers. But after it became unbearable and we witnessed the oppression and tyranny of the American-Israeli coalition against our people in Palestine and Lebanon, it came to my mind. The events that affected my soul in a direct way started in 1982 when America permitted the Israelis to invade Lebanon and the American Sixth Fleet helped them in that. This bombardment began and many were killed and injured and others were terrorized and displaced. I couldn't forget those moving scenes, blood and severed limbs, women and children sprawled everywhere. Houses destroyed along with their occupants and high rises demolished over their residents, rockets raining down on our home without mercy ... In those difficult moments many hard-to-describe

¹⁵⁶ Ginbar, Yuval, *Why Not Torture Terrorists? Moral, Practical, and Legal Aspects of the 'Ticking Bomb' Justification for Torture*. Oxford University Press, 2010, p. 143.

¹⁵⁷ Wright, Lawrence, *The Looming Tower: Al-Qaeda and the Road to 9/11*. Vintage Books, 2007, p. 61.

¹⁵⁸ Till, Brian, 'A Note on Egyptian Torture'; in: *The Atlantic*, 1 February 2011

¹⁵⁹ 'Profile: Al Qaeda 'bomb maker' Ibrahim al-Asiri', *BBC News*, 9 May 2012

¹⁶⁰ Warrick, Joby, *Black Flags: The Rise of ISIS*. Doubleday, 2015, pp. 195 and 197.

ideas bubbled in my soul, but in the end they produced an intense feeling of rejection of tyranny, and gave birth to a strong resolve to punish the oppressors. And as I looked at those demolished towers in Lebanon, it entered my mind that we should punish the oppressor in kind and that we should destroy towers in America in order that they taste some of what we tasted and so that they be deterred from killing our women and children.”¹⁶¹

While individual stories and qualitative accounts are certainly persuasive, it is also worth noting that a number of quantitative studies have added further evidence of the damaging impact of state abuses. Mia Bloom has noted that there is “an empirical regularity” in Chechnya, Palestine, and Sri Lanka linking the loss of a family member to “unjust” state action and the choice to carry out an act of suicide terrorism.¹⁶² A study conducted for the US-based National Bureau of Economic Research on insurgent recruitment in Afghanistan in 2009–2010 found that revenge for the death of a loved one was often a crucial determining factor in an individual’s decision to join the insurgency.¹⁶³ In 2014, the Institute for Security Studies in South Africa approached ninety-five Kenyan residents associated with the Somali terrorist group *al-Shabaab* in an attempt to find out why they had joined the organization. When asked “the single most important factor” that had pushed them to embrace violence, 65% of those approached referenced the Kenyan government’s aggressive counter-terrorism strategy towards Kenyan Muslims and Kenyans of Somali descent, specifically citing the assassination of Muslim leaders, collective punishment, arbitrary arrest, and police beatings among their complaints.¹⁶⁴ A February 2017 survey conducted in North East Nigeria by the Network for Religious and Traditional Peacemakers found that 57% of former Boko Haram fighters interviewed by the researchers identified a desire for revenge as having had a major influence on their decision to join Boko Haram.¹⁶⁵ One former Boko Haram member told the researchers that security forces “kill innocent people that are not members... I think they deliberately do so. So [people] join the group to fight the military.”¹⁶⁶ Further support for these findings came from a transnational United Nations Development Programme study, *Journey to Extremism in Africa*, which interviewed 495 current and former African militants and found that 71% cited government action, including the “killing of a family member or friend” or the “arrest of a family member or friend,” as the tipping point that prompted them to join a terrorist group.¹⁶⁷ The authors concluded that state security-actor conduct should therefore be considered “a prominent accelerator of recruitment, rather than the reverse.”¹⁶⁸

A key finding of quantitative studies into the putative relationship between poverty and terrorism conducted in the decade after the 9/11 attacks was that while poverty did not correlate in absolute terms to an increase in terrorism, human rights abuses and the suppression of civil liberties did. Jitka Malečková found that at a given level of income, countries with a low

¹⁶¹ ‘Full transcript of bin Laden’s speech’, *Aljazeera.com*, 1 November 2004

¹⁶² Bloom, Mia, ‘Dying to Kill: Motivations for Suicide Terrorism’; in: Ami Pedahzur (Ed.), *Root Causes of Suicide Terrorism: The Globalization of Martyrdom*. Routledge, 2006, p. 37.

¹⁶³ Condra, Luke, Felter, Joseph, Iyengar, Radha, and Shapiro, Jacob, *The Effect of Civilian Casualties in Afghanistan and Iraq*, Working Paper 16152. National Bureau of Economic Research, July 2010.

¹⁶⁴ Botha, Anneli, *Radicalisation in Kenya: Recruitment to al-Shabaab and the Mobasa Republican Council*. Institute for Security Studies, September 2014, p. 20.

