RE DEFINING TERRORISM[1]

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The aphorism "one man's terrorist is another man's freedom fighter" has acquired the status of cliché precisely because it conveys so neatly the core of the definitional problem of "terrorism". Terrorism is an emotive and value laden word for all that it is invariably used and projected as an unquestionably objective term. Those who assert that this aphorism is no more than an expression of unacceptable moral relativism are, in effect, claiming an exclusive moral rectitude for their own views and, by direct implication, moral superiority for themselves. History tends to deal harshly with such claims.

That there is a definitional problem with the term "terrorism" is witnessed by the proportion of writers on the subject who feel obliged to discuss the matter - and to offer their own definitions - and by the failure of the United Nations to agree on a definition despite stating for fifteen years that it is essential to do so.

There are several dimensions to the definitional problem. Firstly, "terrorism" is an item of political discourse, and as such is often employed for political effect, in the same way as the terms "democracy", "Rule of Law" and "freedom" are employed in the political arena. In this fashion "terrorism" has the function of a crude pejorative calculated to instil hostility and fear. Secondly, commentators may eschew overtly political usages. They may perhaps recognise a question of value-neutrality but nevertheless find it impossible to escape from positions profoundly influenced by their political and cultural environments. This raises the third and more general dimension. It is the matter of whether it is possible to attain objectivity in the sense of arriving at an absolute, universal truth or criterion. Schmid's view that "the best we can hope for is a definition which is acceptable to social science analysts, leaving

the political definition to the parties involved in terrorism and anti-terrorism" (1984:6) could be understood as affirming the possibility of objective analysis and definition by social scientists. Alternatively, it could be interpreted as arguing for the more modest goal of consensual definition amongst social scientists. In either case it seems taken for granted that social scientists can transcend the subjectivities of "the parties concerned" which ought to be reason enough for *not* leaving to them "the political definition". Finally, it should be remembered that the terms and language used within the definitions of terrorism may themselves be contentious.

Politics, Culture and Terrorism

States need external enemies and invariably they can be found or created:

> the best way of preserving a state, and guaranteeing against sedition, rebellion and civil war is to keep the subjects in amity with one another and, to this end, to find an enemy against who they can make common cause (Jean Bodin, *Six Books of the Republic*, quoted in Stacey 1978:44).

The current common enemy for Western states is the terrorist "not only because they absorb the brunt of the attacks, but because their political philosophy is anathema to the terrorists" (Netanyahu 1986:3, cp. Wilkinson 1977). The first of the two suppositions can be considered accurate if and only if "terrorism" is so defined as to exclude a number of apparently similar acts. These would include: (i) those committed by, or on behalf of, Western states; (ii) those committed by régimes against their own subjects; and, most generally, (iii) those committed in lands geographically or economically distant enough to ignore, provided, of course, that Western citizens or property are not imperilled. The second supposition, a contrast of political philosophies, implies either that all terrorism is part of a monolithic conspiracy against liberal democracies or that all terrorist groups have philosophies which invariably include a common element hostile to Western styles of government. President Ronald Reagan appears to believe in a network of "terrorist" and "outlaw" states which are "united by the simple, criminal phenomenon - their fanatical hatred of the United States, our people, our way of life, our international stature" (speech to the American Bar Association, 9 July 1985).

This process of political demonology has a number of potential functions in both domestic and international politics. For example, it promotes the stigmatisation of the enemy as sub-human and barbarous. Since no argued grounds are given for hating the United States of America or anathematising the West's political philosophy, the audience is encouraged to deduce that the terrorist is irrational - a conclusion which is heavily promoted by selective use of such words as "fanatic". As any

attempt to reason with the irrational is pointless, a further conclusion is invited. This is that as logic and reason, by definition, must fail then the *only* response which the terrorist understands is the use of force. The effect of this exercise is to polarise issues and, by so doing, to eliminate any possible middle ground so that the state's citizens and its allies must make a very simple choice: to support either the wholly good, i.e. the state, or the wholly bad, i.e. the terrorist. Ambivalence or attempts to construct alternative positions are castigated and categorised as supporting the state's enemies.

Within the polity this process can be appropriated by one political party or faction in order to assert its moral supremacy over the political competition. It presents itself as *the* law and order party, inviting "right thinking" people to support it not only against terrorism but also against those parties which are "soft" on terrorism. The political capital can be increased by emphasising the issue through continual reference to the terrorist threat.

When in political power, these practices serve not only to marginalise and delegitimise parliamentary and extra-parliamentary opposition (and conversely to legitimise the state). Also, in conjunction with more-or-less repressive legislation aimed ostensibly at the defence of the constitution and public order, they can serve to criminalise the opposition.

The problem for democracy is not simply that repressive measures might jeopardise the very freedoms they purport to protect. Inevitably there is a danger that parliamentary opposition parties refuse to criticise law and order populism for fear of being stigmatised as "anti-police" or "pro-terrorist" with the consequent damage to their electoral standing. There are no votes for such positions. Parliamentarians, well placed to defend freedoms, allow themselves to be unbalanced as the entire political-cultural structure distorts. A consequence is that extra-parliamentary opposition is further marginalised. As "national security" becomes the watch word, the ends come to justify the means - a situation which is supposedly the antithesis of liberal democratic ideals and the chief immorality of terrorism itself.

Further, the claim in political discourse that all terrorism is directed against Western democracy *as a philosophy* is rendered interchangeable with the claim that all terrorism is directed against Western democracies *as they exist*. These are the two inseparable halves of Netanyahu's assertion (quoted above). Democracy *qua* philosophy is essential because it is replete with strongly positive valuations that serve as theoretical legitimations for the state. But defence of the democracies as they exist is a defence of the status quo: the existing power relations, the existing economic relations, everything as is. As the law and order factions respond to what they see as a growing threat from terrorism, and attempt

to drag society with them, increased marginalisation ensures a supply of groups which can be identified as potentially threatening.

International Order

The international situation is directly analogous to the national situation. Complaints that terrorism endangers international order are commonplace. The very expression "international order", or "world order" is imprecise, for it covers both the mechanisms or processes of international law and politics, *and* the current disposition of power – including economic power – between states. As with the law and order dichotomy, the one is presented as neutral, the other as natural, so that when "third world" states on the one hand emphasise the importance of not labelling international liberation movements as "terrorist", and on the other hand pay insufficient respect to the slogan of defending the world order, this is labelled as the politicising of the terrorist debate.

