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DIRECTION FOR THE
DEMOCRATIC LEFT

‘Democracy and Terrorism’

by Dr. Annabelle Lever

December 2009

Think
PIECES

Number 56

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‘Democracy and Terrorism’

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Terrorism is a threat to democratic government, albeit one with which we may have to live. But what, if anything, does a commitment to democratic government tell us about the ethics of counter-terrorism? Democracy takes many forms and the inevitable gaps between ideal and reality exacerbate disagreement about what counts, or should count, as an example of democratic government. Nor is the term ‘terrorism’ less opaque. Still, if democracy is valuable, the differences between democratic and undemocratic government should affect the ways we think about the ethical challenges posed by terrorism.

Here are three related suggestions about the implications of democracy for the ethics of counter-terrorism.

- (1) No distinctive policy proposals follow from the ways in which terrorism is exceptional.
- (2) We need significantly to revise Sir David Omand’s ‘ethical guidelines’ for fighting terrorism.
- (3) Citizens are entitled to understand and debate the principles of counter-terrorism, as with other matters of public policy.

1) Terrorism and Exceptionalism

It is increasingly common to claim that terrorism is different from other bad things, such as crime, because it is essential to prevent terrorism, rather than simply to hunt down and punish its perpetrators. For example, Jacqui Smith, the Home Secretary, maintains that

‘In many respects, counter-terrorism work is distinctive in nature and not like other areas of law enforcement. The work of our security and intelligence agencies is, of

necessity, covert.We depend on the police and Security Service to identify these individuals before their plans come to fruition, to stop an attack from happening. This contrasts with the majority of police investigations, which happen after the crime has taken place’.¹

Such claims about the exceptionalism of terrorism need to be treated with care, not because terrorism isn’t sui-generis in some ways, but because the ways in which it is exceptional depend on how one thinks about war, crime and illness, or other bad things. Hence, the exceptional features of terrorism are likely to prove matters of degree rather than kind, and to be of uncertain help to policy makers.

For most evils, prevention is better than cure. That is why we should prioritise the prevention of murder, rape, corruption, fraud and serious illness over efforts at redress or compensation for their ravages. Such things ruin people’s lives and destroy societies, whether or not they are also meant to terrorise. So, it is hard to discern a categorical difference between terrorism, crime and other evils, whether we consider the nature of the phenomena, or the harms we are seeking to prevent and punish.

Nor are the causes and remedies for terrorism invariably exceptional either. Although most crime is spontaneous, and this makes it hard to prevent, not all crime is of this type. Some of it is complex, requiring significant international organisation and cooperation - as with the trafficking of drugs, weapons and people, or some forms of corruption, tax-evasion and fraud.

The social causes and preconditions of crime are hard to disentangle. However, it is pretty clear that heavy-handed efforts to prevent crime or terrorism can increase the incidence and severity of both. This is partly because one might as well be hanged for a sheep as a lamb; and partly because the resulting disruption to ordinary life, relationships, hopes and expectations created by such ‘crackdowns’,

undermines the inhibitions that prevent most of us, most of the time, from using violence to solve our problems.²

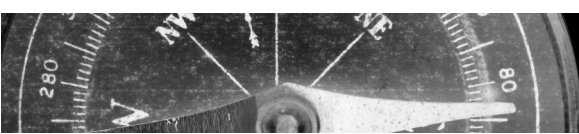
A democratic approach to terrorism, therefore, needs to consider the ways in which our social and economic policies, as well as our approaches to crime and terrorism foster, rather than inhibit, violence. William Julius Wilson and Robert Sampson have highlighted the role of urban renewal, family breakdown and ordinary market forces in explaining black and white homicide rates in the United States.³ The late Brian Barry drew our attention to the ways crime prevention and imprisonment can exacerbate intractable social problems.⁴

Finally, in a recent discussion on terrorism and democracy in the House of Lords, Steve Tsang referred to the work of Mike Aaronson on economic development and terrorism. While Western governments think of development as a sensible way to combat terrorism, the way in which such development is offered often serves to discredit development, not to inhibit terrorism.⁵ The reason is simple: recipients of aid are well-aware that aid is self-interested, not altruistic and that its benefits may fail to offset the risks of impoverishment, exploitation and insecurity resulting from trade with the West.

So, it’s difficult to reconcile a democratic approach to terrorism with the insistence that terrorism is exceptional, rather ordinary - embedded in everyday networks of power, opportunity and justification at home and abroad.

