

TERRORISM, HUMAN RIGHTS, SOCIAL JUSTICE, FREEDOM AND DEMOCRACY: SOME CONSIDERATIONS FOR THE LEGAL AND JUSTICE PROFESSIONALS OF THE 'COALITION OF THE WILLING'

MATTHEW BALL*

I INTRODUCTION

Not surprisingly, the terrorist incident¹ of September 11 2001, left the US ('US') asking 'why us...why do they hate us?'² President George W Bush asked why there is such 'vitriolic hatred for America in some Islamic countries', adding that 'like most Americans, I just cannot believe it because I know how good we are'.³ Many believed that the American commitment to free speech, religious liberty, and gender, racial, and ethnic diversity were the reasons for the incident, in conflict with the ideals of theocrats in the Middle East supporting a singular religious truth.⁴ Certainly the

* B Justice (Dist) (QUT), currently undertaking B Justice (Hons).

¹ In order to make this discussion a little more neutral, the word 'incident' has been used instead of 'attack'. Furthermore, the term 'war on terror' has been used in quotation marks. This is because the 'war on terror' (as explored throughout this discussion) is itself a form of terrorism, being conducted by a leading terrorist nation, in order to prevent the very activity it condemns. For the term 'war on terror' to mean anything, this war must fight all forms of terror. As this would involve the United States ('US') being held to its own standards, Bovard suggests that the war should be redefined along the lines of 'a campaign to vanquish all potential enemies of US hegemony and to impose American political values on much of the world': J Bovard, *Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil* (Palgrave MacMillan, 2003) 1.

² M Doran, 'Somebody Else's Civil War: Ideology, Rage, and the Assault on America' in J Hoge Jr and G Rose (eds), *How Did This Happen? Terrorism and the New War* (Public Affairs, 2001) 31, 31; K Hayward and W Morrison, 'Locating "Ground Zero": Caught Between the Narratives of Crime and War', in J Strawson (ed), *Law After Ground Zero* (Glass House, 2002) 139, 152.

³ R Crockatt, *America Embattled: September 11, Anti-Americanism, and the Global Order* (Routledge, 2003) 68.

⁴ See, for example, A Wolfe, 'The Home Front: American Society Responds to the New War' in J Hoge Jr and G Rose (eds), *How Did This Happen? Terrorism and the New War* (Public Affairs, 2001) 281, 284.

way that the media and the US government chose to portray the incident was of America as the innocent victim of an 'attack'.⁵

Unfortunately for the Bush administration, the grievances of those that carried out the September 11 incidents are well known. Although the *fatwa* that Osama bin Laden has issued called for the murder of American people, neither that, nor the interviews that he has given say anything regarding rights, freedom or democracy in the US.⁶ Perhaps the struggle to expel the Soviets from Afghanistan clearly demonstrates bin Laden's motives and complaints. At the time, the US supported bin Laden in this fight, with the expulsion of these people from the Muslim holy lands as his goal. Although the Soviets were expelled, the US remained in much of the Middle East. While fighting alongside the US he did not raise any objection to the freedom of America, which was at the time certainly as liberal as before September 11.⁷ Bin Laden and his followers appear more concerned with American foreign policy in the Middle East,⁸ in which three main issues arise. These are the stationing of troops in Saudi Arabia, the provision of military support for Israel, and the continuance of sanctions towards Iraq, responsible for the deaths of countless Iraqis and the strengthening of Saddam Hussein.⁹

It does not seem surprising then that the 'coalition of the willing' led by the US have not taken account of these complaints. Portraying terrorists as resentful of freedom not only misrepresented the cause of Al Qaeda and other terrorists, but offered a rather simplistic explanation for their actions. This served to render void any serious discussion of the legitimate roots of terrorism, which might in turn lead to the policy directions of those in power (namely the 'war on terror') being challenged. It may have also allowed for such a 'war on terror' to be undertaken in the first place.

Such misrepresentation is an important issue to consider and underpins this discussion. It not only suggests that further inconsistencies and hypocrisies may exist in the 'war on terror', but also that the war may be unsuccessful, considering that proper consideration is not being given to the grievances of terrorists.¹⁰ It seems that the logical method for solving such a problem would be to address its actual causes, thereby preventing war (and subsequently the violation of human rights), minimising the loss of life, and decreasing the risk of similar incidents occurring.

⁵ See, for example, R Gaita, 'A "War of Good Against Evil"' in T Coady and M O'Keefe (eds), *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne University Press, 2002) 113, 118.

⁶ See, for example, Bovard, above n 1, 320.

⁷ H Zinn, *Terrorism and War* (Allen & Unwin, 2002) 13.

⁸ See, for example, Crockatt, above n 3, 44.

⁹ See, for example, R Young, 'Political Terrorism as a Weapon of the Politically Powerless' in T Coady and M O'Keefe (eds) *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne University Press, 2002) 22, 30; Zinn, above n 7, 12-13; Bovard, above n 1, 320.

¹⁰ See, for example, Zinn, above n 7, 12. Discussing the legitimate roots of terrorism is seen as justifying the attacks, despite actually being a restriction of the democratic freedom of speech: at 62. It would appear that attempting to prevent a war, or at the very least wanting a war to be fought properly, is widely condemned.

Because of their inseparable connection to peace (discussed below), human rights are by definition going to be denied or violated in times of war,¹¹ whether on countries and religions, or on drugs, poverty, or terrorism. The immediate governmental responses to September 11 have been the restriction of many ideals fundamental to liberal societies, such as human rights, social justice, freedom, and democracy. This is presumably in the hopes that such restrictions will serve to enhance such ideals in the long run.¹² As a result, it has been said that September 11 has caused norms of domestic and international law to become questionable,¹³ however it can be asked whether trading human rights for safety will result in either being improved. Is it better to enhance respect for human rights in a defence to terrorism?¹⁴

As legal and justice professionals have the social responsibility to defend and uphold human rights, social justice, freedom and democracy, they must be equipped with a basic knowledge of how governmental responses to terrorism may at times conflict with such ideals. Legal and justice professionals should, for example, ensure that terror suspects are brought to justice in accordance with the rule of law, or question whether the restriction of freedoms is necessary in preventing and investigating terrorism.¹⁵ As terrorism is an international phenomenon with uncertain jurisdiction, part of this responsibility involves examining and respecting the use of international mechanisms for achieving justice, in order to prevent terrorism being fought through the use of anti-democratic and unlawful means.¹⁶ Fundamental to such methods and considerations is respect for human rights. This discussion will attempt to canvass the abovementioned ideals (human rights, social justice, freedom, and democracy) in a broad context within the 'war on terror'. Such an analysis will focus primarily on the US, not only as the coalition (including Australia) is following its lead, but as it is defining the parameters and ideologies of the war and acting as the moral, political and social role model (by basically claiming moral superiority over other countries). As such, it is important to subject their actions to serious scrutiny.

Such scrutiny is also important as the US is a superpower with more means to large-scale violence, quite capable of (and not a stranger to) exercising its hegemony.¹⁷ Furthermore, if the coalition believes that its use of force throughout the world is justified on the basis that it adheres to 'civilised' ideals such as human rights, social justice, freedom, and democracy, an analysis of whether these nations substantively demonstrate the values to which they formally espouse is in order.

