

**Has the definition
and threat of terrorism been
abused to such a degree
that civil liberties and democracy
are seriously compromised?**

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Scholars of contemporary history can feasibly argue that over the last number of decades certain labels can be attached to a timescale in order to describe the primary threat experienced by Western society at a given time. These labels may be simplistic and may not have necessarily been used correctly by those who applied them but they do act as useful barometers of the primary concern of governments along the labelled timescales for they assist us in identifying a significant Other. In the 1950s, Communism, and the Red Scare in the US, was a label often used in order to pass certain legislation or even to isolate certain individuals and groups who were seen to have supported the Other. The predominant label of the last decade was terrorism with the significant Other primarily being violent Muslim extremists. The link between the two is now so strong that in popular culture the image of terrorism is that of a bearded Muslim male. This image is by no means a definition of terrorism but its existence in the public consciousness acts as one, while the perceived threat of terrorism, as espoused by government agencies, has taken its toll on civil liberties and democracy, two qualities that Western governments use quite often in differentiating between the West and certain Muslim nations that allegedly assist terrorists. This essay will attempt to investigate if the threat and definition of terrorism has been used to seriously compromise civil liberties and democracy by seeking out a definition of terrorism and how its threat is framed. Terrorism is not a new phenomenon; it has existed for centuries, and since the 1970s anti-terrorism legislation has existed that has eroded a certain amount of civil liberties. However in the post-September 11 2001 period, new legislation and wider ranging state powers along with the concept of a never-ending War on Terror, have yet again compromised the ideal of civil liberties and democracy to a point where it is questioned if the perceived threat is being abused to a degree where these rights are more compromised now than they have ever been during a prolonged peace time. The task of this essay is to question this further and investigate if civil liberties and democracy are indeed seriously compromised.

The actual definition of terrorism and how its potential threats are expressed and framed are crucial to understand in deciding whether or not they are being abused in order to compromise civil liberties. While it is generally accepted that terrorism does pose a threat to society, we must be wary of how it is framed and how this framing influences our own thinking of it. The concept of terrorism existed long before 9/11 but there is today a much greater fear of terrorism reflected in the wide-ranging, perhaps draconian laws that are supposedly designed to safeguard us all against the consequences of terrorism. It should be kept in mind however that a threat existed from terrorism before the events of September 11, 2001. The fear that exists of it today is partly due to the way terrorism is framed as being such a common occurrence when the reality is quite different. “Over the past decade, fewer than 400 Americans a year have died as a result of foreign and domestic terrorism, about the same number who drown from using a bathtub”¹ while “terrorists have not pulled off another attack on the scale of 9/11”² but yet the US is the nation that is most worried about terrorism and was also one of the most willing to pass laws such as the Patriot Act which before 9/11 would probably have been widely and publicly criticized as overarching state intrusion in the lives of private citizens due to it, among many other things, giving power to the intelligence community to engage in wider surveillance without public knowledge³. The framing of the terrorist threat post-9/11 however meant there was much less criticism than there would likely have been before. In many cases where airliners have crashed accidentally or even in the case of the 2007 collapse of the I-35 bridge in Minnesota, the first cause to be ruled out, and thus one of the first causes to be considered by many was terrorism, showing that terrorism is

¹ William A. Niskanen, ‘The Several Costs of Responding to the Threat of Terrorism’, *Public Choice* 1/2 (2006), pp. 351 – 356: 352.

² Peter Beinart, ‘What al-Qaeda Can’t Do’, *Time* January 18 2010, p.21.

