Conor Gearty   October 28th, 2024

Q and A with Conor Gearty on Homeland Insecurity

*In this interview with **Anna D'Alton**, **Conor Gearty** discusses his new book, **Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law** which traces terrorism's history, its emergence as a discourse in the 1970s and the onset of counter-terrorism laws in response. Though such regulations claim to protect citizens from the threat of violence, the book unpacks how they are used to infringe on human rights and civil liberties around the world.*

Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law. History of Violence Series. Conor Gearty. Polity. 2024.

How did you arrive at the history of anti-terrorism law as the focus of the book, which you describe as being part of a broader project of historicising terrorism?

I've always believed that the key to understanding terrorism is to understand it in its particular, local, regional context – which peoples are fighting and over what. The subject of terrorism is an enemy of context because it wants to suggest that there's a virus in the world which afflicts certain actors wherever they are, and they behave in similarly self-indulgent, sometimes psychotic ways to destroy people. I believe that to be nonsense.

Historicising terrorism is a subversive intellectual act because it's asking, what's the context in which the act called terrorism was carried out? The book is a study in anti-terrorism law, and it's loyal to that historicising endeavour. Its driving concern is these laws which emerge out of particular cultural, social and political milieus.
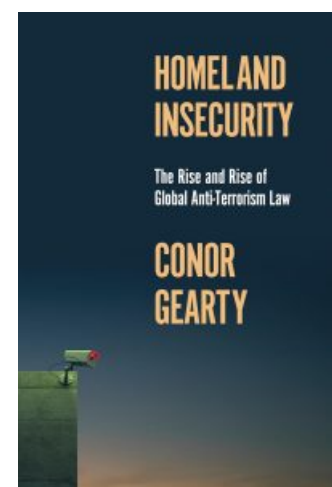
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Why do you argue that Western colonialism, specifically the violent suppression of resistance in the colonies and the legal frameworks created to enable it, is foundational to the ascendance of terrorism as an idea?

One of the reasons I focused on law was because there are already many excellent books exploring the history of terrorism, for example those by Richard English and Louise Richardson. There are also several about the colonial dimension to anti-terrorism and the use of the language of terrorism to isolate, control and coerce opponents of colonial power: writers like Joseph McQuade and Fatemah Alzubairi. I reverse-engineered from there to a more general thesis: that this language of terrorism was a motivating force for law.

Then I searched through the materials, the parliamentary debates that might precede an Act of Parliament, the White Papers that led to governmental interventions, secondary literature which talked about the reaction of civil servants to be able to tie down this correlation between concerns about terrorism and the laws that I was describing.

How did Western nations' framing of Communist Party insurgent activity ("Red Scares") during the Cold War fuel the entrenchment of terrorism as a global threat to liberal democracy?

I found two key things that supported the idea that terrorism continued to be prevalent as a label from colonial powers' castigation of its opponents through to today. Firstly, many of the insurgents against British and French rule in the 20th century (in the near east, far east, Africa and Cyprus) were politically driven, left-wing people with strong communist inclinations. The label was adopted in Malaya (now Malaysia) of "communist terrorists" – there was an elision between the two terms.

Secondly, it became important to countries that had secured their independence and that were choosing American protection in the Cold War not to put Communist insurgents (who had been

their partners in anti-colonialism positions) in prominent positions in government. They would have sought radical transformation following independence, rather than preserve the status quo under a new nationalist label, the outcome desired by the US and other Western powers.

There are several examples of the development of terrorism laws – even if not explicitly labelled as such – in these new postcolonial states being used to isolate and coerce radical political elements within the state. In the case of Egypt from the 1950s and to some extent, Tunisia, during the same time frame, this extended to radical Muslim elements as well. Now we're very familiar with what people call Islamicism, but there was already a strong critical engagement with Egypt and other North African states from a radical Muslim perspective 70 years ago.

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> *After 11 September 2001, the United Nations Security Council required, through Security Council Resolution 1373, that all countries act immediately against terrorism. But they nowhere defined terrorism*
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You pick out the partition of Palestine and formation of the state of Israel in 1948 as a nodal point in the history of terrorism, leading to escalating violence in the late 70s and 80s. How did global terrorism as a threat become entrenched then?

Two things happened. First, in the 1970s, Israel successfully characterised Palestinian violence as part of an international campaign of terrorism. They did so with evidence, which was the use of political violence in Europe, with shocking civilian casualties, by groups like the Palestine Liberation Organization and Black September: think of the Munich Olympics massacre in 1972, multiple killings at airports. People began to be persuaded that the Palestinian cause wasn't just an ordinary anti-colonial cause, but a bloody international cause waging war on the world.

Second, and of enormous significance, was the Iranian revolution of 1979, which was immediately followed by the taking hostage of dozens of Americans in the American embassy in Tehran. Before this, the US had controlled the Middle East, the home of oil, through its strategic partner, Iran and its Shah. Suddenly he was gone, replaced by a fundamentalist Muslim cleric, the Ayatollah Khomeini. Islamic fundamentalism, as we learned to call it, was born. Israeli forces in Lebanon were at the

time (1982) engaged in one of their occasional wars of conquest. Iran aligned with Lebanon, very successfully equipped Hezbollah to resist, and succeeded in removing American and French forces, in 1983.

By the end of the 80s into the 90s with President Clinton, the US has a determined view that there is a global crisis of international terrorism. You see the evidence in the attacks on the World Trade Centre in 1993, and Clinton securing anti-terrorism legislation from Congress in response. Terrorism was being framed as a war on civilisation, with an implicit racial and religious undercurrent, well before 11 September 2001.

