# Counter-terrorism: The Liberal Biopolitics of Securing Life

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AYSHWARYA RAJITH SRISKANDA RAJAH, AUG 2 2015

The *Counter-Terrorism and Security Act 2015*, enacted last February to deal with the radicalization threat in the United Kingdom, has created much controversy. The legislation, among many other powers, confers the Home Secretary the power to impose temporary exclusion orders on individuals suspected of involvement in terrorism while they are abroad (see Home Office, 2015). The Home Secretary Theresa May has argued that such powers are needed to enhance the UK government's 'ability to monitor and control the actions of those who pose a threat, and combat the underlying ideology that feeds, supports and sanctions terrorism' (Ibid.).

On the other hand, the human rights group Liberty (2015) has claimed that the legislation is an 'unsafe' and 'unfair' one that 'will leave potentially violent terrorists roaming amongst us while innocent people are subjected to punishment without trial'. For Liberty, in confronting Islamist terrorism, political leaders in liberal societies would be expected 'to promote, robustly and actively, democratic values such as the rule of law, human rights and equal treatment'. The *Counter-Terrorism and Security Act 2015,* however, 'plays into the hands of terrorists by allowing them to shape our laws in a way that undermines our principles' (Ibid.).

Whatever the justifications and criticisms there are, one thing is clear: the legislation has invigorated debates on the need to strike a balance between upholding liberal values and freedoms while taking measures to secure life. Drawing on Michel Foucault's work on biopolitics, this article makes a contribution to this debate. Foucault used the term 'biopolitics' to refer to the system of power that emerged in the eighteenth century to secure life by eliminating threats to its existence (2004: 249). Adopting and applying this idea, this article provides a new interpretation of the temporary exclusion powers conferred on the Home Secretary by the *Counter-Terrorism and Security Act 2015*. The central contention of this article is that these powers are largely in line with the liberal biopolitics of securing life.

**End of the Prison?**

In his work *Discipline and Punish*, Foucault claimed that in modern societies the prison plays a productive role (1991: 307-308). Unlike in the Middle Ages when the body of the criminal was treated as 'the king's property' on which 'the sovereign left his mark and brought down the effects of his power', in modern societies the criminal has become the 'property of society' for its collective appropriation and use (Ibid.: 109). Once the court hands over the sentence, the criminal is removed from society and sent to prison to be interned there so that s/he can be disciplined and later returned to society as a good member (Ibid.: 110-111, 122-123, 126-127; also see Foucault, 1976/1980: 39). While also punishing the criminal by depriving them of their liberty, the prison acts like a military barrack, a strict school and a dark workshop for disciplining them (Foucault, 1991: 233; also see Foucault, 1980: 40). The disciplining process 'increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience)' (Foucault, 1991: 138). Thus, the prison works to re-qualify the criminal as an obedient and good member of society.

The *Counter-Terrorism and Security Act 2015* seems to be signalling a change to how this disciplinary process is carried out. Section 2 of the Act empowers the Home Secretary to temporarily exclude an individual from the UK if she: (a) 'reasonably suspects the individual is, or has been, involved in terrorism-related activity outside the United

Kingdom'; (b) 'reasonably considers that it is necessary, for purposes connected with protecting members of the public in the United Kingdom from a risk of terrorism'; (c) 'reasonably considers that the individual is outside the United Kingdom'; (d) 'the individual has the right of abode in the United Kingdom'; and (e) either the court gives her permission to issue a temporary exclusion order or she 'reasonably considers that the urgency of the case requires a temporary exclusion order to be imposed without obtaining such a permission'. This would mean that anyone who satisfies all of the above conditions would not face trial in the UK until the 'temporary' exclusion order is lifted and the permission to return to the UK is granted. It would also imply that the disciplinary function performed by the UK's prisons would no longer apply to anyone who is outside the UK and is suspected of involvement in terrorism. Does this mean that the UK no longer requires a disciplinary process to deal with terrorists or terror suspects who are outside the UK? A close reading of the Act shows that this is not the case.

