



TIPPING THE SCALES, ETHICAL CONCERNS IN TIMES OF EMERGENCY

Melissa Doerk*

Abstract

Like many, Michael Ignatieff and Smaw recognize that balancing civil liberties and national security in times of emergency is a necessity if we are to survive onslaughts from terrorist organizations. Ignatieff, however, argues for infringing upon the liberties of some in order to preserve the liberties of others. In such cases, he concludes we ought only to infringe upon civil liberties in light of adversarial review, placing strict limitations on our actions, using sunset clauses, and fully accepting that our actions will sometimes result in immoral behavior. By contrast, Smaw finds Ignatieff's approach to be problematic because it fails to take seriously important substantive measures for achieving justice in times of emergency. Smaw concludes that Ignatieff's procedural measures coupled with the substantive measures of truthfulness, faithfulness, and solidarity result in a superior policy for balancing civil liberties and national security in times of emergency because they ensure the cases of those accused of wrongdoing meet the pedigree tests for procedural and substantive justice, even in times of emergency. In response to Ignatieff and Smaw, I show that it is crucial to understand the differences between past and present terrorist organizations. Otherwise we cannot effectively institute counter-terror procedures. Moreover, I conclude that any effective counter-terror method must entail a proper balance between national security and civil liberties. Otherwise the agents of the state risk becoming terrorists themselves

* Ph. D. Department of Philosophy Rolling College, Fl. USA. E – mail: mdoerk@rollins.edu.

Key Words: Crisis, Terrorism, Emergency.

JEL: H12

L'AIGUILLE ET LA BALANCE, PRÉOCCUPATION ÉTHIQUE EN ÉTAT D'URGENCE

Résumé

Comme beaucoup d'autres, Michael Ignatieff et Smaw reconnaissent que l'équilibre entre les libertés civiles et la sécurité nationale en état d'urgence est une nécessité, si nous voulons survivre aux massacres perpétrés par des organisations terroristes. Toutefois, Ignatieff penche pour transgresser les libertés de quelques uns et préserver ainsi les libertés des autres. Dans ces hypothèses, il conclut que nous devrions seulement enfreindre les libertés civiles à la lumière d'un examen critique de l'adversaire, en fixant de strictes limites à nos actions, en adoptant des clauses d'extinction et en acceptant pleinement que nos actions déboucheront parfois sur une conduite immorale. À l'opposé, Smaw trouve problématique l'approche d'Ignatieff, car ce dernier ne recourt pas à des mesures substantielles importantes pour faire justice en période d'urgence. Smaw conclut que les mesures procédurales d'Ignatieff couplées avec des mesures substantielles de véracité, de fidélité et de solidarité, s'avèrent être une politique plus avantageuse pour équilibrer les libertés civiles et la sécurité nationale en période d'urgence, car elles assurent que ceux qui sont accusés de méfaits bénéficieront de tests d'idonéité en matière de justice procédurale et substantielle, même en période d'urgence. En réponse à Ignatieff et à Smaw, je montre qu'il est crucial de comprendre les différences entre les organisations terroristes passées et présentes. Sinon, nous ne pourrions pas instaurer efficacement des mesures antiterroristes. En plus, je conclus que toute mesure antiterroriste efficace doit offrir un équilibre entre sécurité nationale et libertés civiles. Sinon, les agents de l'État risqueraient eux-mêmes de devenir des terroristes.

Mots clé: crise, terrorisme, urgence

I. Introduction.

Terrorism consists of means as old as the coup d'état as way of obtaining power and as new as suicide bombing as a way of instilling fear in and control over a community. Although scholars continually debate questions about which organizations can be rightly classified as terrorist organizations, exploring the history of terrorism is crucial for understanding the differences in modus operandi of terrorist groups from antiquity to today. In fact, although the debates among scholars are endless, all agree that terrorism consists in the purposeful and deliberate use of violence as a way of achieving the perpetrator's goal of instilling fear and intimidation and thereby influencing the behavior of his/her victims. I will adhere to this general definition of terrorism through this paper.