¹¹ D Barash, 'Human Rights' in David Barash (ed), *Approaches to Peace: A Reader in Peace Studies* (Oxford University Press, 1999) 149, 155.

¹² See, for example, G Annas, 'Terrorism and Human Rights' in J Moreno (ed), *In the Wake of Terror: Medicine and Morality in a Time of Crisis* (MIT Press, 2003) 33, 33.

¹³ J Strawson, 'In the Name of the Law' in J Strawson (ed) *Law After Ground Zero* (Glass House, 2002) xi, xi.

¹⁴ See, for example, M Moore, *Stupid White Men ... And Other Sorry Excuses for the State of the Nation!* (Regan Books, 2001) xii; Annas, above n 12, 36.

¹⁵ B Horrigan, *Adventures in Law and Justice: Exploring Big Legal Questions in Everyday Life* (UNSW Press, 2003) 282.

¹⁶ *Ibid* 262.

¹⁷ N Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (Metropolitan Books, 2003) 4.

Finally, considering the universal nature of human rights, it becomes difficult to argue that such an inquiry is not justified. Although it is redundant to state that terrorist activities violate human rights,¹⁸ those acting as moral agents in regards to applying human rights must bestow them upon terrorists as well. To prevent hypocrisy, moral standards must also be turned on those that espouse them. If terrorists are condemned for violating the law (whether it be domestic or international) then the actions of those that condemn them must therefore conform to the law. This discussion will attempt such an analysis.

This discussion will outline a definition of terrorism, as well as important human rights documents that apply to the 'war on terror'. Furthermore, some of the hypocrisy surrounding the 'war on terror' will be discussed, followed by some human rights violations that have occurred in this war. Finally the coalition will be discussed in relation to their adherence to the social ideals being promoted as superior in this war, with specific reference to the US. The purpose of this discussion is to outline for legal and justice professionals some general considerations that they must take into account while executing their many professional roles. These professionals, through the creation and enforcement of laws (including those to fight terrorism) and the direction of government policy, are entrusted with the protection of the values discussed above. Therefore, it is important that these professionals have a wider knowledge of the issues (in this case terrorism and government responses to it) that may threaten these values. As the purpose of this discussion is to focus on these ideals, they will be put into a broad perspective in which specific domestic laws regarding terrorism will not be discussed.

II DEFINING TERROR

There is no universally accepted definition of what constitutes terrorism, and any attempt is bound to descend into a debate over semantics. Perhaps the often repeated 'one person's terrorist is another person's freedom fighter' is the best example of this. However there are some important general considerations that manifest themselves within most definitions.

Terrorism is often associated with political subversion, though it can have different motives or underpinning ideologies at different times, and consist of different actions.¹⁹ Most definitions focus on terrorism as the use or threat of violence (sometimes referred to as the 'unlawful use' of violence),²⁰ directed at a country or its inhabitants, in order to achieve some sort of goal (usually political change) by

¹⁸ See generally V Held, 'Terrorism, Rights and Political Goals' in R Frey and C Morris (eds) *Violence, Terrorism and Justice* (Cambridge University Press, 1991) 59, 72; C Wellman, *An Approach to Rights: Studies in the Philosophy of Laws and Morals* (Kluwer Academic Publishers, 1997) 141.

¹⁹ See, for example, O Elagab, *International Law Documents Relating to Terrorism* (Cavenidsh Pub, 2nd ed, 1997) xix.

²⁰ But see C Coady, 'Terrorism, Just War and Supreme Emergency' in T Coady and M O'Keefe (eds), *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne University Press, 2002) 8. It appears difficult to make a moral distinction between lawful and unlawful acts of violence, considering there may be ulterior motives behind legal definitions of such actions. Consider that the actions of dissidents within Nazi Germany were legally defined as terrorism: at 9.

terrorising (or instilling fear in) the population (or certain members of it).²¹ Such actions can be undertaken by one person, an organised group or a state.

Central to most definitions of terror is the intentional killing of civilians. As such, it is important to ask whether there is any distinction between unjustified acts, acts undertaken within the law, or acts of war. For example, if terrorism is justified within the law, or narrowly defined as only instances involving the ‘illegal use of force or violence’, does the *legal* use of force or violence make a difference to the victims? Does it mean that they are less terrorised? A similar question could be asked about acts within war. For example, the above definition would define the US bombing of Hiroshima and Nagasaki as terrorism.²² These actions have not necessarily gone down in history as acts of terrorism as many may believe they were legitimate and necessary.²³ It is important to remember that justifications for such actions matter little to the victims.

III HUMAN RIGHTS AND INTERNATIONAL LAW DOCUMENTS

In addition to a general definition of terrorism, and in order to provide a general conceptual framework for a discussion of related human rights, a number of relevant international law documents will be outlined below. Those discussed are by no means to be seen as a comprehensive list; merely a general conceptual framework, including a number of considerations central to this discussion. Furthermore, it is important to mention that there is not space for a discussion of the construction of human rights and their reflection (and prioritisation) of liberal democratic capitalist ideals over alternatives, nor the numerous Indigenous and feminist critiques (among others) that also exist.²⁴

Human rights are universal, applying to all people of all races, colours, sexes, languages, religions, political or other opinion, national or social origin, property, birth, or other status.²⁵ Everyone has the right to life, liberty, and security of the person,²⁶ and the freedom from torture (discussed further below), and cruel, inhuman, or degrading treatment or punishment.²⁷ Furthermore, no one is to be subjected to

²¹ Ibid 8. Also see generally Wellman, above n 18, 141; Coady, above n 20, 8. See also Chomsky, above n 17, 188, who discusses an army manual definition of terrorism as ‘the calculated use of violence or threat of violence to attain goals that are political, religious, or ideological in nature...through intimidation, coercion, or instilling fear.’

²² See, for example, Horrigan, above n 15, 296.

²³ Any suggestion that the actions of the ‘coalition of the willing’ (read the US as the example of the superior ideology and as leader) should be subject to this definition are discounted. It is in fact often stated that ‘our’ actions are counter-terrorism (Chomsky, above n 17, 188-189). As such, it is not a difficult stretch of the imagination to believe that Osama bin Laden believes that the actions of Al Qaeda are also counter-terrorism.

²⁴ See generally P Fitzpatrick, ‘Enduring Right’, in J Strawson (ed) *Law After Ground Zero* (Glass House, 2002) 37, 37.

²⁵ *Universal Declaration of Human Rights* (1948), art 2.

²⁶ *Universal Declaration of Human Rights* (1948), art 3; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, art 6 (1), art 9 (1) (entered into force 23 March 1976) (hereafter ‘*International Covenant on Civil and Political Rights*’).

