

Britain: Law Lords terror ruling provokes constitutional crisis

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The unprecedented ruling by Britain's highest court against the government's detention of nine foreign nationals without trial on grounds of national security has created a constitutional crisis, and further exposed the abrogation of democratic rights under the guise of the "war on terror".

On December 16, the House of Lords ruled by an eight to one majority in favour of an appeal by the Arab men that their indefinite detention without charge breached human rights.

Seventeen men have been held under the Anti-Terrorism, Crime and Security Act 2001 rushed through by the Blair government in the wake of the 9/11 attack on New York. Arguing that potential terror attacks constituted a "public emergency threatening the life of the nation," the government opted out of the section of the European Convention on Human Rights governing the right to a fair trial.

On the say so of the home secretary, any foreign nationals suspected of links with terrorism can be detained without charge or trial, and with no right to hear the evidence against them, or be deported. They cannot be deported without their consent, however, if they could face persecution in their homeland. The home secretary does not have to provide evidence of the case against those he is seeking to detain, just assert that he has "reasonable grounds to suspect" they may have links to terrorism based on "closed material".

Most of the nine men still detained and who have not yet been deported are being held at Belmarsh prison in south London, dubbed Britain's "Guantanamo Bay", under conditions that the Home Office's own medical experts have condemned as "barbaric". None of them are accused of terrorist activities but with supporting organisations deemed to be terrorist.

Their detention has been subject to a series of legal challenges. In August the Court of Appeals upheld the men's detention and, in a groundbreaking ruling, stated that evidence extracted through torture—the men had argued that some of the evidence compiled against them might have been obtained through duress at the US military camp in Guantanamo Bay—was admissible in British courts.

It was this decision that lawyers for the nine sought to challenge before the law lords, Britain's highest court, last Thursday. The hearing was seen to be of such constitutional significance that the nine law lords, rather than the usual five, heard the appeal.

In court, Attorney General Lord Goldsmith acting for the government, argued that the terror threat following 9/11 was so

grave that it justified opting out of the Convention, and that provisions for reviewing the legality of such detentions meant that safeguards against abuses were sufficient.

In a theme long favoured by the government and former Home Secretary David Blunkett, Goldsmith argued that unelected law lords have no right to "second guess" the judgement of elected ministers. (Under British law, the courts have no authority to veto parliamentary legislation, only to review its legality).

The law lords struck down the government's justifications on both counts. The case "calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention," Lord Hoffman stated.

In a judgement that has sent shock waves throughout the entire establishment, he continued that the gravest threat to Britain arose not from potential terrorist attacks, but from draconian legislation such as that resorted to by the government.

"Freedom from arbitrary arrest and detention is a quintessential British liberty, enjoyed by the inhabitants of this country when most of the population of Europe could be thrown into prison at the whim of their rulers," Hoffman stated.

In the past the suspension of habeas corpus had depended on conditions of war or a "public emergency threatening the life of the nation". Notwithstanding the capacity of terrorist fanatics to "kill and destroy", Hoffman continued, their actions did not constitute such a threat.

"Whether we should survive Hitler hung in the balance, but there is no doubt we shall survive Al Qaeda. The Spanish people have not said that what happened in Madrid, hideous crime as it was, threatened the life of the nation. Their legendary pride would not allow it.

"Terrorist crime, serious as it is, does not threaten our institutions of government or our existence as a civil community.

"The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these.

"That is the true measure of what terrorism may achieve. It is for parliament to decide whether to give the terrorists such a victory."

Supporting the majority verdict, Lord Scott said that indefinite detention "in consequence of a denunciation on grounds that are not disclosed and made by a person whose identity cannot be disclosed is the stuff of nightmares, associated whether accurately or inaccurately with France before and during the Revolution, with

Soviet Russia in the Stalinist era and now associated, as a result of section 23 of the 2001 Act, with the United Kingdom.”

In his ruling, Lord Nicholls concurred that, “Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law”. Lord Hope said that whilst the court was responsible for upholding laws aimed at safeguarding the lives of British citizens, it also had another duty, to protect “the individual’s right to liberty.”

