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## *Power and Punishment in the Construct of Terrorism*

The concept of terrorism has long been a slippery one, bordering on meaningless even before the 9/11 attacks massively increased its use. Since that day, the term has been used so “broadly and carelessly . . . that there appears to be a wholesale disregard for any serious endeavor to treat terrorism as an analytical concept.”<sup>[1]</sup> Popular modern use of the term arises from the Terror that reigned in the years following the French Revolution of 1789, which infamously bore witness to thousands of extrajudicial executions and detentions during a brief, ecstatic swell of revolutionary passion. It is from this moment that the equivocations and ambiguities embedded in and surrounding the term emerge with it, as Mark Twain noted with characteristic insight. “There were two ‘Reigns of Terror,’” Twain observes, “if we would but remember it and consider it.” He characterizes the Terror of the Revolution as a quick settlement of debt in “hot passion,” measured in mere months and thousands of deaths, attempting to sweep away a millennium of villainy that cost hundreds of millions of lives:

A city cemetery could contain the coffins filled by that brief Terror which we have all been so diligently taught to shiver at and mourn over; but all France could hardly contain the coffins filled by that older and real Terror—that unspeakably bitter and awful Terror which none of us has been taught to see in its vastness or pity as it deserves.<sup>[2]</sup>

Arguably, Twain spoke more plainly than we are permitted to today of the vastness and depth of the “violence inscribed into the smooth functioning of our economic and political systems,” the “violence inherent in [the] ‘normal’ state of things.”<sup>[3]</sup> This violence is mostly imperceptible and in a sense inconceivable to us, its scales—of time, misery, loss

of life and culture, etc.—too immense to be understood from the ground. We can grasp the microtrend or the discrete event; we can focus our attention, outrage, and grief on it. Americans could bear witness to 9/11; few had either the critical tools or the willingness to point careful scrutiny at the historical backdrop against which the day’s acts of violence played out. We believe we can almost begin to comprehend the Terror—biased, whether we admit it or not, by our opinions of the Revolution itself—but who pretends to grasp the agony of the thousand-year period to which Twain refers? We are inured to the systematic violence of the class, economic, and political systems that rule us. We give them a pass because we are taught to and because doing so seems to be a matter of survival within these systems. If our words give shape and structure to our thoughts and ideas, we should be wary of words like terrorist.

To anyone paying even a little attention, this points dramatically to the way that the concepts of terror and terrorism are constructed in our language and culture. How we define and think about terrorism is fundamentally political, informed by our fears of ostracism and punishment. The delicately constructed notion of terrorism in currency in the West deliberately ignores questions of economic class, colonialism, and race, asking us to believe an account of reality that is at odds with all available evidence. In practice, proximity to social and political power stands in for objective criteria as the decisive factor in determining whether one is labeled a terrorist. In the United States, particularly in the hysterical environment of the post-9/11 War on Terror, terrorism has been the convenient, go-to pretext for violating the civil and human rights of political dissidents and activists. In the years following 9/11, the national security state carefully cultivated an environment of fear and paranoia, a social atmosphere in which Americans would be billing to abandon high-minded ideals of civil liberties and due process in favor of safety. If we were to be safe, those suspected of terrorism couldn’t have rights, not the same rights anyway. A new, exceptional kind of war required new, exceptional powers—and, besides, those pesky constitutional safeguards were for *real* Americans, not suspected terrorists. It is at this juncture that the racial and religious dimensions of terrorism as a concept played their critical role, buttressed by “a pervasive media and political discourse that insisted the disciplinary techniques available to the state were insufficient for dealing with the threat that terrorism posed.”<sup>[4]</sup> The terrorist or suspected terrorist becomes an “exceptional figure,” dehumanized and subject to different rules, to “excess levels of state power” and disciplinary actions that would not be permissible absent this context of race.<sup>[5]</sup> The War on Terror became the primary means through which an imperial ruling class could

consolidate its real and psychological power by punishing the other. Policing at home could become ever more militarized and oppressive, surveillance more pervasive—justified by an omnipresent threat that has already infiltrated the homeland.

