

## HOMELAND INSECURITY:

### WHY ANTI-TERRORISM LAWS ARE HERE TO STAY

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*Abstract:* In this paper I argue that the self-evident sustainability of the changes wrought by anti-terrorism law since the 11 September 2001 attacks are rooted in our colonial past, a past that is littered with such laws. I further argue that in the post-colonial period those laws were then carried over into the Cold War era, where they were too useful in the struggle against radical dissent ever to be completely jettisoned – even by those newly liberated countries whose leaders had suffered under their coercive power. The paper ends with some brief reflections on how the ‘problem’ of ‘terrorism’ became globalised in the post-colonial period. My examination of its origins led me to believe that the ‘War on Terror’ was easy to entrench because liberal democracies had had decades of practice at it.

*Running head:* Homeland insecurity

## INTRODUCTION

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\* Professor of Human Rights Law, LSE. This paper is based on remarks made at the RIA’s conference ‘Human (in)security in an unsettled world’ 2 May 2023. I am grateful to all those present who commented on the paper. I am grateful as well to Professor Aoife Nolan whose careful reading of a draft of this paper greatly improved it.

In this paper<sup>1</sup> I discuss the origins of what we have come to understand as the ‘War on Terror’ – the dramatic escalation of American but also multinational action against an entity known as ‘terrorism’. There was, of course, some resistance,<sup>2</sup> But this should have been harder for a liberal democracy to pull off than it was. After all, we know that the actions taken in its name have entailed dramatic and wide-ranging breaches of human rights and fundamental freedoms, and restrictions on the principle of the rule of law that have greatly eroded their universal application. And yet it was initiated not by an authoritarian super-power, a Putin or a Xi Jinping, but rather by the leader of what was then – and is still - widely thought of as the free world. That leader, George W Bush of course, was from the start working with, among others, European allies – all of them democracies dedicated to the same values as the United States. These partners may have eschewed the label but they certainly embraced the effects of the waging of this informal ‘war’.

Instead of being a shock to the system, to be resisted or, if resistance proved futile, forcibly exorcised in the name of western values at the first opportunity, the new brutality of this ‘War on Terror’ quickly embedded itself in democracy’s understanding of what its values entailed. I do not have the space here to substantiate my assumption about the persistence of such laws.<sup>3</sup> It is tempting to say that the evidence is all around us, in the continued use of Guantanamo Bay’s detention centre, in the ongoing vitality of various UN initiatives (such as

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<sup>1</sup> The argument is taken from my next book: *Homeland Insecurity. The Rise and Rise of Global Anti-terrorism Law* (Cambridge: Polity Press, 2024).

<sup>2</sup> See for one example of the sorts of struggles that the challenge entailed for representative democracies Elizabeth Grimm Arsenault's book *How the Gloves Came Off: Lawyers, Policy Makers, and Norms in the Debate on Torture* (New York: Columbia University Press, 2017).

<sup>3</sup> This is the central thrust of my forthcoming book, Gearty *Homeland Insecurity*.

UN Security Council Resolution 1373<sup>4</sup>) that immediately followed the 11 September attacks, and in the pervasiveness of contemporary anti-terrorism laws in states around the world, whether democratic or authoritarian. True, the laws and practices generated by the early ‘War on Terror’ have been modified, some of their immediate harshness smoothed away,<sup>5</sup> but the paradoxical consequence of such reforms has been to protect anti-terrorism law from further attack, to entrench rather than to expel. A few years ago, I did a Radio Four programme in which I argued that all terrorism laws should be repealed. It was aptly named HERESIES by the producers. What was once within many of our adult lives an unprecedented and draconian interference with freedom, described in such terms by the British Home Secretary who introduced the first explicitly anti-terrorism laws in the early 1970s,<sup>6</sup> has now become so much part of our legal framework that contemporary common sense demands its retention. Indeed it is not going too far to say that anti-terrorism laws no longer needs political violence that can be plausibly called terrorism to survive.

In this paper I argue that the sustainability of the changes wrought by anti-terrorism law are rooted in our colonial past, a past that is littered with such laws, and that in the post-colonial period those laws were then carried over into the Cold War era, where they were too useful in the struggle against radical dissent ever to be completely jettisoned – even by those newly liberated countries whose leaders had suffered under their coercive power. My

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<sup>4</sup> 28 September 2001.

