The USA PATRIOT Acts (et al): Collective Amnesia, Paranoia and Convergent, Oligarchic Legislation in the 'Politics of Fear'

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Comparative analysis has been ignored in recent decades as the mantra of 'convergence' has taken hegemonic forms under globalisation and, more recently, under the exporting of a United States–inspired 'exceptionalism' within this Neo-liberal project. The 'War on Terror' provides an unusual window for 'seeing' real convergence in the largely 'invisible' manoeuvring over framing and re-framing of anti-terrorist legislation in the US, UK/Europe and Australia.

A cursory, comparative glance at *The USA PATRIOT Act* 2001, *The USA PATRIOT Act* 2006, other legislative variations in the United Kingdom/European Union (UK/EU) and Australia, and Stalinist legislation - Article 58, Criminal Code of the RSFSR (1934) - provides uncomfortable reading and an interesting convergence in the use/abuse of the 'politics of fear'. Within Neo-liberalism, arguably, the destruction of long standing civil and political rights in the name of defending such rights is surely an issue for future democratic account.

The current irrelevance of *Habeas Corpus* in so-called Anglo-American democracies would have many a tyrant marvelling at the rapidly convergent, authoritarian behaviour of political oligarchs in Liberal-democratic societies and the actual de-legitimation of sovereignty and democratic values under the onslaught of hubris, propaganda and fear.

Introduction

'The reaction to the 9/11 attacks, such as the *USA PATRIOT Act 1 and 11* has done more to destroy the rights of Americans than all of our enemies combined' (Bowman 2006, cited in Marrs 2006, p. 17).

'Bin Laden hardly needs to lift a finger. We're scaring ourselves to death……Bin Laden has won because we lost our heads and surrendered to fear' (Adams 2006, p. 54).

'In light of setting up internment camps, incarcerating innocent people and keeping it all secret, just how different is George Bush from Kim Il Sung and Kim Jung Il? …Because of the similarities to North Korean camps in terms of secrecy, the incarceration of innocent people and the deliberate avoidance of compliance

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with human rights laws, it is possible to compare the US "democratic" government with North Korea's "communist" regime' (Roche 2007).

'Titanic is us, our triumphalist, self-congratulating, blind hypocritical society, merciless towards the poor - a society in which everything is predicted except the means of predicting………we all guess that there is an iceberg waiting for us, hidden somewhere in the misty future, which we will hit and then go down to the sounds of music' (Attali, cited in Bauman 2006, p. 12).

This paper examines some commonalities between the response to 9/11 in the United States (US), the UK/EU and Australia in terms of direct responses, enacted legislation and approaches to Public Administration. The paper looks to the past, comparing convergent 'politics of fear' being practised today with Stalinist-Russian and McCarthyist-US abuse of 'fear'. Current oligarchic convergence between Russia and the US, the immediate future of Anglo-American democratic hubris, threats to civil society and dangerous oligarchic threats to democratic praxis, are canvassed.

Before 9/11, both the US and Australia extolled the epochal transformation evident in the inter-related, Neo-Liberal and Post-modern-condoned discourse (Thorne and Kouzmin 2007a) of anarchic, constantly changing globalisation, virtuality and individual sovereignty, all of which were the supposed foundations of an open, empowering, technocratic 'New World Order'.

This paper argues that although the Australian response has been somewhat diminished in size and formal expression, Australia has been no less voracious than the US in exploiting the political and economic opportunities presented by the 'War on Terror'. Following Thorne and Kouzmin (2004), this paper proposes that both the US and Australia have been notable for the rapidity with which they have moved from championing a 'New World Order' of globalisation, free-markets, open borders, democracy, and empowered individuals to re-asserting, via the 'War on Terror', the surveillanced and militarised nation state, political and economic intervention in the affairs of others, the re-imposition of borders and the disempowering of individuals.

Post 9/11, the US and Australia made outmoded borders and legislative regimes appear and disappear and made individuals appear and disappear. Post 9/11, partners in the 'Coalition of the Willing' mobilised military and quasi-military resources and enacted specific legislation that directed legislative and public administration efforts towards securing borders and pursuing/punishing 'terrorists'. The US committed

extensive military personnel and resources into direct and indirect military action in Afghanistan, Iraq and elsewhere. The Australian government committed a much lesser number of mostly specialised military units and a few other military resources.

The US's far-reaching legislative/legal response revolved around *The USA PATRIOT Acts* 2001 and 2006, and *The Homeland Security Act 2002*. Australia's response involved creating a series of new criminal offences in the criminal code (Lynch and Williams 2006). Both the US and Australia significantly extended their domestic and non-domestic counter-terrorist intelligence gathering and response activities. Both nations kept their populations on some level of constant threat from terrorists - a tense state of fearful emergency and active participation in 'forward defence', which trades global openness and the presumed riches of cosmopolitanism for domestic security and the pursuit of economic and political self interest.

This paper contends that, post 9/11, the 'us against them' discourse evident in the US and Australia severely compromised the epochal (in)visibility legitimating the 'New World Order'. Post 9/11, both the US and Australia fluxed visible and invisible power in such a manner that directly exposed the hegemonic interests of elites and corporate capitalism. According to a 'terror' expert at the RAND Corporation, 'by invading an oil-rich Arab country, we validated all of bin Laden's arguments that the US is an imperial power that seeks to subjugate Islam' (Hoffman, cited in Brzezinski 2004, p. 240; see also Ahmed 2006; Atwan 2006, p. 225).

Furthermore, the emergent visible and invisible stratagems in the 'War on Terror' pushed 'New World Order' notions of benign cosmopolitanism and the inevitable world-wide adoption of Western–style free-markets, democracy and technology - especially information and communications technology (ICT) - into a contradictory reliance on overt nation-state-based military action (Atwan 2006, p.233), the overt curtailment of hard-won civil liberties and an acknowledgement of the veracity of supposedly irrelevant religious and other fundamentalisms.

This 'War on Terror' mutation of the inherently unstable 'New World Order' state of (in)visibility not only makes visible naked hegemonic forms of imperialism and other fundamentalisms within the mythology of the global commons, but also, most dangerously, presents yet again only one possible future - a future where any real or imagined upsurge in domestic terrorist activity leads to the acceptance of the most oppressive state of (in)visibility, as long as such oppression claims to protect citizens.

Visibility and invisibility are both parts of the pervasive apparatus of political, economic and communal hegemony. As argued by Thorne and Kouzmin (2006), the issue of visibility and invisibility is not new. Constructing 'realities' has always involved a manipulation of what is seen and not seen - what is 'actual' and what is 'illusionary'. It is important to be aware of the 'invisible hand' and 'visible management' (Thorne and Kouzmin 2006) behind what is permitted to be visible and to be able to deal with the invisible before reacting to the visible. The visible and the invisible are inter-related 'realities' of the human condition.

Debating whether it is the invisible hand of the market or the visible hand of management that is the most decisive is almost tautological. Rather, what must be grasped is that the invisible hand of the market and visible management are different stratagems with the same intention - to mask and deflect attention from those who benefit from manipulating this ideological 'pea and thimble' discourse (Thorne and Kouzmin 2006). The primary function of the visible and the invisible is to validate the supremacy of one economic/ideological position over another. Visibility and invisibility are extensively fluxed in attempts to validate dominant worldviews, putative modes of organising and an economic-sovereign way of life over any possible other.

(In)visible Stratagems in the 'New World Order'

Since the presumed post-Cold-War defeat of 'Communism' and many forms of 'Socialism' (Kouzmin and Korac-Kakabadse 1997), US free-market Corporate Imperialism has prevailed. Despite Fukuyama's (2006) many renunciations of the Bush administration's misuse of Neo-conservative thought, the 'End of History' (Fukuyama 1992) discourse still persists. Intertwined notions of globalisation, democracy and technology, especially ICT, have driven, and been influenced by, worldwide transformation. This 'End of History' sermon is presented as ideological hegemony - as the inevitable result of a globalised, Neo-Liberal, democratic world - a new, enveloping cyberspace-based epoch of stateless, anarchic, constantly changing, globalised, disembodied citizens and consumers (Ohmae 1991, 2005; Freidman 1999, 2005). Essentially, Ohmae (1991) foresaw a borderless world in which no state could control, or even regulate, the flow of people and information.

