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SOSYAL BİLİMLER ENSTİTÜSÜ  
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İNGİLİZCE ULUSLARARASI İLİŞKİLER PROGRAMI  
YÜKSEK LİSANS TEZİ

**A COMPARATIVE STUDY ON TERRORISM AND  
STATE RESPONSES: THE BRITISH AND AMERICAN  
EXPERIENCES**

**Ayşegül EKİNCİ**

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2010

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Anabilim Dalı : Uluslararası İlişkiler  
Programı : İngilizce Uluslararası İlişkiler  
Proje Konusu : A Comparative Study on Terrorism and State Responses:  
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**ÖZET**  
**Yüksek Lisans Tezi**  
**İngiliz ve Amerikan Deneyimleri Bağlamında; Terörizm ve Devlet**  
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21. Yüzyıl; modern terörizmin en büyük saldırısı ile başlarken, hem devlet yapıları hem de güvenlik algısı üzerinde öngörülemez bir değişikliğe sebep olmuştur. Bu tez; modern terörizmin, liberal devletlerin doğasında bulunan güvenlik - özgürlük dengesi üzerindeki etkilerini incelemeyi amaçlamıştır. Bu bağlamda, 11 Eylül 2001 ve 7 Temmuz 2005 saldırıları; boyutları, failleri ve kısa vadeli sonuçları bakımından irdelenirken; kendi topraklarında vurulan devletlerin, terörle mücadele yasaları kapsamında ilk tepkileri de ele alınıp kıyaslanmıştır. Terörün ve terörle mücadelenin; temel hak ve özgürlükler üzerindeki etkisi, İngiliz ve Amerikan deneyimleri karşılaştırılarak incelenmiştir. Bu tez, 11 Eylül saldırıları ve Patriot yasası; 7 Temmuz saldırılarıyla 2006 Terör Yasası ve Kratos Operasyonu sebebi ile; devlet - birey ilişkisinin değişime uğradığını belirterek; İngiltere - Amerika arasındaki ayrıcalıklı ilişkiye rağmen, bu değişimde iki ülkenin farklı noktalarda bulunduğunu iddia etmektedir.

**Anahtar Kelimeler: Terörle Mücadele, Liberal Devlet, Ceza Hukuku, Kratos Operasyonu, Patriot Yasası**

## **ABSTRACT**

### **Master Thesis**

#### **A Comparative Study on Terrorism and State Responses: The British and American Experiences**

**Dokuz Eylül University**

**Institute of Social Sciences**

**Department of International Relations**

**Program of International Relations**

21. century beginning with the most extensive attack of modern terrorism; led to unpredictable changes in the state structures as well as in the perception of security. This thesis intend to examine the challenges posed by modern terrorism on the natural balance between security and freedom in liberal states. In this context; while the attacks in 11 September 2001 and 7 July 2005 is analyzed in the scale, perpetrators and immediate results; the state responses is discussed and compared as anti-terrorism legislations, specifically reactive to the attacks in their homeland. The effects of terrorism and counter terrorism on fundamental rights and freedoms is scrutinized through the experiences of United States and United Kingdom. Eventually, 11 September attacks and Patriot Act, also 7 July bombings and Terrorism Act of 2006 together with Operation Kratos result in a change of the relationship between state and individual. This thesis argues that despite the privileged relationship between United States and United Kingdom, two states is claimed to have different standpoints in this change.

**Key Words: The War on Terror, Liberal State, Criminal Law, Patriot Act, Operation Kratos**

**A COMPARATIVE STUDY ON TERRORISM AND STATE RESPONSES:  
THE BRITISH AND AMERICAN EXPERIENCES**

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## ABBREVIATIONS

7/7	: The attacks in London on 7 July 2005
9/11	: The attacks on America on September 11, 2001
ACLU	: American Civil Liberties Union
CCTV	: Close-Circuit Television
CIA	: Central Intelligence Agency
EU	: European Union
FBI	: Federal Bureau of Investigation
G8	: Group of Eight
IRA	: Irish Republican Army
NATO	: North Atlantic Treaty Organization
NSA	: National Security Agency
Patriot Act	: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001
UK	: United Kingdom
UN	: United Nations
USA	: United States of America

## 1. INTRODUCTION

As the phenomena of terrorism grow in the sense of use, number and lethality, it is becoming a more complicated problem for liberal states to solve. The dilemma between security and freedom is getting a more debated concept within the politics and academic circles. The main concern is mostly about what liberal states could do within their liberal nature when they are attacked by terrorists; as the balance in a society between freedom and security is challenged by the terrorist attacks. When one base of the equilibrium, the security, was attacked, the state reflex is usually concentrated on the security measures, which in high probability causes a trade off between civil liberties and security quest.

The great example would be the aviation security measures taken after 9/11 as an instance greater time were spent to get into a flight because of the regular searches. The finger prints, facial recognition programs, total exploration of the trip by authorities are just some of the precautions taken after 9/11. Many more can be found analyzing the daily life. All these measures could be seen comprehensible to a state facing a horrible attack like 9/11. However, when the civil liberties, being the other part of the equilibrium, concerned; a change can be seen in the liberal state. These thesis will try to focus on this change basically. The change in the equilibrium, the trade offs between civil liberties and security and how terrorism affects the nature of liberal states by responding to terrorist attacks is tried to be studied comparatively. The 9/11 together with the response of USA and 7/7 bombings with responses of UK is tried to be compared by the sense of liberal state's political repercussions.

Liberal democratic states based on civil liberties are facing the great phenomena of international terrorism starting from the new millennium. According to Paul Wilkinson, the liberal state survives over its liberal values of humanity, liberty and justice.<sup>1</sup> However after a terrorist attack or a terrorist threat, "*The emergency powers of*

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<sup>1</sup> Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response*, (Routledge, Britain, 2006), p.82.

*a liberal state carry great risk for the democratic systems.*<sup>2</sup> Wilkinson argues that “*it is a dangerous illusion to believe one can <protect> liberal democracy by suspending liberal rights and forms of government.*”<sup>3</sup> It is one of the most argued topics after the 9/11 attacks to World Trade Center; how the counter terrorism measures of a liberal democratic state be formed.

Through the history of terrorism many different responses were constituted against terrorist threats in liberal states. Some were based on rigid military responses, some were both militaristic and economic and some were based on civil liberties. The rigid military approach can be seen in Israeli State politics of zero-tolerance fighting the terrorist attacks over 60 years. Economic measures is mostly about ending the sponsorship of the terrorist organizations, moreover trying to cut the relationship between terrorist organizations and criminal offenses.<sup>4</sup> Even if many different counter terrorism politics exist, it is becoming a more important debate in liberal states, how the balance between security and civil liberties would be harden.

Considering major terrorist attacks, the states may deploy two immediate response; emergency powers and anti-terrorist legislations, which in many terms contradict with the civil liberties in liberal democracies. Search of houses and vehicles without warrant, duration of custody, detention without criminal charge and interception of telephonic conversations can be some examples of such legislations in different states. The alteration of such legislations is mostly about the modality of prevention of any terrorist commitment. The difference lies in the base, as we punish the crime after it was committed, not according to its probability. However in counter-terrorism; it is been tried to prevent from ever happening.<sup>5</sup>

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<sup>2</sup> Wilkinson, Terrorism vs. Democracy p.82

<sup>3</sup> Ibid p.82

<sup>4</sup> Drug trafficking, human trafficking, money laundering etc. are some of the criminal offenses terrorist organizations commit for economic reasons.

<sup>5</sup> Russel Hardin, Civil Liberties in the Era of Mass Terrorism, The Journal of Ethics, 8 (2002), 77-95

The internationalist character of terrorism makes it harder to evaluate what is to protect and how can what be protected from whom. According to Berthold Meyer “*Striving for security is a universal human tendency. In the sense of seeking safety measures against hazardous natural environment, as well as against unfriendly neighbors, security efforts have given important stimulation to the whole “process of civilization.”*”<sup>6</sup> However, security became a symbol of after 20th century mostly within the democracies and of wealthy states of north according to Meyer.<sup>7</sup> Even if seeking of security exists since the beginning of civilization, the internationalist character of late terrorism challenges the situation.

Russell Hardin argues that the concept of civil liberties has been built as a positive law within the legal context and protections since the early forms. Protection from intrusions against life and property were developed as states prerogatives according to Hardin. However, Hardin claims that national laws are binding within the state and within the citizens.<sup>8</sup> As Hardin argues “*It makes no sense to say, in an analogous way, that security against foreign terrorists is a right. I have a right under the laws of our government to protection against you, my fellow citizen. Terrorists from abroad should be deterred to some extent, but this is a welfarist claim, not a claim of rights under law.*”<sup>9</sup> The constitutional rights within a state serve within the citizens of the state. Therefore, security from the enemies outside the state is to provide with deterrence and prevention according to Hardin. The rights and freedoms, provided by the constitutions of different nation states serve within the national borders and within the citizens. Therefore, security from international terrorism is not something to be developed in national legislative acts. The difficult relationship between security and the civil liberties lies at this spot. Civil liberties are provided by the state within national

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<sup>6</sup> Berthold Meyer, “Fighting Terrorism by Tightening Laws: A Tightrope Walk between Protecting Security and Losing Liberty” in *Fighting Terrorism in the Liberal State*, ed. Samuel Peleg, Wilhelm Kempf, 88 (IOS Press, 2006)

<sup>7</sup> Ibid.

<sup>8</sup> Hardin, *Civil Liberties* p.86-87

<sup>9</sup> Ibid.

borders with the law, whereas laws developed for the pursuit of security within the national borders do not serve as positive rights. Deterrence and prevention are the grass roots for laws of security pursuit. Therefore the stand point and the spirit of Anti-Terrorism laws can be said as different from the constitutional rights in liberal democracies, as special Anti-Terrorism laws in liberal democracies seek for prevention and deterrence from international terrorism. Pursue of deterrence and prevention could be seen as a way out for liberal democracies to work within the law without losing its core liberal values against terrorism.

Again, the challenge exist because of the nature of terrorist actions, unpredictability causes deficient precautions. Berthold Meyer explains this difference with the experience of 9/11 as follows; “...working on the basis of... life experience is treading on shaky ground, as the events of 9/11 show: Before this, there seemed to be no grounds for the presumption that a civilian airplane, would ever be steered into a skyscraper with a terrorist intention.”<sup>10</sup> The unpredictable nature of the terrorist attacks also causes revisions of the security pursuit. According to Meyer the security we seek is developed according from what we have learned from the life experiences. “Since that day, “Life experience” has had to consider the risk of a repetition of such attacks, but this experience gives us no hints as either the probability or the possible targets.”<sup>11</sup> Even if life experiences cause a certain way of Anti-Terrorism laws to developed, the unpredictable nature continues for further possible attacks. The complexity of the security pursuit lies in the unpredictable nature of the terrorism. Meyer argues that “Therefore, it is completely impossible to judge whether it is necessary for the police or military to continuously secure all buildings above a certain height or whether it is sufficient to forbid flights over certain parts of big cities and to control this to protect the supposed basic law of security for everyone living or working in a skyscraper.”<sup>12</sup> The precautions taken in the basis of life experiences when combined with

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<sup>10</sup> Meyer, Fighting Terrorism p.96

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

unpredictability can lead to restriction of countless aspects of daily life. According to Meyer *“If the existence of this basic right is accepted, the door will be opened to enormous enlargements of security regulations and systems.”*<sup>13</sup> The unpredictable nature of terrorism causes the challenge to regulate laws and security systems. It is also the point where the civil liberties confront with security.

On the other hand, the unpredictable nature of terrorism is the cause of fear it creates, as unpredictability leads to vulnerability. Anti-Terrorism legislations therefore aim to decrease vulnerable circumstances within a state. As Meyer argues, the vulnerabilities in a state is learned from the life experiences, in that situation probability calculations for further attacks contradicts with the liberal stand of states.<sup>14</sup> In this light, the measures taken against terrorist threats become a major debate within liberal states. The precautions, the limits of the precaution considering basic rights and the duration of the precautions are just some of the basic problems considering the debate. Anti-Terrorism legislations of United States and Britain will be compared considering these basic points of views in this thesis.

When the liberal values were introduced in French Revolution; egalite, fraternite and liberte, the first step was taken to modern liberal state. Those values of French Revolution today become universally accepted by the United Nations Universal Declaration of Human Rights. At first sight declaration made it clear that there shall be no distinction between any person belonging to different states as it puts:

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international*

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<sup>13</sup> Meyer, p.96

<sup>14</sup> Ibid.

*status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”<sup>15</sup>*

Furthermore the declaration introduced basic rights as everyone has the right to life, liberty and security of person.<sup>16</sup> According to declaration “*all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*”<sup>17</sup> Also everyone have a right to peaceful assembly and association and no one may be compelled to belong to an association.<sup>18</sup> On the other hand, there are some prohibitions introduced by the Declaration: “*No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment. No one shall be subjected to arbitrary arrest, detention or exile.*”<sup>19</sup>

Even if these rights were universally accepted, crisis may challenge the situation. Considering states facing crisis, two basic form of response can be stated; emergency powers to deal with the immediate results of crisis also, legislations and strategies for further effects and prevention of repetition. Therefore, any state facing exceptional circumstances may turn to its emergency powers. Emergency powers of a state are legally formulated against events that pose serious threat to human welfare, the environment or security of a state or parts of state.<sup>20</sup> Natural disasters, civil disorder or declaration of war could be classified as circumstances leading to emergency powers

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<sup>15</sup> UN Universal Declaration of Human Rights <http://www.un.org/en/documents/udhr/> (accessed 12 August 2009)

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Anthony Richards “The Emergency Response:Process and problems” in *Homeland Security in UK: Future Preparedness For Terrorist Attack since 9/11* ed. Paul Wilkinson (Routledge, Oxon. 2007) p.345

employed. *“The emergency powers can best be thought of as a compromise that allows the government to ensure the security of state while limiting the damage to liberty and democracy.”*<sup>21</sup> Other circumstances may also be added into the definition of emergencies like political, administrative or economic threats. The feature and the scope of emergency powers are changeable to states. However there are some basic aspects. As Michael Freeman explains *“Emergency powers are also frequently, but not necessarily, limited in their scope. At one extreme, emergency powers can suspend all liberties for all people.”*<sup>22</sup> The scope of emergency power can be divergent considering the situation faced. According to the exceptional situation a state face, emergency powers can be used in the spectrum of all to limited. *“At the other end of the spectrum, emergency powers may only suspend just a few liberties of particular citizens, such as suspected terrorists. While emergency powers may lie anywhere on this spectrum, they are usually limited to some degree in terms of their scope”*<sup>23</sup>

The scope of the emergency powers differs both from states to the circumstances a state face. Therefore both the crisis and the nature of state delineate the usage of emergency powers. The state of emergency can be declared locally, state level or internationally. The swine flu outbreak in early 2009 leads to a state of emergency on international level declared by World Health Organization.<sup>24</sup> It is also possible to declare state of emergency locally for example because of a natural phenomenon. The duration of the state of emergency is also another important feature. Israel for example is in a state of emergency since its establishment in 1948. In contrast, in Canada, the duration of state of emergency is for 90 days unless it is expanded by the government.