³ Jon B. Gould, ‘Playing with Fire: The Civil Liberties Implications of September 11th’, *Public Administration Review* (2002), pp. 74 – 79: 74.

considered to be an everyday concern, an everyday security threat⁴. The United States Code defines terrorism as “premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience”⁵. This is a relatively wide definition which could be interpreted with some amount of discretion by law enforcement agencies but yet it is what many Western countries are currently fighting a war against. This so-called War on Terror is a not a war in the traditional sense because it is not against a traditional enemy such as a nation-state. Instead it is against many groups with no set location, no prerequisites that would signal an end, such as in traditional wars, with the Bush administration having proclaiming in 2003 that “victory, therefore, will be secured only as long as the United States and the international community maintain their vigilance...”⁶. Essentially this meant there was to be no end and thus no end to incursions against civil liberties. The fact that it is framed as a war though means that even to debate its course implies dissention and perhaps subversion⁷. It is with this in mind that it should be explored how civil liberties and democracy are affected during traditional wartime and how they have been affected in the post-9/11 period of the non-traditional, and apparently perpetual, War on Terror.

⁴ BBC, ‘In pictures: US bridge collapse’, *BBC News*, http://news.bbc.co.uk/2/hi/in_pictures/6927178.stm, (accessed 13 January 2010).

⁵ William A. Niskanen, ‘The Several Costs of Responding to the Threat of Terrorism’, *Public Choice* 1/2 (2006), pp. 351 – 356: 352: 351.

⁶ Adam Roberts, “Countering Terrorism: A Historical Perspective”, in Keller, A., and Bianchi, A., (eds.), *Counterterrorism: Democracy’s challenge* (Oxford, 2008), p.37.

⁷ Nancy V. Baker, ‘National Security versus Civil Liberties’, *Presidential Studies Quarterly* 3 (2003), pp. 547 – 567: 547.

In times of traditional war, such as the period of time during which the Second World War raged, incursions on civil liberties are expected and tolerated for the most part. Telephone calls can be monitored and correspondence can be intercepted and read in order to assist in the defence of the nation. Professor Jon Gould outlines that America has a history of such restrictions on civil liberties in times of war with the internment of Japanese-Americans in concentration camps during World War Two and the suspension of habeas corpus during the American Civil War⁸. These restrictions were accepted by citizens because these were times of emergency where a battle was ongoing with a significant, and very real, Other. In such cases civil liberties are considered a dangerous luxury but “historically, once war is over, those luxuries are again embraced”⁹. Counter-terrorism laws that existed before 9/11 did, to a certain degree, hinder on civil liberties but as with many laws, an acceptable balance was seemingly struck between the encroachment of these laws on citizens and the protection that these same laws sought to provide. In fact counter-terrorism laws prior to 9/11 have been described as “sharply focused and usually applied with the kind of restraint that could only flow from a culture whose commitment to freedom...did not feel challenged by sporadic acts of...weak subversives”¹⁰. This is high praise but it is praise of a memory because more recent legislation lacks focus, is too wide-ranging and certainly has the potential to restrict civil liberties more so than at any point before. Mo Mowlem points out that the British government has introduced more “restrictive legislation against terrorism than it ever felt necessary when the IRA was regularly bombing both Britain and Northern Ireland”¹¹. Why are there now

⁸ Jon B. Gould, ‘Playing with Fire: The Civil Liberties Implications of September 11th’, *Public Administration Review* (2002), pp. 74 – 79: 76.

⁹ Nancy V. Baker, ‘National Security versus Civil Liberties’, *Presidential Studies Quarterly* 3 (2003), pp. 547 – 567: 548.

¹⁰ Conor Gearty, ‘Rethinking Civil Liberties in a Counter-Terrorism World’, *Field Day Review* (2007), pp. 124 – 135: 131.

¹¹ Mo Mowlem, ‘Global Terrorism’, in Hocking, J., and Lewis, C., (eds.), *Counter-terrorism and the post-democratic state* (Cheltenham, 2007), p. 2.

more restrictive laws that subvert civil liberties when the threat is apparently lower than what the government is proclaiming it to be? Could it be that during the IRA's most violent periods a greater Other, Communism, was the real focus of the West and now that Other happens to be terrorism? Either way a general shift has seemingly occurred whereby the general usage of the threat of terrorism, along with the resultant counter-terrorism legislation, has placed more restrictions on individuals in the post-9/11 period than did counter-terrorism legislation in the period before the attacks of September 11.