According to the pro-globalisation literature, such as Drucker (1993), Hammer (1996) and Thurow (1997), a paradigm shift emerged with the approaching Twenty-First Century. What happened before no longer mattered. Borders were seemingly rendered in-effectual. Indeed, sovereignty was a fast disappearing capability in the intended confusion of principal/agent distinctions consequent to the radical attack on sovereign governments in Neo-liberal propaganda. Many other pro-globalists, such as Friedman (1999, 2005), went further, expecting that the whole world could be incorporated into a universal and level economic-playing field.

The 'New World Order', based on Neo-Liberal democracy, free markets and ICT, is not universal. Nation states persist. There are more restrictions on the movement of individuals, refugees and non-refugees than had existed during the height of Nineteenth-Century imperialism. Braithwaite and Drahos' (2000) seminal text on business regulation indicates the continuing focus on the nation state as the locus of domestic and non-domestic regulation and supra-regional governance is more noticeable.

(In)visible Stratagems in the 'War on Terror'

Post 9/11, both the US and Australia found it useful to assert that geographic areas, usually considered part of the national compact, were actually different in some crucial aspects or could be effectively exorcised completely. Borders have been made to appear or re-appear However, events at the Guantanamo Bay (Cuba), Christmas Island (Australia), Nauru Gulags and other global sites for 'extraordinary rendition' demonstrate the purposeful (re)-emergence and persistence of borders.

The recent gyrations over the legal and political fictions associated with the categories called alien/non-alien, combatant/non-combatant and terrorist/non-terrorist that are situated within Nineteenth-Century, imperially-imposed borders, raises new contradictions in administering not only citizenship, but also identity and community. Sovereignty of the state, where borders are exposed as visible or rendered invisible, can be understood according to the *qui bono* credo. This is not a US imperial novelty. Others, including Australia, were fast learners in manipulating the (in)visibility of borders and national sovereignty.

Although it is possible that markets are poorly constrained by sovereign borders and that social compacts may be made more amenable to borders, both may be involved in the deliberate manipulation of visibility and invisibility within areas of contested or 'limbo' sovereignty. In effect, borders are moved around, rendered visible or invisible, in order to demonstrate the ability of certain nations or elites to escape the supposed level-playing field of globalisation, to resist the reach of international institutions, such as the United Nations, and to renounce international treaty obligations when national interests are threatened.

Individuals are also made visible, as actual or potential terrorists, or made invisible as human beings in a manner that echoes the 'non-persons' of the concentration camps, Gulags and 'devil's' islands. Although some things flow more easily, such as financial flows, or flow more rapidly, such as some communication flows, everything is not unrestricted.

The exploitation of 9/11 by oligarchic interests, especially the attempt by US Neo-conservatives to grasp the historical opportunity to remake the world, is more and more perceived as counter-productive forays into old and new forms of unilateral imperialism (Atwan 2006; Harvey 2003; Johnson 2000). Albrow (1996) presaged the shallowness and the easily-disturbed nature of 'New World Order' cosmopolitan, hyper individualism. The seemingly new, visible resurgence of Islamic and other religious fundamentalisms re-enervates seemingly invisible, divisive and outmoded notions of 'Millennialism', the 'Apocalypse', the 'End of Time' (Kirsch 2006). 'Holy War', 'Crusade' or 'Jihad' (Armstrong 1991; Lewis 2004), the 'Clash of Civilisations' (Huntington 1997) and the confrontation between now 'visible', extremist Islamic theocracy with another, supposedly 'invisible' Judeo-Christian theocracy.

There is a widespread re-examination of the perils of global inter-connection (Eckes and Zeiler 2003). The Twenty-First Century now appears more medieval than global, with constant warfare, economic and social upheavals, genocide, environmental and biodiversity disasters, global warming and AIDS already having killed more people than those who died during the 'Black Death'.

Berman (2006) considers that the American 'empire' has entered an inescapable final phase. In Berman's (2006) view, the post 9/11 endless 'War on Terror' and the military interventions in Afghanistan and Iraq have left the American economy burdened by an insurmountable debt that threatens an imminent economic and social

collapse (see also Atwan 2006, pp. 214-215). This is apart from the crisis proportions of the collapse of any global, 'moral' authority, oligarchs and many legal and public administration academics attach to American 'exceptionalism'.

While the endless flow of propaganda destroys hard-won civil ideals and democratic freedoms, there are dangerous signs of hubris, the intrusion of threatening lost and discounted multiple histories and (in)visible portents of a future other than post-Cold-War 'triumphialism' (Schrecker 2004) of 'exceptionalist' American interests. Yet, as Thorne and Kouzmin (2007a) explain, the manipulations of the flux of visibility and invisibility by elites have just moved on to incorporate the more open reliance on religious, nationalistic and other oppositional justifications to the use of naked force and military power to eliminate opposition and to drive out putative 'darkness'.

The post-9/11 resurgence of Western imperialism presents a form of (in)visibility (Thorne 2005) that is inherently unstable. Not only does it contradict the seductive rhetoric of 'cosmopolitan, enervating global capital' that sustains exploitation, but also, it conjures notions of Empire, Civilisation and an absolute 'line in the sand' political–ethical position, which exposes the purposeful interests of elites and, in fact, constructions of illusion upon illusion.

It is highly possible that the post 9/11 interventions sanctioned by these elites will not allow any retreat from the masking of global capitalism. Rather, the visible and invisible stratagems required to maintain the interests of capital will transpire within the on-going, ill-defined conduct of a 'War on Terror' that involves fundamentalisms, which not only settle new scores, such as the Neo-Conservative, historical opportunity to re-structure 'evil' nations, but also involves the settling of old scores with the non-patriotic, those of 'non-assimilating' or belligerent races, ethnicities and religions, homosexuals, women, or others with differences in belief patterns (Thorne and Kouzmin 2007a, p. 26).

The clearest and most present danger is that post 9/11 events not only exposed the visible and invisible aspects of the inter-twined interests of political, economic and religious elites, which were supposed to have disappeared just before the dawn of the Third Millennium, but presented a practical and ideological vacuum susceptible to 'once and for all' opportunistic fantasies for ultra-religious fanatics. Post 9/11, cherished and long-fought-for liberties and institutional protections within Australia

have been fatally compromised in the name of patriotism, domestic security and protecting 'the economic' way of life.

The Politics of Fear

'Markets without boundaries [are] a recipe for injustice and a new world disorder….. The globalisation of harm and damage rebounds in the globalisation of resentment and vengeance' (Bauman 2006, p.97).

'It was the actions of the US together with its various satellites, like the World Bank, the IMF and the WTO, that prompted subsidiary developments, dangerous sub-products such as nationalism, religious fanaticism, fascism and of course terrorism, advancing step in step with the Neo-liberal project of globalisation' (Bauman 2006, p. 97).

'Non-religious grievances, such as issues of social identity and meaningful participation in communal life, once expressed in Marxist or nationalistic vocabularies, tend nowadays to be translated into the language of religious revival' (Bauman 2006, p. 112).

'*Al Qaeda* has now become Al-Qaedaism' (Bauman 2006, p. 103).

'"Rapture Politics", as right-wing religion, conjoins with conservative political ideology and corporate power politics …to lay the ground work for a growing authoritarianism' (Bauman 2006, p. 113).

'It is our "security obsession", and our intolerance of any minor breach in security provision which it prompts, that becomes the most prolific, self replenishing and inexhaustible source of our anxiety and fear' (Bauman 2006, p. 130).

Since 9/11, the 'Anglophone echo chamber on three continents' (Marr 2007, p.60) fluxes the 'Politics of Fear' under the Mantra of the 'War on Terror'. The US Administration has gained extraordinary social control by invoking the threat of terrorism against US citizens. A most blatant example occurred in August 2004 during the Presidential campaign, when an increased terror alert against financial institutions was invoked, only to be subsequently revoked on a US Administration admission that the alert had been based on old information and from a discredited source (Marrs 2006, p. 257).

Invoking an external threat in order to establish internal control is a tactic/strategy well known to social scientists and authoritarians of multiple hue (Coser 1965; Simmel 1955).

