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Extreme Financial Risk-taking as Extremism subject to anti-terrorism legislation?

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Introduction

This is an exploration of the degree to which financial risk-taking, of the kind acknowledged and deplored as central to the financial crash of 2008, can be defined as "extremism". And, to the extent that that is the case, does such extremism fall under the proscriptions of anti-terrorism legislation -- given that "extremism" has been conflated with "terrorism".

The exploration follows from an earlier study on the forms of what be understood as "terrorism" (*Varieties of Terrorism -- extended to the experience of the terrorized*, 2004). Given that there has been a more recent tendency to conflate "extremism" with "terrorism", two further explorations focused on the nature of "extremism" (*Presumption of Guilt by Association: reframing extremism in the response to terrorism*, 2005; *Norms in the Global Struggle against Extremism: "rooting for" normalization vs. "rooting out" extremism?* 2005).

Definitional-game playing

Whilst different legislations may define "terrorism" with a degree of precision, it would appear to be the case that no clear international definition exists. This follows from the saga of many years regarding the international definition of "aggression". In particular definitions do not take account of the experiential situation as to whether people can legitimately claim to have been "terrified" or "terrorized". They notably fail to take account of "terror" induced by government agencies (for reasons they frame as legitimate) or which they simply deny. This confusion notably arises in relation to any form of "interrogation", defined as legitimate, or of "collateral damage" in a conflict situation.

Incitement to terrorism, as opposed to any incident defined as involving "violence", has been progressively associated with "extremism" - defined as "unacceptable" in any form. Unfortunately, here again, there is no clear definition of "extremism". The term may be qualified as "violent extremism", presumably to be understood as incitement to violence.

The difficulty with such definitions is that:

- terrorism may be a matter of personal experience including such forms: bullying and intimidation, mugging, exposure to dangerous driving, etc (as noted in *Varieties of Terrorism -- extended to the experience of the terrorized*, 2004)
- extremism may include extreme sports, extreme beliefs, extreme diets (as noted in *Norms in the Global Struggle against Extremism: "rooting for" normalization vs. "rooting out" extremism?* 2005).
- violence may be understood as limited to actual physical violence in contrast with threats of violence. This unfortunately excludes those forms of violence understood as structural, cultural or psychological.

Johan Galtung (*Violence, Peace, and Peace Research*, *Journal of Peace Research*, Vol. 6, No. 3. (1969), pp. 167-191) makes a vital distinction between physical violence and **structural violence**. Physical violence is for the amateur, using weapons in order to dominate. For Galtung, structural violence is the tool of the professional employing exploitation and social injustice to achieve domination. But beyond the latter, acting behind the scenes (and adjusting the scenery) is surely the conceptual violence of the super-professional, using disinformation and psychological operations (military psy-ops) -- and the associated processes of brainwashing. Examples of conceptual

violence include use of category euphemism to inhibit or numb recognition of other dimensions of an experience. This is typical of business and military jargon (bodycount, collateral damage, etc.) but even of reference to body processes (washroom, etc.) -- reinforcing an insidious form of experiential denial.

In addition to "structural violence", Johan Galtung (*Cultural Violence, Journal of Peace Research*, Vol. 27, No. 3, 291-305, 1990) has defined "cultural violence" as any aspect of a culture that can be used to legitimize violence in its direct or structural form. Symbolic violence built into a culture does not kill or maim like direct violence or the violence built into the structure.

The difficulty is how then is "violent extremism" to be understood and addressed by the law?

Extreme risk-taking

There is no lack of references to the extreme risks taken by traders on the financial markets in the past decade -- whether primarily for their own personal benefit or with the incitement of their institutional superiors. The level of the rewards has been exorbitant by many, if not repugnantly so.

There is also no lack of references to the consequent loss of livelihood, shelter, and the ability to obtain food and health care. The loss of housing as a result of the subprime crisis, and the loss of employment thereafter, have been the subject of repeated comment in the light of detailed statistics available in many countries.

Many have been appalled at the continued payment of financial rewards to those who have been most intimately involved in these practices -- rewards made notably with the use of taxpayer bail-out funds.

The argument has been put forward that many such payments were made in conformity with legally binding contracts -- presumably on the assumption that no professional fault was involved that would nullify the terms of such contracts.

Curiously the expression "financial extremism" was already used in London in 2002 ([Anthony Hilton, *Financial extremism that gives cause for alarm*, Evening Standard, 16 May 2002](#)).

"Violence"

Little effort has been made to undertake legal proceedings against those who have been intimately involved in the processes which have affected the lives and livelihoods of so many.

Within the above context, what is to be considered "violent" in the light of either "violent extremism" or terrorism. Clearly the crisis has engendered terror in many uncertain of their livelihoods, their future, or their pensions. Presumably many will die prematurely as a result of the extreme risk-taking, especially in developing countries or regions dependent on economies that have effectively collapsed. Presumably also, some investors, faced with financial collapse, may have committed suicide, or may do so.

