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Policina

RCMP



ROYAL CANADIAN MOUNTED POLICE

in the Post 9/11 Era



Research and Evaluation Branch

Community, Contract and Aboriginal Policing
Services Directorate



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

Canada

Policing in the Post 9/11 Era

Dr. Frederick Desroches
Department of Sociology
St. Jerome's University
University of Waterloo

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Research and Evaluation Branch
Community, Contract and Aboriginal Policing Services Directorate
Royal Canadian Mounted Police
Ottawa

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Executive Summary

The terrorist attacks of September 11, 2001 have had a profound impact on security issues within and beyond American borders. Since 9/11, governments around the world have taken significant steps to protect citizens and infrastructure from terrorist attacks. In Canada, Britain, and the United States, new legislation has tightened immigration policies, the banking industry, transportation security, and expanded the reach of both intelligence and police agencies. Although most people agree that the state must be more vigilant and increase security, there is less consensus over what powers the police and other government agencies should have in investigating suspected terrorist groups.

Since 9/11, Canada, Britain, and the U.S. have each passed anti-terrorism legislation that has blurred the historical distinction between law enforcement and national security. Within the U.S., for instance, The Patriot Act grants intelligence agencies access to many of the powers and tools of domestic law enforcement and gives law enforcement officials access to intelligence tools - all in a way that frees both types of agencies from the procedural restrictions of the criminal justice system. Canada's 2001 anti-terrorism legislation, Bill C-36, and Britain's Prevention of Terrorism Bill 2005 (which replaces the Anti-Terrorism, Crime and Security Act 2001) similarly provide additional investigative powers to intelligence and law enforcement agencies. C-36 did not change the RCMP's mandate with respect to conducting national security criminal investigations but expanded its law enforcement role by creating Criminal Code offences related to national security.

Overall, the terrorist attacks of 9/11 have resulted in an expansion of government powers and centralization, decreased civil liberties, and an increased intrusiveness into the lives of citizens by government. Civil libertarians in Canada, Britain, and the U.S. have criticized legislative initiatives as major threats to individual rights. Controversial aspects include investigative hearings, access to private records, and preventative detention powers that allow the arrest and incarceration of non-citizens without charges or legal representation and without most of the rights granted to persons charged with criminal offences. Of major concern has been the targeting of ethnic minorities and the use of immigration rules as a convenient way of arresting, detaining, and deporting non-citizens without due process. The deportation of immigrants and asylum

seekers to countries where their security cannot be guaranteed has been heavily criticized in all three countries.

Civil libertarians argue that governments in Canada, Britain, and the U.S. have over-reacted to the threat of terrorism and that legislative actions following September 11, 2001 have led to the development of policies that are dangerous to civil liberties and unlikely to improve national security. This is criticized as a short-term and shortsighted expedient that is in direct opposition to traditional values of justice and due process. Critics contend that it is necessary to set reasonable guidelines for law enforcement and intelligence officials and to enforce them through judicial oversight. Government policies need to be both defensible and democratic in order to be considered legitimate.

The following paper discusses the legislative response of Canada, Britain, and the U.S. to the events of 9/11 and the debate and controversy surrounding the move towards increased homeland security and the consequent threat this has meant to civil liberties. Also discussed are initiatives aimed at protecting key infrastructures that do not rely on law enforcement or threaten civil liberties.

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Introduction

The events of September 11, 2001 changed the manner in which people and governments in North America perceive the threat of terrorism. While the tragedy of September 11th was an attack on American soil, it has acted as a "wake-up call" for countries throughout the world and has had a profound impact on the manner in which Governments protect their citizens and infrastructure including transportation and aviation security. New legislation was rushed through respective legislatures in Canada, Britain, and the U.S. which has given increased powers to both intelligence and police agencies. Critics assert, however, that these powers have had a correspondingly negative impact on the rights of citizens in these democratic countries.

THE USA POST 9/11

The Patriot Act

Following the September 11, 2001 attack, the U.S. began to view itself in a "war" with terrorists whose aim was to destroy the moral and economic basis of their country. In his frequent speeches after the tragedy, President Bush portrayed himself as a "war President" and the war on terrorism as a fight between good and evil and one that threatened not only U.S. strategic interests, but basic values as well.

What was under attack in New York, Washington, and Pennsylvania was not merely a symbol of modern-day America's financial and military strength. Under attack was the very basis of Western societies: freedom, and security (Bush Speech, 2002).

The most immediate legislative result of September 11, 2001 was the passing of The Patriot Act just 45 days after the attack on the twin towers and the Pentagon. The act substantially increased the powers of intelligence agencies and blurred the traditional distinctions between law enforcement and intelligence gathering.

Historically, there has been a clear dichotomy between domestic crime and foreign wars, and it was easy to tell the two apart. Government agencies assigned to deal with each have been kept

separate and distinct: the police fight domestic crime and the military fights wars and stays out of domestic law enforcement. Some of these walls were meant to protect individual rights, while others were meant to protect national security interests. This was viewed not just as an efficient division of responsibilities, but as a fundamental characteristic of open democratic societies. Countries in which armies are involved in law enforcement also tend to be non-democratic nations.

Critics have argued, however, that this "wall" prevented the sharing of information between law enforcement and intelligence agencies that could have prevented the tragedy of September 11, 2001 (Berman and Flint, 2003:55-6). The U.S. government has since taken the position that defence organizations need to be engaged in domestic affairs and that law enforcement agencies must also concern themselves with homeland security in order to protect national security interests.

The Patriot Act now grants intelligence agencies access to many of the powers and tools of domestic law enforcement without the same legal constraints that are found in criminal investigations and prosecutions. Similarly, the act gives law enforcement officials access to intelligence tools, but in a way that frees police agencies from the procedural restrictions of the criminal justice system. The Patriot Act, for instance, allows secret intelligence warrants for business records at libraries, bookstores and other institutions and makes it illegal for agencies to notify individuals whose records are targeted.

U.S. Justice officials have stated that their marching orders since 9/11 have been very clear: disrupt first, prosecute later. Civil libertarians argue that this strategy has resulted in the gathering of evidence in unorthodox or inadmissible ways and the misuse of other laws and government agencies to harass individuals suspected of having links with terrorist organizations. Many persons, notably newer immigrants of Arab descent, have been rounded up on lesser charges such as immigration violations in order to keep them off the street while they are being investigated.

These new powers were implemented with few politicians asking how abuses would be prevented in the absence of the checks and balances that are available in the criminal justice arena (Berman and Flint, 2003). Without legal safeguards, critics argued that abuses of citizens rights are inevitable. Predictably, since the events of 9/11, the United States Department of Justice has arrested and held many thousands of individuals in jail for months on end, without any evidence of criminal wrongdoing (Salyer, 2002).

