

Maintaining national security without eroding civil liberties assignment



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MAINTAINING NATIONAL SECURITY WITHOUT ERODING CIVIL LIBERTIES

Political Science 100 - D4 Professor: Logan Masilamani Teacher Assistant:

Serdar Kaya July 26, 2011 Maintaining National Security without Eroding Civil Liberties Since 9/11, terrorism and the threat of terrorism have become a fact of life for all citizens of developed countries. No one is immune to terrorism; the word, alone, carries a negative connotation that can strike fear in the hearts and minds of the people subjected to its wrath.

The concept of terrorizing individuals or groups of individuals by the use of force in order to achieve a political goal is nothing new and has been around since mankind has engaged in disputes and armed conflicts. According to Professor Gerard Chaliand and Arnaud Blin (2007, p. 3), experts in asymmetric conflicts, terrorism existed as early as 70 C. E when a Jewish zealots sect called Sicarii used terrorism " to cite an uprising against the Roman occupation. " Very little has changed since then; terrorism is alive and well.

In fact, Britain " have waged a prolonged, low-key, yet deadly struggle against both international and domestic terrorism for 30 years" (Cuthbertson, 2002, p. 27). As a result of the imminent threat of terrorism, in 1974, the British parliament introduced its first anti-terrorism legislation, Prevention of Terrorism Act (PTA); PTA " permitted police to arrest, detain, and conduct search-and-seizure raids against suspected terrorists without a warrant" (Cuthbertson, 2002, p. 27). In essence, the British government passed a legislation that undermined the fundamental ideals which democratic societies like itself were built upon.

Following the aftermath of 9/11, in order to prevent and deter further terrorists attacks, America passed its own anti-terrorism act called the " USA Patriot Act. " The power that the PTA provided to British law enforcement agency is pale in comparison to the USA Patriot Act. Thus this essay will focus on the questions of whether or not the United States government should restrict civil liberties in order to fight terrorism and to what extend in term of restriction should they take.

As the threat of terrorism escalate, democratic countries such as America, Britain and Canada will be more willing to sacrifice civil liberties in exchange for security. This willingness to sacrifice civil liberties in the name of for security illustrates that an individual's rights and liberties, even in a democratic society, are not absolute. However, the implementation of anti-terrorism legislations that grossly infringe on individuals' rights will not be sufficient in and of itself to eliminate terrorism, but it may push a democratic society towards authoritarian rule. Currently there is no universally accepted definition of terrorism.

The term itself is ambiguous in nature: " One man's terrorist is another man's freedom fighter" (Ganor, 2002, p. 4). Nevertheless, one must have clearly defined definition of terrorism in order to separate terrorist activities from other form of political violence such as political assassination, civil wars, rebellions, coup d'etats, revolutions, and so forth. In 2004, the UN Security Council adopted a working definition for terrorism: criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose o provoke a state of terror in the general public or in a group of persons or particular

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persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism (Saul, 2005, p. 164) Therefore, an attack on civilian targets that were selected indiscriminately among a targeted population in order to intimidate or force a government body to alter its current political agenda would be considered a terrorist act.

For example, the Provisional Irish Republican Army conducted a series of bombing that targeted British civilians to force the British government to relinquish its control over six counties in Northern Ireland. On the other hand, political violence encapsulates all form of violence performed by people and governments to achieve political goals. A study financed by the European Commission (Isolating Terrorism, 2007, p. 30) came to the same conclusion: " terrorism is indisputably a form of political violence, but a form of political violence is not necessarily terrorism. There are many overlapping similarities between Terrorism and other type of political violence. For instance, terrorism and all form of political violence employ the same tactics - violence - as a mean to achieve their political aims. However, the key differences between Terrorism and other type of political violence is the extent in which terrorists apply violence. Terrorists tend to employ violence in a very liberal manner: More often than not, " the direct targets of violence are not the main targets" (What is Terrorism? , 2011).

Political violence such as political assassinations is carried out against individuals in positions of military or political authority. For instance, an assassination of a political rival is not considered a terrorist act but a form of

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political violence. In contrast, any act of violence which may further a terrorist's political agenda is considered and acted upon. Hence, terrorism as a form of expression in opposition to a government's policy is extremely hazardous to the welfare and security of the inhabitants of any country. Terrorists are not bounded by any law, domestic or international.

