Pre-empting Terrorism[*]

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i. Reconsidering Deterrence

An early version of this paper was presented at some conferences and published on the internet in March 2002. The opening paragraph read: 'Both the war model for confronting a transnational problem and the criminal justice model share a central commitment to the deterrence doctrine. At the time of writing, US deterrence doctrine with the war on terrorism seems to be based on the idea that it can readily do to other 'axis of evil' states what it has done to Afghanistan. Of course it can, but the issue is whether Iran, Iraq or North Korea really believe that the US is willing and politically able to take the military losses that would be needed to do an Afghanistan to them. At the time of writing, this belief seems plausible with Iraq; but if Iraq is a short war that acquires a very long and painful tail to keep control of Iraq's oilfields, then in the meantime, other axis of evil states are going to feel secure rather than deterred.'

Two things have changed since this was written. First, Iraq was invaded with lower US losses than had been expected by those of us who thought it was more likely than not that Iraq still had some chemical and biological weapons (and that if Saddam had kept them, he would use them). Second, since 2002 the US Administration has frequently argued that the war on terrorism is not about deterrence but about extermination of terrorists. Indeed, this section of the present paper has come under attack on some email lists from defenders of US pre-emption for misunderstanding US policy as a deterrence policy. In these email debates, it was said that the US Department of State's Ambassador at Large, Coordinator of Counter-Terrorism Activities had read the present paper and found it 'interesting' though wrongheaded on this deterrence issue. On the other hand David Frum and Richard Perle (2003:33) continued to advance deterrence as one of the rationales for toppling Saddam Hussein: 'We gave other potential enemies a vivid and compelling demonstration of America's ability to win swift and total victory over significant enemy forces with minimal US casualties.'

There is actually an important role for deterrence in confronting terrorism, especially if we deploy the more sophisticated models of deterrence of international relations (IR) theory, as opposed to those of criminology or law and economics. IR deterrence is more dynamic compared to the static models that dominate criminology. This is the legacy of criminology and the economics of law from Bentham: deterrence means statically projecting a probability x severity of punishment that makes compliance rational. Here a dynamic enforcement pyramid approach to deterrence is favoured that is more akin to IR thinking about deterrence and compellance.

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But first consider a psychological model of deterrence that is critical of both the criminal justice and IR models. This is Brehm and Brehm's (1981) theory of *Psychological Reactance*. It is a theory that is grounded empirically in a large number of psychological experiments. These show that when deterrent threats are escalated you get a deterrence curve with a positive slope as predicted by deterrence theory. But you also get a reactance or defiance curve with a negative slope. Escalating threat simultaneously delivers more deterrence and more defiance (on defiance theory, see Sherman 1993; on deterrence and defiance with terrorism, see Frey 2004a). Whether deterrence 'works' depends on the positive slope of the deterrence curve being steeper than the negative slope of the defiance curve. The net effect of escalating threat is formally the sum of these two curves.

What is especially interesting about the psychological reactance literature is that it also reveals some important insights about the conditions where the deterrence curve will be steeper than the defiance curve. The experimental research suggests that deterrence is stronger than defiance when the freedom we seek to regulate is not very important to the target of deterrence (Brehm & Brehm 1981; Braithwaite 2002:102–110). Hence if we think of a freedom that is not so critical to us, like the freedom to park our car wherever we like, defiance is minimal. We do not explode when we confront a sign that says 'No parking 9am to 5pm'. Because the defiance curve is minimal in slope here, deterrence of parking violations with fines works almost exactly as rational choice theory in economics predicts. If on the other hand, we are seeking to regulate a freedom as important to people as freedom of religion by throwing Christians to the lions, we may then find, as the Romans did, that because defiance is so great with such a freedom, Christianity actually grows as a result.

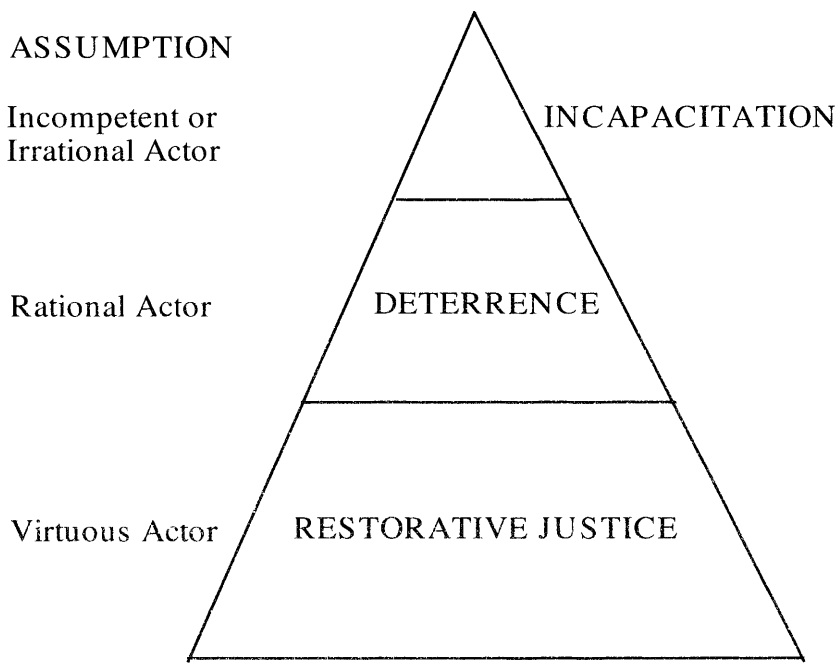
It seems possible that Osama bin Laden and Hamas have an intuitive understanding of this theory. Their game is perhaps not so different from that of martyrs like St Peter. It is to provoke deterrence that is engendered counterproductive by defiance. For bin Laden, it is to provoke a pan-Islamic, not just pan-Arab, consciousness of oppression of their freedom. It is to portray the war on terrorism as another Christian crusade. If the US no longer believes in deterring terrorism, clearly Israel does. In general, it does not assassinate Hamas leaders to prevent terrorism as soon as it acquires intelligence about them; instead it murders them, and whoever is with them, in the 24 hours after an act of Hamas terrorism occurs. There is a place for deterrence in a strategy to defeat terrorism. It is just that for Israel, and the Bush administration in supporting Israel, it is the wrong place. In their strategy, deterrence is positioned to engender defiance that continues cycles of tit-for-tat terror.

ii. Reconsidering Justice

A second important empirical result from the psychological literature comes from Tom Tyler's (1990) work. Tyler finds that criminal enforcement and other forms of social control work when they are administered in a way their targets perceive as procedurally fair. This research shows a surprising capacity of people to buckle under to social control that delivers bad outcomes to them so long as those outcomes are dispensed through processes they accept as fair. Marrying these results to defiance theory, we might say that deterrence effects will exceed defiance effects when sanctions are seen as an outcome of fair procedures, a critical part of which is genuinely listening to the point of view of the other. Needless to say, this implies listening rather than just blustering at the United Nations. And it might mean being unwilling to go to war without a UN resolution that specifically legitimates the war. I will come back to the importance of the procedural justice results with the war on terrorism.

