EMERGENCY POWERS: 9/11, 7/7, AND THE CONTINUITY OF COUNTERTERRORISM IN THE UNITED KINGDOM

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ABSTRACT

Laura Slater: Emergency Powers: 9/11, 7/7 and the Continuity of Counterterrorism in the
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In times of emergency states enact emergency powers that place security over rights since legitimacy is derived from the state's contract to protect its people as was posited by the political theory of Thomas Hobbes (*Leviathan*). The "War on Terror" has shown that in times of emergency state conduct can challenge liberal assumptions and cause changes in trajectories of liberal government. The way governments handle contemporary crises such as terrorism can expose hypocrisies, undermine their own legitimacy, and have damaging and lasting impacts on the relationship between state and civil society. This work investigates how and why the British government enacted a state of emergency in response to the attacks on the United States in September 2001 and traces British counterterror legislation from 2000 until 2007, noting an increased restrictiveness on civil liberties over time. Viewing security and rights as a necessary balance to be struck in liberal democracies, this dissertation looks at whether such a balance was achieved in the United Kingdom and what can be deduced from state conduct in responding to contemporary terrorism. Placing responses in a wider social and cultural context allows for insights into how governments struggle to meet challenges emerging from a post-ideological and digital age that materialized following the Cold War.

For T. H. Barnes.

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Introduction

"It is better to be feared than loved, if you cannot be both," – Machiavelli

The post 9/11 era revealed how in a time of national emergency the United States and its allies embarked upon courses of action that often ran contrary to the foundational principles of law-based order and rights upon which they were founded. The decade following the inception of the 'war on terror', as declared by US President George Bush on September 20th 2001, illustrated how combating new threats and challenges to national security can expose contradictions that lie at the core of liberal democracies. A study of liberal democratic responses to terrorism in the post-9/11 era reveals the tension between liberalism and democracy (Mouffe, 2013) and highlights the fine balance that must be struck between granting freedom and rights on one hand; and maintaining order and security on the other. The way states conduct themselves in times of emergency can undermine their own legitimacy and thus carry out the work of any political enemy or terrorist group for them. It follows as advisable that states and civil society take care to proceed in accordance with their foundational principles and preserve the relations that have served them for centuries.

This work looks at how state of emergency powers triggered by the terrorist attacks of September 11th 2001 affected the balance between civil rights and security in one of the world's most stable democracies, the United Kingdom. It finds a prolonged legacy of dealing with terrorism embedded emergency powers within British democracy and institutionalized some features of a police state. Emergency powers that were introduced in times of exception

and thus intended to be temporary became permanent and consequently normalized the circumstances that were once deemed abnormal. This facilitated policy responses that prioritized security measures over civil rights and freedoms in a routine-like manner in the time period studied. Emergency powers were contested episodically, most strongly surrounding British involvement in the 2003 Iraq conflict, however this work focuses on contention surrounding certain pieces of domestic counterterror legislation such as the 90-day detention period and control orders debated in Parliament. Despite the extensive international components of this debate, the crux of this work focuses on the domestic implications of the 'war on terror' and inspects how counterterror legislation passed by the Labour government from 2000 to 2007 affected the relationship between state and civil society.

The dissertation follows three main steps. It begins with a discussion of the historical foundations of rights and emergency powers in the United Kingdom considering how temporary emergency powers from the conflict in Northern Ireland came to be embedded in the Terrorism Act 2000. The second section consists of two parts: a discussion on the British reaction to 9/11 and the legislation that was passed in the wake of the new 'war on terror', and secondly an account of the reactions to the 2005 London bombings. It delves into how the government led by Tony Blair represented the security threat as part of a Manichean worldview that saw good imperiled by evil (Dyson, 2006, 289) and thus created increasingly controversial counterterror legislation over time. The third and final step documents how state approaches to terrorism have been challenged from within and discusses the implications of the way terrorism was dealt with during the time period studied, allowing for future policy to be construed in a more comprehensive manner.

Theoretical Considerations

"To show any sign of love or fear is to honour; for both to love and to fear, is to value" –
Thomas Hobbes, Leviathan

The relationship between state and civil society is operationalized by assessing the impact of counterterror legislation upon civil liberties such as the freedom of speech, freedom of movement, the right to a fair trial, and detention measures. While tight security measures are essential in preventing attacks, it is well documented that criminal justice systems, if overly repressive, can have a backlash effect, further marginalizing and radicalizing the individuals in question. Analysing the character and trajectory of counterterrorism measures from 2000 to 2007 allows for an opportunity to take account of the measures implemented and assesses their proportionality to the threat faced.

Some scholars claim that a climate of "national insecurity" has prevailed causing citizens of liberal democracies to hastily withdraw support for international law and compromise on democratic values (Brysk, 2007, 1). Such scholars acknowledge that in "unconventional war human rights are the first casualty" (ibid). State misconduct in the wake of emergencies is of particular concern for liberal scholars such as John Rawls (1972) and Richard Lebow (2007) who maintain that the principle of justice is paramount to sustaining any successful order (Freeman, 2005, 38-39; Lebow 2007). Emergency powers and everyday exceptionalism can therefore jeopardize the successful functioning of society, by denying human rights and justice with delegitimizing and fractionalizing consequences.

The media plays a vital role in upholding and preserving a democratic system and retains the capacity to illuminate the workings of government thereby acting as a check and a

balance (Rimington, 1994). A complete account of the role of the media in the war on terror is beyond the parameters of this research, but its inclusion is paramount since observing the state-media relationship can provide valuable insights into the quality of democracy. This is included in the final section on the way the media engages with terror suspects.

The Locke-Hobbes debate over how society should be governed is also central to the question of how states govern in times of threat or uncertainty (Landman 2007, 76). Whether the state prioritizes freedom and rights (as posited by John Locke) or whether states prioritize security and sovereignty (according to Thomas Hobbes) allows us to see which school of thought prevails in the British state's response to terrorism. This work finds that the predominance of state power and the institutionalization of the police state with regards to strict counterterror measures align the United Kingdom's response to terrorism most closely with the work of Thomas Hobbes. Hobbes argued that state legitimacy is derived from security; the ability to protect and that people would be willing to concede their natural rights in order to be granted preservation and maintain order (Freeman, 2005, 39).

