

# The Criminalization of Dissent by Law Enforcement Agencies in the Netherlands



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In dedication to those who keep on struggling against xenophobia, racism, imprisonment, animal (ab)use other forms of domination. And to those who, with their love and passion for a more just world, make it one worth living in.



# Glossary of Abbreviations and Acronyms

AAGU	Anarchist Anti-Deportation Group Utrecht [Anarchistische Anti-Deportatie Groep Utrecht]
ADC	Anti Animal-Testing Coalition [Anti-Dierproeven Coalitie]
AIVD	General Intelligence and Security Service [Algemene Inlichtingen- en Veiligheidsdienst]
BPRC	Biomedical Primate Research Centre
BVD	National Security Service [Binnenlandse Veiligheidsdienst], precursor of the AIVD
CB	Crime Image [Criminaliteitsbeeld], report by DNR
CBA	Crime Image Analysis [Criminaliteitsbeeldanalyse], report by DNR
CDA	Christian Democratic Appeal [Christelijk Democratisch Appel] (Right-Centrist Parliamentary Party)
COT	Policy research institute for security- and crisis management
CTIVD	Commission on the Intelligence and Security Services [Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten]
CU	Christian Union [ChistenUnie] (Right-Centrist Parliamentary Party)
DBF	Dutch Animal Liberation Front [Dierenbevrijdingsfront]
DNR	National Crime Squad or National Investigation Service [Dienst Nationale Recherche]
FOIA	Freedom of Information Act
GL	GreenLeft [GroenLinks] (Leftish Parliamentary Party)
IVA	Research institute affiliated with the University of Tilburg
KLPD	National Police Agency [Korps Landelijke Politiediensten]
LP	National Office [Landelijk Parket] of OM
LPF	List Pim Fortuyn [Lijst Pim Fortuyn] (Right-wing Parliamentary Party)
NIK	National Information Center [Nationaal Informatie Knooppunt] of the KLPD
OM	Public Prosecution Service [Openbaar Ministerie]
PvdD	Animal Party [Partij van de Dieren] (Leftish Parliamentary Party)
PvdA	Labor Party [Partij van de Arbeid] (Left-Centrist Parliamentary Party)
PVV	Freedom Party [Partij Voor de Vrijheid] (Right-wing Parliamentary Party)
RaRa	Revolutionary anti-Racist action [Revolutionaire Anti-Racistische Aktie]
RvD	Respect for Animals [Respect voor Dieren]
SP	Socialist Party [Socialistische Partij] (Leftish Parliamentary Party)
SHAC-NL	Stop Huntingdon Animal Cruelty Netherlands
SGP	Reformed Political Party [Staatkundig Gereformeerde Partij] (Right-wing / Orthodox Protestant Parliamentary Party)
UCTA	Unit Counter-Terrorism and Counter-Activism of the DNR
WIV	Law on Intelligence and Security Services [Wet op de Inlichtingen- en Veiligheidsdiensten]
WVO	Security Investigations Act [Wet veiligheidsonderzoeken]
VVD	Liberal Party [Volkspartij voor Vrijheid en Democratie](Right-wing Parliamentary Party)
WOB	Dutch equivalent of FOIA [Wet Openbaarheid Bestuur]



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# **Introduction**

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## Relevance and scientific novelty

In recent years the public expression of discontent has increasingly come under pressure from authorities in many European countries. In the aftermath of 9/11, the Madrid and London bombings, governmental control over the public realm has intensified and many freedoms, such as the right to protest, have been curtailed. Criminologist Magnus Hörnqvist summarized the situation as one where “any element of non-conformity is construed as a threat”<sup>1</sup>.

In the Netherlands this process has gone so far that protest is being investigated as “ideological crime” by the national police and prioritized together with organized crime and “terrorism” as investigations of “national interest”. Even special prosecutors, responsible for presenting a “case” in a court case against an individual accused of breaking the law, are assigned to “deal” with no border and animal rights movements. In the past years the ongoing governmental efforts to curtail freedoms of expression and assembly are striking. This has manifested itself for instance in increasing restrictions placed on demonstrations, mass arrests and the excessive police violence during protest actions. This means that the legal space for the expression of discontent is gradually being erased. Following this trend, various security agencies in the Netherlands have been working in their own way to construct protest as a threat (“terrorism”, “extremism”, “ideological crime”, and others). In the last years in the Netherlands protesters are increasingly criminalized and suppressed for their questioning of governmental policies and their will for “fundamental changes in society”<sup>2</sup>. It is important to not only focus on the practices of repression (the policing and arrests if you will), but to analyze the mechanisms standing behind this trend and its societal effects. Though these developments have set a far-reaching trend since the mid-2000, no research has been conducted yet on the criminalization of protest in the Netherlands, which makes this study a first exploration in its kind.

The motivation for choosing the criminalization of protest as a research subject lies in my previous experience of studying and participating in social movements where I have been observing a continuous deterioration of public space for grassroots politics over the last years. The starting point for this study is the dismay with this recent trend in criminalizing protest. Where does this concern about these “dangerous” protesters which potentially “endanger the democratic legal order”<sup>3</sup> come from? And what does it tell us about the times we live in?

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<sup>1</sup> Magnus Hörnqvist (2004) *The Birth of Public Order Policy, Race and Class*, Vol 46 (1). p. 30.

<sup>2</sup> AIVD, Annual Report 2010.

<sup>3</sup> Ibid.

## **Aim**

The aim of this research is to analyze the post 9/11 (for lack of a better word) concern with “security” by which “politics” is being reduced to parliamentary activities and space for everything “radical” (as openly critical or dissident) is under government pressure and through governmental attention also under public scrutiny by media and the Dutch society. The main question of this thesis is:

**How are contemporary social movements criminalized by the concepts of “terrorism”, “extremism” and “ideological crime” and what are its implications for dissent in contemporary Netherlands?**

This question can be separated into the following subquestions:

- How and by whom is protest delegitimized and criminalized in the Netherlands?
- When and how was the concept of “terrorism” introduced in the EU and when in the Netherlands? How did this translate into actual laws?
- How are the events of 9/11 and the construction of the “terrorist” threat related to the criminalization of dissent in the Netherlands?
- How has the AIVD prioritized dissent as security concern and what role does the concept of “extremism” play in this? What is meant by the concept of “extremism” and how is it legitimized and actually used?
- How has the DNR prioritized dissent as security concern and what role does the concept of “ideological crime” play in this? What is meant by the concept of “ideological crime” and how is it legitimized and actually used?
- When and how have these concepts been constructed and made into governmental policies by law enforcement agencies, media and parliament in the Netherlands?
- How is the use of these concepts in law enforcement actions and pressure from parliament and media against protest legitimized? How are these concepts actually applied to social movements?

Through these questions I will consider how since the mid-2000s new security measures and classifications of threats have been created in the Netherlands to suppress dissent on a scale not seen in last decades. Starting with post 9/11 developments in the security terrain of government agencies, tasked with protecting the public sphere, I will do so by tracing the implementation of the Dutch Terrorist Offences Act and the construction of the concepts “extremism” and “ideological crime”. I will

then analyze how these concepts are used in the reports and investigations of respectively the General Intelligence and Security Service (AIVD) and the Dutch National Investigation Service (DNR) to criminalize and delegitimize protest. I will look at these developments through case studies of animal rights and no border movements.

## **Method**

To make sense of the vast terrain which we call “security” I will use an interdisciplinary approach which combines anthropology with criminological and interpretative methods. Anthropological fieldwork lies at the heart of this study. Over a two month period I have stepped back and forth between two different fields. These fields can not be separated easily, but should be seen as separate fields more in a conceptual way. At the one end I have participated in social movements in the Netherlands and have interviewed and spent time with various participants of the no border, anti-fascist, and animal rights movement. At the other end I have been trying to get a as detailed view as possible from the Dutch security industry. From this field I have been able to interview ministerial workers, security experts, and researchers, but failed to get access to law enforcement agencies or the AIVD.

The persons I chose to conduct an interview with came to me through the method of snowballing and by selecting some key figures myself. Most of the interviews I have conducted were semi-structured, and were specifically planned in advance. In advance to each interview I prepared the main questions I wanted to know more about. I have mostly interviewed people in person, by meeting them at their working places, and a few in a café. On four occasions I have interviewed a person by phone, skype, or by email. No gatekeepers where necessary, as every person I interviewed made it easier to interview others.

Remarkably, many of the “experts” I interviewed were themselves very much aware of the problematic aspects of the governmental security polices I was researching. They however felt that by participating in the field they were bringing more nuance to the ongoing governmental discussion by providing for instance a pedagogical paradigm of “care”, instead of limiting it to a security concern. Also interesting was that especially security “experts” (researchers) or “officials” (ministerial workers) were hard to reach, and tended to forget or not show up at meetings at all, because they were “busy” or had “forgotten” our meeting. Next to this, they also tended to be the most concerned when it came to me recording our interviews with a dictaphone. This was especially the case for “academics”. In the cases when I asked such a person how he or she felt to be the object of a study, instead of studying

other people, he/she unequivocally agreed that it was something new, and that it was something he/she tended to be a bit hostile towards. This also expressed itself in the way how many researchers were hard to get to speak to at all.

The people I interviewed about security policies were all experts of sorts in their fields, so before talking to them I had to “study up” a great deal. Before every interview I tried to find the most important articles, books or reports the person had written recently, and I tried to relate their work to my own research questions as much as possible. What was very difficult and which I in retrospect could have done much better, was that I might have been too “nice”. In being in a very contentious area, and knowing that I could easily “burn” my bridges, as well as myself having a quite critical point of view towards the policies I was researching, I tried to not let my own emotions picture the issues and the questions I asked – and *how* I asked them – too much. For this reason I adopted a somewhat nonchalant, relaxed stance, which resulted in very good connections with the people I interviewed, but which made me not always dig as deep during the interviews as I maybe should have, or I felt like I was sometimes talking a bit too much “with” the person I was interviewing, agreeing at points I did not necessarily agree with completely. But these are the complexities of research, especially when writing/researching somewhat against the *natives* point of view. And as what is commonly the cases in studies of “elites”<sup>4</sup>, where I could situate my own work in, I was very dependent on good interviews, as I was not able to follow people around or conduct participant observation. This problematic in terms of *access* – a common feature for anthropological studies of “elites”<sup>5</sup> – translated itself in the impossibility of gaining entrance to institutions as research centers, governmental ministries or law enforcement agencies to conduct participant observation. Making appointments for interviews was the only means of data gathering inside such institutions. Reflecting more on all the interviews I was conducting I also came to realize that talking is itself a form of practice. It is somehow something more than what is talked *about*. Talking about practice, especially for “bureaucrats” and “academics”, means setting up an ideal-model, not entirely real, but also not entirely false. Talking about policy is one reality, reports about the policy are another, and finally on the ground the practice is the last one. Separating these levels, I chose to focus my interviews on the first two levels, focusing on the idea's and imaginations, the symbols, and the argumentation of the security researchers and “professionals”.

The field of social movements was much more accessible and allowed me to focus on the third level, the actual *practice* of governmental policies of security. In this field I could move around and

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<sup>4</sup> Laura Nader (1972) “Up the Anthropologist—Perspectives Gained from Studying Up” in Dell H. Hymes (Ed.) *Reinventing Anthropology*. New York: Pantheon Books p. 284 – 311.

<sup>5</sup> *Ibid.* pp. 302 – 303.

participate in protests, ask questions to participants and conduct participant observation. As the so-called Occupy movement had also just set foot in the Netherlands when I arrived for my fieldwork, I was also able to spend a lot of time there to talk to activists and discuss their visions about the attitudes of the Dutch government towards protest. Other possibilities for exploring the practice of the criminalization of dissent came in the form of protest actions I conducted participant observation of: a blockade of a building site of a new detention center for refugees at Schiphol Airport by the no border protest group *Stop Deportations*, and various demonstrations by the Occupy movement in the cities of Amsterdam and Utrecht. A final interesting event for talking to activists and discussing the contemporary situation for the space for protest by social movements was at the end of November when the yearly “gathering of activists and do-gooders/tinkerers”, the 2.Dh5 festival in Amsterdam, where activists came together and held seminars, workshops and debates to exchange knowledge about “taking action and improving the world”<sup>6</sup>.

One difficulty I came across in the field was my own position as a researcher. This position is a very fluid one and it changed between different people. Especially between security experts, and participants of protest movements, I adopted a different style of talking and behaving. As I as a person and a researcher changed my ways, so do the people I interview and hang out with and how they behave to me. In the “academic” field I would bring more attention to my academic credentials, where I was a researcher. In the field of social movements, I would make more of a point that I had also been involved in protests myself. As I was both, I was not lying about any of this, but just bringing out different aspects of my own person more clearly depending of the situation I found myself in.

Coming home from my trips of the day, I would take some time to write down all of my thoughts and memories of the day. I would start with going through a chronological description of the day: what had I done, what had the people around me been doing and what new contacts did I make that day? Before I knew I had written down many pages of notes like these and it would be night already. It would then be time to start reflecting on the things I had done, the things I had heard, and to reflect on my thoughts of that day. Not only what had happened was important, but also how I had behaved, what I had asked, and especially what I had not asked. The final work which had to be done for that day would be working on another document where I kept track of all my appointments, and update my agenda, as well as updating my “todo” list. In my todo list I kept all notes of people I still tried to reach, when I had called or emailed them, and when I should call them back. This document was mostly filled with names of government workers and researchers, as they were the hardest to reach,

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<sup>6</sup> Het Kapitalisme Crasht [Capitalism Crashes Festival]. 7th edition of 2.Dh5-Festival: November 18 – 20, 2011, <<http://www.2dh5.nl>> (retrieved at May 12, 2012).

as well as police and law enforcement personnel whom I kept trying to make an appointment with, and who made sweet promises, but in the end never came back to me.

Also if it was not too late in the night, I would sometimes go over my earlier fieldnotes and think about how I could place today's experiences in relation to my earlier work and how I could place it in my current research and main research questions. This helped me to rethink previous and current work and also come up with new possible questions and people to interview, much like Yamba's *Chaka Zulu*<sup>7</sup> shows how coming back time and again to reflect on earlier material can give new insights and disprove earlier thoughts and theories. Similarly so I would presuppose that if an academic would write a threat analysis of a social movement, as Bureau Beke and COT - two major Dutch policy research centers – do, he or she would also support the governmental programs of “deradicalization”, aimed at making “radicals” into good *obedient* citizens. What I found out through my research however, was that many of the researchers implicated in such research were at the same time personally highly critical of the programs they were evaluating positively in their reports. The reasons for still writing such reports, against their own judgment, appeared to have much to do with funding opportunities and institutional circumstances. Remembering the day also has some very positive aspects in a more reflexive way: by remembering the day I not only wrote down what happened, but also what I thought about it when it happened and also what I thought about it after it happened, in the evening reflecting on my initial thoughts about it I came sometimes to different conclusions than I had initially in my mind. Because text is also a great help in organizing thoughts, I realized that even if field notes are not the best material to use in the final research text, they are great for rethinking things and a help for recovering your memories.

Sometimes moral issues would be raised as well during the writing up of my day, as when I wanted to write down very personal things people had told me in private. I would never publish any of these things, but should I write them down in my field notes to be able to get a complete picture of the day for myself and be able to reflect on the day in more detail? I decided to write down some of the “gossip” which was told to me in a very abstract way, just by keywords, and mentioning person's names in my notes only when necessary and by initials, to make sure all details of respondents could be kept anonymous.

When I completed my fieldwork and came back from the Netherlands to Stockholm, the next step of my research began. After the initial anxiety about whether I had gathered enough materials, I started with rereading my field notes and writing up the most important interviews. When going

<sup>7</sup> Christian Bawa Yamba (2006) *The Vindication of Chaka Zulu. Retreat into the Enchantment of the Past*, in Terence M. S. Evens and Don Handelman, *The Manchester School*, pp. 253 – 271.

through them I at first had no idea what to do with them, because it was such a huge pile of data, unsorted and random chunks of interesting bits. But in some time I could more clearly see the recurrent themes, and the theoretical interesting parts. As I had recorded all interviews, it was easy to write out the interviews. If some parts were unclear in the interview I could pause it and listen to it again to make sure what I wrote down was actually what was being said.

But anthropology is not the only method I have used. From a more criminological grounded understanding of my research I specifically chose to focus on the categories and labels used by legal and political authorities to make protest into a crime. I would do so in my interviews as well as by reading many reports, memo's and other documents by law enforcement agencies and the Dutch intelligence and security service, AIVD. Next to this, as I was unable to gain entrance to law enforcement agencies themselves, I participated in protest actions and interviewed protesters to explore the means used by state security agencies to enforce the categories and labels “terrorist”, “extremist” and “ideological criminal”.

Helped by interpretative methods, as discourse analysis, and framing I have also been studying both the implicit and explicit meanings of governmental documents and media representations of protests. Through comparing media representations of protest with governmental sources and contrasting them both with materials from social movements and interviews of protesters I was able to explore the different attitudes and values attached to the same events by different respondents. Interpreting events is not an easy job. To be able to find out for instance what had exactly occurred at some protest events or at an event where a group of activists had been arrested I had to go through piles of newspaper articles, governmental documents and reports by social movements. This was especially the case for events which were represented in competing ways by government and social movements.

## **Sources**

The main group of sources I have based my research on are state materials. These include documents from security and law enforcement agencies. They are annual and thematic reports of the AIVD, police, persecutor's office, and parliament discussions, court case files, policy memo's, and legislative acts. Internal documents from law enforcement agencies have been through FOIA requests by police and secret service investigation collective *Buro Jansen & Janssen*, who have put such documents on their

website<sup>8</sup>. This group of sources is supplemented by interviews with individuals working at state departments and ministerial offices.

The second group of sources comes from policy-oriented researchers from semi-public or private research and security centers, and NGO's. The materials consist of reports, policy evaluations, articles and academic books.

The third group of sources, *social movements materials*, consists of magazines, brochures, and internet publications produced by participants in social movements. It also includes interviews with protesters and political lawyers.

The last group of sources, *mainstream media*, includes articles in newspapers and magazines, internet publications, and TV and radio broadcasts. Most of the newspaper articles I have obtained by using the online news database LexisNexis Academic NL.

## Literature analysis

As this study concerns the criminalization of dissent in contemporary Netherlands, not much anthropological work can be found on this theme. More theoretical anthropological work can be found in the form of Mary Douglas' 1992 collection of essays, *Risk and Blame*<sup>9</sup>, which she prefaces with “The day anthropologists give up their attempt to ground meanings in politics and economics will be a sad day”<sup>10</sup>. *Risk and Blame* will be able to tell us more about the way a society or culture is organized and how what it perceives as *risk* can tell us more about the social structure itself, and the cultural, political and economical values that sustain it. Douglas 1966' classic *Purity and Danger*<sup>11</sup> in which she analyzes the meanings attached to the word *dirt* in various contexts can bring important insights about the politics of classification. Classification is first of all *political* as also Douglas remarks “There is no such thing as absolute dirt: it exists in the eye of the beholder”<sup>12</sup>.

Next to anthropological work, studies from disciplines as criminology, political science, and legal studies will be used as well, which focus more directly on the criminalization of dissent and will prove to be very helpful for the understanding of the contemporary situation in the Netherlands.

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<sup>8</sup> Buro Jansen & Janssen even has started the website *openbaarheid.nl* [transparency.nl] collecting all their FOIA requests and giving advice on how to start your own FOIA request. See: <<http://www.openbaarheid.nl>> (retrieved at June 3, 2012).

<sup>9</sup> Mary Douglas (1992) *Risk and Blame: Essays in Cultural Theory*. N.Y.: Routledge.

<sup>10</sup> *Ibid.* p. ix.

<sup>11</sup> Mary Douglas (1966) *Purity and Danger. An Analysis of the Concepts of Pollution and Taboo*. L., N.Y.: Routledge

<sup>12</sup> *Ibid.* p. 2.

On the criminalization of dissent and the attacks on civil liberties including the freedom of expression in the wake of 9/11, some work has appeared internationally. Influential is the work by Belgian sociologist Jean-Claude Paye<sup>13</sup> and U.S. legal scholar Donohue<sup>14</sup> who both through meticulous studies of government reports, have analyzed how, the war against terrorism reorganized power at the world level. Where Paye's study concerns the more general situation in the world and theoretical concerns with examples from United States, Great Britain, France, Belgium, Italy, and the European Union in general, Donohue's work can be seen as doing similar things from the perspective of “law”, by comparing the developments in the United States and the UK in legal terms. Neither of these or similar studies focus specifically on the Netherlands, as well as they are most interested in theoretical questions at the one end, and legal questions at the other. While law is an important vehicle it by no means explains *how* dissent is criminalized, but only how in contemporary liberal democracies this is legitimized and institutionalized.

Studies focusing more specifically on the consequences for non-mainstream political space and protesters can be found in more recent work on the use of “terrorism” as a concept or discourse for the suppression of dissent<sup>15</sup>. Where *Muzzling a Movement* by American lawyer Lovitz and *Green Is the New Red* by American journalist Will Potter both focus on the US, the volume edited by Olga Aksyutina and Marianne Maeckelbergh still to be published, is a first study with an international scope, focusing on various countries over the globe, and analyzing both law and discourse, as well as the actual practice of governmental repression of dissent. The volume *Using “Anti-Terrorism” to Suppress Dissent* is also the first of its kind to include a chapter specifically on the Netherlands.

More specific work on the suppression of protest as such – not in the wake of the 9/11 mania – can be found in work by criminologist Luis Fernandez and political scientist Donatella Della Porta, who focus mostly on the *policing* of dissent<sup>16</sup>. While these studies are interesting on how the police

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<sup>13</sup> Jean-Claude Paye (2007) *Global War on Liberty: Anti-terrorism, Dictatorship, Permanent State of Exception*. N.Y.: Telos Press.

<sup>14</sup> Laura Donohue (2008) *The Costs of Counterterrorism. Power, Politics, and Liberty*. N.Y.: Cambridge University Press.

<sup>15</sup> Dara Lovitz (2010) *Muzzling a Movement: The Effects of Anti-Terrorism Law, Money, and Politics on Animal Activism*. N.Y.: Lantern Books; Will Potter (2011) *Green Is the New Red: An Insider's Account of a Social Movement Under Siege*. San Francisco: City Lights Publishers; Olga Aksyutina and Marianne Maeckelbergh (eds.) (forthcoming) *Using “Anti-Terrorism” to Suppress Dissent: The Criminalization of Social Movements*.

<sup>16</sup> Donatella della Porta and Herbert Reiter (eds) (1998) *Policing Protest: The Control of Mass Demonstrations in Western Democracies*. Minneapolis, MN: University of Minnesota Press; Donatella della Porta, Abby Peterson and Herbert Reiter (eds) (2006) *The Policing of Transnational Protest*. Aldershot, UK: Ashgate; Luis Fernandez (2008) *Policing Dissent. Social Control and the Anti-Globalization Movement*. New Brunswick, NJ: Rutgers University Press.

tries to restrain protest, they tell us less about the wider context or developments which made such policing possible. Work using the concept of *criminalization* which tell us about the way in which social movements or protest groups get a negative signifier can be found in the work by criminologists Phil Scraton and Jeff Shantz<sup>17</sup>.

Although the developments in law enforcement practice of criminalizing protest have set a far-reaching trend since the mid-2000, with the exception of the forthcoming article in the volume by Aksyutina and Maeckelbergh<sup>18</sup>, no recent literature exists on the criminalization of protest specifically in the Netherlands. Some articles about these tendencies in the Netherlands can be found in publications by the earlier mentioned research collective *Buro Jansen & Janssen*, but more extensive academic studies are non-existent. This makes this study a first exploration in its kind, necessarily not backed up by any secondary empirical literature. This study should therefore be seen as what it intends to be: a first exploration of the phenomenon of the criminalization of dissent in the Netherlands since the mid-2000s.

There have also been numerous studies about Muslim groups deemed as “terrorist” and also quite a few specifically on the Dutch situation<sup>19</sup>. The reasons for becoming a “terrorist” are then sought most often in psychological reasons<sup>20</sup>, group or identity dynamics – a sense of *belonging* –, but not at all in other explanations, as structural inequalities, discrimination or racism. What these groups have in

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<sup>17</sup> Phil Scraton, 'Nasty Things Happen in War', in Scraton, P. (2007) *Power, Conflict and Criminalisation*. L., N.Y.: Routledge; Jeff Shantz (ed.) (2011) *Law Against Liberty: The Criminalization of Dissent*. Lake Mary, FL: Vandeplas Publishing, pp. 190-217.

<sup>18</sup> Rick van Amersfoort, The de-politicisation and de-radicalisation of dissent in the Netherlands, in Aksyutina, O. and Maeckelbergh, M. (eds.) (forthcoming) *Using “Anti-Terrorism” to Suppress Dissent: The Criminalization of Social Movements*.

<sup>19</sup> On Muslim (communities) as allegedly susceptible to terrorism see: Olivier Roy (2005). *Euro-islam: De Hihad van Binnenuit?* [Euro-islam: the Jihad from the inside?]. *Justitiële verkenningen*. Vol. 31 (2), pp. 28 – 46; Marieke Slotman and Jean Tillie (2006). *Processen van radicalisering: Waarom sommige Amsterdamse moslims radicaal worden*. Amsterdam: IMES; National Coordinator for Counterterrorism (NCTb) (2008) “Salafisme in Nederland: Een voorbijgaand fenomeen of een blijvende factor van belang?”; Kees van den Bos, Annermarie Loseman and Bertjan Doosje (2009). *Waarom jongeren radicaliseren en sympathie krijgen voor terrorisme: Onrechtvaardigheid, onzekerheid en bedreigde groepen* [Why young people radicalize and get sympathy for terrorism: Injustice, insecurity and threatened groups]. The Hague: WODC; Joop van der Pligt and Wim Koomen (2009). *Achtergronden en determinanten van radicalisering en terrorisme* [Backgrounds and determinants of radicalization and terrorism]. The Hague: WODC. For a more critical analysis see: Marion van San, Stijn Sieckelink and Micha de Winter (2010). *Idealen op drift: Een pedagogische kijk op radicaliserende jongeren*. Den Haag: Boom Lemma; Martijn de Koning (2008) *Zoeken naar een ‘zuivere’ islam: Geloofsbeleving en identiteitsvorming van jonge Marokkaans-Nederlandse moslims* [Searching for a "pure" Islam: Religion and identity perception of young Moroccan-Dutch Muslims]. Amsterdam: Uitgeverij Bert Bakker.

<sup>20</sup> Yvonne R.A. Prins, Roel W. Meertens and Bertjan Doosje (2006) *In iedereen schuilt een terrorist. een sociaal-psychologische analyse van terroristische sekten en aanslagen* [In everyone a terrorist is hiding. a social-psychological analysis of cults and terrorist attacks]. Schiedam: uitgeverij Scriptum.

common with protesters in the Netherlands is that they are both groups with antagonistic relations to the state, and by this reason declared a “threat”. The earlier criminalization of Muslims as a “threat” and potential “terrorist” has now extended to social movements as well.

At the other hand, a body of literature is growing on social movements in the Netherlands, albeit from a very specific perspective. These studies are, similarly to those of other groups designated as potential “risks” by the security industry (mainly “Muslim” communities), conducted from the perspective of risk. Such studies assess social movements in terms of danger to the state or alleged public order. Without exception they are financed to do so by the government, most often the Ministry of Security or its former version, the Ministry of Interior. Researchers conducting such policy oriented research can be found in private policy research centers Beke and COT, as well as semi-private research institute IVA, connected to Tilburg University. Such research might not be “unscientific”, but does happen inside a certain institutional framework, with specific constraints imposed on them and therefore its scientific credibility can at least be – but it is almost not – debated, as well as that it could be argued that such work supports or is complicit in the ongoing criminalization of dissent. One such study by COT and Bureau Beke, called “Extreme Left” focuses on *left-wing oriented* protest groups and analyzes them in their supposed willingness to use violence<sup>21</sup>. Various researchers, known for their yearly report on racism, have conducted a similar study by comparing “Islamic radicalism”, “right-wing radicalism”, “left-wing radicalism” and “animal rights activism and extremism”<sup>22</sup>, in terms of their potential for danger and “undemocratic” means, using the exact same classification and threat-constructions as the AIVD. Even studies critical to the criminalizing attitude of the AIVD towards Muslims<sup>23</sup> still are trapped in the framework of evaluating groups and people in terms of risks. Even if the conclusion of some of such reports is that Muslims should not be considered a risk at all, its research is still framed in terms of “risk”, as the title of one such report *Salafism in the Netherlands - the nature, extent and “threat”*<sup>24</sup> also shows. In this way even work critical towards the dominant

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<sup>21</sup> Laurens van der Varst, Ton van Ham, Marco Zannoni, Anton van Wijk, Abdessamad Bouabid (2010) *Extrem Link(s) Een verkennend onderzoek naar linksgeoriënteerde initiatieven in Nederland* [Extreme Left: An exploratory study of left-oriented initiatives in the Netherlands]. COT Instituut voor Veiligheids- en Crisismanagement & Bureau Beke, The Hague/Arnhem: COT/Beke.

<sup>22</sup> Hans Moors, Lenke Balogh, Jaap van Donselaar, Bob De Graaff, *Polarisatie en radicalisering in Nederland. Een verkenning van de stand van zaken in 2009* [Polarization and radicalization in the Netherlands. An exploration of the state of affairs in 2009]. IVA beleidsonderzoek en advies, Tilburg, december 2009.

<sup>23</sup> Interview with Ineke Roex, November 2011, Amsterdam.

<sup>24</sup> Ineke Roex, Sjef van Stiphout and Jean Tillie (2010) *Salafisme in Nederland - aard, omvang en dreiging* [Salafism in the Netherlands - nature, extent and threat], Amsterdam: Institute for Migration and Ethnic Studies (IMES), accolades added for emphasis.

security paradigm of evaluating dissenting voices – religious or political ones – as potential threats, still reinforces the dominant discourse of “risk”.

Studies as these raise serious questions about what the role of scientific research should be. With my work I will try to show the problematics of such labeling and why state constructed definitions of threat, should not be blindly taken over by researchers, claiming to conduct academic work. What I intend with my study is then to bring attention to the various practices of state repression, by focusing on concepts of “extremism” and “ideological crime” targeting protesters signified as “not-yet-terrorists”. By focusing on the Netherlands, a country left out of the analysis of the post 9/11 studies on the criminalization of dissent, I hope to make a modest contribution to understanding the dynamics behind these developments as they are taking place in the Netherlands.

