

statewatchjournal

reflections on the state and civil liberties in Europe



vol 23 no 1 | March 2013

Austerity, democracy and civil liberties

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Signs of the times

Ben Hayes

It seems appropriate that the first of our newly thematic Journals should focus on the nexus between austerity, civil liberties and democracy. The financial crisis that began in the banking sector five-and-a-half years ago has devastated European economies. In the time since this collection was conceived, Cyprus has become the latest country to accept crippling austerity in return for EU-IMF life support for its stricken financial sector. Few would bet against further bail-outs in the Eurozone and only the foolhardy dare suggest that the worst is over. Regardless, the impact of austerity programmes already underway will be with us for years to come.

Across Europe, the working class and the disenfranchised are being hit hardest by austerity [see Peio Aierbe on Spain]. Their ranks are growing by the day as the devastating costs of the bailouts and economic contraction continue to accumulate. The articles in this collection show how the imposition of austerity is not simply an economic sanction: it requires extraordinary levels of surveillance and coercion (increasingly outsourced to the private sector) that often fly in the face of liberal democratic assumptions about the state and the supposed “social contract” [see in particular Chris Jones, Peio Aierbe, Yasha Maccanico and Kees Hudig].

States have dealt harshly with the increasing numbers who challenge their authority on the streets [see Nick Moss]. As Laurie Penny pointed out recently, those who ask why there has not been greater resistance to austerity measures overlook the fact that many people are scared to participate in protests for fear of arrest, serious charges and permanent police records. Formidable state responses to demonstrations, strikes, occupations, protests, direct actions and riots are steeped in the narrative and imagery of counter-subversion. Fear is used to help coerce the wider population into accepting the cuts [see Peio Aierbe]. Long prison sentences are handed down to those whose violence or activism must be made an example of [see Nick Moss], while the people who caused the crisis have escaped largely unpunished.

“Shock doctrine” is rightly used to describe the imposition of neo-liberal austerity policies on states that effectively cede control of their economy to the IMF et al. But the coercive elements of the state are also using the crisis to impose or justify exceptional measures in the name of justice or security. For

example in Italy [see Yasha Maccanico] where the “technical” government’s measures to combat tax-evasion include compulsory bank accounts, financial surveillance and profiling against the “redditometro” (income-meter), limits on cash transactions and IDs for infants.

Nowhere is the “shock doctrine” more evident today than in the powers that EU institutions have exercised and accrued in the name of dealing with and preventing future crises. This volume of the Journal includes a lengthy essay on “anti-politics” and “post-democracy” by Leigh Phillips which suggests that the EU, already suffering from a long-standing crisis of legitimacy, continues to move further away from the liberal democratic ideals upon which it was ostensibly founded. He argues that contrary to claims about “emergency” powers and “exceptional” measures, the crisis is consolidating the “rule-by-expert” mentality that already dominates many EU and national institutions of government. Left unchecked, Phillips warns, “post-democracy” will become “the mechanism through which the unravelling of the post-war compromise between capital and labour will be completed”.

Leigh Phillips argues that the widening democratic deficit is undermining public confidence in governments and institutions of state alike – a gap that is being filled by “anti-politics”: a “cynical rejection of the entire political class as inevitably venal and out to swindle the public”. This breakdown of confidence in authority creates space for populist movements of all stripes. The emergence of organisations like the neo-Nazi “Golden Dawn” in Greece – a growing force on the streets as well as in the corridors of power – is made all the more frightening by the “deafening silence of Europe” [see Jerome Roos].

This collection only scratches the surface of the nexus between austerity and civil liberties. It might also have discussed the positives emerging from the crisis: across Europe a new generation has been radicalised and is organising in ways which challenge the failures of the mainstream political Left and the pragmatism of “civil society”. We might also have looked to Iceland, the first state ravaged by the crisis and the only European country where propping up the banks gave way to letting them go (while protecting domestic savers and the welfare system). Powerful people were held responsible for the crisis and sent to jail. A vibrant multimedia sector premised on freedom of information, expression and investigative journalism is among the relatively radical initiatives to emerge from the ashes of the financial sector. The EU was born of the same political traditions – cooperation, human rights and accountability – but the political space in which it operates has been circumscribed by neo-liberalism, the “War on Terror” and post-democratic forces.

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Discipline and discontent: coalition government extends “slave labour” welfare policy

Chris Jones

Under the government’s Work Programme, unemployed people must work for free for private companies such as Tesco and Primark or face losing their benefit payments. These companies manage the programme “without prescription from government” and are given access to sensitive personal data. The government is determined to bolster the number of people involved in the scheme. Disabled people have been increasingly targeted for enrolment and the government’s Universal Credit welfare plan will see thousands of individuals become eligible for referral.

Since the late 1990s, successive governments in the UK have introduced “work-for-your-benefit” policies through which the receipt of unemployment benefits is conditional upon the undertaking of certain activities – for example, filling in a minimum number of job applications every week. Following its formation in May 2010, the coalition government introduced the Work Programme which raised the number and intensity of activities required of those claiming benefits. It also increased the severity of sanctions that can be imposed should people not comply. The activities – which in many cases include unwaged work – are prescribed by private firms with government contracts. These firms exercise considerable power over the individuals involved.

Upon referral to the Work Programme by a member of staff at a Jobcentre Plus, a letter is sent to the claimant. It states that the provider or one of their partners:

“Will support you whilst on the Work Programme. They will discuss what help you need to find work, and draw up an action plan of things you’ll do to improve your chances of getting and keeping a job.

You must complete any activities that [the provider], or one of their partners, tells you to... You must take part in the Work Programme until you are told otherwise.” [1]

Refusing to take part – and in numerous cases, administrative error – can mean losing benefit payments, initially for up to 26 weeks, although loss of benefit entitlement can last for up to three years in extreme cases.

These policies have led to fierce and effective opposition across the country. “In terms of UK government policy, there is perhaps no better instance of state power encroaching on the rights of individuals... than the Work Programme,” the campaign group Boycott Workfare told *Statewatch*. They argue that the Work Programme – and workfare policies more generally – “police the individual, with the state interfering directly in people’s lives. State power subcontracts regulation of an unemployed individual’s behaviour and control of the unemployed to private providers.”

Slave labour?

Most controversially, people can be obliged to undertake unpaid work, enforced through the threat of the removal of unemployment benefits. In the most extreme cases, payments can be stopped for up to three years. Companies such as Tesco, Asda, and Primark, as well as numerous charities, have faced frequent protests for their involvement in these “workfare” schemes. Under the Mandatory Work Activity programme – one of several schemes that are in place – contracted companies and charities can take on unemployed people in receipt of Jobseekers’ Allowance for four weeks’ unpaid work for up to 30 hours a week. The company or charity receives the labour and the state foots the bill. One Department for Work and Pensions (DWP) document describes Mandatory Work Activity (MWA) as “helping the recipient develop the labour-market discipline associated with full-time employment such as attending on time and regularly, carrying out specific tasks and working under supervision.” [2]

The regulations that cover the MWA scheme outline that such work should be of “community benefit” – of which one official definition includes “working towards the profit of the host organisation, providing that the majority of the role is dedicated towards the delivery of benefit to the community.” [3] The person who does the work is obliged to do so or face sanctions – that is, losing their income. Undertaking unpaid work, however, is not enough. A letter sent by the firm Pinnacle People to someone faced with Mandatory Work Activity at the Royal Society for the Prevention of Cruelty to Animals makes the following demand: “you must continue to attend your Job Search Reviews at the Jobcentre and actively seek employment whilst on Mandatory Work Activity.” [4] The same letter contains a timetable, showing that from Monday to Friday, Mandatory Work Activity will take up the individual’s day from 9:30 in the morning until 16:30 in the afternoon, which would not seem to leave much time for “actively seeking employment.”

A recent estimate suggests that the number of people subjected to workfare in the last year “has escalated” and “has had a significant effect on the amount of paid work available.” MWA is expected to provide 70,000 placements a year, while a similar scheme (the “work experience scheme”) “is expected to put 250,000 people to work without pay over the next three years.” The total figure is likely to be far higher, but “the government refuses to say how many of the 850,000 people sent on the ‘work programme’ have also been forced to work for free.” [5]

Legal action last year sought to challenge these policies. Cait Reilly, an unemployed geology graduate, “was told she would lose her £53.45 weekly benefits unless she worked for two weeks unpaid in Poundland,” [6] as part of the “sector based work activity scheme.” Her case was taken up by Public Interest Lawyers, along with a similar complaint from a mechanic, Jamieson Wilson, who “under a scheme known as the Community Action Programme was required to work unpaid, cleaning furniture, for 30 hours per week for six months.” [7] The legal action was partially successful – the DWP was found to have acted unlawfully by not following the procedure requiring them to inform Mr Wilson of the consequences of not participating in the scheme. The letters they posted – which were sent to thousands of people – “failed to comply with the basic notice requirements that would allow the DWP to lawfully impose benefit sanctions.” [8]

However, the case also sought to argue that the government’s schemes breached Article 4 of the European Convention on Human Rights, which prohibits slavery and forced labour. On this count, the legal challenge failed, with the judge ruling that “characterising such a scheme as involving or being analogous to ‘slavery’ or ‘forced labour’ seems to me to be a long way from contemporary thinking.” [9] A recent appeal agreed with the view that the schemes could not be considered to be forced labour, although the three judges in the Court of Appeal also declared that the Jobseeker’s Allowance (Employment, Skills and Enterprise) Regulations 2011 “are unlawful and must be quashed”. This means that:

“All those people who have been sanctioned by having their jobseeker’s allowance withdrawn for non-compliance with the Back to Work schemes will be entitled to reclaim their benefits. And until new regulations are enacted with proper Parliamentary approval [the original regulations were not put through Parliament] nobody can be compelled to participate in the schemes.” [10]

Iain Duncan Smith, the Work and Pensions Secretary, said that the ruling was “utter madness” and that he had “no intention” of paying compensation to any claimant who declined to join a scheme and had their benefits docked as a result.” [11] *The Daily Telegraph* quoted a “senior government source” as saying that ministers “want to increase the use of mandatory activity and sanctions for the unemployed as the schemes work.” [12]

Freedom – for “prime providers”

Compulsion is central to workfare schemes. It is this which separates them from “traditional, rights-and-eligibilities-based welfare systems,” says the academic Jamie Peck. “The essence of workfarism involves the imposition of a range of compulsory programs and mandatory requirements for welfare recipients with a view to *enforcing work while residualising welfare*,” he argues (emphasis in original). [13] The government has also been clear on the element of compulsion within the programme:

“We expect claimants to do everything that can reasonably be expected of them to find work or prepare for work in the future as a condition of receiving support. This is known as

conditionality and will be backed up by tougher sanctions to ensure claimants meet their responsibilities.” [14]

Iain Duncan Smith has said of sanctions that “it is only right that if we are helping people get back into work, then we also have a right to expect that those we support are ready and willing to take on work if it is offered.” The impact of the more widespread introduction of sanctions into the welfare system was made clear last year when it was revealed that managers in jobcentres around the country were imposing “individual or group targets” for sanctions. The government said its messages on the need for jobcentre staff to be “clearer about conditionality” had been “misinterpreted by a small number of Jobcentre Plus officers who had imposed targets for the number of sanction referrals.” They said the targets had been abolished, although investigation by *The Guardian* suggested otherwise. [15]

A significant degree of power has also been outsourced to employees of private companies. Exactly what “can reasonably be expected” of those who find themselves referred to the Work Programme is not decided by the government. The programme is contracted out to companies such as Working Links, Serco and G4S, each of whom has signed multi-million pound contracts with the government. Referred to as “prime providers” or “primes”, they are supposed to “identify the most effective way of helping people into sustained work.” These firms “have been given new freedom to do so without prescription from government,” with centrally-ordained standards “minimised as far as possible, allowing them to innovate and focus their resources where it will do most good.” [16]

Mind control?

It is this freedom of operation that has seen contracts that permit the provision of free labour to companies such as Tesco and Primark. The prime providers also run courses and training sessions for the unemployed – with attendance often ensured by the threat of sanction. Individuals referred from a Job Centre to programmes run by A4e have found themselves placed into sessions during which neuro-linguistic programming (NLP) techniques are used “to try to instil a go-getting mentality in jobseekers.” NLP is embraced by some who say that “it builds confidence and helps people to achieve their goals through language, physical movements and thought patterns,” according to an article in the *Financial Times* (FT).

However, it is not approved by the national health advisory body, the National Institute for Health and Clinical Excellence, and “academics have attacked NLP as pseudoscience.” One of A4e’s “customers”, quoted in the FT, described it as “psychobabble: people telling you ‘believe anything and it can happen’... I just resented being forced on pain of having our income removed to attend something that was stupendously stupid.” [17]

A4e is not the only prime provider trying to “instil a go-getting mentality.” Boycott Workfare also accuses the firm Reed of doing the same, albeit through providing its own Work Programme “customers” with books “encouraging people to develop ‘3G thinking’”. According to a website run by the firm’s chairman,

James Reed, this stands for “global”, “good” and “grit.” Reed encourages his readers to “master your mindset.” [18]

Ms M. J. Canning, who is long-term unemployed and into her second year on the Work Programme, criticised these approaches in a written submission to a House of Commons enquiry:

“We’ll change the way you think’ I was patronisingly told, when it’s obvious my inability to get a job is merely because of my age and the fact that few employers will even consider the long-term unemployed, and has nothing whatever to do with my thought processes.” [19]

Boycott Workfare suggested to *Statewatch* that courses that seek to address an individual’s mindset form part of a political strategy:

“By blaming and scapegoating the unemployed, state power is basically used in order to cover up the ideological and political failings of the state and political status quo. So this also shifts blame away from the institutions which caused the economic crisis such as the banking system...to those unfortunate enough to be out of work.”

Invasions of privacy

Neuro-linguistic programming and ‘3G thinking’ might not encourage individuals to change the way they think, but a number of measures allow employees of both Jobcentres and Work Programme providers (whether “prime” or subcontracted”) to keep an eye on what people do. Freedom of information requests submitted to the DWP in 2011 revealed that, despite the letter informing an individual that they have been referred to the Work Programme saying that the Jobcentre has “passed your contact details” to a provider, private firms and their sub-contractors are in fact given significant amounts of personal data. [20] This includes name, address, telephone number, information on current and past benefit claims, indications of “whether an incident has been recorded relating to the customer on Jobcentre Plus premises”, and items taken from the “Action Plan” of the “customer” – aims, job preferences, employment history, and educational qualifications amongst other things. The response from the DWP also contains an extensive list of information supplied by the individual to the Jobcentre, on which the relevant Work Programme provider will be kept updated if their circumstances change.

All Work Programme providers and sub-contractors are considered by the DWP as data processors. According to the website www.consent.me.uk, this means that:

“They share any personal information you give them with DWP Jobcentre, without the need for further consent. Personal information you share with the DWP Jobcentre is also shared with all providers and their sub-contractors for delivery of the Work Programme, without the need for further consent.” [21]

The website was set up to inform people that although there is a presumption in favour of sharing personal data between jobcentres and providers, this is not mandatory, and individuals can “withhold or withdraw consent to stop your personal information being shared with any third party, such as an employer or

training provider.” Establishing this fact was not straightforward – it required the submission of a number of freedom of information requests, and appeals against subsequent responses. Even then, some people subjected to the Work Programme have found it difficult to have their rights respected. Ross Bradford submitted evidence to a House of Commons enquiry into the Work Programme, with a complaint about his experience with the Jobcentre:

“At one appointment, I was told to record details of my job search and give the provider a copy of the form. I told them I didn’t have to do this – as confirmed by a Freedom of Information request. They told me I would be sanctioned if I didn’t do what they asked.”

He makes similar accusations about his time with Triage, a provider, to whom the Jobcentre passed him on:

“They simply handed me a bunch of forms to fill in and sign. The provider’s own forms didn’t make me aware that giving them extra personal information or permission to contact third parties was entirely optional. When I queried their right to demand I do so, one of the staff members wrote ‘mandatory’ on the top of my form, effectively lying to me in order to get me to sign an optional consent form.” [22]

This information can be used by providers to check up on the activities of people referred to them. Work Programme contracts work on a “payment by results” system. Providers receive some money when an individual is referred to them by a Jobcentre, but the financial rewards increase significantly for finding them employment: “The maximum amount that providers can earn for supporting someone into work (and keeping them there for around eighteen months to two years) varies from £4,000 to over £13,000 depending on the ‘customer group’,” according to the Centre for Economic and Social Inclusion. [23]

But finding out if someone is still in work means monitoring by the provider: “Even when employed, the individual cannot escape the Work Programme,” say Boycott Workfare. “Even if someone manages to find employment on the Work Programme, their private provider will still ring them weekly for up to two years, as their payments depend on the length of time a ‘client’ remains in work.” Policies due to come into effect this year will expand this system to people who are in paid work, but receive certain types of benefits due to a low income.

Meanwhile, a new online job search system run by the government has been used by “bogus employers” to “harvest people’s personal details.” *Channel 4 News* “exposed serious security flaws” in the system late last year, with hackers revealing that “they were able to harvest passport details and passwords from users.” [24] The Public and Commercial Services Union also announced in December that it “is receiving reports and queries from members concerned that some local managers appear to be putting pressure on advisors to misrepresent the mandatory nature of signing up to the new service.” [25] Use of the service is not quite mandatory – but individuals can be subject to sanction if they do not sign up when “registration is deemed by a Jobcentre Plus adviser as reasonable in terms of improving

employment prospects.” If “the claimant will not do so willingly, the adviser will be able to require registration through the issue of a Jobseeker’s Direction” – a notice which leads to sanction if it is not observed. [26]

There have been calls from politicians and think tanks for even more intrusive schemes to be implemented – with proposals currently before the House of Commons that, if passed, would give the state control over what people can buy. In late December Conservative MP Alec Shelbrooke proposed legislation that would see the introduction of “welfare cash cards”, through which benefit payments would go to a pre-paid card, rather than into a bank account. This would mean that those in receipt of benefits would be able to make “only priority purchases such as food, clothing, energy, travel and housing. The purchase of luxury goods such as cigarettes, alcohol, Sky television and gambling would be prohibited...taxpayer-funded benefits should be used to fund only essential purchases.” This was presented by Shelbrooke as advancing personal freedom, allowing benefit recipients to “take control of their finances and get back on their feet.”

Such a scheme in fact already exists for one section of society: refused asylum-seekers. Those whose asylum claim has failed “must make arrangements to return to [their] country of origin as soon as possible,” but they “may be able to receive short-term support” from the government, known as section 4 support (it stems from section 4 of the Immigration and Asylum Act 1999). [27] In 2009, the previous government introduced payment cards for those in receipt of section 4 support, which are “only accepted at a small number of Home Office designated retailers including Tesco, Asda, Sainsbury’s, Boots, Peacocks and Morrisons.” It is intended “to cover food and essential toiletries only,” and provides £5 per person per day. Research in 2010 into the impact of the card found that, amongst other things:

- People are unable to buy enough or appropriate food to feed themselves and their children;
- People are unable to buy essential non-food items for themselves and their children;
- Users are unable to travel to access essential services, including legal advice and medical care;
- It causes anxiety and distress amongst users and contributes to the stigmatisation of asylum seekers;
- People have been left without the funds they need to buy food due to technical and administrative failings. [28]

A recent parliamentary inquiry into the effect of section 4 support on children and young people confirmed these findings, [29] but this does not appear to have diminished enthusiasm for the introduction of a similar system for benefit claimants. The think tank Demos released a report in late January arguing that a card could “help recipients control debt and build up budgeting skills, as well as delivering huge administrative savings for the state.” The report’s author has said that “this technology can be empowering for service users – there is much more to it than state control.” A poll by Demos found that “59% of the public supported some form of state control over benefits,” but in “focus

group” discussions, support for state control of spending diminishes. “Participants tended to support the idea of other people (particularly younger people) having their benefits monitored, but not themselves,” reports *The Guardian*. [30] Shelbrooke’s Welfare Cash Card Bill is due to have its second reading in the House of Commons in March.

