‘War on terror’ and Spanish state violence against Basque political dissent

Introduction

This chapter interrogates Agamben’s concept of the ‘state of exception’ in the context of the Basque conflict within a historical and contemporary context.1 In particular, it will use Agamben’s framework to explore the counter argument made by the Spanish government that its ‘War on Terror’ (in contrast with the US and UK) is lawful. The chapter will further explore how current strategies of Spanish state terror are based upon political interventions that draw indiscriminate parallels between the Basque separatist groups *Izquierda Abertzale* (I.A.) and *Euskadi Ta Azkatazuna* (E.T.A.) via the *Ley de Partidos* (Law on Political Parties, 2002).

I<en>State of exception

Decades before 9/11, since the time of Franco’s dictatorship, the fight against terrorism in Spain has been a powerful pretence to stimulate patriotism while legitimating the state’s imposition of exceptional measures.

 The state of exception has not been formally declared since the transition to democracy in Spain at the end of the 1970s. However, the faculty to impose exceptional measures has been maintained in the Spanish Constitution.2 The constitutionally sanctioned exceptional measures refer to the suspension of a series of constitutional guarantees for individuals accused of terrorist crimes. This seems to be what Agamben (2005) argues when he says that the state of exception depends on the suspension of law. According to him, it is located at the critical and ambiguous space between law and politics. The paradox of what can thus be considered a *legal illegality* represents a fundamental limitation to law, and for the purposes of this chapter more specifically a limitation on human rights law. Considering the increased use of law to paradoxically deny rights to certain groups of individuals since 2001, Agamben has described the state of exception as,”[.<th>.<th>.] neither external nor internal to the juridical order. [.<th>.<th>.] The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order” (2005: 23). According to Whyte (2009), Agamben interprets the state of exception as something fundamental to state power. It is the very foundation of state sovereignty. As Agamben points out “what is at issue in the sovereign exception is not so much the control or neutralisation of an excess as the creation and definition of the very space in which the juridico-political order can have validity” (1998:19). In this way, the exception is not simply outside the law, but is created by the suspension of law. The sovereign creates the law, determines its suspension thus creating the exception, and so determines the validity of the law regarding the exception.

 We use Agamben’s theoretical framework in analysing the case of Spanish state violence over Basque separatist organisations because its broadness allows us to relate legal and illegal measures of apparently different natures. Therefore, using Agamben’s interpretation of the state of exception we scrutinise the contradictions in the liberal legal framework’s suspension of legal provisions that protect human rights while preserving the rule of law. In Agamben’s words,

As if the juridical order contained an essential fracture between the position of the norm and its application, which, in extreme situations, can be filled only by means of the state of exception, that is, by creating a zone in which application is suspended, but the law, as such, remains in force.

(Agamben, 2005: 31)

This emptiness of law relates the direct violence of Spanish police brutality over Basque detainees with the exclusion of radical Basque separatist groups from any legal participation in the political realm.

 We are not arguing the exclusivity of the Spanish state in applying measures such as incommunicado detentions or the banning of political parties since there have been and continue to be examples in other Western countries, not least in the War on Terror. However, the scale of the Basque conflict and the efforts of the Spanish state to present itself as fighting terrorism under the rule of law presents an opportunity to explore and scrutinise how paradoxically the liberal democratic states are currently violating human rights through the lawful enforcement of law; and how these human rights violations are constructed as non-violent democratic measures of counter-terrorism through the enforcement of legal provisions under due process.

II<en>STOP *estado de excepción*

The Basque conflict is complex and multi-faceted. There are many political parties in the Basque Country (*Euskal Herria*), and it would be a mistake to aggregate the separatist groups. The P.N.V. (Basque Nationalist Party) is a Basque nationalist group that has governed for almost 30 years. It has pursued a strong separatist agenda since 2000, promoting a ‘referendum’ or popular consultation about the right to self-determination and ways to handle the violence of E.T.A. More radical than the P.N.V. is the I.A., which has in many cases made similar demands to E.T.A. (e.g. for a “free and socialist Basque Country”3). Far from being a well-defined political party, I.A. is a complex gamut of Basque leftist separatist groups. It has traditionally maintained an ambiguous position around the use of political violence to achieve independence. At the time of writing, March 2011, I.A., has radically altered their position by condemning any violence to achieve political goals. Even when I.A. does not connect itself to E.T.A., the armed separatist group has done so in the past (see Juaristi, 2007). E.T.A. and I.A. share the political goal of independence for the Basque Country, and both qualify the Spanish state as an ‘*estado de excepción*’ (state of exception). I.A. has specifically used the slogan ‘STOP *estado de excepción*’ as part of their discourse and on the streets (graffiti and other propaganda) as a strategic attempt to draw a parallel between the present-day situation and Franco’s dictatorship, which was marked by numerous official states of exception.4 I.A. is addressing not only the Basque population but also the international human rights community. Their demand to ‘stop the state of exception’ is projected beyond the frontiers of *Euskal* *Herria*, for example its application at the European Court of Human Rights (ECtHR) for violations of human rights by the Spanish state in 2004.