Under the Patriot Act, "domestic terrorism", is so vaguely defined that it could be applied to acts of civil disobedience (Larder, Jr., 2001; Rosenfeld, 2001:1). Critics point out that the U.S. is sending a message that when it comes to the issue of civil rights versus national security, security gains precedence. Under The Patriot Act, the U.S. seems willing to ignore or place in abeyance its own principles of liberty and equality for the sake of security.

Despite the increased powers granted to police and intelligence agencies, a number of high-profile U.S. terrorism prosecutions since 9/11 have grabbed big headlines only to quietly fizzle or stall at trial (Time, March 7, 2005:10-14). In addition, U.S. courts have used their own powers to rein in government anti-terrorism strategies which attempt to detain so-called "enemy combatants" without charge or trial. The U.S. Supreme Court recently held that foreigners seized by U.S. forces as potential terrorists and held for several years may challenge their captivity in American courts (Globe and Mail, December 17, 2004).

Homeland Security

The attacks of 9/11 on U.S. soil shook the American people and government out of their complacency and made homeland security a major political, defence, and law enforcement concern. Homeland security is defined as an "overarching concept, consisting of all action taken at every level (federal, state, local, private, and individual) to deter, defend against, or mitigate attacks within the United States, or to respond to other major domestic emergencies" (Beresford, 2004). The ideology behind homeland security supports an active and powerful military/government/citizen coordination, affirming that government is "doing something" to provide protection to its citizens.

Many politicians in the U.S. are convinced that the essential problem of homeland security is the lack of coordination among a myriad of existing "homeland-defence" agencies, all competing for mission authority and budget. The intent of establishing a new Homeland Security Agency is to realign and consolidate a number of key federal agencies in a way that will help government prevent and respond better to homeland threats. The idea is to superimpose a domestic terrorism czar over the inter-agency process, and lend leadership and accountability to domestic counter terrorism efforts, including the military.

The Office of Homeland Security, created in 2005, is the new super-department passed into law by the U.S. administration to coordinate intelligence gathering to prevent terrorist attacks in the

United States. This security system oversees the actions taken by various intelligence agencies including the FBI, National Guard, Immigration and Naturalization Service (INS), the Secret Service, Department of Justice, the Pentagon, and the Central Intelligence Agency. These departments now work collectively to increase the effectiveness of intelligence gathering, prevent and respond to major domestic emergencies, secure national borders, reduce the vulnerability of critical infrastructures, and strengthen the capacity to respond to emergencies and terrorist attacks. The Homeland Security office has also set out a national strategic alert system for terrorist threats and developed security plans for high profile public events (CFR, 2004).

The Homeland Security Act has many critics who see it as unnecessary, expensive, and a threat to individual liberty (Beresford, 2004; Brown, 2003). The act allows, among many things, for Internet surveillance in order to gather telephone numbers, Internet provider addresses, and website addresses or e-mail information without consent; requires officials to hand over suspicious records to law enforcement authorities; and allows the government to utilize as much surveillance upon individuals as they see fit (Cotty, 2004:138; Brown, 2003:62).

In addition, video surveillance has been expanded throughout the U.S. connecting to the Joint Operations Command Center or the JOCC (Brzezinski, 2003). The JOCC is a recently developed facility shared by many law enforcement agents who monitor video cameras from computer terminals. With this new technology, government officials can witness events taking place within schools, subway stations, and shopping malls. Officials, it is suggested, will have ample opportunity to abuse their power by tapping into any random citizen's life without justification (Cotty, 2004:138).

Homeland Security has shifted the American justice system away from the due process approach in order to provide an effective system to deter attacks and protect citizens. Government officials defend the changes by claiming that they "enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system" (Sylves and Cumming, 2004). Nonetheless, sceptics contend that while defending Americans against all enemies is an essential role of government, the government must also make sure that Americans' civil liberties are protected.

Data Mining

Data mining involves the scanning of billions of bits of personal data concerning the behaviour

and habits of citizens in search of evidence or hints of terrorist activities. Data mining encompasses all records that exist in the hands of government and third parties including medical, financial, credit card, travel, education, employment, housing, shopping, Internet browsing, and even library borrowing records. Unlike electronic surveillance, such as the use of wiretaps, there are minimal legal constraints on government use of data mining to examine these materials.

The Patriot Act has given a huge boost to mining techniques by vastly expanding the ability of the FBI to compel disclosure of entire databases or records. The police only need claim that databases are sought for an authorized intelligence investigation. In other words, a court order is still required to obtain business records, but the legal standards for obtaining such orders are relatively low. Rather than having to request the records of specific individuals, the government now can insist that a business turn over its entire database (Berman and Flint, 2003:56).

The mining of vast and diverse commercial and government databases containing personal information about ordinary Americans, with no basis for suspicion, has attracted the interest of numerous U.S. government agencies. At present, the FBI and Department of Homeland Security make extensive use of data mining and the Transportation Security Administration is developing a passenger profiling system that relies on data mining technology (Berman and Flint, 2003:56).

Critics point out that none of these agencies have guidelines to control the use of this powerful tool nor have they established standards for accuracy and reliability, rules on how inferences should be drawn from such data, limits on the actions that may be taken based on commercial data, guidelines on warehousing or sharing of data, or time limits on retention of such information. Since data mining technologies have the potential to monitor the actions of millions of citizens, many find it alarming that a comprehensive set of standards have not been established to govern such invasive practices (Berman and Flint, 2003:56).

Racial Profiling

Prior to 9/11, efforts were underway in the U.S. Congress and several state legislatures to ban the use of racial profiling in policing. The proposed Congressional legislation The End of Racial Profiling Act defined racial profiling as "the practice of a law enforcement agent relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities". The bill provided a private cause of action against any officer or law

enforcement agency who used a profile for routine stops and searches. Until 9/11, it appeared as though anti-profiling legislation might be passed. Bills were pending in Congress and both presidential candidates, Al Gore and George Bush, had endorsed the concept during the 2000 election campaign. However, after it became clear that the terrorists of 9/11 fit a distinct profile - all were young men of middle eastern origin with Islamic names - Congress withdrew the bill and is not likely to pass any legislation that would stand in the way of law enforcement officers preventing further terrorist attacks.