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<sup>21</sup> Michael Freeman, *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror*, (Praeger,2003) p.2

<sup>22</sup> Freeman, *Freedom or Security*, p.6

<sup>23</sup> Ibid.

<sup>24</sup> For further information [http://www.who.int/mediacentre/news/statements/2009/h1n1\\_20090425/en/index.html](http://www.who.int/mediacentre/news/statements/2009/h1n1_20090425/en/index.html) (accessed 24 December 2009)



The limitations on emergency powers are important because these powers are also open for abuses. The way to totalitarianism or coups can be regulated through emergency powers. The best example of such abuses in the history is realized by Adolf Hitler.<sup>25</sup> There is a major debate on the possibility of abuses of emergency powers. Freeman explains the possibility of abuses so: “...[emergency powers] may also be costly if they are abused, such as when an actor employs the emergency powers to permanently undermine individual liberties or seize greater powers within the state.”<sup>26</sup> In history many examples<sup>27</sup> of the costs of abuses of emergency powers can be seen however most recognized is the example of Hitler. Freeman also gives the example of Hitler and explains as follows “this possibility is exemplified by Adolph Hitler’s use of emergency powers in Weimar Germany, in which he used emergency powers to replace a democratic government with an authoritarian one.”<sup>28</sup>

Michael Freeman argues in his book Security versus Freedom that “there are two distinct but related types of abuse of emergency powers, depending on whether they are abused in their scope or their duration.”<sup>29</sup> The scope of emergency powers can be abused as powers can be implemented against the political opponents. The political force belonged to opposition party can be taken over by their detention or imprisonment. Freeman explains the abuse of scope of emergency powers so that “If the state takes advantage of the emergency powers to arrest political opponents known to be unaffiliated with terrorism, or violates additional liberties not covered by the

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<sup>25</sup> Before the Parliamentary elections in 1933, there had been a fire on the Parliament Building (Reichstag). As the Chancellor of Germany Hitler was invited by the President von Hindenburg to form a coalition government. However, the fire was used by the Hitler and its supporters as a tool to get power. The Communist party was blamed to start uprisings with the fire. Nazis claimed that Communist Terror was arisen firstly from the Parliament Building. Hitler forced the President to declare Reichstag Fire Decree, which allows to use any appropriate measure to provide public safety. With the Decree, civil liberties were suspended mostly habeas corpus. So that, the members of Communist Party was arrested and expelled from political arena. After the elections on 5 March 1933, the Enabling Act which gives all the authority to government from the Parliament was signed into law on 23 March 1933 which opened the whole pathway to the Dictatorship of Hitler.

<sup>26</sup> Freeman, Freedom or Security, p.3

<sup>27</sup>Mussolini in Italy, Franco in Spain can also be further examples in this context.

<sup>28</sup> Freeman, p.3

<sup>29</sup> Ibid. p.7

*emergency powers, these would be abuses in the scope of the powers. Abuses of this type are usually carried out by the security forces of the state and pose a danger to the individual liberties of citizens.*"<sup>30</sup> Also the time span of the implementation of emergency powers can be abused. The duration of the emergency powers are also a great risk for the liberal states as it could lead to the change of regime type to dictatorship. Freeman argues the abuse of duration of the emergency powers as follows "*On the other hand, if the government changes the emergency powers from temporary to permanent, this would be an abuse of the duration of the powers. Abuses of this type are typically coup d'états, are usually undertaken by the military or the executive, and are threats to the very democratic nature of the state.*"<sup>31</sup> No matter what type of abuse is formed, it carries risks for the democratic nature of the states. "*Both types of abuse constitute a danger to the democratic state, and so together comprise the dangers of emergency powers.*"<sup>32</sup> So, the existence of emergency powers is necessary but also risky in its nature. States of emergencies are also one of the first responses of states to terrorism. After 9/11, USA immediately declared state of emergency.

Together with emergency powers, anti-terrorism legislations and strategies are also one of the first responses of states against terrorist attacks. As the pursuit of further security constitutes state responses, it mostly contradicts the principles of freedom in a society moreover damaging the balance between freedom and security. Considering this balance, this thesis tries to make a comparison between states' first responses to terrorist attacks in their homeland. September 11 and first responses of USA to attacks, along with 7 July bombings and first responses of UK will be examined comparatively. As both liberal democracies; the affects of terrorist attacks and state responses will be comparatively analyzed regarding civil liberties.<sup>33</sup> United Kingdom

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<sup>30</sup> Freeman. p.7

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Even if the effects of anti-terrorism laws on civil liberties are a major discussion point, this thesis try to compare the responses of states after terrorist attacks and the effect of these responses on the nature of liberal states.

and United States were chosen on the purpose that there exist a special relationship between two of them. Considering their similarities and differences, the state responses were compared in terrorist attacks and in-reply anti-terrorism legislations together with the criticisms of legislations regarding freedom and liberties.

The analyzing of terrorist attacks in both United States and United Kingdom will be followed by the introduction of the anti-terrorism legislations produced as a response to attacks in their homeland. Further, the criticisms of the legislations will be analyzed considering both the balance between security and freedom and also the change in the nature of liberal states. Finally, a comparison chapter will be framed considered similarities and differences of United States and United Kingdom's aspect of countering terrorism.

## 2. 9/11 AND USA RESPONSE TO TERRORISM

In the early morning of September 11, 2001, two civilian airplanes crashed into the twin buildings of World Trade Center in Manhattan Newyork. Another one crashed into Pentagon Building. The fourth one was crashed to a rural place in Pennsylvania, aiming another place but the terrorists lost the control of the airplane. The September 11 attacks were four-faced, well organized suicide attacks, killing almost 3000 people including terrorists themselves and injured thousands.<sup>34</sup> The casualties, except the 55 military personnel in Pentagon, were all civilians.<sup>35</sup> The casualties belonged to almost 90 different states.<sup>36</sup> The attack was formed by 19 terrorists of Al-Qaeda, 15 of them were Saudi Arabian, 2 from United Arab Emirates, 1 from Egypt and 1 from Yemen.<sup>37</sup> Lead by Osama Bin Laden, Al-Qaeda had declared Jihad against enemies occupied the Arab peninsula and supporters of Israel State.<sup>38</sup> The architect of the attacks was Khalid Sheikh Mohammed, whom was captured in Pakistan in 2003 and was held in Guantanamo bay since.<sup>39</sup> The attacks were long been planned by various Al-Qaeda members including Osama Bin Laden. After the clarifications of the terrorist group responsible, United States took immediate action declaring that *“International terrorists, including members of al-Qaeda, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that*

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<sup>34</sup> Numbers are taken from the official Public Report of National Commission on Terrorist Attacks upon the United States <http://www.9-11commission.gov/report/index.htm> (accessed 12 August 2009)

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> FBI press releases on 19 hijackers <http://www.fbi.gov/pressrel/penttbom/penttbomb.htm> (accessed on 17 September 2009)

<sup>38</sup> First Fatwa was cosigned by bin Laden and al-Zawahiri declaring war against enemies occupying Arab peninsula and their allies. The translation was taken from the report of Federation of American Scientist. The fatwa was translated from a Arabic journal al-Quds al-Arabi article published in UK, London on 23 February 1998

<sup>39</sup> Guantanamo bay is a detention center created in Cuba. Declared to try the unlawful enemy combatants by USA.

*requires the use of the United States Armed Forces.*"<sup>40</sup> The first response was the Declaration of War against Terrorism, aiming to bring the terrorist organization and its leaders to justice and sanctioning economically and militarily the states harboring terrorists. As a member of NATO, USA was declared under attack which leads to announce that the attacks were against every member of the NATO.<sup>41</sup> A coalition was created under the leadership of USA in war against terrorism. First operation was against the Taliban rule in Afghanistan accused of harboring Osama Bin Laden and the Al-Qaeda group. A broad international coalition was involved in the war in Afghanistan. The second operation in war against terrorism was against the Saddam Hussein regime in Iraq. Even if a history of relations existed between Saddam Hussein and America, the regime was accused supporting terrorist organizations and possessing weapons of mass destruction.<sup>42</sup>

After the September 11 attacks, the politics within USA and the world has changed in many ways. The wars in Iraq and Afghanistan have found many support and many critics. However, the first response within the USA legislation was the USA Patriot Act, which is one of the main topics of this thesis. First the act will be analyzed and furthermore the criticisms of the act in the basis of challenges against civil liberties will be argued.

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<sup>40</sup> Harvard Law Review Association responding to terrorism: crime, punishment and war p.1222 Harvard Law Review

<sup>41</sup> According to NATO Article 5 of the Washington Treaty, which states that an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against them all. Declaration was made on 12 September 2001 <http://www.nato.int/docu/pr/2001/p01-124e.htm> (accessed on 12 August 2009)

<sup>42</sup> The pre-war assessments can be found in the Senate's intelligence report. <http://www.gpoaccess.gov/serialset/creports/iraq.html> (accessed on 12 August 2009)

## 2.1. The USA PATRIOT ACT 2001

All these actions in war against terrorism were legally carried out by the Patriot Act<sup>43</sup> introduced in 26 October 2001. The architects of the act was John Ashcroft the Attorney General (and Department of Justice) and the president George W. Bush. The act gains all the support from both Houses, the Republican and Democrat Party. Uniting and Strengthen America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act had only opposed by Senator Russ Feingold.<sup>44</sup> The act was introduced by George W. Bush by his speech addressing to nation as:

*“The changes, effective today, will help counter a threat like no other our nation has ever faced. We’ve seen the enemy. . . . They have no conscience. The terrorists cannot be reasoned with. . . . But one thing is certain. These terrorists must be pursued, they must be defeated, and they must be brought to justice. And that is the purpose of this legislation. . . . We’re dealing with terrorists who operate by highly sophisticated methods and technologies, some of which were not even available when our existing laws were written. The bill before me takes account of the new realities and dangers posed by modern terrorists. It will help law enforcement to identify, to dismantle, to disrupt, and to punish terrorists before they strike. . . . This government will enforce this law with all the urgency of a nation at war. The elected branches of our government, and both political parties, are united in our resolve to fight and stop and punish those who would do harm to the American people.”<sup>45</sup>*

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<sup>43</sup> The full text of the Patriot Act can be found on [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf) (accessed 17 September 2009)

<sup>44</sup> Howard Ball, *The USA Patriot Act of 2001: Balancing Civil Liberties and National Security*, Santa Barbara, CA: ABC-CLIO, 2004, p.22

<sup>45</sup> <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011026-5.html> (accessed 24 December 2009)

The act has 10 titles; Enhancing Domestic Security against Terrorism, Enhanced Surveillance Procedures(Wiretap), International Anti Money Laundering Abatement and Anti Terrorist Financing Act, Protecting the Border, Removing Obstacles to Investigate Terrorism, Providing for Victims of Terrorism Public Safety Officers and Their Families, Increased Information Sharing for critical Infrastructure Protection, Strengthening the Criminal Laws against Terrorism, Improved Intelligence and Miscellaneous.

### **2.1.1. ENHANCING DOMESTIC SECURITY AGAINST TERRORISM**

Under the first title, enhancing domestic security against terrorism a new fund was created for counter terrorism activities. The abilities of security agencies were increased in technical means by the creation of the new fund for counter terrorism activities. The authorities of Attorney General were broadened basically extending the relationship to Department of Defense in military assistance against possible threats of weapons of mass destruction. Moreover the ability and the authority of the Presidency were broadened in times of terror, including confiscation of property in military activities and made it possible to show classified evidence of government seizure of property.<sup>46</sup>

### **2.1.2. ENHANCING SURVEILLANCE PROCEDURES**

The second title, enhancing surveillance procedures makes possible to intercept wire oral and electronic communications related to terrorism and related to computer abuse and fraud. The information gathered from surveillance and the information of criminal history become sharable between agencies. To protect life and limb, electronic communications can disclosure in emergency. Computers trespassing, the IP addresses can be intercepted. The surveillance by all means for suspected terrorists become possible for both USA and non-USA citizen in and out of the soil of

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<sup>46</sup> Ball, p.2

USA. The voice-mails can also be intercepted with a warrant. The surveillance procedure covers also agents of foreign states under counter intelligence efforts. This regulation makes it possible to close observation and wiretap without criminality. The information gained in the counter intelligence activities are also permitted to secret grand jury testimony.<sup>47</sup> This section also provides sneak and peek power to the federal agents, which makes possible to search property with delayed notice of the owner.<sup>48</sup>

### **2.1.3. INTERNATIONAL ANTI MONEY LAUNDERING ABATEMENT and ANTI TERRORIST FINANCING ACT**

Third chapter, International Anti Money Laundering Abatement and Anti Terrorist Financing Act, has three basic points; strengthening Banking Rules against money laundering, increase communication between federal agencies and financial institutions, broadened currency crimes. By strengthening banking, the recording system is extended. With the regulation, the records are kept in detailed as from whom how much money is transacted to where and who. The owners of the bank accounts and the authorized people to use the accounts are kept as record with the regulation. Certain type of bank accounts, in which ownership cannot be recorded, is prohibited. The definition of money laundering is extended to include transactions of money to commit crime. Every attempt to transact 10.000\$ in cash that is not reported was classified in cash smuggling. Also any suspicious transactions of money will be reported to federal agencies according to act.<sup>49</sup>

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<sup>47</sup> Ball, p.3

<sup>48</sup> William A. Niskanen "The several Costs of Responding to the Threat of Terrorism" Public Choice Vol. 128 2006 p.353

<sup>49</sup> Ball, p.3

Moreover the review of The USA Patriot Act by the Senator Patrick Leahy was used.