¹⁶⁵ Botha, Anneli and Abdile, Mahdi, *Understanding Boko Haram in Nigeria – Reality and Perceptions*. The Network for Religious and Traditional Peacemakers, February 2017, at 9

¹⁶⁶ *Ibid.*

¹⁶⁷ Ojjielo, Ozonnia, et al, *Journey to Extremism in Africa: Drivers, Incentives and The Tipping Point for Recruitment*. United Nations Development Programme, 2017, p. 5.

¹⁶⁸ *Ibid.*, p. 5.

Freedom House Index score for civil liberties were consistently more likely to produce international terrorists.¹⁶⁹ Similarly, a cross-national empirical study conducted by James Walsh and James Piazza found that countries with a poor human rights record were also more likely to experience both domestic and transnational terrorist attacks.¹⁷⁰ A third study carried out by Freedom House itself found that between 1999 and 2003, 70% of all deaths from terrorist attacks were caused by terrorist groups originating from countries characterized by the organization as “Not Free.”¹⁷¹ This has proved to be the one consistent takeaway common to most such studies into the causes of terrorism. A number of influential researchers working in this field have reached similar conclusions, including Ethan Bueno de Mesquita, James Fearon, Douglas Hibbs, Alan Krueger, David Laitin, Mark Lichbach, and Michael Mazarr.¹⁷²

In fairness, it must be emphasized again that just as not every son of a Basque joins ETA, not every abused individual becomes a terrorist, nor equally has every terrorist necessarily suffered personally from human rights abuses at the hands of the state. It is simply a common, perhaps the most common feature, of radicalization case studies. However, of further concern to counter-terrorism officials should be the fact that such experiences can also serve to amplify some of the other principle drivers of violent extremism enumerated above. As in the example of Udham Singh, it is easy to see how taking on the role of an avenger, especially on behalf of one’s community, could add substance to an individual’s quest for personal significance. It is equally easy to see how such abuses might provoke empathy for the abused in others. Chérif Kouachi, one of the two brothers behind the attack on the offices of the French satirical magazine *Charlie Hebdo* in January 2015 in which twelve people were killed, told a reporter who contacted him during his fatal stand-off with French police: “It was everything I saw on the television, the torture at Abu Ghraib prison, all that, which motivated me.”¹⁷³ The centrality of kinship and friendship networks to the makeup of terrorist groups adds a personal dimension to the aftermath of kinetic state action against them, ensuring the cycle of violence is likely to continue. As Gregory Johnsen has noted, pursuing a policy of targeted assassination in a country like Yemen with a deep tribal commitment to *thar* (revenge) or Afghanistan where the strict *Pashtunwali* code of honor requires a wronged party to seek *badal* (variously translated as revenge or justice) is only likely to prolong conflict.¹⁷⁴ A sense of social exclusion is only likely to be exacerbated by the application of overly aggressive and intrusive tactics. The Belfast-based criminologist Paddy Hillyard coined the term “suspect communities” to describe how the wider

¹⁶⁹ Malečková, Jitka, ‘Impoverished Terrorists: Stereotype or Reality?’ in: Bjørgo, Tore (Ed.), *Root Causes of Terrorism: Myths, Reality and Ways Forward*. Routledge, 2005, p. 41.

¹⁷⁰ Walsh, James and Piazza, James, ‘Why Respecting Physical Integrity Rights Reduces Terrorism’; in *Comparative Political Studies*, Vol. 43, No. 5, 2010.

¹⁷¹ Karatnycky, Adrian, *Civic Power and Electoral Politics*. Freedom House, 2005, p. 9.

¹⁷² Hibbs, Douglas, *Mass Political Violence*. Wiley, 1973; Lichbach, Mark, ‘Deterrence of Escalation? The Puzzle of Aggregate Studies of Repression and Dissent’; in: *The Journal of Conflict Resolution*, Vol. 31, No. 2, 1987, pp. 266-297; de Figueiredo, Rui and Weingast, Barry, *Vicious Cycles: Endogenous Political Extremism and Political Violence*. Institute of Government Studies, 2001; Fearon, James and Laitin, David, ‘Ethnicity, Insurgency and Civil War’; in: *American Political Science Review*, Vol. 97, No. 1, 2003; Rosendorff, Peter and Sandler, Todd, ‘Too Much of a Good Thing? The Proactive Response Dilemma’; in: *Journal of Conflict Resolution*, Vol. 48, No. 4, 2004; de Mesquita, Ethan Bueno, ‘The Quality of Terror’; in: *American Journal of Political Science*, Vol. 49, No. 3, 2005; Mazarr, Michael, *Unmodern Men in the Modern World: Radical Islam, Terrorism and the War on Modernity*. Cambridge University Press, 2007; Araj, Bader, ‘Harsh State Repression as a Cause of Suicide Bombing: The Case of the Palestinian-Israeli Conflict’; in: *Studies in Conflict and Terrorism*, Vol. 31, 2008; Krueger, Alan and Laitin, David, ‘Kto Kogo? A Cross-country Study of the Origins and Targets of Terrorism’; in Keifer, Philip and Loayza, Norman (Eds.), *Terrorism, Economic Development, and Political Openness*. Cambridge University Press, 2008; and de Mesquita, Ethan Bueno, ‘The Political Economy of Terrorism: A Selective Overview of Recent Work’; in: *The Political Economist*, March 2008.