<sup>5</sup> For example in the Obama reforms made to the regime at Guantanamo Bay, and in the appointment of a UN ombudsperson to provide some independent input into the UN’s sanctions regime.

<sup>6</sup> Roy Jenkins, introducing the Prevention of Terrorism (Temporary Provisions) Bill 1974: House of Commons Debates vol 882 (25 November 1974): <https://hansard.parliament.uk/Commons/1974-11-25/debates/8422b814-468c-4637-97ef-77184fe1cde2/Terrorism> (visited 17 May 2023).

examination of its origins led me to believe that the ‘War on Terror’ was easy because liberal democracies had had decades of practice at it.

### (NOT) THINKING ABOUT DEFINITIONS

Before I proceed further though, I need to confront an issue of meaning, in particular that of the term ‘terrorism’. Or rather – and this is central to what follows – I address it by consciously choosing not to. Let me explain. I struggled recently in conceptualising a planned book on the history of terrorism, so much so that I put the project aside. When we ask ‘what is terrorism?’ (and I have often done this myself in the past<sup>7</sup>) we inevitably wander off into mazes of linguistic uncertainty, where ancient warriors like the Zealots and the Assassins bump into 19<sup>th</sup> century versions of themselves in the shape of anarchists and Fenians and the like, with all the usual suspects from the 20<sup>th</sup> century (the Red Army Faction, ETA, the IRA and so on) lumped in, all joining in in this impossible effort to link the un-linkable.<sup>8</sup> Even at face value it is a difficult task: do targets have to be important functionaries (as was thought to be the case in the 1930s) or must they be innocent civilians (as is often assumed today)? And should we extend our reach beyond the subversive, as perhaps we should? Does state terrorism ‘count’ or does it not? If a state facilitates ‘terror’, is it a ‘state-sponsor’ of terror? Or a just protector of freedom-fighters? Where does the ‘terrorist state’ fit? No wonder experts have come up with hundreds of definitions: ‘inventing the subject’ as

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<sup>7</sup> eg Conor Gearty, *Terror* (London: Faber and Faber, 1991).

<sup>8</sup> But for an outstanding study which avoids all these traps see Richard English (ed.), *The Cambridge History of Terrorism* (Cambridge: Cambridge University Press, 2021).

one superb study by Lisa Stampnitsky has put it<sup>9</sup>; generating what another two scholars Edward Herman and Gerry O’Sullivan have called the ‘terrorism industry’.<sup>10</sup>

My focus here on the origins not of ‘terror/terrorism’ but of anti-terrorism in general and *anti-terrorism laws* in particular offers I believe a better route to understanding than the histories I have rejected. After all, the ‘War on Terror’ is about anti-terrorism action, not the terrorism itself. These laws certainly exist and contain within them diverse definitions of the terrorism at which they are aimed. That is certainly a decent start to our quest for the origins of the ‘War on Terror’. Such laws have been around for a while – the first UK-wide anti-terrorism law mentioned earlier was passed as a response to IRA activity in 1974.<sup>11</sup> The US used this language in 1984<sup>12</sup> and 1986,<sup>13</sup> and again in 1996 with the Anti-terrorism and Effective Death Penalty Act, passed during the Clinton administration. Maybe it has been laws like these, enacted in various shapes and forms across the Global North that inoculated liberal democracy to the undermining effects on its own character of all that has followed the attacks of 11 September 2001? Certainly, they have generally been adopted in response to atrocity and have revealed democratic cultures as willing to embrace the extreme (while still asserting their liberalism).

This seems a thin explanation though, loading too much explanatory power onto too little. And, anyway, how come these laws were themselves so easy to pass, encountering little

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<sup>9</sup> Lisa Stampnitsky, *Disciplining Terror. How Experts Invented Terrorism* (Cambridge: Cambridge University Press, 2013).

<sup>10</sup> Edward Herman and Gerry O’Sullivan, *The ‘Terrorism’ Industry. The Experts and Institutions that Shape Our View of Terror* (New York: Pantheon Books, 1989).

<sup>11</sup> Prevention of Terrorism (Temporary Provisions) Act 1974.

<sup>12</sup> Act to Combat International Terrorism 1984.

