Defence against the dark arts: how the British response to the terrorist threat is parodied in J K Rowling’s “Harry Potter and the Half Blood Prince”

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Abstract: One explanation for the attraction of the Harry Potter books to the adult population could be that Rowling’s description of an alternative society and its government traces recent events in contemporary society. The political thread going through the series largely focuses on the way in which the Ministry of Magic deals with Lord Voldemort’s return. This paper examines the various aspects of the UK government’s response to the terrorist threat and draws parallels between Rowling’s depiction of anti-Voldemort security measures in the Potter books and the legal and political developments in the area of counter-terrorism in the UK since 2001.

Keywords: Harry Potter; surveillance; interception of communication; detention and internment; identity cards; security theatre.

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1 Introduction

The Harry Potter phenomenon has astounded many not for its success with its obvious target audience but for its appeal to the older generation. Since the publication of the fourth book, “Harry Potter and the Goblet of Fire”, the books’ publisher, Bloomsbury, has acknowledged this fact by bringing out an adult edition alongside the children’s version, reportedly to allow grown-ups to read the book in public without embarrassment.
Debbie Williams, Children’s Buyer at Waterstone’s, reportedly expected the adult edition of Rowling’s latest offering, “Harry Potter and the Half Blood Prince”, to account for more than 15% of launch sales. Speculation is ripe about what exactly is the attraction of the books to the adult population and how Rowling has managed to recruit so many unlikely followers to her successful franchise. Many social scientists claim that, like Tolkien’s “Lord of the Rings” trilogy and Philip Pullman’s “Dark Materials” (Christian Science Monitor, 2006), the books are an allegory for the constant battle between Good and Evil (Binnendyk and Schonert-Reichl, 2002). Others interpret its success with older readers as a sign that an appreciation of ‘proper’ literature is being displaced by an addiction to escapist fantasy. While it cannot be denied that many enjoy the Potter books because of their sheer readability (King, 2000), this paper submits that there are more serious reasons for their popularity.

Rowling’s talent for providing us with accurate and to the point political and social commentary on the public’s state of mind, our day-to-day concerns and our relationship with our political leaders surely contributes to the books’ appeal. She infuses the books with wit and irony, creating a subtext within the narrative which is almost exclusively accessible to adults. If parody as a literary concept is the imitation of another author’s style (Oxford Dictionary of English, 2005) which one wishes to expose or ridicule, in a social or political context, Rowling’s description of an alternative society, its members and its government exposes and often ridicules recent events in contemporary society. In her writing she reveals situations, political wrangling, power-play and the values of a confused and morally exhausted electorate. Cultural studies expert Jeremy Gilbert observed early on in the series that “the books can be read as both commentary and exemplification of the distinct political moment of Tony Blair’s core aspiration” (Gilbert, 2001); the parallel society in which the stories are set portraying Blairite values such as ‘multi-culturism’ and ‘individual liberalism’ (Gilbert, 2001). As the UK’s love affair with the New Labour government comes to an end, so the relationship between the wizarding community and its equivalent, the ‘Ministry of Magic’, deteriorates, when Harry and his friends begin to take a much more critical attitude to the activities of the ‘Department for Magical Law Enforcement’, the ‘aurors’ and the ‘unspeakables’. In the two books written by Rowling since the terrorist attacks in New York, Washington and Pennsylvania on 11 September 2001 (Rowling, 2003, 2005), the ‘political thread’ (Taylor, 2005) going through the series largely focuses on the way in which the Ministry of Magic deals with the obvious threat of Lord Voldemort’s return:

“[Lord Voldemort’s band of followers], the Death Eaters are hard to identify, see, because they live among regular everyday wizards and only make themselves known during occasional spectacular acts of violence, which occur without warning and harm innocent people. ... The Ministry of Magic, though working overtime to catch the real Death Eaters, is also preoccupied with saving face; they issue inane lists of precautionary steps citizens can take to protect themselves, they try to court Harry Potter ... as a celebrity endorsement for their program, and they occasionally arrest innocent people to appear as if they’re accomplishing something.” (Taylor, 2005)

Rowling traces the British post-9/11 experience, paranoia and panic of both the general public and the ruling class succinctly and with an unfailing instinct for the peculiar. This paper will look at the various aspects of Rowling’s treatment of the executive response to the terrorist threat and draw parallels between Rowling’s depiction of anti-Voldemort security measures in the Potter books and the legal and political
developments in the area of counter-terrorism in the UK since 2001. It will examine the way in which anti-terrorist measures adopted by the British government are in conflict with many of the values it purported to espouse when it first came to power and how the frequent departure from these values in the context of the proclaimed ‘war on terror’ is portrayed and subtly criticised by Rowling in her last two books.

2 Surveillance and interception of communication

“And lastly, while you stay here, The Burrow has been given the highest security the Ministry of Magic can provide. These measures have caused a certain amount of inconvenience to Arthur and Molly – all their post, for instance, is being searched at the Ministry, before being sent on. They do not mind in the slightest for their only concern is your safety.”

(Rowling, 2005, p.80)

Rowling first portrays the use of surveillance and the interception of communications in the context of a conflict between her main protagonist and the Ministry of Magic in “The Order of the Phoenix”. The Ministry, concerned that Harry’s account of the rebirth of his old adversary, Lord Voldemort, might worry the wizarding community, tries to contain this information. A ‘High Inquisitor’ is appointed to oversee the running of Hogwarts, the wizarding school Harry and his friends attend, and very soon measures are put into place to ensure both, that the Ministry is aware of any communication Harry might receive from the outside world and that such communication itself is limited. Harry is told that ‘all channels of communication in and out of [Hogwarts] are being monitored’ (Rowling, 2003, p.556). This includes the monitoring of the floo network – a wizarding communication and transportation device operating through the interconnection of wizards’ fireplaces – as well as the interception of normal mail (Rowling, 2003, p.556). It is likely that the Inquisitor’s interception authority, like most of her other powers is based on a ministerial ‘Educational Decree’, a form of executive regulatory instrument which the Ministry uses throughout the book for the purpose of imposing more and more restrictive measures on the school, its students and its teachers. Rowling’s use of the Decrees highlights how the use of executive control without proper judicial oversight can lead to the suppression of dissent by those in power.

