

Statement of Problem: Dangerous Desires in Orwell's *1984* and the Present Spanish Penal Code

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Hogg A., 2014. Statement of Problem: Dangerous Desires in Orwell's *1984* and the Present Spanish Penal Code. *Oñati Socio-legal Series* [online], 4 (6), 1208-1231. Available from: <http://ssrn.com/abstract=2543689>



Abstract

Our construct of a dangerous subject has changed little over the past century. Dangerous subjects in Oceania, a region created by Orwell in his novel *1984* in a constant state of war, consciously or unconsciously manifest too much autonomy. Self-autonomy and agency breach established moral codes of conduct and manifest an inability to self-govern and conform i.e. discipline. What is deemed dangerous is constructed by Ingsoc, Oceania's prevailing political philosophy; however, if considered of value to the party, time is invested and mandatory treatment is imposed to bring them into line with normative conduct. This treatment consists in stripping them of their identity and desires, which is achieved through them being rendered physically and psychologically innocuous. In the same vein, two new dangerous collectives were designated by the Spanish legislature in a reform introduced to the Penal Code in June 2010, the terrorist and sex offender. On this occasion, it is their efforts to resist this normalization onslaught that renders them dangerous. Unable to incarcerate indeterminately or execute both collectives, a new post-custodial security measure is deployed to ensure that both collectives remain socially and politically isolated. This article compares the dangerous symptomatology depicted by Orwell in *1984* with the dangerous offender constructed by the Spanish legislature in OL 5/2010, the problematization of their habits and behaviours as well as the alleged cure offered to these dangerous subjects. For Ingsoc and the Spanish legislature, the imminent danger is a threat to social and public order.

Key words

Dangerousness; moral and public order; self-government; Orwell; OL 5/2010 and techniques of the self

Article resulting from the paper presented at the workshop *Perspectives from Justice and Fundamental Rights in Literature: an Approach from Legal Culture in a European context* held in the International Institute for the Sociology of Law, Oñati, Spain, 20-21 May 2013, and coordinated by Joxerramon Bengoetxea (University of the Basque Country) and Iker Nabaskues (University of the Basque Country).

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Resumen

Nuestra construcción de un sujeto peligroso ha cambiado poco durante el siglo pasado. Sujetos peligrosos en Oceanía, una región creada por Orwell en su novela *1984* que está en un constante estado de guerra, manifiestan demasiada autonomía de forma consciente o inconsciente. La anulación de la propia autonomía y la voluntad establecieron códigos morales de conducta y manifestaron la incapacidad de autogobierno y de conformar, es decir la disciplina. Ingsoc, la filosofía política que domina Oceanía, determina lo que se considera peligroso; sin embargo, si se considera valioso para el partido, se invierte tiempo y se impone un tratamiento obligatorio para alinearlos con la conducta normativa. Este tratamiento consiste en despojarlos de su identidad y deseos, lo que se consigue haciendo que sean física y psicológicamente inocuos. En la misma línea, en la legislación española se designaron dos nuevos colectivos peligrosos, a través de una reforma del Código Penal en junio de 2010, el terrorista y delincuente sexual. En este caso, son sus esfuerzos para resistir este ataque de normalización lo que los hace peligrosos. Ante la imposibilidad de encarcelar de forma indeterminada, o ejecutar a ambos colectivos, se ha implementado una nueva medida de seguridad tras la pena de cárcel para asegurar que ambos colectivos permanecen social y políticamente aislados. Este artículo compara la sintomatología peligrosa retratada por Orwell en *1984*, con el peligroso delincuente construido por la legislación española en la LO 5/2010, la problematización de sus hábitos y comportamientos, así como la supuesta cura ofrecida a estos sujetos peligrosos. Para Ingsoc y la legislación española, el peligro inminente es una amenaza al orden público y social.

Palabras clave

Peligrosidad; moral y orden público; autogobierno; Orwell, LO 5/2010 y técnicas del yo

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1. Introduction

In 1984, Orwell (1949) depicts a main character, Winston Smith, who is an outer party member of the sole political party and whose thoughts and behaviours are considered dangerous. He lives in a region that is in a permanent state of exception, Oceania, whose targeted enemy is changing incessantly as what is deemed internally dangerous. If suspected of exhibiting any symptoms construed as dangerous, the person is subjected to a battery of interventions. Some serve to cure them whilst others serve to treat the social body. Collectively, these problematized symptoms include any manifestations of autonomy i.e. techniques of the self that do not conform with techniques of domination. Under party doctrine "The individual only has power as so far as he ceases to be an individual" (Orwell 1949, p. 276-277). Self-alienation is therefore what allows for the individual to exist in Oceania. Party members suspected of self-independence whether thoughts, desires - political, social or personal – are a destabilising dangerous element for the collective. Aloneness and failure to regularly attend group activities such as Two-Minutes Hate, Junior Anti-sex League etc. demonstrate a deviation from normative thought and practices (Orwell 1949, p. 77). All practices, habits and behaviours are utilitarian and directed at the survival of the Party and are a duty of members e.g. intercourse. Personal sentiments such as love and lust i.e. individual pleasure or wholeness, deviate and weaken bonds with the Party (Orwell 1949, p.138-140). Consequently, self-initiated relations that serve purposes other than those advocated by the Party, are demonstrative of deviant ambition, and are prohibited. To question the authority of Big Brother, an invisible leader, or the Party's claims and policy is to be disloyal. Disloyal thoughts and conducts contravene the underlying political philosophy, Ingsoc, and therefore put the Party and Big Brother in danger and are a crime. Loyalty reflects discipline, consequently those whose thoughts and desires deviate from the norm are considered loose cannons. Although the act itself may be demonstrative of a disloyal thought, it is the thought that is the crime and of greater concern to Big Brother. Winston's thoughts, conducts and habits are problematic because they are ungoverned; however, his lack of discipline is demonstrative of the party's weakness and its inability control his body and soul. He must therefore be psychologically and physically neutralised. In respect to what is considered dangerous and how it is governed, it is difficult to differentiate fact from fiction. Governments and scientists are still striving to get into the mind and body of its citizens and in particular, those who lie outside the norm of dominant society.

Although written in 1949, Orwell described a dangerous subject who in many respects shares common traits with the dangerous offender constructed in current Spanish criminal legislation i.e. sex offenders and terrorists.¹ Winston and these dangerous subjects contravene normative codes of conduct and therefore put at risk social and public order. The acts identified are distinct but their perpetrators share a common trait. They manifest a failure to self-govern and toe-the-line. As such, the act is but an externalisation of their dangerousness, which is an inherent quality or vice (Castel 1991). As such, the repressive response is a reaction to the author and not the conduct (Greig 1993).

