

## **Civil Liberties vs. National Security: Lessons from September 11th Attacks on America**

**By Shun-jie Ji\***

*It has been a long-lasting debate on the balancing of protection of citizens' rights and liberties against the national security. The September 11th, 2001 terrorist attacks on America made this issue more intriguing and complicated. It forced people to reflect their commitment to democratic principles. The American government responded determinedly toward protecting the American and the democratic systems. Utilizing the roaring patriotism, the American extended its authority into people's daily lives. The negative images came with such efforts were seen as racial profiling, taking advantage on public fear, sudden expansion of executive power, playing people's political tolerance, etc..*

*On the other hand, the September 11<sup>th</sup> attacks were used by other regimes to allying with the U.S. government based on the very*

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*legitimate cause: anti-terrorism. They were accused of becoming more aggressive toward the dissident and the minority group that are fighting for autonomy or ideological grounds. The tolerance of the American government on this stretch of anti-terrorist movement has been seen as the ignorance of civil liberties on the ground of punishing terrorists.*

*This paper is aimed to review the existing literature on the conventional debate on liberty and security, to explore findings on the public attitude after the attack. The value of democracy and civil liberties derived from democracy should be upheld regardless of peace time or war time. The U.S. leading role in fighting for democracy is essential for the liberal democracy to thrive on this planet. Its intentional and continued violation against civil liberties will not only damage the American moral leadership, but also impede the sustainability of democracy worldwide.*

**Key words: Civil Liberty, National Security, Anti-Terrorism, USA Patriot Act, Ruling Legitimacy**

*Those that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety. (Benjamin Franklin, Historical Review of Pennsylvania, 1759)*

*We're likely to experience more restrictions on our personal freedom than has ever been the case in our country....It will cause us to re-examine some of our laws pertaining to criminal surveillance, wiretapping, immigration and so on. (Justice Sandra Day O'Connor, New York Times, September 29, 2001).*

*If you accept, as most do, that the war on terrorism justifies wider powers of surveillance and detention, then two principles still need to be applied. First, the government's new powers should, where possible, be enacted in clearly-worded terrorism laws, passed by Congress. Second, wider powers should be balanced by wider review.*

(The Economist, March 6, 2003).

### **Introduction**

The September 11th attacks are definitely to become the kind of event that is a historical marker for a generation of people in the United States. People will always remember where they were and what they were doing when the attacks occurred and how they felt afterwards. The attacks became part of the common memory of people around the world. They were more important and more immediate to some and more distant to others.

The September 11<sup>th</sup> attacks was the deadliest terrorist attack in history. Before September 11, the deadliest attacks were the bombings of airplanes, such as Pan Am flight 103, destroyed over Lockerbie, Scotland, in 1988 by terrorists linked to Libya, or the 1985 bombing of an Air India jet. Each of these attacks killed more than 300 people. The August 1998 bombings of the U.S. embassies in Kenya and Tanzania—before September 11, the largest attacks on major buildings—killed 224 people.

Regarding to terrorism, Paul Pillar, a former deputy chief of the CIA's Counterterrorist Center, argues that there are four key elements of terrorism:

1. It is premeditated—planned in advance, rather than an impulsive act of rage.
2. It is political—not criminal, like the violence that groups such as the mafia use to get money, but designed to change the existing political order.
3. It is aimed at civilians—not at military targets or combat-ready troops.
4. It is carried out by subnational groups—not by the army of a country.<sup>1</sup>

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<sup>1</sup> <http://www.terrorismanswers.com/terrorism/introduction.html>

The incidence also carried broad and deep implications for the world in all aspects of lives, including economic, political, social, and cultural dimensions. For international politics, some argued it marks the end of a period known as the American unipolar moment, which brought up by the end of the Cold War.<sup>2</sup> Since the collapse of the Soviet Union, the global reach and unilateral freedom of action of the lone remaining superpower has grown far beyond that of previous world powers. No Roman Caesar or British monarch could have imagined the scope of U.S. influence. That this “empire” is not constituted in formally territorial terms in the manner of previous imperial systems—whether Greek, Roman, Byzantine, Ottoman, Spanish, Dutch, or British—diminishes neither the force of its military authority nor its economic and cultural influence. To say that the United States is an “imperial” power is not to take an ideological, polemical, or controversial position; it is simply to state a fact.

Accordingly, it is viewed the US became the sole superpower who would be able to influence world politics in a unprecedented dominant way. Accordingly, no individual power or nation-state can impose serious threat or challenge to US hegemony in the future. However, the September 11th attacks not only declared the end of the American invincibility, also exposed her vulnerability.

For other implications, we can summarize through the debate between Samuel P. Huntington’s and Francis Fukuyama’s arguments on the new world order after the end of the Cold War. In Fukuyama’s book, *The End of History and the Last Man* (1992),<sup>3</sup> he did claim people would live peacefully and happily since the Cold War was over and the more popular capitalism and liberal democracy had prevailed

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<sup>2</sup> Steven Smith. 2001. “The end of the unipolar moment: September 11 and the future of world order.” See [http://www.ssrc.org/sep11/essays/smith\\_text\\_only.htm](http://www.ssrc.org/sep11/essays/smith_text_only.htm)

<sup>3</sup> Fukuyama, Francis. 1992. *The End of History and the Last Man*. Free Press.

over the Communism and totalitarian regime. Indeed, the conflicting history between the two ideologies in the Cold War era came to the end and liberal democracy obviously had won the global acceptance. Before the September 11th attacks, Fukuyama's optimistic views received more attention and helped to build the American mindset as the only superpower that would guarantee the application of capitalism and liberal democracy to the world. However, the September 11th attacks hit hard to the great achievement and woke up more reflections and searching for answers to the American hegemony position.

