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Convicting Terrorism: The Northern Ireland Example

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‘Ship me somewheres east of Suez, where the best is like the worst,
Where there ain’t no Ten Commandments an’ a man can raise a thirst.’

The verse from that hoary old imperialist, Rudyard Kipling’s *Road to Mandalay* provides a handy text for discussing measures against Northern Ireland terrorists, or urban guerrilla freedom fighters, as some would prefer to call them. The Ninth Commandment of Jews and Christians, paralleled in several religions including Islam, prohibits bearing false witness. The principle can be stretched to a demand for legal due process and hence civil rights. These, it will be argued, often appear too restrictive for established governments faced with unconventional opposition. Irish history, where terrorism has frequently been a very real factor, provides a useful yardstick for Australia which has since 7/11 2001 passed a raft of security legislation.

In 18th century Ireland a Protestant minority ascendancy controlled a Catholic majority through the notorious Penal Laws, an effective denial of civil rights. An odd provision prevented Catholics from owning good horses, which the authorities classified as having military, or terrorist, potential. The Act of Union in 1800 transferred responsibility for the maintenance of Irish sectarian division to the United Kingdom, but in 1829 Daniel O’Connell’s movement achieved Catholic emancipation, restoring most civil rights to the Irish majority. When Irish rebellion loomed in 1848, the government obtained John Mitchel’s conviction through a Dublin jury and transported him to Van Diemen’s Land. In this case the jury appeared to have been suitably ‘packed’ by the authorities. Mitchel’s Young Ireland colleague, Charles Gavan Duffy was more fortunate; after five juries failed to convict, Duffy was released,¹ eventually emigrating to the colony of Victoria where he became Premier and won a knighthood. Confronting Irish unrest during the late 19th century the British Government used a succession of Coercion Acts, which enabled suspension of habeas corpus and the incarceration of suspects without trial.

After the Irish Revolution the 1921 a twenty-six county Irish Free State and a six county Northern Ireland statelet, dependant on Great Britain, were established. With a Catholic minority of one-third, determined to achieve unity with the rest of the country, Northern Ireland began precariously. The Irish Republican Army continued the struggle. The all-Protestant Northern Ireland Government of Sir James Craig reacted in 1922 with a rigorous Special Powers Act, which enabled the Home Minister, according to critics, to do virtually anything.² He could declare states of emergency, set up special courts, activate the death penalty for explosives’ offences, order whipping for lesser misdeeds, ban public meetings and newspapers, and employ internment without trial. The latter, according to Michael Farrell, was used ‘lavishly’,

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¹ Richard Davis, *The Young Ireland Movement* (Dublin, Gill and Macmillan, 1987), pp. 154, 156, and 165.

² A Unionist MP, G.B. Hanna, suggested that only a single sentence was required: ‘the Home Secretary shall have the power to do whatever he likes or let someone else do it for him.’ John McGuffin, *Internment* (Tralee, Anvil, 1973), p. 22.

operating from 1938 to 1946 and from 1956 to 1961.³ It could also be used in short bursts. For example, before a royal visit in 1951 thirteen men were arrested in the early morning and held without charge till the visit was over. Their challenge to the Home Minister to reveal the case against them was ignored. Harry Diamond, Republican Labour MP for the Falls, denounced the 'uniquitous [sic] and hydra-headed monster', the Special Powers Act.⁴ On the contrary, John Vorster, prime minister of Apartheid South Africa, declared that he would be happy to drop all his repressive legislation in return for the Northern Ireland Special Powers Act.⁵

The current Northern Ireland Troubles, generally dated from 1968, saw a resurgent Provisional IRA and equally violent Protestant paramilitary groups such as the Ulster Defence Association. The British and Northern Irish authorities resorted to internment. In August 1971 a massive sweep of over 500 suspects was undertaken to obtain information enabling the rapid elimination of insurgency. About a dozen suspects, nicknamed 'the guinea pigs', were subjected to the 'five techniques' of hooding, wallstanding, for up to 48 hours, sleep and food deprivation and disorienting noise.⁶ The results were not inspiring. Local ladies with their dustbin lids provided warning of the approach of snatch squads and most IRA leaders escaped. In 1978 the European Court of Human Rights condemned the British Government for the inhuman and degrading treatment of the guinea pigs. It rejected torture, included by the European Commission on Human Rights. A hostile cartoon shows a judge advising a grossly abused suspect not to scream, as he was merely experiencing inhuman and degrading treatment, not torture. Far from internment reducing violence, 1972, with over 400 deaths from violence, proved the worst year of the Ulster Troubles.

