

THE TERRORIST THREAT: AUSTRALIA'S RESPONSE

The Honorable Mr. Justice Desmond Keith Derrington*

On this subject, there is no such thing as the Australian response. We have a full kaleidoscope of political and social opinions. There are some who would contradict anything I say. The only sensible solution is to offer you the thrust of views that are representative of a strong majority. Interestingly, they are generally diverse in their political allegiances, or they are unaffiliated.

We are very well served with news and commentary from around the world. The level of interest is high. Our modest status demands that we remain aware of world opinion and issues. This helps us to be relatively objective in our understanding of terrorism and its context.

The Australian view is fortified by painful experience. We cannot be dismissed as detached armchair critics. America had its catharsis on September 11, 2001. Australia had its own on October 12, 2002. Eighty-eight young Australians died as the result of the terrorist attack at Bali. Our loss did not match the World Trade Center tragedy in numbers, but to a country of only 20 million, it was egregious enough.

It is necessary first to understand what is meant by terrorism. For present purposes, it may be described as an attack on innocent civilian targets for the purpose of furthering a political cause. It is not resistance to illegitimate oppression by attacking military or governmental targets of the oppressor – that is self-defense. The French Resistance is an example. This is a difficult area when the attack on civilian targets is claimed to be the only means by which this can be further achieved because of the strength of the oppressor.

Secondly, the present discussion will be limited to the current major threat, which excludes terror associated with separatist movements or domestic uprisings, often involving more overt armed conflict as well. The affairs in Northern Ireland, Palestine/Israel, Columbia, and Russia are examples of such domestic uprisings. However, the following discussion may have a certain relevance to those in part.

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In Australia, we were acutely aware of the American agony over the World Trade Center bombing. Our reactions to those tragic events were –

- Very deep *sympathy* for the innocent victims and their families;
- *Disgust* at the inhumanity of the perpetrators;
- General *concern* at such a serious turn in the world's affairs;
- *Understanding* that the United States must respond appropriately, but we *hoped* that it would be suitably thoughtful and restrained. We participated in the war in Afghanistan as a clear case of self-defense by the United States, but we became concerned with certain aspects of the its conduct and its aftermath. Like the English Court of Appeal, we have become particularly concerned with the circumstances at Guantanamo Bay; and
- Objective and broad *recognition* that, despite its appalling nature, such an attack was not simply the aberration of fanatical madmen. There were serious causes that motivated them to sacrifice their own lives, which won them the passionate support of many people. It was accepted that nothing could justify such a grossly inhumane act, but there was recognition of this larger picture.

For a rational and balanced response, it was essential to identify the cause of such a dreadful crime that would also lead its perpetrators to certain martyrdom. Any successful and practical solution demanded understanding of the problem as it really was, and not as we would have liked to have it. This was also necessary in order to give the solution legal validity, and to give the legal solution any moral legitimacy.

It would be blind in reality to ignore the grievous plight of masses of desperate people whose suffering is most cogent to this issue. We have considerable evidence that their humanity has been so eroded by poverty, oppression and hopelessness that they can see no other remedy. Their lives are so wretched that, to them, death is no great loss.

The terrible numbers of Americans and Australians who died in these attacks were insignificant when compared with the numbers of the poor and powerless who die from want of nourishment or medical care, or from oppression that has coincided with our interests. The United States Senate Foreign Relations Committee recently heard that 24,000 people per day die from starvation!

It would be self-indulgent to believe that the death of an American office worker or an Australian tourist has a greater distress value for us than the death of one of these from starvation or disease, or from violence by an oppressive military regime, is to those who already have so little. However we see ourselves, they see us as the wealthy and powerful ones who directly or vicariously oppress them by economic and military force in order to maintain our privilege. And their means of resistance are very limited.

This is so destructive to their moral sense and humanity, that it might inhibit their violence toward other innocent human beings. It is a fecund breeding ground for fanaticism. As it often happens with vulnerable people, fundamentalism then intrudes to offer a remedy, but only through hatred and intolerance. It takes advantage of people in crisis, without hope.

