

ON TERRORISTS, ZOMBIES & BIKINIS

A Study on Police Measures, State Security & Terrorism

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ABSTRACT

The following article is the second published report on my ongoing research on the transformation of the global public sphere in relation to terrorism. This research is part of a project seeking to understand the cartography of terrorism and the public global sphere. This time I consider the case of Great Britain between 2000 and the present. The tone of my approach will be respectful but critical. I will refer to the state of exception as the state of our situation. I will proceed by deconstructing several section of the 2000 Act, highlighting the risks in relation to behaviour and habits that we find mostly in popular culture, that is, in the global sphere at large. Then I will refer in similar manner to the 2001 Act and talk a little bit

*Fecha de recepción: 19 de julio de 2005
Fecha de aceptación: 7 de octubre de 2005*

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about at the situation in HMP Belmarsh, one of the prisons being used in the enforcement of anti-terrorist legislation. The article ends with a consideration of the rationale behind these and other related measures affecting the global public sphere.

Key words: terrorism, global public sphere, state of exception, popular global culture.

RESUMEN

El siguiente artículo es el segundo informe publicado dentro de mi investigación sobre la transformación de la esfera pública global en relación con el terrorismo. Esta investigación es parte de un proyecto que busca entender la cartografía del terrorismo y la esfera global pública. Esta vez considero el caso de Gran Bretaña entre el 2000 y el presente. El tono de mi aproximación será respetuoso pero crítico. Me referiré al estado de excepción como el estado de nuestra situación. Empezaré desvirtuando varias secciones del acta de 2000, resaltando los riesgos en relación con comportamientos y hábitos que encontramos mayormente en la cultura popular, esto es, en la esfera global como un todo. Posteriormente me referiré al acta de 2001 como un todo y hablaré sobre la situación en HMP Belmarsh, una de las prisiones usadas para hacer cumplir la legislación antiterrorista. El artículo termina con una consideración sobre las motivaciones detrás de éstas y otras medidas que afectan la esfera pública global.

Palabras clave: terrorismo, esfera global pública, estado de excepción, cultura global popular.

SUMMARY

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Bibliography

*'What has al-Qaeda done to our constitution, and to our national standards of fairness and decency? Since September 11, the government has enacted legislation, adopted policies, and threatened procedures that are not consistent with our established laws and values and would have unthinkable before.'*¹

1. THE THREAT TO PATRIOTISM

The opening quote belongs to professor RONALD DWORKIN, probably the most influential legal thinker of our era. It comes from an article published by the equally well-known *New York Review of Books* in 2002. The object of such a staunch criticism was a piece of legislation known as the USA *Patriot Act*, passed by Congress on October 25, 2001, barely a month after the attacks on the Twin Towers. According to DWORKIN, that statute aimed to establish a 'new, breathtakingly

1 DWORKIN, RONALD, 'The Threat to Patriotism', in *The New York Review of Books*, February 28, 2002, 44.

vague and broad definition of terrorism and of aiding terrorists: someone may be guilty of terrorism, for example, if he collects money for or even contributes to a charity which supports the general aims of any organization abroad –the IRA, for example, or foreign anti-abortion groups, or, in the days of apartheid, the African National Congress- that uses violence among other means'² in an effort to oppose national policy or interests.

DWORKIN is correct in most accounts bar one. It was not new. Its antecedent is the UK Terrorism Act 2000 (hereafter the 2000 Act). The 2000 Act sets out a new, breathtakingly vague and broad definition of terrorism and of aiding terrorists. According to 1(b) 'Terrorism' means the use or threat of action 'designed to influence the government' or 'to intimidate the public or a section of the public' and (c) the use or threat is made 'for the purpose of advancing a political, religious or ideological cause', and 'it involves serious violence against a person, or 'serious damage to property' or endangers a person's life other than that of the person committing the action or creates a serious risk to the health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system.

Section 3 of the 2000 Act provides for proscription of organisations concerned in 'terrorism' by the Home Secretary acting as Secretary of State. Section 11 makes it a criminal offence to belong to a proscribed organisation. S 12 also makes it an offence to solicit support —whether financial or otherwise— for a terrorist organisation, and to arrange or assist in arranging meetings in support of the organisation.