More importantly, however, I intend to demonstrate that there are significant similarities and differences between ancient, modern, and contemporary terrorist organizations. For example, ancient, modern, and contemporary terrorists have a variety of aims. Some engage in terrorism for military ends, like the Athenians of antiquity. Others engage in terrorism for political ends, like the Irish Republican Brotherhood of the late nineteenth century. Still, others engage in terrorism for religious reasons, like Osama Bin Laden's Al Qaeda. Either way, my historical analyses will show that there are indeed significant similarities between terrorist groups throughout history. By contrast, my contemporary analyses will show that there are also significant differences between the terrorist groups of today and those of the past. For example, unlike the Athenian military and Irish Republican Brotherhood, which were hierarchical in structure, contemporary terrorist groups, particularly those like Bin Laden's Al Qaeda, have no hierarchical command or economic structure. This is one significant difference between terrorist organizations of old and many contemporary terrorist organizations. Nevertheless, in the end, I will show that it is crucial to understand the differences between past and present terrorist organizations otherwise one cannot effectively institute counter-terror procedures. Moreover, I will argue, effective counter-terror methods entail a proper balance between national security and civil liberties, otherwise the agents of the state risk becoming terrorists themselves.

II. Terrorism: A History.

Thucydides' *Peloponnesian War* provides us with one of the earliest examples of state-sponsored terrorism. As Thucydides tells it, Melos was a Spartan colony that had remained neutral throughout much of the war (Thucydides, 1883). Despite Melos's neutrality the Athenians wanted to bring the island under their control. In order to accomplish this, the Athenians encircled the island and offered the Melians a straightforward ultimatum: surrender to Athenian rule or be destroyed. Spokespersons for both sides met to discuss the ultimatum. Of course, the Athenians argued that the Melians should submit to Greek rule and the Melians argued that the Athenians should allow them to remain neutral. In the course of the debate, we see that the Athenians employed familiar terrorist argumentation: namely, that they cannot allow the Melians to remain neutral because they needed to instill fear throughout the region as a way of deterring others from rebelling. Or, as one Athenian put it: "They think that states like yours are left free because they are able to defend themselves, and that we do not attack them because we dare not. So that your subjection will give us an increase of security, as well as an extension of empire" (ibid, 72). In the end, the Melians refused to yield, and the Athenian ultimately forced them to surrender. Thucydides puts it in this way: "They surrounded the town of Melos with a wall, dividing the work among the several contingents. They then left troops of their own and of their allies to keep guard both by land and by sea, and retired with the greater part of their army; the remainder carried on the blockade" (ibid, 114). The Athenian's attack on Melos provides an excellent example of ancient terrorism for military ends, i.e. military domination for the purpose of instilling fear in others. Of course, the Athenian military had a hierarchical command and economic structure. This is common among many terrorist organizations.

By contrast, the Irish Revolutionaries provide us with a modern example of terrorism for political ends. In the early nineteenth century Ireland was under uncontested British rule, at least until the Fenian Brotherhood started thinking revolution (Hoffman, 2006). The Fenians and the Irish Revolutionary Brotherhood implemented a string of plots in an unsuccessful attempt to free Ireland. But their commitment to Irish republicanism and the strategic use of violence in order to bring about that end inspired subsequent Irish revolutionary groups. Indeed, shortly after 1873, a new group emerged called Clan na Gael led by O'Donovan Rossa, and dedicated to Irish liberation, was created (Hoffman, 2006). This group was among the first to utilize media outlets, newspapers in particular, to spread propaganda in order to make their terrorist attacks even more impactful in spreading of their message of liberation, a strategy that became popular with other modern terrorist groups. The Clan carried out a string of successful bombings in the late nineteenth century. Shortly thereafter, they combined forces with the Irish Republican Brotherhood (IRB) and began laying out plans for a bombing campaign directed against the London Underground and mainline railway stations. This destructive campaign lasted for nearly four years (Hoffman, 2006).