Lord Bingham stated, “The attorney general is fully entitled to insist on the proper limits of judicial authority, but he is wrong to stigmatise judicial decision-making as in some way undemocratic.”

The government’s legislation was unlawful because it discriminated “on the ground of nationality or immigration status,” he said.

Lady Hale insisted, ““Executive detention is the antithesis of the right to liberty and security of person. Yet that is what the 2001 act allows.”

Regarding the government’s targeting of foreign nationals for detention, she questioned, “If the situation really is so serious and the threat so severe that people may be detained indefinitely without trial, what possible legitimate aim could be served by only having power to lock up some of the people who present that threat?”

Only Lord Walker dissented from the majority verdict, on the grounds the anti-terror laws were “not offensively discriminatory” because there were “sound, rational grounds for different treatment”.

In law the government does not now have to release the detainees immediately, but it must seek to remedy the deficiencies identified by the judgement. But such a course is fraught with great difficulties.

The law lords’ decision has blown a gaping hole in the government’s anti-terror legislation. For months it has argued that the terror threat justifies the suspension of civil liberties—an argument that has now been rejected by the law lords.

The government’s response has been bellicose. Foreign Secretary Jack Straw said that the judgement was “simply wrong”. Regarding the balance between “liberty and order”, Straw said, “[T]he most important liberty is the right to life. If that liberty is taken away by the terrorists, then we have not met our prime obligation as a government.”

Newly appointed Home Secretary Charles Clarke also spelt out that the men would remain in prison. He would be asking parliament to renew the anti-terror legislation, Clarke said, whilst holding out the possibility that he would seek changes to the law—for example, making evidence obtained from telephone tapping admissible in a criminal court—which would make it easier to try the detainees.

With the government weakened by former Home Secretary David Blunkett’s resignation last week following news of his affair with a married woman, reporters speculated that such moves on Clarke’s part would enable him to maintain his hard-line credentials on law and order whilst avoiding a full blow confrontation between the government and the judiciary.

But the war on terror and the authoritarian measures passed in its

wake are fundamental to the government’s entire political agenda. Indeed sections of the media and the political establishment have argued for the government to defy the law lords and jettison human rights legislation entirely by withdrawing from the European convention.

Prime Minister Tony Blair and his New Labour coterie are the political representatives of a financial oligarchy whose privileges and wealth depend upon the impoverishment of the broad mass of the population. That is why the government and its backers are so hostile to any form of democratic check or popular accountability.

But in its efforts to free itself from any control, the government has severely undermined democratic rights in a way that has caused concern amongst establishment figures who recognise that this will necessarily provoke widespread political and social opposition.

And when such concerns have been raised, Labour has recklessly responded by questioning the legitimacy of other sections of the state apparatus in a manner that threatens to undermine the very mechanisms of bourgeois rule.

In April, an appeal court ruled that the health of one Belmarsh detainee had been so gravely undermined by his imprisonment that he should be freed from prison and held under house arrest. Blunkett denounced the ruling at the time as “extraordinary”. People would regard the decision as “bonkers,” he went on, stating that he would seek to change the law to enable him to overrule judges in such instances.

His tirade brought an angry rebuke from Former Master of the Rolls Lord Donaldson. “You have somebody who occupies so senior and influential a position as the home secretary simply being rude to the referee,” Donaldson told the “Today” programme.

Revealing the full extent of his concerns, he added: “*If you expect the people of this country to abide by court decisions* then you should get a lead from very senior politicians, and that regrettably we are not getting” [Emphasis added].

On December 20, leading QC Ian Macdonald, withdrew from the Special Immigration Appeals Commission (SIAC) panel in protest at the government’s stance.

Macdonald, one of approximately 19 barristers appointed by the solicitor general to represent detainees held without charge, said his decision was prompted not only by the law lords ruling, but because his appointment as special advocate was being used to claim that those held were being accorded their human rights.

Describing the anti-terror legislation as “an odious blot on our legal landscape,” the QC said, “The House of Lords’ judgement was so very clear about the need to defend the rule of law and I felt that our role is legitimising something I don’t think can be legitimised.”

Another five special advocates are said to be considering following Macdonald.



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