The strategies used to identify and contain dangerous thoughts and behaviour in 1984 are common practice and policy for certain impenetrable Spanish prison

¹ As posited by Foucault (1985, p. 115), to study the 'problematization' of a state or conduct, "is not a way of denying the reality of such phenomena. It may be "some real existent in the world which was [is] the target of social regulation at a given moment." Nonetheless, "there is a relation between the thing which is problematized and the process of 'problematization'. The 'problematization' is an 'answer' to a concrete situation which is real." Although aware of the feminist criticism directed at Foucault and in particular the introduction of *The History of Sexuality Vol.1*, I still consider his work on governmentality of use in this context. I am aware of the criticism directed at Foucault (2003) in respect to his portrayal of sex abuse and children in *the History of Sexuality Vol.1*; however, like Bell (2010), I consider his perspective on relations of power appropriate for this analysis.

collectives in 2014. Although the 1995 Spanish Criminal Code abolished the Vagrancy Act (1933)², a statute that appeared indestructible having survived a Republic, dictatorship and new constitution, dangerousness crept its way back into Spanish criminal legislation under OL 5/2010 of 22 June. The dangerous subject depicted by the legislature isn't a far cry from the one described and treated by O'Brien, and feared by Big Brother. As in the case of the Thought Police in *1984*, the legislature claims to be able to read the minds of certain classes of offenders and predict their future behaviour of offenders. Their predictions are based on the deviant desires of both. Their fears in regards to these two collectives are founded on their inability to penetrate the individual and read and therefore govern their thoughts and desires thus putting them outside of the reach of power.

This article compares O'Brien's arguments with those advanced by the Spanish legislature in the parliamentary debates leading up to the enactment of OL 5/2010 of 22 June as well as the strategies used to render docile this heterogeneous group of dangerous subjects. Criminal dangerousness and the use of indeterminate sentences to contain this problematized subject was first openly debated at the International Penal and Penitentiary Congress held in 1910 (Teeters 1949); however, little has changed other than the construct itself and technology used to give off the semblance of a professional and scientific diagnosis (Greig 1993, Pratt 1997). For all intent and purpose, the dangerous subject depicted in *1984* and OL 5/2010, and their deviant thoughts and desires, is comparable to the subject described by Foucault (2003) in *Abnormal*. "The subject's desire is closely connected with transgression of the law: His desire is fundamentally bad. But this criminal desire – and this is still regularly found in the experiences [*rectius*: expert, opinion] – is always the correlate of a flaw, a breakdown, a weakness or incapacity of the subject" (Foucault 2003, p. 21). For the Party, Winston Smith's flaw is his nefarious attempt to self-govern, which leads him to succumb to a plethora of deviant desires and thoughts. In the case of the dangerous offender described and classified under OL 5/2010, it is their deviant sexual or political desires, which lead them to offend and make them dangerous. In response, the Ministry of Love and Spanish prison administration designed specific techniques to abate these desires; however, if rebuffed, they remain a dangerous element to the social body having eschewed the norms and values of dominant society and destabilised the authorised moral and social order. They are incomprehensible and unpredictable and must be rendered physically innocuous by controlling their movements and censoring the externalisation of their thoughts i.e. symptoms.

1984 demonstrated Orwell's acute awareness and ability to describe a contemporary and future phenomenon, which recently materialised in OL 05/2010. Like its contemporaries *Brave New World* (Huxley 1932), *We* (Zamyatin 1924) and *Lord of the Flies* (Golding 1954), Orwell's *1984* has been dissected and analysed by academics from various fields and regions. It like the aforementioned texts is recognised as a pivotal and provocative piece of literature on civilisation, dystopia and degeneration. As far as what inspired a novel that has been appropriated by the right and left wing, only hypotheses can be made. They range from WWI advertisement for distance learning (Burgess 1978) to his experiences in Spain as a member of the Workers' Party of Marxist Unification and his disgust with totalitarian pro-Stalin communists forces (Orwell 1938a, 1938b). Another interesting hypothesis is that it was inspired by James Burnham's *The Managerial Revolution* (Burnham 1941), which depicted a world ruled by three super-states and run by managers and bureaucrats or "totalitarian hierarchies of managers". In his review of the author's work, Orwell makes reference to all of the aforementioned texts and their foresight through their portrayal of imaginary worlds without capitalism but also without freedom or equality (Orwell 1946a 1946b, Kimball 2002). This article considers the book's timelessness or rather Orwell's foresight and in particular his

² Ley de Vagos y Maleantes of 4 August 1933.

description of a form of political degeneration and danger to Ingsoc, and the means used to rectify it i.e. treatment. This is compared with two recently designated dangerous subjects under Spanish criminal legislation, the terrorist and sex offender and the techniques used to subdue the nefarious desires of both.

2. Dangerous practices and thoughts in Oceania:

The dangerous offender is now a common criminal classification; however, the concept has gone from a problematized collective exogenous trait to one based on individual externalised endogenous traits that is identified and diagnosed through a series of standardised estimates. Further, it is now interlinked with an ability to predict the potential future conduct of the individual diagnosed with this condition. A prediction based on the personal traits of the offender and not a criminal act per se (Kemshall and MacGuire 2001). Its classification, treatment and emergence as an acute problem that warrants particular attention or rather problematization was and remains the construct of a group of professionals. In this respect, its construct serves also economic interests as do for instance prison and prostitution (Foucault 1977). The constant state of terror fed and constructed by Big Brother and the public spectacle created by repenting political offenders served to legitimize Ingsoc's institutions, as do the new security measures introduced under OL 5/2010 for persons condemned for a terrorist offence who refuse to publicly negate the ends and means of their acts and association. This article looks at similarities between the diagnosis and treatment of the dangerous subject. Specifically, the individual's desires and a diagnosis based on an inability to self-govern i.e. to subdue and resist these desires. Big Brother and the Spanish legislature's effort to discourse and knowledge in respect to these dangerous subjects reflect their desire to control power. O'Brien is unwilling to do so and his perseverance to repress Winston is detailed and personalised. This therapy reflects Winston's weaknesses or rather his inability to self-govern.

2.1. Individual and collective danger

It is dangerous to let your thoughts wander, to talk in your sleep or to someone of matters that have little to do with party policy lest it reveal unconscious signs of wayward self-government. In the same vein, to value something for its physical beauty such as a piece of coral embedded in a paper-weight may trigger a memory of a world. Memory, emotion and thought are inaccessible and cannot be directly controlled by the Party and therefore are problematic (Orwell 1949, p. 166). It is equally dangerous for the Party to have members who remember the meaning of a word no longer used in Newspeak and who do not utilise doublethink. This can be provoked by reading proscribed messages or news that may lead to autonomous thoughts and practices. The externalisation of these dangerous traits through for instance a slip of the tongue or body or a muscular twitch will eventually be unveiled by telescreens or microphones. This potent arsenal of security surveillance serve to identify these weaknesses, to uncover a lack of discipline, self-restraint and diagnose; however, technology is an asset as long as it serves the party's aims, but is suspicious and prohibited in all other contexts. As in the case of the paper-weight, technology can lead party members to access information that isn't within the grips of the Ministry of Truth i.e. not controlled by the Party. A constant state of exception facilitates control and power (Agamben 1998). As in the case of the McCarthy government and their anticommunism campaign, party members are kept in a constant state of hysteria in order to politically repress and "to ensure that the political powers are obeyed" (Robin 2004, p. 1061). Obedience is dependent upon their ignorance and hysteria is induced by sexual deprivation (Beauchamp 2004).