However, these consideration can be set aside as more difficult to assess.

Potentially more credible is the question of how "violent extremism" is to be understood in relation to extreme risk-taking. At what point is any form of extremism to be understood as "violent"? If the risk-taking places the lives of others in danger, should this not be considered as "violent extremism"? A simple, perhaps trivial example, is driving at high speed such as to endanger the lives of others, whether or not they are "terrorized" by the process. Incitement to do so might also be considered in the same light.

Legal action against extreme risk-takers?

The issue is then the extent to which the extreme risk-taking in which traders engaged, and were incited to engage, should be considered as tantamount to "violent extremism" and therefore subject to the relevant legislative provisions -- however these may or may not be conflated with those for "terrorism".

Of interest in this respect is any statute of limitations on undertaking such legal proceedings.

Also of interest is that legal proceedings would then be undertaken under anti-terrorism laws rather than seeking to redress for actions relating to the legality of financial activity of the trading corporations. Ironically, whereas the notorious [Al Capone](#) was not indicted for any of his gangster and racketeering activities but for income tax fraud, here the situation is reversed in seeking to pursue extreme risk-takers for the "violence" resulting from their activity -- as envisaged by legislation against "violent extremism".

In some cases it is "extremism" alone that is subject to legal sanction, irrespective of the use of "violent" as a qualifier. To what extent is the extreme risk-taking in which financial traders engaged then to be understood as a form of extremism? How is complicity in such activity then to be understood?

More generally, what "extreme" initiatives and viewpoints are *not* to be considered as potentially justifying action against their "extremism". For example, is this argument worthy of such consideration? More provocatively, is fanatical conformity to norms to be considered "extremism" -- especially when it leads to loss of life through "following prescribed procedures" and "obeying orders" -- irrespective of whether they constitute "withholding aid to those in danger" (held to be a crime in some countries)?

With respect to criminality, how is the distinction to be made between misleading clients through a Ponzi scheme -- considered "fraudulent" -- and misleading investors in financial derivatives -- considered "legal"? Both clients and investors are well-satisfied for an extended period -- until the moment of truth. Like "creative accounting" does this exemplify the quest for "flexibility", with only the first case being considered unacceptable?

Financial "crimes against humanity"?

The main argument against criminal action against those who are responsible for the financial crisis of 2008 and its consequences is that they did nothing illegal at the time and were encouraged in their risk-taking by the institutions for which they worked and with whom they had lucrative contracts. People at the highest level of government were supportive of their role.

Given the harm inflicted on the livelihoods of millions, as is becoming increasingly evident in 2009, the question is to what extent those responsible are effectively protected by legal niceties. These might be usefully compared to "creative accounting" -- equally legal but challenged as suspect. As an example, given his formal regulatory role in the UK Government, how irresponsible is [Gordon Brown](#) to be considered for his speech on 20 June 2007, as quoted by Will Hutton (*High Stakes, Low Finance*, *The Guardian*, 2 May 2009):

This is an era that history will record as a new golden age for the City of London," Brown intoned. "I want to thank all of you for what you are achieving." Just weeks later the financial catastrophe burst, creating the "great recession" and leaving the UK taxpayer with a one-sided exposure of £1.3 trillion in loans, investments, cash injections and guarantees to the banking system, of which over £100bn may be lost for ever. Brown went on to hymn the City's "creativity and ingenuity" that had enabled it to become a new world leader. In language so purple it could make a cardinal blush, he praised London's invention of "the most modern instruments of finance" -- the very instruments that were to bring it and the western banking system down.

In May 2009, the European Commission indicated that it expected the recession across Europe to be twice as bad as previously predicted. The European economy was declared to be in the midst of its deepest and most widespread recession since World War II. Unemployment across Europe was expected to rise to 26 million, or 11.5% -- increasing from 7.5% in 2008. The eurozone budget deficit will triple to 6.5% of GDP in 2010, well above the EU upper target of 3%. (Julia Finch, *It will be twice as bad as we feared*, says *Brussels*. *The Guardian*, 5 May 2009). Given that these forecasts have been revised from those made only months earlier, it is questionable how much confidence it is appropriate to have in them.

As pointed out by Timothy Garton Ash (*This epochal crisis requires us to resolve the paradox of capitalism*, *The Guardian*, 6 May 2009):

The conduct of the bankers who pitched us into the slurry-pit - not all bankers, of course, but quite a few of them - may not have been illegal but it was selfish, irresponsible and immoral. Year after year, they took huge personal gains for themselves on the basis of assets whose real nature and prospects they either did not understand or cynically ignored. Their pay and bonuses, out of all proportion to the sums almost everyone else was earning in the societies around them, were justified as "performance-related", but "performance" was measured by inadequate indicators over too short a time-frame.

