

# America's Transition to the "State Terrorist Model of Government"

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*It has occurred almost without notice. While the U.S. continues to claim its foremost world status as a democracy, since 9/11 it has shifted its model of government to something far more concerning. This shift is instanced perfectly in a story that appeared in very few of the news media outlets during the last week of July: two animal rights activists were charged with "domestic terrorism" and jailed for freeing caged animals on a fur farm and for vandalizing the property of the corporation that ran it. Federal law now makes it a crime of terrorism to engage in acts that threaten the ability of a business or a corporation to make a profit.*

This speaks directly to a shift that has occurred in the model of government on the federal level, from what the lawyer and philosopher David Luban calls "the war model" to an even more force-oriented model: what we will call "the terrorist model." We will show the structures of such a model by first defining "terrorism." Then we can apply that definition to U.S. actions and policies. This will allow us to see the shift in the governing model the U.S. now uses, both abroad and domestically.

## Terrorism

Definitions of terrorism are nearly as numerous and varied as are the writers of them. The United States government alone has four official definitions of terrorism: Defense Department, FBI, State Department, and U.S. Code. They are all similar, but different. The most detailed definition, though, comes in the U.S. Code.

The official U.S. Code divides terrorism into two types: international and domestic. However, the definition of each is precisely the same. Thus, according to Title 18, Part I, Chapter 113B, "international terrorism" means activities that:

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend

national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum. [with the obvious change in the definition of “domestic terrorism” to acts that “occur primarily within the territorial jurisdiction of the United States”].



As might be expected, there are some problems with the U.S. definitions of terrorism. First, note that by definition the U.S. government cannot be terrorist or engage in terrorist actions. Terrorism is just what *others* do to the U.S. government. This raises the obvious question as to whether the actions of a government such as the U.S. which fit these descriptions while fighting terrorism are *in reality and morally* themselves terrorist, even if they have legally ruled out themselves as potentially guilty of terrorist activities. If so, then there are a plethora of actions of the United States that could rightfully be considered to be terrorism, such as the support of the Contras in Nicaragua, the attacks on Grenada and Panama, both wars on Iraq (1991 and 2002), the invasion of Libya, and drone strikes.

Second, note how broad the definition is. It is this breadth that has allowed the government to charge animal rights activists with “terrorism.” But it doesn’t and won’t stop with only those activists, as we will see below.

Third, the U.S. definition makes no distinction between terrorism and counterterrorism, the latter of which is official U.S. policy. Fourth, Noam Chomsky has observed that the definitions do not distinguish between international terrorism and aggression, nor between terrorism and resistance (e.g. freedom fighters). Were Nelson Mandela and the African National Congress terrorists or freedom fighters? The U.S. and Israel were the sole nations to hold to the former, as evidenced by their vote on the 1987 U.N. General Assembly resolution that recognized “the right to self-determination, freedom, and independence” of people “forcibly deprived” by “colonial and racist regimes and foreign occupations,” and that these very rights, *placed in a proclamation condemning terrorism*, were to be held as prior in importance to the characterization of those who sought them as terrorists. The vote was 153-2, the U.S. and Israel casting the only no votes. It is the same with the Palestinians today.

Fifth, there is an important question that remains unasked, and is not raised in the

definitions just discussed: are we warring on terror—a tactic; a verb—or are we warring on terrorists, non-state individuals and groups? If the latter, how are the ethics and the laws of war supposed to be applied, if at all? It is important to note in this respect that every modern-day U.S. President has declared a “war on terror:” Nixon; Reagan; Bush I; Clinton; Bush II; Obama, all under different pretenses and definitions. But with each of these wars, no one has bothered to be precise about the definition. If whatever entity—government or individual—is painted by the U.S. as “terrorist,” that automatically allows forceful and military intervention. That this is part of the model of the terrorist state will be established below.

In terms of assessing the morality of terrorism, we can appeal to the widespread and consistent intuitive rejection of terrorism that maintains that taking innocent lives is wrong; targeting innocents for physical or psychological abuse is wrong; and that killing and/or abusing certain humans is wrong.

### State Terrorism

Given our previous, largely agreed-upon definition of “terrorism,” the definition of State terrorism would be similar to that one, removing the government’s self-exemption clauses: a violent attack on civilians for the purpose of intimidating or coercing a civilian population by a given state. Interestingly, nearly all contributors to discussion regarding state terrorism focus on the issue of morally legitimate *responses* to terrorism (e.g. responses for which the U.S. has moral justification in taking action against terrorists after 9/11). In other words, their analyses begin with the U.S. being attacked and reflect on “what we can do to *them*.”

Some scholars (e.g. Igor Primoratz), argue that the new U.S. war on terrorism is not state terrorism, because the wars on terrorism (e.g. in Afghanistan; Iraq; Syria) do not deliberately attack civilians. However, these writers immediately and critically nuance that evaluation by stating that there are both serious concerns regarding the proportionality of civilian deaths to terrorist deaths in U.S. bombing campaigns, and also that there must be clearer attention paid to the proviso that the harm to civilians must be deliberately reduced.