Profiling in the U.S. is highly contentious, since it has been developed in the context of America's history of racial oppression, which includes slavery, lynching, and segregation (Malt-Douglas, 2002:66). The fact that the 9/11 terrorists fit a distinct profile has added an explosive element to an already unstable mixture - international conflict has become intertwined with domestic discord - making the use of profiling highly controversial. Many civil libertarians and representatives of racial and ethnic minorities have argued that race and ethnicity have no place in criminal profiling except in the identification of a specific suspect. They argue that it is far too easy for racism to influence the profiling process leading to the construction of negative stereotypes and the mistreatment of hundreds of thousands of minorities (Harris, 2002).

Aviation Security

The events of 9/11/2001 have had a profound effect on aviation security. Aviation facilities have both symbolic and functional significance and their destruction wreaks widespread economic damage. In addition, the terrorist attacks on the World Trade Center and the Pentagon have shown dramatically how aircraft can be used as weapons just as destructive as missiles. As part of Homeland Security, aviation security has undergone a widespread reassessment with the primary focus placed on the prevention of future hi-jackings. Enhanced security efforts aimed at target hardening airlines have included the appointment of Federal Security Directors responsible for major airports; reinforcement of cockpit doors; the use of specially trained air marshals on many flights; a huge expansion in the use of technologies to search passengers and their luggage; and better screening of airport employees (Szyliowicz, 2004).

The most significant problem in increasing aviation security lies in the fact that given the volume of passengers - millions and millions of people fly each year - effective screening of passengers and baggage is based on profiling techniques used to identify potential terrorists who can then be subjected to a more thorough security check (Szyliowicz, 2004:53-5). Such profiling, of course, is

based on racial and ethnic characteristics and has had a large impact in the screening of airline passengers. The U.S. aviation industry, under the guidance of intelligence and law enforcement agencies, has created an inventory of possible terrorist suspects who have been put on a "no-fly" list. Passengers whose names appear on the list are given additional scrutiny at airports through searches, interrogations, and extended delays. On occasion, they are denied the right to fly or entry into the United States.

Although the no-fly list is a product of the post 9/11 security agenda in the U.S., it is not clear if its purpose is limited to anti-terrorism or whether it also serves an ordinary law enforcement agenda. Critics claim that it has been used politically by government agencies to stop peace and environmental activists from flying to the U.S.. Even the artist formerly known as Cat Stevens, now a converted Muslim, was prevented from entering the U.S. when he tried to fly into the country from Britain in 2004.

Critics are concerned about the potential for abuse of civil liberties and the consequences of mistakes for people whose names appear on the list. The U.S. Transportation Security Commission keeps no records of the number of passengers denied boarding or delayed by the list, or the number of people mistakenly on the list or wrongfully taken aside at airports and questioned. Anecdotal evidence, however, suggests that the no-fly list is riddled with wrongly flagged travellers and misspelled names, and often lacks sufficient information to verify the identity of an individual listed (CAUT Bulletin, 2004). In addition, the list is heavily biased against racial and ethnic minorities, people of certain nationalities and those from particular regions of the world. One effect of this increased scrutiny of visitors to the U.S. has been a huge drop in the number of foreign students applying and obtaining visas to enter the United States. In addition, the number of foreign tourists to the U.S. has also dropped significantly (The Economist, September 25, 2004).

Immigration as a Tool to Combat Terrorism

Since September 11, 2001, the U.S. government through the office of the Immigration and Naturalization Service (INS), has arrested thousands of immigrants based on racial and ethnic profiling in an attempt to ascertain if any have links to terrorist organizations. Almost all have been detained without access to lawyers or without being formally charged of criminal or terrorist related offences. Instead, most are held in custody for having violated U.S. immigration law and because they are not U.S. citizens, they are denied basic rights of due process (Jablonsky,

2002:10). Many are held in jails for months without any evidence of criminal wrongdoing while the FBI investigates them. Proceedings are civil rather than criminal; thus detainees lack the Sixth Amendment guarantees of legal representation and are not entitled to an attorney at government expense. Detainees who are considered "special interest" cases are held in custody for months while the FBI attempts to "rule out the possibility that a detainee is linked to terrorism". Immigrants are questioned without lawyers and under coercive conditions that would never be permissible in a criminal context (Salzer, 2002:60).

Critics argue that the U.S. immigration system has treated these persons as criminals for purposes of determining their rights to liberty while in confinement, but denies them any of the safeguards that are in place in the criminal justice system that serve to assure fairness and justice. Not surprisingly, immigration detainees have been the fastest growing segment of the nation's jail population (Salzer, 2002:60-61).

Similarly, asylum seekers in the U.S. who have fled persecution in their home country are also subjected to detention while their claims are investigated. Since September 11, 2001, thousands of asylum seekers have been taken into custody from their port of entry and transported to jails, often in handcuffs, and usually without any clear understanding of why they are being detained. Most asylum seekers are detained in local jails with common criminals in violation of United Nations Convention protocols relating to the status of refugees (Welch, 2004; 113-114).

Critics argue that U.S. immigration laws have been used as a pretext for holding people while the government figures out what to do with them and that the immigration system has been used as a political tool - a convenient way of getting rid of someone without having to prove criminal conduct. Detaining asylum seekers in jails across the U.S., it is argued, suggests that certain aspects of the war on terror serve more to control immigration than to control crime, is ineffective as an antiterrorist tactic, and produces an array of human rights predicaments (Kaneya, 2003; Welsh, 2004).

BRITAIN POST 9/11

The Detention (Internment) of Foreign Terrorist Suspects

Following the September 11, 2001 terrorist attacks on the United States, the British Parliament

rushed through emergency legislation entitled the Anti-terrorism, Crime and Security Act in December 2001. The Act - since replaced with the Prevention of Terrorism Bill 2005 - was heavily criticized and described as "the most draconian legislation Parliament has passed in peacetime in over a century" (Tomkins, 2002:205). The legislation contained measures so coercive that the United Kingdom became the only country of the 41 nations who had ratified the European Convention on Human Rights (ECHR) to enter formal derogation from Article 5(1) dealing with the protection of civil liberties (Tomkins, 2002:205-206).

The law allowed the police to arrest and hold foreign nationals if there were "reasonable grounds to suspect" links to terrorist groups. This represented a far lower requirement than the standard of proof that would be required to convict people of a crime. The result has been the arrest and detention of a number of foreign terrorist "suspects" in Britain who have been held in prison without any charges being laid. These "detentions" as they are called, have been the focus of intense criticism by opposition politicians and civil libertarians in the United Kingdom.