## **Structure of the Thesis**

The thesis consists of three parts, all aimed at one of the three concepts which lies at the heart of the ongoing criminalization of dissent in the Netherlands. The first chapter starts with defining what is meant by the concept of “the state” as it will come back often in this thesis. After this I will analyze the concept of “terrorism” and how in the wake of 9/11 new laws have been enacted in Europe, the Netherlands and many other European countries. The Dutch *Terrorist Offences Act*, enacted in 2004, defines certain acts as terrorist offenses and as a separate category of crime, making terrorism a punishable offense for the first time in Dutch history. In this first part I will show how from the very beginning it was apparent that “terrorism”, both as a concept and as a legal category could be used to suppress protest and how since its inception right-wing media commentators and parliamentary members used the “terrorism”-mania to create a public discourse where protest was constructed as illegitimate and related to “terrorism” if not itself already “terrorist”. In this context the two other developments have taken place, where the other two chapters will focus on.

In the second part I examine how the General Intelligence and Security Service (AIVD) uses the concept of “extremism” to construct forms of protest as threats to the “national legal democratic order”. I will study which meanings are ascribed to the label of “extremism” by the AIVD and how this word became associated with social movements. Also I intend to clarify which consequences these constructions have had for social movements and how the criminalizing discourse of the AIVD is taken over by the wider society. Finally I will explore how and why the term “extremism” is used in reports of the AIVD to describe certain kinds of protests. For this I will present a case study of threat

constructions out of the animal rights movement. Through this case study I will analyze and reflect on what consequences this new definition of prohibited forms of politics as “extremist” have had for protest. I will be primarily interested in how the term “extremism” is used and legitimized by the AIVD, and how protest is made into an issue for security agencies to deal with.

In the third and final part I focus on how the Unit Counter-Terrorism and Counter-Activism (*Unit Contra Terrorisme en Activisme*, UCTA), as part of the National Investigation Service (*Dienst Nationale Recherche*, DNR) of the National Police, investigates protest and “terrorism” as what it defines, in an Orwellian fashion, as “ideological crimes”. I will analyze how the concept of “ideological crime” has been drafted by the Public Prosecution Service (*Openbaar Ministerie*, OM) and how it is taken over by the DNR for investigations of protest, designated as investigations of “national importance” and therefore high on the agenda of the DNR. I will do so by case studies of the animal rights movement and the currently ongoing persecution of Anna, a no border activist for texts written opposing the Dutch governmental control over migration and “migrants”. Through these case studies, with the help of internal documents and memo's of the DNR, I will analyze how the concept of “ideological crime” predicates political persecution of activists and activists groups. Protest, earlier understood as minor breeches of public order, becomes constructed as an “ideological crime” and thereby linked to “terrorism” in a similar way as the AIVD does with the label “extremism”. This reclassification makes it possible to indiscriminately suppress protest in the name of fighting “terrorism”, thereby also warranting more means for investigation and prosecution. I will start by describing the place DNR takes in the Dutch security landscape, to then analyze what the term “ideological crime” means by how it is used in the DNR's internal reports, to then finally through the mentioned case studies show how it affects social movements themselves.



## Chapter 1

# **Anti-“Terrorism” as a Means to Suppress Dissent**



In recent years the freedom of expression has come under heavy pressure. Protest equals danger in the minds of the powers that be. In the post 9/11 world radical politics – or any kind of street politics for that matter – is suspect. New “counter-terrorism” legislation has been drafted starting with the EU and acted upon by its member states. Already from the start it was apparent that these anti-terrorism measurements could also be used to keep protesters in line. Obviously something is changing in how the Dutch government and its institutions look at dissent. In this vision protest is seen as the beginning of a slippery slope towards “terrorism”. This change can be called nothing less than a move towards – if we have not already arrived there - the political policing of dissent and the sanitization of the public sphere.

In this chapter I will trace the development of post 9/11 counter-terrorism measures and the consequences for protest in the Netherlands. I will start with a story of a woman, Anna, who is charged with “terrorism” for her writings, to understand the contemporary situation in the Netherlands where the act of protest becomes constructed as a threat to the “nation” and is criminalized by various governmental departments, law enforcement agencies and media. After this I will explore the concept of the “State”, a concept which will be used often in this thesis. I will then shortly describe the role of the EU in the making of the European anti-terrorism law and its potential to suppress dissent. After this I will analyze how the Dutch government responded to 9/11 and how the first anti-terrorism law, the Terrorist Offences Act was created. By focusing on the Terrorist Offences Act an in depth-study of the making of anti-terrorism legislation can be realized. Further, I will focus on debates and questions raised in parliament about whether or not to consider protesters as “terrorists”. Finally I will explore the case of Anna more in detail.

## **1.1. Anna, and how I changed my research plans**

In the morning Anna was working on her computer when the doorbell rang. She went downstairs and saw a man standing in front of the door with some papers in his hands. “The mailman”, she thought and opened the door. Her surprise was big when the mailman transformed in a burly man and five other men appeared besides him. “This is not good”, Anna pondered. “National Crime Squad. Are you misses K?”, the man asked, showing an identification card for a flick of a second. “Yes that is me”, Anna replied. “Then you are arrested for instigation”, the man continued. “What?”, Anna exclaimed, but knew what would happen next. “Can I put on a coat?”. Anna thought about her

partner who was still upstairs and who should know what was happening before they would take her. Anna ran upstairs, with the men following behind her. They told her that they would confiscate the computer and search the house. “Better to take your toothbrush with you”, one of the men said and Anna was taken downstairs, and outside. There was no possibility to escape, the men were all around her with two men, each at one side, holding her arms in a tight grip. Outside a car was waiting, with tinted windows and the engine still running. When they drove Anna away at high speed, the house search started. The members of the National Crime Squad took pictures from all the rooms in the house, and confiscated the computers, usb sticks, cd's and other electronics they could find. They also took with them any notes, letters, photo's, and address books they could find.

Anna was put in a little cell and not allowed to inform anyone of her arrest, or make any phone calls, except one to her lawyer. Anna was informed that she was to be held in complete isolation of the outside world as she was arrested for “terrorism”. . .

Anna is a long time advocate for migrant rights, known writer and artist. Over the years she has been actively protesting the Dutch migration policy by the method of civil disobedience: from blockading detention centers to more carnivalesque protests as die-inns and street theater. Next to this Anna writes a steady flow of articles on migrants' lives in the Netherlands, poems and her own reflections about the inhumanity of the Dutch migration policy. The 13th of September 2011 she was arrested for “terrorism”, as her texts would “instigate” people to use violence against “the state”. I choose not to focus on the actual content of the texts and if the phrasing used in her texts might actually instigate people to use violence or commit acts termed illegal by the Dutch Criminal Code, as this would mean a legal discussion not well fit for anthropology, or if not about *legality* a discussion about *morality* and the legitimacy of such texts, more suited to philosophy. I do however want to focus on the charge of “Terrorism” which is made by state authorities to Anna, and I also want to reflect on the other concept, the “State”, as both these concepts lay at the heart of the main question of this thesis: How can protesters be labeled “terrorists” for actions which until recently were seen as completely legitimate by a big part of the Dutch population?

The story above is taken from my notes of the days I spent with Anna, and this initial story Anna told me over some cups of coffee in a café in Amsterdam<sup>25</sup>, when I had just arrived in the Netherlands for my research. I had read about her arrest when I was just about to leave for the

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<sup>25</sup> Interview with Anna, October, 2011, Amsterdam.

Netherlands, and it would dramatically change my original plans. The main theme I was interested in exploring initially was how different people in the Netherlands have very varied ideas about the term “radical”, and how the political meaning of it as represented by grassroots or “radical” politics as enacted by the many 80's social movements has shifted in the last twenty years. In the 80's the term “radical” was used to signify a political practice (or *praxis*, as in between theory and practice) where activists, squatters, environmentalists and other dissenting voices were engaging themselves directly with problems in their every-day lives. The word “radical” was used by them both implicitly and explicitly as a self-name, where radical should be understood as derived from the original Latin meaning of *radic for* root, implying a politics aimed at the root cause of problems, empowering people to do things without asking for permission from any authority or government. Contrasted to this use and meaning seemed to be contemporary everyday life use, and the meanings attached to it. This could be clearly seen by representations in media, parliamentary speeches, and in both academic and policy reports. Here the meaning of “radical” seemed to have shifted towards another meaning; that of *extreme*. In effect, the word “radical” in today's Dutch society has come to signify “danger”, and “insecurity”, and through this *labeling* activities before held to be legitimate, have become understood by the government, and the general public, as public order problems or security risks.

With great curiosity about this phenomenon I wanted to first of all ask *when* this shift occurred, and if so secondly *how* it occurred. I wanted to do this by studying texts written by participants of the various 80's social movements, by analyzing the framing of language in newspaper articles, and other sources, but also talk to people who were active in radical politics in the 80's, politicians of those days, and other people who might be connected in some way or another to a quite broadly seen “political space” of those times. All this was meant to sketch a picture of what it was to be a radical in the 80's, and then to contrast this picture to the contemporary one, where the “radical” or “dissident” as *critical* has been replaced by “radical” as *dangerous* to the stability and security of the Dutch nation. I had prepared a working plan, an initial research plan, found different people willing to be interviewed and got permission of the IISG (International Institute of Social History) to study various open and restricted archives. But just when I was about to embark on this mission I read about the arrest of Anna in the media, and the scientific necessity to understand what was going on and my own personal wonder about this fact, where an activist could be arrested as a “terrorist” for texts she had written, became more urgent than my original research. How could it be that a protester, someone not found guilty yet of any crime, be charged with instigation and - the king of all crimes - with “terrorism”? And why was there such a silence in the media about her case?

I believe that if we are to be able to understand how a protester, not convicted or caught in any criminal acts she has done, but for something others *might* do by reading her written words, we have to take some steps back in time. For this we have to situate the contemporary situation in the event which became irrefutably linked to the word “terrorism”: that of *nine eleven*. But even before we do this we also should be able to understand what is meant with the words “the state”, words often used together and designating political authority in the many contemporary “liberal democratic” societies of the world of today, and words which will be often written down in this thesis. What is meant with “the state” is a question to which anthropology is well equipped to answer.

## 1.2. The mythical entity, “the State”

State is the name of the coldest of all cold monsters.

– Friederich Nietzsche, Thus Spoke Zarathustra

The Netherlands is a nation-state, like almost all countries in the world<sup>26</sup>. The nation is an “imagined political community - and imagined as inherently limited and sovereign”<sup>27</sup>. The nation is imagined and even though one will never meet all members of a nation, there exists a form of horizontal, collective solidarity between fellow citizens, all imagining to be part of the same nation. Max Weber in a interpretive way already showed that what is important with the nation, is the meaning given to it by people themselves<sup>28</sup>. The nation is limited by its territorial boundaries, known as borders. World maps clearly show how the world has been split up between countries, almost all of them nation-states. The nation is also sovereign, because it is the state which is responsible for deciding what should be done in the formal areas of the nation<sup>29</sup>. It is the government who is allowed to speak for the nation, and all of its inhabitants. It is also the government that implements policies and holds the monopoly on violence to use Max Weber's terms<sup>30</sup>. This allows the government to construct the nation to a particular

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<sup>26</sup> There are some exceptions to this rule of nation-states. One such exception, or at least ambiguous case, is for instance Somaliland, officially part of Somalia and not recognized by any government, but practically an independent region with its own army and parliament.

<sup>27</sup> Benedict Anderson (2006) *Imagined Communities. Reflections on the Origin and Spread of Nationalism*, L.,N.Y.: Verso, p. 6.

<sup>28</sup> Max Weber (1968) *Economy and Society: An Outline of Interpretive Sociology*. Volumes 1, 2, 3. Edited by Guenther Roth and Claus Wittich. N.Y.: Bedminster Press.

<sup>29</sup> One can question such an assumption as well, on the basis of powerful supranational entities as the European Parliament or monetary organizations as the IMF and World Bank, or on the basis of foreign influence or pressure as clearly has been the case in the making of European anti-terrorism legislation by the United States.

<sup>30</sup> Max Weber (1968) *Economy and Society*.

ideological model of how a given society ought to be and how its people should behave.

About the State we can say a few more things. As Philip Abrams mentions in *Notes on the Difficulty of Studying the State*, the “state” is a problem for scientific inquiry<sup>31</sup>. It does not have a physical form, it can not be found anywhere *specific*. It doesn't have an office you can walk into and ask questions about “the state”. The state is a “fantasy”<sup>32</sup>. By theorizing and reflecting on the *idea* of the state, Abrahams shows that the “state” is an “ideological thing” which can be “understood as the device in terms of which subjection is legitimated”<sup>33</sup>. In other words, the state is not a physical thing, it is a concept, a signifier used to legitimize certain actions, and truth-claims. In short, the “state” “presents politically institutionalised power to us”<sup>34</sup>. As it is not possible to study this mythical entity which we call “the state” as a material object, we have to focus on that what represents it. What represents, or in their words is represented by the state, are the institutions and organizations which lay claim to political “domination”<sup>35</sup>. The “state” is then the word used by the institutions which in the name of the very subjects it governs – *the people* – decides over what is right and wrong. Certain institutions are chosen to deal with the perceived violations of the rules – laws, meaning courts – tracking down those who have violated the norms – investigative police, or stopping harm from happening before it has happened – the General Intelligence and Security Service, or after and during its happening – the police. Other institutions are responsible for excluding those offending the norms – prisons, or those not deemed “worthy” of being a Dutch citizen – detention centers. Again others claim to debate over the current state of society and which changes in its regulations, rules, organization might be necessary – the parliament, ministries, etc. These, and many others make up that what we call the “state”. The Government is that part of institutions that organize the machinery of the state and is more narrow, often seen as synonym to the *parliament*.

Two institutions play a special role in the criminalization of dissent and are in great need for more scientific study. They are first of all extremely understudied by science, which treats them as neutral arbiters of justice, and secondly, they both have reconceptualized protest in new ways constructing protest as “danger”. These institutions are the National Crime Squad and the General Intelligence and Security Service. The way in which these institutions work in order to in their view protect the Dutch national territory from “threats” has changed rapidly over the years. But before we

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<sup>31</sup> Philip Abrams (2006) *Notes on the Difficulty of Studying the State*. in Aradhana Sharma and Akhil Gupta (eds). *The Anthropology of the State: a Reader*. Oxford: Blackwell Publishing, p. 114.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* p. 117.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* p. 125.

focus on these two institutions in the coming chapters, this chapter will provide the background of what made it all possible: the so-called “War on Terror”.

### 1.3. The Dutch response to 9/11

The eleventh of September 2001: The CNN and other channels aired live footage of the twin towers coming down after being hit by two hijacked airplanes, with subtitles as “Breaking News”, “New war” and “America is under Attack”. The same live broadcast was aired by television, radio, and Internet all over the world to a public which was addressed as an “us”. Through this frame it was a “we” – the “West” - that would strike back at a “them”, the “terrorists”. In this way the world was represented as a black/white picture, a clash of civilizations<sup>36</sup>. Conflicting readings of what had happened were ignored or silenced. Such an oversimplification made it possible that for the future weeks, months – can we say years? - the main story-line was one of “good” versus “evil”, and “democracy” and “freedom” versus “hatred” and “terror”. For quite some time now people tend to talk about the world before and after 9/11 and we are constantly reminded about the “fact” that we live in a post-9/11 world.

When in the Netherlands the gravity of 9/11 became known the Dutch House of Representatives<sup>37</sup> stopped their meeting. An official response by the Dutch government was given by prime-minister Wim Kok. On television Kok spoke in a calm voice about the need for “Engagement, sympathy and solidarity with the American people”<sup>38</sup> but also added very cautiously that he hoped that the “American people” would stay calm and “respond in dignity”<sup>39</sup>.

Kok's contemplative message was not the only message in the evening news<sup>40</sup>. Next to a short shot of Kok's hope for a response “in dignity”, Frank de Grave, minister of Defense, could be heard speaking of a “new Cold War” and other ministers gave similar gloomy responses about “a world

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<sup>36</sup> Samuel Huntington (2002) [1996], *The Clash of Civilizations and The Remaking Of World Order*, London: Simon & Schuster UK.

<sup>37</sup> The Dutch Parliament consists of two chambers: the Senate [Eerste Kamer der Staten-Generaal in Dutch] and the House of Representatives [Tweede Kamer der Staten-Generaal]. Members of the House of Representatives are elected every four years. they have the right to propose bills themselves, or to amend bills proposed by the Government. By motion they can ask the government to take action on a certain issue, or they can give their opinion on the policies of the Government. Ministers can be asked to inform the House of Representatives about certain issues. <<http://www.houseofrepresentatives.nl>> (retrieved at May 24, 2012).

<sup>38</sup> “Tekst van de verklaring van premier Kok, gisteravond na het ingelaste kabinetsberaad” [Text of the statement of Prime Minister Kok, last night after the inserted cabinet discussion], available at archive of NRC <[http://vorige.nrc.nl/geslotendossiers/aanval\\_op\\_amerika/nieuws/article1560436.ece](http://vorige.nrc.nl/geslotendossiers/aanval_op_amerika/nieuws/article1560436.ece)> (retrieved at March 10, 2012), translation my own.

<sup>39</sup> Ibid.

<sup>40</sup> NOS Nieuws, jaargang, September 11, 2001.

which never would be the same”. The next day a storm of criticism was unleashed against Kok for his “lack of solidarity” with the “American people”<sup>41</sup>. The storm continued not much later when a Dutch diplomat asked questions about America's will to bring Article 5 of the NATO Treaty into position for the first time in history - an attack on one is an attack on all. Again Kok was scolded, but now internationally by American ambassadors <sup>42</sup>.

Six days later on 18 September 2001 Kok spoke again at a press conference. Whether it was a change of heart or because of the criticism, Kok's tone had changed considerably. This time it was a language of war, removed of all earlier nuances. Following what would become the dominant 9/11 doctrine, Kok called the attacks in Washington and New York “a declaration of war on our democracy, [and] on the entire free West”.<sup>43</sup> They were not just attacks on America, but were committed against “us”. Maintaining the 9/11 discourse, Kok made it clear that this new fight would be a long one and as with any war everyone would be expected to do his/her part, as it was “not only a task for the government but [one where] also citizens must contribute to a safer future”<sup>44</sup>. What this contribution consisted of will become more clear in chapter three, when the policy of deradicalization will be discussed, but suffice it to say that no one was allowed to stand idly in this new “War on Terror”.

What happened next is history: the *War on Terror* came in the form of measures taken both at home and further away Abroad, it came in the form of the invasion of Afghanistan and Iraq, among others<sup>45</sup>, devastating human lives. At home, it came in the form of the proliferation of a large number of laws, measures and police or secret service operations against “the new enemy” thinly disguised as Islamophobia, which is also made apparent in the more general rise of racism and xenophobia<sup>46</sup>.

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<sup>41</sup> Especially biting was the criticism of EU Parliament member Bolkestein who called Kok's words for moderation, “bleating on the sidelines”. See: Bolkestein: Voorbehoud steun VS gemekker, De Telegraaf, September 17, 2001.

<sup>42</sup> De Volkskrant, Koele Minnares, September 11, 2006.

<sup>43</sup> Kok: Ons land mee in de oorlog tegen terreur, De Telegraaf, September 18, 2001; “Kok: Oorlog aan terreur; Kabinet wil maatregelen aanscherpen; Premier: We moeten daadkracht tonen; Rijtoer Beatrix vandaag aangepast”, Algemeen Dagblad, September 18, 2001; Kok: Aanslagen VS ook oorlogsverklaring aan ons, Trouw, September 18, 2001.

<sup>44</sup> Ibid.

<sup>45</sup> Other foreign “measures” allegedly against “terrorism” is for instance the U.S. military intervention/presence in Pakistan and Somalia, as well as the creation of the *United States Africa Command* (Africom), responsible for U.S. military operations on the African continent.

<sup>46</sup> Margreet Strijbosch, Xenophobia on the increase in the Netherlands, RNW, July 10, 2006; Sam Cherribi (2011) An obsession Renewed: Islamophobia in the Netherlands, Austria and Germany. In *Islamophobia: The Challenge of Pluralism in the 21st Century*, Edited by John L. Esposito, Ibrahim Kalin, N.Y.: Oxford University Press, pp. 47 – 62; Robert Braun (2011) The diffusion of racist violence in the Netherlands: Discourse and distance. *Journal of Peace Research*, Vol 48 (6), pp. 753 – 766; Anne van Bruggen (2012) The Rise of Dutch Neo-Nationalism: Analysis of Three Explanations for the Recent Upsurge in Nationalist Mobilization. *Yale Review of International Studies*, February 2012, no pagination.

It seems that since then the highly emotional language of war overruled all more reasoned outlooks. People who tried to question the simplicity of this global terrorism discourse were ostracized, shouted out as collaborators with the terrorists and effectively silenced or ignored by mainstream media discourse. This became clear for instance to leftist intellectual Maarten van Rossum who was told to “shut his mouth because it really was war now”<sup>47</sup> when he dared to criticize the 9/11 discourse. President Bush his words reflect this attitude strikingly when he uttered the words “Either you are with us, or you are with the terrorists.”<sup>48</sup>. Such absolutist thinking is representative for the 9/11 thinking in terms of absolutes, where one supports the ongoing counter-terrorism measures or one supports terrorism.

Following this discourse politicians and all kinds of “experts” and journalists could be heard in the Dutch media encouraging “urgent measures”<sup>49</sup> to be taken against the “terrorists”. As a classical “rally effect”<sup>50</sup> 9/11 mobilized the “sudden and substantial increase in public approval”<sup>51</sup> for these measures. And it was in such a climate that the first Dutch anti-terrorism Act would be enacted.

#### 1.4. The making of the Dutch Terrorist Offences Act

In the aftermath of 9/11 members of the European Parliament, erstwhile critical of anti-“terrorism” measures, now waved their previous concerns and the Framework Decision on combating Terrorism

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<sup>47</sup> Maarten van Rossem, 9/11 tien jaar later, September 6, 2011, <<http://www.maartenonline.nl/nl/weblog/626/maarten-van-rossem.html>> (retrieved at March 10, 2012), translation my own.

<sup>48</sup> George W. Bush, Address to a Joint Session of Congress and the American People, September 20, 2001, <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>> (retrieved at March 10, 2012).

<sup>49</sup> Kees Lunshof, Column politiek: geen ruimte voor nuances in oorlog, De Telegraaf, September 18, 2001; Kok : ons land mee in de oorlog tegen terreur, De Telegraaf, September 18, 2001; Hoofdartikel: oorlog, De Telegraaf, September 18, 2001; Bewaking in hele land op scherp, De Telegraaf, September 19, 2001; Nederlands leger mee in strijd, De Telegraaf, September 20, 2001; Pal achter zwaargewond amerika, De Telegraaf, September 22, 2001; Politiek valt over advertentie met anti-geweld-taal, De Telegraaf, September 24, 2001.

<sup>50</sup> John Mueller (1973) War, Presidents and Public Opinion. N.Y.: Wiley, as cited in Marc J. Hetherington and Michael Nelson (2003) Anatomy of a Rally Effect: George W. Bush and the War on Terrorism. *Political Science and Politics* Vol 36; Pippa Norris, Montague Kern, Marion Just (eds) (2003) Framing Terrorism. The News Media, the Government and the Public, N.Y.: Routledge, pp. 229.

<sup>51</sup> Ibid.

was proposed in December 2001<sup>52</sup> to be enacted in June 2002<sup>53</sup>. This piece of legislation requires EU member states to implement national legislation which defines certain acts as terrorist offenses and as a separate category of crime. Article 1 of the framework decision reads as follows:

Each Member State shall take the necessary measures to ensure that the intentional acts (...) which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population, unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, shall be deemed to be terrorist offences.

This definition is vague to say the least, and has been criticized by among others Amnesty International<sup>54</sup> and Human Right Watch<sup>55</sup> exactly for this reason. It could for instance easily cover a range of protest activities, from holding a picket-line or handing out leaflets against a corporation which compels this “international organisation” to “abstain” from an action. Statewatch, an organization which monitors civil liberties in the European Union, immediately remarked upon the reasons for such a vague definition by analyzing the Explanatory Memorandum<sup>56</sup>. The memorandum makes clear that terrorist offenses “could include, for instance, acts of urban violence”<sup>57</sup>. Last decade riots in Paris banlieues (2005 and 2007), Athens (2008 onwards) and London (2011) could all be

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<sup>52</sup> Proposal for a Council framework Decision on combating terrorism, OJ C 332E , 27.11.2001, p. 300–304, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001PC0521:EN:HTML>> (retrieved at 15 march 2012).

<sup>53</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L 164 of 22.6.2006 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0475:EN:NOT>> (retrieved at 15 march 2012).

<sup>54</sup> Amnesty International (2005) Human Rights Dissolving at the Borders? Counter-Terrorism and EU Criminal Law, <[http://www.amnesty.eu/static/documents/2005/counterterrorism\\_report\\_final.pdf](http://www.amnesty.eu/static/documents/2005/counterterrorism_report_final.pdf)> (retrieved at March 10, 2012); Dick Oosting, Amnesty International, 2006, Europe’s clampdown on terrorism risks backfiring, <[http://www.europesworld.org/NewEnglish/Home\\_old/Article/tabid/191/ArticleType/articleview/ArticleID/20611/language/en-US/Default.aspx](http://www.europesworld.org/NewEnglish/Home_old/Article/tabid/191/ArticleType/articleview/ArticleID/20611/language/en-US/Default.aspx)> (retrieved at March 10, 2012).

<sup>55</sup> Human Rights Watch (2001) Human Rights Implications of European Union Internal Security Proposals. Context Post-September 11: General Concerns, December 1, 2001 <<http://www.hrw.org/press/2001/11/eusecurity-memo.htm>> (retrieved at March 10, 2012)

<sup>56</sup> An explanatory memorandum accompanies each law, explaining the reasons for the law and its wider implications. It can then be used in a court-case to take in account this “spirit” of a law and if a law is intended to be used in a certain way or not.

<sup>57</sup> Statewatch (2001) “EU to adopt new laws on terrorism”, September 2001, <<http://www.statewatch.org/news/2001/sep/14eulaws.htm>>. The Memorandum can be found at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001PC0521:EN:HTML>> (retrieved at March 10, 2012), my italics.

termed acts of “urban violence”, and would therefore all qualify as terrorism under this definition. Tony Bunyan, investigative journalist and director of Statewatch, comments:

The response of the EU to the tragic events in the US needs to be examined with great care. The definition of terrorism is very similar in its scope to the UK Terrorism Act which is drawn so wide as to endanger legitimate dissent.

The European Commission proposal on combating terrorism is either very badly drafted, or there is a deliberate attempt to broaden the concept of terrorism to cover protests (such as those in Gothenburg and Genoa) and what it calls “urban violence” (often seen by local communities as self-defence). If it is intended to slip in by the back door draconian measures to control political dissent it will only serve to undermine the very freedoms and democracies legislators say they are protecting.<sup>58</sup>

The Netherlands was fast to respond to the EU's wish for national counter-terrorism legislation. A law proposal was presented to the parliament in 2002 by Piet Hein Donner, the Minister of Justice<sup>59</sup>. This law would be the first of many to come and made terrorism a punishable offense for the first time in Dutch history<sup>60</sup>, as for most other EU countries. The Netherlands went further than just about all EU countries by adding extra prohibitions, banning “recruitment for armed struggle” (article 205 of the Criminal Code) and adding “conspiracy” charges to many existing articles of the Criminal Code. After various debates and hearings the law was enacted on 29 July 2004 and defined as article 83a in the Criminal Code:

A terrorist objective is understood to mean the objective to cause serious fear in (part) of the population in a country and/or to unlawfully force a government or international organisation to do something, not to do something, or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.<sup>61</sup>

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<sup>58</sup> Statewatch 2001 *ibid*.

<sup>59</sup> TK 2001 – 2002, 28463, nr. 1. For Parliamentary documents I will use the notation as is common place in legal studies. TK means House of Representatives, followed by the governing year. After this the file number is mentioned followed by the number of the item within the file. In this case 28463 means “Behandeling van het wetsvoorstel Wijziging en aanvulling van het Wetboek van Strafrecht en enige andere wetten in verband met terroristische misdrijven (Wet terroristische misdrijven)” and item 1 is the message by the queen about the law proposal. For readability I will mention the title of the item. Unless mentioned, all translations are my own.

<sup>60</sup> TK 2001 – 2002 28463, nr. 3: Explanatory Memorandum.

<sup>61</sup> Law at <[http://wetten.overheid.nl/BWBR0001854/EersteBoek/TitelIX/Artikel83a/geldigheidsdatum\\_10-03-2012](http://wetten.overheid.nl/BWBR0001854/EersteBoek/TitelIX/Artikel83a/geldigheidsdatum_10-03-2012)> (retrieved at March 10, 2012, official english translation from

Comparing this definition to the European one we can see that the Dutch definition is wider, or as Donner called it, more “generous”<sup>62</sup>. First of all, the Dutch Terrorist Offences Act uses the words “serious fear” instead of “seriously intimidating”. According to minister Donner, “intimidate” would point at the “boosting of fear in a *direct* confrontation”, while for Donner it is clear that also “indirect” acts should be included<sup>63</sup>. The definition might have been even wider, if it was not for concerns raised by parliament members about removing the word “serious” from the definition<sup>64</sup>. After a few rounds of heavy debate the word “serious” was added back.

Moving on to the difference between “intimidation” and “fear” and why the latter was chosen instead, Donner told parliament that the reason for this was that fear “more clearly expresses that it is not required that the promotion of such fear actually need to have resulted in intimidation of the population”<sup>65</sup>. What Donner actually says, and what also becomes clear from reading the Explanatory Memorandum<sup>66</sup>, is that an act signified as “terrorist” does not need to have “succeeded”, the potential cause of fear is enough. In other words, it is not the act itself which is looked at for arguing that something is “terrorist”, rather, it is the *intent* of the perpetrator which is decisive. For this reason the law does not speak about “terrorism” as such, but about “terrorist objective”, or “terrorist” intent.