By 1975, the British Government had changed its policy. Internment and political status for suspects was replaced by 'criminalisation'. Insurgents were now convicted by courts and treated like ordinary criminals. But how were convictions to be obtained? The ordinary courts were ineffective. Some witnesses feared to appear and others were eliminated by paramilitaries before they reached the courtroom. Juries were equally unreliable from the Government viewpoint. The report of an English judge led to the establishment of the so-called 'Diplock Courts'. Single judges, without juries, decided both law and fact. There were still problems. How were tough paramilitaries, in the absence of witnesses, to be convicted?⁷ The system, due to be phased out in 2007, was used in 2005 to convict Abbas Boutrab, an alleged al-Qaeda sympathiser.⁸

An estimate suggests that 75% of convictions before Diplock Courts resulted from confessions obtained after interrogation⁹ in the week allowed to the security



³ Michael Farrell, *Northern Ireland: The Orange State* (London, Pluto Press, 1980), pp. 94-5.

⁴ *Irish Times*, 13 May 1951.

⁵ T.P. Coogan, *Ireland in the Twentieth Century* (London, Hutchinson, 2003), p. 303.

⁶ See John McGuffin, *Internment* (Tralee, Anvil, 1973).

⁷ Peter Taylor, *Beating the Terrorists: Interrogation in Omagh, Gough and Castlereagh* (Harmondsworth, Penguin, 1980); Amnesty International, *Torture in the Eighties* (London, 1984).

⁸ See Wikipedia.

⁹ Taylor, *Beating the Terrorists*, p. 55.

forces. As Clause 6 in the act establishing the legal system was ambiguous on the use of force in interrogation, Justice Sir Ambrose McGonigal accepted that ‘a certain roughness of treatment’, taking ‘the form of slaps or blows of the hand on the head or face’, fell short of torture in interrogation.¹⁰ A stream of complaints that confessions had been elicited by brutal means ensued. Beating, cigarette burning, wrist twisting and other forms of abuse were claimed. The authorities sometimes replied that suspects had deliberately injured themselves to cast doubt on the interrogators at Castlereagh Barrack and other centres. The tireless campaigners, Fr (later Monsignor) Denis Faul and Fr Raymond Murray produced a stream of pamphlets based on evidence from those interrogated.¹¹ The prison doctors Denis Elliott and Robert Irwin, also disgusted with the system, spoke out. Amnesty International published an adverse finding. Finally the Government’s own Bennett report¹² accepted that much was amiss and recommended that spy holes in interrogation rooms and closed circuit TV be established to enable senior officers to check proceedings. Though a hostile cartoon showed a senior officer delighted with the bashing he observes, the number of complaints were seen to diminish.¹³ This was partly due to the public exposure by books like those of Frs Faul & Murray and Peter Taylor’s *Beating the Terrorists*.

In England itself, as the result of the IRA bombing campaign, very serious miscarriages of justice, the Guildford Four, the Maguire Seven, and the Birmingham Six, occurred. Although judge and jury in regular British courts convicted these innocent people, the background was similar to many Diplock cases. While flimsy and ultimately insubstantial scientific evidence incarcerated the Birmingham Six and the Maguire Seven for periods between ten and fifteen years, the Guildford Four were convicted through confessions beaten out of them by British police. The others were also subjected to similar treatment. The Guildford Four and Birmingham Six were exonerated after fifteen years’ incarceration.¹⁴ Compensation of over one million Australian dollars to Guildford Four member Gerry Conlon was little recompense for fifteen years as an IRA bomber in a succession of British gaols and the death in custody of his father, Guiseppe, one of the Maguire Seven. Prime Minister Tony Blair in 2005 officially apologised for the gross denials of human rights and elementary justice.

Back in Northern Ireland, the criminalised products of the Diplock Courts, led by Kieran Nugent, rejected prison clothes and ‘went on the blanket’, using bedding to cover their nakedness. This escalated, in both the male Long Kesh (Maze) and the female Armagh prisons, into the ‘dirty protest’, when, unable to slop out, prisoners coated their cell walls with excrement as the only means of enduring the stench. The

¹⁰ Taylor, *Beating the Terrorists*, p.73. In the case at issue, Michael McNaught claimed that he had been repeatedly punched in the stomach, kidneys and back, slapped around the face, had been burnt on the mouth with a cigarette, been stripped and struck in the testicles. McGonigal eventually dismissed the case against him.