The appropriate questions are: "whose world and whose order"? Analysis of the Western understanding of world order shows that international order is not the product of a global or impartial General Will and neither is it the product of chance, blindfolded as if the symbolic figure of justice. International order, as a legal mechanism, has been contingent historically upon the emergence of the dominant world position of the Western states. The creation of a world order by and on behalf of Western interests was legitimated by recourse to the law which was carried in the dominators' baggage.

This is not to suggest that the international legal system cannot be used by "third world" states in defence of their interests, or that it is solely an embodiment of the current interests of the dominant states. However, the law *does* embody the violence of the past by legitimating the activities of the present. Attempts to redress the inequities of the past are thus seen as threatening, even revolutionary, and, if they employ the methods used in creating the status quo, they are deemed unlawful. To the extent that acts labelled "terrorist" accord with efforts of this nature, they clearly do attack the existing "international order", in the sense of "power system". But condemnatory labelling of such acts merely because they attack the international order can only be supported if it is first shown that the status quo ought to be defended. The "argument" that the status quo or anarchy are the only choices – again a simplistic choice constructed through political discourse – is no justification for taking a condemnatory stand.

The claim that terrorism constitutes an attack on international law amounts to little more than a metaphorical restatement of the proposition that terrorism is contrary to, or in contradiction to, international law. There is no real evidence that terrorism has ever been directed at the mechanisms of international law per se, rather than at its historical effects. There is, nevertheless, a particular contradiction which states

find objectionable and that consists of the usurping by putative terrorist groups of one of the prerogatives supposedly reserved for the state - the use of violence itself for political gain. Conceptually there is the challenge of the expansion of the notion of sovereignty, a challenge accentuated when organisations, such as the PLO, claiming to speak for nations (yet titled by some as terrorist) are given a degree of recognition as an international "person". Again, this development is not *intrinsically* evil notwithstanding the rhetoric and objections of the states whose interests are concerned.

It is impracticable to distinguish absolutely between overt political manipulation in the definition of terrorism and the less conscious expression of entrenched conceptual orientations. Aspects of the discussion of international order exemplify this statement. Probably for the majority in Western states concepts such as "state sovereignty" *are* of self-evident validity rather than consequences of a particular history.

Human Rights - a Question of Priorities?

Turning to the cultural element, alongside the questions of domestic law and order and international order, is that of the innocent victim. The term "innocence" is subject to ideological use, but more profoundly it is the logical counterpart to the Western tradition of human rights, originating in the natural law of the Church and developing (like the notion of sovereignty) during the time of the American and French national revolutions. Although human rights are nominally of universal application, slaves and colonial populations were downgraded to the status of untutored children, untamed savages or worse, and were excluded from benefiting from such rights until modern times. Indeed, for over two hundred years the colonised have been permitted to fight for their masters' rights, most ironically that of self-determination: "an imperative principle of action which statesmen will henceforth ignore at their peril" according to President Wilson in 1918. The lawyer L.C. Green has remarked that the references to the right of self-determination in the UN General Assembly resolutions on terrorism have resulted in its elevation "above human life", as if lives had not been thrown away in the cause of European and American national liberation (Green 1979).

The West's assumption that military and industrial supremacy also entailed moral supremacy has led to the conclusion that "the Judaeo-Christian tradition" alone produced a system of human rights (e.g. Bond 1974:ch.1). In turn the concept of human rights has become a central tenet of the ethical legitimation of Western liberal democratic states. Consequently, an act construed as an attack on human rights is almost automatically registered as an attack on liberal democratic values. Because public and media consciousness of human rights issues is maintained by, amongst other things, the regular political attacks on the Soviet Union and its allies, major violation of human rights is perceived

as a typically foreign occurrence, confirming the equation of human rights with liberal democracy.

Terrorism is seen as confronting human rights because of its avowedly political nature. Furthermore, although most political theorists accept the legitimacy of political violence in certain circumstances, it is regarded as axiomatic that these circumstances are not to be found within liberal democracies. Thus terrorism is considered doubly outrageous: it is alien both in terms of those who carry it out and in terms of its incompatibility with the political system. These often inchoate beliefs provide the ground on which political manipulation can operate.

The mass media constitute an intervening variable. An attraction of terrorism for the mass media is that it is violent, dramatic, sensational and radically extra-normal to every day life. But the causes and contexts of terrorism are rarely as dramatic and so cannot compete successfully for the limited space or air time. Since they are often grounded in problems which have existed unresolved for years or decades they do not even earn the titles "news" or "current events". Accordingly, the representation of terrorism is as if it were without cause or reason, hence the labels "fanatic", "deviant" and "mad" which are so easily attached to the event and its perpetrators.

Terrorism, characterised by random but nevertheless deliberate action violating liberal democratic rights, can be contrasted with other social problems which produce a lower level of public concern - and undoubtedly less political concern - despite being harmful to or wasteful of life. Why is a death from a terrorist bomb more horrifying than death in a road accident? If the greater weighting for deaths is justified by stating that those who use road transport tacitly accept the possibility of fatal accidents caused exclusively by others, then settlers living in colonies must accept similar risks. If, in the one case, the risk is a corollary of a "right" to travel by car, then in the other it is a corollary of a "right" to expropriate and exploit.

However, when it is the elderly poor who die through cold, unable to heat their homes as a result of inadequate state benefits, the analysis is more difficult. On the one hand their deaths are the calculable outcome of a deliberate policy, like many of those occurring as a consequence of terrorist or military actions. On the other hand there is none of the risk-countervailing benefit that can be assumed in the examples of road travel and colonial settlement. It must be stressed that this British example of elderly people dying is actual, not hypothetical, and their deaths result from a "sin of commission", not merely from the absence of state action, a "sin of omission". These pensioners are "innocent" and it is difficult to accept that their right to life should be of less political import than that of terrorist victims unless we introduce ideological exigencies. Doubtless, their story is of less headline value for the mass media.

Individualism or Context?