The eminent Canadian intellectual Henry Giroux refers to this as “the punishing-surveillance state,” a process of normalized violence waged through both “hard war” and “soft war” strategies. The hard war expresses itself both through the U.S. government’s willingness to exercise its military power abroad and through the expansion of the domestic “expansion of the punishment state.” The soft war, meanwhile, is “waged over the meaning of agency, identity, subjectivity and values,” through “an assault on the imagination itself and the institutions that produce the conditions for real critically empowered teaching and learning.” The United States government is the global expert on this soft, ideological war. It has used this war to assail our culture of freedom and equality. In her book *Terrorism on Trial: Political Violence and Abolitionist Futures*, Nicole Nguyen sets forth a study of terrorism in context, as an authoritarian paradigm with clearly social and political dimensions aimed at the suppression of specific political beliefs and attempts to organize. Specifically, Professor Nguyen’s book focuses on the logics, narratives, and sources of epistemic authority mobilized in American courts in the adjudication of cases implicating charges of terrorism.<sup>[6]</sup> It fills a gap within the terrorism literature by addressing the ways in which courts and legal actors became tools in the broader War on Terror; it shows that they actively participated in the construction of “the legal, social, and cultural category of the terrorist,” a subject that underlines the paradox of the law within the modern state by being “unworthy of the law’s protection but subject to its punishment.”<sup>[7]</sup> While the number of terrorism cases has always been small, they have had a disproportionate impact on the U.S. legal system as a whole, creating dangerous precedents that criminalize “high inchoate activity that may never result in criminal in illegality,” calling to mind the Precrime division in *Minority Report*. The vast majority of the actions to which terrorism-related indictments have pointed were carefully orchestrated by federal agents themselves in order to ensnare vulnerable defendants who did not otherwise have their own plans to commit violent acts.<sup>[8]</sup>

Examining terrorism as a social practice, the idea of punishment reveals itself again and again. Studying the role of terrorism within the criminal justice system sheds light on a “transnational web of globalized punishment” established to criminalize dissent and present the disruption of “the violent regimes of governance that incite armed struggles” in the first place.<sup>[9]</sup> Of the 465 post-9/11 terrorism defendants released before John Walker

Lindh, not one ever reoffended.<sup>[10]</sup> Given this empirical evidence, careful observers will ask what terrorism is and what a terrorist is. Terrorism scholar Anthony Richards argues that the concept,

has been shaped to serve the interests of the definers to the point that any common political will or purpose to address the problem of achieving a universally agreed definition has been overridden in favour of perspectives that seek to preserve and enhance those interests.<sup>[11]</sup>

The U.S. government's countless cynical and abusive applications of terrorism as a means of punishing dissidents and violating both constitutional law and international law call into question its foundations as a useful concept; today it is far from clear that it can be applied helpfully to any conduct or situation. The transparently self-serving manner in which state power—always far more pervasive and destructive than that of private individual actors—has been excluded from the contemporary definition of terrorism suggests that we scrap the term and apply more descriptive language. Throughout the Cold War, the United States frequently aligned itself with and supported political groups that employed what are traditionally regarded as terrorist tactics. The whole history of the CIA is the use of right-wing terrorism to suppress the socialist movement growing naturally out of local populations' desire to be free and self-sufficient, to push against the community-killing disease of global corporate capitalism.

These manipulative and power-serving uses of the language of terror and terrorism have made it almost impossible for people living at the empire's core to honestly reckon with the costs of war—and thus to come to a real understanding of who the terrorists really are. While it is impossible to know with certainty how many people have died as a result of the several military campaigns that make up the War on Terror, a report released by Brown University's Watson Institute earlier this year puts the total count, including indirect deaths resulting from these wars, at more than 4.5 million. The War on Terror displaced or made refugees of close to 40 million people. As in past wars, Washington has been notorious for manipulating the death and casualty data and systematically undercounting. Professor Stephanie Savell, the report's author and the co-director of Brown's Costs of War Project, observes that Americans “don't really know enough about or think about” the reverberating human costs of war. The government's post-9/11 propaganda strategy—in particular, the ways it has deployed the concept of terrorism, stoking irrational fear of the terrorist as a dark-skinned, Muslim *other*—has played a central role in occluding the picture of the millions of deaths it caused, that is, the real terror. “Our” government

doesn't ask for our input or permission before undertaking these massive projects of state terrorism that kill millions and funnel billions to corporate war profiteers.