Huntington's book, *The Clash of Civilizations and the Remaking of World Order* (1993),<sup>4</sup> quickly offered an explanation to this shocking tragedy. Huntington assumed that the fundamental source of conflict in this new world would not be primarily ideological or primarily economic. The great divisions among humankind and the dominating source of conflict will be cultural. Nation-states will remain the most powerful actors in world affairs, but the principal conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will be the battle lines of the future. Huntington particularly discussed the conflict between the Western and Muslim worlds as a major triggering point of the future war. Accordingly, the outbreak of the September 11th attacks seemed to confirm Huntington's argument.

The other reflection on the September 11<sup>th</sup> attacks was focused on the American continued one-side favor with Israel foreign policy on Mid-East. It is not difficult to see the American asymmetric support toward Israel in Israel-Palestine conflict. Many Arabic people have viewed the US as the commanding force behind all those daring action from Israel toward Palestine. The American bias enhanced the

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<sup>4</sup> Samuel P. Huntington. 1993. *The Clash of Civilizations and the Remaking of World Order*. New York: Simon and Schuster.

Arabic hatred against the American then used to fan the anti-American sentiment in the Mid-East. Thus, killing the American became a holy war to realize the long denied justice.<sup>5</sup> Accordingly, some called for change of the American attitude on Israel-Palestine conflict to be more objective. However, some still saw the American stronger and bigger support with Israel essential in anti-terrorism war. It is argued that the United States was formerly a passive guarantor of Israeli security, limiting its support to diplomatic and material aid. But after the September 11<sup>th</sup> attacks the American commitment to Israeli security has become more active. The United States will itself seek to destroy the enemies of Israel such as Hamas and Hezbollah. The inclusion of Iran in the much-criticized idea of the “axis of evil” is primarily in the interest of Israeli security. The U.S.-Israel “special relationship” was historically regional in scope and limited to the Middle East, but has developed into one with a global scope after the September 11<sup>th</sup> attacks.<sup>6</sup>

### **Two Conflicting Issues: National Security vs. Civil Liberties**

Compared to those world political and cultural consequences, the attacks caused some more immediate and deeper influences to people’s daily lives in civil liberty on the ground of national security. These two issues have long been a controversial debate in modern democratic societies. The conventional wisdom has been that people will accept more restrictions as the natural cost of heightened security. To balance the protection of people’s civil liberties against their security was always a critical challenge for constitutional discussion

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<sup>5</sup> November/December 2001: 25-26; Peter Ford, “Why do they hate us?”, *Christian Science Monitor*, 27 September 2001.

<sup>6</sup> M. A. Muqtadar Khan. 2002. “Nice but Tough: A Framework for U.S. Foreign Policy in the Muslim World.” *The Brown Journal of World Affairs*, VX:1, pp. 355-62.

in both of the peaceful time and war or national crises.<sup>7</sup> It is believed that "in time of war the laws are silent," and the supremacy of security dominates over liberty that typically accompanies national crises or emergencies. As the US Chief Justice William Rehnquist suggested in his book, *All the Laws but One: Civil Liberties in Wartime*, national emergencies shift the balance between freedom and order toward order-"in favor of the government's ability to deal with the conditions that threaten the national well-being."<sup>8</sup> During all of America's major wars -- the Civil War, World War I and World War II -- the government restricted Americans' civil liberties in the name of quelling dissent, silencing criticism of political decisions and preserving national security.

Not long time after the ratification of the Bill of Rights, the First Amendment came under assault. In the Federalist-controlled Congress the Sedition Act of 1798 was passed to make it a crime to criticize the government. The justification for such an extreme measure was the heightened tensions between the United States and France. However, almost all of the indictments, prosecutions, and convictions under the act were of Republicans .<sup>9</sup> In 1801 president Tomas Jefferson pardoned all convicted under the act.

During the Civil War President Lincoln interfered with freedom

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<sup>7</sup> Hans, J. Morgenthau. 1952. "Another great debate: The national interest of the United States." *American Political Science Review*, 46:4, pp. 961-88. Donald Johnson. 1963. *The challenge to American freedom: World War I and the rise of the American Civil Liberties Union*. University of Kentucky Press. Paul M. Sniderman,, Joseph F. Fletcher, Peter H. Russell, and Philip E. Tetlock. 1996. *The Clash of Rights: Liberty, Equality, and Legitimacy in Pluralist Democracy*. New Haven: Yale University Press. Linfield, Michael. 1990. *Freedom under fire: US civil liberties in Times of war*. Boston: South End Press

<sup>8</sup> Rehnquist, William. 1998. *All the Laws but One: Civil Liberties in Wartime*. New York: Knopf Press,p.222.

<sup>9</sup> Nancy Chang, 2002. *Silencing Political Dissent: How post-September 11 anti-terrorism measures threaten our civil liberties*. Seven Stories Press.

of speech and of the press and ordered that suspected political criminals be tried before military tribunals. One of Lincoln's most controversial acts was to suspend the writ of habeas corpus, a safeguard of liberty that dates back to English common law and England's Habeas Corpus Act of 1671. But Lincoln suspended habeas corpus without waiting for Congress to authorize it.