Western human rights are first and foremost rights of the individual. The brand of empiricist positivism historically and ideologically associated with the heyday of capitalism (and especially its Anglo-Saxon variants) comprehends only this atomised being, and the social collectivities in which, on other accounts, he or she is enmeshed. English judges (and many politicians), when invited to think about collectives and collective action, respond negatively. "The common law knows nothing of a balance of collective forces. It is (and this is its strength and its weakness) inspired by the belief in the equality (real or fictitious) of individuals, it operates between individuals and not otherwise" (Kahn-Freund 1972:2). Perhaps the only clear exceptions are those instances where the collectivity can be abstracted and re-presented as a reified symbolic focus for emotional appeals, as "the nation" or "the national interest".

Formal emphasis on the individual and individual rights (often rights to property) leads unfailingly back to the epistemological and psychological notions of the individual acting exclusively as an autonomous and atomic free will. The logical consequence is the conservative criminology in which social factors are dismissed and explanation is reduced to the espousal of Evil (Original Sin) as an agent in human affairs, or to psychopathology. There is, of course, a plethora of Western theories of terrorism couched in these terms.

Thus context is denied. The possibility of terrorism being an act undertaken by the individual on behalf of the collectivity is submerged. Terrorists *become* terrorists because their mothers are over-dominant, they are symbolically killing their fathers, they are overcome by "narcissistic rage" (although resistance fighters against German occupation, 1939-45, chose *their* course because they were "exceptionally brave"). Ultimately, some Western commentators feel compelled to note that some states regard terrorism as a political issue, as if that were somehow unusual and surprising (cp. Evans 1978:382).

Individuation proceeds in the analysis of the act as well as the actor. The single incident is divorced from its context of cause and campaign. To the empiricist, empiricism is realism: the UK delegate at the United Nations Assembly is therefore a realist who says "The most hopeful course was to concentrate on acts and victims, not on perpetrators or motives" (UN 1977:34). Treating symptoms rather than relieving causes, the logical outcome of this approach, will not eliminate terrorism if precedents are accurate predictors.

Terrorism and Objectivity

Does this suggest that the definition of terrorism is impossible? Schmid, as noted earlier, advocates a social science definition but concludes that "we cannot offer a true or correct definition" (1984:110).

Certainly this is true for many of the objects of social science, "social class" for example, which are defined differently according to competing theories.

The social science definition of terrorism for which Schmid calls can only therefore be a consensus. But we are then full circle, for almost all the social scientists are Western. In our view the best hope for progress will rely on what global "inter-subjectivity" exists, that is the Geneva Conventions, the UN Declaration on Torture and those other elements of international law accepted universally. In the meantime definitions of terrorism must be considered in the same manner as the phenomena they purport to define, which is with full regard to their origins and contexts. Above all, when terrorism is discussed "don't ask for the meaning, ask for the use" (Wittgenstein 1963).

The British State: Neither Empire nor Consensus

The UK in 1945 was an exhausted country. Even though extensive sale of overseas investments had occurred to fund the war (it had cost some £35b - equivalent to the entire National Income for the first four post-war years) the UK was heavily in debt. At the same time the loss of those investments and of markets worldwide weakened the prospect of rapid economic recovery. Domestic industry had been damaged and dislocated. Nevertheless, the prevailing mood was optimistic: unemployment was a fraction of what it had been at any time between the wars, there was a new consensual commitment to the building of the welfare state with Keynesian full employment. The very destruction of industrial plant and stocks implied the reconstruction which led to the "boom" of the late 1950s. By committing itself to such a broad "New Deal" the state in effect relegitimated itself.

With hindsight, however, much of the optimism was misplaced. First, the idea of the Empire was under attack. The war had been fought and finished with acclaims of "freedom" and "self-determination" - a principle promptly recognised in the UN Charter. Colonial subjects had fought with honour alongside British troops and could with reason expect changes in their post-war status. Indeed, in some of the colonies sections of the population had fought sustained guerrilla wars against the

Japanese occupation and their puppet régimes after the British had retreated. The rapid collapse of the Japanese on the Asian mainland in 1945 meant that these popular armies could, not unjustifiably, claim to have liberated themselves, and having done so, were not necessarily amenable to the reimposition of British rule. Churchill's rhetorical claim that he had not become Prime Minister "in order to preside over the liquidation of the British Empire" (Butler and Sloman 1980:250) was no more than a forlorn voice against a rising tide. In truth, the UK could no longer afford the pretensions of being a world power, although the facade was maintained for two decades.

Internally, the UK enjoyed rapid economic growth and rising living standards through the 1950s to the early 1960s. On a perspective broader than that given by British history alone, however, the economic performance was poor. The progressive loss of captive markets during the war and decolonisation meant that the historic weaknesses of low industrial and research investment and preference for finance capitalism against industrial capitalism were ever more evident. These effects were exacerbated by the stronger performances of other major capitalist economies. From the mid-1960s unemployment increased steadily and living standards relative to the West as a whole declined. Further economic decline has been aggravated, and not caused by, the economic shocks of the 1970s. If what one writer has called "remunerative compliance" (Etzioni 1961:12-13; cp. Crouch 1972:6) was the foundation of the state's legitimacy after 1945, it has been subject for twenty years to erosion as far as a large part of the population is concerned. Certainly, labour and political militancy have increased as the economy has failed.

Since the end of the war, the British state has experienced a continuing crisis of legitimation. For approximately twenty years this occurred in the periphery, the Empire, and subsequently in the UK itself. While the response of the British state has been in detail no more consistent than has the composition or moods of its dominant classes, a fairly consistent pattern of concession coupled with repression is discernable. This process of "hard and soft" goes back for at least 150 years. The element of concession has typically been partial, consisting in the granting - or yielding - of specific political or economic benefits with the intention of absorbing and incorporating "moderate" opposition while isolating the irreconcilables. Thus, Disraeli supported the extension of the franchise to the respectable elements of the working class rather than deal with agitation for universal suffrage (Moorhouse 1973:341, Trevelyan 1965:336-7). In turn, modern Conservatives urged the creation of a black middle class after the inner-city riots in 1981 and 1985. In the colonies this tactic at times relied on racial tensions. For example, Indian labour was indentured into East Africa initially to help build the railroads and work the plantations and then act as a buffer between the black and white communities. Lenin's comment on English politics as "a widely-ramified, systematically-managed, well equipped system of flattery, lies, fraud ... and promising reforms and blessings to the workers right and left" (1959: 342-343) is surely applicable to British colonial rule. Time and time again, having failed to eliminate revolt in one or other of the colonies, the British nurtured one group, against others, in order that independence would be granted to the pro-British faction, thereby securing British economic interests.