 The state of exception in the Basque Country, according to E.T.A. and I.A., is the suppression of any political challenge to the integrity of the state under the pretence of the rule of law. This is illustrated by the discretionary banning of political parties, the prohibition of demonstrations from groups linked to the radical Left Basque movement, mass detentions often resulting in incommunicado detentions, exceptional treatment of Basque political prisoners, disproportional inflation of offences when associated with terrorism, and torture by the police. E.T.A and I.A. assert these measures are carried out under the enforcement of a liberal legal framework.

 In contrast to the position adopted by I.A., and in a break from history, the Spanish government uses the ‘rule of law’ and respect of human rights with rhetorical reverence to legitimise its actions. In July 2004, a few months after the Al-Qaeda 9/11 terrorist attack in Madrid at the Atocha train station and only four months into his presidential term, Zapatero defined his strategy in the fight against terrorism. He insisted it would be in strict accordance with the ‘rule of law’, an approach differing from the United States and Britain:

[.<th>.<th>.] The government over which I preside will have as its primary objective to fight tirelessly against terrorism, against any terrorism, against all terrorism! In this battle, we will consecrate all the possible resources available to a democratic society [.<th>.<th>.] I will not make the mistake of proposing restrictions to our system of freedoms, for the sake of security. I will neither consider initiatives that violate our own legality nor that of international legality.

(Zapatero, 2004a, authors’ transl.)

Zapatero’s discursive line has strictly obeyed the pre-existing legality. Under his government, there have been no legal modifications of the previous governments’ counter-terrorist framework. Neither emergency legislations nor executive decrees were sanctioned and security forces have operated under the existing legality, following orders from judges who investigated terrorist crimes.5

 Understanding Zapatero’s claim of fighting terrorism under the rule of law must be contextualised within a history of repression and state terror under Franco’s dictatorship and during the transition to democracy, to which we now turn.

III<en>Counter-terror as state terror

3.1<en>A history of state terror: Spain’s dirty war

The Franco years were distinguished by decades of repression and brutality by the government on the populations of the Spanish territory. All dissident groups throughout this period were violently suppressed, leading to uprisings all over Spain. The most famous of those dissident groups is the armed separatist group E.T.A. founded in 1957. The confrontation between E.T.A. and Spanish officials exploded with the 1968 assassination of police commissioner Melitón Manzanas,6 after which Franco declared an official state of exception. The 1970 military trial of the ‘Burgos 16’, as the accused E.T.A. members became known, was wrought with fabricated evidence and testimonies recovered under duress and torture (Clark, *ibid*: 181–188). The trial made waves internationally and eventually the death sentences of 9 of the accused were reduced to life imprisonment. E.T.A.’s assassinations escalated. In 1973, they targeted Luis Carrero Blanco, then Prime Minister of Spain, whose legacy was in what Paddy Woodworth (2005) calls the ‘first dirty war’. Underground anti-ETA terrorism began in 1975, organised by SECED, a group of Francoist secret service officers (*Servicio Central de Documentación*) led by Carrero Blanco. He set the blueprints for what became the B.V.E. (*Batallón Vasco-Español*) – an elusive paramilitary group fighting outside the law but protected by the state – active from 1975–1981, almost exclusively in the French Basque Country. The B.V.E. was made up of death squads and mercenaries acting under orders of members of state security forces (*ibid*: 67). It was the forerunner to the state-terrorist group G.A.L. (*Grupos Antiterroristas de Liberación*). Until the Socialist electoral victory in 1982, a number of underground anti-ETA, right-wing terrorist groups (e.g. B.V.E., Triple A, Grupos Antiterroristas Españoles) killed an estimated 40 *etarras* or suspected E.T.A. collaborators (Maravall, 2003:285). A report from the Basque government’s Office of Victims of Terrorism (*Oficina de Víctimas del Terrorismo del Gobierno Vasco*) has officially identified 74 acts of terrorism from paramilitary and extreme right-wing groups in the French and Spanish Basque Country from the period 1975–1990, resulting in 66 deaths (Aizpeolea, 2010). The murders carried out by these terrorist organisations were imputed to B.V.E. (18), Triple A (8), Grupos Antiterroristas Españoles (6) and G.A.L. (26).