After the sad events of July 7th 2005, the extent of this definition will be even broader. The office of the Prime Minister has announced already that it will propose new legislation to the Parliament, extending the definition of terrorism to actions such as 'justifying' or 'glorifying violence', for instance on a published paper or an internet site, directed in particular against foreign nationals who are

2 *Ibid.*

in Britain. As I argued elsewhere,³ the problem with these extensions has to do with a distinction that exists in international law between acts of liberation and terrorism.

The point is that after the 1960 Declaration on the Recognition of the Independence of Colonized Peoples & Countries, produced by the UN General Assembly, the use of violence for the purposes of national liberation (for instance, the liberation of an oppressed people from an occupying force or a discriminatory government) is considered to be legitimate. That is the basis upon which the second wave of decolonization was deemed legal. That was also the principle that allowed the recognition of the anti-apartheid struggle in South Africa and that of the Palestinians in the Middle East. Given that, the new legislation on terrorism prompts questions such as this: Can the members of the ANC who planned in London the bombing campaign against the apartheid regime, be considered as terrorists? What about the PLO? How to distinguish? Can we distinguish? The mayor of London, KEN Livingston has already expressed his concerns about the proposed legislation using precisely the case of the ANC as proxy.

In what follows, I will approach these questions with reference to the existing legislation in Britain. The tone of my approach will be respectful but critical. I will refer to the state of exception as the state of our situation. I will proceed by deconstructing several sections of the 2000 Act, highlighting the risks in relation to behaviour and habits that we find mostly in popular culture, that is, in the global sphere at large. Then I will refer in similar manner to the 2001 Act and talk a little bit about the situation in HMP Belmarsh, one of the prisons that is being used in the enforcement of these pieces of legislation.

I trust most of you have read about Abu Grahیب and Guantánamo and perhaps you have seen the pictures. Now, most people says

3 GUARDIOLA-RIVERA, O., 'Terrorism & the Global Public Sphere', in *International Law. Revista Colombiana de Derecho Internacional*, n° 4, Pontificia Universidad Javeriana, Bogotá, December 2004.

that Abu Grahیب and Guantánamo are terrible but nevertheless understandable given the context: foreign, third world countries in the midst of ongoing war or occupation. In this sense the case of HMP Belmarsh is even more pressing. We are not talking about some godforsaken third world hellhole, but, rather, about good old Britain. We are not talking about some exterior territory that remains a legal black hole, but about a common prison inside the motherland. I will end with a consideration of the rationale behind these and other related measures. I hope to show what is at stake in the legal treatment of terrorism within (and outside) our borders.

2. GUEVARISTA FOOTBALL: STATE OF EXCEPTION & POPULAR CULTURE

We must begin by acknowledging that, at first sight, these dispositions may seem just and reasonable given the times we are living. ‘These are dire times’ is the claim of our governments; arguments such as this call for the declaration of a state of emergency or ‘state of exception’. We all know what is implied by this term, for it is touched upon by constitutionalists and philosophers as much as it is by those of us interested in international law.

In fact, there has been an explosion in the literature on the subject, including studies by very well known philosophers and political theorists such as **DANILO ZOLO**, **ANTONIO NEGRI** and **GIORGIO AGAMBEN**. We will not occupy ourselves with their philosophical musings. Suffice to say that the term ‘state of exception’ refers to the extension of the military and police powers into the civil sphere and the suspension of the constitution (fundamental rights, that is). Look at that meaning closely, with the eyes of a lawyer, and you will see that there is plenty to worry about.

For instance, how many of you own, or have ever owned, a piece of clothing or decoration sporting the face of **CHE GUEVARA**? How many of you have read **GUEVARA**’s *Motorcycle Diaries* or seen

the film? How many of you own a record or have heard and like a rock band called Rage Against the Machine?

Well, you may be in trouble; according to s 13 of the 2000 Act it is an offence for a person to wear an item of clothing or wear or display articles (such as badges, banners... also a book, a record perhaps?) which gives rise to a 'reasonable suspicion' that he or she is a member or supporter of a proscribed organisation.

Is philosophy-football.com, the web site that sells these wonderful t-shirts and uses the funds it obtains in solidarity campaigns with such causes around the world, a terrorist outfit?