Therefore, it is necessary for governments to devise and implement counterterrorist strategy and policy that are flexible in order to prevent terrorism or at least reduce the effect of terrorism. Since the main objective of counterterrorism legislation is to save lives, citizens must accept the fact that some of their civil liberties may be violated. However, the primary question remains: To what extent should government curtail civil liberties in order to improve security? Figure 1: | Libertarian Authoritarian Less security More freedom More security Less freedom | | Degree of freedom| 1| 2| 3| 4|

Restriction on Civil liberties| No restrictions| Some restrictions| a lot of restrictions| sever restrictions| Examples:| Maximize individual liberty| uphold all civil rights and liberties | uphold some civil rights and liberties| place strict limits on civil right and liberties| | and political freedom| Freedom of expression| limit freedom of expression| no freedom of expression| | Minimal government oversight| Freedom of assembly| limit public demonstrations| No public demonstrations| | No Drugs laws| Freedom of speech| Authorized illegal wiretaps | Stripping citizenship | | -| Respect rule of law| Authorized illegal eavesdropping| No rule of law| | | independent judiciary| some independent judiciary| No independent judiciary| | -| right to a fair and speedy trial| imprisonment without a trial| indefinite imprisonment without a trial | | -| freedom from cruel and unusual punishment| Allow for invasion of
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privacy| secret arrest without a warrant and authorize use of torture| Even in a democratic society, there is no such thing as absolute freedom.

Government's rules and laws provide a framework that limits citizens' freedom; diverging from this set framework may result in punishment. For example, in almost all part of the world, drug use may result in jail time.

However, in a libertarian society, there would be no drugs laws since Libertarianism believes in "maximizing individual liberty and political freedom" as long as it does not infringe on others liberties and freedoms (Wikipedia). Essentially, we live in a society where the degree of freedom that citizens are entitled to is always changing with the political climate. For the last 50 years, North Americans' degree of freedom has been fairly stable at a level of 2. This has not always been the case. During time of war or other crisis, the degree of freedom may vary from 2- 3 1/2. A classic example "is the illegal mass interment of more than 110, 000 Japanese Americans, most of them U. S. citizens, without charge, during World War 2" by the United States government (Friedman, 2005, p. 1).

This was a clear violation of several constitutional rights: the right to legal counsel; the right to life, liberty and property; the right to an indictment or to be informed of the charges and so forth. As governments responds to the changing political climate, the degree of freedom may change. The 9/11 attack which killed nearly 3000 people was the worst attack on American soil. As a result, the fear of further terrorists attacks pushed America to abandon its democratic ideals in favor of stronger anti-terrorism law. This led to the introduction of the "USA Patriot Act" in the United State. The most

shocking aspect of the USA Patriot Act is that it was passed into law with no debate in the House of Representatives.

In the article titled “ Civil liberties and Homeland Security” by Valerie L. Demmer (2002, p. 1), she describes that most of the politicians did not even have the chances to read the Bill: The Patriot Act was signed into law by Bush on October 26, 2001, after being rushed through Congress without giving members time to properly read or interpret its provisions. According to Representative Ron Paul of Texas (one of only three Republicans in the House to vote against the bill), ‘ The bill wasn’t printed before the vote—at least I couldn’t get it... It was a very complicated bill. Maybe a handful of staffers actually read it, but the bill definitely was not available to members before the vote.

This should be a major concern for all Americans considering the amount of power that the USA Patriot Act gave to law enforcement and the Executive Branch of government. The Patriot Act “ extends surveillance powers, decreases individual rights, increases the powers of the Executive branch, and limits the powers of the legislative and Judicial branches to review the Executive’s decisions” (Fleming, 2002, p. 3). To illustrate, the act allows for secret arrest and illegal wiretapping and eavesdropping, illegal searches to be conducted without a warrant, indefinite imprisonment of suspected terrorists, US citizen to be stripped of his or her citizenship and so forth (Cole, 2003, p. 6-7).

Some advocates of the USA Patriot Act insist that the Patriot Act is a crucial component to maintaining America’s national security. The Act provides Law

enforcement and Federal counterterrorist agencies the tools they need to effectively combat terrorism. One of the “ most essential improvement wrought by Patriot has been the dismantling of the intelligence wall,” because Federal counterterrorist agencies were barred from communicating with local law enforcement before 2001 (McCarthy, 2004, p. 32). In addition, the ability to conduct wiretapping and eavesdropping without a warrant have helped Law enforcement dismantle several terrorist cells in America such as “ The Portland Seven”.