The impact on disabled people

The coalition government’s enthusiasm for the Work Programme has seen it introduce policies that increase the number of people who can be referred to it, through the acceleration of policies introduced by the previous New Labour government. Starting in October 2008, unemployed disabled people in receipt of social security payment called Employment and Support Allowance (ESA) were subjected to a “Work Capability Assessment” (WCA) to see whether they were capable of working. In October 2010, a trial began in Aberdeen and Burnley that saw the introduction of the assessments for those who claimed ESA prior to October 2008, and by April 2011 the government moved “to full national reassessment.” The government says its aim in doing so is to “support long-term benefit claimants back into work, whilst continuing to provide appropriate support for those who are unable to work.” [31]

The assessments are carried out by the firm Atos Healthcare on behalf of the DWP, and have been strongly criticised. In January, the firm was subjected to “sustained criticism from MPs as they told stories of constituents who had died shortly after being ruled fit for work by the firm.” During a House of Commons debate:

“MPs gave emotional accounts of how very sick individuals had been incorrectly assessed and told to return to work. Some of them later died, they said, and MPs told of others who had killed themselves or become suicidal following such decisions.” [32]

Just as the intensification of workfare for those in receipt of Jobseekers’ Allowance led to campaigning and protest in response, so has the more widespread introduction of WCAs. Disabled People Against Cuts (DPAC), has “a very lengthy list” of government policies and practices against which they are campaigning, one of which is “the way in which the private firm Atos are being allowed to drive disabled people to suicide and death through the Work Capability Assessment tick box system,” said Linda Burnip from the group. Just like MPs who have found their offices phones “clogged with crying people” who have had to undergo a WCA, DPAC has come across similar stories. Burnip related a case in which “a deaf-blind woman [was] left in the middle of the car park [at an Atos reassessment centre] to see if she was able to move herself.” Last June, a man set himself alight outside a Job Centre in Birmingham after being “found fit to work predicating a move from one benefit to another.” [33]

Those assessed as “fully fit to work” after a WCA – by scoring less than 15 points on the firms’ “biopsychosocial” assessments – are placed onto the Work Programme, and so referred by their local Job Centre to one of the prime providers. [34] The way the

programme is designed allows providers to “innovate and focus their resources where it will do most good,” yet a number of accusations have been levelled at firms for “creaming and parking” – that is, seeking employment for those most ready for work (for which the provider is paid by the government), whilst fobbing off those they consider to hold less chance of obtaining work. The disabled charity Scope has expressed “serious concerns that the group of disabled people who are furthest from a job are receiving the least support,” a problem “compounded by performance issues on other disability-specific employment schemes...and the ongoing failures of the WCA which mean many claimants are being placed onto inappropriate programmes.” The charity quotes government statistics: “in spite of making up a third of all referrals onto the programme, disabled people account for only 1 in 5 of the total job outcomes.” [35] A case that emerged early this year saw Triage, a firm sub-contracted by two prime providers, accused by a former employee of telling its staff to “spend as little time and effort as possible on helping them find jobs,” while in training sessions staff referred to unemployed disabled people as “lying, thieving bastards.” [36]

Recipients of ESA who score 15 points in their WCA “are assessed as having limited capability for work at present but as being able to prepare for a return to work,” and are subsequently “placed in the Work Related Activity Group (WRAG).” [37] This initially meant having to attend “work-focused interviews”, but at the end of last year an amendment to the regulations means that:

“Work Programme providers will be able to use mandatory work placements as another measure through which to help ESA WRAG participants move closer to the labour market. It will help these participants to address barriers to work such as lack of work experience due to their limited capability for work.”

The DWP says these changes were made “in line with the view that long term absence from work is bad for the health and well-being of individuals and their families,” [38] although given the effects that being assessed as “fit to work” has had on some disabled people, many people are likely to disagree with the DWP. As noted in a *Guardian* report: “Those in the work-related activity group have recently included people diagnosed with terminal cancer with more than six months to live, victims of strokes, those with mental health issues and people paralysed from the chest down.” [39]

DPAC has regularly held protests against WCAs and other government policies and, as with protests against workfare, this has been through “a grass roots movement,” says Linda Burnip, which “is different from any previous disabled people’s movement in so far as we’ve tried to raise awareness of disabled people’s access and other issues.” Protests have included the blockading of roads in central London – for example at Oxford Circus – with Burnip arguing that “if you have a government who are immoral and corrupt then as a citizen you have a moral obligation to use non-violent direct action to get rid of them.” She notes that as well as making the issue visible by bringing it into the streets, direct action “is massively empowering to those

taking part and others who read about it [or] see it on social media. For disabled people in particular who often have little control over their lives it’s a really good way for them to have some control.”

Extending control with “tougher sanctions”

Despite the movement against new welfare policies led by Boycott Workfare, Disabled People Against the Cuts and numerous other groups and individuals – which has had a number of successes in getting companies and charities to withdraw from the Work Programme – the government is preparing to try and expand its reach. Late last year the government refused to publish the names of companies and charities using workfare, with *The Guardian* reporting that “the DWP has said that the government’s mandatory work programme would “collapse” if the names were made public due to the likelihood of protests against the organisations involved.” [40] This may be because workfare and sanctions are soon to become applicable to whole new swathes of the population. Reforms to the way in which benefits are paid, through the introduction of a new system called Universal Credit, will see the government make “important changes to the existing conditionality and sanctions regime to strengthen the link between people receiving benefits and meeting their responsibilities.” [41]

“Universal Credit will be an integrated benefit in place of income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Housing Benefit, Child Tax Credit and Working Tax Credit,” with the ostensible aim of “[simplifying] the benefit system and [tackling] welfare dependency by making work pay,” according to Lord Freud, a Conservative peer and Under Secretary of State for Welfare Reform. “It will reward people who go back to work by ensuring they are better off in work than on benefits,” he told a conference in January hosted by Capita, the firm that received the contract for implementing the new system. Universal Credit was chosen from a number of options as it “offers the greatest scope to improve work incentives.” [42] It will be tested in a limited number of places across the country from early April until national “roll-out” in October 2013. [43]

The introduction of Universal Credit will also see thousands more people become eligible for referral to the Work Programme. Boycott Workfare told *Statewatch* that when it is brought in, “for the first time ever those in work, be it part time or self-employed work [and in receipt of some form of income-related benefit] will also have their employment monitored, and policed, via the work programme.” There will be “four broad conditionality groups” under the new system:

- Full conditionality – jobseekers;
- Work preparation – people with a disability or those with a health condition which means they have limited capability for work at the current time;
- Keeping in touch with the labour market – lone parent or lead carer in a couple with a child over age one but below age five; and

- No conditionality – people with a disability or health condition which prevents them from working, carers, lone parents or lead carers with a child under the age of one.

However, the thresholds at which people are subject to conditionality will initially “be set at broadly the same point at which people lose entitlement to out-of-work benefits” – in other words, once people earn enough money to disqualify them from state support, conditionality will no longer apply. But “in the future,” says a DWP document, “it will be possible to raise the threshold to apply conditionality to greater numbers of recipients,” because “currently, we believe that some sanctions are set at too low a level.” [44] A system of “personalised conditionality” will be introduced, giving jobcentre employees greater control over claimants, through which even the “low” level of conditionality will make it possible for jobcentre staff to end an individual’s benefit payments “until re-engagement”, and then for a fixed period of weeks afterwards. Under the “high” level of conditionality, a third failure to apply for a job, accept a job offer, or take part in Mandatory Work Activity, will see removal of benefit payments for three years.

With the broader introduction of the workfare policies, protest and resistance seems likely to increase as well. The Work Programme is worth £5 billion, but so far it has failed to work.

One in 10 people referred to the programme have been subjected to sanction and lost their benefit payments, but “as few as one in 20 finds a permanent job.” The total number of people sanctioned since the scheme began “is likely to be more than 150,000.” Despite the fact that the number of people seeking jobs far exceeds the number of jobs available, the employment minister Mark Hoban responded to these figures by saying that:

“Sadly some people are clearly very determined to avoid having to get a job at all and are failing to play by the rules. Through the Work Programme we are offering the hardest-to-help claimants extensive support in order for them to take control of their own lives and return to work.” [45]

But many people do not see this “support” in such a positive light. Boycott Workfare summarise the programme in two short sentences: “The crime is unemployment. The sentence is workfare.” Examined more critically, many elements of the Work Programme begin to look more like authoritarianism than assistance. As commentator Wail Qasim argued following the first reading of Alec Shelbrooke’s Welfare Cash Cards Bill in the House of Commons:

“The entire lives of those who seek state help come to revolve around ensuring that the minimal benefits they receive actually do arrive in their account... Discipline comes to dominate our lives whether we are employed or not and whether it is from employer or state.” [46]

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Kick 'em all out? Anti-politics and post-democracy in the European Union

Leigh Phillips

"¡Que se vayan todos!" ("Kick 'em all out!")

A popular slogan on mobilisations against the entirety of the Argentine political class during the country's 2001 economic crisis

"French statesman Georges Clemenceau said war was too important to leave to the generals. I'm beginning to think Europe is too important to leave to the politicians."

European commissioner Neelie Kroes in *Het Financieele Dagblad* (8 February 2013)

One of the more cringeworthy moments of the last few years of sometimes ideological, sometimes street-fighting - but rarely parliamentary - combat between the European superintendents of austerity [1] and their subjects came in October 2012 when German Chancellor Angela Merkel's visited Athens. Two Greek protesters dressed in Nazi regalia rode through the streets

imitating conquering soldiers from a wartime newsreel. They burnt a flag emblazoned with a Swastika as a piece of radical theatre mocking the Berlin-led imposition of cuts and structural reforms.

Thousands of police were enforcing a ban on all gatherings and protests across much of the city, which became awash in tear-gas when citizens rejected this lockdown. The anger at Merkel's visit was more than understandable given the profound Troika-orchestrated social destruction being wrought in the country and the less-than-democratic means by which this is being instituted. In any case, one is not looking for analytical complexity in the banners and slogans - or fancy dress - of demonstrators. A march, a protest, a strike is a performance, not an academic treatise.

Nevertheless, the incident, along with the usual Merkel effigies with scribbled black Hitler moustaches, was a gift to German and international media, providing them with the perfect telegenic moment to reinforce the narrative of German generosity (or in EU-speak "solidarity") for their bailing out of Athens, and of Greek ingratitude and fecklessness.

When one of the most urgent tasks at the moment is to break this false north-south narrative and overturn the racist stereotypes of industrious (Protestant [2]) northerners and work-shy, corrupt (Catholic/Orthodox) southerners, and to remind "ordinary" German people that they have more in common with Greek protesters than they do with their own elites, the Nazi uniform incident was very much an own-goal however cathartic it may immediately have been to the nearby protesters who raucously applauded the ersatz Schutzstaffel [Stormtrooper] unit.

Beyond the profound offence the incident caused in Germany, it illustrates how much of a loss we are at in terms of having a vocabulary to describe what has happened to Europe since the crisis.

It must be acknowledged that Merkel is plainly not a Nazi. There is no German military occupation of Greece or Italy (or of Portugal, Spain, Ireland, Slovenia, Bulgaria, Latvia etc.) For all the attacks on Roma and immigrants across the bloc that have increased since the crisis, a “Final Solution” has not been proposed. For all of the shifts in fiscal-policy decision-making away from democratically elected parliaments to unelected bureaucrats and diplomats within European institutions, the EU is not a military dictatorship.

So when critics point out the extra-democratic turn of the EU in its crisis response the EU’s defenders and spokespersons laugh derisively at such arguments, saying that the bloc is manifestly not North Korea or Belarus. The charge of anti-democratic manoeuvring is, they could say, an exaggeration akin to the teenager tearfully calling their parents fascists for not letting them go to the disco.

But the sloppy convergence in the media and in popular understanding of the terms “despotism”, “authoritarianism”, “dictatorship”, “autocracy” and “totalitarianism” – which all mean slightly different things – leaves us without a language to describe precisely what has happened.

Between norms of liberal parliamentary democracy and Nazi dictatorship there is a spectrum of democratic and less-than-democratic forms. I want to argue that it would be useful to revisit why it is we chose the democratic forms we did, and that in doing so we will find that the EU crisis-response lies somewhere on this spectrum a good distance from the liberal democratic ideal.

To those who say: “Who cares about the liberal democratic ideal? It is insufficiently democratic anyway and we must go further,” I would respond that I don’t disagree with you.

However, the eighteenth century revolutionary transformation from monarchic autocracy to bourgeois democracy was manifestly a great advance and should not be sneezed at, as anyone in Tunisia or Egypt will tell you today.

Additionally, it is precisely through this withering away of democratic norms that the reversal of the left’s gains of the last 70 years is being achieved.

In the struggle against despotism, questions about how far democracy should be extended (to the economic realm, for example) are suddenly up for debate in a way that they have rarely been in the past. It is in the struggle for democracy that we can ask these other questions. A Grand Unifying Theory, if you will, of social justice struggles - from trade union rights to women’s rights to economic equality - is a tale of the steady extension of the realms that should be opened up to democratic decision-making.

My point here is that the struggle for European democracy is not parallel to the fight against austerity. The latter is in fact a subset of the former. The fight for European democracy is what is fundamental.

Simultaneous to what I will describe as the European “post-democratic turn” has been the development - dating back at least a couple of decades now in Europe and beyond - of a popular mood of “anti-politics” that is the obverse of post-democracy.

Depending on its particular flavour, anti-politics can exist as a cynical apathy that buttresses the neo-liberal post-democratic turn, or even wishes for an outright authoritarian turn with the arrival of a strongman saviour. But anti-politics can also be the germ of the overthrow of post-democracy if it embraces a progressive road that transforms anti-politics into the construction of (rather than just demand for) popular self-government.

The good news is that this means that all is in play. The bad news is that unless progressive forces get their act together it is the non-democratic forces that will further exploit this flux.

Post-democracy

In 2004, British sociologist Colin Crouch authored a slim volume analysing the late-New Labour conjuncture that unfortunately did not receive the recognition it deserved for its highly functional novel insight that can be applied well beyond the Blairite geography.

Crouch’s key illumination was his recognition that in the UK in the 2000s, and indeed throughout the West, the pageant of democracy continues, but without substance. It is not that we have collapsed into autocracies. Formally, elections proceed with regularity, but the possibility of change is excluded with all policies - at least within the economic realm - coordinated outside the normal democratic channels.

This is distinct from the traditional critique that bourgeois politics is dominated by elites (‘Twas ever thus. What is new here?) The argument is rather that while “virtually all the components of democracy survive within post-democracy,” [3] decision-making is on the one hand being taken out of the hands of elected parliaments and placed in the hands of experts, and on the other transformed into private, treaty-based negotiations between government leaders.

In brief: the pageant of democracy continues, but the substance is steadily hollowed out.

It is this hollowing out of democracy that permits still greater political dominance by capital – and because a reversal of the left’s historic post-war gains can be partially but not fully achieved democratically, ultimately *post-democracy* is the mechanism through which the unravelling of the post-war compromise between capital and labour will be completed.

“While elections certainly exist and can change governments, public electoral debate is a tightly controlled spectacle, managed by rival teams of professionals experts in the techniques of persuasion, and considering a small range of issues selected by those teams. The mass of citizens plays a passive, quiescent, even apathetic part, responding only to the signals given to them. Behind this spectacle of the electoral game, politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business interests.” [4]

Long before the crisis struck, the EU was already one of the world’s premiere exemplars of post-democracy in action, having steadily metastasised from a customs union to a quasi-government with

far-reaching legislation covering most policy areas (in theory the EU has restricted competences but in reality there are always legal grounds to be found to extend its superintending realm should the desire be there for it to do so). Without going into the details of the European legislative process, suffice it to say that power is shared between the unelected civil servants of the European Commission (Europe's executive), and the legislative chamber of the European Council/Council of Ministers, representing different configurations of national ministers depending on the policy topic up for discussion (agriculture ministers, foreign ministers, etc., up to first ministers – the European Council, which is the Council formation of the bloc's presidents and prime ministers, the supreme legislative chamber of the EU.) The European Parliament is the sole directly elected chamber of the three main EU institutions. Unlike any other parliament in the Western world, it does not have the power to propose legislation and can only amend it. This power is nothing to sneeze at, but it is a crippled chamber compared to national counterparts.

Understanding the nature of the Council is crucial to grasping the post-democratic nature of the EU. It is the primary law-making body of the EU. While *most regulations* are decided by the Commission independently, laws are first proposed by the Commission and the Council then decides whether it will give its approval. In reality, the Commission rarely if ever proposes anything on which it has not already sounded out with the Council.

Meetings of the Council of Ministers are largely held in secret except for a handful of pre-selected televised sessions (which are made all the more banal as a result). The Council maintains its own secretariat general and has begat some 250 committees that supervise the Commission's implementation of laws and "working groups" that examine legislative proposals.

This network of committees is in turn controlled by the Committee of Permanent Representatives, or Coreper. This brings together national officials with the status of ambassadors - the heads of the permanent representations (essentially the embassies to the EU from each of the member states) or their deputies - to meet multiple times a week to prepare the agendas of Council meetings and carry out its orders. Examinations of Commission proposals are usually first performed by Coreper, for example. This clutch of diplomats is the highly secretive power behind the throne. Around 70% of EU legislation is decided, in effect, in these working groups, another 15% is set in Coreper and just 15% is actually discussed and negotiated in the Council.

What we have here is a senate-like legislative chamber whose individual members may be representative of their "district" (their nation), but which meets in secret and is never the subject of a general election. It would be like having a parliament to which members are elected individually but a government the electorate could never vote out, nor could they reject or overturn the current policy path.

The legislative decision-making apparatus is not parliamentary but intergovernmental and takes place primarily between diplomats behind closed doors. In truth, this is a form of treaty making rather than legislating, a method that historically was

the realm of war, peace-making, and espionage. Great swathes of policy areas have been taken out of the domain of public, contestatory parliaments and placed in the hands of diplomats and civil servants.

This replacement of national democratic legislative processes with treaty-making intergovernmentalism is not unique to the EU, even if the EU is the ideal *nonpareil* of this model. The United Nations Security Council, the World Trade Organisation, the International Monetary Fund, the World Bank, even the UN Framework Convention on Climate Change and the International Whaling Commission, are all noodles in the alphabet soup of the construction of international *governance* without *government*.

Many policy areas require international governance, from climate change to managing the global economy to tackling internet child pornography, antibiotic resistance and even near-Earth asteroid tracking. International governance structures are being built to tackle these – all on a post-democratic basis. Our task is to transform this globalisation process into a democratic one.

Europe's post-democratic turn was not pre-ordained. EU leaders have for decades given lip service to the problem of what they termed the bloc's "democratic deficit." It may well be that some were genuinely concerned about this. Some of the original visionaries of the European project assumed that the sub-democratic wrinkles of the EU framework would eventually be ironed out with the steady development of a United States of Europe, with a governmental cabinet and first minister drawn from a fully democratic European Parliament. One can certainly fault these visionaries for their top-down approach, but there is no question that their vision was ultimately a democratic one.

But the intergovernmentalist approach – the not-quite-democratic halfway house between national democracy and international democracy – gradually came to be embraced as an end in itself and the democratic end-point was shelved. These structures are much more efficient than a democracy and certainly are more predictable (more capable of providing "legal certainty") but are also more malleable by capital.

The first clear signal that a post-democratic consensus had emerged and all efforts at overcoming the democratic deficit would be abandoned was the EU elite response to the defeat of the European Constitution at the hands of French and Dutch referendum voters in 2005. Despite this rejection, an almost identical version of the constitution returned in 2007, this time going by the name of the Lisbon Treaty. In 2008, Irish voters still rejected the tarted up Constitution-cum-Lisbon-Treaty. Within hours of the vote, Brussels was demanding a fresh vote, a wish that they were ultimately granted. With the help of a well-funded fearmongering campaign, Ireland voted in favour in 2009. Ireland had also been forced to vote twice on the Nice Treaty after initially rejecting it in 2001, but the quadruple "do-over" of the European Constitution took post-democratic manipulation to another level. European power-brokers had announced that it would indeed, *pace* Brecht, be simpler if the government dissolved the people and elected another.

In 2011, that inflection-point year of the eurocrisis, EU power-brokers moved forward with ever more radical structural changes to fiscal governance and ever greater interference in the democratic process, and in three cases effectively overthrew governments. Any remaining anxiety about Europe's democratic deficit was set aside.

“They made us look like an occupied government”

The European Central Bank, like all “independent” central banks, is a legislative chamber of a sort as well, but solely concerned with monetary policy. It also represents another mechanism through which a policy area is taken out of the hands of parliaments, in this case with a painful set of disciplinary instruments at its disposal. Monetary policy was deemed “too important” to be “politicised” – in other words, too important to be decided democratically.

Most citizens in “programme countries,” a euphemism for their diminished-sovereignty status in return for bailouts, will be familiar by now with the dreaded quarterly arrival of inspectors from the troika – austerity and structural adjustment monitors from the EC, IMF and ECB. After seeing this humiliating and almost total surrender of fiscal sovereignty, Portuguese PM Jose Socrates, and more recently his Spanish counterpart Mariano Rajoy, balked at suffering a similar indignity. It took a financial coup d'état by the ECB to bring Socrates to heel. “I have seen what happened to Greece and Ireland and do not want the same happening to my country. Portugal will manage on its own, it will not require a bailout,” he declared. A few days after he finally succumbed in April last year, it emerged that the ECB chief had forced his hand by pulling the plug on the state. When Portuguese banks announced they would no longer purchase bonds if Lisbon did not seek a bailout, Socrates had no choice but to request an external lifeline. Later in the week, the head of the country's banking association, Antonio de Sousa, said that he had had “clear instructions” from the ECB and the Bank of Portugal to turn off the tap. Even hardened cynics in Lisbon and Brussels were staggered, privately saying the ECB had crossed a line.

In August 2011, the ECB swooped in to rescue Italy and Spain in a massive bond-buying programme after yields approached the level Greece and Ireland had faced when they applied for aid from international lenders. A secret letter made public by Italian daily *Corriere della sera* from then ECB chief Jean-Claude Trichet and his successor Mario Draghi delineated the quid pro quo for this assistance: still further austerity and labour market deregulation. The letter told the Italian government exactly what measures had to be instituted, on what schedule and using which legislative mechanisms. The ECB, unelected and unaccountable, was now directing Italian fiscal and labour policy in secret. Even Silvio Berlusconi said at the time: “They made us look like an occupied government.”