Now, to start with, Ernesto 'CHE' GUEVARA is the ideological icon of at least two of the terrorist organisations that appear in the current listings provided by the UK Home Secretary's office: Colombia's ELN and FARC. Not only that, his writings on guerrilla warfare (that you can find in Waterstone's, just round the corner), are the strategy & war manual of pretty much every subversive group worthy of the name, around the world. This is true of the IRA, the Iraqi resistance movements fighting the coalition guerrilla-style, the NAC in the days of apartheid and the PLO.

Take Mr TOM MORELLO, former lead guitar of Rage Against the Machine, now with super-group Audioslave. Mr MORELLO has a wide collection of guitars, which he uses in concert, a few of them clearly sporting the words 'Shining Path'. This is the name of yet another violent group, this time from Peru, that may appear in the infamous list. Is Mr MORELLO a terrorist? A supporter of terrorism, perhaps? What about Bono? Back in the days of apartheid he participated in a campaign against Sun City (including a video clip that rotated globally on MTV), a luxurious resort exclusively for white people in South Africa; allegedly the money raised with the video and the record was used to support the ANC, a political outfit that, as you know, used London as a base in preparation of a bombing campaign against the South African government. Was Bono a terrorist? What about those who have sympathy for the Basque separatist movement? Or the relief officers and NGO's that dealt

with the Tamil Tigers in Sri Lanka late last year, in the wake of the tsunami disaster.

Then again, according to s 12 of the 2000 Act, outfits such as the Tamil Tigers, ELN, FARC or Shining Path are allowed to apply to the Home Secretary to have their name removed from the list, and if such an application fails, they may appeal to the Proscribed Organisations Appeal Commission, and from there on a question of law to the Court of Appeal, Court of Session in Scotland and Court of Appeal in Northern Ireland. Sounds very civilised, doesn't it? Where's the catch? Well, as we already saw s 11 makes it a criminal offence to belong to a proscribed organisation; so one can wonder how exactly can anyone apply to the Home Secretary on behalf of these organizations without being arrested him/herself, or at least, without raising the 'reasonable suspicion' of being a member of a proscribed organisation. Actually, the reason for the suspicion would be that such a person applied to the Home Office on behalf of this or that organisation to have its name removed from the terrorist list!

The more one deconstructs the provisions of the statute, the more absurd they appear. And we have not even considered the question of racial profiling, the fact that these measures seem to be particularist (since they target, mainly, Arab and Muslim communities), the question of deportation to countries with a questionable Human Rights record and the way in which these measures have 'traveled' around the globe (for instance, is a 'terrorist' in contemporary Britain the same as a 'terrorist' in, let us say, Cuba or Colombia?)

Firstly, what is a 'threat' suppose to mean? Is a 'threat' the same as an 'action'? Do we jail people because they say to one another 'I'll kill you motherfucker' on a TV debate, or in the middle of a binge-drinking fight? Is that tantamount to 'homicide'? No, it is not; and common sense tells us it would be absurd to think otherwise. Why would then be the situation different when we equate a 'threat of action' with an action, an actual use of force in the case of terrorism?

Secondly, how should we construct the provision according to which the threat or use of force must be made 'for the purpose of

advancing a political, religious or ideological cause'. Were the Sikhs who protested against the stage play *Behzti*, a few months ago in Britain, committing an act of terrorism? What about the case of reverend PAT ROBERTSON, perhaps the most influential Christian religious leader on the USA, calling for the assassination of Venezuelan President HUGO CHÁVEZ on American t.v.? Is he a terrorist? Can we assume that he will be prosecuted as a terrorist? The US State Department, part of a government that in the opinion of many responds to the views of the radical Christian community in America, talked about an 'inadequate opinion' after ROBERTSON's *gaffe*. What makes ROBERTSON's and 'inadequate opinion' and, say, OMAR BAKRI's (a north London radical Muslim cleric) an act of terrorism?

How about the Christian fundamentalists (and yes, there are Christian fundamentalists) protesting against JERRY SPRINGER: *The opera*, or the pictures of a naked model resembling the last supper? The latter cases involved death threats; according to the newspapers, serious enough to be consider violent against the person of the Chairman of the BBC (who was scared enough to go on hiding) and the director of a leading gentlemen magazine in South America. They were advancing 'a political, religious or ideological agenda', and set out to intimidate the public or a section of the public (those of us who thought JERRY SPRINGER: *The Opera* or the pictures were actually an interesting, albeit rather boring, work of art that should be shown for the purposes of upholding freedom of speech, at the very least). They fall squarely within this description, why then they were not held as terrorists?