According to a 2005 ABC poll, “ six in 10 Americans favor extending the Patriot Act” (Langer, 2005). This indicates that the public is willing to give up some of their civil in order to prevent or reduce terrorism. Most of the illegal wiretapping and eavesdropping is directed at suspected terrorist, but sometime they are conducts illegal against ordinary citizen due to errors. This type of violation is a small price to pay if it could prevent a nuclear terrorist attack. In general, some of the provisions in the Patriot Act has been useful in the war against terrorism such as the updated provisions that address the need to monitor terrorist activities over the internet and the sharing of information between agencies and foreign governments.

Critics of the Patriot Act argue that there are considerable evidences that the USA Patriot Act has taken a heavy toll on civil liberties. Some of the negative effect of the Patriot Act is the authorization by the American government to employ authoritarian tactics, such as indefinite imprisonment without a trial, secret arrest without a warrant and the authorized use of torture to retrieve information, which was commonly used in Hitler’s Third Reich, Stalinist

Russia and Kim Jong-il’s North Korea. In some cases, the Patriot Act overrides <https://assignbuster.com/maintaining-national-security-without-eroding-civil-liberties-assignment/>

the Americans Constitution and other core principles of the common law system including the presumption of innocence, due process and the writ of habeas corpus.

Immediate after 9/11, approximately 1200 people, mainly foreign nationals of Middle Eastern descent and a few American citizens, were taken into custody without probable cause (Baker, 2003, p. 556). Some of the individuals were incarcerated for up to five years without access to a lawyer, to their family and to a trial. In the end, the American government was unable to link any of the 1200 people arrested to al-Qaida or terrorism (PBS, 2002). The use of torture as a method to extract information remains a hotly debated topic in United States. Vice President Dick Cheney was a key advocate of torture: he proposed “ that Congress legally authorize human rights abuses by Americans” (Washington Post, 2005). However, the real question is not whether torture was being used but how it was being used. According to Lawrence B.

Wilkerson, chief of staff to Secretary of State Colin Powell, “ America’s armed forces were involved in practices that violated the Geneva Conventions, the International Convention Against Torture, U. S. domestic law, and the written and unwritten moral code of the American soldier” (Anonymous, p. 46).

Hence, torture has been a common practice in the war against Terror.

Methods like waterboarding (simulated drowning) , sleep deprivation, sensory deprivation, extremes of heat and cold and other extremely painful methods are commonly used to extract information from suspected terrorist at Abu Ghraib and Guantanamo Bay. Does the end justifies the means? That

really depends on the situation. If torture was shown to provide reliable information which could save lives, then there may be support for it.

However, past experience has indicted that torture is an ineffective tool of extracting confessions or information, since people exposed to torture would often tell the interrogators what they wanted to hear. For example, under torture, Ibn al-Shaykh al-Libi, an member of al-Qaeda, told interrogators “ that Saddam Hussein trained al-Qaeda members in the use of weapon of mass destruction” (Anonymous, p. 27). With hindsight, this evidence is false, since Saddam Hussein did not possess any weapon of mass destruction.

Case after case similar to the one above shows that evidences retrieved from torture is highly unreliable. Therefore, the use of torture should be discarded. America’s divergence from its traditional democratic principles illustrates the shift from a democratic society to a semi-authoritarian society. Figure 2.

Poll regarding sentiment on the Patriot Act. Reprinted from Pew Research Center Publications retrieved July 15, 2011, from <http://pewresearch.org/pubs/1893/poll-patriot-act-renewal> (2011). There is a strong sentiment among the American public in support of the Patriot Act. As you can see from figure 2, support for the Patriot Act has grown from 33% to 42%” within seven years. This is not surprising since the majority of Americans are not affected by the Patriot Act: “ 91 percent of registered voters surveyed said that the Patriot Act had not affected their civil liberties. Another 56 percent said the law is good for the country” (Brownfeld, 2003).