Recently, Britain's highest court harshly condemned the 2001 anti-terrorist law in a powerfully worded 8-1 decision. The judges described the law as a gross violation of human rights, disproportionate and discriminatory against immigrants and foreigners, and ruled that it breached the European Convention on Human Rights. "The real threat to the life of the nation... comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve," wrote Lord Hoffman, one of the nine-judge panel in the House of Lords. Shortly thereafter, a high court judge ordered the release on bail of all foreign terror suspects held without trial under the 2001 law.

Adding to the British government's embarrassment was their demand that the Americans release the remaining four British prisoners at Guantanamo Bay detention camp. The detainees were sent back to Britain and it was determined that there was so little evidence against them, that they were all immediately released. Critics were quick to charge the British government of having a double standard when it came to the detention of suspected terrorists.

The Prevention of Terrorism Bill 2005

In March 2005, the British Government passed a new anti-terrorism bill to replace the 2001 discredited legislation that expired on March 14, 2005. Politicians approved British Prime Minister Tony Blair's contentious Prevention of Terrorism Bill after one of the longest

parliamentary sittings in British history - a 30-hour marathon in the House of Commons and the House of Lords. Opposition parties argued that the bill would seriously infringe on civil liberties and demanded a "sunset clause" that would cause the bill to expire in 12 months' time. A deal was reached when the Prime Minister agreed to review and amend the legislation in one year's time.

The 2005 Prevention of Terrorism Bill will allow the government to detain both Britons and foreigners indefinitely and without charge if it suspects them of terrorism. It provides new powers to order the indefinite house arrest without trial of terrorist suspects, impose curfews and electronic monitoring without trial, and allows the government the right to forbid terror suspects from travelling, meeting certain people, and restricts access to telephones and the Internet. Just hours after the new law was passed, tough "control orders" were imposed on eight men - all foreign nationals and Muslims. Each of them was required to wear electronic monitors, remain at home for 12 hours a day, and refrain from pre-arranged meetings. Under the new law, the government must apply to a judge to issue house arrest orders. In emergency situations, the government can arrest first and seek court approval for "control orders" within seven days.

Tories, Liberal Democrats, and many Labour left-wingers were dismayed that the government would pass legislation that they viewed as "deeply flawed" (The Economist, March 5, 2005:58). George Churchill-Coleman, a former head of Scotland Yard's anti-terrorism squad, declared the new measures were impractical, unethical, and would further marginalise Britain's Muslims: "I have a horrible feeling that we are sinking into a police state." (The Economist, February 19, 2005:55)

The law is likely to be challenged in the European Court of Human Rights by nine foreigners still held in Britain without trial for the past three years. The government is worried they may lose the appeal and are planning to seek a derogation from the clause in the European Convention on Human Rights that guarantees a right to liberty. Under the convention, derogation is permitted only "in time of war or other public emergency threatening the life of the nation" and then only "to the extent strictly required". The government argues that the threat of international terrorism is just such a "public emergency".

The determination of the Labour government to press ahead with legislation that they know many reasonable people loathe reflects a belief that the voting public will blame them for not doing enough to prevent terrorism if some major attack should occur. The dilemma for the government

centers around the decision to release or detain terrorist suspects when the evidence will not stand up or be admissible in a criminal court of law. The question becomes: does the threat of terrorism pose such a danger that the criminal justice system's usual safeguards should be dispensed with? Prime Minister Tony Blair has made it clear to parliament that he prefers erring on the side of security rather than civil liberties.

What we are desperate to do is to avoid the situation where at a later point, people turn around and say: "If you'd only been vigilant as you should have been, we could have averted a terrorist attack" (Blair speech, 2005).

Some citizens and journalists have sided with the government or at least sympathized with their dilemma. They point out that government officials are routinely exposed to the fears of security advisers who constantly bend their ears with prophecies of doom. Governments in Britain have been given frightening briefings from security services regarding several large plots since September 11 aimed at killing Britons, all of which have been averted (The Economist, January 20th, 2005:12; March 5, 2005:58).

No one disputes the fact that the terrorist threat is real. It has been only one year since the bombing of several passenger trains in Madrid in March, 2004.¹ Islamic terrorists are known to work on a long time-scale and plot their major offensives for years in advance. Critics, however, argue that the government ignores accepted political consultative processes in making judgements and reaching decisions and has exaggerated the terrorist threat in order to pass its legislative agenda. They also point out that no other nation in Europe has sought a derogation from the European Convention on Human Rights (The Economist, March 5, 2005:58; February 19, 2005:55).

Civil rights activists argue that even though it is better to keep terrorist suspects under house arrest without trial than to imprison them in high-security jails, it is still an unacceptable practice. The Economist, for instance, condemns the 2005 law arguing that in a democratic society, no one should be locked up indefinitely, inside their home or out of it, when they have not faced a trial in which they have been given the opportunity to defend themselves publicly (The Economist, January 29, 2005).

Lawyers and civil rights advocates are increasingly concerned that the government is flexing its

¹ Since this report was written, London experienced the transit bombings in July, 2005.

law-and-order muscle at every turn. The new form of "internment" allowed under the 2005 Prevention of Terrorism Bill, applies to both British citizens and foreign nationals. The last time British citizens were subject to a form of internment was in the early 1970s when hundreds of suspected IRA separatists were detained without trial in Northern Ireland. The practice was widely seen by Catholics as a grave injustice and was dropped after IRA recruitment and violence increased. There is a concern that house arrests might have the same impact on Britain's two million Muslims, whose leaders have already warned that the widespread stop-and-search tactics employed by police are pushing hundreds of youths into the hands of extremists.

The Experience of other European Countries

The British debate is reflected across Europe as democracies struggle to find a balance between protecting lives and maintaining civil liberties in times of terrorism. Despite the fact that anti-terrorist laws across Europe have granted increased powers to the police and intelligence agencies, the results have been the same: widespread arrests but few convictions. In Britain, 701 suspected terrorists have been arrested between September 11/01 and February 2005. Of those, 119 suspects were charged under the Terrorism Act and only 17 were convicted. None of these cases were the kind of bomb plots often cited by politicians to justify crackdowns (Ranstorp, 2005). German authorities have failed to convict anyone with suspected links to the September 11, 2001 plot despite several arrests. Germany now focuses on deporting suspects while respecting European Union restrictions on sending people back to a country where they risk death or torture. House arrests are employed in Italy, while in France, detention orders from judges can keep suspects in jail for up to three years while their cases are investigated.

There is also increasing concern that new anti-terrorist powers are being used inappropriately to deal with crime and other threats to social order. Police in Britain, for example, have recently confiscated mobile phones from people demonstrating against the war in Iraq (Globe and Mail, Sept 27, 2004).