#### **2.1.4. PROTECTING THE BORDER**

The fourth title, protecting the border, introduced many different observation rules. At first the number of border patrol personnel was increased. Biometric technology get started to use as regulating entry-exit data systems. Identity information system was established including fingerprints database. Criminal history records become a necessity for visa applicants. The monitoring of foreign students registered to American education system had begun according to the law. Detention of suspected terrorist is regulated without giving them any rights in the process. The attorney general was given the right to detain anyone posing threat to national security. The definition of terror activity was broadened under this section. The terrorist activity, including all dangerous devices, not only firearms and explosives but also was broadened to any support like providing safe houses or helping transportation.<sup>50</sup>

#### **2.1.5. REMOVING OBSTACLES TO INVESTIGATE TERRORISM**

Under fifth title, removing obstacles to investigate terrorism, a reward system is established. The Department of State was allowed to pay rewards to combat terrorism. The jurisdiction of secret services was extended, allowing agencies to order a subpoena from organizations demanding personal information of individuals. Federal agencies are also to investigate offenses against government computers. The educational background information of individuals becomes also possible for federal agencies to obtain relevant to an investigation or an act of domestic or international terrorism.<sup>51</sup> Moreover, the provision authorizes the collection of DNA samples from any person convicted of certain terrorism-related offenses and other crimes of violence, for inclusion in the national DNA database.<sup>52</sup>

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<sup>50</sup> Ball, p.3

<sup>51</sup> Ibid.

<sup>52</sup> The review of the Senator Patrick Leahy <http://leahy.senate.gov/press/200110/102401a.html> (accessed 12 August 2009)

#### **2.1.6. PROVIDING FOR VICTIMS OF TERRORISM PUBLIC SAFETY OFFICERS AND THEIR FAMILIES**

The sixth title, providing for victims of terrorism, public safety officers and their families, is the set of regulations for the people victimized because of the terrorist attack in USA. A crime victims fund has been established. Compensation guidelines are formed to provide assistance to crime, mass violence and terrorist activities victims.<sup>53</sup> According to the Public Safety Officers Benefits Program benefits are provided for each of the families of law enforcement officers, fire fighters, emergency response squad members, ambulance crew members who are killed or permanently and totally disabled in the line of duty.<sup>54</sup>

#### **2.1.7. INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION**

The seventh chapter is formulated in order to improve the regional information sharing system. The aim is to better coordinate the local-state-federal law enforcement responses to terrorist attacks. The bill included the provision to expand the Department of Justice Regional Information Sharing Systems Program to facilitate information sharing among Federal, State and Local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities. And the funds of the program were doubled due to the expansion of authority.<sup>55</sup>

#### **2.1.8. STRENGTHENING THE CRIMINAL LAW AGAINST TERRORISM**

The eighth title deals with the definitions of terrorism. Specifically, domestic terrorism, terrorist attacks, cyber terrorism, acts that cause mass violence

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<sup>53</sup> Ball, The USA PAtriot Act, p.3

<sup>54</sup> Review of the Senator, <http://leahy.senate.gov/press/200110/102401a.html> (accessed 12 August 2009)

<sup>55</sup> Review of the Senator.

(against transportations system for example) is redefined in this article. The supportive action to terrorists are redefined, including prohibition of any the material support and harboring any person, American or not, committing terrorist crimes. In this chapter, extraterritorial jurisdiction was given to the security personnel to work against any commitment of crimes targeting USA international facilities.<sup>56</sup> Moreover, development and support of cyber security forensic capabilities are regulated in the act. The provision included the Attorney General to establish regional computer forensic laboratories and to support existing computer forensic laboratories to help combat computer crime. The cyber forensic examinations center was established according to this chapter.<sup>57</sup>

#### **2.1.9. IMPROVED INTELLIGENCE**

The ninth title, improved intelligence, is seeking a better coordination of collection and use of intelligence. By this aim, the responsibilities of the directors of intelligence services were expanded. The section creates a responsibility for law enforcement agencies to notify the Intelligence Community when information came into existence in criminal investigation with intelligence value. The directors become responsible of assisting attorney general in the usage of intelligence on terrorism. Two centers, Foreign Terrorist Asset Tracking Center in financial counter terrorism and National Virtual Translation Center in evaluation of intelligence gathered in foreign languages, were created for betterment of gathering intelligence and domestic training of personnel.<sup>58</sup>

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<sup>56</sup> Ball p.4

<sup>57</sup> Review of the Senator, <http://leahy.senate.gov/press/200110/102401a.html> (accessed 12 August 2009)

<sup>58</sup> Ball, p. 5-6 Also, Review of the Senator, <http://leahy.senate.gov/press/200110/102401a.html> (accessed 12 August 2009)

### 2.1.10. MISCELLANEOUS

The tenth section was mostly about the clarifications of the terms used in the act for federal agencies and departments. The most important point of this section is that it gives permission to Department of Defense to use its funds for private contracts in military installations in security concerns. A study was formulated by the leading Attorney General in biometric identifiers.

### 2.2. THE CRITICS

The Patriot Act of 2001 was signed into law by almost no oppositions and full support of the parties. Some of its parts were to expire on 31 December 2005, most of which was reauthorized in two acts by the Houses in 2004 and 2005. The invasion of Afghanistan and Iraq was realized under the Patriot Act in the War against Terrorism. Even if it was believed that the process after Patriot Act “*will depend largely on whether the nation suffers another attack or at least a convincing attempt. Americans will have to be convinced that curtailing civil liberties is unavoidable and limited to the need to deal with proximate threats.*”<sup>59</sup> Even if the belief of a strong America exists in scholars like Steven Simon, in time, the doctrine of Bush Administration lost its support. According to Deborah Wilkins Newman the labeling of the attacks just immediate after September 11 causes the society to accept the new law. However, the time passed by, lead the decrease of support because the labeling of the attacks lost its influence. “*...the societal reaction or labeling rose to a significant enough level to fuel the passage of a new law.*”<sup>60</sup> Newman was arguing according to the polls one month after the attack, the support to Patriot Act was too wide nationally, when labeling of the attack was strong,

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<sup>59</sup> Steven Simons The New Terrorism: Securing the Nation against a Messianic Foe, The Brookings Review Vol. 21 No.1, 2003 p.21

<sup>60</sup> Deborah Wilkins Newman, September 11: A Societal Reaction Perspective, Crime, Law & Social Change Vol. 39 2003 p.223

however comparing to a poll seven months after the attack the support will decrease because of the labeling process.

In many terms, the opponents of the Act increase in number and opposition points. Many different civil society organizations, academic scholars become critics of the Act not only because it contradicts with the constitution of the USA, mostly the fourth amendment, but also being an example to other states to regulate Acts like Patriot Act.<sup>61</sup> As Russell Hardin argues *“the first concern with terrorism is likely to be the trade-off between controlling terrorism and enabling government to intrude massively into citizens’ lives.”*<sup>62</sup> The Patriot Act was accused of overriding civil liberties in order to provide national security. The major debate was about how far will the pursue of security be taken. Steven Walt argues that the efforts will not be cost-free. *“Even if subsequent terrorist attacks are unsuccessful, the United States will have to pay additional costs to keep danger at a tolerable level.”*<sup>63</sup> Whether further attacks in the USA soil actualize or not; the efforts to keep the homeland secure, will have burden that the USA will carry. Walt continues his argument as *“The first lesson, therefore, is that the United States can no longer assume that it can wield global influence at little or no cost to itself.”*<sup>64</sup> One of the most debated topics was the long term versus short term responses to terrorism. Many scholars, including Paul Wilkinson argues that *“...the promotion of genuine democracy may well become the best long-term antidote to terrorism...”*<sup>65</sup> The precautions taken with Patriot Act were in many terms contradicting

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<sup>61</sup> Jenny Edkins Forget Trauma Responses to September 11 p.252

Same ideas was also declared by Shamsul Haque Government Responses to Terrorism: Critical Views of Their Impact on People and Public Administration p.172 Emmanuel Pierre Guittet also used the name of French Patriot Act in his article “Military activities within national boundaries” in the book “Terror, Insecurity and Liberty: illiberal practices of liberal regimes after 9/11” edited by Didier Bigo and Anastassia Tsoukala and also David Cortright “Friend not Foe Civil Society and the Struggle Against Violent Extremism

<sup>62</sup> Hardin, Civil Liberties in the Era of Mass Terrorism p.92

<sup>63</sup> Stephen M. Walt, Beyond Bin Laden: Reshaping U.S. Foreign Policy, International Security, Vol.26, No.3 Winter, 2001-2002 p.59

<sup>64</sup> Ibid.

<sup>65</sup> Wilkinson, Terrorism versus Democracy, p.51

to civil liberties inside and outside the USA. The criticisms can be classified in two bases, on domestic issues and on international law.

### **2.2.1. CRITICISMS ON DOMESTIC ISSUES**

The first and the most debated part within the USA are the violations of constitution in basic human rights, immigrant law and the individual privacy. Also, the act was blamed in violation of democracy as turning in to a police state.<sup>66</sup> Andre Gunder Frank argues that *“Since then the attorney general Ashcroft and his staff have converted several arms of the department of justice into those of a police state.”*<sup>67</sup>

#### **2.2.1.1. Basic Rights**

The expansion of authorities of the Department of Justice given in the Patriot Act is criticized as the provisions in the act overrides with the civil liberties. Frank criticizes the same point and gives the example of surveillance procedures expanded with the act *“The executive has encouraged and permitted the attorney general and the department of justice judiciary branch to violate the bill of rights and the constitution on multiple counts. For instance the US Government already claims the right to monitor all e-mail and to bug telephone conversations without specific judicial permission.”*<sup>68</sup> Along with Frank, Haque also argues the same point of contradictions with basic human rights while criticizing the Patriot Act and says that *“It is clear from this discussion that under war on terrorism, the anti terrorist laws, institutions and budgets have expanded in an unprecedented manner.”*<sup>69</sup> The measures including the increase of budgets in countering terrorism is challenging according to Haque. As

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<sup>66</sup> Andre Gunder Frank, Coup d’etat in Washington Silent Surrender in America and the World, Economic and Political Weekly, 9 August 2003, p.3357

<sup>67</sup> Frank, Coup d’etat in Washington, p.3357

<sup>68</sup> Ibid.

<sup>69</sup> Shamsul Haque. Government Responses to Terrorism: Critical Views of Their Impacts on People and Public Administration Public Administration Review Vol. 62 Special Issue: Democratic Governance in the Aftermath of September 11,2001 Sep.2002 pp. 175

explained by Haque *“Although these measures have been presented as necessary to combat terrorism, they have serious implications for people’s basic rights,...to individual privacy, to free press and speech, to political participation and association, to equal representation and to basic goods and services.”*<sup>70</sup>

Wilkinson argues, the worse can be done to liberal state is the violation of civil rights in the name of national security and concludes *“another kind of betrayal is the deliberate suspension of limitation of civil liberty.”*<sup>71</sup> Moreover, the similar concerns were shared between academicians arguing that the provisions in the Patriot Act can be further used against political opponents, or any political movement. Also, Haque argues that *“..in terms of people’s political rights...recent antiterrorist provisions represent a threat to any form of political protest, movement and activism.”*<sup>72</sup> By the act, the rights of political movements and association are endangered according to the Haque in contrast to liberal spirit. The criticisms on the rights of political movements are enlisted *“because of its broad definition of domestic terrorism, which may cover political dissent, civil disobedience and environmental activism and allow investigation and surveillance of such political activities and groups.”*<sup>73</sup> According to Haque the broad definitions within the act are problematic because of their wide scope and may be leading to inclusion of many different civil activities into illegal territories and restricting basic human rights. *“The definitions are so vague and broad that they may lead to the criminalization of peaceful movements and unreasonable restrictions on basic human rights.”*<sup>74</sup>

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<sup>70</sup> Haque, p.175

<sup>71</sup> Wilkinson Terrorism verus Democracy, p.82

<sup>72</sup> Haque. Government Responses to Terrorism, p. 174

<sup>73</sup> Ibid.

<sup>74</sup> Haque, p.178

The very first criticism on violating both the constitution and civil liberties can be seen in habeas corpus<sup>75</sup>, the right to due process of law considering the people, taken into custody immediately after the September 11 attacks and took in detention for several months without any charge at all. The immediate afterwards of the attacks many people, immigrants, Muslim originated arguably Arab ethnicity, were taken into custody in terms of preventive measures.<sup>76</sup> Their rights to a legal counsel or court were taken away by the declaration of state of emergency. Many people were detained without any charge or trial for months or longer. Frank argues that *“More serious still, the Bush administration has shredded the bill of rights, abrogated the constitution and even violates the age-old common law of habeas corpus, which prohibits the detention and holding of anybody against his will without due process of law.”* Immediately after the attacks, many people were taken into custody with the state of emergency. Their rights of habeas corpus were taken away with the regulations of state of emergency. Frank explains the situation *“So far we know of 700 people who have remained in detention since September 2001; though there may be many more since nobody knows or says where they are or who they are or what they are accused of. Indeed, only a dozen of these have ever been charged with anything. The others remain out of sight and out of mind except for their families who are not allowed even to secure legal representation for them.”*<sup>77</sup> David Cole also criticizes the same point of the act, violation of habeas corpus as most troubling attribute of the government after the attacks. Cole argues *“perhaps the most troubling feature of the government’s response to the attacks of September 11 has been its campaign of mass preventive detention...in early November the number was 1147.”*<sup>78</sup>

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<sup>75</sup> Habeas corpus is a law that states that a person cannot be kept in prison unless they have first been brought before a court of law, which decides whether it is legal for them to be kept in prison. The right of Habeas Corpus was taken away with the Presidential Military order on 13 November 2001.

<sup>76</sup> David Cole, Enemy Aliens. Stanford Law Review Vol. 54 No.5 May 2002 p.957

<sup>77</sup> Frank, Coup d’etat in Washington, p.3357

<sup>78</sup> Cole, p.960



While the detentions become wider, the idea behind the detentions was explained with the sleeper cell theories.<sup>79</sup> According to the idea, sleeper cells exist within the America and are waiting for their order to attack.<sup>80</sup> According to the theory, the sleeper cells were formulated by the people member to the terrorist organizations. The members of the cell have a totally legal and quiet life until their time to attack with in the soil of their targeted state. The life styles before any order came for attack made the cells hard to discover. Mass detention was made due to this fear of further sleeper cells within the America. However, Cole adds the sleeper cell theory to his criticism, that any sleeper cell waiting for the order to attack will have a quiet life and will live totally within the law, is made the justification of mass detentions. *“In practice, they appear to have justified tremendous overbroad detention policies.”*<sup>81</sup> According to the idea, sleeper cell theory was just used to make a justification in the eyes of the society. Along with these claims, the mass detentions have another point different in its spirits from the constitution; Cainkar argues that *“...USA Patriot Act, which shift the burden of proof onto the defendant.”*<sup>82</sup>

### **2.2.1.2. Immigration Laws**

In another point, the detentions were mostly against a particular group in the USA, even if in the Patriot Act the difference was made between the citizens and non citizen, it was not the whole case. As Kathleen Moore argues *“In the US, the brown-skinned immigrants (this time Middle Eastern or South Asian), whose provenance lies outside the imagined borders of Western civilization, is described as a threat to democracy.”*<sup>83</sup> The regulations against the immigrants was one of the most criticized

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<sup>79</sup> Cole, p.960

<sup>80</sup> Ibid.