Section 5 of the Act empowers the Home Secretary to issue a 'permit of return' to the terror suspect, though with strict conditions that they are expected to comply with upon their return. This would mean that until such a permit is issued, the terror suspect will be expected to remain in the country from which they attempted to return to the UK. It is often the case that when an individual is identified as a terror suspect by the authorities of their home country, the foreign country they are staying in would takes measures to arrest and detain them or at least monitor their movements. Whatever measures the foreign country takes, its involvement in the disciplinary processes of the country in question is certain. In other words, the Act effectively outsources the disciplinary role played by the UK's prison system to those of foreign countries. What this implies is that the British prison system would from now onwards be largely dealing with the processes concerning the disciplining of criminals who are not classified as terrorists. It would seek to discipline some terrorists, but they have to be in the UK. Terrorists, or suspected terrorists, who are outside of the UK have become a special category that the UK's prison system would no longer be seeking to discipline.

But this outsourcing of the disciplinary role of British prison system is not new when one considers the controversial Guantanamo detention facility in which British terror suspects were also held during the Global War on Terror (GWoT). What has changed, however, is that this outsourcing process has been legalised by the*Counter-Terrorism and Security Act 2015.*

So why has the UK government decided to pursue this option? Is it because the UK's prison apparatus is not competent enough to discipline those terrorists and terror suspects?

Evidence shows that the UK's prison apparatus has not always been the best choice when it comes to preventing Islamist radicalisation. In a report published in 2012, The House of Commons Home Affairs Committee identified prisons to be among the places in which individuals become vulnerable to radicalisation (2012: 26-28). Schedule 6 of the *Counter-Terrorism and Security Act 2015* also identifies prisons to be some of the public places that have the obligation to take measures to prevent radicalisation. In an interview to BBC this year, Chris Philips (BBC, 2015), the former head of the UK's National Counter Terrorism Security Office, claimed that staff shortages were making it hard to monitor and prevent radicalisation in British prisons. Though the Home Secretary (Ibid.) has denied this, the outsourcing of the disciplinary role of the UK's prisons does indicate that this may be the case.

So, what are the advantages that the UK government will have by outsourcing prisons?

One obvious advantage of outsourcing prisons is that the vulnerability of the UK's prisons from becoming centres of radicalisation would be minimised: there will be less extremists who may be capable of radicalising their fellow inmates. This would also mean that the government would not have to invest heavily in prevention programmes in their prisons.

It would also be easy for the UK's law enforcement agencies to gain vital information from the terrorists and terror suspects without having to be entangled in complex legal processes. After all, prisons are good places for observing individuals, especially to obtain knowledge about them, their behaviour, their states of mind and changes in them (Foucault, 1991: 249). When it comes to prisons in non-Western countries, prisoners are not only monitored, but are also tortured to obtain confessions and other vital information. Whatever the justifications some may advance, torture

does not enjoy the sympathy of the British public. British courts are also very sensitive when it comes to allegations of torture. Moreover, under British laws, terror suspects or even terrorists cannot be forced to give confessions. In the UK, as well as other Western countries, torture is seen as 'a survival of the barbarities of another age' (Foucault, 1991: 39). This, however, is not the case outside the West, especially in Middle Eastern and North African countries where most of the British-born Islamists are thought to be based (see, for example *The Guardian,* 2014; also see Foster, 2014).

Therefore, some of the things that are not possible in the UK's prisons can take place in non-Western prisons. For example, British terrorists or terror suspects who are arrested and detained abroad can be forced to give confessions and other information vital to British law enforcement agencies. It is highly unlikely that British officials would be directly involved in these confession-extraction exercises. Instead, these are more likely to be carried out by officials of foreign countries and then the details passed on to British law enforcement agencies (see, for example Cobain, 2015; also see Human Rights Watch, 2009; Liberty, 2013). The UK government would also avoid getting entangled in allegations of connivance in torture abroad if arrests in those countries take place under their national laws, and not as part of those countries' international counter-terrorism obligations to the UK.