Back in the muggle world at the turn of the new millennium, the UK government also tried to improve its ability to gain information from its citizens’ private communications. Certain acts of covert surveillance had already been possible under the Interception of Communications Act 1985. However, it argued that with the advent of the Internet and the increased use of e-mail, the existing powers of the police and other security services were increasingly insufficient for the prevention and prosecution of crime. Existing powers were also not always compatible with the Human Rights Act 1998 which was due to come into force in October 2000. Consequently, when a new legislative instrument was proposed in the form of the Regulation of Investigatory Powers Bill, then Home Secretary Jack Straw presented it as merely an attempt by the government to adapt existing powers to a new legal and technological framework, claiming that “the Human Rights Act and rapidly changing technology” were the “twin drivers of the new Bill” (Regulation of Investigatory Powers Bill Published Today, 2000).
However, while s.1 of the Regulations of Investigatory Act 2000 (RIPA) establishes the general rule that it is an offence to intercept communications in the course of their transmission via a public postal service or a public telecommunications system, s.5 RIPA authorises the Secretary of State to issue, subject to compliance with certain conditions, interception warrants to certain named persons and authorities, including the police, the security services and the Secret Intelligence Service. Such a warrant, when served on a provider of a postal service or a public telecommunications service, requires the recipient to take all necessary steps for giving effect to the warrant unless such steps are not reasonably practicable for him to take. A telecommunications service provider can also be required, on the basis of an order by the Secretary of State under s.12 RIPA, to maintain an interception capability which would enable it to comply with an interception warrant at short notice. Providers which fail to comply with these provisions are liable to a fine or imprisonment of up to two years. In addition, the Secretary of State can enforce a provider’s obligations by initiating civil proceedings for an injunction, or for specific performance of a statutory duty.

The Home Secretary required providers to maintain an interception capability in the Regulation of Investigatory Powers (Maintenance of Interception Capability) Order 2002 (SI 2002/1931). The Regulations require postal service providers to “ensure the interception and temporary retention of postal items destined for addresses in the United Kingdom” by providing “for the interception and retention of postal items sent by identified persons” in relation to registered mail and by maintaining “a system of opening, copying and resealing of any [other] postal item carried for less than £1”. Part II of the Schedule imposes an equivalent obligation on telecommunications providers who must “provide a mechanism for implementing interceptions within one working day of the service provider being informed that the interception has been appropriately authorised”. For this purpose providers inter alia have to ensure

• the interception, in their entirety, of all communications and related communications data authorised by the interception warrant
• their simultaneous (i.e., in near real time) transmission to a hand-over point within the service provider’s network as agreed with the person on whose application the interception warrant was issued
• that the intercepted communication and the related communications data will be transmitted so that they can be unambiguously correlated
• the simultaneous interception of the communications of up to 1 in 10,000 of the persons to whom the service provider provides the public telecommunications service.

Where an intercepted communication is encrypted, the provider must also, to the extent possible, hand over the encryption key to the person enforcing the interception warrant. In his endorsement of the new legislation, the Home Secretary did not mention that the use of information technology not only allows for new forms of crime, but that it also provides “both a new site for policing activity and also furnishes a variety of opportunities for surveillance which would not previously have been feasible” (Akdeniz, 2001). As Yaman Akdeniz points out, the trend “represents part of a fundamental switch away from the reactive policing of incidents to the proactive policing and management of risks” (Akdeniz, 2001). This can be shown most clearly in relation to
the interception of postal mail, the offline equivalent of electronic communications. Although postal service providers will, in the past, have been called upon to assist in the tracing of a communication’s sender after that communication has been identified as relevant in a criminal investigation, providers would not have been in a position – as they are with electronic mail – to intercept all postal letters sent by a suspected criminal unless that criminal was under constant police surveillance and providers were told when and where he had posted such letters. Information technology, however, enables law enforcement agencies to identify individuals as suspects and to gain access to all of their electronic communications. While the paradigm shift from prosecution to prevention is undoubtedly to be welcomed in general, these new police practices mean that individuals’ right to privacy of their electronic communications is protected only to the extent that the security services are able to correctly identify potential suspects. In this context, incompetence in the conduct of a criminal investigation, denunciation and/or false information as well as the possible abuse of police powers all threaten the right to privacy of ordinary citizens. Consequently, these new and extensive police powers should be subject to stringent safeguards in order to be compliant with individuals’ fundamental rights.

To this end s.65 RIPA establishes the Investigatory Powers Tribunal “as a means of receiving complaints and providing redress” (Ferguson and Wadham, 2003). Its function is to “consider and determine any complaints made to them” by aggrieved individuals who believe that, for instance, their communications were intercepted by any of the police or security services in ‘challengeable circumstances’. However, since all interceptions have to carried out “in such a manner that the chance of the interception subject or other unauthorised persons becoming aware of any interception is minimised”, an individual will normally not be aware that he or she has been the subject of surveillance.

It is not disputed that covert surveillance may be useful and has a place in the armoury of an effective police and security service. Rowling, too, has acknowledged this in “The Half-Blood Prince” when Dumbledore advises Harry that the mail of his friends, the Weasleys, will be opened and searched to ensure his safety. However, RIPA has been widely criticised as going beyond that, as starting out as a “dog’s breakfast” (Cajella, 2000) and ending up as a “Snoopers Charter” which provides a “legal shield for existing mass surveillance techniques that have been ruled in breach of the European Convention [of Human Rights]” (Chandrani, 2000). In any case, the legislation permits significant intrusion upon an individual’s privacy, in secret and with very little judicial oversight.