2) Privacy and Security

Protection for privacy is essential to democracy and, consequently, an essential part of State duties for security. Nonetheless, people’s claims to privacy are not reducible to their claims to security, or inherently of lesser importance than the latter. That is why democracies enable citizens but not legislators to vote anonymously, although universal suffrage



means that it is usually easier and more efficient to bribe or coerce the latter.

Protections for privacy sometimes promote security - freedom from violence, exploitation, intimidation and the like. But even where they don't -even when they come at a cost to self-protection and the protection of others - they can still be justified by the liberties and opportunities they help to create, and by the ways they prevent us from sacrificing other people's hopes, aspirations and well-being for our own ends. We can harm people by making them public objects of ridicule, contempt, entertainment and instruction, as happened to Max Mosley, and not only when we make them objects of fear or hatred.⁶ That is why our interests in anonymity, seclusion and confidentiality cannot be reduced to interests in security.

If these points are right, we must modify Sir David Omand's well-publicised claim that people must be willing to limit privacy for security against terrorism.⁷ Such claims mislead us about the nature and relationship between core democratic rights and values and are more likely to hinder than help a democratic response to terrorism.

Occasionally we may have to sacrifice privacy in order to secure our own rights and those of other people - although we will still have to assess the ethical implications of the different ways we might provide security and constrain privacy. Policemen on the beat, conductors on buses and attendants in lavatories have different implications for people's privacy, equality and security than CCTV; and the differences between random searches, universal searches and racial or ethnic profiling can greatly affect whose privacy is sacrificed for whose security.⁸ Still, my main worry about Sir Omand's pronouncement is its one-sided and unqualified character, which turns a problem in jointly protecting two values into a reason to sacrifice one to the other. This is unjustified, and has the predictable consequence that some people's security

will be threatened because we are contemptuous of their privacy.

We can contrast Omand's idea that privacy must bow before claims to security with a famous decision by the US Supreme Court: *NAACP v. Alabama*.⁹ The NAACP is the National Association for the Advancement of Coloured People, and was originally founded as a non-profit membership association. By 1957 the state government of Alabama was seriously concerned with its growing membership and use of civil disobedience against racial segregation. The state government therefore sought access to the membership list of the NAACP under an existing state statute aimed at ensuring that business associations be held responsible for any damage to life, liberty or property that their activities cause.

Clearly, the purpose of requiring the NAACP's to disclose its membership list was not fear for people's lives, liberty or property, so much as the desire to thwart the movement for Civil Rights. The motives for requiring the membership list in 1957, then, were not particularly reputable. They would surely have failed Omand's test of 'integrity of motive' which, his 'ethical guidelines' suggest, is a prerequisite for legitimate state access to private information.¹⁰ Nonetheless, the Court held that the State of Alabama had a legitimate interest in holding members of the NAACP to account for their actions. But the Court denied that this required access to the full membership list of the NAACP, because the names of its leaders or representatives were sufficient for that purpose. Democracy requires governments to be able to hold associations to account, the Court thought, but that does not mean the State is entitled to record the names, addresses (or license plates and photos)¹¹ of ordinary people, even if they are engaged in social protest, or campaigning for radical change.

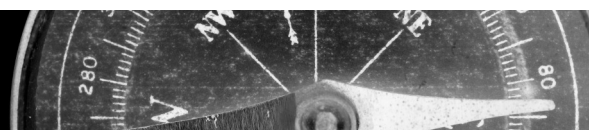
Clearly, there are limits to the ways we can generalise the reasoning and conclusions from this case - especially

where we are concerned with groups that are amorphous, informal or actually clandestine. However, *NAACP v. Alabama* shows why purity of motive is a poor guide to the legitimacy of our interests in either privacy or security. As the Court saw, the fact that Alabama's motives were poor (to say the least) did not mean that governments lack duties to protect the public. Conversely, the motives of the NAACP do not matter to the claims of its members to engage in peaceful protest without fear for their lives and limbs, or those of their loved ones. People's motives can determine whether or not they were right to exercise their rights in a particular way, or on a particular occasion, but they cannot determine what rights they have. So we must revise Sir Omand's ethical guidelines: because privacy can protect as well as threaten security, whatever our intentions or the intentions of those who oppose us.¹²

3) Democratic Education and Deliberation

Finally, I would suggest that people need to be able to discuss the moral and political tradeoffs, as well as the empirical details, which form the stuff of counter-terrorism. The government, like every think tank, stresses the importance of education in fighting extremism, but proposals in this area are astonishingly vague and bland. Above all, they seem utterly disconnected from the thought that, as citizens, we need and are entitled intelligently to discuss counter-terrorism policy, just as we would employment policy, education, welfare or policy on crime and punishment.