¹⁷³ <http://www.juancole.com/2015/01/terrorist-radicalized-torture.html>.

¹⁷⁴ Johnsen, Gregory, ‘How we lost Yemen’; in: *Foreign Policy*, 6 August 2013.

Catholic community in Northern Ireland had come to be treated very differently from the rest of the population in law, policy, and police practices.¹⁷⁵ Floris Vermeulen, who has studied European attempts to engage resident Muslim communities over the past decade, has similarly warned that by conflating the threat posed by a small minority of radicalized extremists with entire communities, rather than the select few, local authorities risk prescribing public policy solutions that miss their intended target, alienate natural allies, and create suspect communities who, isolated from the authorities, are much less likely to push back against the extremists in their midst.¹⁷⁶ One Somali refugee summed up the disconnect perfectly in a conversation with the counter-extremism researchers Heidi Ellis and Saida Abdi: “They feel I am a threat, but I feel I am a target.”¹⁷⁷ If they are to have any chance of success, community engagement programs must be perceived as something that is being done in partnership with communities, rather than imposed on them.¹⁷⁸

This is where international human rights law comes in. A commitment to observing international human rights norms can prevent states from adopting counter-terrorism tactics that play straight into the hands of terrorist strategists, and give alienated members of society further reason to consider violent extremism as a pathway to change. Supporters of a more muscular counter-terrorism approach, true believers in the necessity of turning to “the dark side,” typically advance variants of the argument that human rights protections tie counter-terrorists’ hands, accompanied by emotionally charged appeals to intuition rather than evidence. The Israeli Prime Minister Benjamin Netanyahu’s observation that “if [democratic governments] do not fight terrorism with the means available to them, they endanger their citizenry” is typical of this approach.¹⁷⁹ If they can throw in dash of swaggering machismo to underscore the point, so much the better. Taking charge of the Palestine Police Force amidst the Arab Revolt in 1937 the veteran colonial policeman Sir Charles Tegart and his deputy Sir David Petrie described their ideal recruit as a “tough type of man, not necessarily literate, who knows as much of the game as the other side.”¹⁸⁰ Sixty-five years later the former Head of the CIA’s Clandestine Service, Jose Rodriguez, was likewise true to type when he told the reporter Lesley Stahl: “We needed to get everybody in government to put their big boy pants on and provide the authorities that we needed [to go after the terrorists].”¹⁸¹ However, it is worth taking a moment to measure these assertions against the reality in the field.

International human rights law and international humanitarian law provide a framework within which lawful state responses to terrorism should be conducted. This framework makes provision for wide-ranging international cooperation on counter-terrorism, establishes the benchmarks that characterize genuinely democratic societies, and creates an international regime of protection for fundamental human rights — such as the right to life, the right to liberty, the right to freedom of conscience, and the right to privacy — to ensure that individuals

¹⁷⁵ Vermeulen, Floris, ‘Suspect Communities — Targeting Violent Extremism at the Local Level: Policies of Engagement in Amsterdam, Berlin, and London’; in: *Terrorism and Political Violence*, Vol. 26, No. 2, 2014, p. 288. See also Hillyard, Paddy, *Suspect Community: People’s Experience of the Prevention of Terrorism Acts in Britain*. Pluto Press, 1993.

¹⁷⁶ *Ibid.*, pp. 287–288.

¹⁷⁷ Ellis, Heidi and Abdi, Saida, ‘Building Community Resilience to Violent Extremism Through Genuine Partnerships’; in: *American Psychologists*, Vol. 72, No. 3, 2017, p. 297.

¹⁷⁸ Vermeulen, Floris, *supra* note 175, pp. 287–288.

¹⁷⁸ Ellis, Heidi and Abdi, Saida, *supra* note 177, p. 295.

¹⁷⁹ Netanyahu, Benjamin, *Fighting Terrorism: How Democracies Can Defeat Domestic and International Terrorists*. Farrar, Straus and Giroux, 2001, p. 30.