²⁷ *Universal Declaration of Human Rights* (1948), art 5; *International Covenant on Civil and Political Rights* (1976), art 7.

arbitrary arrest, detention, or exile.²⁸ Upon their arrest, detainees are to be informed of the reasons for it, are to have charges brought against them promptly, and are also to be brought before a judge or other officer authorised with judicial power within a reasonable period of time.²⁹ Detainees are also to be allowed to undertake proceedings to determine the legality of their detention, must be able to receive compensation for wrongful detention,³⁰ and must be treated with humanity and respect for the ‘inherent dignity of the human person’.³¹ Everyone has the right to be recognised everywhere as a person before the law.³² Finally, the right to life and freedom from torture may not be derogated from at any time,³³ although other freedoms may be restricted under the threat of war or public emergency.

For the purposes of international law, torture has been defined as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [sic] or a third person information or a confession, punishing him [sic] for an act that he [sic] or a third person has committed or is suspected of having committed, or intimidating or coercing him [sic] or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.³⁴

Torture may not be justified, even under the immediate threat of war, political instability or public emergency,³⁵ nor on the orders of a superior officer or public authority.³⁶ Furthermore, the methods and practices of interrogation and the treatment of imprisoned persons must be systematically reviewed especially with the purpose of preventing torture.³⁷

In addition to the documents outlined above, the third Geneva Convention³⁸ also relates to the treatment of those detained during a war. It states that prisoners of war must at all times be humanely treated and that they must be protected from acts of violence.³⁹ Although it is correct that not all held in military custody have to be granted the status of prisoner of war, this decision must not be made arbitrarily.⁴⁰ The

²⁸ *Universal Declaration of Human Rights* (1948), art 9; *International Covenant on Civil and Political Rights* (1976), art 9 (1).

²⁹ *International Covenant on Civil and Political Rights* (1976), art 9 (2), (3).

³⁰ *International Covenant on Civil and Political Rights* (1976), art 9 (4), (5).

³¹ *International Covenant on Civil and Political Rights* (1976), art 10.

³² *International Covenant on Civil and Political Rights* (1976), art 16.

³³ *International Covenant on Civil and Political Rights* (1976), art 4 (1), (2).

³⁴ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, art 1 (entered into force 26 June 1987) (hereafter ‘*Torture Convention*’).

³⁵ *Torture Convention* (1987), art 2 (2).

³⁶ *Torture Convention* (1987), art 2 (3).

³⁷ *Torture Convention* (1987), art 11.

³⁸ *Geneva Convention Relative to the Treatment of Prisoners of War*, 75 UNTS 135 (entered into force 21 October 1950) (hereafter ‘*Geneva Convention*’).

³⁹ *Geneva Convention* (1950), art 13.

⁴⁰ *Geneva Convention* (1950), art 5.

convention requires that a ‘competent tribunal’ determine whether they are or are not a person eligible for protection under the convention. Until that decision is made, the prisoners are to be treated as prisoners of war (in much the same manner as being innocent before being proven guilty).⁴¹

This discussion will now turn to the ‘war on terror’ and how it may be analysed in terms of the broad conceptual framework already outlined above.

IV THE ‘WAR ON TERROR’

Being seen as the innocent victim of an unjustified ‘attack’ made it easy for the US to declare a ‘war on terror’ and initially gain global support for such a war.⁴² President Bush premised the war with a statement to the US Congress a week after the September 11 incident in which he stated that ‘...whether we bring our enemies to justice, or justice to our enemies, justice will be done’.⁴³ Prior to September 11, terrorism had been an almost daily occurrence for many people throughout the world (much of which, as discussed below, was supported by the US themselves). However, when for the first time in memory the guns were pointing towards the US, it suddenly became a problem that the victim took upon itself to address.⁴⁴

A number of military actions have been undertaken since the declaration of the ‘war on terror’, one in Afghanistan, and the other in Iraq (both the Middle East). Both were made to appear justified by having some tenuous connection to terrorism (discussed below). However, not only is the concept of the ‘war on terror’ more than a little contradictory (as it is led by the only nation to have been condemned for terrorist activities, as discussed below), but it is questionable that such a war can be waged, let alone won. Neither military action was necessarily fought against the people of that country. The bombing of Afghanistan was made to appear justified as the perpetrators had some link to the Taliban regime that supported Al Qaeda, when in fact at the time the bombing began, the US government did not know the identities of the perpetrators.⁴⁵ On the other hand, the invasion of Iraq was made to appear justified because Saddam Hussein allegedly had weapons of mass destruction, which could fall into the hands of terrorists, because of supposed links between Hussein and Osama bin Laden. The validity of these arguments (especially those given to justify the invasion of the sovereignty of Iraq, which never threatened the ‘coalition of the

⁴¹ See, for example, Annas, above n 12, 38; *Geneva Convention* (1950), art 5.

⁴² Bovard, above n 1, 1-2.

⁴³ Horrigan, above n 15, 281. Bush’s invocation of justice within this speech could be problematic. As this is the victim speaking, ‘justice’ in this sense could be equated with vengeance, or retributive and retaliatory justice. It is important to note that a fundamental principle of justice and the rule of law is that to be truly just, the responsibility for the administration of justice is removed from the hands of the victim and given to an external body. In this case, such an external body would be an international tribunal or the United Nations. In many ways this rejection of the United Nations could be considered to reflect a rejection of justice itself, the supposed aim of the ‘war on terror’ (discussed below).

⁴⁴ See, for example, Bovard, above n 1, 1-2; Zinn, above n 7, 10.

⁴⁵ Chomsky, above n 17, 200. Eight months after the strikes on Afghanistan, the American government stated that the identities of the perpetrators were not known before they began: Chomsky, above n 17. This was not widely reported.

willing')⁴⁶ has since been called into question. Such are the difficulties of fighting a war on a noun.⁴⁷

Taking into account the definition of terrorism, and considering that many people have been killed in the 'war on terror' (whether guilty or innocent), it is important to question whether, when condemning terrorism and fighting a war against it, partaking in it is somehow justified and will help achieve victory.⁴⁸ Killing innocent people is not a 'war on terrorism'; it is terrorism.⁴⁹ Even if people have not been killed but are living in fear, they are being terrorised. The best example of this is that as soon as President Bush indicated an intention to bomb, a flow of refugees (carrying all the possessions that they could) began to leave Afghanistan. These people feared the threat (and eventual use) of violence against them. Referring to the definitions of terror discussed above, does this not adequately describe terrorism?⁵⁰

Putting aside the issues and hypocrisies outlined above, the 'war on terror' still does not seem to have been largely successful.⁵¹ Although the dismantling of both the Taliban and Hussein governments have been major achievements, they were not the primary (or even initial) targets of the 'war on terror'. To truly wipe out terrorism, it would make sense that as well as external actions, the 'coalition of the willing' would take internal steps to root out terror, particularly that which is undertaken in the name of fighting terrorism. Such internal steps (in which legal and justice professionals have a responsibility) would include addressing the injustices and human rights violations discussed below.

A *Human Rights in the 'War on Terror'*

The detention of terrorism suspects is a useful area in which to analyse the application of (and respect for) human rights principles by the 'coalition of the willing' in the 'war on terror'. For a reader equipped with basic knowledge of the issues surrounding Guantanamo Bay or Abu Ghraib, and the standards of international law outlined above, it should be fairly simple to identify the shortcomings of the policies implemented by this coalition. Furthermore, although the detainees may be terrorist suspects, Amnesty International has identified the main forms of *state* terror as arbitrary detention, unfair trials, torture, and political murder or extrajudicial execution. As each of these actions has allegedly occurred in the 'war on terror', it can be concluded that the US is a state terrorist.⁵² The issues raised above will, however, be briefly discussed.