Thirdly, the section of the statue that refers to 'disruption of electronic systems' could very well be used against a 12-year old hacker. Do you remember the famous case of the teenage German hacker who was jailed last year after sending a virus that destroyed a considerable part of the world's net? If he had happened to be in the UK, he could have been deemed a terrorist.

Fourthly, s 62, which extends jurisdiction to acts of terrorism by bombing to actions outside of Britain, does away with the principle

of non-extraterritoriality of the law and toys in a rather clumsy manner with the idea of a ‘universal jurisdiction’ in respect to acts of terrorism by bombing. These are most likely to be committed by non-Britons: Are foreigners who do not live in Britain also subject to the provisions of the act? If yes, how? Is Britain ready to violate the sovereignty of another country in order to get those responsible to stand trial here? (Colombia did something like that in the case of an alleged FARC operative hiding in Venezuela, provoking a dangerous diplomatic crisis). Are we talking good old extradition, or this is something altogether different? (Compare with antecedents, such as the Lockerbie case); if not, then what’s the point?

If these ‘terrorist’ acts are committed by Britons, then does this section mean that the person should be tried in Britain? Or else, that the British jurisdiction overcomes that of the country where the actions took place? Whatever the case, this section is certain to produce a conflict of laws. And the statute provides no guidelines for solving this conflict of laws.

3. ARE THERE BLACK HOLES IN THE LEGAL UNIVERSE?

Section 42 and 43 extend police powers over the civil sphere. In doing so, this action brings forth a constitutional state of exception. Police may arrest without a warrant a person who is ‘reasonably suspected’ to be a terrorist (s 42). This means that if the police declares that they have ‘reasonable grounds’ for suspecting a person (including aliens) of terrorism or aiding terrorism in the broad sense that it is defined, then that person may be detained without a warrant for a certain period of time (see schedule 8, for conditions and length of detention).

The 2001 Act did not improve these matters, but rather the opposite. If it has been said that the 2000 Act was a likely antecedent of the USA Patriot Act, and that the Patriot Act II was like the Patriot Act in steroids, then the Terrorism, Crime & Security Act 2001 is its British clone. The 2001 Act introduced detention without access to

a court of law in respect of, suspected, foreign, terrorists. Look at it closely: if the police and/or the Home Secretary, Mr CLARKE, declare that he has 'reasonable grounds' for suspecting any foreign person of terrorism or aiding terrorism in the broad sense that is defined, then he may detain the foreigner without a warrant, with no charge. If the foreigner continues to arouse suspicions he may be detained for an indefinite period of time, without access to a court of law. So we shall say goodbye to the very pillar of modern British constitutionalism: *Habeas Corpus*.

Critics of these developments warn that the miscarriages of justice which involved Irish suspects and anti terror laws in the 70s and 80s are a reminder of the dangers of rushing laws which create a twin-track system and delivering poor justice.

The Prevention of Terrorism Act 2005, for example, gives the Home Secretary the power to issue 'control orders' to restrict the liberty of individuals. Without any need for a trial, control orders range from restrictions on communications to house arrest. As said before, in the autumn of 2005 the Government will publish proposals for yet another new anti-terror act.

Critics argue that as we recover from the attacks on New York, Madrid and London we must be prepared to defend the ancient principles of freedom and liberty. To allow their erosion, and to give in to intolerance, they say, would give victory to the terrorists.

It is public knowledge that the British government has now detained several aliens, infamously at HMP Belmarsh and HMP Woodhill, some of them in solitary confinement for extended periods per day. None of them have been convicted of anything at all. The government has refused repeated efforts on the part of journalists, NGO's and other groups even to identify these detainees. So the UK now jails a number of people, secretly, not for what they have done, nor even with case-by-case evidence that it would be dangerous to leave them at liberty, but only because they fall within a vaguely defined class, of which some members might pose danger.