Markets had conniptions when Greek PM George Papandreou announced in October 2011 that he would hold a referendum before his government could agree to a second bailout and still

deeper austerity. On 2 November 2011, the “Frankfurt Group” (GdF for short, as per the letters on their lapel badges identifying them to security) – an unelected, self-selected octet established last October, reportedly in the backroom of the old Frankfurt opera house during the leaving do for Jean-Claude Trichet – called him in for a dressing down.

The GdF at the time comprised IMF chief Christine Lagarde; German chancellor Angela Merkel; French president Nicolas Sarkozy; newly installed ECB chief Mario Draghi; EC president José Manuel Barroso; Jean-Claude Juncker, chairman of the Eurogroup (comprised of the 17 states who use the single currency); Herman van Rompuy, the president of the European Council; and Olli Rehn, EU commissioner for economic and monetary affairs. They had decided that they had had enough of this man who was incapable of forcing through the level of cuts and deregulation they demanded.

Days later, Papandreou pulled his referendum and resigned. He was replaced by unelected technocrat Lucas Papademos, former ECB vice president and negotiator when Greece applied for its first bailout. The troika had gone one step further than the manoeuvre that forced the Portuguese leader to sign up to a bailout against his will: they had for the first time toppled a government and suspended Greek democracy, installing one of their own. Days later, they would do the same in Italy.

If the toppling of Greece's prime minister was more of a European-politburo group effort, albeit with the ECB at its heart, most analysts are clear that the overthrow of Berlusconi, untouchable even after 18 years of court cases and corruption scandals, was effected directly by the ECB. As Italian bond yields soared to 6.5%, near the danger zone at which Athens, Dublin and Lisbon signed up to bailouts, it was widely reported that ECB chief Draghi was pressuring Berlusconi to step down. This was signalled by very limited Italian bond-buying by the ECB on the Monday before he resigned to be replaced with ex-EU commissioner Mario Monti. This bond-market weapon at Frankfurt's disposal was of an order of magnitude greater than any domestic pressure from within Berlusconi's own party or the opposition.

Toppling two prime ministers in a week served as a muscular, unambiguous warning to other governments that the ECB giveth and the ECB taketh away. When Spanish PM Mariano Rajoy was dragging his feet in requesting a bailout, aware that he would be surrendering his country's sovereignty, pressure was mounted on Madrid to capitulate. In perhaps a polite reminder to Rajoy of their role in Berlusconi's ousting, ECB governing council members publicly encouraged him to avoid delay.

Moves towards an EU “Fiscal Union” first unveiled in June 2012 by the self-selected quartet of the presidents of the European Council, European Commission, Eurogroup and ECB go well beyond the less-than-democratic centralised EU review of national budgets and fines approved in 2011. It is a move towards a still deeper pooling of sovereignty but without democratic oversight. A fully-fledged “Fiscal Union” remains incomplete and as of writing is the topic of vigorous debate between national capitals, but

if approved Brussels would be given the power to rewrite national budgets. If a country needed to increase its borrowing it would have to get permission from other eurozone governments. This is in line with the vision of political union outlined by ex-ECB chief Jean-Claude Trichet in 2011 when still in office – of a centralised veto over national budgets jointly wielded by the commission and council “in liaison with” the ECB, with overspending governments “taken into receivership.” [5]

The ECB vision, expressed on a number of public occasions by Trichet and subsequently his successor, was described by the former as a “quantum leap.” It involves two aspects: a radical liberalising programme of labour market deregulation, pension restructuring and wage deflation on the one hand; and on the other for fiscal policy to be taken out of the hands of parliaments and placed in the hands of “experts” – in the long-term an EU finance ministry – in the same way that monetary policy has been removed from democratic chambers and placed in the hands of Frankfurt.

Orthodox analysts are quite sympathetic to the goals of the central bank. Jacob Funk Kirkegaard of the Petersen Institute, the Washington economic think-tank, wrote: “The ECB is in a strategic game with Europe’s democratic governments,” an overtly political strategy that is “aimed at getting recalcitrant eurozone policymakers to do things they otherwise would not do.” The bank “is thinking about the design of the political institutions that will govern the eurozone for decades.” For Kirkegaard and a number of other long-time ECB watchers, the main target is ultimately not Spain or Italy, but France, historically resistant to more binding eurozone fiscal rules viewed as a radical infringement of its sovereignty. By doing little in the face of market attacks on Spain and Italy, Frankfurt is warning Paris and its new president that it has no choice but to accede to its vision of technocratic fiscal governance.

Challenged by journalists to explain how such important powers could be taken out of the hands of elected representatives without a serious erosion of democracy, Jose Manuel Barroso said in 2011 that there is no threat to popular sovereignty so long as the member states in the eurogroup vote to give away these powers to civil servants.

“In terms of democracy, let’s be clear. When democratic member states in full respect of constitutional rules entrust some entities with some powers, this is a fully democratic process and absolutely in respect of democratic principles.”

He compared the transfer of fiscal policy to independent experts to the transfer of monetary policy to central banks that has occurred in many countries over the past two decades.

“Just as in our own countries, when we give some powers to a central bank, it is of course not accountable to a parliament, but of course the central bank was created through democratic procedures and is an institution that is absolutely built on a sound democratic architecture.”

The European Parliament has failed to defend democracy against these manoeuvres. Since the start of the crisis conservatives,

liberals, Greens and social democrats have consistently voted in favour of drives toward deeper economic integration that takes decisions out of the hands of elected chambers. Indeed, the sole EU institution with a direct electoral mandate has gone further in insisting on a gelding of democracy than even the Commission or Council of Ministers would have done.

Every few generations it seems we must remind ourselves what democracy is and why it is important. At the time of revolutionary France and America, some favoured an extension of democracy to the widest possible geometry. Others viewed the masses with suspicion and, while opposing absolute monarchy, felt that it would be in society’s best interest if the cleverest, most educated and most virtuous held the reins of power. At the birth of the United States the more egalitarian Thomas Jefferson believed in equality of political opportunity (admittedly only to white males) and favoured “plain folk” and the “yeoman farmer” over the “cesspools of corruption” inhabited by financiers, bankers and industrialists. His nemesis was the proto-technocrat Alexander Hamilton who feared ordinary people’s capacity for self-government, their tendency for “factiousness” (i.e. politics) and the “unsteadiness” of governments. Hamilton instead preferred rule by elites. “Complaints are everywhere heard from our most considerate and virtuous citizens...that our governments are too unstable and that the public good is disregarded in the conflicts of rival parties,” he wrote in the *Federalist Papers*.

Every time there is an election, EU power brokers are petrified that the voters will upset the apple cart. Their response is to warn voters, obliquely in the case of the larger states and more directly in the case of the less powerful ones, to “be responsible.” In other words: do not vote the wrong way. Brussels repeatedly seeks out cross-party assurances that the economic policies of the outgoing government will stand whoever wins the election. In this way, voters are allowed to vote for whoever they like, and subjects that are unrelated to fiscal policy such as gay rights or food packaging are still open to discussion, but fiscal policies cannot change.

In those cases where voters have rejected Brussels’ directions and backed the anti-austerity voices of left or right, immediately after an election EU power-brokers will put into operation efforts to minimise the fall-out, demanding governments of national unity or technocratic administrations.

But post-democracy is not simply a case of getting rid of democracy. As Crouch argues, parties and elections continue to be relevant.

“Politicians in many countries are becoming alarmed at growing voter apathy and declining membership in parties. This is the interesting paradox of the political class. It wants as much as possible to exclude the mass of citizens from becoming actively involved in probing its secrets, organising oppositional activities, disturbing the tight control exercised by the politico-business elite.

But it desperately wants us to offer passive support. It dreads the possibility that we might lose interest in its activities, fail to vote for it, give no money to its parties, ignore it. The solution it sees is to find means of encouraging the

maximum level of minimal participation. If it is worried about voter apathy, it thinks about extending the voting hours of polling stations, or of enabling voting by telephone or the internet.”

Crouch also argues that the obverse of the post-democratic turn at the level of European (and international) political elites is a post-democratic “suspicion of politics” (and what I will call *anti-politics*) from below, a cynical rejection of the entire political class as inevitably venal and out to swindle the public, as exemplified in the song by Jarvis Cocker [6].

“The negative model, for all its aggression against the political class, shares with the passive approach to democracy the idea that politics is essentially an affair of elites, who are then subjected to blaming and shaming by an angry populace of spectators when we discover that they got something wrong.” [7]

Anti-politics is pervasive. I’ll buy anyone a decidedly nice bottle of scotch if they can find me a street *anywhere* in the Western world where nine out of ten passers-by when asked what they thought of politicians did not respond with some variation of: “Well, they’re all corrupt, lying bastards, aren’t they?”

There are ever sounder reasons to think so. The 2012/2013 banking scandals in Greece, Spain and Italy implicated leading figures in government, and from traditional parties left and right, in efforts to protect themselves and their friends and family from the taxation rules mere mortal citizens are subject to. Instead of outrage the more common reaction was a shrugging “Well, what do you expect from these crooks?”

Deference to authority of all descriptions has broken down entirely. This is to be welcomed if it is channelled in a progressive direction, but it can go in other directions as well.

Anti-politics, the nursemaid of technocracy

The anti-political attitude, as Crouch points out, can also actually be exploited by our rulers to *buttress* the idea that some or all governance issues should be taken out of the hands of politicians. Anti-politics can endorse the post-democratic turn.

“[The] post-democratic growing suspicion of politics...an atmosphere of cynicism about politics and politicians, low expectations of their achievements, and close control of their scope and power...suits the agenda of those wishing to rein back the active state, as in the form of the welfare state and Keynesian state, precisely in order to liberate and deregulate that private power.” [8]

In 2012, a group of Dutch entrepreneurs launched a firm, Mars One, which proposed to establish the first human colony on Mars by 2023. This mission would not be funded by or directed by the public sector. Instead a private company would make all the decisions and the money would come from the private sector through advertising and sponsorships for the “Big Brother” style televised game show that would first pick the colonists and then follow them through their tribulations on the red planet. Now, I am as space exploration-obsessed as the next kid, but this all

struck me as a travesty of the noble pursuit of extraterrestrial discovery and I simply do not believe that the true costs (in the trillions rather than the roughly €1 billion the entrepreneurs are claiming) will be swallowed by the private sector.

Even more striking to me was how in a YouTube video promoting the scheme, Dutch Nobel-prize-winning theoretical physicist Gerard ‘t Hooft, who backs the project, blithely dismissed the democratic, public-sector-directed exploration of space in a statement intended to reassure audiences that this would not be a waste of their taxes. He did so in classic anti-political fashion, correctly assuming that his audience held a visceral distaste for politicians.

“As for financing,” he said, “this is going to be a private enterprise. Only private firms are going to contribute. *No political mumbo-jumbo*. No tax-payers’ money will be involved.” [9]

Few people would support an explicit proposal to do away with democratic control over an issue, but when ‘t Hooft or EU leaders or anyone else says that a particular issue “shouldn’t be politicised,” or is “too important to be distorted by politics” many people would actually concur, even though the post-democratic structural consequences of the two statements are indistinguishable.

Analyse the language here and see how EU power-brokers exploit people’s cynicism about politicians. Upon the first visit to Brussels in November 2011 of the technocrat prime minister of Greece, ex-European-Central-Bank man Lucas Papademos who was installed after centre-left leader George Papandreou was effectively removed by the Frankfurt Group, European Commission President Jose Manuel Barroso warned that the eurozone cataclysm was so serious that we no longer have time for “political games.” [10]

When Mario Monti first visited Brussels after he was installed as premier by the same group, Barroso said that the EU existed as a mechanism to take such decisions out of the hands of politicians and avoid public scrutiny:

“After the Second World War, the countries that founded the European Community created supranational institutions, and now we have the European Commission, the European Court of Justice and the ECB. Why? Precisely to have independent assessment and monitoring and also if possible independent enforcement mechanisms that are not subject to political manoeuvring.”

I don’t want to beat up on Barroso alone. The entire EU political class – elected or otherwise – regularly and unashamedly makes similar comments. I’ll give you another from Jean-Claude Juncker, the Luxembourgish prime minister and until recently, long-standing chair of the powerful Eurogroup. In 2011, at a small Brussels think-tank function, forgetting that reporters were present, he for once spoke quite frankly about the need for secrecy, saying: “I’m ready to be insulted as being insufficiently democratic, but I want to be serious.” Economic policy discussions were simply too sensitive, he said, and holding them in public potentially put “millions of people at risk.” “I am for secret, dark

debates,” he joked at the time, adding that despite his Catholic upbringing he had often “had to lie.”

The parachuting of Monti into the Palazzo Chigi is an object lesson in the exploitation of the anti-political attitude for post-democratic ends.

Berlusconi is a more than dubious political character to be sure, and there is vast corruption across the spectrum of the Italian political class. But it should be self-evident to any democrat that it is for the Italian people to rid themselves of their tyrants, either through the ballot box or via the streets, not for a shadowy group of unelected figures in Frankfurt and Brussels to orchestrate his downfall.

And yet, and I can report here from my experience as a reporter in the European capital, many of the young professional expat Italians in Brussels – many of them friends of mine who profess strong commitments to human rights, civil rights, environmental protection, etc. – cheered his ousting, backed the undemocratic way he was removed, and supported the imposition of technocrat Monti precisely because “*the economic crisis is simply too important an issue to be left to the corrupt class of Italian politicians.*”

We even had a slick, Michael-Moore-style but pro-Monti documentary from the former editor of the classical liberal *Economist* magazine, Bill Emmott, which attempted to exploit this anti-political sentiment against the Italian political class to further shock-therapy aims. *Girlfriend in a Coma*, which took its title from a song by seminal Eighties sensitive indie favourites The Smiths and featured Benedict “Sherlock” Cumberbatch as the voice of Dante Alighieri, endorsed the full EU austere package of “reforms”: further public sector cuts, spending limits, flat taxes, privatisation and labour market deregulation. It targeted the usual villains of trade unions and overspending as well as the Italian specificities of corruption, nepotism, the mafia and the denigration of women.

The film billed itself, in an almost “Occupy” style, as the “Campaign to Wake Italy Up.” It wanted to create a movement, an Italian Spring, by specifically targeting the young Italian diaspora – the million or so expatriate Italians outside the country, many of them graduates. Viewers were encouraged to upload their own ideas to the film’s website, while the oven-ready hashtags #wakeitalyup and #italiandiaspora were waiting to go viral (albeit presumably only amongst bilingual ex-pats.)

Regardless of whether they saw the film, youthful expat cosmopolitans did endorse Monti in much greater numbers – he received his highest share of the vote (30%) in the ‘Italian expats in Europe’ voting region, compared to 9% in Italy. Emmott was on to something. It is not so much that this expat class is economically conservative as just economically illiterate. These are Bush haters and Obama lovers. They’re members of Amnesty International and they bike to work. And they’ll say that they support democracy and think that they mean it. But at the same time, when you really push them, they say that they don’t trust ordinary people to vote “the right way.” They support EU efforts to take fiscal decision-making out of the hands of parliaments lest voters spend their way to oblivion. After a few drinks, they

dismiss “most people” as stupid. A few drinks more and they call them “the mob.” It’s this lack of trust in regular people, this unacknowledged attitude that there is a group of experts who know better than everyone else, this belief that there need to be checks on democracy, that frightens me. *Girlfriend in a Coma’s* emphasis on the bright, young, hyper-educated Italian diaspora speaks volumes about the filmmakers’ lack of confidence in all other sorts of Italian voters.

Crouch has words for this class too, or at least the NGO-professional cohort within this group, although this may be uncomfortable for some who feel that their work is above all about strengthening human rights and democracy. [11]

Since roughly the 1980s, there has been an expansion in the number of non-governmental organisations, causes and pressure groups in Brussels at the same time as membership in electoral parties has dwindled, and they appear to be ever growing in importance. Crouch asks: “Do these not constitute the embodiment of a healthy positive citizenship?” [12]

He answers “No” to his own question. These are alternatives to electoral politics as well.

“The world of politically active causes, movements and lobbies belongs to liberal rather than democratic politics, in that few rules govern the modalities for trying to exercise influence. The resources available to different causes vary massively and systematically. Lobbies on behalf of business interests always have an enormous advantage... threaten[ing] that unless government listens to them, their own sector will not be successful... Non-business interests can rarely claim anything so potent as damage to economic success.” [13]

In its own complicated way, the rise of the NGO supports the post-democratic turn in that it is co-incident with the demise of the mass political party as the mechanism through which change is attempted to be achieved and embraces lobbying in its place. It is an end-run around democracy.

Many NGOs have done and continue to do good work. But this is beside the point. The question must be asked: why can “good work” no longer be achieved through normal democratic channels instead of lobbying?

To be sure, the comparison does not work completely. The success of many NGOs depends to a good extent on the mobilisation of people behind them (even if in some – though not all - cases “the people” are objects to be marshalled for this or that purpose in an attempt to demonstrate to those being lobbied how representative an NGO’s position is, and “the people” are not a self-organising force, deciding democratically on the course of action.) Can we really say that the rise of the NGO contributed to the post-democratic turn, or is the NGO just a response to an already existing post-democratic/anti-politics phenomenon?

Either way, Crouch is right not to reduce the question of NGOism to a simplistic Manichaean division between “white-hat” and “black-hat” lobbying (NGOs vs corporate lobbyists) and to instead explore the post-democratic/anti-political ecology in which both exist.

Fascism, the acme of anti-politics

It should be obvious by now, in the wake of the steady growth enjoyed by far-right parties in many European countries since the start of the crisis, that the anti-political mood is fertile ground for some rather nasty developments indeed.

From Hungary's Jobbik, with its Magyar Garda (Hungarian Guard) paramilitary association and their anti-Roma pogroms and unashamed antisemitism, to the unreconstructed neo-Nazis of Greece's Golden Dawn (polling 14% at the time of writing) whose gangs of black-shirted bruisers drag immigrants off public transport and break up immigrant market stalls in full view of a sympathetic police, Europe's new far right is soaking up the anger, cynicism, apathy and fear of people who have abandoned all hope in the political class. Italy's Lega Nord, France's Front National (whose 17.9% for Marine Le Pen in the 2012 presidential elections now seems like a solidified voting bloc and no longer simply a protest vote), Denmark's Folkparti, the Netherlands' far-right "lite" of Geert Wilders – there are few countries left without a far-right party now solidly part of the mainstream.

This is not to say that the rise of the far right is a simple function of austerity, crisis and the anti-political mood. There are a range of complications involved. Support is not consistent and the anti-political mood is a harsh mistress. With allegiances to political parties that once went back multiple generations now lasting less time than it takes a fresh internet meme to come and go, voters will dump a far-right party with as little regret as any other. Golden Dawn was not the first such party to profit from the Greek cataclysm. Laos, a hard-right Greek Orthodox party historically on the fringes of the country's political scene, shot up like a rocket but was wiped out following its support for the EU-IMF bail-out. Similarly, Geert Wilders' anti-austerity turn is a product of his attempt to revive his fortunes after he was associated with the cuts to social programmes of the liberal-conservative coalition he had been holding up.

It is undeniable, however, that if the "Kick out all the bums" attitude is not channelled in a progressive direction it can be absorbed by the far right instead. The rise of this form of anti-establishment politics is inexorably linked to the incapacity of traditional social democracy [14] to present a constructive channel for fury at elites. The rise of the far right is the twin of the collapse of social democracy. Of course, it is not as simple to say that all blue collar voters have switched from social democracy to the far right. This is demonstrably false. With the (instructive) exception of Greece where Pasok, the country's traditional centre-left party, has been all but wiped out, a clear majority of working people in almost every European country continue to vote for social democrats.

But voter abstention is soaring, particularly amongst the working poor, and the far right go fishing in these abstentionist waters. Italy's anti-immigrant and regionalist Lega Nord (Northern League) has soaked up such support in areas that until the 1980s were strongholds of working class activity and mobilisation that its breakthrough in 2008 allowed then leader Umberto Bossi to claim that his was "the new working class party." [15]

Equally in France, the Front National does best in de-industrialised areas and peri-urban commuter belts amongst low-paid private-sector workers, the unemployed and small shopkeepers bankrupted by competition with the out-of-town hypermarkets. "It is a vote that has taken root east of a line from Le Havre in the north to Perpignan in the south, and is made up of the victims of globalisation," according to sociologist Sylvain Crepon who specialises in the demographics of the Front National. "The Front National scores well among people living in poverty, who have a real fear about how to make ends meet." [16] Consistently across Europe, the empirical evidence supports the thesis that being in the category of those viewed as surplus by the market economy and abandoned by social democratic parties "significantly raises" the probability of voting for the extreme right. [17]

A 2011 poll for Greece's Kappa Institute found that 30% of respondents wanted the country to be led by "a group of experts and technocrats" and 22.7% wanted "a strongman" to resolve the ongoing crisis. [18] In this case, we can see the anti-political mood supporting both the technocratic and fascist routes. A more recent survey in France for *Le Monde* made similar findings: 82% agreed that politicians act principally in their own interest, 72% said that "the democratic system in France does not work well and no one represents my ideas," and a full 87% of respondents expressed a desire for a "real leader to restore order." [19]

It is transparent that post-democracy and anti-politics are mutually reinforcing. The anti-political mood is exploited by the post-democratic elites to support the removal of great swathes of legislative subjects (and in particular fiscal policy) from the realm of democratic contest. At the same time, the deepening social dislocation that the policies of austerity and structural adjustment have imposed in this post-democratic fashion alienate electorates still further, deepening the anti-political sentiment.