¹¹ For example, Denis Faul and Raymond Murray, *The British Dimension: Brutality, Murder and Legal Duplicity in N. Ireland* (November 1980), *The Castlereagh File and Violations of Human Rights in Northern Ireland, 1968-1978*.

¹² *Report of the Committee of Inquiry into Police Procedures in Northern Ireland*, March 1979.

¹³ *Torture in the Eighties*, p. 60.

¹⁴ See Robert Kee, *Trial and Error: The Maguires, the Guildford Pub Bombings and British Justice* (London, Hamish Hamilton, 1986) and Gerry Conlon, *Proved Innocent: the story of Gerry Conlon of the Guildford Four* (London, Penguin, 1980).

final result was the Hunger Strike of 1981, which resulted in the deaths of ten strikers, led by Bobby Sands who, shortly before his demise, was elected to the British parliament for a Northern Ireland constituency. Though the hunger strikes created huge international interest, they finally ended when strikers' families, aided by Fr Faul, now condemned by the IRA and Sinn Féin,¹⁵ signed for medical intervention when their loved ones lost consciousness. Almost immediately after the apparent victory of Margaret Thatcher's Government, the Secretary of State authorised the ending of prison dress and other concessions to political prisoners.

What then had the 'defeated' hunger strikers achieved? A great deal. The publicity, enhanced by the election of Bobby Sands to Westminster and colleague Kieran Doherty to Dail Eireann, became a huge moral boost for the Provisional IRA and its political wing, Sinn Féin. The organisation could exercise selectivity in choosing from an avalanche of new applicants. Leaders such as Gerry Adams seized the opportunity for Sinn Féin to fight elections. Previously, the IRA/Sinn Féin had boycotted the polls, leaving the Catholic-Nationalist cause to the non-violent Social Democratic and Labour Party, led by the highly esteemed John Hume. The new IRA/Sinn Féin 'Armalite and Ballot box' policy combined the continuing armed struggle with electioneering. As the 1980s and 1990s progressed, Sinn Féin, slowly but surely, won control of a majority of Catholic areas from the SDLP.

The Peace Process is often dated from the 1993 Downing Street Declaration, of John Major, the UK Prime Minister, and his Irish counterpart, Albert Reynolds. Sinn Féin, led by the able Gerry Adams, was well placed to take advantage. The IRA in due course declared ceasefires and finally agreed to dismantle its stockpile of weapons. The 1998 Good Friday Agreement set up power sharing. After many obstacles, it was partially renegotiated in the St Andrews' Agreement of October 2006. The Peace Process, not yet complete, has proved more effective from the British viewpoint than the stark repression of internment or the criminalisation period. Nevertheless, the current situation also indicates a general failure in long-term British policy, which sought power sharing through moderate parties while ruthlessly suppressing extremists. Now the two major contestants are Gerry Adams, representing the IRA/Sinn Féin, and the Rev. Ian Paisley, long the spokesman for extreme Protestant anti-Catholicism. The moderate SDLP and moderate Unionists, thanks partly to failed British repression, have left the centre stage.

In the war of words, the IRA/Sinn Féin has more than held their own against both Unionists and British Government apologists. Denying that they are terrorists, Republicans threw back the accusation on their opponents. They claim that IRA bombings are preceded by warnings, deliberately ignored by the security forces to create carnage to destroy the credibility of their opponents.¹⁶ Further, Sinn Féin emphasises the writings of British anti-urban guerrilla warfare guru, General Sir Frank Kitson.¹⁷ According to Martin Dillon, 'sections of the Republican movement became paranoid about Kitson' and do not always interpret his strategies correctly.¹⁸ Based on experience of anti-subversion in a number of British colonies and as

¹⁵ *Iris Quarterly*, No. 2, November 1981, pp. 18-22 (Fr. Faul: 'A conniving, treacherous man'). This Sinn Féin periodical gives a general account of the hunger strikes.

¹⁶ *Republican News*, 9 June 1973, quoted in Davis, *Mirror Hate*, p. 216.

¹⁷ Richard Davis, *Mirror Hate: The Convergent Ideology of Northern Ireland Paramilitaries, 1966-1992* (Aldershot, Dartmouth, 1994), pp. 206-7.