¹⁸⁰ Hoffman, Bruce, *supra* note 15, p. 124/1039

¹⁸¹ Lesley Stahl, ‘Hard Measures: Ex-CIA head defends post-9/11 tactics’, *60 Minutes*, 29 April 2012.

enjoy a measure of protection from the unbridled power of the state. Executive powers are limited for the most part by the requirement that due process is observed in their application and that they are used in a manner that is reasonable, necessary and proportionate to the threat posed by criminal activity. International law recognizes that, on rare occasions, grave circumstances may arise which may require the temporary suspension of some protected rights — it simply requires that any such suspension must be done in a lawful manner and that state reverts to the *status quo ante* – full rights observance - at the earliest practical opportunity. At both the individual and the national level, the right to defend oneself in the face of attack is accorded particular prominence. In reality, international law accords state considerable latitude in responding to terrorist threats. However, it does also establish some fundamental red lines that states cannot cross in any circumstances. For example, states cannot detain suspects indefinitely without trial, states cannot torture suspects or render them to be tortured, and states cannot murder suspects with impunity. Any deviation from the “fundamental principles of fair trial” — including the presumption that a suspect is innocent until proven guilty — is completely prohibited.¹⁸² Freedom from discrimination is also regarded to be an absolute human right.¹⁸³ Indeed, the United Nations General Assembly has also identified “ethnic, national and religious discrimination” as one of the “conditions conducive to the spread of terrorism.”¹⁸⁴ So, the question now arises if it is possible to mount an effective response to terrorism without crossing these red lines, and moreover whether crossing any of these redlines has ever proved to be a remotely productive counter-terrorism tactic.

International human rights law anticipates that states will need to surveil, eavesdrop on and otherwise clandestinely collect information on the person and activities of terrorist actors using skilled surveillance professionals, technical devices, covert searches, informants, and undercover officers. Navi Pillay, the former UN High Commissioner for Human Rights, purposely acknowledged the vital role that intelligence collection plays in the prevention of terrorist violence: “The use of accurate intelligence is indispensable to preventing terrorist acts and bringing individuals suspected of terrorist activity to justice.”¹⁸⁵ The Council of Europe’s Committee of Experts on Special Investigation Techniques in relation to Acts of Terrorism has likewise noted:

“The objective of the European Convention on Human Rights is not to disarm the authorities responsible for prevention or prosecution in criminal matters. The Convention sets out criteria in order that the authorities’ activities should constantly be guided by the rule of law and the pursuit of the democratic ideal.”¹⁸⁶

In fact, Special Investigation Techniques are limited in their use for the most part only by the requirement that they are defined in law, that due process is observed in their application, and that they are used in a manner that is reasonable, necessary and proportionate to the threat posed by criminal activity in question. There is a growing body of international jurisprudence that delineates where the line between proportionate and disproportionate action should be drawn.

¹⁸² Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32, 2007, Sec. I.

¹⁸³ Office of the United Nations High Commissioner for Human Rights, *Fact Sheet 32: Human Rights, Terrorism and Counter Terrorism*, July 2008, p. 37.

¹⁸⁴ United Nations General Assembly, *The United Nations Global Counter Terrorism Strategy*, A/RES/60/288, 20 September 2006, p. I.

¹⁸⁵ United Nations General Assembly, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/16/50, 15 December 2010, para 33.

¹⁸⁶ Council of Europe, *Terrorism: Special Investigation Techniques*, April 2005, p. 27.

The only the other major restriction is that in deception operations where a criminal actor is fooled into dealing with undercover operatives, those operatives cannot act to commission or instigate the offence. International human rights law does not allow for the use of *agent provocateurs*. When a person who would not otherwise be predisposed to commit an offence is encouraged to do so by a government official this is considered to be entrapment. The tests set by international human rights law for the use of Special Investigative Techniques go to the heart of the dilemma facing all national security actors operating within democratic systems — how does one protect the public while also protecting the rights and freedoms they enjoy. There is little point adopting policies that ultimately undermine the institutions they are supposed to protect. As a bumper sticker popular in the United States declaims: Freedom isn't free. Some risk is inevitably involved in living in a free society. The challenge is to get the balance right, to ensure, in the words of the current Director General of the British Security Service, Andrew Parker, that being on the authorities' radar is not the same as being under their microscope.¹⁸⁷

Perhaps the investigative activity that has received the most attention from both human rights advocates and national security hawks since the September 11th attacks is the interviewing of terrorist suspects, and specifically the use of coercive measures by the interviewers. The potential to question a terrorist suspect obviously represents an important information-gathering opportunity. There is unquestionably great value to a cooperating suspect who is prepared to provide answers to his interlocutors' questions openly, honestly, and to the best of his or her ability. But there is a universe of difference between rapport-based conversations and coerced speech. The simple fact is that both can result in the production of truthful or deceptive statements. However, it is important to understand that any testimony obtained only represents one stage of any competent investigation, and, until such testimony is tested, analyzed, and compared to other relevant evidence or intelligence, the wise investigator is going to place very little store in it. History is replete with examples of hardened terrorists who have ended up cooperating with the authorities in rights-based police interviews. The Norwegian right-wing extremist mass murderer Andreas Behring Breivik and Osama bin Laden's former driver Salim Hamdan are both examples of cooperative interview subjects. Equally, there are many well-documented examples of motivated terrorists successfully either protecting their secrets or proffered false or misleading information to their torturers. Ibn al-Shaykh al-Libi, the former *emir* of *al-Qaeda's* al Khaldan training camp, and Khaled Sheikh Mohammed, architect of the September 11th attacks, both succeeded in fooling their interrogators despite suffering horrific abuse. However, while the record shows that neither approach can guarantee a suspect's full and honest cooperation, the unlawful use of coercive methods comes with a host of both legal and utilitarian downsides, not least the vulnerability of this approach to confirmation bias, the not uncommon concomitant risk of torturing an innocent individual, the personal criminal liability of the torturer (torture is an international crime with no statute of limitations), and the catastrophic damage to the reputation of the state that allows such methods. Former CENTCOM Commander and Director of the CIA David Petraeus, ruefully acknowledged: "Abu Ghraib and other situations like that are non-biodegradable. They don't go away. The enemy continues to beat you with them like a stick."¹⁸⁸ So, when a politician with little or no national security experience like Donald Trump says, as he did at a campaign event in New Hampshire in February 2016, that "[waterboarding] is fine, and much tougher than that is fine. When we're with these animals, we can't be soft and weak, like our politicians,"¹⁸⁹ it is worth