<sup>13</sup> Anti-terrorism Act 1986.

opposition and, like the legislative and executive consequences of the ‘War on Terror’, outstaying their welcome? (The six-month shelf life of the UK measure enacted in 1974 eventually became the much expanded and now permanent Terrorism Act 2000, enacted the year *before* the 11 September attacks.)

It helps at this point to think about anti-terrorism laws in a more general way, hunting not for the word ‘terrorism’ in their title but for the mischief that lies behind them. Anti-terrorism laws are about countering political subversion, usually (but not only) violent political subversion. If we think about anti-terrorism laws as being about this, it becomes obvious that such laws long predate their statutory description – common from the 1970s onwards – as ‘terrorism laws’. Might this not be a more successful route down which to go in search of answers to our central inquiry? The UK had its Prevention of Violence (Temporary Provisions) Act 1939 to counter what the sponsoring minister at the time specifically referred to (even if not in the title) as ‘terrorist attempts’ and ‘terrorist outrages’.<sup>14</sup> The Restoration of Order in Ireland Act 1920 was similarly focused, as was the Rowlatt Act enacted by the British for India, though it called itself the Anarchical and Revolutionary Violence Act 1919. For the Rowlatt Committee whose report led to the Act, ‘the difficulties attending the enforcement of the law had been enhanced ... by terrorism’.<sup>15</sup> The United States has been similarly alive to the danger from political violence, in the early days the Native Americans but in the last century an enemy within, in the shape of first the anarchists (precipitating the Palmer raids just after the First World War and then the Communist (the Smith Act, very shortly before the US entered the Second World War).

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<sup>14</sup> These were the words used by the then Secretary of State for the Home Department Sir Samuel Hoare when introducing the Bill in the Commons: House of Commons Debates, vol 350, cols 1047 and 1049 (24 July 1939).

<sup>15</sup> Sedition Committee 1918 (Calcutta: Superintendent Government Printing, 1918), para 171.

All these laws dealt with threats in coercive ways, ways that were undermining of liberal democratic principle, and yet all were part of liberal democratic culture, never effectively challenged, indeed often seen (as in the case of domestic Communists) as essential to the very survival of democratic society.<sup>16</sup> They were sometimes but not always framed as responses to terrorism, although the word did not appear in their legislative titles. Maybe this is where liberal democratic society learnt the habit of coercion that was to be turned to such good effect after the attacks on 11 September?

### IMPERIUM

Thinking about meaning in the way I have just been doing reveals a curiosity at the core of ordinary histories of terrorism. These purport to be about political violence for subversive ends through the generations. They often have the hotch-potch approach that I partly derided earlier – certainly my early books and articles did. But they pretty well all miss, or if they don't miss then they pay very little attention to, the most serious kind of political violence of this sort that has occurred in the course of the past two hundred or so years: namely, violence in reaction to colonial aggression. It has been in seeking to manage such violence that successive imperial authorities have found themselves resorting first to excessive military-led responses to local insurgency and second, in a later phase of empire, to draconian legislation and coercive executive action. This has, of course, been a British story, but it has also been a French and Dutch one: wherever there has been violent resistance to empire there has been violent counter-insurgency.<sup>17</sup> As I say, not much of this appears in the terrorism history books – it appears elsewhere of course, and increasingly so, but not so much in how our subject has

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<sup>16</sup> *Dennis v United States* 341 US 494 (1951).

<sup>17</sup> I deal with this at length in my LSE Working Paper 9/2023 (20 March 2023):

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4394683](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4394683) (visited 17 May 2023).

explained itself. But here was ‘counter-terrorism’ law as a normal part of liberal democracy, albeit not always (or even invariably) described as such. Should not a discussion of the origins of contemporary anti-terrorism laws take such laws into account?

There is another way in which discussions of colonial anti-insurgency laws resemble contemporary discussions of terrorism. In both arenas we tend to ignore the counter-actions by the state (or downplay them as mere ‘counter-terrorism’ or ‘counter-insurgency’ if we do come across them, as though they were made inevitable (even ‘right’) by the actions of the dissidents). We are also loath to look for deep explanations that might excuse or even justify the violent dissent that we label (always now and frequently then) as ‘terrorism’ and to which the state violence is a reaction. This is perhaps the weirdest and most debilitating feature of terrorism studies as it has developed over the years: it largely ignores state violence in favour of an endless search for subversion, subversion that is then analysed separately from the violence to which it is a reaction.<sup>18</sup> The subject of terrorism studies has become one that is not really about a kind of violence (political terror) but rather is about a kind of person (a subversive) who practices such violence. The law and practice of state action against colonial insurgency took the same path.

