Terrorists on Trial

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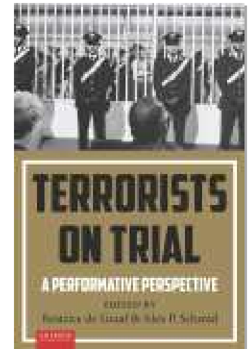

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12. Conclusion

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In this volume, the intricacies of various terrorism trials have been reconstructed and analysed at various levels of depth and from a performative perspective. The idea of looking at terrorism trials as quasi-theatrical performances has led to new insights with regard to both terrorist and counterterrorist performances and strategies in the courtroom. Yet to adhere to performative, or even theatrical concepts remains an uneasy undertaking to those who are accustomed to unquestioningly accepting existing communicative frames of reference, or to seeing 'the law' and 'courts' as solemn institutions and not as objects of *lawfare* and subject to *performance*. At the end of this volume, some reflections on the contested nature of communicatice frames and performative aspects of terrorism trials are offered. First, the widespread unease of governments to put terrorists on trial needs to be addressed. Second, a tentative outline of a typology of terrorism trials will be presented which may serve as a stepping-stone for further research in this field. This tentative typology is developed, to gain deeper insight into how terrorism trials are perceived as and configured into socially and politically relevant categories, leaving aside for the moment the legal questions involved. Since this volume is not intended as a contribution to legal theory, but written from a historic-political perspective on the phenomenon of terrorism trials, this approach might benefit from further categorising and operationalising.

12.1. Why the Unease?

Seeing performative acts in trial as a performance and identifying communicative strategies requires a specific mindset. In carrying out this research project and interviewing various actors involved in terrorism trials, the editors and authors initially were often confronted with scepticism or even resistance to this approach. This reluctance can be explained by pointing to the unease regarding the question of putting terrorists on trial under civilian, criminal law. Why are governments often not at ease with the idea of putting terrorists before civilian courts?

In the US, after President Barack Obama expressed his preference for trials in federal civilian courts and promised to close down the Guantánamo military tribunals in 2009, congressional obstruction forced him to back down from this decision. In early March 2011, the White House announced that it would resume military trials for detainees at Guantánamo Bay, Cuba. 'I strongly believe that the American system of justice is a key part of our arsenal in the war against al Qaida and its affiliates, and we will continue to draw on all aspects of our justice system—including (federal) courts—to ensure that our security and our values are strengthened', Obama stated.[2] Yet, congressional concern relating to the security risks involved in these terrorism trials, given that detainees would have to be transferred to and tried in the 'homeland', prevailed.[3] Former Vice-President Cheney's objection to such trials has already been mentioned in the opening chapter of this volume. In the *Wall Street Journal*, columnist James Taranto also invoked the association of a 'show trial', although he was more nuanced: 'These trials will differ from an ordinary show trial in that the process will be fair even though the verdict is predetermined.' However, even if it were a fair trial with just formal proceedings, it would nevertheless contain an element of show: 'The answer seems to be that the administration is conducting a limited number of civilian trials of high-profile terrorists for show, so as to win "credibility" with the international left.'[4]

Taranto was right in at least one regard: even with legality intact, terrorism trials are highly likely to turn into a spectacle, because either the prosecution or the defendants or both cannot resist adopting communicative strategies (compare the chapters on Breivik and the RAF in this volume for example). As indicated above, the outcome of the first trial against Guantánamo 'ghost prisoner' Ahmed Khalfan Ghailani sparked off a similar debate. Not the final verdict as such, but the use of civilian courts in combating terrorism, became heavily contested. The opposition argued that terrorists should never be granted civilian trials, with all the communicative space and security risks involved, but should be treated and detained as military prisoners. The administration, on the other hand, claimed that the system had shown that a terrorist could be convicted even after a judge excluded evidence gained by coercive interrogations during the Bush administration and by acquitting one defendant on a number of related charges. The sentence meted out—20 years—was probably even stiffer than a military court would have given.

In response to this case, Jack Goldsmith, a high-ranking Justice Department official during the Bush administration, argued that the verdict showed that terrorism suspects should be held without any trial at all, not even a military one. Indefinite military detention, he said, 'is a tradition-sanctioned, Congressionally authorised,

court-blessed, resource-saving, security-preserving, easier-than-trial option for long-term terrorist incapacitation. And this morning it looks more appealing than ever.'[5] Since the attacks of 9/11, this new line of thinking became dominant amongst executives and was reinvigorated after every new attack and in the wake of military campaigns in Afghanistan and Iraq.[6] There is a certain logic to it: in war prisoners are usually held until the end of the war, and since the war Al Qaeda declared on the United States twice in the second half of the 1990s is continuing, release would be premature and, in the case of proven charges of war crimes, might result in a military court verdict rather than release at the end of the war.

The tendency to resort to measures other than criminal law is not solely reserved for US officials. In the Netherlands, for instance, the government arranged for other measures in dealing with terrorism than through criminal law alone. Dutch government officials may pick and choose whether they apply intelligence measures (observation), immigration law, control orders and other administrative law instruments (or a combination thereof) before deciding whether or not a criminal investigation should be pursued.[7]

The explanation for governments' unease regarding civilian terrorism trials is twofold. First of all, one has to consider the element of risk in relation to the outcome of the trial. In performative language, this is the aspect of unpredictability and spontaneity involved in so-called 'simultaneous dramaturgy' settings, implying 'techniques designed to involve spectators in a scene without requiring their physical presence onstage.'[8] From the executive's perspective—which is often dominated by national security considerations—handing the suspect over to an independent court is a risky business. Terrorist suspects can be acquitted, sometimes not because they are innocent but because certain crucial pieces of evidence are deemed inadmissible, as was the case in the Ghailani trial. This risk cannot be excluded, at least not at the cost of turning the trial into a farce for the government. This element of uncertainty runs against the grain of the principal goal of counter-terrorism actors: eliminating the terrorist threat. Thus, the executive's rationale behind an *à la carte* treatment of terrorists lies not in contempt for criminal law, but in the priority given to other (legal) obligations, such as protecting the right to life and the security of the citizen. This weighing of rights is known as the *balance or proportionality response thesis*; notable politicians and scholars such as Michael Ignatieff assume that in order to protect security public interest must be weighed against human rights. If this means that the rights of terror suspects are suspended or restricted, according to him that is just an unfortunate side-effect of protecting national security.[9] Critics such as the 2009 Eminent Jurists Panel in its report on Terrorism, Counter-terrorism and Human

Rights, however, contend that this suspension of terrorists' rights normalises the state of exception—thereby one-sidedly strengthening executive powers—and pleaded for reasserting the value of the criminal justice system, especially in the case of citizens' rights.[10]