¹⁸⁷ Address by the Director General of the Security Service, Andrew Parker, to the Royal United Services Institute (RUSI), Whitehall, 8 October 2013.

¹⁸⁸ Berger, Joseph, 'U.S. Commander Describes Marja Battle as First Salvo in Campaign'; in: *New York Times*, 21 February 2010.

¹⁸⁹ 'The Latest: Clinton Vows to 'Make a Difference' Every Day', *Associated Press*, 8 February 2016

remembering that the FLN Commander Saadi Yacef once said of France's unrestrained use of torture in Algeria and its torturer-in-chief, Paul Aussaresses: "Actually torture helped the FLN enormously because what it did was expose the real face of the French military... you could say that Aussaresses was one of the FLN's most important assets because the more he tortured, the more militants we recruited."¹⁹⁰

The avowed purpose of most counter-terrorism investigations is the arrest, conviction and subsequent incarceration of suspected terrorists, and international human rights law offers many different frameworks within which a state may detain a terrorist suspect or convicted terrorist: administrative detention, pre-trial detention, punitive detention, and the confinement of prisoners of war. The fundamental principle governing all these forms of detention is that that "no one shall be subjected to arbitrary arrest or detention" or "deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."¹⁹¹ The drafters of the International Covenant on Civil and Political Rights made it clear in their preparatory work that "arbitrariness" should not simply be equated with "unlawful" but should rather be interpreted more broadly "to include elements of inappropriateness, injustice, lack of predictability, and due process of law."¹⁹² No derogation from the customary international law prohibition on arbitrary detention is possible.¹⁹³ Secret detention and enforced disappearance, practices closely associated with torture, are similarly prohibited and may, if used in a widespread or systematic manner, amount to crimes against humanity.¹⁹⁴ It is difficult to imagine a compelling argument that these basic principles present an obstacle to successful counter-terrorism operations. Although arbitrary detention has a long and ignoble history one does not have to look further than the CIA's discredited Black Site programme, forensically exposed by Senate Select Intelligence Committee investigators, for a simple cost benefit analysis of the value of such an approach.¹⁹⁵ The Black Sites were associated with torture, produced little or no actionable intelligence, resulted in the enforced disappearance of a completely innocent German national, Khaled el-Masri, which the CIA tried to cover up, placed allies like former Head of Polish Intelligence, Zbigniew Siemiatkowski, in legal jeopardy, and impacted intelligence-sharing with close partners like the United Kingdom, with a Director General of MI5, Dame Eliza Manningham-Buller, publicly acknowledging that the British government had "greater inhibitions than we once did" in sharing intelligence the United States.¹⁹⁶ The brutal leader of *al-Qaeda* in Iraq Abu Mus'ab al-Zarqawi was quick to take advantage of the publicized abuse of US detainees in a communiqué entitled *Our Shari'i Stance with Regard to the Government of the Iraqi Karzai*, commenting: "I do not think that any intelligent person remains who believes in the monstrous lie of promised democracy after

¹⁹⁰ German, Mike, *supra* note 90, p. 119.

¹⁹¹ Article 9, International Covenant on Civil and Political Rights (ICCPR)

¹⁹² Report of the Working Group on Arbitrary Detention, *Part III, Deliberation No. 9 concerning the definition and scope of "arbitrary deprivation of liberty" under customary international law*, A/HRC/22/44, 24 December 2012, para 61.

¹⁹³ *Ibid*, para 50, and Human Rights Committee, General Comment No. 29 on Article 4 (States of Emergency), U.N. Doc. CCPR/C/21/Rev.1/Add.11, 2001, para 13(b).

¹⁹⁴ *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention; and the Working Group on Enforced and Involuntary Disappearances*, A/HRC/13/42, 19 February 2010, p. 2.