"The two aims of the Party are to conquer the whole surface of the earth and to extinguish once and for all the possibility of independent thought" (Orwell 1949, p. 201). In order to achieve the second, the Party must discover how to read human

thoughts, which entails "a mixture of psychologist and inquisitor, studying with extraordinary minuteness the meaning of facial expressions, gestures and tones of voice, and testing the truth-producing effects of drugs, shock therapy, hypnosis and physical torture..." (Orwell 1949, p. 201-202). Although the Thought Police and Ministry of Love are the bodies responsible for overseeing and administering the process, all party members are responsible for keeping a close watch on fellow party members.

2.2. Surveillance and control under big brother

Winston is unaware of Julia's whereabouts but presumes that she like he, is being held in the Ministry of Love. He is in a windowless white cell with other prisoners, told to keep still and quiet, and left to meditate and reflect on what he has done.³ The cell is disorienting, there is no way of deducing time or how much time has lapsed since his arrest. Minimal interaction is permitted between Winston and proles in the rooms; however, it is prohibited between party members unless it is in the interest of the Ministry. From the onset, common prisoners i.e. proles aren't dangerous subjects and can be moderately trusted, which isn't the case with the political prisoners i.e. party members. Further, unlike Winston and other party members, they are sent to work camps and not Room 101.

Winston comes up with his own arrest sheet because he isn't told of the offences he has committed. He presumes to be guilty of keeping a diary in which he has written down dissenting thoughts that question the Party and Big Brother himself. Further, he and Julia dared to initiate a relationship that was not pre-authorized or coordinated by the party. Moreover, they met in secret to have sex and enjoyed it, and worse of all, they attempted to locate and enlist in Goldstein's party. In short, he demonstrated that his techniques of the self overrode Ingsoc's techniques of domination. In doing so, he failed to govern and repress his sexual and political drive (Beauchamp 2004), exposed fissures within the strategies of control and therefore the monopoly of power i.e. the Party's legitimacy. Notwithstanding, he is never told exactly what motivated his arrest. O'Brien only tells him that he lacked discipline.

2.3. Treating wayward discipline

Some of the political prisoners are deprived of food whilst others are gorged. In Winston's case, he is deprived of food and drink up until he passes on to the second stage of interrogation. Whilst at first reassured by the appearance of O'Brien, the sentiment is short-lived. He is soon after struck on the elbow by the guard's bludgeon thus melting any feeling of reassurance or any sense of security. O'Brien accompanies Winston throughout the torture and administers it himself on occasion, but it is for Winston's good. He is worth the effort and O'Brien is willing to personally take him under his wing. He is subjected to routine interrogations during which he confesses to a generic list of offences e.g. murder, treason etc. and to repeated assaults at the hands of the guards; however, minimums are kept so as to give off the impression of a calculated scientific and professional intervention. He is never beaten unconscious, his pulse is monitored and a basic level of hygiene is maintained. The direct beatings eventually diminish but he is always kept with a minimum amount of pain and in a constant state of hysteria lest he forget what was the cause and he becomes tranquil or hopeful. Although initially denied food and drink, he is now offered both. Nonetheless, he is medicated against his will.

³ Five years later, Arendt concluded that a totalitarian rule that arises without having been preceded by a totalitarian movement must isolate individuals to allow for the artificial growth of absolute loyalty. Absolute loyalty "can be expected only from the completely isolated human beings who, without any other social ties to family, friends, comrades, or even mere acquaintances, derives his sense of having a place in the world only from his belonging to a movement, his membership in the party" (Arendt 1978, p. 323-324).

As at the time of his arrest, no formal charges are pressed but as he lies strapped to a gurney he is subjected to lengthy interrogations by men dressed in lab coats. Further, he is no longer in a white bright cell. All he knows is that he is under direct observation. Although they are administering pain, O'Brien is also developing a nurturing relationship with Winston. O'Brien is clearly the one orchestrating his suffering but he is also his saviour. Winston's treatment at the hands of O'Brien is to make him perfect and the suffering is a form of tutelage (Orwell 1949 p. 250-256). It is to cure him of his illness, which he knows he has but refuses to accept. O'Brien explains that they don't destroy their enemies, but change them. In the Ministry of Love all confessions that are uttered are true, because they make them true. Winston will come to accept his deviant ways. "We do not allow the dead to rise up against us" or kill the unrepentant lest they become a martyr (Orwell 1949 p. 266).

At first, O'Brien asks Winston if he sees himself as morally superior. Winston replies 'yes' and that he acts in the spirit of man (Orwell 1949, p. 283). He is instructed to take off his clothes and to look at his emaciated self in the mirror. "Do you see that thing facing you? ...that is the last man" (Orwell 1949, p. 285).

1984 is about the power of the collective versus personal autonomy, for Foucault (1977) power is the power of the norm. Whether through pastoral power as done by O'Brien or biopower, the aim is to disintegrate the person and bring them into the norm through their acceptance of an absolute right i.e. destroy thoughts, emotions or actions that deviate from the standard. This entails accessing the soul. In the case of Winston, this will be manifested through his internalisation of the techniques of domination. It does not suffice to only state that two and two is five, he must also come to believe it consciously and unconsciously, and to forget that he ever thought otherwise. In line with Foucault's analysis of technologies of the self and sexuality, Winston must know himself "in order to be willing to renounce anything" (Foucault 1988, p. 16).

Finally, at no point in time is he told of his fate, he does not know if he will be executed or spared. O'Brien does however forewarn him that he cannot save himself. If released, he will be void of emotion and never return to his earlier state. He must be taught to believe and to control his thoughts. To learn, understand and accept all doctrine on his own free will. He's insane and his truth is a product of his mental state, O'Brien shows him the way, the correct way, the party's truth.

Winston and other inner and outer party members from the onset have the right to associate, personal privacy, ambition, action and independent thought curtailed. In short, the technologies of domination completely override the technologies of the self. This is achieved through certain technologies of power such as hate week, doublethink, Crimestop and Newspeak. These are internalised and the subject self-governs their conduct and thoughts, or disciplinary mechanics are applied. Winston has proven resilient and therefore is subjected to a battery of personalised interventions to strip him not only physically, but also cognitively. As in the case of Winston who initially adamantly refuses to accept that two plus two equals five, their refusal to accept treatment that aims to ensure that the individual has internalised standardised techniques to self-govern provokes the emergence a new instrument of power. These techniques of self and techniques of power are about relations of power and knowledge, and normative behaviour and repression when all else fails. Little has changed in the last sixty-years.