Alternative Proposals - Electronic Surveillance and Wiretap Evidence

There are certain weaknesses in the British criminal justice system that hamper the fight against terrorism. In Britain - unlike Canada and the U.S. - evidence collected by tapping people's phones is inadmissible in court. Britain is thus handicapped in its fight on terrorism because laws

do not allow wiretap evidence to be admitted in court. This restriction was designed to protect the security services' intelligence source but it is now widely believed, by both spies and policemen, to do more harm than good. Opposition parties are lobbying for the reform of these laws in order to facilitate the prosecution and conviction of terror suspects - thus making it unnecessary to hold them in prison without charge. Despite calls for changes in the law, the government has refused to lift a 1985 ban on the use of "intercepted communications," including telephone wiretaps, as evidence in court. Instead, the British government has so far heeded the advice of its security services, which argue that using wiretap information would jeopardize informants and alert suspects to the methods used. Within Europe, Ireland is the only other country that prohibits the use of evidence in criminal cases that has been gained through electronic surveillance.

Searching for Less Coersive Means for Dealing with the Threat of Terrorism

Civil libertarians are concerned that Britain is moving from a civil liberties society to a security society and compare the future to that of a 1984 Orwellian tyranny. They argue that terrorism will continue to be a threat but that governments should not sacrifice fundamental liberties in their pursuit of security. Instead, some argue that governments should focus their efforts on the prevention of catastrophic biological or nuclear attacks. It is suggested that many steps can be taken to decrease the likelihood of serious terrorist attacks on a country's infrastructure without resorting to draconian laws that deprive citizens of basic democratic rights.

In dealing with the potential threat of a terrorist attack on a nation's computer infrastructure, for example, - i.e., cyber attacks or terrorist attacks on critical information structures aimed at disrupting, degrading, or destroying computer networks - governments can work with industry to implement a variety of strategies to increase cyber defences. Most strategies to protect computer systems and stored data rely on technology companies and give little or no role to police forces, nor do they require coercive legislation. Instead, government and technology companies can use a range of mechanisms to reduce the risk and exposure to terrorist or criminal attacks (Rathmell, 2003).

Similarly, Hills (2002) discusses proactive and reactive ways for government organizations to prevent and/or prepare for the possibility of "catastrophic terrorism" which includes nuclear, biological, or chemical (NBC) attacks. He suggests that policies and strategies be drawn from

disaster management experience in order to gain insights from disaster studies. Strategies for dealing with the threat of terrorism should include a wide variety of government and non-government organizations. "Responding to terrorism on an unprecedented scale will require more than just the realignment of security priorities and organizations" (Hills, 2002:246).

CANADA POST 9/11

9/11 - The Changing Role of the RCMP

The September 11, 2001 attack on the U.S. dramatically altered the political atmosphere and led to changes in Canadian criminal law and related statutes. The Canadian government responded to the 9/11 crisis by putting the federal police force back into the business of spying and making the RCMP the lead agency in investigating terrorism. Criminal investigations that target terrorism are complex and require contacts and cooperation with other national police and intelligence agencies. The RCMP have been enlisted in the war on terror because they routinely deal with foreign law enforcement agencies and they have skilled and experienced investigators who are trained to manage major cases (Couture, 2004). A directive from the office of the Solicitor General - now Public Safety and Emergency Preparedness Canada - instructs the RCMP to coordinate national security investigations centrally (Vieira, 2004:8).

Members of the RCMP must now report criminal information related to national security to divisional national security units, which then report the information to the department's Criminal Intelligence Directorate (CID). For every national security investigation it commences, CID is required to consult CSIS - the RCMP's partner in protecting national security - ensuring it is kept abreast of all facets of the investigation. Through centralization, the Commissioner of the RCMP is aware of ongoing national security investigations and the minister of Public Safety and Emergency Preparedness Canada is kept advised of emerging concerns (Vieira, 2004:8-9).

The RCMP have also created four Integrated National Security Enforcement Teams (INSETS) located in Toronto, Montreal Vancouver, and Ottawa whose goal is to bring together provincial and municipal police services with federal partners and agencies such as the Canada Border Services Agency, Citizenship and Immigration Canada, and CSIS. The various agencies can pool resources, allowing the RCMP to work closely with its national and international partners to collect and share timely intelligence about targets that are a threat to national security (Vieira, 2004:9).

9/11 - The Legislative Response

The September 11, 2001 terrorist attacks in the United States created a new challenge for government - how to respond appropriately to threats that bridge the traditional and formerly distinct areas of criminal conduct and acts of war. As in the United States, the Government of Canada has increased the powers of both the police and intelligence agencies and widened their mandates.

In December 2001, the government of Canada enacted Bill C-36, the omnibus anti-terrorism legislation, in response to the events of 9/11. The sections of the bill that attracted the greatest public attention were new terrorism offences and investigative procedures. The new anti-terrorist measures give additional investigative tools to intelligence and law enforcement agencies and are aimed to ensure that the prosecution of terrorist offences can be undertaken efficiently and effectively. Measures include investigatory powers that make it easier to use electronic surveillance against terrorist groups and which eliminate the need to demonstrate that electronic surveillance is a last resort in the investigation of terrorists. The legislation extends the period of validity for wiretap authorizations from the current 60 days to up to one year when police are investigating a terrorist group offence. A superior court judge must still approve the use of electronic surveillance to ensure that these powers are used appropriately. Further, the requirement to notify a target after surveillance has taken place can be delayed for up to three years.

Under Bill C-36, the Criminal Code has been amended to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them. The Anti-terrorism Act, as set forth in sections 83.01 to 83.33 of the Criminal Code, defines terrorist activity broadly as an action that takes place either within or outside of Canada; that is an offence under one of the United Nations anti-terrorism conventions and protocols; or is taken for political, religious, or ideological purposes and intimidates the public concerning its security, or compels a government to do something by intentionally killing, seriously harming, or endangering a person, causing substantial property damage that is likely to seriously harm people, or by seriously interfering with or disrupting an essential service, facility, or system.

Under this definition, there is an interpretive clause that states for greater clarity that an expression of political, religious or ideological beliefs alone is not a "terrorist activity" unless it is part of a larger conduct that meets all of the requirements of the definition of "terrorist

activity". The definition makes it clear that disrupting an essential service is not a terrorist activity if it occurs during a protest or a work strike and is not intended to cause death or serious harm to persons.