Possibly 700 Al Qaeda and Taliban prisoners have been transferred to Guantanamo Bay prison, including two Australians. Reports have stated that these prisoners are

⁴⁶ Bovard, above n 1, 289.

⁴⁷ See generally M Moore, *Dude, Where's My Country?* (Warner Books, 2003) 96.

⁴⁸ See, for example, Zinn, above n 7, 11, 12.

⁴⁹ N Chomsky, *September 11* (Allen & Unwin, 2001) 76.

⁵⁰ Zinn, above n 7, 11-12.

⁵¹ See generally Bovard, above n 1, 8. For example, the United Nations and former CIA director George Tenet have both stated that Al Qaeda has not been dismantled or destroyed and may be ready to strike again: at 8.

⁵² See generally J Sluka, 'State Terror and Anthropology' in J Sluka (ed), *Death Squad: The Anthropology of State Terror* (University of Pennsylvania Press, 2000) 1, 3.

subjected to inhumane and what appears unnecessary treatment, even condemned by Amnesty International and the US Justice Department's own Inspector General.⁵³ This treatment has included prisoners being held in open cages, being heavily shackled and chained, not all being promptly charged, and all having been blindfolded during their trip to the prison, including at least one allegation of being drugged for this time.⁵⁴ Such actions are not confined to Guantanamo Bay, but also occur in various other prisons containing terror suspects throughout the world. For example, in a US prison in Afghanistan, detainees have alleged being prevented from accessing family, legal counsel and courts.⁵⁵ Furthermore, there are 10 000 civilians detained by the US in Iraq, about which little information has been forthcoming, and none for 200 of those in 'high-security' detention.⁵⁶ Perhaps most concerning is the death of at least three detainees, two being ruled homicide, while the circumstances of the third have not been fully explained.⁵⁷ Of great importance is that these allegations of mistreatment have come from people in places beyond the reach of independent external review. Therefore, these reports cannot be verified, nor those responsible held to account.⁵⁸

The imprisonment of Saddam Hussein has also raised a number of concerns in regards to human rights. Although he has said that he is in 'good spirits', a Jordanian lawyer claiming to represent Hussein has alleged that the former Iraqi leader was subjected to torture.⁵⁹ The undisclosed location in which Hussein is held (although necessary for security reasons) is also cause for concern as this too is unable to be reviewed, and therefore those involved in allegations of mistreatment remain unaccountable.⁶⁰ Furthermore, until only very recently (around six months after his arrest), no charges had actually been filed at all.⁶¹

Not surprisingly, the current incumbents steadfastly refused to allow standards such as international law discussed above to apply to the detainees, despite the US administration expecting these standards to apply to US troops subject to capture.⁶² If they were to apply, the inhumane conditions discussed above would have to immediately cease, as all detainees would automatically be given prisoner of war

⁵³ See, for example, Chomsky, above n 17, 26. The Inspector's report was ignored. See also Amnesty International, *United States of America (2003 Report)* (2004) Amnesty International <<http://web.amnesty.org/report2004/usa-summary-eng>> at 18 July 2004.

⁵⁴ Horrigan, above n 15, 288. See also Annas, above n 12, 38; Amnesty International, above n 53.

⁵⁵ See, for example, R Brody, *Prisoner Abuse: What About the Other Secret US Prisons?* (2004) Human Rights Watch <<http://www.hrw.org/english/docs/2004/05/04/usint8524.htm>> at 10 May 2004. See also Crockatt, above n 3, 152-153; Amnesty International, *Iraq (2003 Report)* (2004) Amnesty International <<http://web.amnesty.org/report2004/irq-summary-eng>> at 18 July 2004.

⁵⁶ R Brody, *Prisoner Abuse: What About the Other Secret US Prisons?* (2004) Human Rights Watch <<http://www.hrw.org/english/docs/2004/05/04/usint8524.htm>> at 10 May 2004; Amnesty International, *Iraq (2003 Report)* (2004) Amnesty International <<http://web.amnesty.org/report2004/irq-summary-eng>> at 18 July 2004.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ AAP, *Lawyer Says Saddam Tortured* (2004) The Age <<http://www.theage.com.au/articles/2004/06/10/1086749812954.html?oneclick=true>> at 12 June 2004.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Annas, above n 12, 37.

status until their case was decided. This decision could not be made arbitrarily by the US leadership, but by a competent tribunal.

The US government has since stated that the conventions will apply, yet it has refused to grant detainees prisoner of war status,⁶³ rendering these conventions useless anyway. As such, the conditions of these prisons have not changed, despite being maintained by a nation supposedly committed to basic ideals of democracy, justice, liberty and the rule of law. However, it is difficult to appreciate that the technical definition of these people under international law would ever legitimise the treatment discussed above. Once again, their legal definition means little to victims of such human rights abuses.

The issue of torture is also related to the detention of persons during times of war. Although allegations of torture (and ‘rendition’, the practice of taking suspects to other countries where torture is used to extract information from prisoners)⁶⁴ have come from each prison holding detainees, the issue has not received such attention as it has since the publication of photos that show such activities in Abu Ghraib prison. Whether this is classified as torture or inhumane treatment is not as important as once again questioning whether such actions are necessary under any circumstance. As above, legal definitions do not matter to victims of torture. The complicity of those in positions of power in condoning such actions is also an important issue to consider, especially as the photos appear to have been taken and disseminated without any apparent fear of condemnation or subsequent sanctioning.⁶⁵

As the above issues demonstrate, there appears to be little respect for human rights in this ‘war on terror’. It appears that the rights of the victims of the September 11 incident and members of the ‘coalition of the willing’ have been upheld over the rights of the innocent victims of wars in Afghanistan and Iraq, and those detained in Guantanamo Bay and Abu Ghraib (who should also be considered innocent as they have not been found guilty).⁶⁶ Before this discussion continues to discover why such disrespect might not be surprising, it is important to discuss the significance of the rejection of human rights.

B *The Role of the United Nations, Human Rights, and the Significance of Their Rejection*

In response to the basic human rights and freedoms violated in the Second World War, the United Nations (‘UN’) was established, with its main objective being the promotion and encouragement of respect for these rights and freedoms for all without distinction.⁶⁷ Furthermore, the UN was supposed to replace the use of force with the peaceful resolution of international disputes.⁶⁸

⁶³ Ibid. See also Chomsky, above n 17, 26; Horrigan, above n 15, 288.

⁶⁴ Brody, above n 55.

⁶⁵ Ibid.

⁶⁶ See, for example, Strawson, above n 13, xii.

⁶⁷ J Kavan, ‘UN’s Role in Promoting Human Rights’ (Paper presented at a Public Lecture for the National Europe Centre, Australian National University Canberra, 6 March 2003) <<http://www.anu.edu.au/NEC/kavan.pdf>> at 20 May 2004; *Charter of the United Nations* art 1 (3).

