Comment

# A stampede against justice

In a plea to parliamentarians, Gareth Peirce spells out the dangers of control orders

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This week, our future and our liberties are in your hands. We cannot forgive you if you betray us, and you betray us if you compromise. You betray us if you do not see the excesses of a totalitarian state in what you are asked to endorse.

Any person who has a control order imposed upon him is from that moment branded, forever, as an individual "involved in terrorism-related activity". He can never disprove that label as he will never be told why the order is being made against him. And not only is the man or woman who becomes the subject of the order branded, so too are their entire family, their friends and associates. The children of anti-apartheid activists in South Africa speak of the scars that still remain because they grew up, just as much as their parents, under house arrest.

The children and grandchildren of those witch-hunted by McCarthy in 1950s America lived thereafter branded as the families of traitors. And before we have even had the opportunity to cure the serious mental illnesses caused not just in the men detained under the 2001 act, but in their families also, we are being plunged into new nightmares, unconscious of the lessons of history.

In order not to frighten parliamentarians, it is at present claimed that control orders do not require any individual to remain in his home 24 hours a day. In every fundamental way, however, his life can be destroyed. If he disobeys any aspect of an order, he will be imprisoned. He can be prohibited from possessing specified articles, he can be prohibited from specified activities, he can be restricted "in respect of his work or his business", he can be restricted in his association with specified persons or, open-endedly, "with other persons generally". He can be restricted as to where he lives or who lives with him, where he goes and when. He will be required to give access to "specified persons", to allow those persons to search his place at any time of day or night, to be tagged, to comply with his movements and communications being monitored and, chillingly, to provide information to a specified person if demanded.

We remember the requirement imposed upon hundreds of Americans by McCarthy to provide information on demand, and the heroic stance of those who took the fifth amendment and were sent to prison. "Naming names" will be the order of the day here in just the same way; the individual will be branded, and then, on pain of imprisonment, be required to brand others. Anyone from the Muslim community in Britain, or who has any

knowledge of their experience, will have heard the terrified reports, in particular of those who have no safe immigration status, of being repeatedly approached - outside their homes, in supermarkets, with their children - by intelligence agents to provide "information" in exchange for regularisation of their immigration status or face the consequences if they refuse.

Can future recipients of control orders anticipate them and modify their behaviour accordingly? Based upon the experiences of those detained under the 2001 act, the answer is firmly no. Far from becoming clearer with time, those detained are, after three years, even more confused as to the basis for their detention. What is asserted by the home secretary in March 2005, in relation to each detainee to justify his continuing detention, is that each remains wedded to his extremist jihad ideals. How can this assessment have been made? Of those about whom it is made, three are in Broadmoor hospital and have had access only to their doctors (who proffer their view that no such ideas or behaviour have ever been manifested throughout the years they have been there). Another, driven into madness and under house arrest has had no visitors or communication with anyone other than his wife, children and lawyers for nearly a year. The others, all in Woodhill or Belmarsh, have had no one come near them to make any such assessment since all were thrown into prison in 2001.

All that has happened in the past three years (and now is being redesigned for relegislation for the future) is the antithesis of any criminal justice system. It is a delusion to think that imposing a judge at any stage in the process, whether it be at the outset or further down the unjust line, can remedy the fact that all of this construct is created to avoid our constitutional protections of fair, public and open trial, by a jury of your peers, in which the most important aspect of all is that your accuser tells you at the earliest possible moment what the accusation against you is, so that you have the opportunity of replying. None of this construct can be improved or affected by amendments since the very purpose of the new legislation is to avoid these central obligations. Once the individual is branded, any information to justify the branding is considered behind closed doors.

What do we know of the origins of that information? Enough to disturb us greatly. Only because he was forced into the answer, did the home secretary acknowledge that the government uses information obtained from torture and that the only caveat to its use is what weight to give it. I remain astounded that no parliamentary debate followed to question this most extraordinary admitted breach of our every international and domestic treaty obligation. Nor do I understand why, within this present legislative stampede, there is no serious questioning of what has openly thereby been admitted, that the government's assessment of threat, is erected, to a significant degree, upon information extracted around the world from torture.

As each new wave of British detainees emerges from Guantánamo Bay, individual accounts of horrifying ordeals have one common denominator: from the first days of unlawful capture of each, whether in Pakistan, the Gambia, Zambia or elsewhere, British intelligence agents were there. What those agents wanted was information demonstrating a threat in this country; what they did not want was evidence that there was not.

The same predetermination to find particular answers is not only to be found in the behaviour of our intelligence agencies in Guantánamo Bay. The most extraordinary proof that this was the only approach ever intended was clear from the first moment of arrest of all of those interned under the then 2001 legislation. Were they ever arrested, interviewed by police or indeed anyone to discover what they had to say before they were taken to Belmarsh? No. Have they ever been spoken to since that time? No. The question that ought to inform parliament above all, is "Why not?" Is it that no one in authority wanted to know the answers to the questions that might have been put?

Is it really sane, let alone lawful, to try to discover whether there is a threat to this country by frightening individuals unofficially in the aisles of supermarkets, or by obtaining the byproducts of coercive interrogation and torture abroad and yet deliberately to forgo the opportunity of engaging in official processes of inquiry? Fairness to those accused is not dissonant in any way with the interests of society. The interests of society collectively, as well as of the individual, demand that criminal accusation be precise and foreseeable and communicated. How otherwise can members of society determine in advance whether they risk offending against the law? These fundamental questions demand the clearest possible debate as to what is and what is not acceptable in society, what is banned and what is not.

What the government asks for here is the ultimate demand of any totalitarian regime: the executive is the accuser; the moment of accusation is also the moment of the imposition of the penalty. Wherever in the process a judge comes to be involved, the executive has already pre- determined that the individual will be stigmatised and punished on the basis of suspicion - that suspicion backed only by secret "information". This is a stigma that is intended to attach itself to the accused wherever he moves (if he can) nationally, and conveyed onwards, internationally. It is, of course, open-ended. It will destroy his family for generations.

The accuser, the executive, invokes a judge for one reason alone, to give its procedure a spurious cover, to safeguard it against any future judgment of the law lords or the European court of human rights. However, in a sense it matters not to the executive if in three or four or five years it comes to lose the legal argument once again, since those accused under any new law will have been been immobilised. The government's only preoccupation now is to force this legislation through parliament.

Without protection for the individuals who make up society, society itself founders. Nor is there a balance to be struck between the rights of individuals and national security: national security depends upon every individual in this country having inalienable rights. We have not voted for you as our representatives for you to throw these away.

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