While Clan and the IRB primarily engaged in paramilitary terrorism, their council members focused on recruiting members of the younger generation. By 1912, the younger generation had assumed leadership and effectively controlled a few other revolutionary parties, including the Irish Volunteers. The IRB's organizational structure expanded in 1915 when they formed a military council to plan and prepare for an insurrection in concert with the Irish Citizen Army. Together, the groups formulated plans for the Easter Rising. The insurrection took place in Dublin in 1916, and, although it was quickly defeated and many of the IRB's leaders were later executed, the movement inspired other to push forward for a free Irish Republic (Barberis, McHugh, J, and Tyldesley, 2000).

After the Easter Rising, the Irish elected assembly, the Dáil Éireann, attempted to formally establish the Irish Republic under the direction of the IRB's new leader, Michael Collins. However, they still remained under the rule of the British Empire. During this time, the Irish Republican Army (IRA) was established by members of the IRB, and was recognized as the official army of the Republic by the Dáil assembly (Williams, 1966). From about 1919-1921, Collins began to direct the IRA in a brief paramilitary campaign against the British, hoping to gain independence (Williams, 1967). The aforementioned terror campaign eventually led to the creation of the Anglo-Irish treaty, which established the Irish Free State as a self-governing dominion within the British Empire (Hibbitts, 2010). Nevertheless, the IRB's clearly engage in terrorism for political ends. Like the Athenian military they operated through a hierarchical command and economic structure. However, unlike the Athenian military, the IRB modus operandi was to engage in many small terror campaigns with the purpose of forcing the British into submission. In this regard, the IRB was like a contemporary terrorist organization in the style of Al Qaeda.

Al Qaeda is undoubtedly among the most infamous terrorist organizations in the contemporary world. It originally grew out of the network of Arab volunteers who travelled to Afghanistan in the 1980's to fight under the banner of Islamic freedom against

the imposition of Soviet communism. Osama Bin Laden's experiences during the Afghan resistance provided him with the belief that Muslims could take effective military action inspired by select Islamic principles (Blanchard, 2005). According to one U.S. report: "His exposure to the teachings of conservative Islamist scholars in Saudi Arabia and his work with Arab militants in Afghanistan provided the theological and ideological basis for his belief in the desirability of puritanical Salafist Islamic reform in Muslim societies and the necessity of armed resistance in the face of perceived aggression." Of course, the protection of Islam and Muslim liberation were key to Bin Laden's Al Qaeda.

Nevertheless, as the Soviets withdrew from Afghanistan in 1989, Osama Bin Laden began looking for new jihadists. In part, Bin Laden relied on anti-American sentiments in the mid-east to accomplish his recruitment goals. These goals pushed Bin Laden further and further away from the U.S. and its allies. In 1996, Bin Laden moved his headquarters and training camps to Afghanistan and forged close relationships with the Taliban (Blanchard, 2005). Also in 1996, Bin Laden issued a declaration of jihad against the United States and adopted religious rhetoric to justify his position (Katzman, 2005). Al Qaeda was responsible for various terrorist attacks against the U.S. prior to 9/11, including the 1998 bombing of U.S. Embassies in Kenya and Tanzania, which killed 300 people, and the 2000 attack on the USS Cole in port at Aden, Yemen. Bin Laden made the religious message behind these attacks clear when he issued a *fatwa* that claimed that the U.S. in the Islamic world provided "a clear declaration of war on God, his messenger, and Muslims."

Throughout history, terrorist groups have operated from a number of different vantage points, from within the countries they attack, from outside of the countries they attack, or both. It is crucial to take into account the structural differences between terrorist organizations. Indeed, some contemporary terrorist groups, Al Qaeda in particular, are distinctly different from ancient and modern terrorist groups in that they have no hierarchical structure, do not engage in military style operations, they are funded and supported comes by a variety of sources, and they have cells, recruitment centers, and fundraising centers throughout the world. These cells are connected through their commitment to the ideology and political goals, not through a hierarchical structure. I contend that knowledge of the organization in question plays an important role in assessing how to respond its acts of terrorism. I turn this discuss now.