In the World War I, soon after declaring war on Germany and its allies in 1917, Congress banned using the US mail from sending any material urging "treason, insurrection or forcible resistance to any law." It punished offenders with a fine of up to \$5,000 and a five-year prison term, and the government used this new authority to ban magazines such as *The Nation* from the mail. President Wilson asked Congress to go even further: His draft of the Espionage Act included a \$10,000 fine and 10 years imprisonment for anyone publishing information that could be useful to the enemy. It banned making or mailing any statement intended to interfere with military operations or "promote the success" of America's enemies. The Supreme Court upheld the act in 1919, famously declaring, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." The war also spurred a host of restrictions on Germans and German-Americans, from requirements to register with the federal government to local laws that prohibited speaking or teaching German.

In a speech one week after the Pearl Harbor attack, President Franklin D. Roosevelt promised to preserve constitutional freedoms: "We will not, under any threat, or in the face of any danger, surrender the guarantees of liberty our forefathers framed for us in our Bill of Rights."<sup>10</sup> But not long time later, while members of the War

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<sup>10</sup> Samuel Walker. 1990. *In Defense of American Liberties*. New York: Oxford University Press, p. 135.

Department judged the foreign threat to the West Coast, Congress held hearings to substantiate an internment. In February of 1942, the Congressional Subcommittee on Aliens and Sabotage recommended "the immediate evacuation of all persons of Japanese lineage and all the others, aliens and citizens alike, whose presence shall be deemed dangerous or inimical to the defense of the United States from all strategic areas."<sup>11</sup> When War Department officials advocated the segregation and internment of citizens of Japanese American descent from the largely populated West Coast, unfortunately surprising, Roosevelt signed Executive Order 9066, calling for their evacuation. Roosevelt justified the action as "war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises and national defense utilities."<sup>12</sup> Then it ended up with more than 120,000 Japanese Americans, the majority of whom were American citizens or legal permanent residents, rounded up into internment camps, violating their civil rights to be treated with fairness and equality, without discrimination and the Fifth Amendment liberty of due process.

Under the Reagan Administration, the Civil Liberties Act of 1988 provided for reparation checks of \$20,000 to victims of the WWII internment. As checks have been distributed to over 60,000 survivors of the internment camps, they have been accompanied by a letter of apology from the sitting President: "The United States unjustly interned, evacuated, or relocated you and many other Japanese Americans... and unfairly denied Japanese Americans and their families fundamental liberties during World War II...the nation's actions were rooted deeply in racial prejudice, wartime hysteria, and a

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<sup>11</sup> Stetson Conn. 1990. *The Decision to Evacuate the Japanese from the Pacific*. Washington, D.C.: Center of History, U.S. Army, p. 15.

<sup>12</sup> Executive Order 9066, signed by President Franklin D. Roosevelt. February 19, 1942.

lack of political leadership”.<sup>13</sup>

### **After September 11<sup>th</sup> Attacks**

The September 11<sup>th</sup> attacks forced governments all over the world to take extraordinary measures to enhance the security of their citizens. Heightened security measures, such as unparalleled airport checkpoint procedures, face recognition devices in public places, tracking, monitoring and identification through thumb printing of certain categories of visitors, random searches of internet content by intelligence officers, the ability to demand records on somebody from any business or organization, the use of wiretaps and the ability to intercept and read email, and eavesdropping on conversations between a lawyer and their client.

As in wartime, the September 11th attacks have caused many Americans to wonder about the personal sacrifices to be made in order to keep the nation safe and free. On October 26, 2001, President Bush signed the USA Patriot Act (USAPA) into law. This law was criticized to have given sweeping new powers to both domestic law enforcement and international intelligence agencies and have eliminated the checks and balances that previously gave courts the opportunity to ensure that these powers were not abused.

The summary of USA Patriot Act is as the followings:

1. The standards for wiretapping may be lowered. Whereas previously, the FBI could obtain a court order only if its "primary purpose" was to gather intelligence through wiretapping, the new law permits wiretaps if "a significant purpose" involves intelligence gathering. As a result, people merely suspected of working with terrorists or spies may be wiretapped.
2. The FBI may share sensitive grand jury and wiretap information

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<sup>13</sup> Presidential Letter of Apology, signed by President William J. Clinton. October 1, 1993.

with intelligence agencies without judicial review or any safeguards limiting its future use, so long as the information concerns foreign intelligence or international terrorism.

3. Law enforcement may access an individual's internet communications if officials can certify to a court that the information is relevant to an ongoing criminal investigation. This standard is much lower than the showing of probable cause required for most search warrants.
4. Financial institutions will be required to closely monitor daily financial transactions and share information with government intelligence services. The law also allows law enforcement agencies secret access to an individual's credit report without judicial review.
5. A new crime of domestic terrorism is created, covering conduct that "involves acts dangerous to human life." Presumably, members of Operation Rescue or Greenpeace would be covered under this definition, permitting the FBI to wiretap the homes of individuals who provide lodging or other assistance to activists.
6. Non-citizens facing deportation may be held indefinitely on the attorney general's certification that an individual endangers national security.