For deciding someone's intent no act has to be committed yet. What is considered is what is in someone's head. A suspected “terrorist” can be sentenced on the charge that he or she has the *idea* of committing a “terrorist” act, or might be “capable” of doing so. According to human rights activist and legal scholar Astrid Essed, before the Terrorism Act was in effect “when someone would want to blow up something, some kind of evidence was needed (...) materials, plans, whatever”<sup>67</sup>. With the Terrorism Act though an “indication” is already enough. “What is meant by 'indication' however is not defined anywhere in the law”<sup>68</sup>. A similar criticism is raised by parliament member Albayrak (PvdA), who nevertheless voted in favor of the Terrorism Act: “At the moment that you consider terrorism possible, there must be something more than something that is in the head without the existence of a concrete start?”<sup>69</sup>. Contemplating on the concept of intent, we can conclude that declaring actions

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<https://www.unodc.org/tldb/showDocument.do?lng=en&documentUid=7599&country=NET> (retrieved at March 10, 2012).

<sup>62</sup> TK 2003 – 2004, 28 463 nr 1 – 2: “Wijziging en aanvulling”.

<sup>63</sup> TK 2001 – 2002, 28463, nr. 3: Explanatory Memorandum.

<sup>64</sup> TK 2002 – 2003, 28463, nr. 6: “Nota naar aanleiding van het verslag”, December 17, 2002.

<sup>65</sup> TK 2001 – 2002, 28463, nr. 3: Explanatory Memorandum.

<sup>66</sup> TK 2001 – 2002, 28463, nr. 3: Explanatory Memorandum.

<sup>67</sup> Interview with Astrid Essed, October 2011, Amsterdam.

<sup>68</sup> Ibid.

<sup>69</sup> TK 2003 – 2004, 28463, nr. 33: Voortzetting van de behandeling van het wetsvoorstel Wijziging en

punishable based on someone's *perceived* aim comes dangerously close to doing so based on someone's *convictions*. In this way terrorism charges are the equivalent of a political sentencing.

Another important distinction between the EU and the Dutch Terrorism Act is that where the EU's definition speaks about intimidating “a population”, the Dutch equivalent uses causing fear to “the public or a *part* of the population”<sup>70</sup>. This comparison between the Dutch and the European definition is not meant to conclude that the European definition and criminalization of “terrorism” is justified, but only where the European definition is already misguided, the Dutch equivalent is even more outrageously wide and vague as the European one. Even more, because nowhere the law specifies how big this part of the population should be, or what a “part” of a population is. Does it include ethnic groups? Social groups? Can it be an economical sector? A company? A profession? Criticism was raised against this addition and an amendment was proposed by parliament member De Wit (SP) for whom it was “undesirable that the proposal allows *activists* and *protesters* [could be] considered as terrorists in a legal sense”<sup>71</sup>. Even though no clarification of what a “part” of a population might mean, the amendment was rejected by a majority of the House of Representatives.

Finally it was only in the last instance (the fourth round of amendments and other changes to the law text) that the word “unlawfully” was placed back in the “*unlawfully* compelling a government (...)” part<sup>72</sup>. Removing the word would have meant that *all* ways of compelling a government or organization to any action could in a legal sense be criminalized as terrorist. This would have opened the doors for using such legislation indiscriminately against any act of social protest, be it strikes, demonstrations or blockades, as one of the main goals of any protest is putting pressure on a government or corporation to change some policy. This does not mean that the law can not be used against protest anymore, far from it. In the current form the definition still has more than enough reach for covering many forms of protest. This is especially the case, since any legal protest can at any moment become illegal. As we will see in chapter 2 the artificial separation between activism and extremism, the border between legal/illegal is a very diffuse one.

The easiness by which terrorism-charges are used is also in agreement with this loose definition.

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aanvulling van het Wetboek van Strafrecht en enige andere wetten in verband met terroristische misdrijven (Wet terroristische misdrijven), December 4, 2003.

<sup>70</sup> translation my own, italics are mine, <[http://wetten.overheid.nl/BWBR0001854/EersteBoek/TitelIX/Artikel83a/geldigheidsdatum\\_10-03-2012](http://wetten.overheid.nl/BWBR0001854/EersteBoek/TitelIX/Artikel83a/geldigheidsdatum_10-03-2012)> (retrieved at March 10, 2012).

<sup>71</sup> TK 2003 – 2004, 28463, nr. 13: “Amendement over het ongedaan maken dat 'een deel van de bevolking ernstig vrees aanjagen' onder de definitie van terrorisme valt”

<sup>72</sup> TK 2003 – 2004, 28463, nr. 12: “Amendement over onderscheid gelegitimeerde uitingen van protest en terroristische misdrijven”.

Of the 274 people who have been arrested for terrorism in the Netherlands between 2001 and 2010, only seven<sup>73</sup> have been convicted and are now in special terrorism detention facilities<sup>74</sup>. They however have not committed any terrorist act, but have been found guilty of planning or conspiring to plan one, or being a member of an organization declared “terrorist”. In maybe a vision of what was to come, shortly after the killing of the controversial columnist Theo van Gogh, the Minister of Foreign Affairs, Maxime Verhagen, could be heard saying to parliament that it was better to have “10 innocent people in jail than one terrorist on the loose”<sup>75</sup>.

Many other laws<sup>76</sup> and changes in regulations<sup>77</sup> have followed the 2004 Terrorist Offences Act. There are even too many to mention them all, but some of them will be introduced in chapter two. That the Netherlands is running ahead of many other countries is exceptional, especially considering the knowledge that nowhere in Dutch history any terrorist act with people killed has happened on Dutch territory *ever*<sup>78</sup>. Regarding history, legal scholar Lintz asks a relevant question: in his work on the Dutch Terrorist Offences Act<sup>79</sup> Lintz wonders why the connection between former anti-communist laws and contemporary anti-terrorism laws is not made in any of the existing studies on terrorism<sup>80</sup>, or if

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<sup>73</sup> Statistics by journalistic research radio program Argos, compiled from old newspaper articles. Overview at <[www.onjo.nl/fileadmin/uploads/BO/be\\_users/documents/Argos/arrestatie-terrorisme-tot-2010.pdf](http://www.onjo.nl/fileadmin/uploads/BO/be_users/documents/Argos/arrestatie-terrorisme-tot-2010.pdf)> (retrieved at April 26, 2012) The number of 255 is a conservative estimation as it only includes the cases which have appeared in the national newspapers.

<sup>74</sup> Two such special prisons for “terrorists” exists in the Netherlands since September 2006, where prisoners are kept in extreme restrictions, “Nieuw Vosseveld” in Vught and “De Schie” in Rotterdam. See the recent report, Tinka M. Veldhuis, Ernestine H. Gordijn, Siegwart M. Lindenberg, René Veenstra (2010) *Terroristen in detentie. evaluatie van de Terroristenafdeling*, who evaluate these prisons as “aimed for maximum security and control, which is reflected by an extensive package of restricting measures imposed on the offenders.”, English Summary, Terrorists in Prison. Evaluation of the Dutch terrorism wing, p. 8.

<sup>75</sup> Rik Coolsaet, ‘Radicalisme is het zout in de samenleving’, Kennislink, February 1, 2008. <<http://www.kennislink.nl/publicaties/radicalisme-is-het-zout-in-de-samenleving>> (retrieved at April 26, 2012).

<sup>76</sup> The most important of them are the EU Arrest Warrant (12 May 2004), the Extended Identification Duty (1 January 2005), the Protected Witnesses Act (1 November 2006).

<sup>77</sup> For instance the problematic definition of armed struggle and conspiracy charges and the increase from 90 days to 2 years of pre-trial arrest, special prisons for terrorists with special regimes, 15 years of prison time instead of the 7 proscribed by the EU framework decision, and more such draconian measures.

<sup>78</sup> The murders of Pim Fortuyn and Theo van Gogh could arguably be called terrorist by the new anti-terror law, and in reality the murderer of Theo van Gogh, Mohammed B, was charged with terrorism and stays inside a terrorism prison. I however want to make the point that both of them they were actually political murders or *assassinations*, as they were specifically targeting one individual and not a population or even a part of a population. The other cases where people have been charged with terrorism were all charged in having and spreading “radical writings” with terrorist objective.

<sup>79</sup> Johan Marius Lintz (2007) *The Position of the Terrorist Offences Act in Dutch Substantive Criminal Law* [De plaats van de Wet terroristische misdrijven in het materiële strafrecht. Een onderzoek naar de wederzijdse beïnvloeding door de Wet terroristische misdrijven en het Wetboek van Strafrecht en enkele bijzondere wetten], Nijmegen: Wolf Legal Publishers (WLP).

<sup>80</sup> *Ibid*, pp. 289.

anti-communist laws or “communist” violence is mentioned, they are only referred to indirectly.<sup>81</sup> But where the question is brilliant, Lintz then goes astray by explaining the textual differences. What Lintz fails to see is that even if they might be different in a strict legal or textual sense, what is similar is their *purpose*. Both 1930's anti-“communist” and contemporary anti-“terrorist” laws are aimed at criminalizing, silencing and repressing anti-governmental discontent. Contemporary repression of dissent is also different though in many ways, with the development of new policing techniques<sup>82</sup>, new policing materials made possible through technological breakthroughs in the extremely mis-termed “non-lethal” weaponry<sup>83</sup>, and the charge of “terrorism” – as opposed to “communism” – itself with its own specific meaning. The view of similarities in the suppression of “communism” and the contemporary “war on dissent” is shared by Geert Corstens, councilor of the High Court, the highest judicial authority. Corstens tells in an interview to the newspaper NRC, as paraphrased by De Volkskrant:

We're in a repressive wave as we also have known in the thirties of the last century. People want more punishment, longer sentences, tougher penalties. Our prison population has never been larger. In such times, proper control of trials is difficult. That is why we judges, including the Supreme Court, have to be extra careful. It is a war on crime, because you will never get anywhere with it.<sup>84</sup>

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<sup>81</sup> Ibid.; Walter Laqueur (2000) *The New Terrorism: Fanaticism and the Arms of Mass Destruction*. Oxford: Oxford University Press, p. 22. Paul Wilkinson (2006) *Terrorism Versus Democracy: The Liberal State Response*. L., N.Y.: Routledge, p. 2, 11.

<sup>82</sup> Fernandez (2008); Mattias Wahlström (2008) *The Making of Protest and Protest Policing. Negotiation, Knowledge, Space, and Narrative*, Göteborg Studies in Sociology No 47; Christian Scholl (2010) *Two Sides of a Barricade (Dis)order and Summit Protest in Europe*, Doctoral Thesis, University of Amsterdam; Amory Starr, Luis Fernandez and Christian Scholl (2011) *Shutting Down the Streets. Political Violence and Social Control in the Global Era*. N.Y.: New York University Press.

<sup>83</sup> The non-lethality of weapons and tools for police control of protest can be questioned. So-called “non-lethal” electroshock weapons, *tasers*, have caused many deaths and permanent injuries to people in the United States. Since 2009 some Dutch police are also allowed to use the taser. See “Arrestatieteams proberen stroomstootwapen uit”, Nu.nl, August 11, 2008. <<http://www.nu.nl/algemeen/1694473/arrestatieteams-proberen-stroomstootwapen-uit.html>> (retrieved at May 20, 2012).

According to the Amnesty International report on taser-related deaths between 2001 and 2008, 334 people in the United States died after being shocked by police tasers. Source: *The use of stun weapons in US law enforcement*, Amnesty International, December 16, 2008, <<http://www.amnesty.org/en/news-and-updates/report/tasers-potentially-lethal-and-easy-abuse-20081216>> (retrieved at May 20, 2012). The blog Electronic Village speaks about 525 since 2001, and the blog Truth not Tasers mentions 728. <<http://electronicvillage.blogspot.se/2009/05/taser-related-deaths-in-united-states.html>> and <<http://truthnottasers.blogspot.se/2008/04/what-follows-are-names-where-known.html>> (both retrieved at May 20, 2012).

<sup>84</sup> De Volkskrant, Hoge Raad bezorgd over 'verharding' strafklimaat, May 6, 2006.

The words of Corstens are remarkable, because high councilors are generally very careful not to say anything too provocative in public, as this might be held against them in court-cases for being a biased judge. Knowing this, it makes Corstens honest words even more extraordinary.

But these reflections were not shared by most members of parliament, when debating the Terrorism Act. For many of them anti-“terrorism” measures could not only be used against religious “others”, defined as “Islamic” or “Muslim” communities<sup>85</sup>, but also against political “others”, protesters<sup>86</sup> and other people critical of governmental policies as animal rights and migration. How far the Dutch government was willing to go in declaring protest to be equivalent to “terrorism” was still open for debate however.

## 1.5. Parliamentary Debates on “Terrorist” Protesters

Minister Donner opened the attack on animal rights activists in a general debate on the Terrorist Offences Act in 2003 by telling the parliament “there are indeed circumstances imaginable under which animal activism assumes a magnitude that you say now it is really a form of terrorism. On the other hand, I must say that not necessarily all animal activism is terrorism.”<sup>87</sup>

(Then) VVD member Wilders continued that day's debate with the statement, “From the committing of crime and violence by radical activists follows logically that they do so with the aim of

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<sup>85</sup> I am aware of the fact that Muslim communities have been under attack in an unprecedented way since 9/11 and that most anti-“terrorism” laws and measures have been used most strongly, with devastating effects, against them. This could be most clearly seen in the response to the AEL which, according to the Dutch government, should be forbidden even before its official creation as well as targeted by so-called *deradicalization* policies. But that such measures also effect not religiously inspired protest, of which no research has been conducted as of yet, is clear, and for this reason the focus of this thesis.

<sup>86</sup> With protesters I will mostly mean “activists”. Oversimplifying unforgivably, with “activists” I mean the various communities of protesters which are predominantly white, atheist, and stereotypically can be distinguished by certain marks of their subculture, as black clothes or music preference. On the probable use of the law against protesters see: Thomas Mathiesen, *Expanding the Concept of Terrorism?* In Phil Scraton (ed.) (2002) *Beyond September 11. An Anthology of Dissent*. London: Pluto Press; Statewatch 2001, “EU to adopt new laws on terrorism”, September 2001, <<http://www.statewatch.org/news/2001/sep/14eulaws.htm>>; Amnesty International, 2005, *Human Rights Dissolving at the Borders? Counter-Terrorism and EU Criminal Law*, <[http://www.amnesty.eu/static/documents/2005/counterterrorism\\_report\\_final.pdf](http://www.amnesty.eu/static/documents/2005/counterterrorism_report_final.pdf)> (retrieved at March 10, 2012); Dick Oosting, Amnesty International, 2006, *Europe’s clampdown on terrorism risks backfiring*, <[http://www.europesworld.org/NewEnglish/Home\\_old/Article/tabid/191/ArticleType/articleview/ArticleID/20611/language/en-US/Default.aspx](http://www.europesworld.org/NewEnglish/Home_old/Article/tabid/191/ArticleType/articleview/ArticleID/20611/language/en-US/Default.aspx)> (retrieved at March 10, 2012); Human Rights Watch, 2001, *Human Rights Implications of European Union Internal Security Proposals. Context Post-September 11: General Concerns*, December 1, 2001 <<http://www.hrw.org/press/2001/11/eusecurity-memo.htm>> (retrieved at March 10, 2012).

<sup>87</sup> TK 2003 – 2004, 28463, nr. 31: general debate.

frightening the public or a section thereof.”<sup>88</sup> This is not surprising as three VVD members earlier that year submitted a resolution to persecute for terrorism “so-called animal/eco-activists” who “commit offences causing fear in part of the population”<sup>89</sup>. Wilders repeated the struggle against dissent to his fellow parliament members: “I therefore think that the Public Prosecutor in appropriate cases should be prosecuting animal rights activists for terrorist offenses.”<sup>90</sup> The resolution was accepted a few days after the general debate by a majority-vote of liberal party (VVD), Christian Union, Reformed Political Party (SGP), Christian Democratic Appeal (CDA) and List Pim Fortuyn (LPF).

The 2003 parliamentary debate was repeated in 2007 when a debate was held specifically on animal rights activism<sup>91</sup>. Minister of Interior Guusje ter Horst's words sum up the situation most clearly when she told parliament that “The term terrorism is not applicable”<sup>92</sup> to violent activism, *but* “such crimes can be combated individually with administrative measures, that may also be taken against terrorism.”<sup>93</sup> In other words, protest is not yet “terrorism”, but anti-“terrorism” measures could nevertheless be taken against it. For this purpose a resolution was accepted for using administrative measures from the Terrorist Offences Act against “radical” animal rights activists who more and more would have a “terrorist character”<sup>94</sup> and should be criminalized “in the broadest form possible”<sup>95</sup>.

Since the initial anti-terrorism debate, whenever a negative message appears in the media about some protest, most often animal rights or no border activism, a member of a right-wing party can be trusted to ask questions about it by so-called *Kamervragen* (Parliamentary questions) or to propose a resolution. Officially, Parliamentary questions are intended to keep parliament members informed about society and government. A member has the right to ask questions about current topics to members of government (Ministers). The corresponding Minister then has six weeks to answer the question. By resolutions members can ask all members of parliament to vote on a proposal to government. Accepted resolutions can ask the government to pay attention to something, ask government to make a law proposal, or pass judgment on a policy.

In practice however, parliamentary questions are used by members to create discussions about

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<sup>88</sup> TK 2003 – 2004, 28463, nr. 31: general debate.

<sup>89</sup> TK 2003 – 2004, 28463, nr. 26: Resolution member van Fessem “inzake de vervolging van dieren/eco-activisten”.

<sup>90</sup> TK 2003 – 2004, 28463, nr. 31: general debate.

<sup>91</sup> TK 2006 – 2007, TK 87: “debate about animal rights activism”, 28 June 2007.

<sup>92</sup> De Pers, “Voorbereiding geweld mogelijk sneller strafbaar”, 28 juni 2007 <<http://www.depers.nl/binnenland/77337/Harde-aanpak-dierenactivisten.html>> (retrieved at May 24, 2012).

<sup>93</sup> Ibid.

<sup>94</sup> TK 2006 – 2007, 30800-VI, TK 87, resolution nr. 107, “motie-De Roon over het aanmerken van het Animal Liberation Front als een terroristische organisatie”, June 28, 2007.

<sup>95</sup> Ibid.

these topics in parliament or make certain topics a political issue for which legislative “solutions” – often proposed by resolutions – have to be found. For a member to propose a resolution or ask parliamentary question (s)he is the first one to discuss an issue, phrase the problem, and consequently decides the terms of the succeeding debate. Language is an important tool to “frame” such issues and in effect helps to create a discourse, a way of thinking, about a certain topic<sup>96</sup>. Parliamentary debates do not stay within the limits of government, but are often repeated in media as well. In this way parliamentary debates influence both governmental and public opinion in a powerful way.

Once a resolution is accepted it becomes a signed statement by the majority of the House of Representatives which has to be followed and acted on by the corresponding Minister. In practice a Minister can also choose to disregard a resolution, which almost never happens<sup>97</sup>, especially not in the case of so-called “security measures”. Resolutions, when followed upon by a Minister, are not empty statements, they have real consequences for protesters. This was especially the case with the earlier mentioned “administrative measures from the Terrorist Offences Act” against protesters, as we will see in chapter two, various laws would come out of it.

Some examples of parliamentary questions might be helpful in understanding how such resolutions come to be. One parliamentary question about protest was asked by member Oplaat (VVD) in 2005 about the release of 600 – 800 minks, calling people who had committed this action “animal-rights-terrorists”<sup>98</sup>. Another question came two years later, in July 2007, after an article in the right-wing newspaper, *De Telegraaf*, about animal rights activism<sup>99</sup>, when De Roon (PVV) asked the minister that same day if it was possible to define animal rights group “Bite Back” as a terrorist or criminal organization for alleged links with the Animal Liberation Front and the general continuing “terror” by animal rights activists<sup>100</sup>. De Roon most probably was not interested in the answer of the minister, because a resolution declaring Animal Liberation Front (ALF) a terrorist organization was

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<sup>96</sup> Erving Goffman (1974). *Frame analysis: An essay on the organization of experience*. Cambridge, MA: Harvard University Press; Clifford Geertz (2000) [1983] *Local Knowledge: Further Essays in Interpretive Anthropology*, N.Y.: Basic Books; David Snow & Robert Benford (1988) *Ideology, frame resonance, and participant mobilization*. In Bert Klandermans, Hanspeter Kriesi and Sidney Tarrow (Eds.) *From structure on action: Comparing social movement research across cultures*, pp. 197 – 217. Greenwich, CT: JAI Press.

<sup>97</sup> Parliament can of course object to resolutions, but in practice does seldom so as it would threaten the position of the Minister, and in the worse case a governmental crisis or re-elections. On the other hand, resolutions which could be seen as going against the dominant security paradigm, as restrictions on arms exports, are commonly disregarded by Ministers. My thanks to Mark Akkerman for bringing this point to my attention.

<sup>98</sup> TK 2004 – 2005, 2027 “Vragen van het lid Oplaat (VVD) aan de ministers van Justitie en van Binnenlandse Zaken en Koninkrijksrelaties over een actie van dierenrechtenterroristen”, May 2, 2005.

<sup>99</sup> *Dierenactivisten bedreigen directie farmaceutisch bedrijf, de Telegraaf*, July 24, 2007.

<sup>100</sup> TK 2006 – 2007, 2678 Herdruk\* “Vragen van het lid De Roon (PVV) aan de minister van Justitie over voortdurende terreur van dierenactivisten”, July 24, 2007.

already rejected earlier in the same month<sup>101</sup>. It would therefore be highly unlikely that a protest group not charged with any crime would be considered a terrorist organization. Even more, De Roon clearly was ignorant about the subject because when similar tactics as ALF happen (very seldom) in the Netherlands, they are not claimed by the ALF, but by the *Dierenbevrijdingsfront* (DBF), both of them not organizations but *noms de guerres* pretty freely usable by individuals committing actions for animal-justice. Even though the answer of the minister might have been negative, De Roon managed to again repeat the words “terror” and “terrorist” in connection with animal rights activism in parliament.

One final example might suffice for explaining the relation of parliamentary questions and criminalization of protest. In October 2008, members Agema, Brinkman en Graus (all PVV) asked the minister if it was possible to prohibit the action group *Respect for Animals* who according to the PVV-members were “violent (animal) extremists” and in doing picket-lines at circuses “threatened” and “traumatized” little children “after a nice evening at the circus”<sup>102</sup>. The minister answered that he could not forbid the actions from taking place, because no criminal acts had happened as far as he was aware of. Again, the parliamentary question was given in by a newspaper article in *De Telegraaf*<sup>103</sup>.

These are just a few of the many examples, but what becomes clear is that protest activities are under heavy scrutiny by some members of parliament. These members then propose resolutions, which occasionally are accepted by a majority of parliament. Acts of protest are grouped together as the very same thing, be it “extremism” or “terrorism”. One illustration of such a framing is given by members De Roon and Fritsma (both PVV) in 2009. After an article, not surprisingly in the *Telegraaf*, on “asylum extremism”<sup>104</sup> termed by De Roon and Fritsma as “asylum terrorism”<sup>105</sup> the members questioned the minister of Justice about the “connections and/or overlap between asylum 'activists', animal rights 'activists' and squatters 'activists'”<sup>106</sup>. De Roon and Fritsma continued by asking the minister if there was any “evidence” that “all the activists from several European countries work together and support each other in carrying out *terrorist* acts (called by you 'activism')?”<sup>107</sup>.

The interplay between newspaper the *Telegraaf* – or other right-wing magazines – and

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<sup>101</sup> TK 2006 – 2007, 30800-VI, TK 87, resolution nr. 107, “motie-De Roon over het aanmerken van het Animal Liberation Front als een terroristische organisatie”, June 28, 2007. rejected on July 3, 2007.

<sup>102</sup> TK 2007 – 2008, 692 “Vragen van de leden Agema, Brinkman en Graus (allen PVV) aan de ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Justitie over gewelddadigheden van (dieren) extremisten tegen circusbezoekers.”, 23 October 2008.

<sup>103</sup> Kinderen staan te huilen, *De Telegraaf*, Oktober 17, 2008.

<sup>104</sup> Asielbeleid onder vuur [Asylum policy under attack], *De Telegraaf*, October 17, 2009

<sup>105</sup> TK 2009 – 2010, “Vragen van de leden De Roon en Fritsma (beiden PVV) aan de minister van Justitie over linkse asielterroristen.”

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.* italics are my own.

parliament members on the right side of the political spectrum is striking. As untrue or biased some of these articles turn out to be, they are used by parliament members for their own political agenda. They help to set the tone of a debate where animal right activists and protest are under suspicion. In this view protest is not regarded as part of a *public* – not solely parliamentary – sphere where politics are open for debate and criticism, but regarded as a danger which needs to be combated.

Every few months voices can be heard in parliament which constantly make a problem out of any act of dissent. In their speeches, resolutions and questions to parliament, they repeat the mantra of “violence” and “danger”, group together such diverse topics as no border activism, animal rights activism, anti-fascism, and squatting, and make them synonymous to “extremism” and “terrorism”. The goal of bombarding Ministers in such a way becomes clear when De Roon and Fritsma ask their final question on “asylum terrorism”:

Are you [the Minister of Justice] willing, if necessary, to adapt the legal definition of terrorism to include the behavior of all these terror exerting “activists”, so henceforth we can just talk about asylum terrorists, animal rights terrorists and squatters terrorists? If not, why not?<sup>108</sup>

The response of the Minister was, that he did not think *all* activists could be termed “terrorists”. And even if some more confrontational protest tactics might be declared terrorism by a majority of parliament, they are not yet legally defined and criminalized by legislative powers as such.

In relation to protest we can see that a very hostile discourse has been created which started with the general debate in 2003, intensified in the 2007 one and continues until now. By using the words “violence” and “extremism” systematically together in the same sentence as protest, especially animal rights activism and no border activism become synonymous to violence and “danger” and, in a still less successful way, synonymous to “terrorism”

When Peter J. – also known as “Vegan Streaker” for his streak actions – was caught for releasing 2500 minks from a farm in 2009, he was charged and convicted for “theft” of minks and of “damage” to the surrounding fence to 18 months in prison<sup>109</sup>. The word “terrorism” was not mentioned anywhere in his legal charges, even if in media and in Parliament he was termed one. It seemed then, that judicial powers were following a different line than Parliament. For many years only people fitting

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<sup>108</sup> Ibid.

<sup>109</sup> LJN: BM7152, Rechtbank Rotterdam , 10/600051-09, June 6, 2009. “Promis. Dierenactivist veroordeeld wegens vrijlaten en diefstal van nertsen uit een nertsenfokkerij. Beroep op psychische overmacht verworpen.”, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BM7152>> (retrieved at March 10, 2012)

the Islamophobic sentiments<sup>110</sup>, would or could be charged with terrorism. This all changed in 2011 though, as we will see in the case of Anna, which we will now look at in more detail.

## 1.6. Protesting and charged with “Terrorism”. Case-study of Anna

Readers might still remember the story of Anna, mentioned at the beginning of this chapter, where Anna, a protester known for her opposition to the Dutch government's migration policies, was arrested for “terrorism” and taken from her home, while the National Crime Squad searched her house. In this part I will show how the story of Anna continues, and what it can show us about the criminalization of dissent by the label of “terrorism”. It will also provide the springboard for a more thorough analysis of the two earlier mentioned governmental institutions which play an important role in the process of criminalization, the National Crime Squad and the General Intelligence and Security Service.

### **Anna, continuation . . .**

. . . At the police station Anna was held in complete isolation. She was not allowed to have any contact with the outside world. The only contact Anna had was with her lawyer, who had a gagging order and so could not tell anything about what had happened with Anna, who had disappeared, to anyone.

The next days, Anna was interrogated twice. Long silences intersected by questions as “How do you feel?”, “Are you really that surprised about the charge of instigation?”. Quotes from texts Anna had written and published on her website were read out to her. But during the second interrogation when the interrogators let Anna read her charge she noticed something they had not mentioned to her: next to the charge of instigation, in bold letters it said “with terrorist objective”. When asked about it they told Anna there was no special reason for it. But when Anna read the paper more careful in her cell, she

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<sup>110</sup> The most famous case of a politically motivated persecution of a group of Muslim youngsters in the post 9/11 context is the case of the *Hofstadgroep*. This group of youngsters was collectively charged with being a terrorist organization, on the basis of very shallow grounds. Nine out of the 14 alleged “members” got between 5 months and 15 years of prison. It could be argued that next to being a religious study group they were also a political grouping concerned with the situation in Chechnya, as two members tried to travel there, Afganistan and Iraq. This political dimension was ignored by media in favor of a religious reading of them as a Muslim (and therefore “terrorist”) group, effectively depoliticizing them and demonizing them into a terrorist threat. The fact that one of the members, Mohammed B., was the person who assassinated Theo van Gogh complicates this matter even further. Compilation of the case at LJN: AV5108, Rechtbank Rotterdam, 10/000322-04;10/000328-04;10/000396-04;10/000393-04;10000325-04;10/000323-04;10/000395-04, March 10, 2006, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AV5108>> (retrieved at March 10, 2012).

found out that various terrorism indictments were added to the charge of instigation. Anna thought she might be there for a very long time and went to sleep.

However, on the third day Anna was released.

When I met Anna in the café in Amsterdam to ask her what had happened and what she thought about it she was still a bit shaken from the experience, but also very angry. Anna told me that she has been the target of unwanted government attention for many years, but that this is the first time that she really felt *silenced*, putting her hand over her mouth: “I feel censored (...) like the government wants to stop me from writing what I think”. Anna told me that she is charged with article 131, *instigation*. The article criminalizes “[Sh]e who publicly, orally, in writing or in picture instigates to any offense or violence against public authorities”<sup>111</sup>. More freely translated instigation might translate as “calling out to people to commit an offence against the governing powers”. But when does one “call out” for action? When does a writing still fall under freedom of expression and when does it become instigating?

