

Trading civil liberties for greater security?: the impact on minority communities

Christina Pantazis and Simon Pemberton highlight the impact of anti-terrorism legislation on minority communities.

This is not an argument about whether we respect civil liberties or not; but whose take priority. It is not about choosing hard line policies over an individual's human rights. It's about which human rights prevail. In making that decision, there is a balance to be struck. I am saying it is time to rebalance the decision in favour of the decent, law-abiding majority who play by the rules and think others should too (Tony Blair, 2006).

This article questions New Labour's reconfiguration of civil liberties in the context of the domestic 'war on terror'. In classic New Labour 'double speak' this reformulation does not mean undermining rights; it involves a reordering of rights which prioritises the safety of the 'law-abiding majority' over the civil liberties of terrorist suspects. Exactly how one achieves such a balance is unclear without the erosion of the rights of 'suspect' individuals and communities. Moreover, the presentation of public safety and suspects' rights as irreconcilable is equally problematic. The recent experience of the political violence in connection with Northern Ireland suggests that the perceived and lived injustices of 'suspect' communities targeted by draconian counter-terrorism legislation does little to ensure greater public safety and may even serve to escalate conflict.

However, such concerns have been cast aside by New Labour's

attempts to remould an allegedly outdated criminal justice system – a system which is perceived to be ill-equipped to protect the 'law abiding majority' from the threats posed by 'global terror networks'. This assessment is predicated on New Labour's belief of the threats posed to liberal democracies by the 'new terrorism'. Accordingly, the criminal justice system must be better equipped to deal with terrorists immune to political negotiation, who are motivated by hate and prepared to use indiscriminate methods in causing harm to others. The characterisation of the 'new terrorism' is problematic in depicting the objectives of radical Islamic groups as purely motivated by religious fundamentalism rather than also having political agendas. Nevertheless the 'new terrorism' ideology has operated to legitimate the development of a series of draconian counter-terrorist measures that have signalled a re-alignment of the criminal justice system toward 'pre-emptive' interventions and 'incapacitation' of terror suspects. Whilst these measures have far-reaching impacts for the individuals that are subject to them, New Labour has managed to augment considerable populist support for these powers.

Trading civil liberties for greater security: New Labour's legislative response

Building upon previous (temporary) legislation relating to Northern

Ireland, the Terrorism Act 2000 (TA) placed into permanent statute many temporary provisions and introduced a number of new measures. Central to the Act was a new definition of terrorism which defined as terrorist, 'any action or threat of action against a person or property or electronic system designed to influence government for the purpose of advancing a political, religious or ideological cause'. Concerns exist over the broad nature of the definition and the wide range of groups that it potentially captures, especially as the Home Secretary is empowered to ban organisations who they believe are involved in terrorism. Thus, a total of 46 organisations are currently banned including a number of Irish splinter groups opposed to the peace process, as well as international Islamic organisations and so-called 'liberation' groups such as the Kurdistan Workers' Party. Section 44 of the TA introduced wide police powers relating to terrorist investigations, including exceptional stop and search powers (s.44). These allow the police to stop and search individuals and passengers in vehicles in designated areas in order to search for things in connection with terrorism whether or not they have any grounds for suspecting the existence of such things. Recent testimony to the Home Affairs Committee from Assistant Chief Constable Bexley suggests this power is being used in a 'random way' to deter terrorist activities. Furthermore the Act also now allows for detention without charge for a period of 28 days, although the government is currently committed to extending this to 42 days.

Within less than a year of the TA being enacted and, in response to the events of 9/11, the UK government introduced further anti-terrorist measures in the form of the Anti-Terrorism, Crime and Security Act (ATCSA) 2001. The most controversial element of the Act centred on Part IV, giving the Home Secretary the power to indefinitely detain without trial foreign nationals believed to be a national security threat. Thus, following the Act there were at least 18 individuals held in

British prisons for an indefinite amount of time but whose guilt had not been established in a British court of law. This situation was to be relatively short-lived when in December 2004, the Law Lords ruled that the indefinite detention of foreign nationals without trial was incompatible with Articles 5 (right to liberty) and 14 (freedom from discrimination) of the European Convention of Human Rights. The government responded by replacing Part IV of ATCSA 2001 with the Prevention of Terrorism Act 2005. Now individuals regardless of their citizenship status, who cannot be taken to court, can be served control orders which place restrictions on their freedom of movement and association through curfew. Thus although individuals are no longer held in custody, their effective incapacitation means that human rights principles continue to be undermined. Furthermore, these orders (and the detention powers which they replaced) represent a shift towards pre-emption within the CJS where the aim of bringing offenders to justice is replaced by the need to reduce the risk of terrorism. Further legislation was to come in the shape of the Terrorism Act 2006, following the July 2005 London bombings, which among its provisions included new criminal offences relating to encouragement of terrorism and dissemination terrorist publications. In summarising the legislative response taken by New Labour, Lustgarten (2004: 9) writes that 'Britain now has the most

comprehensive, and in some respects most draconian, legislation directed against "terrorism" anywhere in the world, certainly in Europe'. The most worrying aspect of these developments for civil liberties is the guiding principle of 'pre-emption' and its consequences for due process.

Reconciling civil liberties: whose liberties are being traded?

An implicit assumption in New Labour's rhetoric is that the 'law abiding' majority having nothing to fear from its legislative developments; only those involved in terrorism or connected to terrorism should be concerned. However, the reality is somewhat different. Our analysis suggests that these powers are being used extensively and are also disproportionately impacting upon minority ethnic groups and, in particular, Muslim communities. Since 2001/02 stops and searches under the Terrorism Act 2000 have increased dramatically (Table 1). Stops and searches began to rise in 2000/01 (the year the TA 2000 replaced the Prevention of Terrorism (Temporary Provisions) Act, and began rising at an even faster rate from 2001/2002 onwards – the year of the attacks on New York and the Pentagon. Thus, between 2001/02 and 2005/06 there were more than 163,000 stops and arrests despite these powers being exceptional and supposedly being used sparingly. Moreover, arrests resulting from these searches are miniscule (at just 1%)

and many are not related to terrorist offences.