 In the two years immediately following Franco’s death in 1975, King Juan Carlos pardoned most Basques imprisoned for political crimes committed under the old regime (Encarnación, 2007: 956). The government provided programmes for reintegration for those who renounced affiliation to E.T.A. Nonetheless, Spain experienced a spike in terrorist activity in 1977. The majority of Basques, including some nationalist political parties such as P.N.V., accepted the 1978 democratic Constitution that recognised the Basque Country as an autonomous province, although denied it the possibility of self-determination. Opposed to this constitutional settlement, E.T.A. continued its attacks, and Prime Minister Suárez introduced the first anti-terrorist legislation of the democratic period. Encarnación (*ibid*) explains how the 1981 Law for the Defence of the Constitution (*Ley por la defensa de la Constitucion*) broadened the definition of ‘terrorism’, ultimately expanding the powers of the Guardia Civil to arrest anyone suspected of affiliation with terrorism.7 This law led to the arrest and eventual conviction of the leadership of the Basque political party *Herri Batasuna*, commonly accepted as E.T.A.’s political wing. The new law on terrorism, mass arrests, an attempted military *coup d’état* by General Tejero, and the continued activity of B.V.E. were fodder for E.T.A.’s ongoing struggle. The dehumanisation of E.T.A. was maintained in the media with commentaries questioning the justice of human rights for terrorists. In his editorial from 23 March 1981, P.J. Ramírez questioned the “human rights of beasts” in the right-wing journal *Diario 16*:

A beast is enclosed behind bars thicker than those of prison cells. To achieve this, you first need to play all kinds of tricks and games. If one [beast] dies in the adventure, it is a case of bad luck (or good luck!). E.T.A.’s death is our life. There are no human rights when hunting the tiger. When hunting the tiger, he threatens you, and harasses you. You dominate it and if necessary you kill it. Even if fifty *etarras* die in combat, the hands of Spain will continue to be clean from human blood. We will applaud the courageous police who shoot against them [.<th>.<th>.].

(quoted in M.M., 2006, authors’ transl.)

Ramírez justified the Dirty War by claiming that the death of a terrorist is inconsequential and any means is therefore acceptable.

 The Socialist Party (P.S.O.E.) came to power in 1982, in the first democratic elections in Spain since the Civil War. It was, as Woodworth (2002) calls it, the first Spanish government with ‘clean hands’ in over fifty years, meaning it was the first government without ties to Franco’s regime. It did not however change its relationship with the military, which remained Francoist. For reasons explained by Woodworth (2005) and Clark (1990), including pressure from the military and fear of another attempted *coup*, Prime Minister González and his Socialist government delegated primary responsibility for counter–terrorism strategy to the military. Although Suárez’s government had previously attempted to centralise military information and require reporting to the government with CESID (*Centro Superior de Información de la Defensa*), there was an almost “seamless transfer of military autonomy over the issue of counter-terrorism policy” with the creation of G.A.L. (Encarnación, 2007: 963). The purpose of G.A.L. was covert counter-terrorist measures against E.T.A. using paramilitary action, sanctioned by the government. Continuities with the anti-E.T.A. terrorist groups set up under the Francoist regime and their activities during the new democracy were evident with the same members of the B.V.E. becoming members of G.A.L. (Belloch quoted in Maravall, 2003:ftnt 40). Woodworth’s interviews with security officials reported the collusion between the paramilitary group and the state, “Give us the money and cover, and we will clean things up for you. If you give us a free hand, we will finish off E.T.A. in a very short space of time” (2005: 70). This was all the more subversive since the cover of a left-wing party provided even more protection for the military (Encarnación, 2007).

 G.A.L.’s creation taints the history of democratisation in Spain and represents in the eyes of many Basques, a continuation of Francoist regime. The Socialists expected their relationship with E.T.A. to be different: they had supported regional politics and devolution; they were socialist and making a break with Franco’s authoritarian regime; they also believed France, also under a PSOE government, would be more likely to extradite E.T.A. members. None of this was true. E.T.A. remained hostile and France was unwilling to enter into the politics of Basque affairs (Woodworth, 2002; Encarnación, 2007). It was widely known that many *etarras* (E.T.A. members) fled to the French Basque Country where they lived openly and freely. González’s government had hoped for a rapprochement with their Socialist neighbours in France under the Mitterand government. However, initially the French were unwilling to cooperate by extraditing presumed terrorists back to Spain. This provoked G.A.L.’s illegal attacks on Spanish Basques living in France, beginning with the disappearances of Joxean Lasa and Joxe Zabala in 1983.8 This initiated a series of killings and kidnappings by G.A.L. in the French Basque Country. These attacks eventually put enough pressure on the French government so that by the end of 1984, it had deported twenty-three *etarras*, including top leaders (Irvin, 1999: 197). Along with new legislation – such as the Organic Law 8/1984 that confirmed extraordinary police powers and empowered judges to order the detention of presumed terrorists for up to two and a half years without trial – these actions led even moderate Basques to conclude that ‘democracy’ had not changed the politics of terror used during the Francoist regime. Cynthia Irvin has shown how the new Organic Law authorised judges to ban political parties and other groups led by convicted terrorists, close down newspapers and magazines supporting terrorist aims and it became a crime for any elected public official to criticise the Spanish nation, its symbols, or its flag (*ibid*). The election of Jacques Chirac to the French presidency in 1986 consolidated Franco-Spanish efforts against E.T.A. and ushered in a new wave of deportations and raids in the French Basque Country.