III. Balancing Act: Dealing with Terrorism without becoming Terrorists.

a. Habeas Corpus.

In times of emergency, debates about the proper way to balance civil liberties and national security naturally come to the forefront of political discourse simply because they conflict. Indeed, in times of emergency, libertarian political thinkers staunchly defend American civil liberties as inalienable (Smaw, 2011). After all, they were placed in the *US Constitution* so that the government cannot abuse its power and unjustifiably interfere in the lives of its citizens. By contrast, pragmatic thinkers argue that national security should trump civil liberties since the primary objective of the government is to ensure rights of its citizens, especially in times of emergency (ibid, 1-2).

Later, I will show that liberty and security are mutually reinforcing. But, for now, a close inspection of English philosopher John Locke reveals that he was extremely concerned about the relation between liberty and security. More importantly, he influenced the Americans in this regard. In his *Second Treatises of Civil Government*, John Locke describes the state of nature as a state in which man has liberty to dispose of his persons or possessions. It is also a state of equality in which power and jurisdiction are reciprocal between all rational individuals. People exercise their freedoms under the constraint of the law of nature, which forbids them from harming one another's life, liberty, or possessions (Locke, 2003). Everyone has the right to self-preservation as well as the right to punish all who violate the law of nature. Although Locke's state of nature is distinct from that of Hobbes's, in which life is "solitary, poor, nasty, brutish, and short," it is not so secure that people do not want to leave and establish civil society (Hobbes, 1962). Indeed, according to Locke, to avoid the inconveniences of the state of nature people enter into contract by transferring their rights to the state, thereby establishing a commonwealth for the purposes of providing security, for the mutual preservation of their lives, liberties, and property. Clearly, according to the foremost philosopher on human rights, both liberty and security are essential parts of the creation of the state.

Nevertheless, Locke also recognizes that there are times when the state must exercise powers that constrain civil liberties, in order to protect the people in times of emergency. In the *Second Treatise of Civil Government*, Locke calls this power "prerogative." Prerogative, for Locke, is the power granted to the Executive to act outside of the law, and sometimes even against it, for the public good (Locke, 2003). So, for Locke, the right to suspend habeas corpus falls in the hands of the Executive. He prevents the Executive from violating the right of the majority with the threat of rebellion. Locke advocated governmental separation of powers and believed that revolution is not only a right, but an obligation in some circumstances such as when the state infringes too much upon civil liberties. Thus, according to Locke, the abridgement of civil liberties should be approached with caution and only be chosen when absolutely necessary for security.

Nevertheless, historically, in times of emergency the scale has often tipped toward national security at the cost of violating of civil liberties. For example, the 1798 *Alien and Sedition Act*, censorship of newspapers during the First World War, the internment of Japanese citizens during WWII, the opening of mail destined to the USSR during the cold war, and the Patriot Act after 9/11, to name a few. Indeed, in *Swaying in the Balance*, Dr. Smaw offers one reason why such infringements occur, namely, more often than not, they are directed at minorities who use their freedom of speech to articulate undemocratic or unpatriotic points of view.¹ In which case, the majority is likely to support the efforts of the government because such restrictions do not directly affect them. Consider, for example, the 2004 case of *Hamdi v. Rumsfeld*. In 2001, Yaser Hamdi, an American citizen, was arrested by the United States military in Afghanistan. He was accused of fighting for the Taliban against the U.S., declared an enemy combatant, and transferred to a military prison in Virginia, even though Hamdi's father had told officials he was there doing relief work. He was held without access to an attorney, denied his petition to habeas corpus, and there was no public outcry. Eventually, the Supreme Court overruled the Executive in

Hamdi v. Rumsfeld, ruling that the Fifth Amendment due process guarantees give a citizen held in the United States as an enemy combatant the right to contest that detention before a neutral decision-maker. Intrusive actions such as these are often deemed necessary when the government declares a state of emergency. During such times, the Executive suspends the normal functions of government and utilizes the status of the emergency as a rationale for suspending civil liberties. In the past, such declarations usually occurred during a time of civil disorder or following a declaration of war.

