

The Terrorist Threat: Its Impact on American Civil Liberties and Democracy

Lindsay Gorman

Within the international system, terrorist attacks threaten the security of their target states. Terrorism can be defined “as the threat or use of violence to spread fear to lead to political change.”[1] However, state responses to terrorist threats differ according to its political system. For authoritarian regimes, the responses are virtually limitless. Appropriate responses become inherently more complex for a liberal democracy that guarantees its citizens a certain level of civil and human rights. In fact, the strategy used by terrorists “is to force the liberal government to reveal its true, authoritarian nature...through restrictions on civil liberties as would be imposed in a crisis or state of siege.”[2] A paradox ensues, in which a state can clamp down on civil liberties and human rights in order to defeat and capture terrorists, ending the democratic regime. Alternatively, states that do not react in this manner ensure civil liberties are protected but leave their citizens vulnerable to security threats.[3] As Michael Ignatieff points out, “A terrorist emergency is precisely a case where allowing individual liberty – to plan, to plot, to evade detection—may threaten a vital majority interest that is national security.”[4] This is the “catch-22” of the liberal democratic state response to terrorism.

Since the terrorist attacks of September 11th, 2001, the United States government under George Bush has

highlighted homeland security as one of his government’s top priorities, and thus new legislation has been implemented to fight terrorism along with the corresponding wars in Afghanistan and Iraq. One such legislation is the USA Patriot Act, enacted on October 24, 2001. The purpose of this controversial legislation is to provide law enforcement with enhanced investigatory tools to aid in deterring and prosecuting terrorist acts, on American soil and abroad.[5] Critics argue this act erodes America’s civil liberties by removing checks that limit law enforcement’s freedom. However, proponents of the bill assert that the Patriot Act is necessary as a measure to counter terrorism and ensure national security.[6]

The controversy surrounding this legislation raises an age-old debate; what measures must a state be willing to undertake in order to secure its own survival? What are the limits of state responses to security threats? Should national security take precedence over civil liberties? Where should the line be drawn? Do emergency legislations restricting civil liberties defend or attack democracy? What implications do US governmental policies –intended to guarantee American security -have for democracy? Are they a threat to the quality of American democracy or a necessary measure to guarantee state security?

I intend to examine to what extent liberal democratic states can restrict civil

liberties to protect against the threat of terrorism before they cease to be democratic. Doherty et al. outline four specific areas in which legislation following the 9/11 terrorist attacks erode civil liberties they are: open government; the right to privacy; treatment of immigrants, refugees, and minorities; and finally security detainees and the criminal justice system.[7] I will focus specifically on two sections, the right to privacy and the security detainees. Then I will use Freeman's theory in a detailed analysis to examine the impact for American democracy. In particular, Freeman's work will help determine whether or not the restriction of civil liberties is an effective use of emergency powers. In addition, Wilkinson offers three safe guards to which democratic anti-terrorist legislation should adhere, which will help explore the impact of such legislations on American democracy.[8]

My research has shown that, due in part to the international reach of this terrorist network, the restriction of civil liberties is relatively ineffective.[9] In addition, some of the post-9/11 legislation does not meet Wilkinson's criteria, and therefore may inhibit and threaten American democracy. However, I cautiously predict the erosion of civil liberties to decrease American democratic quality, but at the same time not pose a valid threat to democratic stability.

Before beginning any discussion regarding the impact of terrorism on liberal democracies, it is necessary to define the term. Liberal democracy is one of the many definitions of democracy to add a qualifier, therefore changing or expanding its meaning. The term democracy on its own has been widely defined as 'rule of the people': that is, a system of government selected by the people through the process of open, fair elections.[10] Juan J. Linz considers a government democratic "if it

supplies regular constitutional opportunities for peaceful competition for political power ... to different groups without excluding any significant sector of the population by force." [11] Linz's definition accounts for a measure of equality, which takes us to where the qualifier liberal fits into this definition. Fareed Zakaria defines liberal democracy as "a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property." [12] The collection of basic inalienable liberties or freedoms is how liberalism is included in the definition; these liberties are protected from a purely majority rule via the constitution. In general, a constitution aims to ensure a balance between equality and individual liberty.[13]

Thus, for a liberal democracy, the rule of law via a written Constitution that serves to check and balance separate government branches is paramount. For this reason, I will use examples of Constitutional violations to illustrate the breakdown of the rule of law, which consequently may diminish the quality and stability of a liberal democracy. The breakdown of the rule of law, and situations in which the Constitution is not directly upheld, threaten the ability of a liberal democracy to hold free and fair elections. When laws can be applied arbitrarily, the government in power has the potential to abuse this authority by limiting the opposition. Clearly, if this occurs, the state will no longer be classified as democratic.