A second explanation for a government's difficulty with relying on criminal law in dealing with terrorists is the fact that the courtroom trial may turn into a 'political show', with the terrorists dominating the scene or even succeeding in breaking existing communicative frames and presenting new ones. The main functions of the criminal justice system are exerting social control, settling disputes and confirming society's norms.[11] Counter-terrorism verdicts, however, do not necessarily affirm society's shared values. Many terror suspects come from minority groups that oppose a government they consider oppressive; they are not likely to perceive criminal law or its implementation by the judiciary as neutral or legitimate at all. Their (perception of) truth cannot simply be 'tried away' in court. Take for example the trial against Nelson Mandela. During the Apartheid regime in South Africa, Nelson Mandela, who publicly supported violent political struggle, was labelled a terrorist partly due to his conviction in 1964 for conspiracy. Although the trial ended in a legal victory for the prosecution, it was a political disaster for the regime in the court of national and international public opinion. The trial was a communicative defeat; it undermined the legal basis of the adjudication, and even that of the government's legitimacy as such. This is exactly what governments are afraid of: although criminal law may serve immediate political ends (detaining political opponents by sentencing them as terrorists), the intermediate and long-term communicative and political effects can be unforeseeable and potentially devastating. Given the possibility of these kinds of deferred aversive consequences, the element of risk once again enters the courtroom. Mandela's trial became a show of injustice; its reverberations undermined the political credibility and legitimacy of the Apartheid regime, although it managed to survive for nearly three more decades.[12]

The events resulting in the killing of Osama bin Laden underscore the salience of these two points. Indeed, governments are in most cases uneasy about staging major terrorism trials, both because of the security risks and due to the unpredictable communicative 'show' element involved. At the same time, this show element is sometimes consciously used by the prosecuting authorities themselves as an opportunity to showcase to the world that the rule of law has been upheld. Under the right conditions of legality and with adequate performative strategies, terrorism trials (like any other trial) confirm the underlying communicative mode of rules and procedures, and thus may result in a triumph of justice. We will come to this later,

but first it is necessary to explore what the 'show' element in terrorism trials actually entails and how this element relates to the concept of 'show trials', a category loaded with heavy historical associations.

12.2. The 'Show Element' in Criminal Trials

In this volume we have introduced the concepts of lawfare and performativity (to be defined below) to enable a broader perspective to be taken on the legal, but also social and political implications of a terrorism trial. This is warranted since 'the Law' is in itself broader than a mere summary of legal norms and principles; it incorporates, amongst other things, social norms, values, power relations and social processes—and offers a constitutive communicative framework in disseminating these. Then, by applying law, one sets in motion a communicative process. In the words of Mark van Hoecke, a legal scholar, 'Law cannot any more be correctly understood within a paradigm of one-dimensional rationality. [...] The dramatic rise of complexity, both of law and of society, have made such a scheme obsolete.'[13] Many legal theorists of the twentieth century held that facts and norms could be separated, but this positivist view of the law has come under attack.[14] Acknowledging today's multi-layered, complex, but also vulnerable societies has unearthed the weakness of a purely positivist approach to law.[15] Law is not (solely) about sifting facts from opinions or about establishing objective truth; it is also about social control, communication and the perception of social norms. Trials are one instance in which the broader public can see law in action. Trials communicate that law is not just in the books but is implemented in practice. In the narrowest perspective, courts interpret and apply legal rules. Yet by doing so they contribute to strengthening certain concepts of justice and inculcate norms and standards to the general public. In addition, by enforcing the law, courts are linked to the state's legitimacy as well as to the elaboration of policy goals.[16] Trials thus communicate publicly and ceremonially to society what a state's norms and principles are (or ought to be).[17]

The law in action *is* a communicative process, but at the same time also *offers* a framework with which to interpret human actions and communication. Trials are the medium through which this communication process takes place, involving, as Mark van Hoecke put it, 'communication between legislators and citizens, between courts and litigants, between the legislator and the judiciary, communication between contracting parties, communication within a trial'.[18] More importantly, exactly this

communicational aspect, within the confines of the court and amongst the legal actors involved, can serve 'as the ultimate safeguard for a "correct" interpretation and adjudication of the law', and in so doing thus legitimises the law.[19]

Since this communicational process is the principal foundation underlying the legitimacy of the justice applied, a trial ought to be heavily protected against political interference and manipulation. A fair trial is a basic human right, protected not only by criminal law, but also by international and constitutional law. The principle of fair trial is recognised in numerous international instruments and treaties, such as the Universal Declaration of Human Rights (Article 10 UDHR), the International Covenant on Civil and Political Rights (Article 14 ICCPR) and the European Convention on Human Rights (Article 6 ECHR). Besides serving other functions, the fair trial principle ensures the right of an individual to be informed of the measures taken, to be informed about the case against him or her, the right to be heard within a reasonable period of time, the right to a fair and public hearing by a competent and independent review mechanism, the right to counsel with respect to all proceedings and the right to have his or her conviction and sentence reviewed by a higher tribunal according to the law. However, international law does recognise restrictions in criminal justice for reasons of national security.[20] However, such deviations from the ordinary practice of adjudication must always be temporary and meet standards of legality, necessity and proportionality.[21] The principle of fair trial assures individuals that they have a place to turn to, should the state or others fail to honour their human rights.[22]

The relevance of this normative framework that is meant to safeguard the right to a fair trial can only be understood against the context of its mirror image: the historical reminiscence of the Stalinist (and, to a lesser, extent National-Socialist) show trials; these were the very opposite of fair trials, not in the least because of their one-sidedly executive dominance of the communicative process. 'Show trials' and 'political trials' are often mixed up in public discourse. The overriding characteristics of a classical show trial in the Stalinist sense are 1) the total exclusion of the element of chance and/or risk from the trial and 2) the predominant function of the trial as a tool in 'educating' the public at home and abroad in order to strengthen ideological power. Sometimes such trials are not strictly Stalinist, in the sense that they do not primarily serve to demonstrate and confirm totalitarian rule behind a façade of justice administered. However, we do call them *political* as soon as the executive branch of a government uses criminal law predominantly to further its own political agenda. Otto Kirchheimer, in his classic study *Political Justice*, defines political trials as attempts by regimes to control opponents by using legal procedure for political ends (Alex P. Schmid has extensively covered this in chapters 2 and 4).[23] Authorities deploy

criminal law to maintain their dominant power; they eliminate political opponents by outlawing oppositional voices, making them illegal. In such cases, courts only serve political powers, not justice.

However, this type of state-controlled show trial is not the association that was invoked by American comments on the Ghailani case quoted earlier. The show element in the trial they referred to was the risk that the terrorist suspects would manage to dominate the courtroom with their narratives of injustice, thereby turning the trial into a second 'terrorist show'—the first being the attack they had perpetrated.