3 Detention and internment

“Stanley Shunpike, conductor of the popular wizarding conveyance the Knight Bus, has been arrested on suspicion of Death Eater activity. Mr Shunpike, 21, was taken into custody last night after a raid on his Clapham home...”
(Rowling, 2005, p.208)

While the Ministry of Magic urgently seeks to find a way in which to stem the tide of attacks suffered by both the wizarding and the muggle community, news reaches Harry that an acquaintance of his has been taken into custody after he was allegedly overheard talking about the Death Eaters’ secret plans. Although neither Harry, Headmaster Albus
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Dumbledore nor the Ministry officials who interview him believe that Stan is guilty of any offence (Rowling, 2005, p. 310) – Stan is described elsewhere in the books as a ‘spotty youth’ with a tendency to tell tall tales -, he is kept in the wizard prison Azkaban for the duration of the school year. When Harry confronts the Minister for Magic with what he sees as an abuse of Ministry power, the latter replies that “these are dangerous times and certain measures need to be taken” (Rowling, 2005, p324).

The detention of terrorist subjects in the UK has a long history mainly connected to its “longstanding experience concerning terrorism relating to the affairs of Northern Ireland” (Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society: a Discussion Paper, 2004). In his excellent portrayal of the way in which both executive detention and detention without trial were used by successive UK governments in the fight against nationalist and unionist violence, Brandon (2004) shows how current anti-terrorist legislation follows on from those origins in spirit as well as in method.

Since 1974, detention without trial for up to seven days was permitted under consecutive “Prevention of Terrorism Acts”, the first of which was introduced shortly after the bombing of two pubs in Birmingham on 21 November 1974, in which 22 people were killed and 183 injured (Brandon, 2004). The measures were supposed to be temporary – the 1974 Act contained a sunset clause and was subject to renewal every six month – but through continuous renewal and re-enactment in different guises they became a quasi-permanent feature until the enactment of the Terrorism Act 2000.

Because the European Court of Human Rights (ECHR) had determined in its case law that a detention without trial for more than four days constituted a violation of the right to liberty and security of the person, Art.5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention)16, the UK Government entered a derogation in respect of that provision in accordance with the procedure set out in Art.15. Under Art.15(1) a contracting party may “in time of war or other public emergency threatening the life of the nation” take “measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation”. Although the decision to derogate was challenged before the ECHR several times, the Court, in each case, decided that a wide margin of appreciation applied “both on the question of the presence of an emergency and on the nature and scope of the derogation necessary to avert it”.17 However, following the abatement of Northern Irish terrorist activity in the wake of the Good Friday Agreement and in view of the impending incorporation of the European Convention into domestic law through the Human Rights Act 1998, the Labour Government decided, in 2000, to replace the existing anti-terrorism legislation with a set of permanent measures in the form of the Terrorism Act 2000. In the Act it reduced the period for which a suspect may be retained to four days,18 a step which allowed it to withdraw the Art.5 derogation with effect from 26th February 2001.19 However, in November 2001, following the attacks on New York, Washington and Pennsylvania, the Anti-Terrorism Crime and Security Act 2001 (ATCSA) was adopted requiring the immediate re-instatement of the derogation.20 Under s. 23(1) ATCSA, a “suspected international terrorist” could be detained indefinitely where it is intended to remove or deport the person from the UK but where removal or deportation is not for the time being possible. This “inability to deport” had arisen from the ECHR decisions in Soering vs. UK21 in 1989 and Chahal vs. UK22 in 1996. In both cases the applicants complained that their extradition or deportation from the United Kingdom to their respective home countries violated their rights under Art. 3 of the European Convention (freedom from torture and inhumane treatment).
Chahal had entered the UK as an illegal immigrant after having been involved in terrorist activities in India. He was suspected of terrorist offences in the UK, but had not been convicted. The ECHR held that if Chahal were returned to India, there was a real risk that he would be exposed to torture or inhumane treatment in a way incompatible with Art.3 by the Indian security services. As Colin Warbrick (2002) explains, this is of particular significance in the response of states to international terrorism where the government finds itself in a position where it would prefer to secure the return of a suspect to his home state rather than try him for offences, but where it is unable to do that because the suspect alleges that there is a real risk of Convention-incompatible treatment. While this predicament did not exist in the context of Northern Irish terrorism, it did become an issue when the main threat of terrorist attacks came from Muslim fundamentalists who were often nationals of states which fell foul of the principles set out in Art. 3 European Convention.

In the UK, the situation is made more difficult by the fact that in many cases much of the intelligence which forms the basis of the security services’ conviction that an individual suspect represents a threat to public security, is obtained by means of covert surveillance such as telephone tapping and the interception of communications. Under s.17 RIPA, however, the use of intercept evidence in legal proceedings is prohibited in order to avoid exposure of the intelligence to the suspect (for example, to protect sources and techniques or to avoid damaging relations with foreign governments or agencies). As a result, 14 foreign nationals were detained by order of the Home Secretary under s.23 ATCSA from December 2001. Because the decision to detain was treated as an immigration measure, the detainees’ only remedy was to the Special Immigration Appeals Commission (SIAC) which decided in 2002 that “there was such an emergency as justified derogation”, that there was no need that the emergency should be actual or imminent and that the power to detain without trial was in fact strictly required by the exigencies of the situation. However, the SIAC found that the fact that the measure only applied to non-UK nationals violated the provisions of Art.14 of the European Convention which prohibits discrimination on the grounds of inter alia national origin.