The dynamic theory of social control illustrated here is justified in *Restorative Justice and Responsive Regulation* (Braithwaite 2002). Figure 1 represents a responsive regulatory pyramid. It means you have a presumption in favour of starting at the base of the pyramid by trying dialogue, reconciliation and creative problem solving (restorative justice) first. Then when that fails and fails again, you may be willing to escalate through a hierarchy of forms of deterrent justice. Then when deterrence fails you become willing to resort to incapacitative justice — incapacitating the terrorist by putting her in jail or killing her, for example. As you move up through escalated deterrence options to more incapacitative options, if a cooperative response is elicited you must de-escalate your response. Here the explanatory and normative content of responsive regulation has a lot in common with Graduated Reduction In Tension (GRIT) theory in International Relations

Figure 1: Toward an Integration of Restorative, Deterrent and Incapacitative Justice



The presumptions of responsive regulatory theory are precisely the opposite of those expounded by Newt Gingrich during his 2002 speaking tour in Australia to sell the war on terrorism. Mr Gingrich argued that the burden of proof is upon those who are against the war option for expanding the war on terrorism to new targets to come up with alternatives. Responsive regulatory theory imposes that burden on those who wish to escalate.

Following this line, my own view would not be to rule out the military option but to be more circumspect about it than the Bush Administration has been. So with the war on terrorism, when the Taliban announced that they were willing to negotiate with the US

about handing Osama bin Laden and his leadership over to a third nation to be tried in a court of law, the responsive regulatory presumption is that it is morally right to take up such an offer (see Pilger 2002:103–4). Even if one had the belief, as I did, that the offer was likely not sincere, one should still negotiate. The reason is that it is procedurally just to listen to the perspective of the other before escalating. Even when one feels ninety per cent certain that negotiations will fail, the arrogance of refusing to listen undermines the legitimacy of the war option and will make it harder to win the peace. Grounded in procedural justice theory, the hypothesis here is that the Muslim world would be less resentful and defiant today about the war on terror if the US had negotiated in good faith before bombing Afghanistan.

Responsive regulatory theory assumes that all individual and collective actors have socially responsible selves, rational selves and irrational or incompetent selves (Figure 1). Moreover, it assumes that sophisticated diplomacy can often persuade actors to put their best self forward. This is one of the reasons I will argue below that General George Marshall is a good candidate for the greatest American of the American century (Pogue 1966, 1973, 1987). He had the ability to persuade a socially irresponsible actor, such as Stalin, to put his socially responsible self forward, to be trustworthy with him; Stalin in turn said that Marshall was the one person in the West whom he did trust. Second, responsive regulatory theory assumes that when actors are being irrational or incompetent in their judgements it is possible for good diplomacy to persuade them to be susceptible to rational incentives like deterrent threats. The psychological evidence on the capacity of human beings to abandon one kind of self, in favour of another that seemed utterly entrenched, never ceases to amaze (Turner et al 1987).

iii. Regulating Those Who Harbour Terrorists

In the case of the Taliban, they were captured by bin Laden's ideology that just as God had helped the forces of Islam to defeat the Soviet Union, they would do so also against the even greater power of the United States. The negotiating challenge for the US would have been to persuade the Taliban leadership that this belief was irrational, that American resolve in the wake of September 11 was much greater than Soviet resolve had been, that US public opinion would make it good politics to push on no matter what the cost, that the warlord class in Afghanistan would not be united against the US in the way they were with the Soviet invasion, that the Soviets would not be supporting them against the US in the way the US, Pakistan, China, Egypt and Saudi Arabia supported them against the Soviets, and so on.

William Maley, Director of the Asia-Pacific College of Diplomacy and an Afghanistan specialist, made the interesting point when I gave the present paper to a meeting of the Australian Committee of the Council on Security Cooperation in Asia and the Pacific that this would not have worked because the Taliban's socially responsible selves as well as their incompetent and irrational selves required them to honour their hospitality to bin Laden, that this obligation was intrinsic to their identity. Perhaps so. On the other hand, many Taliban later showed a startling capacity to defect and betray when they ultimately did see death as the inevitable alternative. Moreover, Maley argued that delay during negotiations would have undermined the confidence and resolve of the Northern Alliance to work with the Americans. William Maley would know better than I if these empirical claims are correct. If they are, they are the kind of arguments that should be considered in reluctantly overcoming the presumption in favour of negotiating. But as Jacquard (2002: 53) argues, it is hard to be sure of what was driving the Taliban's protection of bin Laden:

> According to some, Osama bin Laden was in reality the true leader of the Taliban, and he had confirmed it by offering his daughter in marriage to Mullah Omar. According to others, he had simply paid a high price for his security and was financing the secret drug laboratories that had been set up in Afghanistan.

And in September 2002 we learned that Taliban Foreign Minister, Wakil Ahmed Muttawakil, touted at the time of his 'capture' as the most senior Taliban leader to be held in American custody, sent a senior aide on a mission to the US Ambassador in Pakistan in July 2001 with a warning that bin Laden was planning a 'huge attack' on targets inside America (Canberra Times 8 September 2002:16). The Taliban Foreign Minister was quoted as saying that extending hospitality to this man was going to result in destruction of the house offering the hospitality. Richard Clarke (2004:274) has now revealed that the belief of the Clinton State Department was that the Taliban and al Qaeda could be separated.