In the US, according to Box (2007, p.1), 'the current situation includes: the national government captured by [what appear to be] war criminals; the physical environment under sustained attack by corporations; politically-created increases in social inequality; a militaristic society saturated with violence; and a field of public administration pre-occupied with the manufactured distractions of economic performance and terror'. Rear Admiral Poindexter, for example, was forced to resign after the leaking of a plan to develop a futures market which would allow investors to hedge against terrorist strikes (Brzezinski 2004, p. 69).

The 'siege mentality', with an 'evil enemy', has been invoked since 9/11, replacing 'cold war' paranoia whilst dramatically altering the 'democratic deficit' within the contours of an expanded 'imperialism' in an age of xenophobia, patriotism and ambiguously-defined enemies. As Marrs (2006, pp.166 and 259) outlines, *Al Qaeda*, literally translates as 'the data base'. '*Al Qaeda* was a computer file of thousands of *Mujahedin*, recruited and trained to defeat the Russians, in Afghanistan, with the help of the CIA, then under control of the US Vice President and former CIA Director, George Bush, Sr., who controlled the US government following the shooting of Ronald Reagan. *Al Qaeda* is a computer list of Arab mercenaries/freedom fighters/terrorists for hire'. The *Taliban* emerged from Afghan *Mujahedin* whose heroism had been lauded by the US during the 1980s (Atwan 2006, p. 80), whilst Saudi Arabia 'has produced some 70 per cent of *al Qaeda's* fighters, as well as the leader himself' (Atwan 2006, p.235).

The USA PATRIOT Act 2001 (H.R. 3162) (Public Law 107.56)

'Secret evidence; closed trials; false imprisonment; warrant-less searches; involuntary drugging; and the seizure of private property seem like something out of the Nazi [and Soviet] era[s]' (Marrs 2006, p. 307) but the 'politics of fear' allow for such acquiescence. 'Often, supposed enemies prove to be mirror images of each other' (Marrs 2006, p.260; Thorne and Kouzmin 2007b, p.18). For oligarchs, however, knowing one's 'enemy' has always been a source of considerable strength and political advantage. Selznick (1952, pp. 275-314) wrote extensively on the 'vulnerability of institutional targets' and 'problems of counter offence' against Communism (Selznick 1952, pp. 315-333, 1957)

and implies that ideologically-opposed oligarchs often collude in method – policy/legislative 'plagiarism' does not embarrass.

The USA PATRIOT Act 2001 was rushed into law by the US Congress on 26 October 2001, some 45 days after 9/11. The 342 page *Act* made changes to more than 15 US statutes, most of them enacted after previous abuse of surveillance powers by the FBI and CIA (Marrs 2006, p. 299). 'The speed with which this legislation was passed has left little doubt that it had long been prepared, simply needing some provocation as an impetus for action' (Marrs 2006, p. 299). The provision of a sunset clause had not yielded the protection of US civil liberties, with the more draconian *The USA PATRIOT Improvement and Re-authorisation Act 2006* (H.R. 3199) (Public Law 109.177) having been passed on 9 March, 2006, after the original sunset deadline of December 2005 for *The USA PATRIOT Act 2001.*

The USA PATRIOT Act 2001 was built on the little known *Foreign Intelligence Surveillance* (FISA) *Act 1978,* which opened the way for secret government searches on non-US citizens by intelligence agencies. *The USA PATRIOT Act 2001* expanded FISA to include US citizens. FISA was originally intended to monitor Soviet espionage but permits the wiretapping and bugging of all at will (Brzezinski 2004, p. 68). Civil libertarians were mostly concerned about (Brzezinski 2004, p.67; Marrs 2006, pp. 303-304):

- Monitoring religious and political institutions to assist terrorism investigations (a violation of the First Amendment right of association).

- Secretly detaining people without charge and encouraging bureaucrats to resist FOI requests (a violation of the Fifth and Sixth Amendments guaranteeing due process, speedy trials and freedom of information).

- Prosecution of librarians and other keepers of records if they revealed that the government had subpoenaed information related to a terrorist investigation (a violation of the First Amendment right of free speech).

- Government monitoring of conversations between prisoners and their legal representatives and the possible denial of access to legal representation (a violation of the Sixth Amendment right to have legal representation).

- US citizens being jailed without trial or charges being brought (a violation of the Sixth Amendment).

- Section 412 of The USA PATRIOT Act 2001 allows for the indefinite detention of non citizens. The USA PATRIOT Act 2006 gives power to designate US citizens 'enemy combatants' for 'terrorist' activity carried out in the US. Section 501 of The PATRIOT Act 2006 allows the revoking of citizenship and secret detention of those suspected of providing 'material support' to terrorists (Brzezinski 2004, p. 68).

Further parameters of the contemporary 'democratic deficit' in the 'exceptionalist' US state, in the name of combating Anthrax-based1 terrorism (Marrs 2006, p. 261), include:

- A biological-attack 'fascism', whereby any resistance to arbitrary re-location is in violation of law and subject to arrest, fines and imprisonment.

- Refusal to be inoculated is subject to fines and imprisonment.

- Federalising all medical personnel.

- Using the Federal Emergency Management Agency (FEMA), as the lead agency under the Department of Homeland Security, to enforce evacuation of cities.

- The creation of 'displaced persons' camps around the US. Many such camps are military bases, others are operated by FEMA. FEMA has let a contract for 1,000 'emergency re-location camps' in case of widespread terrorism or biological/chemical attacks on US cities. The most ominous potential concentration camp is located in Elmendorf AFB, in Alaska, designated to be used as a "'mental health facility'…. It is our version of Siberia and the Gulag" (Lt. Col. Roberts, cited in Marrs 2006, p. 274; see also Applebaum 2003; Kashima 2003; Tashima 2007; Thorne and Kouzmin 2004, pp. 425-426).

- Violation of *The Posse Comitatus Act* (PCA) *1878* (18 USC 1385), the law prohibiting the US military from conducting law enforcement duties against the US public. Post 9/11, military troops were seen patrolling the streets of Washington and New York, providing glimpses of life under martial law - the prospect of which became less invisible with the 2005 Presidential announcement that military troops would be used in the event of a national pandemic (Marrs 2006, p. 266).

Regarding torture, citing an FBI account of how Guantanamo prisoners had been treated, Republican Senator Durbin is quoted as saying 'If I read this to you and did not

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1 Military grade and unavailable outside of the US

tell you that it was an FBI agent describing what Americans have done to prisoners in their control, you would most certainly believe [that] this must have been done by Nazis, Soviets in their Gulags, or some mad regime - Pol Pot or others' (Marrs 2006, pp. 2 and 64).

Department of Homeland Security

'In light of recent legislation, the only factor required today to turn the US into an Orwellian *1984* – type dictatorship is technology. Such technology was not available in 1984 – it is today' (Marrs 2006, p. 321).

The passage of *The Department of Homeland Security Act* 2002, in November of that year, saw the largest re-structuring of the US federal government since the passage of *The National Security Act 1947.* Leading up to this passage, Tom Ridge (quoted in Marrs 2006, p.276, emphasis added) argued:

'We are today a nation at risk to terrorist attacks and will remain so for the foreseeable future. The terrorist threat to America takes many forms, *has many places to hide and is often invisible*. Yet the need for improved homeland security is not tied solely to today's terrorist threat. It is tied to *our enduring vulnerability*'.

Incorporated into Homeland Security, along with many other agencies, were the Secret Service and FEMA, the latter being the lead agency for imposing martial law in the US, as planned by the Reagan National Security Council in 1984 (Marrs 2006, p. 279). Some problem areas with the Homeland Security Department include (Marrs 2006, pp. 281-282):

- Negating *The Freedom of Information Act 1996* with new and broad exemptions to the Act involving threats to infrastructure, national security and confidential business information.

- Exempting advisory committees to Homeland Security from *The Federal Advisory Committee Act 1972,* passed to ensure openness and accountability.

- Silencing whistleblowers protected under the federal *Whistleblowers Protection Act 1989.*

- Homeland Security over-riding Inspector General investigations.