<sup>81</sup> Ibid, p.963

<sup>82</sup> Louise Cainkar, No Longer Invisible: Arab and Muslim Exclusion After September 11 Middle East Report No.224 in Middle East Research and Information Project Autumn 2002 p.24

<sup>83</sup> Kathleen Moore: A Part of US or Apart from US?: Post-September 11 Attitudes toward Muslims and Civil Liberties p.33

sides of the act as it causes discrimination in the society.<sup>84</sup> As Cole argues in detail the side of violations in the basic right, he assumes that the sacrificed rights mostly belong to the other identity. *“While there has been much talk about the need to sacrifice liberty for greater sense of security, in practice we have selectively sacrificed noncitizens’ liberties while retaining basic protections for citizens.”*<sup>85</sup> The detentions mostly cover a certain type of people, immigrants from Middle East or Asian.<sup>86</sup> Accordingly, the regulations under the act mostly targeted the rights and liberties of non citizens. Cole criticizes the discrimination as *“It is often said that civil liberties are the first casualty of war. It would be more accurate to say that noncitizens’ liberties are the first to go. The current war on terrorism is no exception.”*<sup>87</sup> Cole also continues his arguments as claiming that the abuses of civil rights will not be accepted if it would be posed on USA citizens. *“In other words, we have imposed on foreign citizens widespread human rights deprivations that we would not likely tolerate if imposed on ourselves.”*<sup>88</sup>

Alike criticisms were also made by another scholar Louise Cainkar claiming discriminatory behaviors are becoming more visible in American society. *“...eleven months after September 11, 2001 the Arab-American is no longer invisible. Whether traveling driving, working, walking through a neighborhood or sitting in their homes, Arabs in America - citizens and non citizens - are now subject to special scrutiny in American society.”*<sup>89</sup> Cole agrees with the rise of the discriminative attitudes in the society and claims that it was more accurate with the Patriot Act. As he argues that *“One of the most dramatic responses to the attack of September 11 was a swift reversal in public attitudes about racial and ethnic profiling as a law enforcement tool.”*<sup>90</sup>

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<sup>84</sup> Academicians like Cole, Frank, Cainkar and Moore also organizations like Human Rights Watch, ACLU are criticizing the discriminatory affect of Patriot Act posed on immigrants.

<sup>85</sup> Cole, p.955

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Cainkar No Longer Invisible, p.22

<sup>90</sup> Cole, p.974

Moreover, Cainkar adds that the September 11 attack together with Patriot Act causes the discrimination within the society according to religion, ethnicity and nationality. As Cainkar claims *“these policies...target millions of innocent people on the basis of their religion, country of birth or ethnicity in response to the actions of tiny number (19 hijackers)”*<sup>91</sup> And Cole also shares the similar idea that the point of view against foreigners had changed since the September 11 attacks and adds that *“...we are treating people as suspicious not for their conduct but based on their racial, ethnic or political identity.”*<sup>92</sup>

The discriminatory behaviors based on ethnicity and nation has also many different examples within the Western world after September 11. Both United States of America and United Kingdom<sup>93</sup> have alike samples of discriminations against aliens. One of the examples of wrongly detained persons in America was explained by Howard Ball as *“Shortly after 9/11, the FBI arrested as a “material witness” a San Antonio, Texas, radiologist, Albader Al-Hazmi, who had a name similar to two of the 9/11 hijackers and who had tried to book a flight to San Diego for a medical conference. The FBI held the radiologist incommunicado for six days before his lawyers could get access to him. He was finally released after a few more days.”*<sup>94</sup> It was not the only example in the detention processes after September 11. However, it has been a reference of the abuses of civil rights. *“After the release, Al-Hazmi’s lawyer said, ‘This is a good lesson about how frail our processes are. It’s how we treat people in difficult times like these that is the true test of the democracy and civil liberties that we brag so much about throughout the world’”*<sup>95</sup> The procedures of the detentions of people was also

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<sup>91</sup> Cainkar, p.27

<sup>92</sup> Cole, p.1003

<sup>93</sup> Jean Charles de Menezes were shoot to kill wrongly by metropolitan police of UK. He was wrongly assumed being a suicide terrorist. While he was waiting for the subway, he was killed by police on a wrong suspicion of being Hussein Osman. The shoot to kill policy in UK will be analyzed in the next chapter more detailed.

<sup>94</sup> Ball, p.22

<sup>95</sup> Ibid.

criticized by the Human Rights Watch and a report on the Human Right abuses of post-September 11 was formed.<sup>96</sup>

The procedures against non citizens were widely criticized in two terms. The first can be sum up in arrest, detention, violation of immigration procedures and deportation policies. The second is the surveillance policies covered in the Patriot Act. The Act introduces new authorities in surveillance procedure like secret searches of houses, secret wiretaps without any probable cause but only “investigatory interest”<sup>97</sup>. According to critics, the Patriot Act causes discrimination within the society in ethnical bases. People were arrested according to their ideas and associational activity. As Cole argues *“It makes aliens deportable for wholly innocent associational activity with a terrorist organization whether or not there is any connection between the alien’s associational conduct and any act of violence much less terrorism...an alien who sent a toy train to a daycare center run by a designated organization would be deportable as a terrorist.”*<sup>98</sup> The example Cole has given is highly interesting as showing how further the act can criminalize the actions of non citizens. The further assumption gets more interesting as Cole argues that a non citizen offering a training for example to IRA representatives on furthering peace in the aim of countering terrorism can be found guilty if IRA would be classified as terrorist organization. So the alien would be deportable according to Patriot Act. As Cole explains the act also covers *“those who seek to support a group for the purpose of countering terrorism. Thus, an alien who offered to train IRA representatives in negotiating in the hope of furthering the peace process in Great Britain and forestalling further violence could be deported as a terrorist if the Secretary of State chose to designate the IRA as a proscribed group.”*<sup>99</sup> The description of the act in that sense is criticized by historical examples: *“Had this law been on the books in the 1980s, the thousands of noncitizens who supported the*

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<sup>96</sup> The report of Human Rights Abuses of Post-September 11 can be found at <http://www.hrw.org/legacy/reports/2002/us911/> (accessed 12 August 2009)

<sup>97</sup> Ball, p22

<sup>98</sup> Cole p.966-67

<sup>99</sup> Ibid. p.967

*African National Congress's lawful, nonviolent anti apartheid activity would have been deportable as terrorists.*"<sup>100</sup> The basic human rights of the aliens considering rights of freedom peaceful assembly and association<sup>101</sup>, were much under violation with the Patriot Act.

American Civil Liberties Union (ACLU) has also concerns about the Patriot Act violating civil liberties. The reaction to protestors and political opponents were too harsh in their view. *"Some government officials, including local police, have gone to extraordinary lengths to squelch dissent wherever it has sprung up, drawing on a breathtaking array of tactics, from censorship and surveillance to detention, denial of due process and excessive force."*<sup>102</sup> According to ACLU, police have beaten protestors in Missouri, spied on activists in Colorado and fired on demonstrators in California. Moreover, FBI was used in campuses to spy on professors and students. ACLU also criticizes the Department of Justice as *"Ashcroft's Justice Department has further asserted the right to seize protesters' assets and deport immigrants under anti-terrorism statutes rushed through Congress after the attacks, and debated whether to revoke U.S. Citizenship in some cases."*<sup>103</sup>

The ideas of excessive use of security forces, mostly against the non citizens are one of the common ideas shared between critics. Howard Ball argues that *"...[by] the Patriot Act of 2001, persons in the United States have been arrested for what they say and for their association with organizations or nations perceived to be enemies of the United States."*<sup>104</sup> Ball also argues that the violation of rights arise because of the preventive justice idea. The efforts for prevention of further terrorist attacks cause civil liberties to rule out. Ball explains his criticisms so that *"This is the essence of the*

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<sup>100</sup> Cole, p.967

<sup>101</sup> UN Universal Declaration of Human Rights

<sup>102</sup> ACLU Report Freedom Under Fire: Dissent in Post-9/11 America May 2003 [www.aclu.org](http://www.aclu.org) (accessed 12 August 2009)

<sup>103</sup> Ibid.

<sup>104</sup> Ball, p.22

*concept of preventive justice: Use the latest technology, identify 'suspected enemies/terrorists,' arrest them for suspicion of "materially supporting" the enemy (the language of the Patriot Act), detain them without the aid of lawyers, and deport them in secret hearings closed to the public if the suspected enemies are illegal aliens or, if they are not, hold them in detention indefinitely without filing charges against them"*<sup>105</sup>

In the light of discriminatory criticisms, Cole accuses the act in causing ideological division between the society specifically targeting a group of people and taken their rights of free speech and freedom of thought: *"The USA Patriot Act also resurrects ideological exclusion, the practice of denying entry to aliens for pure speech...more broadly, excluding people for their ideas..."*<sup>106</sup> Along with the discriminatory criticisms, the real discriminations were also happening with in the American society. Immediately after September 11 attacks, hate crimes had increased trough out the America.<sup>107</sup>

Another point of the discriminatory policies and societal actions were therefore the hate crimes mostly committed after September 11 attacks. According to Cainkar, more then 100 hate crimes were committed only in Chicago until the end of December 2001.<sup>108</sup> The Arabs and Muslims were targeted in their mosques and schools, which due the hate crimes were closed until control were regained by the local police. As Cainkar explained *"In Chicago, more then 100 hate crimes against Arabs and Muslims, as well as persons mistaken for them, were reported to the Chicago Commission on Human Relations by the end of December 2001."*<sup>109</sup> The hate crimes were also targeting religious houses. Mostly; the larger mosques were targeted by the

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<sup>105</sup> Ball, p.22

<sup>106</sup> Cole, Enemy Aliens, p.969-70

<sup>107</sup> Cainkar, No Longer Invisible, p.22

<sup>108</sup> Ibid.

<sup>109</sup> Ibid, p. 23

angry crowd. Cainkar gives the example of surrender of the biggest Arab mosque in Chicago.

*“On September 12, the largest predominantly Arab mosque in Chicago metropolitan area was surrounded by a mob of hundreds of angry whites, some shouting ‘kill the Arabs’ some wielding weapons. Local police and concerned citizens acted to protect Muslims in the area. Suburban police encouraged Muslims to close the schools affiliated with mosque until their safety could be assured, and not to attend Friday prayers at the mosque. The schools were closed for one week, but the prayer at mosque continued.”<sup>110</sup>*

Hate crimes were also a problem for local officers to solve. While the number of hate crimes increase nationally; the government had to take precautions against it. Therefore prosecutorial enforcements were granted by the government. Posner and Vermeule explain the situation as follows *“...minority protecting mechanism applies with equal force to emergency-relevant minorities- the minorities who have some connection to a perceived enemy, and are thus conspicuous targets for scapegoating.”<sup>111</sup>* Together with the emergency measures, according to Posner and Vermeule precautions against hate crimes have to be provided by the government. *“Indeed, even while targeting Arab- and Muslim- American aliens after 9/11 , the U.S. government poured prosecutorial resources into enforcement of hate crime laws for their protection.”<sup>112</sup>* Even if precautions were taken against the hate crimes widely on USA soil, the discriminatory spirit was written into the Patriot Act itself.<sup>113</sup>

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<sup>110</sup> Cainkar, p.22-23

<sup>111</sup> Eric A. Posner and Adrian Vermeule “Emergencies and Democratic Failure” Virginia Law Review Vol. 92 No.6 Oct,2006 p.1127

<sup>112</sup> Ibid, p.1127

<sup>113</sup> Ibid.

The conducts against Arab or Middle Eastern people, at immigrants or non citizens wholly, were prepared at the first hand by the Patriot Act, even in a contradictory point of view to the position set by the report of the 9/11 Commission. The report of the 9/11 Commission states clearly that the message set to immigrants have to be based on tolerance and justice both to protect against further terrorist attacks and for gathering intelligence. It is stated in the report that: *“our borders and immigration system, including law enforcement, ought to send a message of welcome, tolerance and justice to members of immigrant communities in the United States and in their countries of origin.”*<sup>114</sup> While criticizing the discriminatory attitudes against immigrants, the report also considers the immigration communities as a good source to gather intelligence. *“We should reach out to immigrant communities. Good immigration services are one way of doing so that is valuable in every way - including intelligence.”*<sup>115</sup>

Moreover, after September 11, terrorism was reclassified as war crimes. Due to this reclassification, any person, whom not belongs to USA citizenship, involved with terrorist organizations was declared ‘unlawful enemy combatants’ of the war on terror. Military tribunals<sup>116</sup> were introduced to try the unlawful enemy combatants, the captured war prisoners in Afghanistan and legal or illegal aliens residing in USA engaged in terrorism<sup>117</sup>, of the war on terror. These tribunals were given the authority to use classified evidence, secret detentions and to prosecute according to the military order. The aims and practices of military tribunals have been one of the most controversial precautions taken after September 11 attacks, as they were accused of being established on political grounds rather than law.<sup>118</sup> Even if the establishment of military tribunals against aliens was one of the major topics of criticism in the debate of

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<sup>114</sup> 9/11 Commission Report “What to do? A Global Strategy” p.390

<sup>115</sup> Ibid.

<sup>116</sup> Military order were issued by the President George W. Bush on 13 November 2001 creating secret detentions and secret military tribunals for non citizens engaged in terrorist activities. (Ball, Chronology)

<sup>117</sup> Ball, p. 33

<sup>118</sup> Cole, p.977



civil liberties versus security, they are not introduced in Patriot Act, rather introduced by the President George W. Bush's order on 13 November 2001. Therefore, this part, military tribunals with secret detention and without due process rights, of the criticisms on civil rights were not analyzed in this Patriot Act and its critical views concentrated study.<sup>119</sup>

### **2.2.1.3. Individual Privacy**

The third base of the criticisms of USA Patriot Act on was consisted on the new regulations of surveillance procedures established under the act. Surveillance procedures were regulated under the act in the basis of both physical and financial situation of the individual. The criticisms on individual privacy were assessed in two parts, physical and financial.