A strong argument is made for the inappropriateness of initiating legal action against those who might be held responsible by any reframing of the legal perspective with regard to past actions. The interesting question is what is the degree of harm caused by such actions which would justify reviewing such legal protection? If 10 million were to lose their livelihood would that justify such a review? 50 million? 100 million? If deaths were involved? Specifically, how much consequential harm is required to justify revision of what has been considered "legal"?

A potentially valuable parallel is the manner in which the [Nuremberg Trials](#) were justified as a means of prosecuting the most prominent members of the political, military, and economic leadership of Nazi Germany after its defeat in World War II. The legal basis for those trials was established by the *London Charter of the International Military Tribunal*, issued on 8 August 1945, which restricted the trial to "punishment of the major war criminals of the European Axis countries." Three categories of crimes were defined: [war crimes](#), [crimes against peace](#), and [crimes against humanity](#).

Some sources date the end of [World War II](#) from the armistice of 14 August 1945, rather than the formal surrender of Japan (September 2, 1945); in some European histories, it ended on [V-E Day](#) (8 May 1945). It is to be noted that this charter was signed **after** the latter date and therefore is in some measure retroactive.

The charter stated that holding an official position was no defence to war crimes. **Obedience to orders could only be considered in mitigation of punishment if the Tribunal determined that justice so required. The question therefore stands as to how comparable is the harm done by those complicit in the financial crisis and its consequences.** At what stage should a charter be signed to prosecute those held to be responsible -- whether or not they are esteemed to have acted legally (as presumably did those within the Nazi regime) and whether or not the enabling charter is signed after the perpetration of those crimes (as was the London Charter)?

What is to prevent [financial crimes](#) against humanity being considered as meriting such prosecution? What level of damage to livelihoods justifies treatment of irresponsibility and negligence as worthy of prosecution?

Failing any consideration of such possibilities by states, is there a case for undertaking such trials by the [Permanent Peoples' Tribunal](#) as a long-established international opinion tribunal? This would at least constitute token recognition through naming and shaming.

However, purely as a matter of legal principle regarding the nature of the implication of those deemed responsible for Nazi war crimes, is it remotely possible that the outcome of their trials could now be considered a miscarriage of justice in the light of the legal principles now determining the degree of responsibility of those complicit in engendering the current worldwide loss of livelihood, whether deliberately or through neglect?

Extreme financial risk-taking by al-Qaida?

In September 2008, many commentators in the USA were arguing that the damage done to stocks through short selling could have been the work of "financial terrorism" (Jerry Mazza, *Financial terrorism: US taxpayers bail out Wall Street criminals*, *Online Journal*, 22 September 2008). The possibility was reviewed under the heading *Financial Terrorism on Wall Street?* (Michael Webster, *Terrorist attack Wall Street*, *Right Side News*, 18 September 2008; Northeast Intelligence Network, *Our current economic crisis: Could part be a terror attack on U.S. financials?* *Right Side News*, 28 September 2008). The arguments were developed by various parties of questionable objectivity, especially given the quality of information available and the opportunities to gain political advantage from the crisis.

However earlier in 2008 in the UK, the case had already been made that hedge funds should be forced to reveal their trading secrets to deter them from the more evident kinds of market manipulation (Neil Barnett, *Tantamount to financial terrorism*, *The Spectator*, 23 April 2008). The term "financial terrorism" had figured in commentaries prior to 2008. Max Keiser (*What is 'Monetary Extremism?'* *The Huffington Post*, 5 July 2008) defined "monetary extremism" as:

In other words, in response to the so-called terrorists the Fed in Washington has embarked on its own jihad by expanding the money supply at 18% -- one of the largest percent increases in history. The results are near catastrophic and about to get a lot worse

Had the financial crisis of 2008 been the result of al-Qaida sympathizers, operating through several international bank trading houses, it would have been considered a great strategic success by them. But, if they had done nothing "illegal", as is claimed by those currently claiming no responsibility, at what point would this position have been considered indefensible?

Of particular interest would have been the situation if "al-Qaida" had eschewed "violence" in any physical form -- and had strategically shifted its focus to ensuring "structural violence" -- as a riposte to the structural violence it sees as justifying its own action. .

Of even more interest would be the case if they had eschewed violence in any form, including structural violence, and were then able to claim no responsibility for any "collateral damage" arising from their actions.

More fundamental is the issue of how much extreme risk-taking can be deliberately undertaken, placing the livelihoods of others in danger -- if not their lives -- without it being appropriate to substantiate any claim against those risk-takers. Speeding in an automobile offers an interesting example, even though "speeding" is now illegal in its own right -- but not as "extreme risk-taking". Of course, as suggested above, speeding might also provide the basis for action under anti-terrorism legislation -- as engendering terror in others.