It is generally accepted that states must balance their reaction to terrorist acts with the preservation of civil liberties.[14] Benjamin Barber echoes this idea of balance, asserting "an effective national security strategy must secure

America against terrorism without destroying the liberty in whose name its struggle is waged.”[15] However, this concept of balancing remains fairly murky and rhetorical. If we consider this idea as existing on a continuum, this implies that civil liberties are given up for increased security. Does this mean that policy, in order to be balanced, should remain in the middle of this continuum? This idea is what Michael Freeman calls “the tradeoff of using emergency powers”, a tradeoff which occurs when states weigh the benefits and costs associated with using emergency powers to fight a terrorist threat.[16] Emergency powers are one tool used by states to counter terrorist security threats, which “can increase the power of the state along many dimensions...[by suspending] normal due process laws, allowing the police to conduct searches without warrant, arrest citizens without charge, [or] hold them in jail without bringing them to trial.”[17] Freeman’s definition of emergency powers also includes legislation that limits civil liberties (like the right to free speech or assembly), and powers that suspend the separation of different branches of government.[18] From Freeman’s description, legislation suspending civil liberties and giving law enforcement a broader scope, such as the USA Patriot Act, could be included in the category of possible state responses to terrorism.

The tradeoff concept has been widely established in related literature.[19] The debate has instead focused on the acceptance of the tradeoff, which is influenced by the goal protected, democracy or state security. Here, Freeman suggests that norms play a role in how actors (whether scholars writing on the subject or politicians drafting legislation) place greater value on either protection of democracy or security goals. Freeman identifies the tradeoff

concept as one that rests on the assumption that restraining civil liberties is always an effective tool for combating terrorism, which he argues is not necessarily the case. His research looks at four case studies, and distinguishes between ineffective/effective and abused/not abused emergency powers. With this analysis, he aims to provide policy recommendations outlining when states can expect emergency powers to be effective and not abused. Freeman concludes that although citizens fear the invocation of emergency powers to combat terrorism and the “tradeoff between effectiveness and abuses” of these powers, “the tradeoff does not always materialize.”[20]

Freeman’s research is quite innovative as it correctly makes the distinction between effective and ineffective uses of emergency powers. However, his application to the current American situation was not fully developed. Freeman concludes that the abuse of emergency powers would be unlikely in the United States because institutional safeguards would remain in place (for example, the free press, the Congress and the Supreme Court) and because there is a strong commitment to democracy. Although these powers would not likely be abused, Freeman also emphasizes that they could be ineffective, and therefore unnecessary.[21]

Freeman applies his theory to the American example, but does not present an in-depth analysis.[22] One major weakness is Freeman’s failure to consider the USA Patriot Act. This legislation could be categorized as an exercise of emergency power, albeit one relatively limited in scope. In regards to the USA Patriot Act, Freeman effectively points out that emergency powers are the most controversial counter-terrorism tool that democratic governments can implement

because they restrict civil liberties.[23] He argues that,

[o]nly emergency powers promise the benefits of defeating terrorism while also imposing costs on a democratic society...[at best], emergency powers entail temporary curtailments of individual liberties. At worst, the emergency powers can lead to the end of democracy.[24]

Freeman's description of emergency powers includes relaxations of normal due process laws and searches without warrants. [25] Therefore, the USA's Patriot Act could fit into this description, as it relaxes some safeguards. Due to the loosening of these safeguards, abuse becomes possible. Therefore, a more current and complete analysis of the American example would have to include this new legislation.