Perhaps sticking with the presumption favouring negotiation would have been wrong in the case of Afghanistan. Possibly half or even more of al Qaeda's operatives that existed in late 2001 have been killed or captured by a combination of the war and thousands of arrests around the globe, at least some of which must have something to do with al Qaeda. But it still seems at the time of writing that most of the leadership circle have not been captured or killed including the two top leaders. If one takes the wider group of the most important 180 al Qaeda members, the White House Press Secretary claimed in July 2003 that more than half had been put out of action (White House 2003). If incapacitation more than deterrence is the objective of the new Bush doctrine of pre-emption, then it is incapacitation of the leaders of the network rather than its fungible operatives that counts. Focusing on the proportion of known 2001 members who have been captured ignores 2002–5 recruits, and indeed the possibility that the war on terror has created 'new bin Ladens'. The International Institute of Strategic Studies (2003) estimated that al Qaeda in 2003 had 18,000 operatives in 90 countries compared to 2700 known or suspected members who had been arrested. By October 2003 even US Defence Secretary Rumsfeld was fretting in his infamous leaked memo that al Qaeda was winning recruits faster than the US could kill or capture them (Canberra Times 24 October 2003:14). Charges have been laid against only one person for involvement in planning September 11.

Perhaps even a very slim chance of arresting the leadership by Taliban betrayal without the suffering, political, economic and moral costs of war was worth the try. Perhaps the war would have gone almost as well with a two week delay and perhaps its fall-out in the Muslim world would not have been so bad in motivating new recruits to become terrorists. The wisdom of hindsight might have argued for more cautious escalation to war in Afghanistan, then when negotiated handover of the al Qaeda leadership failed, more aggressive escalation to US 'boots on the ground' rather than trusting the Northern Alliance to seal off the escape of al Qaeda (so US troops could be held back for the invasion of Iraq — see Clarke (2004)). After all, it was more than a month after the US opened its Afghanistan war that the Taliban leader, Mullah Omar, pulled back from Kabul to hide in the mountains with no Western troops giving chase (Clarke 2004:275).

While bin Laden did seem to have miscalculated on the capacity of the Taliban to hold off a US-supported Northern Alliance attack, he did not miscalculate on the longer term objective of increasing resistance in the Muslim world against the infidels. Sales of bin Laden's political and religious education tapes have skyrocketed in the Muslim world since September 11. Arguably it was raising consciousness of Muslim oppression by the West and their puppet regimes that was bin Laden's ultimate objective with the September 11 attacks and President Bush helped to achieve this objective with his arrogant speeches myopically oriented to domestic US consumption.

iv. Regulating Saddam Hussein

To clarify further how restorative and responsive regulatory theory would cause us to look at international relations in a different frame, consider the Gulf War. A widespread conservative analysis is that the failure of the Gulf War was one of failing to push on to Baghdad and capture Saddam Hussein.[2] Restorative and responsive regulatory theory sees its failures in a very different way. First, the most critical failure was that of the US Ambassador to Iraq failing to display a credible enforcement pyramid to Saddam Hussein *before* the invasion of Kuwait. Instead the Ambassador left the government of Iraq with reason to suspect that US and UN reaction to an invasion might be publicly censorious but militarily passive (rather as it had been with Indonesia's invasion of East Timor). The US failed to make crystal clear in advance what it was in fact willing to do and able to persuade the Security Council to authorise — escalate to whatever level of military force was necessary to reverse an invasion of Kuwait. It compensated for this failure with excessively precipitate escalation to a costly war. There was both insufficient inexorability and insufficient gradualism about US/UN projection of deterrence through escalation. Then after the war there was insufficient de-escalation. In the immediate aftermath of the war, Mamoun Fandy's (1999) empirical study of the ideologies of Saudi dissidents, including Osama bin Laden, Saudi Arabia and the Politics of Dissent, showed that a common line was that the US orchestrated the Gulf War to secure military bases in Saudi Arabia. Fandy shows that such a conspiracy theory was not taken seriously by ordinary Saudis in the early 1990s and the dissidents were politically marginal. However, ten years on with the US bases still hovering in the holy places, more and more Saudis came to see the radicals as right after all, indeed as prophetic. So one can reject the interpretation of US policy as a failure for not escalating to taking Baghdad. Instead, the failure can be seen as one of failing to de-escalate out of Saudi Arabia once the just objective of reversing the invasion had been achieved. So the restorative and responsive regulatory critique of the Gulf War is of:

1. Failure to project willingness to escalate to whatever level of force was necessary.
2. Excessively precipitate escalation.
3. Insufficient de-escalation.

Under-deterrence followed by over-deterrence followed by insufficient de-escalation of deterrence. Of course, we can all be wise in hindsight on what is under-, over-, and insufficiently de-escalated deterrence. Contextual wisdom during a crisis on the difference between appeasement and over-reaction can be difficult in advance of actually seeing how the deterrence (or its absence) is responded to. What was true of the Bush I administration with the Gulf War was also true of Bush II with the war on terrorism. Under-reaction, in the form of gross incompetence in putting the pieces of the intelligence picture together, followed by over-reaction, followed by a failure to demobilize from a virtual state of martial law to the restoration of normal democratic freedoms.

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2 It is forgotten that one reason Bush senior did not push on to capture Baghdad is that he had no UN backing for this and that Saddam may have been willing to deploy his chemical and biological weapons against invaders in a way he was not when he was fighting an enemy that had the backing of international law to reverse his illegal invasion of Kuwait. John Pilger (2002: 78–84) argues that Bush I wanted to stand back while another pro-Western iron-fisted junta took over from Saddam: he did not want to build a democracy that might see the Shi'a majority find common cause with Iran and an independent Kurdish democracy destabilize Turkey in the North.

v. Containment and Enlargement

Enough of negative cases according to the theory. Heroes of the twentieth century by the lights of restorative and responsive regulatory theory are Nelson Mandela and General George Marshall. Mandela overcame the peaceniks in the ANC to take them into an armed struggle against Apartheid that unfortunately was necessary. It included attacks on civilian targets such as the power grid, but he also counselled against attacks directed at killing civilians. His escalation was very gradual and oriented to bringing the hearts and minds of the rest of the world with his just cause. When he prevailed politically, he proffered restorative justice to his enemies through the Truth and Reconciliation Commission. His jailers sat beside him at his inauguration as President.