- Insufficient guarantees for abuse of personal privacy and constitutional freedoms. 'Combining domestic and foreign intelligence under Homeland Security would lead to widespread spying on constitutionally-protected political activity' (Edgar, cited in Marrs 2006, p. 282).

- The listing of names of persons 'suspected' of terrorist connections and the creation of 'no-fly' lists by some 26 terrorism-related databases from within intelligence and law enforcement agencies. By early 2006, according to Marrs (2006, p.284) these contained 325,000 names.

- The attempted introduction, in mid 2002, of the Terrorism Information and Prevention System (TIPS) as an expanded national system of citizen spying and reporting - the 'snitch culture', akin to East German Stasi work, Cuban Committees for the Defense of the Revolution (CDRs) and Stalinist citizen reporting requirements of the 1930s and 1940s.

- The availability of powerful intelligence gathering tools, originally developed to track Soviet spies, now being used to monitor US citizens. *Echelon,* a global satellite network, intercepts and analyses phone calls, faxes and emails sent to and from the US (Kakabadse, Kouzmin and Kakabadse 2000, p.10). 'Dictionary' software is used for 'trigger words'.

  Echelon, publicly acknowledged in 2001, is being phased out in favour of a ground-based technology – *Tempest*. This technology secretly reads the displays on personal computers, cash registers, TV sets and ATMs (Wilson, cited in Marrs 2006, p. 326).

  Magic Lantern records every key stroke on a computer, captures passwords and accesses encrypted data files. *Fluent* searches foreign websites and displays an English translation back to US agencies, whilst *Oasis* is a technology that transcribes world-wide radio and TV broadcasts. *dTective* traces financial transactions, whilst *Encase* recovers deleted computer files. A GPS-based *Veritracks* is a felon monitoring system (Marrs 2006, pp. 326-327).

In the 'War on Terror', the US administration has expanded government secrecy in ways unthinkable to many. 'Law enforcement agencies have been allowed to operate in the shadows' (Marrs 2006, p.329). The US Presidency and the issuing of 'signing statements' – the conveying of Presidential views about the law and presidential power

– are increasingly controversial for their trajectory of favouring unlimited executive power.

Thousands of pages of public documents in the public domain have either been re-classified (Kouzmin et al. 2002) or deleted from the internet. CNN.com, for example, provides a weekly list of Transcripts. Listed for 15 March 2003 is a transcript titled 'What are the Military Differences between Iraq and North Korea?' This transcript was deleted from the internet when access was attempted on 22 July 2007. Wikipedia censoring/re-editing is rife – from the Australian Prime Ministerial offices to global corporations and even the CIA (Hafner 2007; Moses 2007).

The issue of a 'shadow government' does not go away. In March 2002, the US President announced that the American public need not worry about the survival of federal government functions because a 'shadow government' made up of un-elected officials were working in underground bunkers (Marrs 2006, p. 340). The 'Continuity of Government' (COG) programme has been in place in the US since the 'Cold War' and the passage of the *National Security Act, 1947*. Now, both COG and the 'shadow government' agendas have been tied to the Homeland Security apparatus, which refuses to reveal any details of costs or budgets (Marrs 2006, p. 341). This connection to Homeland Security 'legitimates the most coveted mask of the rule by secrecy' (Witt 2007).

Expanding the Definition of 'Terrorism': Anglo- European Trajectories

The UK *Criminal Justice Act 2003* raised three areas of serious concern (Nield 2005, p.111).

- Removal of the right to trial by jury in complex cases in the fear of jury 'tampering'.

- Abolishing the double jeopardy, making all acquittals conditional.

- The admissibility of previous convictions, acquittals and hearsay evidence.

Moving British justice towards a European inquisitorial system was designed to harmonise the UK with the EU *Corpus Juris* proposals of April 1997. Rights of *Habeas*

Corpus, established in 1679, and trial by jury, established by *Magna Carta* in 1215, were nullified.

The Anti-Terrorism, Crime and Security Act 2001 provided for foreign nationals to be detained indefinitely on suspicion that s/he is either a terrorist or a threat to national security. In December 2004, the House of Lords ruled that such powers contravened *The European Convention on Human Rights.* The British government then introduced the *Prevention of Terrorism Act 2005,* giving power to impose 'control orders' on British and foreign terror suspects. This Act compromised the 800 year-old right to a fair trial and 'would be instantly recognizable by every secret police force, including the CHEKA [NKVD/OGPU/KGB]' (Johnston, quoted in Atwan 2006, p.226).

However, the Madrid train bombing of 11 March 2004 provided the impetus for EU integration of judicial and security functions (State Watch 2004). There were 57 proposals in all, out of which 27 proposals had nothing to do with mitigating terrorism. These proposals included:

- The establishment of an EU intelligence agency and EU security coordinator.

- An EU database of forensic material.

- The logging of all telecommunications and tracking of all air travel within the EU.

- The finger printing of all EU citizens.

- The simplification of procedures for the exchange of information between intelligence and law enforcement agencies.

The Australian Terrorism 'Echo/Cringe'

In Australia, the rhetoric of a world 'transformed since 9/11' justified a security apparatus, developed over the last six years, which provides Australian citizens with imprisonment without trial, home detention and sedition laws.(Hamilton and Maddison 2007; Marr 2007, p. 61).

The purpose of creating crimes of 'domestic terrorism' was to revoke rights and dramatically increase the power of government and in an inter-dependent world, refusing to differentiate internal with external threats (Nield 2005, p.113). A new

concept of security includes ecological, health, electronic, migrant and economic vulnerabilities.

In Australia, Marr (2007, p. 68) (see also Hamilton and Maddison 2007) summarises the contours of social control and an increasing 'democratic deficit', established with the same invocation of the threat of internal (home-grown) and external terrorism against Australian citizens:

> 'Press "attack dogs" are set against government critics; bureaucrats are prosecuted; NGOs are intimidated; protestors are arrested; books are banned; phone lines are surveillanced and censored; Freedom of Information (FOI) laws are undermined; anti-terrorism operations are hidden behind punitive press laws; dissenters are exposed to sedition charges;…. and hard-line, Christian doctrine is converted into law.'

Within a broader frame, the northern islands of Australia are now no longer part of Australia and Afghan and Iraqi refugees landing on these islands are placed in custody and outsourced to Christmas Island and Nauru detention centres for 'processing'. Just recently, reactive sedition laws removed the fundamental right to *Habeas Corpus,* placing Australia in the company of North Korea and the US. Suspects can now be detained indefinitely, cut off from contact with family, friends or employers. It is also now possible 'to monitor, question and detain Australians citizens who are not suspected of any involvement with terrorism but might have information useful to the Government' (Lynch and Williams 2006, p.29). Individuals can even be arrested for involvement in terrorism for terrorist acts that had not yet transpired. Dick's (2002) pre-cognitive law enforcement (Public Administration) is no longer science-fiction.

Commonwealth and State governments compete over who is the hardest on 'terror' and crime (prison construction is a growth industry) and who can interfere the most with the recalcitrant judiciary, prosecutorial services and the police. Citizens 'watch the photo- opportune exploits of the rapidly swelling forces of the police and secret service' [recall APEC police/security hysteria in Sydney, September 2007] and 'listen to the ever bolder auction bids of politicians as they try to outwit each other in promising ever tougher and more severe measures to be deployed in an all-out war on terrorists' (Bauman 2006, p.153).

All this, whilst simultaneously stripping public services back to the minimum and transferring responsibility for economic policy even more openly back to the business

sector and engaging religious organisations in social policy and the outsourced, under-funded public sector. Parents and students are moving away from the state school system into independent, mostly religious-based schools that seek not to employ or educate anyone who does not share their 'faith' and/or worldview (Karvelas 2007).

In a strange echo of the indoctrination and control practices associated with totalitarian regimes, highly conservative/reactionary governments have legislated for the placement of Christian chaplains within every Australian school. Deeply felt and jingoistic involvement with the symbols of Australian 'nationhood' have come increasingly to the fore. Dawn vigils at Gallipoli – where the ANZACS fought against the resolute Turks in what was a British-led military catastrophe – and trudging the Kadoka Trail - where, in appalling tropical conditions, Australian troops defeated the Japanese – have become rites of passage for many young, and alienated, Australians.