¹⁹⁵ United States Senate Select Committee on Intelligence, *Study of the Central Intelligence Agency's Detention and Interrogation Program*, December 2014

¹⁹⁶ Open Society Foundations, *Litigation: El-Masri v. Macedonia*, 23 January 2013; Berendt, Joanna and Kulish, Nicholas, 'Polish Ex-Official Charged With Aiding CIA'; in: *The New York Times*, 27 March 2012; Intelligence and Security Committee of Parliament, *Rendition*, July 2007, p. 47.

the revelations of Abu Ghraib and the joke of Guantanamo.”¹⁹⁷ It is hard to argue that his observation lacked merit.

The last of the four main categories of executive action is the use of force. Force is an extremely broad concept in international law, with lawful forms of compulsion extending from the verbal notice of arrest and minimal physical restraint at one end of the spectrum, to the use of potentially lethal weapons at the other. As with other areas of executive action, international human rights law imposes two core obligations on officials who are lawfully empowered to use force in performance of their duties — that force is used only when it is necessary to do so, and that, when it is used, it is used in a manner strictly proportionate to the seriousness of the offence and the legitimate objectives sought.¹⁹⁸ The requirement of necessity also imposes an obligation to minimize the level of force applied “regardless of the level of force that would be proportionate.”¹⁹⁹ It is not the gravity of the threat that determines the level of force that can be used to contain it, but rather the manner of action that would be sufficient to neutralize the threat. The criterion that there should be a proportionate relationship between the degree of force used and the legitimate objective for which it is being used, requires that any escalation of force ceases when the consequences of applying additional force outweigh the value of the objective for which it is being employed.²⁰⁰ In sum, international human rights law imposes limits to ensure that force is used as sparingly as possible, but also recognizes that sometimes the only way to protect the public from acts of violence is to meet force with force.

If we look at states that have gone beyond these lawful limits to embrace what is termed targeted killing in modern vernacular, they have frequently had cause to regret it. First, there is the potential for mistaken identity, as in the case of Mossad’s July 1973 murder of an innocent Moroccan waiter called Ahmed Bouchiki in Lillehammer, Norway, who was erroneously and inexplicably identified the Black September Organization’s operations chief, Ali Hassan Salameh. One senior *Mossad* officer later excused the error with the telling admission: “Our blood was boiling. When there was information implicating someone, we didn’t inspect it with a magnifying glass.”²⁰¹ Then there is the issue of collateral damage, *Mossad* finally settled its score with Salameh in January 1979 killing him, along with his bodyguards, with a car bomb in Beirut, but in doing so also killed four innocent bystanders, including a German nun and an English student.²⁰² In April 2015 President Obama apologized for a US drone strike in Pakistan which accidentally killed two western hostages, Warren Weinstein and Giovanni Lo Porto, held by *al-Qaeda*. This admission prompted a powerfully memorable headline on Public Radio International: “If Obama apologized for 1 civilian drone victim every day, it would take him 3 years.”²⁰³ Grounded in extensive research by the Bureau of Investigative Journalism into the use of drones in counter-terrorism operations, this genuinely shocking statistic graphically underscores just how callous and unrestrained American use of force has become.²⁰⁴ And finally there are the unintended consequences of striking out, a killing can precipitate deeper conflict, as in the case of the murder of *Boko*

¹⁹⁷ Cook, David, *Understanding Jihad*. University of California Press, 2015, p. 223.

¹⁹⁸ *Note by the Secretary General: Extrajudicial, summary or arbitrary executions*, 5 September 2006, A/61/311, para 42.

¹⁹⁹ *Ibid*, para 41.

²⁰⁰ *Ibid*, para 42.

²⁰¹ Byman, Daniel, *supra* note 75, p. 53.

²⁰² *Ibid*, p. 54, and ‘Death of a Terrorist’; in: *Time Magazine*, 5 February 1979.

²⁰³ Jackson, Allison, ‘If Obama apologized for 1 civilian drone victim every day, it would take him 3 years’, *Public Radio International*. Available at: <https://www.pri.org/stories/if-obama-apologized-1-civilian-drone-victim-every-day-it-would-take-him-3-years>

²⁰⁴ <https://www.thebureauinvestigates.com/projects/drone-war>

Haram founder Mohammed Yusuf in Nigerian police custody in July 2009, which gave birth to a terrorist insurgency that endures in North East Nigeria to this day, or the Israeli February 1992 Apache helicopter strike on the Secretary-General and co-founder of *Hezbollah*, Sheikh Abbas al-Musawi, which a month later led to *Hezbollah* detonating a truck packed with explosives outside the Israeli Embassy in Buenos Aires killing twenty-nine people and wounding 240. In 2006, the US National Intelligence Estimate predicted that the loss of key leaders like Osama bin Laden and Abu Mus'ab al-Zarqawi would cause [*al-Qaeda*] to fracture into smaller groups.²⁰⁵ Both men are now long dead, killed by US forces, and, as the Estimate predicted, *al-Qaeda* and *al-Qaeda* in Iraq were significantly degraded by these and other losses. But, the space left by *al-Qaeda*'s decline was quickly filled by a still more violent and destructive foe: ISIL. The underlying political appeal of Islamist extremism to an angry and alienated minority had changed very little. As another former Director of the CIA, General Michael Hayden, has noted, there are always second and third order effects of covert action and these can be very difficult to predict.²⁰⁶ Before reaching for the hammer in the tool box, it is worth remembering another of David Fromkin's pithy warnings: "Terrorism can... make heroes out of gunmen, and thereby rally popular support to the cause... Just as it can make gangsters into heroes, terrorist provocations can also make policemen into villains."²⁰⁷