Before and after the passed of USAPA, the US government was accused of the following wrong doings:<sup>14</sup>

1. Hundreds of individuals have been held in preventive detention. Arrested in conjunction with the terrorism investigation, as many as 1,200 individuals were detained for an extended period without any criminal charge lodged against them, and in most cases, without any basis in immigration law.
2. . An order allowing law enforcement agents to monitor attorney-client conversations undermines the principle that all criminal

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<sup>14</sup> "The State of Civil Liberties: One Year Later" in *Erosion of Civil Liberties in the Post 9/11 Era* A Report Issued By The Center for Constitutional Rights, p.3.

defendants are entitled to a fair and competent defense.

3. The Justice Department has limited the discretion of immigration judges and the immigration appeals process in ways that threaten the objectivity and independence of the immigration court system.

4. The President's Executive Order authorizing military tribunals has stripped away many constitutional protections afforded the accused.

5. Governmental actions have targeted individuals of Middle Eastern descent, South Asian descent and of the Muslim faith in violation of laws prohibiting governmental discrimination against ethnic and religious minorities.

6. Through its use of interim regulations and executive orders, the Executive Branch has usurped the authority and powers assigned to the Legislative Branch.

7. By mandating the use of military tribunals for those accused of terrorism, the Executive Branch has deprived the judiciary of its role in deciding criminal cases, and has made the same branch of government both the prosecutor and the judge.

8. Key provisions of the USA PATRIOT Act and relaxed guidelines for FBI investigations threaten the right to dissent by raising the possibility of harassment by investigators, by permitting searches on little evidence, and by creating the risk of felony prosecution for minor criminal violations.

Those wrongdoings obviously violated several rules defined in Bill of Rights. Among them include The First Amendment that protects rights to freedom of speech and assembly, to petition government for redress of grievances, and to freedom of religion. These rights are integral to a democratic society. Additionally, also violated were those rights guaranteed by the Fourth, Fifth, and Sixth Amendments that protect people against unreasonable searches and seizures, arbitrary detention, and unfair trials. The government's harassments with these people fundamental rights not only break the social contract between the rule and the ruled, but also put people in

unexpected danger brought by the rule's aggressiveness.

For example, the detention of hundreds or perhaps thousands of Arab and Muslim immigrants violated due process and equal protection rights. More than 1,000 people were detained in the investigation, and most were held without criminal charges or adequate grounds under immigration law. More specifically, the detentions violate due process and equal protection rights in the following ways:

1. Detainees were held without being notified of the reason for their detainment. Of 718 cases the government has disclosed, 317 were brought before a judge more than the mandated limit of 48 hours after arrest. Thirty-six individuals were provided hearings more than 27 days after arrest, 13 after more than 40 days, and 9 after 50 days. In at least one case, a detainee did not see a judge until 119 days after being taken into custody.

2. Many detainees were held on minor immigration charges. In most cases, these violations did not warrant incarceration, and in any case, they provide grounds for detention only until an order of deportation has been issued. Numerous detainees were held for weeks or months past the issuance of a deportation order and scheduled deportation dates in violation of due process requirements.

3. Detainees were sometimes subjected to coercive and involuntary interrogations, and many were not advised of their right to retain an attorney. These interrogations were presumably meant to extract confessions or other incriminating evidence, but the due process clause prohibits forced interrogation.

4. All detainees had their personal property confiscated upon detention, and there were numerous instances in which key identification papers, money, clothing, and jewelry were not returned upon their release. This amounts to a seizure of private property by the state. Such a seizure without either legal grounds or judicially mandated compensation violates the Fifth Amendment.

5. There is considerable evidence that detainees have been singled out on the basis of their racial and ethnic backgrounds and religious convictions, rather than any specific evidence of wrongdoing. Further, measures taken against them were often out of proportion compared to the standard course of action - many were held for tourist visa violations, for example, that normally would result in an individual's release on bond. Their detention violates the equal protection guarantee implicit in the due process clause.<sup>15</sup>

Another example of some 660 al-Qaeda and Taliban suspects held at Guantanamo Bay also invited critics against the US government in violating human rights issue of foreigners. Guantanamo Bay is an American naval base in Cuba, where those suspects are waiting for military trial. Some have been detained for more than 21 months but without any charges issued against them. Nor were they granted the right to access to a lawyer or a consulting official. As mentioned above, such action violates the Geneva Convention regulations on prisoners of war.

On January 16, 2002, the United Nations High Commissioner for Human Rights issued a statement regarding the Guantanamo detentions, noting that:

"All persons detained in this context are entitled to the protection of international human rights law and humanitarian law, in particular the relevant provisions of the International Covenant on Civil and Political Rights ("ICCPR") and the Geneva Conventions of 1949. The legal status of the detainees, and their entitlement to prisoner-of-war (POW) status, if disputed, must be determined by a competent tribunal, in accordance with the provisions of Article 5 of the Third Geneva Convention. All detainees must at all times be treated humanely, consistent with the provisions of the ICCPR and the Third Geneva Convention.

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<sup>15</sup> Ibid, p. 12.