The Australian Government's website (Australian National Security 2007a, p.1) is at pains to emphasise its leading role in the development of laws to combat terrorism. 'In fact, the Australian Government has introduced an extensive *legislative regime* around counter-terrorism, national security and other cross-jurisdictional offences' (emphasis added). Some 26 key pieces of national security legislation have been enacted since 2002.

For Australians with an historical sensitivity to the actuality of authoritarian abuse of paranoia and political repression, reading *The Anti-Terrorism Act (No.2) 2005* (No.144, 2005), in particular, is a salutary exercise. The reading may be better benchmarked against Stalin's *Article 58, The Criminal Code of the RSFSR (1934)* (Cunningham 2000) rather than racist and fascist repressive legislation (Coultan 2007, p. 27; Wolf 2007). Some principal features of the Act are (Australian National Security 2007b):

- Extending the definition of a terrorist organisation to enable 'listing' of suspect organisations.

- A new regime of control orders allowing for close monitoring of terrorist 'suspects'.

- A new police preventative detention regime, with people to be held in detention without charge.

- Expanded sedition offences.

- A new regime of search and seize powers.

- The creation of a legal basis for the use of video surveillance.

The more repressive aspects of *The Anti-Terrorism Act (No.2) 2005* (No.144, 2005), leading to probable political abuse comparable to Twentieth Century authoritarian histories, include the following:

- Subsection 102.1(2) (a) of the *Criminal Code* deems it an offence to 'advocate the doing of a terrorist act whether or not a terrorist act has occurred or will occur'.

- Division 105.1(b) allows for the incarceration of individuals in order to 'preserve evidence of, or relating to, a recent terrorist act'.

- Division 105.34 (a) (b) restricts citizens, detained under a preventative detention order, from contacting another person.

- Furthermore, a detained person is subject to five year imprisonment for any disclosure about a preventative detention order (see, Division 105.41 (1) (b)).

- Division 80.2 (7) (c) commits, to a seven year prison term, a person who urges another person to engage in conduct assisting an organisation or country at war with the Commonwealth, whether or not the existence of a state of war has been declared.

- Schedule 7, Section 30A (3) (a), involving sedition, may come as a surprise to law -abiding, Australian republicans; it is an offence 'to bring the Sovereign into hatred or contempt'.

- Australian Ministers of Immigration and talk-back radio politicians may be surprised to find that an offence has been committed, under Section 30A (3) (d), when one seeks 'to promote feelings of ill will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth'.

With current legislation passed by the Australian Lower House, but yet to be passed by a government-controlled Senate, 'security agencies would be able to secretly track people via their mobile phones and monitor their internet browsing for up to three months without obtaining a warrant' (Allard 2007, p. 1).

Converging Exceptionalisms: Russian versus American Oligarchies

Invoking aspects of 'Cold War' comparative dimensions is also constructive in identifying the convergence occurring in the name of 'fear'. 'Unlike his predecessors, Gorbachev and Yeltsin, President Putin has been less enthusiastic about erasing Russia's Soviet past from memory, stating that whatever the crimes of the Communist regime, they have passed and they were, nevertheless, an important part of Russian history which has influenced the creation of modern Russia' (Kakabadse et al. 2006, p. 197). 'In 2004, President Putin declared the collapse of the USSR a national tragedy of an enormous scale adding to Anglo-American fears of an emerging dictatorship' (Kakabadse et al. 2006, p.197).

However, Putin has established a personal and political communication with the Russian Orthodox Church – an 'established' Church, like others, prior to the Bolshevik revolution. On 14 March, 2004, Putin won the Presidential election with a landslide (71 per cent of the vote), giving him his second and final term. Notwithstanding massive campaigning by Russian national TV in favour of Putin, the election itself was recognised as fair (Kakabadse et al. 2006, p.197).

Table 1 benchmarks contemporary Russia against the US to assess whether developments are consistent with democratic aspirations or whether the country is slipping towards a dictatorial, or at least an overtly authoritarian, oligarchic regime.

Table 1: Benchmark for US and Russian Governance Characteristics

Characteristics	US		Russia	
Ideologies are extreme (extreme left or extreme right).	Y	Neo-Conservative ideology of 'Rational Choice' is an almost theological faith in the universal validity of a dogmatic (and, in part, imaginary) American-style economic individualism.	N	An emerging 'free market' after the criminal/corrupt plunder of Russian national assets under Harvard University-inspired 'coupon privatisation'.
Constitutional changes that centralise and subsume legislative and judiciary power under executive power.	Y	- *The USA PATRIOT Act* 2001. - The Christian, fundamentalist President, with his Republicans, had a clear majority in both houses (Congress - 233 of 435 seats and, in the senate, 55 of 90 seats) and thus, clear control over both legislative branches of government and the potential to control the only other check in power, the Supreme Court, by appointing Republican judges. - *The USA PATRIOT Improvement and Re-authorisation ACT 2006.*	N	- Following the 2003 parliamentary elections, Putin gained a sufficient majority to change the Constitution but, so far, he has not announced any intention to do so (Constitutionally, he cannot run for a third term). - Following the Beslan school hostage crisis, and nearly concurrent terrorist attacks in Moscow, on 13 September 2004 Putin launched an initiative to replace the election of regional governors with a system whereby they would be directly appointed by the President and approved by regional legislatures. The initiative was approved by Russia's parliament in December 2004. - Putin publicly backed a plan by the Central Elections Commission for voters in Duma elections to elect parties rather than individual candidates. (Half of the 450 deputies in the Duma get elected based on party votes, while the other deputies are elected

				individually, in single-mandate districts).
Increased government spying on citizens.	Y	- Total Information Awareness (TIA) project under the Security Advance Research Projects Agency (SARPA). - Increase in control through electronic surveillance or 'keeping watch over' communication (ECHELON system for e-mails, mobile phones), work places as well as the public sphere (e.g. CCTV) by systematic monitoring, observation, collection and analysis of information on people in order to exert control at home and abroad.	?	Not clear.
Increased use of the power of police.	Y	- New American Century (NAC); - Strategic Energy Policy for the 21st Century. - **At the 2004 Republican National Convention, protest activity at** the nomination of President George W. Bush for the 2004 US presidential election by hundreds of group organised protesters (United for Peace and Justice, a coalition of 800 anti-war and social justice groups, International ANSWER) over 1,800 individuals were arrested - a record for a political convention in the US.	?	Not clear. The murder of 14 journalists while President Putin has been in office, raise serious questions about Russia's 'dirty war' in Chechnya.

Public funds going to military initiatives: - Subsidise and fund domestic and foreign 'defence' corporations. - Subsidise and fund domestic and/or foreign military operations (wars, *coup d'etat*, training).	Y	- In April 2003, the US Agency for International Development (USAID) awarded, in an invitation-only bidding process, Bechtel Co, (which donated 59 per cent of its US $1.3 billion in campaign contribution to the Republicans) a US $680 million contract for Iraq's reconstruction. - Annual donation by USAIIEI to international investors in the Defence Industry in 2002 to the amount of US $8,093 million.	?	Not clear.
Creation of 'unnecessary' homicidal wars or impression of an imminent threat of war.	Y	'War on terror' starting with war on Afghanistan and war on Iraq (to reduce dependency on Saudi Arabian oil power).	?	Putin opposed the war in Iraq during the Iraq crisis of 2003 but continues to use a military solution to the 'Chechen problem' in Russia.
Spread of militaristic values (millenarian traditions).	Y	Doctrinal changes from a 'threat-based' military doctrine, to a 'capabilities-based' approach, allowing a new military doctrine – 'pre-emptive' strike to become acceptable policy.	N	Not evident.
Promotion of strong nationalism (religiously or anti-religiously based).	Y	Increasing nationalism through paranoia of threat from 'the axis of evil' and fuelling fundamentalism and religious traditions, such as the Evangelicals and Pentacostals. (Eighty per cent of Americans believe in God, whilst 60 per cent claim that religion plays an important role in their lives).	Y	Soviet-era symbols have been allowed to return to Russia, such as the trademark red military flag, the ' 'Soviet Star' crest and the Soviet national anthem, but with revised lyrics.
Ruling elite assuming illegal powers and not being brought to justice due to the	Y	Entire executive body of officials forming a 'shadow government' (in violation of the constitution).	?	'Oligarchs', who emerged during Yeltsin's 'coupon privatisation', are increasingly under pressure. However, the 'Petersburg' group, allied to Putin, may be

