Perceptions of civil rights, security and the "war on terror": East and West compared

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ABSTRACT

This article explores the tension between civil rights and security by examining the perceptions of the general public and elites in Eastern and Western Europe on (i) the terrorist threat; (ii) external pressure to stay within or step outside the law when combatting terrorism; and (iii) how best to combat terrorism. Large scale qualitative and quantitative data collected in Western and Eastern Europe before the terrorist act in Norway in 2011 and the Russian intervention in Ukraine and subsequent annexation of the Crimea in 2014 suggest that at the time terrorism was perceived as a greater threat in Western than in Eastern Europe. Further, Europeans felt that the US had extended pressure on their countries to combat terrorism by stepping outside the law. While ordinary citizens believed that terrorism should be fought by introducing more security — if necessary at the expense of civil rights — elites emphasized the need to protect civil rights while combating terrorism. Finally, European Muslims claimed that the terrorist threat was exaggerated and that protecting civil rights is more important than combating terrorism.

1. Introduction

Civil liberties and human rights are essential components of democratic society. So is the rule of law. The war on terror poses a challenge to Western democracies in that it causes tension between the need for security, on the one hand, and the need to uphold basic civil liberties and human rights, on the other. Since 9/11 two main positions on how to deal with the threat of Islamist terrorism have crystallized. One of them emphasizes security over civil liberties and human rights (Chalk, 1998; Tsoukala, 2006), while the other advocates fighting terrorism by democratic means — if necessary at the expense of security (Barak, 2008; Chalk, 1998; Tsoukala, 2006).

While much has been written about the war on terror as such, the manner in which it has been conducted, and the fear and anxiety it has caused amongst citizens in the Western world (White, 2011; Combs, 2010; Simonsen and Spindlove, 2009; Martin, 2009; Post, 2008; Chaliand and Blin, 2007; Wright, 2007; Gareau, 2004), no systematic comparative analysis of the views of publics and elites on how best to conduct the war on terror, has so far been carried out. The purpose of this article is to examine the views of *legal insiders* and *outsiders*[1] in five European states on (i) the "war on terror" and the threat it poses to their respective countries; (ii) external pressure to force the hand of domestic politicians in the name of the "war on terror"; and (iii) various measures by which to fight terrorism.

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[1] We define "legal insiders" as those working professionally with the law — i.e. elected representatives, non-elected government officials, judges, lawyers, public prosecutors and the police. The term "legal outsiders" refers to the general public — including religious and ethnic minorities.

More specifically, the article examines the extent to which *the maximum civil rights* and *the maximum security* positions "inform" perceptions of the war on terror in Western and Eastern Europe. Some attention is also given to the perceptions of Europe's Muslims. Their views are of special interest as Muslims are members of the general public and thus a potential terrorist target; but also victims of public opinion: the war on terror has caused considerable fear of Muslims as a group amongst citizens in the West. Added to this, they are a potential source of recruitment for Islamic terrorist groups. The article is rounded off by some reflections on European legal cultures and the manner in which they have responded to the terrorist threat.

2. Civil rights, national security and legal culture

Shortly after the destruction of the Twin Towers in New York in 2001 President Bush announced a global war on terror. He made it clear that those countries that were not with the US in this war were effectively siding with the terrorists. Not only the EU and its member states but also numerous other countries have since joined the global war on terror — through UN and NATO initiatives to curb terrorism in Iraq and Afghanistan, as well as by other means. Many of the specific policies targeting terrorism have been defined and "exported" by the US to other countries.

Meisels (2005) notes: "measures taken by the Bush administration since 9/11, such as the Patriot Act, have stirred considerable debate about 'striking a new balance between security and liberty.'" This debate has taken place both in the US and in Europe and it is by no means new: 'since the late 1960s when terrorism' — defined by Neumann and Smith (Freedman, 2007, 314) as 'the deliberate creation of a sense of fear, usually by the use or threat of use of symbolic acts of physical violence, to influence the political behaviour of a given target group' — 'emerged as a significant feature of domestic and international political life, liberal democracies have been struggling with the problem of how to respond in a manner that is consistent with their own norms of legitimacy and acceptability' (Chalk, 1998, 373). Terrorism has mostly been treated as a crime where punishment takes place within the system of criminal law (Chalk, 1998, 376). The global war on terror differs in that it treats Islamist terrorism not as a domestic criminal problem but as an external threat to national security.[2]

It is possible to identify two main positions on how best to respond to Islamist terrorism. The *maximum security position* calls for more security at the (temporary) expense of civil liberties and human rights. Its starting point is that terrorism poses a threat not only to life, but that it also seeks to destroy the very structure that enables a liberal and democratic way of life to exist in the first place (Chalk, 1998, 376). Governments cannot fight terrorism effectively unless they sacrifice some of their democratic substance (Bossis, 2006; Cettina, 2001; Chalk, 1995; Donohue, 2001; Schlagbeck and Walter, 1992, referred to in Tsoukala, 2006, 608). Some liberal governments subscribe to this position.

The *maximum civil rights position* is advocated primarily by liberal-minded politicians, human rights' activists and judges.[3] They argue that terrorism can — and should — be fought by democratic means. Combating terrorism by curtailing basic civil and human rights is inadmissible as fighting terrorism is not only a question of protecting the democratic order against an external enemy, but also of upholding this order in the process — including when dealing with terrorist suspects. Chalk (1989, 375) notes that:

> Legal restraint, justly imposed on the government in the form of constitutional safeguards '… forms an integral part of any liberal democratic polity. The rights of the accused must be protected; the powers of judicial and police officials must be limited by such imperatives as reasonable suspicion, "minimum force", and due process; and redress must be available for those wrongly accused or imprisoned … '

Consequently, to cite Tsoukala (2006, 609), 'if governments cannot legitimate emergency measures they cannot be morally distinguished from the terrorists, who believe that the end justifies the means, and may be denounced for their undemocratic, authoritarian-driven stance.'

Acknowledging the tension between the *maximum civil rights* and the *maximum security* positions a third group, composed by both Western decision-makers and activists, advocates a *reasonable balance* between security and the protection of civil and human rights:

> A core security dilemma for the present era of terror violence is posed: how far should human rights and civil liberties of citizens be abridged by a government for the avowed sake of protecting that state's national security? Obviously the degree to which such abridgements might occur is relative to the laws and freedoms in each state. But the goal remains the same, namely, to find the balance between the concerns for national security and the need to guarantee the rights and freedoms associated with liberal democracy in a state (Joyner, 2004, 240–241).

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[2] Our starting point is that the war on terror has largely been defined by the United States and transferred to Europe. Boyle (2008, 191) argues that 'the declaration of a global war on terror in the aftermath of the attacks of 11 September 2001 constituted the single most ambitious reordering of America's foreign policy objectives since the Second World War'. Addressing the joint session of Congress following the attacks, President Bush said that 'every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists.'

[3] A. Barak (2008, 494), retired President of the Supreme Court of Israel, for instance, suggests that 'judges in modern democracies have a major role to play in protecting democracy. [They] should protect it both from terrorism and from the means the state wishes to use to fight terrorism.'