Some Brief Observations on the Significance of Deterrence in Braithwaite's 'Pre-empting Terrorism'

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The regulatory model preferred by John Braithwaite, over what he sees as 'crude' criminal justice or war models for preventing and controlling terrorism, has its own limitations. These limitations evidence in the model's essential reliance on, and confidence in, deterrence. Even in Braithwaite's discussion of *escalation* and *de-escalation*, these concepts measure deterrence strategies.

> Contextual wisdom during a crisis on the difference between appeasement and over-reaction can be difficult in advance of actually seeing how the deterrence (or its absence) is responded to.

The prevailing reliance, whether the terrorist is *responsible* and *rational* or *irrational* and *incompetent*, is that terrorists will make choices dependant on an extant and common morality. Essentially what is required is a perception of justice on both sides that tends to down play defiance over contested political realities.

> The research shows a surprising capacity of people to buckle under to social control that delivers bad outcomes, so long as those outcomes are dispensed through processes they *accept as fair.*

However, the essence of the terrorist situation is a contest over legitimacies, such as justice and fairness, and the consequent defiance in the face of imposed fundamentals.

This ascription to deterrence is located in the methodological quicksand of micro managing 'macro-disasters'. The confidence in deterrence strains the credibility of evidence-based regulation while tending to displace some of the vital informants of terrorism and political over-reaction, to the detriment of understanding the central phenomena of terrorism as much as preventing or controlling it.

Deterrence must assume both choice and at least recurrent rationality. But the ultimate defiance of terrorism and of the communities it attracts operates within determined counter rationalities. The impact of deterrence on the terrorist, even if it is received and recognized, will be diminished or defused by competing normative frameworks and neutralizing alternative realities.

Braithwaite correctly contends that the 'war on terror' in its problematic Iraq context, has employed suspect justifications and publicly proposed the wrong enemies. In so doing the anti-terrorist responses, predominantly military, have not addressed the central constituents of the current insurgency. The same might be said of a heavy-handed, shoot to kill response to the recent London bombings. Excessive responses no doubt fuel and favour terrorist counter realities. Excessive responses galvanise supportive communities beyond defiance on to a complementarity with the terrorist's reinterpretation of their actions, as well as what might be promoted as deterrence. In this situation deterrence may not counter-balance competing realities that foster and are fostered by terrorism. In fact the deterrent response may stimulate just those behaviours which it sets out to contain.

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There needs to be adequate analysis in the model proposed of its impact over supportive communities as well as terrorist perpetrators. Where the alternative realities common within such communities are confirmed by deterrent responses (excessive or otherwise), the outcomes will not be modified as intended through the control or regulation process, particularly where they are pre-emptive.

Even if deterrence is to prevail as the central policy motivator for preempting terrorism it is distracting to diminish the potential of an adequately constructed criminal justice response. In *Transforming International Criminal Justice*[1] we propose a reinterpreted international criminal trial as a venue wherein diverse justice paradigms might be employed in better integrating victim communities and thereby legitimating positive justice influences towards governance and peace-making.

Directing pre-emptive strategies more towards referent communities (often victims of the 'injustice' against which the terrorist meaning is directed) has the persuasive potential of undermining the legitimacy on which the terrorist relies. It is such legitimacy as much as the spectacular nature and consequences of terrorist acts which resists the deterrent response.

A social and criminal justice response to terrorism is a more grounded pre-emption than deterrence in the politico/military manifestation. Involving, as Braithwaite mentions, an imbalance between primary and tertiary prevention, 'war'-style deterrence should be superceded as well as preceded by a war for the hearts and the minds of otherwise resistant communities. Secondary prevention (diplomacy) can, as much as criminal justice, provide a vehicle for the new war on terror but only where it works from a commitment to universal justice values. This is very much the case in post-conflict states where legitimacy is marginal and vulnerable to the excesses of the institutional past.

The representation of primary and secondary prevention as largely about containment, and enlargement referring to expansive deterrence and intrusive 'democratisation', fails to recognize the proactive potential of the foundation stages. This is a central flaw of pyramidic modeling, passing through and up from these foundations without appreciating their recurrent and interactive influence over the 'final resort'.

It is necessary, for those who manage pre-emption, to go further than a 'bottom-up commitment to peace'. That is to recognize and build the interactive capacity of justice above deterrence, as well as a victim community focus for delegitimising terror (visualizing victims on both sides of the terror divide).

In this regard the 'web of controls' advocated but not elaborated by Braithwaite is indeed worthy of development. The 'mutually reinforcing redundancy of control' is confirmed as communities reject the legitimacy of terrorist ideology and embrace competing normative frameworks as a consequence of prevailing justice. The impact is neither as extensive or long-lasting when control depends on deterrence coming from an imposed and opposed rationality.

References

Findlay, M & Henham, R (2005) *Transforming International Criminal Justice: Retributive and restorative justice in the trial process*, Willan Publishing, Uffculme, UK.

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1   Findlay, M & Henham, R (2005) *Transforming International Criminal Justice: Retributive and restorative justice in the trial process*, Willan Publishing.