manipulated, powerless legislature and judiciary.				prospering.
Control (channels and content) of the 'information exchange'.	Y	The powerful corporate media acts as a filter which only allows pre-ordained views to be heard by the public, excluding third parties and alternative viewpoints. Bagdikian (2001, p. 43) reports a decline in number of large companies, which control most of the US print, broadcast, motion picture and cable TV media outlets, from 50 corporations in 1984, then ten in 1997 and just five in 2001, leading to a blatant 'manipulation of news to pursue the owner's other financial goals'.	Y	In 2003, largely government-run media, especially the Russian national TV, had massively and unfairly campaigned for the governing party, although the elections were deemed fair. Most Russian TV stations, newspapers and other media are today controlled directly, or indirectly, by the Kremlin.
Idolisation of the leader.	Y	Idealisation of the 'strong' and 'decisive' hero leader. A national belief that a strong President can deliver prosperity.	Y	Idealisation of the 'strong' and 'decisive' hero leader. A national belief that a strong President can deliver prosperity.
Nationalisation of major industries (energy) held by foreign and/or local investors.	Y	Nationalisation of airport security by passing *the Aviation and Transportation Security Act*, 2001. (Also, during WWII, foreign and national companies).	?	Not clear. Yukos Oil returning to state control through GasProm. Gas and energy resources increasingly consolidated by State ownership.

Source: Updated and adapted from Kakabadse et al. (2006, pp. 198-202); Politkovskaya (2004, p. 27).

The Russians have been ambivalent towards the *Zapad* (the West) for a long time. It is incumbent upon scholars, especially, to recognise that, apart from ideology and propaganda, the 'West' may have little to offer the Russians with regard to political and governance transfer relevant to crisis transitional contexts. Further, current Western, Neo-liberal praxis may, like previous political and historical mis-understandings, leave the Russians with only one option; turning within again, in order to determine specific transitional economic, political and governance outcomes in a highly distinctive Russian manner (Kouzmin and Korac-Kakabadse 1997).

Political and governance failure on behalf of Western scholarship to understand processes of *radical* economic and political change is not only regrettable, but it is also

dangerous (Burawoy and Krotov 1993, pp. 67-69). Western scholarship failed to fully understand Russian history. It certainly failed to predict the demise of the USSR (Ruttard 1994, pp.565-578) and it now seems as if it is doomed to fail to understand or anticipate the post-transition Thermidor, especially Russia's response to its 'War on Terror'.

Precisely at a time when the US, in particular, sought to 're-invent government' (Wamsley 1990; Osborne and Gaebler 1992), the Russians were providing a unique, oligarchic model of such governance, legitimacy and functionality. The paradox of modern, oligarchic, liberal democracy is that the largest one, the US, is dangerously in peril of, losing its way (Escobar 1992).

The US, like Australia, resonates with a 'collective amnesia' about authoritarian history(ies) while at the same time, purporting freedom of markets and wealth for all. Does this amnesia foretell the emergence of a new, oligarchic, fear-driven, authoritarian 'convergence' within the formal frameworks and hubris of Neo-Liberal economies? Grass (2005, p.2) asks 'is freedom now no more than a stock-market profit?.....Those who treat their freedoms as a stock-market profit have failed to understand that there is a need to be able to cope with today's risk of a new totalitarianism, backed by the world's last remaining ideology – the power of capital' (Grass 2005, p. 4).

From an exceptionalist 'Socialism in One Country' to an equally exceptionalist, US-based 'Democracy in One Country' – from one dangerous 'oligarchy' to another - Cold War-driven, comparative, political analysis requires renewal in light of Neo-Liberal, convergent and oligarchic realities. The critical point is that Russia and the US are heading in the same direction. In the US, elite economic and political interests have converged. Whether a similar coalition will form to the same extent in Russia has, as yet, to be seen. However, the more likely path that Russia will take is that already trodden by the US; namely oligarchic, state governance (Kakabadse et al. 2006, p.206). Chechnya for the Russians plays the same role as 9/11 did for the US. If authoritarian oligarchy is really the nature of a convergent political future, how will the oligarchs, together with the State, respond – as dictators themselves or as social-minded heroes? (Kakabadse et al. 2006, p. 207)?

From Old to New Gulags: Converging Coercion in the New Political Ontology

The US Senate Judiciary Committee (on testimony opposing the nomination of John Ashcroft, as Attorney General, 16th January 2001) warned that 'Ashcroft

would bring under the guise of "crisis management" a form of brutal "bureaucratic fascism" on the US that bears striking similarities to the conditions under which Hitler seized power in 1933' (Freeman, cited in Marrs 2006, p. 315).

In a little publicised announcement, in August 2002, 'Ashcroft said he wanted the power to strip American citizens of their constitutional rights, including access to the court system and indefinitely imprison them in internment camps on the word of the US Attorney General that they were "enemy combatants"… or "suspected terrorists"' (Marrs 2006, p. 315).

'I am neither from the revolutionary camp, nor from the reactionary camp – I am from the concentration camp (Soviet dissident, Vladimir Bukovsky's 1975 interview, 1978)'….. 'the concentration camps were reserved for hardened criminals, so-called counter-revolutionaries and *politicals*' (Fainsod 1970, p. 429, emphasis added).

One of colonial Britain's contributions to 'civilisation', apart from rendering opium a global currency during the 19th century (a trade that paradoxically the Taliban refused to support in the 21st Century), was the invention of the world's first Gulag in Australia's Botany Bay. Domestic but marginalised non-persons were rendered invisible by the simple expedient of deportation (Thorne and Kouzmin 2004, p. 425) – a process cross subsidised by a global search for a new strategic and military commodity; a new source of the flax required to maintain the supremacy of the British navy (Blainey 1982).

Variants of Botany Bay emerged in Tsarist expressions of a Russian empire and then, Soviet Gulags to buttress the imperial expressions of an exceptionalist 'Socialism in one Country'. Guantanamo Bay, Christmas Island, Nauru and 'extraordinary rendition' constitute new dimensions to marginalising and rendering invisible global citizens in the name of new imperialist pretensions. That such Neo-Liberal Gulags should exist in the face of duplicitous and 'exceptionalist' mantras of constitutionality, sovereignty and democratic rights is challenging global credulity in the face of the synchronised hubris and convergent Neo-Liberal-egotistical and Post-modern-narcissistic fantasies about the nature of global consumer - no real borders, consumerist ambitions and no other compelling purpose in life.

Such globalised duplicity (Sardar and Davies 2002) will continue to prevail in an Anglo-American denial of the consequences associated with a global expression of

American exceptionalism. Forebodings about future Gulags beyond the 24 international Gulags that have already become a little more visible since *Abu Ghraib* (ABC News Online 2004), might result from an historical and comparative awareness of other, previous Gulags. *The USA PATRIOT Acts 2001; 2006* resonate with a collective ignorance of such history(ies) and foretell the emergence of Homeland and out-sourced Gulags of incarcerated non–persons of the politically marginalised and the invisible.

It should not be surprising that the US, the largest incarcerating state on earth (Shelden 2004; Margolis 2006), should now, under the protective cover of privatised invisibility, seek to broaden the incarcerating mandate drawn from race and poverty to the politically dissonant and those who refuse to politely accept their invisibility. A system of invisible Homeland and outsourced Gulags, within the hubris of an exceptionalist 'Democracy in one country', is not consistent with the 'End of History' discourse but is consistent with a newer beginning of history associated with xenophobic and chauvinist, Neo-Liberal–driven corporate imperialism.

If there is a democratic crisis at hand – threats from without and within - 'the deeper issue….is whether in facing the dangers of terrorism, Americans [and Australians] will end up sacrificing the ethical substance of their democratic culture and institutions' (Stout 2007, p. 5). Further, the desire to maintain US economic dominance has, in fact, 'permitted plutocrats to take over the central functions of government…allowing for the further hope to dominate the world. This ambition is expressed, euphemistically, as the objective of preventing potential rivals from challenging the status of the US as the only superpower' (Stout 2007, p.5).