#### **2.2.1.3.1. Physical Surveillance**

By the act the ability of security agencies are expanded in terms of surveillance and secret searches. According to the act; oral, wire and electronic communications relating to terrorism and computer fraud or abuse are to be intercepted. Surveillance procedures also cover the agents of foreign power. Such an authority also permits of surveillance without any criminality or without a probable cause. Moreover, sneak and peek searches are also permitted with the Patriot Act. American Civil Liberties Union explain and criticize these authorities as so: “ ...[The Patriot Act] *gives the government access to all sorts of extremely personal information, including medical records, e-mails, library records, bookstore purchases and even genetic information.*”

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<sup>119</sup> For further study on the establishment and regulations of the military tribunals introduced after September 11, writings of Howard Ball in his book *The USA Patriot Act of 2001*; the essay published by Harvard Law Review “Responding to Terrorism: Crime, Punishment and War; Jon Moran “State Power in the War on Terror: A Comparative Analysis of UK and USA; Robert Jervis *An Interim Assessment of September 11: What Has Changed What Has Not?*”; David Cole “Enemy Aliens” and Paul Wilkinson “Terrorism versus Democracy: The Liberal State Response can be resources for further information.

*There is almost no limit to the kinds of information the FBI can access*<sup>120</sup> According to the ACLU the safeguards of the civil liberties are few in comparison to the authority given to the secret services. *“There are few safeguards in the law. Section 215 doesn’t require the FBI to have ‘probable cause’—or even to believe that its surveillance target is engaged in criminal activity, terrorism, or espionage*”<sup>121</sup>

Moreover, to this collectable information, communications on phone and internet, were also made in surveillance procedures by the act. Besides the communications, even library records will be under surveillance according to the act. Andre Gunder Frank argues that *“any person or business to produce any books, records, documents, or items.” That includes bookstores and public libraries being obliged to divulge who is reading what. This is now the law.*<sup>122</sup> The communications between a detainee and its lawyer were also allowed to monitor with the act. American Civil Liberties Union explains and criticizes this procedure in its flyer on USA Patriot Act as following *“ The government is allowed to monitor communications between Federal detainees and their lawyers, destroying the attorney - client privilege and threatening the right to counsel.”*<sup>123</sup> Moreover, ACLU also criticizes the broadened authorities of Attorney General and argues that *“New Attorney General Guidelines allow FBI spying on religious and political organizations and individuals without having evidence of wrongdoing.”*<sup>124</sup>

Cole also argues the potential affects of the surveillance procedures by explaining that *“ the USA PATRIOT Act also made substantial changes to the rules that govern the collection and sharing of information by law enforcement and intelligence*

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<sup>120</sup> ACLU report on Surveillance-Industrial Complex [http://www.aclu.org/FilesPDFs/surveillance\\_report.pdf](http://www.aclu.org/FilesPDFs/surveillance_report.pdf) (accessed 12 August 2009)

<sup>121</sup> Ibid.

<sup>122</sup> Frank, Coup d’etat in Washington, p.3358

<sup>123</sup> ACLU flyer on The USA PATRIOT Act and Government Actions that Threatens our Civil Liberties <http://www.aclu.org/FilesPDFs/patriot%20act%20flyer.pdf> (accessed 12 August 2009)

<sup>124</sup> Ibid.

agencies. Many of these changes potentially affect citizens and immigrants alike, although their principal targets, at least initially, are likely to be Arab and Muslim immigrants.”<sup>125</sup> According to Cole most dramatic change in the search and surveillance procedures is the authority given for the secret searches to the secret services. “One of the most significant changes has the effect of authorizing warrants for secret searches (so-called “black bag jobs”) and wiretaps in criminal investigations without probable cause of criminal conduct.”<sup>126</sup> In contrast to earlier procedures of surveillance, only through a probable cause that a person engaged in criminal activity, with the Patriot Act, the surveillance becomes possible for those being a foreign agent. According to Cole,

“...[the USA Patriot Act] (it) authorizes the FBI to conduct electronic surveillance and secret physical searches without a criminal predicate, on the theory that foreign intelligence gathering is not designed to detect crimes but to gather information about foreign agents. Accordingly, it authorizes warrants not on a showing of probable criminal conduct, but on a showing that the target of the intrusion is an ‘agent of a foreign power.’ ‘Agent’ is defined broadly to include any officer or employee of a foreign based political organization, so that an employee of or volunteer for Amnesty International could be an ‘agent.’ If the suspected agent of a foreign power is a U.S. citizen or permanent resident alien, the government is not allowed to base its warrant on activities protected by the First Amendment<sup>127</sup>, but there is no requirement that the warrant be predicated on criminal activity.”<sup>128</sup>

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<sup>125</sup> Cole, p.972

<sup>126</sup> Ibid.

<sup>127</sup> First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”

<sup>128</sup> Cole, p.973

The difference between citizen and noncitizen is the basic concern that rights of people could be abused. The surveillance and wiretap mostly will likely to target a specific group within the American society. Along with wiretap and surveillance procedures, there was also new record keeping procedures were introduced with the act. Niskanen also adds explanation and his criticisms to procedures introduced with the Patriot act as following “*several other disturbing provisions of the Patriot Act are not subject to the sunset provisions*<sup>129</sup>. *Section 213, the so-called ‘sneak and peak’ power, authorizes federal agents to conduct covert entries into homes and businesses following a judicial search warrant, but without informing the property owner about the entry for days or weeks later.*”<sup>130</sup> Moreover, to the secret searches or late notification of the property owner, Niskanen criticizes the authority given to the secret services to share information of grand jury without the approval of a judge. “*Another section authorizes the sharing of grand jury information among federal agencies without the approval of a federal judge.*”<sup>131</sup> The criticisms on physical surveillance deepen in many points as the acts committed by the agencies arisen.

#### **2.2.1.3.2. Financial Surveillance**

Another aspect of the surveillance and recording procedures is coordinated under the Anti Money Laundering part of the Patriot Act. By the anti money laundering section, all the financial transactions were recorded. Even if money laundering precautions were not new within the law, the relationship of terrorist organizations and money laundering were quite new to taken in attention.<sup>132</sup> Every transaction was

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<sup>129</sup> Sunset Provisions unset laws state that a given agency will cease to exist after a fixed period of time unless the legislature reenacts its statutory charter. Sunset provisions differ greatly in their details, but they share the common belief that it is useful to compel the Congress or a state legislature to periodically reexamine its delegations of authority and to assess the utility of those delegations in the light of experience.

<sup>130</sup> William A. Niskanen, The several Costs of Responding to the Threat of Terrorism, Public Choice Vol. 128 2006 p.353

<sup>131</sup> Niskanen, p.353

<sup>132</sup> It was war “on drugs” when first financial surveillance was codified in the US law. However, the September 11 attacks changed the situation and the surveillance was enlarged to cover terrorists attempts in money laundering. William Vlcek p.23

recorded since 2001. One of the most controversial parts are at first privacy arguments, the foreigners sending and receiving money from abroad, non profit organizations and charities moreover a different side, the record keeping databases. The privacy arguments is based recordings of *“US civilians in their daily lives: academic transcripts, ATM receipts, prescription drugs, telephone calls, driving licenses, airline tickets, parking permits, mortgage payments, banking records, e-mails, website visits and credit card slips”*<sup>133</sup> As Vlcek argues that *“there has been a steady erosion of privacy and the anonymity of our individual financial dealings.”*<sup>134</sup>

Along with privacy arguments, the debate about the people, living in America but funded from outside is also another point of criticism. Cortright also shares the criticism of the financial restrictions having harmful influence on people and argues that *“tighter restrictions on international financial transactions are a central element of international counterterrorism policy. These measures have had a negative impact on civil society groups, however; especially those that depend on funding from overseas donors and diasporas.”*<sup>135</sup>

Moreover, some agencies raising funds for humanitarian aids are also having troubles due to financial restrictions. Cortright argues that view as following, *The suspicion of wrongdoing by nonprofit groups has created a chilling effect in the donor community. Some donor agencies have become fearful that funds intended for humanitarian purposes might be frozen by governments. Charities face the risk that counterterrorism financial restrictions will be applied to their activities.”*<sup>136</sup> According to Cortright the act resulted in fear in donors which lead to decrease in donations. The donations made for the third world or crisis points were decreased therefore according

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<sup>133</sup> Frank, Coup d’etat in Washington p.3357 quoted from The Guardian 23 November 2002

<sup>134</sup> William Vlcek “A Leviathan Rejuvenated: Surveillance, Money Laundering and the War on Terror” International journal Polit Cult Soc Vol.20 2008 p.36

<sup>135</sup> David Cortright and George A. Lopez, Alistair Millar, and Linda Gerber-Stellingwerf, Friend not Foe: Civil Society and the Struggle against Violent Extremism, A report to Cordaid from the Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame 2008 p.16

<sup>136</sup> Ibid.

to Cortright. *“As a result donors have become risk averse and reluctant to fund initiatives ... Philanthropic agencies that previously supported...informal peace processes have scaled back some of their work in conflict zones due to designations of certain actors as terrorist. The new restrictions on nonprofit financing undermine trust and cooperative relations between donors and overseas partners.”*<sup>137</sup> There is also another point of view on charities or non profit organizations in fighting against money laundering. Charities or non profit organizations, their budgets and their support clients can be totally legal until an act of terror was committed by the supported client. Vlcek explains this reverse situation as follows

*“[it]...is an important point, because money laundering involves money that comes from a criminal act, e.g. bank robbery or drug trafficking. The financing of terrorism on the other hand does not necessarily come from an illegal source, but just as easily might come from a charity or something as simple as passing around a collection cup at the pub to help the freedom fighters. In other words, money laundering involves money that was already considered illegal, because of some past activity, whereas terrorist financing may involve money that is legal up until it has been used to commit an act of terrorism. It becomes illegal after the event. Some government officials have called this ‘reverse money laundering’ because it moves money from legal sources to an illegal activity while concealing or hiding the origins of the money.”*<sup>138</sup>

In other words, the phenomenon of terrorism challenge and change the known definition of money laundering and also the ways to deal with it.

Another important point in financial surveillance section is the enormous data collected due to the recording obligations. Both collection of data and its process of

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<sup>137</sup> Cortright and others, p.16

<sup>138</sup> Vlcek, A Leviathan Rejuvenated, p.25

analyzing need more man craft working under state security agencies. Müller explains the circumstances about how hard is data collecting and analyzing so; *“all...data can now be stored forever. The resulting massive databases can be combined and analyzed with intelligent data mining and other computing techniques.”*<sup>139</sup> The enormous amount of data makes it harder to evaluate, as amount keeps increasing with wide spreading of technology. Müller argues that regardless of the increasing amount of data, it will always be a personal data for someone. *“After all, most of the data that is computer-stored world-wide is personal data for some person. It is estimated that each human generated an average of 250 MB of digital data each year in 1999, but 800 MB in 2002, i.e., about 5 million terabytes each year overall. This number will continue to rise sharply with the spread of information technology.”*<sup>140</sup> Müller continues to explain the challenge in surveillance in his argument with quotations from the NSA Directors warning and argues that *“the enormous increase in data to be processed...such as the mobile phone, Internet use, etc. Note also that this data will be in many languages, in some cases in more than one language in one communication. Note also that the basic analysis must be done in “real time”, i.e., as fast as the new data is coming in.”*<sup>141</sup> As seen above, there are many different criticisms on surveillance procedures introduced by the USA Patriot Act.

However, there is another one that seems quite interesting in my point of view. William Vlcek argues that the introduction of USA Patriot act opens a new chapter in the American society as transcending the old Military-Industry complex. Vlcek argues that The USA Patriot Act,

*“[on its new surveillance procedures creating the need of]...software industry, highlighting another aspect of the...situation. The war on terror has seen the expansion of a burgeoning security industry, of*

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<sup>139</sup> Vincent C. Müller, “Would you mind being watched by machines? Privacy concerns in data mining” *AI& Soc* Vol.23 2009 p.532

<sup>140</sup> Müller, p.532

<sup>141</sup> *Ibid.*

*high-tech firms developing hardware and software to identify faces in a crowd, or the suspicious purchases made with your ATM card. The military–industrial complex has expanded into a **security–industrial complex** comprising financial institutions, the U.S. Treasury and related government offices, and suppliers of government and business software and services.”<sup>142</sup>*

However, as another point of newly created complex, there will be some costs of such alteration and the cost of these transformations created in the war on terrorism will be passed on consumers according to Vlcek.<sup>143</sup> The change in American administration and in its military activities, engaging into war in Afghanistan and Iraq are visible within the spirit of USA Patriot Act. Vlcek criticized the increasing surveillance procedures and increased role of government in the daily life of people and argues that democracy is being replaced with governmentality.<sup>144</sup> “*The increased incidence of domestic surveillance..moves Western societies further into the condition Michel Foucault has named ‘governmentality’*”<sup>145</sup>

## **2.2.2. CRITICISMS ON INTERNATIONAL LAW AND POLITICS**

Along side with the domestic transformations carried with the Patriot Act, there are also points in the act that have influence in international politics and law. The criticisms of USA Patriot Act on its international influences can be sum up in two basic points. These points are the government power to confiscate the property engaged in terrorist activities, the financial measures as freezing moreover seizing bank accounts

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<sup>142</sup> Vlcek, A Leviathan Rejuvenated, p.28

<sup>143</sup> Ibid, p.28-29

<sup>144</sup> Governmentality is a term first used by Michel Foucault in Security, Territory, Population: Lectures at the College de France 1977-1978. Governmentality refers to the art of governing, with its expanded definition; techniques and procedures designed to govern individuals and also populations not only in political or administrative level. In Vlcek’s argument governmentality with its expanded definition mostly refer to neoliberal democracies of the West, considering whole actors involved in the process of governing and transcend the process of governing.

<sup>145</sup> Vlcek, A Leviathan Rejuvenated, p.37



internationally, the wars in Afghanistan and Iraq with the situations of the prisoners of war and lastly the behaviors against non citizens in opposition to international law.