One constraint of focusing my analysis on Freeman's work is that his four case studies were instances of domestic terrorism. His first case study is Great Britain, which used emergency powers in Northern Ireland against the Irish Republican Army (IRA), without restricting liberty and democracy but also without much success in limiting terrorist operations.[26] Freeman's second case study is Canada and its response to the Front de Libération du Québec (FLQ)'s kidnappings in 1970. In this case, the FLQ was eliminated with the use of emergency powers with little cost to democracy.[27] Uruguay is Freeman's third study, where emergency powers were invoked from 1968-72 against the Tupamaros terrorist group. In this case, the military took over counter-terrorist policing, and the emergency powers it was given to investigate were abused. This created the opportunity for the military to stage a successful coup in 1973, thus ending democracy.[28] The final case, in which the

use of emergency powers were both abused and ineffective is Peru, where such powers were used to target the Shining Path terrorist organization, just as the country was returning to democracy in the early 1980s. In this case, the abuse of emergency powers was horrific, as security forces murdered many innocent civilians and completely suspended basic civil liberties in specific areas.[29]

All these cases encompass commonalities, as the target states were relatively democratic and the terrorists to whom they responded were domestic. Of course, it has become common knowledge that international terrorists, linked to the Al Qaeda network, performed the attacks on the United States. This poses a conceptual challenge, because the methods for combating domestic and international terrorism are inherently different. Therefore, the evaluation of the effectiveness of emergency power use would be slightly different.

Nevertheless, I believe this challenge will strengthen my argument against the use of emergency powers by the United States government. Due to the fact that the Al Qaeda network has cells operating in many countries all over the globe means that the use of emergency powers within the domestic borders of the United States will have little or no impact on terrorists who are plotting and planning in other countries. As Freeman acknowledges, "[e]mergency powers will be more likely to be ineffective if a terrorist group has a large base of supporters and sympathizers, relative to the size of the active terrorist group." [30] In this case, he was referring to domestic terrorist organizations, but we can infer the efficacy of emergency powers to be compromised further when applied to the expansive and complex networks of terrorist organizations like Al Qaeda: "[w]hen terrorist groups are very large, numbering

in the tens of thousands of members spread out throughout a country, emergency powers are unlikely to be effective.”[31] Because this limitation is augmented when we consider international terrorism, it is safe to assume that only when these terrorists physically enter the United States will emergency powers be of any use. Even then, due to their broad support and organizational base, it is doubtful these emergency powers would actually threaten the international terrorist organization.

Furthermore, since a number of the hijackers involved in the 9/11 attacks attended flight school in the United States, and thus obtained their commercial pilot licenses on American soil, their activities could have been impacted by more stringent emergency powers. Consequently, improved enforcement of existing immigration laws would have dealt a sizeable blow to the organization of these attacks. Six of the hijackers were in violation of immigration laws (more specifically, visa overstays and violations of student status) that were never detected by immigration officials.[32] In these cases, enforcement of existing laws would have limited terrorist movement into the United States; however, it is doubtful that emergency powers and minor limitations of civil liberties would have been effective.

In attempting to decipher what effects post 9/11 legislation has had on democracy, I will use Wilkinson’s three recommendations for anti-terrorist legislation to analyze further the level of harm to American democracy. Wilkinson outlines three crucial safeguards that democratic anti-terrorist legislation should follow:

- 1) All aspects of the anti-terrorist policy and its implementation should be under the overall control of the

civil authorities and hence democratically accountable.

- 3) Special powers, which may become necessary to deal with a terrorist emergency, should be approved by the legislature only for a fixed and limited period, at the very minimum on an annual basis. This should be subject to the legislature’s right to rescind the special powers in whole or in part if circumstances alter. Emergency powers should be clearly and simply drafted, published as widely as possible, and administered impartially.[33]

Using Wilkinson’s three safeguards, along with the initial criteria provided by Doherty et al. (in particular, the right to privacy, and security detainees in relation to the criminal justice system), I will attempt to synthesize the evidence in order to provide a basis from which I can posit that some of the post-9/11 legislation is threatening the quality of American democracy.