On the other hand, repression, whilst aimed primarily at the intransigent, has nevertheless been employed against wider sections of the population who have been deemed in some way hostile or potentially hostile. A major problem is that the conception of who *might be* hostile is highly subjective and prone to considerable fluctuations in its cover

and application. When the state is confident, the scope tends to be limited: when challenged either physically or in terms of its sustaining legitimating ideologies, the scope can be wide. During the decline of the Empire the British state, and more particularly the dominant class of white colonialists, was frequently unsettled and unconfident. However, as was finally the case, it is possible to retreat from a colonial situation when disadvantage outweighs advantage. Within the UK this option does not exist, only the choice of repression or accommodation. But the ongoing internal crisis has seen a political polarisation which renders accommodation increasingly unlikely. This has been furthered by the political administration of Mrs Thatcher which appears to revel in its "tough" image. In such situations the definitions, implicit or explicit, of terms such as "terrorism" acquire vital importance. It is to the domestic scene of the UK that we now turn. A review of anti-terrorist legislation, police powers and the criminal process enables us to appreciate how the classification of "terrorism" can be used for various and wide ranging forms of repression essentially unconnected with, but dependent upon, the existence or fear of terrorism.

The Legislative Process

It is argued that the liberal democratic parliamentary structure is incapable of reacting within its own terms of reference to the perceived or the actual threat of terrorism (Smith 1982:208). Yet there is the demand that such attempts be made rather than overtly and crudely meeting terrorist violence with state violence by abandoning accepted democratic procedures. The parliamentary process does not accommodate certain types of pressures on its time or method of deliberation. This means that this weakness can be exploited to push through legislative measures that would fail given a more appropriate, deliberate and lengthy examination. Parliamentary legislative structures are organised to provide a framework for technical battles between political parties. Divisions, time-tables, select committees, the committee stage, readings, and the practice of pairing of MPs, ensure that even contentious legislation fits within an accepted framework. Thus, the problem of how to develop a stronger state while apparently remaining faithful to the ideology of liberal democracy can be solved to some extent by using emergency situations to justify extraordinary legal responses to terrorist or other abnormal threats. Thus, the state's response to terrorism is also an opportunity to reduce civil rights and expand police and security powers.

The *Prevention of Terrorism (Temporary Provisions) Act 1974* (hereafter, the PTA) provides an illustration of parliamentary incompetence to vet or fully comprehend the Act's implications or ultimately to control and scrutinise its everyday use by the security forces. The Act came into force on 29 November 1974, after a total of seventeen hours' debate and discussion in the House of Commons. (It is normal for Bills to proceed over a time scale of several months.) The Bill's "draconian powers ... unprecedented in peace time", as the Home

Secretary, Roy Jenkins, described them, followed the horrific bombing in Birmingham on 21 November where twenty-one young people died in a pub from an IRA attack. The Bill had been drafted some eighteen months earlier and this bombing provided a politically appropriate background for the Bill's introduction. The powers were indeed "draconian". They gave police officers powers to arrest without warrant, to detain for up to seven days without charge and to deny access to family, friends and lawyers. Citizens could be sent into internal exile with no right of appeal to a court of law. They could be arrested without warrant for questioning without any charge against them ever being considered. Each of these powers had been regularly used in the colonies for the suppression of dissent.

The passage of the Act was swift and unopposed. No parliamentarian could afford to be seen by the public as in opposition to the Bill, for that equalled being "soft" on terrorists. Attacks on Irish people occurred in Birmingham and the government was concerned that a panic-stricken country would take the law into its own hands unless it stepped in (Scorer and Hewitt 1981:10). The air of moral panic overwhelmed the possibility of serious discussion of the Bill's clauses. Michael Mates MP suggested identity cards and capital punishment while Sir George Sinclair MP called for increased police resources and joint military and police exercises. Maurice Macmillan MP suggested that there was a wider conspiracy and that the IRA was being used as a front for other subversive groups. William Rees-Davies MP talked of the infiltration of our universities by "Marxist sympathisers from Czechoslovakia, Poland and elsewhere" (H.C. Debates, vol. 822, col. 690). Criticism was muted and warnings ignored. Leo Abse MP stated, to no avail, that the Bill was like "colonial repressive legislation [which is] no substitute for policy ... In the legislation in Kenya there was a massive attempt to control movements, and it led to about 4,500 arrests a month of people who were in breach of the law. None of the legislation was of any avail. It led to one thing - withdrawal" (cols. 658-9).

The Act of 1974 is not the sole example of the exploitation of an abnormal event to rush through repressive legislation. Terrorist activity produced a similar emergency response in the passage of the *Prevention of Violence Act 1939*. Cabinet discussions of the 1939 Act show a total lack of concern for constitutional liberties and the dangers that such powers constitute for innocent people (Lomas 1980). Another example arises out of the growing anxiety of war and German espionage which resulted in the passage of the *Official Secrets Act* after a thirty minute parliamentary debate on a balmy summer's day in 1911.

There is a public expectation of a political response to terrorist action, albeit that the expectation has been encouraged by the mass media and politicians themselves. Yet that very expectation provides the vehicle for the introduction of legislation the implications of which range far wider than is generally appreciated. It also smooths the

parliamentary passage of increased police and security powers which would normally be subjected to detailed scrutiny and hostile comment. In this way the terrorist action both exposes the weaknesses of the parliamentary process and creates an opportunity for the introduction of "draconian" powers which range far beyond the issues at hand. This point was belatedly noted by Gerry Fitt MP in 1981 when he stated:

> It is my impression that once a government has these powers in their control they are very reluctant to give them up, particularly today, when many people in the UK will not be surprised if there is social unrest as a result of unemployment rising from 2 million to 3 million or even to 4 million. This Act would certainly come in handy if events took place which did not satisfy the government in power at the time. The Act is always there, it can always be extended, and it could be used to deal with such a situation (H.C. Debates, vol. 1000/1, col. 382).