Let me now lay out briefly the contours of a history of terrorism which is told from the perspective of anti-insurgency, later anti-terrorism, laws. The colonial project upon which European states embarked in the 18<sup>th</sup> and 19<sup>th</sup> centuries involved huge levels of political violence, conducted by states with a vastly superior military capacity than the communities

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<sup>18</sup> There are of course many honourable exceptions to this rather over-general claim: (amongst others) Richard English, *Does Terrorism Work? A History* (Oxford: Oxford University Press, 2019); Richard Jackson, *The Case for a Critical terrorism Studies* (2007): <https://www.aber.ac.uk/en/media/departamental/interpol/csrvc/case-for-a-critical-terrorism-studies-richard-7.pdf> (visited 17 May 2023); and Louise Richardson, *What Terrorists Want: Understanding the Enemy, Containing the Threat* (London: John Murray, 2006).



they were intent upon subjugating.<sup>19</sup> Such violence was often intended to communicate to locals the fierceness of their opponents and the impossibility of resistance, pure terror in other words. Local resistance was easily brushed aside if it presented itself in an open way: some readers may well have seen the film *Zulu*, based on real events. That was Rorke's Drift. At the Battle of Omdurman, fought in 1898 as the culmination of a campaign to avenge the death of Britain's General Gordon at the hands of Sudanese Muslim opponents (the Mahdists), the British forces killed at least 10,000 and wounded over 13,000 for the loss of just 47 soldiers with another 382 wounded.<sup>20</sup>

Unsurprisingly those opposed to colonial occupation balked at continuing to run at their opponents, unarmed, in order to be mown down. They adopted the tactics of the Native Americans before them: as the leading historian of American military strategy described them, writing in 1988: 'The logic of Western superiority in fixed encounters had been thoroughly digested by the Indians: after their costly initial defeats, they were scrupulously careful to avoid pitched battles – much to the fury of the Europeans – because they always lost them'.<sup>21</sup> That fury was also evident in the response of colonial powers to the shape that resistance took in later colonial periods, not open battles leading to certain defeat, but rather

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<sup>19</sup> Caroline Ekins, *Legacy of Violence. A History of the British Empire* (London: Penguin Random House, 2022).

I realise I am presenting a particular account of the colonial legacy here. There are others, eg Nigel Biggar, *Colonialism. A Moral Reckoning* (London: William Collins, 2023) which provide a radically different account. In some ways our discussion here is about much more than (merely) terrorism but about how our ideas of western democracy are constructed: Douglas Murray, *The Strange Death of Europe. Immigration. Identity, Islam* (London: Bloomsbury Continuum, 2017).

<sup>20</sup> Ekins, *Legacy of Violence*, 85.

<sup>21</sup> Geoffrey Parker, *The Military Revolution. Military innovation and the Rise of the West 1500-1800* (2<sup>nd</sup> edn, Cambridge and New York: Cambridge University Press, 1996), 119.

isolated acts of violence, covert assaults on supporters of imperial power, and, especially, assassination. These actions stimulated vast and bloody responses, retaliatory offences against local communities, often entirely indiscriminate. Sometimes mere protest was enough to provoke the ire of the colonial powers. When Brigadier General Reginald Dyer explained in his official report why he had ordered his men to open fire on some 15,000 or so unarmed civilians in Amritsar in April 1919, killing 400 and injuring well over 1,000, he wrote of the need to ‘produce the necessary moral and widespread effect’ that ‘it was [his] duty to produce.’<sup>22</sup> Dyer’s orders were no aberration – he was lionized by the British public as the ‘Saviour of the Punjab’ and his actions were defended by military strategists for decades to come. A particularly serious atrocity by British forces in the early years of the Malaya insurgency (the late 1940s) was privately explained away as being a consequence of having ‘a war of terrorism on our hands’, one that was complicated by the fact that, as the official put it, ‘we are endeavouring at the same time to maintain the rule of law.’<sup>23</sup> ‘It was the barbarism of my enemy that made me do it’ you might say.