Due to counter-terrorism measures introduced in the post 9/11 period the concept of terrorism as an act against the state has resulted in terrorism not being treated as a wholly criminal matter and rights afforded to suspected regular criminals are thus not transferrable to those suspected of being engaged in terrorism. This has created a whole new paradigm where the threat of terrorism compromises people's civil liberties due to the new ways in which the perceived threat is being fought, especially when compared to how it was fought pre-9/11. A major difference between the pre and post-9/11 periods is that because of the way in which the threat of terrorism is currently framed, we are all seen as potential suspects and in being potential suspects we actually lose some of our freedom as private individuals because as suspects individuals could be subject to preventative arrest despite "the object of criminal law (being) to deter and prevent crime...not to pre-arrest those who are thought likely to commit a crime"¹². As such then ordinary criminal/civil rights are discarded with because of the paradigm of prevention that currently dominates counter-terrorism measures¹³. Governments,

¹² Russel Harden, 'Civil Liberties in the Era of Mass Terrorism', *The Journal of Ethics* 1 (2004), pp. 77 – 95: 90.

¹³ Russel Harden, 'Civil Liberties in the Era of Mass Terrorism', *The Journal of Ethics* 1 (2004), pp. 77 – 95: 91.

but most especially that of former President George W Bush, consistently preach that terrorism is a constant danger which has the capacity to strike at any given opportunity. It is because of this that prevention has been made out to be the only viable system with which authorities can fight terrorism but in order for this system of prevention to function it has to be accepted that personal privacy and other such rights will likely be impinged upon. After all, everyone is a potential suspect and the authorities must endeavour to know what individuals may be doing in the near term future in order to abide by a counter-terrorism doctrine of prevention.

The doctrine of prevention opens all new avenues for government intrusion in the lives of private citizens at vast expense to the role of civil liberties in society. The Pentagon and NSA's Total Information Awareness programme monitors telephone calls, emails and other such communications and are fully entitled to do so due to the USA Patriot Act which allows wiretapping and interception of emails and other such internet communications without any law enforcement agency showing probable cause as a reason¹⁴. This recent, and quite startling, invasion of privacy brings about many practical civil liberties concerns as the number of officials involved in these new practices probably numbers in the thousands and "all of them might act tyrannously in their own small venues...(and) thousands of officials operating in closed venues can hardly be exposed"¹⁵. The very idea of on-demand wiretapping is completely at odds with the ideals of civil liberties because it destroys ones right to privacy. However it is only compatible due to the wide legislative net which casts

¹⁴ Jon B. Gould, 'Playing with Fire: The Civil Liberties Implications of September 11th', *Public Administration Review* (2002), pp. 74 – 79: 74.

¹⁵ Russel Harden, 'Civil Liberties in the Era of Mass Terrorism', *The Journal of Ethics* 1 (2004), pp. 77 – 95: 89.

each individual as a potential suspect. This massive expansion of state power has also been seen in the United Kingdom where the Secretary of State has the right to order indefinite detention, without charge, of an individual on suspicion of terrorism through the UK Anti-Terrorism Crime and Security Act of 2001¹⁶. This legislation goes further however in that it allows the government to remove a non-national (although not British citizens) on suspicion of terrorism even if they could not be removed for legal or practical reasons¹⁷. That a person can be held without charge for an indefinite period of time arouses many suspicions and questions and perhaps even acts as a deterrence on citizens who, while certainly not terrorists, may be labelled as such for protesting or making a public statement against government policy. One of the bedrocks of a successful and progressive democratic nation is the right to freedom of expression and association and sections of the USA Patriot Act, along with Britain's anti-terror legislation, questions these rights as not being automatic but instead subject to many and changing conditions including how suspicious an agency may be over supposed terrorist activity. This is especially dangerous when one considers that a person accused on suspicion of terrorism has a relatively high chance of being arrested as a "false-positive" (more so than the high rate of this in murder cases where the pool of suspects is smaller than for terrorist attacks)¹⁸ but due to the current framing of the terrorist threat and the preceding legislation there is little hope of fair reprieve in line with what we once considered general civil liberties.