The Practice of the Prevention of Terrorism Act

Before examining the relationship of this Act with complementary legislation it is necessary to establish how the PTA is employed by the police. The reports of those involved with reviewing or justifying the PTA are redolent with statements which indicate that there are no figures which prove its deterrent effect. For example, Lord Jellicoe stated: "there can be no clear proof that the arrest powers in the Prevention of Terrorism Act are, or are not an essential weapon in the fight against terrorism" (Jellicoe 1983:para. 55). This conclusion was repeated in the House of Commons in 1985 by Clive Soley MP: "There is very little evidence that the Act works as a deterrent" (H.C. Debates, vol. 73, col. 1304).

The PTA is used as a trawling device against large numbers of people to obtain low level information or simply as a form of legalised harassment. In 1975 there were 1,067 detentions under the Act and of these people three were charged under the Act. According to Home Office statistics, in 1985 there were 268 people detained under the Act and 15 charged. However, a further 55,328 were stopped and questioned at ports of entry. The fact that less than three per cent. of those detained have subsequently been charged under the Act casts fundamental doubts on the necessity and suitability of this legislation. It is used in the most bizarre of cases and raises major issues of what constitutes a "terrorist" in the minds of the security forces. For example, in 1986 a supporter of the Campaign for Nuclear Disarmament whilst following a Cruise and Polaris convoy was detained under the PTA. "Film was taken out of his camera and a CB radio from his car, he said. A notebook which contained information was also taken. Mr. Peeden said he was released after 17 hours" (*The Guardian* 6 August 1986). Lord Gifford QC relates a case he was involved in as follows: "I tried in vain to secure

the release of Ann Boyle and Maire O'Hare, who were detained for five days after arriving to address the Socialist Feminist Conference in London in 1979. It was sheer harassment; it emerged later that they were not questioned about *anything specific*" (Gifford 1986:107). In 1980 in Wales the police detained some 40 people whilst they investigated an arson campaign. All were released some three days later, without criminal charge. Their interrogation was based on the assumption that they were terrorists.

> A senior officer stood in front of me holding a folded newspaper containing a report on one aspect of the campaign. 'You are a terrorist' he shouted at me and struck me across the face with the paper (Jones, Smith and Thomas 1980:32).

A husband reported that his wife was questioned as follows:

> She was asked about my mental state, if I had had a mental breakdown at any time, if I was impulsive, if I craved to be famous ... She was questioned about our sex life. She was told that all terrorists are sexually perverted, and that because I was a terrorist I must be perverted too. She was asked what method of contraception we used and if there were any vibrators about the house or any pornographic literature (Jones, Smith and Thomas 1980:33).

In 1984 the PTA 1974 was replaced by a new and expanded PTA which added "international terrorism" into the previously domestic interpretation of the term. This was because the government feared that the UK "could become a battleground for warring Middle East terrorist factions" (Jellicoe 1983:para. 76). In 1984 there were 44 people detained under the Act but when the Government was asked to explain why this occurred the explanation offered provided no reason:

> It would clearly not be in the national interest for me to disclose what it was that each of the 44 persons detained was suspected of doing or planning, or to discuss general trends or patterns of behaviour (David Waddington MP, Home Office; H.C. Debates, vol. 73, col. 1300).

Those detained under the Act have included Shapua Kaukunga, the Western European representative of SWAPO, on 22 September 1985. In 1985, 11 Sikhs were detained at Heathrow airport under the Act prior to the arrival of Prime Minister Gandhi. A Sikh spokesperson said,

> Our organisation does not believe in the use of force outside Kashmir ... We believe we have been arrested because of Mr Gandhi's visit ... They will be released when he has gone ... It's a mockery for them to be held under the Prevention of Terrorism Act (*The Guardian* 14 October 1985).

This view was echoed by Chief Inspector John Whillis, of Blackburn Police, where one Sikh was held, when he said:

> As far as I'm aware, it's a case of a detention order by the Home Office and presumably after that period he will be released. I am not expecting any charges *(ibid.)*.

Finally, in February 1987 James McGuire, a councillor from Northern Ireland, was detained under the Act for three days before he could embark on an official cultural visit concerned with the Welsh language. He was arrested in Liverpool, detained there, released without charge, and returned to Northern Ireland. Thus the PTA is used not only for purposes of harassment, low level intelligence gathering, "criminalising" by putting on police files thousands of people who are released without charge, and thus expanding the practical usage of the term "terrorist", but also as a form of short term political internment rather than as part of a process of criminal investigation.

Police Practice and Police Powers

Though police powers and practice are often very different, there is a link between them. There is a constant demand by senior police officers to be given increased powers in order to deal with the issues of the day as they identify them. Failure to provide these extra powers, according to Britain's most senior policeman, the then Commissioner of the Metropolitan Police, Sir David McNee, results in criminal activity by police officers: "many police officers have, early in their careers, learned to use methods bordering on trickery or stealth in their investigations" (evidence to the Royal Commission on Criminal Procedure 1981, Cmnd 8092). This theme was continued when the Commission was told by a senior policeman from Plymouth that "it is getting to the stage where it is better to take the law into one's own hands if offended against: at least you get justice, which you don't seem to get in the courts any more" *(ibid.)*. Thus, there is a constant leapfrogging of demands for increased police powers coupled with a threat of inefficiency and illegality. This process is well illustrated by the introduction of the *Police and Criminal Evidence Act 1984* which introduced a wide ranging set of police powers.

The Police and Criminal Evidence Act

That Act exemplifies the knock-on effect of anti-terrorist legislation. It is an Act concerned with "normal" police powers and "normal" criminal activity. Terrorist activity is covered only in that it can be considered "normal". It has been argued above that treating terrorism as "abnormal" provides a licence for an excessive state response. Whilst such responses occur, as illustrated by the PTA, they also have a further effect on the political actors and political climate. This process is one of normalising the abnormal. It is achieved by

lowering the legislative norm associated with liberal democratic societies to that found in anti-terrorist legislation. This constitutes a profound attack on civil liberties as everyone and everything become subject to the repressive legislation and police activities that are held to be justified in the fight against the "abnormal": the terrorist. The new base line for social control is that which is geared to a response to terrorism (Sim and Thomas 1983:71).