The new legislation also makes it a crime to knowingly collect or provide funds in order to carry out terrorist crimes; to knowingly participate in, contribute to or facilitate the activities of a terrorist group; to knowingly harbour or conceal a terrorist; and to instruct anyone to carry out a terrorist activity on behalf of a terrorist group. Canadian courts now have the jurisdiction to try terrorist offences even if they have been committed outside Canada, when the accused is found in Canada. In addition to these Criminal Code reforms, the definition and designation scheme make it easier to remove or deny charitable status under the Income Tax Act to those who support terrorist groups.

Special provisions in the Criminal Code also authorize the detention of individuals for specified periods of time, facilitate access to electronic surveillance and allow for the examination of a witness at an investigative hearing. These provisions allow for the admission of evidence from foreign authorities in private and in the absence of the suspect, and non-disclosure to the suspect in certain proceedings (Couture, 2004). These are exceptional measures that temporarily limit the rights of the individuals in question. But as stipulated in section 1 of the Charter, these rights are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In the final analysis, the judicial system remains the intervenor of choice for the protection of human rights and an individual can only be convicted of a terrorism offence if guilt is proven beyond a reasonable doubt (Couture, 2004).

Bill C-36 also amended the Canada Evidence Act to alter the regime for determining claims of public interest immunity that fall under federal jurisdiction. The doctrine of public interest immunity recognizes that on occasion, the public interest in non-disclosure of information concerning the state outweighs the public and private interests in proper dispute resolution. The bill gives the Attorney General new powers to issue a certificate prohibiting disclosure of any information in any judicial proceeding that is likely to cause injury to international relations or national defence or security (Stewart, 2003:250).

In addition, new provisions of the Public Safety Act and the Immigration and Refugee Protection Act have been implemented that also impact on the rights of citizens and non-citizens for security purposes (Mendes, 2004:14).

Concern for Civil Liberties - Security Certificates

The laws enacted after 9/11 clearly have the potential to impact greatly on the rights of individual Canadians. Controversial aspects include investigative hearings, preventive detention powers, security of information provisions and the definition and listing of terrorist groups and individuals under the omnibus Anti-terrorism Bill C-36. Of particular concern are security certificate provisions that allow the arrest and detention of non-citizens without charges, without legal representation, without rights, and allow the government to deport them to their home state. Under federal security certificates, accused persons and their lawyers are not informed of the precise allegations or given full information about them.

In November 2004, more than 40 law professors and national and provincial legal networks, including the Canadian Bar Association, lent their support to a letter urging the government of Canada to stay immediately the removal of any person to a country where they face a serious risk of torture or persecution, and to reform the security certificate process to bring it into conformity with international human rights standards.

The writers point out that security certificate provisions in their current form allow the arrest and detention of non-citizens without charges, without legal representation, and without rights. Individuals detained in cases involving security matters are denied the right to prepare a defence and mount a meaningful challenge to the lawfulness of their detention. Critics also charge the security certificate process is being invoked in cases where the likely outcome is deportation to a country where the individual concerned is at serious risk of torture or other human rights violations. The letter states:

We are gravely concerned that the security certificate process denies to non-citizens the due process rights to which they are entitled as equal human beings. Likewise of great concern is the denial of non-citizens' rights to be free from arbitrary detention - especially in the case of those who are not permanent residents, who can be detained without even a warrant. As undeniably serious as these violations are, however, they pale in comparison to what for some is the eventual outcome of the process: torture, which is perhaps the ultimate violation of human dignity and fundamental human rights.

The authors argue that the rights to life, liberty and security of the person, the right to be free from discrimination, as well as the prohibition on torture are pillars of democracy and the rule of law. These rights are guaranteed not only by the Canadian Charter of Rights and Freedoms, but

also by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and numerous other international and regional human rights treaties to which Canada is a party.

The letter says there are other options for dealing with individuals who are believed to be a threat to national security or the safety of another person. It is suggested that Canada can prosecute people under the anti-terrorism provisions of the Criminal Code. Alternatively, Canada may extradite the person to face charges elsewhere, provided the person's fundamental human rights will not be violated by that country. Both of these options meet the goal of avoiding impunity and protecting the public, and have been repeatedly advocated by the United Nations' General Assembly, the United Nations' Security Council, and international legal scholars.

At its recent conference in Berlin, the International Commission of Jurists adopted the Declaration on Upholding Human Rights and the Rule of Law in Combatting Terrorism. The declaration specifically affirms the principle that states should apply and where necessary adapt existing criminal laws rather than resort to extreme administrative measures in efforts to combat terrorism.

Canada's Privacy Commissioner also raised an alarm in her 2004 annual report that personal freedoms are becoming a casualty of the fight against terrorism. Commissioner Stoddart stated that as law enforcement and national security agencies collect more information about more people, chances increase that travellers and others will be treated unfairly. She also noted that Canadians who are singled out for special treatment may never know the reasons because of secrecy about how the systems for gathering and sharing data work.

The Commissioner points out that there are new surveillance threats to Canadian civil liberties - threats that result from attempts to create a state free of any and all supposed security risks. This "new legal landscape" has led the government into uncharted territory in which neither the criminal law nor the rules of war apply. Those who have accidentally found themselves trapped in this new terrain have become disoriented, frustrated and for some - like Maher Arar, a Canadian citizen born in Syria - in serious jeopardy.

Stoddart argues that there must be a middle ground between two bad options: targeted security profiling of citizens based on race, and subjecting everyone to increased scrutiny. The Commissioner is not opposed to agencies sharing information, provided there are policies and

procedures to protect the data, ensure they are used only for stated purposes, and kept no longer than necessary. Her report also expresses concern that, increasingly, national security agencies are using personal information gathered by the private sector for purposes unrelated to security.

In this context, the RCMP's role in the fight against terrorism also was subjected to a degree of media criticism. For example, the RCMP was alleged to have provided classified information without proper safeguards or high-level approval in the case of the deportation of a Canadian citizen, Mahar Arar, from the U.S. to Syria. (See, for example, Travers, 2004) The public investigation into this incident, the "Arar inquiry," has yet to publish any findings.

Terrorist Activity in Canada

Most analysts suggest that the type of terrorist activities taking place in Canada have been limited to fundraising, logistical support, and the procurement of equipment and supplies. A significant portion of the CID's National Security Intelligence Branch (NSIB) time is spent investigating the financing of terrorist activities (Vieira, 2004:9). Most cases are international and money raised in Canada is typically transferred to groups and organizations outside the country. Despite the fact that Canada has not recently been a target of international terrorism, and despite the fact that there has yet to be a conviction under Canada's anti-terrorism legislation, few people in the intelligence business doubt that the threat is real or that the country is vulnerable to attack.