For a growing number this has led to a desire for a strongman, but it does not need to be this way. We've identified here that anti-politics can push in two directions: support of post-democratic technocracy or support of fascism - a strongman or paramilitary force to "restore order." The difference between the two lies primarily in their attitude to force, to minorities, and their auras of "respectability." But in terms of their relationship to democracy – and their agreement on the need to curb the excesses of democracy - the two are essentially identical. They are both varieties of despotism.

Anti-politics and self-government

There is a third direction that anti-politics can take; a progressive and truly democratic direction. There is the possibility that the rejection of the political class transforms itself into a belief in self-government – *the idea that we ordinary people are capable of governing ourselves* - and the desire for a transcendence of liberal political and economic structures that, however much they should be defended against despotism, are themselves far from fully democratic.

Indeed, a rejection of the governing classes is the most fundamental prerequisite for the achievement of genuine democracy.

“¡Que se vayan todos!” (Kick ‘em all out!) was the famous slogan of the Argentine piquetero movement of 2001 and their caceroleros (noisy street protests banging pots and pans) when the government saw its legitimacy collapse entirely. New found solidarity and local decision-making sprung up from urban gatherings in their thousands to local neighbourhood assemblies, work committees addressing people’s needs, and occupations of factories that in many cases turned into industrial self-management. The conclusion of Argentina’s 2001/2002 movement is well beyond the remit of this paper, but suffice to say that we see similar dynamics at play in Iceland’s 2009 “revolution”; the 15-M/Indignados movement of squares in Spain; the carnation-wielding demonstrators that fill Portuguese squares singing the revolutionary anthem “Grandola, Vila Morena”; Bulgaria’s February 2013 protests that toppled the prime minister, and the interplay between Greece’s left-wing Syriza party and the popular protests and general strikes in that country.

In September 2012, thousands of Spanish protesters surrounded the parliament in Madrid carrying a large banner emblazoned with the slogan of the Argentine piqueteros: “Que se vayan todos!” The centre-left daily *El País* noted that this demand was made “*sin distinción*” (with no distinction between the different parties), a demand that “experts” warned demonstrated the emergence of anti-democratic populism. [20] On the contrary, it is through these movements that democracy has the best chance of being revived and extended.

As much as we should be optimistic about these developments, not all grassroots movements that emerge in resistance to austerity have a democratic character or should be blindly cheered on.

While I’ve set out three main roads of anti-politics (liberal/technocratic, fascist/authoritarian, and progressive/self-governing) this does not mean that these roads do not at times cross paths. The liberal-technocratic governance of Greece has, for example, been accompanied by a steady ratcheting up of civil repression: arbitrary arrests, police violence, excessive use of tear gas on crowds, rounding-up of dissidents, mass jailing of immigrants, collusion between the police and far-right paramilitary, militarisation of labour, and intimidation of the media.

But we should also consider the hybrid phenomenon of the Five Star Movement (Movimento 5 Stelle, M5S) of comedian Beppe Grillo in Italy, the *quintessenza* of anti-politics.

Anti-political and pan-ideological

There should be no time for the lazy category of “populism” that the EU political class applies without ever really defining it to any politics that does not fit within the narrow confines of the liberalising Brussels centre-left-centre-right consensus. For example, both Syriza and Golden Dawn, two parties of radically different perspectives on almost all questions, are lumped together. So too in France is the *Front de Gauche* of Jean-Luc Melenchon and the *Front National* of Marine Le Pen, and in the Netherlands the *Socialistische Partij* and the *Partij van de Vrijheid* of Geert Wilders. Since the Italian elections in February, Beppe Grillo and even Silvio Berlusconi have been cast as “clowns” out to destroy the eurozone by both the German tabloid *Bild* and the *Economist*

magazine. [21] When the category of “populism” is so broad and encompasses such widely differing sets of politics it ceases to have any meaning.

The soft-Keynesian policy proposals of the likes of Syriza, Melenchon and the Dutch SP are crisply to the right of the positions of the post-war social democratic parties of northern Europe that ushered in the welfare state through to the end of what the French call *Les Trentes Glorieuses* – the 30 glorious post-war years of labour-capital compromise. A useful comparison is the 1945 election manifesto of the British Labour Party which promised to nationalise great swathes of the economy, take the Bank of England under democratic control, and deliver public healthcare, full employment and progressive taxation that would squeeze the rich until they squeaked. Their continental counterparts were scarcely any different. By this logic, Clement Atlee, Olof Palme, Willy Brandt and Bruno Kreisky – the giants of European social democracy – were all populists and demagogues. For contemporary European social democrats to describe the likes of Melenchon and Tsipras as populists is to deny their own origins and to denigrate their greatest achievements.

The success of Beppe Grillo’s M5S in the February elections, in which they won the most votes of any party, has thoroughly destabilised the political ecology of the country (alternatively it could be argued that the destabilisation of Italy’s political ecology allowed Cinque Stelle to succeed). The centre-left coalition led by the Democratic Party of Pier Luigi Bersani mustered little more support than scandal-ridden Berlusconi and is unable to form an effective or durable government. Markets had their predictable “Democracy – what a bitch” moment, with share prices swooning across the continent and sovereign bond yields spiking across the eurozone periphery to levels not seen for months.

Again we heard the demand “*Tutti a Casa!*” (*Que se vayan todos!* Kick ‘em all out!) as M5S soared from 1.8% support in 2010 to 24% within two years. Almost two out of every three voters backed anti-austerity parties and a full 90% did not vote for the party of European austerity – the Monti coalition. Grillo’s intransigence in refusing to join any coalition (as of the time of writing) makes the country effectively ungovernable at least in terms of the Brussels-Frankfurt consensus. This is without question the first major victory of the anti-austerity resistance. Not the Indignados, not the Greek general strikes, not Tsipras or Melenchon have achieved this.

We could even say that Grillo has been braver than Tsipras in that he campaigned on an explicit platform of withdrawal from the euro and said that M5S would buy back €600bn in Italian bonds from foreign holders while delivering a painful haircut to them – in effect a default – while Syriza has been more coquettish on these questions. That a plurality of Italians – historically one of the most pro-European of EU member states – could confidently endorse a break-up of the euro is a remarkable change in fortunes for the bloc. It changes everything. It is transparently clear that the European elite are losing popular consent for the union even amongst its most committed subjects. The challenge to the political legitimacy of the European Union has arrived at the heart of the project.

There are also aspects of Grillo's movement (or movement of movements – a coalescence of different campaigns over public water, green energy, etc.) that appear at first glance to have replicated the best horizontal, maximally democratic aspects of Occupy and the Indignados and the resistance movements that have come before: the Seattle-to-Genoa altermondialist movement of the late 1990s/early 2000s. His "*Grillini*," the 163 fresh-faced new deputies and senators, most of them in their 20s and 30s, were selected through online voting and arrived in Rome to take up their seats bringing with them little more than backpacks and sleeping bags. Grillo repeatedly declares: "We're not a political party; we're a civic revolution."

There are those who would say that at this early point in M5S' existence it is too soon to be overly judgemental or sectarian towards the phenomenon. They argue that the fact that it is not an expressly progressive movement has so far not undermined its theoretical transformative potential. A number of progressives emerging from what autonomist commentator Federico Campagna [22] (a critic of M5S) describes as the Italian "ruins of the post-2001 movements" (altermondialist, *Rifondazione Comunista*, *Tute Bianchi*, *No Globo*, autonomist, anarchist, etc.) have involved themselves with this new force. [23]

But I want to argue that there is sound reason for reticence regarding Grillo and M5S. For the purposes of this essay I am less interested in some of the political positions of the grouping than the question of whether M5S represents a transcendence of the anti-politics that buttresses liberal/technocratic and/or fascist/authoritarian post-democracy – in other words a progressive/self-governing anti-politics – or whether instead it is some sort of as-yet-unresolved contradictory hybrid form.

Nevertheless, the party's political prescriptions and the particular anti-political flavour of M5S are not unrelated. Rejection of austerity and corruption combine with a focus on public water, environmentalism and a sort of copyleft, digital-rights activism and emphasis on broadband development. Many commentators have referred to the similarities between parts of a Green programme and the Pirate Parties in Germany and Sweden (which are themselves also the beneficiaries of the anti-political mood), and they are not wrong. But Grillo and his Grillini cook up a pan-ideological salmagundi of ideas.

Notably, he is not unfriendly toward the fascists of Casa Pound, a far-right social centre squat named after the fascist sympathising American poet Ezra Pound, whose estimated 5,000 members are known for their murderous attacks on immigrants, but which also provides housing for impoverished families. [24] Simone di Stefano, a Casa Pound leader and candidate for president of the Lazio regional government, approached Grillo and said: "They ask me if you are a fascist." Grillo responded "This is a question that doesn't regard me. We are an ecumenical movement. If a guy from Casa Pound wants to enter the Cinque stelle, and he meets the criteria, he can do that." The pair chatted in front of cameras for some time and endorsed many of each other's positions.

Grillo approvingly quotes Mussolini, opposes citizenship rights for the children of immigrants born in the country, and has said: "The unions are outdated. We no longer need them. We should

do as the US does." He argues that so long as workers are represented on company boards in corporatist fashion unions can be done away with.

Even Grillo's anti-austerity position is not as unequivocal as it seems. He backs a slashing of public debt via "cutting waste and with the introduction of new technologies." His desire to see a break up of state firms such as the railroads, Telecom Italia and the public power companies surely is no different to the Monti programme and the demands by Brussels, Frankfurt and Berlin. The M5S mayor of Parma, Federico Pizzarotti, elected in May 2012, has overseen a programme of municipal cuts.

Grillo is silent on questions of taxation and appears not to have any analysis of the global economic crisis other than an unexceptional fury at the mysterious puppet-masters of "Big Finance."

These perspectives are clearly a contradictory mess - public water but private electrics? Were M5S to extend its position in an election in six months' time say, and rather than complete its "civic revolution" in fact be the superintendent of further austerity and structural adjustment, can we be confident that it would have any greater popular support than Monti?

Internally, the movement is run on a rigidly hierarchical basis and is the personal property and will of Grillo and his partner, web marketing guru Gianroberto Casaleggio. There are no conferences or branches. Members that diverge from the duo's perspective are briskly and pitilessly drummed out of the party.

When all this is put together, M5S appears less a replication of Syriza, the Indignados, the Portuguese demonstrators, the Front de Gauche, et al – an anti-austerity movement with Italian characteristics – than a genuinely novel phenomenon, an authoritarian pied piper dressing up his charges in red, green, yellow and black livery: red for anti-austerity, green for environmentalism, yellow for liberalism, and black both for the flirtation with fascism and the dalliance with anarchism.

Parts of M5S do appear to represent an anti-politics of the progressive third kind, but other parts repeat neo-liberal-technocratic and authoritarian anti-politics. In this way it is different from pretty much anything that has come before.

It is anti-politics, ne plus ultra.

A Strasserism for the twenty-first century

My best guess is that M5S is unsustainable. The ideological contradictions are too profound. The pressures on the party now that it is in the role of kingmaker will be considerable and, unlike Syriza or the Front de Gauche, it simply does not have the structural analytical chops to deal with the economic and political tempest that surrounds it.

This is not to suggest that the likes of Syriza or the Front de Gauche are not also having difficulties dealing with the world-historical nature of the circumstances they find themselves in. But even the sharpest progressive critics of the paths that Syriza and the Front de Gauche have chosen could not deny that within their ranks and in their leadership lies a defined analytical framework to describe the crisis which M5S does not have.

If M5S can be said to have any analytical framework it is the base, uninformative belief that there is “La Casta,” an ill-defined “caste” of venal characters, traitors, who need to be done away with. It is La Casta versus the “honest people.” It is the anti-political analysis of Vaffanculo! (Fuck off!) [25]

Why is the Italian case important? The matter goes beyond the scale of the Italian economy, its debt levels and its role in the *global* economy which puts Greece in the shade. This case is important because M5S is the extreme example of the weakness that is common to all resistance movements.

In many ways M5S’ categorisation of the enemy as a “caste” of traitors is not so different from Occupy’s nebulous “99% versus the 1%.” But while the latter is a useful slogan on a homemade cardboard placard and the starting point for a more thorough analysis and deeper understanding of class, markets, financialisation, unemployment, and - in the case of the Indignados and the rest of the European anti-austerity resistance - the eurozone and the EU’s structures, Grillo’s “caste” is a moralistic endpoint. That said, the 99% analysis is still structurally weak and needs to be transcended.

In the years leading up to the crisis there was a desire, usually unspoken but sometimes explicitly expressed, for a fresh disaster, a true catastrophe to rock international capitalism that would “wake people up.” More sensible analysts recalled that economic crises tended to be very bad indeed for progressive forces. Empirical evidence shows that it is actually during the high points of economic cycles with near full employment that progressive demands are achieved and that in downturns, dark, fearful ideologies take hold. Moreover, heading into the last economic crisis of the current scale, the Great Depression, progressive forces were markedly more hegemonic. There were mass social democratic and Communist parties and even sizeable anarchist sympathies in many jurisdictions that were linked to militant trade unions confident in the power they wielded. Heading into the current crisis, progressive forces were scattered, weak, minoritarian and on the defensive.

This is to say: anti-politics is not enough. It can be swayed and bent in some very anti-democratic directions.

Some have argued that Beppe Grillo and M5S have prevented the birth of a domestic version of the Indignados or Syriza. They have it the wrong way round. It is the lack of a domestic version of the Indignados or Syriza that gave birth to M5S. When M5S collapses under the weight of its incoherence, there will still be nothing in Italy on the level of these other European movements that can begin to imagine, let alone construct, an alternative.

My great fear is the arrival of a combination of a nationalist Keynesian response to the crisis and a vicious anti-immigrant programme. A variety of anti-politics that arrives with this set of ideas, fronted by a charismatic figure and/or movement, will be very popular indeed.

It is uncomfortable for the left to discuss this topic but it must be broached. We use the term “far-right” to describe all those wretched formations beyond the pale of the conservative mainstream but this is historically inaccurate. The original Fascists, in

Italy, and the Nazis, in Germany, did not see themselves as just a harder version of conservative forces. There is a reason why Hitler’s party was called the *Nationalsozialistische Deutsche Arbeiterpartei* – the National Socialist German Workers’ Party.

I do not see any reason why amidst Europe’s current climate of deep anti-immigrant racism a contemporary variation on this theme of nationalism, hatred of internal (and external) racial enemies together with a social programme of defence and protectionism could not be widely embraced, perhaps with a dash of localist environmentalism and digital-rights decoration - a Strasserism for the twenty-first century, if you will.

Strasserism describes the “left-wing” strain of Nazism associated with the Strasser brothers, Otto and Gregor Strasser, which was ultimately crushed in 1934 during the Night of the Long Knives. The National Socialists, like Mussolini, had promised a “national revolution” which the Strassers and the head of the Sturmabteilung (SA), Ernst Roehm, took at their word demanding robust action to do away with poverty, enact wealth redistribution and topple elite power. Otto Strasser called for wide-ranging land reform that would break up the vast estates of the aristocracy and advocated cooperatives and a system of artisanal guilds. A confused, pan-ideological muddle, the Strasserites favoured “productive capital” over opposed “Jewish finance” and attacked Jews on a supposed anti-capitalist basis. As per German Marxist August Bebel, this was *Der Antisemitismus ist der Sozialismus der dummen Kerle* – Antisemitism, the socialism of fools.

Marine le Pen for her part has overseen something of a Strasserite policy turn from her father’s regime, emphasising a defence of working people against immigrants and unpatriotic capitalists. There are echoes of this in Wilders’ defence of pensions and social programmes for the honest, modest, hard-working mythical Dutch couple, Henk and Ingrid, who face destruction at the hands of lazy immigrants and the depredations of foreign EU masters.

This is not to describe M5S as explicitly Strasserist and catching out a naïve member of the Grillini for some pro-fascist comments is insufficient for describing the nature of the movement as a whole, however worrying what was said may be. [26] But we should be on our guard when confronted with such a pan-ideological hodge-podge. It is not enough to celebrate the anti-politics of M5S for tapping into “a mood of anger and resistance and a desire for change.” So, frankly, did the SA.

Just as it is uninformative of supporters of the EU austerity strategy to categorise any new variety of anti-politics as “populism,” it is also important for opponents of the austerity strategy to not blindly celebrate these groups. Instead it must be asked what kind of anti-politics a new phenomenon represents, whether it is democratic itself and whether it has a response to the post-democratic structure (and for that matter the broader economic crisis), or is it just a confused ideological mess?

In the coming years, with the spreading collapse in legitimacy of political elites, all sorts of new-fangled anti-political formations will be thrown up and we must interrogate whether they ultimately buttress post-democracy or prefigure its overthrow.

Endnotes

- [1] For the sake of legibility, I use the term “austerity” as shorthand for the full panoply of policies of both austerity and structural adjustment imposed by the European political class and their national compradors. But in truth, the two are not synonymous, as liberalisation, deregulation, privatisation and wage deflation (the four horsemen of structural adjustment) do not necessarily require a cut in public spending, in fact they often entail an increase in public outlay.
- [2] I mention “Protestant” parenthetically not because any member of the European political class (so far as I know) has made mention of the religious differences between northern and southern Europe, but due to neo-liberalism’s continued dependence upon Max Weber’s narrative of capitalist success being a product of Protestant hard work and frugality – the Protestant work ethic – a narrative that few northern Europeans outside of academia would be able to reference explicitly, but regularly do so *implicitly*. The culture “knows” southerners are lazy. And the Weberian narrative is alive when EU President Herman van Rompuy, for example, speaks of a “northern culture of competitiveness” and “southern culture of solidarity” that need to learn from each other. He is invoking here the Protestant-point-of-view archetypes of the loving, jovial, fecund but feckless southern Mama versus the austere, cold, sexless but sensible northern Hausfrau. Both stereotypes are overtly racist, of course.
- [3] C. Crouch, p 22, Post-democracy (Polity Press, 2004)
- [4] Crouch, p 4
- [5] All of this is a very much simplified discussion of the series of treaty manoeuvres in the last couple of years that steadily ratchet up the fiscal discipline while removing democratic accountability: the European Semester system, the “Six-Pack”, the Euro Plus Pact (successor to the Stability and Growth Pact,) the Fiscal Compact, and “Fiscal Union.”
- [6] J. Cocker, “Cunts are Still Running the World”, Polydor 2007 <http://www.youtube.com/watch?v=monyiOsoKxg>
- [7] Crouch p14
- [8] Crouch p23
- [9] Mars One promotional clip, uploaded 6 June, 2012 (emphasis added): <http://www.youtube.com/watch?v=n4tgkyUBkbY>
- [10] Leigh Phillips, EUobserver – “The EU techno-party is hollowing out democracy”, 30 November, 2011 <http://euobserver.com/opinion/114425>
- [11] Although in my experience as a bar-hopping wingman of many an NGO worker whether in Brussels or in the evening after some godforsaken international MacGuffin conference somewhere else, after a few beers their own criticism and recognition of the contradiction at the heart of what they do is far more piercing than anything Crouch has to say.
- [12] Crouch, p15
- [13] Crouch, p18
- [14] By “social democrat” I am sweeping together the rainbow of European labour, “Socialist,” social democrat and, to a certain extent, Communist parties. This is perhaps unfair, as there have been ideological distinctions between them, of course. But for the purposes of this discussion, they all have played and continue to play a similar role on the centre-left of the spectrum.
- [15] International Viewpoints journal, May 2008, Lydia Cirillo <http://internationalviewpoint.org/spip.php?article1465>
- [16] BBC report, 24 April, 2012, Hugh Schofield, “What next for Marine Le Pen’s National Front?” <http://www.bbc.co.uk/news/world-europe-17824436>
- [17] Kai Arzheimer and Elizabeth Carter, European Journal of Political Research, Vol 45, Issue 3, pages 419-443, May, 2006. DOI: 10.1111/j.1475-6765.2006.00304.x Their survey covered six European states: Austria, Belgium, Denmark, France, Germany, Italy and Norway. Note that this was carried out prior to the crisis.
- [18] Leigh Phillips, EUobserver, 17 May, 2011, ‘The junta of experts tells us: “Vote how you like, but the policies cannot change”’ <http://euobserver.com/opinion/32501>
- [19] Gérard Courtois, Le Monde, 24 January 2013, “Les Crispations Alarmantes de la Société Française” http://www.lemonde.fr/politique/article/2013/01/24/les-crispations-alarmantes-de-la-societe-francaise_18121655_823448.html
- [20] Anabel Díez, El País, 30 September, 2012 “‘Que se vayan todos’, sin distinción” http://politica.elpais.com/politica/2012/09/30/actualidad/1349030757_905661.html
- [21] The Economist 2 March, 2013 “Send in the clowns: How Beppe Grillo and Silvio Berlusconi threaten the future of Italy and the euro” <http://www.economist.com/news/leaders/21572763-how-beppe-grillo-and-silvio-berlusconi-threaten-future-italy-and-euro-send>
- [22] Campagna is a collaborator of the Italian autonomist philosopher Franco “Bifo” Berardi and the co-editor of the collection of anti-austerity resistance manifestos What We Are Fighting For (2012 Pluto Press).
- [23] Novara radio programme “Five Star Shaman’ – The Meaning of Beppe Grillo” 5 March, 2013 <http://novaramedia.com/2013/03/five-star-shaman-the-meaning-of-beppe-grillo/>
- [24] “Italy’s fascists stay true to Mussolini’s ideology,” The Guardian, 6 November, 2011 <http://www.guardian.co.uk/world/2011/nov/06/italy-fascists-true-mussolini-ideology>
- [25] See for example his Vaffanculo Day: <http://www.beppegrillo.it/eng/2007/06/vaffanculoday.html>
- [26] Shortly after the election, daily newspaper La Stampa discovered a blog post of Roberta Lombardi, a member of the party freshly elected to the Chamber of Deputies, in which she praised Mussolini’s ideology saying: “Before it degenerated, the ideology of fascism had a socialist-inspired sense of national community and a very high regard for the state and the protection of the family.”