¹⁸ Martin Dillon, *The Dirty War* (London, Arrow, 1991), pp. 28 and 56.

commander of British forces in Northern Ireland during the internment period, Kitson's well-known work, *Low Intensity Operations*, has been mined by Sinn Féin for revealing admissions of willingness to use 'dirty tricks' in the British cause. The most spectacular of such admissions, is Kitson's suggestion that the ordinary legal due process is not strong enough to deal with urban guerrilla activity. His contention that the law should become a 'weapon' in the war against insurgency and 'little more than a propagandist cover for the disposal of unwanted members of the public' was quoted *ad nauseam* by Republican periodicals, often supported by cartoons. Sinn Féin attributed to the provocative general brutal interrogation, shoot to kill by security forces, and collusion between the Royal Ulster Constabulary and Protestant paramilitaries. Furthermore, Sinn Féin argued with some plausibility that such views indicate that the British Government was using Northern Ireland as a laboratory for the suppression of civil rights on the mainland.¹⁹

Such contentions bear directly on the current 'war on terror'. It is clear that the treatment of suspects in Northern Ireland and in the post 9/11 campaigns have much in common. Hooding, beating, humiliation, sleep deprivation, appeared in Northern Ireland long before the revelations of Abu Ghraib and Guantanamo Bay. Some analysts, like lawyer Gareth Peirce, who conducted the appeals of the Guilford Four and Birmingham Six, argue that this constitutes not just a fortuitous parallel, but a 'logical extension' of policies intended to reduce civil rights in the interests of more authoritarian government.²⁰ In 2000, during ceasefires in Northern Ireland and before the September atrocity, the Blair Government introduced a draconian Protection Against Terrorism Act in the UK. In Belmarsh Prison, London, it organises its own mini-Guantanamo. Issues surfacing in Northern Ireland were dramatically exposed in the aftermath of the London bombings of July 2005, when an innocent Brazilian, Jean Charles de Menezes, was brutally gunned down by London police. In Northern Ireland earlier investigation of shoot to kill policies by the Manchester Assistant Police Commissioner, John Stalker, were aborted by absurd, totally unfounded accusations, when Stalker appeared to be closing in on authorisation at high levels.²¹

Although Northern Ireland provided no facilities for the rendition of suspects to countries where civil rights did not apply, attempts were clearly made to achieve some internal areas where ordinary rules were suspended. In Australia, though it has not so far experienced any terrorism of the Northern Ireland or British variety, recent anti-terrorist legislation has been surprisingly rigorous. Terrorism has been so broadly defined as to apparently cover civil disobedience, which might injure property or interfere with commercial transactions on the internet. If, as Andrew Lynch and George Williams point out, Nelson Mandela would qualify as a terrorist under

¹⁹ Davis, *Mirror Hate*, p. 205. According to Paddy Hillyard, author of *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain* (Pluto, 1993), the separate system to deal with terrorism 'has corrupted the ordinary criminal justice process in three significant ways': anti-terrorist procedures have been incorporated into ordinary law, anti-terrorist legislation is used to deal with ordinary criminals, and the whole legal system has been discredited by the substitution of political expediency for the rule of law. 'The "War on Terror": Lessons from Ireland, European Civil Liberties Network, <http://www.ecln.org>.

²⁰ Paul Donovan, 'The Guantanamo hell-hole', *The Guardian*, 15 October 2003.

²¹ John Stalker, *Stalker* (London, Penguin, 1988).

Australian law,²² so too would Gerry Adams, despite his insistence that he had never been an IRA, but only a Sinn Féin, member. Under the 'precautionary principle', Australian law allows the arrest of people under Preventive Detention Orders 'before they have formed a definite plan to commit a criminal act.'²³ This resembles the Northern Ireland Special Powers Acts, which enabled the temporary 'lifting' of thirteen Northern Irish republicans without charge during a royal visit. In contemporary England, according to the *New Statesman*, 'this Labour government has acquired a penchant for locking people up even before they have done anything wrong',²⁴ despite its willingness under the peace process to release considerable numbers of political prisoners in Northern Ireland whose offences could well be described as terrorism. Indeed, under current Australian law, the Northern Ireland 'peace process' would have been impossible. Similarly, in Australia, the Classification Review Board's ability to ban books that 'promote, incite or instruct in matters of crime or violence', despite promises by the Attorney-General that he will allow 'limited' access to academics, will make serious research and analysis difficult. Northern Ireland periodicals showing screaming 'touts' being kneecapped²⁵ and photographs of IRA volunteers wielding modern weapons in 'war news' would surely be banned under this system. Australian legislation appears similar to aspects of the now defunct Special Powers Act of earlier Northern Ireland Governments.²⁶ Had current Australian prohibitions been in force in Northern Ireland, elections could hardly have been fought and the IRA would consequently have been compelled to rely on pure violence. Gerry Adams, at the height of the Troubles, may not have been allowed to speak directly on television, but his words were reported, if read by an actor.