The Commissioner of Police in Calcutta for much of the 1920s Sir Charles Tegart spoke on the topic of ‘Terrorism in India’ at the Royal Empire Society in London on 1 November 1932 and in 1937, H W Hale of the Indian police wrote *Terrorism in India, 1917-1936*, a book that was as one scholar working in the field has put it ‘instructive of an evolving colonial prose of counterterrorism during this period. By the time that Hale composed his volume ..., the term “terrorism” had definitively replaced older labels such as “sedition”, “conspiracy”, or “political crime” as the primary lens through which acts of anti-colonial

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<sup>22</sup> Ekins, *Legacy of Violence*, 134.

<sup>23</sup> Christopher A Bailey and Tim Harper (eds.), *Forgotten Wars: The End of Britain’s Asian Empire* (London: Allen Lane, 2007), 453. There is a full account of the incident at 449-456.

revolutionary violence were understood.’<sup>24</sup> To Hale, terrorism ‘as distinct from other revolutionary methods such as Communism ... may be said to denote the commission of outrages of a comparatively “individual” nature.’<sup>25</sup> In vain did Mahamat Gandhi try, at his trial for sedition in 1922, to turn the linguistic tables on the British asserting that they had created a ‘subtle but effective system of terrorism’ in India.<sup>26</sup>

The word may not have been in the laws explicitly, but the language of terrorism hovered in the background in this way throughout the late colonial period, functioning as a vital alibi for departure from ordinary liberal values. There were other explanatory tropes that combined with it, of course, all also instantly recognisable today. In Kenya, the ‘Mau Mau “terrorists” were regarded as certifiably insane’ and (as one scholar put it) ‘one of the most common interpretations at the time was that the revolt was an outbreak of madness – a primordial, atavistic scream, as members of the Kikuyu struggled with modernity’.<sup>27</sup> In an earlier colonial period (the Mau Mau were the 1950s) Christianity was the mission in the way that modernity became and liberal humanism is today – the business of civilising the native for their own good can sometimes be a bloody one. And there was always the imperial belief that the noisy dissenters were just a few rotten apples in a barrel of quietly supportive natives:

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<sup>24</sup> Joseph McQuade, *A Genealogy of Terrorism. Colonial Law and the Origins of an Idea* (Cambridge: Cambridge University Press, 2021), 18.

<sup>25</sup> McQuade, *Genealogy of Terrorism*, 169.

<sup>26</sup> Janaki Bakhle, ‘Savarkar (1883-1966), Seditious and Surveillance: The Rule of Law in a Colonial Situation’ (2010) 35 (1) *Social History* 51-75, 73.

<sup>27</sup> Richard Reid, ‘Terrorism in African History’ in English (ed.), *Cambridge History of Terrorism*, 199-222, 209 (footnote omitted). After the decision in *Mutua v Foreign and Commonwealth Office* [2011] EWHC (21 July 2011), the then Foreign Secretary William Hague acknowledged in Parliament that ‘Kenyan were subject to torture and other forms of ill-treatment at the hands of the colonial administration’: HC Debates, vol 563, col1692 (6 June 2013).

as the British Lord Lieutenant in Ireland put it when declaring martial law on the island in late 1920 ‘Irishmen! Understand this: Great Britain has no quarrel with Irishmen: her sole quarrel is with crime, outrage and disorder; her sole object in declaring Martial Law is to restore peace to a distracted and unhappy country.’<sup>28</sup> Colonial authority is always being let down by the failure of the natives to appreciate it. The idea of terrorism worked as a kind of open term within which could be clustered all these various ways in which imperial power explained to itself why it had to do what it did.

This needed especially to be done where that power’s understanding of itself was as a liberal (and later a liberal democratic) polity. These were the ways in which the violence of the authorities abroad could be defended, not merely excused but justified, celebrated even (‘the lion of Punjab’) as essential for the public good. Key here was that it was all happening abroad, at a time when communications were slow and relatively easily controlled by the government through its own communications and also via an imperial press whose stranglehold on public discourse was nearly total. The homeland was different: there, anarchists and others engaged in subversion got generally fair trials – some of them even got acquitted (the prosecutions of the anarchists responsible for the siege of Sydney Street in London in 1911 were all unsuccessful). Extradition law protected political murderers abroad who managed to make it to Britain. In one celebrated case in 1891, a Swiss anarchist who had killed a political functionary was permitted to stay at liberty in Britain, his ‘crime’ being excused precisely because of its political nature. As one judge in the case put it ‘one cannot look too hardly and weigh in golden scales the acts of men hot in their political excitement.’<sup>29</sup> But when in 1909 the radical Indian nationalist Vinayak Damodar Savarkar published an article praising an assassination of an official of the Raj as an act of patriotism, he was

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<sup>28</sup> See *R v Murphy* [1921] 2 IR 190, 198-200.