The most serious problem is that in places where the need is greatest, these victims often find that the fundamentalists are the only ones who offer them hope and a form of resistance. If we connive at or assist in the "removal" of their moderate leaders simply because they do not agree with us or are inimical to our interests, we err, and we err badly. We are seen as supporting those who have only added to their misery with torture and death. This leaves them with only the fanatics to fight their cause.

In Australia, we have always been wary of people with a surfeit of evangelical zeal – the defenders of mankind with the only answer. This response is often attractive because it is "strong" (read "fanatical") and "clear" (read "simplistic"). Their zeal often stems from excessive and warped religious belief. They alone can identify absolute good and absolute evil, and God is always on their side.

They demonize their opponents by drumming up hatred and public support for their own extreme acts. They excite fear in their followers, and any dissent is suppressed. They deny rational debate with catchcries, often with a religious flavor to give it a semblance of respectability. Worst of all, they are willing to destroy innocent lives in the name of righteousness. Due to defects in our national character, we do not find this altogether attractive or persuasive.

However, that is not the view of many of the dispossessed. Some fanatics are not weak and powerless, and they are ultimately prepared to do something. Though their atrocities are undoubtedly deplorable, they have conscience of a kind. They leave their comfortable lives – they may even be rich – and they willingly accept privation and death for a cause that they see as just. They are not heroes, but those whose cause they die for see them as heroes.

While the causes remain, there will always be many to replace them, no matter how many are killed. How can they be deterred by fear if they are already willing to martyr themselves?

It is sometimes suggested that this hatred is merely jealousy of the West and its wealth. In some idiosyncratic cases, this may be true, but to use it to explain the general disaffection is self-delusion or propaganda of the worst order. Belief in our own absolute perfection simply compounds the problem.

To add to the problem would be unconscionable. Without the sanction of law that demands respect because it is just, any response that results in the destruction and mutilation of many innocent people is surely counterproductive. It would simply enlarge and justify the terrorist response. "Collateral damage" is a terrible euphemism for such carnage, just as it would be if it were applied to the victims of the World Trade Center or Bali.

This does not predicate inaction. The suggestion that the alternative to an excessive behavior is to do nothing is a base argument that ignores alternative courses of action that avoid such terrible consequences. Certainly, the perpetrators should be pursued and punished with the full force of the law, and all proper preventative measures against further attack should be employed. But the rule of law must not be broken or bent in the process.

It must be preserved in its letter and spirit. If law is observed and exalted only when it does not matter, it is a sham. Its need becomes greatest in times when it is under challenge or when there are strong sentiments of revenge and fear. Then, it is wrong to assert that the laws should be suspended or watered down to meet current convenience.

Such a proposition is worst when it comes from those who wield ultimate power. With power, there is also responsibility. Without responsibility, there is moral corruption. Some robustly aggressive people would describe all this as weak. But J.K. Galbraith once spoke of the reckless position as the position that requires the least moral courage. We must not be the judges in our own cause. Adherence to the rule of law and adherence to justice that is objectively applied when it is contrary to the popular mood is not weak. Those who abandon the rule of law when it suits them have little justification when times change and they want its protection.

The implications of all this for legal philosophy and principle are imperative. International law must address the injustice that is the root cause of the current wave of terrorism and this will require a radical revision of where the law is willing to go. If it does nothing, it will permit the continuation of terrible injustice, and the law itself will become irrelevant. Anarchy will prevail. The law must move incrementally but firmly, or the moves for change will be quick and violent, as we have already witnessed.

Consistently with this, in Australia we see the answer in social, political, and economic justice reinforced by the law. It will not be found in widening the gap between the rich and the poor. The extraordinary amounts spent on a war could largely buy peace and security. It could also provide relief against terrible suffering. Poverty and ignorance must be replaced with something better than our imposition of self-serving globalization. Martyrs are difficult to find for comfortable middle-class causes. If want and hopelessness are absent, they have little stimulus.

The American catastrophe in a way prepared us for ours. Our response to Bali was one of compassion for the victims and their families. When things settled down, it generally followed the national philosophy – “She’ll be right, mate.”