⁶⁸ Horrigan, above n 15, 283; *Charter of the United Nations* art 1 (1).

However, consider the actions of the US and the general attitude of the ‘coalition of the willing’, specifically in regards to the invasion of Iraq. The coalition rejected the UN outright. In this rejection, what message was the coalition (ie, the US)⁶⁹ sending to the world? By rejecting the legitimacy of the UN, the coalition rejected the legitimacy of a body that was set up to resolve international disputes and uphold human rights. Although this does not mean an outright rejection of human rights, it is largely a denunciation of an internationally agreed upon statement of human rights and vision of the world. The military actions (under the guise of a ‘war on terror’) have become acts of colonial conquest that have attempted to enforce western hegemony on the Middle East (as this is where the ‘war on terror’ has been focused).

The violations of human rights and the basic ideals of democratic and socially just societies discussed above seem inexcusable, especially from those countries that promote such values and ideals and are now attempting to enforce such values onto the world. This discussion will now turn to why such violations might not be surprising, given the situation of many such countries.

V HUMAN RIGHTS, SOCIAL JUSTICE, FREEDOM AND DEMOCRACY IN THE UNITED STATES

As already outlined, it is important to scrutinise those claiming moral, social, and ideological superiority, especially if the values they are attempting to enforce on others (specifically democracy, human rights, freedom and social justice) are not substantively demonstrated in their own societies. It may be believed that concerns over social justice are diminished in the face of the enormity of terrorism; however these issues remain important. Such values are fundamental to justice, which means they are important for legal and justice professionals to consider. The abuses outlined above may not be surprising (and in some ways explained) if discussing how a nation treats its own population gives any indication as to how that same nation will treat other nations.⁷⁰

Before undertaking this discussion, covering both US domestic and foreign policy and then the ideals of the ‘coalition of the willing’, it is important to clarify that it is the American government that undertakes and perpetuates the injustice discussed below. A vast majority of Americans believe in racial equality, women’s rights, the right to join unions, responsible environmental policies, and equality for gays and lesbians.⁷¹ Therefore the following criticisms are aimed largely at governmental policy.

Leading the ‘coalition of the willing’ is the US. Although a democratic society, voting is not compulsory. In the last election, not only did a majority of Americans not vote, but the majority of those that did, did not vote for George W Bush. The current President was not elected, but appointed by the US Supreme Court.⁷² As

⁶⁹ As discussed above, although the coalition may include states not traditionally associated with the West (for example, Equatorial Guinea), it must be remembered that this is a coalition led by the US, with parameters set by and ideologies defined by the US.

⁷⁰ See generally Barash, above n 11, 156.

⁷¹ Moore, above n 47, 174.

⁷² See, for example, *ibid* x; N Chomsky, *Elections 2000* (2001) Z Magazine <<http://www.zmag.org/Zmag/articles/jan01chomsky.htm>> at 20 May 2004; Moore, above n 14, 2; Hayward and Morrison, above n 2, 152.

such, the President does not govern by the will of the people in any democratic sense of the term. It is possible to conclude that the will of the people may not be a factor in Presidential decisions, which is of particular concern as US foreign policy can have a large impact on the citizens of the rest of the world, as recently demonstrated. If American citizens potentially rank low on the President's list of priorities, it is possible to hypothesise that the citizens of the rest of the world rank even lower.⁷³

Not only did the contested 2000 election outline problems with the democratic process in the US, but it also exposed a social injustice that many Americans face, that being the restriction of the voting rights of former prisoners. As African-Americans are over-represented in prison in America, this disenfranchised a disproportionate number of African-Americans. Such a practice is unjust as these ex-offenders are still being punished, despite having paid their debt to society.⁷⁴

The respect that successive US governments have shown for human rights appears minimal, as the US has the largest number of unsigned human rights treaties. This includes the *Convention on the Rights of the Child*, which means that child offenders may be executed, and has allowed children in America to become the poorest social group.⁷⁵

Over 885 people have been executed since 1976 in the 38 states that retain the death penalty, further demonstrating the little respect that the country shows towards human rights principles. This is despite the fact that in around seven out of 10 capital cases, the courts have found instances of serious reversible error,⁷⁶ and that most prisoners on death row are racial minorities and among the poor.⁷⁷ Along with children, and unlike any industrialised western nation, the US also executes the mentally disabled, keeping company with countries such as Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen.⁷⁸ Furthermore, the Supreme Court does not believe that the execution of children (under 16) is cruel and unusual punishment, despite this same court stating that these same children do not have the legal capacity to sign contracts.⁷⁹

The US has also been removed from the UN Human Rights Commission because of the current government's continual disregard for international human rights agreements, as well as its rejection of an international accord to uphold a ban on germ

⁷³ Moore, above n 14, 257.

⁷⁴ See generally *ibid* 4; Chomsky, above n 72. Chomsky quotes Manza and Uggen who state that the Republicans are unlikely to allow ex-prisoners to vote because (as many are African-American) they overwhelmingly vote Democrat (demonstrating the commitment that Republicans have towards democracy), while Democrats are unlikely to allow ex-prisoners to vote because they do not want to appear soft on crime (as if restricting voting rights of those that have paid their debt to society would prevent crime). See also US Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (2001) US Commission on Civil Rights <<http://www.usccr.gov/pubs/vote2000/report/main.htm>> at 30 June 2004.

⁷⁵ Moore, above n 14, 175, 205.

⁷⁶ *Ibid* 204-205. See also Amnesty International, above n 55.

⁷⁷ Moore, above n 14, 203. See also Amnesty International, above n 55.

⁷⁸ Moore, above n 14, 175, 205-206. See also Amnesty International, above n 55.

⁷⁹ Moore, above n 14, 205. See also Amnesty International, above n 55.

warfare.⁸⁰ This is despite later criticisms of Saddam Hussein's alleged possession of such weapons.

Adding to the hypocrisy of the 'war on terror' are issues surrounding the constant refusal by the US government to agree to the establishment of an International War Crimes Tribunal. While the US government has often been the most vocal critic of war criminals and those that commit crimes against humanity (most recently Saddam Hussein), they have opposed the creation of such a tribunal specifically because the US government and military would be subject to it.⁸¹ The attitude has almost been that 'an American by definition cannot commit a war crime',⁸² or conversely that Americans are the only ones able to. These refusals could not demonstrate more clearly the desire for the U.S. government to be free to criticise others but not themselves. It appears that little could be more fundamental to a liberal democracy than the rule of law, and the ability for the critics to themselves be criticised.

Ultimately, the attitude and level of respect that the US has towards justice and human rights is relatively simple to understand in regards to bringing 'terrorists' (specifically people such as Osama bin Laden and Saddam Hussein) to justice. Falk believes that if an international tribunal were set up to deal with the September 11 incident, it would be 'impossible to persuade the US government to empower such a tribunal'. This is probably because such a tribunal (in accordance with international law and fundamental human rights) could not impose the death penalty.⁸³

A *Social Injustice*

The 'war on terror' has diverted attention away from many of the social injustices that exist within American society.⁸⁴ While the income gap widens, many Americans are hungry, unemployed, or underemployed. Little attention is paid to the problems that the majority face, while the benefits to the minority of corporate America grow.⁸⁵ Religious, sexual, and racial minorities face extensive and institutionalised violence and discrimination,⁸⁶ with tensions between religions increasing since September 11. When such problems exist, it is difficult to take the professed moral superiority of the US and its criticisms of dictatorships and brutal regimes seriously, particularly as it appears to be a socially unjust regime itself.