With the USA Patriot Act, the President was expanded in the authority to confiscate any property engaged in relationship with any terrorist activity. Ball explains the authority to confiscate property as such *“the president or the president’s delegate may confiscate and dispose of any property within the jurisdiction of the United States, belonging to any foreign national, foreign entity, or foreign country whom they determine to have planned, authorized, aided, or engaged in an attack on the United States by a foreign country or foreign nationals.”*<sup>146</sup> Moreover to the confiscation authority in the territories of USA jurisdiction, the act enlarged the government authority to confiscate property engaged in terrorism regardless of its place. Ball describes this authority as following *“the government is authorized to confiscate all property, regardless of where it is found, of any individual, entity, or organization engaged in domestic or international terrorism against the United States, Americans, or their property.”*<sup>147</sup> The authority to confiscate the property by the government also unite with the secret presentation to judicial review. *“If the governmental action is subject to judicial review, the Patriot Act allows the government to present, secretly (ex parte and in camera), classified information upon which the forfeiture was based.”*<sup>148</sup>

In addition to confiscation power, the record keeping regulations and the surveillance procedures of financial systems also covers international bank accounts. Whether it is in America but a branch of a foreign bank, or it is accounts in tax heavens, a relationship with American banks or accounts would be detect, then it would be under the jurisdiction of USA. Vlcek compares the regulations to previous regulations and criticized that *“ The laws have now been used to seize funds from the U.S. branches of foreign banks. Previously the U.S. government would have to request assistance from*

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<sup>146</sup> Ball, p.58

<sup>147</sup> Ibid, p.59

<sup>148</sup> Ibid.

*the foreign government involved to retrieve the illicit funds.*"<sup>149</sup> Now, it had been replaced direct authority to seize foreign bank accounts. According to Vlcek "*this power to seize foreign bank accounts may be the most startling provision of the Patriot Act. It's an awesome power, and it may even go too far because of the diplomatic problems it could cause.*"<sup>150</sup> Given the example of master cards used world wide, foreign banks also become responsible to record their clients' information, using master cards to the American authorities.<sup>151</sup>

Besides the criticism of financial surveillance having international influences, the Patriot Act was also criticized by academicians in the extensions of state power, in violation of international law. Moran criticizes the measures introduced by the act as "*USA Patriot Act 2001 represent important extensions of state power. Further the US has extended its power internationally by a combination of hard and soft techniques both via international agreement ... but also in contrast to international regime agreement and allegedly in violation of international law.*"<sup>152</sup> The Iraq and Afghanistan war were seen the extensions of state power by many critics.

According to Frank the declarations of war was also violations of international law and argues as so "*The Bush administration has also set aside centuries of international law. It wages illegal war, prohibited by numerous international treaties and by the United Nations charter.*"<sup>153</sup> However another point of these wars is the war prisoners captured in different places and declared as unlawful enemy combatants. According to Ball, it creates another legal challenge and argues that "*Another potential legal challenge to Bush administration actions in the war on terror revolves around the November 2001 executive order creating special military tribunals to try suspected Al*

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<sup>149</sup> Vlcek, p.30-31

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Jon Moran, State Power in the War on Terror: A Comparative Analysis of the UK and USA, Crime, Law & Social Change, Vol. 44, 2005, 348

<sup>153</sup> Frank, p.3359

*Qaeda members and supporters.*"<sup>154</sup> The tribunals were created to try different types of persons. These four categories are "*unlawful enemy combatants seized in Afghanistan or other countries outside the United States, prisoners of war captured in Afghanistan, illegal aliens in the United States or aliens who came to America legally "but with the alleged purpose of engaging in terrorism," and legal aliens with permanent resident status who are accused of engaging in terrorist attacks against the United States.*"<sup>155</sup> As the military tribunals and the usage of Guantanamo are not provisions under the USA Patriot Act, the further criticisms will not be analyzed on this topic in this thesis, however it was mentioned in order to show the extension of state power and the double standard created with the act between citizens and non citizens.

As Moran criticizing coercive interrogations against foreign citizen and claim that "*arguing against Guantanamo on the grounds of domestic law or international obligations is like fighting against a naked tyrant by threatening to remove his cloths. Indeed, actions such as Guantanamo demonstrate the need to rethink the nature of state power and international law...*"<sup>156</sup> The relationship between USA and international law after September 11; the measures taken after the attacks together with war on terror was criticized by David Cole. Cole accuses American politics in its usage of international laws and norms and criticized that "*...we have too often acted as if we are free to ignore international norms whenever it serves our interests.*"<sup>157</sup>

On September 11, the world had witnessed an enormous attack in the American soil. Carried by 19 men, the crash of hijacked airplanes into twins of World Trade Center and Pentagon buildings caused the death of almost 3000 people and injured thousands. The attacks were to be believed to start a new world order, followed by USA war on terrorism. However, during the reactions many of basic human rights

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<sup>154</sup> Ball, p.96

<sup>155</sup> Ibid.

<sup>156</sup> Moran, State Power in the War on Terror, p. 348

<sup>157</sup> Cole, Enemy Aliens, p.958

were ignored or overridden. The passage of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act was the first step of precautions taken against terrorism. Even at the first period of its passage the support was too high, during its regulations many criticisms were made against. In this chapter, the ten titles of the act was tried to explain. In addition, the criticisms were drawn according to the abuses of basic civil rights. Two basic classifications were made in the criticisms, the criticisms about the influence of the USA Patriot cause domestically on civil liberties and criticisms of the influence of the act cause internationally on basic universal human rights and international law. The balance between freedom and security in American society is criticized as deprived by the USA Patriot Act and criticisms increase in time.

### **2.3. THE REAUTHORIZATIONS**

Even if the Patriot Act of 2001 was the first response of the USA to terrorist attack in the homeland; the discussions on counter terrorism efforts remain an important part of the agenda. Alongside with the all criticisms Patriot Act provoke within the society, the criticisms increased in time and with provisions due expire on 31 December 2005 and later on 31 December 2009.

In July 2005, both Houses approved reauthorization acts for expiring parts of Patriot Act. Both the act of Senate and the act of Houses of Representatives were signed into law by the president on March 2006<sup>158</sup>. Two bills are formed to extend the sunset provisions in the Patriot Act of 2005. The act of the Senate makes permanent 14 of the 16 expiring USA PATRIOT Act sections. The material support of terrorism amendments and sections of 206, roving wiretap provision and 215, access to business

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<sup>158</sup> Congressional Report Service, <http://www.fas.org/sgp/crs/intel/RL33332.pdf> (accessed 24 December 2009)

records for surveillance matters scheduled to expire on December 31, 2006<sup>159</sup> ; whereas the House of Representatives offered a ten year extension of the provisions till 2015.<sup>160</sup>

By the reauthorizations; wiretapping on terrorism and computer fraud or abuse; wiretapping on foreign intelligence, sharing foreign intelligence information without any legal restrictions; seizure of stored voice mail; emergency disclosures of communication content, including electronic communications; access to computer trespassing; search orders with law enforcement purposes become permanent sections.<sup>161</sup> The section defines the surveillance procedures for agents of foreign power engaging in terrorism or activities in preparation was reauthorized with a sunset due to December 2009 in Senate bill and 31 December 2015 in House of Representatives bill.<sup>162</sup> In addition, to collect the library, educational and medical records were given under the authority of high level officials, FBI Director, FBI Deputy Director and Executive Assistant Director for National Security. Also, to obtain the records; statement of facts become obligatory by the reauthorization act.<sup>163</sup> Moreover the sneak and peak searches with the delayed notice of the property owner were reorganized as the delayed noticed should not be later then 30 days if the facts justify a longer delay.<sup>164</sup>

In the presidential election in 2008, democratic party, Barack Obama succeeded George Bush administration, the inventors of the Patriot Act of 2001. However, Obama administration also recommended the continuation of some provisions of the Patriot Act when the expire date approximated as the Senate and House of

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<sup>159</sup> Report of Congressional Research Service; <http://www.au.af.mil/au/awc/awcgate/crs/rs22216.pdf> (accessed 24 December 2009)

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

Representatives started to discussions on the provisions.<sup>165</sup> The administration recommended that three provisions in the Patriot Act to continue; the roving wiretaps, the seizing of business records and monitoring on suspected terrorists.<sup>166</sup> Accordingly, the Senate proposed a bill to extend the sunset of the certain provisions in the USA Patriot Act.<sup>167</sup> By the Patriot Act Extension Act, the sunset provision reauthorized in 2005 was reauthorized until 31 December 2013.<sup>168</sup> The roving wiretaps, seizing of business records and monitoring suspected terrorists (agents of a foreign power) was reauthorized till 31 December 2013.<sup>169</sup> Also the delayed notice of the property owner by the sneak and peek searches was reduced from 7 days to 30 days.<sup>170</sup> Also, the House of Representatives proposed a bill including mostly same provisions of the Senate bill, however the House Committee on Financial Services granted an extension on 16.12.2009 for further consideration ending not later than January.<sup>171</sup>

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<sup>165</sup> Washington Times, <http://www.washingtontimes.com/news/2009/sep/15/justice-reauthorize-3-patriot-act-tactics/> (accessed 24 December 2009)

<sup>166</sup> Ibid.

<sup>167</sup> The Library of Congress, <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1.:/temp/~bdURqC:@@D&summ2=m&/bss/111search.html> (accessed 24 December 2009)

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> The Library of Congress, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR03845:@@D&summ2=m&/bss/111search.html> (accessed 24 December 2009)

### 3. 7/7 AND BRITISH RESPONSE TO TERRORISM

On 7 July 2005, three bombs were exploded in the London subway system almost simultaneously on morning rush hours. Another one, in a bus near to the subway was exploded after almost one hour to the subway bombings. The coordinated attacks were carried out by four suicide terrorists related to the Al-Qaeda. The attacks on London's public transportation system cause 56 people, including the bombers to die and 700 to injure. On 7 July, there were also a G8 summit in Gleneagles Scotland hosted by United Kingdom.<sup>172</sup> The date chosen for the terrorist attack was therefore meaningful.

The suicide terrorists were 4 people, having home-made bombs in rucksacks. All four terrorists Lindsay, Hussain, Tanweer and Khan were British citizens, one Jamaica origin and three were second generation British citizens whose parents were Pakistani origin.<sup>173</sup> Khan was believed by the authorities to be the leader of the group. And the idea of planning an attack in Britain was believed to be formulated after the visit of two terrorists to Pakistan. The belief of the authorities was that the relationship with Al-Qaeda was built and training of two men was carried in their visit to Pakistan. Still today, the roots of the relationship with Al-Qaeda was not clearly defined. Also the martyrdom video of Khan, aired on al Jazeera on 1 September, was also believed to be recorded then. In the video of the Khan, the attitudes of the West against Muslims were said to be the cause of the attacks. Moreover, the martyrdom was glorified in the will of Khan.<sup>174</sup> On 21 July, there were another attempt to explode bombs in underground and in a bus, however the attempt failed due to the detonation

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<sup>172</sup> The attendants were Canada, Germany, France, Japan, Italy, Russia, USA and UK. The main topics of the summit were the global climate change and the lack of economic development in Africa. After the attacks Prime Minister Tony Blair leave the meeting to return to London. The meeting continues in his absence.

<sup>173</sup> Names and numbers were taken from the "Report of the Official Account of the Bombings in London on 7th July 2005" published by the Stationary Office.

<sup>174</sup> The official report

problems in the main explosives.<sup>175</sup> The perpetrators escaped from the scene, however were captured in further weeks.

According to the report of the 7 July Review Committee, it is expected a terrorist attack against Britain, but nobody knows when. “*London had been warned repeatedly that an attack was inevitable: it was a question of when, not if.*”<sup>176</sup> Since the start of new millennium, UK passed a series of Anti-Terrorism legislations. Even before the attacks on September 11, UK passed the Terrorism Act 2000. After the attacks on World Trade Center on September 11, like other states in the world, UK has introduced a new legislation, Anti-Terrorism, Crime and Security Act 2001. Furthermore in 2003 the Criminal Justice Act, in 2005 the Prevention of Terrorism Act and in 2006 The Terrorism Act has introduced in the counter terrorism efforts. There were many debates considering the acts, mostly on detention processes and discriminatory features. The contradictions between the powers introduced in the acts and civil liberties has been long debated in the parliament and further taken to the courts. Before and after 7/7 bombings, the government and the Houses come across on the issues of civil liberties challenged by the anti terrorism acts.<sup>177</sup> However, suicide terrorist attacks in Homeland changes the face of the problem. The contents of the acts were taken further by the 7/7 bombings. The acts until the Terrorism Act 2006 will be analyzed in an overall glance, but the main argument will be condensed therefore on the Terrorism Act of 2006.

In an overall interpretation, The Terrorism Act 2000 has introduced a broader definition of terrorism, provide an extended list of terrorist organizations beyond the associated ones with Northern Ireland and allowed detention up to 7 days for police questioning.<sup>178</sup>

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<sup>175</sup> The official report on 7/7 bombings

<sup>176</sup> 7 July Review Committee report p.6

<sup>177</sup> For example, the Prevention of Terrorism Act was passed from the parliament after 50 hours of debate.

<sup>178</sup> The Terrorism Act of 2000 accessed via Office of Public Sector Information, National Archives in UK [http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000011\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000011_en_1) (accessed 17 September 2009)



The Anti-Terrorism, Crime and Security Act in 2001 was introduced as a reaction to the attacks on September 11. In the act, the detention processes for foreigners had become indefinite and the deportation policies were reevaluated. Measures against terrorist finance were taken. The criminal law was changed from “racially aggravated” to “racially or religiously aggravated”. Dealing with biological and chemical weapons became illegal according to the act. The Ministry Defense Police have become operable within civil areas. Moreover, surveillance procedures were regulated on internet and telephone due to national security procurement. Also laws against corruption and bribery was enlarged to cover outside the territory of United Kingdom according to the act.<sup>179</sup>

The Criminal Justice Act of 2003, in counter terrorism measures, has introduced 14 days of detention to questioning for police. The extension of the detention process were justified in claim that analyses on chemical or biological weapons cannot be completed in 7 days.<sup>180</sup>

The Prevention of Terrorism Act of 2005 was in fact introduced to deal with the nine people related to terrorism detained without trial. The law lords concludes that detention without trial under Anti-Terrorism, Crime and Security act was unlawful and incompatible with the European Human Rights and domestic Human Rights therefore. With the act, control orders<sup>181</sup> were established for people suspected of relating terrorism.<sup>182</sup> Even if there introduced a series of anti-terrorism legislations, the

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<sup>179</sup> Anti-Terrorism, Crime and Security Act 2001 accessed via Office of Public Sector Information National Archives in UK [http://www.opsi.gov.uk/acts/acts2001/ukpga\\_20010024\\_en\\_1](http://www.opsi.gov.uk/acts/acts2001/ukpga_20010024_en_1) (accessed 17 September 2009)

<sup>180</sup> The Criminal Justice Act via OPSI [http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030044\\_en\\_1](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030044_en_1) (accessed 17 September 2009)

<sup>181</sup> Control orders were a kind of house arrests and described in the act as “In this Act “control order” means an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism”

<sup>182</sup> The Prevention of Terrorism Act 2005 [http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050002\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050002_en_1.htm) (accessed 17 September 2009)

Terrorism Act of 2006 was drafted in response to 7 July bombings in London, which will be one of the main interested topics of this thesis.