But there are other benchmarks for consideration. Research (Nield 2005, p.110) indicates that the 'War on Terror' is 'the chosen pretext for the global integration of police, intelligence and military functions…..[that] governments across the world are promoting the idea that society must militarise itself in order to be free of terror'.

US Attorney General, John Ashcroft, with his daily prayer meetings (Brzezinski 2004, p. 70), was a catalyst for constitutional devolution, encouraging US citizens to accept autocratic rule as their only way of avoiding terrorist attacks. His greatest problem had been preserving a level of panic and fear necessary to induce 'free' people to surrender their rights (Thurley, cited in Marrs 2006, p. 318).

The strategic direction of repression continued under Ashcroft's successor, Alberto Gonzales, who, on being sworn in on February 2005, immediately 'played the terror card' in his initial remarks to employees of the Justice Department (Marrs 2006, p.319). As White House Counsel, prior to appointment as Attorney General, Gonzales argued, in 2002, that laws inhibiting the torture of prisoners did not apply to Presidential detentions and interrogation of 'enemy combatants' and that the 'War on Terror' was a new kind of war, rendering obsolete strict Geneva Conventions in handling enemy prisoners (Elliot 2007, p.11).

> 'The debate over how terrorist suspects should be held and questioned began shortly after 9/11…when the Bush Administration adopted secret detention and coercive interrogation, both practices the US had previously denounced when used by other countries. It adopted the new measures without public debate or Congressional vote, choosing to rely… on confidential advice of a handful of appointees.'(Shane, Johnston and Risen 2007, p.2)

> 'The CIA constructed its programme [of interrogations] in a few harried months by consulting Egyptian and Saudi intelligence officers and copying *Soviet interrogation methods* long used in training American servicemen to withstand capture' (Shane, Johnston and Risen 2007, p. 3) (emphasis added).

The existence of a secret prison system, operated by the US throughout the world, has now been acknowledged by most sources (Baldwin 2006; Lewis 2007; Priest 2005; Roche 2007). These 'black sites' have been spread out among many countries, including some recent 'democracies' in Eastern Europe (Roche 2007) well versed in a Stalinist, repressive praxis. Outsourcing 'extraordinary rendition', to such ex-Stalinist, now 'newly sovereign' states, is a remarkable example of convergent, authoritarian and oligarchic interests across the old ideological divides.

According to the Jews for the Preservation of Firearms Control (JPFO), a close examination of the *US Gun Control Act* of 1968 (Public Law 90-618) revealed it to be nearly word-for-word the gun legislation passed in Germany under Hitler (Marrs 2006, p. 47). The nature of public life in the US today has begun to resemble Hitler's Third Reich, Stalinist Russia and Communist East Europe, whilst supporting a foreign policy that angers and alienates peoples all across the globe with its thinly-disguised 'Neo-colonialism' (Marrs 2006, p. 403; see also Sadar and Davies 2002)).

The USA PATRIOT Act 2001 has been compared to Hitler's *Reichstag Fire Decree 1933* (Atwan 2006, p. 226). It is, however, also incumbent on one to read *The USA PATRIOT Acts, 2001* and *2006* in conjunction with Stalin's *Article 58, The Criminal Code of the RSFSR (1934)* (Solzhenitsyn 1974, 1997; Cunningham 2000)*, the legal code on 'counter-revolutionary crimes' and political repression just prior to the 'great purge' in Soviet Russia (Applebaum 2003), to be alarmed at the evident convergence in rhetoric and legislation in the name of preserving the security of the people. Substitute the word 'terrorist' for 'counter-revolutionary' and a new awareness of potential political repression dawns.

With this Criminal Code, there was no limit to the discretion of prosecutors. If, for example, police decided that the prescribed six-month sentence (Article 58-10) was inadequate for a suspect possessing anti-Soviet literature in peacetime, they could always torture [the suspect] until confession to a more serious offence [was made] (Solzhenitsyn 1974, pp. 60- 67; Cunningham 2000) (*pace Abu Ghraib* and Guantanamo Bay). Article 58-8, on terrorism, for example, specified that attacks on Soviet officials were punishable by execution compared to mere ten year incarceration for the murder of ordinary citizens (Cunningham 2000). Solzhenitsyn (1974, p 284) lists other 'lettered articles' not corresponding to specific paragraphs of Article 58, such as those dealing with anti-soviet agitation; counter-revolutionary activity and thought; and illegal crossing of state borders.

> 'Who amongst us has not experienced the all encompassing embrace [of Article 58]? In all truth, there is no step, thought, action, or lack of action under the heavens which could not be punished by the heavy hand of Article 58' (Solzhenitsyn 1974, p. 60).

In Stalin's time, "the formula of Capitalist 'encirclement' proved elastic enough to embrace the enemy inside, as well as the enemy outside" (Fainsod 1970, p. 423). The full circle of the 'great purge' offers a dramatic case study in the use [abuse] of terror (Fainsod 1970, p. 443). Can the current 'War on Terror' be compared with Stalin's abuse of Soviet Russia's paranoia about hostile encirclement? "As long as Capitalist encirclement exists, there will be wreckers, diversionists, spies, terrorists sent behind the frontiers of the Soviet Union by the intelligence services of foreign states" (Stalin, cited in Fainsod 1970, p. 423). "The pervasive fear of the informer and the secret police made the air heavy with suspicion and distrust" (Fainsod 1970, p. 421). As (Bauman 2006, p. 156) observes, "the totalitarian state is feared as the source of the unknown and

the unpredictable" and "the practice of terror generates its own underlying theoretical justifications" (Fainsod 1970, p. 422).

Readers need to be reminded of the fact that Stalin's great purge reached the peak of its intensity in the first year of the life of the 'democratic' 1936 Constitution, that was intended to safeguard the freedom of speech…etc., and was prefaced by the significant proviso that rights [were] to be exercised in 'strengthening the socialist system' (Fainsod 1970, p. 377-378).

As in most authoritarian contexts, 'the manifest function of stern policies, declared to be the eradication of terrorist threat, was playing second fiddle to the latent function of shifting the grounds of state authority from areas that the state could not, nor dared to, control to another area…...under public applause' (Bauman 2006, p.153). Convergence, or oligarchic, policy plagiarism in anti-terrorism legislation within and without the Anglo-American consensus is as chilling as it is stark. Reading and comparing anti-democratic legislation across the conventional ideological divide is a salutary reminder of converging oligarchies in a 'War on Terror'-driven, Neo-Liberal world (Kakabadse et al. 2006; Thorne and Kouzmin 2007b).

> 'It makes no more sense to attack civil liberties to get at terrorists than to invade Iraq to get Osama bin Laden' (Gore, cited in Brzezinski 2004, p. 242) – a growing consensus that political leadership in Anglo-American societies had over-reached in designing 'the legal and technological frameworks for a maximum "security state"' (Brzezinski 2004, p. 243).

Conclusion: The Challenges of 'Fortress Democracy'

> 'The manipulation of terror as a system of power is a delicate art' (Fainsod 1970, p. 441).

> 'The "personal safety" state, the latest replacement for the ailing [privatised] "social" state is not known for being particularly democracy friendly. Democracy draws on the capital of [citizen's] trust in the future and sanguine self-confidence in an ability to act. The "personal safety" state draws on fear and uncertainty, arch enemies of confidence and trust….. it saps the foundations of democracy' (Bauman 2006, p.154).

'What most people hate is "America", the political entity based on authoritarian violence, double standards, self-obsessed self interest and an a-historical naivety that equates the Self with the World' (Sardar and Davies 2002, p. 194).

The most important power struggles and gambits are over the ability to control (in)visibility. The prevalent manifestations of (in)visibility in the 'War on Terror' suggest exactly where attention needs to be directed, what must be attached to such attention and how to most usefully play with the flux of visibility and invisibility.