There is however even a third type of show imaginable: a show in which the authorities demonstrate, through the way in which sentences are meted out, that modern democracies are fully capable of performing a show of justice in a positive sense. The Nuremberg trials may be regarded as a modern model for how a trial can be a communicative masterpiece and performance of justice. They did so by revealing the genocidal dimensions of the holocaust, establishing a historical narrative that stood the test of time and one that is accepted by large majorities of the public in Germany and in most of the rest of the world. Nuremberg created a collective memory, fixed responsibility on Germany and set standards for adjudicating on future misconduct by states and social groups. Indeed, the Nuremberg trial was *the* example of a convincing performance by the victorious powers in using criminal law—rather than mere revengeful force—to deal with war criminals and state terrorists.

In fact, the concept of show trial can refer to totally different types of politicised trials, depending on the normative charge. In the words of legal scholar Awol Kassim Allo, 'What counts is not that a trial is labelled a 'show trial', it is rather the end that the "show" serves.'[24] This brings us to the core question of this volume: which performative strategies were used by the actors in court to convince audiences of the validity of a specific narrative of (in)justice?

12.3. Performative Strategies in Court: What Kind of 'Show' can Terrorism Trials Offer?

It has been stated by various experts that terrorism is a form of communication.[25] Terrorism expert Brian M. Jenkins noted as early as 1975 that 'terrorism is theatre'.[26] Peter Waldmann added to these observations the statement that most terrorists explicitly want theatre, since they are bent on provoking state power.[27] With their deeds, terrorists seek to communicate their visions of justice and injustice, visions on the rearrangement of power relations and attempts to rebalance them. However, there

is another side to this coin: counter-terrorism also involves a form of communication, it is performative as well.[28] In court, the prosecutor has a story to tell as well. After an attack, or an attempted one, perpetrators are, if and when apprehended, usually brought to trial. In the courtroom, all parties involved in the drama are brought together. Within the narrow confinements of this stage, issues of (in)justice are addressed, retribution is demanded and justice is carried out—at least that is the theory, to which reality does not always live up. Sometimes terrorists are tried behind closed doors in secret courts; in some cases, trials are so heavily politicised or even tampered with that they resemble more the classic show trial in the Stalinist sense than any display of justice.[29]

The question, then, is what strategy do the actors in this theatre of lawfare, which often amounts to a public drama, follow and what are the legal, political and social consequences of their strategies? Does politicising a trial, putting on a show, rule out the risks referred to earlier? Or, on the contrary, does it incite sectors of the public by violating their sense of justice? Can it placate the public, restore social peace and prevent further radicalisation? Following the provocation-repression theory,[30] a trial controlled and run by the prosecution without counter-balance from judges could provide terrorists with new proof of state oppression, strengthening injustice frames of reference that enable the recruitment of new members and initiate new violent campaigns.

In the introduction, we presented our working definition of the concept of performativity. This definition, however open-ended it may be, refers to discursive efforts and actions to construct social realities,[31] as applied to terrorism trials:[32]

> Performativity in terrorism trials refers to acts or strategies (coherently or incoherently) adopted by parties with a stake in the to try to persuade their target audience(s) in (and outside) the courtroom of the justice of their narrative(s) and the injustice of the one on the opposite side of the bar.

We have seen that these strategies were restricted by the different historical contexts, which provided the dramaturgical framework for the trials.

The first element in every stage play was the script, which was to provide for a plot and for the different narratives and storylines to be heard. The initial script was triggered by the suspect's crime, and drafted by the charge(s) brought by the prosecutor against the accused. Criminal law functioned as a set of guiding principles, dictating how this script should be written. Were intelligence reports accepted as evidence in court? Could witnesses give evidence behind closed doors? The script, or

the 'director's clues', provided the legal rules of the game. By bending or changing these rules, the authorities could influence the outcome of the trial. At the same time, manipulating the rules of adjudication during a trial could 'spoil' the game and could undermine confidence in the law.

Secondly, an important question with regard to this dramaturgical element was the nature of the script: Was it a script within a civil law or within a common law system? In other words, was the trial inquisitorial in nature or adversarial? Did the defence need to convince a jury, or was it the judge who heard and weighed the material? Another structural element that mattered was the amount of evidence that needed to be presented in court, which impacted on the length of the trial. In the Netherlands, for example, the charges, evidence and defence's response were mainly exchanged and worked out on paper before the actual trial began.

Third, the way the stage was set also affected the unfolding of the drama. Did a trial take place in a regular court building, or were the defendants transported to a fortified location where the visitors had to go through heavy security checks? Were the defendants placed on regular benches or locked in cages, as was the case in several Italian trials? The courtroom/building could thus enhance or downplay the dramatic quality of a trial as well.

Fourthly, the play itself was performed by actors, who adopted different strategies, which will be discussed below. Actors were the prosecution, the defence, the judges, the witnesses and sometimes also the victims or their families. The play developed through a contest between the prosecution and the defence over the writing of the script. Each side attempted to offer its own script as the way to go and try to arrange its performance so as to advance its truth. Judges often acted both as directors and audience, depending on the type of criminal justice system of the country involved.

Lastly, we have seen that every play was in need of an audience. In terrorism trials, as in other trials, the audience was constituted by the judge (in a civil law system) or jury (in a common law system), but also by the public (including journalists) in the courtroom and the public outside. What the public saw and heard was, however, sometimes filtered, if not controlled, by the media's reporting of the trial. Or it was broadcast directly to the public in and outside the courtroom itself. This gave the media, especially the social media, an important, often crucial, role in the play as well.

Within these dramaturgical frames the terrorism trials unfolded, and resulted in different types of 'show', depending on the relative success of the performative and communicative strategies adopted by the various actors, and on the question which communicative mode of negotiating legality and justice dominated the trial.

12.4. A Communicatively Oriented Typology of Terrorism Trials

A highly defining characteristic of terrorism trials is the struggle for communicative dominance, the contest for the communicative mode in which questions of legality, legitimacy and justice are negotiated. A 'fair trial' is usually characterised by the confirmation and correct and transparant application of legal norms and rules. However, in case of terrorism trials, more often than not turn into a site of severe contestation. The parties involved adopt communicative strategies, execute performative acts; all in order to appropriate, impose and disseminate their version of justice and legitimacy. Based on the definition of performative strategies in terrorism trials, we could now try to place the various terrorism trials discussed in this volume in a graph. The question of positioning is defined by a horizontal axis and a vertical one, and guided by three questions: 1) To what extent did the actors involved accept and uphold the legal system as mutual mode of communication in and outside the courtroom? 2) To what extent did the actors involved tried and succeeded to dominate the communicative space and impose their version of justice and injustice? 3) To what extent did the trial attract media attentation and perhaps even resulted in a 'trial by media'? By answering these question, admittedly in a highly qualitative and associative way, we have placed the trials in the graph below. The horizontal axis delineates the different communicative strategies in court. At the left end of the axis, the executive powers/authorities dominate the communicative mode and turn the trial into a one-sided 'show' of executive prerogatives. This restriction of the communicative space of the defendants is often justified by security considerations. On the right end of the pole the terrorist defendants follow a strategy of rupture, reject the existing modes of communication and law and turn the legal proceedings into a communicative continuation of their struggle. The vertical axis depicts the level of media attention generated by the trial, ranging from nothing to a total take-over of the communicative process by outside forces in the media. Based on a number of cases that we looked into, the following typology can be developed (the trials' position is assessed based on the communicative dominance during the last stage of the trial):