Of the four areas outlined by Doherty et al., the evidence on unclassified detainees pertains directly to Wilkinson’s second safeguard criteria for democratic anti-terrorism legislation. I will use the most current report from the Lawyers Committee for Human Rights as evidence to support the argument that Wilkinson’s second criteria, which ensures that “the normal legal processes are maintained, and that those charged with terrorists offences are brought to trial before the courts of law”, is not always followed.[35] Acer et al. argue that the incarceration of unclassified detainees violates both domestic and international law.[36] They point to the creation of the term ‘enemy combatant’, which can be used by the president (solely executive power, and therefore no checks and balances) instead of using the classification of prisoner of war or criminal

suspect. This is a blatant use of semantics to bypass both the American constitution and International law. If the prisoners labeled by the United States' government as 'enemy combatants' were called prisoners of war, their detainment without trial would be in direct violation of Article 103 of the Geneva Convention, which states that:

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.[37]

Additionally, as Acer et al. point out, the Geneva Convention ensures every person status under the law, either as a prisoner of war or a civilian.[38]

However, since September 11th, 2001, there have been two American citizens held without charge by the United States in a military detention facility. One of these men, José Padilla, was denied both counsel and family visitation for approximately 15 months (prior to the writing of Acer et al.'s report).[39] Because United States citizens cannot be classified as prisoners of war, they must therefore be criminal suspects if they are detained. However, due to the creation of this 'enemy combatant' category, the executive branch of American government is completely bypassing normal legal processes that Wilkinson warns must remain intact.[40] According to Acer et al., Padilla's treatment is illegal, as it violates "constitutional protections against

arbitrary detention, including the right to counsel; the right to a jury trial; the right to be informed of the charges and confront witnesses against them." [41] This violates Wilkinson's second recommendation for anti-terrorist legislation in democratic states, where normal legal processes should be maintained and performed under the law, and terrorists should be charged and tried before the courts of law.[42] The United States' Constitution guarantees the writ of habeas corpus, which is a check against the arbitrary application of imprisonment, and is an important tool in upholding the constitution and personal liberty.[43] The Constitution does provide for exceptional circumstances of rebellion or invasion, during which the writ can be constitutionally suspended; [44] however, it seems a stretch to justify the suspension of the writ by classifying the terrorist threat as an 'invasion.' This means the detention of prisoners, like Padilla, directly violate the American constitution, and therefore threaten democracy due to the arbitrary application of Constitutional law.

This raises a second area where the American government is using what Acer et al. refer to as 'extra-legal institutions', which violate the United States Constitution, and where "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish". [45] Trying some of the aforementioned Guatánamo Bay detainees by established military commissions, instead of trial by the criminal courts, is a process that operates outside both the United States criminal courts and court martial, and therefore outside the judicial institutions and power.[46] As this development violates both the Constitution and rule of law, in addition to bypassing the Judiciary institutions, it has the potential to threaten

democracy by undermining the rule of law and the democratic institutions essential to the stability of liberal democracies. The military commission process also violates Wilkinson's second criteria, the necessity of maintaining normal legal and due process for those suspected of terrorist activities.[47] Therefore, this is an additional development that jeopardizes American democracy.

Given the implications for American democracy due to the suspension of civil liberties explored in this paper, it becomes relevant to consider whether these means are necessary, given the genuine security threat posed by international terrorism. Is the erosion of civil liberties justified in view of the actual threat posed? Are limited restrictions of civil liberties warranted in terms of the terrorist security threat? How serious is this security threat? These questions require another paper, but I will offer some preliminary comments. Prominent Canadian journalist Gwynne Dyer argues that the threat to the domestic American population is inherently miniscule:

As for the 300 million Americans at home, exactly as many of them have been killed by terrorists since 9/ 11 as have been killed by the Creature from the Black Lagoon in the same period. None. [48]

Those opposed to the Patriot Act argue that the threat of domestic terrorism is relatively small, and that the Patriot Act is therefore unnecessary. Conversely, proponents of the Patriot Act argue that the absence of an attack on American soil is a testament to the legislation's efficacy.[49] Therefore, the Patriot Act's concrete 'success' is difficult to measure because both sides are claiming the lack of terrorist attacks on the American homeland as 'proof' of their arguments.