 G.A.L. was responsible for conducting covert operations in the French Basque Country, kidnapping individuals and bringing them across the border into Spain, where they were tortured and sometimes killed. In its five years of terror (1982–1987) G.A.L. was responsible for 27 deaths, one-third of which were of individuals with no connection to E.T.A (Woodworth, 2005: 63). The government’s role in the paramilitary group’s activities was long suspected. Judicial investigations into G.A.L. were started in 1988, spearheaded by Judge Baltasar Garzón. Two policemen were indicted and sentenced to life in prison. Having been assured by the government that they would be protected, the police officers kept their silence, but a few years into their sentence they spoke out about G.A.L. and the government. Senior policemen and politicians (including Prime Minister González) were named, highlighting the collusion between government and military (*ibid*: 64). Although González was eventually removed from the judicial investigation, some commentators have noted the conviction of some of his senior staff makes his “political responsibility crystal clear” (*ibid*: 76).9 Democracy had not brought the change expected. Although some state officials involved were exposed and convicted during the 1990s, the courts refused to define them as state terrorists. They argued the defendants were not terrorists because they did not seek to produce “the alarm or fear specific to terrorism” (Woodworth, 2005: 76). What is more, although the investigation targeted individual relations with G.A.L., there was a strategy of eliminating the connection between G.A.L. and the state, or in other words G.A.L. as a state-sponsored terrorist organisation. Woodworth critiques the reluctance of the Spanish courts to fully understand and address the scale and extent of G.A.L., as well as the government’s role in its existence and actions. As he elucidates, the court prosecuted G.A.L. for appalling crimes but resisted using (state) terror as one of the characteristics of its crusade. For this reason, it is also important to contextualise the investigations and to remain critical of the political objectives which played an important role in their materialisation.10 Nonetheless, the investigations into G.A.L. were important for several reasons: firstly, for the practical use of the courts against the collusion of government officials and paramilitaries; secondly, symbolically for providing a platform from which to critique the causal relationship between the state and the many terrorist organisations that existed between 1975–1986; and thirdly, to help us think about the connection between the state and terrorism today.

 The 1980s counter-terrorist terrorism – terror carried out by the state under the auspices of counter-terrorist measures – has had a profound mark on the perception of the transition to democracy in Spain. It fuelled propaganda and continued support for E.T.A. by some, and a distrust in ‘democracy’ and democratic institutions by others. What is clear is that the legislative and political endeavours to demonise *etarras* in the 1980s have not been subdued. Since 2000, there remains an important debate on the treatment of detainees in Spanish prisons, polemic related to the constitutionality and encroachment on rights of incommunicado detentions, as well as allegations of the continued use of torture by the *Guardia* *Civil* and other police forces. Moreover, the dangerously close relationship between the executive and the judiciary is a concern that needs to be addressed in any state claiming to be a democracy.

 Spanish counter-terrorist measures include incommunicado detentions, the exceptional treatment of Basque political prisoners, and mass detentions; they are now key parts of the repertoire of numerous states around the world in the ‘War on Terror’. The intensity with which counter-terrorism has been applied and the numbers of allegations of torture, along with objections raised by the international community make the Basque Country paradigmatic of state terror. We now scrutinise how these measures are being executed in the Basque Country.

IV<en>State terror under the rule of law

4.1<en>Incommunicado detentions and torture

The regime of incommunicado detentions in Spain permits holding a detainee suspected of terrorism-related offences for up to thirteen days. Of those thirteen days the first five are in police custody. Afterwards, it is the investigating judge who decides if the suspect can be held for an additional eight days. The incommunicado regime implies a series of restrictions on the rights of detainees: they cannot designate their own lawyer; instead, the Bar Association appoints a duty lawyer to provide legal assistance. Nor can they consult any lawyer in private. They can neither have their family informed that they have been detained nor tell them where they are held. Furthermore, foreign nationals cannot inform their embassy or consulate. Lastly, detainees can only be examined by a state-appointed doctor, not a doctor of their own choice (Amnesty International, 2009).

 Although the Constitution contains emergency measures that authorise the suspension of certain rights in cases of terrorism, the incommunicado regime stands apart. In other words, it is not regulated by the Constitution but is a ‘supplementary’ suspension of rights. After his visit to Spain, Theo van Boven, former UN Special Rapporteur on the question of torture stated, “incommunicado detention may facilitate the perpetration of torture and could in itself amount to a form of cruel, inhuman or degrading treatment” (United Nations, 2004:11). According to a report by Askatu (2009: 8), a Basque NGO from the I.A. milieu, there have been 390 detentions in the Basque area under Spanish and French control throughout 2008; 162 of these detentions were under the regime of incommunicado, and 90 of them by the Spanish security forces. Whilst there have been no claims of torture from detainees held by French security forces, 61 detainees under Spanish security forces have claimed to be survivors of some kind of torture. Of these, only one allegation comes from a detainee who was held under the regular regime – the rest were tortured during incommunicado detention.