Another point in the UK policies implemented after 7 July bombings were named as Operation Kratos. Originally, the policy was composed after September 11 attacks in America.<sup>183</sup> Operation Kratos were formulated to counter against suicide attacks. “*Kratos is the operational name for a wide range of tactics that the Metropolitan Police Service could use to protect the public from the potential threat posed by a suicide bomber, either on foot or in a vehicle.*”<sup>184</sup> It includes the power given to the police, to shoot in the head to kill a suspected person about to detonate bombs carried on him/herself.<sup>185</sup> The policy implemented by British police officers was named as “shoot to incapacitate”. The context of the policy and its influence on civil rights were one of the most debated topics after 7/7 bombing in UK. Therefore, Operation Kratos will also be analyzed in this thesis and the criticisms directed against counter terrorism strategies in the basis of Operation Kratos will be analyzed.

United Kingdom is not unfamiliar with terrorism since the struggle in Northern Ireland lasts since recent years. However, the suicide bombings are new for UK. Attacks to transportation systems, aiming to kill masses are also new. Therefore this thesis is interested in responses to suicide attacks targeting homeland related to Al-Qaeda and will focus on the legislative act of 2006 drafted to counter further attacks. Moreover, the criticisms of the response policies will be analyzed in their arguments of challenges against civil liberties.

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<sup>183</sup> Operation Kratos is the name of a policy implemented by the British Police. Kratos is the name of Greek God of strength. The content of the policy is together with a range of tactics, most arguably “shoot to kill”. However, the policy was introduced as “shoot to incapacitate” a euphemism according to Kennison and Loumansky. The shoot to kill policy is not new in UK agenda, it was also used in countering policies against IRA. The best known example is the Gibraltar incidents in 1988. Three people suspected of being IRA terrorists and planning an explosion of a car bomb, were killed in the parking lot. After the incident, the investigation shows that neither there were explosives in the car nor the three people were carrying guns. However, non of the police officers were found guilty of killing three people.

<sup>184</sup>Metropolitan Police Service declaration on Operation Kratos. [http://www.met.police.uk/communities\\_together/docs/v\\_05-11-08\\_srb\\_anna\\_de\\_vries\\_1\\_.pdf](http://www.met.police.uk/communities_together/docs/v_05-11-08_srb_anna_de_vries_1_.pdf) (accessed 17 September 2009)

<sup>185</sup> Peter Kennison and Amanda Loumansky, “Shoot to Kill - Understanding Police Use of Force in Combating Suicide Terrorism”. *Crime Law and Social Change*, Vol. 47, 2007, pp. 151-168

### 3.1. THE TERRORISM ACT OF 2006

The Terrorism Act of 2006 were signed into law on 30 March of 2006. The act was first introduced on 12 October 2005, however have meet with many criticisms, like all the terrorism acts produced in UK, in House of Commons and therefore the royal ascent had been delayed till March 2006. The Act was first acquainted by Prime Minister Tony Blair on 5 August 2005;

*“Since the 7th of July the response of the British people has been unified and dignified and remarkable. Of course there is anxiety and worry, but the country knows the purpose of terrorism is to intimidate, and it’s not inclined to be intimidated.... The action I am talking about has in the past been controversial, each tightening of the law has met fierce opposition, regularly we have a defeat in parliament or in the courts. The anti-terrorism legislation of course passed in 2002 after September 11th was declared partially invalid, the successor legislation hotly contested. But for obvious reasons, the mood now is different, people do not talk of scare-mongering, and to be fair the Conservative leadership has responded with a genuine desire to work together for the good of the country, as have the Liberal Democrats... First, the Home Secretary today publishes new grounds for deportation and exclusion. Deportation is a decision taken by the Home Secretary under statute. The new grounds will include fostering hatred, advocating violence to further a person’s beliefs, or justifying or validating such violence...we are today signaling a new approach to deportation orders. Let no-one be in any doubt, the rules of the game are changing.... the circumstances of our national security have self evidently changed....once the new grounds take effect, there will be a list drawn up of specific extremist websites, bookshops, networks, centers and particular organizations of concern. Active engagement with any of these will be a trigger for the Home Secretary to consider the deportation of any foreign*

*national....This will include an offense of condoning or glorifying terrorism. The sort of remarks made in recent days should be covered by such laws. But this will also be applied to justifying or glorifying terrorism anywhere, not just in the United Kingdom.*"<sup>186</sup>

The Terrorism Act of 2006 is consist of three parts. First part defines the offenses, the second part state miscellaneous provisions and the third part defines the supplemental provisions.

### **3.1.1. OFFENSES**

First part consist of five sections, encouragement etc. of terrorism, preparation of terrorist acts and terrorist training, offenses involving radioactive devices and material and nuclear facilities and sites, increases of penalties and incidental provisions about offenses. At first section, publishing any statement directly or indirectly encouraging terrorism or preparation of acts of terrorism was prohibited and the publisher directly or indirectly will be committed crime according to first section. The offense will cover the past and the future. Moreover, the section prohibits directly or indirectly the distribution, selling, lending or electronically transmitting of any terrorist publication. Publications on glorifying terrorism or helping to prepare any terrorist acts are prohibited including the ones published online. Also, dissemination of any publication, which can be read, listen or look at or watch, in electronically provided service is prohibited. The maximum penalty is seven years of imprisonment.<sup>187</sup>

In the second section, committing acts of terrorism or assisting to others committing acts of terrorism and engaging any preparation in intention of terrorism was prohibited. The punishment maximum is life imprisonment. Moreover, receiving training or training others for terrorist activities is prohibited and the maximum penalty is 10 years. By this section, it is also prohibited that no one either in UK or abroad shall

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<sup>186</sup> Tony Blair's speech on August 2005 press conference introducing Terrorism Act of 2006 <http://edition.cnn.com/TRANSCRIPTS/0508/05/se.01.html> (accessed 17 September 2009)

<sup>187</sup> The text of the legislation can be found in National Archives in Office of Public Sector Information [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060011\\_en\\_2](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_2) (accessed 17 September 2009)

be in a place where training for terrorist purposes is going on. Maximum penalty is 10 years imprisonment. Also forfeiture power was regulated under this section for the possessions of training material.<sup>188</sup>

In the third section, offenses involving radioactive devices and materials and nuclear facilities and sites, possession of radioactive devices or material with the intention of using in preparation or act of terrorism is banned. Moreover, this part also prohibits using radioactive materials or a radioactive device in a terrorist attack, and the sabotage of nuclear facilities which causes a radioactive leak. Also, as a threat with terrorist intention, any threat to demand any radioactive devices or material and threat to use or damage of a nuclear facility is prohibited. Maximum penalty is life imprisonment. Besides, the ban on trespassing on nuclear sites were expanded to cover any nuclear site.<sup>189</sup>

The fourth section revises the penalties. The punishment times were revised and expanded from the earlier terrorism acts. Maximum penalties were redefined in the section. The section extends the maximum length of imprisonment for 'possession for terrorist purposes' from 10 years to 15 years, and for threatening to damage a nuclear power station to life imprisonment. The last section on incidental provisions defines the procedures of hearings and courts. Also, this section clarifies the contexts of the offenses committed abroad or in United Kingdom.<sup>190</sup>

### **3.1.2. MISCELLANEOUS PROVISIONS**

In the second part of the act covers the proscription of the terrorist organizations, the detention processes and procedures also the procedures of searches. The act proscribes any organization, promotes or encourages terrorism including

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<sup>188</sup> [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060011\\_en\\_2](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_2) (accessed 17 September 2009)

<sup>189</sup> National Archives in Office of Public Information [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060011\\_en\\_2](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_2) (accessed 17 September 2009)

<sup>190</sup> Ibid.

unlawful glorification or preparation moreover associated with statements containing such glorification. Besides, the Home Secretary's power were enlarged in order to proscribe any terrorist organization; also continue proscription even when their names were changed. The detention period was increased to 28 days without charge.<sup>191</sup> The search and seizure powers were enlarged. On the premises of any terrorist relationship or any suspected terrorist publications were covered on this chapter. The search of vehicles and people were expanded from a port or border point to search of vehicle on a ship or aircraft. The powers of intelligence services were increased in the act. The maximum periods for interception warrants were increased to six months where it is necessary for national security. The definition of terrorism was enlarged from “ actions or threats designed to influence a government may be terrorism; offense of using noxious substances or things to influence a government or to intimidate” to cover “ a government or an international organization.”<sup>192</sup>

### 3.1.3 SUPPLEMENTAL PROVISIONS

The third part of the act deals with the supplemental provisions. The part clarifies the procedures that shall made the bill into law. The commencements were defined. The Secretary of the State was made to appoint a person to review the first part of the Terrorism Act of 2000. The forfeiture power of the courts on offenses relating to terrorism were redefined. The name of the act as Terrorism Act 2006 was given in this part also.<sup>193</sup>

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<sup>191</sup> The detention period was the most controversial section of the act. At first, the government proposed 90 days for detention period according to the advise of police. However, it was rejected in the House of Commons. The government argue according to the advice of the police that 90 days for detention is necessary to prevent terrorism. The argument of the police that more time is needed was established on many basis, including difficulties in identity determination to advanced use of technology by terrorists, the long processes in intelligence sharing, the international character of terrorist organizations to long periods for forensic examination even to chemical and biological agents. There were three readings for the bill, 13 October 2005, 26 October 2005 and 10 November 2005. The argument on detention period lasts with the defeat of government and were singed into law as 28 days maximum. The last reading were made on 10 November 2005 and Royal ascent was given on 30 March 2006.

<sup>192</sup> Terrorism Act of 2006 Part 2, section 34 National Archives [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060011\\_en\\_5](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_5) (accessed 17 September 2009)

<sup>193</sup> [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060011\\_en\\_6](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_6) (accessed 17 September 2009)

### 3.2. OPERATION KRATOS

After the lethal attacks in September 11 in USA, many state introduced new policies and strategies to cope with suicide terrorism. Operation Kratos was one of the strategies implemented in UK by Metropolitan Police Services to handle the threat of suicide terrorist attacks. Operation Kratos consists of a range of tactics. As a strategy, it was formulated after September 11. After the attacks in world trade center, Metropolitan Police Services deploy a team to investigate suicide terrorism and policies to counter suicide terrorism. The team was sent to Israel, Sri Lanka and Russia, the states experienced suicide terrorism beforehand. According to the report published on Operation Kratos, valuable lessons were gathered in identifying potential suicide bombers, common types of devices and intelligence collection practices. However, the strategies implemented in example states was not suitable to use in United Kingdom.<sup>194</sup> Therefore, Operation Kratos were formulated as a counter strategy in United Kingdom.

Operation Kratos consist of three separate plans depending on the situation faced, operation Andromeda, Operation Beach and Operation Clydesdale. Operation Andromeda is designed to deal with spontaneous sighting by a member of the public of a suspected suicide bomber.<sup>195</sup> In operation Andromeda, the police have received 292 calls in August 2005 claiming the existence of suicide bombers, however 19 calls were received in January 2006.<sup>196</sup> Operation Beach was formulated for an intelligence-led operations. It is a set of confidential operations to locate or arrest people suspected of involvement in terrorist actions. Operation Clydesdale is designed to handle intelligences received about a suicide attack as a pre-planned event. Operation Clydesdale can be sum up as the last minute strategy to prevent a suicide attack.<sup>197</sup> The

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<sup>194</sup> The strategies were not suitable for UK, as it was party to European Human Rights legislations.

<sup>195</sup> Metropolitan Police Authority Report on Suicide Terrorism. Report no: 13 27 October 2005 <http://www.mpa.gov.uk/committees/mpa/2005/051027/13/?qu=operation%20kratos&sc=2&ht=1> (accessed 17 September 2009)

<sup>196</sup> Metropolitan Police Authority Report on MPS response to Suicide Terrorism. Report no: 8 23 February 2006 <http://www.mpa.gov.uk/committees/mpa/2006/060223/08/> (accessed 17 September 2009)

<sup>197</sup> Ibid.

tactics differs according to the proximity of the threats. The tactics are formed in a scale from an unarmed stop of the suspect by uniformed officers, through to the deployment of armed police officers.<sup>198</sup> The context of the tactics are classified as might have been expected. However, the public awareness of Operation Kratos was clarified mostly after the 21 July incidents. The wrongly killing of Jean Charles de Menezes in the subway opened a public debate on the counter strategy of operation Kratos on suicide terrorism. The criticisms will be analyzed in the next section.

### 3.3. THE CRITICS

After the attacks on 7 July, even if United Kingdom was not unfamiliar with terrorism, suicide attacks in public transportation systems change both the legal circumstances moreover the public opinion of the danger posed by international terrorism.<sup>199</sup> As a series of anti-terrorism legislations since 2000 were adopted in UK, the criticisms on security versus civil liberties has been a long debate in public. For example, London more than any other city in the world was surrounded with CCTV<sup>200</sup> cameras.<sup>201</sup> The surveillance systems were top of the criticisms on the debate. However, the perpetrators of the 7/7 attacks were identified with the surveillance systems and the perpetrators of the 21 July incidents were captured according to the information gathered from the surveillance systems.<sup>202</sup> Even if there were an ongoing debate on security versus civil liberties, the Terrorism Act of 2006 added new features to the debate both as a draft and afterwards of its legislation. Before the draft was unfolded,

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<sup>198</sup> MPA report no: 13

<sup>199</sup> Frank Gregory, "Police and Counter Terrorism in UK" in *Homeland Security in the UK: Future Preparedness for Terrorist Attack since 9/11* ed. Paul Wilkinson (Routledge, 2007) pp.203-247

<sup>200</sup> CCTV is the shortened name for close-circuit television, used mostly for surveillance purposes.

<sup>201</sup> In 1993, IRA used a car bomb to attack London's financial center, Bishopgate. The financial damage was seriously high, so that surveillance cameras were installed into the entrances of the city, also known as ring of steel. Since then, even if exact number was not known, CCTV surveillance systems were build all over the London and also United Kingdom.

