

# The Meaning(fulness) of Treason

OWAIN JOHNSTONE  
*Oxford University*  
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## Introduction

Why is it that British citizens who travelled to Iraq or Afghanistan to fight against Anglo-American troops or who incited terrorism in the UK were not charged with treason? Treason charges were considered in several such cases, but in the end were not applied. The decision not to label these acts as such speaks to the declining relevance of treason in contemporary society, and points to the distinct character, as well as the increasing prominence, of terrorism.

In this essay I explore why treason has declined in relevance, and what that decline, together with the increasing prominence of terrorism, can tell us about wider changes in society.

## What is treason?

In order to explore the continuing relevance and meaningfulness of treason, we need to adopt a working definition.

In one sense, treason is straightforward to define - it is a criminal offence set out in an Act of 1351, in language that is archaic but not complicated. Paraphrased, the offence reads as follows. Treason comprises: plotting the death of the King or Queen or their eldest son and heir; violating the King's wife, or the King's eldest unmarried daughter, or the wife of the King's eldest son and heir; waging war against the King in his realm, or aiding his enemies there or elsewhere; murdering the Chancellor, the Treasurer or a King's Justice.

The thrust of the offence clearly belongs to a specific historical period. Its concerns are with the physical person of the monarch, with the purity of the royal bloodline, and with the rebellion of a monarch's subjects, likely during a time of war. Consequently the word 'treason' has a certain historical air to it, almost a romantic tone. It does not seem quite of our time.

Despite this historical specificity, the idea of treason, along with the criminal offence, has survived until the present day. Clearly there must be some perceived need for it, and that must rest on the spirit or intent felt to underlie the rather antiquated wording of the offence. We might think of this as less a legal meaning, more a social meaning. What is it that we mean, then, when we invoke treason in public and political debate today?

Intuitively, we can point to certain obvious preconditions without which treason cannot be said to have occurred. In short, there must be some kind of allegiance, that is breached, in such a way as to threaten the integrity of the basis on which allegiance is owed. Of course, when we talk of allegiance today, at least in liberal democratic countries, we generally mean allegiance to our national government rather than to an unelected monarch.

All three elements must be present. An allegiance that is breached does not by itself constitute treason. We breach any allegiance we owe our government every time we break a law. The law can be seen as a kind of social contract, a set of rules by which we, as citizens, agree to abide in return for certain services and protections (healthcare, law enforcement, and so on). When we break a law we violate the contract we have entered into with the state.

Yet most crimes are not treasonous. This is because they do not threaten the basis on which the bond of trust between citizen and state is established. A contract is made in the expectation that it may be breached; provisions are included for dealing with that eventuality, through recourse to arbitration or enforcement of some kind. So long as those provisions are able to occur as intended, such that breaches are dealt with appropriately, the system remains intact. More contracts can be made, in the expectation that they will be honoured or that breaches will be remedied.

Some acts not only constitute a breach of whatever allegiance we may be said to owe our government, but also threaten the basis of that allegiance. The most typical kind of act of this nature would be an act of aggression against one's government - which directly challenges and rejects the social contract. It is this kind of act that we are inclined to label as treason.

Of the three preconditions, the most central is the allegiance presumed

to be owed by a citizen to their government. This is the aspect of treason that Rebecca West focuses on in her account of the trial of William Joyce. West thought that the bond between citizen and state occurs naturally and automatically. It was not, in her view, necessary even to be a citizen - mere physical presence in the territory of a state would suffice in order to establish a duty of allegiance. She thought that entering a jurisdiction would imply the acceptance of the protections offered by a state power, in return for which allegiance is owed. In this sense, we can never not owe allegiance to at least one national power. We are born bearing an allegiance and, no matter where we go, we are never able to escape that basic duty. Treason is thus a violation of a universal human obligation. Unsurprisingly, West implies that the act of treason is unnatural and renders one less than human.

In modern society, it is this precondition for treason that seems most obviously problematic. It entails a view of the world in which the pre-eminence of the nation state is taken for granted. Alternative allegiances (international bodies such as the European Union or transnational movements such as Al Qaeda) are not compassed. While that view of the world may have been common when West was writing, it is less common, and less true, today.

## **The decline of treason**

The idea that national identity and allegiance is automatic and universal is surely less relevant today than before, and certainly less relevant than it was in 1945 when West observed Joyce's trial. After a period of six years during which powerful nations had been openly at war with one another, it must have seemed implausible that the pre-eminence of the nation state would ever be challenged. Today, increasing levels of migration, the availability of new trans- and international identities, the increasing prevalence of transnational bonds of business and the global supply chains of modern capitalism have to some extent reduced the power of the state. More importantly, the idea that we are each born with a single national identity, owing allegiance to one state, is no longer as automatic as was once the case.

The declining centrality of the nation state has not left a vacuum, however. We may look less to the state as a source of identity and as a repository of allegiance, but we continue to recognise the importance of loyalty to

something higher than ourselves. So we turn to additional or alternative sources of legitimacy and authority.

This often involves augmenting or replacing talk of King and country with statements of values and ideals: democracy, human rights, justice, freedom. These have the advantage of abstraction: rather than residing in flesh and blood individuals or particular patches of earth, they can stand free, unconfined by material constraints. Importantly, they need have no respect for national borders.