Article 131 was enacted in 1920 in the wake of the 1917 Russian Revolution. The “further provisions to combat revolutionary turmoil”<sup>112</sup> or shorter “Anti-Revolution Act”, as it was initially called, was created to tackle (communist) disturbances in an “early, preliminary stage”<sup>113</sup>. Since then article 131 has been used against a variety of dissidents, never – as far as I could ascertain – for any calling out in person or committing any actual “acts”, but always for the publication of written texts. It was used firstly against Indonesian anti-colonial students and against the anarchist Anton Levien Constandse (1899 – 1985) in 1927. Constandse was charged with instigation after publishing an article which urged sailors to rebel and workers to strike. Four years later in 1931 communist Henk Sneevliet (1883 – 1942) was imprisoned for instigation for his writings. Finally, in 1966 the article was used against Provo-member<sup>114</sup> Roel van Duijn after writing “shoot the demolitioners [of a street in Amsterdam] from the rooftops”<sup>115</sup> in a self-published magazine.

<sup>111</sup> Article 131 of the Penal Code [Wetboek van Strafrecht, Artikel 131], my translation

<sup>112</sup> Martijn Blekendaal, “De arrestatie van Mohammed Hatta”, *Historisch Nieuwsblad*, nr 6, 2006.

<sup>113</sup> *Ibid.*

<sup>114</sup> Provo (1962 – 1967) was a political countercultural movement, loosely organized around a magazine and “happenings” and “white plans” by which they provoked the Dutch government to overreact. Provo popularized situationist interventions in everyday life, and led to the establishment of the (short-lived) *Kabouters* [gnome] party/movement. See: Richard Kempton (2007) *Provo: Amsterdam's Anarchist Revolt*. N.Y.: Autonomedia.

<sup>115</sup> “If you do not immediately wish to go so far as to shoot the demolitioners of the objects (which would be best) and make the demolition plans simply impossible, you'd have to start with pamphlets and other means to agitate among the demolitioners and the contractors to put pressure”. Roel van Duyn (1985) *Provo*. De

What can be seen clearly from the history of the article is that from its beginning the charge of instigation has been used in a similar fashion as the charge of “terrorist-objective”, based on a perceived *intent*. In recent years the article has made a come-back, as many messages written on websites and social media have been labeled instigating, and various people over the last years have been arrested. None of these have however been charged with “terrorist”instigation, except for the case of Anna which brings together both 1930's anti-“communist” legislation and contemporary anti-“terrorist” legislation.

Asking Anna about which texts she is charged for with instigation, she tells me that they are actually all quite old texts, some even four years old. She would call them “indictments to the Dutch state”, “Fortress Europe” and “the foreigners or asylum policy as it is called”. Anna feels all she has written are opinions, even though she hopes that her texts “make clear to people that they need to take action” and that people need to “wake up” to the horrors which happen to people around us, whom we call “illegals”.

As Anna keeps track of who visits her website she knows that “almost every day” the police, national crime squad, secret service, and all kinds of other governmental agencies visit her website. “So actually they are kinda late to charge me with instigation”, Anna continues, as one of the articles Anna is persecuted for “Waar blijft de Hollandse opstand?” was written in June 2008. About why the Public Persecutor (OM) might see the texts as instigating now, Anna tells that since a verdict of the high court in 2009, the definition of instigation has been broadened<sup>116</sup>:

It used to be instigation is if you called for “do this, do that”, imperative. But that is not the case anymore. If I already say, I give my opinion: “it is time for a new generation to take over the torch of the RaRa<sup>117</sup>” – what I think is an opinion. Then apparently that is

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geschiedenis van de provotarische beweging 1965-1967. Amsterdam: Meulenhoff, p. 177.

<sup>116</sup> LJN: BJ7237, Hoge Raad, 07/13017, December 15, 2009, “1. Threat Prime Minister, Art. 285 Sr. 2. Seditious, Art Sr. 132. 3. Freedom of expression, Article 10 ECHR. Ad 1. The notion that art. 285 Criminal Code refers only to the threat of a "threatener" himself to commit crime is incorrect. 2. The view that for a conviction of the offense of Art. 132.1 Criminal Code requires that it is established that is reasonably likely to consider that the offense or violent actions as referred to in the provision will take place is incorrect. Ad 3. Court's not incomprehensible judgment comes bottom line is that the text as used by the accused, as shown in the statement is included, threatening, inflammatory in nature and therefore can not be considered a contribution to public debate.”, my own translation, <<http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BJ7237>> (retrieved at March 17, 2012).

<sup>117</sup> RaRa – or Revolutionary anti-Racist action – was an anti-imperialist protest group which in the 80s, in solidarity with the international struggle against apartheid in South Africa, firebombed Dutch companies trading with South Africa violating the UN boycott. In the 90s RaRa switched its focus to “imperialism at home”, turning towards the Dutch government and its migration policies by placing bombs in several

instigation.<sup>118</sup>

Did she expect the National Crime Squad knocking at her door?, I ask her. Anna shakes her head, “I always thought, that as long as I do things openly, they cannot do much to me. Because they just know what I am doing, and everyone can have a debate with me.” But now “times have changed”, Anna continues:

In the 80s it was really different. It was much more normal to be active, civil disobedience, what was then civil disobedience, is now already extremism, because they say that at the moment when you violate the law you are a extremist. Well that goes very far. And what is the next step? Well to call someone who writes radical texts, a terrorist. Because factually I am a terrorism suspect. It is too crazy for words to describe. I can still not get over it.<sup>119</sup>

Following Anna's arrest a support group called *13 September* (after the day Anna was arrested) was set up, publishing news and analysis about the case, and sending out press releases. All that was sent out as press-releases by the support group was ignored though by mainstream media. The only information which could be read about Anna her case was copy-pasted from the press-release of the public persecutor<sup>120</sup>. From the conservative *De Telegraaf* to the liberal *NRC* and *Volkskrant*, no journalist had taken the trouble of phoning Anna to ask her side of the story, her story was made irrelevant. What could be read in the media was: “The National Crime Squad Tuesday arrested a 47-year-old woman (...) for instigation. The reason for the investigation were four messages by the activist on the Internet.”<sup>121</sup> It was followed by four quotes of articles published on her website, and ended with reporting on the house search, her interrogation and her release that day.<sup>122</sup>

Two months after our talk in the café and ironically two days before the international day for human rights, Anna's website could not be found on the Internet anymore. A take-down-notice had been sent to the hosting provider by the public persecutor, after which the website was taken off-line. Again mainstream media ignored the press-releases by Anna's support group. What the media did write about the next day was a Ministerial conference hosted by minister of Foreign Affairs, Uri Rosenthal.

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governmental buildings during the night.

<sup>118</sup> Interview Anna, October, 2011, Amsterdam.

<sup>119</sup> Ibid.

<sup>120</sup> Landelijk Parket, “Nationale Recherche houdt activiste aan voor opruiing”, September 16, 2011, <<http://www.om.nl/actueel-0/nieuws-persberichten/@157102/nationale-recherche/>> (retrieved at March 1, 2012).

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

The conference was called “Freedom Online”<sup>123</sup> for a “joint action for free expression on the Internet”. Focusing on what was happening in Syria, but forgetting about what was happening closer to home, Rosenthal told delegates of 15 countries that “censorship techniques are still being used massively in some countries” but that luckily “online technology is making life difficult for the censors.”<sup>124</sup> Both minister Rosenthal and the journalists writing their news items of that day failed to mention that this commitment to open Internet stood face-to-face with the other message which appeared in that day's newspapers. A short message, again copy-pasted from the national persecutor's press release, read:

The woman (...) was arrested for instigation in September. She then, however, not heeded the request of the prosecutor to remove the instigating texts from her website. Therefore, the website has been made inaccessible.<sup>125</sup>

This example shows a certain blindness, some might call it hypocrisy, on the side of the Dutch government. It takes away freedoms while talking about freedom, and it now also fights against censorship while inflicting censorship. But Rosenthal was right on the account that “online technology is making life difficult for the censors”, because immediately after Anna's website was taken down, copies – *mirrors* – of the website were appearing on the Internet.<sup>126</sup> By trying to take down Anna's website the persecutor instead achieved the opposite: the texts multiplied. Even more, the next day the official website was back on-line. Hacking-group *Anonymous* somehow had managed to bring it back<sup>127</sup>.

The case of Anna is still current. At the time of writing an investigation is still ongoing, as also Schram, the persecutor for “asylum extremism”, acknowledges in an interview with magazine *Vrij Nederland* (VN)<sup>128</sup>. Schram however denies any accusation of a wider investigation. According to

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<sup>123</sup> Freedom Online, 8 & 9 December 2011, The Hague, press-release Ministry of Foreign Affairs, <<http://www.minbuza.nl/en/ministry/conference-on-internet-freedom>> (retrieved at 17 march 2012).

<sup>124</sup> Protecting Freedom Online: Time for Governments to Join Efforts, Editorial by Minister Rosenthal on Internet Freedom, <<http://www.minbuza.nl/en/ministry/conference-on-internet-freedom/editorial-by-minister-rosenthal-on-internet-freedom.html>> (retrieved at 17 march 2012).

<sup>125</sup> Website met opruiende teksten uit de lucht gehaald, Landelijk Parket, December 7, 2011 <<http://www.om.nl/actueel-0/nieuws-persberichten/@157902/website-opruiende/>> (retrieved at 1 march 2012), translation my own.

<sup>126</sup> admin, Waar zijn de teksten nog meer te vinden, undated, Steungroep 13 September, <<http://13-september.nl/mirrors/>> (retrieved at 11 march 2012).

<sup>127</sup> admin, Anonymous: Takedown jokekaviaar.nl van korte duur (press-release Anonymous), December 8, 2011, Steungroep 13 September, <<http://13-september.nl/2011/12/08/takedown-jokekaviaar-nl-van-korte-duur/>> (retrieved at 11 march 2012).

<sup>128</sup> Sophie Derkzen, “Asielactivisme: ‘Ik blokkeer, ik bezet, ik keten me vast’”, *Vrij Nederland*, March 15, 2012,

Schram the arrest for instigation “has nothing to do with what other things [Anna] does in a *group*”. That Schram mentions what Anna does or does not do in a group out of the blue, is interesting. As the article in the VN is about protest against the migration policy, what Schram means are *protest* groups. The arrest for instigation then should be seen in this light of a wider campaign of criminalization of protesters, called “extremists” in reports of the General Intelligence and Security Service and in parliament. About this charge we will see more in chapter two.

## 1.7. Conclusion

Starting with the attack on the twin towers, I have showed how the 9/11 discourse mobilized widespread support for the “War on Terror” and quelled most criticism, both in the Netherlands and elsewhere. After this I analyzed how the 9/11 discourse worked as a rallying effect for first of all the acceptance of the European Framework Decision in the European Parliament and secondly the Dutch Terrorist Offences Act in the Dutch Parliament.

I have pointed out the shortcomings of both these Acts, and their vague definition of “terrorism”. I then continued with showing how these Acts have the potential to be used against protesters and how there were from the very start signs of an inclination to exploit these Act for such a use.

Secondly, I analyzed the post 9/11 parliamentary debates on terrorism in Dutch parliament in relation to protest and have shown how by a interplay of media and parliament members an atmosphere is created where protest is seen as “suspect” and “dangerous”. I also have shown how parliamentary questions and resolutions were used for this goal. From this it should have become clear that members of parliament were too busy listening to the post 9/11 discourse of war, and had no ears for other voices. The Geert Corsten's, Atrid Essed's, Tony Bunyan's, Maarten van Rossum's and even the few critical members of parliament were outnumbered, ignored and therefore not heeded. Only now, 10 years later, more critical mainstream voices start to be heard, more regretful about being swallowed up in the terrorism-mania.

Thirdly and lastly, I have focused on the case of Anna, the first protester to be charged in the Netherlands with a terrorism indictment, and shown how former anti-“communism” laws and contemporary anti-“terrorism” ones are used together for the criminalization of protest.

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<<http://www.vn.nl/Archief/Samenleving/Artikel-Samenleving/Asielactivisme-Ik-blokkeer-ik-bezet-ik-ketene-vast.htm>> (retrieved at 20 march 2012).

As a conclusion it is important to realize that every single one of the many anti-“terrorism” laws and measures are gross breaches of rights, killed for a false sense of “security”. This trend is still ongoing and it can not be seen where this trend might lead. According to Belgian sociologist Jean-Claude Paye, this trend is one which will not end for quite some time to come, as the so-called “war against terrorism allow[ed] power to be reorganized at the world level”<sup>129</sup>. In his influential book *Global War on Liberty*<sup>130</sup> Paye studied study how “new modalities of governance” in the United States, Great Britain, Belgium, France Italy, and the European Union more general have sprung up in the wake of 9/11. According to Paye a “state of exception” has been created by which the suspension of the rule of law and restrictions of rights and freedoms are legitimized. Where many studies on the post 9/11 world take this generalized notion of a state of exception as their conclusion, Paye takes it as his point of departure where the state of exception has become a “state of permanence”<sup>131</sup>. For Paye the normalized exceptional modalities of power do not lead to a dictatorial regime of rule, but rather a *new* “political regime”<sup>132</sup>, which has to be understood in its own terms. In the Netherlands, exactly such a new political regime can be seen where every year new exceptional measures are taken and laws enacted which are understood less and less as “exceptional”, and slowly become permanent. This new political reality thrives on the “othering” of those designated as “terrorists”, the new *Homo Sacer*<sup>133</sup>, those stripped of all rights, and likewise for other categories of people. As we will see in the coming chapters the trend continues with new concepts as “extremism” and “ideological crime” being invented to criminalize and “other” protesters as well.

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<sup>129</sup> François Debrix, The Permanent State of Exception and the Dismantling of the Law: Jean-Claude Paye's *Global War on Liberty*, Telos Press Blog, July 16, 2007.

<sup>130</sup> Jean-Claude Paye (2007) *Global War on Liberty: Anti-terrorism, Dictatorship, Permanent State of Exception*. N.Y.: Telos Press.

<sup>131</sup> François Debrix, The Permanent State of Exception and the Dismantling of the Law.

<sup>132</sup> *Ibid.* p. 61.

<sup>133</sup> Giorgio Agamben (1998) *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.

## Chapter 2

# **Manufacturing “Extremists” and the General Intelligence and Security Service**



As we have seen in the previous chapter the rally effect of 9/11 mobilized an exceedingly hostile discourse towards those people seen by members within the Dutch government or journalists as somehow not conforming to or opposing (some of the policies of) the powers that be. This process culminated in the Dutch Terrorist Offences Act and the formation of a discourse which portrayed protest as a danger to the national “order”, if not outright as “terrorist”. We have also seen how the Dutch activist Anna has been charged with “terrorism”.

This trend of criminalizing dissent and stripping away rights of everyone deemed a threat by one of the many government agencies will be explored in more detail in this chapter with respect to the main organization charged with signaling threats to the “nation”, the General Intelligence and Security Service. In this chapter I will examine how the General Intelligence and Security Service (AIVD) uses the concept of “extremism” to construct forms of protest as threats to the “national legal democratic order”. I will study which meanings are ascribed to the label of “extremism” by the AIVD and how this word became associated with social movements. Finally I intend to clarify which consequences these constructions have had for social movements and how the criminalizing discourse of the AIVD is taken over by the wider society.

Before starting with this endeavor however I will begin by explaining more about the AIVD as an organization which manages *information*. After this I will explore how and why the term “extremism” is used in reports of the AIVD to describe certain kinds of protests and how protest becomes understood as a “threat”. This will be followed by a case study of threat constructions out of the animal rights movement. By this case study I will analyze and reflect on what consequences this new definition of prohibited forms of politics as “extremist” have had for protest. I will be primarily interested in how the term “extremism” is used and legitimized by the AIVD, and how protest is made into an issue for security agencies to deal with. As ethnographic materials are lacking for the obvious reason of the AIVD's wish to stay clear of being the object of participant observation, I will rely on a thorough reading of the available annual and thematic AIVD reports.

## **2.1. The General Intelligence and Security Service as an “Organization” for Classification**

Before understanding how the AIVD classifies dissent as “extremism” and the way the AIVD presents such claims in its annual reports, a look at the AIVD as an organization will clarify why the AIVD is

such an important player in the manufacturing of threats. To be able to understand the way in which such threat constructions help to strengthen the dominant political structure and how its conduct is regulated by this structure I will analyze how the AIVD relates to the concept of the “State”.

The General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*, AIVD), previously known as National Security Service (*Binnenlandse Veiligheidsdienst*, BVD), is the *organization* tasked with classifying threats to the Dutch nation-state. The BVD was renamed into AIVD in 2002 when the Law on Intelligence and Security Services (*Wet op de Inlichtingen- en Veiligheidsdiensten*, WIV) came in effect to reorganize the BVD and change its focus from the “communist threat”, towards that of organized crime<sup>134</sup>. This immediately tells us about the core function of the AIVD: to gather information about what is perceived to be the core threat(s) to society and to alert other organizations when deemed necessary. The problematics of researching the AIVD as an organization lies in the fact that the AIVD is a “secret” organization, also known as a “secret service”. Because of this secrecy surrounding the organization and its work less is known about the AIVD than other security-related organizations. Most of what is known is through the few memoirs or books written by former employees<sup>135</sup>, which causes problems for the credibility of such information. Such memoirs or books are also censored by the AIVD to protect “operational data” or “confidentiality of sources”. These matters make it difficult to get a clear (historical) picture of the organization and even more so about its contemporary work. What is known about its more recent work is mainly by what the AIVD itself decides to share with the world in the form of short briefings to government (*ambstberichten*) or in the form of its annual reports, published every April.

To figure out more about what kind of establishment the AIVD is we could however focus on its characteristics as an *organization*. The word “organization” means “the act of organizing or the state

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<sup>134</sup> Rick van Amersfoort, The de-politicisation and de-radicalisation of dissent in the Netherlands, in Aksyutina, O. and Maeckelbergh, M. (eds.) (forthcoming) Using “Anti-Terrorism” to Suppress Dissent: The Criminalization of Social Movements; Cyrille Fijnaut, Inlichtingendiensten in Europa en Amerika; de heroriëntatie sinds de val van de Muur en 11 september 2001 [Intelligence agencies in Europe and America, the reorientation since the fall of the Berlin Wall and September 11, 2001]. *Justitiële verkenningen*. Vol. 30 (3), pp. 10 – 42; Paul Abels and Roel Willemse, Veiligheidsdienst in verandering; de BVD/AIVD sinds het einde van de Koude Oorlog [Security services in change, the BVD / AIVD since the end of the Cold War]. *Justitiële verkenningen*. Vol. 30 (3), pp. 83 – 98

<sup>135</sup> Former BVD employee and historian Dick Engelen published “Frontdienst. de BVD in de Koude Oorlog” (2007) and “Geschiedenis van de Binnenlandse Veiligheidsdienst” (1995). Both of these were commissioned by the Minister of Interior. The only independent (though also screened) memoir of a former employee is “In dienst van de BVD: Spionage en contraspionage in Nederland” (2004) by Frits Hoekstra. This number of publications is in stark contrast to the US, where more than a hundred of such memoirs have appeared, and the UK, with over sixty (numbers by Bob De Graaf, cited in: Ben de Jong, “How transparant is the AIVD ?” [Hoe transparant is de AIVD?], *Liberaal Reveil*, September 2009, no. 3, pp. 133 – 139).

of being organized”, it is an “order”, “system” a “method” or an “organized structure or whole”<sup>136</sup>. So when we talk about an organization it actually can mean anything which has the aim of *organizing* something. More generally we mean a fixed place where people work to organize things. In the case of the AIVD it is the entity which organizes people and especially *information* in such a way as to classify and obtain as much information as possible about what might be understood as a “threat” or “danger” to that what is termed “national security”. In some cases the AIVD then chooses to intervene directly, preventive, or inform an other governmental agency to “manage” the risk. So if we talk about the AIVD, we know first of all that it *classifies*. Secondly, the AIVD *mobilizes* governmental *action*.

The AIVD does not just classify and mobilize actions against just anything, but specifically against a variety of things it considers a danger to the abstract entity of “national security”. By focusing on these two words – *nation* and *security* – we might be able to get a more clear picture of what this exactly means for the main focus of our research: the criminalization of protest. What is meant with the “nation” we have already clarified in the previous chapter, when we called it an “imagined political community” felt by its inhabitants as a “form of horizontal, collective solidarity” between each other and constructed by the government “to a particular ideological model of how a given society ought to be and how its people should behave”. We also know that the “nation” the AIVD officially is in charge to protect is geographically limited and known as “the Netherlands”.

National “security” however is more difficult to define. The Dutch word for “security”, *veiligheid*, from *veilig*, which comes from the medieval *seker*, based on the Latin word *securus*, meaning “without care, carefree, reliable and free from guilt and punishment”<sup>137</sup>. Combined with the Latin word *sēcūritās* meaning “safe” as in “not exposed to danger or harm”<sup>138</sup>, “security” is commonly understood as “freedom from danger or risk”. In Mary Douglas' collection of essays, *Risk and Blame*<sup>139</sup>, on the phenomenon of risk she puts forth what would become known as the “cultural theory of risk”. According to this theory, the way in which a society responds to what it perceives as risk can be seen as “symptoms of the way the society is organized”<sup>140</sup>. Analyzing how certain groups of people are then identified and perceived as danger, as risks, to the societal structure, in a society as the Netherlands, by an organization as the AIVD, can tell us more about the social structure itself and the cultural, political

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<sup>136</sup> “Organization” in Jeremy Butterfield (2003) Collins English Dictionary, 6th edition. N.Y.: HarperCollins.

<sup>137</sup> E.R. Muller (ed.) (2004) *Veiligheid: studies over inhoud, organisatie en maatregelen*, Alphen aan den Rijn: Kluwer.

<sup>138</sup> “Security” and “secure” in Collins English Dictionary.

<sup>139</sup> Mary Douglas (1992) *Risk and Blame: Essays in Cultural Theory*. New York: Routledge.

<sup>140</sup> *Ibid.* p. 6.

and economical values that sustain it. But we should not forget about the other word in the title of Douglas' work, *blame*. According to Douglas blaming is a *political* technique, as Elaine Draper in discussing the work of Douglas remarks: “no social actor can present an argument about risk that is not biased and political”<sup>141</sup>. By blaming a person or a group of persons as “risk” the AIVD does not only make these groups susceptible for government intervention by its mobilizing function, but according to Douglas also “reinforce[s] power relations”<sup>142</sup>. Both the way in which a society then *blames* people as risk, the way and the way it *responds* to them expresses values about its governing structure and can tell us about its “underlying assumptions and values about order, hierarchy, and the just society”<sup>143</sup>. Douglas warns us that in today's times “[w]e have disengaged dangers from politics and ideology, and deal with them by the light of science”<sup>144</sup>. In the case of the AIVD we will see what Douglas might have had in mind, as its classifications of risks hiding under the twin banner of “objectivity” and “security” go without questioning by society. The work of the AIVD and the people or groups of people it chooses to designate as “dangerous” are seen as absolute, objective truths, disconnected from any political or subjective orientations. What counts as risks though, and thereby as threat to *security*, is – to speak with Foucault – part of a political “regime of truth”<sup>145</sup>. According to Foucault “[e]ach society has its [own] regime[s] of truth”<sup>146</sup> in which “truth” and “knowledge” are produced within a historically specific dominant discourse. Through this discourse of “truth” and in the specific time and space such knowledge is then not only seen as “true”, but also goes without much questioning by mainstream society. “Truth”, according to Foucault,

is to be understood as a system of ordered procedures for the production, regulation, distribution, circulation, and operation of statements. “Truth” is linked in a circular relation with systems of power which produce and sustain it, and to effects of power which it induces and which extends it.<sup>147</sup>

This is also what Douglas reminds us of when she writes that “public debates about risk are [actually]

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<sup>141</sup> Elaine Draper, Risk, Society, and Social Theory. *Contemporary Sociology*, Vol. 22, No. 5 (Sep., 1993), pp. 641 – 644. p. 643.

<sup>142</sup> Ibid.

<sup>143</sup> Draper, Risk, Society, and Social Theory. p. 642.

<sup>144</sup> Douglas, Risk and Blame. p. 4.

<sup>145</sup> Michel Foucault (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972 – 1977* N.Y.: Pantheon. p. 131.

<sup>146</sup> Foucault, M (1991) *The Foucault Reader: An Introduction to Foucault's Thought*, L.: Penguin, p. 74.

<sup>147</sup> Ibid.

debates about politics”<sup>148</sup>. In other words, what counts as risk in a given society, in a given time, is never neutral and always takes place within larger political structures of power steering the political debate over its meaning. What is considered as “risk” is then perceptible to change, of which the rapid change in the meaning and legitimacy of protest, and its criminalization by government members and agencies since the mid-2000s is an example.

Coming back to the conceptualization of the AIVD as an organization, be it a very special form, namely a “bureaucracy”<sup>149</sup>, it has *professionals* working as representatives of the organization as paid, highly rationalized, employees. The main employees all work in a specialized place, an *office*, received expert training, and new employees can be hired, or old ones fired. In recent years the amount of employees of the AIVD has more than doubled, from six hundred in 2000 to fifteen hundred in 2011<sup>150</sup>.

This brings us to the most important characteristic of a bureaucracy, that of *paper*. A bureaucracy's main tools are paperwork and statistics. In the case of the AIVD it is known that it houses a huge archive full with paper documents. Every day many of its employees go through different newspapers and other publicly accessible paper documents, called in AIVD-speak *open source intelligence*, analyze them, make abstracts of the longer articles and store them in their huge archive. The aim of this is to make events and especially people *legible*, as James Scott would call it<sup>151</sup>. Classifying not just people, but especially categories of people, these categorizations in terms of “threat” are more than just descriptions. They are simplified generalizations of people and events in terms of what an employee of the AIVD considers a risk to that abstract notion of *security*, something James Scott would term *state simplifications*<sup>152</sup>. That these are not neutral descriptions but affect reality will become clear when we will analyze the AIVD reports and its descriptions of social movements in terms of “risk”. Such qualifications of what counts as “danger” have real consequences for such social movements, extending beyond the paper reality of its descriptions. According to James Scott “The categories used by state agents are not merely means to make the environment legible; they are an

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<sup>148</sup> Douglas, Risk and Blame. p. 79.

<sup>149</sup> Richard Swedberg and Ola Agevall (2005) *The Max Weber Dictionary: Key Words And Central Concepts*. Stanford, CA: Stanford University Press. p. 19; Max Weber (1964) *The Theory of Social and Economic Organization*, N.Y.: Free Press.

<sup>150</sup> Where in the year 2000 the AIVD had 650 people working the equivalent of 608 FTE's (time equivalents to full-time workers) and an expenditure of 110.6 million euro, in 2011 the organization operated 1495 FTE's, three times the amount 10 years earlier and almost doubled its expenditure to 197.8 million euro's. Source: BVD, Annual Report 2000, p. 91 – 93 and AIVD, Jaarverslag 2011, p. 49.

<sup>151</sup> James Scott (1998) *Seeing Like A State. How Certain Schemes to Improve the Human Condition Have Failed*. L.:Yale University Press.

<sup>152</sup> *Ibid.* p. 83.

authoritative tune to which most of the population must dance”<sup>153</sup>. And as also Max Weber has already pointed out, the main instrument of a bureaucracy is “knowledge”<sup>154</sup>. Through the structuring of knowledge a bureaucracy exerts power over what counts as “truths” and “untruths”. It is through this administration of knowledge that bureaucracies are able to exert influence over the world we live in. In this way, in a Foucauldian way, *knowledge equals power*.

The final characteristic of a bureaucracy is that it is *predictable* and *transparent*, or at least it has the image to be. As the organizational work of the AIVD is kept hidden from public view it cannot be considered entirely transparent. On the other hand, the AIVD does try however to appear transparent, as well as accountable to the Dutch government. Officially, the Dutch Parliament oversees the AIVD by the Parliamentary Committee on the Intelligence and Security, also called the "Secret Committee" (*Commissie Stiekem*). The committee is made up from leaders of all political parties under strict oaths of confidentiality. Commissie Stiekem can ask questions to the director of the AIVD in closed sessions. The validity of information given by the director of the AIVD can not be verified though as “proof”, for any of his statements is held back in the name of “state security”. Also what exactly is discussed within the committee has to remain secret and can not be discussed in parliament<sup>155</sup>. In this way, it is not clear how the AIVD can actually be held accountable by government at all.

In addition to Commissie Stiekem, the “Commission on the Intelligence and Security” (*Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten, CTIVD*) monitors if investigations are conducted in accordance to the law (WIV and the Security Investigations Act [*Wet veiligheidsonderzoeken*], WVO). The CTIVD has access to the full reports of the AIVD, but as the material where the CTIVD bases its conclusions on can not be seen by anyone else, the problem of validity stays the same. The cloud of secrecy just shifts from the AIVD to the CTIVD. Another similar issue is that the CTIVD only analyzes if the AIVD has followed the *legal* framework it should operate in. The AIVD can legally however accuse any social movement of any kind of terrible things, without proof. The legal base of the AIVD work does not matter in how it publicly chooses to criminalize

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<sup>153</sup> Ibid.

<sup>154</sup> Swedberg and Agevall, p. 19.

<sup>155</sup> A noteworthy example of this was the parliamentary debate surrounding the political support to the invasion of Iraq. Through the investigation by the Committee of Inquiry on Iraq (Davids Committee) following the invasion, it became known that leaders of political parties had information refuting the hypothesis of Iraq having “weapons of mass destruction”. This information, although politically highly relevant and known by the leaders of all political parties, was not shared with the members of parliament, because it had come from the AIVD in Commissie Stiekem. When this became known it almost caused the downfall of the cabinet.

certain protest groups. This was initially also the reason for the Socialist Party (SP) not to take part in the Secret Committee. Many calls for more transparency and accountability of the AIVD have been made by public figures<sup>156</sup>, but the issue of governmental oversight has not been solved. Even the CTIVD itself has criticized the lack of accountability publicly<sup>157</sup> and also a report by criminologist Cyrille Fijnaut, an expert in intelligence and security services, calls for more accountability<sup>158</sup>.

The situation of the AIVD is not extraordinary. In the lack of transparency and accountability the AIVD stands not alone as these seem to be the characteristics of any, after all, *secret* service<sup>159</sup>. Extraordinary though is the way how the AIVD has engaged in a campaign of criminalization of various social movements and the extraordinary broad and vague concept of “extremism” as a security threat which has been constructed to serve this aim. What is problematic then about the secrecy of the AIVD is that it is *partial*. At the one hand the AIVD refuses to give any proof for its allegations and is very hesitant in giving out *any* information<sup>160</sup>, but at the other hand it is very “open” and clear in the way it accuses certain protest groups and whole social movements of serious “extremist” crimes, as we will soon see. The information it chooses to disseminate in its reports is then highly *ideological*, constructed within a certain “regime of truth”. To the point of ideology we will return in chapter three with *ideological* crime, but suffice it to say for now that through the act of labeling certain groups, as social movements, as “risks”, the AIVD creates categories of people, which are then made the object of controlling measures through laws, regulations, and actions by law enforcement agencies.