Recently, the United States has been in a quasi state of emergency with its color coded terror alert systems. However, the *US Constitution* outlines procedures for suspending civil liberties in times of emergency. In fact, according to *Article 1, section 9, paragraph 2 of the U.S. Constitution* states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."¹ Note, however, here, the word "rebellion" means civil war. Similarly, the term "invasion" entails cases when another nation puts troops on the ground in declaration of war. In both cases, the writers of the *Constitution* were willing to suspend civil liberties only in times when the instruments of government are not functioning. Of course, 9/11 does not meet this pedigree test. After all, 9/11 did not affect the courts, legislature, or executive nor did it prohibit any of them from functioning. Furthermore, there is no reason why the U.S. could not both uphold habeas corpus and fight terrorism. Indeed, given the Supreme Court has consistently overruled the Executive in cases like Hamdi, it is incumbent on the government to find a way to balance civil liberties and national security.

a. Civil Liberties.

In the *Lesser of Two Evils*, Michael Ignatieff argues for what he calls the lesser evil approach for protecting the state against terrorism and civil liberties against tyranny. He attempts to strike a balance between a pure libertarian position, which maintains that no violations of rights can ever be justified, and a purely pragmatic position, which maintains that any anti-terrorist measures are justified so long as they ensure the safety of the state (Ignatieff, 2004). Moreover, according to Ignatieff, in times of emergency, circumstances may require that security trumps civil liberties, and, other times, they may require that civil liberties trump security. In order to keep democratic checks and balances in place when violating civil liberties the state ought only to violate civil liberties in light of procedural measures such as adversarial review, placing limitations on how we can abridge civil liberties, and using sunset clauses. Additionally, Ignatieff argues that the State must accept the fact that actions deemed necessary for promoting national security will sometimes result in immoral behavior. In conclusion, he argues that this third position is best since it encompasses the benefits and avoids the pitfalls of a pure civil libertarian position and a purely pragmatic position (Ignatieff, 2004).

Of course Ignatieff's (2004) position is challenged by many. In Smaw's perspective (2011), for example, Ignatieff's reforms are important measures for achieving procedural justice. The problem, however, according to Dr. Smaw (2011), is that Ignatieff places too much faith in the efficacy of procedural measures while failing to take seriously important

measures for achieving substantive justice. Smaw (2011) illustrates this by highlighting the fact that the cases against Chinese-Americans during the exclusion, Japanese-Americans during the internments, and those suspected of being Communists during the Red Scare met the pedigree tests for procedural justice and yet failed to meet the pedigree tests for substantive justice. According to Dr. Smaw (2011), such injustices were possible “because those who were responsible for putting the ‘wheels of justice’ into motion were apathetic to the plight of minorities, afraid to stand up for those being persecuted or they straightforwardly accepted and passively or actively participated in the injustices.” Either way, he concludes that no amount of procedural measures can remedy such problems. For these reasons, Smaw (2011) argues that Ignatieff’s procedural measures combined with the substantive measures of truthfulness, faithfulness, and solidarity result in a superior policy for balancing civil liberties and national security because they are able to ensure that the cases of those accused of wrongdoing, often minorities, meet the pedigree tests for procedural and substantive justice. Notice that both Ignatieff and Smaw (2011) recognize the importance of balancing civil liberties and national security in times of emergency. However, Ignatieff attempts to justify infringements when it appears that they will increase security, which is why Dr. Smaw argues for substantive measures in order to insure the rights of the minority are not unjustly violated. Nevertheless, both scholars overlook important evolutions in terrorist organizations, like Al Qaeda, and therefore, they fail to offer a proper analysis of how to respond its acts of terrorism.