- A *status-quo-trial* where everyone complies with the existing communicative framework of applicable law and legal conventions, such as in the Dutch Piranha and Hofstad group cases. This trial can be positioned in the centre of the horizontal axis and low on the vertical axis. Both sides refrained from adopting explicit performative strategies. Such trials do not score high on the lawfare scale, and

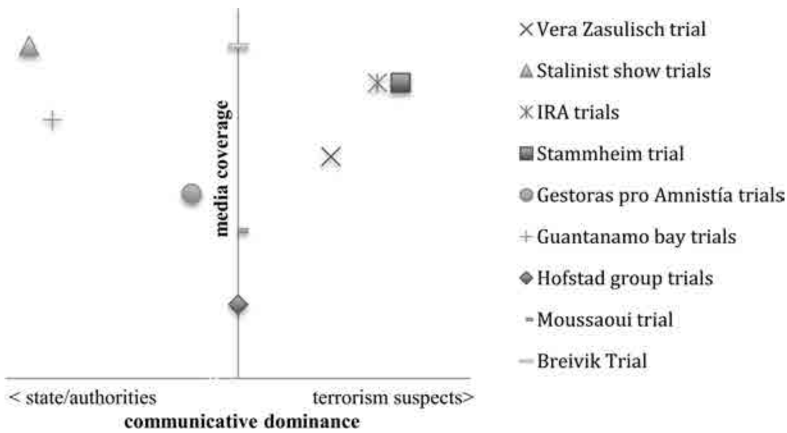

Figure 12.1: A communicatively oriented typology of terrorism trials

often indeed offer closure rather than rupture for society at large, if not always for those accused of serious political crimes.

- A *trial as the continuation of the terrorist struggle* by legal and communicative means. The defendants break through existing modes of communications, reject legal conventions and challenge the legitimacy of the system as such. They often generate a good deal of media attention and inspire new rounds of violence by terrorist sympathisers. The German Stammheim trial (see Chapter 6) in its final stage would be an example of such a significant performative effort by the defence lawyers and their clients. Such trials are a theatre of open lawfare, involving rupture and leading to some kind of closure perhaps only in the long run.
- A *trial as continuation of executive counterterrorism practice*. Not law, but security offers the underlying framework and restricts the open, communicative space in which proceedings take place. Such executive 'shows' are in their extreme form exemplified by the classical Stalinist show trials. Here, the prosecution dominates the show, sometimes even hand-in-glove with the judge or the jury. This show can also be a de facto non-show-like trial, closed to the public or the media, but organised by the state to serve its security agenda. The trial may, however, also be staged as a virtual show: the trial serves as a tool of risk management, when justice is subordinated to principles of national security, turning the trial into a site of 'actuarial justice'. When crimes under consideration deal with conspiracies and terrorist preparations rather than actual attacks, it is difficult to draw the line between *habeas corpus* and imagination—since without an attack, or 'smoking gun', often only inferences can be drawn, and possible future attack be imagined,

rather than proven with statistical evidence. The lawfare element depends on the degree of secrecy involved, but the risk of rupture can be significant.

- A trial may turn into a *media show*—not run so much by the terrorists or the prosecution, but dramatised in the media, often capitalising on public feelings of vengeance and outrage—often helped by *sideshows* staged by audiences and groups outside the courtroom (victims, sympathisers, etc.). Starting point is not the law, 'revolution' or security, but the communicative mode has been taken over in advance by outside forces in the media. The lawfare element is difficult to assess here, since media reporting may fuel the conflict at stake. Closure/rupture strategies may both be possible, rupture being defined as above as the rejection, obstruction or undermining of the legal system.
- A *performance of justice*: a show where the verdict educates the public about the importance of the rule of law in a democratic society creates a collective memory and sets standards for future conduct by states and society. This type of show is run by the judge/jury, but the performative strategy is based on a (perceived) neutral application of the law, not on partisan politicisation of justice. In the ideal world, such a theatre of lawfare provides closure for all parties involved, if not immediately then in the long run. The law as mutual mode of communication has been confirmed or recaptured.

Nota bene: The trial may change in type during the course of its proceedings. It may, for instance, begin as a not so dramatic show but develop into a media show. Other transformations are also possible. We will elaborate on these types below.

12.4.1. First Type: A Status-Quo-Trial

The first type of trial is not that dramatic at all. A terrorist trial does not always have to be a social drama. There are indeed instances when terrorism trials created little spectacle. In the Netherlands, the trial against the Moluccan activists who raided and occupied the Indonesian Ambassador's residence in 1970 in order to further their separatist cause, killing a police officer in the process, proceeded very smoothly. The defendants pleaded guilty, complied with the court's demands and raised only one moral question: they wanted their plight to be heard. They wanted to tell their story of expulsion from the Moluccan islands, of the apparent promise made by the Dutch authorities to lobby for their independence from Indonesia and to highlight the discrimination they suffered in Dutch postcolonial society.[33] In this particular case, those accused of terrorism did address a social grievance, but both the judge and

the general audience were receptive to their narrative and acknowledged it in their responses. The defendants' communicative space was wide enough and their cause was recognised. The judge, himself a former colonial officer, paid tribute to the sufferings of the Moluccans, their plight after 1950 and their loss of homeland. This, in turn, appeased the defendants and made them accept the verdict based on Dutch laws. They did so without protest—the sentence was lenient considering the fact that it had involved the killing of a policeman.[34] If there was a show at all, it showed the Moluccans' tragic fate and Dutch society's feelings of guilt about having let them down in 1950 and beyond. The law had been violated, yes; a policeman had been killed as the Indonesian residence was occupied. Nevertheless, there was no clash of incompatible ethical or communicative frameworks. On the contrary, the Moluccan activists appealed to their families' shared history with the Dutch people, recalling their parents' loyal service to the Queen, demanding only that the government live up to its own standards and promises.[35]