Conclusion

The facts should really speak for themselves: terrorists see advantage in provoking the state into overreacting and abusing human rights; social science research has identified state abuses as a major – perhaps the major – driver of terrorist recruitment; international human rights law anticipates and endorses the lawful use of a wide range of potentially intrusive and robust enforcement tools, it simply places limits on the use of these tools so that they are not abused and their use does not undermine democratic life; the historical record strongly suggests that exceeding these limits serves little practical purpose, but can greatly damage the societies that do so. The synergy between human rights observance and effective counter-terrorism should be obvious to any competent national security professional. And yet, state after state ignores these facts and repeats the mistakes of its forebears, so much so in fact that Louise Richardson has noted that this response is practically pathological.²⁰⁸ The question is, why?

Acts of terrorism are crafted with theatrical flair with the specific goal of eliciting a fear-based response in which unreason trumps reason. In democratic societies, politicians and policymakers have to listen to the voices of their frightened constituents or face being removed from office.²⁰⁹ The politician who finds himself or herself out of step with majority public opinion is flirting with unemployment, and the sad reality is that political incentives can limit the willingness of policymakers to play down threats and can also encourage them to inflate them.²¹⁰ Andrew Liepman, the former Deputy Director of the US National Counter-Terrorism

²⁰⁵ Wilner, Alex, 'Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency'; in: *Studies in Conflict and Terrorism*, Vol. 33, No. 4, 2010, pp. 313–314.

²⁰⁶ *Playing to the Edge: An interview with General Michael Hayden*, Spycast Podcast, The International Spy Museum, 3 May 2016.

²⁰⁷ Fromkin, David, *supra* note 5, pp. 686-687

²⁰⁸ Louise Richardson, *supra* note 4, p. 234.

²⁰⁹ Friedman, Benjamin, 'Leap before You Look'; in: *Breakthroughs*, Vol. 3, No. 1, Spring 2004, p. 30.

²¹⁰ Friedman, Benjamin, 'Managing Fear: The Politics of Homeland Security'; in: *Political Science Quarterly*, Vol. 126, No. 1, 2011, p. 104; Walt, Stephen M., 'Think Before You March'; in: *Foreign Policy*, 18 January 2015; Gore, Al, 'The Politics of Fear'; in: *Social Research*, Vol. 71, No. 4, Winter 2004; and German, Mike, *supra* note 90, p. 55.

Center, and Philip Mudd, the former Deputy Director of the CIA's Counter-Terrorism Center, have identified the public's unhealthy and illogical obsession with terrorist violence as a critical vulnerability: "Terrorists want attention; our hyper-sensitivity to their violence feeds that need."²¹¹ A December 2015 Gallup poll found that 51% of Americans questioned were "very worried" or "somewhat worried" that either they or a family member could become a victim of terrorism, which, in a country of 330 million people that has lost approximately 213 people to a more or less even mix of Islamist and far-right terrorism in the eighteen years since the September 11th attacks, is patently absurd.²¹² This is an area in which a little bit of tough talk from the would-be hard men of the national security community might actually be appropriate, and perhaps even helpful. If we want to keep our societies safe we need to reinforce the resolve and emotional resilience of our people. Terrorism is not, on its own terms, an existential threat, nor is it an especially present one. Terrorism does exist, it is a problem, and like other manifestations of violent crime, it is entirely appropriate that states take every lawful precaution to prevent terrorist incidents. Indeed, states have a human rights obligation to do so – both to protect the lives of their citizens, and to ensure the full enjoyment of their human rights. It makes absolutely no sense to jeopardize those rights in the process, to destroy the village in order to save it. Terrorism only represents an existential threat if we make it one.