Furthermore, the Australian Security Intelligence Organization (ASIO) has the power, more extensive than counterparts in Canada, the UK or the USA, to detain for up to 7 days, with questioning periods of 24 hours, citizens not even suspected of offences.²⁷ More importantly, there is a two years ban on revealing operational information relating to ASIO arrests.²⁸ Had such a ban applied to interrogation in Castlereagh Barracks, it would have been impossible to reveal the abuses described in the Amnesty and Bennett Reports. The critical doctors would have gone to jail for speaking out. Australian legislation certainly insists that terrorist suspects may not be subjected to the 'cruel, inhuman or degrading treatment',²⁹ used against the Northern

²² Andrew Lynch & George Williams, *What Price Security?* (Sydney, University of New South Wales Press, 2006), pp. 15-17.

²³ Lynch and Williams, p. 19.

²⁴ *New Statesman*, 15 January 2007.

²⁵ *Tattler*, No. 4, Vol. 2 [1972]. This Provisional IRA publication, like all the pamphlets and periodicals thrown up by the Ulster Troubles, is housed in a special collection by the Linenhall Library, Belfast. Would such a collection, open to the public, be allowed under existing Australian legislation?

²⁶ Even under the purely Protestant regime with its Special Powers Act, Sinn Féin, despite demands for its banning on the ground that it preached violence, was generally allowed to exist. See Minaford in the Northern Ireland parliament, *Irish Times*, 18 May 1955.

²⁷ Lynch and Williams, pp. 36 and 39. For suspects, the period, worked by agreement between the Commonwealth and the States is 14 days detention. (p. 47)

²⁸ Lynch and Williams, pp. 64-5.

²⁹ Lynch and Williams, p. 39.

Ireland internment guinea pigs. But, as theologian Dietrich Bonhoeffer found in Nazi custody at Tegel prison, though warders were forbidden to hit prisoners, 'it was impossible for a prisoner who was treated unjustly to get redress.' Warders admitted that their word, usually supported by a colleague, would always prevail against prisoners.³⁰ Even without overt brutality, many innocent citizens would succumb to signing dubious confessions under lengthy interrogation, without any prospect of revealing the pressures upon them. An Australian jury has already found inadmissible the alleged confession of Joseph Thomas to the Australian Federal Police, while assaulted and threatened with torture and execution by Pakistani gaolers.³¹

To conclude, insufficient attention appears to have been accorded to the Northern Ireland background in the 'War on Terror'. In 1984, George Orwell showed how governments could achieve instant amnesia of the inconvenient past. The Sinn Féin cause has now become respectable and Gerry Adams is an honoured guest at the White House. It is now politically incorrect for all who are not militant Ulster loyalists to mention that Adams was once a supporter of terrorism, or even that IRA explosions killed some people. In its earliest days, when widely denounced as mad bombers, Northern Irish Republicans, citing the apotheosis of Jomo Kenyatta from 'leader unto darkness and death' to the Queen's honoured visitor, looked forward to eventually joining him in sipping tea at Buckingham Palace.³²

Another lesson from Northern Ireland is that suspension of civil rights is often counter-productive in dealing with terrorism. Negotiation, rather than 'criminalisation' or strong-arm interrogation, proved more effective in reducing violence. Only when it was realised that the IRA and Sinn Féin leaders, were not 'mad bombers' or homicidal maniacs could peace become feasible. Many Northern Ireland 'terrorists' were highly intelligent, working to well-constructed plans and amenable to reason. The phrase 'war on terror', however, suggests suicide bombers too fanatical for argument. It is remarkable that Tony Blair, prepared to negotiate with the IRA and paramilitary terrorists in Northern Ireland, where the peace process appears his chief legacy, does not draw the same lessons in Iraq.

As implied by Kipling's *Mandalay*, problems arise when established authorities attempt to cast out terrorism, basically a weapon of the military weak against superpowers, by dropping due legal process, once the coping-stone of American democracy; such authorities join their opponents in rejecting the Ten Commandments and similar ethical norms. The 'best' rapidly become identical with the 'worst' as civil rights are progressively discarded. This plays into the hands of terrorists who themselves deliberately provoke an over-reaction by governments to demolish official moral standing and popularity.

³⁰ Dietrich Bonhoeffer, *Letters and Papers from Prison*, abridged edition (London, SCM Press, 1981), p. 80.

³¹ Lynch and Williams, pp. 74-5.

³² Davis, *Mirror Hate*, p. 270.