Furthermore, if the general considerations that make up a definition of terrorism are taken as an accurate reflection of terrorism (the exercise of violence and intimidation over a population in order to instil fear and effect change),⁸⁷ it is quite apparent that

⁸⁰ Moore, above n 14, 33, 165.

⁸¹ Zinn, above n 7, 55.

⁸² Ibid.

⁸³ Fitzpatrick, above n 24, 42.

⁸⁴ See, for example, Zinn, above n 7, 37. An increase in military spending during the 'war on terror' is also going to take funding away from already underfunded social programs: at 43. This discussion will only canvass a small number of social injustices, as a comprehensive discussion on such a topic could be quite lengthy.

⁸⁵ Ibid.

⁸⁶ See generally Moore, above n 14, 209.

⁸⁷ See generally Elagab, above n 19, xix; Wellman, above n 18, 141; Coady, above n 20, 8; Chomsky, above n 17, 188.

the US government is complicit in allowing racial, religious, and sexual minorities, as well as the poor to be terrorised (especially if they live in fear of violence and with little legal protection). Social injustice itself (especially that which is sanctioned and perpetuated by law) could be considered a form of terrorism.

Perhaps the social injustice that pervades governmental policy is not surprising, given the attitudes of those in power. For example, President Bush has nominated both a critic of the separation of church and state, as well as an opponent of civil rights to federal judgeships.⁸⁸ Furthermore, Attorney-General John Ashcroft has opposed all cases of abortion (even incest and rape), has opposed legislating to protect homosexuals from discrimination in employment, and has also limited the ability for those on death row to file appeals.⁸⁹ The attitudes of these people are important because they shape the direction of the law in America. If justice is seen purely in terms of legal justice (and hence a reflection of those that shape the law), then American justice is truly socially unjust. Furthermore, this demonstrates the role that legal and justice professionals, and their personal beliefs, values, and attitudes can have on terrorising the disadvantaged.

Perhaps the most telling example of the value placed on social justice by the government is demonstrated by the recorded spending on military projects as opposed to serious humanitarian problems. The US spends \$US350 billion a year on military programs.⁹⁰ The money that it would take to provide drinking water to the one billion around the world currently without adequate supplies would be around a quarter of that spent on the 'Star Wars' missile defence program.⁹¹

Alternatively, this money could also be spent on addressing AIDS, or providing food, water, immunisation, and education for those without such basics. Even in the domestic arena, the US government could spend that money on health care, housing programs, or a substantial public defender system to name but a few.⁹² An effort to address social injustice is an important step in the 'war on terror', especially if the most egregious instances of such injustice occur within the country that is leading the fight against terror, and has the capacity to address such injustice. As Horton states, 'principles of harm reduction are more realistic and practicable than false notions of a war on terrorism', therefore the achievement of global security can only occur through 'building stable and strong societies'.⁹³ This discussion will now turn to US foreign policy.

B *United States Foreign Policy*

US foreign policy also appears lacking in relation to social justice and respect for related values, quite often being of a largely terrorist nature and in contradiction to the abovementioned values currently being fought for. The US has a history of supporting brutal dictators, such as Pol Pot and the Khmer Rouge in Cambodia,

⁸⁸ Moore, above n 14, 35.

⁸⁹ Ibid 17.

⁹⁰ Zinn, above n 7, 18.

⁹¹ Moore, above n 14, 168, 273.

⁹² See, for example, Zinn, above n 7, 18.

⁹³ Horton quoted in Annas, above n 12, 46.

Mobutu Sese Seku in the Congo-Zaire, and Suharto in Indonesia to name but a few.⁹⁴ The US has also had a large role in overthrowing democratically elected leaders in Guatemala, Iran, and Chile.⁹⁵ Those that made up the Reagan and Bush Senior administrations (which include an overwhelming majority of those that make up the current Bush administration) have also appraised such brutal and unjust dictators as Marcos, Duvalier, Ceaușescu, and Manuel Noriega.⁹⁶ However, the example that unequivocally demonstrates the hypocritical and socially unjust nature of American foreign policy is that the Reagan and Bush Senior administrations supported Saddam Hussein.

The crimes of Hussein are often repeated. His actions have included gassing the Kurds and Iranians, torturing the Shiites, Sunnis and others, and lowering the living standards of his people while the country endured UN sanctions.⁹⁷ However, what is missing is that the US supported Hussein through these atrocities and did not object to them until after Hussein's invasion of Kuwait.⁹⁸ The gassing of the Kurds occurred in 1988, yet a year later Bush Sr. stated in a National Security Directive that 'normal relations between the US and Iraq would serve our longer-term interests, and promote stability in the Gulf and the Middle East'.⁹⁹ Furthermore, the US State Department in 1990 believed that aiding Saddam Hussein would improve human rights, stability in the region, and peace.¹⁰⁰ During this time, the US provided Hussein with the capabilities to create weapons of mass destruction.¹⁰¹ American corporations sold the Iraqi dictator chemicals such as Bacillus anthracis (Anthrax), Clostridium botulinum (Botulinum toxin), Histoplasma capsulatum, Brucella melitensis, and Clostridium perfringens,¹⁰² all used in the manufacture of biological and chemical weapons.

This example demonstrates the true respect that US foreign policy has towards human rights, as well as the unjust, hypocritical, and irresponsible nature of such actions. The weapons that the current President Bush criticised the dictator for allegedly possessing (and used to justify the invasion of Iraq) were the very same weapons that the President's father had allowed Hussein to acquire.¹⁰³ Although Hussein has in the past possessed such weapons, constant inspections by the UN since the Gulf War have meant that these weapons no longer exist. The justifications for war, however hypocritical, were not supported either before or after the war,¹⁰⁴ nor were attempts to

⁹⁴ See especially Chomsky, above n 17, 112; Moore, above n 47, 58-59.

⁹⁵ Moore, above n 47, 58.

⁹⁶ See especially Chomsky, above n 17, 112.

⁹⁷ See generally Bovard, above n 1, 290; Chomsky, above n 17, 17, 25; N Chomsky, *Power and Terror: Post 9/11 Talks and Interviews* (Seven Stories Press, 2003) 37; Moore, above n 47, 57-58.

⁹⁸ See generally Bovard, above n 1, 290; Chomsky, above n 97, 290. See especially Chomsky, above n 17, 17, 25, 111-112.

⁹⁹ Chomsky, above n 17, 111-112.

¹⁰⁰ Ibid 111.