The following section presents the dangerous subject constructed under Spanish prison and criminal law. Further, the arguments forwarded in the Spanish Lower Chamber in debates preceding the enactment of legislation that brought about this new mechanism of power, a post-custodial security measure. Although prisoners in Spain are legally entitled to refuse treatment (§112.3 Royal Decree 190/1996 on Prison Rules), their unwillingness to accept their illness and refusal to enter treatment is concluded to be symptomatic of their dangerousness. They must

“overcome – through the application of medical, biological, psychiatric, psychological, educational and social [*techniques*] – the personal or social factors that drove them to offend” (Cuesta and Blanco Cordero 2008, p. 4). As in the case of the guards, laboratory staff and O’Brien, the condition is identified, classified, treated and rewarded or sanctioned by diverse specialists. It is the offender’s responsibility to recognize the condition, take it in hand and rectify it. In short, they must accept, develop and internalise authorised self-government.

3. From 1984 to 2010

Shearing and Stenning (1996) concluded that the disciplinary instruments described by Foucault (1977) in *Discipline and Punish* hadn’t reached the “totalitarian nightmare” of 1984. “Surveillance is pervasive but it is the antithesis of the blatant control of the Orwellian state [...] Within contemporary discipline, control is as fine-grained as Orwell imagined but its features are very different” (Shearing and Stenning 1996, p. 432). That said, the spaces of control described by Foucault i.e. monarchy, judiciary and prisons had a common moral foundation. As is shown in the following sections, alleged immorality is the underpinning commonality of the two supposedly dangerous collectives described in OL 5/2010. The Spanish government argues that it has been unable to train the souls of both supposedly dangerous collectives i.e. bring them into the norm. Unable to physically contain them indeterminately in prisons, it has developed a secondary mechanism to control their bodies whilst continuing efforts to discipline their souls and govern their conduct on sentence expiry. In concordance with Shearing and Stenning (1996, p. 427), for criminal justice “order is fundamentally a moral phenomenon and its maintenance a moral process.” The treatment programmes offered to both collectives within prison is directed specifically at disciplining and controlling moral and public order.

3.1 *The dangerous subject under OL 5/2010*

In 2004, Greig (1993, p. 50) concluded “Governments were creating a special type of offender with distinctive characteristics, who were considered a priori to be antithetical to the security of society.” This still holds true. In the foreword of the Bill for OL 5/2010, the Government argued -with the support of the main opposition- that persons convicted for a sex offence involving a minor or terrorism offence remained a danger to the collective body when released on sentence expiry. Although removed from the final version, the original bill stated that sex offenders, terrorists and members of a criminal organisation who had received a “positive social reintegration prognosis” would no longer be able to obtain the third grade (Bill 121/000052, 27 November 2009, p. 2). It was argued that their intransigency and unwillingness to accept the treatment offered was symptomatic of their continued dangerousness. Consequently, a new disciplinary measure was needed to ensure that public order and safety, and the Rule of Law were upheld. Both conducts, although distinct in content, were problematized in criminal law.

A range of behaviours have been classified as dangerous since the enactment of the *Vagrancy Act* of 4 August 1933. Although the behaviours and profiles have changed modestly over a period of sixty year and diverse political regimes, it wasn’t until the enactment of a new Penal Code in 1995 (OL 10/1995 of 23 November) that the determinate list of dangerous conducts and biological or psychological conditions was finally abolished. Pre-existing security measures were retained only for persons found guilty of the physical element of the crime i.e. *actus reus* but not the psychological element i.e. *mens rea* and therefore not criminally liable (§20); however, the reforms introduced to the Penal Code under OL 5/2010 of 22 June introduced a new security measure for two newly designated criminally dangerous subjects.

In the Draft Bill's foreword, the legislator stated that a new post-custodial security measure was required for persons condemned for a sexual or terrorist offence. As aforementioned, security measures were already at the disposal of the judiciary in cases involving dangerous offenders who conformed to the dangerous individual described by Foucault (1978) i.e. the criminally insane. The forensic mental health professionals responsible for identifying and diagnosing dangerousness i.e. insanity regained some of the jurisdiction lost in 1995 and had their portfolio expanded through the problematization of this new post-custodial dangerous subject. Notwithstanding, they only remained the specialists responsible for curing the individual's ailments and therefore the social 'body', it was the legislature who diagnosed. Professionals were unable to identify a rational motive for the offence but the offenders had to be held criminally responsible. Sexual and terrorism offences are motivated, intentional and planned; however, the legislature argues that their authors demonstrate an unwillingness to be treated and therefore cured. Their motives are incomprehensible and unpredictable, which renders them all the more dangerous and in particular to the social and political body.

Indeterminate containment and execution aren't an option under Spanish law. In response, a new dangerous phenomenon has emerged and is constructed as a danger to the social or constitutional 'body'. The new automatic post-custodial security measure is argued to be a necessary reform and serves to govern those who are not sufficiently pathologically ill to be absolved of criminal liability, but too great a risk to release. Psychiatry no longer holds jurisdiction over these cases, politics does. When defending the Bill, the Government argued "*the danger comes from the specific subjective forecast attributable to the nature of the offense committed, as long as the legislature itself has so provided, so expressed*" (121/000052 Proyecto de Ley 6 de mayo 2010, 2009, p. 2).

Further, they upheld that the danger was caused by the inefficacy of the custodial sentences and new measures were needed to abate this ever present danger. Consequently, the legislature must "*consider other solutions. Unabated by rehabilitation, constitutional requirements [rehabilitation and individualisation] can be reconciled with other values no less worthy of protection...*" (121/000052 Proyecto de Ley 6 de mayo 2010, 2009, p. 2). In both cases, the "*subject remains a danger*" at sentence expiry (121/000052 Proyecto de Ley 6 de mayo 2010, p. 2). In these cases, "*the most appropriate solution is the security measure, an institution of our traditional legal system that aims to treat the dangerous person.*" A condition that "*was demonstrated through their commission of the offence*" (121/000052 Proyecto de Ley 6 de mayo 2010, 2009, p. 2). The legislature is therefore no longer granting the professionals any freedom to discuss the motivations for the offences or to medicalise it; it is the act that is of relevance. Nonetheless, the act is only a symptom of a dangerous element in the social body and the illness must be treated.