In his 2007 *A Cultural Theory of International Relations*, Richard Lebow outlines the importance of the 'interest explanation' associated with Hobbes; the assumption that "people are willing to accept relatively inferior positions and benefits in return for the greater absolute rewards they receive by belonging to a society in which their physical security and material possessions are protected" (4). Guaranteeing physical and material security then is the primary concern of government and one reason that counterterror laws have been able to triumph over rights in the current climate of fear and insecurity that prevails in many Western societies. This was particularly pronounced following the terror attacks of September 11th

2001, which was perceived by many in the international environment as something new and unprecedented (Freeman, 2005, 37).

The Debate: Liberal Democracies' Responses to Terror

"I am of the opinion that the boldest measures are the safest" – Lord Nelson (Stevens, 2008)

Some say that anti-terror legislation has deeply damaged liberal society. Laura Donohue (2008) argues that "the damage caused to the United States and United Kingdom by anti-terror legislation is significantly greater than first appears" and that counterterrorist law "increases executive power in both absolute and relative terms" thus altering "the relationships among the branches of government with implications well beyond the state's ability to respond to terrorism" (3). For such scholars, the lengths to which states are willing to go to implement counterterror legislation appears to be of concern and could "result in a shift in the basic structure of both states" (ibid).

Meanwhile, protectors of anti-terror law say that it is necessary to curtail rights to ensure security and that the 'new' type of terrorism we are facing is worthy of such a stringent response. In reaction to the London bombings of 2005, Prime Minister Tony Blair defended his stance, stating: "We, of course, wanted far tougher laws against terrorism. We were prevented by opposition and then by the courts in ensuring that was done" (Landman, 2007, 75). While Home Secretary John Reid said: "We may have to modify some of our freedoms in the short-run in order to prevent their abuse by those who oppose our fundamental values and would destroy our freedoms and values in the long term" (ibid). These statements express the types of responses put forward at the height of the time frame

taken and provide accounts of the types of arguments emanating from the two sides of the debate.

Applying the thesis of Thomas Hobbes – that the primary role of any sovereign requires the protection of the people—this work posits that such was the reaction to 9/11 that following the domestic nature of 7/7 and the technological changes taking place at the turn of the twenty first century explains the continuation of severe security measures over time. It also seeks to provide answers for shortcomings. "What has been lacking since 2001 is a balanced, measured and informed examination of these events that offers a historical and contemporary context to what is occurring in the United Kingdom" (Hewitt, 2008, 2). Assessing the level of contention surrounding the enactment of legislation is necessary in assessing the accountability and democratic nature of such responses. In doing so, this research attempts to fill certain knowledge gaps and seeks to assess the relative veracity of these arguments by carefully examining key counterterror legislation passed between 2000 and 2007.

Discourse analysis of elite statements will be used to illustrate how the threat was articulated and legislation justified. Critics argue that responses of Western societies to terrorism have been disproportionate to the threat (Furedi, 2016) whilst intelligence agencies said that the threat was much larger than the public understood (Evans, 2010). It is therefore necessary to continually examine the balance between security and freedoms to ensure that a measured and informed equilibrium is reached. Looking at certain pieces of key legislation and the extent to which they were contested allows for an observation of the back and forth between security and rights that must be struck in any democratic polity.

Contemporary terrorism has been frequently projected as an existential threat to Western society (Bush, 2001) inciting drastic actions to counteract the menace and protect the endangered state and its people. Although history shows terrorism to be a common feature of the liberal state, it has often been cast as an emergency in order to push through extraordinary measures. Carl Schmitt's political theology on the state of exception and emergency powers is both explanatory and relevant in this context. Schmitt viewed the sovereign as the sole entity capable of enacting emergency powers in order to return instances of chaos to order (Schmitt, 2005, 5). Schmitt viewed a turn towards liberal cosmopolitanism in the 20th century world order as problematic as emergencies cannot be foreseen and a sovereign must retain the sole capability to declare an emergency. The United Kingdom is a case in point for assessing this claim as a state of emergency was enacted following the attacks of September 11th in the United States, creating tension between Britain and its adherence to European and international law.

As noted by Donohue (2008), to view security and rights as a trade off is to risk inaccuracy or distortion; it is a fine balance that must be struck in a democracy and there can be room for both. Hobbes posited that security reigns because the sovereign's legitimacy stems foremost from providing the security and protection of the people. Security measures, if enacted aptly, can also allow for the preservation of fundamental rights, as a Director of the British Security Services articulated in 1994: "A security service does not conflict with democracy, even though it must work largely in secret- provided it is properly overseen and controlled, as is in [the United Kingdom]" (Rimington, 1994). Assessing oversight and control, though not easy in the covert domain, is an essential component in maintaining liberty and order.

Definitions

Terrorism involves the threat or use of violence for political reasons, such as to influence government policy, against civilians and non-combatants by non-state actors (Hewitt, 2008, 3). It is difficult to remove terrorism from the political context in which it is used. This work focuses on an actor, the UK government, in its 'war on terror', and the implications of this conflict for the quality of democracy. Before delving into how the United Kingdom dealt with terrorism at the beginning of the twenty first century, it is also useful to note that the term 'emergency powers' denotes "the partial or complete suspension of a state's normal legal system, involving the suspension of government power through the curtailment of individual liberties and/or the reassignment of authority between the branches of government" (McGiverin, 2008, 233-234). The legitimacy of emergency powers is of concern because the "exigencies of the circumstances may well place a government in the position of acting as its own judge." (McGiverin, 2008, 235)

Context

Before analysing the United Kingdom's counter-terror strategy, it is helpful to contextualise the London bombings of 2005 in order to better understand the driving forces behind the response amid the domestic and international environment at the time. The attacks on the United States on September 11th 2001 and the subsequent 'war on terror' "heaped a series of legally contentious and morally urgent questions upon the international community" (Brahimi 2010, 4), not least surrounding the Anglo-American invasion of Iraq, which divided western allies. In the 'war on terror', both conflicting parties regarded the conflict as something new (Brahimi, 2010, 5) and that the unprecedented nature of this conflict caused

some western parties to invoke drastic security measures to protect their civilian populations. Engagement in the 'war on terror' has led participating parties liable to contention both at the international level and within their respective civilizations. "Indeed, the gravest challenge that such contentious policies pose is to their own traditions and their own attempts to interpret and reinterpret them" (ibid).