In contradistinction to that position, Douglas Lackey offers a detailed evolution of how U.S. foreign policy became progressively a state terrorist one, from WWII city bombings to U.S. nuclear strategy (“The Evolution of the Modern Terrorist State”), while Noam Chomsky regularly catalogues the clear cases of U.S. state terrorism across the globe (in *9-11; Hegemony or Survival; Failed States; “Simple Truths, Hard Problems;”* and “Terror and Just Response”).

Beyond that, I would add that it is important to note that very few commentators write about state actions that breed terrorism, such as the following:

- i) State terrorism of one nation-state against another that predates and may even cause terrorist attacks on the state doing the terrorizing (e.g. U.S. drone attacks in Pakistan);
- ii) State enhancement of terrorism—i.e. support of terrorism of other nations that engage in terrorism (e.g. U.S. arming Israel to attack Lebanon and Palestine; U.S. arming anti-government forces in Syria, etc.);
- iii) Whether state terrorism may be classed as a nonviolent kind (e.g. U.S. economic sanctions on Iraq prior to the invasion of 2003, or U.S. putting military bases in Saudi Arabia).

Both actions directly antagonize the civilian population of each country).

Regardless of the definition, it would seem that, in all cases, state terrorism is worse than non-state terrorism, due to the asymmetry of violence-capability by each, the secrecy and duplicity of state terrorism, the illegality of state terrorism, and inability of states to plead that there is “no alternative” to terrorism. While this places a much higher moral responsibility on states than on non-state actors, the general consensus seems to be that states may respond to terrorist attacks with violence provided that they respect the principles of discrimination/noncombatant immunity and proportionality of damage caused to the good sought.

The conclusion of this part of the analysis would have to be that there is a morally presumptive illegitimacy to the use of state terrorism. In State practice today, however, the distinction between war crimes, terrorism, and counterterrorism has become blurred.

### The War Model of Government

David Luban, in his seminal article “The War on Terrorism and the End of Human Rights” (*Philosophy and Public Policy Quarterly*, 2002), convincingly argues that the latest war on terrorism (the one declared after 9/11), is a hybrid model combining U.S. government foreign war policies and actions with the domestic and traditional “law model” of democratic rule at home. The results are not good for citizens. In effect, the war model allows the government to use its broader war powers to apply not only to other nations and their citizens, but to certain of its own citizens, as well. This allows government to see dissenters as terrorists, and to take any action it deems necessary, from incarceration without charge at home, to assassination of its own citizens abroad, simply by declaring the legal status of any dissenter by this term, without having to prove its charge.

According to Luban, there are several characteristics of the war model of government, each one having to do with both human and civil rights.

First, civilians from another nation are now susceptible to attack by government without apology or remuneration, by changing the legal concept of “unintended death of innocent civilians” to the war model concept of civilian deaths as simply “collateral damage.” The obvious example of this is the mounting number of civilian deaths caused by U.S. drone strikes. A second, more specific example can be seen in the July report released by Amnesty International, concluding that there is “strong evidence” that Israel committed war crimes and possibly crimes against humanity during its assault on Gaza last summer. The report underscored the “relentless and massive bombardment of residential areas ... displaying a shocking disregard for civilian lives.” The findings echo an earlier U.N. report which found both Israel and Palestinian militants committed possible war crimes during the assault, which killed 2,200 Palestinians (*Democracy Now*, July 29). We can extend this example. Witness the confessions of Israeli soldiers earlier this year, summarized succinctly by one soldier, who said: “every Palestinian within 200 yards of I was told to consider as an enemy.”

Second, the requirements of evidence and proof that someone is actually an enemy are drastically weaker in the war model of government than they are in the law model of traditional democratic governance. All that is required in the war model is intelligence information that leads to suspicion. Then an attack may commence. This model directly leads to the killing of innocent civilians on the basis of faulty intelligence or mistakes. The

specific cases of the U.S. doing this in Afghanistan, Iraq, and Yemen are multitudinous, from Uruzgan in Afghanistan, to Fallujah in Iraq.

Third, in the war model of government, legitimate targets include anyone who *might* harm State interests; not those who *have* harmed the State in any way. Luban gives an example from January 2002, when U.S. forces in Bosnia seized five Algerians and a Yemeni suspect and took them to Guantanamo Bay. The six had been jailed, tried, and released in Bosnia for lack of evidence. The U.S. reason for kidnapping them off the street was, as U.S. advisor Ruth Wedgwood stated, that they *might* have been planning terrorist attacks. This is also the weapon the U.S. uses to legitimate bellicose rhetoric and actions against non-allied states, like Iraq in the 2000's and Iran in the 2010's.