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You mention that although national laws define terrorism, there's no definition of terrorism in international law. Why not, and what are the consequences of this?

Individual states have terrorism definitions and pass national laws around it. Britain is typical, but not alone, in having a very wide definition; what matters isn't what the law says, but how it's exercised, which is typically not in a way which damages ordinary consensual majority opinion. It becomes a mechanism for the extension of state power, of surveillance, arrest and coercion against groups judged to be suspect.

Where a definition does not exist is internationally. After 11 September 2001, the United Nations Security Council required, through Security Council Resolution 1373, that all countries act immediately against terrorism. But they nowhere defined terrorism and the draft International Agreement on the Definition of Terrorism has never been finalised. I would argue this is because there is a continued belief among sovereign, post-independence states (the majority of the UN General Assembly) that sometimes you have to kill people to obtain freedom from colonial domination. Defining terrorism would question the legitimacy of too many foundational moments in too many states.

In the absence of a definition, individual states can give character to the term themselves. So, Israel can choose to adhere to Resolution 1373 by acting against terrorism. But it chooses what terrorism means.

How has the UN navigated the double standard between counterterrorism practices that have the potential to undermine human rights guarantees and the commitments to the protection of human rights and national sovereignty on which it was founded?

Writing the book led me to reflect on what exactly the UN is. The UN is a deal between national sovereignty and fundamental values, which means that it's already compromised. It allows the states that make up the world to declare themselves autonomous and independent, and so a part of the world into which the UN cannot reach – the guarantee of no influence over domestic affairs. That's a great success for the UN, then, because it means it doesn't have to quality control its members.

But the deal is done with an accompanying structure of human rights invigilation. States are enabled to keep their sovereignty, but the UN will scrutinise them for human rights violations through mechanisms like the Universal Declaration of Human Rights, regular assessments and reports, encouraging states to join particular conventions, the ability to issue complaints to various international groups, and so on.

11 September 2001 disrupted that deal because nation states now have counterterrorism with which to combat human rights protections. The UN no longer has just one minibus of human rights professors coming to invigilate a state's compliance with UN resolutions. It now also has a helicopter full of counterterrorism experts who have a more contemporary mandate, which is to check that countries are complying with counterterrorism requirements. These requirements are different from the human rights requirements, thereby destabilising the UN's previous compromise.

One of the examples you explore in the book, Guantánamo Bay, illustrates this conflict, with its detention of prisoners without trial and myriad other human rights abuses in the name of the "war on terror". You cite the moment in 2008 where the US Supreme Court ruled in favour of Guantánamo detainees and against the Bush administration, firstly by looking at the right to detain US citizens versus non-citizens, then questioning its overall legitimacy.

There's an interesting contrast between Israel today and the US on the war on terror. Countries need stories they tell themselves that make them feel good. The story that the US told itself was about the rule of law. The story that Israel has told for many years is that of the plucky kid on the block establishing its secure Jewish homeland, looking after its kibbutzes, building oases of prosperity in what was a desert, and the rule of law.

The US has been able to assert its principles in a way that allowed it to believe, plausibly, to believe, that it was engaged in the rule of law. As a result of those Supreme Court cases, which were cross-party, President Obama created a framework of "half" due process. There are still people in Guantánamo Bay, but they're able to make applications to be released, to have their positions scrutinised, to have a lawyer. There are Senate congressional hearings into the discovery that there is torture. And so, the US's effort to preserve an idea of themselves as upholders of the rule of law has been largely successful.

Israel, on the other hand, has given up on that completely recently. There are prison camps where people are being openly tortured with no accountability whatsoever. There are reports of these detainees being attacked, raped, savaged by animals, and there's no serious accountability as far as one can tell, because so distraught has Israeli society become, that it becomes even controversial to try and hold to account the torturers in their prisons. They have given up trying to explain themselves with reference to Western standards, and so their assertions about the rule of law are now laughably implausible. They have become a kind of bandit state, with no underlying value other than of Zionism, which may be enough but doesn't seem to be.

Why do you claim that counter-terrorism law and practice in the post 9/11 world no longer requires terrorism to sustain it?

I was close to coming to this idea as a big end point in the book, that we've now reached a point where the success of counterterrorism law and practise is that it's existing independent of political violence. Terrorism law needed violence to start, and for a while to continue, but it has now become so normalised, so bureaucratically entrenched that it's unthinkable to remove it. The counterterrorism committee of the UN Security Council, set up after 11 September 2001, is now a grand bureaucratic machine with regular conferences and spin-off executive directorates. You get the feeling that it's not checking whether it's needed on an annual basis. Then came the Hamas attacks in Israel in October 2023. It would no longer be plausible to write a book saying there's no terrorism and we still have these systems, because we've had an extraordinary event which needs to be accommodated. Counter-terrorism always wins: we need it if there is terrorism; we need it if there is none. That seems to be the future we are stuck with.

Note: This interview gives the views of the authors, and not the position of the LSE Review of Books blog, nor of the London School of Economics and Political Science.

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About the author

Conor Gearty

Conor Gearty is professor of human rights law at LSE as well as a barrister at Matrix Chambers. He is an honorary King's Counsel (KC). Conor has published many books over the years, on terrorism, human rights and civil liberties. This latest book, Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law, was published by Polity in May 2024.

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