More provocatively, given how effectively the financial traders pursued a strategy that would have been welcomed by al-Qaida, to what extent can those traders be interpreted to be covert sympathizers, "aiding and abetting" the al-Qaida cause -- if only unconsciously in an increasingly "unconscious" civilization (John Ralston Saul, *The Unconscious Civilization*, House of Anansi, 1995)

If the non-violent "financial extremism" in which trading houses were complicit is to be interpreted as constituting a degree of complicity analogous to that of the chauffeur of Osama bin Laden, it is useful to explore the judgement against that chauffeur. A U.S. military jury convicted the driver, Salim Hamdan, of providing material support to al-Qaida, but cleared him of terrorism conspiracy charges (*Bin Laden's former driver guilty in terror trial*. *CNN*, August 2008). Does this suggest how "financial extremism" should be handled?

Richard Seymour (*The Liberal Defence of Murder*, 2008) considers, for example, that with respect to the US imperial enterprise, its foot soldiers include a great number of liberals and progressives -- thinkers and writers he labels as "enablers". He argues that the "moralisation of the means of violence has been the task of liberal and progressive intellectuals since they first competed with clerics for moral authority". If those enabling violent terrorism in any way are to be a focus of legal retribution,, what of the "enablers" of global financial catastrophe.

Simply stated:

- did extreme financial risk-taking effectively assist al-Qaida?
- did the results correspond to the strategic interests of al-Qaida?
- could agents of al-Qaida have done it better in the interests of al-Qaida?
- having lost livelihoods, life savings or pensions, do significant numbers of people now face a terrifying future?

Cui Bono?

Example: United Kingdom

As reported by Seumas Milne (*We are all extremists now*, *The Guardian*, 16 February 2009), the government is criminalizing legitimate dissent under the guise of fighting "extremism", a word for which it has no definition. He notes indications that security services are now coordinating surveillance and infiltration of "domestic extremists". This is understood to be specifically working with government departments, university authorities and private corporations to "remove the threat" of "public disorder that arises from domestic extremism" using "secret data" and "sensitive source material".

Given the historically unprecedented disruption to the national economy and individual livelihoods, resulting from the acknowledged complicity in extreme financial risk-taking, it must surely be asked how this threat to national security is to be distinguished from "domestic extremism"

With respect to the same initiative with regard to "domestic extremism", Asim Siddiqui (*How to categorise every Muslim as an extremist*,

The Guardian, 17 February 2009) comments:

According to [documents seen by the Guardian](#), the government is planning to move its counterextremism "prevent" strategy from targeting those that promote violent extremism to those that endorse extremist ideas in general but condemn violence. The idea being that there is a "conveyor belt" from people finding extremist ideas appealing to then becoming violent extremists themselves, and that by the government working with non-violent extremists (which the government has apparently been doing) to tackle violent extremists simply legitimises and emboldens the world view of said extremists and hence makes their followers easier prey for the violent extremists.

In this case the question arises whether the "counterextremism strategy" had taken account of the extreme financial risk-taking in framing its preoccupations -- surely a clear example of "non-violent extremism". Arguably banks had indeed been endorsing "extremist ideas", but with no incitement to violence in the physical sense -- whatever the complicity in structural violence. Seemingly however an extremist will be "defined" on the basis of a set of criteria. As Siddiqui notes:

But who is an extremist? To provide us with the answer, the state will do your thinking for you and will apparently provide a checklist against which you can tick off the various criteria.

Siddiqui's concern is that the [draft criteria](#) for "extremism" focus narrowly on Muslims. It is not clear whether any other group holding views that could be framed as endangering British national security would be recognized by such criteria. Again, the extremism in which the financial traders so "successively" engaged (at the expense of British interests) would seem to have been neglected. Indeed the British government is now in a situation of funding those that engaged in this very activity -- only tardily curtailing individual bonuses in those companies in which they have a direct financial interest.

| Case of Fred Goodwin (Royal Bank of Scotland) | |
|---|---|
| Widespread concern at the level of payout of Fred Goodwin (following a disastrous financial performance of RBS consequent upon its involvement in the financial bubble in 2008) resulted in an articulation of the possibility of recovering his exorbitant pension allowance (Afua Hirsch, <i>What are the legal options?</i> , <i>The Guardian</i> , 27 February 2009). These included: | |
| <ul style="list-style-type: none">• claw back• criminal charges• refuse to pay | <ul style="list-style-type: none">• legislation• higher taxes• administration |
| With respect to "criminal charges" it was stated: The only way to challenge it now is to find something that was done in the past. If he was guilty of any gross misconduct, or he was in breach of a fiduciary duty to disclose his own wrongdoing, that could force him to reconsider his position. | |
| In the light of the case of Al Capone and the UK legislation against "extremism", would it not be more appropriate to indict Goodwin under the legislative provisions regarding terrorism? | |

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