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Deterrence, Punishment, or Retribution: American Criminal Prosecution of Sayfullo Saipov and Intern

By: Madeline Epstein



On Halloween in 2017, Sayfullo Saipov drove a large truck into dozens of people on the cycling and pedestrian pathway near the West Side Highway in Manhattan, causing eight deaths and numerous injuries.[1] Saipov was allegedly acting on behalf of the Islamic State (“ISIS”), and the Southern District of New York charged him with twenty-eight counts, including murder and attempted murder in aid of racketeering and provision of material support to a designated foreign terrorist organization, among other included charges.[2] Saipov, a citizen of Uzbekistan, was found guilty by the American jury on all counts during the guilt phase of his trial.[3] In the upcoming sentencing phase (poised to begin on February 6), a jury will deliberate on whether or not to impose the death penalty on Sayfullo Saipov.

The upcoming penalty phase begs the question of what purpose the American criminal prosecutions of international terrorists serve: deterrence, punishment, retribution, or all three. Deterrence, an essential component of criminal prosecution, considers that convicting a criminal and bringing accountability for his or her crime will deter other potential offenders.[4] Convictions and criminal sentences that punish perpetrators of crimes potentially also signal to future offenders that their criminal attempts will not be fruitful. Even if they succeed in carrying out crime, the perpetrator knows he will never be free

in society, as he will have to pay for his crimes. This de-incentivizing system only functions properly if it succeeds at deterrence.

In 2022, the United States was ranked 28th on the Global Terrorism Index (“GTI”), after moving up two places since 2021, sitting between Iran and Greece.[5] The GTI defines terrorism as

“the systematic threat or use of violence, by non-state actors, whether for or in opposition toestablished authority, with the intention of communicating a political, religious or ideologicalmessage to a group larger than the victim group, by generating fear and so altering (orattempting to alter) the behavior of the larger group.”[6]

.....While this data represents only a limited look into terrorism-related activity in the country, at a minimum it demonstrates that despite all efforts to prevent and punish terrorism, it continues to wreak havoc in America at increasing rates.

Modern international criminal justice took form with the Nuremberg trials, where Nazi war criminals were punished for their participation in the Holocaust.[7] The international justice system continued with this punitive focus which may have had a deterrence effect, because failure to prosecute international criminals could embolden instigators of similar crimes. However, the emphasis is not on deterrence, because there is no guarantee that potential future criminals will be dissuaded by another criminal’s punitive sentence. This is seemingly where America falls in its criminal justice objectives: accountability through punishment and removal of violent criminals. There is a relationship between pursuing retributive justice and pursuing criminal security.[8] Sayfullo Saipov is one less international actor carrying out acts of terrorism on behalf of the Islamic State, and whether or not it deters future similar actors is not the focus of prosecuting him. The families of victims are likely not concerned with what other criminal actors will potentially do or not do; they want to see the man who murdered their loved ones properly detained and punished. This is another function of prosecuting international terrorists like Saipov in the United States – retribution and justice for victims, families, and communities affected by terrorism. When foreign citizens enter the United States and commit acts of terrorism on American soil, disrupting American peace, American courts should be able to punish them on behalf of all impacted Americans.

When capital punishment is on the table for criminal actors like Sayfullo Saipov and other evil terror-makers like him, does this mean the United States is taking revenge? Revenge is different from retribution, as it is a private matter between perpetrator and victim, or the family of a victim.[9] When the state carries out punishment as a matter of retribution, however, it fulfills the same function as private revenge. The process of prosecuting and convicting a criminal in the American criminal justice system is prescribed and extensive, but the end goal of formal “revenge” is achieved by American prosecutors.[10]

The families of murdered victims of terror will not have their loved ones back, but they can sit in courtrooms and watch the American criminal justice system work to punish the perpetrators of attacks. Perhaps the guilty verdict and a life in prison for Sayfullo Saipov is enough for some of his victims’ families, and maybe they do not all wish the death penalty for him. Not everyone seeks “an eye for an eye” in criminal justice. The most important thing here is that Sayfullo Saipov is no

longer free to commit more acts of terror on behalf of ISIS, and the American criminal system fulfilled its role in bringing justice and enforcing the law.

Madeline Epstein is a Staff Editor at CICLR.

[1] *United States v. Saipov*, 412 F.Supp.3d 295, 296 (S.D.N.Y. 2019).

[2] *Id.* at 297.

[3] *A Man who Killed 8 Bicyclists in Manhattan in Convicted and May Face the Death Penalty*, NPR (Jan. 27, 2023), <https://www.npr.org/2023/01/27/1152043983/new-york-bike-path-terrorist-truck-attack-sayfullo-saipov-guilty> [<https://perma.cc/M4LK-H2S5>].

[4] Kate Cronin-Furman, *Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity*, 7 Int'l J. Transitional Just. 434, 434 (2013) [hereinafter *Managing Expectations*].

[5] Institute for Economics & Peace, *Global Terrorism Index 2022: Measuring the Impact of Terrorism* 8 (Mar. 2022), <https://www.visionofhumanity.org/wp-content/uploads/2022/03/GTI-2022-web-04112022.pdf> [<https://perma.cc/2RTG-ZP4H>].

[6] *Id.* at 6.

[7] Cronin-Furman, *supra* note 4, at 436.

[8] Victor Trados, *Justice and Terrorism*, 10 New Crim. L. Rev. 658, 658 (2007).

[9] Burton M. Leiser, *Capital Punishment and Retributive Justice*, 21 Free Inquiry 40, 40 (2001).

[10] On the flip side of this, families of 9/11 victims are disturbed by potential plea deals being made with 9/11 terrorists, as they want to see proper punishments imposed on the men who helped murder their loved ones. See Charlie Savage & Carol Rosenberg, *Biden Leery of Involvement in Potential Plea Deal in Sept. 11 Case*, N.Y. Times (Jan. 25, 2023), <https://www.nytimes.com/2023/01/25/us/politics/biden-guantanamo-sept-11-plea.html> [<https://perma.cc/4ZML-HUKW>].