In addition, the use of the Patriot Act is shrouded in a veil of secrecy. Due to restrictions on the Freedom of Information Act (FOIA) enacted after the terrorist attacks, information regarding the frequency of the Department of Justice's use of the Patriot Act has been classified.[50] The American Civil Liberties Union took the Department of Justice to court to request information about their use of the Patriot Act, but lost due to the further restrictions placed on the FOIA.[51] Evidently, this makes it increasingly difficult to gauge the effectiveness of the Patriot Act in regards to the security threat. In addition, the secrecy surrounding the use of the Patriot Act provides ample opportunity for its abuse, which has been established as a threat to American democracy.

After reading Dyer's article, another facet of this complex issue comes to light; if the war on terrorism is unwinnable (he compares it to the war on crime, where no one actually expects a day where all criminals will surrender), what implications does this have for the duration of civil liberty interruptions? Dyer offers a comment from Stella Rimington (the former director of MI5, Britain's domestic intelligence agency), who is

afraid that terrorism didn't begin on 9/11 and it will be around for a long time. ... terrorism has been around for 35 years ... [and it] will be around while there are people with grievances...there will always be terrorism. One can be misled by talking about a war, as though in some way you can defeat it.[52]

If this is the case, the suspension of civil liberties for emergency power purposes becomes potentially infinite; if the war will never be 'won', can an endless restriction of civil liberties be justified to the American population? This is certainly

an interesting perspective making the use of emergency powers in this situation even more problematic.

In conclusion, I argue that restricting civil liberties as an anti-terrorist measure in the United States has not necessarily been effective, due to the large scope of international terrorist organizations. This weakens the tradeoff assumed to exist between democratic civil liberties and the terrorist security threat. In this respect, I agree with Freeman's conclusion that emergency powers would be ineffective and unnecessary against an international terrorist threat.[53] However, I disagree with Freeman's assertion that, if implemented, these emergency powers would not be abused.[54] The extensive research of the Lawyers Committee for Human Rights highlighted areas where post-9/11 anti-terrorist legislation was abused.[55] In addition, their research highlighted examples where new legislation was actually deemed unconstitutional (for example, the Padilla case and the use of military commissions instead of trial by jury for detainees). These examples along with Wilkinson's criteria illustrate that the United States legislation did not comply with his recommendations. While not a perfect evaluation of how democracy is threatened, it provides a framework to argue that the quality of American democracy is possibly suffering from post-9/11 legislation. In addition, I attempted to evaluate whether specific restrictions of civil liberties violated the Constitution, which threatens democracy qualitatively by limiting pluralism.

Therefore, I posit that the use of emergency powers, like the restriction of civil liberties, is an ineffective tool for the United States in combating terrorism. In addition, I argue that the abuse of emergency powers, like the suspension of

due process laws, arresting citizens without charging them, indefinite detention without trial, and conducting searches without warrants, violate the rule of law, threatening both the quality, and – although mildly – the stability of American democracy. Thus, I adapted Freeman's[56] original table that classified countries and their response to terrorism and propose the United States be included in the ineffective and abused category.[57]

Finally, I warn against the potential negative and international repercussions of the United States' abuse of civil liberties. In this respect, I am in accord with the most recent report from Doherty et al., who caution that:

[t]he actions of the U.S. government are being closely followed and emulated by other governments around the world. The United States must address security concerns in a manner consistent with the fundamental principles of human rights. By turning its back on these principles, the United States forfeits the very values for which it claims to be fighting.[58]

Although I doubt the abuse of civil liberties will lead to the imminent demise of American democracy, the implications for worldwide democratization efforts are potentially disastrous. This is clearly an issue too large for this paper, but as a superpower the actions of the United States speak louder than its words. Therefore, some regimes with more tenuous democratic institutions may follow the American lead by enacting civil liberty restrictions and bypassing institutions. In this respect, the American citizens will not be those most negatively impacted by the United States response to international terrorism. Therefore, terrorist attacks affect their target states, but also the stability and security of the entire

international system due to the state response and its potential threat to democracy.