Civil Liberties versus Security

The September 11, 2001 terrorist attacks in the United States blurred the distinction between criminal acts and acts of war. During times of war, civil liberties are usually curtailed because of the serious threat posed by an external enemy. Terrorism also poses a threat but one that is generally viewed as significantly less than war with other nations. To what extent does the "war on terror" threaten the lives of Canadians and its economic and political system and what should be our security response are questions that are fiercely debated.

Civil libertarians argue that despite serious threats to the security of the nation, the protection of the state must include the protection of the fundamental rights of individual citizens. The most important values in a free and democratic society include respect for the rule of law, the fundamental rights of citizens, and the protection of equality within our multicultural society.

Civil libertarians argue that the state must still respect the fundamental principle of proportionality enshrined in the Canadian Charter of Rights and Freedoms. The principle of proportionality requires that legislation be implemented in a manner that is proportional to the threats faced; are not based on racial profiling and stereotyping; respect the rule of law; and are not used to extend the reach of our national security agencies into areas not envisaged by the purpose of such legislation. If this occurs, effective national security and the protection of our fundamental democratic and constitutional values need not be a zero-sum game.

Mendes (2004) cautions that since the passage of the various pieces of national security legislation, abuses of civil liberties have occurred and the fundamental principle of proportionality has been ignored in some high-profile cases.

In the face of transnational terrorism, democracy and fundamental rights of citizens are ultimately protected by the respect for proportionality and the rule of law that those who are entrusted to protect the state demonstrate, even as they are given greater and greater powers to combat the perils of the day (Mendes, 2004).

Others point out, however, that individual rights must be sacrificed occasionally for security and that the most fundamental right in society is the right to be protected from those who would seek to kill or deprive individuals through violence (Dolhai, 2004). To what extent security issues should trump civil liberties and what powers should be given to our law enforcement and intelligence agencies are questions that are still hotly contested.

One area of concern is the possibility that law enforcement may use its new anti-terrorism powers to facilitate criminal investigations. For instance, anti-terrorism security provisions allow the RCMP to request access to airline passenger lists for reasons of transportation security. This is a serious concern for Canada's Federal Privacy Commissioner, who worries that the RCMP may use passenger lists for the purpose of executing an arrest warrant and for other crime control purposes. Commissioner Stoddart argues that as a general principle, anti-terrorism powers should not be used for general crime control purposes and argues:

If the police were able to carry out their regular Criminal Code law enforcement duties without this new power before September 11, 2001, they should likewise be able to do so now. The events of September 11, 2001 were a great tragedy and a great crime; they should not be manipulated into becoming an opportunity... to expand privacy-invasive police powers for purposes that have nothing to do with anti-terrorism (Editorial, 2002:3).

Border Security and the U.S.A.

United States politicians have expressed concern over the possibility that terrorists may launch their next attack on the U.S. from Canada. Canada has been criticized as having lax immigration and political-asylum laws that have made it a safe haven of choice for international terrorists of Bin Laden's al-Qaeda network (Timmerman, 2001). American security personnel have not forgotten the attempted border crossing of Ahmed Ressam - the man known as the "Millennium Bomber" - armed with 130 pounds of explosives intended to be detonated at the Los Angeles International Airport. Many have called on Canada to reform our immigration and refugee situation, or face increased security at the U.S. border that would adversely affect trade.

Since 9/11, Canada and the U.S. have signed a "Smart Border Action Plan" that calls for developing common standards for biometric identity cards, visa policy coordination, sharing of passenger information, joint passenger analysis units, compatible immigration databases, exchanges of information on immigration-related issues, integrated border enforcement teams, establishment of integrated national security enforcement teams, and joint cooperation in deporting individuals to source countries.

In an effort to keep the Canada-U.S. border open to legitimate trade and travel, but closed to terrorists, the RCMP recently created another Integrated Border Enforcement Team (IBET) in the Sault Ste. Marie region, bringing the total to 15 and ensuring that the entire border is covered by IBETs. First established in 1996, IBETs are made up of members from police and law enforcement agencies from both sides of the border who work with local, state, and provincial partners. The teams are designed to identify, investigate and intercept individuals and organizations that pose a threat to national security or who are engaged in organized crime (Vieira, 2004:9).

With respect to airline security, the RCMP are assisting in the development of a passenger rating system that will be integrated with the United States "no-fly" system in an effort to prevent a reoccurrence of the 9/11 disaster. The U.S. has exerted pressure on Canada and other countries to cooperate in this venture or risk losing aircraft landing rights within its borders.

The Canadian version of the "no-fly" list is already underway and is known as the Canadian Risk Assessment Centre. It is run by the Canadian Border Services Agency under the umbrella of the

new Public Safety and Emergency Preparedness Department and will track the travel patterns of air passengers. The plan is to eventually expand the program to all transportation systems (CAUT Bulletin, October 2004).

The Redeployment of Police Resources

Following the enactment of Bill-C 36, Canada's new anti-terrorism bill, the federal government awarded \$576 million in funding to the RCMP to assist them in the fight against terrorism. Recently, the RCMP announced the closure of nine detachments in Quebec on order to redeploy the officers to other Quebec posts. "Today we face a rapidly changing environment characterized by the forces of globalization, unprecedented technological advances and the omnipresent threat of terrorism and organized crime," said Assistant Commissioner Pierre-Yves Bourduas, commanding officer of the force in Quebec. Bourduas justified the redeployment of officers by explaining that the changes "will allow the RCMP to concentrate on its priorities - terrorism and organized crime" (Globe and Mail, Sept. 25/04).

Alternative Security Measures

The immediate reaction of federal legislatures in Canada, the U.S., and Britain to the attacks of 9/11 was to pass comprehensive anti-terrorist legislation that expanded the list of terrorist - related offences, increased criminal sanctions for these crimes, and provided sweeping new powers to both intelligence and law enforcement agencies. The consequence of anti-terrorism laws has been a corresponding reduction in the civil liberties of all citizens in these democratic nations.

In addition, police organizations in these countries have been given increased resources, have redeployed personnel and funds, and have made terrorism a much higher priority in their agenda. It is difficult to assess how effective this increased vigilance has been but one thing is clear - there have been no serious terrorist attacks on Canada, or the U.S., or Britain² since the events of September 11, 2001. The danger is still present, however, as witnessed by the series of violent and deadly train bombings orchestrated by terrorists with links to al-Qaeda which took place in Spain in 2004. These attacks led to the election of a new socialist government and the withdrawal of Spanish troops from Iraq.

² Since this report was written, London experienced the transit bombings in July, 2005.