Another example of remarkably little theatre was the latest hearings in the Hofstad group case, staged in late 2010. When the trial started, following the murder of Theo van Gogh in November 2004, the defendants, all of whom belonged to a group around Van Gogh's murderer Mohammed Bouyeri who were charged with participating in a terrorist organisation and inciting hatred, refused every form of cooperation with the court. They argued that, first of all, the man-made Dutch judicial system was not in line with the divine rule of law and violated *hakimiyyat Allah* (the sovereignty of God). Secondly, they claimed that public and political pressure prevented them from getting a fair hearing in any case. In the heated and anxious climate of the months following Van Gogh's murder, this second complaint had some merit. Government officials had proclaimed a 'war' against Dutch terrorists, public vigilance campaigns against terrorist attacks were launched, radicalised Muslims were spotted everywhere and revenge-fuelled attacks against mosques and other Muslim sites took place.[36] Seven suspects were arrested and charged with being part of a terrorist and criminal organisation engaged in inciting hatred and preparing for terrorist attacks. In 2006, they were convicted on the counts of attempting to murder police officers, the possession of hand grenades and membership of a terrorist organisation. One suspect, Jason Walters, who threw the hand grenade, was sentenced to 15 years in prison.[37]

However, as years passed without any further jihadist attack on Dutch soil, the Dutch political and social climate changed. In 2008, the Court of Appeal in The Hague acquitted those belonging to the Hofstad group on the count of membership of a criminal terrorist organisation.[38] The court hearings in 2010 proceeded almost

unnoticed, until Jason Walters stood up to announce his faith in the Dutch democratic system and the rule of law. He demonstrated his abandonment of extremist behaviour by conforming to the norms in court, wearing ordinary clothes and sporting a modern haircut. 'I am certain that I will receive a fair trial', he stated at the end of the pre-trial hearing in the High-Security Court in Amsterdam on 16 July 2010, thereby following a strategy of signalling trust in and conformation to the law.[39] Although this story is an exceptional instance of a terrorist's public conversion, it provides a valuable insight: a change of times, demonstration of reflective justice and a terrorist conversion caused the trial to normalise. The charge of membership of a terrorist organisation was later reconfirmed, but the trial hardly presented a show any more: no party involved tried to turn it into a drama of conflicting ethical frameworks.

Another example of a rather undramatic case of mutual compliance to applicable law and legal conventions is the trial of the first and only Dutch female terrorism suspect, Soumaya S. On 15 March 2011, the Dutch Attorney-General submitted an advisory opinion to the Supreme Court that stated that the verdict against Soumaya S., who had been arrested in 2005 and convicted of participating in a terrorist organisation, had to be annulled. Soumaya S. had already been sentenced for carrying an Agram 2000 machine gun, but had been put on trial a second time for being a member of a terrorist group.[40] Strangely enough, almost no public attention was paid to all of this. No front-page newspaper headlines, no interviews with disgruntled politicians or a disappointed public prosecutor were seen or heard in the national media. No audience outside or inside the courtroom explicitly applauded the verdict, drew attention to the outcome or rallied against it. No public outrage was discernible. This terrorism trial thus ended with a whimper, rather than with a bang.

As has been stated above, the undramatic character of this trial can be explained in part by the brevity of the trial, the inquisitorial nature of the Dutch criminal justice system, and the lack of historical precedent. But more importantly: the terrorist suspects themselves did not follow a strategy of rupture, but of total compliance. Neither were there enough sympathisers willing to stage sideshows, probably due to the lack of support for home-grown jihadist terrorism in the years between 2004 and 2010 within the Dutch Muslim community.

12.4.2. Second Type: A Continuation of the Terrorist Struggle

Instances like the Moluccan trials in the 1970s, where those accused of terrorism remain within the boundaries set by the legal system's rules of court procedures and share society's moral values and principles, where the magistrates and general

public act low key and are receptive to the terrorists' story, are rare. They mostly depend on the attacks' low level of lethality, the short duration of a terrorist campaign and on the shared historical context in which terrorists and host society operate. Peaceful debates in court are an exception, rather than the rule. More often than not, terrorists challenge and contest society's moral principles in court. This is the second type of terrorism trial we have identified: the show is staged by those accused of acts of terrorism, where the *suspects and their lawyers* play up their version of reality. To be sure, those accused of an act of terrorism have already made their first point with the physical attack. Due to the terrorist attack (assuming they were not arrested for preparatory actions beforehand) they moved to the national stage and into the limelight of mass media and public opinion. The terrorist attack itself on a prominent victim was a kind of kangaroo trial, their own primitive form of justice. Once arrested and confined to the narrow space of the courtroom, they themselves had to stand trial.

A major example of an intended show trial staged by terrorists as continuation of their struggle by legal and communicative means can be found in the history of the Red Army Faction (RAF) in Germany. One of the largest successes of the founders of the RAF (Andreas Baader, Gudrun Ensslin, Ulrike Meinhof and Jan-Carl Raspe) was that, together with their lawyers, they succeeded in portraying their trial—which lasted from May 1975 to April 1977—as a political one, conjuring up an image of political justice in Germany. They tried to portray themselves as political warriors, and in the end as the ultimate martyrs for the revolution's cause. As Jacco Pekelder and Klaus Weinhauer (see Chapter 6) have written elsewhere, their lawyers sought a direct confrontation with the other parties involved in the criminal justice system and carried out a 'political defence': 'More than attacking the actual accusations against their clients these *Linksanwälte* [left-wing lawyers—a play on words in German] seemed to aim at undermining the legitimacy of the trial and the justice system that had produced it.'[41] Although in the end justice prevailed, the West German judiciary damaged its own image of impartiality by reacting so nervously during the trial. The RAF suspects used the court to stage their own play, which served their own revolutionary agenda. They used the long-drawn-out period in which the Stammheim trial unravelled to radicalise and mobilise a second and third generation of new recruits to their cause. These newcomers in turn initiated a second round of violence, the aim of which was the liberation of their historical leaders from jail. When this backfired, climaxing in the raid on the hijacked Landshut aeroplane in Mogadishu in October 1977, the Stammheim prisoners' play moved to its final act: they committed suicide, but staged it in such a way that it

looked like politically-motivated murders by the German authorities. With this final act of vengeance, they wrote their own ending to the state's judicial script and turned it upside down. As a consequence, in the eyes of a sizeable segment of the public, both at home and abroad, it was not the suicidal terrorists, but the West German authorities who stood accused in the court of public opinion. With the indispensable help of the mass media, the RAF was able to instrumentalise the Stammheim trial for its own ends and turn it into a veritable show—with far-reaching consequences.[42]

12.4.3. Third Type: The State is Running the Show

However, in many cases terrorism trials are a stage performance by the state, which leads us to the third type of terrorist show trial: a continuation of executive counterterrorism practice. Authorities bring terrorists to justice in order to show that there is a terrorist threat but while assuring the public that they can manage to contain and control it. Terrorism trials serve to show that the executive brings peace to society: the perpetrators are caught, law and order are in good hands but further vigilance is called for. Sometimes, substantive law and procedural rules are modified to suit the state's security needs. The executive selects a particular legal tool to ensure that the risk of acquittal is minimal. Hence, the authorities may resort to rewriting the script as well: they sometimes wait until the curtain falls on the criminal trial and then stage their final punishment beyond the eye of the public. The acquitted suspect is sometimes expelled from the country or made subject to permanent surveillance and control orders the moment he or she leaves the courthouse.[43] Some people argue that the Guantánamo tribunals represent a type of trial where the government one-sidedly runs and rules the show, without much media presence, totally restricting the defendant's communicative space.