 The situation in 2009 was regrettably very similar. According to the *Coordinadora para la Prevención y Denuncia de la Tortura* (CPDT), a coalition of human rights NGOs from all over Spain, there were at least 88 detainees in 2009 under incommunicado detention. Forty-five claim to have suffered torture (CPDT, 2010:104). Other than Theo van Boven’s cautionary statement, the Spanish regime of incommunicado detention has been repeatedly denounced by local NGOs and the international community, including Amnesty International (2007), Human Rights Watch (2005), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, 2007), and van Boven’s successor UN Special Rapporteur on torture Manfred Nowak (United Nations, 2006, 2007, 2010). Despite this, the Spanish State has continued to deny that it commits torture and has refused to abrogate the incommunicado regime. On the contrary, it has argued that this regime is a fundamental instrument for the fight against terrorism; a statement expressly supported by representatives of the main political parties, PSOE and PP. Illustrative of this position is the attitude of the current Basque Government which has gone as far as to publicly declare that they will present charges against anyone who accuses Basque security forces of committing torture during incommunicado detentions (CPDT: 2010).

 This policy of denial has lead to a condemnation in 2009 by the European Court of Human Rights (ECtHR). The ECtHR found against Spain for dismissing without any investigation accusations of police torture made by a Basque detainee under incommunicado regime in 2002. This prompted the Constitutional Tribunal of Spain to force a criminal judge to re-open a case of torture under incommunicado detention denounced by Sara Majarenas in 2005, which was filed with medical reports confirming the injuries suffered. In 2010 the case of two Basque detainees, Igor Portu and Mattin Sarasola, both severely injured under incommunicado detention in 2008, was finally brought to court. On 30th December 2010 the Court decided in favour of the applicants and convicted four Guardia Civil guards to up to four and a half years imprisonment for torturing, insulting and threatening to kill the detained. The other eleven officers indicted in this case were acquitted.

4.2<en>Treatment of detainees in Spanish prisons

While ETA prisoners have always suffered severe prison conditions these have nonetheless changed over time. In the mid 1980s, E.T.A. prisoners were placed together in the maximum-security prison Herrera de la Mancha, under a military regime. The purpose was to break the group solidarity by offering better conditions to those who rejected E.T.A. Despite these measures, the policy failed to break prisoners’ solidarity. In 1987 a radically different approach was taken. Instead of putting all E.T.A. prisoners together, the policy became one of dispersing prisoners throughout the Spanish territory. There has been and continues to be a strong opposition from the majority of the Basque population to the policy of prisoners’ dispersion. According to Etxerat, a Basque NGO that supports the families of Basque prisoners, there are currently 597 Basque political prisoners scattered in 49 jails in Spain. The average prisoner is held at a distance of 694 kilometres from his/her home. In France where the state is applying a similar policy there are 151 E.T.A. prisoners dispersed in 34 jails (Etxerat, 2010: 10).

 Responding to critics, the government of Spain argues that the policy is necessary to avoid the concentration of large numbers of E.T.A. members; to break control of the organization over individual members; to prevent the planning and execution of new crimes by E.T.A. members from within prison; and to protect victims from potential secondary victimisation. Human rights organizations and E.T.A. itself have argued that this measure is an additional punishment (Human Rights Watch, 2005). The UN Special Rapporteur on Torture, Theo van Boven (2004), has said dispersal of detainees “apparently has no grounding in law and is applied arbitrarily.” Additionally, E.T.A. prisoners are held under a special regime called F.I.E.S., which stands for *Ficheros de internos de especial seguimiento*, or Files of Inmates Under Special Surveillance. The F.I.E.S. regime consists of a database that designates the most problematic inmates (Rivera Beiras, ND). The F.I.E.S. was introduced through a simple administrative circular by the General Director of the Prisons as a regulation of the more general Art. 10 of Prisons Law which contemplates the need for an exceptional regime for extremely dangerous inmates. Once an inmate is included in the F.I.E.S. regime his/her living conditions are drastically impoverished. For example, under this regime inmates suffer from extended periods of isolation. Inmates in such isolation are only allowed three hours outside their individual cell per day, together with no more than one other person in the prison yard at the same time. They are also subjected to daily cell and body searches (Human Rights Watch, 2005). Under the F.I.E.S. regime the correspondence of prisoners is censored and limited; their phone calls are recorded, and their personal visits are scrutinised by the prison authority (Rivera Beiras, ND; Exterat, 2010). Moreover, while the regime of isolation is normally revised every 3 months, Exterat contends that E.T.A. prisoners remain condemned to it for years. The policy of dispersion and the harsh conditions under the F.I.E.S. regime have been accompanied by a progressive increment in the length of prison sentences and an extension of the wait period for parole.