¹⁰¹ See, eg, Bovard, above n 1, 290; Chomsky, above n 17, 17, 25, 102; Chomsky, above n 97, 37-38; Moore, above n 47, 48; C White, *Why I Oppose the US War on Terror: An Ex Marine Speaks Out* (2002) Z Magazine

<<http://www.zmag.org/content/showarticle.cfm?SectionID=15&ItemID=2567>> at 21 May 2004.

¹⁰² Moore, above n 47, 48. Also see White, above n 101; Chomsky, above n 97, 37-38.

¹⁰³ See, for example, Moore, above n 47, 41; Chomsky, above n 17, 17.

¹⁰⁴ See generally Moore, above n 47, 44, 60, 62.

link Osama bin Laden and Saddam Hussein (as both are in ideological conflict,¹⁰⁵ which both Bush and Secretary of State Colin Powell have even stated).¹⁰⁶ Ultimately, a discussion of the hypocritical nature of US foreign policy need only to inquire whether the US would remove their arsenal of weapons of mass destruction after going to war in order to remove them from others.¹⁰⁷

The nature of foreign policy and its attitude towards democracy, freedom, human rights, and social justice can also be demonstrated by the correlation between U.S. aid and human rights abuses. Evident in Latin America especially, US aid (in particular military aid) has disproportionately flowed to governments that torture their citizens and violate human rights, a correlation independent of need.¹⁰⁸ This aid provides a market for the arms industry (the largest industry in the world) to make a large profit.¹⁰⁹ While Amnesty International has labelled such actions as ‘trading in terror’,¹¹⁰ it really does not become surprising that given the large profits to be made and the investment climate created by siding with such regimes, the US remains unwilling to partake in any critical self-reflection, and truly fight all forms of terrorism.

These above examples are not the worst examples of terrorism in the guise of US foreign policy. The ‘war on terror’ fought by Ronald Reagan which focused on Central America and the Middle East left many thousands dead, countless others as refugees, and resulted in torture and the widespread violation of human rights. This is especially true for Nicaragua, which was virtually destroyed by US actions after the US could not control the outcome of a Nicaraguan election. In response to the terror that the country experienced, Nicaragua did not institute its own ‘war on terror’ and attack Washington (as they would be entitled to if they followed the current example of the US) but followed the rule of law and took the matter to international institutions. The World Court ordered the US to stop the atrocities and pay reparations, condemning the country for the ‘unlawful use of force’ (terrorism according to the FBI definition)¹¹¹ and violating international law. The reaction from America was to increase the war, ordering the destruction of civilian targets, which

¹⁰⁵ See, for example, Moore, above n 47, 56, 57. Hussein has led a secular Iraq, in opposition to bin Laden’s goals. See also Chomsky, above n 17, 19; Bovard, above n 1, 289, 302; W Pincus and D Milbank, *Al Qaeda-Hussein Link is Dismissed* (2004) Washington Post <<http://www.washingtonpost.com/wp-dyn/articles/A47812-2004Jun16.html>> at 20 June 2004.

¹⁰⁶ Bovard, above n 1, 303-304; Crockatt, above n 3, 156. Bush was asked by a journalist: ‘Do you believe that there is a link between Saddam Hussein, a direct link, and the men who attacked on September the 11th?’ Bush replied: ‘I can’t make that claim’: Bovard, above n 1, 303-304. See generally Chomsky, above n 17, 19; Pincus and Milbank, above n 105.

¹⁰⁷ Moore, above n 47, 125. Even if the US removed its weapons of mass destruction, it would still have the strength of arms to defeat any challenge to its hegemony. See also Robert Scheer, *America’s Weapons of Mass Destruction* (2002) Salon.com <<http://www.salon.com/news/col/scheer/2002/12/11/weapons/>> at 15 June 2004.

¹⁰⁸ See, for example, Sluka, above n 52, 8; Chomsky, above n 97, 46-47.

¹⁰⁹ Sluka, above n 52, 8.

¹¹⁰ Ibid.

¹¹¹ ‘The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives’, quoted in White, above n 101.

only stopped after the Nicaraguans voted for the US-backed candidate in domestic elections.¹¹²

Even after the escalation in bombing and the destruction of civilian targets, Nicaragua still followed the rule of law and went to the UN Security Council, which voted on a resolution for all states to respect international law, a resolution that was unsurprisingly vetoed by the US.¹¹³ The case of Nicaragua is only one example of the terrorist nature of US foreign policy; other examples include occurrences in Panama, the Middle East and elsewhere.¹¹⁴

If the FBI's own definition of terrorism is to be respected by the US, and believed to be an accurate definition, then the victims of its terrorist activities would include: Cuba, Haiti, Granada, Colombia, Bolivia, Zaire, Namibia, Venezuela, Uruguay, Paraguay, Ecuador, the Dominican Republic, El Salvador, Honduras, Bangladesh, Guatemala, Mexico, Chile, Lebanon, Egypt, Palestine, China, Greece, Cyprus, Angola, Iran, South Africa, the Philippines, Korea, Vietnam, Laos, Turkey, Iraq, Cambodia, Libya, Israel, Afghanistan, Sudan, Indonesia, East Timor, Mozambique and Somalia.¹¹⁵ Of serious concern is that this list is only indicative of victims since the Second World War.

The above examples demonstrate not only the concerning nature of American foreign policy, but also the nature of the entire mainstream commentary surrounding the 'war on terror'. Of vital importance to such a commentary would be the fact that the current war is being led by the only country to have ever been condemned by international bodies for terrorist activities, as well as the only country to have ever used nuclear weapons.¹¹⁶ This is surely an important issue, as it results in questioning the form of terrorism being fought in this war. It is not surprising that such a question has not been asked, as its answer would point to the complicity of the 'coalition of the willing' in actually supporting global terrorism.

Although many people may not feel such issues are important to them, it would seem that the victims of such actions cannot ignore the hypocrisy, especially the hypocrisy of claimed moral superiority and the assumed role of the US as designated innocent victim.¹¹⁷ By ignoring (when it suits those in power) international law to which it is a signatory, the basic ideals upon which democratic societies were founded, and the values to which they espouse, the US appears nothing more than an irresponsible superpower.¹¹⁸ Such actions severely tarnish the country's image and quite blatantly reveal the hypocrisy behind the true nature of US actions and foreign policy. As Abdullah Ahmed An-Na'im (former director of Human Rights Watch Africa) stated:

¹¹² See especially Chomsky, above n 17, 9, 99, 102. See also White, above n 101; T Coady and M O'Keefe, 'Preface' in T Coady and M O'Keefe (eds), *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne University Press, 2002) xiii, xvi; Chomsky, above n 97, 49-50.

¹¹³ See, for example, Chomsky, above n 17, 99-102; Chomsky, above n 97, 50.

¹¹⁴ See generally Coady and O'Keefe, above n 112, xvi; Chomsky, above n 17, 107.

¹¹⁵ White, above n 101. See generally Coady and O'Keefe, above n 112, xvi.

¹¹⁶ See, for example, White, above n 101; Coady and O'Keefe, above n 112, xvi.

¹¹⁷ White, above n 101; Annas, above n 12, 39.

¹¹⁸ Annas, above n 12, 39.