IV. Critical Analysis of Counter-Terror Measures: How the State Ought to Act in Times of Terror.

In times of terror:

“the government has no alternative but to intensify repression. The police networks, house searches, arrests of innocent people and of suspects, closing off streets, making life in the city unbearable...and the general sentiment is that the government is unjust, incapable of solving problems, and results purely and simply to the physical liquidation of its opponents” (Chalian and Blin, 2007: 35).

This is Carlos Marighella terrorist manifesto. Indeed, he tells all would be terrorists how to bring about such evil in the *Minimanuel of the Urban Guerilla*. There is, of course, at least one thing that Marighella gets correct, namely, that terrorism is enacted as a strategy to achieve a variety of ends, military, political, religious, economic, etc. However, when religion is the impetus, often the aim is not to gain power or overturn a government but to promote a message, establish an ideology, and/or to recruit others in support of the terrorist’s agenda. This is done by forcing a government to act in such a way that polarizes its members through its counter-terror responses, exactly what Marighella wishes.

In cases of terrorism, the State must figure out how to combat terrorist groups, bring about justice, and do so without oppressing its people. Otherwise, it makes the mistake that Marighella hopes it would and thereby assists him in his endeavor. This is precisely why discussions of how to balance civil liberties and national security in times of terror must

entail an understanding of the kind of terrorist group the State is dealing with. For example, if the anti-terrorism laws enacted after 9/11 were directed at Muslim Americans they would naturally lead to an aggravated sense of injustice among American Muslims, and possibly Muslims abroad. The problem with such policies is that they will eventually foster sympathy, support, and even public reactions that support the terrorists (Smaw, 2011). In fact, since 9/11, the US government has consistently engaged in damage control in an effort to avoid this very problem. This explains why the US did not want news outlets to publish information regarding torture at Guantanamo Bay, Abu Ghraib, rendition, and its unwarranted detention of Muslim Americans in the US.

This problem is exacerbated by the fact that we need to collaborate with Muslims in the fight against terrorism. In fact, the most effective way to combat terrorist groups like Al Qaeda is to infiltrate them. Notice, however, that infiltration cannot be successfully employed without the help of Muslims and Arabs. After all, white Americans and Europeans simply will not be accepted by terrorist organizations. In which case, we need Muslims and Arabs to assist us in these endeavors. However, the members of Muslim and Arab communities will not be willing to help us as long as the U.S. government continues to violate their civil liberties, place them under the gaze of suspicion, and propagate stereotypes about them. Dr. Smaw (2011) makes a similar point in *Swaying in the Balance*.

Secondly, notice that Al Qaeda is a loosely associated group of terror cells that operate in many nations. In which case, they do not represent a threat in the way that an insurgency group would, certainly not to the U.S. Therefore, Al Qaeda cannot be interpreted as trying to overthrow in the United States government in a coup d'état or as trying to provoke a civil war in the way the confederacy did. Rather, Al Qaeda is trying to provoke the government to act in a repressive way. The purpose of this is to destabilize the nation in the way that Carlos Marighella predicts. Historically, the first response of governments has often been to infringe upon the civil liberties of minorities and the rights of non-citizens. Even the pragmatist Ignatieff accepts this point. In the *Lesser of Two Evils* he writes:

‘almost all liberal democracies have used September 11th to substantively expand the coercive powers of the criminal law and the police. *What needs explaining [however] is not that political figures exploit emergencies to suit their own ends, since they always will, but why they can usually count on substantial public support.* Unless we assume that the public are dupes, we need to consider the possibility that strong measures, harmful to civil liberties, actually appeal to majority opinion.’ (Ignatieff, 2004)