PART 1

The United Kingdom: Emergency Powers in the United Kingdom

Scholars demarcate the uniqueness of the British experience in dealing with terrorism and rights, noting its historic legacy of enshrining civil rights whilst responding to terrorism dating from Guy Fawkes and the Gunpowder Plot in 1605 (Landman 2007, 77). "On the one hand, Britain has been a beacon of liberty to the world, and has been a key player in the development of one of the strongest regional systems for the protection of human rights…On the other hand, in dealing with domestic and international terrorism, it has established the strongest and most draconian set of restrictions on its citizens in Europe" (ibid). When introspecting as to whether a balance was achieved at the turn of the 21st century, acknowledging the legacy of the past allows efforts to be contextualised.

Through incremental legislation, often won through years of conflict, British citizens enjoy some of the strongest civil and political rights in the world. The signing of Magna Carta in 1215, Habeas Corpus Act of 1679 and the English Bill of Rights in 1689 represent some of the first examples of the granting of basic civic rights to Englishmen (McGiverin 2008, 260). However, dealing with emergencies such as terrorism frequently causes states to disregard rights; Habeas corpus was suspended in the wake of national emergencies such as during the First and Second World War and throughout the Northern Ireland conflict.

The UK government's long history of resorting to emergency powers when faced with terror-related challenges speaks to the present. The relatively weak oversight British

courts exercise over the executive is one reason emergency rule persists; in times of emergency the government "has afforded itself more power than it otherwise would have done during an emergency" (McGiverin 2008, 262). The Parliament Acts of 1911 and 1946 resulted in a significant level of Parliamentary supremacy that make it difficult for courts to contend and challenge an act of Parliament (ibid). The Defence of the Realm Act 1914 was passed without debate in the wake of European hostilities on the eve of the First World War, permitting the executive to pass regulations such as the power to detain individuals on the basis of "hostile origin or association" (ibid, 263). As will be addressed, this bears resemblance to the legislation passed in contemporary responses to terrorism.

The Emergency Powers Act of 1920 bestowed authorities with "such power and duties as His Majesty may deem necessary for the preservation of peace, for securing and regulating the supply of distribution food, water, fuel or light, and other necessities, for maintaining the means of transit or locomotion, and for any other purposes essential to the public safety and life of the community" (Taylor, 2002, 188). The Act also enabled the government to counter "major strikes, civil disorders, and pre-revolutionary situations." (McGiverin, 2008, 265) "Any powers granted under this act were temporary in order to ensure that they would not become regularised and hence infringe upon basic civil rights" (ibid, 189). However, in actuality, as noted by McGiverin (2008, 266), the act was mobilized twelve times before being replaced in 2004 by the Civil Contingencies Act (CCA), which will be discussed in the second section.

What is notable about emergency rule today is the globalized, technological context in which security and rights are contended. Scholars such as Cronin (2006) argue the effect of the Internet and communications technology is transforming both the nature of human social

interaction as well as international conflict (77). A democratization of access to information is occurring and giving rise to a more fractionated and individualized form of warfare (ibid, 81). Emergency rule today, perhaps unlike the past, is interpreted, conveyed and projected on a global scale with local, national and international ramifications.

According to Laidi (1998) the inability of the state to collectively interpret and objectify globalization has created an environment of widespread confusion that effectively grants states the "authority to be free of political perspective" (11). The Yugoslavian conflict of the 1990s signified "The end of utopia [which] has brought the sanctification of emergency, elevating it into a central political category," while a lack of perspective renders states "slaves to emergencies" (ibid). This helps both ask as well as answer the question: how and why did liberal democratic states respond to instances of domestic and international terrorism in the 'war on terror'? Passing through a term of counterterror legislation passed by New Labour allows for introspection into how notions of insecurity informed policy and may have prevented more measured responses. First it is necessary to place the New Labour government in context.

Liberal Democracies Respond to Terrorism: New Labour Pre-9/11

New Labour was elected in 1997 upon a wave of optimism. After almost two decades in opposition, Tony Blair became Britain's youngest Prime Minister and enacted a number of progressive policies that sought to "bring rights home" (Landman, 2007, 82). During his time in office Blair attempted to revive the welfare state and passed acts such as The New Deal and Sure Start that lifted hundreds of thousands of children out of poverty (Giddens, 2010, 1-2). Under Blair, Labour also signed up to the Social Chapter of the EU, together with the European Convention on Human rights, and introduced a Freedom of Information Act (ibid).

Labour's liberal trajectory was most evident in the adoption of The Human Rights Act of 1998, which came into force in 2000 and effectively domesticated the articles found in the European Convention of Human Rights (ECHR) (Landman, 2007, 82). This enhanced the power of the judiciary, enabling it to declare acts of Parliament incompatible with the Convention and change elements of existing legislation to make it more compatible with convention rights without consulting Parliament (ibid). Although Parliamentary sovereignty has been challenged in forty cases, the government has often struck back, demonstrated through the navigation of legislation below. There is a discernible trend towards tightening security measures indicating a gradual increase in executive state power, as described by McGiverin (2008) and renders the Hobbesian notion of the primacy of security true. The difficulties in upholding rights and the rule of law in a perpetual state of emergency are evident and warrant continued debate.

Also notable in this narrative is the cross-party consensus on dealing with terrorism. In 1994 Parliament created the Intelligence and Security Committee (ISC) "to examine the policy, administration and expenditure of the Security Service, Secret Intelligence Service (SIS), and the Government Communications Headquarters (GCHQ)." (The Intelligence and Security Committee of Parliament) It is precisely because terrorism poses a threat to the state that emergency powers are invoked and the sovereign power takes the deemed necessary measures to preserve it and its population and thus existential security issues surpass party lines.

As this work seeks to demonstrate, from 2000 to 2007 the British government pioneered more restrictive counterterror measures than any of its predecessors. As perceived threats grew at the same time as the world became more interconnected, counterterror and

emergency powers legislation became broader and more robust. The domestic nature of the London terror attacks of July 2005 warranted further severe legislation, before the further tightening of measures encountered increased resistance towards 2007.