Any possible trials should be guided by the principles of fair trial, including the presumption of innocence, provided for in the ICCPR and the Third Geneva Convention."<sup>16</sup>

However, the US government insists the Guantanamo Bay is a not US territory because it is leased from Cuba. Moreover, those suspects are not prisoners of war, instead they are “enemy combatants.” Nevertheless, they are all treated humanely. Accordingly, such detentions violate with neither the Geneva Convention nor the US constitution. Some doubt if the US intention is not to bring those suspects under trail but to lock them under control. Donald Rumsfeld, the secretary of defence, seemed to confirm the doubt by saying “Our interest is not in trying them and let them out. Our interest is in-during this global war on terror-keeping them off the streets, and so that’s what’s taking place.”<sup>17</sup>

Do noncitizens living in America have the same rights as American citizens? Legal scholars disagree about which constitutional rights apply to noncitizens as well as citizens. Broadly speaking, the Supreme Court has declared that the right to due process of law applies to both citizens and noncitizens. But questions of whether other rights apply to noncitizens have been interpreted differently throughout U.S. history. Many of these issues could ultimately be decided by the Supreme Court.

### **Public Concerns**

The American very initial response to the government’s heightened measures on civil liberties was largely supportive. In a September 2001 NBC/Wall Street Journal poll 78 percent of

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<sup>16</sup> Statement of High Commissioner for Human Rights on Detention of Taliban and Al Qaida Prisoners at US Base in Guantanamo Bay, Cuba, 16 January 2002, at: <http://www.unhchr.ch/hurricane/hurricane.nsf/newsroom>.

<sup>17</sup> The Economist, Oct. 11th-17<sup>th</sup>, 2003, p. 44.

respondents expressed they would be willing to accept surveillance of internet communications. A survey by NPR News, the Kaiser Family Foundation and Harvard University Kennedy School of Government in November 2001 showed that the vast majority of Americans are willing to forgo some civil liberties to fight terrorism and that they trust the government to do the right thing in carrying out the fight. When asked directly about government action that could threaten their civil liberties, Americans were not particularly concerned. Majorities support giving law enforcement broader authority to:

- Wiretap telephones (69 percent)
- Intercept mail (57 percent)
- Intercept e-mail (72 percent)
- Examine people Internet activity (82 percent)
- Detain suspects for a week without charging them (58 percent)
- Examine students' education records (76 percent)
- Examine telephone records (82 percent)
- Examine bank records (79 percent)
- Track credit card purchases (75 percent)
- Examine tax records (75 percent)<sup>18</sup>

Americans also think the government should be allowed to review and censor news reports that discuss troop deployments or military plans, or report the names of people arrested for military action. Four out of 10 would allow censorship of stories about antiwar protests, and more than a third (36 percent) would even allow the government to censor stories that criticize how the president is conducting military actions. About half (52 percent) believe that the government should be able to stop the U.S. media from broadcasting interviews by Osama bin Laden or his lieutenants.

Interestingly, Americans feel this way even though they suspect there could be abuses. Nearly two-thirds (65 percent) are concerned

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<sup>18</sup> See <http://www.npr.org/news/specials/civillibertiespoll/011130.poll.html>

that if law enforcement is granted broader authority, it will be used against innocent people. And they believe that they themselves -- or people they know and respect -- are likely to be directly affected (58 percent believe that they will have to give up some of their own rights and liberties; 44 percent believe that law enforcement expanded authority is likely to be used on someone they know and respect).

Most Americans believe there will be another terrorist attack of one sort or another. Eighty-six percent believe there will be more anthrax attacks, 72 percent believe there will be an attack using another biological weapon like smallpox, 83 percent think there will be an attack using a car or truck bomb, 41 percent think there will be a nuclear terrorist attack, 59 percent believe there will be an attack on the water supply, and 55 percent believe there will be an attack on the food supply.

Despite this fear, 61 percent of Americans said that the terrorist attacks had not shaken their personal sense of security and safety. So behind much of this willingness to do whatever was necessary to fight terrorism was not that most people feel immediately threatened. Rather, it was a strong belief that it was the government's job to protect the country from attack.

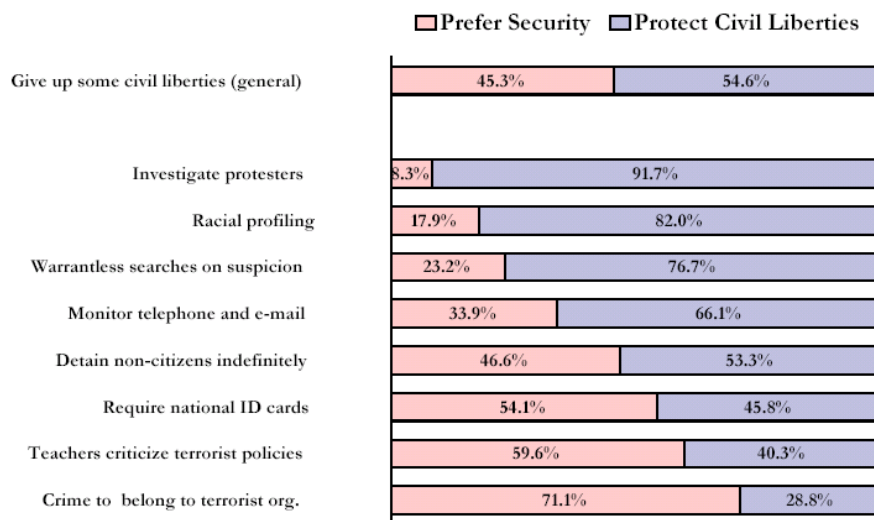
Thus, in time of crisis, Americans seemed to trust the government and are willing to give it significant leeway to, as the preamble to the Constitution puts it, "provide for the common defense." Nearly 60 percent of Americans said they trusted the federal government to do what was right just about always or most of the time; fewer than a third (29 percent) felt that way in June 2000. Two-thirds (66 percent) believe that the anti-terrorism law recently enacted will increase their security against terrorists, and more than eight out of 10 (82 percent) are confident the government will administer the law fairly.<sup>19</sup>

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<sup>19</sup> All data were seen from <http://www.npr.org/programs/specials/liberties/resources>.