The Court of Appeal agreed with SIAC in almost all respects but decided that the measure did not violate Art. 14. However, this verdict was in turn reversed by a nine-member bench of the House of Lords in December 2004 which issued a declaration of incompatibility under s.4(2) of the Human Rights Act 1998. In his leading judgement Lord Bingham concluded that although it could not be shown that SIAC or the Court of Appeal misdirected themselves on the issue of whether or not there existed, at the time of the detention, a public emergency threatening the life of the nation and although it accepted the argument of the Attorney General that “an atrocity was credibly threatened by a body such as Al-Qaeda which had demonstrated its capacity and will to carry out such a threat, where the atrocity might be committed without warning at any time”, the measure was nonetheless judged to be disproportionate. It also concluded that the detention regime was discriminating against the detainees on the grounds of nationality.

However, the decision did not prompt the immediate release of the detainees from HM Prison Belmarsh. Instead, the Home Secretary, Charles Clarke, in a statement to the House of Commons on 26 January 2005 confirmed that while he accepted the Law Lords’ declaration of incompatibility of s.23 ATCSA with the ECHR, the Government had decided to replace the relevant powers with a new system of so-called ‘control orders’. Under this system, where the Home Secretary decides that there are reasonable grounds for suspecting that an individual is, or has been, concerned with
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terrorism, and if he considers it necessary for the purposes of protecting the public from terrorist-related activities, he has the power to impose controls on that individual. Control orders included a range of measures restricting movement and association or other communication with named individuals as well as the imposition of curfews and/or tagging and restrictions on access to telecommunications, the internet and other technology. In extreme cases the suspects could be put under house arrest. The plans were implemented through the Prevention of Terrorism Act 2005 after prolonged discussions between the two Houses of Parliament which centred mainly on the question of whether or not the making of a control order should be subject to the decision of a judge. However, in its briefing “Control Orders and Human Rights Principles” (Liberty, undated), civil rights organisation Liberty argued that apart from the imposition of house arrest, several of the other measures, including curfews and tagging also placed a restriction on liberty. It pointed out that, while the making of control orders with judicial supervision was preferable to a power granted to the executive alone, under Art.5 of the European Convention, restrictions on liberty are permissible only with a view to some form of ‘criminal disposal’, otherwise restrictions must eventually become unlawful. Consequently, it argued, a system of control orders might still be in breach of Arts.5 and 15(1) of the European Convention. In the event, the power to make a control order was granted to the Home Secretary in respect of all measures apart from the decision to impose house arrest.31 In order to avoid a breach of Art.14, the powers apply to all terror suspects irrespective of nationality. The last eight foreign suspects were finally released from Belmarsh on 11 March 2005 under a range of bail conditions set out in the new Act (BBC Online, 2005a). The control order regime created by the Act, which was subject to a twelve-month sunset clause,32 was first renewed with effect from 11 March 2006.33 In June 2006 the High Court ruled that control orders imposed against six of the 14 released detainees were unlawful, because the restrictions imposed upon them were too severe.34 The decision, which was appealed by the Home Office, has since been upheld by the Court of Appeal.35 Home Secretary John Reid, responded to the decisions by “Mr Reid last night ‘reluctantly’ agreeing to implement the ruling, although he claimed it would mean that the amended control orders imposed on the six terror suspects “are not as stringent as the security services believe are necessary” (The Guardian, 2006).

It has since been discovered that two terror suspects under control orders have gone missing, a fact which has caused much embarrassment to the government which has also entered into “memorandums of understanding” with Jordan, Libya and Lebanon that terror suspects deported to these countries would not face treatment banned under Art.3 of the European Convention. One of the terror suspects has since been deported to his native Algeria after loosing his appeal before the Special Immigration Appeal Commission,36 a number of others face deportation to Libya.

4 Identity issues

“[...] 4. Agree security questions with close friends and family so as to detect Death Eaters masquerading as others by use of Polyjuice Potion ....”
(Rowling, 2005, p.45)

After Lord Voldemort’s return to power, the Ministry of Magic issues a leaflet titled “Protecting your home and your family against dark forces” to all members of the wizarding community. The leaflet, which is not unlike the leaflet “Preparing for
Emergencies – what you need to know”, produced by the UK Government and delivered to all UK households in 2005, contains a number of security guidelines which are alleged to help protect wizards, their family and their home from attack by Lord Voldemort and his supporters (Rowling, 2005, p.45). Among other things, the leaflet advises that friends and family should agree ‘security questions’ to be able to verify each others’ identity and to prevent impersonations. Most characters in the book ignore this advice, including Headmaster Albus Dumbledore, who agrees with Harry that the system seems rather pointless. After jokingly reprimanding Harry that he had not asked Dumbledore what his favourite flavour of jam was, he points out that “of course, if I were a Death Eater, I would be sure to research my own jam-preferences before impersonating myself” (Rowling, 2005, p.45).

Although since the 9/11 attacks many governments have focussed on identity verification as part of their counter-terrorism strategies, the UK has had a chequered history in relation to mandatory ID cards. They were last introduced under the National Registration Act 1939, a piece of wartime emergency legislation which provided for the creation of a National Register containing certain personal data of all persons living in the UK at the time. All civilians were issued with compulsory identification cards, and the giving of “false information, impersonation, forgery of an identity card, and unauthorised disclosure of information” became an office. Police had the right to stop people with a request to identify themselves through presenting the card.

Although the wartime rationale for the Act – the need to be able to plan for manpower and the possibility of rationing – gradually fell away after the war, the cards were retained for civilian purposes. Although the subject of widespread public resentment, they were only finally discarded following the case of Willcock vs. Muckle in 1951. Here, the defendant, Willcock, was stopped by police constable Harold Muckle while driving in his car and asked to produce his identity card. When he refused and also refused to present the card at any police station later he was charged under s. 6(4) of the 1939 Act. While the Court of Appeal had to concede that the Act was still legally in force, it strongly condemned the way in which the police used the powers granted to them:

“Because the police may have powers, it does not follow that they ought to exercise them on all occasions or as a matter of routine…. To demand production of the card from all and sundry, … is wholly unreasonable…. To use Acts of Parliament passed for particular purposes in wartime when the war is a thing of the past … tends to turn law-abiding subjects into lawbreakers, which is a most undesirable state of affairs.”