Emergency Powers, Northern Ireland and the Terrorism Act 2000

In February 2001, the government's Terrorism Act 2000 came into force superseding the Prevention of Terrorism Act 1989 and the Northern Ireland (Emergency Provisions Act) 1996. The act altered the British approach to terrorism in two important ways; amending both the nature of emergencies and the notion of terrorism. Until 2000 counterterror legislation was temporary, however the Terrorism Act 2000 rendered permanent the Emergency Powers Act of 1920 (Taylor, 2002, 189) and embedded emergency powers into British society. This effectively normalized the concept of "emergency" turning exceptional circumstances into the norm. This had profound consequences for the freedom and rights of individual citizens and essentially created a perpetual state of emergency.

The Terrorism Act 2000 broadened the concept of terrorism to include: "the use or threat of action [that] involves serious violence against a person, involves serious damage to property, endangers a person's life, creates a serious risk to the health or safety of the public or a section of the public, or is designed to interfere with or seriously disrupt an electronic system." Or, if "the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause." (*Terrorism Act 2000*, Chapter 11 Part I) It also included international terrorism for the first time (McGiverin, 2008, 270) with "action" including action outside the United Kingdom.

Critics contend that the legislation granted excessive power to the police; "such a broad definition of terrorism not only covers aeroplanes crashing into buildings, but also rowdy political protests and hacking into Internet systems" (O'Neill, 2001) thus illustrating the encompassing nature of the Act and its ability to penetrate all areas of British life. The definitional expansion reveals the increased emphasis on the political tenets of terrorism. It also corresponds with the perceived need to cover myriad emergencies, especially in response to the rise of the Internet throughout the 1990s. The increased comprehensive nature of the legislation suggests that globalization has produced the need to prepare for increasingly portentous global threats such as that posed by the growing Islamic militant presence in Afghanistan and Sudan throughout the 1990s (Sageman, 2004, 45-46).

Levels of contention surrounding the Terrorism Act 2000 in its initial stages led government officials to protect the bill on the grounds that it was necessary "to defend democracy" (Straw, 1999). This is indicative of the state rhetoric placing emphasis on protection of the state. Meanwhile civil society groups complained the act made it possible for UK-based activists campaigning for political change to be labeled as terrorists (Guardian, 2009) thus infringing on the quality of democracy. This exhibited the tension between democracy and security.

The timing of the Terrorism Act 2000 is interesting in that it was issued without a strong sense of domestic public emergency. Underlying reasons for the legislation include the increasing threat emanating from global terrorism and a persistent threat stemming from the IRA. It was in no small part due to the emergence of global Islamic extremist group, Al-Qaeda, which issued *fatwas* against Western enemies in 1996 and 1998 and was responsible for attempts on the World Trade Centre and attacks on US embassies in Africa in the late

1990s (Sageman, 2004, 45-46). This explains the Act's reference to international terrorism in its expanded definition. However, it is still interesting that the Act did not emerge in reaction to any domestic attack or sense of public emergency and demonstrates a pre-emptive approach to security.

The Act was after the Good Friday Agreements of 1998, which culminated "the Troubles", the three decades of violent conflict in Northern Ireland and United Kingdom. When violent terrorist movements culminate in political agreements, the risk of attacks from disgruntled lone-wolf actors often facilitates the need for continued vigilance (Durodié, 2016). This can be realized through the implementation of a consolidated set of security measures as the Terrorism Act 2000 represented.

The number of times the Act was used to detain suspects in relation to how many charges were made is revealing. On March 5th 2007, Home Office Statistics showed that of 1,126 arrests made under the Act between September 11th 2001 and December 31st 2006, 40 people were convicted on terrorism charges; 652 faced no charges and were released (Hewitt, 2008, xxii). Analysts have argued that this conviction rate of 3.5 per cent is even less indicative of an effective policy than compared with the Prevention of Terrorism Act used in relation to the Northern Irish community, under which 14 per cent of those detained between 1974 and 1991 were charged. The earlier act led to denunciations of a policy of harassment (O'Neill, 2001, 1) while some observers such as Hillyard (1993) argued such measures made a "suspect community" of Irish groups.

Contemporary scholars contend that a similar trend is occurring in the contemporary security climate. Pantazis and Pemberton (2009) argue that targeted surveillance is creating a "suspect community" among British Muslims, which has led to further research into the

effects of government policy on Muslim communities. One conclusion was that "the government's counter terrorism laws, policy and practice have to be informed by human rights canons of equality and proportionality if the police and intelligence and security agencies are to gain the trust in the Muslim communities that is essential to the successful prosecution of counter terrorism in the UK" (Weir et al., 2006, 17). This case illustrates the continuity in UK counterterror approaches from the Northern Ireland conflict toward the present day.

It is valuable to note that prior countering security challenges arising from Islamic extremism, Britain's previous 'war on terror' was declared in response to an IRA bombing in Birmingham in 1974 that left 21 people dead (O'Neill, 2001, 2). Following the IRA ceasefire in 1994, the Conservative government was put under pressure to rethink UK counterterror legislation with Labour promising an overhaul if it came into power (ibid). It follows that Tony Blair enacted the Terrorism Act 2000 as a part of this promise in addition to the factors described above. Having found that emergency rule to be concretized at the turn of the twenty first century, the second part of this research asks how the British government responded to the terror attacks of September 11th 2001.

PART 2

2.1 Emergency Powers and Contention: The British Response to 9/11

In response to 9/11 the government implemented further legislation that strengthened security measures. In late 2001, the government enacted the Anti-Terrorism, Crime, and Security Act 2001, which alloyed with the 2001 Patriot Act in the United States (Landman, 2007, 83). Sections 21-23 of the Act allowed for the indefinite detention of foreign nationals while section 33 renounced Britain's legal obligation under article 5 of the ECHR, the "right to life and liberty," and relied on Article 15, "In time of war and other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law" (*ECHR, Article 15*) to circumnavigate rights to potential criminals or terrorists. In doing so, Britain was the only one of 41 member states of the Council of Europe to declare a state of emergency in response to the attacks on the United States (Landman, 2007, 83). This denotes the uniqueness of the British case and probes a deeper analysis of why such measures were passed and what the implications of these were.

Officially, the act was implemented to "amend the Terrorism Act 2000; to make further provision about terrorism and security; to provide for the freezing of assets; to make provision about immigration and asylum; to amend or extend the criminal law and powers for preventing crime and enforcing that law; to make provision about the control of pathogens

and toxins; to provide for the retention of communications data; to provide for implementation" (*Anti-Terrorism, Crime, and Security Act 2001, c.24,* 1*)*. This is suggestive of a perceived need to respond an inflation of threats posed by contemporary terrorism. The Act's encompassing of several components of globalization such as migration and communications technology displays the multidimensional nature of the threat and the broadening of security measures in response.