Austerity policies also cut rights and liberties in Spain

Peio Aierbe, Mugak/SOS Racismo

The austerity policies implemented in response to what has generically come to be called “the crisis” have a stated objective: to prune the social gains that have been won over time. Fear is being used to coerce the population into accepting these cuts. This pruning process has affected practically every sphere

of political, economic and social life to the extent that many citizen’s rights and liberties have been lost.

The privatisation of healthcare and the exclusion of immigrants who do not have a residence permit

One of the first things to be cut by the Spanish government was the right to health care. It did this through royal law decree no. 16/2012 which was approved by the *Congreso de los Diputados* (Congress of Deputies, the lower house of parliament) in May 2012 and came into force on 1 September. The law shifts the right to healthcare from being on the basis of one’s status as a citizen to a model of affiliation in which an insured person or beneficiary must be recognised as such by the *Instituto Nacional de la Seguridad Social* (National Institute for Social Security.) The new model retreats from providing universal health care and represents a serious reversal in terms of individual rights and for society as a whole.

Until the enactment of decree 16/2012, the General Law on Health no. 14/1986 established that “Spanish people or a foreigner whose residence is settled in the national territory is entitled to the right to the protection of health and health care.” The new law peremptorily excludes the irregular immigrant population from getting public health care, with the exceptions of minors and pregnant women, leaving other undocumented migrants dependant on accident and emergency (A&E) services.

This prompted a large number of health service personnel groups to consider conscientiously objecting to the new law. Several autonomous communities (regional administrative councils in the Spanish federal system) have contrived formulae to avoid enacting the new law. The Basque government, for instance, rendered the law void through a decree and continues to provide health care to these people. This resulted in the central government appealing against the Basque government’s decree before the Constitutional Court. The outcome is pending, but the court has allowed the Basque government’s decree to remain in force. Contrary to the Spanish government’s aims, this exclusionary measure has not received popular support. According to a survey by *Metroscopia* on 19 December 2012, 77% of the population reject it.

Evictions

One of the most brutal effects of austerity measures has undoubtedly been a large increase in evictions. According to a report by the *Consejo General del Poder Judicial* (CGPJ, General Council of Judicial Power), during the first nine months of 2012 the number of mortgage repossessions across Spain was 67,537 and there were 49,702 evictions. From 2008 until the first quarter of 2012, there were 391,032 mortgage repossessions, equivalent to 321 per day. A significant number of these evictions involved immigrants who had been encouraged by banks to request loans to buy houses despite not possessing sufficient financial guarantees and who, as the situation worsened due to increased unemployment, were unable to make repayments. The appalling situation in which hundreds of thousands of people who had lost their homes found themselves led to the creation of *Plataformas de Afectados por las Hipotecas* (Platforms for People Affected by Mortgages). Using the slogan “STOP evictions”, the organisation has helped those threatened by eviction and raised public awareness of the issue.

Judges had a strong influence on public opinion after they became protagonists in late 2011 when some of them began issuing statements criticising the legislation on mortgage loans and evictions that forced them to unjustly evict thousands of families. Media coverage of their criticism, and the death of a number of people who committed suicide when judicial officers arrived to evict them, forced political parties and the government to appear more responsive to the situation. A Popular Legislative Initiative (*Iniciativa Legislativa Popular*, ILP), supported by 1,400,000 signatures, was delivered to the Congress of Deputies. Among other things, the Initiative recognised repossession as repayment - that once a mortgaged property is handed back to the bank

the debt is settled. Pressure by citizens has forced the *Partido Popular* (PP) to modify its initial opposition and allow the ILP to undergo parliamentary scrutiny on 13 February 2013. Moreover, it was left to the European Union’s Court of Justice (ECJ) to issue a ruling on 14 March 2013 that recognised the existence of abusive clauses in mortgage loans. The court empowered judges to suspend eviction proceedings when they deemed such clauses to exist and ruled that the government must review the legal framework on mortgage loans and evictions.

Criminalisation of assistance to undocumented immigrants

A further turn of the screw to worsen the already precarious position of migrants whose stay has not been regularised was proposed in September 2012, when the government presented a draft bill to reform the penal code. It would introduce the possibility for public prosecutors to charge people for lending assistance to irregular migrants. Past jurisprudence from the courts concerning provisions in the current penal code had already ruled out punishment for acts motivated solely by solidarity, or a will to lend humanitarian assistance. The proposed Article 38 *bis* states:

“The Ministerio Fiscal [public prosecutor] may abstain from bringing charges for this offence [assisting undocumented immigrants] when the pursued objective is solely to lend humanitarian assistance to the person concerned.”
[emphasis added]

Rather than making it obligatory not to bring charges, the wording leaves it up to the public prosecutor to decide whether or not to bring charges. This legal absurdity already exists in the current art. 318 *bis* of the penal code, where it is left to the courts - including the Supreme Court - to clarify the reach of the wording and to exclude actions motivated by solidarity from its scope. The current wording leaves it possible, for example, that those receiving undocumented immigrants in their home, or helping them financially, may be punished with a prison sentence of up to two years. The government’s intention has been widely rejected and the *Salvemos la Hospitalidad* (Let’s Save Hospitality) initiative was launched, alongside several others, and succeeded in obtaining statements from numerous town councils opposing this legislative measure.

Financial obstacles to accessing justice

The Spanish government approved a Law on Judicial Charges (*Ley de Tasas Judiciales*) on 21 November 2012 which made access to justice more expensive by setting a charge of between 100 and 1,200 euros to appeal against a decision in court. There has been widespread criticism of this law because, once it is implemented, justice will no longer be equal for rich and poor. It has not only been rejected by numerous citizens’ groups but also by the majority of magistrates’ associations (magistrates, prosecutors, lawyers, court clerks, etc.) The latter announced that they would test its legality before the Constitutional Court, arguing that it contravenes the equality of Spanish people before the law and their right to effective protection. This led to a rare

strike by magistrates and prosecutors on 20 February 2013, only the third such action in 35 years. 41% of judges and magistrates participated in the strike according to figures from the *Consejo General del Poder Judicial*. In a display that highlights the inconsistency of the *Partido Popular*'s method of governing, the Law on Judicial Charges was modified four months after it was enacted.

Demonstrating: a criminal offence against the State's institutions

The government has been using limitations to the right to demonstrate since the appearance of the protests and camp-ins known as the "indignados" or "15-M". These include applying a measure provided in the penal code as a "crime against the state's institutions" to people participating in demonstrations outside the *Congreso de los Diputados*, as happened recently after demonstration-organising committees called on participants to surround the *Congreso* as a means of exerting pressure on MPs. The possibility of modifying the penal code to make demonstrating while concealing one's face a criminal offence is also being examined.

Denial of access to detention centres for NGOs and journalists

The opacity of the Spanish administration concerning conditions in *Centros de Internamiento de Extranjeros* (CIEs, detention centres for foreigners) leads it to try to avoid any form of democratic control over the way in which these centres are managed, and the human rights violations that occur within them. In 2012, within the framework of the "Open Access Now" campaign led by the Euro-African *Migreurop* network and *Alternatives Européennes*, a request for access to the centres was made by MPs, human rights organisations and the media. The requests

were rejected outright, and even those submitted by the MPs went unanswered. These precedents form a backdrop to a draft Regulation to regulate the operation of the centres, which is nearing completion after several years of discussion. In accordance with the policy of cutting back on rights, it seems unlikely that it will include the bulk of the proposals presented by migrant support associations and the judiciary.

A unified response by citizens

The above examples are only some of the consequences of using austerity measures to tackle the so-called economic crisis. There is plenty of scope to continue illustrating its effects. For instance, I could focus on labour market legislation that makes dismissals easier, lowers wages and renders employment more fragile. Spain already has the highest unemployment rate in the European Union, with 25.8% of the active population and over 50% of young people out of work. Or I could have focussed on the cuts to the education budget that have resulted in tens of thousands of teachers being sacked, the closure of school refectories and a general increase in university fees.

I started this article by saying that the public administrations have been trying to arouse fear as an ally for their reforms to be accepted by the public. However, in the case of Spain opposition is gradually growing and becoming less intimidated. New sectors are joining the protests daily. Moreover, and this is very important, the opposition forces are unified and, so far, they have avoided falling into the trap of treating other groups that are under attack from the measures, such as the migrant population, as targets. It is the government's intention to exacerbate any splits, as is evident from its divisive measures.



Using the Italian crisis to impose control: a shift towards a fiscal surveillance state?

Yasha Maccanico

The "technical" government has introduced passports for small children, limits on cash transactions, compulsory bank accounts and the "redditometro" (income-meter) to counter tax evasion.

After taking over from Silvio Berlusconi's discredited government on 16 November 2011, the "technical" executive led by Mario Monti tackled a number of structural problems with the Italian economy such as widespread tax evasion and a sizeable underground economy. Measures approved during Monti's 14 months at the helm included: limits on the use of cash; targeted controls by the customs and excise police (*Guardia di Finanza*, GdF) in exclusive holiday resorts; the introduction of passports for infants and forcing everyone to have bank accounts. A personal bank account - set up by their parents - will be necessary for children to pay for their passports and for pensioners to receive pension payments above 500 euros. Increased control has been coupled with "austerity" measures which range from cuts to public services, eligibility for pensions being delayed, an assault on workers' rights that undermines the security of employment and a spending review to rein in costs that are viewed as wasteful.

The "technical" government fell on 21 December 2012 when Monti resigned after opposition from Berlusconi's *Popolo della Libertà* (Pdl) caused him to lose his majority in parliament. After elections were called for February 2013, Monti threw off his

mantle of impartiality (to maintain which he had been granted the status of senator for life by president Giorgio Napolitano) by standing for election when it became apparent that the *Partito Democratico* (PD) would run in alliance with *Sinistra, Ecologia e Libertà* (SEL, Left, Environment and Freedom).

A cash-free society

The first measures to shore up Italy's banking system introduced by the Monti government under the "*decreto salva Italia*" (Decree to save Italy) included tracking transactions involving the payment of sums in excess of 1,000 euros. This was achieved by forbidding the use of cash for such payments, enabling them to be recorded in bank records and accessed by the GdF. In fact, article 11.2 of the decree establishes that from 1 January 2012, "financial operators must periodically communicate transactions" to the tax collection residents' register (*anagrafe tributaria*) along with "any information concerning these relationships that is necessary for fiscal controls" as well as the sums transferred in such operations. The GdF will not be able to use this data on bank customers' transactions without prior authorisation by the regional commander of the GdF or the central director of the tax revenue agency's (*Agenzia delle Entrate*) controls section. Nonetheless, the data will be used to "identify taxpayers for whom there is a high risk of evasion to be subjected to controls" (art. 11.4).

The government's intention to restrict the use of cash *per se* is clearly expressed in the title of article 12 of law decree no. 201 of 6 December 2011, "Lowering of the limit for the tracking of payments to 1,000 euros and countering the use of cash." The measure was not unprecedented. A limit of 5,000 euros was imposed on cash transactions by legislative decree no. 231 of 21 November 2007. This limit was lowered to 2,500 euros by law no. 148 of 14 September 2011 in order to comply with EU provisions designed to prevent the financial system being used to launder the proceeds of criminal activities or for terrorist financing.

The 201/2011 decree added article 4 *ter* to the 148/2011 law "for the purpose of favouring the modernisation and efficiency of payment instruments [and] reducing the financial and administrative costs that derive from the management of cash." Thus, expenses paid by local and central public administrations must be processed by telematic and IT means as part of the process to move beyond the use of paper-based transactions. Payments must be transferred into current or post office accounts and, in cases where cash is used, the amount cannot exceed 500 euros. This includes wages, pensions, and payments to service providers and any other payments that are due. Provisions have been made to exclude people on the minimum wage or state pensions from the requirement of paying the ordinary tax (*bollo*) for having a bank account and banks and financial entities will not be allowed to charge these users any costs. The economy and finance ministry will reach an agreement with the *Associazione Bancaria Italiana* (ABI, Italian Banking Association) to make a basic bank account available, providing minimum services (including a debit card) and whose cost structure is transparent. The cost of

a basic account should be compatible with "financial inclusion" as defined by the European Commission Recommendation of 18 July 2011, whose section 4 point 9 states that "Member States should ensure that a basic account is provided either free of charge or at a reasonable charge." Law decree 201/2011 states that the agreement with ABI will ensure that this basic account will be available "without costs" for people falling within the "socially underprivileged" category.

While the Monti government was preparing to outlaw the use of cash for sums above 1,000 euros, a campaign to promote a cashless society was launched involving the Rai 3 programme *Report*. Its presenter Milena Gabanelli has for many years been at the forefront of revealing cases of corruption. *Report* has documented scandals including corruption at *Finmeccanica* and in the preparations for the G8 summit. Moreover, the *Corte dei Conti* (CdC), which audits Italy's accounts, has repeatedly issued warnings about the loss of revenue resulting from corruption, tax evasion, organised crime and a substantial informal economy. The 2012 report on the state's accounts for 2011 notes that:

"Recently, a commission established within the economy and finance ministry estimated the incidence of the underground economy in 2008 at 17.5% of the GNP (that is, 275 billion [euros]). Estimates from the tax revenue agency... quantify the rate of VAT evasion at 29.3% and that of IRAP (a regional tax on economic activity) at 19.4%, providing a figure of over 46 billion [euros] per year in missing tax revenue recorded only for these two taxes." (p. 70)

On 12 July 2012, at a hearing before the parliamentary oversight commission on the *anagrafe tributaria*, after outlining the tax evasion phenomena the CdC president Luigi Giampaolino highlighted that: "it is evident that a contribution to their reduction may come from the operation of IT and telematic instruments" (p. 4). The report submitted during this oversight session stressed that a key aim of the development of IT and telematic instruments is to attain a higher "tax compliance level in a mass fiscal system." (p. 21)

A CdC text approved for submission to an audit of the draft law to counter corruption and illegality in public administration held on 14 September 2011 stressed that "the corruption phenomenon, which is in constant growth in Italy, has also become settled and nested within the public administration and represents the third most important source of tax revenue damage, according to data found in summons issued by the regional prosecutors' offices in 2010." (p. 13)

Passports for infants: travellers treated as suspects

As of 26 June 2012 (the deadline for implementation) minors will require their own personal passport to travel abroad. This is in application of EC Regulation 2252 of 13 December 2004 "on standards for security features and biometrics in passports and travel documents issued by Member States" which was amended by EC Regulation 444 of 28 May 2009. Passports in which children's data was recorded on their parents' document prior to the new provisions will be valid until the passport's expiry.

The Regulation states that a degree of harmonisation concerning the age when fingerprints will be taken is required. This has been provisionally set at 12 years, at which age a child's fingerprints and digital signature will be acquired and stored on the relevant chip. The regulation notes that:

“During pilot projects in some Member States it appeared that the fingerprints of children under the age of 6 seemed not to be of a sufficient quality for one-to-one verification of identity. Furthermore, they are subject to significant changes which make it difficult to check them during the entire period of validity of the passport or travel document”.

The Regulation notes that the age limit will be reviewed and may be lowered following the publication of an in-depth study to “examine the reliability and technical feasibility, including through an evaluation of the accuracy of the systems in operation, of using the fingerprints of children under the age of 12 for identification and verification purposes.” In the meantime, Member States may reduce the lower limit during a four-year transitional phase (lasting up to 26 June 2013) to as low as six years of age.

This is part of the process to introduce heightened security that will involve fingerprinting the entire population of the EU (although Denmark, Ireland and the UK are not bound by the Regulation.) The 2009 Regulation notes that the “use of new elements” will render “passports and travel documents more secure and establish a more reliable link between the holder and the passport or travel document, thus making an important contribution to ensuring that passports and travel documents are protected against fraudulent use.” This begs the question of whether the fraudulent use of children's travel documents is really a problem or whether the proposed changes are in fact a ramification of EU institutions' growing pre-occupation with surveillance, identification and security.

The agreement of both parents will be necessary to validate an application for the travel document and they must be present when the application is processed. Whenever an under-14 travels abroad accompanied by someone who is not their parent, a signed declaration bearing the name of the person responsible for them will be needed. This person will be issued a document by the police that they will have to hand in along with the minor's passport during border controls. In this case, travelling will entail going to the city's police headquarters (*questura*) with a signed declaration and photocopies of the identity cards of the person in whose charge the minor will be, as well as those of its parents and the child itself. Had they not already done so, the child's parents would need to apply for a passport for their child which would involve setting up a current bank account in the child's name to pay for the document. The passport will be valid from birth to three years of age, and renewed every five years thereafter until they are 18, to “guarantee the minors greater individuality and security” by enabling “the updating of the photograph and the minor's identification during border controls.” Passports are valid for ten years in the case of adults. To be issued the document, applicants will have to produce two biometric photographs of the minor. The cost of a passport is 82.79 euros.

The “*redditometro*” (income-meter)

On 24 December 2012, a decree issued by the economy and finance ministry set out the provisions for the so-called “*redditometro*” to gauge whether the living standards of taxpayers matched their declared income. It is applicable to revenue from 2009 onwards. Its stated aim is to “adapt” controls “to the changed socio-economic context of the last decade” and to make it “more efficient.” The premise of the measure is that “synthetic assessment of the overall income of persons may be based on the inductive content of elements that indicate their tax paying capacity.” This “inductive content” may be identified by analysing “significant samples of taxpayers” who are categorised on the basis of their family unit type and the area in which they live, as well as average spending patterns for each type. Finally, the Agenzia delle Entrate reserves the right to use other categories that are not included in the chart gauging “contributive capacity,” including any annual savings.

A chart is provided to indicate the costs incurred by taxpayers to acquire services and goods, and for their maintenance, that may be used as “elements indicative of contributive capacity” (art. 1.2). A second “inductive element” will be drawn from the average costs incurred by the type of family unit to which a taxpayer belongs, based on national statistical studies on their spending. The relevant chart details 11 different types of family unit (single under-35; couple under-35 without children; single 35-64 years old; couple 35-64 years old without children; single over-65; couple over-65 without children; couple with a child; couple with two children; couple with three or more children; single parent; and other) divided into five geographical areas (northwest, northeast, centre, south and islands) whose average expenditure will be estimated. Socioeconomic analysis and studies, some of them sectoral (that is, estimates of what people should earn in a given profession, particularly freelance workers) will also be treated as “inductive elements” to gauge a taxpayers' contributive capacity. Sectoral studies have intermittently been used to collect taxes from freelance professionals on the basis of estimates of what people should be earning rather than their recorded activity due to suspicion of large-scale tax evasion. The tax revenue authority will use the higher figure between that arising from the costs of services and goods, that estimated from averages for family unit typologies, and that produced through socioeconomic analysis.

The “*redditometro*” has been changed on numerous occasions. Contrasting the chart's spending categories with those from a similar measure approved in 1992 makes for amusing reading. There were nine categories in the table attached to the 1992 measure: luxury goods and vehicles; home costs and insurance; airborne vehicles; boats and sea vessels; cars, other means of transport and motor vehicles or camper vans; main and secondary homes; domestic workers; race horses; and insurance premiums. These were expanded in the table attached to the 2012 version of the *redditometro* to 11 categories with subdivisions covering the widest possible range of expenses: consumption of foodstuffs, drinks, clothing and shoes; residence (mortgage,

rent, water, condominium, maintenance costs etc.); fuel, central heating and energy; furniture, electrical home appliances and services (cleaning products, underwear, pots and pans, domestic workers); health (medicines and visits); means of transport (repair costs, oil, petrol, maintenance, spare parts, trams, buses, car rentals); communications (purchase of telephones and bills); education (nurseries, schools, paid courses, postgraduate studies, studies abroad, student hall fees); leisure time, culture and games (games, toys, television, radio, books, magazines, music, stationery, TV license, Internet services, plants, repairs, lotteries, pay TV, leisure activities, sports clubs, season tickets for sports and cultural events, online gaming, horses, pets, vets); other goods and services (insurance, social security contributions, barbers, hairdressers, beauty care, personal care products, spas, jewellery, silverware, watches, bags, suitcases, payments for professional services, hotels and holidays, eating out, regular payments to spouses); and economic investments (in property, vehicles, shares, insurance policies, bonds, art works and antiques).