This growth of the strong state through the exploitation of the terrorist threat is illustrated by the relationship which exists between the "abnormal" *Prevention of Terrorism Act* and the "normal" *Police and Criminal Evidence Act*. Prior to the enactment of the *Police and Criminal Evidence Act* a parliamentary review of the anti-terrorist legislation was undertaken by Lord Jellicoe, a former officer in the Special Air Service and ex-head of the secret National Security Commission. His conclusions were that the anti-terrorist laws should be brought into line with normal police practice, powers and procedures. However, given the special nature of the problem there would have to be some movement of these regular powers towards those already enshrined in the *Prevention of Terrorism Act*.

> The terms and operation of emergency legislation should be as close as possible to those of the general law. In framing my detailed recommendations ... I have been conscious of the passage through Parliament of the Police and Criminal Evidence Bill ... My recommendations in this area are designed to accord with the spirit, and where possible the letter, of its provisions (Jellicoe 1983:para. 11).

Thus the wide increase of police powers within the *Police and Criminal Evidence Act* suggests that the emergency nature of the anti-terrorist legislation will to an ever greater extent be subsumed within everyday police practice. Thus what was abnormal yesterday becomes normal today as the emergency powers become standard and unexceptional. The changing political reality encourages the accommodation of exceptional legislation within the revised framework of generally acceptable statute law. The police practice when dealing with terrorists not only has legislative licence for extra-ordinary procedures under the PTA. There is in addition the common belief that the "irrational fanatic" does not merit the basic protections and assumptions that are formally associated with other criminals. "Mad dogs", "misfits" and "loony tunes" understand only force as President Reagan, in the language of Disneyland, has so aptly phrased it (speech to the American Bar Association, 9 July 1985). Similar though rather more muted sentiments are found in the British Parliament as illustrated by Sir Philip Goodhard, formerly of the Northern Ireland Office, who argued in 1983 that "a bit of harassment under the terms of the Act would be in some cases highly desirable" (H.C. Debates, vol. 38, col. 580). This refrain was soon echoed in the House of Lords by Lord Paget who suggested that:

> anyone found with illegal arms ... would be tried by a court martial, by a drumhead court martial, with a major as president; sentenced; the sentence would be confirmed, and execution would take place within 48 hours (H.L. Debates, vol. 440, col. 503).

Police Practice in Northern Ireland

Day to day police practices, particularly those which occur in Northern Ireland, reflect, in part, those sentiments which refuse to accept alleged terrorists, supporters, families and friends as people with rights. All of these, including those who are classified as "subversives", are deemed to be outlaws, in the historical sense of the word. In such a world the police and security forces take on the mantle of "bounty hunters" where the "shoot to kill" policy is in direct conflict with the law and codes of operational practice (see generally Stalker 1988).

This licence to "take out" terrorists was most recently examined when three active-service members of the IRA were shot and killed in Gibraltar in March 1988 by members of the British Special Air Service. Despite widespread concern that these people were executed when in fact they could have been arrested, the government has resisted an inquiry into the affair.

Within such a framework the level of co-ordinated state violence which followed the introduction of internment in Northern Ireland in August 1971 is understandable. It was then that the interrogation centres were planned which were the product of discussions between British Intelligence officers and the Royal Ulster Constabulary's Special Branch. The experience of counter-insurgency gained in Kenya, Malaya, Cyprus and Aden when fighting "terrorists" was made available through the five techniques of interrogation ultimately used to obtain information. These consisted of hooding the suspects, subjecting them to a high-pitched noise, making them stand against the wall, and depriving them of sleep and a proper diet - all of which are classic techniques of sensory deprivation. Coupled with these techniques were simple forms of brutality and torture. Over 3,000 suspects were interrogated by the RUC in the *one* year that followed internment (Taylor 1980:13). In 1980 a total of 4,069 persons were arrested. Of these less than 11% were charged with a scheduled offence. This leaves a massive 89% who were released after interrogation (Walsh 1982:37). In sharp contrast, research commissioned by the Royal Commission on Criminal Procedure suggests that in England and Wales of those arrested for whatever reason, only between 10 and 20% are released without charge (Royal Commission on Criminal Procedure 1981, Cmnd. 8092, para. 4.83). This enormous discrepancy can be explained by the purposes for which the arrest occurs. Its function is to obtain low level intelligence, take people off the streets, inform them of police and security forces' interest in them, harass and possibly embarrass or isolate them within their own communities. The function of these

arrests is not based exclusively on the police having reasonable cause to believe that they have been involved in, or know of, criminal activities, let alone "terrorist" activities.

Ultimately, after a public outcry over the treatment of detainees in these interrogation centres, the Irish government took the UK government to the European Commission of Human Rights. It was held by the Commission and the Court, to the embarrassment of the UK government, that the interrogation methods used on those detained constituted inhuman and degrading treatment. "Quite a large number of those held in custody at Palace Barracks were subjected to violence by members of the RUC" (Application No. 5310/71, European Human Rights Report 1979:59).

The Trial and the Jury

Our argument, so far, has been that the label "terrorist" is used by the security forces to detain and question individuals uninvolved with terrorists; that people have been labelled "terrorist" to justify instantaneous, rough justice; and that the very term "terrorist" corrupts normal legislation and political thinking. However, the judicial, criminal process itself has not escaped the influence of the terminology. This label has affected both the trial and the jury, and is most obvious in Northern Ireland.

The failure of internment and the exposure in the European Court of Justice of the inhuman interrogation methods employed by the security forces and RUC in Northern Ireland required alternative methods to be employed by the British state. The Diplock Commission was established to make recommendations on what modifications were necessary in the legal system to use it successfully against suspected terrorists (Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland 1972, Cmnd 5185). Recommendations of this commission which restructured the criminal trial were aimed at easing the passage of a successful criminal conviction of alleged terrorists. They were implemented by the *Northern Ireland (Emergency Provisions) Act 1973*. In particular, two points are noteworthy here. The first is the relaxation of the law governing the admissibility of confessions in order to enable convictions upon confession alone. The second, and perhaps more important, although it was scantily treated in the report, is the suspension of the jury trial for a list of offences usually associated with the activities of paramilitary organisations: terrorists. Diplock considered that jury nobbling was too dangerous for potential jurors and that sectarianism destroyed the objectivity of jurors. Thus the judge sits alone, deciding on both the law and the facts, in criminal trials involving scheduled offences.