Roughly translated in its cultural context, it means –

- Don’t get too excited;
- Think about what has to be done, do it, and do it properly;
- Fair go – meaning, “Don’t go overboard;”
- Keep a sense of humor;
- Then, she’ll be right, mate.

The public manifestations have been interesting. After the grief and sympathy, there was a mood of cheeky defiance and some moral outrage; but it was reasonably restrained. The usual few bigots attacked some Muslim mosques and people. Happily, this conduct only earned the disgust of the general community, and the law's response was swift and heavy. Interestingly, polls indicate that Australians were more moved by the American tragedy than we were by our own. After September 11th, it was rather inspiring to see the banks of flowers left anonymously on the stairs of the U.S. Consulate in Sydney.

This difference in response may be attributed to the difference in scale of the tragedies, but we tend to be offhand about our own wounds. More significantly, the attack revealed something that had until then been remote from our thoughts – our vulnerability. It came as a shock. With minor eccentric exceptions, we had never had the local equivalent of the Basques, the I.R.A., the Red Brigade, or even the Timothy McVeighs of this world. The last bombing had been detonated in a garbage bin outside the Hilton Hotel in Sydney. It was planted by a religious zealot and was aimed at a visiting foreign dignitary. It killed a garbage collector, but that was the only tragedy out of the event.

This position of relative comfort had insulated us against the trauma of direct attack and had left us complacent. The shock of realization stirred our emotions at the time. On calmer reflection, we saw it as a price for our political affiliations that we had to expect, if not accept. It was generally accepted that our government's support of American foreign policy was generally accepted. The Bali bombers say that they targeted Australia because of our support of the United States in Afghanistan, to which they attributed the deaths of a large number of Muslim people, including women and children. Our happy goodwill towards everyone, which we expected would be reciprocated, was no shield against this antagonism.

More importantly, our minds became more focused. We were now players in a serious game. We did not shrink from that, but we also saw that we have a problem that cannot be dismissed by simplistic responses. At a deeper level, we saw our loss as the tragic result of a profound problem rather than of a simple "Hate Australia" exercise by a few fanatics. We understood that the attack was not gratuitous. While condemning the terrorism itself, many recognized that its causes must be addressed.

Pragmatically, we shall defend ourselves, but with suitable caution. Our police gave effective aid to the very successful Indonesian investigation of the Bali crime. This was done with sensitivity and with all due recognition of Indonesian sovereignty. There seems to be not the slightest trace of criticism of the legality and propriety of the entire procedure.

Prudence has demanded some domestic security precautions and restraint, which is seen as a necessity. The more elaborate are accepted with a certain wryness. The newspapers carried a photograph of an example of the more extravagant security at the Brisbane airport – two security police and a

dog; but the young policeman seemed to be concentrating his conversational skills on the young policewoman. The dog looked bored.

Our government has outlaid a large sum in telling us that we should be alert but not alarmed. The only thing that alarms us is our government's waste of taxpayers' money. Travel warnings have been given, but Australians have resumed their traditional walkabout.

I was recently in Singapore, where they strive to eliminate poverty and to promote cultural harmony. Despite Australian government warnings, the atmosphere was secure and peaceful, but one small touch went almost unnoticed. After lectures, two of my Muslim students always saw to it that I was accompanied back to my hotel three blocks away. Doubtless, their action was motivated as much by kindness and courtesy as by any fear for my safety, but I suspect that it was also insurance against any unpleasantness.

There was one other notable feature. Every one of the many professional and commercial people there with whom I discussed this issue was of the same views as Australians.

So, in respect of terrorism, we in Australia are almost back to normal, but perhaps with somewhat heightened perceptions as to the need for the development of the law to act to remove the sources of terrorism, which are probably more horrific than terrorism itself. Apart from our terrorizing the English on the cricket field, the current burning topic is whether we should deploy military forces in the Middle East. But that is another matter – entirely.

CONCLUSION

Australia has suffered its own major terrorist attack. After their grieving, Australians believe that it can only be eliminated by striking at its source; and the law must move to that end.