The Draft Bill presented in November 2009 was by and large enacted intact seven months later. The arguments forwarded in the first draft in matters related to both classes of dangerous offences remained virtually untouched. The modifications made to §36 of the Penal Code were only appropriate "*for these extremely serious crimes*" but an "*unnecessary general rule*" for all other offences, which carried a custodial sentence of greater than five years. Since coming into force, persons convicted of a sex offence against a child⁴, or an offence committed on behalf of a criminal or terrorist organisation will not be classified as a minimum security until

⁴ Under this reform, a child is considered to be under 13 years of age. Although the Civil Code was amended in spring 2013, the legal age of consent to marry was up until this reform 14 years of age (Gutiérrez Calvo 2013). This one year difference therefore became legally problematized only as of 2010 and 2013. It was increased to 16 years of age bringing in into line with most European countries. Notwithstanding, to engage in any form of sexual activity with a child was an aggravated matter as of 2010. In the same line, another bill was presented in September 2013, which if enacted will increase the legal age of consent to 16 years of age (Criminal Code Reform Act §183.1, 183.4 and 184 quáter).

having served at least a half of their custodial sentence.⁵ In parallel, the judiciary has been restored a certain degree of discretion in sentencing. In cases involving common for personal gain prisoners, a prison supervising judge can exceptionally override this provision if it concludes the prisoner will successfully socially reinsert on release. This decision is based on their therapeutic trajectory whilst incarcerated. As aforementioned, the two new dangerous offenders, the sex offender and terrorist, are intransigent and cannot be reformed. In both cases, it is the sentencing judge who plays a prominent role in setting the conditions of the security measures. They along with the prison supervising judges are responsible for overseeing security measures when imposed, replaced, modified, suspended or terminated. This even applies to custodial sentences of forty years.

Since its enactment, persons condemned for either category of offences are now subjected to one or more of the following requirements for up to ten years: electronic monitoring, attendance requirements, inform the court or judge of any changes in residence or employment, prohibition from leaving a designated territory or residence without prior judicial authorisation, restraining order, prohibition from partaking in activities that may facilitate the commission of a similar offence, mandatory treatment attendance (Spanish Penal Code §105.2; §106). They must therefore not only undergo therapy that they are presumed to reject but are also subject to heightened surveillance, and have their movements and contacts severely restricted in prison and on release. As in 1984, multiple agencies and methods are involved in the identification, diagnosis and classification. These include professionals from the political, judicial and medical fields.

3.2. *Techniques of the self, resolution and dangerousness*

In respect to the convicted terrorist, it is the motivation and resolution of the prisoner that render them dangerous. Although removed from the final draft, the original draft published in November 2009 makes direct reference to the determination of the offender. The new post custodial measure was envisaged to apply to these subjects and was in concordance with *"the notorious diagnosis of dangerousness which in principle can be attributed to terrorists, given the genesis of their peculiar criminal resolution"* (121/000052 Proyecto de Ley Organica 27 de noviembre 2009, p. 11). In short, it was the provenance of the deviant desires of the terrorist that rendered them dangerous; however it wasn't only their morality that was a threat so was the means used to uphold it. Acts of terrorism are *"considered the greatest threat to the Rule of Law, as well as the particular way certain terrorist groups or cells operate at the international level."* Their identification and dismantling is rendered all the more difficult by "their degree of autonomy" (121/000052 Proyecto de Ley 6 de mayo 2010, p. 10). Although their independent resolution is problematic, it is their use of techniques used to maintain a network and disseminate messages that renders them is of equal concern. Herein, is an overlap with the Thought Police. Individuals who recruit, indoctrinate, train for the purposes of terrorism through "the distribution or public dissemination by any means of messages or slogans without necessarily leading to the commission of an offence or inciting others to commit one" e.g. provocation, conspiracy or position to commit a concrete offence, can generate an apt breeding ground that may bring about a decision to offend (121/000052 Proyecto de Ley 6 de mayo 2010, p. 10; §579).

It is now a criminal offence to distribute or publicly disseminate by any means messages or slogans to provoke or encourage others to commit of any of the felonies foreseen in the chapter on terrorism offences. Further, the offence does not have to be committed, the act alone is argued to "generate or increase the risk of them effectively being committed" (Spanish Penal Code §579.1). By limiting recognisable vocabulary thoughts too can be governed (Orwell 1949, p. 55).

⁵ In the UK, this is comparable to a Class C classification.

Further, it isn't solely the use of technology for prohibited purpose to bring about the commission of an offence that is dangerous, it is also the thought and its possible contagion.

Although the political resolution of persons convicted of a sex offence involving minors isn't perceived by the Spanish legislature to be symptomatic of dangerousness, their use of technology is. Apart from their deviant desires, this is the only apparent commonality between both collectives.

3.3. *New dangerous techniques*

As in 1984, technology is viewed as a valuable resource when used in the interest of those in power, but a source of danger when not. Although, two directors of Spanish intelligence have been convicted of tapping the phone-lines of left-wing political parties in the Basque Country (Gorospe 2003, OL 5/2010 introduced a new commonality between both classes of dangerous offences. Although different tools of technology such as the internet and phone tapping serve the Government to carry out surveillance on political opponents and to restore "state hegemony via the informational and technological colonization of insurgent communities" (Feldman 1991, p. 87); however, it can also be used to disseminate information and promote dissidence.

As far as sex offences involving minors are concerned, the legislature argued that it can also be used to contact and snare minors. In this respect, the Government and Ingsoc consider technology a valuable tool when used to serve their purposes, but restrict access and repress use having recognised its possible adverse effects and use to access unauthorised private information (Lessig 2005). The intransigency of both collectives was therefore not their only common characteristic, so was their use of certain technological advances for an unauthorised purpose, to achieve their goals. §579.1 targets the messenger; however, a new schedule was introduced for cases involving sex-offenders, which problematized the methods used to entice their victims. Under §183*bis*, to use the internet, a telephone or "any other information and communication technology to contact a person under the age of thirteen years and propose to meet that person" along with "material acts aimed at such an approach" is now a criminal offence. Up until this point, what was said was criminalised; however, not the means used. It is no longer solely a question of saying it, but rather the deceit and guise used along with the method that renders the perpetrator particularly dangerous.

The reform introduced two new offences that pertained to the dissemination of information and indoctrination, either under the guise of a peer to lure a minor such as in the case of the sex offender or to pass on information or political propaganda as in the case of a convicted terrorist; however, it didn't introduce any notable changes apart from a new post-custodial security measure. Ultimately, unable to introduce indeterminate sentences of imprisonment, the legislature concluded that persons condemned for any of the above types of offences must be automatically imposed a ten year accessory penalty, a security measure. This new technique of domination is characteristic of probation and can be commuted to a second custodial sentence if breached. Whilst purging the custodial sentence or security measure, it is the prisoner and ex-convict's responsibility to demonstrate that the danger has been abated. As in the case of muscular twitches in 1984, both must demonstrate that they no longer consciously or observably retain their devious desires.