Of course, no one would sympathise with Jihadists when they eventually come out of a foreign prison and allege that were tortured because of their terrorist affiliations. But what will happen if it turns out that a terror suspect who was tortured abroad was not at all a terrorist but an innocent individual? During the Middle Ages and at the threshold of modernity, in many Western penal regimes torture was understood to be the ritual for producing the 'truth', and it applied to criminals and suspects alike (Foucault, 1991: 41). If the suspect was eventually found to be guilty, the pains imposed through torture were seen to be just (Ibid.). Even, when it turned out that the suspect was innocent, the pains inflicted on them were still seen to be justifiable. It was based on the belief that the suspect 'always deserved a certain punishment; one could not be the object of suspicion and be completely innocent. Suspicion implied an element of demonstration as regards the judge, the mark of a certain degree of guilt as regards the suspect and a limited form of penalty as regards punishment' (Ibid.: 42). Though this idea is no longer shared by many Western jurists and criminologists, some of the statements made by politicians in the run-up to the introduction of the *Counter-Terrorism and Security Bill* imply that this ancient philosophy does enjoy support among some politicians. For example, writing in *The Telegraph* in August last year, the Mayor of London Boris Johnson (2014) called for a change in UK's law so that 'there is a "rebuttable presumption" that all those visiting war areas [Iraq and Syria] without notifying the authorities have done so for a terrorist purpose'.

Thus, the *Counter-Terrorism and Security Act 2015*, by outsourcing prisons and their disciplinary roles, has created a new way of managing threats for the UK's populations. But this is only a part of the liberal biopolitics' story of making life live by eliminating threats.

**Keeping the Wolf Away from the Flock**

Biopolitics seeks to secure life by creating a binary division within populations: the 'good' part of the population that must be looked after, and the 'bad' part of the population that must be eliminated for the 'good' part to live (Foucault, 2004: 254-255). Here, elimination does not always mean literal death. It can also include political deaths such as expulsions (Ibid.: 256). When the court hands over the sentence, the criminal ceases to be a member of society and thus meets 'political death'. Foucault referred to the court's handing over of the criminal to the prison as the latter's funeral (1991: 110). The criminal, once convicted, would be removed from society and sent to a space called prison, which existed within society but in a space outside it, with its own rules to manage life processes. In the prison, the criminal could not enjoy the same rights and liberties that other members of the society enjoy. Prisoners could only return to society after reincarnation/requalification as 'good' members. The *Counter-Terrorism and Security Act 2015* now signifies a major shift in this.

The outsourcing of prisons means that the terrorist or the suspected terrorist will now be placed in a space that is both outside and completely detached from the society they come from. In other words, the wolf is now kept as far away as possible from the flock. This would mean that the wolf is not only incapacitated from attacking the flock from within, but is also prevented from stirring trouble within by poisoning the minds of some members of the flock. The

wolf can only return to the flock if it eventually reincarnates as a sheep or shows that it is not a wolf. Even then, it could be monitored to see if it is a wolf in sheep's clothing.

Detaching the space for interning the wolf also makes it easier for its literal elimination. If the terrorist or the terror suspect is detained in a prison of a foreign country, their death may occur due to torture. On the other hand, if the country in question decides to allow the individual to move freely (while at the same time monitoring their movement), or if Britain does not enjoy a good relationship with that country, they may be killed by drone strikes, as the recent death of a British Jihadist in Syria shows (see Whitehead, 2015). Thus, another benefit of the temporary exclusion order is that if the terrorist or the suspected terrorist is considered to be a very dangerous one who cannot be disciplined to become a good member of society, they can be eliminated permanently. How compatible is this with the liberal discourse on securing life?

Writing at the height of the GWoT, Robert Cooper, the advisor to the former UK Prime Minister Tony Blair, divided the world into three categories: the post-modern world (the West); the modern world (the developing states of the global South); and the pre-modern world (made up of failed states) (2002: 15-16). For Cooper, the pre-modern world is a jungle, and 'when we are operating in the jungle, we must also use the laws of the jungle'. It is necessary to 'revert to the rougher methods of an earlier era' (Ibid.).

Similar arguments can be found in the works of prominent classical liberal thinkers, in particular, John Locke's *Second Treatise of Government* and Immanuel Kant's *Metaphysics of Morals*. In his critique of Locke's work, though with specific reference to his arguments on the prerogative of the princes (a term Locke, like Machiavelli, used to refer to the king), Mark Neocleous (2008: 14 & 22; also see Locke, 1690/1980: 83-88) suggests that it should be seen as the inauguration of a 'discourse on the *priority of security'*. For Neocleous, 'the project of liberty supposedly announced with the onset of modern liberalism has been inextricably bound up – one might even say wrapped up – in the project of security (Ibid.: 22).