We may differ in our desire and ability to master many of the relevant details or controversies - though this is unlikely to be any truer of counter-terrorism than of employment or education policy, let alone pensions or the EU constitution. And, of course, some things have to stay secret. So we will need to combine historical cases, the experience of other countries and hypothetical examples in lay as well as expert discussions. But this is perfectly



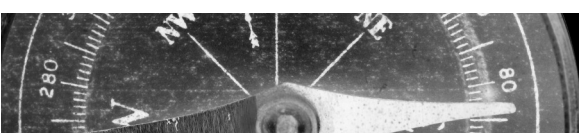
compatible with the assumption that ordinary citizens might be interested in, and should be able to discuss, the principles and basic practices of counter-terrorism.

For example, we ought to be able to consider whether the UK should continue to exclude wiretapped evidence in court, and the grounds on which people are subjected to wire-tapping, and we should not need any more specialised access to information than we would for a comparable issue of economic or foreign policy. We should be free to debate whether, or how far, the state should protect the credibility of spies even at the cost of their involvement in serious crimes like murder or racketeering.¹³ Such questions are as central to the prevention of financial, as of violent crime; and as important to prevent sexual enslavement and coercion as terrorism. The basic information and principles necessary to form an intelligent opinion on them need to be widely available

In short, until we accept that citizens are entitled to understand the principles and main practices of counter-terrorism, and to debate these openly, we will lack an essential element in a democratic response to terrorism - and to crime more generally. People must be able to talk honestly about their laws, institutions and practices - their history, justification, their strengths, weaknesses and the alternatives to them. This applies to our efforts to prevent terrorism, no less than to our hopes for solving other collective problems. There is no bright line which separates the one from the other:

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References

¹ The Home Secretary was addressing the Smith Institute and the Centre for the Study of Terrorism, at St. Andrews University, in June 3, 2008 (available at <http://press.homeoffice.gov.uk/Speeches/countering-terrorism-democracy>). The quotation comes from the section called 'Our Objectives'.

² John Sidel's fascinating 'The Islamist Threat in South East Asia: Much Ado About Nothing?' *Asian Affairs*, vol. XXXIX, no. III (Nov. 2008) 339 - 351, provides some evidence of that - and of the importance of distinguishing terrorist violence as a 'last gasp' response to waning power as compared to the confident move of a powerful group.

³ Robert J. Sampson and William Julius Wilson, 'Toward a Theory of Race, Crime and Urban Inequality' in *Crime and Inequality*, ed. J. Hagan and R. D. Peterson (Stanford University Press, 1995), 37 - 54. See also Robert J. Sampson, Jeffrey D. Morenoff and Stephen Raudenbush, 'Social Anatomy of Racial and Ethnic Disparities in Violence' *American Journal of Public Health* 95, No. 2 (Feb. 2005). For the bearing of these figures on arguments for and against racial profiling see Annabelle Lever, 'What's Wrong With Racial Profiling? Another Look at the Problem', *Criminal Justice Ethics*, (Vol. 26. No. 1, Winter/Spring 2007), 20-28.

⁴ Brian Barry, *Why Social Justice Matters*, (Polity Press, London, 2005).

⁵ See Steve Tsang's pre-publication chapter in *Combating Transnational Terrorism: Searching for a New Paradigm* (Praeger Security International, 2009). The gist of this chapter was presented at the House of Lords debate on Terrorism, organised by Baroness Nicholson of Winterbourne, MEP, on 23 February, 2009. I was not at that meeting and am relying on the copy of the chapter that he supplied.

⁶ Compare Max Mosley's case, as described in *Mosley v. News Group Newspapers Ltd.* (2008) EWHC 687 (QB), with the fate of Oliver Sipple, who deflected a bullet aimed at U.S. President Gerald Ford in September, 1975. Encouraged by Harvey Milk, the gay mayor of San Francisco and a friend of Sipple's, Herb Caen published an article, revealing that Sipple was gay. Sipple unsuccessfully tried to sue for invasion of privacy but, by 1984 when his appeal reached the State Court of Appeals in California, the Court held that Sipple had, indeed, become news and that his sexuality was part of the story. To my mind Sipple's privacy was invaded by Milk and Caen (and subsequent newspapers) in order to instruct the public, or to show that a gay man can be a hero. I think the invasion was unjustified, and the revelation clearly blighted Sipple's life, even though much of his life in San Francisco was openly gay. However, others, like Richard Mohr, would disagree.