Appendix A

TABLE 1.1
DEMOCRATIC STATES THAT HAVE USED EMERGENCY POWERS AGAINST TERRORISM

Effective ↑ ↓ Ineffective	x-Canada x-Italy	x-Uruguay x-United States
	x-Spain x-Britain x-Israel	x-Peru
	Not Abused	Abused

(Adapted from Freeman, 15)

Appendix B

COMPARING FAIRNESS PROTECTIONS

RIGHTS	U.S. CRIMINAL COURT	U.S. COURT MARTIAL	MILITARY COMMISSION
Jury	Yes	No	No
Counsel of defendant's choice	Yes	Yes	No
Know all evidence against the defendant	Yes	Yes	No
Obtain all evidence in favor of the defense	Yes	Yes	No
Attorney-client confidentiality	Yes	Yes	No
Speedy trial	Yes	Yes	No
Appeal to an independent court	Yes	Yes	No
Remain silent	Yes	Yes	Yes
Proof beyond a reasonable doubt	Yes	Yes	Yes

(Reproduced from Acer et al., 57)

Sources

Acer, Eleanor et al. "Assessing the New Normal: Liberty and security for the post-September 11 United States." New York: Lawyers Committee for Human Rights,

2003. <http://www.humanrightsfirst.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf> (13 Feb. 2005).

Barber, Benjamin R. *Fear's Empire: War, terrorism, and democracy*. New York: W.W. Norton & Company, 2003.

1. http://www.defenddemocracy.org/usr_doc/USA_Patriot_Act.pdf (5 Feb. 2005).

Doherty, Fiona et al. "A Year of Loss: Reexamining civil liberties since September 11." New York: Lawyers Committee for Human Rights, 2002. http://www.humanrightsfirst.org/uslaw/loss/loss_report.pdf (11 Feb. 2005).

_____. "Imbalance of Powers: How changes to U.S. law & policy since 9/11 erode human rights and civil liberties." New York: Lawyers Committee for Human Rights, 2003. <http://www.humanrightsfirst.org/uslaw/loss/imbalance/powers.pdf> (4 Feb. 2005).

Dyer, Gwynne. "Despite the Rhetoric, the 'war on terror' can never be won." *Kingston Whig – Standard*, 8 September 2004, n.p. <http://proquest.umi.com/pqdweb?did=692593401&sid=2&Fmt=3&clientId=13370&RQT=309&VName=PQD> (20 March 2005).

Freeman, Michael. *Freedom or Security: The consequences for democracies using emergency powers to fight terrorism*. Westport, CT: Praeger Publishers, 2003.

Geneva Convention relative to the Treatment of Prisoners of War. Adopted on 12 August 1949 *entry into force* 21 October 1950. UNHCHR

website. <http://www.unhchr.ch/html/menue3/b/91.htm> (4 March 2005).

Ignatieff, Michael. *The Lesser Evil: Political ethics in an age of terror*. Toronto: Penguin, 2004.

Kupperman, Robert H. and Darrell M. Trent, *Terrorism: Threat, reality, response*. Stanford, CA: Hoover Institution Press, 1979.

Linz, Juan J. "An Authoritarian Regime: The case of Spain." In *Mass Politics: Studies in Political Sociology*, eds. Erik Allardt and Stein Rokkan. New York: Free Press, 1970, 251-83, 374-81.

National Commission on Terrorist Attacks Upon the United States. *Entry of the 9/11 Hijackers into the United States*, Staff Statement No.1., Washington: 2004. <http://news.findlaw.com/hdocs/docs/terrorism/911comm-ss1.pdf>. (27 Feb. 2005).

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. HR 3162, 107th Cong., 1st sess., 24 October 2001, Electronic Privacy Information Centre. <http://www.epic.org/privacy/terrorism/hr3162.html> (4 Feb. 2005).

Wilkinson, Paul. *Terrorism Versus Democracy: The liberal state response*. London: Frank Cass Publishers, 2000.

Zakaria, Fareed. *The Future of Freedom: Illiberal democracy at home and abroad*. New York: W.W. Norton and Company, 2004.

Endnotes

[1] Michael Freeman, *Freedom or Security: The consequences for democracies using emergency powers to*

fight terrorism (Westport, CT: Praeger Publishers, 2003), 26.

[2] Robert H. Kupperman and Darrell M. Trent, *Terrorism: Threat, reality, response* (Stanford, CA: Hoover Institution Press, 1979), 26-27.