Knowing that this constitutes a breach of one of the most fundamental liberties, recognised by the European & international

community, the British government derogated from article 5 of the ECHR. Then again, this is a country that praises itself as a paradigm of civilisation and a beacon of liberty. However, at least in this respect, it does not stand comparison with African & Caribbean countries. The African Charter on Human and Peoples' Rights, article 7, guarantees the right to fair trial. This guarantee has been enforced in a string of cases, some of them decided in Britain. The Charter allows judges to draw inspiration from the Universal Declaration of Human Rights and other instruments adopted by the UN and customary law. In spite of many obstacles, this tradition thrives in Africa & the American Caribbean, and has not been distracted by the current 'panic' fashion.

In contrast, after the events of July 2005 there has been talk in Britain of 'secret trials' in relation to cases involving suspects of terrorism. Here again the risks are many. It is not the case that we are entering uncharted territory, but, rather, that we know very well, for there is enough evidence from the past, that this sort of reactionary measures do very little to prevent let alone combat terrorism. If that is so, before we rush into eroding civil liberties and the principles of freedom and democracy we must consider the rationale behind such and other related measures.

The 2001 Act relaxes many other rules that protect people suspected of crime from unfair investigation and prosecution. It greatly expands the government's power to conduct searches of the premises and property of aliens and citizens alike without informing them, in order to discover evidence of terrorist activity (see also s 43, 2000 Act). So no one may now be confident that his premises have not been searched by the government without his knowledge. Previous records are now allowed in court; evidence from telephone intercepts has been made admissible. Britain's top prosecutor, KEN McDONALD, sees no reason why evidence from telephone intercepts should not be admissible. Human rights groups agree with him, but argue that if a phone is tapped, a defendant should at least know what the security services are using against him or her. The government does not, arguing that such an approach might

compromise UK's spooks. McDONALD has said that his foreign counterparts tell him that bringing in such a measure would be a signal that British courts are serious about fighting terrorism.

McDONALD insists that Belmarsh is the opposite of Guantánamo. 'The whole point of Guantánamo is that there is no recourse to due process' says the DPP 'that's why it is a legal black hole. Belmarsh has never been outside the jurisdiction of English courts. Everything that has been done has been through the courts system, sanctioned by the Court of Appeal'. That is true, but as we all know the Law Lords overruled that in 2004. In response, we have been promised more of the same and a staunch attack upon the manner in which higher courts have responded to the erosion of civil liberties in the name of fighting terrorism. Once again, we must take into account that this is no local curiosity but a global, and therefore even more worrying, reaction.

CHARLES CLARKE, the UK Home Secretary, has responded to judicial progressive activism by announcing so-called 'control-orders', house arrest without trial for British as well as alien terrorist suspects. MICHAEL HOWARD, leader of the conservative Tory party, fell short of accusing the judges as collaborators. McDONALD, in turn, has not made public his counsel on that, but it is believed in the legal profession to have concerns about the human rights implications and the public sphere at large.

4. IS THERE A GOOD REASON FOR CREATING BLACK HOLES IN THE LEGAL UNIVERSE?

What is the rationale behind these measures? An argument states that suspected terrorists do not deserve the same rights we do because terrorists do not respect freedoms themselves. However, the entire point of any criminal trial is to determine whether those who are accused of crimes are actually guilty of them, and it is particularly worrying that those officials who have the power to review detentions and issue final decisions, claim that their suspicion (backed by some

supposed 'intelligence' that always remains out of the public eye) is tantamount to guilt. In view of the numbers already involved (and the tendency is that they may increase) there is an evident danger that some innocent people who would have been acquitted under the stricter rules on an ordinary system will in fact be convicted and punished (with house arrest, for instance). It seems even more likely that many of the aliens now being detained, in secret, are not terrorists and would pose no danger to the community if they were released.

A second argument insists that these measures are justified because they mainly target foreigners and foreigners have either no rights under the British constitutional system or, at least, fewer rights than citizens do. The tradition stretching back to Magna Charta, *Habeas Corpus* and the doctrine of the Levellers, developed in judicial decisions and statues up to the due process clause of the HRA '98, explicitly state that no person's liberty may be taken without due process of law, and the higher courts have several times held that foreigners within the UK are, in principle, entitled to the same fair trial protections as UK citizens.