As far as persons convicted of terrorism are concerned, different "de-radicalisation programmes" have been implemented in various international jurisdictions. For example, Saudi Arabia created the Prevention, Rehabilitation, and Aftercare (PRAC) programme that aims to teach insurgents a 'correct' reading of the Qu-ran (Horgan and Braddock 2010). The insurgents therefore exhibit an erroneous interpretation of events and are deemed irrational in a Lockean sense. The counselling to which

they are subjected is a multi-agency task that is headed by religious, psychological and social, security and media subcommittees (Boucek 2007). The prisoner's dangerousness is therefore a legal diagnosis; however, unlike the Spanish government, the Saudi Arabian government believes to have medical, scientific and mystical cure for this illness. In the same vein, having accepted that some prisoners may eventually be released, governments in Colombia, Yemen and Indonesia have introduced prison programmes to 'treat' and 'rehabilitate' convicted terrorists (Ribetti 2009, Theiden 2007 Horgan and Braddock 2010). These programmes are directed at the subjects' mistaken moral reasoning and they are taught to function and think differently. This is accomplished through their acceptance the dominant social and/or religious order.

Perhaps more in line with Ingsoc's treatment of proles, the People's Republic of China committed dangerous convicts such as counter revolutionists or recidivists to the Re-education Through Labour or Force Job Placement programme up until 2014 (Epstein and Wong 1996). This programme aimed to bring the prisoner ideologically and not mystically in line.

3.2. *Boot on the face without leaving a trace: EM*

In 1998, Simon described past and present scientific rationality regarding sex offenders as "a lesson in the intransigence of evil" (Simon 1998, p. 452). Over fifteen years later, it would be difficult to argue that we have learnt from this lesson. They remain a group of offenders who are diagnosed, punished and ostracised socially and legally (Spencer 2009). This group is still argued to be unable to adapt to 'community norms.' Similar arguments are forwarded when discussing the danger posed by convicted or suspected terrorists.

From the onset, it should be noted that both groups have low recidivism rates irrespective of whether or not they attend and complete a specific behavioural programme (Hanson *et al.* 2002, Robles Planas 2007, Shirlow and McEvoy 2008, Horgan 2012).⁶ Notwithstanding, the perpetrators are portrayed as an imminent and uncontrollable danger. In 1950, Sutherland stated that rape was "customarily used as an indication of the extent of the danger to women and children" (Sutherland 1950, p. 544). But, "the least glimmer of truth is conditioned by politics" (Foucault 2003). In accordance, Rennie (1978) and Pratt (1997) posit dangerousness is a political issue and its identification depends upon the identifier and their priorities. Big Brother kept party members in a constant state of exception and hysteria through its manipulation of events. Moreover, in accordance with Sutherland (1950, p. 544) and Orwell (1949, p. 43), rates of recidivism and statistics in their original or rectified form are mere fantasy or incomplete, which renders their manipulation all the easier. That said, the purpose of this article is to compare the construct of the dangerous offender and the treatment offered in present day Spain with that depicted by Orwell in 1984.

Although, the jury is still out on the efficacy of CBT (cognitive-behavioural treatment) programmes, in the shadows of 'What Works' they continue to be the dominant model used in prison treatment (McGuire 1995, Brown 2005). CBT programmes strive to change the way people think, feel and act. As aforementioned

⁶ There is unfortunately no comparable evidence regarding persons convicted of terrorism, which may reflect the draconian sentences handed down to this collective and State secrecy on all related matters. Horgan (2012) estimates that the number of dissidents in Ireland is greater than shown; nevertheless, the rate still remains a fraction of the rate for common for personal gain offenders. Studies concluding that paramilitaries took up arms again are in underdeveloped countries and continued social, political and economic marginalisation e.g. Mozambique (Alden 2002), Angola (Knight and Özerdem 2004, Rolston 2007). It is noteworthy that the alleged dangerous of both groups was not contested by any of the deputies in the lower Chamber. It was accepted or taken for granted; however, there was dissent voiced regarding the sentencing judge's ability of to foresee the state of these prisoners at the time of the release e.g. PNV, ERC. The prisoners could be treated and morally reformed, but the sentencing judge did not have sufficient auto-biographical information to predict future conduct.

and foreseen by Foucault (1978), the dangerous offender couldn't have emerged nor the specialised services created to manage them without the input of psychiatry and psychology. More precisely, the current reference to dangerous offenders stems from the Psychopathy Checklist-Revised, which was replaced by the DSM diagnosis of antisocial personality disorders, a term used interchangeably with deviance (Hare 1991, Maden 2007).

3.2.1. Treating independent resolution

Under the 1978 Spanish Constitution, the death penalty can only be imposed when "provided for by military criminal law in times of war" (§15). Weary of international conventions e.g. the 1977 Protocol II of the Geneva Convention, each successive government has refused to constitute any form of terrorist activity as acts of war or an armed conflict. The same schedule of the Constitution prohibits the "inhuman or degrading punishment or treatment" and another stipulates "imprisonment and security measures shall be aimed at re-education and social rehabilitation and may not involve forced labour" (§25.2). Consequently, the government doesn't dispose of the plethora of alternatives available to O'Brien. Faced with these impediments and unable to 'normalise' the individual, the Government opted to introduce a second consecutive penalty, a security measure to "incapacitate them out of the circuit" (Foucault 2003, p. 244). As aforementioned, it was deemed necessary given that attempts to access and penetrate the individuals in order to treat them had been unsuccessful or were consciously impeded by the offender in question.

The following section presents the treatment available to both dangerous collectives. Both programmes are based on a CBT approach. As manifested in the title for this section, CBT programmes aim to change the way the individual thinks and functions. Under this premise, it is argued that how persons think about themselves and others as well as what they do affects their thoughts and feelings. "There are helpful ways and unhelpful ways of reacting to most situations, depending on how you think about. The way you think can be helpful – or unhelpful" (Blenkiron 2013). There is therefore a presumed norm and treatment is designed to "overthrow maladaptive behaviour patterns of doing, thinking and feeling" i.e. irrationality⁷ (Milburn 2011). Neither Winston nor persons condemned for sex offences or terrorism exhibit disproportionate melancholy or delirium. It is their "symptomatology" i.e. the act that attracts attention to their supposed dangerousness. Their acts are premeditated, planned and resolute. The professionals' inability to penetrate their thoughts and feelings i.e. souls, led the subjects and their behaviours to be problematized in 2010.

Up until the end of 2008, therapy did not exist for persons condemned for terrorism, which reflected in part the institutions inability to access this group of prisoners as well as their unwillingness to acknowledge epistemological questions regarding what to treat (Silkes 2002). Regardless, the prisoner was to demonstrate that they were rehabilitated and willing to merge with the majoritarian, and share its desires. Although able to physically "divide up the multiplicity", they were unable to isolate the collective's thoughts (Foucault 2007, p. 12). Unlike other prisoners, a complete individualised assessment is not completed on persons condemned for a 'terrorism' offence. First, up until December 2013 and with few exceptions, ETA's prisoners refused to cooperate and acknowledge the institution and its professionals (Pérez Cepeda 1995, Sanz Mula 1998).⁸ Second, regardless of the nature of their involvement and conduct, they are labelled as dangerous solely due to their membership in a proscribed organisation and are automatically given the highest security classification i.e. first degree. Inmates given a first degree classification

⁷ Unlike rational-emotive therapy (RET), which aims for long-lasting change, CBT strives to bring about symptomatic change (Ellis 1980).