## 2.2. The concept of “Extremism”

Before we can start to describe how the AIVD criminalizes specific social movements in the Netherlands some clarification about the term “extremism” used for this goal is justified. In this section I will analyze how the concept of “extremism” has found its way into the annual reports of the AIVD,

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<sup>156</sup> Joop Debat, Tweede Kamer moet greep op AIVD vergroten, Joop.nl, March 11, 2012.

<sup>157</sup> CTIVD chairman Van Delden in ‘Verbeter controle AIVD’, Een Vandaag, April 18, 2012; Controle op AIVD schiet tekort, Novum, April 18, 2012

<sup>158</sup> Cyrille Fijnaut, Het Toezicht op de Inlichtingen- en Veiligheidsdiensten: de noodzaak van een krachtiger samenspel. De vertrekpunten en uitkomsten van een gespreksronde, CTIVD, April 18, 2012

<sup>159</sup> On specifically AIVD see Louis Sévèke, “Veiligheidsdienst mag veel te veel”, Trouw, 8 maart 2003. Internationally see for instance Stuart Farson and Mark Phythian (2011) *Commissions of inquiry and national security: comparative approaches*. Oxford: Praeger Security International

<sup>160</sup> This fact is widely acknowledged by all people who have ever tried to get information from the AIVD through the Freedom of Information Act, myself included.

how its meaning has shifted over the years and what consequences this has had for the general understanding of dissent.

Since 1991 the BVD/AIVD publishes annual reports in which it describes what it currently considers possible threats to the “democratic legal order, state security or other vital interests of the state”<sup>161</sup>. Since then the BVD/AIVD also publicly comments on the social movements or protest groups it considers and thereby constructs as possible threat to “national security”. In the reports of 1992 to 2004 the BVD/AIVD grouped such social movements under the rubric of “politically motivated (violent) activism”. In 2000<sup>162</sup> the BVD explained this choice of investigation social movements by writing:

The BVD investigates politically motivated activism where it takes or can take violent forms. Politically motivated violent activism differs from terrorism because it is aimed at making material damage and not victims.<sup>163</sup>

Apparently already before 11 September 2001 the BVD considered the *possibility* of understanding certain forms of dissent as “terrorism”. Following the events of 9/11, the Madrid and London bombings and two political murders the possibility of understanding protest and social movements as potential “terrorists” became more of a *probability*. After various years where the term “Islamist terrorism” was increasingly used and had become the new big threat, in 2005 also protest became more closely associated with “terrorism”. In that years' annual report the term “extremism” appeared for the first time<sup>164</sup>. In the report the AIVD introduced the header “Left-wing and Right-wing extremism”, replacing the earlier header of “politically motivated violent activism”. As “left-wing extremist” the AIVD considered the environmental movement, the anti-racist movement, the anti-globalization movement, the anti-militarist movement and actions taking place against detention centers. Except for the new heading, nothing seemed to have changed in how the AIVD described social movements

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<sup>161</sup> Also known as the first legal duty of the AIVD according to the Intelligence and Security Services Act (WIV): “Conducting research on organizations and individuals that give rise to serious suspicion that they pose a danger to the democratic legal order, state security or other vital interests of the state”. The whole Act is available at <<https://www.aivd.nl/publish/pages/1470/wiv2002en.pdf>> (retrieved at April 28, 2012).

<sup>162</sup> By “In 2000 the AIVD...” is meant the situation of 2000 which the AIVD considers in it's year report of that year, and the terminology used to describe events of that year. Even though annual reports are only published after the year has ended, I will stick to the practice of not making the text overly complex by writing something as “In the year report of 2000, published in 2001, the AIVD...”.

<sup>163</sup> BVD, Annual report 2000 [Jaarverslag Binnenlandse Veiligheidsdienst 2000], p. 41, translation my own.

<sup>164</sup> AIVD, Annual Report 2005.

however, except that movements before considered on their own, were now all grouped together under the same header. The murder of Van Gogh in November 2004 and the March 2004 Madrid train bombing might have influenced the AIVD's willingness to introduce the term "extremism" as an overarching classification of all forms of protests, no matter how diverse, considered by the AIVD as a possible threat to national security.

In 2006 the term "extremist" was used in the report itself in relation to left-wing protest groups, instead of merely as header. While the term "extremism" was new the motivations for investigating social movements were according to the AIVD still for their "disturbances of public order" and for "violent offenses"<sup>165</sup>. This changed in 2007 when the separation "left-wing extremism" and "right-wing extremism" was not made anymore. Instead the AIVD now grouped everything under the header of "political extremism"<sup>166</sup>. The reasons given for investigating such "political extremism" were not explicitly anymore for their presumed "violence" or "disturbances of public order". In fact no exact reason is given at all, except for them being "extremist" and thereby a "potential threat to the *democratic legal order*"<sup>167</sup>. That the concept of "extremism" was not defined anywhere and the motivation for investigating protest groups because of their perceived "threat" to something abstract as the "democratic legal order", shows that the AIVD has greatly broadened its understanding of "danger". This evaluation of groups or individuals, based on their perceived "risk" is what criminologist Magnus Hörnqvist has called the "new security mentality", where new security risks are constantly sought, diagnosed and investigated by security agencies<sup>168</sup>. Where the previous protest groups applicable as "politically motivated violent activism" were, according to the AIVD, also detrimental to the "democratic legal order"<sup>169</sup>, the main threat was formed by "violent" activism and not by the "broad-based, predominantly peaceful protest movement"<sup>170</sup>. In 2007 however it seemed that for the AIVD "extremism" lay at the heart or in the corner of all social movements, and for this reason whole movements should be investigated and named in its annual report.

This shift in how the AIVD tends to perceive legitimate forms of protest as "extremist" was further extended in 2008 when also the animal rights movement was included under the header "Radical animal rights activism and extremism"<sup>171</sup>. The AIVD also finally gave some kind of a

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<sup>165</sup> AIVD, Annual Report 2006, p. 49.

<sup>166</sup> AIVD, Annual Report 2007, p. 49.

<sup>167</sup> Ibid.

<sup>168</sup> Magnus Hörnqvist (2004) "The Birth of Public Order Policy", *Race and Class*, Vol 46 (1). pp. 32.

<sup>169</sup> BVD, Annual Report 2001, p. 30.

<sup>170</sup> Ibid.

<sup>171</sup> AIVD, Annual Report 2008, p. 37.

definition of “extremism”. To the AIVD “extremism” was the phenomenon where groups or individuals constituted a “potential threat to the democratic legal order”<sup>172</sup>. For the AIVD to come with such a vague definition after using it already for three years to describe protest shows that it wants to include as much protest groups as possible in the definition of “extremism”, and thereby under its watch. In public press releases and speeches by the Ministers of Justice and Interior the term “extremism” figures predominantly but similarly so without any definition<sup>173</sup>. The only defining characteristic of “extremism” is that it is a “potential threat to the democratic legal order”. What constitutes this “democratic legal order” is not specified anywhere and what exactly might represent a threat to it or *how* is also not defined. Also it is not clear how – and *if* – the “democratic legal order” differs from just the “legal order” or “law”. The AIVD does make some distinction between “extreme” and “extremist”. Where “extreme” refers to “individuals and groups which operate on the fringes of, but still within, the established political spectrum and the democratic legal order”<sup>174</sup>, extremist is used as a label for “a movement which”, according to the AIVD, “has overstepped that boundary by, for example, resorting to violence in pursuit of its goals or publishing material intended to incite hatred”<sup>175</sup>.

The “for example” is important in relation to the mentioned “acts of violence” and “material intended to incite hatred”. Because of the obscure definition of “extremism” the AIVD could have mentioned other actions after the words “for example” as well. If understanding “overstepping the boundary” of the “democratic legal order” as not following the law, instead of “acts of violence”, the AIVD could have just as well give any other punishable offenses as “not following a police order” or “encroaching on private terrain”. While both of these are minor breaches of civil law, they could as well be considered “extremist” by the virtue of the loose construction of the definition of “extremism”. The words “trespassing” the “established political spectrum” are even more vague. Does this mean that any social movement which does not primarily focus on appealing to the established political realm – the parliament and politicians – is considered a potential threat by the AIVD? We will come back to his question later. This uncertainty about the meaning of the term “extremism” makes the definition dangerously broad and makes it possible for the AIVD to include almost *any* protest group as a risk, as

<sup>172</sup> Ibid. p. 33.

<sup>173</sup> See for instance: AIVD, Minister Remkes at the conference ‘One year later ...’ starting with the words “*extremism*” and “radicalism” in connection to “terrorism”, [AIVD, Spreekpunten minister Remkes op de conferentie ‘Een jaar later ...’] October 27, 2005; see also “Brief aan Tweede Kamer over Jaarplan 2008 AIVD”, December 19, 2007: “Efforts by the AIVD on the fields right and left wing *extremism* and animal rights activism in 2008 will be maintained. Concrete evidence for the existence of risks to the democratic legal order from these environments make that desirable.”

<sup>174</sup> AIVD, Annual Report 2008, p. 33.

<sup>175</sup> Ibid.

the core of protest is disagreeing with the government or any other authority and demanding change in another way than just addressing the parliament by voting.

Where the term “activism” had previously still been used to describe some animal rights action groups, in 2009 the term “activism” was not used at all anymore to classify social movements in the annual AIVD report. The groups the AIVD mentioned by name were the same ones as previous years, but were all grouped under the rubric of “extremism”. One, unlikely, possibility for this change of labeling was that all the publicly known groups protesting for animal rights, migration-justice or against fascism the AIVD had been investigating, somehow all changed their tactics and became increasingly more violent and dangerous and thereby real threats to national security. Another, more likely, possibility was that the AIVD's “security mentality” and the loose definition of “extremism” made it appropriate for the AIVD to construct all mentioned protest groups as “extremist”. The definition of “extremism” was finally made a bit more clear and could be found in the annual report's glossary<sup>176</sup> as:

The phenomenon whereby people and groups, when striving to improve the rights and living conditions of individuals, groups or animals, consciously break the law and commit illegal acts which may be violent.<sup>177</sup>

This definition is at least more clear than the previous one, but it also shows that what the AIVD considers a threat to the national security is very broad. Any social movement which “consciously break[s] the law” is considered a threat and thereby classified as “extremist”. On a casual reading one might not see much difference with the definition prior to 2005 where “politically motivated activism” was investigated by the AIVD “insofar as it involves *violent* means and action”<sup>178</sup> as “extremism” is also investigated where social movements “consciously break the law and commit illegal acts which may be *violent*”, but on closer reading there is a huge difference. Acts “may be” violent, but might as well not be. Before 2005 the main factor in deciding if a social movement or action group constituted a threat by the AIVD, at least officially, was its capability for *violence*, as problematic as that was already<sup>179</sup>. In the new definition of dissent as “extremism” it is the *legality* of an action which defines

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<sup>176</sup> Ibid. p. 62.

<sup>177</sup> Ibid.

<sup>178</sup> AIVD, Annual Report 2004, p. 29.

<sup>179</sup> When does something become violent? Is resisting arrest at a demonstration violence? Is de-arresting someone violence? Is breaking a window, on accident, during an occupation, violence? And in which of these cases is the violence of such a nature that it constitutes a threat to national security?

the threat. This shift in the understanding of dissent will have huge consequences for protest as will be considered in the coming example of the animal rights movement.

Another final remarkable shift took place in 2009 when the term “activism” came back into the annual report's glossary, while not at all used anymore in the report itself. The term “activism” was defined as “extra-parliamentary” politics, of course “within the limits of the law”<sup>180</sup>. In defining both activism and extremism a message was given to society which could not be mistaken: the only permitted form of protest, confined in the definition of “activism”, was by following the limits of the law. This point can be pressed as also the earlier mentioned separation between “extreme” and “extremist” has disappeared from the report. Following this logic, any dissent or civil disobedience which by its very defining feature does not follow the legal constraints is criminalized as “extremist” and considered a danger to the “national security”. Also the label “extra-parliamentary” points in this direction, as by the use of this label it is pressed that the accepted form of dissent is somehow “extra” to parliamentary activities. In this way the touch stone is not just the law, but actually the “parliament”. A social movement is allowed to exist if it not only it follows the absolute legal norms, but also if its main goal is *addressing* the parliament, not demanding change, but asking nicely. This is then what actually also might be conveyed by the 2008 definition of not allowed forms of protest as overstepping the “established political spectrum”<sup>181</sup>. The real danger of such a vague concept where anyone or anything not conforming a hundred percent to the law can be considered a threat by the AIVD, is that definitions tend to develop from “politically-motivated violent activism”, to “extremism” and soon maybe “terrorism”.

### **2.3. The Making of “Animal Rights Extremism”**

Having shown the problematic definition of “extremism” and how it broadens the scope of what the AIVD considers to be “threats” I will analyze the three reports the AIVD published specifically on the animal rights movement in the Netherlands. I will focus on how the AIVD has portrayed the protest groups Respect for Animals and SHAC-NL and how the label of “extremism” is ascribed to them. By this I will be able to give a more practical example on the criminalization of a specific social movement by the AIVD, and how the concept of extremism is used towards this goal.

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<sup>180</sup> AIVD, Annual Report 2008, p. 62.

<sup>181</sup> Ibid. p. 33.

The animal rights movement was the first social movement which got under attack worldwide in the wake of 9/11 (Austria, US, UK<sup>182</sup>). American journalist Will Potter in his book “Green is the New Red” compared the criminalization and political persecution of the animal rights movement to the McCarthyism epoch with its witch-hunts on “communists”. In the Netherlands a report published by the AIVD in 2004 would be the beginning of a heightened process of criminalization of the Dutch animal rights movement. Two other reports in 2007 and 2009 sustained this process of ongoing criminalization with far-reaching consequences for the legitimacy of protest in the Netherlands. The contemporary Dutch animal rights movement<sup>183</sup> consists primarily of groups engaging in direct action, as Respect for Animals (*Respect voor Dieren*, RvD), SHAC-NL (Stop Huntingdon Animal Cruelty Netherlands), and the Anti Animal Testing Coalition (*Anti-Dierproeven Coalitie*, ADC).

Before we can understand how the label “extremist” became applied to specific protest groups we will have to know more about one event which changed the Dutch political landscape forever and which is used ever since as a motive for the ongoing criminalization of the animal rights movement. In 2002 the politician Pim Fortuyn was assassinated. The murder happened exactly in a time of large legal and political confrontations between politicians and lobby groups of the *bio industry*<sup>184</sup> on the one side and animal welfare proponents on the other<sup>185</sup>. The murderer of Fortuyn, De Graaf, was not particularly involved in the animal rights movement. Instead he worked for a highly successful environmental litigation group. Nevertheless, De Graaf was constructed in the media as the “leader” of a “radical

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<sup>182</sup> On Austria see: Christof Mackinger (2009) AETA, paragraph 278 and conspiracy to... Conspiracy laws and the repression of animal liberation activism, *Interface: A Journal for and about Social Movements*. Volume 1 (2). November. pp. 244 – 249. On the USA see: Dara Lovitz (2010) *Muzzling a Movement: The Effects of Anti-Terrorism Law, Money, and Politics on Animal Activism*. N.Y.: Lantern Books; Will Potter (2011) *Green Is the New Red: An Insider's Account of a Social Movement Under Siege*. San Francisco: City Lights Publishers.

<sup>183</sup> In talking about the Dutch animal rights movement, I choose to exclude animal welfare/protection organizations, which can be seen as part of the animal rights movement as well, but follow a more legalistic/NGO approach as a strategy for change. With the animal rights movement in this thesis I mean the various groups mostly conducting protest unmediated, by means of direct action as opposed to the lobbying approach favored by the more legalistic animal welfare organizations. My thanks to Mark Akkerman for bringing this point to my attention.

<sup>184</sup> With the bio industry is meant all big animal- and agro business, as large animal farms, but also pharmaceutical companies who conduct experiments on animals. Bio industry in the context of parliamentary politics then means the collection of companies who collectively lobby parliament for less environmental restrictions and less restrictions for animal welfare, making the holding of or testing on animals more expensive.

<sup>185</sup> For a history of such lobbying see: Thomas Post (2011) *Bont voor Dieren? Hoe de pelsdierhouderij zich tracht te wapenen tegen een oprukkend dierenactivisme in Nederland 1990 – heden* [Fur for Animals? How the fur farming industry is trying to guard itself against an advancing animal activism in the Netherlands 1990 – present]. (M.A. Thesis) June 2011, Erasmus University Rotterdam, Faculty of History and Arts.

murderous animal rights movement”.

Looking for a big news story, various media outlets dramatized the murder of Fortuyn and led the way the debate over it would be conducted in a highly sensationalist way. The murder was constructed as the beginning of a “new form of terrorism” ushered in by De Graaf. According to this framing of the debate it was a “coincidence” that only one fatality had occurred till now<sup>186</sup>. Many of these articles shared the common frame of holding certain animal rights protest groups or the whole animal rights movement responsible for the murder. Some journalists linked the animal rights environment where De Graaf supposedly came from directly to 9/11 as both “Al-Qaeda” and the animal rights movement were “fundamentalist” and as “dangerous as the religious fundamentalism” which caused the events of “September last year in the U.S.”<sup>187</sup>. For them it did not matter that De Graaf was hardly the stereotypical image of a radical protester doing illegal actions. Instead he worked for an NGO engaged in legal proceedings against environmental violations and filled his days with long court cases and litigation for environmental protection<sup>188</sup>. The most fierce labeling of the animal rights movement as “terrorist” and responsible for the murder of Fortuyn came from Peter Siebelt, a writer of many conspiratorial books on left-wing social movements. Siebelt's book *Eco Nostra, The Network behind De Graaf*<sup>189</sup>, sketched a highly polemical story involving GreenLeft and the Socialist Party, NGO's Greenpeace and Oxfam Novib up to the United Nations all working together with various underground animal rights cells. With some exceptions<sup>190</sup>, the book was not widely supported but it helped to establish the mode in which the debate over the murder was conducted and where a proposal for declaring animal rights movement “terrorism” could be justified by members of parliament for not being excessive at all, considering the other allegations.

Facts which did not fit the constructed frame of De Graaf as representative of the animal rights movement were widely ignored or mentioned only casually by the media. On the court case which followed the murder De Graaf explained that his act had come not from the idea that Fortuyn might mean harm to existing animal rights laws, but that he had killed Fortuyn to stop him from targeting “weak members of society” and exploiting Muslims, asylum seekers and the unemployed as

<sup>186</sup> Beesten van mensen, Elsevier, June 28, 2003.

<sup>187</sup> Kees Lunshof, Misdadig, De Telegraaf, May 11, 2002.

<sup>188</sup> Michiel Kruijt, Fanatiek milieustrijder – vanachter het bureau, de Volkskrant, May 8, 2002.

<sup>189</sup> Peter Siebelt (2003) *Eco Nostra. Het Netwerk Achter Volkert Van Der Graaf*. Soesterberg: Uitgeverij Aspekt B.V.

<sup>190</sup> Newspaper de Telegraaf is the only newspaper which does not refuse to work with Siebelt. For an overview of Siebelt's life-long hunt against “all that is left” and his “conspirative” work see Eveline Lubbers, Liefdewerk Oud Papier wordt vervolgd, in: Buro Jansen & Janssen (1995) *Welingerichte Kringen*, Amsterdam: Ravijn. Also available at <<http://evel.home.xs4all.nl/oudpap.htm>> (retrieved at April 24, 2012).

“scapegoats”<sup>191</sup>. The statement by De Graaf was only mentioned causally in some newspapers and did not interfere with the dominant reading of holding the animal rights movement responsible. Sensationalist news about murderous animal rights activists scored better and sold better. Even newspapers known for their usual balanced views also stepped in this framing by declaring the whole animal rights movement as blameworthy for the death of Fortuyn, even years later<sup>192</sup>. An atmosphere was created where the whole animal rights movement was imagined to be implicated in the murder of Fortuyn.

Following the media campaign of blackening the animal rights movement, politicians closely connected to the farmers lobby took the criminalization a step further. In a move of political opportunism, politicians used the murder and the “animal rights activist” frame of violent animal rights activists<sup>193</sup> and animal rights protest as “terror”<sup>194</sup> or “terrorism” for furthering their political agenda and their smear campaign against the animal rights movement to abolish existing animal welfare laws. In a parliamentary commission hearing specifically on the animal rights movement, De Graaf was mentioned as a constant reference. Members of parliament Wien van den Brink (LPF and pig farmer), Gertjan Oplaat (VVD and chicken farmer) and Arie van den Brand (GroenLinks, also from a farmers family) pressured Donner, Minister of Justice, to take harsher measures against what they called “terrorist animal rights activism”<sup>195</sup>, which should be dealt with just as hard as with “Al-Qaeda”<sup>196</sup>. Earlier these members (Arie van den Brand excluded) were also highly successful in turning back animal welfare measures and overturned the ban on mink breeding, the ban on chicken battery cages, unanesthetized castration and teeth clipping of piglets, reversed the protected status of foxes and deer. Other parliament members Van Fessem (CDA), Wilders (VVD) and Eerdmans (LPF) drafted a memorandum that same day which was supported by the majority of parliament and insisted that the minister of Justice should do its best to broaden the already vague legal definition of “terrorism” and persecute animal rights protests under the Terrorism Act<sup>197</sup>. The initial criminalization of animal rights

<sup>191</sup> Court case LJN: AF7291, Amsterdam, 13/123078-02, April 15, 2003, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AF7291>> (retrieved at April 24, 2012) and appeal LJN: AI0123, Gerechtshof Amsterdam, 23-001670-03, July 18, 2003, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AI0123>> (retrieved at April 24, 2012).

<sup>192</sup> Actie tegen radicalen; NRC.Next, May 1, 2007; FORUM, de Volkskrant, January 11, 2008.

<sup>193</sup> Jan Colijn, Nertsensbevrijding loopt uit op veldslag met Puttenaren, De Telegraaf, September 8, 2003.

<sup>194</sup> Arno Reekers, Extreem, De Telegraaf, October 4, 2003.

<sup>195</sup> TK 2003 – 2004, 29 200 VI, nr. 63, October 28, 2003.

<sup>196</sup> Members of Parliament, Wilders and Oplaat quoted in: Joost Ruempol, 'Behandel dierenactivisten hetzelfde als terroristen', De Telegraaf, September 26, 2003.

<sup>197</sup> Motie-Van Fessem c.s. over vervolging van dieren/eco-activisten, TK 2003 – 2004, 28 463, nr 36, December 8, 2003.

protest by the CDA was not surprising as it is a known stronghold of farmers, most often in control of the ministerial post of “Agriculture, Nature and Food Quality”<sup>198</sup>. The LPF, or *List Pim Fortuyn*, also was not unexpected as it was the party started by Fortuyn himself and who had just lost its party leader. Peter Langedam, the new leader of the LPF, made the illustrious statement that “the bullet came from the left”<sup>199</sup>, implying that the whole “Left”, including parliamentary parties Labor Party (PvdA) and the GreenLeft (GroenLinks), were guilty of Fortuyns murder. This might be a possible reason why even Green-Left supported the memorandum and spoke so clearly against dissent in such a generalized way, trying to show that they were not like *them*, the “Left”<sup>200</sup>.

At the same time, the parliament required both AIVD<sup>201</sup> and National Crime Squad, DNR<sup>202</sup>, to conduct an investigation in the scale of illegal actions of the animal rights movement. The reason given was that reliable figures about the amount of illegal actions were non-existent. This shows that the debate in parliament was not backed up by actual facts as the number of incidents, but more by the emotions stirred up by parliament members with close links to the bio industry who used the murder of Fortuyn as a justification for their vindication of the animal rights movement. In June 2004, the AIVD presented the requested report “Animal rights activism in the Netherlands – between peaceful and burning protest” to parliament<sup>203</sup>. The purpose of the AIVD report was to provide the parliament with more knowledge about what the animal rights movement actually consisted of and to inform the debate surrounding the to be implemented Terrorism Act. Its other task as requested by parliament was to identify in which cases animal rights protest could be understood as “terrorism”<sup>204</sup>.

The conclusion of the AIVD report was that a “small core of radical animal rights activists” were willing to use violence to change the policy on animal welfare and moved “on the dangerous edge

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<sup>198</sup> This Ministry has recently been reorganized into the *Ministry of Economic Affairs, Agriculture and Innovation* [Ministerie van Economische Zaken, Landbouw en Innovatie], combining the Ministry of Agriculture and the Ministry of Economic Affairs.

<sup>199</sup> Addie Schulte, Leider LPF volhardt: kogel kwam van links, *Het Parool*, May 13, 2002.

<sup>200</sup> Recently there are voices within the ranks of the Green-Left party who want to rename the name of the party to just “Green”, identifying with “nature” but not among “the left”. This could also be seen in the fact that at the Green-Left party congress of 2012 where a memorandum to work together with the Socialist Party and Labor Party as opposed to a right-wing coalition, was rejected by a majority-vote. See also: Steun leden GroenLinks voor Kunduz-koers fractie, *de Volkskrant*, February 11, 2012.

<sup>201</sup> TK 2003 – 2004, 29 037, nr. 2, General Meeting, October 27, 2003.

<sup>202</sup> TK 2003 – 2004, 29 200 VI, nr. 175, Letter of the Minister of Justice and the Minister of Interior, July 12, 2004.

<sup>203</sup> AIVD, July 2004, Animal rights activism in the Netherlands – between peaceful and burning protest [Dierenrechtenactivisme in Nederland – grenzen tussen vreedzaam en vlammend protest].

<sup>204</sup> *Ibid.* p. 6, 19, 25.

of what should be regarded as terrorism”<sup>205</sup>. For the AIVD to consider acts as animal liberations and arson, which had been happening for over 30 years already by the Dutch Animal Liberation Front (*Dierenbevrijdingsfront*, DBF) as “dangerously close to terrorism” showed that not only media and parliament, but also the AIVD had changed its consideration of dissent as possibly “terrorist”. Where before “political violence” was used to describe protest considered to be dangerous by their nature of being perceived as “violent”, now the label of “political violence” was not used and similar acts of violence as vandalism and arson were considered “almost, but not yet terrorist”. This small core of *not yet terrorism* was considered “dangerous”<sup>206</sup>, but as an “excess in animal rights activism”, not representative for the whole movement, which was “characterized by moderate expressions”<sup>207</sup>. Even though the 2005 annual report spoke of a “boom in arson and sabotage against so-called hunting cabins”<sup>208</sup> and at least according to the AIVD the amount of illegal actions were growing, it would only be in 2007 that the AIVD would use a new label and term the animal rights movement “extremist”.

That the animal rights movement could even be considered “terrorist” was unimaginable a few years earlier. Political scientist Anton van der Heijden agrees when he tells the *Gelderlander*<sup>209</sup> that the “zeistgeist plays an important role in the criminalization of the animal rights movement”<sup>210</sup> and that “politicians today like to score with a new, strong attitude, with which it seems that they make a real difference”<sup>211</sup>. This “strong attitude” is also what was expressed in a memorandum the AIVD presented after the murder of Fortuyn<sup>212</sup>. The memorandum was published as a response to the criticism on the AIVD for not being able to stop the murder of Fortuyn and a second political murder of columnist Van Gogh. In the memorandum the AIVD spoke of a “strong service” capable of keeping society safe. It also designated the animal rights movement as a high priority for investigation<sup>213</sup> and advised local municipalities, government, and law enforcement agencies to cooperate more closely in “countering” these forms of “radicalism because (spreading) the philosophy as such – even if not directly or indirectly leads to violence” formed “a threat to the democratic legal order”<sup>214</sup>. This image of people

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<sup>205</sup> AIVD, Animal rights activism in the Netherlands, July 2004, p. 20.

<sup>206</sup> *ibid.* p. 6.

<sup>207</sup> AIVD, Annual Report 2004, p. 29.

<sup>208</sup> AIVD, Annual Report 2005, chapter “Left-wing and right-wing extremism”, p. 31.

<sup>209</sup> 'Begrip terrorisme niet uithollen'; Dierenactivisme, *De Gelderlander*, October 3, 2003.

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*

<sup>212</sup> TK 2004 – 2005, 29 754, nr. 26, memorandum on radicalism and radicalization [nota radicalisme en radicalisering] August 19, 2005.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.* p. 11.

within the animal rights movement as holding a dangerous and violent philosophy, is also what would be a continuing theme in parliament and expressed by law enforcement agencies. It was for a reason then that also in 2005 the Unit Counter-Terrorism and Counter-Activism (UCTA) had been established and animal rights activism was prioritized by DNR as “national importance”<sup>215</sup>.

By 2007 the perception of the animal rights movement as generally “moderate” had changed. After more ongoing political debates about the need for repressive measures against animal rights activism, the AIVD published its second report on the animal rights movement where it focused primarily on the protest group Respect for Animals (*Respect voor Dieren*, RvD), thereby setting the mode for more criminalization of the wider animal rights movement. RvD is a protest group created in 2004 striving for a world where animals are not exploited by humans in any way. RvD conducts public protests as manifestations, handing out leaflets in shopping districts, and holding picket lines in front of circuses where animals are used for entertainment, fur retailers or against flight company Air France-KLM for transporting animals for testing purposes. RvD follows a well established tradition of civil disobedience, seldom transgressing the Dutch legal framework.

The AIVD presented the report “Animal rights activism in the Netherlands. Springboard for Europe”<sup>216</sup> to parliament as an update of the thematic report two years earlier. As the debate whether to consider animal rights protest “terrorist” or not was still ongoing, the AIVD report was meant to inform the parliament about contemporary trends, so that parliamentary debates could be held at the basis of actual information. Many parliament members were in favor of anti-terrorism measures being used against illegal, not necessary “violent”, acts of protest, but one issue was still not cleared out. To define protest legally as “terrorism” would also mean that damages after an animal liberation action or after some acts of damages to a fence or barn would not be covered by the insurance. This had also been the reason why the earlier mentioned proposal to legally define animal rights activism as terrorism, backed by a majority of parliament and farmers' lobby groups, was pulled back at the last moment<sup>217</sup>.