¹⁶ Sergio Marchisio, 'Recent Developments in Anti-Terrorism Law: How To Fill Normative Gaps' in Hamilton, D.S.(ed.), *Terrorism and international relations* (Washington DC, 2006), p.133.

¹⁷ Dominic McGoldrick, 'Terrorism and Human Rights Paradigms', in Hocking, J., and Lewis, C., (eds.), *Counter-terrorism and the post-democratic state* (Cheltenham, 2007), p. 124.

¹⁸ Russel Harden, 'Civil Liberties in the Era of Mass Terrorism', *The Journal of Ethics* 1 (2004), pp. 77 – 95: 82.

While it has become much easier for the state to intrude on the privacy of individual citizens and to detain and arrest people without due care for traditional legal provisions, it has also become much easier for the state to keep its secrets and prevent the citizenry from learning more of the methods they are supposedly being protected with. In Australia the separation of powers between the judiciary, executive and legislator has been broken by relatively recent counter-terrorism laws whereby the Attorney-General has the power to veto court evidence and witnesses in trials deemed to be of a national interest¹⁹. Surely then the bedrocks of democracy, such as freedom of expression and the separation of judicial powers from the government, are so weakened as to make it feasible to argue that we live in a post-democratic age where civil liberties are no longer an automatic right. This widening of the distance between the government and governed brings about quite obvious implications for democracy because not only has the threat of terrorism been used to justify attacks on civil liberties but also on democracy itself because the attacks are rooted in democracy – that is, emergency powers/laws are pushed through by those who claim that these laws have democratic legitimacy because they were elected²⁰. Protests, once one of the purest expressions of a democracy, now fall under the scope of counter-terrorism legislation which brings about the scenario of legislation, derived from a perceived threat, that in itself subverts democracy. Protests and other forms of direct action, in the UK have to be approved of by the police if they are to be allowed go ahead and this raises the question of state authority on extra-parliamentary action. As has been seen, state governments already have the power to stop protests and detain participants through the enactment of anti-terrorism legislation. Essentially it is legal for a government to prevent people voicing anger over its decisions. This is an affront to democracy and while it can, and has, been argued that these

¹⁹ Jenny Hocking and Colleen Lewis ‘Terrorism and Human Rights Paradigms’, in in Hocking, J., and Lewis, C., (eds.), *Counter-terrorism and the post-democratic state* (Cheltenham, 2007), p. 139.

²⁰ Conor Gearty, ‘Rethinking Civil Liberties in a Counter-Terrorism World’, *Field Day Review* (2007), pp. 124 – 135: 131.

laws would not be used in such a manner, the fact that they exist in a fashion that makes them so easy to abuse is worrying. Conor Gearty argues that “civil libertarians need to be unafraid to argue that instability (and) disconcerting direct action...are routes to a better democratic future, not evidence of terrorist subversion”²¹. In this he is correct but this increasingly goes against the grain of government policy as public protest becomes almost superfluous in our supposedly free society as officials challenge people to become elected representatives and thus take their challenge to the inside of the system against which they were first protesting. Once on the inside their protests may be diluted, subduing initial concerns and again preventing any real change from occurring.