⁸ 28 December 2013, ETA's prisoner collective EPPK published a communiqué in Gara and Berria newspapers stating that they accepted their sentences and acknowledged the legal system that up until this point was repeatedly disqualified and considered an external imposition (EPPK 2013).

allegedly manifest "*criminological dangerousness and maladjustment to the ordinary or open units*" and are consequently incarcerated in closed units (§10.1 of the GPL (General Penitentiary Law) 1/1979 and §89-95 of the PR (Prison Rules)). Prisoners classified and purging their sentence in the first degree are subjected to tighter controls over communal activities and surveillance (§10.3, GPL; §90.2, PR).⁹ In short, their interaction with others is severely curtailed and when they are granted contact with other prisoners, it is for a limited period and under close supervision lest they contaminate the other. In the same vein, the PR consider "*membership in a criminal organization or an armed gang unless having given clear signs of having abandoned the internal discipline of such organisations and gangs*" and the criminal trajectory of the inmate to demonstrate "*aggression, violence or antisocial.*" These have been diagnosed by the legislature as traits that qualify "*extreme dangerousness and inadaptability to the ordinary unit*" (§102.5 a) and c) PR).¹⁰ Finally, 'terrorists' can have their visits restricted or denied. These restrictions do not apply to immediate family but to persons "*with who there is an ideological bond.*" This common ideological bond may prevent or complicate their rehabilitation i.e. normalisation (§43ii PR). Further, in addition to these laws and rules controlling the internal administration of this dangerous collective, a special surveillance regime FIES was put in place as of March 1991. The FIES was created to compile information on the criminal and prison trajectory, type of offence, and associations of a determinate group of prisoners (Ríos Martín 1998, p. 2). There therefore already existed considerable legislation stating that this collective is dangerous, some of which dated back to the first piece of prison legislation enacted shortly after the Constitution. Notwithstanding, they remain abnormal and impenetrable collective. In response, a new dangerous subject was problematized in 2010, the 'terrorist' on sentence expiry.

From the onset, efforts to document sufficient biological knowledge of the individual prisoner are impeded due to the scarce contact between all prisoners held in the first degree and staff (CPT 2003, p. 82, 2013). Further, this was exacerbated by the unwillingness of members of the collective to interact and partake in the activities organised by the prison. Notwithstanding, a diagnosis continues to be made based on "the circulation of individual dossiers" (Castel 1991, p. 282); however, once released they can no longer be kept under a constant gaze. Having been unable to guide these collectives into self-government i.e. controlling their desires, a new instrument of power emerged, the security measure. Without this knowledge and unable to motivate the prisoner to internalise moral reform or authorised self-government, they remain a misunderstood and dangerous subject. In this respect, the unrepentant terrorist shares certain 'problematized' traits with Winston Smith. They like Winston are "more deeply concerned with the political future of society than his [their] own life or work" (Moen 2000, Spender 2004, p. 43).

As is the case with classification, under §76.1 d) of the PC, penitentiary benefits for persons convicted of membership in a terrorist organisation are conditioned to them publicly renouncing the use of violence. Under this law access to the third degree¹¹ and parole are heavily restricted. Convicted terrorists can only access the third degree once having served four-fifths of their sentence, and conditional release once having served seven-eighths (§78.3 PC). They must also manifest unequivocal signs of having abandoned the aims and means used by the

⁹ Prisoners held in the first degree are subject to daily cell searches and bodily if necessary, are entitled to at least 3 hours of time in the yard with a maximum of two prisoners at a time (may have up to an additional 3 hours added and with only up to 5 prisoners at a time) and are held in single cells (§101.3 PR 1996).

¹⁰ The PR 1201/1981 considered membership to a criminal organizations and the number and nature of the offences to be two of the four global factors that demonstrated the inmate in question was 'extremely dangerous' (§43.3 a)). §102.5 c) of the present PR (Royal Decree 190/1996) states that "membership to a criminal organization or an armed gang" is to be considered a factor, unless they have demonstrated that they "have abandoned the organization in question."

¹¹ Although not identical, the closest Anglo-Saxon equivalent is Category C or minimum security.

organisation, actively collaborate with the authorities to prevent other crimes by the organisation, mitigate the effects of the crime, or identify, capture and prosecute the perpetrators and obtain evidence on the organisation or prevent it from carrying out its activities, in order to demonstrate their abandonment. Finally, they have to apologise to the victim(s) of their crime(s). Their disassociation from the organisation, setting and activities carried out by related illegal associations and groups, and their collaboration with the authorities must be attested for in their technical reports drafted by the Treatment Committee (§ 90 PC). The risk factors are therefore constructed by the political field, enforced by the juridical field and assessed by the medical. Otherwise, they serve their sentence to expiry.

In this respect, the requirements placed on this collective resemble the technologies of mind control identified by Zimbardo (2005). To divert attempts to associate or foster interpersonal trust, prisoners are expected to socially isolate themselves. Equally, to stifle independent thoughts, there is heightened surveillance i.e. Thought Control and Police. A sense of self or recollection is “no match to the Ministry of Truth’s falsification tactics of selective amnesia” or the investigating magistrates and prosecutors responsible for assessing the authenticity of the prisoners repentance.

Accepting that their efforts to break the ranks of ETA and therefore to penetrate and access the individual had failed, the Ministry of Interior began to regroup prisoners who voiced their desire to separate themselves from the collective and to condemn their actions and those of the organisation at two prisons, Zuera and Villabona (Aizpeolea 2010). First, prisoners who applied and are chosen for this programme are transferred to one of the three “Respect Modules.” In 2011, Penitentiary Institutions stated that the respect modules were not apt for certain prisoners given their “entrenched code of values” (Ministerio del Interior 2011, p. 2). It can therefore be concluded that eligibility is based on the prisoner’s willingness to renounce their ideological values.

This specialised programme was created at three prisons. Once transferred, the prisoner is expected to become a member of the group in the module thus to abandon previous alliances. If the prisoner fails to meet the demands set by the institution i.e. their responsibilities, the group is punished. As such “the group exerts internal and external control over its members” (Ministerio del Interior 2011, p. 3). Further, the qualitative and quantitative evaluations completed by professionals on the ward are also marketed as one of its fundamental factors. The evaluations are claimed to have an ‘immediate effect’ and serve to modify inmate’s behaviour.