The AIVD report starts with a short overview of what the AIVD perceives to be the animal rights movement in the Netherlands. Only the first three pages of the report are used for this overview. The remaining pages are focused entirely on the mentioned group Respect for Animals. This implies

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<sup>215</sup> This decision was taken in 2007 by the Board of Procurators-General. Source: Ministry of Justice, Directorate General Justice and Law Enforcement, Department of Law Enforcement and Crime Prevention, Department of Organized Crime, “Animal rights activism” [Dierenrechtenactivisme] in 5489394/07/15, June 2007, p. 6.

<sup>216</sup> AIVD, Animal rights activism in the Netherlands. Springboard for Europe [Dierenrechtenactivisme in Nederland springplank voor Europa], June 2007, translation from Dutch is my own.

<sup>217</sup> Erno Eskens, De activisten oppakken, de dieren rechten geven, Trouw, April 4, 2009.

that the goal of the report is different than giving an overview of the Dutch animal rights movement, or merely an update of the earlier report. The report specifically constructs the group Respect for Animals as a threat and describes everything about the group in the light of this assumption. The AIVD even describes RvD's financial situation: "RvD does not have to bend over backwards to get money. Nor do the activists need to act outside the law. Many Dutch people (...) are benevolent to their goal. (...) Collecting money in Dutch shopping districts provides a lot of money for animal rights campaigning"<sup>218</sup>. In focusing on just one protest group, the AIVD explicitly criminalizes the RvD as the most dangerous, or most "important"<sup>219</sup> animal rights group of the Netherlands. The AIVD writes extensively about the group and begins by writing that their main means of protest is by "public demonstrations"<sup>220</sup>. The AIVD also mentions that the expected "increase of violent activism" by which the memorandum on using anti-terrorism measures against protesters was accepted by parliament, have not occurred<sup>221</sup>. A shift can nevertheless be seen in how the AIVD approaches the animal rights movement. According to the AIVD Respect for Animals is in a process of "radicalization" as there are cases known where people have been "threatened"<sup>222</sup>. Which people or by whom is not explained and no examples are given about the alleged threats, but as the report is entirely about Respect for Animals the assumption given by the report is that RvD is behind them. The assumption of RvD as threatening people can also be found in one article by the newspaper De Telegraaf<sup>223</sup>. In the article Respect for Animals is accused of "threatening" employees of Circus Renz. Similar accusatory articles can be found by members of parliament as well. Even more, after the publication of the article in de Telegraaf, three members of the right-wing party PVV immediately asked the Minister of Justice to ban future demonstrations by RvD and extend existing laws making this possible. The reasons are quoted directly from the article in De Telegraaf where the "radical" group RvD "traumatizes and threatens little children"<sup>224</sup>. According to a local media channel and police files however, it were exactly the employees of Circus Renz who attacked the members of Respect for Animals and even the police<sup>225</sup>. At

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<sup>218</sup> AIVD, Animal rights activism in the Netherlands. Springboard for Europe. pp. 12 – 13.

<sup>219</sup> Ibid. p. 6.

<sup>220</sup> Ibid. p. 12.

<sup>221</sup> Ibid. p. 17.

<sup>222</sup> Ibid. p. 12.

<sup>223</sup> Kinderen staan te huilen, De Telegraaf, October 17, 2008.

<sup>224</sup> TK 2007 – 2008 692 "Vragen van de leden Agema, Brinkman en Graus (allen PVV) aan de ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Justitie over gewelddadigheden van (dieren) extremisten tegen circusbezoekers.", October 23, 2008.

<sup>225</sup> Vechtpartij bij protest tegen dierencircus, RTV Utrecht, October 23, 2008.

the incident one RvD protester ended up in hospital and two employees of Circus Renz were arrested<sup>226</sup>. As it is not clear if this is the example the AIVD means with “threatening”, the only thing which becomes clear is that as incidents are falsely portrayed in parliament and media, the AIVD might also not always be entirely right in its claims.

Even when one would not question the credibility of the accusations given by the AIVD, “threatening” a person can hardly be called a threat to national security and in need for the AIVD to investigate. Instead the AIVD takes the criminalization of Respect for Animals further and argues that the RvD is in a process of “radicalization”<sup>227</sup> and that “any violence directed to persons – the next step in action methods – can not be ruled out entirely in advance”<sup>228</sup>. Why this violence can not be ruled out is not mentioned, and another reason for considering the RvD a threat is mentioned later. On the last page of the report the AIVD mentions that it regards Respect for Animals to be responsible for the coordination of all nightly acts of property destruction and animal liberation in Europe<sup>229</sup>. This accusation is also not solidified and seems extraordinary for a group which only exists since 2004. But as the AIVD is the only organization in the Netherlands taken on its word that seems to be enough. Hans Moors, Head of Crime and Safety at IVA<sup>230</sup> and researcher of social movements, agrees when he tells a journalist of Vrij Nederland years later, “You may wonder whether it all as serious as the AIVD suggested. (...) I got the impression that the AIVD has it all a bit blown out of proportions. But the point is: if the AIVD says something, you can not check it”<sup>231</sup>. Moors makes a valid point. His views are not shared however by the media and parliament who without questioning take over the picture drawn by the AIVD. The credibility of the claim that RvD has in two years since its creation become the mastermind of all protest groups conducting animal liberations or acts of sabotage at the European continent, is not much reflected on by media and parliament and Respect for Animals is considered a “serious threat” to “democracy”<sup>232</sup>, all without any actual proof.

In 2009 the AIVD published “Animal rights extremism in the Netherlands. Fragmented but

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<sup>226</sup> animal. Dierenrechtenactivist ziekenhuis in geslagen, Indymedia NL, October 23, 2008, <<https://www.indymedia.nl/nl/2008/05/52475.shtml>> (retrieved at April 25, 2012), Alex, Twee circusmedewerkers opgepakt na vechtpartij met politie, Animal Rights Media, October 23, 2008.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid. p. 17.

<sup>230</sup> IVA is a research institute affiliated with the University of Tilburg, mostly doing policy research for the government, municipalities and private clients.

<sup>231</sup> Sophie Derkzen, “Ik blokkeer, ik bezet, ik keten me vast”, Vrij Nederland, March 10, 2012.

<sup>232</sup> Erno Eskens, De activisten oppakken, de dieren rechten geven, Trouw, April 4, 2009.

growing”<sup>233</sup>. The report was the last one in the series on the animal rights movement for now. In this report, which according to the AIVD gave the “principal developments in Dutch animal rights extremism since 2007”, the AIVD continued its criminalizing tone towards the animal rights movement. In the 2009 report the AIVD mentioned three groups which it considered a possible danger. They are the previously mentioned Respect for Animals, the Coalition Against Animal Testing (Anti Dierproeven Coalitie, ADC) and the group Stop Huntingdon Animal Cruelty Netherlands (SHAC-NL). The AIVD drew a picture where all three groups were in the front of illegal actions as vandalism and animal liberations. That only few actual animal liberations have happened in the Netherlands since the whole existence of the AIVD seems not to matter. I will focus on the group SHAC-NL as mentioned in the report, and thereby show more clearly how the AIVD used the new concept of “extremism” to criminalize SHAC-NL, and thereby the wider animal rights movement.

One example of such a criminalizing discourse of allegations made to a specific group is the case of NYSE Euronext. In this case, in 2008, two cars of a director of stock-exchange firm NYSE Euronext were put on fire by a group called “NYSE Euronext Bomb Squad”<sup>234</sup>. To the AIVD “it seems highly likely” that “acts” of arson committed in 2008 by this group are actually committed by members of SHAC-NL<sup>235</sup>. By first of all phrasing this incident as *acts*, plural, the assumption was made that there were multiple arsons in 2008, instead of one. In this way the act of putting two cars on fire during the night was presented as “acts of arson”, in more than just a grammatical construction. Secondly, the assumption that it was “highly likely” that members of SHAC-NL are behind the action is basically the same thing as saying that SHAC-NL was “surely” behind it. Why else to name a group in the AIVD report? Even if there is no actual proof for these accusations, the media did not use the words “likely responsible” in its coverage of the AIVD report, but plainly held SHAC-NL responsible for the act of arson.

The AIVD continued its vindication of SHAC-NL by further vague constructions, as that the people who committed the arson “may well be actual members of that group, *but* could also be autonomous individuals inspired by its ideology”<sup>236</sup> According to the AIVD, it is also “common” that

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<sup>233</sup> AIVD, animal rights extremism in the Netherlands. Fragmented but growing. April 2009.

<sup>234</sup> Two cars of the director of Euronext, the stock market trading shares of the British animal testing company, Huntingdon Life Science burned down while parked in front of his house. The Claim communique can be found at: [http://www.directaction.info/news\\_dec21\\_08.htm](http://www.directaction.info/news_dec21_08.htm) and [http://www.directaction.info/news\\_dec22\\_08.htm](http://www.directaction.info/news_dec22_08.htm) (retrieved at April 28, 2012)

<sup>235</sup> SHAC-NL is the Dutch equivalent of the British started campaign “Stop Huntingdon Animal Cruelty” aimed at getting Huntingdon Life Sciences, an animal testing facility housing in total over 70.000 animals, closed.

<sup>236</sup> AIVD, animal rights extremism in the Netherlands, 2009, p. 9.

“extremist actions”, as the Euronext arson, are perpetrated by “persons unaffiliated with any of the organizations mentioned and [are] acting alone”<sup>237</sup>. Here it appeared as if the AIVD contradicted its earlier accusation, as the people committing the arson might not be affiliated with SHAC-NL after all. But on closer reading we can see that *ideology* is used by the AIVD as the connection between the perpetrators of the arson and SHAC-NL. It is this ideology of the SHAC which according to the AIVD makes individuals “extremist”<sup>238</sup>. This ideology consisted of “ascrib[ing] animals the same rights as people”, which for the AIVD means that people with such beliefs are “extremist” and the actions these kind of people would carry out are “releasing animals, starting fires and intimidating or threatening people they consider responsible or complicit in the abuse of animals”<sup>239</sup>. What is criminalized as “extremist” is then first of all an *ideology*. In the case of SHAC-NL it is their ideology of animals having the same rights as people which makes it “highly likely” that people “unaffiliated” to SHAC-NL commit arson in its name. But this is not just their ideology, as the idea of animals having basic fundamental rights is the core of the whole animal rights movement. And the idea that animals are not only there to satisfy human needs it widely accepted by Dutch society, where over 750.000 people are vegetarians<sup>240</sup> and where an Animal Party (Partij van de Dieren, PvdD) has made it into parliament in 2006. The attribution of danger to an ideology which runs counter to the dominant view is also what Olga Aksyutina expressed in her article on the discourse of “eco-terrorism” which “is intended not only to de-legitimize environmental protest as such, but the very idea of protecting nature and animals as well as problems associated with it”<sup>241</sup>. In a similar way the discourse of “extremism” delegitimizes more than just animal rights protest, but the very ideas of protecting animals and ascribing animals the same rights as humans. In focusing on the ideas of people, and holding people as a threat to society not on the base of what they might *do*, but on the base of what they might *think*, the AIVD clearly moved forward in its “security mentality”. In doing so it took a step away from being concerned about *actions* of people, and took the dangerous step towards more politically based assumptions as its predecessor, the BVD, had done earlier about the threat of “communism”, and where the AIVD publicly tries to distance itself from.

At the end of the report the AIVD mentioned the alleged “extremist” actions which have

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<sup>237</sup> Ibid.

<sup>238</sup> Ibid. p. 7.

<sup>239</sup> Ibid. p. 7.

<sup>240</sup> Around 4.5% of the Dutch population is vegetarian according to the Vegetarians Association, <<http://www.vegetariers.nl/vegetarisme>> (retrieved at April 29, 2012)

<sup>241</sup> Olga Aksyutina (forthcoming) “Eco-terrorism” as a Means to Delegitimize the Environmental Movement, in *The Use of the “Terrorism” Discourse in Politics: A Critical Approach*, Ed. by Olga Aksyutina.

happened since 2007, which were freeing animals, destroying or covering property with graffiti and threats made by telephone<sup>242</sup>. These acts might be illegal, but calling them all “extremism” without any differentiation between “arson” or “graffiti” made it possible for the AIVD to overstate the so-called danger of these acts. If the AIVD writes “extremist action” instead of “graffiti” a very different image is created of the person or protest group accused in doing so. We have earlier seen that the definition of “extremism”, as groups or people who “consciously break the law and commit illegal acts which may be violent”<sup>243</sup> is open to many different interpretations. “Extremism”, in the image manufactured by the AIVD, correlates to acts of violence as arson, but at the same time it also includes various other acts maybe not seen as similarly violent but also illegal, as graffiti or damaging property. It is not clear how these actions are related to the AIVD's official mission of protecting “national security”. By not mentioning these acts by their specific names, but as “extremist acts” a different frame is constructed where it seems that the Netherlands is facing many serious threats, all labeled as “extremism”, and the AIVD has much to protect society of.

After the publication of the report, newspapers, TV programs and radio shows, websites and columns ran headlines about the increase of “violent animal rights activism” and the “dangerous action group SHAC-NL”<sup>244</sup>. Trying to counterbalance this negative image, SHAC-NL responded with a press-release where it condemned a society “where it is acceptable that living creatures (...) are exposed to (...) suffering” and a society “in which those responsible for atrocities against humans and animals take no responsibility for the crimes they do”<sup>245</sup>. But the harm had already been done: SHAC-NL was publicly branded as 'extremist' and nowhere it was mentioned what SHAC-NL had actually been doing, that is to say peaceful picket-lines in front of pharmaceutical companies testing on animals.

Taking the criminalization of the animal rights movement a bit further in 2010 the AIVD wrote a letter to the Ministry of Education, Culture and Science warning for animal rights activists giving public lectures on animal rights at secondary schools<sup>246</sup>. Mr. Bouman, head of the AIVD, asked Minister of Education, Plasterk, to take precautions and warn educational organizations for Respect for Animals and the Anti Animal Testing Coalition which were alleged to be examples of organizations

<sup>242</sup> Ibid. p. 22.

<sup>243</sup> Ibid.

<sup>244</sup> Leonie van Nierop, NRC, “Geweld radicaal dierenactivisme neemt toe”, April 2, 2009.

<sup>245</sup> Shac Nederland, “Shac distantieert zich”, November 9, 2008. <<http://shacnederland.blogspot.com/2008/11/shac-nederland-distantiert-zich.html>> (retrieved at April 21, 2012).

<sup>246</sup> AIVD, press-release, “AIVD geeft duiding aan voorlichting dierenrechtenorganisaties”, September 10, 2010. <<https://www.aivd.nl/actueel/@1895/aivd-geeft-duiding/>> (retrieved at April 12, 2012); Letter to OCW on the activities of animal rights extremists at schools. (annexed to 30977, nr. 38), January 15, 2010.

“that engaged in legal animal rights activism [and] can namely be an ideological umbrella and inspiration for animal rights extremists who conduct illegal and violent actions”<sup>247</sup>. The Minister of Education responded by saying that although he understands that educational institutions were free to decide how they shaped their teaching, he will pass the warning on to the “appropriate umbrella organizations” and invites mr Bouman for a presentation about these “developments” at the Ministry<sup>248</sup>. It is not clear what happened afterwards, but from questions by parliament member Ouwehand of the Animal Party, the letter has been discussed with various education councils and associations<sup>249</sup>. This final case in 2010 can be called the final and most extreme case of criminalization of the animal rights movement by the AIVD. In this year the AIVD goes further than writing a report criminalizing the animal rights movement without any proof, but actively asks schools not to have animal rights classes. The reasons according to the AIVD are because of the possibility of creating “an environment where violence against institutions and individuals seem justified”<sup>250</sup>.

Analyzing the reports of the AIVD on the animal rights movement, it has become clear how the AIVD 2004 report fuels the already present hostility towards the animal rights movement, after the murder of Fortuyn by De Graaf, constructed as an animal rights activist in the media. This report warns parliament and society that there are people in the animal rights movement who commit illegal actions and are dangerously close to “terrorism”. In 2007 another report continues the criminalization, specifically targeted to the group Respect for Animals, making unfounded accusations, while the 2009 report does the same for SHAC-NL. Finally in 2010 the AIVD engages directly with the public domain by warning schools for legally operating animal rights activists educating children about animal welfare, but thereby somehow propagating a violent ideology.

The results of such a portrayal of animal rights protest groups has been that they are increasingly seen as dangerous by the wider society, and thereby are less supported. Another consequence is that it has become harder for them to conduct in protest actions at all. Following the portrayal of animal rights activists as “extremists” policing has also become increasingly harsh. Entry to industrial areas where animal testing companies are located are declared off limits for animal rights

<sup>247</sup> Letter “Activities of animal rights extremists at schools” at Rijksoverheid, “AIVD informeert de minister van OCW over activiteiten van dierenrechtenextremisten op scholen” January 15, 2010, translation my own.

<sup>248</sup> Letter “Response of the Minister of Education, Culture and Science” on the letter of 20 January 2010 in which he is informed that animal rights extremist organizations provide information on school, February 16, 2010, translation my own.

<sup>249</sup> TK 2010 – 2011 30977, nr. 36, Verzoek lid Ouwehand, September 15, 2010 and response of Minister Marja van Bijsterveldt-Vliegenthart, November 11, 2010.

<sup>250</sup> Letter “Activities of animal rights extremists at schools” at Rijksoverheid, “AIVD informeert de minister van OCW over activiteiten van dierenrechtenextremisten op scholen” January 15, 2010, translation my own.

protesters<sup>251</sup>, demonstrations in shopping districts are broken up by police<sup>252</sup> – or even banned before they have actually happened<sup>253</sup> or only allowed after successfully appealing the municipal ban in court<sup>254</sup> – for interfering with the public order, and activists are repeatedly arrested for minor or fabricated charges and released the next day<sup>255</sup>.

## 2.4. Conclusion

We have seen that the AIVD makes much of an effort to investigate and monitor various social movements. But the AIVD goes further than just that by actively constructing social movements as risks to national security. To this end the AIVD has since 2005 used the concept of “extremism”. Since that time it also became common for the AIVD to mention protest groups they considered a *possible* risk by name. Before this time, protest groups would only be mentioned for actions they had taken credit for themselves, not for actions only ascribed to them by the AIVD but denying such involvement themselves<sup>256</sup>.

Next to the less restrictive use of names and other identifying data, we have also seen that the scope of what “counts” as danger for the AIVD has made an immense jump over the years. Before 2005 it was the act of *damage* or the perceived *harm* caused by an act which would determine if something comprised a threat to national security. Nowadays however, protest which does not act within the *legal* boundaries or does not see the parliament as the main focal point in its struggle for social change is considered a threat and can expect to have the attention of the AIVD. This is a final break away from the earlier mentioned “violent activism”.

Having looked at the AIVD's considerations and classification of protest as threats in its annual and thematic reports I have demonstrated that the AIVD's “threat” qualifications are also rather opaque.

<sup>251</sup> Dierenactivisten stuiten op hekken, Brabants Dagblad, June 30, 2012.

<sup>252</sup> Marcel van Engelen, Dierenactivisten Politie maakt wederom einde aan demonstratie. Een beetje flyeren voor een bontwinkel is er niet meer bij, de Pers, June 2, 2008.

<sup>253</sup> Gracht verboden gebied activisten, Noordhollands Dagblad, December 22, 2008; Tilburg wil dierenactivisten niet in centrum, Brabants Dagblad, January 27, 2012; Geen betoging tegen Hartelust op cityring, Brabants Dagblad, January 28, 2012.

<sup>254</sup> Winkeliers opgelucht na rustig bontprotest, Trouw, August 24, 2008; Rechter staat antibontactie Maastricht toe, Reformatorisch Dagblad, August 22, 2009.

<sup>255</sup> 'Arrestaties bij winkel niet legaal', Noordhollands Dagblad, June 5, 2008.

<sup>256</sup> The only two protest groups mentioned in this way prior to 2005 by the AIVD were “Animal Rights Militia” for a claimed arson to a poultry farm in 2002 (AIVD, Annual Report 2002, p. 54) and “Onkruid” for occupying a railway track and delaying the transport of American weapons for 24 hours in 2003 (AIVD, Annual Report 2003, p. 32).

They are often nothing more than “assumptions” in the sense that threats may “possibly”, “quite likely” or “maybe” come from certain protest groups. In the example of the animal rights movement three groups, Respect for Animals, SHAC-NL and the Coalition Against Animal Testing, are specifically named in its reports and are accused of “extremist” actions. The problem lies in the fact that the AIVD accuses protest groups of actions as vandalism and graffiti, but that it can be debated if these are actually conducted by these groups at all. This is the case as none of the members of these groups, as far as I have been able to establish, have ever been charged, let alone been convicted, for any of the acts mentioned by the AIVD in the Netherlands. Another problem lies in the fact that it is debatable as well if the described, allegedly “extremist”, acts as graffiti or vandalism should even be considered threats to the so-called “national security”.

The definitions as used by the AIVD are also highly problematic as they tell a lot about the legality of an action, but nothing whatsoever about the actual danger they entail to society at large. The AIVD defines protest as “activism”, for acts deemed legal, and “extremism”, for those regarded as illegal. This question about legality is a false one as there is no exact correlation between *legality* and *threat*. Law is a bad measure of risk as it covers many different behaviors, from those not deemed “decent” to those deemed “dangerous”. Beating up a person might be painful for the person involved, as well as being illegal, but does not in itself constitute a risk to society as a whole. This is even more clear for less harmful but similarly illegal acts the AIVD has classified as “extremist” as graffiti and vandalism. By all these acts not a single person has been hurt and no rational explanations are given by the AIVD why they should be seen as the high risks to national security as depicted in its reports.

The AIVD is the only organization in the Netherlands which can call people or groups a threat, “extremist” or “terrorist”, without proof, and not being reprimanded for it. This “proof” is hidden, according to the AIVD, in the name of security, but might as well not be there at all. As such there is no substantiated argument to refute and the AIVD has to be taken on its word. This is also reflected in “terrorism” lawsuits in which the OM can invoke AIVD material, which because of “security” reasons can not be seen, and therefore can not be negated by the defense. The lack of transparency and its determination to publicly criminalize and name social movements should make anyone wary and critical of the words of the AIVD. We have however seen that the opposite is true: most accusations towards social movements as expressed by the AIVD are directly taken over by media, government and society. The result is that the AIVD has much control over how protest is perceived by society.

Finally and most importantly, by criminalizing social movements and confining protest to a

strict reading of the “legal sphere” a whole tradition and history of social struggles for emancipation is suppressed. All major social and political changes in society as the abolishment of slavery, women emancipation and rights for marginalized populations were achieved by means of collective struggles against laws seen in those times by dissidents as unjust. Even more, the results of many of such previous collective struggles as the eight hour working day, the right for union organizing, and sick leave are seen in contemporary societies as exactly the fiber of the established political, allegedly “democratic”, system. In contemporary times however it is exactly the service officially tasked with the defense of such “democratic” values which treats similar contemporary struggles by social movements as a danger to that same order.



## Chapter 3

# Ideological Crime



We have seen how the AIVD utilizes the widespread fear for “terrorism” by labeling protesters as “extremists”. This chapter will describe how a law enforcement agency, the Dutch National Investigation Service (*Dienst Nationale Recherche*, DNR), links protest to terrorism under the header of the Orwellian sounding concept of “ideological crime” since 2005. This is a clear shift away from its official goal of investigating organized crime, and to the more political goal of suppressing dissent.

I will start by describing the place DNR takes in the Dutch security landscape, as I have earlier done for the AIVD. I will then proceed by showing the extent to which the DNR goes to criminalize dissent, and how for an agency tasked with enforcing the law, is prepared to stretch the law far itself. Following this I will analyze what the term “ideological crime” means, how it is used in the internal reports of the DNR. Finally I will analyze how this articulation of dissent as “ideological crime” affects social movements themselves, through the story of Anna and Dennis, two activists who have been under investigation by the DNR for “protest”.

### **3.1. The Dutch National Investigation Service**

The Dutch National Investigation Service (*Dienst Nationale Recherche*, DNR) is the investigative branch of the National Police Agency (*Korps Landelijke Politiediensten*, KLPD) and tasked with fighting organized crime on the national and international level. Where political motivated acts deemed to violate the law, used to be investigated as any “ordinary” crime by regional police forces, since 2004 criminal investigations into animal rights activism have been designated as investigations of “national importance” by the Board of Procurators-General<sup>257</sup>, as well as no border activism more recently<sup>258</sup>. The Board of Procurators-General (*College van Procureurs-Generaal*) is a five member leadership of the Public Prosecution Service (*Openbaar Ministerie*, OM), determining the national investigation and prosecution policy of people suspected of crimes. The prioritizing of animal rights and no border protest as “national importance” means that investigations of crimes attributed to the no border or animal rights movement are coordinated centrally by the KLPD under which the DNR operates. Since 2006 such “incidents” of animal rights activism (and most likely also no border activism, more recently) are not only investigated centrally as a high priority, but also registered in a single database

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<sup>257</sup> Ministry of Justice, Directorate General Justice and Law Enforcement, Department of Law Enforcement and Crime Prevention, Department of Organized Crime, “Animal rights activism” [Dierenrechtenactivisme] in 5489394/07/15, June 2007, p. 6.

<sup>258</sup> Anonymous interview with governmental official, October, 2011, Amsterdam.

hosted by the KLPD at the National Information Center (*Nationaal Informatie Knooppunt*, NIK)<sup>259</sup>, and in which all known protest-related offenses are registered and accessible for all employees of the DNR.

One year after designating protest related crimes as of “national importance”, the department of the DNR created to investigate “terrorism”, the Unit Counter-Terrorism and Special Tasks, was reorganized to also include protest activities and was renamed to the Contra-Terrorism and Contra-Activism Unit (UCTA). The existence of a police department as UCTA, investigating both activism and terrorism under the same denominator of “ideological crimes”, tells much about the DNR's conception of protest, and as it will become more clear in the following pages the policing of dissent and the construction of activism as “terrorism” have gone hand in hand.

The DNR investigates criminal proceedings for which it has to collect and analyze evidence to be used in court by the Public Prosecution Service (*Openbaar Ministerie*, OM). Since designated as investigations of “national importance” its National Office (*Landelijk Parket*, LP) houses one public prosecutor specifically for animal rights related cases, and another one for no border activism<sup>260</sup>.

Comparing the DNR to the AIVD, the DNR focuses on past events, where the AIVD works against possible future threats. The DNR's base for special powers, as using informants, tapping phones, covert observation and others, is therefore more limited than that of the AIVD. The data gathering of the DNR needs to have a very clear legal basis as it will be used against a suspect or suspects in a court case. As the DNR itself does not always follow the law, information gathered in this way might not always be permitted by court. That the DNR sometimes tries to cut corners in this way was recently exemplified when it became known that the DNR broke, and still breaks, into computers of assumed criminals, illegally<sup>261</sup>, echoing the *IRT-affaire* where in the 90s the Dutch police also ignored many laws by having undercover police agents import drugs themselves hoping to catch “real” drug traffickers. The response of Lodewijk van Zwieten, national public prosecutor for cyber crime and interception, to the contemporary hacking of computers, was that indeed it was not allowed, but that breaking the law was sometimes “unavoidable”<sup>262</sup>. Remarkably the DNR was not reined in, rather the Minister of Security and Justice, Opstelten, responded publicly that he would study not if the law

<sup>259</sup> TK 2007-2008, 1478, Kamervragen met antwoord: Schriftelijke vragen en antwoorden van de leden Aptroot, Griffith en Zijlstra (allen VVD) aan de ministers van Economische Zaken, van Volksgezondheid, Welzijn en Sport, van Onderwijs, Cultuur en Wetenschap, van Binnenlandse Zaken en Koninkrijksrelaties en van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer over intimidatie van de dierproefsector door dierenrechtenactivisten. March 18, 2008.

<sup>260</sup> Anonymous interview with another high ranking governmental official, October, 2011, Amsterdam.

<sup>261</sup> Wil Thijssen, Justitie kijkt illegaal in computers 'De wet schiet tekort bij jacht op internationale cybercriminelen', de Volkskrant, March 10, 2012.

<sup>262</sup> Wil Thijssen, Justitie kijkt illegaal in buitenlandse computers, de Volkskrant, March 3, 2012.

needed to be changed, but how it should be changed<sup>263</sup>, following Wilbert Paulissen, director of DNR, who had just argued for such a law<sup>264</sup>. That the relations between parliament and law enforcement are close is also demonstrated by Opstelten's State-Secretary, Fred Teeven. Teeven is known for his tough-on-crime stance and has previously worked as a prosecutor, leading many investigations into organized crime in cooperation with the DNR, where he had the nickname “pitbull” and “bulldozer”<sup>265</sup>. He is also widely known for the large amount of law proposals for tougher sentencing and increased powers for law enforcement agencies<sup>266</sup>.

### 3.2. The Concept of Ideological Crime

In 2004 the Public Prosecution Service (OM) published a memorandum outlining the strategy and the six areas the DNR and the National Public Prosecutor should prioritize from 2005 to 2010<sup>267</sup>. The OM distinguished between “predatory crimes”, “trade crimes”, and “organizational crimes”, as “economical crimes”<sup>268</sup>, and for the first time another kind of crime was introduced, that of “ideological crime”<sup>269</sup>. “Ideological crime” was, according to the OM, a grave threat, which “following the attacks in New York (2001) and Madrid (2004) hardly needs an argument. (...) As examples may be mentioned right-wing/nationalist extremism, militant forms of anti-globalism or animal activism”<sup>270</sup>. In an Orwellian twist, the OM seemed to put the killing of thousands of people on the same level as the protests against summits of world leaders, and protests for a more human treatment of animals. This grouping together such a wide spectrum of phenomena on the basis of “risk” shows how far the security mentality has developed and how the inattentive concern over “security” overshadows all other concerns<sup>271</sup>.

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<sup>263</sup> NOS, Opstelten: wet computercriminaliteit misschien aanpassen, 10 march 2012, Audio at <http://nos.nl/audio/350106-opstelten-wet-computercriminaliteit-misschien-aanpassen.html> (retrieved at April 1, 2012).

<sup>264</sup> Wil Thijssen, Justitie kijkt illegaal in buitenlandse computers, de Volkskrant, March 10, 2012.