 The number of suspected *etarras* killed in questionable circumstances or explicitly by the state has decreased since the 1980s, although the dubiousness surrounding some deaths persists. Two individuals, Josu Zabala Salegi in 1997 and José Luis Geresta Mujika in 1999, were found killed by gunshot in questionable circumstances, and later officially declared to have committed suicide. In 2004 a Basque autonomous police officer shot to kill Arkaitz Otazua, also under unclear circumstances. In April 2009, Jon Anza, an E.T.A. militant and former prisoner, disappeared after boarding a train travelling within France. A month later *Gara*, a Basque pro-independent newspaper, published the hypothesis that Jon Anza had been ‘disappeared’ and then killed by the Spanish police during an interrogation. In March 2010, after almost a year of his disappearance, his body was found in a French hospital of Toulouse. While the Spanish government, backed by the French government, declared that Jon Anza had died of a heart attack, a series of irregularities in the investigation carried out by the French prosecutor lent credence to the assassination theory.

4.3<en>Mass detentions

In May 1998, judge Baltasar Garzón from the *Audiencia Nacional* initiated a series of criminal proceedings against a large number of grassroots organisations, social movements, businesses and media in the Basque Country. These criminal proceedings have become known as the 18/98 case. The case indicted 276 people, of whom 125 were detained. Out of these, 102 have subsequently been imprisoned. The relevance of the case was that with his interpretation of the law, Baltasar Garzón radically expanded the range of crimes related to membership of and collaboration with a terrorist organization. A ‘terrorist’ could be anyone belonging to an organisation with obscure links to E.T.A., without any attempt to establish decisive evidence of alleged criminal activity by individuals. In other words, the investigation seeks to prove the membership of a suspect to an organisation that can be linked to E.T.A. through documents and public statements indicating a coincidence of political goals (CPDT: 2010).

 In cases where it was not possible to declare these organisations as terrorist, such as youth organisations Jarrai, Haika and Segi, (because they did not use weapons or explosives) they were simply banned, considered as E.T.A.’s collaborators. Their members were sentenced to prison (CPDT: 2010). Similarly, *Gestoras Pro Amnistía – Askatasuna*, Basque human rights organisations that worked with E.T.A. prisoners, were also banned because of their political goals. Besides this macro criminal proceeding, other human rights organisations have suffered threats or even formal accusations by the authorities whenever they raise suspicions or accusations of torture by Spanish security forces. The *Coordinadora para la Prevención y denuncia de la Tortura* (CPDT) documents 9 cases where the criminal law was used to intimidate human rights activists in order to obstruct their activity (2010).

V<en>The politics of state terror

5.1<en>Pact of freedoms and against terrorism

Zapatero describes the terrorist as an ‘irrational criminal’. According to Zapatero, terrorist groups “neither deserve to be recognised as followers of a religion [.<th>.<th>.] nor of a nation or of the people” (Zapatero, 2004b). They are just a group of“fanatics who are ready to kill to impose their madness through force. Ready to disseminate the seed of evil” (Zapatero, 2004c). Zapatero asks for the “unity of democrats” against these “violent fanatics”. It is a unity that “is the fundamental element in the fight against terrorism” (Zapatero, 2004b). The enemy (E.T.A. and its sympathisers) is the one who uses violence (evil) to impose his/her ideas; it is the democrat as ‘friend’ who must help in the (good) fight against terrorism. This essential dichotomy between democrats and terrorists, friends and enemies in a state of normalcy was delimited by the infringement of the criminal law concerning terrorist crimes. However, as Agamben points out contemporaneously “the enemy is first of all excluded from civil humanity and branded as a criminal; only in a second moment does it become possible and licit to eliminate the enemy by a ‘police operation’<th>” (2000: 105–6). The process of social and political exclusion was initiated by the signing of the 2000 ‘Pact of Freedoms and Against Terrorism’ (*Pacto por las libertades y contra el terrorismo*) by the two main political parties in Spain.11

 The Pact constituted a bloc of political forces that agreed to give full support to any counter-terrorist measures taken by the government, regardless of which political party was governing. From that moment onwards, in the political realm the dichotomy between democrats and terrorist supporters, friends and enemies, began a process of delimitation based on the noncritical support of the government that the Pact demanded. This created a grey zone where the line between critiquing state policies against terrorism, being a terrorist supporter, being a terrorist collaborator and/or a terrorist became increasingly arbitrary and changed according to the political circumstances. This political stigmatisation was then translated into law by the enactment of the *Ley de Partidos*.