The people who are affected by the Patriot Act are the minority, mostly Muslims and Middle Eastern descent. One of the fundamental aspect of an

entrenched Constitution is to protect minority rights from the majority rule. This is a key difference from an authoritarian society and a democratic society. If America allows the Patriot Act to grossly infringe on the rights and liberties of the minority, then America is no different from Nazi Germany or Stalin's USSR. One must take into account of the inaction of the German people to stop Hitler from introducing the Nuremberg Law which stripped Jews and German Jews of basic rights. The Nuremberg Law was the first step to the persecution and extermination of the Jewish people during World War II.

To prevent future Holocaust, no legislation should even be allowed to supersede the American Constitution or the rule of law. That is why it is important that Americans oppose the sections in the Patriot Acts that grossly infringe on individuals rights such as indefinite imprisonment without a trial, secret arrest without probable causes, the use of torture, and stripping US citizen of their citizenship. Normally, citizens are not subjected to these threat, but if a citizen is deemed a terrorist, then he or she may be denied his or her civil rights. The cases of John Walker Lidhn and Yaser Hamdi highlight " the systematic denial of several basic rights to [] U. S. citizen[s]" (Fleming, 2002, p. 41). Both men are U. S. itizens who were classified as enemy combatants when they were captured as Taliban fighters in Afghanistan (Fleming, 2002, p. 41). John Walker Lidhn was interrogated, tortured and denied of due process. On the other hand, Yaser Hamdi was forced to give up his U. S. citizenship in exchange for freedom. Some people may argue that they are enemies of the United States and they deserved what they got. These people may be right; however take the case of Brandon

Mayfield, a former U. S. Army Lieutenant and Lawyer, was unlawfully detained for two weeks under the pretext that he was one of the 2004 Madrid train bombers, even though Spanish investigators told FBI agents that his fingerprints did not match the ones at the crime scene (Eddlem, 2011).

Despite receiving a formal apology from the federal government and two million in compensatory damages, the stigma of being suspected of terrorism ruined Mayfield's personal and professional life. Mayfield is not the first and will not be the last victim of the Patriot Act. This demonstrates the negative consequences that may happen to individuals' rights if Constitutional rights are not upheld, and in this case the Fourth Amendment. It is not too late for America to redeem itself in the eyes of the world and its citizens. As David Cole, a law professor at the Georgetown University Law Center, stated that "it appears that the greatest threat to our freedoms is posed not by the terrorists themselves but by our own government's response (Cole, 2002, p. 1) Grossly infringing on individuals' rights and civil liberties does not prevent or reduce terrorism but it only shifts the power from one group of individuals to another. America's underlying government system was designed with the principle of checks and balance in order to prevent any one branch of government to obtain too much power. However, certain provisions in the USA Patriot Act give the Executive branch authority to supersede the Constitution and the rule of law. This is unacceptable in a democracy. Therefore, Americans should defend their rights by demanding politicians to modify the Patriot Act by discarding the sections which grossly infringe on civil liberties.

We live in turbulent times, balancing civil liberties while maintaining national security is a delicate balancing act. However, as long as Americans stay true to the core principal that their country was built upon, then terrorism can never destroy democracy and freedom. Bibliography Anonymous. (2008). No Torture. No Exceptions. *The Washington Monthly*, 40(1-3). Baker, N. V. (2003). National Security versus Civil Liberties. *Presidential Studies Quarterly*, 33(3), 547-567. Brownfeld, P. (2003). Patriot Act Opponents Say Law Endangers Rights. from Fox News <http://www.foxnews.com/story/0,2933,97003,00.html> Chaliand, G. , Blin, A. , Schneider, E. D. Pulver, K. , & Browner, J. (2007). *The history of terrorism: From antiquity to al Qaeda*. Berkeley: University of California Press. Cole, D. (2003). Patriot Act's big brother. *The Nation*, 276(10). Cole, D. (2002). Enemy aliens and American freedoms. *The Nation*, 275(9). Cuthbertson, I. (2007). Whittling Liberties: Britain's Not-So-Temporary Antiterrorism Laws. *World Policy Journal*, 18(4), 27-33. Demmer, V. L. (2002). Civil Liberties and Homeland Security. *The Humanist*, 62(1). Eddlem, T. R. (2011). Anti-Fourth Amendment Patriot Act. from New American from <http://thenewamerican.com/usnews/congress/6988-anti-fourth-amendment-patriot-act> Fleming, L. (2002).

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