Since then, successive governments have attempted to reintroduce ID cards. In 1989, the Home Office commissioned a feasibility study into a national system of voluntary identity cards to combat crime and a National Identity Card Bill was put forward to Parliament which was rejected in second reading. In 1995 the Home Office issued a Green Paper, followed by an enquiry by the Home Office Affairs Committee. It concluded that “the balance of advantage to the individual citizen and to the public as a whole is in favour of the introduction of some form of voluntary identity card” (Select Committee on Home Affairs, 1996a). However, the public mood in the UK during this time was very much against identity documents; so much so that the issue became a running gag in the press and on television. One episode of popular 1980s television series “Yes Minister”, for example, depicts the introduction of ID cards is depicted as
“the last nail in the coffin” (Lynn and Jay, 1981, p.116) for any politician when it shows hapless Minister for Administrative Affairs, James Hacker cry out in exasperation:

“The British people do not want to carry compulsory identification papers. I’ll be accused of bringing in a police state, […] ‘Is this what we fought two world wars for?’ I can hear the backbenchers cry.” (Lynn and Jay, 1981 p.115)

Nevertheless, in 1996 the Tory Government confirmed its intention to publish a draft Bill on the introduction of a voluntary card scheme (Select Committee on Home Affairs, 1996b). However, the calling of the May 1997 General Election prevented any further developments.

Incoming Prime Minister, Tony Blair had already made it clear in his speech to the 1995 Labour conference in Brighton that he did not regard the introduction of ID cards as a priority for his new government:

“We all suffer crime, the poorest and vulnerable most of all, it is the duty of government to protect them. But we can make choices in spending too. And instead of wasting hundreds of millions of pounds on compulsory ID cards as the Tory Right demand, let that money provide thousands of extra police officers on the beat in our local communities.”

This attitude changed gradually after the September 11 attacks. Although originally stating that the introduction of an identity card scheme would not be part of the government’s response, the then Home Secretary, David Blunkett confirmed that the policy would be kept under review. In July 2002, the Home Office published a consultation paper (Home Office, 2002) followed by a summary of findings in November 2003 (Home Office, 2003) when announced its decision to proceed with a compulsory national identity cards scheme. On 26 April 2004, the Government launched a consultation document on the legislation required for the introduction of identity cards which now also required the inclusion of ‘biometric’ data, that is, data such as facial dimensions, fingerprints or iris images (Home Office, 2004). The scheme envisaged the use of cards, containing a certain amount of personal data and a secure encrypted chip containing a unique personal biometric identifier. The cards would be checked against a national secure database, holding the information contained on the card and relevant biometric data, to confirm identity. According to the government, the scheme would provide individuals with a watertight ‘proof of identity’ (Home Office, 2004) and, as such, help to combat certain types of serious crime, such as terrorism and drug trafficking (Home Office, 2004, foreword by David Blunkett). Following its announcement in the Queen’s Speech, the Identity Cards Bill was published on 29 November 2004. It provided for the creation of a National Identity Register which would allow individuals to prove ‘registrable facts’ about themselves to others and provide a means for public and other authorities of ascertaining or verifying ‘registrable facts’ about individuals where that is in the public interest. Registrable facts’ include name, date and place of birth, nationality, immigration status, address and physical characteristics (such as iris patterns, fingerprints or other ‘biometric’ data). Each registered entrant would be provided with a National Identity Registration Number (NIRN). Registration would, for the time being, be on a voluntary basis, although anyone applying for a ‘designated document’ (including a passport) would automatically be registered. Anyone failing to register when required to do so would incur a civil penalty fine of £2,500. Unlike similar schemes in other
countries, the Bill also envisaged the issue of ID cards to non-UK citizens registered as entitled to remain in the UK.50

The inclusion of biometric data into the scheme was largely driven by the USA which, under S.414 of the Patriot Act 2001 had required the implementation of an “entry and exit data system for [US] airports, seaports, and land border ports of entry” which utilised ‘biometric technology’ as part of ‘tamper-resistant documents’. In 2002, s.303(c)(1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 required the government of any country participating in the US visa waiver program to certify, as a condition for designation or continued designation, that it had a program to issue to its nationals such machine-readable and tamper-resistant passports incorporating biometric data.52

Although the 2004 Bill did not survive the Parliamentary session 2004/05, it was re-introduced with only minor amendments in May 2005. It was passed in its third Commons reading on 18 October 2005 by 309 votes to 284 and proceeded to the House of Lords. The Lords proposed no fewer than 72 amendments to the Bill including an amendment which would have meant that individuals would not automatically be deemed to have applied to have their details entered in the Register and to be issued with an ID card when they applied for a ‘designated document’.55 Most of the amendments were rejected when the Bill returned to the House of Commons in February 2006.56