In short, they would allow a precise picture to be drawn up of any taxpayer's private life, including the pettiest details, in order to assess the likelihood that they are guilty of tax evasion. Moreover, notions such as average expenditure disregard the fact that at a time of high youth unemployment many families support their sons and daughters long after they become adults. Savings that are used to meet expenses would also be flagged as an "incongruence" with declared income, the criterion that will result in further controls and, possibly, fines. The fact that taxpayers will have an opportunity to explain any "incongruence" between their tax returns and their spending does not change the fact that the burden of proof is placed on them to reverse an assessment that may result from generic estimates.

On 6 January 2013, *Corriere della Sera* columnist Piero Ostellino sparked controversy by describing the measure as those of a "fiscal police state." He said that the "bureaucrats" who drew up the tables are reminiscent of fascist police officers in pre-1945 Italy or the Stasi in East Germany. Two days later, Attilio Befera, head of the tax revenue agency, replied that "we are not a fiscal police state" and that it was merely a means of identifying the most "shameless tax evasion." He explained that:

"our redditometro consists of an IT procedure that crosses databases and uses statistical indicators with extreme caution, striving to identify the degree of correlation between the income that emerges from a subject's tax returns and their

capability to spend, as detailed on the basis of the data that the tax authority has available to it, as reliably as possible."

Social and fiscal control as the new imperative

The measures detailed above are not limited to Italy and the Monti government. The passport measure was in application of an EU Regulation, while lowering the minimum threshold for cash payments complied with EU measures to counter money laundering and terrorist financing. This was supposedly to counter tax evasion and the informal economy, which are admittedly substantial in Italy, although the low threshold appears excessive and will cause problems to people who do not have bank accounts by choice, because they have never had much money or because they have never needed one. It also appears to be an attempt to shore up the banks by ensuring that as high a proportion of transactions as possible flows through them. Forcing everyone to have a bank account also solidifies the role of banks at a time when banks have fallen into disrepute due to their role in the economic crisis. These measures, alongside the *redditometro*, are indicative of a move towards ever-increasing social control of citizens by the state. Moreover, for its part the state is routinely failing to fulfil its obligations to its citizens. Corruption is rampant in public administrations (both the Lazio and Lombardy regional councils fell in 2012 due to scandals), thousands of businesses are closing (11,615 in 2011) and unemployment is on the rise, without an adequate social security network. Evictions and crisis-induced suicides are other significant phenomena. In many cases a stranglehold between delays in payments from the state and uncompromising tax collection at prohibitive levels is proving unbearable for small and medium businesses.

The election results of February 2013 highlighted the degree of disenchantment with "austerity." Over 50% of voters cast their ballots for parties that opposed Mario Monti's policies (Berlusconi's PdL and Beppe Grillo's Movimento 5 Stelle, M5S), with the outgoing prime minister only winning around 10% of the vote. This means that the pre-election favourites who emerged as marginal victors, Bersani's PD alongside SEL, appear unable to muster a workable majority. To do so they are trying to obtain support from the virulently anti-austerity M5S whose stated aim is to rid parliament of the existing political class. It appears that Monti's entry into the arena of electoral politics may have backfired and that his neo-liberal recipe for tackling the crisis is ill-suited to a country in which small and medium businesses are prevalent.*

* Italy has the highest number of small and medium businesses in the EU (3,813,805).

This figure is drawn from a European Commission Small Business Act for Europe country profile for 2012.

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Golden Dawn and the deafening silence of Europe

Jerome Roos, editor, ROAR online magazine

With a neo-Nazi party on the rise in Greece, it seems that even a Weimar-like scenario might be tolerable for EU leaders insisting on further austerity.

"For Peace, Freedom and Democracy. Never Again Fascism. Millions of Dead Remind Us." Those are the words carved into a memorial stone underneath the Austrian house where Adolf Hitler was born in 1889. "Never Again." This was the uniform slogan resounding across Europe after the full scale of Nazi atrocities became known in the wake of World War Two (WWII). The cosmopolitan project of European integration was founded upon this promise. Never again would fascists and warmongers be allowed to tear the Old Continent and its people apart.

One day it may therefore be considered one of history's greatest ironies that, as EU leaders were busy deciding who would collect its Nobel Prize for "the advancement of peace and reconciliation, democracy and human rights," those same leaders remained woefully silent when a recent survey indicated that the neo-Nazi Golden Dawn party now polls third [1] in Greece, at 14 percent. This is a showing comparable to that of Hitler's National Socialist German Workers' Party in 1930, three years before rising to power and setting the world on course for WWII.

For clarity's sake: the comparison made between National Socialism and Golden Dawn is by no means an exaggeration. Golden Dawn is an extreme-right organisation whose emblem [2] deliberately resembles a swastika; whose leader publicly gave the Nazi salute [3] upon his election to Parliament; whose magazine [4] regularly features articles and pictures of the Führer himself; whose spokesman recently assaulted [5] two female rivals on a live TV show; whose manifesto pledges to drive all immigrants [6] out of hospitals and all non-Greek children out of kindergartens; and whose MPs actively participate in racist pogroms [7] against Greece's immigrant population. (Incidentally, Golden Dawn's favourite band is called Pogrom, [8] known for such hits as "Auschwitz" and "Speak Greek or Die." Its former bassist is now one of Golden Dawn's 18 MPs.)

Even the mild-mannered BBC is now making eerie comparisons [9] with the early days of the austerity-stricken Weimar Republic. It is happening again. Fascism is once again on the rise in Europe. And what do EU leaders have to say about this? Nothing, it seems. As neo-Nazi militia run amok [10] in the streets of Athens, Brussels and Berlin remain shrouded in a deafening silence. The only thing European leaders seem to care about is that Greece repays its debts. Democracy, human rights and the rule of law have all been relegated to secondary concerns.

Recently, a spokesman for the German Chancellor Angela Merkel told journalists that the cancellation of Greece's debt would be "in violation" of German budget laws. But when *The Guardian* published a terrifying report on forty anti-fascist activists who had been tortured by police [11] in prison – with some beaten to the point of severe bruising and broken bones and others forced to strip naked, bend over and spread their buttocks while reciting fascist slogans to their comrades – no European official declared these acts to be "in violation" of the Third Article of the European Convention of Human Rights prohibiting torture.

In fact, European leaders seemed indifferent. In May 2012, José Manuel Barroso, President of the European Commission,

publically questioned [12] the neo-Nazi label being attached to Golden Dawn, and sidestepped any form of responsibility by vaguely stating that “we have to define what a neo-Nazi party is, which can only be done at national level.” When a senior Greek police officer confirmed [13] that the Greek government wilfully allowed “pockets of fascism” to infiltrate the police force so it could “use them for its own purposes”, Barroso preferred to ignore it and keep his head firmly in the sand.

So far, the only person who has pledged to investigate Golden Dawn is the Commissioner of Human Rights, Nils Muižnieks, but his commission is part of the Council of Europe, [14] an independent Strasbourg-based organisation that is entirely separate from the EU. What’s more, the commission’s concern was entirely discredited when, on 1 October 2012, Golden Dawn MP Eleni Zaroulia joined the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe. A few weeks later, on 18 October 2012, Zaroulia made a declaration [15] in the Greek Parliament stating that “immigrants are subhuman.”

Golden Dawn’s sudden rise in Greek institutions is perhaps the least of the country’s troubles. The organisation’s presence on the streets and its infiltration of the police force are the greatest causes of concern. In August, following the racist murder of a 19-year-old Iraqi, the Migrant Workers Association reported over 500 hate attacks [16] in the previous six months alone. A report from October 2012 confirmed [17] that more than half of these attacks were perpetrated by gangs of men in paramilitary uniforms – one of the trademarks of Golden Dawn’s *Sturmabteilung* [stormtroopers]. The numbers are likely to be only the tip of the

iceberg, as many victims are too terrified to report abuse and violence.

Earlier this month, Golden Dawn MP Ilias Panayiotaros was caught on video [18] during a mob attack on a theatre, hurling homophobic abuse at the director of a critical play and beating up anti-fascist protesters trying to protect the theatre as well as a journalist trying to do his job. Another Golden Dawn MP who was part of the mob, Christos Pappas, was even seen freeing an arrested fellow fascist from a police van. Police officers stood by and did nothing. No wonder Golden Dawn proudly claims “60 percent support” [19] among the police force. Not only do officers deliberately ignore criminal complaints and emergency calls by immigrants and activists; it is now commonly known that they *actively refer* Greeks who have “problems” with immigrants to Golden Dawn. As the Greek state crumbles under the weight of its debt repayments Golden Dawn has stepped in to fill the void.

Never again, we used to say. Never again. How much more blatant does the situation need to get for Europe to at least express its *concern* and admit that the problem exists? How is it possible that a Nobel Peace laureate simply *ignores* the rise of violent neo-Nazi elements in its midst? Perhaps the answer is simply that European leaders realise how deeply implicated they are in the rise of Golden Dawn. Perhaps they prefer to stay silent because they *know* that admitting the resurgence of fascism on the continent could greatly complicate the austerity agenda they are pushing unto the European periphery. Perhaps, then, even a strong flavor of fascism might be tolerable – as long as Greece continues to service its debt.

This article originally appeared in the online version of *ROAR Magazine* <http://roarmag.org/2012/10/golden-dawn-european-union-silence/>

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Collective punishment and pre-emptive policing in times of riot and resistance

Nick Moss

Anti-austerity protests and the revolts of August 2011 have led to the introduction of increasingly draconian forms of policing. Individuals involved in these demonstrations face severe collective punishments by the courts for the combined effect of what is done en masse.

If austerity is our destiny, as UK Chancellor George Osborne would insist, we should anticipate that some of us will not embrace our fate quietly. The student demonstrations of early 2011 and the revolts which followed the police killing of Mark Duggan clearly demonstrated as much. The anticipation of further revolts, in the face of a deliberate drive through austerity to maintain the creditworthiness of British capital at the expense of the working class, has led state agencies to reconsider the form of policing adopted as part of the machinery of austerity. What is particularly interesting is that the model they chose is that which was adopted in the Six Counties [of Northern Ireland] to repress the nationalist community. Arming police with a range of weaponry has been prioritised. The new commissioner of the Metropolitan police (Met), Bernard Hogan-Howe, said that every police car should have a Taser. [1] There are already 2,000 Met officers authorised to carry Tasers and Hogan-Howe's plan would lead to Tasers being carried in 6,500 police cars. [2]

Pre-empting the student demonstrations

Prior to the November 2011 student demonstrations in London, Hogan-Howe made clear that he had pre-authorised the use of baton rounds. [3] During the demonstration an "operational decision" was made to restrict the time students were allowed to gather at the London Wall assembly point and keep them on the agreed route of the march (this power is afforded to police under the Public Order Act 1986, sections 12 and 14). Anyone leaving the route of the demonstration or overstaying the two-hour time period imposed for gathering at London Wall was liable to be arrested for a public order offence. Prior to the march a letter was sent to individuals who had been arrested on a previous anti cuts protest. Signed by Simon Pountain, the Met commander leading the policing operation, it stated: "It is in the public and your own interest that you do not involve yourself in any type of criminal or antisocial behaviour. We have a responsibility to

deliver a safe protest which protects residents, tourists, commuters, protesters and the wider community. Should you do so we will at the earliest opportunity arrest and place you before the court." [4] Since the revolts the Met has increased training for police officers in the use of baton rounds and is planning to purchase three water cannons.

The Met's interim report on the August revolts [5] makes clear that chief among the police's "failings" was their inability to control people's movements. The report seeks to address "the level of resource required under mobilisation plans and how officers can be deployed in a more agile way." As was the case in the Six Counties, the fundamental response will be an increase in the use of force alongside the techniques of control:

"Reviewing alternative tactics to deal with large scale disorder, including options for the use of water cannon. The MPS has increased the number of officers trained to deploy with baton gun teams so that teams can be deployed more flexibly if and when required...Developing a CCTV strategy that will cater for any future London wide incident and exploring what can be developed, with appropriate financial investment, regarding further CCTV and facial recognition technology...Considering whether a request for additional public order powers or a review of other legislation may be beneficial in dealing with large scale disorder." [6]

As the report makes clear, what went wrong for the Met, and the police nationwide, was that their policing techniques were designed only for "pre-planned protest" before which the police would be "able to themselves prepare a policing plan with a contingency for disorder." In August 2011, the spontaneous, mobile, dynamic, geographically diverse nature of the revolts meant the Met was outflanked. This showed quite simply that the society of control only works if we acquiesce to such control. Owen's report states that "When confronted with a scene of serious disorder, public order officers are faced with four basic options; to isolate, contain, arrest or disperse the crowd." In August this system of policing broke down because the decision to contain or disperse was taken away from the police by the simple refusal of the rioters to treat protest as something that is required by the police to be "pre-planned", with permission granted and location fixed.

Punishing the "mob"

In Gilmour-v-R (2011) EWCA Crim 2458 the Court of Appeal considered the appeal against the sentence of a middle class student (the adopted son of the Pink Floyd guitarist Dave Gilmour) who had been convicted for his part in the December 2010 student protests - specifically the "mob disorder" in Oxford Street and the attack on the car convoy containing the Prince of Wales. The sum total of Gilmour's actions was that he sat on the bonnet of the car, kicked a window and stole a mannequin. He received a 16 month custodial sentence. The court rejected the appeal and made it clear that the basis for the decision was that the sentence had to reflect not the individual act alone but the "inflammatory context" as per Hughes LJ at para 16:

“It is an unavoidable feature of mass disorder that each individual act, whatever might be its character taken on its own, inflames and encourages others to behave similarly, and that the harm done to the public stems from the combined effect of what is done en masse.”

Thus the sentence reflects not the actions of the individual but the combined effect of what is done en masse.

It is hard to avoid the conclusion that individuals had been punished for the actions of the mass as part of a sentencing process designed to collectively punish all those involved, regardless of their actual level of participation. This could be seen again in the conviction of 10 people for aggravated trespass in the Fortnum and Masons UK Uncut protests where the trial judge determined that the defendants were guilty on the basis of joint enterprise – that as a group they had intended to intimidate. This was despite the fact that none of the defendants were shown to be doing anything intimidatory. The judge effectively ruled that the simple act of “demonstrating” is intimidatory and therefore a crime. [7]

According to the review of post-riot sentencing contained in the combined appeals in *R-v Blackshaw et al (2011) EWCA Crim 2312* as per Lord Justice Judge, the Lord Chief Justice, “There can be very few decent members of our community who are unaware of and were not horrified by the rioting which took place all over the country between 6 August and 11 August 2011. For them, these were deeply disturbing times. The level of lawlessness was utterly shocking and wholly inexcusable.” (para 1)

The review continues:

“There is an overwhelming obligation on sentencing courts to do what they can to ensure the protection of the public, whether in their homes or in their businesses or in the street and to protect the homes and businesses and the streets in which they live and work. This is an imperative. It is not, of course, possible now, after the events, for the courts to protect the neighbourhoods which were ravaged in the riots or the people who were injured or suffered damage. Nevertheless, the imposition of severe sentences, intended to provide both punishment and deterrence, must follow. It is very simple. Those who deliberately participate in disturbances of this magnitude, causing injury and damage and fear to even the most stout-hearted of citizens, and who individually commit further crimes during the course of the riots are committing aggravated crimes. They must be punished accordingly, and the sentences should be designed to deter others from similar criminal activity.”

By defining the rioters as apart from “the public” any attempt to identify the police actions as a trigger for the revolt is excised from consideration. In his confirmation of the sentences handed down in the aftermath of the riots, Judge refers to *R v Caird [1970] 54 Cr. App. R 499* at 506:

“When there is wanton and vicious violence of gross degree the court is not concerned with whether it originates from gang rivalry or from political motives. It is the degree of mob

violence that matters and the extent to which the public peace is broken...Any participation whatever, irrespective of its precise form, in an unlawful or riotous assembly of this type derives its gravity from becoming one of those who by weight of numbers pursued a common and unlawful purpose. The law of this country has always leant heavily against those who, to attain such a purpose, use the threat that lies in the power of numbers. When there is wanton and vicious violence of gross degree the court is not concerned with whether it originates from gang rivalry or from political motives. It is the degree of mob violence that matters and the extent to which the public peace is broken...”

Dealing with “imminent threats”

The case of *The Queen (on the application of Hannah McClure and Joshua Moos) v Commissioner of the Metropolitan Police [2012] EWCA Civ 12* dealt with judicial review proceedings brought by two claimants, who challenged a number of policing decisions made in handling the crowd which attended the Royal Exchange and Climate Camp demonstrations. The case is noteworthy for the referencing of *R (LaPorte) v Chief Constable of Gloucestershire Constabulary [2006] UKHL 55, [2007] 2 AC 105* by the Master of the Rolls (at this point Lord Neuberger of Abbotsbury – who had already authorised the clearance of the Democracy Village protest from Parliament Square) and the development within the case of the discussion around the question of “imminence”: “If police action is to be justified where no actual breach of the peace has occurred, it is therefore essential that the police reasonably apprehend an imminent breach of the peace.”

Imminence was described at *[2007] 2 AC 105, para 141*, by Lord Mance in these terms:

“The requirement of imminence is relatively clear-cut and appropriately identifies the common law power (or duty) of any citizen including the police to take preventive action as a power of last resort catering for situations about to descend into violence. That is not to suggest that imminence falls to be judged in absolute and purely temporal terms, according to some measure of minutes. What is imminent has to be judged in the context under consideration, and the absence of any further opportunity to take preventive action may thus have relevance.”

Lord Rodger of Earlsferry said at *[2007] 2 AC 105, para 69*, that there was no need for the police officer “to wait until an opposing group hoves into sight before taking action,” as that would “turn every intervention into an exercise of crisis management.” Lord Carswell said about imminence at *[2007] 2 AC 105, para 102*:

“[I]t can properly be applied with a degree of flexibility which recognises the relevance of the circumstances of the case. In particular it seems to me rational and principled to accept that where events are building up inexorably to a breach of the peace it may be possible to regard it as imminent at an earlier stage temporarily than in the case of other more spontaneous breaches.”

Thus, the “preventive action as a power of last resort” is based on a political judgement that “where events are building up inexorably to a breach of the peace it may be possible to regard it as imminent at an earlier stage temporarily than in the case of other more spontaneous breaches.” The Master of the Rolls goes on to recite:

“At [2007] 2 AC 105, para 29, Lord Bingham of Cornhill made the point that a constable has a ‘duty’ as well as a ‘power’ to ‘seek to prevent...any breach of the peace occurring in his presence..., or any breach of the peace which is about to occur.’ Secondly, Lord Rodger said at [2007] 2 AC 105, para 84, that a police officer could stop potential protesters from proceeding further, ‘even if they were entirely peaceful’, provided ‘there was no other way of preventing an imminent breach of the peace’.”

These are the same arguments that have been used to justify the police tactic of “kettling” (the police containment or corralling of

protesters). Lord Neuberger resolves that the kettling of demonstrations at the Climate Camp was lawful:

*“We have concluded that a decision to contain a substantial crowd of demonstrators, whose behaviour, though at times unruly and somewhat violent, **did not of itself justify containment**, was justifiable on the ground that containment was the least drastic way of preventing what the police officer responsible for the decision reasonably apprehended would otherwise be imminent and serious breaches of the peace, as a result of what he reasonably regarded as the immediate risk of the crowd being joined by dispersing demonstrators from another substantial crowd, which had itself been contained, as its behaviour had been seriously violent and disorderly.” (emphasis added)*

The obvious danger is that the concept of “imminence” becomes so elastic that in effect the police in the first instance and the judiciary in the second, can retrospectively justify any action to restrict assembly, regardless of the facts on the ground.

Endnotes

- [1] The Guardian 22.11.11
- [2] Ibid
- [3] The Guardian 9.11.11
- [4] The Guardian 8.11.11

- [5] Operation Kirkin “Strategic Review Interim Report” Opera
- [6] Ibid
- [7] www.fortnum145.org



Belgian ‘municipal fines’ cause growing dissent

Kees Hudig

Fines have been issued for an array of bizarre “offences” and have been used to target individuals involved in organising political protests.

Tens of thousands of people, predominantly youths, have been issued with ‘municipal administrative sanctions’ (Gemeentelijke Administratieve Sancties, GAS, or SAC in Wallonia) over the last few years. These fines are issued by local municipal functionaries, so called GAS-ambtenaren often from rubbish or park maintenance units, against people they deem to be causing a “public nuisance.” The definition of what constitutes a public nuisance is decided by the municipality itself, as is the size of the fine, which can vary from 50 to a few hundred euros. The sanction, which was introduced as an administrative efficiency measure, is increasingly being arbitrarily applied to everyday

activities and to political protest. This has led to growing public dissent over its use.

