Britain: home secretary proposes “pre-emptive” justice

Richard Tyler
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In the film *Minority Report*, set in the year 2054, the state has the power to imprison those who have not yet committed any crime. In February 2004, Home Secretary David Blunkett is proposing that the British state should have the same power to incarcerate men and women based on “pre-emptive” charges, before a crime is committed.

In an interview with the Press Association, Blunkett has outlined measures that would overturn centuries-old legal precedents. Trials could be held without juries, behind closed doors; judges, and with lawyers vetted by the security services before being allowed to hear a case; evidence could be withheld from the defence “in the interests of national security” and the standard of evidence lowered.

Once again, these draconian measures are being justified with reference to the threat from terrorism. According to a Home Office spokesperson, Blunkett wants tighter laws because the threat of being jailed does not deter suicide bombers from committing attacks. (It should be noted that to date, there has not been a single suicide bombing in Britain.)

The measures are similar to those that the government has already legislated for—under the same pretext of combating terrorism—that are already being employed against foreign nationals.

The proposals were denounced by leading civil rights lawyer Gareth Pierce, who represented five of the “Birmingham Six,” falsely accused and imprisoned for 17 years on charges of being IRA terrorists. Pierce compared the present indefinite detention of 16 foreign nationals in British jails, without being charged or facing a trial, with the US imprisonment of alleged terrorist suspects at Guantanamo Bay: “The Home Secretary says he wishes to extend secret hearings to all those accused of the mere suspicion of terrorism, even though short of evidence that could be proved beyond reasonable doubt in a public trial before a jury.”

The home secretary’s latest proposals were an “experiment into how willing the public of this country and those concerned in the passage of legislation are to allow basic safeguards to be jettisoned without protest.”

Shami Chakrabarti, director of the civil rights organisation Liberty, said, “What is to be left of democracy or the rule of law in such a topsy-turvy world? No juries? No presumption of innocence? No defence lawyers or trials held in public?”

Baroness Helena Kennedy QC, who has acted as defence counsel in several high-profile terrorism cases including the 1984 bombing of the Conservative Party conference in Brighton, called the proposals “an affront to the rule of law.” Kennedy, who sits on the Labour benches in the House of Lords, added, “It is as if David Blunkett takes his lessons on jurisprudence from Robert Mugabe,” the president of Zimbabwe.

Mark Littlewood, Liberty campaigns director, told the press, “Britain already has the most draconian anti-terror laws in Western Europe. To add to these by further undermining trial by jury and radically reducing the burden of proof is wholly unacceptable.”

Under the banner of the “war against terrorism,” the Labour government has introduced a series of measures stripping away fundamental democratic and legal rights: the Terrorism Act 2000, the Anti-Terrorism, Crime & Security Act 2001, and the Civil Contingencies Bill presently before parliament.

For 30 years, “The Troubles” in Northern Ireland were accompanied by IRA bombings in British cities and the assassination of senior politicians and military figures. However, even then, the draconian and undemocratic Prevention of Terrorism Act (PTA), introduced in 1974 by the Labour government of

Harold Wilson, was never put on the statute books permanently and was subject to an annual vote in parliament for it to be renewed.

Under Prime Minister Tony Blair and Home Secretary David Blunkett, the emergency provisions of the 1974 PTA have been vastly extended and made semi-permanent. Indeed, one minister ominously described the Civil Contingencies Bill as an attempt to make emergency powers legislation "future-proof."

Those suspected of being "terrorists" face extended pre-charge detention; the home secretary can proscribe organisations and arrest its members; and police chief constables can designate whole cities and counties for stop-and-search action if this is considered "expedient to preventing terrorism".

Britain is the only European Union country to suspend sections of the European Convention on Human Rights banning detention without trial. As a result, the 16 foreign nationals imprisoned under the government's present terrorism legislation are in a legal limbo, where they are neither charged with any crime nor can they seek the court's intervention unless it is to confess they are guilty.

The appeals process open to the detainees is neither impartial nor subject to public scrutiny. Secret evidence is admissible, behind closed doors and under exclusion of the internee and his representative. In judging whether the detainee should remain in prison, the judges must only be satisfied on the "balance of probabilities." This is a much lower standard of evidence, usually applicable in civil cases, as opposed to the test of "beyond a reasonable doubt" that applies in all criminal cases where a custodial sentence is possible.

Blunkett now wants to bring in legislation that will enable him to detain British subjects based on the same lower evidential test. The use of secret evidence would also be acceptable, "so as to protect British intelligence sources."

As Gareth Pierce noted, this opens the way for the use of evidence obtained under duress or even torture. "While our government publicly sheds crocodile tears for the British detainees in Guantanamo Bay, it has emerged only recently that British intelligence agents have been there, and in Afghanistan's Bagram airbase, interrogating those detainees. This country has been wholly complicit in obtaining the product of sustained interrogation in the absence of any safeguards of due process."