Moreover, stop and search powers are being used increasingly and disproportionately against minority ethnic groups. Although together Black and Asian people constitute just 8% of the population in England and Wales, a quarter of all searches in 2005/06 under s.44 involved Black and Asian people. A further 4% were classified as 'Other', possibly capturing people of Middle Eastern appearance. Racial profiling of suspects has become an accepted policing norm, backed up by the Home Office and Ministers. Home Office guidance includes a statement that "it may be appropriate to take into account a person's ethnic origin in selecting persons to be stopped", whilst Hazel Blears (as a Home Office Minister) justified the acceptance of using stop and search powers against specific minority groups, claiming that this "is the reality of the situation." Although we have no way of evidencing from these figures whether stop and search powers are disproportionately used against Muslims, other evidence (often of a qualitative nature) supports the idea that Muslims individuals feel demonised and also that they are being targeted by the police (Home Affairs Select Committee, 2005; Blick et al, 2006; MPA, 2007).

The public's perception of civil liberties

There appears to be significant public support for New Labour's

Table 1: Searches of persons under sections 44 (1) and (2) of the Terrorism Act 2000 by ethnic appearance of suspect, 2001/02 – 2005/06 (Number and percent)

Year	White		Black		Asian		Other		Not Recorded		Total	
	N	%	No	%	No	%	N	%	No	%	N	%*
2001/02	6,629	78	529	6	744	9	358	4	260	3	8,520	100
2002/03	14,429	67	1,745	8	2,989	14	1,259	6	1,155	5	21,577	100
2003/04	20,600	70	2,701	9	3,659	12	1,324	5	1,099	4	29,383	100
2004/05	23,389	73	2,511	8	3,485	11	1,480	5	1,197	4	32,062	100
2005/06	30,837	69	4,155	9	6,805	15	1,937	4	809	2	44,543	100

Note: *Percentages do not equal 100% due to rounding.

Sources: Home Office (2003) *Statistics on Race and Criminal Justice System – 2003 : A Home Office publication under section 95 of the Criminal Justice Act 1991*, London: Home Office; Home Office (2004) *Statistics on Race and Criminal Justice System – 2004 : A Home Office publication under section 95 of the Criminal Justice Act 1991*, London: Home Office; Home Office (2005) *Statistics on Race and Criminal Justice System – 2005: A Home Office publication under section 95 of the Criminal Justice Act 1991*, London: Home Office; Ministry of Justice (2007) *Statistics on Race and Criminal Justice System – 2006: A Ministry of Justice publication under section 95 of the Criminal Justice Act 1991*, London: Ministry of Justice

trading of civil liberties for supposedly greater security. Johnson and Gearty (2007) report that around 80% of respondents in the British Social Attitudes Survey believed that the 'use of surveillance against terrorist suspects', 'putting suspects under special rules', 'allowing the police to detain suspects for more than a week' were 'a price worth paying.' These findings mirror those conducted by other polls. For example, in the aftermath of the July 2005 London bombings and following Tony Blair's announcement of further anti-terrorism measures, 73% of those surveyed by The Guardian/ICM (2005) believed that it was right to lose some civil liberties to improve Britain's security against terrorist attacks. The same survey reported 45% of the sample was in favour of banning organisations that promote radical Islamist views, even in the case of non-violent groups, 62% supported making it easier to deport foreign nationals who spread radical Islamist views even if it means sending them back to countries who use torture, and 69% believed that police should have the power to detain suspects for up to three months. More than half of those surveyed disagreed with judges overturning decisions made by the government on matters of national security.

Johnson and Gearty (2007) observe that the high levels of support for counter-terrorism legislation, should be viewed in the context of declining support for civil liberties over the last 25 years, 'a trend that predates 11th September 2001 and 7th July 2005' (p.169).

However, they suggest that these events have served to consolidate support for the introduction of counter-terrorism measures at the expense of personal freedoms. They note this support is likely to be predicated on the assumption held by many that these powers will be used against 'others' and not themselves. It is therefore unsurprising that those who are more likely to experience or have experienced the use of these powers, or know someone who has, will hold these rights more dearly than others. Thus, when compared to the general population, Muslims report greater concern about recent developments: 81% (compared to 58%) thought it was unacceptable for the police to view Muslims with greater suspicion because the 7/7 bombers were Muslim (The Times/INT News, 2006); and 57% (compared to 17%) thought it was wrong for the police to act to pre-empt potential terrorist attacks, even if the intelligence, information and warnings may turn out to be wrong (The Guardian/ICM, 2006).

Conclusion

New Labour has legitimated its draconian counter-terrorism legislation through the exploitation of a longstanding decline in the popularity of civil liberties, as well as recent terrorist attacks. Supporters of civil liberties need to engage in this debate over the reformulation of rights in order to challenge the public's growing intolerance towards civil liberties. Two strategies may help to undermine the hegemonic dominance of these ideas: first,

replacing the current characterisation of the 'new terrorism' with a more nuanced understanding of radical Islamic groups; and second, ensuring that the historical lessons in the use of counter terrorist measures from Northern Ireland are not forgotten. ■

Christina Pantazis is Senior Lecturer and Head of the Centre for the Study of Poverty and Social Justice, University of Bristol.

Simon Pemberton is Lecturer in Social Policy at the Centre for the Study of Poverty and Social Justice, University of Bristol.

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