

# INTRODUCTION

SYMPOSIUM  
CITIZENS AND ENEMY ALENS

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## **A multi-disciplinary analysis**

This special issue of IJPL focuses on the implications of the measures taken to combat trans-national terrorism. This subject involves multiple perspectives and has complex roots in different academic disciplines and their sub-fields, such as history, law (especially criminal law, international law and public law), and sociology. It also concerns a variety of ‘real world’ fields of endeavour, including those of judges, administrators, and experts in international relations. There are consequently many aspects to consider, with a variety of themes, questions, and issues that have commanded attention for more than a decade. Moreover, “citizens and enemy aliens” is both a subject for academic study and a complex aspect of governmental activity and social life. This by itself explains why we have decided to convene scholars with different academic backgrounds in the research project and in the seminars organized to discuss its outcomes.

In what follows, we first describe and compare the measures taken by governments in different periods and countries in regard to both their citizens, when they are suspected of “intelligence with the enemy”, and to aliens, who are regarded as enemies even though they do not have the status of combatants and do not enjoy the guarantees of that status. We then argue that some of the measures adopted were already used in the First World War, while others have been introduced in recent years, especially in the context of the United Nations.

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Precisely for this reason, a recurrent concern of this special issue is the “war on terror”. A distinctive feature of the measures taken against terrorism in the past decade has been the attempt to liken the reaction against terrorism to a war, which is a more or less well-defined legal concept with a series of implications for the techniques of government and their limits (how suspects must be treated, what their rights are). We argue that, historically and conceptually, terrorism differs from “war” and may not, therefore, entail similar practical consequences. Public authorities have, of course, several ways to exercise force, but in a liberal democracy) nothing (allows the State to use force regardless of all legal restraints. Another, and related, issue is the legal status of individuals. We do not discuss only the legitimacy of qualifying a group of persons as “enemy aliens”, with the aim or the effect of depriving them of some of the most fundamental guarantees accorded by liberal democracies, including the right to be heard and the right to an effective judicial protection. We also discuss the political, social and psychological implications. Anger at bomb attacks in New York, Washington, Madrid and London required prompt action by governments, but, as Bruce Ackerman has acutely observed, terrorism justifies neither repressive laws that may devastate civil liberties nor racial profiling and stigmatisation. This is very important in view of the need to promote more suitable behaviour among public administrators.

### **Individual contributions**

We have also paid attention to more specific topics related to citizens and enemy aliens. In the first contribution to this issue, Daniela Luigia Caglioti considers historically the dilemma between the safety of the population and the system (as in the old maxim *salus rei publicae suprema lex*), on the one hand, and the safeguards for liberties and rights on the other. She argues that this dilemma is not a novelty of the twenty-first century, and shows the analogies with WWI, but also the differences, which must not be overlooked.

Giacinto della Cananea focuses on the administrative due process of law. He observes that, whilst the courts often initially deferred to political power, comparative analysis of national and supranational judicial institutions shows that in more recent years the courts have ensured that some essential procedural requirements imposed on governments are respected, and legislators have modified laws accordingly. However, some

aspects of such procedural requirements have been redefined and can no longer be conceptualised in the traditional terms of the nation-state.

The three contributions that follow explore more specific aspects from a legal point of view. Mario Savino focuses on the balance between security and freedom in counter-terrorism and immigration policies, mainly from the point of view of legislation and administrative practice. Renata Spagnuolo Vigorita argues that, while the Italian legislature has repeatedly manifested its lack of interest in constraints on government, both administrative courts and the Constitutional court have restored safeguards, using general principles of law such as equality and reasonableness. Federico Fabbrini demonstrates, however, that judicial guarantees are not unlimited. Indeed, the experience of “extraordinary” measures like renditions reveals that even in liberal democracies there are tensions that may not be solved by the courts.

Fabbrini’s emphasis on “extraordinary” measures is paralleled by Vincenzo Rapone’s focus on the studies conducted, in particular, by Giorgio Agamben and which show the risk of exclusion from the human community because such measures allow? differentiations with no reference to the universals of discourse and culture. Finally, Leopoldo Moscoso focuses on the notions of emergency powers as well as on the controversy on the state of exception, and points to the difficulties inherent to violence control, to the emergence of private governments, and to the nation-state’s loss of centrality in both domestic and international politics.

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