The municipal fines system was launched in 1999 to alleviate the overburdened lower court of justice (parket). It enabled local authorities to issue (and collect) fines for minor infractions that are defined by municipal bylaws. Initially the fines were only applied to adults, but in 2004 the age range was lowered to 16 years (albeit with a maximum upper limit of up to 120 euros when applied to under-18s).

On 13 December 2012 the federal government lowered the age range further to 14 and increased the size of the fines. [1]

The original 1999 law has been gradually amended to broaden law enforcement remits and their application. Initially, only local police officers and those with law enforcement powers could issue administrative sanctions, but since 2005 the municipalities have had the power to decide which officials can issue fines. Many municipalities created special ‘GAS officers’ who roam the streets to identify and fine people who are ‘causing a nuisance.’ The city of Antwerp, for instance, issues around 1,000 fines each month and has 30 ‘GAS civil servants,’ mostly former rubbish collectors.

Until recently, those fined generally accepted the sanction and there was little organised protest. In 2012, however, it became known that the sanctions were being used not only to punish minor acts, but as instruments of political repression. This caused a public outcry.

It is possible to appeal against a fine, but there is no independent complaints body and the authority that issued the fine is responsible for assessing the appeal against it. The authority's decision can be appealed at a local second instance court, but this is seldom done because the procedure is cumbersome and carries the risk of incurring court costs if unsuccessful.

The theatre of the absurd: fined for eating a sandwich

Every municipality has its own bylaws which list acts that are prohibited and subject to sanction by the city council. This has led to a wide array of behaviours being outlawed. The online journal *PIDmagazine* published a special issue on the most bizarre GAS fines issued. [2] It includes fines for feeding birds in a park, throwing paper on the ground, imitating a police siren, honking and waving to a friend and not sitting in the right position on a public bench. Jef Coulommier, an 18-year old student, was arrested for eating a sandwich on the stairs of a church in Mechelen in October 2012 and was threatened with a fine of 100 euros. This caused a public outcry and led to 100 people gathering to eat sandwiches in the same spot three weeks later. [3]

Local municipal rules further prohibit, among other things: leaving ice hanging from your roof (Dendermonde), picking up confetti during carnival and throwing it again (Deinze) and scaring people (Lokeren). In Hasselt it is forbidden to mix cement in graveyards "unless using a bucket" and in Mortsel it is forbidden to repair your car on the side of the road.

Political nuisance fines

Municipal fines are now being used to target people involved in organising political protests. Two people identified as "leaders of Occupy Antwerp" were each issued with triple fines [4] after being accused of involvement in organising actions by their local group in September 2012. The evidence against them was that they had been observed attending meetings, carrying pencils (which could be used to write slogans) and assisting in a clean up after a gathering. They appealed against their 150 euro fines but they were not overturned, merely halved. One of the fines with which the two were issued was a pre-emptive fine for "planning to organise a protest on Astrid Square." They were arrested an hour before the protest was to take place, identified,

photographed and detained for more than an hour. Another case of 'political GASfining' was made against members of the leftist PvdA party in Antwerp in winter 2011. They were demanding flu vaccinations for all elderly people, but having been denied a permit to hold a demonstration in the town square they moved the action to a café. For this they received a fine.

The architect of the GAS fine system

Former minister, Luc van den Bossche, created the GAS-fine system in 1999. When confronted on the arbitrary application of fines, van den Bossche admitted that the law was being broadly interpreted by the municipalities and that oversight was lacking. In an interview with the website *DeWereldMorgen* [5] he conceded that the 2005 amendment, which bestows responsibility for evaluating complaints on the same authority that issued the fine, had been a mistake.

One organisation campaigning against the arbitrary issuing of GAS-fines in Belgium is the Chiro movement (www.chiro.be). Although this traditional youth organisation from Flanders is similar to a Scout group, many of its members were fined for organising street events. "Even climbing in a tree is being criminalised now" said the organisation's spokesperson Matti Vandemaele. The Chiros movement, along with dozens of other organisations such as the Human Rights League (Liga voor Mensenrechten) and youth organisations, are now demanding reform of the GAS/SAC policy. They staged a protest against the current practice of GAS-fines [6] in November 2012 together with some 25 Belgian organisations involved in youth issues, arguing that they were "criminalising the youth." More than a hundred demonstrators gathered in Elsene, a suburb of Brussels which holds the Belgian record for the number of fines with 6,000 having been issued. [7] Two days before the Elsene demonstration, students in Gent had protested against the fines. While trying to address the city council they were evicted from the town hall by the police. [8]

One of those warning against the growth of GAS fines is Jan Nolf, a former judge. In an interview, Nolf pointed to the lack of a legal base for issuing the fines and also highlighted the political-economic dimension: the economic crisis, he argued, will force more young people to roam the streets and they will be constantly confronted with "absurd GAS-penalties." [9]

Wikipedia: http://nl.wikipedia.org/wiki/Gemeentelijke_administratieve_sanctie

Official police information on the GAS fines: <http://www.lokalepolitie.be/5418/gas.html>

Endnotes

[1] De Standaard 3.10.12 Gas Boetes Omhoog http://www.standaard.be/artikel/detail.aspx?artikelid=DMF20121003_00320633 and http://www.standaard.be/artikel/detail.aspx?artikelid=DMF20121213_00401027

[2] Online magazine on GAS-fines <http://www.stampmedia.be/pidmag/>

[3] Nieuwsblad 31.10.12 Acties tegen Boete voor Broodjeseter http://www.nieuwsblad.be/article/detail.aspx?articleid=DMF20121030_00353631

See pictures and report at <http://www.dewereldmorgen.be/foto/2012/11/13/broodje-smeren-tegen-gas>

[4] *DeWereldMorgen* 20.9.12 <http://www.dewereldmorgen.be/artikels/2012/09/20/occupy-antwerpen-en-pvda-betwisten-gas-boetes-van>

[5] Interview with Luc Van den Bossche 19.11.12

<http://www.dewereldmorgen.be/artikels/2012/11/19/luc-van-den-bossche-vader-van-de-gas-boete-herkent-zijn-kind-niet-meer>

[6] Report on demonstration on website mensenrechten.be http://www.mensenrechten.be/index.php/site/nieuwsberichten/verslag_protestactie_gas_nee_bedankt

[7] See video of the demonstration here: http://www.nieuwsblad.be/article/detail.aspx?artikelid=BLSME_20121130_001

[8] *Knack* 26.11.12 Studenten protesteren tegen GAS-boetes <http://www.knack.be/nieuws/belgie/studenten-protesteren-tegen-gas-boetes/article-4000213917157.htm>

[9] Interview by stampmedia on website *DeWereldMorgen* 5.12.12 <http://www.dewereldmorgen.be/artikels/2012/12/05/drie-wijzen-over-gas-boetes>

Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison? *Prison Reform Trust* and *INQUEST*, 2012, pp.66 (ISBN: 978-1-908504-03-6)

Reviewed by Marie Martin

Between 2003 and 2010, INQUEST provided specialised case-work services to the families of children and young adults who died in custody in the UK. In 2005, the charity published its first overview on the subject called *In the care of the state?*

INQUEST's monitoring of the deaths of young people and children started in 2003 following the death of Joseph Scholes (16) who died in a Young Offenders Institution (YOI) in March 2002 "rais[ing] serious concerns about the treatment of vulnerable children and young people within the criminal justice system." Despite the charity's and families' requests, the call for a public inquiry into the deaths of five children and 188 young adults since 2003 was rejected.

This joint report by the Prison Reform Trust and Inquest aims to provide an alternative to the absence of a concerted approach by the authorities, and the "inadequate institutional responses to the deaths of children and young people in prisons." It analyses "trends and evidence derived from the deaths of children and young people [18 to 24 years old] between 2003 and 2011."

The report provides a comprehensive overview on the reality of the detention of young adults and children: the vulnerability assessment mechanisms in place, the inquest process following a death in custody, research establishing the specific needs of children and young adults in detention. The authors also provided statistics and background information on the detention of children and young adults and on the profile of those who died in custody between 2003 and 2011. Their statistical research shows that "recommendations from inquests and investigations into previous deaths have not been properly implemented."

Both organisations took the cases of five children or young adults who died in custody to illustrate different shortcomings in understanding the causes for these deaths, from the decision to put the young offender in custody (the issue of the custodial threshold), to the assessment of the children and young adults' vulnerability and their special needs – including mental health problems and risks of self-harm.

The report starts with a description of the investigation process following the death of a child/young adult at a secure children's home, securing training centre, young offender institution or adult prison. This process has been amended since the adoption of the Serious Case Review Process in 2008 but is still believed to have a "limited effectiveness", particularly because of the length of the procedures (up to two years as identified by the Independent Advisory Panel on Deaths in Custody in 2011), the impediments to family participation, and the lack of transparency in the conclusions of the investigations. Most reports

are kept out of the public eye, including the feedback given by different agencies to the coroner on the measures to prevent further deaths. Moreover, despite the adoption of the Coroner and Justice Act in 2009 (partly in force in 2013) underlying issues such as sentencing policy will not be part of what coroners consider.

Despite the reduction in the number of children detained in recent years, there were still 1,690 children in custody in 2012, almost one quarter of them on remand. Among them, 26% were below the age of 16, with an over-representation of BAME (Black, Asian and Minority Ethnic) people who make up to 27% of the children in custody, although they represent only 15% of the general population. The research found that this particular group is treated less favourably when it comes to the reduction of the use of custody for children. The report stresses the importance of using detention as a last resort, since "ample research evidence shows that many children are in fact imprisoned for offences that are not very serious." In line with the recommendations of the UN Committee on the Rights of the Child, the authors believe that England and Wales should raise the age of criminal responsibility which at ten years of ages is the lowest in the EU. The detention of young adults is also considered to be inappropriate. First of all, 18-24 year olds are not treated as a specific group despite the Inspector of Prisons' recommendations in 2011. Empirical research has emphasised their vulnerability, especially emotionally and psychologically. Studies referred to in the analysis show that young people in prison are more likely than adults to have mental health problems and are more likely to take their own life. Second, these young adults have "a disproportionate level of involvement in the criminal justice system," making up 25% of the total prison population (as of June 2011).

Through their work, both organisations have come to the conclusion that children and young adults held in custody are "amongst the most disadvantaged in society" – homelessness, death of a parent, time spent in care, victims of domestic violence or abuse, drug issues, mental health problems - and had in many instances been "failed by the systems set up to safeguard them from harm."

The decision to put children and young adults in custody despite their vulnerability, and the failure to address their fragility once detained are considered as the main causes for self-harm and suicide cases. Between 2003 and 2011, 194 young people died in custody including six children. 83% of the deaths amongst those aged 18-24 were self-inflicted. The report points at disastrous shortcomings in the assessment of the vulnerability of detained children and young adults despite the recommendations in 2006 by the Lambert Report following Joseph Scholes's death. The report criticised the failure to protect young adults detained in prisons from bullying, and the absence of sufficient medical care and therapeutic services in prison.

An entire section of the report is dedicated to the disturbing use of restraint against children and young adults, a practice which was reviewed in 2007 following the death of two young adults, one in prison and the other in a secure children's home. However, if "pain restraint techniques" are now prohibited in all

secure children homes, new guidelines adopted by the Ministry of Justice in July 2012 still allow for the use of pain-inducing restraint techniques on children in prison. According to the authors, “there is no such thing as ‘entirely safe’ restraint. Restraint is intrinsically unsafe. And when it does not end in physical injury the experience and the memory can be profoundly damaging psychologically.”

This report is a plea for common sense. It provides further evidence, based on the terrible reality of deaths of children and young adults, that under-18s should not be detained and the decision to hold a young adult in custody should be more carefully considered. A 2008 study by the Prison Reform Trust found that 60% of the children were convicted although the offence usually resulted in non-custodial sentences. INQUEST and the Prison Reform Trust argue that “minor offences and anti-social behaviour should be viewed as a public health rather than a criminal justice issue” and calls for more “emphasis on therapeutic environments.”

Link to the report: <http://inquest.gn.opc.org/website/publications/fatally-flawed>

Xénophobie Business — A quoi servent les contrôles migratoires? [Xenophobia business — What is the point of migration controls?] Claire Rodier. *La Découverte*, October 2012, pp. 194 (ISBN 978-2-7071-7433-8)

Reviewed by Marie Martin

The question asked by Claire Rodier in the title of her latest book (in French) may seem easy to answer. One may assume that the point of migration controls is to stop irregular migrants, although in reality migration controls are more efficient at diverting migrants from established routes. However, as this work reveals, migration controls also involve a complex logic of inter-dependent geopolitical, ideological and economic interests.

Tracking, detaining and removing migrants has become a profitable business. Using concrete examples based in the USA – the adoption of the SB 1070 law in Arizona, for instance – and the UK, Rodier dedicates an entire chapter to the rise of private security companies, their influence on politicians, and their shift from a military to a civil role after the Cold War. The author states that in 2009 security firms made a global profit of €450 billion. The impressive growth of this expanding market between 2002 and 2009 – from 10 to 12% – is likely to be maintained, encouraged by hyperbolic government narratives against “illegals” and terrorists.

Whether in Anglo-Saxon (specifically the UK and USA) countries where the management of detention centres and prisons has been totally or partly privatised, or countries like Italy where the management of detention centres is a source of profit for supposedly “charitable” organisations, depriving people of liberty is a source of employment for those who provide services and “security” to thousands of detainees. Rodier suggests that it is a policy worth more than a few votes in times of economic crisis.

Since 2002 and the appearance in public discourse of the notion of the “securitisation of external borders,” the demand for security and surveillance at the border and beyond has developed exponentially, e.g. with the establishment of SIVE (Integrated System off the Spanish coasts), EUROSUR (European Border Surveillance System), and the creation of Frontex (EU border management agency).

Maintaining fear against “invading” irregular migrants who have been increasingly associated with terrorism and organised crime since the 1980s, a tendency that has increased since 2001, is in the interest of both security companies and governments. The former are enthusiastic participants in “expert groups” on security which advise governments on what they consider to be the best way to protect citizens – e.g. investment in surveillance technologies. The latter play on the political potential of creating a scapegoat (migrant) community and stress their efforts to counter it through building walls and detention centres and deporting irregular migrants.

While mainly focused on the EU’s migration control policies and their externalisation to neighbouring countries (through readmission agreements, EU funded detention centres built in Mauritania, Libya, Ukraine, Turkey etc.), the book also draws on several non-EU related examples. 18,000 km of walls have been built worldwide to exclude undesirable migrants and detention centres are proliferating. Have these containment strategies proved useful? Rodier cites the economist Jagdish Bhagwati who described the barrier dividing India and Bangladesh as “the least disruptive way of doing nothing while appearing to do something.” Rodier adds:

“These barriers, whether legal (visa), physical (walls) or virtual (radars and sensors), are far from impassable: a non-negligible part of so-called undesirable migrants manage to pass through.”

Migration controls also play an important role in diplomatic relations between states. For example, the EU’s support to Ukraine is not purely based on immigration related interests but also on diplomatic relations with a major gas provider to Europe. However, Rodier points out that what seems to be an imbalanced power relation is not a one-way-street. The “externalisation of migration controls” supports the geopolitical interests of countries who aspire to be regional leaders. Thus, the emphasis on migration controls at the Morocco-Algeria border does not only serve the EU’s interests; it is part of long-lasting tensions between the two countries. In fact, migration controls in this part of the world are mostly symbolic since migrants removed by Morocco to Algeria often cross the border again after they have bribed border guards.

If the usefulness of migration controls is debatable, the costs incurred raise serious questions about the proportionality of the entire apparatus. Vast sums are spent by the security-industrial complex on the research and development of new technologies, cooperation funds are used to win the support of third countries to widen the belt of buffer states, and public money is spent on the tracking, detention, and forced removal/deportation of migrants.

According to the UNITED network, thousands of lives have been lost at the European Union's border since the early 1990s, but these deaths are used by governments to distort humanitarian narratives to maintain the lucrative "xenophobic" business of migration controls. According to Rodier, "[i]t is high time to put things in perspective against the background of these dramatic consequences: this hypocritical discourse, the real motives behind migration controls, and their efficiency."

UNITED link: <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>

Civil liberties

Defence Companies Anti-Corruption Index 2012. *Transparency International UK*, 3.10.12, pp. 30, (ISBN: 978-0-9569445-8-0).

With a foreword by a Former Secretary General of NATO, it is clear that this study is not in itself opposed to aspects of the arms trade that are often so contentious amongst campaign groups, such as sales to repressive regimes. Rather, it focuses on corruption in the arms – or "defence" industry – seeing it as "dangerous, divisive and wasteful." This can lead to bad reputations for the governments and companies involved, "much to the frustration of the many honest people working in it." The report is well-researched, with primary research leading to the first major finding that "two thirds of defence companies do not provide adequate levels of transparency." 129 companies were examined altogether, largely on the basis of questionnaires issued to relevant staff and information available publicly (e.g. via websites). Only ten of those 129 reach a score that "means they have good, publicly available evidence of having at least basic ethics and anti-corruption compliance systems in place." Further sections of the report examine whether companies meet global standards; corporate "leadership" on anti-corruption practices; emphasising to employees a zero-tolerance anti-corruption policy.

Available as a download: <http://companies.defenceindex.org/sites/default/files/documents/CI-Report-Single-Hires.pdf>

Turn Down the Heat: Why a 4°C Warmer World Must Be Avoided. *Potsdam Institute for Climate Impact Research and Climate Analytics* (The World Bank) 2012, pp. 85.

This report, written for the World Bank, warns of the devastating effects of a 4°C warming of the world. It draws attention to various potential scenarios, including the inundation of coastal cities; increasing risks for food production (potentially leading to higher malnutrition rates); many dry regions becoming dryer and wet regions wetter; unprecedented heat waves in many regions, especially the tropics; substantially exacerbated water scarcity in many regions; increased frequency of high-intensity tropical cyclones and irreversible loss of biodiversity. The report notes that "a 4°C world is so different from the current one that

it comes with high uncertainty and new risks that threaten our ability to anticipate and plan for future adaptation needs."

Available as a download at: http://climatechange.worldbank.org/sites/default/files/Turn_Down_the_heat_Why_a_4_degree_centrigrade_warmer_world_must_be_avoided.pdf

Immigration and asylum

Turned Away: Summary Returns of Unaccompanied Migrant Children and Adult Asylum Seekers from Italy to Greece. *Human Rights Watch*, January 2013, pp. 51, (ISBN: 1-56432-976-3).

In November 2011 and between June and September 2012, Human Rights Watch conducted 29 interviews with migrants who had been removed from Italy to Greece shortly after their arrival by sea as stowaways. Thirteen of those interviewed were under-age when removed to Greece and most of them are still in limbo today. Based on evidence from migrants, NGOs and collected during interviews with officials, the report concludes that many of the stowaways arriving in Italian ports are systematically returned to Greece, despite the critical situation migrants are facing there. Human Rights Watch emphasises the vulnerability of asylum-seekers and unaccompanied children who are returned to a country where the asylum system and immigration reception conditions were found to be substandard and inappropriate by both the Court of Justice of the European Union and the European Court of Human Rights. Despite Italy's obligations to examine each individual's situation, to identify and support unaccompanied children and adults in need of protection – particularly asylum-seekers evidence abounds to show, *inter alia*, very limited access for NGOs to ports, the absence of any statistical record of the number of people intercepted and returned, allegations of detention of migrants on-board ship and Italy's violation of its international and national obligations under human rights law. This report further documents a situation denounced by Pro Asyl and the Greek Council for Refugees in a recent publication, *Treated like human cargo - Italy pushes protection seekers back to Greece* (July 2012).

The Human Rights Watch report is available as a free download: http://www.hrw.org/sites/default/files/reports/italy0113ForUpload_0.pdf

'A Prison in Mind': the mental health implications of detention in Brook House Immigration Removal Centre. *Gatwick Detainees Welfare Group*, November 2012, pp. 24.

The Gatwick Detainees Welfare Group (GDWG) conducted a study on the mental health of detainees in Brook House Immigration Removal Centre, one of two Immigration Removal Centres – the other being Tinsley House - where the charity provides support to migrants in detention. The organisation wanted to investigate its "concerns...that detainees' mental health was adversely affected by their prolonged detention." Based on

interviews with nine long-term detainees (whose average length of detention was 15 months) and 11 visitors, the report provides a useful insight into the ill-being of detainees, identified through physical and psychological symptoms. Interviewees, some of who suffered from mental illness prior to detention, confirmed that detention had affected them negatively and that access to healthcare was unsatisfactory. However, many considered that improving detention conditions would not help improve their situation and some blamed the immigration system itself, arguing that their detention was at the root of detainees' distress. The report provides a set of recommendations. By stressing the importance of in-depth research on how detention affects the mental health of detainees, GDWG has provided a "timely reminder that the way we treat the most vulnerable among us is a measure of our own humanity," according to the Royal College Medical Lead on Asylum Mental health Cornelius Katona MD FRCPsych.

Link to report: <http://www.gdwg.org.uk/downloads/GDWG-PrisonInTheMind.pdf>

The Effectiveness and Impact of Immigration Detention Casework: a joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration. *HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration*, December 2012, pp. 52 (ISBN: 978-1-84099-578-7).