General George Marshall equally understood the need to overcome the resistance of US isolationists during the late 1930s to project deterrence to Hitler (Stoler 1989; Cray 1990). He led a reluctant US and his President to the view that it would have to build an army that could defeat Germany in a ground war in Northwestern Europe and project a capacity to do that — not just a capacity to defend itself through airpower (FDR's late 1930s vision). It was Marshall who resisted Churchill's 'closing the circle' policy of 1942 — a bombing war plus scattered ground engagements at the periphery of Europe. Marshall saw the need for more decisive escalation to take some pressure off the Red Army by thrusting at the heart of Europe. Then after the war it was Marshall as Secretary of State who persuaded a punitive American people to learn from the mistakes of Versailles and heal Europe through the Marshall Plan — the finest moment of the American century (Ferrell 1966; Pogue 1987). Marshall — always more decisive in his support for escalation when that was what was needed and always more dramatic in his de-escalation than those around him.

Through this theoretical lens we can see more clearly the virtues of the containment theory of the Truman doctrine that incubated during the decade or so when Marshall was the most dominant influence on US strategy,[3] and that was mostly sustained by all US Presidents until George W Bush. It meant refusing to bring on a full scale war with the Soviet Union or China, even when the US had nuclear weapons and the Communists did not, but containing them from occupying new territory such as South Korea or Taiwan. It meant containing the spread of nuclear weapons through the Nuclear Non-Proliferation regime initiated on Marshall's watch. In retrospect the accomplishments of nuclear non-proliferation are fairly remarkable, as were the accomplishments of deterring invasion of South Korea and Taiwan without a massive conflagration. Again it was Marshall as Defence Secretary during the Korean War who got the job of containment done, calming the megalomania of his commander, Douglas MacArthur, who would have brought on a war with the People's Republic of China which Marshall regarded as a Russian trap. It was this even more than his constructive relationship with Stalin that later caused Senator Joseph McCarthy to vilify Marshall. The Truman doctrine was premised on a prudent patience. Part of that prudence in Korea was institutionalising the principle of seeking the authority of the United Nations for military containment. Containment would at times take bold resolve to deter expansion. However, so long as totalitarianism was contained, in the long run it would prove to have more internal contradictions than liberal market democracies. In the long run contained totalitarianism is more likely to self-destruct than contained democracy.

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3 In the crafting of the Truman doctrine of containment one must give substantial intellectual credit to George Kennan (1947) who drafted the first version of it after Marshall appointed him head of a new Policy Planning Staff in the State Department.

The genius of Marshall was not only that he had a clear vision of the strategic role of deterrence in a policy of containment, but that he also had a vision of what the Clinton administration later came to describe as enlargement — enlargement of the space on the globe secured by democratic institutions. But Marshall persuaded a level of US generosity toward the former fascist states that Clinton never persuaded the US to extend to former Communist societies. Since Marshall, the US seems never to have got the balance so right between investment in containment and investment in enlargement. Dulles, Marshall's successor as US Secretary of State, embarked on many ill-conceived adventures in containment that in fact crushed the enlargement of democracy, especially in Latin America (for example the US-orchestrated Guatemalan coup of 1954). For all the foreign aid the West poured into the Middle East — most of it US weapons for Israel — Britain, France and the US failed massively to promote the enlargement of democracy in the Arab world and did much to bolster tyrannical puppets resented by the ordinary people of the region.

vi. The Torn Web of US Controls on Terrorism

This analysis of containment and enlargement failure is also true of the US strategic response to the war on terrorism. The containment failures included US opposition to an anti-terrorism treaty during the 1990s that might have criminalised the funding of terrorist organisations (see also Clarke (2004:98) on domestic sensitivity to upsetting Arab investors in the US), among a suite of useful containment measures, the abysmal intelligence failures and failures of target hardening against hijacking that allowed the September 11 attacks to succeed. Front-line managers of airline security — flight captains — were not even put on alert after intelligence of planned hijacks associated with al Qaeda were deemed serious enough to warrant distracting the President from his long summer holiday with a briefing. It was known that unlike the US security establishment from the time of Dulles and CIA Director Bush I, al Qaeda was palpably a learning organisation, one that learned from its mistakes. The fact that it had failed to topple the World Trade Centre once, that a previous attempt by Islamists to topple the Eiffel Tower with a hijacked aircraft had failed, were no warrant for assuming it would continue to fail at such known objectives. When various elements of the intelligence establishment were reporting deep suspicions over the flight training of certain characters who were actually known by other elements of US intelligence to be associated with al Qaeda, there was reason to believe that al Qaeda had not given up on its ambition of crashing aircraft into major public buildings in the US (see US Congress, 2004:xi, xiii, 85). Then there was the explicit warning from the Taliban Foreign minister two months before September 11. George W Bush was presented as a consummate delegator to a world amazed at the thought of the new CEO of any major organisation taking a full month's holiday six months into starting the job. While he was at the ranch something went wrong with this great system of delegation that future public enquiry will hopefully fully lay bare. If he was too busy to be talking to the Foreign Minister of the country that was the greatest threat to his nation's security, then why was not someone reporting to him who was in this conversation? Richard Clarke's (2004) White House insider account now makes it clear that while Clinton had been 'hands on' with al Qaeda and with plans to assassinate or 'snatch' bin Laden, Bush paid limited attention to the terrifying briefings he was sent on imminent plans for al Qaeda to attack America.

The enlargement failures related to the timidity in pushing for the enlargement of democratic sovereignty for the Palestinians, for enlarging opportunities for the bereft Muslims of the refugee camps of Pakistan and many other places that became breeding grounds for al Qaeda recruitment, for enlarging democracy in former Arab ally states like Iran under the Shah, Iraq before 1990, Afghanistan after the Soviet withdrawal and Saudi

Arabia today. Bin Laden understood that in a world where the majority of refugees in the 21st century had become Muslims, providing practical support for a more just future for them, such as the schools he supported in Pakistan, the orphanages he funded for Muslim victims of the Bosnian war (Jacquard 2002:70) were a good investment. In Urdu Taliban means band of scholars, a reference to the way they were recruited — as poor children for whom Islamist madrassas were the only way they could afford an education. Saudi democracy might have integrated into its power structure many of the idealistic young Muslim men returning from victory against the Soviet Union in the Afghanistan war. Instead it treated them as dangerous elements, a threat to the total control of the Royal Family. Saudi institutions gave them no legitimate path to political voice, only the path of Islamist terrorism. Most bouts of terrorism in the twentieth century, after all, had ended with the integration of some terrorist leaders into democratic power structures — whether it was Northern Ireland terrorism, Israeli terrorism, South African terrorism, East Timorese terrorism, the terrorism of the Italian Red Brigades or of the Bader-Meinhof gang in Germany (see Frey 2004a). Mustapha Kamel Al-Sayyid (2003) has attempted to show that the evidence is that Islamist organisations are more successful when they reject violence in favour of electoral politics. Al Qaeda's appeal will collapse only when Muslims who believe in the ideal of an Islamic state turn on al Qaeda for using un-Islamic means for achieving the end they share (see Gunaratna 2002:239). Of course the more injustice and humiliation the West hurls at Islamists, the less likely such a marginalisation of al Qaeda will become. British Prime Minister Blair showed the wisdom of the democratic integration option when he released IRA terrorists from prison in 1998 so they could speak and vote when their political party decided whether to end armed struggle and support power sharing in Northern Ireland.