A third argument focuses on the changing structure and conception of war. These are dire times, they say, for it is not easy, perhaps it is not possible, to draw the line between a conventional enemy power and an international terrorist group, working as a set of splintered cells, perhaps with no recognisable 'centre' or 'chain of command'. Remember, after all, that the 9/11 attacks featured civilians against civilians. Thus, the old rules of war are up for revision. That may be so; perhaps the law should treat foreigners who cross these or other boundaries as if they were committing unlawful acts on behalf of an organised enemy. But here problems begin.

To start with, notice how much the issue of immigration mirrors the language of the 'foreign enemy' crossing the borders in order to plot against us, or even worst, to enjoy more than us (to enjoy the fruits of our enterprise, our taxes, our services, our higher standards of life...). Immigration is really another form of the 'panic & fear' language that feeds into the whole terrorist-scare. As such, it has the

same form: the form of a fantasy; one that produces ‘them’ as the (absent) cause of everything that has no cause.

The theoretical import of this observation, for our purposes, is that every declaration of the state of exception requires a spectre, a phantasmatic ‘them’ ready to strike at us (like the Bond films). Because of this we may not know when the spectral cause is ‘real’ or just a condition produced by the necessity to declare the state of exception and use the (constitutional) power that comes from it. Governments usually get trapped in this circle; that may be our case already.

The more practical import of this observation for our purposes is the following: As said before, perhaps the law must treat foreigners who cross the frontiers planning terrorism as soldiers committing war crimes on behalf on an enemy organisation, but we could not plausibly treat everyone to whom the Minister’s order applies in that way. Basque separatists, IRA splinter groups, Colombian drug-lords and foreign warlords no doubt act in ways that harm the interests of this and other nations, and may be subject to arrest. But we would not be justified in labelling them as ‘illegal combatants’ in a war (of civilians against civilians) or something of the sort, and then shooting them as spies because they were not wearing uniforms.

Remember what happened to a Brazilian national shot six times in the head in London under the ‘shoot to kill’ policy. Black humour serves here as a warning. After that terrible incident a poster appeared in some London underground stations warning people not to run suspiciously in the corridors and streets near the tube. Mostly if they were wearing a long coat during the English summer, carry a backpack and looked a little bit foreign or coloured! It turned out that apparently the Brazilian who was shot did not run from the police, that apparently he was wearing no coat and, surely, he did not look more ‘foreign’ than the majority of London’s population. Black humour acts in this case as a dire warning.

The best argument for a reason behind these measures is perhaps the consequentialist one: What any nation can afford to provide, by way of protection for accused criminals depend on the consequences

such protections would have for its own security. The terrorist threat is great, even unprecedented, and we cannot be as scrupulous in our concern for the rights of suspected terrorists as we are for the rights of people suspected of less dangerous crimes. As Justice Jackson of the US Supreme Court once said, and to follow DWORKIN once more, we cannot allow the constitution to become a suicide pact. The point is the same, these are not normal times, these are emergency times and thus we must consider the calculus when one of the guilty may blow up the rest of us.

As I have rehearsed in elsewhere some of the lines concerning the consequentialist way of argumentation I will not trouble you with further analytical detail.⁴ Suffice to say that this calculus (1) presupposes too much about the causal relationship between the supposed causes and the expected outcomes, (2) it requires safeguards that amount to an almost absolute prohibition of the calculated action and (3) implies that some may be sacrificed for the well-being of others and that someone is in position to establish the correct criteria for making such a choice. That criteria, as I stated before, is actually inexistent and therefore, we must assume that the familiar metaphors of ‘trade-off’ and ‘balance’ or ‘cost-benefit’ and ‘hard choices’ (or ‘lesser evil’) are deeply misleading. This is so because they suggest a false description of the decision that the nation must make; they suggest that ‘we’ must decide which mixture of liberty & security is best for ourselves in pretty much the same way we decide to spend our monthly budget in the last electronic gadget once we know how much it costs and the impact it will have in all our other needs, debts and duties. If that were really the case of our choices in these matters, the choice would be an easy one (actually, only a small number will be affected by these measures).

But the issues we face are very different.⁵ We must not decide where our interest lies on balance, but what justice and survival

4 See on this, following BENTHAM, TWINING, WILLIAM, *The Great Juristic Bazaar*, Aldershot, Oxford, 2003.

5 N 1, 48.

require. We must take into account real, concrete experiences such as pain, fear & suffering and what causing them may entail, not because, but in spite of our interests, if you like it out of love or hospitality to other people. 'Love' is a term that I am not using here lightly, as a wishy-washy stuff, good for soap-operas but impossible in real life.