That the judges are influenced by their preferences, prejudices and their social conditions is axiomatic. Indeed, on occasions these prejudices are worn on the sleeve for all to see. A terrorist trial example - not

even in a "Diplock court" but in the Court of Appeal in London – is that of the six Irishmen who were convicted of the Birmingham pub bombings in 1974 which led to the introduction of the *Prevention of Terrorism Act*. A very senior English judge, Lord Denning, Master of the Rolls, was involved in the appeal by the men, who were seeking damages for assault against the West Midlands and Lancashire police. The six had said their confessions had been induced by violence and threats from the police but the trial judge found their statements to be voluntary and therefore admissible. Denning stated in his judgement:

> Just consider the course of events if this action were to proceed to trial. It will not be tried for 18 months or two years. It will take weeks and weeks. The evidence about violence and threats will be given all over again, but this time six or seven years after the event, instead of one year. If the six men fail, it will mean that much time and money and worry will have been expended by many people for no good purpose. If the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and were improperly admitted in evidence, and that the convictions were erroneous. That would mean that the Home Secretary would have either to recommend they be pardoned or he would have to remit the case to the Court of Appeal under s 17 of the Criminal Appeal Act 1968. This is such an appalling vista that every sensible person in the land would say: "It cannot be right that these actions should go any further". ...
>
> This case shows what a civilised country we are. Here are six men who have been proved guilty of the most wicked murder of 21 innocent people. They have no money. Yet the state lavished large sums on their defence. They were convicted of murder and sentenced to imprisonment for life. In their evidence they were guilty of gross perjury. Yet the state continued to lavish large sums on them, in their actions against the police. It is high time that it stopped. It is really an attempt to set aside the convictions by a sidewind. It is a scandal that it should be allowed to continue. (*McIlkenny v. Chief Constable of West Midlands Police Force* [1980] 2 All ER 227 at 239–40).

In 1986 the Home Secretary reluctantly decided to have the case reviewed. Further evidence which has contributed to widespread concern over the guilty decision is the admission of a former Birmingham police officer, present at the time of the interrogations in the cells, that the six Irishmen were threatened with guns, beaten in police custody and kept without food and drink (*The Guardian* 21 January 1987). However, in January 1988 the Court of Appeal held in a review of the case that the original guilty verdict should stand.

The jury trial is the linch-pin of British criminal justice. Twelve commoners chosen at random are obliged to listen to the evidence and thereafter reach a decision on the innocence or guilt of the accused. Lord Devlin, a famous English judge, has described the institution as follows:

> Each jury is a little parliament. The jury sense is the parliamentary sense. I cannot see the one dying and other surviving ... trial by jury is the lamp that shows that freedom lives (Devlin 1956:165).

Thus, the jury sits in judgement not only on the defendant but also upon the law. Should the jury consider the law to be unjust or the bringing of the charge as unfair, then it is liable to produce what the state describes as a perverse decision. Such a decision was rendered by the jury in the politically motivated prosecution of Clive Ponting. He was a senior civil servant in the Ministry of Defence who, in the public interest, leaked documents regarding the British sinking of the Argentinian ship, "The General Belgrano", to an MP. He was found not guilty in January 1985 of a charge arising out of a breach of section 2 of the *Official Secrets Act 1911* (Ponting 1987).

The suspension of the jury was a "temporary" affair and required annual review in Parliament. However, like the PTA it devolved into a rubber stamping exercise, poorly attended and usually starting late at night. In 1984 Sir George Baker, a retired judge, reported to the government that "the time is not ripe for the return of the jury trial" (The Baker Report, Cmnd 9222:139). To this day the solitary judge of first instance sits as judge *and* jury.

A second major introduction to the Northern Ireland trial system caused by the need to convict suspected terrorists was the witness called the "supergrass". The paid witness is neither new nor novel to the English legal system (Hillyard and Percy-Smith 1984:335). However, the evidence of such a witness, a self-confessed criminal, has long been treated with the greatest of caution by English judges. As long ago as the seventeenth century Lord Hale expressed concern:

> The truth is that more mischief hath come to good men by these kinds of approvements by false accusations of desperate villains, than benefit to the public by the discovery and convicting of real offenders, gaolers for their own profits often constraining prisoners to appeal honest men (quoted in Radzinowicz 1956:52).

The authorities call such witnesses "converted terrorists", not supergrasses, but Gifford has pointed out (1986) that while it might be a suitable term for a genuine repentant it is not for someone motivated by

immunity from prosecution and the promise of a fresh start in life with a new name, money and relocation abroad.

As stated above, the confession statement, sometimes obtained through coercion, duress or even torture, was widely used in Northern Ireland in terrorist cases. For example, 86% of all defendants who appeared for trial in Diplock courts between January and April 1979 had made a confession (Boyle, Hadden and Hillyard 1980:44). However, the public exposure and denigration of methods used to obtain these statements paved the way for the "supergrass" to replace the confession statements. To date only one person has given himself up; the others have done deals whilst in prison, in custody or detained for interrogation. The trials are long, complicated with multiple defendants. However, the most contentious issue is that of conviction in the absence of corroborating evidence. In England and Wales the judge is obliged to warn the jury of the dangers of doing so. In Northern Ireland the judge is obliged to warn him- or herself! The distortion of the criminal justice system is clear. Uncorroborated evidence from a witness with a clearly defined motive for appearing for the prosecution becomes enough to convict defendants of the most serious of offences, those associated with terrorism, yet this is done in the absence of a jury.

Finally, and briefly, we turn to the criminal courts in England and Wales. Although not exposed to the same pressures as are experienced in Northern Ireland the jury has been attacked and whittled away (East 1985:518; Harman and Griffith 1979). Again, the jury is recognised as a fundamental institution within the criminal justice system even though it hears less than 1% of criminal cases. The law states: "a jury consists of 12 individuals chosen at random from the appropriate panel" (Practice Note, 1973:24). However, in 1979 it was discovered that in *certain* trials the jury was not, and had not been since 1948, selected randomly. The Attorney-General then drew up guidelines on when this random procedure should be avoided. In 1980 these were revised and on publication they were seen to include jury vetting based on grounds that:

> in both security and terrorist cases there is a danger that the juror's political beliefs are so biased as to go beyond normally reflecting the broad spectrum of views and interests in the community to reflect the extreme views of a sectarian or pressure group to a degree which might interfere with his fair assessment of the facts of the case or lead him to exert improper pressure on his fellow jurors (1980 Guidelines, para. 5; quoted in East 1980:526).