Evidence from public opinion polls suggests that the psychological impact of 9/11 on the west was significant and the public felt strongly about the government imposing stringent security measures to ensure their protection. While the British people fiercely opposed the involvement of their country in the war in Iraq, views on fighting terrorism at home was markedly more severe. A BBC poll conducted in April 2004 showed 62 per cent of respondents favouring the indefinite detention of terror suspects, and 63 per cent willing to apply the same measures to British suspects. An ICM poll conducted for the Guardian in 2005 found that 52 per cent of people supported the notion of parliamentary sovereignty in counterterror matters and were opposed to judicial review that could overturn parliamentary decisions (Landman, 2007, 89). These findings support the Hobbesian thesis on the primacy of security and the power of fear in maintaining this order. As Landman concludes, "it seems unlikely public opinion will shift drastically in favor of a rights-protective regime while Britain is under the threat of terrorism" (2007, 89). The public therefore supported, not challenged the governmental response and with no signs of the terror threat subsiding, security measures proceeded to tighten.

The existing emergency legislation was deemed inadequate such that the Civil Contingencies Act was passed in 2004. This allowed the executive to create regulations for a

"controlling or mitigating effect of an emergency that has occurred, is occurring, or is about to occur." (CCA, c.36, 3) The Civil Contingencies Act delivered a single framework for civil protection in the United Kingdom capable of meeting the challenges of the twenty-first century. The Act is another example of governmental responses to threats and security challenges in the post-Cold War and post-9/11 climate and how the British government bolstered its handling of emergency powers (by decentralizing) and implemented mechanisms of civil protection, of which terrorism occupied a central role.

The Act regards emergencies as: "an event or situation which threatens serious damage to human welfare in a place in the United Kingdom; an event or situation which threatens serious damage to the environment of a place in the United Kingdom; or war, or terrorism, which threatens serious damage to the security of the United Kingdom." (CCA, c. 36, 12) Whilst Part 1 deals with resilience and planning, the second section focuses on emergency powers. Notably, the Act broadens emergencies to just about anything, defining "human welfare" as: "loss of human life, human illness or injury, homelessness, damage to property, disruption of a supply of money, food, water, energy or fuel, disruption of a system of communication, disruption of facilities for transport, or disruption of services relating to health" (CCA, c.36, 2) thus reflecting the perceived need to control for any form of adversity through the prism of enacting an emergency.

The Act does not proscribe specific measures for dealing with terrorism but develops emergency response planning that a terrorist attack could trigger. According to commentators, "The Act emerged through the apparent inadequacies of previous emergency legislation to deal with the changing security environment" (Ellis, 2007, 78) denoting how a perception of an increasingly complex changing environment of the twenty first century

shaped government policy. Ellis notes that the Act was "as much about introducing cultural change across the public sector in respect of resilience as it [was] in implementing the mechanics of civil protection" (ibid, 79) highlighting how the act was a part of broader social, cultural and economic trends.

Contending Emergency Rule: Preliminary Cases

Some instances of resistance to emergency measures have already been documented but further introspection is required in order to better understand how a democracy withstands periods of emergency rule and contends potentially illiberal practices. Pushback against excessive executive powers emanated from a variety of actors. The British state's structural design permits Parliament powers to push through most counterterror legislation while the courts and the upper chamber, the House of Lords, retain some capacity to curtail emergency powers, which they have exercised in various cases. Following a series of repressive measures dating from 2001, in December 2004 the Law Lords ruled 8-1 that power to retain foreign nationals without charge for an indefinite period was incompatible with the European Convention on Human Rights on the premise that it was a disproportionate response to the threat posed at the time of its introduction and discriminatory since it applied to foreign nationals only. (Landman, 2007, 84) Theoretically, this case exposes the limits of liberalism in that the sovereign's conception of the appropriate response to an emergency placed it in direct conflict with its commitments to a liberal system of regional and international law.

Another notable episode of contention surrounding counter-terror measures was in the Home Office proposals debated in the Prevention of Terrorism Bill 2005. These included control orders such as house arrest curfew, electronic tagging, and other restrictions on any individuals (foreign or British) suspected of involvement in terrorism. (Landman, 2007, 84) These measures were debated in the third longest sitting in the House of Lords and, after bouncing between both houses four times; the bill received the Royal Assent on March 11[th,] 2005. Then, "just as the nation and Parliament was catching its breath from the debates over the Prevention of Terrorism Act 2005, London was bombed on 7th July, followed by another attempted bombing on July 21st" (ibid). This leads to the second part of this section, which looks at how the government responded to the domestic terror attacks of 2005, with the seeds of contentious politics in the domain of British counterterror laws already sewn.

2.2 Domestic Terror – Responses to 7/7

The London bombings of July 7th 2005 involved three separate suicide bombings that killed 56 people and injured more than 700. The attacks prompted cross-party consensus on the need for counterterror action in which Prime Minister Tony Blair pledged to introduce new laws that would include bans on the preparation of, incitement to, and/or training for terrorism (Landman 2007, 85). The new Terrorism Bill created an offence for glorifying terrorism (*Terrorism Act 2006*, 2). This created an exception to the political aspect of speech rather than the physical dimensions of terrorism. Many human rights groups viewed this as impinging on freedom of speech whilst security officials and politicians continued to affirm the need to sacrifice certain rights in order to maintain security amid transforming circumstances.

Dame Eliza Manningham-Buller, Head of MI5 stated two months after the London bombings that "The world has changed and there needs to be a debate on whether some erosion of what we all value may be necessary to improve the chances of our citizens not being blown apart as they go about their daily lives." (Landman, 2007, 75) The quote also demonstrates the elite perception that the stakes had changed and that the world was a very different than place than before. This was the justification for the continued implementation of stringent security measures.

Tony Blair's reaction to the London bombings was defensive; "We of course wanted tougher laws on terrorism," he said in 2006; "We were prevented by the laws and the courts from ensuring that was done." (Landman, 2007, 75) Blair's statement exhibits a reluctance to take responsibility as he allocates blame to other actors with limited agency within British democracy. This is surprising given the extent of counterterror legislation already in place and suggests that the domestic nature of the events warranted increment restrictive legislation. As previously described, public opinion was also in support of tough measures on suspected terrorists.