Terrorism has been with us for more than 150 years and it isn't going away any time soon. The bomber will sometimes get through. Just like other forms of criminal activity it is unrealistic to expect that extremist violence can be eliminated completely. Not every terrorist attack is preventable, and the reality is that when opportunities to prevent attacks are missed, this typically reflects a failure of competency, imagination, or capacity on the part of the authorities, rather than an institutional shortfall in investigatory powers.²¹³ Intelligence and security agencies are not infallible, and it is unrealistic to expect them to be so. As Eliza Manningham-Buller admitted while Director General of MI5, intelligence services face acute and very difficult choices of prioritization.²¹⁴ It is not an easy job. More intrusive powers will not prevent every attack and most likely would just generate additional intelligence clutter further obscuring the needle represented by terrorist activity in a giant haystack of irrelevant data.²¹⁵ In the intelligence business, less is often more, intelligence-driven investigation is efficient, data-driven investigation for the most part is not. Former CIA Director David Petraeus admitted as much in an interview in May 2016: "Now the challenge, actually, is the amount of data we have; Big data has become overwhelmingly big."²¹⁶ Furthermore, as we have seen above, more intrusive powers may just make the situation worse by pouring more fuel on the fire. Once again, Fromkin got it right, the smart strategy is to avoid the terrorist trap altogether:

²¹¹ Liepman, Andrew and Mudd, Philip, 'Lessons from the 15-Year Counterterrorism Campaign'; in: *CTC Sentinel*, Vol. 9, No. 10, October 2016, p. 14.

²¹² Gallup, *Terrorism in the United States*, In Depth: Topics A-Z. Available at: <http://www.gallup.com/poll/4909/terrorism-united-states.aspx>, and Bergen, Peter, Sterman, David, and Salyk-Virk, Melissa, *Terrorism in American 18 years after 9/11*. New American Foundation, 18 September 2019. Available at: <https://www.newamerica.org/international-security/reports/terrorism-america-18-years-after-911/what-is-the-threat-to-the-united-states>

²¹³ *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, Authorized Edition. W. W. Norton and Co., 2004, pp. 266–272.

²¹⁴ Eliza Manningham-Buller, *The International Terrorist Threat to the UK: Speech by the Director General of the Security Service*, Queen Mary's College, 9 November 2006.

²¹⁵ Brooks, Rosa, 'The Threat Is Already Inside: And nine other truths about terrorism nobody wants to hear'; in: *Foreign Policy*, 20 November 2015.

²¹⁶ *The Commander: An Interview with Gen. David Petraeus*, SpyCast, 24 May 2016

“The important point is that the choice is yours. That is the ultimate weakness of terrorism strategy. It means that, though terrorism cannot always be prevented, it can always be defeated. You can always refuse to do what they want you to do... So, if you can do so, you should accept the consequences, however terrible, of standing firm in order to avoid an infinite sequence of painful events.”²¹⁷

As hard as it may be, we have to learn to live with some loss. The price of freedom is a certain degree of vulnerability.

Resisting pressure to abridge our laws and liberties in order to suppress terrorism takes political courage and principled leadership, which is often, but not always, in short supply, especially in times of crisis.²¹⁸ It can be done, and every now and again a politician rises to the challenge. In his July 2011 National Memorial Address for the victims of Anders Behring Breivik’s shocking attack on Oslo and Utøya, Prime Minister Jens Stoltenberg told the Norwegian people: “I have been impressed by the dignity, compassion and resolve I have met. We are a small country, but a proud people... Our answer is more democracy, more openness and more humanity.”²¹⁹ In December 2014, US Senator John McCain took to the Senate floor to commend the release of the Senate Select Committee on Intelligence’s report on the use of torture by the CIA, and deliver a powerful speech outlining what a truly robust democratic response to terrorism should look like:

“Our enemies act without conscience. We must not. This executive summary of the Committee’s report makes clear that acting without conscience isn’t necessary, it isn’t even helpful, in winning this strange and long war we’re fighting. We should be grateful to have that truth affirmed. Now, let us reassert the contrary proposition: that is it essential to our success in this war that we ask those who fight it for us to remember at all times that they are defending a sacred ideal of how nations should be governed and conduct their relations with others — even our enemies.”²²⁰

This is what real resilience looks like. To defeat terrorism we need to hold true to our values, not jettison them at the first sign of trouble. We need to cherish and protect human rights, they were hard won and are all too easily lost. They are also the heart and soul of an effective counter-terrorism policy. What Jens Stoltenberg, John McCain, and David Fromkin all seem to have understood is this fundamental truth, that, in the final analysis, the war of the flea is actually all about the dog.

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²¹⁷ Fromkin, David, *supra* note 5, p. 697

²¹⁸ Fromkin, David, *supra* note 5, p. 697

²¹⁹ Prime Minister Jens Stoltenberg, *National Memorial Address*, Oslo Cathedral, 24 July 2011

²²⁰ *Sen. McCain’s full statement on the CIA torture report*, USA Today, 9 December 2014. Available at: <https://www.usatoday.com/story/news/politics/2014/12/09/john-mccain-statement-cia-terror-report/20144015/>

Tribunal for the former Yugoslavia (ICTY) working in the field in Bosnia and Kosovo, and as an Intelligence Officer in the British Security Service (MI5). Tom has taught undergraduate and postgraduate courses on international terrorism in Yale University's Residential College Seminar Program, Bard College's Globalization and International Affairs Program, and the National Defense University at Fort Bragg.

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Web-Based Resources

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