However, in a research based on a nationwide survey indicated the majority of American was still very concerned with civil liberties.<sup>20</sup> In Figure 1 we see very high support in protecting the right of protesters and the distaste with racial profiling. The security concern only prevailed in category directly related to terrorists.

Figure 1. Public Opinion on Security vs. Liberty



Some advocates for civil liberty tried to remind the American not to forget the basic values strongly tied to the national pride should be given up. For example, John Perry Barlow, a Beckman fellow at Harvard Law School and co-founder of the Electronic Frontier Foundation (EFF), wrote a mass e-mail on right after the attacks

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<sup>20</sup> Brian D Silver, and Darren W. Davis. 2002. "Civil liberties vs. security in the context of the terrorist attacks on America." Paper presented at the Annual Meeting of the American Political Science Association, Boston, MA. August 27-September 2, 2002.

encouraging Americans to hold on to their freedoms by writing public officials, joining the American Civil Liberties Union or the EFF, "to prevent the control mania from destroying the dreams that far more have died for over the last 225 years than died this morning." He also said planned tightened security surveillance over private communications, with only a small chance of catching something, is a gamble not worth taking.<sup>21</sup>

People who were always concerned with security issue also encouraged American citizens to protect their free way of life. "We live in an open society and it's very difficult to control people and control threats and manage risk when you have the openness that we have in this country," said Don Ulsch of the Ulsch Group, a security consultancy in Lancaster, Massachusetts. "We should not have the knee-jerk reaction of suggesting that we live in any other way." Barlow wrote further argued that the goal of terrorism against America is to paralyze the American government by encouraging totalitarianism. The American should "fear nothing, live free."<sup>22</sup>

Six months later in February 2002, in a Greenberg poll showed that 62 percent of all respondents tended to agree that "Americans will have to accept new restrictions on their civil liberties if we are to win the war on terrorism." In a poll conducted for The Associated Press by ICR/International Communications Research of Media, Pa., 63 percent said they were concerned that the new measures could end up restricting Americans' individual freedoms. Of those, 30 percent of the 1,001 responding adults were "very concerned" and 33 percent "somewhat concerned."<sup>23</sup>

The endurance of the public tolerance with more restrictions on

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<sup>21</sup> <http://www.wired.com/news/politics/0,1283,46784,00.html>

<sup>22</sup> Ibid.

<sup>23</sup> [http://www.hollandsentinel.com/stories/091102/911\\_091102072.shtml](http://www.hollandsentinel.com/stories/091102/911_091102072.shtml)

civil liberties has been a debated issue. Some people believe the support for tighter security will go as long as the anti-terrorism was not completed. But some people tend to see the tide will erode over time.<sup>24</sup> For example, the security check in the airport changed from the very beginning after the September 11<sup>th</sup> attacks from extremely tight to relatively tight compared to before. Initially, people would tolerate the 2-hour before check in time policy and thought positively toward security concerns. However, more investigations proved that tightened security was still not able to effectively prevent passengers to carry minor but danger objects on the plane. Psychologically and practically people did not feel safer after tightened security check.

The other possible reason for people to tolerate seeing government violation or aggressiveness on civil liberties is based on the fact that the suffering target is someone else and someone not directly or indirectly related. It is a reasonable assumption that people will tend to be more concerned with civil rights when the violation against them is clear and present. It is like viewing disaster from TV news coverage does not shock people compared to witnesses on site. The civil rights violation measures imposed after September 11<sup>th</sup> affected mostly on specific groups of people thus the overall public remain a certain distance from the immediate impact. Moreover, when answering survey questions people are picturing those responsible for the attacks are to be punished. That would be those “bad guys” be restricted not other good citizens. However, they ignored all institutionalized measures will be enforced to everyone sooner or later, here or there. Through the failure of introducing citizen ID card can we see that people tolerance toward civil rights violation is not unlimited or unconditional.<sup>25</sup>

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<sup>24</sup> Jon B. Gould. 2002. “Playing with Fire: The civil liberties implications of September 11<sup>th</sup>.” *Public Administration Review*, 62, pp. 74-79.

<sup>25</sup> Chang 2002

### **International Affect**

The US's war against terrorism after September 11<sup>th</sup> has been being adopted by other countries confronting protracted internal or regional conflicts, in some cases we see negative consequences.

The US war in Afghanistan indicated that blunt force could produce expected results. Surprisingly, such a template has been copied by other countries. Using the declaration of anti-terrorism, they could start the war against their "terrorists" without hesitation. For example, Israel did not waste much time after President George W. Bush made the war on terrorism before it began labeling its primary opponent Palestinian leader Yasser Arafat a "terrorist."