A variation within this type of state-dominated performance is the terrorist trial organised as a site of 'actuarial justice'. Here the prosecution turns a terrorism trial into a quasi-virtual trial because more and more often such a trial takes place *before* an alleged terrorist attack has been carried out. The trial is a site where not crime, but risk is being sentenced.[44] Contrary to what Foucault stated, it is not the case that 'law recedes'.[45] In fact, as Louise Amoore stipulates, 'as risk advances [...] law itself authorizes a specific and particular mode of risk management' which entails that '[...] evidence, the judgment of the expert witness, and the legal subject as bearer of rights are all reoriented in a risk regime that acts pre-emptively and authorizes with indefinite and indeterminate limits'.[46] Competences, provisions and measures are

adapted to make sure the judges (are likely to) render a conviction; either by using criminal law, or via administrative or immigration law (control orders, administrative rule or alien's rights).

Those trials that involve suspects arrested based merely on preparatory actions, on allegations, suspicions or intentions can be termed *virtual* or 'what if' trials. An act is put under judicial scrutiny that may only exist in an imagined future—as (pre- or re-)constructed by the prosecuting authorities. Conspiracy trials, thought crimes, incitement to hatred: such crimes involve possible deeds in the future, based on vague plans and/or allegations only. Depending on the assessment of preparatory evidence, the moment of culpability and the moment of the actual deed are severed. The relationship between offence and punishment becomes much more indirect. Pre-emption and premediation replace retribution inquiries, thereby raising new human rights issues. Rather than assessing different versions of the 'truth' about an incident, judges have to deal with techniques of imagining possible future incidents. Premediation and security imagination replace responsibility for concrete actions. This type of terrorism trial serves to placate virtual threats; they have become instruments in risk management. The sword of justice has been 'securitised'. Deterrence, retribution for present dangers or restoration of social peace—the main functions of criminal law—give way to a secondary function: meting out sentences to pre-empt future risks. Under such circumstances, the trial becomes a theatre of imagined terrorist futures, where the defendants' communicative space is severely limited.[47]

12.4.4. Fourth Type: The Media are Running the Show

Terrorism trials may turn into show trials through media saturation coverage but also because the public considers some of these trials to be a spectacle in themselves. Not law, security or 'revolution', but the dramatic potential of the trial becomes the mode of communication and dominates the narrative. Going back to the pre-modern age, trials always were often also theatrical performances. The perpetrator was put on a scaffold and physically punished in full view of all the spectators. The aim of this performance was not just the carrying out of worldly justice, but demonstrating the fate of sinners. Public punishments and executions were a direct *memento mori*, demonstrating how the gates of hell would open for anyone who dared to violate divine and human laws. Such trials were often a theatre of horror. Since those days, most trials have lost such dramatic quality. At their best, they became a theatre of common sense and civility. Trials should ideally be theatres to stage examples of objectivity and prudence, based on well-established criteria and procedures. However, terrorism

and war crimes trials have the tendency to slip back into pre-modern theatres of terror. Hannah Arendt followed the trial of Eichmann in the 1960s and concluded that he was tried more for the suffering of the Jewish people than for his individual deeds.[48] In public opinion, as voiced by the media, terrorists should also be punished for the fear and shock they inflict upon society. In this way, adjudication based on concrete criminal acts, individually attributed, disappears behind the front of public indignation. Public opinion takes over the role of prosecutor, judge and jury alike. The trial becomes a show of public vengeance and outrage. In fact, those accused of terrorism are in many cases already sentenced by the media, leaving the judges often hardly any room for manoeuvre, let alone to issue less severe sentences or even acquittals. If they acted otherwise, they might even run the risk of being (virtually) lynched by an outraged public.[49]

A media show can also be created by sideshows, as staged by groups outside the courtroom. The audience—including the victims—has to make sense of the competing narratives as well. They sit and listen; or, like a Greek *chorus*, they comment. They sometimes have their own agendas. Sympathisers for the defendants may stage sideshows, organise picket lines outside the court building, submit petitions and protests in the media against the treatment of those in jail. On the other hand, victims may get together and protest against the court's perceived leniency. Prisoners may initiate hunger strikes and defendants may start an (international) lobby effort to win support for their cause, as the IRA did in the case of Bobby Sands. The defendants may inspire or even appeal to their comrades and followers outside the courtroom to act on their behalf and initiate new rounds of violence, the aim being to put extra pressure on the state, blackmailing the authorities to release the suspects or taking vengeance on the judges, as happened in Germany and Italy in the 1970s when second and third generation terrorists 'punished' judicial representatives for the verdicts being issued against their leaders.

12.4.5. The Fifth Type: A Persuasive Performance of Justice

The fifth type involves a show where equality of arms exist, where law and legal procedures offer all parties free communicative space. In these cases, the trial might come to reveal violations of justice, and the verdict might educate the public about the importance of upholding the rule of law in a democratic society. As in the Breivik trial, the verdict shapes a collective memory and sets standards for the future conduct of both government and society. This type of show is run by the judge or the jury, whose performative strategy is based on a (perceived) neutral application of the law, whereby

they refuse to bow to a partisan politicisation. Amongst the competing narratives of (in)justice, the *judges* have to try to reconstruct an accurate version of the facts of the case under consideration and interpret and apply the law to it. They have to probe deeply into opposing narratives, diverse testimonies and partisan accounts to discover the various motives and intentions behind the terrorist actions.

From this point of view, judges have first of all an obligation to establish a thorough, accurate and wide-ranging account of the facts pertaining to the incident before the court. Secondly, they have to reveal the underlying motives and strategies, and relate these to the context in which the incident occurred. In carrying out such a penetrating inquiry, they can make a valuable contribution to the general understanding of the facts and their background. They can more or less write history. They may hear the victims, speak on behalf of a terrorised population and thereby give them back their agency.

Of course, reconstructing the truth is an especially troublesome endeavour when it concerns a preventive arrest, based on preparatory actions only. Judges are not there to make up for the authorities' shortcoming or failures in gathering enough compelling evidence; they do not have to protect another branch of government. They have to settle the issue that falls under their jurisdiction, have to throw new light on the affair,[50] which is difficult when an offence exists only as a *possibility*. Carrying out justice in a situation of security risks, of allegations, presumptions and guilt-by-association runs the gauntlet of turning the trial into a virtual show. The judges may face severe criticism from an enraged public and security officials if they acquit the suspects. On the other hand, if they do not, they may face condemnation by the constituency of the terrorists.