The Bill was always controversial. Civil liberties campaigners claim that the introduction of an identity card scheme “will have far reaching implications for the relationship between the individual and the state” (Liberty, 2005) and that ID cards will “intrude on privacy as the amount of information held on the database and the uses made of that information will increase dramatically” (Liberty, 2005). In October 2005, the Information Commissioner expressed concern about the extent to which the Bill would breach data protection principles (Information Commissioner’s Office, 2005). While the Government estimates the cost of implementing the system to be in the region of £5.6 billion, an independent study carried out by a team at the London School of Economics put the true cost between £12 billion and £18 billion (London School of Economics, 2005). The production cost of an individual card would be between £130 and £190, although the Government has intimated that it would only charge £30 for a stand-alone identity card and £93 for a combined biometric passport and identity card (BBC Online, 2005b). Many argue that identity cards will not assist law enforcement authorities in preventing terrorism, since “almost two thirds of known terrorists operate under their true identity” (Privacy International, 2004) and because “of the 25 countries that have been most adversely affected by terrorism since 1986, 80% have national identity cards” (Privacy International, 2004). Indeed it became known after the Madrid bombings in 2003 that at least one of the bombers had carried an identity card and then Home Secretary, Charles Clarke, on the day after the London bombings in July 2005, had to admit that identity cards would not have prevented the attacks (BBC Online, 2005c).57 Similarly, the use of biometrics, advocated by the Home Office as a way to disrupt the use of false and multiple identities by organised criminals and those involved in terrorist activity, is unlikely to improve the picture. First, it may not be possible to collect biometrics from certain groups of people (for example, iris scans from the visually impaired, fingerprints from amputees).59 Secondly, biometric database technology identifies bodies rather than people. As Karen McCullagh points out, once a biometric is stored in a computer, the security provided by biometric identification is lost “as a stored biometric could easily have been copied from another computer, rather than
being directly measured” (McCullagh, 2005). Entry of a biometric into a database does not “prove that the new identity is false; they simply prove that the biometrically identified body once used some other name. Change the file and you change the identification” (McCullagh, 2005). The possibility that security may be compromised by a loss of biometric data is also emphasised by security expert Bruce Schneier. While he recognises that biometrics are hard to forge, he argues that they are easy to steal and that they don’t handle failure well:

“Imagine that Alice is using her thumbprint as a biometric, and someone steals the digital file. Now what? This isn’t a digital certificate, where some trusted third party can issue her another one. This is her thumb. She has only two. Once someone steals your biometric, it remains stolen for life; there’s no getting back to a secure situation.” (Schneier, 1999)

The success of a national identity database in the prevention of terrorism is further limited by technical and organisational issues. Since national identity cards always assume the existence of a national database and since large databases of information will, by definition, “always have errors and outdated information” (Schneier, 2003, p.205) verification systems are bound to fail:

“Much of the utility of ID cards assumes a pre-existing database of bad guys. We have no such database; all attempts are riddled with errors and filled with the names of innocent people.” (Schneier, 2003, p.205)

In view of the immense cost of the system and the doubts over its usefulness it is difficult to see how its introduction can justify the intrusion upon individual freedoms and privacy. Identity cards will certainly not prevent the commission of crimes by any person never previously involved in any criminal or terrorist activity. They will also not stop those with special skills and knowledge from manipulating database content in a way which would allow the production of fake identification and authentication instruments. As Dumbledore observed, any skilled terrorist is bound to make sure that he has obtained sufficient information before trying to impersonate another person. Rather than protecting the public from terrorism, a national database and identity card may, on the contrary, provide a means to those planning an attack for obtaining a bogus identity, thereby allowing them to circumvent brittle security systems which have a propensity to fail. It is at least possible that this could reduce rather than increase real security in the UK.

### 5 Security theatre

“‘They probably want to look as if they’re doing something’, said Hermione, frowning. ‘People are terrified.’” (Rowling, 2005, p.209)

As shown above, the Ministry of Magic, like the UK Government, has a desire to be seen to be doing something. Following a well publicised battle between Lord Voldemort’s supporters and the members of a secret society dedicated to fighting him, the Ministry takes a number of allegedly protective steps. A new Minister for Magic is appointed and “tough new measures” are reportedly being taken “to ensure the safety of students returning to Hogwarts School” (Rowling, 2005, p.44). The leaflet titled “Protecting your home and your family against dark forces” issued to all wizarding households is another example of the way in which the Ministry attempts to reassure the frightened population.
As already mentioned, the security leaflet bears an uncanny resemblance to the leaflet “Preparing for Emergencies – what you need to know”, produced by the UK Government and delivered to all UK households in 2005. Like the wizarding leaflet, the Government’s advice was largely ignored when it arrived on people’s doorstep. Undoubtedly, it was intended to be a PR exercise aiming to ease people’s fears rather than providing real information which would be helpful in a crisis situation. Security expert Bruce Schneier calls such measures, which provide the feeling of security instead of the reality, ‘security theatre’ and ‘palliative at best’ (Schneier, 2003, p.38):

“Sometimes it seems those in charge – of governments, of companies – need to do something in reaction to a security problem. Most people are comforted by action, whether good or bad.” (Schneier, 2003, p.38)

Schneier argues that while there are situations where security theatre might be justified, even necessary to soothe unreasonable fears, in many cases security theatre seeks to conceal the hidden agenda of one or more of the players, who want to use the emergency to push through pre-existing policies which benefit themselves rather than the general public.

At the same time, security theatre can actively compromise real security when it uses up valuable resources, both human and financial. Police and security personnel employed to secure a high-profile but low-risk event will be sorely missed if a real emergency occurs elsewhere. Money spent on the implementation of a national identity card system could be better spent, as Tony Blair pointed out in his 1995 Labour Party conference speech, on putting “extra police officers on the beat”. In the meantime, many of the new security measures have a severe impact on the freedoms and liberty of ordinary citizens who are urged to accept them as the ‘lesser evil’ and as necessary in a changed world. As Warbrick points out:

“All this matters because we have been promised by those who would wage the war against terrorism an Orwellian world of perpetual conflict against an elusive enemy, where knowledge about the threat posed by the enemy, of victories and defeats, cannot be revealed other than through the organs of government.” (Warbrick, 2004)

The Ministry of Magic, too, ‘cannot go into detail’ about its stringent new security plans ‘for obvious reasons’ (Rowling, 2005, p.44). “It seems clear, however, that “the decision to make sacrifices of liberty to power will be made by those who benefit from them, not by those who have to make them”’ (Warbrick, 2004).