Of course, this is exactly what terrorists hope for. After all, allowing such injustices will only increase the possibility that the government will grow repressive. And, unfortunately, repressive governments find it difficult to stop violating the rights of its citizens in the name of national security. At which point, it will be only a matter of time before violations are “done to American citizens tomorrow” (Cole, 2003). Indeed, we have seen glimpses of this in the PATRIOT Act. For example, the Justice Department’s “Operation TIPS” (Terrorism Information and Prevention System) initiative which recruited utility workers, delivery drivers, and millions of private citizens to snoop and spy on their neighbors in an

effort to prevent future terrorist attacks was headed in that direction. Fortunately, this program was shut down (ibid, 6).

Nevertheless, restricting civil liberties as a way of addressing terrorism is misguided, particularly in the case of Al Qaeda, because Al Qaeda is primarily operating from outside the country. Notice, for example, that the “shoe bomber” was an Al Qaeda operative flying to the US from Paris (Elliot, 2002). In this case, because the terrorist was a British citizen coming into the U.S. from outside, restricting civil liberties in the U.S. could not have stopped the attack. In fact, it was the brave citizens on the plane who were responsible for stopping the terrorist in this case. Even if the current restrictions on civil liberties would have stopped the shoe bomber, the terrorists would simply find another way to carry dangerous materials onto U.S. airliners.

Additionally, because Al Qaeda is not arranged hierarchically, throwing the bulk of our counter-terror efforts at apprehending the “leaders,” will simply not dismantle the organization. Even worse, it may assist the terrorists in recruiting others. Indeed, when dealing with an ideology as widespread as Al Qaeda’s jihad campaign has become it is clear that the ideology will outlast its creator, Bin Laden. To defeat al-Qaeda, the U.S. must destroy its ability to recruit members by discrediting its dangerous ideology. If the U.S. polarizes the Muslim populations abroad through its counter-terror actions, it will have a hard time discrediting the ideology. We must find a way to eliminate the ideology without eliminating our connections with Muslim allies in the other countries (Smaw, 2011).

Moreover, the “security at all costs” approach is dangerous. First, ignoring international standard of human rights will lead to additional problems for the State. The introduction of illegal methods, such as rendition for the purposes of torturing and interrogating suspects, diminishes the authority of the state as a leader in human rights and costs it allies in the fight against terrorism. In fact, cases like *El Masri v. Tenet*, in which El-Masri, a German citizen of Lebanese descent, who on December 31, 2001, traveled to Macedonia and was detained and handed over to CIA operatives who flew him to a CIA-operated detention facility near Kabul. He was held there against his will, beaten, drugged, bound, blind-folded, confined in a small, unsanitary cell, and prevented from communicating with anyone from the outside world including a lawyer or the German government in violation of international law. He was released in 2004 when it was discovered that he was wrongfully detained due to a misunderstanding over the spelling of his name and that of an alleged Al Qaeda member. Of course, the U.S.’s creditability suffered greatly because of this, its mistakes only added fuel to fire of anti-American sentiments around the world.

The U.S.’s mistake is that it failed to take into account how its actions would affect the willingness of other nations to aid in the fight. David Cole points out in *Enemy Aliens*, that by 2001 more than seven nations had complained that the detention campaign violated international law, leading to heightened anti-American sentiment abroad (Cole, 2003). Pakistani officials warned that the U.S.’s actions were “‘helping to sow the seeds of hatred in the Pakistani community against the U.S. government.” (Cole, 2003: 196) Moreover, officials from Canada, Great Britain, the Netherlands, France, and Germany, all complained

about the U.S.'s practices at Guantanamo Bay. Furthermore, there is no reason why the U.S. should have acted in this way. Indeed, acting within the standards of international law and combining forces with allies would have offered more intelligence and assistance in the transnational war against terrorism. As Smaw points out, just after 9/11 a vast majority of people of all nations, ethnicity, religion, etc. sympathized with the U.S. and rallied behind them in the fight against terrorism. Unfortunately, this was short lived due to the approach the government took in its war on terror. Many nations around the world have been affected by the terrorism of Al Qaeda. However, in order to call upon these sympathies again, the U.S. must change some of its policies. In short, in the war against terrorism, the U.S. cannot lose its soul. The nation must maintain a high standard of upholding international human rights and protecting the rights of *all* of its citizens in order to be successful against terrorists, without turning into the enemy itself.