5.2<en>Law on political parties

In June 2002, the Spanish Parliament introduced a new *Ley de Partidos*, which regulated the requirements for political parties’ participation. This law allowed the suspension and banning of political parties that did not explicitly condemn terrorist attacks. On the basis of this new legislation, on 27 March 2003 the Special Division of the Supreme Court illegalised *Batasuna*, the political continuation of *Herri Batasuna*. *Batasuna* had already been subject to criminal investigation since 1998 for its relationship with an armed group. Despite criticism from civil liberties groups, the Spanish Constitutional Court has judged the *Ley de Partidos* constitutional. The lawhas greatly intensified the space of indistinction created by the ‘Pact of Freedoms and Against Terrorism’, allowing the suppression of political parties without having qualified them as catalysts of criminal activity. Any link with a terrorist organisation (e.g. candidates condemned in the past for terrorist crimes but who have already served their sentences) is a viable association warranting suspicion of terrorist support and providing just cause for the banning of the entire political party.12

 The politicization of the criminal process was made evident by the suspension of *Batasuna*’s activities by the penal judge only two days after the Spanish Parliament initiated the process of banning under the new *Ley de Partidos*. In light of these events, these words take on new meaning. The *Ley de Partidos* seemingly incorporates counter-terrorist measures without producing a ‘new’ law, in accordance with Zapatero’s declaration of a different approach from his Anglo-American allies. The law has been used over the past few years to ban several political parties within the spectrum13 of I.A. accused of continuing *Batasuna*’s political activities. Interestingly, in the 2007 elections, during negotiations between the Spanish government and E.T.A., the prohibition was relaxed and applied to only a few candidates, resulting in some political parties related to I.A. winning seats in many Basque cities and towns; after the failure of the peace negotiations in 2008, these same political parties were then banned. In this way, the *Ley de Partidos* allows the government to open or close the political arena to the I.A. depending on the circumstances in the Basque Country. The ambiguous and vague definitions of the *Ley de Partido* project Basque radical separatist parties into a grey zone or zone of indistinction where there is a constant normative uncertainty. By so doing, it creates a pervasive uncertainty with regards to inclusion into the sphere of formal political participation.

 The grey zone created by the *Ley de Partidos* also affected elected I.A. members. Those who were elected previous to the banning of their political parties have maintained their seats, but they can no longer claim affiliation to that party. Meanwhile, in order to extend this grey zone the Spanish political groups, with some occasional support from P.N.V., have presented motions in the town halls demanding the elected members of political parties from the I.A. (e.g. Acción Nacionalista Vasca)14 publicly condemn E.T.A.’s attacks and support Spanish policies against terrorism. At that time, I.A. had traditionally refused to condemn E.T.A.’s violence, although it had not publicly supported it either. Under the pressure of these so-called ‘ethical motions’, I.A.’s refusal (until recently) to express condemnation was put on par with publicly expressing support for terrorist acts. These motions were used predominantly to publicly discredit I.A., and in a particular case a motion was used to incriminate one member. The case occurred in the city of Mondragón, where the mayor, who was a member of I.A., refused to subscribe to an ‘ethical motion’. This refusal was used as evidence in a criminal case where she was accused of continuing the political activity of a banned party.

 In the winter of 2011, I.A. through its new political party *Sortu* fulfilled the demands from the Spanish state to condemn violence as a means to attain political goals, explicitly including this condemnation into its statute. This is happening within the context of E.T.A.’s first ‘permanent, general and verifiable’ ceasefire in its history. Notwithstanding, the Spanish state is threatening to ban Sortu, claiming it is a new iteration of Batasuna, and thus has strong links to E.T.A. This illustrates how the Spanish state continues to operate within the grey zone provided by the *Ley de Partidos* where it can shift the legal requirements.

Conclusion: state terror and Spanish rule of law

On one hand, it could be argued that there has been a continuum of exceptional measures in the Basque Country dating from Guernica onwards. However, to equate the current Spanish government with Franco’s dictatorship, as does the I.A. discourse and propaganda, is certainly polemical. The degree of repression and the context is without doubt very different. On the other hand, the use of the guise of the rule of law by the Spanish state to legitimate counter-terrorist measures that violate human rights is a continuation of state terror.

 Spain is not alone in applying incommunicado regimes, exceptional treatment of prisoners, torture, and mass detentions*.* These are methods widely used by governments all over the world – and this long before the emergence of the 9/11 counter-terrorist legislation. Considering this, Agamben quoting Benjamin, pointedly declared that the exception is in fact already the rule in liberal democratic governments. The particularity of the Basque scenario is that these measures are being denounced and challenged with an uncommon intensity, making visible the state violence otherwise masked by law.

 The banning of political parties which have significant popular support – approximately one hundred and fifty thousand votes in the Basque Country – has brought the politics of exclusion to a new level in Spain. The *Ley de Partidos* lays bare the political function of law, which liberal democracies generally attempt to hide, making the Spanish case especially relevant to the consideration of counter-terror as state terror. The confirmation of the legality of this measure by the European Court of Human Rights in 2009 highlights the limits of liberal law to confront these violations of human rights.