6 Civil measures

“I warned Sirius when we adopted twelve Grimmauld Place as our Headquarters that Kreacher must be treated with kindness and respect. I also told him that Kreacher could be dangerous to us. I do not think that Sirius took me very seriously, or that he ever saw Kreacher as a being with feelings as acute as a human’s-‘…. Kreacher is what he has been made by wizards, Harry’, said Dumbledore. ‘Yes, he is to be pitied’”. (Rowling, 2003, p.733)

Throughout the series Rowling attempts to show how the attitude of the wizarding community towards minority groups has contributed to the problems it faces in relation to the Dark Arts. There is a strong feeling amongst many wizards not only of their
superiority towards muggles and other wizard\textsuperscript{66} but also towards other human and non-human creatures. This causes friction in the wizarding society. For example, prejudice exists against giants and werewolves leads to these groups aligning themselves with Lord Voldemort. Centaurs are abused as ‘filthy half-breeds’ when in reality they represent a highly developed culture with an ability to divine future events. Finally, house elves enjoy the status of unpaid labourers in wizard households, much in the way of slaves or low paid servants in human society. Even Harry’s godfather, Sirius Black, treats his house elf Kreacher with little more than disdain. This moves Kreacher to assist the Death Eaters in a plot which leads to Sirius’ death. Although Harry and his friend Ron try to encounter all creatures with an open mind, it is only his friend Hermione – who, in “Harry Potter and the Goblet of Fire” (Rowling, 2001), founds the Society for the Protection of Elfish Welfare – and Dumbledore, who really advocate greater interaction and understanding between the different cultures. Immediately after Voldemort’s return to power, Dumbledore advises the Minister for Magic to make peace with the giants in an attempt to persuade them to join the wizarding community in their fight against the Dark Arts. The Minister refuses, arguing that he would be hounded out of office for suggesting it. Predictably, most of the giants later join Voldemort.

The reaction of Western states to the terrorist attacks of 11 September were equally mixed. While some employed a rhetoric of confrontation – speaking of a ‘war on terror’ fought by a ‘coalition of the willing’, others responded in a way which could be “characterised principally as a civil reaction” (von Schorlemer, 2003). Von Schorlemer explains:

“Most European states opted for what may be called a ‘prevention’ strategy, and underlined the importance of non-military measures to combat international terrorism, including an increase in development aid and economic cooperation and greater cooperation in international fora to ensure wider implementation of international human rights instruments. Thus there is a strong belief, in Europe at least, that terrorism cannot be defeated purely by military means and that it is necessary also to confront the underlying causes.”

(von Schorlemer, 2003)

This approach was criticised by many in the US as appeasement politics and the states refusing to join the military coalition were ridiculed as ‘old Europe’. However, more than four years after 9/11, it has become clear, that “the message given by western states of threat from other realms, especially the Islamic world”, has encouraged “a response of equal intolerance” (Walker, 2004). In a speech given at Harvard Law School on 8 March 2004, then Home Secretary, David Blunkett, characterised the threat faced by contemporary society as one from ‘franchised terror’. One could argue that the real threat is more likely to come from ‘disenfranchised terror’. As Hoffman, Chair of the International Executive Committee of Amnesty International, points out,

“a state’s failure to adhere to fundamental human rights norms makes it more likely that terrorist organisations will find it easier to recruit adherents among the discontented and disenfranchised and among the family and friends of those whose human rights have been violate.” (Hoffman, 2004)

Human rights, along with democracy and social justice, “are seen as a means to prevent terrorism. Thus on this view, the key to enhancing security is the pursuit by all governments of a comprehensive human rights programme” (von Schorlemer, 2003). At the same time
“[b]y challenging the framework of international human rights and humanitarian law, so painstakingly developed over the last several decades, the 'war on terrorism' undermines our security more than any terrorist bombing.” (Hoffman, 2004)

It has been said, “in an asymmetric conflict, the terrorists cannot destroy western polities, but they may be able to provoke western polities to destroy their own spirits” (Walker, 2004). In this context the “symbolic reaction of an otherwise impotent legislature accountable to a frightened majority presents a danger quite as much as the deliberate step towards authoritarianism” (Warbrick, 2004). Actor, director and scriptwriter George Clooney, who recently starred in two films dealing with issues related to the current situation68 sums it up as follows:

“These aren’t ‘bad guys’ he says [of the Bush Administration]. ‘Their argument is, ‘How do we defend the country if those people are going to do that?’ I understand that. The question it all raises is, defend it for what? To preserve what, if we’re giving away everything we’re defending?” (Applebaum, 2006)

7 Conclusion

This paper has shown that there are significant parallels between the response of the British Government to the terrorist threat and the way in which J K Rowling portrays the wizarding community’s fight against Lord Voldemort. It would be farfetched to call any of her books a roman à clef – she does not draw parallels to particular political players or historical proceedings. Rather, in a form of ironic plot-borrowing from current events, she draws our attention, very subtly, to areas where our society is in danger of becoming legally and morally deficient. Where she succeeds is in “capturing the spirit rather than the letter of life in these troubled times” (Taylor, 2005) and it is submitted that it is, among other things, this understated approach that makes her books so popular with the older generation. With the UK government seemingly advocating the sacrifice of ever greater parts of our civil liberties in exchange for ‘increased security’, it will be interesting to see if and how Rowling will deal with more recent political developments in the final instalment of the series.