Those involved with the visible and invisible stratagems in the 'War on Terror' soon learn that 'in the end, power doesn't flow necessarily to those who stake their claims or guard their turf – it goes to those who make the rules' (Spar 2001, p. 21). Dick (1968) challenges one to act 'as authentic human beings who instinctively know what we should not do and will baulk at doing it whatever the consequences. This is, ultimately, the heroic trait of ordinary people; they say no to the tyrant and they calmly take the consequences of this resistance' (Dick 1968, in Sutin, 1995, pp. 278-279, cited in Crampton 2003, p. 112).

Robertson (2005) examines whether it is ever possible for anyone charged with sedition or terrorism to have a fair trial. The trial of John Lilburne (or Freeborn John, as he was known to his admirers) during the eleven year period the United Kingdom was actually a republic, reflected a provoked, yet independent, reflexive approach to the public administration of justice and established the basic rights of a fair trial in the shared UK, US and Australian legal traditions:

'John Liburne was first imprisoned by the Star Chamber for refusing to answer its questions, so when the Puritans abolished it, he appealed to the House of Lords which ruled that everyone had "the right to silence"- he created the rule against self-incrimination.

In due course he attacked Cromwell, who had him tried for treason, for the first time before a bench of independent judges and a jury of his peers. In that trial, he established the right to a public hearing - the open justice principle.

He then insisted on his right to have the indictment translated into a language he could understand (English, because at that time indictments were in Latin).

He then insisted that the prosecution provide him with particulars of the charge and an adjournment to study them. He stopped the practice of prosecutors conferring privately with the judges.

He established the right of the defendants to be treated with some respect, to have pen and paper, to sit rather than stand at the bar, even to relieve themselves when they had to – a chamber pot was brought to him in court for this purpose, and he shared it with his jury' (Robertson 2005, pp. 171-172).

In relation to the way the 'New World Order' has mutated into the 'War on Terror', the looming challenge for democratic praxis in both Australia and the US will revolve around distinguishing truly patriotic, even cosmopolitan, actions from the dutiful enforcement of such things as *The USA PATRIOT Acts 2001; 2006* at the behest of fundamentalists who seemingly visibly confront terror and dissent whilst harbouring their own theocratic ambitions and invisibly support economic and political elites that strive to profit from global disintegration just as much as from global integration.

Following Sennett (1996, 2004), such cultural/societal enervation requires a public administration based on the constructive decentralisation of power that refuses to regulate conflict and that maintains institutional and bureaucratic routines open to social conflict – a public administration that has no guilt over conflict but reacts comprehensively when subject to the visible and invisible manipulations of oligarchs and elites.

For example, John Liburne's acquittal in his sedition trial established 'in the popular mind, in England and its colonies, an invincible and almost superstitious belief in the rightness of trial by jury' (Robertson 2005, p.172). However, the Stuart restoration escaped this commitment to a 'fair trial' for those Republicans, including colonial Puritans, who wanted it brought for justice/revenge. Although the Stuart restoration was unable to neither bring back the Star Chamber, nor use any special military commission, it fluxed visible and invisible power by having 'the jury panel vetted for loyalty to the King' (Robertson 2005, p. 172). Lawyers were denied to the accused, secret meetings were arranged between the judges and the prosecution, and methods, such as summing up the evidence, were devised to impose judicial control over the jury.

Currently, democratically-inclined citizens must continually question the privileging of the 'borderless', 'New World Order' and the related, mutated 'you are either for us or against us' 'War on Terror' discourses that eliminate all alternative

approaches to identity and community. Political discourse is yet to confront this challenge to its legitimacy in any strategic way. This suggests that public policy will not escape being caught up in the Neo-Liberal and fundamentalist enthusiasm for 'capture' and the inevitable and systemic 'de-regulation' of economies and the destruction of communities.

The fictional 'non-persons' (such as Australian citizen and/or enemy combatant, David Hicks) who spent more than five years in Guantanamo Bay, and the refugees on Christmas Island and Nauru must remind everyone of the continuing ubiquity of boundary definition and re-definition, increasingly coercive in corroding and diminishing existing and hard-won public domains of visibility.

If this reminder remains invisible, how long before the defence of the 'Homeland' legitimates setting up more American and Australian Gulags for domestic social and political dissenters, let alone supposed terrorists? After all, the US administration has now admitted using military resources to spy on its own citizens in the 'homeland'. *The USA PATRIOT Acts 2001; 2006* resonate with a collective ignorance/amnesia or mystification of domestic and non-domestic imprisonment and abuse. The greatest threat is that, over time, any real or imagined upsurge in domestic terrorist activity will lead to the acceptance of even the most oppressive state of (in)visibility, as long as it 'protects' citizens.

Lynch and Williams' (2006) recourse to Hamilton's warning in *The Federalist Papers* is most instructive:

> 'Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property, incident to war, the continual efforts and alarm attendant on a state of continual danger will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be safer, they, at length, become willing to run the risk of being less free' (Madison, Hamilton and Jay 1987, pp.114-115).

Has counter-terrorism and the 'War on Terror' become the investigative obsessions that counter Soviet espionage and 'anti-Communism' were under paranoid McCarthyism in the US of the 1950s and 1960s (Marrs 2006, p. 272)? Do oligarchic defenders against alienated 'Stalinoids' of the Cold War successfully re-invent themselves as oligarchic

protectors against the exploitation of a growing mass of equally-alienated 'Netizens' of a 'terror'- driven Neo-Liberalism (Thorne and Kouzmin 2007b, p. 26)?

Essentially, one is confronted by a seemingly unyielding, now-eternal crisis where any conviction involving common humanity and its ability to mitigate conflicts has been compromised by the exposure of the naked, hegemonic forms of imperialism and other fundamentalisms within the mythology of the global commons. One must locate the purposeful, hegemonic interests of the 'American Empire' (Johnson 2004), global corporate imperialism (Thorne and Kouzmin 2004, 2006) and groups and individuals lusting for theocratic Christian and Islamic fiefdoms within the pervasiveness of a presumed unending 'War on Terror'.

It is possible that one is left with an unwinnable war and/or unsustainable peace with an operant mythology of increasing conflict between perceived 'infidels', which presages a return to the Cold War doctrines of 'Mutually Assured Destruction', with Iran/ Syria/ North Korea substituting for the Russian menace. Far more preferable would be to confront the a-historic, unending 'New World Order'/'War on Terror' discourse with a much more real-politic, historically-resonant formulation of what Castro (1954) termed the 'Convivencia', or living together side-by-side between Christians, Jews and Muslims, which existed in Spain and the Levant for centuries (Webster 2004; Wheatcroft 2003).

Although some may consider this an accommodation of a de-mythologised, 'integrationist' examination of the 'enemy in the mirror' (Barkai 1984), it, however, promotes a much more vigorous understanding of the nature of physicality, purposeful networks, permeable and non-permeable boundaries and barriers and the enduring visible and invisible enchantments cast by elites and other hegemonic groupings and interests. What must be continually renewed are those visible and invisible assumptions that maintain 'Convivencia' - those structures of concession that counterpoint imbalances in power and that are attuned to refreshing co-existence. For this reflexive commitment to mutual co-existence is PATRIOTism, with and without *The USA PATRIOT Acts* (et al) (see also, Tashima 2007).

According to Bakhtin, 'the constitutive moment of all earthly powers is violence, suppression, falsehood and the trepidation and the fear of the subjected' (Bakhtin, cited in Bauman 2006, p. 155). This 'trepidation, fear, is a constitutive moment of power in democratic polity as much as it was in totalitarian states on record' (Bauman 2006,

p.156). Whether the benchmarks for these constitutive moments of power are Fascist (Wolf 2007) or Stalinist is an on-going issue for debate. The apparatus of sheer political, rather than racist or religious, suppression would suggest the latter benchmark for serious consideration.

Notwithstanding, Wolf (2007) (cited in Coultan 2007, p. 27) details ten measures taken by fascists and other dictators often elected to destroy open democracies. The Bush Administration has embodied all ten. From declaring innocent US citizens enemy combatants, to surveillance and spying on citizens, to the routine use of torture - learning from the past, looking to the future - one begins to understand a disturbing, new, political ontology in domestic, Anglo-American, democratic praxis, replicating US foreign-policy praxis over many years elsewhere (Johnson 2000; Sardar and Davies 2002; Chomsky 2006).

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