 The recent cease-fire from E.T.A. and the condemnation of violence from the I.A. should dismantle the arguments applied to the exceptional measures. However, the reaction of the Spanish state has instead been to persist in its use of these measures, continuing mass detentions, incommunicado, prohibiting mass demonstrations, and the continued denial of legality to Basque Leftist parties. This illustrates that in Spain the state of exception is in fact not exceptional. The Basque case represents a critical moment where the accommodation of human rights to a specific political program is being defined in liberal democracies.

Notes

<en>1 Studies of political terrorism provide a good example of how a research field can flourish without even minimal agreement regarding the definition of basic terms (Douglass & Zulaika, 1990: 239).

<en>2 We are referring to Article 55.2 of the Spanish Constitution which says: an organic act may determine the manner and the circumstances in which, on an individual basis and with the necessary participation of the courts and proper parliamentary control, the rights recognized in section 17, subsection 2, and 18, subsections 2 and 3, may be suspended for specific persons in connection with investigations of the activities of armed bands or terrorist groups.

<en>3 See I.A. press release *Zutik, Euskal Herria* (Stand Up, Basque Country; Feb. 2010) “the Popular Unity will be the reference for all socialist and pro-independence people in all the Basque Country in the coming political activity, to develop the democratic process, in mass-mobilisation, ideologically and at the institutional level”; see Juaristi’s interview with E.T.A. (Apr. 2007) “It is known that our objective is a free and socialist Basque Country, and that is what we are fighting for (*Es conocido que nuestro objetivo es una Euskal Herria libre y socialista y que luchamos para lograrlo*)”.

<en>4 Addressing the specific context of the Basque Country, Linstroth suggests there is “value potential” in exploiting political images and object; as he comments, political images in the Basque Country “have become an effective means of communicating a political message and governments are anxious to limit access to this device” (2002*:* 216).

<en>5 For a detailed analysis of Zapatero’s discourse on the fight against terrorism and the rule of law see Van Klink, Lembcke, Ciocchini (2010: 14–24).

<en>6 Manzanas had the reputation of a sadistic and brutal police officer, known for torturing Basque nationalists (Arrondo, 2008).

<en>7 The definition of terrorism was defined by this new law as “embracing any attack on the integrity of the Spanish nation”, as well as, “any effort to secure independence of any part of its territory, even if non-violent” (Clark in Encarnación, 2007: 956).

<en>8 It was discovered years later that G.A.L. was responsible for disappearing the two young men whose bodies were identified a decade later buried in quicklime in Alicante (see Woodworth, 2005: 63).

<en>9 The Basque government’s Office of Victims of Terrorism highlighted that of the 74 *acts of terrorism* from paramilitary groups during the period 1975–1990, only 17 have led to sentences without appeal (Aizeolea, 2010).

10 This is controversial, but worthy of mention. There is empirical evidence that the third democratic electoral victory of the PSOE in 1993 provoked a strong political reaction in the *Partido Popular* (hereafter PP), the Spanish conservative party. According to Maravall (2003) the PP set out to destabilise the PSOE and dislodge González, drawing on powerful and wealthy allies from within the media and banking milieu. This is corroborated by an interview with one of the chief organiser of the PP’s strategy, Luis María Ansón, published by the *Tiempo* newspaper in 1998 wherein he admits the instrumentality and politically charged aims of the investigations into G.A.L. Maravall suggests, “this was the difference between the judicial investigation into what had happened, and the political strategy to dislodge the incumbent that judicialised politics as a political weapon” (2003:287). Moreover, the construction of the trial was to an extent the objective to isolate the PSOE from the political forum and from the state. There was never a question of state terror but rather an attack on the PSOE for fraud. a differentiation between the state and the poltical.

11 The two main political parties in Spain are the right wing P.P. (Partido Popular) and the center-left wing P.S.O.E. (*Partido Socialista Obrero Español*). The Pact was the idea was of Zapatero.

12 Ley de Partidos article 9.3 b) “Regularly include in its directive organs or in its electoral list, people condemned of terrorism or terrorist crimes; people who have not publicly rejected terrorist goals and means; or an important number of its affiliates keep a double militancy in organisations or entities related to terrorist or violent groups, unless they have adopted disciplinary measures against them for their expulsion” (authors’ translation).

13 I.A. refers to a number of political parties or groups affiliated with Basque nationalist and separatist ideology. Their radical Left ideological stance embraces a wide spectrum (e.g. Marxist, Socialist, Social Democratic, etc.) and differentiates them from the conservative Basque nationalist party, the P.N.V. (*Partido Nacionalista Vasca*).

14 The A.N.V. has been linked to E.T.A. as its new political party since the dissolution of *Herri Batasuna* and the illegalisation of *Batasuna*. In 2008, Spain’s Supreme Court banned the A.N.V. in the Basque region because of its links to armed separatists ETA (Sanz *et al.*, 2008).

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