In August 2005 the Labour Government issued a 12-point counterterror plan that included the following (Landman, 2007, 85):

- New grounds for deportation and exclusion

- Refusal of asylum for anyone who has had anything to do with terrorism

- Enhanced powers to strip British citizenship from dual citizens and naturalized citizens

- Time limits on all extradition cases

- Significant extension of pre-trial detention

- Extension of control orders against those who cannot be deported

- Enhancement of court capacity the hear deportation and control order cases

- Proscription of extremist organizations

- Raise the threshold for British citizenship

- Powers to close places of worship with extremist views (though this was dropped in December)

- Speed up border control plans to include biometric data

These measures indicate the further tightening of counterterror measures and were realized through a combination of the Terrorism Act 2006 and the Immigration, Nationality, and Asylum Act 2006. Two key elements of the Terrorism Act 2006 were the proposed 90-day detention period and the "glorification of terrorism" offence, which attracted stiff opposition from many quarters, including Labour backbenchers. While Labour advocated a 90-day detention period, the Liberal Democrats promoted 14 days, while the Conservatives supported the existing period at the time of 28 days. Labour's demands were defeated in the Commons and 28 days received the vote. (Landman, 2007, 86) dealing the Labour party its first defeat in the Commons. According to Conservative MP, Dominic Grieve, this was a turning point causing libertarians in Parliament to "wake up" as to the repressiveness of the measures in place (Grieve, 2016).

Contention also emanated from the academic domain. In 2006, a group of scholars released a report, "*The Rules of the Game: Terrorism, Community and Human Rights*", in which they deducted that "home-grown terrorism presents a real if unquantifiable threat to

the people of the United Kingdom." Key policy recommendations included a call for the government to abandon the term 'war on terror' for its disproportionality and exploitation of the "politics of fear" (Weir et al, 2006, 11). This resounded further criticisms of government disproportionality that sourced from inside government institutions and will be discussed next.

Having navigated government responses to terrorism from 2000 to 2007, the final part of this dissertation analyses the effects of state conduct in dealing with terrorism at the turn of the twenty first century and draws on perspectives from law enforcement officials to demonstrate how the government approaches were viewed from within and what can be deducted.

PART 3: Contending Emergency Rule

3.1 A Call for Perspective from within

"What should not have been inevitable is the way 9/11 has come to dominate the way we think about national security." – Sir Richard Dearlove, 2010

Several insiders from the law enforcement establishment have voiced criticism of the British establishment's approach to its most recent 'war on terror.' In a series of statements over time, Security Service Directors have revealed the extent of the challenges of upholding both security and democracy. "A Security Service does not conflict with democracy," remarked Head of MI5 Dame Stella Rimington in 1994. Her memorial speech shed light on the challenges of the Security Service and how soon after the end of Cold War the new climate of complexity was present. Finding the balance between judicial procedures and protecting sensitive security methods "has never been a straightforward matter," she stated. "But in recent years it has become even more complex." Though her statement significantly predates the time frame of this study, its content indicates the extent to which the post-Cold War world was taking shape and affecting security operations well before the events of the new millennium.

The intricacies continued and were expressed by Rimington's successors such as Dame Eliza Manningham-Buller, who, after the 2005 attacks, affirmed that: "containing terrorism in a democratic society, governed by the rule of law, where civil rights are of great value (…) is not straightforward." Manningham-Buller cautioned, "Our courts require

evidence that meets high standards of proof and strong evidence of a crime having been committed or strong evidence of a conspiracy to commit such a crime." These statements are illustrative of the central dilemmas of combating terrorism and confirm the central role of the courts in upholding justice on sensitive matters of national security.

In 2010, Head of MI5, Jonathan Evans projected three main security threats of concern to the UK: Northern Ireland, the threat from Al Qaeda and espionage. "Like many extreme organizations, the dissident Republicans have tended to form separate groups based on apparently marginal distinctions or personal rivalries. But those separate groups can still be dangerous and in recent months there have been increasing signs of coordination and cooperation between the groups," he said. The continuation of the threat from Northern Ireland is evident and reflects the profound impact of the conflict in Northern Ireland upon British security responses from the 1960s up to the end of the time period studied.

Evans confirmed the IRA's replacement, asserting that "The main effort for the Security Service remains international terrorism, particularly from Al Qaida, its affiliates and those inspired by its ideology." Revealingly, he critiqued the approach adopted by the Service; "In recent years we appear increasingly to have imported from the American media the assumption that terrorism is 100% preventable and any incident that is not prevented is seen as a culpable government failure," he said, illustrating the transatlantic impact on policy. "This is a nonsensical way to consider terrorist risk and only plays into the hands of the terrorists themselves. Risk can be managed and reduced but it cannot realistically be abolished and if we delude ourselves that it can we are setting ourselves up for a nasty disappointment." Evans' admittance that responses to terrorism have played into the hands of the terrorists themselves confirms the findings of this research and leads to the conclusion

that the permanence of emergency powers grants political capital to those against who it is implemented. The statement is reminiscent of a widespread call for perspective that has become increasingly heard in critiques of contemporary western responses to terrorism.

Sir Richard Dearlove, former Chief of British Security Service also advocated a more proportional response to the threat originating from radical Islamic terrorism. In a 2015 speech delivered at the Royal United Services Institute, he recalled that in response to the threat from the Soviet Union, Security Service spending equated to approximately 38 per cent of total expenditure. He proceeded to cite that in the 1970s and 1980s, the IRA claimed more lives of UK citizens and soldiers than Al Qaeda, yet "we deliberately avoided the danger of making national policy dance to an Irish jig." He outlined that counterterrorism resources currently occupy close to 50 per cent of security resources indicating an on-going need to assess proportionality relative to the changing global circumstances and technological change that may warrant larger scales of monitoring and security investment.

Dearlove confirmed the elite consensus found in this research that: "9/11 changed the outlook, and dramatically" and was "a defining moment." His main concern was that "we are using the events of 9/11 and its consequences to provide the answer rather than thinking rationally about the contemporary political causations of these problems." He highlighted some of the most problematic aspects of the British handling of contemporary terrorism, particularly concerning the role of the media with its tendency of "making national security monsters out of our young Muslim men." This has the effect of granting fame to these individuals and therefore allows them to live out their fantasies as Jihadists, playing into the hands of any real or potential terrorists.