The long term implications could quite possibly be worse however, for the US government, along with many other governments the world over, have greatly overreacted to the threat of terrorism to the point where there is a “false sense of insecurity”²². The sense of insecurity has the ability to create a society of fear where citizens are actually quite apprehensive about becoming involved in protest movements or perhaps in severe government criticism which again widens the distance between the individual and the state. A society which has absolute trust in its government, due to its absolute fear of the monolithic Other, is one that may well be naive and allow the subversion of democratic principles to continue unabated. The Patriot Act authorized a collection of powers that the US government had wanted for some time before 9/11 but the resultant fear of terrorism allowed it to be

²¹ Conor Gearty, ‘Rethinking Civil Liberties in a Counter-Terrorism World’, *Field Day Review* (2007), pp. 124 – 135: 133.

²² William A. Niskanen, ‘The Several Costs of Responding to the Threat of Terrorism’, *Public Choice* 1/2 (2006), pp. 351 – 356: 352.

approved as a package with little in the way of restrictions²³. A fearful nation, and a fearful Congress, wanted and passed the legislation as a whole but did not consider doing so when the fear of terrorism wasn't in existence. A fearful citizenship, open to many new forms of government intrusion and without an exclusive right to privacy is one that is stuck in the soft cage where "surveillance instils discipline by forcing self-regulation"²⁴ upon all and sundry to the point where those who do continue to protest, sometimes even violently, are seen as deviants who wish the collapse of society and not the collapse of new government regulation. They could even be seen as terrorists and this securitization of society through the usage of the threat of terrorism is detrimental to civil liberties and democracy.

On the basis of the evidence, both practical and theoretical, it is hard to argue that civil liberties and democracy have not been compromised by the recent uses of the threat of terrorism as reason for new and restrictive legislation. If there is a fear that a person can be intercepted and interned without the right of defence due to a mere suspicion then surely this is a warning sign that we face a relatively dystopian future if we allow this to continue. An argument in favour of recent counter-terrorism measures can most certainly be made in which the question is raised of how we plan on using our traditional freedoms if we happen to have died due to a terrorist attack. While this is a simplistic argument, it is one that has resonance and deserves to be addressed because "the willingness of representative democracy to equip itself to fight against forces that would destroy it must entail an openness to the curtailment of

²³ William A. Niskanen, 'The Several Costs of Responding to the Threat of Terrorism', *Public Choice* 1/2 (2006), pp. 351 – 356: 352.

²⁴ Christian Parenti, *The soft cage: Surveillance in America from slavery to the war on terror* (New York, 2003), p.9.

civil liberties”²⁵. At the same time though is it worth having a society where your fundamental freedoms are being impeached upon more and more all of the time to the point where fear is the one word that aptly describes the whole of society? As this essay has outlined, terrorism is not a recent phenomenon and neither is the curtailment of civil liberties and attacks on democracy but the changes that have occurred between older counter-terrorism measures and more recent ones are startling to the point where in popular culture many of its components were once seen as props in a horror story along the lines of 1984. While this may seem stereotypical, it is not all that far from the truth on the basis of the evidence presented here. The framing of the definition and the threat of terrorism by national governments has brought about a fear of such that has led to the securitization of everyday life from the proliferation of CCTV cameras to the usage of biometric fingerprinting to enter a gymnasium. Even the flow of general information is being limited as US government repositories and libraries were stripped of any material deemed sensitive after 9/11²⁶. Fear and the restrictions on information flows, protest movements and increased government secrecy have most certainly led us to a point in history where civil liberties and the concept of democracy itself is more threatened than at any other peacetime. The great paradox of this is that the damage being done to both civil liberties and democracy is being done by elected officials and not by the terrorists who it is claimed are ready to strike at any given opportunity and against whom private individuals apparently require so much protection from.

²⁵ Conor Gearty, ‘Rethinking Civil Liberties in a Counter-Terrorism World’, *Field Day Review* (2007), pp. 124 – 135: 130.

²⁶ Nancy V. Baker, ‘National Security versus Civil Liberties’, *Presidential Studies Quarterly* 3 (2003), pp. 547 – 567: 550.

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