<sup>265</sup> M. van der Kaaij, Teeven is en blijft misdaadbestrijder, Trouw, March 11, 2002; Forum, 'De pakkans moet echt omhoog', November 3, 2011.

<sup>266</sup> Ibid.; Thijs Niemantsverdriet and Paul Faassen, Fuck de feiten! Fact-free veiligheid, Vrij Nederland, August 6, 2011; Vrij Nederland, De veiligheid van Teeven en Opstelten, March 24, 2011; Marian Husken and Harry Lensink, Veilig is heilig; Reportage / Ivo Opstelten en Fred Teeven, Vrij Nederland, March 26, 2011.

<sup>267</sup> OM, Criminal Law Approach to Organized Crime in the Netherlands. 2005 – 2010 [de strafrechtelijke aanpak van georganiseerde misdaad in nederland. 2005 – 2010], 2004.

<sup>268</sup> Ibid, p. 9 – 10.

<sup>269</sup> Ibid. p.13

<sup>270</sup> Ibid.

<sup>271</sup> Frank Furedi (1997) [1948] Culture of fear: Risk-taking and the morality of low expectation. L.: Cassell; Frank Furedi, Epidemic of fear, Spiked Online, March 15, 2002, <<http://www.spiked->

In 2005 the DNR itself took over the criminalization of social movements and published the first *Crime Image*<sup>272</sup> at the request of parliament<sup>273</sup> where “ideological crime” was one of the areas of focus<sup>274</sup> in the fight against “heavy organized crime”<sup>275</sup>. Other areas of interest included cocaine trade, heroin trade, synthetic drugs, human trafficking, illegal trade in firearms and explosives, and money laundering. With ideological crime the DNR meant “the criminal activities of individuals and organizations who in the name of a certain ideology undermine the legal system.”<sup>276</sup>. According to this definition it is the *ideology* that is central to making a crime an *ideological* crime. It is not explained though in any way why and how the grouping together as diverse acts as flying a plane into a building or painting graffiti on a wall as “ideological crimes” could help the investigations into such crimes. The DNR goes as far as grouping together “terrorist attacks”, “suicide attacks”<sup>277</sup>, “murder”<sup>278</sup>, “arson”<sup>279</sup>, and “armed struggle”<sup>280</sup> as well as both “peaceful” and “violent” “radical animal rights activism”, “left-extremism”, “actions” and “demonstrations”<sup>281</sup> all as similar acts of “ideological crime”.

After many pages on “drug trade”, “weapon smuggling” and “human trafficking” the DNR starts its chapter on “ideological crime”. It begins with a lengthy expose on terrorism and guerrilla warfare to then continue with animal rights activism. The investigation of animal rights activism as

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[online.com/Articles/00000002D46C.htm](http://online.com/Articles/00000002D46C.htm)> (retrieved at June 5, 2012); David L. Altheide (2002) *Creating Fear: News and the Construction of a Crisis*, N.Y.: Aldine de Gruyter; David L. Altheide (2006) *Terrorism And the Politics of Fear*. Lanham, MD: AltaMira Press; Zbigniew Brzezinski, *Terrorized by 'War on Terror'*, Washington Post, March 25, 2007; Dan Gardner (2008) *Risk: The Science and Politics of Fear*. Toronto: McClelland & Stewart Ltd; Henry A. Giroux (2002) *Democracy and the Politics of Terrorism: Community, Fear, and the Suppression of Dissent*, *Cultural Studies ↔ Critical Methodologies*, Vol. 2 (3), pp. 334-342.

<sup>272</sup> The DNR publishes a yearly overview, the *Crime Image* (Criminaliteitsbeeld, CB), where all the areas of interest are summarized and the general investigation policy is outlined. Next to the CB the DNR publishes a two yearly separate reports focusing extensively on one focus point, the *Crime Image Analysis* (Criminaliteitsbeeldanalyse, CBA). These reports are normally not disclosed to public, they describe DNR's official internal policy and strategies for investigation. The documents used in this analysis are, with some exceptions, acquired through FOIA (*Freedom of Information Act*, in Dutch called *Wet Openbaarheid Bestuur*, WOB) requests by Buro Jansen & Janssen. Such documents will be abbreviated as CB or CBA followed by the year about which it portrays an image, not the year of publication (often one year later).

<sup>273</sup> TK 2004 – 2005, 29 911 nr. 1, Bestrijding georganiseerde criminaliteit. Brief van de ministers van Justitie en van Binnenlandse Zaken en Koninkrijksrelaties, December 22, 2004.

<sup>274</sup> KLPD/DNR “Ideologisch gemotiveerde Criminaliteit” in “Criminaliteitsbeeld 2005” (CB 2005), Driebergen: Korps landelijke politiediensten / Dienst Nationale Recherche, 2006, p. 88 – 107.

<sup>275</sup> CB 2005, p. 7.

<sup>276</sup> Ibid. p. 88.

<sup>277</sup> Ibid. p. 91.

<sup>278</sup> Ibid. p. 92.

<sup>279</sup> Ibid. p. 92, 98.

<sup>280</sup> Ibid. p. 94.

<sup>281</sup> Ibid. p. 96.

“ideological crime” is justified on the ground that the murder of Pim Fortuyn by a “radical environmental activist” in 2002, “drew attention to the drastic extent of radicalization in this corner”<sup>282</sup>. How the action of one individual would be representative for a whole movement is not made clear, but the line of thinking does tell us something about the manner in which the DNR evaluates social movements. In this it exhibits the same attitude of blaming and othering as espoused earlier by many members of parliament and right-wing media blaming the whole animal rights movement in the murder of Fortuyn.

Another problem with the report is that it is full of vague assumptions without any proof, or even slanderous ones, exactly as we have earlier found in reports by the AIVD. Such assumptions were already highly problematic in the case of the AIVD, but as we have seen the AIVD thrives on secrecy and is therefore difficult to hold accountable. But for the DNR, as a law enforcement agency, to use similar constructions is more than excessive. The DNR writes for instance about “violent activists” who have been acquitted by court<sup>283</sup>. But if a person is seen by the court as not guilty, what right does a police department have to label him or her as an “ideological” criminal? As the DNR is part of the police it should only concern itself with “facts” and not come with ungrounded claims, even less with claims which run counter to a court ruling. About the damages caused by acts of property destruction by animal rights activists the DNR informs that it is difficult to assess, but that “it is indicated that this damage is considerable”<sup>284</sup>. How this is indicated is not mentioned, and why it would be “considerable” is also not made clear anywhere in the report. Next to these problematics of the report, a more fundamental problem lies in the label of “ideological crime” itself, as already mentioned earlier, no explanation is given why or how the classification would help in the investigation and persecution of criminal activities.

Why the DNR decided to use the concept of ideological crime became a bit more clear however in 2007 when it published a report solely on “ideological crime”<sup>285</sup>. The report starts with a foreword of

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<sup>282</sup> Ibid. p. 98.

<sup>283</sup> KLPD/DNR, *Ideologische misdaad, Deelrapport Criminaliteitsbeeldanalyse 2007 (CBA 2007)*, Driebergen: Korps landelijke politiediensten / Dienst Nationale Recherche, 2008, p. 56, footnote 164 p. 108.

<sup>284</sup> CB 2005, p. 99.

<sup>285</sup> KLPD/DNR, *Ideologische misdaad, Deelrapport Criminaliteitsbeeldanalyse 2007 (CBA 2007)*, Driebergen: Korps landelijke politiediensten / Dienst Nationale Recherche, 2008. As half of the document has been blacked out by the DNR, much of which groups or individuals are seen as “ideological criminals” can not be clearly studied. Information excluded of the right for public information is for instance data which would interfere with state security, unity of the crown, business and manufacturing details, economic or financial interests of the state, privacy (personal data), or data which is used in the current investigation and prosecution of offenses (Wet openbaarheid van bestuur, Chapter V, article 10 and 11).

the director of the DNR, who writes that “terrorism”, “heavy organized crime” and “activism” are “often very complex” and “use the legal infrastructure, operate illegal markets or terrorist activities.”<sup>286</sup>. This will set the tone of the report. Organized crime is mentioned here and there, but the report is entirely about terrorism and activism. What the report actually does is linking acts of “activism” to the concepts “terror” and “terrorism”<sup>287</sup>. This happens all through the report that at the end of the report, when the chapter itself is actually about protest<sup>288</sup>, the dividing line between acceptable forms of protest and so-called “terrorism” has disappeared. At that time activism is framed as “terrorism” without any problems for the internal logic of the report.

The start of this line of thought can be found in the introduction where it is acknowledged that although ideological crime is “not necessarily terrorist”<sup>289</sup>, the term includes what the legislative means under “crimes committed with a terrorist intent”. This is stated, even though ideological crime is not a category from the Penal or Criminal Code, but “defined more broadly and also includes lighter criminal activities”<sup>290</sup>. This means that the understanding of “ideological crime” is quite similar to the construction of “extremism” in the AIVD reports, but even closer connected to terrorism. This fits well with the approach envisioned by the OM which advised the investigations to be conducted into “ideologically motivated crime” to be “similar” to that of “predatory crime”<sup>291</sup>. In other words, even if ideological crime is not a legal term, it will still be used as a basis for an investigation. In this way protest becomes investigated as a crime, even though no actual criminal offenses might actually have occurred. Even more, the memorandum also calls for an “explicit link” with the AIVD<sup>292</sup>. Put differently, ideological crime is an exceptional, not legally defined crime, where the AIVD and DNR work closely together. The AIVD against “extremism”, and the DNR against “ideological crime”.

Ideological crime was defined in 2005 as “crimes committed with reference to a philosophy of life”<sup>293</sup>. This already vague definition was apparently not broad enough for the DNR when 2007 the definition was changed to, “the collection of crime, including preparatory acts, committed from a philosophy of life”<sup>294</sup>. The reason given by the authors is that in the previous definition actions might

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<sup>286</sup> CBA 2007, p. 8.

<sup>287</sup> CBA 2007, p. 8, 20, 22, 23, 28, 32, 87: “activism and terrorism”, p. 25: “activism and terror” and p. 30: “activism and extremism”

<sup>288</sup> CBA 2007, pp. 90-140.

<sup>289</sup> Ibid. p. 10.

<sup>290</sup> Ibid.

<sup>291</sup> OM, aanpak georganiseerde misdaad 2005-2010, p. 13.

<sup>292</sup> Ibid.

<sup>293</sup> CBA 2007, p. 22.

<sup>294</sup> Ibid.

have happened where no ideological motive is disclosed by the perpetrators, but might actually be “evident”<sup>295</sup>. According to the DNR such motives are “plausible” if “evidence or facts or circumstances indicate that an ideological or philosophical motif is at stake”<sup>296</sup>. But as this interpretation of motives, and what constitutes an ideology, is all up to the interpretation of the DNR, a crime becomes ideological when the DNR decides it to be.

Not having defined what counts as “ideological”, the DNR also does not delineate sharply what is understood as “extremism”, “radicalism” and “activism”, and which sometimes refer to “opinions” and sometimes to “behavior”<sup>297</sup>. As with “terrorism”, what is actually criminalized with the concept of ideological crime, are not specific actions. What is criminalized also goes further than specific ideologies or -isms as communism or anarchism. What is criminalized are ideas or views people might have of the world and the events around them, but which run counter to the dominant view. These thoughts of non-conformity are what is meant when the DNR jots down the word “ideological crime”. What makes a crime *ideological* then, is the will of the DNR to see a loosely, or not at all, defined ideology as the *motivation* for the crime. The deliberation of criminality and the necessity of investigation becomes a *political* reasoning, where some criminal acts are decided to be ideological in nature, and others are not.

This “new security mentality” as Magnus Hörnqvist has called it, overpasses all other concerns for proportionality, human rights, or moderation<sup>298</sup>. When security becomes the basis on which to organize society “the focus is shifted to what a person might do instead of what a person has done”<sup>299</sup>. Ideas, ideologies and philosophies themselves become suspect, as they are the cause of such terrible crimes. About the ideology of “communism” the DNR for instance writes that it has become a “rather obscure movement”, but that actions by governments against are “probable” as “involvement in violence is likely”<sup>300</sup>. This connection between “communism” and “violence” is made only on the basis of it being an *ideology*, and therefore dangerous and violent. The contemporary dominant ideology which stands behind the current governing structures and view of the world, capitalism, is relieved from this status, by being “not an ideology”<sup>301</sup> at all, according to the report. That the current dominant

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<sup>295</sup> Ibid.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid.

<sup>298</sup> Magnus Hornqvist (2004) The Birth of Public Order Policy. *Race and Class*, Vol 46 (1).

<sup>299</sup> Ibid. p. 37

<sup>300</sup> CBA 2007, p. 170.

<sup>301</sup> Ibid. p. 91. as quoted in Buro Jansen & Janssen, Politieke politie in Nederland, March 11, 2010, <[http://www.burojansen.nl/artikelen\\_item.php?id=441](http://www.burojansen.nl/artikelen_item.php?id=441)> (retrieved at May 24, 2012).

order is highly ideological is something we should better forget.

In this mindset “[n]either the assessment of the problem nor the response need be proportionate to a concrete threat. It is more a question of who succeeds in establishing their definition of the situation and less one of what the threat really consists of”<sup>302</sup>. We can come back to Mary Douglas here for whom the classification of specific “risks” or “sins” reflects specific ways of life and a “specific way of structuring social relations and a supporting cast of particular beliefs, emotions, perceptions and interests”<sup>303</sup>. This specific way of identifying risks is what we have earlier also called a “regime of truth”<sup>304</sup>, in which “truth” and “knowledge” are produced within a historically specific dominant discourse. This system of ordering empirical materials to fit a certain world view is based on the post-9/11 feeling of *fear*. Again with criminologist Hornquist, in this new “security mentality” in which the focus lies in what someone is perceived to potentially do, “[f]ear becomes a controlling mechanism for the maintenance of the social order” where “any element of non-conformity is construed as a threat”<sup>305</sup> and where protest is seen as in need to be curtailed in this ever increasingly dangerous world. What this means for the political space in reality and the practical possibility for protest will become clear with two examples from Dennis, an animal rights activists, and the earlier mentioned case of Anna.

### **3.3. The Struggle Against Animal-Testing and its Suppression by the DNR.**

In April 2004 an action took place against the Biomedical Primate Research Centre (BPRC) in Rijswijk. Late at night eight people cut down two meters of a fence surrounding the terrain of BPRC. The BPRC is the biggest primate research center in Europe<sup>306</sup> and was then the object of many protests actions for its treatment of and testing on animals. Dennis, an activist involved in the 2004 action recalls how they were driving back from the place of action to a house they were supposed to sleep, but were awaited by the police and DNR. The police had filmed the entire action by infrared cameras and

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<sup>302</sup> Hornquist, p. 40 – 41.

<sup>303</sup> Mary Douglas, Michael Thompson and Marco Verweij (2003) Is time running out? The case of global warming. *Daedalus*, 132 (2), 98–107 p. 100, as cited in Andy Alaszewski, The future of risk in social science theory and research, *Health, Risk & Society*, Vol. 11, No. 6, December 2009, 487 – 492, p. 488.

<sup>304</sup> Michel Foucault (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972 – 1977* N.Y.: Pantheon. p. 131.

<sup>305</sup> Hornquist, p. 30.

<sup>306</sup> BPRC houses around 1250 monkeys for breeding of which 140 for animal testing. (Numbers from: Esther Ouwehand, Algemeen Overleg Kennismaking OCW, 26 april 2007, Partij voor de Dieren <<https://www.partijvoordedieren.nl/tweedekamer/speeches/i/23>> (retrieved at May 3, 2012).

had been watching their every move. Dennis laments the fact that the action was taken so serious, both by the media and by law enforcement agencies. The action was what they termed a “speldenprik”: a small, playful action, causing only minimal damage, intended to bring some attention to the problem of animal-testing in a funny way:

Onthek je plekje, its a funny name, it wasn't supposed to be so... something which was a bit lighter, so people could laugh about it a bit more. But somehow even these kind of actions the press love to make into an extreme terrorist action.<sup>307</sup>

The name of the action “onthek je plekje” was a pun on a popular Dutch TV-show *ontdek je plekje* which means “discover your place”, where attention was given to a town or a city. In a similar way the action group “onthek je plekje” – from *ont-* for de- and *hek* for fence, so “removal of a fence” – wanted to bring attention to the BPRC practice of testing on animals.

The morning after the arrest the activists were interrogated by the police and DNR about their participation in animal rights protests, where many questions were not at all related to the action they had just done, but about other actions they knew nothing about. They were held in restricted custody, meaning that they were not allowed to have any newspapers or radio and could not have contact with other people, except for their lawyer. Meanwhile, in three different places, as a friend of Dennis who was at home told him later, “30 pumped up riot cops, people with bulletproof vests”<sup>308</sup> kicked in doors and conducted house searches, opening photograph lists, looking behind books, and knocking on walls, to see if anything was hidden behind it. The DNR confiscated computers, papers, books, and many other things they suspected of being somehow related to activism. Looking back at this, Dennis tells,

What was scary when I got locked up and I got the proces verbaal [charge papers], I was reading them when I heard about the [house] raids. They can only do this if theres like reason for it, but you have to have done something that is likely to get you six years or more in prison. Like an arson, or extreme violence. In Holland six years is a lot.<sup>309</sup>

At the court case which followed it became clear that the DNR and AIVD had in close cooperation with each other been conducting a huge investigate operation and had been listening in at all their

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<sup>307</sup> Interview with Dennis, January 4, 2011, Utrecht. Interviewed by Olga Aksyutina.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

phone calls, intercepting mail messages, and had been following members of the group. According to Dennis this was probably the case, because there were a lot of actions going on at that time and there was a big pressure from the animal-industry, government and media to get the “extremists”. When these could not be found they went for the first animal rights action group they could find and made a big media spectacle out of it, to at least give in to the pressure and show some results.

The depth of the ongoing investigation and the huge amount of invested resources became clear when pages of a then still to be published DNR report on animal rights activism could be found in the case material. The included pages of the “Crime Scene Analysis: Radical animal rights activism, 1999-2003”<sup>310</sup> gave an overview of the ideology and history of the animal rights movement, but what else was in the report was still unknown. As the report has become publicly available, it can be reconstructed that behind the scenes, it played an important role in how the investigation was carried out. Its authors for instance argued that as no people could be found responsible for the acts of property destruction going on at the time against the BPRC, a shift in investigation would be needed. This shift meant that not individuals would be held responsible for their deeds, but the “*organization*”<sup>311</sup>, by using Article 140 of the Dutch Penal code and charging all activists with being members of a criminal organization. In the report the DNR explains step by step what needs to be taken into account when collecting evidence for such a crime, in the field of “organization”, “participation and “purpose”<sup>312</sup>. From such data a picture would need to be drawn which could proof that an action group was a “structured and sustainable partnership of two or more people with a certain level of organization”<sup>313</sup>. One would be a member of such an organization if he or she participated in or supported the *organization* by any means, not necessarily its actions. Even knowledge about any protest actions would not be required as being part of the organization would be sufficient.

About the criminal organization charge Dennis now says that “its really hard to proof that people are part of an organization. If you read the [case] files they try to see if there's a grouping. We all sensed that they would try the criminal organization thing. Thats what they want all the time”. With “all the time” Dennis means earlier cases where article 140 has been used against protesters. Only a few<sup>314</sup> of these cases have managed get a conviction based on this article. Even though, it seems that the

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<sup>310</sup> KLPD / DNR, 2005, Criminaliteitsbeeldanalyse Radicaal dierenrechtenactivisme 1999-2003 (CBA 2004).

<sup>311</sup> CBA 2004, p. 130.

<sup>312</sup> Ibid. pp. 124 – 126.

<sup>313</sup> Article 140 of Penal Code, as cited in *ibid*.

<sup>314</sup> Because of the limited space of this thesis, I cannot go into the history of the use of Article 140 against dissent. About the “Opstand” case in 1994 see Buro Jansen & Janssen, “Artikel 140 en de inval bij Opstand: Een analyse van december 1994”, NN, december 1994; About the eviction of the Mariënborg in 1987 see

OM and DNR have not given up, as the article keeps popping up in many different protest-related cases. Asking Peter of the police and intelligence research collective, *Buro Jansen & Janssen*, about the article he explains that article 140 is used for the *rake*-method where a law enforcement agency wants to be sure to get as many people as possible charged for what maybe only one or two people actually have done<sup>315</sup>. Next to this, article 140 is also used for “fishing expeditions”, where it can be used as the initial charge to start a heavy investigation with extended powers as house searches, phone taps and observation. In this way a lot of “evidence” can be collected, which even if the charge doesn't stick, still can be kept and used for other charges within the same court case, or other investigations.

For Dennis it is clear that article 140 and the investigation were to gather information about the animal rights movement, but also to intimidate him and his friends to stop protesting against the BPRC. One such example was the total “overkill” of private information in the case documents:

All the phone calls they put in my file, they were just normal phone calls to friends. Nothing to do with anything so I don't know why they put that in my file, because its all personal stuff and no links whatsoever to anything.(...) In the file there is one instance where they were following me and this friend. They were describing that we went swimming in our underwear. So they were describing our underwear. It was kinda weird and disgusting.<sup>316</sup>

When it became clear that article 140 would not work the prosecutor tried to play the “extremist” card. The criminalization of animal rights activists as “extremists” had found a willing audience, because of the just published AIVD report on animal-rights activism<sup>317</sup> one month earlier and the ongoing media campaign against animal rights and environmental activists in the wake of the murder of Theo Van Gogh, called in the DNR animal rights report the “Pim Fortuyn-Effect”<sup>318</sup>.

In my court case the one persecuting us, the prosecutor [court prosecutor Mrs. Plugge] she said “Well, but you're not occupying an office”. That was after we cut away two meters of fence, that's what we did. And I'm thinking ok so your referring to occupying an office at

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Robert van de Griend / Harry Lensink, “Louis Sévèke, kwelgeest van de geheime dienst”, *Vrij Nederland*, November 26, 2005; For more general info see also “Openbare orde verstoringen en criminele organisaties” in *Buro Jansen & Janssen, Tips tegen Tralies*, Uitgeverij Baal, July 2000.

<sup>315</sup> Interview with Peter, October 2011, Amsterdam; Telephone interview Peter, April 2012.

<sup>316</sup> Interview with Dennis, January 2011, Utrecht.

<sup>317</sup> AIVD, July 2004, *Animal rights activism in the Netherlands*.

<sup>318</sup> CBA 2004, p. 112.

the end of the 80s when she was probably a student and maybe even joined one of these actions. “But you are people that burn down buildings”. And I'm thinking, ok how do I get from cutting away two meters of fence, to burning down buildings?<sup>319</sup>

From the words “you are people that burn down buildings” of court prosecutor Plugge it can be seen that there was the conscious effort of creating an image of the eight people as dangerous. It was not what they had done which was so serious, two meters of a fence could be replaced easily, but it was the fact that there were other unsolved cases of more serious property destruction for which the eight could be held responsible. Even if after tapping their phones, emails and following them for days, no proof of any of these other actions could be found, they were still portrayed as arsonists. If not their actions, it were their thoughts which made them a danger. This way of thinking follows the concept of ideological crime closely and could also be seen by court prosecutor Plugge when she argued in court that the action “was deliberately planned from an ideology and such radical actions by animal rights activists are disruptive to democracy”<sup>320</sup>. This attitude towards protest has paved the way for an increasingly hostile portrayal of protest, and an assault on the very fundamental of human life, political action, or the “active life”<sup>321</sup>, of allowing alternative political visions to exist in the minds of people, or even to act upon them. This presumption will become clear in the example of Anna, for whom other means than the article 140 procedure were used by the DNR to criminalize and investigate her protest activities. Next to the advise of the OM to use article 140 to prosecute protest activities, another possibility for the suppression of activism was mentioned in the DNR report where after the introduction of the Terrorism Act animal rights activism could “under conditions” be labeled a terrorist offense<sup>322</sup>. In the example of the BPRC case article 140 did not work and also terrorism-charges could not yet be used. The eight activists were convicted for public violence, with 500 euros in fines each, for damages to the fence. That in the end the conviction was only for a minor offense, does not lessen the fact that for many of the eight arrested activists it has been a traumatic experience. To be thrown in jail and branded an “extremist” or “arsonist” by media and in court, for your “playful” protest against an animal testing company has given many people a painful memory of government harassment of protest.

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<sup>319</sup> Interview with Dennis, January 2011, Utrecht.

<sup>320</sup> Hofaanklaagster Plugge in Nico, “Statement rechtszaak hejkknippers BPRC”, Indymedia NL, October 2, 2005, <<https://www.indymedia.nl/nl/2005/10/30932.shtml>> (retrieved at April 13, 2012), my italics.

<sup>321</sup> Hannah Arendt introduced the term active life (*vita activa*) to describe her thought where she sees political “action” (together with work and labor) as the basic condition of human life. Hannah Arendt (2002) *The Human Condition*, Chicago: University of Chicago Press.

<sup>322</sup> CBA 2004, p. 130.

### 3.4. Migration-Justice as a Threat: The Ongoing Investigation of Anna

The earlier mentioned arrest of Anna can be placed within the wider context of the growing protest against the Dutch migration policy with groups as AAGU and Stop Deportations, but also many more groups publishing migration-related news, groups doing solidarity work for refugees, and more. No border activism finds itself in a position very similar to that of animal rights some years ago. In 2003, as we have seen, with the growth of animal rights activism, there was great pressure from government and from the animal testing-industry to go tough on animal rights activists. In a similar way, the last years (since 2005) have seen a large number of protests against the Dutch migration policy, which is getting more harsh every year<sup>323</sup>, and against detention centers, where people without papers – labeled as “illegals” – are held captive, sometimes for years, until they are deported. Next to the many public protest actions, there have also been a few cases of property destruction. The government and building companies which have been the target of these acts are pressuring government and law enforcement agencies to take harsh measures against “asylum-related extremism”<sup>324</sup>. Again a special investigative team has been formed by the DNR and a slip of the tongue of State-secretary of Justice, Teeven, also made clear that already in 2010 a public prosecutor with the name of Schram, had been appointed to coordinate the investigation in no border activism<sup>325</sup>. The fact that such an investigation has been started and that it is headed by a specially assigned prosecutor, shows that there is much political pressure to take action against the continuing acts of protests. In the need for quick results, it seems that prosecutor Schram is again repeating history. Similarly as for the BPRC arrestees, who were arrested for being a visible public protest group, by arresting the single most public no border activist of the

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<sup>323</sup> The Dutch migration policy has been criticized by among others Human Right Watch and Amnesty International for being too harsh and not following European Convention on Human Rights. The European Court of Human Rights has reprimanded the Netherlands several times in asylum cases and stopped the Netherlands from deporting asylum seekers to Greece where the asylum conditions are inhumane and to central Somalia where war rages. See for example HRW, *Fleeting Refuge. The Triumph of Efficiency over Protection in Dutch Asylum Policy*. April 9, 2003; HRW, *The Netherlands: Discrimination in the Name of Integration*. May, 13, 2008; HRW, *Controlling Bodies, Denying Identities*. September 13, 2011; Amnesty, *Foreigners detention in the Netherlands: It can and must change [Vreemdelingendetentie in Nederland: Het kan en moet anders]*, 11 October 2011; Amnesty, *Netherlands: Protecting human rights at home*, November 28, 2011.

<sup>324</sup> “Illegaal verzet grijpt diep in”, *Cobouw magazine*, December 6, 2009; *Activisten plaag voor BAM*, *De Metro*, June 30, 2011.

<sup>325</sup> *Rijke asielzoeker kan terugkeer betalen*, *Nu.nl*, January 26, 2011, <<http://www.nu.nl/politiek/2431873/rijke-asielzoeker-kan-terugkeer-betalen.html>> (retrieved at April 13, 2012).

Netherlands, Anna, the message is given to the whole no border movement, as well as to other social movements, that protest transgressing the legal boundaries of the law, will be treated as “terrorism”.

Because of the secrecy surrounding the case, not much is known about the current ongoing investigation. In a recently published article by *Vrij Nederland*, about “asylum activism”<sup>326</sup>, Schram can be heard publicly about the case for the first time<sup>327</sup>. For this reason, I will quote from the article at length. In the article Schram starts by saying that he has no idea how large the illegal opposition to asylum and immigration policy exactly is: “They are extremely difficult to detect. The offenses committed are for us almost impossible to predict. An arson or a destroyed fence give few opportunities to investigate”<sup>328</sup>. A bit further Schram acknowledges that there are indeed only a few *home visits*<sup>329</sup> each year, but that it would not be “appropriate” to completely “relativize” the threat. Contrary to home visits, Schram continues, “arson and vandalism are *more common*”, even though he is “not talking about hundreds of cases”.

Let us analyze Schram his words step by step. Schram first points at the professionalism of the “extremists” and the seriousness of their “not hundreds” of crimes with arson and severe damages to fences. With the “not hundreds” cases of arson Schram actually means *two*, one in 2009<sup>330</sup> and another one in 2010<sup>331</sup>. Also the fact that the “not hundreds” cases of arsons and damages would not give many opportunities for investigation is plain false, as three big cases of arson in 2000 were exactly the reason for the start of the initial animal rights investigation, supra-regional investigation team Escape<sup>332</sup>, and the mentioned publication of extensive reports by the DNR and AIVD.

Finally, Schram can be seen trying another scare-mongering tactic when he points at “animal rights extremism” which plainly is going “out of control”. Schram then makes the argument that in those cases there was no “arson at construction sites, but in people's homes, in the carport”. The only case where such an action indeed did happen in the last decade has been the earlier mentioned “NYSE

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<sup>326</sup> Sophie Derkzen, “Ik blokkeer, ik bezet, ik keten me vast”, *Vrij Nederland*, March 10, 2012, p. 36 – 42.

<sup>327</sup> Many phone calls asking to get in contact with Schram failed, and also an extensive search in the Dutch version of the database LexisNexis yielded no results, except the mentioned article in *Vrij Nederland*.

<sup>328</sup> Derkzen, *Vrij Nederland*, March 10, 2012.

<sup>329</sup> Home visits are actions which are done by anonymously operating groups, most often at night, at the house addresses of people they held responsible for the testing on animals, or the construction of detention centers. Unlike the media messages about human harm or danger to people's lives, the only damage which has ever been done by such actions is against property, not human lives.