These points are telling of the need to consider whether resource allocation and the nature of responses from a variety of democratic actors are appropriate and effective in countering threats and invites further scrutiny of the procedures in place for dealing with domestic terrorism. The role of the media is particularly important for its ability to sensationalize, spread fear and distort facts on the one hand, and perform politics through alternative means on the other, seeking to hold the government of the day to account and thus performing a vital democratic role.

3.2 Taking care of us: British society and politics

*"Of course, terrorists hope that their acts will lead to a breakdown in social cohesion. Whether it comes true is up to us." (*Durodié, 2007, 446)

The lack of historical perspective and the risk-averse climate of the millennial era characterized by the 'politics of fear' (Furedi, 2005) are contributing factors for producing conditions of insecurity that can be remedied through political security solutions. The way threats are responded to often project notions of self-identity or insecurity based on the need for enemies and assertions of what we are not, or what we are against, instead of clear projections of what we are for. The post-Cold War era with its erosion of clear ideological distinctions has contributed to this trend. Since long-term responses to terrorism can have destabilizing and delegitimizing consequences, strengthening the capacity of democracies to respond effectively to terrorism is important and reinforcing the values the west claims are driving the response is extremely important in avoiding hypocrisy and maintaining credibility.

The counterterror measures studied in this text occurred during a 'crisis of British democracy' that was noted by academics and commentators since the mid-2000s. In 2004, scholars found Britain to be suffering from a crisis of democracy with electoral turnout in 2001 at the lowest recorded levels since 1918 (Bromley et al, 2004, 6). There has been a decline in levels of trust in government and confidence in the political system paralleling that of the post-Great War malaise (ibid) therefore adding to the complexities of tackling the problem with legitimacy.

Some scholars view the United Kingdom as having arrived in a 'post-political age' characterized by a deep distrust of authority (Durodié 2007). Any actions taken in the contemporary 'war on terror' must avoid adding to trends that alienate society and instead engage and promote trust in government. Durodié notes that "the breaking down of social affiliations, at both the formal and informal levels of participation, and a resultant isolation of individuals in society, together with the absence of a sense of collective purpose in the aftermath of the Cold War, has left people prone to developing an exaggerated sense of risk and vulnerability" (2007, 437) therefore creating apt conditions for government to play the role of social protector and push through security measures. Furthermore, when the relationship between the state and society diverge, consequences have historically been heightened levels of contention and war (Tarrow, 2013).

Current trends such as dealing with radicalization and interconnectivity enabled by the World Wide Web are challenging for democracies, but we need to do more to embrace it. Mouffe (2016) reminds us of this, writing that it is the conflictual aspect of democracy that is the fundamental source of its values. Maintaining composure and stability in times of perceived insecurity demand that we become accustomed to being uncomfortable. "Virtually

everyone agrees that terrorism is defined by its impact on public targets. Yet there seems to be very little open discussion on how society has responded to it."(Furedi, 2016, xv) We must therefore do more to embrace conflict and engage openly in debate about terrorism and how we ought to respond to it.

This thesis has pointed to broader implications for domestic policy than often is discussed. Given the high level of de-politicization, particularly among Britain's youth, it appears sensible to suggest that a political revival and accompanying cultural shift might need to occur if we are to live in a truly democratic society that achieves an equilibrium between security and rights. Security measures must be enacted in line with law and order in order to retain legitimacy and sustainable forms of security. It is the job of civil society to instigate creative methods to contend illiberal rule. As noted by Tarrow (2013), "Civil society activism is the only way to restrain the tendency of modern governments to sacrifice civil liberties in war" (245). Edward Snowden's revelation about the extent of the US government's oversight and surveillance represents one such attempt. This episode also revealed the extent of British surveillance and led to heightened contention between the government and the *Guardian*.

In the context of weak political engagement, civil society activism must compatible with regaining confidence in British institutions, not adding to their decline. A measured allocation of attention and resources is required so as to prevent an overwhelming focus on counterterrorism whilst neglecting other important social and economic policies such as health and education. Eroding support of social institutions can increase public notions of insecurity and have long-term damaging societal consequences.

Scholars such as Niall Ferguson (2014) argue that cultural factors also play a prominent role and that the West should revisit the factors that led to its centuries of predominance. With regards to contemporary terrorism, he argues that the decline of religion has resulted in "spiritual vacuum [that] leaves West European societies vulnerable to the sinister ambitions of a minority of people who do have a religious faith – as well as the political ambition to expand the power and influence of that faith in their adopted countries." (Ferguson, 2014, 289) The call for a revitalization of religion represents the acknowledgement of a void in identity and values projected from the top and the need to develop a common vision or political project for the post-Cold War world.

Conclusion

Applying the political theory of Thomas Hobbes, this work has placed Britain's contemporary responses to terrorism in a history of emergency powers in which security has predominated. It has shown that emergency powers were effectively permanent before the most significant terrorist attack of recent times, September 11th 2001 and has documented how the British government continued to tighten security measures following these attacks from 2000 until 2007. It has investigated how dealing with terrorism affected a government's purported liberal trajectory and created conflict with commitments such as adhering to European law.

Resistance to excessive emergency powers was found to be present in the courts and in Parliament, with the courts taking the blame for detracting from the operational effectiveness of the security services. However, it has also documented the security services

acknowledgement of faults in approaches to combating terrorism and has exemplified the complexities of functioning in a post-Cold War environment in which security must be contemporaneously balanced with rights.

This work has explored levels of contention surrounding various pieces of key counterterror legislation to demonstrate how a democracy balances rights and security and has put forward scholarly and official critiques in an attempt to further the debate on how liberal democracies respond to terrorism. It has attempted to fill certain knowledge gaps as to why more measured responses were lacking and has identified that cultural, political and social factors all play a definitive role in democratic responses to terrorism. It has been suggested that resilience and sustainable security approaches might be achieved through increased civil society activism and political engagement as well as clearly defined political projects, values and aims.

APPENDIX: Terrorism & Counterterrorism in the UK 2001-2007 (Hewitt, 2008)

2001

19 February - The Terrorism Act 2000 comes into effect replacing the Prevention of Terrorism Act that had been in place since 1974.