The joint report examines how UKBA is dealing with immigration detainees' cases in detention centres, prisons and ports. It warns of serious shortcomings with respect to the decision to detain, the regular review of the detention order, case progression and the reasons for prolonged detention. The report draws on 81 interviews with detainees conducted between February and September 2011, and the analysis of some detainees' files. As of March 2012, 3,034 detainees were held under immigration law, including victims of torture, victims of trafficking and children - the report covers cases at Cedars' Pre-Departure Accommodation for families in Pease Pottage, Sussex. In particular, the absence of automatic judicial review of detention orders and the lack of regular, coherent and appropriate reviews of detention raised concern: in 59% of cases detention was not reviewed by the correct authority. As of March 2012, 42 detainees had spent more than two years in detention. The longest detainee amongst interviewees had spent nearly five years in detention. Although there is no defined limit on the length of detention in the UK, it should only occur when detainees can be deported or removed within a reasonable period, with six months detention being regarded as a long detention period by the *Bail Guidance for Immigration Judges*. The absence of support for vulnerable detainees such as victims of torture or trafficking, or people with health issues - 67% of the interviewees, half of them describing mental health problems - reflected a concerning lack of professionalism by UKBA which either ignored diagnoses establishing the vulnerability

of some detainees, or did not consider detainees' expression of distress and suffering. Access to information, legal advice, judicial review of the detention order, and the lodging of bail request remain very limited, mostly because many detainees are unaware of their rights or were not provided quality advice by their legal representative. The situation of foreign national prisoners, who are automatically issued with a deportation order if they have been imprisoned for a minimum of twelve months, is examined at some length in one section of the report, as it seems that immigration detention could be avoided in many cases. These elements led the two inspectors to the conclusion that "the evidence of poor casework needs to be addressed at every level." The UKBA replied to the report but only accepted some of the recommendations. It rejected the possibility of asking an independent panel to examine cases of lengthy detention or of translating information documents - on access to legal aid, bail etc. - into languages which detainees can understand, arguing that interpreting services can be used "if necessary."

Link: <http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf>

Report of the Parliamentary Inquiry into Asylum Support for Children and Young People. *Children's Society*, January 2013, pp. 40.

In 2009, the Home Secretary was given the responsibility to promote the welfare of children in the immigration system. No formal review of the asylum support system was undertaken from this perspective until a cross-party parliamentary inquiry into *Asylum Support for Children and Young People* was launched in October 2012, led by former children's minister Sarah Teather MP and supported by the Children's Society. Written submissions and oral evidence from over 200 individuals and organisations were reviewed, including contributions from asylum-seeking families, local authorities, child protection committees and civil society organisations involved in the defence of access to health care, children's rights, and refugee rights. The report examined the living conditions of families seeking asylum - supported under Section 95 of the Immigration and Asylum law - and families whose asylum claim was rejected but who cannot be removed from the UK - supported under Section 4 of the Immigration and Asylum law. What the authorities claim to be temporary support schemes can in reality last for years in many cases. The report's conclusions are alarming: children living in dire poverty, unsecure and unsanitary living standards, and families unable to provide for the essential needs of their children. Destitution puts these families and children at risk of exploitation, especially those under Section 4 support who cannot dispose of their allowance in cash (Azure card), and are entitled to far less support than asylum-seekers under Section 95. In the foreword to the report, Teather concludes that "systemic failures from successive governments are leaving many [children and families seeking protection] destitute."

This, combined with “racial abuse” and “abject disregard for basic human dignity” are in blatant contradiction with the UK’s “proud record of giving protection to those fleeing persecution and war.” According to the report, the practice of “creating a hostile environment” to deter asylum-seekers from coming to the UK is “dangerously flawed.” Teather and the panel strongly recommend, *inter alia*, that Section 4 support be abolished and replaced by “a single cash-based support system”; that asylum support should not fall below 70% of income support levels; that adult asylum-seekers be permitted to work if their case is still pending after six months and that decent living standards are guaranteed for all.

Link to report: http://www.childrenssociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf

Link to written evidence: <http://www.childrenssociety.org.uk/what-we-do/policy-and-lobbying/parliamentary-work/parliamentary-inquiry-asylum-support-children-and->

Lives in Transition: experiences of migrants living in Morocco and Algeria. Andrew Galea Debono, *Jesuit Refugee Service*, December 2012, pp. 48.

This report examines the experiences of migrants from sub-Saharan Africa living in Algeria and Morocco, where many have become “stuck” in their attempts to get to Europe due to the controls imposed by the EU and its member states’ governments, particularly in the Spanish enclave of Ceuta. While the political analysis in the report is limited – at one point “Europe and its respect for human rights” is mentioned without any critical comment on the situation of migrants and refugees within Europe – it does a good job of detailing the hardships experienced by refugees, asylum-seekers and undocumented migrants living in Algeria and Morocco. This includes information on limited access to healthcare and education; racism in the police and wider society; raids, detention and deportations; and lack of legal procedure or effective identification of persons who may qualify for international protection.

Available as a download at: <http://www.jrseurope.org/publications/LivesInTransitionJRSEUR10Dec2012.pdf>

Law

The Code for Crown Prosecutors. *Crown Prosecution Service* January 2013, pp. 24.

The Director of Public Prosecutions, Keir Starmer, has published the seventh edition of *The Code*, which provides guidance to prosecutors and police in deciding whether or not to charge a suspect. The Code says: “The CPS has recently widened the range of cases that it prosecutes, which includes motoring, benefit fraud, sexual offences, corruption, murder and the most complex fraud and organised crime. Given this variety of cases on which charging decisions are made, this new version of the Code is a simpler, stripped back statement of overarching principles that

can be applied to every case. It sits side-by-side with a wealth of existing legal guidance on specific offences.”

Available at: www.cps.gov.uk

Military

Louder than words – an agenda for action to end state use of child soldiers: report published to mark the tenth anniversary year of entry into force of the Optional Protocol on the involvement of children in armed conflict. *Child Soldiers International*, 2012, pp. 162 (ISBN 978-0-9541624-3-6).

This report looks at the legal framework that obliges states to end the recruitment and use of children by armed forces; global trends in the use of child soldiers and case studies covering countries including Eritrea, Liberia and Yemen; and an examination of the responsibility of arms-exporting states to prohibit exports to countries in which child soldiers may be used. “Despite frequently repeated statements of concern about the relationship between the proliferation of small arms and child soldiers, when it comes to bilateral arms transfer, with few exceptions exporting states do not consider the record on child soldier recruitment and use by recipient states in their decision-making processes.” Only three states – Belgium, Switzerland and the USA – “have enacted laws to condition arms exports specifically on a recipient country’s record on recruitment and use of children,” although it is not always possible “to assess where [the laws] have been applied and with what effect.” The report calls for “legislation which explicitly prohibits transfers of arms and other military assistance to states where children are subject to or at risk of unlawful recruitment and use by state armed forces or allied groups,” and also notes the potential for security sector reform programs to be used to ensure the prevention of recruitment and use of child soldiers.

Available at: http://www.child-soldiers.org/global_report_reader.php?id=562

Death of a Dictator: bloody vengeance in Sirte. *Human Rights Watch* 2012, pp. 58, (ISBN: 1-56432-952-6).

This report details the final hours of Muammar Gaddafi’s life and the circumstances in which he was killed. “It presents evidence that Misrata-based militias captured and disarmed members of the Gaddafi convoy and, after bringing them under their control, subjected them to brutal beatings. They then executed at least 66 captured members of the convoy at the nearby Mahari Hotel. The evidence indicates that opposition militias took Gaddafi’s wounded son Mutassim from Sirte to Misrata and killed him there. Under the laws of war, the killing of captured combatants is a war crime, and Libyan civilian and military authorities have an obligation to investigate war crimes and other violations of international humanitarian law.”

Available as a free download at: <http://www.hrw.org/reports/2012/10/16/death-dictator-0>

Mali: first assessment of the human rights situation after three week conflict. *Amnesty International*, 1.2.13, (AFR 37/003/2013) pp. 14.

This Amnesty briefing, based on research carried out in the towns of Ségou, Sévaré and Niono, reports that civilians are at risk from all sides in the conflict. It reports that at least five civilians, including three young children, were killed in an air attack launched by the joint French and Malian counter-offensive to take over the town of Konna and on credible reports that civilians have been extrajudicially executed by the Malian military since January.

Amnesty has also collected testimonies about human rights abuses and violations of international humanitarian law by armed Islamist groups including unlawful killings and the use of child soldiers.

Available as a free download at: <http://www.amnesty.org/en/library/info/AFR37/003/2013/en>

Policing

Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom. Maina Kiai. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Press release* 23.1.13.

The Rapporteur's press release, which prefigures the full report which will be presented in June, covers January's visit to London, Belfast and Edinburgh and his meetings with senior officials, representatives of the legislature, human rights commissions and independent monitoring institutions. In England and Wales Kiai expresses deep concern at the use of "embedded undercover police officers in groups that are non-violent" and finds their use, such as in the case of Mark Kennedy/Stone, to be "shocking" as the groups that were infiltrated were not engaged in criminal activities: "The duration of this infiltration, and the resultant trauma and suspicion it has caused, are unacceptable in a democracy. It is a clear violation of basic rights protected under the Human Rights Act, and more generally under international law." Kiai calls for a judge-led public inquiry into the Kennedy operation and related cases, "with a view to giving voice to victims, especially women, who were deliberately deceived by their own government, and paving the way for reparations." The report also criticises the imposition of a blanket ban on marches (in relation to mobilisations against a EDL demonstration) and expresses concern at the police practice of "kettling" (mass containment) which is "detrimental to the exercise of the right to freedom of peaceful assembly due to its indiscriminate and disproportionate nature." In England, Wales, Northern Ireland and Scotland concern is expressed at the application of the "problematic concept of 'domestic extremism' to protest groups,

and the gathering and use of intelligence." In relation to freedom of association in the context of the fight against terrorism, the report is critical of the use of proscription against organisations (from Tamil, Kurdish or Baloch communities) when there is no proof of their involvement in terrorist activities. The author also alludes to the difficulties faced by Muslim charities from interference by banks. Two trade unions issues are referred to: undue restrictions on solidarity actions ("secondary picketing") which should be repealed and the existence of the Consulting Association, which blacklisted construction industry union members without any sanctions being taken against those who benefitted from the practice.

Available as a download at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12946&LangID=E>

Innocence Network UK (INUK) Symposium on the Reform of the Criminal Cases Review Commission (CCRC): Report, Michael Naughton and Gabe Tan and Dossier of Cases. *Innocence Network UK* 2012 pp. 96 & pp. 20.

The first volume is a report from INUK's symposium which highlighted 45 cases of alleged victims of wrongful conviction as part of a campaign for urgent reform of the Criminal Cases Review Commission (CCRC). The event hosted talks from – among others - Susan May and Eddie Gilfoyle, who are widely believed to be innocent of the murders they were convicted of, and Paddy Hill of the Birmingham Six who was fitted-up with others by the police for an IRA bombing and served 16 years in prison as a result. The report provides an overview of the papers presented at the event as well as two papers that were submitted afterwards. The dossier volume details 44 cases of current victims of wrongful conviction which have been refused a referral back to the Court of Appeal by the Criminal Cases Review Commission at least once, despite doubts about the evidence that led to their convictions.

The two volumes are available as a free download: <http://www.innocencenetwork.org.uk/wp-content/uploads/2012/05/INUK-Dossier-of-Cases.pdf> and <http://www.innocencenetwork.org.uk/wp-content/uploads/2013/01/CCRC-Symposium-Report.pdf>

Your Rights and Mobile Fingerprinting. *Network for Police Monitoring*, 28.1.13.

In late January the Metropolitan Police became the twenty-fifth police force in the UK to begin using mobile fingerprint scanners, which allow officers in the street to check prints against the Police National Computer database. Police using the scanners can take prints in the street, without placing the individual under arrest, if they "reasonably suspect" they have committed a crime. The Network for Police Monitoring says the mobile scanners "could pose a serious threat to civil rights" and have published this guide which is available on their website: <http://netpol.org/2013/01/28/your-rights-and-mobile-fingerprinting/>

Prisons

The surveillance of ‘prolific’ offenders: beyond ‘docile bodies’. Michael McCahill and Rachel L. Finn, *Punishment & Society*, Volume 15 no. 1, 2012, pp. 23-42.

Based on a series of interviews with a group of mainly white, working class residents of deprived council estates in northern England on a variety of different probation regimes, the article draws on the work of Pierre Bourdieu to try and “provide a corrective to much of the existing literature which continues to portray the surveilled as ‘docile bodies’, rather than social actors who can contest power relations in situations that are very much skewed against them.” The authors examine the different methods of monitoring and surveillance (electronic tagging, surveillance, databases, observation, police and probation service interviews, home visits) to which people on probation are subjected, and examines the different ways in which they seek to resist these methods of control.

Learning lessons bulletin. Prisons and Probation Ombudsman for England and Wales, *Bulletin* Nos. 1 and 2 (September 2012 / February 2013), pp. 4.

These bulletins provide themed analysis of findings and investigations into complaints and fatal incidents in prisons and approved premises. *Bulletin* 1 examines the lessons that can be learnt from deaths in approved premises and *Bulletin* 2 covers the use of restraints for seriously ill and dying prisoners.

Available as a download: <http://www.ppo.gov.uk/>

Investigation of Fatal Incidents. The Prisons and Probation Ombudsman, March 2012, pp. 8.

This pamphlet, published by the Prison’s Ombudsman’s office, is designed for family members and friends of someone who has died while in a prison, immigration removal centre, secure training centre, or while a resident of probation approved premises or in the custody of the courts. It explains the role of the Prisons and Probation Ombudsman following a death and provides guidance on the investigation process.

http://www.ppo.gov.uk/docs/PPO_Family_Liaison_Booklet_2012_Web_Final.pdf

Remand prisoners: a thematic review. *HM Inspectorate of Prisons* (August) 2012, pp. 126 (ISBN: 978-1-84099-548-0).

Remand prisoners, those who have not been convicted or sentenced by a court, constitute about 15% of the prison population at any one time (between 12-13,000 prisoners). Women and those from black and minority ethnic and foreign national backgrounds are over-represented. Remand prisoners suffer from a poorer regime and are offered less support than sentenced prisoners, leading to an increased risk of suicide and self-harm.

Available as a free download at: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/thematic-reports-and-research-publications/remand-thematic.pdf>

Racism and fascism

Racial Violence: facing reality. Jon Burnett. *Institute of Race Relations*, February 2013, pp. 7.

This report, based on extensive research carried out by the IRR, examines the spread of racist violence from the inner cities to smaller cities and towns across the UK in the face of a post-MacPherson reform narrative that saw racism relegated to history. Burnett’s research demonstrates that violent racism is alive and kicking and no longer confined to the major urban centres where it thrived but has imperceptibly shifted to areas that previously had no such tradition. On the one hand “new” migrants - asylum seekers, migrant workers and international students - have been targeted after finding themselves marginalised through processes such as dispersal, while older more settled communities have remained under attack against a backdrop of hostility generated by the so-called ‘war on terror.’ Therefore, the report contextualises racist violence “in terms of an interplay between local realities, national policies and global conditions” to advocate a return to a community safety policy that “tries to prevent such attacks taking place in the first place.” This means that agencies, institutions and voluntary bodies “need to understand how racism has changed.” To this end, Burnett concludes by making a series of six recommendations.

Available as a download at: <http://www.irr.org.uk/publications/issues/racial-violence-facing-reality/>

Under Pressure: A report into far-right and loyalist attacks against Irish community parades/marches in Liverpool during 2012. *Cairde na hÉireann*, February 2013, pp. 13.

This report looks at attacks by far-right and loyalist groups on Irish republican parades and marches in Liverpool during 2012. It notes the history of the Irish community in Liverpool, making clear that it has been “an integral part of the make-up of the city for over 200 years”, with “radical political activism and cultural resistance” making up part of the community’s history since Irish people settled in large numbers in Liverpool after the Irish famine in the 1840s. A resurgence in republican political activity in 1994 was accompanied by loyalist and right-wing opposition, which died down between 1996 and 2011 and then once again reared its head in 2012 when three Irish community parades/marches were “directly challenged by far-right groups and individual members of from the Loyalist/Orange community.” Marches in February (in commemoration of the death of republican volunteer Sean Phelan in 1921), July (a trade union march against racism and fascism), and October (in commemoration of the International Brigades that fought in the Spanish

Civil War) met opposition from a variety of racist, nationalist and loyalist organisations who have directed racist and other abuse at marchers. The report ends with a series of recommendations, including that the police “recognise anti-Irish racism as a real issue,” that there be “proper reporting and analysis of attacks by the far-right and loyalists...by the local media,” and that the labour and trade union movement develop a shared analysis of far-right activity in Liverpool.

Available at: <http://cairdeliverpool.files.wordpress.com/2013/01/under-pressure-doc-feb-2013.pdf>

ECRI report on Ireland (fourth monitoring cycle). *European Commission against Racism and Intolerance*, CRI(2013)1, 2013, pp. 42.

ECRI welcomed positive developments, but also highlighted “persistent concerns” in its recommendations. These include: the monitoring of the application of the Immigration Acts 2003 and 2004 in relation to allegations of racial profiling by the Garda Síochána, and enacting legislation to counter it; the establishment of an independent body to monitor discrimination on the grounds of ethnic origin, colour, citizenship, religion and language; the involvement of local authorities in implementing the National Traveller/Roma Integration Strategy pertaining to housing and the adoption and drafting of the Residence and Protection Bill to put in place a procedure for dealing with applications for asylum and subsidiary protection, to introduce a long-term residence status and to introduce procedures for registration of non-national minors under 16.

Available online at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf>

Shifting sands, Sonia Gable, **The fringe of the fringe,** Lee Marshall and **Ultra-right conservative and quasi-patriotic organisations active in Britain,** Cato. *Searchlight* No. 450, January 2013, pp. 5-8.

These articles review the state of the far-right in Britain. “Shifting Sands” covers the British National Party, British Freedom Party, Britain First, National Front, English Defence League and the British Democratic Party. The “fringe” consists of entries on the British Movement, Combined Ex-Forces, Racial Volunteer Force, Blood and Honour, League of St. George, The Infidels, The Casuals, British People’s Party, Redwatch, Stormfront and Historical Review Press. The “Ultra-right conservative” piece considers Bloomfield Books, British Patriots Society, Conservative Monday Club, England is Ours, England Democrats Party, English Green, English Shieldwall, London Swinton Circle, March for England, National Culturists, Patriotic Forum, Quarterly Review, Shieldwall – National Welfare Association, St George’s Committee, The Steadfast Trust, Swinton Circle, Traditional Britain Group, United British Alliance, We Are the English.com and the Workers of England Union.

Security and intelligence

The Policing You Don’t See. Covert policing and the accountability gap: five years on from the transfer of ‘national security’ primacy to MI5. *Committee on the Administration of Justice* November 2012, pp. 106 (ISBN 978-1-873285-48-0).

This CAJ report discusses issues of accountability and transparency in relation to police reform under the Northern Ireland peace settlement “which shifted the most sensitive areas of covert policing...*outside* the post-Patten accountability arrangements.” The policy formalised the previously largely undeclared role of MI5 in covert policing in Northern Ireland and transferred primacy to MI5 over ‘national security’ policing, thereby relegating the PSNI to a subordinate role. The report examines: evidence of past human rights abuses in covert policing in Northern Ireland (Chapter 2); the role of MI5 as far as it is known from official reports and other sources (Chapter 3) and concludes with a critique of the application and impact in practice of the St Andrews safeguards. This final chapter also benchmarks arrangements following the transfer of primacy over ‘national security’ policing to MI5 against the human rights and Patten frameworks for covert policing.

Available on the CAJ website: www.caj.org.uk

Globalizing Torture: CIA secret detention and extraordinary rendition, Amrit Singh. *Open Society Foundations*, 2013, pp. 216 (ISBN: 978-1-936133-75-8).

This important report investigates human rights abuses committed by the CIA as part of its secret detention and extraordinary rendition operations. It presents information on 136 *known* victims of the CIA’s illegal torture (“enhanced interrogation technique”) programme. The report notes with “significant concern” that the US officials responsible for authorising these human rights violations have enjoyed impunity from prosecution, but also observes that the programme could not have been conducted without the complicity and cooperation of foreign governments such as Egypt, Syria, Afghanistan, Saudi-Arabia, Algeria, Albania, Somalia, Libya, Yemen, Uzbekistan, Zimbabwe and other dictatorships. *Globalising Torture* also documents collusion by European countries (such as the United Kingdom, Poland, Belgium, Germany, Finland, Sweden and Denmark) and their allies (Canada and Australia) who gave active and logistical support in assisting the CIA in delivering suspects for “special treatment.” Not a single US official has been held accountable for their illegal actions. Regarding the CIA’s collaborators, Canada, Sweden, Australia, and the UK have issued compensation to some of the victims but the officials and intelligence agents who colluded in the torture programme are apparently beyond the reach of the law.

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ISSN: 0961-7280

editors: Tony Bunyan, Ben Hayes

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hard copy subscriptions available:

<http://www.statewatch.org/ordering/order.html>

printing: Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