Lofty notions of American democracy notwithstanding, we currently have no practical ability to stop this or hold these bad actors to account. The U.S. government asks us to accept a facially ridiculous and untenable position: that the fathomless chaos and death it sows around the world, using the most powerful and sophisticated weapons, are a force of freedom and democracy, while the small-scale, ragtag resistance of people desperate for self-determination is simply terrorism. Ignoring context and history, they tell us to believe that the panicked struggles of vastly outmatched and overpowered victims of empire are just cold, merciless killers. They don't explain why this would ever be the case, and few in positions of any power or prestige have had the courage to question their ridiculous story. Given the volume of lies they've gotten us to swallow about terrorism and the War on Terror, they take us for fools and believe we'll continue to be placated by ballot box theater. But an online, globally connected world can no longer be convinced of such transparent nonsense. Unfolding now is the inevitable crisis of trust and legitimacy arising from this manipulation of language and conscience.

Juries and even judges have been wary of prosecutors' absurd, fact-free theories of terrorism cases. Terrorism "experts" have thus been relied upon to fill in the enormous factual gaps in government terrorism prosecutions. Through the cachet of such "experts," terrorism has become a self-reinforcing, self-protecting ideological vehicle, despite its lack of clearly defined content. This lack of specific, subject-independent content and the pervasive influence of supposed experts are related: in the almost complete absence of objective criteria, the only ontological and argumentative strategies available rely on appeals to authority and the carefully curated opinions of those who tow the state's line, giving cover to its hypocrisies and abuses.

Terrorism scholarship shows again and again that the law is not a uniform, universally applicable set of objective rules, but a fluid construct of class and power used to punish some kinds of people for particular political and economic reasons. As Pierre-Joseph Proudhon wrote, "Laws! We know what they are, and what they are worth! Spider webs for the rich and powerful, steel chains for the weak and poor, fishing nets in the hands of Government."

The cartoonishly exaggerated specter of the terrorist famously became the U.S. government's way to rationalize its torture program. With the help of dozens of foreign governments in thrall to the U.S., the CIA kidnapped suspected terrorists, subjecting them

“to ‘waterboarding,’ ‘walling,’ ‘rectal feeding’—a form of rape—and other forms of torture.” The U.S. still has not closed its notoriously lawless prison at Guantanamo Bay, where hundreds have been held without charges or trial. There is simply no way to reconcile the U.S. government’s language on terrorism, torture, international law, and human rights with its odious record of abuses and lies. As Human Rights Watch observes, the U.S. government “appears to have lost the moral authority that might compel other countries to curb” such unlawful and unconscionable practices.

The things that we think we know about the world and the actors and movements in it are built up with language, with the polite ways we react to what we hear from those we care about and think we should admire. The United States government and its allies have, with great care, fashioned a language around terrorism and terrorists that cows and manipulates us, that pins to the idea that war is peace and freedom is slavery. We have never really had a way to think about these things that wasn’t constructed by ruling classes to serve their interests. We’ve given millions of human bodies and lives, almost all innocent, to the child’s idea that terror comes from the weakest and most marginal among us, instead of the strongest and most respected. We accepted this child’s idea because it was easier than the truth: the most powerful actors are naturally the worst actors, because they use violence without scruples or accountability. There is a deep absurdity to a world in which an institution such as the United States government pretends to have the moral authority to decide who is treated as a terrorist. If Americans awoke, it could presage a world awakening, a new movement of free people looking for fairness and equality.

**Notes.**

<sup>[1]</sup> Anthony Richards, *Conceptualizing Terrorism* (Oxford University Press 2015), page 2.

<sup>[2]</sup> Quoted in Slavoj Žižek, “Foreword: The Dark Matter of Violence, Or, Putting Terror in Perspective,” in Sophie Wahnich, *In Defence of the Terror: Liberty Or Death in the French Revolution* (Verso Book 2012), p. xiv.

<sup>[3]</sup> Id. at xv.

<sup>[4]</sup> Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso Books 2018).

<sup>[5]</sup> Nisha Kapoor, *Deport, Deprive, Extradite: 21st Century State Extremism* (Verso Books 2018).

<sup>[6]</sup> Nicole Nguyen, *Terrorism on Trial: Political Violence and Abolitionist Futures* (University of Minnesota Press 2023), passim.

<sup>[7]</sup> Nguyen, *Terrorism on Trial*.

<sup>[8]</sup> Nguyen, *Terrorism on Trial*.

<sup>[9]</sup> Nguyen, *Terrorism on Trial*.

<sup>[10]</sup> Nguyen, *Terrorism on Trial*.

<sup>[11]</sup> Anthony Richards, *Conceptualizing Terrorism* (Oxford University Press 2015), page 2.

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