In those cases when the judges manage to keep the balance, a fair trial can become a performative act in itself. The verdict will not only be perceived as legally justified, the narrative of guilt and injustice emerging from such a trial can make history, change existing norms and impact on the prevailing values in a given society. At the interface of terrorism, law enforcement and public opinion, terrorism trials can offer an ideal opportunity to showcase justice in progress and demonstrate how terrorist suspects can be dealt with by the laws of the land.

A convincing performance of justice can, moreover, restore the information asymmetry that allowed terrorists to win the (tacit) approval of radical constituencies and can also undermine the narrative utilised to attract support. Most importantly, terrorism trials are also platforms where victims may regain their voice and where their fate, as a consequence of the terrorist's offence, is put centre stage. According to Tom Parker, the former policy director for Terrorism, Counterterrorism and Human

Rights at Amnesty International USA, it is time to redress the balance and to use victim narratives to confront the violence of armed groups. Parker specifically refers to human rights defenders and NGOs, but the same contention can be made regarding terrorism trials: such trials offer a powerful platform for revealing and challenging the terrorists' narratives by confronting them with the messages of horror, pain and destruction they inflicted upon their victims.[51]

12.5. Terrorism Trials as Catharsis

We have extensively described *how* terrorism trials more often than not involve show elements. We would like to argue, however, that they *have* to be theatre as well—in the sense that they present a performance of justice. As noted earlier, 'What counts is not that a trial is labelled a "show trial", it is rather the end that the "show" serves.'[52] The trial is the nexus where countervailing narratives meet, where moral frameworks clash and where society addresses, confirms and possibly repairs a fundamental breach. A trial can demonstrate that trespassers will be convicted and that victims are heard. It may repair the information asymmetry caused by the terrorists' hold on their constituents. The trial and the verdict can undermine the terrorists' claim to justice and reveal the horror and destruction they inflicted upon their victims and upon society. In this sense, it is important that as many people as possible are able to watch the spectacle unfold.

The question thus becomes: what does it take for a terrorism trial to be considered a performance of justice in the eyes of the public? First of all, the authorities should stick to the script. In a structural sense, the script does of course depend on the nature of the criminal law system; whether it is an inquisitorial or an adversarial system, whether evidence should be presented in the courtroom at full length, or can be dealt with on paper before the trial starts. Nevertheless, in both systems—the civil law and the common law—performative strategies matter. Judges in particular have the responsibility to take care that a trial does not resemble a 'Pirandello play',[53] where each actor follows his own account of events, where the most powerful one decides what the truth has to be and where the spectator is left totally powerless when trying to judge what the underlying narrative is, let alone to assess the truth about the plot. To preserve the integrity of the judiciary, the executive should refrain completely from tampering with procedural rules during the trial; it should be extremely careful not to be perceived as trying to exert political control over the conduct and outcome of a trial.

Secondly, terrorism trials should not be based on premediation, virtualities, or seen as a tool of risk management. Magistrates and prosecutors have to make sure the trial does not develop into a demonstration of maximum security and all-encompassing risk management, as the trial at Stammheim did in part, or as the military tribunals in Guantánamo have done fully. The insatiable desire for security should not trump justice; underlying political conflicts cannot be solved through security measures alone. Judicial catharsis should not be sacrificed to secure risk management.

Thirdly, transparency matters. In the case of the Indonesian trial against Abu Bakar Ba'asyir, the court decided to relocate the hearings from the South Jakarta district court to the larger Agriculture Ministry's compound in Central Jakarta, so as to provide more space for the expected number of people. Against critics who feared that this decision would turn the trial into a media circus, the court contended that an open prosecution, visible to as many spectators as possible, demonstrated justice in progress, underscored confidence in the state's counter-terrorism efforts and showed how new laws were put in practice. Thus, the trial would support Indonesia's rule of law *vis-à-vis* extremist challenges.[54]

Fourthly, a trial should leave room for conflicting narratives of truth and injustice. Judges should make sure that the ongoing transformation of a political conflict into a legal dispute takes into account all the narratives. Amongst all these competing narratives of justice/injustice, the judges have to try to re-establish an accurate version of the facts and interpret and apply the appropriate law to them. They have to probe deeply into the differing narratives, evidence and accounts to discover the various motives and intentions behind acts of terrorism. From this performative point of view, judges have first of all an obligation to establish a thorough, accurate and comprehensive account of the facts pertaining to the incident before the court. Secondly, they have to reveal the underlying motives and strategies, and relate them to the context in which the incident happened. They may hear the victims, speak on behalf of the terrorised population and give them back their agency. Responding to all this with unemotional adjudication subsequently provides the best meta-narrative of social and legal resilience thinkable. In this sense, judges have to be aware of sideshows too, where sympathisers, victims, and other target audiences voice their version of justice.

The late Judge Cassese's reflections on the Achille Lauro Affair support this argument. In his seminal discussion of the lessons the international community of states could draw from this incident, Cassese pointed to the fact that there are long-term, mid-term and short-term policy objectives involved in dealing with terrorism. In the short run, governments may give preference to order and stability,

viewing terrorism essentially as an attack on the public order and choosing to deal with this attack with repressive military or intelligence instruments. However, he argued, terrorism may also reflect a 'desire for social change, innovation and the adaptation of international relations to changing needs, even when, alas, these are expressed in such perverted and destructive ways'.[55] In the mid- and long term, intransigence to or even denial of this political narrative may alienate the terrorists' broader constituencies from the political system they are operating in. This is not to say that the terrorists' narrative should be accepted or even agreed to, but it should be countered and responded to rather than silenced by repressive means only. Judges or juries can have a role in unveiling these minority narratives by paying attention to the deeper motives or social grievances (without needing to view these as legitimate or rightful 'root causes' for terrorism). Revealing such narratives of social change can do justice to the political conflict at hand. Denying or *only* criminalising these narratives and reducing the trial to a mere dichotomy of legal/illegal narrows reality and could in the end both backfire against the 'order and stability' paradigm of the executive and undermine criminal law's legitimacy in the eyes of aggrieved minorities.

When these four conditions are met, a trial will offer a platform on which narratives of injustice confront each other. A trial not only metes out justice to those suspected of acts of terrorism, but also assesses their intentions, their motives and their legitimations. It reveals the ideas terrorists have to offer on questions of rights and righteousness. If an attack has taken place, or if suspects are arrested in a context of heavy political conflicts, law cannot fix this situation of political division. But glossing over the competing narratives, storing them away in indefinite detention does not serve to solve these conflicts either. Not bringing terrorists to justice out of short term security considerations may in fact further deepen the political antagonisms. If the terrorists represent only a tiny faction within a social movement, or even if they represent hardly anyone at all, letting them tell their story in court may just expose this narrative as the hysterical, nihilistic or illegitimate argument it is.