Partly the returning veterans from Afghanistan were treated as dangerous in Saudi Arabia because they had already been created as dangerous elements thanks to the cynical way the US, France, Egypt, Pakistan and others fostered Islamic extremism as a threat to the pre-1989 Soviet Union. John Cooley's (2000) detailed account in *Unholy Wars* of the relationship between the US intelligence establishment and Islamists as 'a strange love affair that went disastrously wrong' is compelling on this. An example was the fact that several of the 1993 World Trade Centre bombers had received CIA training, used a chemical formula for the huge bomb taught in CIA manuals, versions of which were found in the possession of some of the conspirators (Cooley 2000:223, 243). During the Afghan war against the Soviets between 1979 and 1989, the CIA and the Pakistani military institutionalised training in terrorism and financed the propaganda of Islamic proponents of suicidal martyrdom. After the Soviets were defeated, these CIA-trained Islamists fanned out to create homicidal havoc in a dozen Muslim nations from the Sudan to Indonesia, in the Philippines, France, the United States, Chechnya, Bosnia, Kosovo, Kashmir, across Africa and Central Asia, and more (Cooley 2000; Jacquard 2002). US encouragement of terrorism in one era that comes back to bite the United States in another is not a new phenomenon. The Nixon administration's CIA urged its Australian counterpart to refuse to hand over to the Attorney General Lionel Murphy its files on the encouragement of Australian terrorist training camps of the fascist Ustacia for Croatians wishing to destablilize the Communist yet tolerantly multicultural Yugoslavian regime of Tito. The stand-off was resolved in a famous incident in 1973 when Murphy was forced to institute a raid on his own security organisation to seize the files. The US has also allowed terrorist training camps to flourish on its territory. The CIA organised a 1985 terrorist bombing in Beirut that was rather like the Oklahoma City bombing, though not as widely reported. CIA involvement was revealed years later by the same team at the *Washington Post* that broke Watergate. It was a truck bomb outside a mosque designed to murder the maximum number

of people as they left: eighty were killed, two hundred and fifty were wounded, mostly women and children. A Muslim cleric believed by the CIA to be a dangerous character was the main target, but he was untouched (Chomsky 2001:44). From the time of the Dulles brothers, a large number of terrorist incidents were sponsored by the CIA in Latin America. White House staffer, Colonel Oliver North, organised funding for the Nicaraguan terrorist group, the Contras, by selling arms to elements of the 'Axis of Evil' in Iran. Swapping aid to the Contras for arms to Iran was laundered by the CIA through the Arab bank widely used to fund terrorist organisations, the Bank of Credit and Commerce International (BCCI). This same bank was used to launder money by other sometime US allies of the 1980s, Saddam Hussein and Manuel Noriega, by drug lords laundering money from illegal arms trading and for covert nuclear programs.

The US has not only protected but also funded terrorists who have sought to bomb and assassinate the political leaders of other nations, such as Fidel Castro. Indeed, the Reagan administration set a new benchmark by directly bombing the home of Libyan leader Ghadaffi two decades ago, though it only succeeded in murdering his baby. Political assassination has been repeatedly proven to be a threat to peace in the modern world.[4] There would likely be peace in Palestine today if after the assassination of Prime Minister Rabin, the new Israeli Prime Minister Peres had not ordered the assassination of Yahya Ayyash, known as 'the bombmaker'. His assassination was reciprocated with a devastating round of Hamas suicide bombings in February-March 1996 that killed more than 50 Israelis (Quandt 2001). This allowed Benjamin Netanyahu to present himself as Mr Security and defeat Peres, who had until his ill-conceived assassination been way ahead in the polls. It was Netanyahu's provocations that then unravelled the peace process. The biggest tear in the US web of controls against terrorism was therefore more than its undermining of the efforts of other states in the late twentieth century to negotiate an anti-terrorism treaty, it was that it actively promoted terrorism in this era, it actively used the same banks that should have been targeted by international cooperation to attack the financing of terrorism, it actively undermined the rule of international law through foreign political assassinations.

At the same time as the US state undermined the fundamentals of global containment of terrorism, it neglected enlargement, becoming in the late twentieth century the wealthy nation that devoted the smallest proportion of its GDP to foreign aid. The nation that in Marshall's era had wooed the UN to New York could no longer afford its membership dues. A Marshall plan for Afghanistan a decade ago may have helped preserve their long-suffering people from totalitarianism. Talibanism, tribal warlordism, terrorism, targeting by American bombs and the aftermath of resurgent drug running and ungovernability that is their contemporary plight. But America had changed: George W Bush was elected on a platform of opposition to the kind of nation building in the world's Afghanistans that won George Marshall his Nobel Peace Prize.

When security is threatened it is natural to prioritize containment over enlargement. But this is a mistake because enlargement makes containment easier. Fortunately, the US has not privileged containment over enlargement in all aspects of the war on terrorism. A nice case in point is the work of the Financial Action Task Force (FATF), which promulgates national policies to combat the money laundering that is the lifeblood of terrorist organisations. In its early years the FATF gradually expanded a so-called 'white list' of

4 Michael Ignatieff (2004:21) argues for the balancing perspective that 'The fact that liberal democratic leaders may order the surreptitious killing of terrorists... need not mean that "anything goes"'. His view that the effects can be limited by allowing such measures only in temporary emergencies is hardly persuasive with assassination.

states coming into compliance with its anti-money-laundering policies. The shift to sanctioning an unfortunately labelled 'black list' of non-complying states was accelerated by September 11. But this 'black listing' could be more effective because it built on the foundations of years of expanding 'white listing'. Enlargement of the regime was a platform for the containment of money laundering in rogue states.