<sup>330</sup> Anarchist Fire, Detention centre construction site firebombed! August 23, 2009, <<https://www.indymedia.nl/nl/2009/08/61170.shtml>> (retrieved at April 13, 2012).

<sup>331</sup> Anarchist Arsonists, Strukton Firebombed, July 6, 2010, <<https://www.indymedia.nl/nl/2010/06/68319.shtml>> (retrieved at April 13, 2012).

<sup>332</sup> CBA 2003, p. 106.

Euronext Bomb Squad”, which as we saw in the chapter on “extremism” was claimed by the AIVD to be connected to SHAC-NL without a shred of proof. The few cases that indeed arsons have been committed also are not as life-threatening as Schram makes them out to be, as acts of arson which could argued to be connected to no border politics happened at places – an empty office and a desolated construction yard – where no one could be injured.

When asked about Anna's arrest and the current investigation, Schram does not want to go into details, as the investigation is still ongoing. He does want to assure however that the arrest of Anna for instigation stands solely on itself and has,

nothing to do with what she does in a group. There may in her mind a larger conspiracy behind it, but that's not how we work. (...) We go into a house to stop the instigation and to investigate those who had committed it. That is what we must prove, therefore the house search is important<sup>333</sup>.

Schram here says two things. First of all that the arrest and the current investigation stands on its own. This is highly unlikely, since there's a reason he has been appointed as specific “asylum extremism” prosecutor. Schram needs to get results and for this reason the arrest of Anna is used as a fishing expedition to gather information about the no border movement and the people with whom Anna protests, even if none of them, but Anna, have been charged with a crime. Asking Anna about Schram's words she tends to think the same thing: “He [Schram] can not possibly believe that the confiscation of a navigation system, a calendar, and taking pictures of an address book can be reconciled with 'stopping sedition and investigating those who had committed sedition?'”<sup>334</sup>. Also the fact that Schram does not want to give Anna her computer and usb sticks back points in the direction of a fishing expedition where the net is thrown out and hopefully more “ideological criminals” can be fished up.

Secondly, according to Schram, to stop the instigation and investigate who had committed it, a house search is absolutely needed. This is even more unlikely, since the only reason for a house search, for which an official permit needs to be given by a magistrate, is to gather evidence, not to stop criminal acts. This statement is even more absurd as Anna's website where she had published the texts was taken off-line only weeks later. A take down notice<sup>335</sup> was send to the web host, who complied and

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<sup>333</sup> Derkzen, Vrij Nederland, March 10, 2012.

<sup>334</sup> Email conversation with Anna, March 2012.

<sup>335</sup> Under the European e-commerce Directive (2000/31/EC) Internet Service Providers (ISP) are responsible for any illegal material of their customers. If a complaint is send to an ISP about certain materials it is for the ISP

shut down the website. The house search was not in any way required for this. Also it was quite clear who had written the articles as they were all signed by Anna herself, and they could be found as such on her personal website, [anna.nl](http://anna.nl)<sup>336</sup>.

At the moment of writing the investigation officially takes place under the charge of “instigation with terrorist intent” (article 131 Criminal Code) and it not known what the “actual” charge will be when the time for a court case will come. It is up to Schram as a public prosecutor to make sure that the investigation happens “carefully and honestly”<sup>337</sup>, meaning according to the law. Luckily for Schram, in the case of “ideological crime”, legally translated as “terrorism” or “terrorism” aggregation, the law becomes much more elastic.

This can already be seen in the current conduct of Schram who until now has refused to hand over all the case documents to Anna and her lawyer. At a court hearing on 27 March, against the continuing seizure of her computer and usb sticks, Schram told Anna and her lawyer that he will “consider” whether he will make any documents available to them. The next hearing will only take place three weeks later where both the objection to the continuing seizure and the refusal for giving all case documents will be dealt with. This shows that even though the official charge is still unknown, it can be anticipated that the terrorism aggravation will play an important role, as this is the only legal way for a prosecutor to hold back evidence. Former cases headed by Schram show that he might not intend to play the game even according the already flexible legal rules. Readers familiar with the Dutch situation might remember the court case where confidential conversations between Hells-Angels members and their lawyer were taped and could be found typed out in the case materials<sup>338</sup>.

Even though we cannot know for sure what role “ideological crime” plays in the case of Anna, let's start with the last known definition from the DNR 2007 report: “the collection of crime, including

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to find out if the material is illegal and remove it if this is the case. For this no laws exist, only if the material is not removed, a court case can be started in which the ISP is held liable, To standardize such administrative censorship a code of conduct has been created (Gedragcode Notice and Take Down). Also an online cybercrime hotline is started by the KLPD where “child pornography, child sex tourism and terrorism on the Internet” can be reported. <<http://www.meldpuntcybercrime.nl>> (retrieved at 13 April 2012). See also: Bits of Freedom, Study: ISPs too eager to take down legal content, May 19, 2004.

<sup>336</sup> As Anna is a pseudonym, the real website is actually the real name used by Anna to publish her texts. And under which she takes actions against the Dutch migration regime.

<sup>337</sup> "De officier van justitie", website Public Prosecution Service, <[http://www.om.nl/organisatie/de\\_officier\\_van/](http://www.om.nl/organisatie/de_officier_van/)> (retrieved at April 13, 2012).

<sup>338</sup> LJN: BC0685, Rechtbank Amsterdam, 13/133067-04, December 20, 2007, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BC0685>>, abstract of case: “OM inadmissible; serious, widespread and repeated violations of Art. 126Aa Sv; violations of rules with respect to conversations with holders of confidentiality as serious as direct violation of right to remain silent; lack of accountability by OM; confidence in the administration of justice harmed.” (retrieved at April 13, 2012).

preparatory acts, committed from a philosophy of life”<sup>339</sup>. Also we can remember that ideological crime was “not necessarily terrorist”<sup>340</sup>, but includes what legally was meant with “crimes committed with a terrorist intent”. So if ideological crime is for the DNR what is legally meant with an existing crime with a terrorist aggravation, there seems to be a perfect match with the charge against Anna of “instigation with terrorist intent”. Of this again, we cannot be certain, as the concept “ideological crime” is only used inside the DNR's organization and not in court. It seems too accidental however, that the second advice of the 2007 report proposed that activism could “under conditions” be labeled a terrorist offense<sup>341</sup>. After the failure of article 140 for the BPRC case it seems that the Terrorism Act, and its many terrorism-aggravations to earlier existing crimes, will come as another useful tool for the suppression of dissent. “Ideological crime” and its legally defined counterpart “terrorism” will enable the police and DNR to have a huge increase in investigative possibilities. It will also let them try again to, in their minds, finally put some of those “extremists” behind bars, not as a member of a criminal organization this time, but as a “terrorist”. After all, so the DNR report tells us, “an activist can incidentally emerge<sup>342</sup> as a terrorist”<sup>343</sup>.

### 3.5. Conclusion

In this chapter I have shown how the National Police Squad (DNR), while not always following the law itself, has a high motivation to curb dissent which does not follow the legal constraints of the law. In the generally hostile public and political atmosphere towards protest, incidents of illegal acts linked to animal rights activism or no border activism have been designated as investigations of national importance. This means that the Unit Counter-Terrorism and Counter-Activism (UCTA) of the DNR, in close cooperation with both the Public Prosecution Service (OM) and the AIVD, investigates such

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<sup>339</sup> CBA 2007, p. 22.

<sup>340</sup> Ibid. p. 10.

<sup>341</sup> Ibid. p. 126, 130.

<sup>342</sup> The Dutch word for emerge, “ontpoppen” can also mean “reveal” or “turn out to be”. This is important as these different meanings are lost in the English translation. The sentence can be read in various ways, first of all that an activist may turn out to be a terrorist, *after all*, where the activist is not recognized as a “terrorist”, but will reveal himself as such through a terrorist act. An other reading can be as the popular concept of “radicalization”, which is the topic of the next chapter. Here the activist becomes more radical step by step, until finally becoming a terrorist. The assumption of both these readings for the DNR is that in both cases the activist has to be suspected to be a terrorist, first of all in being not really an activist, but an undercover terrorist, secondly, by becoming a terrorist step by step, the activist should be closely watched and stopped before it is too late and he or she has become a terrorist.

<sup>343</sup> CBA 2007, p. 23.

incidents as a high priority, together with terrorism-related incidents grouped as “ideological(-motivated) crimes”. This strategy of treating dissent as somehow related to terrorism has developed since 2004 and since then the DNR has published various reports about ideological crime, where protest is treated as similar to terrorism.

The effects of this are hard to estimate, as the publicly accessible DNR reports are of some years ago. More recent reports, especially considering no border activism, must exist but are most probably classified pending current investigations. What can be seen through the case study of the animal rights group protesting the Biomedical Primate Research Centre (BPRC) in 2004 is that such investigations do not happen gently. I have recited the story of eight activists being arrested, in a huge investigative operation, for cutting down two meters of a fence, While they were painted as highly dangerous extremists, the “kind of people who burn down things”, by the prosecution and media, in the end the eight “extremist” fence-cutters were let of the hook for minor offenses, because the judge decided that after all there were no evidences for any of such harsh charges<sup>344</sup>.

The other case study I have analyzed in the context of ideological crime is an ongoing investigation where Anna, a no border activist, is charged with “instigation with terrorist intent”. This case has illustrated how the public prosecution, in the person of Mr. Schram, also paints Anna as an extremist arsonist for texts she has written and which would instigate people to do such acts. I have shown how the number of actual arson attacks attributed to the no border movement, are highly exaggerated. In this way an image is created of Anna where, before a court case has even started, she is already seen as guilty, proceeding similar to that of the previously mentioned BPRC activists.

Both cases have shown how the DNR goes very far, by manipulating events and words, and by investing huge resources on petty or non-existing crimes, to construct an image of protesters as dangerous ideologically-driven terrorists who should be segregated from society. This is done by charging activists for being members of a criminal organization, in the case of the BPRC protests, or

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<sup>344</sup> There are however more recent examples in the case of suspected “terrorists” where judges have allowed secret evidence to be used in court, or even more for secret AIVD information being the main basis for a conviction for “terrorism”. See the case of Samir A. and the so-called *Piranha-proces*: Astrid Essed (2006) *Het Piranha-proces tav Samir A en medeverdachten* [The Piranha process with regard to Samir A and co-defendants]. *Uitpers*, Vol 82, <[http://www.uitpers.be/artikel\\_view.php?id=1539](http://www.uitpers.be/artikel_view.php?id=1539)> (retrieved at: July 5, 2012). The case can be found at LJN: AZ3589, Rechtbank Rotterdam , 10/600052-05, 10/600108-05, 10/600134-05, 10/600109-05, 10/600122-05, 10/600023-06, 10/600100-06, December 1, 2006, <<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AZ3589>> (retrieved at March 10, 2012). See also: J.P.M. Denissen (2006) *Het gebruik van AIVD-informatie als bewijs in het strafproces. Over het Wetsvoorstel afgeschermd getuigen en een eerlijk proces* [The use of AIVD information as evidence in criminal proceedings. About the Bill protected witnesses and a fair trial]. Phd Dissertation, Dutch Law, University of Utrecht.

for being terrorists, the case of Anna. I have also shown how both these criminal charges are not randomly chosen, but are actually described step by step in internal DNR documents. Again it can be seen that the contemporary prosecution of Anna, should be placed within the wider *persecution* of dissent.



# **Conclusion**



As we have seen, the concepts of “terrorism”, “extremism” and “ideological crime” are the means by which protest becomes signified as a threat. These concepts promote a discourse where the act of protest is seen as a danger to the current political order and therefore a threat to the so-called “national security”. *Any* protest in this security-thinking is perceived as suspect, not for any actual “disturbing” acts, but for its perceived *potential* to do so. This goes further than just physical acts of dissent. The very mental act of imagining different political realities than those espoused by contemporary neoliberal representative “democratic” Netherlands, have become foregrounded as potential “threats” as well. Participants of protest actions find themselves increasingly watched by various governmental agencies, analyzing protest from the perspective of “risk”, “security” and the worldwide fight against “terrorism”. These developments have not come suddenly, but have been following the more global shifts in the public perception and *anxiety* over “security” since the events of 9/11, the Madrid, London and Dubai bombings, and more locally, the political murders of politician Fortuyn and columnist Van Gogh in the Netherlands.

The main threat construction is of course that of “terrorism”. Since the mid 2000s the “Terrorism”-frame has constantly been with us. We have read and still read about it in the newspapers, have heard and still hear about it on the radio and have seen and still see it on our TV's. This constant concern with “terrorism” has altered many factors of our lives and expressed itself for instance in the establishment of a “national threat level” which keeps the Dutch population informed about the actual “terrorist threat” with matching color codes, it has expressed itself in the monthly parliamentary briefings on “terrorism”, the creation of an inter-Ministerial National Coordinator for Counter-terrorism and Security (NCTV), and more such institutional and structural changes. “Terrorism” as the ultimate new *Evil* and threat to humanity created a whole new vision of the world and the dangers it inhabits and thereby the role of the state to guarantee “safety”. It was presented in the popular media by events where many, sometimes 1000s of people, died by a bomb explosion or a plane-crash. “Death” then was what people had in mind when they heard the word “terrorism”.

Those who listened more closely however, or more *critically*, could also hear other voices. For these dissident voices “terrorism” was understood as a blanket term for power. As Alain Badiou expressed it, “terrorism is [a] non-existent substance, an empty name. But this void is precious since it can be filled”<sup>345</sup>. Logically then to Badiou “it is in the first instance filled (...) by what is allegedly in opposition to it”<sup>346</sup>. With “it” Badiou means those that are opposed to the governing or other powerful

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<sup>345</sup> Alain Badiou (2006) *Polemics*. London: Verso, p. 20.

<sup>346</sup> *Ibid.*

players who have control over the construction of dominant labels, and who can ascribe labels to those they deem the “other”. This is why the word terrorism has become such a big part of our vocabulary. It is a symbolic indicator for political use. In a time of *crisis*, be it economical, environment, political or even cultural or social, a time of growing uncertainties about the role of the state, political elites are worried about the “stability” of the dominant political order and take extreme measures to silence dissenting voices and others who might challenge the existing political establishment in words or in action. Those opposing the cutbacks, the austerity measures, the treatment of animals or the degrading and inhumane conditions under which refugees are welcomed in the Netherlands, to be locked up or deported, might find themselves trapped in the “void” of the construction that is “terrorism”.

The word “terrorism” then becomes a tool to suppress protest in the name of “freedom” and “democracy”. A line is being drawn between the terrorist and the non-terrorist, in which a person can only be at either side of the line. Refusing to speak out against the person or group, protesters or social movements, signified as a possible “terrorist”, or even daring to speak out in their defense means placing yourself along with them, and become subjected to the stigmatizing and criminalization which is attached to the term.

These developments are made the most explicit in the activities of law enforcement and security agencies, and their ongoing criminalization of dissent and dissenting voices. Protesters are increasingly met by the hostile gaze of the state, followed and watched by the security service. Such abuses of power are joined by other assaults on civil liberties, freedoms and rights as when demonstrations are heavily policed and protesters arrested under questionable or fabricated charges, beaten up, or when Dutch citizens are imprisoned in refugee detention centers for making use of the right to stay anonymous<sup>347</sup>. The concepts of “terrorism”, “extremism” and “ideological crime” are the means for the construction of a new discourse, a new social reality, by which such measures become legitimized and the whole of society is mobilized to be on constant alert for “threats”. The final demand of the government is the unquestionable support of the contemporary political order.

On the level of “politics”, the very fabric of society becomes rewritten as the whole meaning of

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<sup>347</sup> Jip and Janneke in foreign detention: Janneke van Beek, Jip en Janneke in ‘vreemdelingen’bewaring I, August 9, 2007, <<http://www.jannekevanbeek.nl/jip-en-janneke-in-vreemdelingenbewaring-i/>> (retrieved at May 23, 2012); Overview of such practices 2002 – 2007: redactie, Misbruik vreemdelingendetentie om recht op anonimiteit te ondergraven, Indymedia NL, August 5, 2007, <<https://www.indymedia.nl/nl/2007/08/46404.shtml>> (retrieved at May 23, 2012); Jacob Visser, Steeds meer demonstranten in vreemdelingendetentie, Doorbraak, November 12, 2011, <<http://www.doorbraak.eu/?p=7952>> (retrieved at May 23, 2012);

“political” becomes reduced to parliamentary party politics and the agency of social movements becomes denied and criminalized under the pretext of being “undemocratic” or “dangerous”. The very essence of what it means to be political is challenged and transformed into a question of what is *permitted*. The question over dissent or direct street politics and protest becomes a question over what is “criminal”, what counts as an “ideological crime” or as “extremism”, and what does not. “Dissent” in its broadest meaning is thereby denied to exist, constructed as threat to national security and suppressed by law enforcement agencies who have extended leeway for using special powers by new laws for fighting “terrorism”.

Starting with the fight against “terrorism” the Netherlands adopted the Terrorist Offences Acts in 2004, following the EU Framework Decision on Terrorism of 2002. Because of the vague definitions of what really constituted “terrorism” in both these legislative documents it was apparent from the very beginning that measures against “terrorism” could also be used against protesters. This was made even more likely by the fact that various members of parliament already proposed to include protest under the denominator of “terrorism”, even before the act was actually enacted. Protest, according to such right wing members of parliament, and according to business lobby groups, and journalists of mainstream media could always *become* “terrorist” in nature and should therefore also be treated or “dealt with” as “terrorism”. Anti-terrorism measures and new exceptional laws were implemented all over Europe. The Dutch Terrorist Offences Act was only one of the most outrageous, defining the concept of “terrorism” extremely vague and broad. The Netherlands went further than most other European countries by adding extra prohibitions to the definition than strictly required by the EU, banning “recruitment for armed struggle” and adding “conspiracy” charges to many existing articles of the Criminal Code. Scared by the 9/11–mania and the everyday saturation of images and governmental campaigns of “danger”, without any clear definition of “terrorism”, and the wide scope of acts which might be considered as “terrorism”, it would only be a matter of time until also other categories of people would find themselves investigated or even arrested and imprisoned under the guise of fighting “terrorism”. The contemporary situation where an activist has been charged with “terrorism” for her writings against the governmental control of migrants is just one illustration of this.

This determination of treating dissent as “terrorism” was taken further by law enforcement agencies in 2004 when investigations of crimes assumed to be “political” (read protests) were designated as investigations of “national importance” and the UCTA, the Unit Counter-Terrorism and Special Tasks, was created to investigate both activism and “terrorism” as the Orwellian sounding term

“ideological crime”, in close cooperation with the AIVD. This shared responsibility and cooperation between intelligence service and investigative service meant a huge break in the earlier (officially) more clear separation of investigative and intelligence powers. Because both “terrorism” and protest, in their security mindset, do not necessarily follow the absolute legal norms as defined in the law book, they are both constructed as “anti-democratic”, and therefore many so-called *democratic* rights are denied to them. The mentioned separation between investigation and intelligence gathering does not count for those designated as “undemocratic”. Other democratically held rights are also waived as when the presumption of innocence, where a person is innocent until proven guilty, becomes a presumption of *guilt*. We can recall the words of Minister Verhagen when he told parliament, that it was better to have 10 innocent people in jail than one alleged “terrorist” out on the streets. In the case of “terrorism” of which protest is seen as a potential part, the AIVD gathers intelligence and warns law enforcement agencies about protest as “extremism” and the UCTA similarly so for protest as politically motivated “ideological crime”.

Having analyzed the more specific concerns about protest as national threat by the AIVD in chapter 2 we have seen that the scope of what counts as a “danger” has been subjected to large changes over the years. Before 2005 it was the act of *damage* or the perceived *harm* an act might cause by which the AIVD would determine if something comprised a threat to national security. With the concept of “extremism”, protest which does not act within the *legal* boundaries or does not see the parliament as the main focal point in its struggle for social change has become considered a threat and can expect to have the attention of the AIVD. This concern about *legality* goes directly against the official purpose of the AIVD, as keeping the Dutch society safe from national threats, because, as we have also seen, legality is a bad measure of risk and more a measure of *desired* or *uncivil*, not necessarily dangerous, behavior.

By examples from protest groups as Respect for Animals and SHAC-NL and analysis of various AIVD reports we have also seen that the AIVD as an organization has established its own “regime of truth” in which acts of graffiti or vandalism, when deemed to be politically motivated, are transformed into “extremists” acts, and thereby as threats to the *nation*. It has also become clear that the AIVD's labeling and public condemnation of protest groups happens without any evidence of such groups even participating in illegal or semi-legal acts. We have also seen that such unproven accusations are without hesitation taken over by media, government and even society at large, thereby criminalizing social movements in a significant way and with serious consequences, who in their turn cannot defend against

allegations of the AIVD as its assertions are not based on any known factual evidence which can be refuted.

This state-sanctioned securitized knowledge, taken over by the mainstream media without any criticism of its lack of “proof”, is what generates the current tendency where protest is more and more seen as illegitimate in contemporary Dutch society. In its suppression of protest as “extremism” and “ideological crime” under the banner of “national security”, the real security is for the dominant political structure, not for the migrants locked up in detention centers and protested by the no border activists, the unemployed and people on social welfare who risk losing much of their possibility for a humane life by the austerity measures, and also not for the animals who are subjected to gruesome tests in animal laboratories and against which animal rights activists are protesting. Through a politics of blaming, the governing structure and the cultural, political and economical values that sustain it are exposed as increasingly authoritarian in nature, disturbed by any dissenting act which might threaten their dominance.

The AIVD in its criminalization of dissent and practical condemnation of protest is joined by the UCTA, the investigation service of the National Police. The investigation of “organized crime” and “terrorism”, as well as protest-related criminal acts as “ideological crime” takes the politically motivated persecution of dissent to an extreme level. Its focus is entirely on the level of thoughts, which *might* be the motivation for certain minor or major criminal offenses and thereby constructed as related to “terrorism” and investigated by UCTA as terrorism-related crimes. The UCTA, and its mother organization National Investigation Service (*Dienst Nationale Recherche*, DNR), go further than just prosecuting criminal acts. “Ideological crime” is not a category of the Penal Code, and thereby the DNR in fact proscribes what kind of thoughts are allowed and which ones are not. The examples mentioned in chapter 3 about the prosecution of an animal rights protest group and the current investigation of Anna for her writings have to be read in this context and illustrate how far the DNR is willing to go by manipulating events and words, and by investing huge resources for minor or non-existing crimes. Through its reports and investigations the DNR, similarly to the AIVD, constructs an image of protesters as dangerous ideologically-driven “terrorists” who should be segregated from society. This is done by charging activists for being members of a criminal organization, in the case of the BPRC protests, or for being terrorists, in the case of Anna. As we have also seen, criminal prosecutions like these are not by chance. As we could see they are part of a meticulous strategy outlined step by step in internal memo's by the OM (Public Prosecution Service) and the DNR and

followed upon by the UCTA as a strategy to repress dissent and criminalize certain thoughts or *ideologies*. Therefore the contemporary prosecution of Anna by the DNR should be placed within the perspective of the wider persecution of dissent by law enforcement agencies and the AIVD, as well as the condemnation of dissent by right-wing journalists, members of parliament and industry lobby groups.

What the examples of “terrorism”, “ideological crime” and “extremism” show is the increasingly authoritarian face of the government. In a supposed “democratic” society no person should suffer the wrath of government agencies, by having their house searched and personal belongings taken, arrested or to be put in custody, without any actual proof that this person has committed a serious crime. “Maybe”, or as “an exception to the rule”, is not good enough. Exceptions have the tendency to soon *become* the rule. As also Claude Paye has explored in relation to the worldwide “war on terror”, or the *Global War on Liberty*<sup>348</sup>, exceptional laws and measures have followed in its wake, so far that now we can not talk about a “state of exception” anymore, but the extraordinary situation where exceptional measures have become such a normalized part of our world as a “state of permanence”<sup>349</sup>.

The arrest and investigation of Anna follows exactly in this tradition. Under the presumption of stopping the alleged instigation, and finding out who really had written the texts, a fishing expedition has been started by the DNR to gather data about anyone involved with Anna in protesting against the migration regime. How big this fishing net is will only become more clear over time. The question which should be asked however is, since when did caring for people without papers, or caring for animals, become such a terrible crime that all means are justified to catch these *ideological criminals*? And since when has the act of writing political criticism in today's world become the equivalent to “terrorism”?

The criminalization of dissent continues. If protest in some cases entails the breaking of the law, this likelihood is made more likely by the introduction of exceptional laws, creating special zones for protest and other exceptional regulations and measures to which protesters might not want to submit, as the very act of protest, of civil disobedience, lies in the fact of not listening to government, of rebelling against authority seen as unjust, or in following one's own moral guidelines. The examples mentioned in this thesis are but a few of many other governmental acts of repression, which are part of a much larger project of governmental authoritarian control over the political space and over what counts as

<sup>348</sup> Jean-Claude Paye (2007) *Global War on Liberty: Anti-terrorism, Dictatorship, Permanent State of Exception*. N.Y.: Telos Press.

<sup>349</sup> François Debrix, *The Permanent State of Exception and the Dismantling of the Law: Jean-Claude Paye's Global War on Liberty*, Telos Press Blog, July 16, 2007.

“political” in society.

More than just these individual cases of protest are at stake. A whole tradition of civil disobedience is being rewritten and criminalized as not fitting the post 9/11 world. Demands for change or creating actual change is only allowed to happen through parliament. All other means are declared “terrorist”, “extremist” or as “ideological crime”. The very right for political and public expression, the right to disagree with government, the possibility to want a whole new society based on other values is criminalized on that very basis and shows again the domineering face of the state. In wanting to channel all discontent through parliament, by *voting* leaders in or out, political leaders seem to want to make sure that there will not be any real or structural changes in society and the existing neoliberal mode of governance with its own specific structures of domination is reproduced. Such reflects the wider values of society, or to be more precise, of *authority*. The transgression of laws or not accepting parliament as the main institutions of authority are on their way to become the equivalent to “terrorism”.

Dissent, and imagining alternative political realities can in some cases form a threat to the current governmental order. Social movements like no other know that *real* changes for the betterment of society have never been made within the established governmental structure, but always by pressure from outside. “Electoral democracy” as Samir Amin calls the current mode of governance<sup>350</sup>, has failed to produce real change. And also Amin agrees that “[a]ll changes tending toward real social transformation, even radical reforms”<sup>351</sup> were waged outside of parliament, not within. Samir Amin argues that representative democratic regimes have lost the ideal of being both “representative” to the people, for Amin representing only the interests of “monopoly capital”, or being “democratic”, by not allowing people to speak their minds freely<sup>352</sup>.

It is for this reason that in a time of crisis emergency powers are the first tool to be used by the powers that be against dissenting voices. The practice of the AIVD and DNR have to be seen in this light. Such emergency powers have the tendency to be continuously renewed without end, even when the initial deemed “dangers” are not there any more. Philip Marfleet, writing about the Emergency State of Egypt<sup>353</sup>, shows how the declared “National Emergency” continued in what Human Right

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<sup>350</sup> Samir Amin, the Democratic Fraud and the Universalist Alternative, *Monthly Review* Vol. 63 (5), October 2011, p. 29.

<sup>351</sup> Ibid.

<sup>352</sup> Ibid.

<sup>353</sup> Philip Marfleet, State and Society. in Rabab El-Mahdi and Philip Marfleet (eds.) (2009) *Egypt: The Moment of Change*, L.: Zed Books, pp. 14 – 33.

Watch in 2003 called “an Emergency without end”<sup>354</sup>. According to Philip Marfleet, in Egypt, “[t]he regime had become habituated to powers which were no longer exceptional measures, but routine means of maintaining social control”<sup>355</sup>. Paye makes a similar point for the United States, Great Britain, France, Belgium, Italy, and the European Union in general. A similar situation seems to occur in the Netherlands. Even if no terrorist attack has happened in the Netherlands as of yet, the exceptional measures and laws do not seem to be called back for any time soon – if ever. Exceptional measures then might soon not be that exceptional anymore as they become the habitual means of suppression. Marfleet's words were written in 2009, arguing that no government based on coercion could rule for a very long time and would at some point collapse, as coercion can never create a stable society. We all know what happened only two years later when millions of Egyptians took to the streets of Cairo, marched and camped at Tahrir Square and finally brought down Hosni Mubarak in what would become the second revolution in a long range of popular uprisings in the Arabic world, the Arabic Spring.

By this thesis I have hoped to show how law enforcement agencies construct and employ concepts which should be highly controversial, but are actually not discussed at all in media, in parliament, or in social movements themselves for that matter, and how such concepts are used for the criminalization and suppression of social movements, their struggles and the very ideas they hold dear. Many questions remain however. How can we read the current criminalization of dissent in terms of notions of democracy, politics, conformism, and security? What can we say about the wider decline of the public political sphere? How and why did the understanding of “political” shift from collective action towards electoral party politics and further governmental decision-making? And finally, what is the role of the EU and commercial enterprises in these processes?

The research and the writing of this thesis were not without difficulties. Future anthropological research would do well to take into account the complexities in terms of access to security and state agencies and conduct fieldwork over a longer period of time to be able to get a more extensive understanding of the way in which law enforcement agencies work. It would also be interesting to see how other not mentioned recent modalities of control as *deradicalization* policies, by which a wide range of state agencies, ministries, social workers and researchers work together to *deradicalize* alleged to-be-terrorists, as well as public order management by police, could be seen to fit in the contemporary security landscape and how these modalities, each in their own way, might work towards the

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<sup>354</sup> HRW 2003 “Egypt's Emergency without end”, New York, February 25, 2003. Cited in Philip Marfleet, *State and Society*, p. 24.

<sup>355</sup> Philip Marfleet, *State and Society*, p. 24.

criminalization of dissent. More productive research might also be achieved by taking into account more social movements than just the no border and animal rights movement, as the squatters movement, the environmental movement, the anti-austerity measures movement, the students movement or the environmental movement. Finally, on a more international level, the interconnections and cooperation between the Dutch government and Dutch security agencies with European agencies as Europol, the European Working Group on Terrorism, the EU secret service Sit-Cen, or with other national agencies, could be the focus for a research on how such networks operate and how the criminalization of dissent in the Netherlands is influenced by wider developments and decisions taken in Brussels and elsewhere.



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