After shocking incidents of terror and destruction, society needs to regain a greater degree of balance. Terrorism trials, well-prepared and properly conducted, can help to repair the damage by offering a secure, communicative space where clashing narratives of justice and injustice can be discussed and balanced, where facts and culpability can be assessed. Such trials can help to prevent a schism from opening up and to assist the immediate victims of terrorism attacks and society at large to come to terms with loss, grievances and grief. An open and transparent trial is crucial for re-establishing what happened and why, and will serve to institutionalise or mitigate the need for vengeance and retribution. Inevitably, terrorism trials are show trials,

staging a social drama, revealing narratives of injustice and grievances. They show how law and legal proceedings—although often lengthy and tiresome—can serve as mode of communicating and negotiating these narratives. Sometimes, at their best, they can even provide some kind of judicial catharsis for most, if not all, actors and audiences involved. Only then may the curtain fall.

Notes

1 Many thanks to Alex P. Schmid for his comments on this conclusion. An earlier, different but overlapping version of this concluding chapter was drafted as internet publication: Beatrice de Graaf, 'Terrorists on Trial: A Performative Perspective'. ICCT-Research Paper, 2011. http://www.icct.nl/download/file/ICCT-de-Graaf-EM-Paper-Terrorism-Trials-as-Theatre.pdf (accessed 25 February 2016).

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14 Ibid., p. 8.

15 Ibid., p. 10.

16 H. Bredemeier quoted in R. Cotterrell, *The Sociology of Law*, pp. 89–92.

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18 Van Hoecke, *Law as Communication*, p. 7.

19 Ibid.

20 See, for example, European Convention of Human Rights, Article 6. http://www.echr.coe.int/Documents/Convention_ENG.pdf.

21 OHCHR (Office of the High Commissioner for Human Rights), *Human Rights, Terrorism and Counter-Terrorism*. Factsheet No.32, GE.08–41872, (Geneva/New York: Office of the United Nations High Commissioner for Human Rights/ United Nations, 2008), pp. 28–29.

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23 Otto Kirchheimer, *Political Justice: The use of legal procedure for political ends* (Princeton: Princeton University Press, 1961).

24 Allo, 'The "Show" in the Show Trials', p. 72.

25 Alex P. Schmid and Janny de Graaf, *Violence as Communication: Insurgent terrorism and the Western news media* (London: SAGE, 1982), p. 175.

26 Brian M. Jenkins, 'International Terrorism: A new mode of conflict', in: David Carlton and Carlo Schaerf (eds), *International Terrorism and World Security* (London: Croom Helm, 1975), p. 16.

27 Cf. Peter Waldmann, *Terrorismus: Provokation der Macht* (Hamburg: Murmann Verlag, 2005); Louise Richardson, *What Terrorists Want. Understanding the Enemy, Containing the Threat* (New York: Random House, 2006).

28 Cf. Beatrice de Graaf, *Evaluating Counterterrorism Performance: A comparative study* (London/Routledge, 2011), pp. 8–10; Beatrice de Graaf, 'Terrorismus als performativer Akt. Die Bundesrepublik, Italien und die Niederlande im Vergleich', in: Johannes Hürter (ed.), *Terrorismusbekämpfung in Westeuropa—Demokratie und Sicherheit in den 1970er und 1980er Jahren* (Berlin/München/Boston: De Gruyter Oldenbourg, 2015), pp. 93–115.

29 Ibid., chapter 9, 'Terrorists on Trial: The courtroom as a stage'.

30 'By attacking the establishment and the security forces, the insurgents provoke the state into mass repression which alienates the general public, and increases support

for the rebels', as Hewitt defines it. Christopher Hewitt, *Consequences of Political Violence* (Aldershot et al.: Dartmouth, 1993), p. 61.

31 J.L. Austin, *How To Do Things with Words* (Cambridge, MA: Harvard UP, 1962); Malcolm Coulthard, *An Introduction to Discourse Analysis*. 2nd edition, (New York: Longman, 1985); Judith Butler, *Excitable Speech: A politics of the performative* (New York: Routledge, 1997). Cf. also De Graaf, *Evaluating Counterterrorism Performance*, pp. 11–13.

32 Historically, this definition should only be applied to the modern period of the late nineteenth century and onwards, when the modern state managed to claim for itself the monopoly of (legitimate use of) violence, when a criminal justice system based on a parliament-approved penal code came to maturity at the same time as modern mass media emerged.

33 Peter Bootsma, *De Molukse acties. Treinkapingen en gijzelingen 1970–1978* (Amsterdam: Boom, 2000).

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35 A.P. Schmid, J.F.A. de Graaf, F. Bovenkerk, L.M. Bovenkerk-Teerink, L. Brunt, *Zuidmoluks terrorisme, de media en de publieke opinie* (Amsterdam: Intermediair, 1982). See also Beatrice de Graaf and Froukje Demant, 'How to Counter Radical Narratives: Dutch deradicalization policy in the case of Moluccan and Islamic radicals', *Studies in Conflict & Terrorism*, 33:5 (2010), pp. 408–428.

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38 Court of Appeal in the Hague, verdict, 23 January 2008, LJN: BC2576, Gerechtshof 's-Gravenhage, 2200189706. http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BC2576&u_ljn=BC2576.

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40 Hoge Raad (High Council), 'Conclusie advocaat-generaal in terrorismezaken', The Hague (15 March 2011).

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42 Cf. Ulf G. Stuberger, *Die Tage von Stammheim. Als Augenzeuge beim RAF-Prozess* (München: F.A. Herbig Verlagsbuchhandlung, 2007); Christopher R. Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz. Anti-Terror-Gesetze und ihre Umsetzung am Beispiel des Stammheim-Prozesses* (Osnabrück: Julius Jonscher Verlag, 2009); Pieter H. Bakker Schut, *Stammheim. Der Prozeß gegen die Rote Armee Fraktion* (Kiel: Neuer Malik Verlag, 1986).

43 Cf. also Marieke De Goede, 'The Politics of Preemption and the War on Terror in Europe', *European Journal of International Relations*, 14:1 (2008), pp. 161–185.

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47 For an analysis of premediation as a new security technique see Marieke de Goede, 'Beyond Risk: Premediation and the post-9/11 security imagination', *Security Dialogue*, 39:2/3 (2008), pp. 155–176.

48 Hannah Arendt, *Eichmann in Jerusalem: A report on the banality of evil* (New York: Viking Press, 1963); see also Antoine Hol, 'The Theatre of Justice. On the Educational Meaning of Criminal Trials', in: Chrisje Brants, Antoine Hol and Dina Siegel (eds), *Transitional Justice. Images and Memories* (Ashgate: Farnham/Burlington, 2013), pp. 71–86.

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50 Cassese, *Terrorism*, p. 138.

51 Cf. Thomas Parker, 'Redressing the Balance: How human rights defenders can use victim narratives to confront the violence of armed groups', draft., 2011. Tom Parker was subsequently working for the CTITF of the United Nations in New York.

52 Allo, 'The "Show" in the Show Trials', p. 72.

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