Connected with this—and this is Luban's main concern—is the sharp reduction in both human and civil rights when one is detained on charges of terrorism under the war model. The paradigm example of this is the U.S. prison in Guantanamo Bay, Cuba. The war model used with these detainees is precisely the opposite of the law model, since the war model holds that those being held there lack the rights of any criminal suspect: the presumption of innocence, the right to a hearing to determine guilt, the right to habeas corpus, the right to trial, etc. Two prominent cases that demonstrate how this has already been applied to U.S. citizens are the cases of Yasser Hamdi and Jose Padilla, both U.S. citizens, both denied due process rights after their arrest and detention (Hamdi in Guantanamo Bay) for three years. A third case, the most drastic of all, is the assassination of U.S. citizen Anwar Awlaki, and then, two weeks later, the assassination of his sixteen year-old son, Abdulrahman, who was also an American citizen.

We have just examined how the war model has already been applied to U.S. citizens, both in detention and assassination. But Luban's analysis, while quite insightful, omits one element of the war model when it is applied domestically, that would demonstrate more clearly the method of a terrorist state. Here is the last element: when the war model is combined with the law model of domestic governance, it becomes permissible for the state to negate or bypass legal protection for its citizens to dissent from the State's actions, no matter what level of dissent it is, simply by declaring that person or persons "terrorist." Here is where the case cited at the start of this article comes into play. Under the 2006 "Animal Enterprise Terrorism Act," any individual or group that causes any damage to a corporation's ability to profit from animal products may be prosecuted as a "terrorist." As if to underscore this aspect of the new U.S. model of government, General Wesley Clark, commenting on MSNBC on July 17, stated that citizen dissidents should be placed in internment for the duration of the war on terrorism. This would be tantamount to indefinite incarceration, since the loose definition of terrorism combined with the terrorist model of government makes any declaration of warring on terrorism basically an eternal war.

In sum, we can see that using the U.S.'s own definition of terrorism, and adding Luban's war model of government that the U.S. is now using, with only a few small steps, becomes a terrorist state model of government when those government presumptions are used against its own citizens. We now also can see that this is where we stand today.

#### Analysis of the Terrorist/War Model of Government

Overall, Luban's analysis underscores the fact that a change in government structural operations to a war model is a model that ignores and erodes both human and civil rights. Any government that is willing to embrace such a model does not seek the good of its

citizens, but rather its own dominance. As such, that government is not democratic, because it eschews human rights, which are fundamental to democracy. But there is more to be said.

On the foreign level, the model gives government wide and sweeping powers well beyond its need to protect its citizens, by arguing that American forces can fight as warriors, but if the enemies they war against fight back or even *plan* to fight back, they are not warriors, but criminals, and may on both counts be captured and detained with no rights. In other words, the government has now outlawed fighting against it by belligerents against whom the State is warring.

Second, under such a model, torture becomes endemic to the system and accepted as such—e.g. U.S. “black sites” around the world used by U.S. to secretly torture its detainees.

Third, the rights of foreign civilians not to be attacked and killed are made null and void; civilians simply become “collateral damage” in the war on terror.

Fourth, it aims to upend the traditional aim of war: capitulation of the enemy by force. The war on terror overtly aims only to kill or capture all those whom the state declares to be either domestic or international terrorists until they are all gone—i.e. perpetual war.

Fifth, the war model gives other States the pretext to do the same thing—e.g. Russia attacks Chechens; China attacks Uighurs; Israel attacks Palestinians. All of these examples are part of a model of government that deliberately and publicly refuses to abide by international law and especially the distinction between combatants and civilians. Further, they were all done under the banner of a war on terror, all of which appealed to the U.S. model.

On the domestic level, as part of this new model of government, we can observe the increased willingness of local police forces to use force against civilians who are either driving while black, or peacefully protesting. Connected with this and perhaps just as alarming is the militarization of local police forces, and their equal willingness to use military-level weapons against civilians.

Second, the new model abolishes the rights of enemies and potential enemies and replaces them with government fiat concerning who the terrorists are and what rights they should have. This replaces the legal model requirement of producing a preponderance of evidence required by moral or legal principles. The most plausible reason for this change is that because the U.S. government does not want those it accuses of terrorism to have these human rights.

Finally, the suspension of human rights under the new model is not temporary, but permanent, due to its being based on the interminable nature of the war on terrorists.

In short, on the domestic front as well, the government now engages in “violent acts or acts dangerous to human life,” that are “to intimidate or coerce a civilian population,” and that “occur primarily outside the territorial jurisdiction of the United States.” Thus, excising the self-exempt elements of the government’s definition of terrorism, and combining it with the war model, we can make a case that the government is itself using a terrorist model to control its citizens.

We can draw two general conclusions regarding the main moral issue of state terrorism. First, as long as the State allows itself to war on terror(ism), human rights will be minimal and will fade fast from government focus. Second, any moral argument against terrorism

must be universal—i.e. not just consistent over time, but over parties engaging in it; so it should be applied to *states* as well as to non-state actors. Note that the thesis of this reflection was not that a full-fledged terrorist model of government is in place; only that our federal government has stepped dramatically in that direction, and is now experimenting with such a model. My best educated guess is that we will see how far our government is willing to go in that current direction if and when it is confronted with a mass popular uprising to economic, political, and/or social conditions in the U.S. Until then, we need to be aware that the mechanisms for a terrorist state are already in place, and we are walking more steadily in that direction in the way we see government act, both abroad and at home.

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