Most citizens acknowledge that the threat of terrorism is real, Canada must be vigilant, and that law enforcement and intelligence agencies require sufficient resources to protect the country. Controversy arises, however, over the degree to which new laws meant to prevent terrorism should be allowed to infringe on our basic rights. Civil libertarians contend that the threat is not sufficient to diminish significantly our fundamental rights and freedoms and that due process should always be a priority. They warn against an over-reaction to the threat of terrorism and view the loss of basic human rights as a greater threat than that posed by groups such as al-Qaeda.

These critics suggest that in addition to increased vigilance on the part of law enforcement, there are other proactive and administrative measures that can be taken that will protect our infrastructure while at the same time, have little or no impact on our civil liberties. The Public Safety Act, for instance, provides increased powers to Ministers with mandates over transportation, the environment, health, food and drugs, energy, and hazardous biological, chemical and explosive substances. Threats to homeland security can be addressed through better screening of people who work in sensitive industries such as airports, nuclear power plants, pipelines, and port facilities. By placing tight licencing controls on hazardous substances, the Public Safety Act can help to prevent biological terrorism in a more effective manner than the increased penalties and mandatory consecutive sentencing for terrorist offences.

The Public Safety Act, it is argued, can be used to ensure that private sector corporations take steps to protect critical infrastructure. This type of approach is advocated by many who view a reliance on law enforcement and intelligence as reactive, punitive, a threat to civil liberties, and limited in effectiveness. In short, a more proactive and less punitive policy that engages private citizens and businesses in the protection of our food supply, transportation system, and other parts of our critical infrastructure, is viewed by many as more effective and efficient in the long run and one that respects traditional Canadian values and Charter rights and freedoms.

Summary and Discussion

Most enemies of western industrial nations such as Canada, the U.S., and Great Britain cannot successfully attack these countries using traditional military weapons and strategies. Consequently, they look for nontraditional methods, including the use of terrorist tactics. These strategies, unfortunately, often include the targeting and murder of innocent civilians.

Terrorism is difficult to define because the concept involves both a political and theoretical construction that depends upon cultural, religious, and national perceptions and viewpoints. The United Nations, for example, has been deeply divided on how to define terrorism, and the General Assembly has for years failed to agree on a definition. Part of the reason for a lack of consensus is the argument that one country's terrorist can be another's freedom fighter. Despite the lack of agreement, there is consensus, however, that terrorist activities involve violence or the threat of violence and are motivated for political and/or religious ends. Terrorists typically view themselves as striking back against a repressive political regime that denies them and their people the rights and entitlements they believe are rightfully theirs. Terrorist activities thus attempt to achieve a degree of revenge by attacking, destabilizing, or overthrowing a political order. They choose targets in part because they symbolize the political system that they view as their enemy.

The events of September 11, 2001 reveal dramatically that the United States is viewed as the enemy by al-Qaeda and other related terrorist organizations around the world. The attack also drives home the reality that the United States and Canada, like all democratic societies that value personal freedom and fundamental civil liberties, is highly vulnerable to violent terrorist acts. How governments respond to these threats and protect their citizens and infrastructure from future assaults, is a key issue and one that is hotly contested. One result from the terrorist attack of 9/11 is the growth of the national security state, an expansion of government powers and centralization, decreased civil liberties, and an increased intrusiveness into the lives of citizens by government.

Jablonsky (2002) compares the recent threat of terrorism to the threat the U.S. faced against the former Soviet Union. He suggests that just as the Cold War period of 1945-50 led to increased concern over security matters, the U.S. response to the threat of terrorism is ushering in a new era of national security that will affect generations of Americans in political, economic, and socio-psychological ways that are not yet fully apparent. He concludes that all democratic governments need to take a lesson from Cold War experiences:

The Cold War demonstrates that all this [the threat of terrorism] need not cause the rise of a garrison state or the diminishment of civil liberties. Above all, that long twilight struggle is a reminder of the importance of patience, perseverance, and endurance in the face of protracted conflict without the prospect of clear victory (Jablonsky, 2002:10-11).

Other political commentators similarly argue that government leaders and citizens must have realistic expectations of what can and cannot be achieved in the war on terrorism and acknowledge the vulnerabilities that exist in an open and democratic society. These critics point out that terrorism is a form of psychological warfare designed to create fear and intimidation among the populace, undermine their confidence in government and political leadership, and to rend the fabric of trust that bonds society. They caution against government agencies over-reacting to the threat and playing into the hands of terrorists. Unfortunately, they contend, legislative actions and procedures following September 11, 2001 have led to the development of policies and practices that are dangerous to civil liberties and unlikely to improve national security (Berman and Flint, 2003:55-58; Hoffman, 2002:313).

Too often since 9/11, the American public has been presented with a false trade-off: surrender personal freedoms and curtail democratic accountability in exchange for additional security (Berman and Flint, 2003:58).

Many civil libertarians conclude that the current multi-fronted war against terrorism has led to a pervasive chilling of civil liberties. In their zeal to protect the country from further attacks, the U.S. government, for example, has taken actions that subvert the country's legal values, sending a message that it is willing to ignore its own principles of liberty and equality when it suits its perceived needs. This is criticized as a short term and shortsighted expedient that is in direct opposition to the nation's traditional values of justice and its goal of treating individuals fairly and equally (Salyer, 2002:63).

The war on terrorism will be aided, not hampered, by respect for core Constitutional values: the First Amendment rights to assembly, speech, and the exercise of religion; due process, especially the right to confront the charges and accusers against oneself in a court open to public scrutiny; and privacy (Berman and Flint, 2003:55).

No one doubts that the threat of terrorism to free and democratic societies is real and serious. There is also a clear consensus for increased vigilance, precaution, target hardening, and other security measures. There is less consensus, however, on what powers the police and other government agencies should have in investigating citizens and non-citizens. Critics contend that law enforcement and intelligence officials operating in the field need guidance on how to prevent terrorism and on how not to infringe on civil rights. It is necessary to set reasonable guidelines and to enforce them through judicial oversight. Clear rules that take into account the legitimate needs of law enforcement and intelligence communities as well as civil liberties will result in

more effective investigations and a higher degree of protection for civil rights (Berman and Flint, 2003:58). In the war on terror, government policies need to be both defensible and democratic so that they are considered legitimate. In order to protect national security as well as civil liberties, greater, not lesser, oversight and accountability are required for law enforcement and intelligence agencies (Donahue and Kayyem, 2002:14).

Finally, political commentators who view terrorism from an international perspective argue that, even though an emphasis on law enforcement is essential, it is only part of the solution. What is also required is an overall strategy that incorporates the vital, though often overlooked, foreign policy dimension (Szyliowicz, 2004:48).

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