The basic aim that guides the “Respect Modules” is: “to create an atmosphere which fosters of cohabitation in accordance with norms, values, habits and means of interaction of any standard social collective.” This serves to prepare them for release “in the same conditions as any other citizen,” which is achieved through their adoption and internalisation of “prosocial values and conduct” (Ministerio del Interior 2011, p. 4). Although these modules are praised by the CPT, prisoners interviewed on the wards “stated that they dared not make a complaint about the living conditions in the module for fear of being transferred out of the module” (CPT 2013, pt. 57). Prisoners on these wings are expected to commit themselves “to a set of behavioural rules in return for enjoying some elements of self-management within the modules” (CPT 2013, pt. 56). As in the case of all parolees, they are not to associate with members of the collective unless those individuals have accepted to change their behaviour and demonstrate that these changes have been internalised; however, unlike parolees, they are not entitled to associate with persons who share their same political aspirations.

In short, it is a system that progressively aims “to move the masses and then, having pried them loose from their traditional loyalties and moralities, to impose upon them (with the hypnotized consent of the majority) a new authoritarian order

of his own devising" (Huxley 1958). The latter is a paraphrase from Huxley's description of Hitler and his use of mass politics to brainwash the masses. The present Spanish government cannot be compared to Hitler; however, their continued and resurrected attempt to socially and politically marginalise and disaggregate this collective of prisoners in attempt to render them innocuous is comparable. Having been unable to break the individual as O'Brien achieves with Winston through prolonged physical and psychological stress and have them unconditionally accept the stated history of events and culpability i.e. CBT, they must be controlled once obligatorily released back into the social body. Most efforts to label this group of prisoners as pathological, psychotic or anti-social have been discredited (Silkes 2002, Victoroff 2005); however, sex-offenders and in particular those involving minors remain a group argued to suffer from cognitive distortions i.e. "violate commonly accepted norms of rationality" (Ciardha and Ward 2013, p. 5). Both groups are deemed irredeemable and the inability of the state's institutions to treat either put its very legitimacy over its monopolisation of violence in question e.g. incarceration as well as the stated moral order. Although the treatment offered to both collectives is distinct given the targeted changes, the underlining aim of both is disciplinary and mastership. Further, until both come into line they are treated as "life without form and value, stripped of political and legal rights accorded to the normal citizen" (Spencer 2009, p. 221). In the case of the sex offender, the treatment is directed at them changing the thoughts, emotions and pleasures.

3.2.2. Reforming thoughts, desires and action

As aforementioned, contrary to popular belief, this collective do not have a high recidivism rate. Notwithstanding, perhaps due to the repetitious use of constructs based on moralistic stereotypes, it is perceived as true (Huxley 1958). For example, the sexual psychopath targeted by criminal legislation was claimed to exhibit an "utter lack of power to control his sexual impulses" (Freedman 1987 p. 84). For this reason, this male subject was "likely to attack... the objects of his uncontrolled and uncontrollable desires" (Freedman 1987, p. 84).

Sentence planning for persons convicted for sexually assaulting or abusing adults or minors includes attendance at the 'Control of Sexual Assault: Prison Treatment Programme for Sex Offenders.' In the case of the sexual deviant i.e. sex offender, "it is important to emphasize that sexual crimes are committed in the process of seeking pleasure" and the offender must "first cross large ethical, social and legal barriers. For most people these barriers are so clear and powerful that they never seriously consider crossing them" (Rivera González *et al.* 2006, p. 18). This dangerous collective must internalise control and learn to manage their thoughts and actions, and resist temptations. As such, the programme aims to teach the person to understand "their own behaviour, lifestyle and thoughts." According to Government and professionals involved in the assessments, their inability to control their desires and succumb to these pleasures demonstrates that they are dangerous at present and will continue to be so in the future, unless they learn to internalise control and discipline, to extinct these desires.

Up until this reform, this class of dangerous offender was subject to standard sentencing planning. If they received a custodial sentence of greater than five years, they like all convicts with the exception of those convicted for terrorism, could be released once having purged half of it. Unlike persons convicted for a terrorism offence, they are not required to meet an extensive list of conditions before becoming eligible for release; however, those convicted for assaulting a minor are now subject to this new secondary post-custodial measure due to their alleged dangerousness.

They can therefore obtain parole once having purged half of their custodial sentence; however they are also subject to a second penalty on probation expiry. Regardless of whether they demonstrate that they have mastered their emotions

through aversive emotional training e.g. electric shock therapy, they are and remain a danger and consequently face a loss of their privacy and personal solicitude.

Both dangerous subjects are dangerous because they are members of a dangerous subculture. They cannot be executed or banished and therefore are stripped of their political, social and legal rights for as long as possible. This exclusion is automatic and does not reflect individual or contextual changes.

4. Conclusion

Cohen (1985) may be correct in asserting that disciplinary practices are not individualised or involve mind-control mechanics as depicted by Orwell in *1984*. As shown, under Spanish criminal and penitentiary, disciplinary practices are only moderately individualised; however, convicted paedophiles and terrorists are thrown into a dangerous category from the onset. The legislature has constructed a list of collective characteristics and made a diagnosis based on these, which it argues are demonstrative of the convict's dangerousness. This resilience was real, an answer was needed and therefore there was a problematization of the conduct. Their resilience was observable but was indicative of something deeper. As such, "[the] character resumes its former role as a visible sign directing us towards a buried depth" (Foucault 1973, p. 229). In the case of persons convicted of a terrorism offence, it is their affiliation to a group whose deviant ideology renders all members dangerous. Persons convicted of a sex offence involving a minor, were a danger and remain one. They may meet the requirements set for a progression in prison degree but remain a public danger. In both cases, the initial diagnosis is not individualised but massifying. Nonetheless, the techniques of domination are individualised and consist of an internalization process of techniques of the self that are endorsed by the majority.

As in the case of Winston, once diagnosed, the person enters a second scientific medicalised phase. Their impenetrability and resilience render them unwilling to accept the prescribed treatment. This is the cause of their imminent dangerousness. The treatment prescribed for persons' condemned of terrorism involves their social, political and legal isolation. Unless having demonstrated that they consciously and perhaps unconsciously share the moral and social norms of dominant society and renounce their ideological desires, they remain a danger and are contagious. The treatment offered to convicted sex-offenders is directed at modifying the way they feel and think as well as what their sexual desires. A new technology of domination has emerged in Spanish criminal legislation in response to the institutions inability to penetrate these two new classes of problematized dangerous offenders.

As in the case of the Ministry of Love, the legislature wants to guarantee that the inner thoughts and personal initiative of the prisoner have been abated; however, unable to weave a strong fabric for the society through the existing technologies of power, a new security measure was created that serves to insure against perceived eventualities. Winston lacked discipline and fell victim to his personal autonomy but eventually succumbs to O'Brien's combination of pastoral and biopower, and is released. Having been cured or rather rendered physically and psychologically innocuous, he is no longer a danger to the party. The Spanish legislature justify their answer, a new security measure, to control persons who have purged a custodial sentence for a terrorism offence or sexually assaulting a minor because they claim to be unable to guarantee that members of both collectives are harmless on release.

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