The result is that rules have operated which have not been considered or approved by Parliament and which allow the prosecution in certain cases to trawl through police and special branch files and computer databases. This information is not made available to defence counsel. On the basis of this partial and unchallengeable information

jurors can be stood down for the crown which means that the prosecution has the power to exclude them from hearing the trial.

We are already aware that the term "terrorist" is not adequately defined and neither is "national security". A parliamentary question to the Home Secretary in 1985 produced this explanation of "national security":

> This term has been in general use for many years in a variety of contexts and is generally understood to refer to the safeguarding of the state and the community against threat to their survival or well-being. I am not aware that any previous administration has thought it appropriate to adopt a specific definition of the term (H.C. Debates, 2 April, col. 569).

Thus, the basis of jury vetting is that of "terrorism" and "national security", themselves being terms which have not been defined by those who exercise them. However, some light has been thrown on the practical interpretation of "national security" and jury vetting by the Ponting prosecution. A panel of 60 jurors was vetted in this *Official Secrets Act 1911*, section 2, prosecution in 1985. The details of the vetting procedure were published by Michael Bettaney, a former MI5 officer, who himself was successfully prosecuted and imprisoned for espionage, to Stuart Holland MP in 1985. Bettaney stated:

> The processes with which I am professionally familiar involve record checks to establish whether a juror is a member of, or sympathises with, any subversive party or organisation. In this context, the 'subversive' category extends to members of the Labour Party who are believed to be associated with the Militant Tendency and other 'extremist' elements in the party (*The Observer* 17 February 1985).

The consequence is that people who are deemed unfit to sit in judgement of defendants in terrorist and other sensitive trials include members of the Labour Party. This is because they are considered to be "subversives". Thus, for example, to be classified as or admit to being a socialist simultaneously attracts the label "subversive".

Who Are the "Subversives"?

Throughout this paper we have pointed out the difficulty of defining terrorism and noted that the British state has purposefully avoided this task. This in part can be explained by the opportunity it provides to run the terms "terrorist" and "subversive" into one larger category. Surely today's subversive is tomorrow's terrorist!

A brief chronological review of the term "subversive" shows a remarkable growth in its coverage. It was Lord Denning in 1963 who

defined a subversive as one "who would contemplate the overthrow of government by unlawful means" (Report on the Profumo Affair, 1963, Cmnd. 2152:para. 230). By 1978 it had been expanded by the Home Secretary, Merlyn Rees, to accommodate

> activities which threaten the safety or wellbeing of the State, and are intended to undermine or overthrow parliamentary democracy by political, industrial or violent means (H.C. Debates, vol. 947, col. 618).

The word "unlawful" has been dropped, thereby inviting police investigation and surveillance of political and industrial activity. This police involvement has been forthcoming and has reached a high level of activity. As President of the Association of Chief Police Officers, Chief Constable Anderton of Manchester has stated:

> I think from a police point of view that my task in the future, in the 10 to 15 years from now is that basic crime such as theft, burglary, even violent crime will not be the predominant police feature. What will be the matter of greatest concern to me will be the covert and ultimately overt attempts to overthrow democracy, to subvert the authority of the state (*State Research*, 1979-80:33).

A further and even more startling elision of the terms "terrorist" and "subversive" was made by Harold Salisbury, former Chief Constable of York, North East Yorkshire, in 1981 when he defined a subversive in the following manner:

> Anyone who shows affinity towards communism, that's common sense, the IRA and the PLO and I would say anyone who's decrying marriage, family life, trying to break that up, pushing drugs, homosexuality, indiscipline at schools, weak penalties for anti-social crimes ... a whole gamut of things that could be pecking away at the foundations of our society and weakening it (BBC TV, *Panorama*, 8 March 1981).

Kenneth Sloane, the training officer of Manchester police, made the connection between "terrorists" and "subversives" when he suggested that troublesome groups be banned under the PTA:

> A much simpler action to prevent many of our present troubles would be to declare the National Front, Socialist Worker's Party or whatever the current party causing trouble is, to be a proscribed organisation under the Prevention of Terrorism Act (Public Order and the Police, *Morning Star* 24 November 1979).

The then Home Secretary, William Whitelaw, endorsed his suggestions by writing an introduction to the book.

Mrs Thatcher has echoed similar concerns about the role and growth of the "subversives" in the UK:

> The internal threat has altered considerably. It has become more varied and viewed as a whole has grown more serious ... the fall in Communist Party of Great Britain membership has been accompanied by the proliferation of new *subversive* groups of the extreme left and the extreme right (mainly the former) whose aim is to overthrow democratic parliamentary government in this country by violent or other unconstitutional means, not shrinking in the case of the most extreme groups from *terrorism* to achieve their aims (White Paper on Security Commission Report, 1982).

The central concern is not the classification *of* terrorism (i.e. the formulation of typologies such as insurgent versus state terrorism, or domestic, transnational and international terrorism) but classification of political acts *as* terrorism and the consequences for the population at large and its political activity. The state's link between "terrorists" and "subversives" is clear. There is "an enemy within", the subversives, as, for example, the coal miners were dubbed by the Tories during the miners' strike of 1984-5. There is also "an enemy without", the terrorists. Actual, potential or imaginary connections between them demand the response of a strong British state, and the Tory government wish to be seen as promoting a strong state. Indeed, this danger justified one of the 1986 election campaign slogans of the Conservatives which was to wipe out socialism from Britain if returned for a third term of office. In this way the existence of terrorists is a sine qua non for the present British state. If terrorists did not exist they would have to be invented.

Endnote

1. Completed May. 1987. with minor subsequent amendments. An earlier and briefer version of this paper was given in Geneva. Switzerland in 1987. That paper appeared in H. Koechler (ed.). Terrorism and National Liberation (1988) Peter Langtco. Frankfurt. pp 67-79.

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