Also we saw Russian President Vladimir Putin expressed he expected greater international understanding of his country's Chechen separatists were no different from terrorists. After the September 11<sup>th</sup> attacks, Chechnya's separatist rebels have suffered a dramatic reversal of their image on the global stage. For years, they were seen as freedom fighters whose human rights needed to be protected from Russian military abuses. But since Sept. 11, the Chechens have increasingly been seen as terrorists and bomb makers who represent the sinister spread of Islamic extremism. The same reversal of fortune is evident around the world today. All regimes dealing with Muslim rebels have shrewdly exploited the global mood to justify their crackdowns on domestic insurgencies. The consequence, paradoxically, could be a rise in domestic wars and political violence. The evidences were seen in military-style campaigns against Islamic separatists in Russia, China, Central Asia, South Asia and other regions. The rise of the "antiterrorist campaign," as an all-purpose rationale for war, is strengthening military commanders and damaging the fragile peace processes and political dialogues that were under way in these regions.

Political leaders in most of these regions were already using their

wars against Islamic rebels to help crush dissent and prop up their regimes. Now it is easier for them to pursue these tactics. They can gain foreign sympathy by portraying their wars as campaigns against terrorists. And there is much less international pressure to negotiate a peace agreement with rebel forces.

China also adopted a similar stance towards troublesome minorities. In the Chinese government's definition, a variety of minorities including Falun Gong, Christians, and Muslims in their western provinces were categorized as terrorist groups. Since 11<sup>th</sup> September, the Chinese authorities have taken a more aggressive stance against ethnic Uighurs in the predominantly Turkic-speaking Muslim Xinjiang Autonomous Region. The Muslim Xinjiang province has seen an almost constant separatist struggle since the Communists took power in China in 1949. Chinese authorities have responded by using indiscriminate coercion against independence activists and civilians, implementing a systematic policy of ethnic cleansing, mass arrests, summary executions, and deportations that have driven hundreds of thousands Uighurs away from their native region, mostly into neighboring Central Asian states.

In a statement released on 21 December, the Munich-based East Turkestan Information Center said Chinese law enforcement agencies had arrested more than 3,000 Uighurs since 11 September.<sup>26</sup> Authorities in Beijing have denied the charge, claiming that only convicted criminals were being targeted by the repression.

In Indonesia, the government began a lobbying campaign to persuade the United States that Osama bin Laden's people were supporting Islamic militants on the island of Sulawesi, where hundreds of people have been killed in clashes between Muslims and Christians. There has been no evidence, however, of any al-Qaeda bases in Indonesia. Western analysts believe the Indonesian

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<sup>26</sup> see <http://www.rferl.org>

government is exaggerating the threat in an effort to persuade Washington to reverse its two-year-old ban on military sales to Indonesia.

In the Philippines, the government has switched tactics to portray a leading rebel group as a terrorist organization with links to bin Laden. Before Sept. 11th, it called the group a bunch of bandits. Now, by linking the group to the Afghan-based terrorists, it has secured U.S. military help for its crackdown on the rebels.

And in the disputed Kashmir region on the border between Pakistan and India, the Indian government alleges that Islamic rebel forces are terrorists with links to bin Laden and the Taliban. Moreover, India pushed an international label for rival neighbor Pakistan - a key US ally in the war on terrorism - as a "terrorist state."

Although it would be a stretch to say the US government allowed these countries to ride the tide of anti-terrorism in very national way, it is obvious they were inspired by the American policies after September 11<sup>th</sup> attacks. However what we saw since Sept. 11 was the United States has muted its previous criticism of human-rights violations by Russian troops in Chechnya, including alleged mass murders, torture and other atrocities. Instead, it has allowed Moscow to portray the Chechen war as just another front in the international battle against terrorism.

As Philip Heymann suggested that those extreme measures adopted to against terrorism would deprive the US of its historic claim of moral leadership among the world's nations in matters of fairness to individuals, leaving Americans in the position of encouraging the outrages of dictators. It will also make more difficult future efforts at military coalition-building and deny the US the benefits of legal cooperation with our closest allies in the form of extradition and mutual legal assistance.<sup>27</sup>

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<sup>27</sup> Philip Heymann. 2001. "Liberty vs. Security." See <http://www.npr.org/programs/>

### Conclusion

It is nothing unusual to see governments always search for responsive actions after a disaster or facing a crisis. They tend to focus on short-term gain or immediately political capital to silence the public critics or suppress pressure from the opposition force. Such responsive policies usually result in some bigger disaster or more complicate situations. The fundamental prescription for a disaster is to face its origin, root, and recent factors then to develop some preventive measures, instead of responsive ones.

September 11<sup>th</sup> attacks was a tremendous setback for human rights and human security not only because innocent people were murdered, but also for all of us who have to face tougher and broader regulations and restrictions on our civil liberties. National security is fatal to a state's survival. On the other hand, civil liberties are the foundation of all kinds of security. What distinguish a democracy from a dictatorship is how secure people feel when facing all kinds of potential threats from internal and external regimes. Human security is more than traditional national security ideas, including protection for people from foreign forces and also from domestic disturbances. State sometimes plays the wrong role as a threat of people, not the protector of people. When we say state is necessarily evil, we are referring to its abuse with people's delegation power that forms the social contract between the rule and the ruled.

Anti-terrorism is a war we must fight for good ends but it should not be used to expand the state's power. If the state abused its authority over civil liberties, the state will become one of the human security's most significant threats. Moreover, the definition of terrorism and the labeling of terrorist group are open to discuss to all parties involved. If anti-terrorism climate encouraged all conflicting

groups to categorize terrorists at their own will is a legitimate concern.