V. Conclusion:

In the final analysis, I, like many others, agree with Michael Ignatieff's and Eric Smaw's contention that it is necessary to balancing civil liberties and national security in times of emergency if we are to survive onslaughts from terrorist organizations. Ignatieff claimed, however, that the balance should be tenuous. In fact, he argued for infringing upon the liberties of some in order to preserve the liberties of others, as long as we did so in light of adversarial review, placing strict limitations on our actions, using sunset clauses, and fully accepting that our actions will sometimes result in immoral behavior. Like Smaw, I rejected Ignatieff's (2004) approach. I agree with Smaw's (2011) analysis of the need for procedural measures and substantive measures for balancing civil liberties and national security in times of emergency. Nevertheless, I have illustrated that it is crucial to understand the differences between past and present terrorist organizations. Otherwise we cannot effectively institute counter-terror procedures. For this reason, I have concluded that any effective counter-terror method must entail a proper balance between national security and civil liberties. Otherwise the agents of the state risk becoming terrorists themselves

References

Barberis, P, McHugh, J, & Tyldesley, M. (2000). *Encyclopedia of british and irish political organizations: parties, groups and movements of the 20th century*. London: Continuum International Publishing Group. See page 228.

Blanchard, C. M. Foreign Affairs, Defense, and Trade Division, Middle Eastern Affairs. (2005). *Al Qaeda: statements and evolving ideology* (Order Code RL32759) Received through the CRS Web.

Chaliand, G, & Blin, A. (2007). *The history of terrorism: from antiquity to al Qaeda*. Los Angeles, CA: University of California Press.

Cole, D. (2003). *Enemy aliens: double standards and constitutional freedoms in the war on terrorism*. New York, NY: The New Press.

Elliott, M. (2002, February 16). "The shoe bomber's world." *Time*, Retrieved from <http://www.time.com/time/world/article/0,8599,203478-1,00.html>

Hibbitts, B. (2010). *Anglo-irish treaty ratified*. Unpublished manuscript, School of Law, University of Pittsburgh, Pittsburgh, Pennsylvania. Retrieved from <http://jurist.law.pitt.edu/thisday/2009/01/anglo-irish-treaty-ratified.php>

Hobbes, T. (1962). *Leviathan*, ed. by Oakeshott, M., New York: Simon & Schuster.

Hoffman, B. (2006). *Inside terrorism*. New York, NY: Columbia Univ

Ignatieff, M. (2004). *The lesser evil*. Princeton: Princeton University Press.

Katzman, K. Foreign Affairs, Defense, and Trade Division, Middle Eastern Affairs. (2005). *Al Qaeda: profile and threat assessment* (Order Code RL33038). CRS Report for Congress: Received through the CRS Web. See page 4-5

Locke, John. (2003). *Two treatises of government and a letter concerning toleration*, ed. by Shapiro, I., New Haven and London: Yale University Press. See *Second Treatise*

Smaw, E. (2011). *Swaying in the balance: civil liberties, national security, and justice in times of emergency*. ARSP (pp. 1-17). Stuttgart: Franz Steiner Verlag. See his discussion on strict libertarians

Thucydides. *The melian dialogue* [Excerpted from Thucydides, Benjamin Jowett, tr. A. P. Peabody, ed. (Boston: D. Lothrop & Co., 1883), bk. 5]. Retrieved from http://www.shsu.edu/~his_ncp/Melian.html

Williams, D. (1966). *The irish struggle 1916-1926*. London: Routledge & Kegan Paul Ltd. See page 68.