Some lawyers and criminologists are inclined to think that the criminal justice model is superior for combating terrorism to the war model. There is something in this. Criminologists believe it is better to nab organisational criminals alive rather than dead. Then when we arrest them we let them know that the system will go easier on them, perhaps keep them out of jail altogether, if they provide evidence useful for catching bigger fish in the organisation than themselves (Wilkinson (2000:98) argues this worked particularly well with the Red Brigades in Italy). With Islamist terrorist organisations the more important evidence about bigger fish might relate to financiers of the networks. Al Qaeda cell leaders or the people they answer to may be fungible operatives who are as undeterrable as bin Laden himself in their willingness to die for their cause. It is likely, however, that many of the wealthy Saudi businessmen who seem to be among the funders of al Qaeda would be exquisitely susceptible to deterrence even if only by naming and shaming them, because of their dependence on trading with the West for their wealth. With warlordism more generally in the contemporary world, World Bank regression analyses suggest that the existence of diasporas of wealthy funders in the West explains why war persists in some parts of the world more than others (Collier 2000). So wealthy US funders of the IRA and the protestant para-military organisations were one reason for the persistence of terrorism in Northern Ireland. Suicide bombers are often not only motivated by the embrace of their God in death as martyrs, but also by generous payments to the struggling families they leave behind. Herein lies further appeal of a criminal justice model that moves up organisations to deter financing of terrorism. This is a less clumsy model of pre-emption than the war model. Little to date has been achieved in using immunities to persuade smaller fish to give up bigger fish. Little wonder when even a Taliban Foreign Minister who sought to give up Bin Laden before September 11 is rewarded by being touted as the most senior person they have 'captured' and still held in US custody at the time of writing. The Bush doctrine is clumsy military pre-emption; more subtle models of pre-emption informed by corporate crime enforcement have been quite beyond the Bush administration, which is why charges have not been laid against any of the major funders of al Qaeda.

vii. The Public Health Model

That said, one would not want to push hard for the superiority of a criminal justice model over a war model. One of the failings of the FBI before September 11, 2001 was that they had limited interest in intelligence that would not help secure prosecutions — their regulatory strategy with terrorism was far too preoccupied with one, preferred tool — prosecution (see US Congress 2004:37, 122). Instead of the nature of the problem driving choice of tools; the tool of choice determined which problems and targets would be a priority (Sparrow 2000). It may be that there is more appeal in the ideal of the public health model of integrating primary prevention (eg. clean water for all), secondary prevention (vaccinating targeted at-risk groups) and tertiary prevention (treatment of those already ill) This approach to problems of violence has been developed by James Gilligan (2001:14–17). Then it might be attractive to overlay the US strategic ideals of containment and enlargement that I have found manifest in the diplomacy of George Marshall. An attraction of this overlay is that it helps us look more broadly than just at how we respond to terrorists once they have become terrorists (tertiary containment). Containment is bound to have

more attraction than enlargement if we only consider how to respond to existing terrorists. This will cause us to over-invest in containment and under-invest in enlargement. As we have seen, enlargement of democracy, of the sphere of social justice, or freedom from poverty, liberation from the refugee camps, may be the most important forms of primary prevention of terrorism. A positive example of post-September 11 primary prevention by enlargement is the funding the World Bank is providing to madrassas in Pakistan's North West Frontier Province on condition that they provide a quality educational curriculum to refugees and other poor children, as opposed to the doctrinaire education that fuelled al Qaeda recruitment from the madrassas. Poor schools that receive funding by people of another religion are more likely to teach children religious tolerance.

The imbalance between investment in primary prevention and tertiary prevention by containment was well illustrated by the Bush administration increases in the defence budget to fight the war on terrorism which gave the US defence spending roughly equivalent to the rest of the world's nations combined; the 2002 *increase* alone was greater than the *total* expenditure of all the world's nations on foreign aid. Enlargement (democratic 'nation building') only seems expensive when we forget the comparison of the costs of foreign aid to build democracies to the costs of over-investment in coercive control. Enlargement seems expensive when we forget how the Marshall Plan was a sound long-term investment for the US economy because it fuelled a long boom of US exports to Europe and Japan.

Secondary prevention suffers under-investment as well under the war model — for example there is under-investment in preventive diplomacy and enhancing capability for other forms of secondary prevention such as R & D on target hardening on preventable problems like aircraft hijacking, cyberterrorism or foot and mouth attacks on the livelihoods of a nation's farmers. Preventive diplomacy was also needed in the 1940s when Stalin cynically exploited US sensitivities on the Jewish question by supporting the creation of a Jewish state in a way that forcibly uprooted huge numbers of Palestinians, a way designed to destabilise Western influence in the Arab world. Any one of a number of such forms of secondary prevention might have prevented September 11. This is the theme of redundant or over-determined controls to which we will return in the concluding pages of this essay.

As we move from tertiary to secondary to primary prevention we move in a direction that makes enlargement more important in the balance between enlargement and containment. But even with tertiary prevention, enlargement can be more important than containment. Most Americans believe that the bombing of Serbia was responsible for the fall of Mr Milosevic. Most Serbian opponents of Milosevic believe the bombing made their job harder. Milosevic was not overthrown during or after the bombing, but later by the progressive enlargement of a Yugoslavian democracy movement led by NGOs, students and other young people from below who became more and more fearless in their campaigning in universities, schools, workplaces and ultimately on the streets to win the hearts and minds of surging masses of Serbs. The triumph was not of NATO bombs but was akin to the triumph of people power in the Philippines against Marcos in the 1980s and of the people of Eastern and Central Europe against communist states in 1989. International NGOs played useful roles in supporting the Serbian NGOs; dollars from the West (particularly from George Soros) flowing to those NGOs were also important. But it was indigenous Serbian politics that ultimately prised open the contradictions of Milosevic's totalitarianism, causing the military to switch allegiance from the tyrant to the people, as containment theory predicts democratic patience will one day bring.