<sup>29</sup> *R v Castioni* [1891] 1 QB 149, 167.

arrested and detained in UK. He was being shipped back to India as a prisoner when he jumped ship at Marseilles. In vain did he rely on French liberal values to avoid recapture: the British went and got him anyway. The matter came before the Hague tribunal which upheld the British action. The colonies didn't count.<sup>30</sup>

## THE COLD WAR

So how do we link this colonial terrorism story to the present day? Obviously, there was a dysfunction laid bare by the difference in treatment between those from abroad proper and from the homeland proper on the one hand and those from the half-homeland of the colonies on the other. To use a phrase of the late sociologist Stan Cohen, the 'state of denial' this inculcated, required even, meant that double standards of this sort have long been central to liberal democracy's approach to the world.<sup>31</sup> When the 'colonial attitude' has been expressed closer to home it, it has run into trouble it rarely encountered when indulged in far away. Algeria comes to mind, part of France yet not truly part of it. And this is why Ireland is so especially interesting: part of the United Kingdom in law from 1801 but always understood as different, by both the British and the Irish. Lord French's rallying call was aimed at British citizens (of a sort), and British counter-terror in Ireland in 1920-21 was far more controversial in Westminster than higher levels of violence elsewhere. When ordinary colonial responses to political violence were deployed in Northern Ireland in 1969-1972, there was an upsurge of liberal indignation. We have been doing this for generations was not a reply that could work this close to home, perhaps even, as some would (still) say 'at home'.

The Cold War is the vital link between the late imperial period and our own, the bridge between imperial violence and the 'War on Terror'. You might have expected the

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<sup>30</sup> McQuade, *Genealogy of Terrorism*, 16.

<sup>31</sup> Stan Cohen, *States of Denial. Knowing About Atrocities and Suffering* (Cambridge: Polity Press, 2001).

final failure of the colonial project to have produced a large number of independent sovereign states determined to get rid of the coercive laws under which their victorious leaders had laboured to secure the freedom of their peoples. Quite the reverse. Such laws were not jettisoned, but rather strengthened. Lebanon and Syria were among the first Arab countries to criminalise ‘terrorism’ with the newly independent (of French control) Lebanon defining the term (in 1943) as ‘all acts [that] aim to create a state of panic and are committed by means such as explosives and inflammable materials, toxic or burning products, epidemiological or microbial factors that could cause a public danger.’<sup>32</sup> Syria went down the same route at the same time,<sup>33</sup> Egypt shortly afterwards: ‘In 1946, Article 98(b) was added to the Egyptian Penal Code, condemning “whoever promotes in the Egyptian Republic in any way to change the fundamental principles of the constitution [...] or to overthrow the state’s fundamental social or economic system [...] when the use of force or terror or any other illegal means is noticeable.”<sup>34</sup> Egyptian independence in 1952 made no material difference to any of this legal framework. Israel preserved its British Mandate emergency laws while immediately adding (in September 1948) a prevention of terrorism ordinance, both of which it was able to exhibit with pride when the UN came looking for evidence of anti-terrorism enthusiasm after the 11 September attacks.<sup>35</sup>

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<sup>32</sup> Article 314 of Lebanese Penal Code No 340 of 1943, cited in Fatemah Alzubairi, *Colonialism, Neo-colonialism, and Anti-terrorism Law in the Arab World* (Cambridge: Cambridge University Press, 2019), 78-9.

<sup>33</sup> Alzubairi, *Colonialism*, 79.

<sup>34</sup> Alzubairi, *Colonialism*, 79.

<sup>35</sup> State of Israel: Report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/229/21/PDF/N0222921.pdf?OpenElement> (visited 18 January 2023).