Actually, in real life, what we strive for is to love and be loved by others no matter what: let us face it, we spend most of our lives on such a hopeful and at times hopeless endeavour. And with good reason: since no one can establish criteria according to which some people inherently deserve to survive more than others, we must assume that we all are equally deserving of survival. This 'equality of deserve' is what fuels and justifies our unending search for others. 'Others' mean here those resident or foreign aliens who might very well be ensnared in the less protective and more dangerous legal system that the Ashcrofts and Clarkes of this world are constructing for us all. And we cannot answer to them (and us) on this matter by simply comparing the costs and the benefits to any given person or group. [Since that person or group would have to justify its 'special' and inherent entitlement to survive at the expense of others, and this justification, as far as we know, is not available].

We have already seen the results. On Wednesday 2nd of February, 2005, it looked as if the policy of locking up foreign terror suspects without charge or trial started to unravel, after a man suspected of being a threat to national security was suddenly freed after three years' imprisonment.

CHARLES CLARKE, the Home Secretary, said evidence against Egyptian-born 'C' no longer justified his indefinite detention. 'C' was one of the first alien suspects to be detained under the 2000/2001 Act. His release came shortly after another detainee, named Abu Rideh, was granted bail by the Special Immigration Appeals Commission because his indefinite detention had worsened his psychiatric condition.

The remaining nine suspects held at Belmarsh and Broadmoor are expected to be released on bail or unconditionally freed in the next months, although this expectation may have changed after July 7th. A tenth man, known to us only as ‘G’, was granted bail last year under conditions of house arrest. He is known to us only as ‘G’. This is no coincidence, observe how the ‘other’, the ‘enemy’ is made into a spectre. Being a real person, flesh & bones, with family, debts and worries like the rest of us he has been turned into an unnamed entity, less than a human being, with no face, no history, no ties with any recognisable community, a dead man walking, a ghost. It has been observed [by GIORGIO AGAMBEN] that here we are at the very threshold of the legal-political, a threshold in which human beings are reduced to bare life; and the suffering brought upon this life is nothing else but its exclusion from the *polis* as a distinctively human life.

If in previous interventions I developed the idea of suffering in connection with the unconditional affirmation of life, now we are faced with its very opposite. This means to develop a concept of suffering, specifically in relation to death, understood legally and politically, that is, as the abandonment of life by the state. In this sense [as AGAMBEN explains] we are not talking about biological life [bios] but life exposed to death, bare life or sacred life [zoe].

5. CONCLUSION: ZOMBIES & BIKINIS

This is ‘bare life’, that is, the position of the sacrificial lamb or scapegoat is the originary legal & political element. This is the *Musselman* as described by Primo Levi in *If this is a man*. We have become accustomed to speak of the Holocaust and the Shoa as an industrialized mass death, and of the camps and the colonies as ‘factories of death’. In a sense, prisons, hospitals and even educational institutions —perhaps the productive system as a whole— are part & parcel of such a circuit of production. But the product of this factories ‘is not death but [as Arendt puts it] a mode of life outside of

life and death'.⁶ Put in simple terms this is spectrality, that is, a politics of zombies.

In December 2004, the Law Lords ruled that indefinite detention without trial was unlawful. The decision in *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) and X (FC) and another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* [Thursday 16 December, 2004] prompted Mr CLARKE to agree to replace Part 4 of the 2001 Act with 'control orders' that would allow Ministers to place both foreign nationals and UK citizens suspected of terrorism under house arrest. For this proposal he has faced a backlash from MP's, civil rights groups, the press and the legal profession. These plans would give the Home Secretary as much power over citizens as the Government exercised during World War II. The Home Office said recently that the evidence against the detainees was under constant review and, as soon as they were no longer considered to be a threat, they would be freed. It was suggested that since the activities of 'C's' alleged associates were disrupted he no longer posed any threat to society. However, 'C's' solicitor, NATALIA GARCÍA, said that the decision to release her client 'came out of the blue' and that, in effect 'the Home Secretary has now admitted C is no danger to anyone at all, which is what we said from the beginning, but it has taken three years and his life has been decimated in the meantime'.