Western governments have supported warlords when they fought the enemies of the West even when those warlords crushed indigenous democracy movements and even when they supported themselves by trafficking drugs into the West. In the case of Saddam

Hussein, we supported him militarily even when he used weapons of mass destruction against democracy movements. In *New and Old Wars*, Mary Kaldor (1999) suggests that in late modern conditions the path to democratic transition for war-torn states is to identify 'islands of civility' that always exist in such states and build out from them. Let us hope that is what the US and UN does in Afghanistan rather that assisting a new set of warlords to expand their sway and re-establish wider drug empires. In Israel, the short-term hope of peace from Sharon or Arafat has been feeble until 2005; the long-term prospects of building peace and democracy in Palestine from the peace movements on both sides joining hands are profound. The sad fact of the history of Palestine is that whenever there has been that bottom-up momentum for peace, top-down leadership has been missing; whenever there has been top-down leadership (perhaps as with President Bush's 'roadmap'), bottom-up commitment to peace has been missing. At times when both seemed to be coming together, events like the assassination of Prime Minister Rabin have derailed either the top-down or the bottom-up leadership for peace.

Figure 2: Tying Together the Strands of a Web of Controls to Prevent Terrorism

	Enlargement	**Containment**
Primary Prevention	**Marshall Plan, global democratic institution building, reform of the IMF/development banks, a West committed to social justice and dignity for the Muslim world.**	**A global peace movement that builds the consciences of citizens who reject violence. Reject bellicose strategies like assassination that engender defiance and assist terrorist recruitment.**
Secondary Prevention	**Preventive diplomacy. Preventing the living of lives in refugee camps. Access to education for all children in Pakistan that teaches religious tolerance.**	**Financial Action Task Force Nuclear Non-Proliferation Biological Weapons treaties Target hardening (eg airlines, anthrax vaccines).**
Tertiary Prevention	**UK releases IRA terrorists from prison to vote on power sharing in N. Ireland. Mujahedeen returning from fighting Soviets (eg. bin Laden) given a seat at the table of a Saudi democracy.**	**Intelligence cooperation on terrorism that leads to arrests. International Criminal Court.**

So the prescription of this essay is to be reluctant to embrace wars on terrorism, but diligent at weaving a web of controls against terrorism and firm in our resolve to escalate up an enforcement pyramid until terrorism stops once it has broken out. This means tertiary containment delivering a ceasefire that is just a platform for the other forms of containment and enlargement in the other five boxes in Figure 2. Instead of pre-emptive wars on terrorism, the prescription is for war as a last resort and a balance of primary, secondary and tertiary prevention of terrorism with each of these levels encompassing a balance of

containment of violence and enlargement of democratic institutions of non-violence. With an effective web of controls against terrorism, each strand in the web might be easily broken, but when the strands of the web are tied together to produce an effective and mutually reinforcing redundancy of control, the risks to our persons from terrorism can continue to be kept way below the risks of common crime[5] and a long way below those of corporate crime. Even with all the progress that has been made with nuclear safety regulation, a bigger Chernobyl remains a greater practical risk to the world than nuclear terrorism. With a tightly woven web of controls against terrorism, it can become a very much lower risk. With international security threats of all kinds, if a nation like the US makes the six-fold investment in an appropriate web of controls, it might find that halving its military spending would be responsible.

viii. Being Evidence-Based on Big and Small Problems

As this essay was nearing completion, I enjoyed an interesting presentation from Peter Wilkinson of the British Health and Safety Executive on the Safety Case approach to offshore oilrig safety. The safety case idea is that instead of command and control inspection of oilrigs for compliance with rules, the company is asked to prepare a safety case on how it will manage the specific set of safety risks that confront a single rig — given the particular oceanographic and oil/gas production contingencies it confronts. Once approved by the state regulator it is an offence for the company not to comply with the requirements of its own safety case. My question was: with occupational health and safety we have evidence that command and control inspections of factories and mines to secure compliance with rules does improve safety, so is it responsible to abandon this in favour of a safety case regime in the absence of evidence that it will work better? Wilkinson pointed out that the disasters we try to prevent on offshore oil rigs are rare events such as surviving a 'hundred year wave.' It follows that we can never have a credible evidence base for making such a policy shift. But in a world where some airlines, some rail operators, some coal mines and some nuclear power plants around the world adopt a safety case approach and others do not, it is possible to do systematic empirical research on the efficacy of the innovation with matched controls where the outcomes are not major disasters but smaller events that are known to be elements of disasters – like separation failures with aircraft, derailments, coal mine roof fall injuries, SCRAMS (automated shut-downs of nuclear power plants).[6] In other words, part of what regulatory research is about is assessing whether policies will work with big problems by being systematically evidence-based about how effective the policies are with smaller problems that are elements of the bigger problems.

The most dangerous characters in the world are those who respond to the 'what works' conundrum with big problems by substituting an ideological commitment to a totalising theory like rational choice as a guide to what to do. Of course, most practitioners of international relations are not theoretically myopic in this way. They are students of history who analyse what has happened in the past in crises with some features in common with the

5 While Dershowitz (2002:2) believes religiously inspired international terrorism is the 'greatest danger facing the world today' many times more people are murdered every year in the US than have been killed in international terrorist incidents throughout the globe in the last 40 years (most of whom are of course not Americans) (Frey (2004b:5); showing deaths from international terrorism ranging between a peak of 3250 in 2001 and 34 in 1968; in most of these years more than 20,000 people were murdered in the US; Hoffman (2002:7) points out fewer than 1000 Americans were killed by terrorists either in the US or overseas in the 33 years prior to 9/11).

6 I am indebted to Andrew Hopkins who made this point in the workshop.

unique crisis that today confronts us. Then they 'think in time' about how circumstances are different today than they were then, about how features of the current crisis might cause quite a different outcome than occurred with the like crisis from the past (Neustadt & May 1986). Understanding the ebb and flow of history helps us to be wise; it does not enable us to be rigorous scientists of international relations.