There are many such examples.<sup>36</sup> If a newly independent country chose the West's side in the Cold War, it was choosing democracy as (at least notionally) its form of government – but in doing so it was required to equip itself with the means to defend itself against 'the enemy within', the 'communist terrorists' as Sir Gerard Templar had called the Malayan insurgents in the 1950s.<sup>37</sup> At the start of the Cold War, the US – and indeed its allies in Europe – were well used to the idea that (as they saw it) the freedom of the many needed to be defended by imposing restrictions on the radical few. If this meant consigning old (Communist) allies in the liberation struggle to political (and possibly even mortal) oblivion then so be it – and the way to do it was by adopting the old colonial anti-insurgency template. Indeed, the fear of communism was such that it could even preserve the freedom of the very few in grossly unjust societies, with the label of 'terrorism' doing the bridging work to obscure the extent to which democracy was being flouted. As one scholar has observed, 'in 2008, in the final days of the Bush administration, it was discovered that Nelson Mandela – by that point arguably the most loved and revered person on the planet – was still on the US's "terror watchlist", in addition to other senior figures in the African National Congress (ANC)'. They had been placed there in 1986, by a Reagan administration that had been busy currying favour with the stoutly anti-communist apartheid regime of P. W. Botha.<sup>38</sup>

## CONCLUSION: GLOBALISING TERRORISM

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<sup>36</sup> For Africa, see Susan Williams, *White Malice. The CIA and the Neocolonisation of Africa* (London: C Hurst and Publishers Ltd, 2021). And generally Noam Chomsky, *Culture of Terrorism* (London: Pluto Press, 1988).

<sup>37</sup> Ekins, *Legacy of Violence*, 524.

<sup>38</sup> Reid, 'Terrorism in African History', 119.

So what do we learn about the origins of the ‘War on Terror’ from what I have been saying here? First, that ‘terrorism’ has long been used as the basis for action against one’s political opponents, a term of abuse that occasionally crossed from the political to the legal sphere in the colonial era but whose main work was as an explanation by liberal power to itself of why it had to act as it did (brutally) against those who opposed it in the ‘home-away’ of the colonies, in other words those who stood up against its land-grabs and perpetual exploitation. Second that the term continued to do valuable work throughout the Cold War period, building on the ‘enemy within’ template that had been around since the very start of the democratic era. The exponential increase in immigration in the second half of the 20<sup>th</sup> century took many former colonial subjects to their colonial headquarters, and this greatly expanded the range of potential enemies within when particular strands of political Islam took a violent turn after 1979. The revolution in Iran and the invasion of Afghanistan were two key events in regards that development, of course, with Hezbollah emerging from the first and Al Qaeda from US-inspired opposition to the second. And then there was of course Israel-Palestine.

I add now a third point to the two I summarised a moment ago, building on those conclusions, but which – being new – I will not dwell on at any length at this late stage in this paper: it needs more space than this passing reference can allow. What I have in mind is the way in which ‘counter-terrorism’ translated itself from localised mechanism of control of political crime into a ‘global’ solution to a global problem requiring both domestic legal responses and also coordinated action on the part of the world’s democracies against what began to be understood as this pervasive evil, this contagion of mindless violence. The change happened in the late 1960s and into the 1970s, during which time extensive symbolic violence by Palestinian factions (sometimes acting under the umbrella of the Palestinian leadership) allowed their Israeli opponents effectively to present them not as the last



freedom-fighters of the colonial era but rather as creatures of a new wave of global terrorism, the world of the Red Brigades, the Baader-Meinhof and the IRA rather than that of the Malayan, Kenyan, etc insurgents of the 1940s and 50s. The story of the ‘invention of terrorism’ during this time is well told by Lisa Stampnitsky.<sup>39</sup> It received an additional boost when the US adopted the same civilisation narrative in the 1980s as a way of bringing further pressure to bear on its Soviet opponents: the Kremlin were on this (frequently propagated) account the Godfathers of terrorism because they were funding or at least assisting the Palestinian cause.<sup>40</sup> By then of course the initially Israeli-supported Hamas had emerged to challenge secular Palestinian nationalism in the way that Mr Bin Laden and his cohorts were challenging the Soviet Union via their assault on Afghani secular culture further east. These are the groups that have gone on to constitute the religious-face of post Cold War terrorism, which is where this paper’s story ends. The attacks of 11 September were extreme, but the response to them were not – they drew on themes as old as liberal democracy itself.

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<sup>39</sup> Stampnitsky, *Disciplining Terror*.

<sup>40</sup> Gearty, *Terror*.