Treason does not fit into this picture for two reasons. First, it is particular to a nation state, as represented by a set of individuals or institutions. Second, it requires a presumed, automatic allegiance to that state. It is much harder to posit an automatic allegiance to a set of values or beliefs. We are not born into values or beliefs in the same way as we are born into a nationality; nor do we freely change our values as we move, adopting those of the people around us in the way West thinks we acquire a bond of trust between whatever nation state we find ourselves in. We think of values and beliefs as objects that are up for debate, to be constructed, agreed to or rejected according to the free choice of the individual.

This, anyway, is the liberal democratic vision - itself an ideal. It holds that we create values, argue freely for their merits, and choose freely which to pursue. In that paradigm, at least, treason has no place. It might be objected that in some cultural contexts there do exist sets of values presumed to be universal, inherited upon birth and non-negotiable. But I will focus here on the liberal democratic context, because doing so usefully highlights both the limits of treason and the importance of terrorism.

## **Terrorism**

While treason cannot be directed at a system of values or ideals, terrorism can. Like those values, terrorism need not be tied to any geographical location; it can outlive particular individuals or institutions; it is driven by values of its own.

It is generally a mistake to treat an act of terrorism as an act of treason, because to do so tends to ignore the motivation of the terrorist act and risks mischaracterising its target as a particular nation state rather than a set of values and beliefs (albeit these may be held or represented by a group of nation states).

To suggest that terrorist acts are also acts of treason is problematic.

Either it entails viewing those acts as directed at only one nation state, which seems intuitively wrong given the shared international grief and anger that often accompanies such attacks, or, alternatively, it requires us to assume that a duty of allegiance can be owed to a community of values or beliefs. It is possible to argue that an individual who freely enters into a community by subscribing to their shared values thereby enters into a relationship of trust and comes to owe a duty of allegiance to the community, but it is a difficult case to make out, not least because of the challenges involved in precisely defining such a community. Moreover, it implies that any crime harming the community in some way becomes an act of treason, since it represents a breach of trust with that community. The third precondition of treason identified earlier - that a breach of a duty of allegiance must also threaten the basis on which that allegiance rests - no longer applies. Indeed, it is hard to see how it should apply; what basis is there for the allegiance here except the choice of the individual subscribing to a particular set of values? The result is that treason, in this account, becomes equivalent to 'crime' and loses its specific force.

Treason and terrorism should therefore be kept separate. The contrast is made clear if we consider situations of warfare. Treason could be distinguished from war with relative ease. During the Second World War, a German paratrooper landing on British soil was an enemy combatant prosecuting an act of war. A British resident (even if German in origin) actively assisting the German war effort was committing an act of treason.

Faced with terrorism today, we encounter a difficulty in distinguishing between betrayal of a community and an attack on that community from the outside. In other words, is a terrorist a criminal or a soldier? The former seems to diminish the horror of their acts, while the latter seems to dignify them with a legitimacy we are loathe to accord them. Even assuming we want to try to answer this question, it is unclear how we are to do so. The nationality or residence of the terrorist is hardly decisive - many terrorists are native to the country in which they carry out their attack.

Yet as unpleasant and difficult as it is to answer this question, it is also vital to attempt it. To avoid the issue is to avoid asserting where the boundaries of our community lie. In a world where our allegiance to certain sets of values can be an important component of our identities, it is important that we are able to locate the communities with which we share those values. The definitional challenges that terrorism raises highlight the fluidity of the communities of values that are becoming increasingly important. The decline of treason is illustrative of the same phenomenon.

Both betray a degree of uncertainty - perhaps growing - as to how and from where we derive our sense of belonging and identity.

The availability of treason as a concept that could be pressed into service to prosecute and convict individual offenders assumed that the idea of a national community to which we belong was uncontroversial. In West's telling of William Joyce's trial, she focuses considerable attention on the legal arguments regarding Joyce's nationality, arguments that were complex and uncertain. Yet at no point is there any uncertainty in West's mind or those of the spectators whom she speaks to that Joyce is outside the bounds of their community, having exiled himself through his support for the Nazi regime.

The communities targeted by terrorism today are plural, complex and shifting. They do not necessarily share borders, governments or militaries - though they can include and be marked by those things. When we label an act as terrorism, we are not presuming boundaries of the community thereby attacked - we are implicitly asserting the existence and nature of that community, precisely because we cannot take its contours, or even its existence, for granted. At the same time, we also assert the existence and contours of the terrorist 'community' to which we attribute the attack. Terrorist offences and our responses to them are thus mutually constitutive.

## Conclusions

The nation state is still of fundamental importance to the working of the world, even if it no longer enjoys the taken for granted primacy that it once did. As long as that remains the case, some notion of treason will remain relevant. But it is a very different phenomenon to terrorism. We should hold the two separate so as to remember that they represent attacks on two very different things - a nation state, embodied in particular institutions and individuals, as against a community of values. Sometimes those two kinds of community align, even if temporarily, but they are qualitatively different. Our responses to treason and terrorism ought to reflect that.