In medicine we would rather go to a doctor with the skills of a good clinician, who can pull apart what is different about our set of symptoms from the classic set in the textbook, than go to a good medical researcher. At the same time, we might not want the textbook to be written by doctors who spend all their time seeing patients. For this task we want experts who immerse themselves in the mountains of literature on the theory of disease and evidence on how to control it. We want the textbook to be evidence-based, while we want our doctor to be diagnostically detective-like in the skills she deploys to come up with a treatment for our particularistic symptoms and medical history. Like oilrigs that blow up, we only die once. But the difference is that there are millions of deaths each year for evidence-based medicine to study scientifically. Even so, we can have the benefits of a dual track diagnostic and evidence-based regulatory policy by building our evidence base on more micro incidents that are credibly constitutive of macro disasters. While we need the detective work of the intelligence community to diagnose specific threats of nuclear terrorism, we can also study systematically whether nuclear plants with safety case regimes have lower incidence of unaccounted loss of nuclear materials than command and control regimes. Figure 2 finds an important place for both in a prudent web of regulatory controls. The art of intelligence itself should be guided by an evidence-base on what kind of micro intelligence analytics are more likely to connect the diagnostic dots and which kinds recurrently fail to illuminate the bigger picture. We want creative intelligence analysts who look at the same phenomenon through many different analytic lenses, who can see it as many different things at once. But we also want analysts who know from the literature on evidence-based intelligence that certain analytic lenses promoted by intelligence charlatans recurrently distort the truth in knowable ways. Or as French President Chirac put it, explaining his disbelief in 2002–3 that Iraq had weapons of mass destruction, we need empirically educated political leaders who are wary of the history of how intelligence services 'intoxicate each other' (Blix 2004:128, 263).

A difficulty with this approach is in establishing which ingredients are best targeted for small-scale work. Root cause analysis of terrorism does not have the scientific respectability and ideological neutrality that it does in health and safety (New South Wales Department of Health 2004). Conservatives like to argue that poverty is not a root cause of terrorism because most poor people do not become terrorists (Dershowitz 2002: Chapter 1), while safety scientists are not prone to reject water as a cause of death by drowning because most people who are immersed in water do not drown. In a more fundamental challenge, Dershowitz (2002:28) contends that 'to understand and eliminate the root causes of terrorism ... is exactly the wrong approach':

> The reason terrorism works — and will persist unless there are significant changes in the responses to it — is precisely because its perpetrators believe that by murdering innocent civilians they will succeed in attracting the attention of the world to their perceived grievances and demand that the world 'understand them' and 'eliminate their root causes.' (Dershowitz 2002:28).

This might make sense if what we were considering as root causes to be eliminated equated to demands to release political prisoners. But a World Bank initiative to reduce poverty that is motivated by a number of factors including a desire to reduce terrorism hardly seems to imply the Dershowitz moral hazard.

The web of controls idea is that we make up for the inferiority of a micro evidence-base for macro problems by greater redundancy in the web of controls. Let me summarise the set of empirical claims about the conditions for micro regulatory success that we might seek to deploy for the problem of global terrorism (citing the micro regulatory research where a more detailed case is made for each claim).

1. Success in reducing risk is more likely from an integrated web of regulatory controls that is redundantly responsive to the multiple explanatory theories grasped as relevant to the control problem. It is less likely with a singular control strategy based on a single theory (Braithwaite 1993; Braithwaite & Drahos 2000: especially chapter 23).

2. Intelligence experts tend to 'intoxicate each other', undisciplined by evidence sufficiently decisive to refute their most erroneous analyses. Just as we need doctors who do contextually wise detective work grounded in a reading of texts written by scholars with the best grasp of the theory and systematic evidence to test it, so we need terrorism intelligence that is literate in its responsiveness to regulatory theory/evidence at the same time as it is artful in its detective work (Braithwaite 1993).

3. Responsive regulation that is dynamic tends to control risks more effectively than static command and control regulation (such as the Benthamite deterrence of setting static expected punishments that exceed average expected benefits) (Ayres & Braithwaite 1992; Braithwaite 2002: especially chapters 1, 2 and 4; Braithwaite 2003).

4. In international affairs, top-down preventive diplomacy works in limited but important ways in forestalling armed conflict (Touval & Zartman 1985, 1989). In resolution of more micro forms of violence (eg school and workplace bullying/sexual harassment), top-down preventive diplomacy works much better when it is complemented by bottom-up restorative justice (Braithwaite 2002:chapter 3). Therefore, we might improve our effectiveness in responding to global terrorism by complementing Camp-David-style elite preventive diplomacy over Palestine with bottom-up restorative justice in refugee camps that links ever-widening islands of civility there to ever-widening islands of civility in Israel (Kaldor 1999; Braithwaite 2002:chapter 6).

5. In addition to the embrace of diplomacy that prevents armed conflict, states of course should eschew diplomacy that provokes it -- as I have alleged the US and the Soviet Union each did in the Middle East and Afghanistan in an attempt to embroil the other in armed conflict with third parties including terrorists. These terrorists then came back to bite the shortsighted states that enabled their original terrorist provocations -- bin Laden being an example. This means turning away from the politics of the Muslim world being recurrently humiliated as playthings of major powers, a politics of dignity and respect for the social justice claims of the Muslim world.

6. Webs of controls are best when they conceive justice as holistic (Braithwaite 2002:150–158). Social justice for blacks in South Africa creates the conditions for the restorative justice of the Truth and Reconciliation Commission (Tutu 1999). Procedural justice prevents violence (Tyler 1990; Braithwaite 2002); restorative justice creates superior conditions of procedural justice (Barnes 1999). This means theorising enlargement of democracy as enlargement of justice as non-domination (Pettit 1997). This normative theory can be refined by iterative adjustment to the explanatory theory that domination induces defiance (often accompanied by violence) (Braithwaite & Parker 1999; Braithwaite & Pettit 2000).

ix. Conclusion

In the end, though, the theory of how to design webs of regulatory containment and enlargement in previous research with various colleagues is less persuasive than reflecting upon the failures of Bush I in the Gulf War and Bush II in the War on Terrorism as failures of under-reaction, followed by coercive over-reaction, followed by a failure to de-escalate by decisively substituting investment in enlargement for investment in containment. And reflecting on the contrast of the American regulatory praxis of George Marshall: contestation of under-reaction to Hitler before World War II, prudent advocacy of escalated containment that prevented successful invasions of South Korea and Taiwan a decade later, and the visionary de-escalation of a Marshall Plan that enlarged democracy and justice as a response to the injustice of fascism. Marshall was not without flaws, such as his complicity in following the Nazis into the bombing of civilian populations on a shocking scale, even if less shocking than under Churchill's preferences. He suffered some large diplomatic failures, such as failing to broker a peace between Mao Zedong and Chiang Kai-shek, failing to dissuade Truman against establishing a state of Israel in a way that would suit Stalin through destabilizing Western influence in the Arab world. And it is impossible to love the introspective general as much as Mandela's more contagious compassion. Yet humanity owes Marshall no less homage. That homage is due because of his grasp of enlargement as well as containment, of the detailed networking of primary, secondary and tertiary prevention that is the stuff of global security.

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