References


Notes


2Similar parallels have been drawn to Stephen Spielberg’s ‘Star Wars’ films and C.S. Lewis’ Narnia stories. At the same time many of the Christian churches have criticised Rowling for exposing innocent children to Satanism and blasphemous ideas; see, for instance, in the Christian Science Monitor (2006). After initial reports that the Vatican had ‘approved’ the Potter books (see BBC Online, 2003) it was made public that Cardinal Ratzinger (now Pope Benedikt XVI) in a letter to German sociologist Gabriele Kuby had impliedly condemned the Potter books as including “subtle seductions, which act unnoticed and by this deeply distort Christianity in the soul before it can grow properly”, Letter Cardinal Ratzinger to Gabriel Kuby of 7 March 2003, available at http://www.gabriele-kuby.de/harry_potter.html, last accessed on 1 November 2006. Many tabloids also reported allegation by the Vatican’s chief exorcist Father Gabriele Amorth, that “by reading Harry Potter a young child will be drawn into magic and from there it is a simple step to Satanism and the Devil”, see “Potter ‘lures kids to Satan’”, The Sun, 7 March 2006, http://www.thesun.co.uk/article/0,2004580002-2006100092,00.html; ‘Vatican exorcist warns of Harry Potter’, Sydney Morning Herald, 3 March 2006, http://smh.com.au/news/unusual-tales/vatican-exorcist-warns-of-harry-potter/2006/03/03/1141191841986.html, all last accessed on 1 November 2006.

3US author King (2000) summarised this when he said that Rowling’s books were ‘just fun, pure story from beginning to end’.

4Rowling’s version of the security services and the secret service.
Defence against the dark arts

5Not least of all the individual freedoms and liberties protected by the Human Rights Act 1998, the Act through which the Labour Government incorporated the European Convention of Human Rights into domestic law thereby providing the UK with a written constitutional framework for the first time since the Magna Carta.

6At this time, most of the judges on the Wizengamot, the wizarding equivalent of a Supreme Court, who are sympathetic to Harry’s plight have either been sacked or resigned in protest at the Ministry’s abuse of its powers.

7The term Rowling uses for non-magical people.

8S.3 Regulation of Investigatory Powers Act 2000 also provides for interception with the consent of all parties to the communication while s.4(2) envisages that interception by the providers themselves for the purpose of legitimate practice reasonably required for

“in connection with the carrying on of any business, of monitoring or keeping a record of (a) communications by means of which transactions are entered into in the course of that business; or (b) other communications relating to that business or taking place in the course of its being carried on.”

Both forms of interception are outside the scope of this paper.

9S.11(7) RIPA.

10In June 2006, the Home Office launched a consultation on a draft code of practice which would require communications service providers to voluntarily disclose encryption keys required to access relevant information to law enforcement agencies with an inception warrant for that information or face a disclosure order being imposed upon them, see Home Office Consultation, 2006. The consultation closed on 31 August 2006 but no code has been issued at the time of writing.

11This is now also changing with a new service provided by Royal Mail which allows customers to buy postage on the internet. After selecting the appropriate amount for their letter, customers are issued with a unique bar code which is printed directly onto the envelope. As payment for the service is by credit card or pre-pay account, it should theoretically be possible to trace a letter from sender to recipient via the unique bar code. This raises fresh privacy concerns in relation to possible interceptions.

12S.65 (2)(b) RIPA.


14See Rowling (2005), although this is arguably for the purpose of preventing a direct attack on Harry in the nature of the Anthrax letters received in the USA after the September 11 attacks and not for the gathering of intelligence.

15With the inception of the Regulation of Investigatory Powers Act 2000, the UK has also adopted additional measures allowing public authorities to access traffic and communications data generated by communications service providers in relation to the provision of telecommunication services (Part 11 RIPA). The European Parliament and the European Council have recently agreed on a Directive regulating the mandatory retention of all such communications data for periods of up to two years. This obviously increases the powers of the security services who, once the Directive is implemented in the UK, will be in a position to gain vital information not only about suspected criminals and terrorists but about everyone. This issue is, however, outside the scope of this paper.


18S.41 and Schedule 8 Terrorism Act 2000.

See The Human Rights Act 1998 (Designated Derogation) Order 2001, S.I. 2001/3644, regulation 2. It must be stressed that the UK was the only European country which found it necessary to enter a derogation following the September 11 attacks.


This has been strongly criticised by the Privy Counsellor Review Committee under Lord Newton in Anti-terrorism, Crime and Security Act 2001 Review (the ‘Newton Report’), where it was suggested that “the blanket ban on the use of intercepted communications as evidence in court should be lifted to make it possible to prosecute more terrorists (and other serious criminals)”, Newton Report (2003–2004 HC 100), para. 6.


A and Others vs. Secretary of State for the Home Department (2004) UKHL 56, at paragraph 27.


A and Others vs. Secretary of State for the Home Department (2004) UKHL 56, at paragraph 68.


S.1 Prevention of Terrorism Act 2005.


Re JJ (control orders) (2006) All ER (D) 330 (June).

Secretary of State for the Home Department vs. JJ and Others (2006) EWCA Civ 1141.

A & Ors vs. SSHD, 20th October 2005/SC/33/35-39; R (on the application of Q) vs. Secretary of State for the Home Department and another (2006) All ER (D) 381 (Oct).

A copy of the leaflet is available at http://www.preparingforemergencies.gov.uk/index.shtm (last accessed on 1 November 2006). It has also prompted the publication of a very entertaining spoof website by student Thomas Scott, which, despite demands by the cabinet office that it should be removed from the Net immediately, is still available online at http://www.preparingforemergencies.co.uk/ (last accessed 1 November 2006).


See FN38.

Willcock vs. Muckle (1951) 2 All E.R. 367, 49.

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146 H.C. Debs., cc 1265–1331 (10 February 1989).

David Blunkett, H.C. Debs., cc 867–8W (5 February 2002)

S.1(3) Identity Cards Bill 2004.


Ss.4 and 5 Identity Cards Bill 2004.

S.6(1) Identity Cards Bill 2004, although this was subject to the so-called ‘super-affirmative’ process which requires the government to publish its reasons for a compulsory scheme and for both Houses of Parliament to approve the relevant draft legislation, s.7 Identity Cards Bill 2004.


Ss.8-10 Identity Card Bill 2004.
Established under section 217 of the Immigration and Nationality Act.

The period for compliance was subsequently extended until the end of 2005 due to technical difficulties, see US Department of State, 2004.

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