⁷ See, 'Privacy Must Be Sacrificed, Says Ex-Security Chief' and the resulting controversy at

<http://www.guardian.co.uk/world/blog/audio/2009/feb/25/guardian-daily-podcast>. For American scepticism about the benefits of their use of warrantless wiretapping see the *New York Times* (July 10, 2009), <http://www.nytimes.com/2009/07/11/us/11nsa.html?th&emc=th>. Apparently the very secrecy of the covert-wiretapping programme prevented the effective use and dissemination of any information that it provided.

⁸ I worry that we use CCTV too indiscriminately as a tool of surveillance, even when surveillance is justified, and thereby sacrifice privacy without improving security. See, for example, recent efforts by the police to make the use of CCTV a condition for the licensing of pubs. Such indiscriminate requirements fail to distinguish the security needs and threats posed by the large city pub-cum-nightclub with those of a village or suburban pub. They will therefore fail adequately to protect people's security, while arbitrarily invading their privacy. <http://www.guardian.co.uk/uk/2009/mar/12/cctv-pubs-privacy-ico>. Compare A. Lever, 'Why Racial Profiling is Hard to Justify' in *Philosophy and Public Affairs* 33.1. (2005) with M. Risse and R. Zeckhauser, 'Racial Profiling' in *Philosophy and Public Affairs* 32.2. (2004). And compare A. Lever, 'Mrs. Aremac and the Camera' and B. Goold, 'The Difference Between Lonely Old Ladies and CCTV Cameras' in *Res Publica* 14.1. (March 2008) 35-42 and 43-47 with J. Ryberg, 'Privacy Rights, Crime Prevention, CCTV and the Life of Mrs. Aremac' in *Res Publica* 13.2. (June 2007) 127-143

⁹ *NAACP v. Alabama*, 357 U.S. 449 (1958).

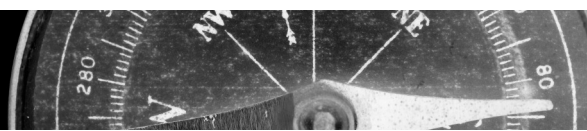
¹⁰ See Sir David Omond, GCB, 'The National Security Strategy: Implications for the UK Intelligence Community' (IPPR, February 2009), 9-10. Omond's 'ethical guidelines' include 'sufficient sustainable cause; integrity of motive; proportionate methods; proper authority; reasonable prospect of success; no reasonable alternative'. As we will see, this list provides no information on the limits to people's moral or legal rights to privacy, and so provides no guidance on when other rights justify state action to constrain privacy. The guidelines merely provide advice on when, once the state is entitled to act, action would in fact be appropriate.

¹¹ See <http://www.guardian.co.uk/uk/2009/oct/26/police-challenged-protest-files> for police treatment of those engaged in peaceful demonstrations in the UK. Recent stories about the UK courts' willingness to limit freedom of expression on libel grounds highlight the importance of distinguishing the claims to privacy protection and protection against libel of ordinary people, as compared to those holding special powers or responsibilities for the lives of others. The American distinction between ordinary people and 'public figures' may leave something to be desired, as it does not readily apply to heads of powerful companies' but there's nothing democratic in ignoring the differences between government officials and those they are meant to serve when trying to decide whose privacy should give way to whose freedom of

expression, or whose reputation should be protected, and at what expense. For the legal origins of the distinction and its significance to freedom of expression and libel see the American Supreme Court decision in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and the wonderful book about it by former *New York Times* columnist, Anthony Lewis: *Make No Law: The Sullivan Case and the First Amendment* (Random House, 1991).

¹² It may be that Omond is basing his guidelines on analogy to just war theory, where justice in war requires that the state exercise its right to wage war in ways that are proportional, reflect a just cause, reasonable prospects of success and the lack of peaceful alternatives and so on. However, these principles assume the existence of state rights of self-defence, and state duties to defend others from unjust aggression. They then seek to illuminate when and how a state can justifiably act on these rights and duties. But they do not tell us whether the state is entitled to claim self-defence under circumstances x rather than y; or whether the state has a duty to aid other states in conditions p rather than q. They come into operation once these things have been established, and are meant to help us decide whether war is a legitimate consequence of those rights and duties.

¹³ Sir David specifically raises this issue in 'The National Security Strategy', p. 10. The problem of controlling and/or justifying the actions of agents embedded in gangs or terrorist organisations underpins controversies over 'collusion' in Northern Ireland, as well as racketeering and murder by police agents in Massachusetts. Here, too, there seems no clear distinction between the problems posed by terrorism and 'ordinary' crime.



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