7 June – Tony Blair and Labour re-elected in general election.

11 September – terrorist attacks in the United States kill just less than 3,000 people.

7 October – British and American attacks against Taliban in Afghanistan begin.

12 November – Blair government introduces Anti-terrorism, Crime and Security Bill in the House of Commons.

13 December – Anti-terrorism, Crime and Security Act receives royal assent.

2002

7 May – Lord Rooker confirms 144 people arrested since Terrorism Act 2000 came into force with no convictions.

23 July - 'Downing Street Memo' – so-called document that reveals that the Bush administration was set by this date on war with Iraq.

30 July – The Special Immigration Appeals Commission rules that indefinite internment under part 4 of Anti-terrorism, Crime and Security Act 2001 is both unlawful and discriminatory.

5 September – Amnesty International issues report expressing concern about 'serious human rights violations that have taken place as a consequence of the UK's authorities' responses to the 11 September attacks on the United States of America.

2003

5 Jan – Police arrest 7 men in London related to a plot to manufacture poison (ricin) for attacks on the London Underground. All acquitted of murder charges; later released and charges dropped.

12 Feb – 5 weeks before invasion of Iraq Joint Intelligence Committee warns the UK government that the invasion of Iraq would increase the risk of a terrorist attack against the UK.

7th March – Attorney General Lord Goldsmith sends 13-page memo to Tony Blair warning that the invasion of Iraq could be deemed illegal without the second United Nations Resolution.

17th March – Attorney General deems invasion of Iraq to be legal.

19th March – American and British invasion of Iraq begins. 27 British personnel die in first day of hostilities.

31 March – US/UK Extradition Treaty signed.

17 July – Scientist and WMD David Kelly 'commits suicide'.

18 July – Blair government announces an inquiry under Lord Hutton to into circumstances surrounding Kelly's death.

2004

1 Jan - Extradition Act 2003 comes into effect.

28 January – Hutton report released 6 months after launch; absolved Blair government of wrongdoing; highly critical of BBC allegations of 'sexed-up' documents.

3 February – Blair government announces an inquiry under the Lord Butler into British intelligence around Weapons of Mass Destruction.

11 March – Al-Qaeda inspired train bombings in Madrid kill 191 and injure over 2,000.

18 May – Sir Michael Jay from Foreign Office writes to Turnbull about findings in memo – cites factors leading to radicalization of British Muslims – foreign policy in the Middle East (Middle East Peace Process and Iraq).

14 July – Butler report released - critical of quality of British intelligence in the lead up to the invasion of Iraq under Section 41 of Terrorism Act 2000.

19 October – Radical cleric Abu Hamza charged with 16 different offences.

2 November – George W. Bush re-elected as President of the United States.

18 November – Civil Contingencies Act 2004 enters into force.

24 November – Government introduces Serious Organised Crime and Police Bill; requires protestors to seek permission before demonstrating within 1km of Parliament square, received Royal Assent April 2005.

16 December – Lords rule detention of 9 foreign nationals without trial under Anti-Terrorism Crime and Security Act 2001 at Belmarsh Prison violates European Human Rights law; detentions continue.

2005

22 February – Prevention of Terrorism bill is introduced to House of Commons.

11 March – Prevention of Terrorism Act 2005 – given Royal Assent – three days before arrest warrant of Belmarsh suspects expired (Landman 2007).

5 May – Tony Blair re-elected as Prime Minister.

6 July – According to the Guardian, Head of MI5 briefs MPs assuring them no terror attacks are on the horizon.

15 July – Home Secretary Charles Clarke writes to shadow Home Secretaries to ask for input on counterterrorism legislation.

18 July – New York Times reports that less than a month before the London bombings the Joint Terrorism Analysis Centre (JTAC) informed the Blair government that there was no group capable of attacking the UK, prompting the threat level reduction from severe defined to substantial, only one step above the threat from the IRA at the time.

21 July – Attacks by 4 suicide bombers in London fail; explosives do not detonate.

22 July – Police shoot and kill Brazilian electrician mistaking him for a terrorist.

5 August – Blair announces new 12-point plan for combating terrorism.

1 September – In a video released by Al Qaeda, Khan blames British Foreign Policy for the attacks.

28 September – Walter Wolfgang, 82-year-old member of Labour party is removed from conference under Terrorism Act 2000 for heckling Foreign Secretary Jack Straw.

12 October – Blair government introduces new terrorism legislation to the House; includes 90 day detention measures without charge.

9 November – 49 Labour MPs join the opposition to defeat a measure contained within the new 90-day clause.

15 December – Government drops 12-point plan; includes clause on closing places of worship used as a center for fomenting extremism.

2006

7 Feb – Radical cleric Abu Hamza found guilty on 11 charges; sentenced to 7 years in prison.

30 March – Terrorism Act 2006 becomes law. House forces government to accept 28-day detention period for suspects – Labour cut short on request for extensive right-impinging legislation.

17 July – Home Secretary John Reid announces two British Islamic Organisations would be banned on grounds of glorifying terrorism – Saved Sect & al-Ghurabaa – under powers granted by the Terrorism Act of 2006.

10 August – 24 people across UK are arrested for alleged plot to blow up airliners using liquid gel explosives – mentioned in Jonathan Evans' 2010 speech

5 October – Jack Straw criticizes wearing of the niqab as a visible statement of separation and difference.

6 Nov – Eliza Manningham-Buller says Mi5 is monitoring 30 active terrorism plots and over 200 groups involving 1,600 people.

2007

26 Feb – Special Immigration Appeals Commission denies the appeal of Muslim preacher Abu Qatada allowing Blair government to deport him to his native Jordan.

5 March – Home Office Statistics reveal 1,126 arrests made under Terrorism Act 2000 between 9/11 and 31/12/2006. 652 faced no charges and were released. 40 convicted on terrorism charges.

10 May – Tony Blair announces his resignation; links invasion of Iraq to increased terror attacks in aftermath – steps down 27 June; Gordon Brown becomes Prime Minister

29 June – Police defuse two car bombs in central London – terror threat shows no signs of subsiding.

25 July – Gordon Brown proposes new anti-terror legislation to Parliament. Major changes include the creation of a border police force and a 56-day period to allow questioning of suspects before the laying of charges.

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