[3] Paul Wilkinson, *Terrorism Versus Democracy: The liberal state response* (London: Frank Cass Publishers, 2000), 115.

[4] Michael Ignatieff, *The Lesser Evil: Political ethics in an age of terror* (Toronto: Penguin, 2004), 4.

[5] *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*. HR 3162, 107th Cong., 1st sess., (24 October 2001), preamble.

[6] There are many organizations against these new legislations; examples include the American Civil Liberties Union and Human Rights First (formerly Lawyers Committee for Human Rights). Supporters of the Patriot Act include The Foundation for the Defense of Democracies; for example, see Viet D. Dinh, "How the USA Patriot Act Defends Democracy", (Washington, DC: The Foundation for the Defense of Democracies, 2004), 1.

[7] Fiona Doherty et al., "A Year of Loss: Reexamining civil liberties since September 11" (New York: Lawyers Committee for Human Rights, 2002).

[8] Wilkinson, 113-18.

[9] Freeman supports the conclusion that due to the international nature of the 9/11 terrorist attacks, restricting civil liberties is not the most effective counter-terrorism tool.

[10] See Fareed Zakaria, *The Future of Freedom: Illiberal democracy at home and abroad* (New York: W.W. Norton and Company, 2004).

[11] Juan J. Linz, "An Authoritarian Regime: The case of Spain," in *Mass*

Politics: Studies in Political Sociology, eds. Erik Allardt and Stein Rokkan (New York: Free Press, 1970), 254.

[12] Zakaria, 17.

[13] Freeman, 36.

[14] Kupperman and Trent, 10-11.

[15] Benjamin R. Barber, *Fear's Empire: War, terrorism, and democracy* (New York: W.W. Norton & Company, 2003), 145-46.

[16] Freeman, 2-3.

[17] Freeman, 28.

[18] Ibid.

[19] Freeman, 3-5.

[20] Freeman, 194.

[21] Freeman, 192-95.

[22] Ibid.

[23] Freeman, 28.

[24] Ibid.

[25] Freeman, 28-29.

[26] Freeman, 15, 18.

[27] Freeman, 15, 19.

[28] Freeman, 15-19.

[29] Freeman, 15-20.

[30] Freeman, 31.

[31] Ibid.

[32] National Commission on Terrorist Attacks Upon the United States, *Entry of the 9/11 Hijackers into the United States*, Staff Statement No. 1., (Washington: 2004), 8.

[33] Wilkinson, 117.

[34] Eleanor Acer et al., "Assessing the New Normal: Liberty and security for the post-September 11 United States" (New York: Lawyers Committee for Human Rights, 2003), 16-17.

[35] See Acer et al, 49-50, for the report from the Lawyers Committee for Human Rights. See also Wilkinson, 117, for criteria for anti-terrorist legislation.

[36] Acer et al., 49-50.

[37] Geneva Convention relative to the Treatment of Prisoners of War, art. 103.

[38] Acer et al., 50.

[39] Acer et al., Introduction, ii.

[40] Wilkinson, 117.

[41] Acer et al., Introduction, xii.

[42] Wilkinson, 117.

[43] U.S. Constitution, art. 1, sec. 9, cl. 2.

[44] Ibid.

[45] U.S. Constitution, art. III, sec.

1.

[46] Acer et al., 52; See also Appendix A, page 44.

[47] Wilkinson, 117.

[48] Gwynne Dyer, "Despite the Rhetoric, the 'war on terror' can never be won," *Kingston Whig – Standard*, 8 September 2004, n.p.

[49] Dinh, 2.

[50] Acer et al., Introduction, vii.

[51] Acer et al., Introduction, vii.

[52] Dyer, n.p.

[53] Freeman, 193.

[54] Ibid.

[55] Please refer to Acer et al. for this report.

[56] Freeman, 15.

[57] See Table 1.1, p. 43. I recognize the distinction between Peru, located further to the outskirts of the table, and the United States, which I placed as close to the center as possible to illustrate that the abuses were not nearly as threatening to democratic stability as in the case of Peru.

[58] Fiona Doherty et al., "Imbalance of Powers: How changes to U.S. law & policy since 9/11 erode human rights and civil liberties" (New York: Lawyers Committee for Human Rights, 2003), 78.