Governments are likely to use terror as a convenient excuse for tightening laws and restricting freedoms in order to crack down in areas such as immigration, drug smuggling, fraud, etc, with insufficient public debate. Such an erosion of liberties has a long-term impact and, in practices, is unlikely ever be reversed as it is not the nature of state bureaucracies ever to give up power. Democratic mandates are insufficient reason to erode liberties; a key purpose of civil liberties is to protect minorities from the tyranny of the majority.

The USPA adopted after the September 11<sup>th</sup> attacks created profound and long-term impact not only the American but also on all people around. It would blur the line between ideology and terrorism.<sup>28</sup> It would impede the US leading role in democracy and moral development. A 2002 Gallup survey conducted in nine Muslim countries found that a majority of the people surveyed have a poor opinion of the United States, don't believe Arabs carried out the September 11 terrorist attacks, and consider the U.S. war in Afghanistan morally unjustifiable.<sup>29</sup> The same response was seen in US allied countries in Europe. Recent polling in Europe suggests that most British, French, Italians, and Germans think the United States is motivated by its own interests in the war on terrorism and ignores the concerns of its allies.

As Weatherford suggested that political legitimacy is merely based on interaction between personal traits and government performance, in which fairness of political process, civic pride, interpersonal trust, and government accountability etc.. are the essence of its existence (Figure 2).<sup>30</sup> More specifically, there are four

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<sup>28</sup> Chang 2002.

<sup>29</sup> <http://www.terrorismanswers.com/responses/diplomacy.html>

<sup>30</sup> M. Stephen Weatherford, 1992. "Measuring political legitimacy." *American Political Science Review*, 86:1, pp. 149-66.

attributes of political ruling legitimacy for all governments. First, are rulers accountable to the governed via a process that allows wide, effective participation? Second, is the government set up to accomplish society's ends without undue waste of time or resources? Third, is the system structured to ensure that issues are resolved in a regular, predictable way and that access to decisional arenas is open and equal? Last, are the advantages and costs allocated by the system distributed equally or else deviations from prima facie equality explicitly justified on grounds that define "fair shares" in terms of some long-run, overarching equality principle? Any wrongdoing violates abovementioned essences would hurt the political legitimacy and divide the nation unity.

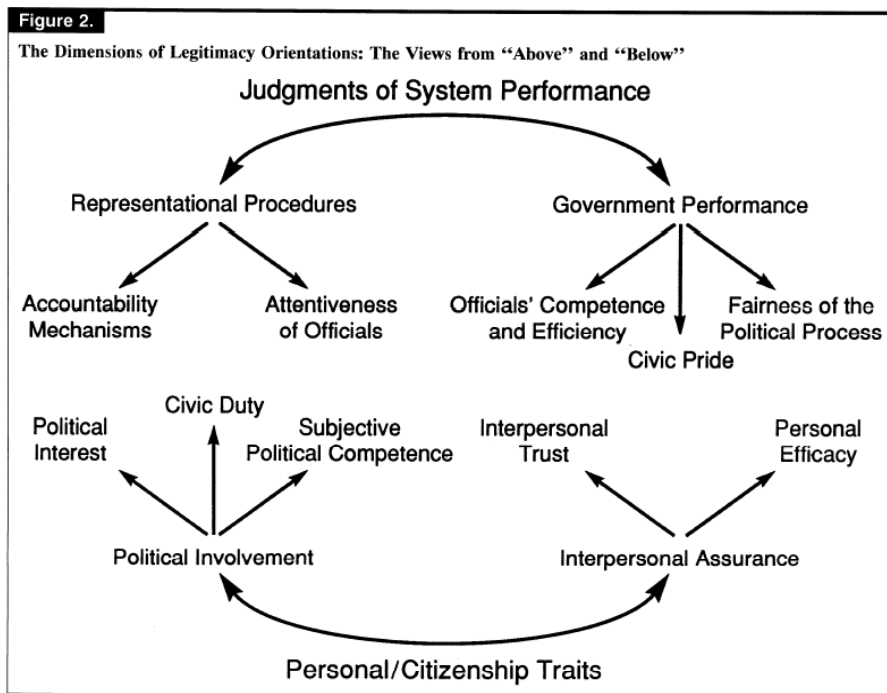
From the micro perspective from the people emphasizes the way public orientations and expectations are shaped, which result in civic pride and participation in public affairs that transfer to government legitimacy. The public beliefs include the psychological feeling that political participation is worth the opportunity cost of trading off time and commitment from other occupations; the belief about interpersonal and social relations relevant to collective action, that is the expectation about the intentions and trustworthiness of other people; and optimism about the responsiveness of the political system based on citizens' perceptions of procedural and distributive fairness.

To conclude this research, some basic principles of democracy that maintain the balance between the need to govern effectively and the need to maintain individual freedoms have to be upheld. These principles define the balance between the security and liberty. First, the Government must be accountable to the people through fair elections in which each citizen has a single and fairly counted ballot. The government may impose punishment only after the conclusion of fair, open, transparent, and objective procedures designed to protect

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the rights of the accused and determine innocence or guilt. In particular, these principles must include the right to be free from coerced interrogation, the right to have an objective and independent judge and the right to a skillful, independent and unintimidated lawyer. The government may not discriminate against individuals or groups on the basis of arbitrary categories such as race, ethnicity, religion, political belief or gender.

The government must abide by the system of checks and balances set forth in the constitution that prevent the aggregation of power in the hands of one person or in a single branch of government. Last but not the least, people must be free to express ideas, regardless of their content, without fear of reprisal.



Source: Weatherford 1992, p. 155.