I am unable to appreciate any moral, political or legal difference between this jihad by the United States against those it deems to be its enemies and the jihad by Islamic groups against those they deem to be their enemies.¹¹⁹

These actions are also most damaging for the cause of human rights and liberal democratic values throughout the world. If one social group sees what has happened in the pursuit of these aims, is it not likely that these people will be less likely to embrace such values? Implementing policies that will breed further animosity towards to US and the coalition is not a positive outcome of this war; there is already enough animosity to go around.¹²⁰

VI HUMAN RIGHTS, SOCIAL JUSTICE, FREEDOM AND DEMOCRACY IN THE 'COALITION OF THE WILLING'

Analysing the attitude of the members of the 'coalition of the willing' is also important in fully understanding the implications and considerations of the 'war on terror'. Although the US is the leader of this coalition, such an analysis of others is justified because the lives of the troops of these countries are at risk. Furthermore, the citizens of these countries could be at risk of future terrorist incidents for being part of this coalition. If these countries uncritically gosestep behind the US and are unwilling to reflect on their own actions (and those of whom they are following), then their claims to moral superiority are also compromised.

For example, the true attitude that such leaders as Prime Ministers John Howard and Tony Blair have toward democratic ideals is relatively easy to identify. Australian polls indicated that around 70 per cent of Australians opposed the war, yet Howard still offered and sent troops to both Afghanistan and Iraq.¹²¹ It would seem a large political risk to go unpopularity into such a serious matter as war. Perhaps a Free Trade Agreement¹²² with the US convinced Howard to trump the democratic commitment to the will of the people with capitalist opportunism.

Public support within the majority of the 'coalition of the willing' was against the war (especially the invasion of Iraq), yet the leaders of these countries still went to war to protect freedom and democracy.¹²³ Furthermore, this was a violation of democratic principles welcomed and applauded by the US. Because of the links between the liberal democratic values currently being fought for and human rights, such a hypocritical attitude may also demonstrate the level of respect for human rights likely to exist in the coalition. Overwhelming opposition to the war was also found among the vast majority of the world's population outside the coalition. It was apparent that

¹¹⁹ Chomsky, above n 17, 201.

¹²⁰ Crockatt, above n 3, 69.

¹²¹ See, for example, Moore, above n 47, ix, 71; Fact Index, *Worldwide Government Positions on War on Iraq* (2003) Fact Index <http://www.fact-index.com/w/wo/worldwide_government_positions_on_war_on_iraq.html> at 30 June 2004.

¹²² See, for example, Moore, above n 47, 71; L Dodson, *Bush Pledges Free Trade Deal* (2003) *The Age* <<http://www.theage.com.au/articles/2003/05/04/1051987607571.html?oneclick=true>> at 20 June 2004.

¹²³ Chomsky, above n 17, 200.

the preferred response to September 11 for most of the world was diplomatic or judicial measures over military action.¹²⁴

Limited commitment to democratic ideals while espousing their importance is one hypocritical issue; yet another is the inclusion of terrorist and repressive governments in the 'war on terror'. Among the 'coalition of the willing' are some of the most oppressive leaders in the world, including Turkmenistan's Saparmurat Niyazov, or Equatorial Guinea's Teodoro Obiang ('elected' by a majority of 97 per cent of the vote).¹²⁵ Furthermore, Turkey is a member, where a quarter of the population (mainly Kurds) have been repressed with the backing of the US and Germany (who have provided military arms).¹²⁶ Other severely oppressed people are part of the countries that have joined this coalition, such as the Uighurs of Western China and the Muslim people of Uzbekistan,¹²⁷ not to mention the indigenous people of the US and Australia, as well as refugees and asylum seekers in Australia (fleeing from the governments that the coalition has gone to war against). It seems that being part of this 'freedom-loving coalition' is a major injustice to the oppressed people of these countries,¹²⁸ yet such issues appear to matter little if the leader tows the US line about having to 'rid the world of evildoers'.¹²⁹

VII CONCLUSION

Within their many roles, legal and justice professionals have the responsibility to fight to strengthen the ideals upon which Australia was founded (and for which the country is now supposedly fighting). However, this should occur in the domestic arena before others can be condemned without hypocrisy. As these professionals are sometimes all that protect citizens from government excesses, legal and justice professionals have the important responsibility of understanding and exposing the contradictions behind government policy and actions. A democratic society equipped with such knowledge, as well as that gained from personal critique, can only positively enhance the socially just values that are fundamental to democracy, human rights, and to achieving justice.

From this preliminary analysis, it appears that the 'coalition of the willing' has largely failed in its apparent claims to moral superiority over other nations that participate in terrorism, and in regards to its respect for values fundamental to social justice. Criticism focused on having the members of the coalition adhere to the values to which they espouse is justified, considering the instances of social injustice and disrespect for human rights that exist among this coalition, not only at home, but in the war. It is particularly important for the leader of this war, the US (as potentially the model for any reforms and as the primary definer of the supposedly superior ideology), to address such issues before the coalition can be respected in the manner it expects.

124 Ibid.

125 Ibid 114.

126 Chomsky, above n 97, 18-19.

127 Bovard, above n 1, 322.

128 Ibid 322.

129 Ibid 1, 5.

As the above discussion has shown, human rights, freedom, democracy, and social justice seem to have been among the casualties of this ‘war on terror’, despite the need for such ideals to be respected and upheld specifically in times of war.¹³⁰ The leaders of the ‘coalition of the willing’ must pay heed to the words of U.S. Supreme Court Justice and chief prosecutor at the Nuremberg trials Robert Jackson, who stated that ‘unless we afford all people...with basic human rights, history will rightfully judge us harshly’, and furthermore, ‘to pass these defendants a poisoned chalice is to put it to our lips as well’.¹³¹ The less human rights are upheld and the more they are undermined, the less reason one has to fight for them.¹³² The same is true for freedom, as ‘freedom is not just an end of economic development and social justice, it is a means as well’.¹³³

As President Bush has almost naively said to the UN, ‘[w]e’re asking for a comprehensive commitment to this fight. We must unite in opposing all terrorists, not just some of them’.¹³⁴ Until this is true, by addressing social issues, respecting international institutions that wish to maintain human rights and peace, and confronting the truth that the US is and has been the leading terrorist state, it remains disingenuous not only to make this statement, but also to make it to this audience. Addressing the terrorism of others and not that of the state does not absolve the coalition from past or current crimes and terrorist activities.¹³⁵ If the restriction of freedoms and democracy, the violation of human rights and the perpetuation of social injustice by others is condemned as terrorism, how can such actions be tolerated or justified within those fighting the ‘war on terror’? In this regard, the ‘coalition of the willing’ appears the biggest terrorist. It is difficult to conclude otherwise.

¹³⁰ See, for example, Kavan, above n 67.

¹³¹ Annas, above n 12, 47.

¹³² Sen quoted in Annas, above n 12, 46.

¹³³ Ibid.

¹³⁴ K Van Der Borgh and J Strawson, ‘Cuba and the Axis of Evil: An Old Outlaw in a New Order’ in J Strawson (ed), *Law After Ground Zero* (Glass House, 2002) 59, 67.

¹³⁵ Bovard, above n 1, 352.