Yes, 'C' has a life-story, a story of resistance. He was granted refugee status in the UK in 2001 after fleeing Syria. He argued he had been sentenced in Egypt to 15 years' jail for 'alleged underground activities to topple the Egyptian regime'. So there you go, 'regime policy' may be the politics of the day, but not for everyone. His brothers implicated him after a confession produced under torture. The UK security services interviewed him first the day he received a letter from the Home Office stating that his application had been

6 NORRIS, ANDREW, 'The exemplar exception. Philosophical and Political decisions in Giorgio Agamben's *Homo Sacer*', in 119 *Radical Philosophy*, May/June 2003, 6. Norris quotes Hannah Arendt's *The Origins of Totalitarianism*, 1966, 444.

successful. Then, the government alleged that he supported Egyptian Islamic Jihad, which is a proscribed organisation under Schedule 2 of the 2000 Act, and which, it claims, had merged with al-Qaeda. 'C' denied any involvement in terrorist activities and argued that the government was trying to build a case for 'reasonable suspicion' without investigating his case. Given the outcome, you may decide for yourselves what version seems correct.

So, and what do terrorists have to do with bikinis? Well, the Bikini-alert system is an indication of a panic level or alert state as used by government, specifically the MoD and the security forces, to warn of non-specific forms of terrorist activity. So, in fact, it measures or indicates the actual state of exception. It was established on 19 May 1970, using five different colours representing different levels of threat to national security. It goes from Bikin-red (imminent attack on a specific target) to Bikini-white (no information about a specific threat). Only government uses it. For what purposes? According to Sir DAVID OMAND (head of security and intelligence at the Cabinet Office),

'the system we have in government buildings for colour-coding has very specific meanings which are understood by the security staff and by those who work in those building so that if that alert state changes, then everybody knows exactly what to do, and that is in the confines of a single building'.

How often is it on red? We don't know, we wouldn't, as the MoD wouldn't release that information to the public. All we know is that of January 2002 the alert was raised from 'Bikini-Black special' to 'Bikini-Amber' three times since 9/11.

Most importantly, what's in the name 'bikini'? Apparently, the word became fashionable after the US nuclear tests in the Bikini Atoll in the South Pacific. It was subsequently appropriated to describe the 'dynamite' effect of women's two-piece swimwear, but the MoD denies any parallels between this connotation of the word and its designation to refer to the threat of terrorist bombs. Who came up with that term? Your guess is as good as mine. According

to the MoD the word was randomly selected by a computer, but, of course, no one can seriously expect us to believe that.

The security services exist in order to contain threats to state or national security. The meaning of these terms has varied over time, being interpreted in different ways by different people. During the Cold War it was thought to be an ideological threat, resulting in the 'Red scare'. After the demise of communism, it became the problem of international trafficking in people and drugs and other forms of cross-border crime including politically motivated terrorism. Their meaning is changing yet again. Then, we must remember that the words that make up the legal medium have hotly contested and historically mutable meanings. Inasmuch as the concepts that constitute political and legal life and language lose old meanings even as they acquire new ones, legal and political experience appear to remain—as it has always been—in a state of perpetual flux. It is key that researchers keep track of these fluctuations so that no one falls in the trap of considering today's concerns as general or universal truths.

BIBLIOGRAPHY

- Books

AGAMBEN, GIORGIO, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford, CA, 1998.

AGAMBEN, GIORGIO, *The Open: Man and Animal*. Stanford University Press, Stanford, CA, 2004.

AGAMBEN, GIORGIO, *State of Exception*. Chicago University Press, Chicago, IL, 2005.

DWORKIN, RONALD, 'The Threat to Patriotism', in *The New York Review of Books*, February 28, 2002.

NORRIS, ANDREW, 'The exemplar exception. Philosophical and political decisions in GIORGIO AGAMBEN'S *Homo Sacer*', in 119 *Radical Philosophy*, May/June 2003.

- Cases

A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)[December 16, 2004]

X (FC) and another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) [December 16, 2004]

- LAWS

European Convention on Human Rights (ECHR)

USA *Patriot Act*, October 25, 2001.

UK Terrorism Act 2000.

UK Terrorism, Crime & Security Act 2001.

UK Human Rights Act 1998