A close reading of Locke's other arguments in the *Second Treatise of Government* also reinforce the suggestion made by Neocleous. Locke (1980: 51) argued that when an individual breaks the law, they become unfit to remain members of society. The criminal's action would take them back to the state of nature (where there will be no government to appeal to, or in Cooper's words 'the jungle') (Ibid.). In the state of nature, 'every man has a power to punish the crime, to prevent it being committed again, *by the right he has of preserving all mankind*, and doing all reasonable things he can in order to that end' [emphasis in original] (Ibid.: 11). For Locke, the criminal, 'having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tyger, one of those wild savage beasts, with whom men can have no society nor security' (Ibid.).

If Locke's arguments were concerned with dealing with the criminal by applying principles that are suited to spaces in the state of nature, Immanuel Kant was more specific about creating spaces outside societies to deal with threats to the society's existence. In Part I of the *Metaphysics of Morals* (which is also called *The Philosophy of Law* or *The Science of Right*), while arguing that the state has the right to kill an individual when they commit a crime, Kant also suggested that it could banish or exile them, thereby withdrawing 'all legal protection' that they had earlier as citizens; the criminal had to be made 'an "outlaw" within the territory of their own country' and sent abroad so they would live in misery (1887: 195-196 & 206).

Thus, as the works of Locke and Kant show, taking measures to eliminate threats to populations, including imposing exiles, are compatible with the liberal way of securing life.

The thanatopolitics (the politics of killing life) of eliminating threats by invoking exceptional circumstances is not something new (Agamben, 1998: 9 & 82). It has been in existence for as many years as mankind has existed. However, before the emergence of biopolitics, the power of death was exercised 'as a means of deduction' that was 'levied on the subjects' by the sovereign to 'appropriate a portion of wealth, a tax of products, goods and services, labor and blood' (Foucault, 1998: 136). With the emergence of biopolitics, this power of death is now manifested as 'the right of the social body to ensure, maintain, or develop its life' (Ibid.).

Before the temporary exclusion orders to deal with the Islamist threat were proposed, the former coalition government was under pressure to strip Jihadists of their British citizenship (see *The Guardian*, 2014a). However, given the fact that the UK is a signatory to the 1954 UN Convention on Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness, the government was constrained from heeding to this call, and instead proposed the current measures (Cameron, 2014). Had the government not been constrained by these obligations, it is more likely that it would have heeded to those calls: terrorists, or even terror suspects, would have automatically become enemy combatants who had to be destroyed.

**Conclusion**

The above biopolitical analysis of the *Counter-Terrorism and Security Act 2015* has shown that it is conceptually incorrect to argue that the legislation undermines in the process liberal values and principles. As I have argued, the legislation is very much in line with classical liberal thought on securing life. Last year, British Prime Minister David Cameron (2014a) wrote in *The Mail* that being a liberal country, Britain should be 'far more muscular in promoting British values and the institutions that uphold them'. That is what the *Counter-Terrorism and Security Act 2015* is now doing.

However, this does not mean that the legislation is without flaws. As Liberty (2015) has pointed out, the passport seizure and retention powers conferred by legislation on law enforcement agencies can lead to discriminatory practices. The temporary exclusion orders also 'risk exposing British citizens to torture or delivering them into the hands of terror factions' (Ibid.). There is also no guarantee that innocent people with different political views will not be targeted. After all, the Act empowers the Home Secretary to exclude an individual from the country without the permission of the court if there is 'reasonable suspicion' that they are terrorists. It is not just the Home Secretary who is going to make judgements as to whether an individual is a terror suspect and thus should be excluded from entering the country; individual law enforcement officers will also have a role to play. With the recent issuing of guidelines under the legislation to public authorities and other bodies to identify early signs of radicalisation and take preventive measures, it is apparent that from nursery teachers to nurses in hospitals will also be playing the role of judging whether one is a terrorist or not (Schedule 6 of the *Counter-Terrorism and Security Act 2015* states that nurseries and hospitals, among many other public and private bodies, have a duty to prevent radicalisation).

Nobody would want to see a terrorist roaming our streets and taking our lives for a murderous ideology. At the same time, it is hard to think that part of the role played by the UK's courts is now being taken over by a myriad of individuals who can make serious judgemental errors.

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## About the author:

**Ayshwarya Rajith Sriskanda Rajah** has research interests in the biopolitics of liberal state-building and securing life and the re-conceptualisation of the term 'war'. He has worked as an associate lecturer at Brunel University London. He also has a PhD from Brunel University.