According to BBC news, the government had spent 500 million £ for CCTV systems.  
[http://news.bbc.co.uk/2/hi/uk\\_news/england/london/8219022.stm](http://news.bbc.co.uk/2/hi/uk_news/england/london/8219022.stm)

<sup>202</sup> The official report on 7/7 bombings



consultations on parties were made to reach a consensus.<sup>203</sup> Consensus was reached in new criminal offenses like preparation or training for terrorist acts, possession of devices.<sup>204</sup>

However, two provisions in the bill lead to major debates. The first was the broad explanation of the offense of glorifying or celebrating terrorism, and the second dispute was over the detention processes. After the criticisms, the glorifying or celebrating terrorism explanation were set to include an intentional or reckless substance. Also, at the first draft, the government proposed 90 days period for detention.<sup>205</sup> However, the 90 days detention process was rejected in House of Commons. Instead, 28 days was accepted in the Houses on 10 November 2005 and on 30 March 2006 Royal Ascent was given. Even if the first draft of the act cause many debate both on public and parliament, this thesis will focus on the criticisms afterwards the passage of the Terrorism Act of 2006. In addition, the criticisms on the powers and strategies used by the police will be focused as there had been a dramatic shift after the 7 July bombings.

### **3.3.1. THE CRITICISMS ON THE TERRORISM ACT 2006**

The criticisms on the Terrorism Act of 2006 started at first stage of drafting. The most debated issue was the detention processes suggested 90 days in the first draft. Even if the process was changed in finale and signed into law as 28 days, the issue played a major role in the debates on Terrorism Act of 2006. Furthermore, the criticisms on the act after receiving Royal Ascent was based on the violation of freedom of speech. As the glorification and incitement of terror was made an offense whether it is direct or indirect. The third point of the criticisms is based on the expansion of state and police powers.

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<sup>203</sup> Vermeule, *Emergency Law Making*, p.1162

<sup>204</sup> *Ibid.*

<sup>205</sup> <http://press.homeoffice.gov.uk/Speeches/speeches-archive/12-05-sp-terrorism-bill.html> (accessed 17 September 2009)

### 3.3.1.1. Detention Process

The criticisms on the Terrorism Act of 2006 had started first on its draft suggesting 90 days period for detention without charge. As his 3rd period in the Prime Ministry, Tony Blair support 90 days police detention without charge, basing on the Metropolitan Police advice. Ninety days of detention process were advised by the Metropolitan Police. The police advice was based on the arguments that the nature of the modern terrorism was much more challenging. According to their claims modern terrorism contrasting to their experience with IRA was aiming to be more lethal. The international character makes the investigation much more complex and time consuming. Also the divergent languages requires interpreters, which slows down the processes. As the use of technology increase, terrorists benefit more and to acquire data is much more complex then it used to. The claims was made by Andy Hayman, the most senior anti terrorist police officer and published in the speech of Charles Clarke, Home Secretary explaining governments approach on 5 December 2005.<sup>206</sup>

The draft of new coming legislation on August 2005 was introduced with the intention of 90 days of detention process. However, the draft meet with many criticisms in both House of Lords and House of Commons. As 90 days proposal was rejected, it was mostly criticized on the violation of habeas corpus. Instead, 28 days was introduced with the Terrorism Act of 2006. The period of 28<sup>207</sup> days was determined as the doubling time on the previous Criminal Justice Act of 2003. Even if 28 days for detention process were accepted, Vermeule associate the 28 days as a gamble of arbitrariness.<sup>208</sup> Both sides of the argument of the debate of detention process, pro's and

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<sup>206</sup> <http://press.homeoffice.gov.uk/Speeches/speeches-archive/12-05-sp-terrorism-bill.html> (accessed 17 September 2009)

<sup>207</sup> The proposal by the critics in the Parliament suggested 28 days to vote instead of 90 days, however if 28 days will not be agreed on, the next proposal of the critics will be 60 days for detention without charge.

<sup>208</sup> Vermeule, p.1187

cons of 90 days, were accusing each other with picking arbitrary numbers and according to Vermeule, all sides were right to do so.<sup>209</sup>

Shephard explains the debate within the Parliament on detention processes as follows “*the government asked the Commons in November 2005 to support an extension from 14 to 90 days... MPs voted against the extension by 322 to 291 with 49 Labour members rebelling – enough to provide Blair’s first parliamentary defeat after the government’s Commons majority was reduced by the 2005 election.*”<sup>210</sup> Rather than the proposal of the government, members of the Parliaments reject the draft and do not support government. The Labour members voting against the 90 days detention process, causes first defeat of the Prime Minister Tony Blair in his eight year of premiership.<sup>211</sup> The defeat of the government had been so controversial in parliament as their position had opened to discussion. As Vermeule argues “*following this defeat, Prime Minister Blair was forced to fend off claims that the government’s defeat occurred on a de facto ‘issue of confidence,’ which under British parliamentary conventions would have forced the government to step down and call new elections.*”<sup>212</sup> By 10 November, the third reading was made and the bill enacted on 15 February 2006. However, the criticisms on government following their defeat in parliament opened up the process of Prime Minister to lose power because of the increasing criticisms on many issues and finally to resign from the Office on 27 June 2007.<sup>213</sup>

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<sup>209</sup> Vermeule, p.1187

<sup>210</sup> Mark Shephard, Parliamentary Scrutiny and Oversight of the British ‘War on Terror’: From Accretion of Executive Power and Evasion of Scrutiny to Embarrassment and Concessions, *The Journal of Legislative Studies*, Vol. 15 Issue. 2, 2009, p. 205

<sup>211</sup> Vermeule, p. 1162

<sup>212</sup> *Ibid.* P.1162-63

<sup>213</sup> The criticisms was first started on the support to USA in War on Terror. As the casualties in Iraq war increases, Prime Minister Blair started to lost support. When the claim that Iraq had weapons of mass destruction was falsified there had been a dramatic decrease of trust to Prime Minister Blair. Following the Parliament defeats, terrorism acts and also legally establishment of identity and DNA databases etc., Blair was accused with proposing authoritarian legislations and eroding civil liberties. All these criticisms lead Tony Blair to resign from his Office on 27 June 2007.

An interesting point on the criticisms of the Prime Minister Tony Blair was written by Mark Shephard as the criticisms on Iraq war had reached a point so excessive that even Media had call Prime Minister “Bluar” instead of Blair.

Moreover to the debates in Parliament, the 28 days period was still criticized as being too long for a democracy to experience. Smith argues that the laws of terrorism may lead in increase of detention processes but it creates further danger for such procedures to expand other criminal areas. *“...the law on terrorism leads, Parliament will feel able to go further on later occasions. In the Terrorism Act 2006, the power to hold suspects without charge has been extended from 14 to 28 days, in spite of the arguments of opponents of the Bill that there was nothing that so differentiated terrorist offences from others such as drugs running or people smuggling.”*<sup>214</sup>

According to Smith, the laws of counter terrorism will be used in other areas and because of its content of terrorism the expansion will not be possible to challenge in the basis of civil rights. *“How long will it be, one wonders, before those arguments are turned against those who used them and in favour of extending the law to those other areas of criminality? Again, it may well be the case that such legislation would not be vulnerable to judicial challenge on Human Rights Acts grounds.”*<sup>215</sup> Landman also criticizes the 28 days of detention process as too excessive. According to Landman *“...the result of a twenty-eight-day detention still means that suspects can be detained without charge for almost a month, a measure that far exceeds the powers enacted in similar liberal democracies across Europe.”*<sup>216</sup> Also Landman argues that United Kingdom since has been the leading state in the world concerning the civil liberties however the Terrorism Acts, United Kingdom produces had been too strong comparing to other European states. *“...In dealing with domestic and international terrorism it[UK] has established the strongest and most draconian set of restrictions on its citizens in Europe.”*<sup>217</sup>

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<sup>214</sup> A.T. H. Smith, Balancing Liberty and Security? A Legal Analysis of United Kingdom Anti-Terrorist Legislation, European Journal on Criminal Policy and Research Vol. 13, 2007 p.77

<sup>215</sup> Ibid, p.77

<sup>216</sup> 5. Todd Landman, The United Kingdom, in National Insecurity and Human Rights: Democracies Debate Counterterrorism, ed. Allison Brysk and Gershon Shafir (Berkeley: University of California Press, 2007) p.91

<sup>217</sup> Ibid. p.77

### 3.3.1.2. Freedom of Speech

The Terrorism Act of 2006 had established new offenses like glorifying or encouraging terrorism, which critics argue challenging the freedom of speech. Also, selling, lending, distributing any material containing glorification or encouragement of terrorism, influencing any one to engage in terrorism is banned with the act. Also organizations can be classified in proscription if committed on any glorification or encouragement of terrorism. The offense of glorification had also been a part of the criticisms in the House of Lords, however accepted in its third reading.

Ellen Parker argue that “ *...both the definition of "terrorism" and the Encouragement of Terrorism offense are overly broad and vague and that the Act will become a tool to arrest individuals for acts less severe than ones that the 2006 Act was originally developed to curtail.*”<sup>218</sup> Also, according to Shephard, the “glorifying terrorism” offense was too elastic to interpretation.<sup>219</sup> According to Vermeule and Posner, the Terrorism Act of 2006 damages civil liberties in the name of security. “*In the United Kingdom, after the July 7, 2005, attacks on the London bus and train system, Parliament enacted major legislation, the Terrorism Act 2006, that curtails speech in the name of security. Among other broad provisions, the law prohibits statements that directly or indirectly encourage terrorist acts and proscribes organizations.*”<sup>220</sup> The 2006 act prohibiting glorifying or encouragement of terrorism was criticized among the scholars in many terms, as Parker was concerned on the possible usages of the offenses. “*If British authorities begin employing the Act as a tool to proscribe terrorist speech, free speech throughout the United Kingdom will be constrained considerably.*”<sup>221</sup>

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<sup>218</sup> Ellen Parker, Implementation of the UK Terrorism Act 2006 - The Relationship Between Counterterrorism Law, Free Speech and the Muslim Community in the United Kingdom versus the United States, Emory International Law Review, Vol.21, 2007, p. 750

<sup>219</sup> Shephard, Parliamentary Scrutiny, p. 205

<sup>220</sup> Eric A. Posner and Adrian Vermeule, Terror in the Balance : Security, Liberty, and the Courts, New York, USA: Oxford University Press, Incorporated, 2007. p 23.

<sup>221</sup> Parker, p.712

As the 7/7 suicide attacks was carried by home-grown<sup>222</sup> terrorists in United Kingdom, it is criticized that the offense of glorifying terrorism was produced for a certain group within the citizens. Cram argues that *“the distrust in libertarian free speech discourse of contents-based regulation of expression means that representations of ethnic minorities and women by economically powerful speakers may pander to, and reinforce prejudiced attitudes in ways that deny the equal worth of individuals and groups without constraint.”*<sup>223</sup> According to critics, the offense of glorifying terrorism targets a specific group in the state as the suicide attacks on 7 July and attempt of attacks on 21 July were carried by Muslims, the target of the act was quite clear. *“Although the text of the encouragement of terrorism offense in the UK Terrorism Act 2006 does not expressly mention Muslims, its proponents were clear before its passage that it is aimed at speech by radical Muslims.”*<sup>224</sup> According to Parker, targeting a certain group in the society is not a realistic way to cope with terrorism, as discrimination would lead to further alienation of that group. *“Considering the government's self- declared dedication to strengthening its ties with the Muslim community, the risk of further Muslim alienation threatened by the 2006 Act suggests that the Act is counterproductive.”*<sup>225</sup> In addition, Parker argues that the act is counter productive because United Kingdom was attacked by home-grown terrorist. The alienation of Muslims from society would be therefore much threatening in the name of terrorism.

According to Parker, *“...there is a widespread concern that the 2006 Act will lead to a "loss of trust" between Muslims and the government.”*<sup>226</sup> The loss of trust will be a major problem according to Parker as the Muslim population only in London is

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<sup>222</sup> Jytte Klausen, British Counter-Terrorism After 7/7: Adopting Community Policing to the Fight Against Domestic Terrorism, *Journal of Ethnic and Migration Studies*, Vol. 35, No. 3, 2009, p. 404

<sup>223</sup> Ian Cram, *Contested Words : Legal Restrictions on Freedom of Speech in Liberal Democracies*, Abingdon, Oxon, GBR: Ashgate Publishing, Limited, 2006. p 204-5

<sup>224</sup> Parker, p.733

<sup>225</sup> Ibid.

<sup>226</sup> Ibid. p.753

approximately one million.<sup>227</sup> Furthermore, Parker argues that instead of alienation of Muslims from the society, a successful counter terrorism measure needs Muslims cooperation. *“However, despite the repulsiveness of a certain category of speech, a broad and tenuous statute is not an attractive tool to combat that type of speech. It causes strong division in the country between opponents and proponents and further alienates the cultural group that the government needs in order to stop those who actually commit acts of terrorism.”*<sup>228</sup>

Gearty also criticizes the same point of the glorifying terrorism offense. It is argued that political discussions and freedom of speech are the basic elements of liberal democracies. *“Where wrongly applied, the orders choke off political discussion that should be allowed in a liberal democracy as a matter of principle. It needs to be remembered as well that such bans often reach well beyond the bodies subject to them, being both over-broadly interpreted by the authorities and misconstrued by the general public as prohibitions on whole categories of speech.”*<sup>229</sup> According to Gearty, prohibitions on the freedom of speech causes situations to worsen, as giving the example of how the UK-wide media ban on Sinn Fein<sup>230</sup> by Thatcher government had become counterproductive. As Gearty argues that UK historically knows how the proscriptions and bans lead counterproductive results. However, it is criticized that the same mistake was made again in the act of 2006. *“The initiative in particular had a large chilling effect on discussion of Irish affairs in Britain. It may well be that the combined effect of the current proscription laws with the new offence of glorifying*

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<sup>227</sup> Parker, p.726

<sup>228</sup> Ibid p.757

<sup>229</sup> Conor Gearty, Terrorism and Human Rights, Government and Opposition, Vol. 42 No. 3, 2007 p.357-8

<sup>230</sup> In 1980s, the Thatcher government and media had totally opposed ideas on Northern Ireland. The media campaign was about the ending of British rule in the area. The rise of the confrontation lead the government to produce a ban in 1988 over the leaders and spokespersons belonging to the other side. Televisions and radios are banned to broadcast the voices and direct statements of those nationalists or unionists. A heavy censorship was applied which even covers elected Parliament member, Gerry Adams, the Sinn Fein leader. According to Thatcher, the ban was produced to deny terrorists, supporters of violence, the oxygen of publicity. However, critics argue that the ban only worked to cut British public to find out the truth about what is going on in the North. Also, the prohibition on freedom of expression was heavily criticized by the Human Rights supporters.

*terrorism introduced in the Terrorism Act 2006 will have the same effect on the expression of Islamic-based political opinion in Britain today.”*<sup>231</sup>

The target group of the Terrorism Act of 2006 is also clear for many critics. Klausen criticizes the government politics on counter terrorism and argues that “*The Blair government also opened itself up to accusations of ‘Islamophobic policing’ by saying that Islam was not the problem but then by acting as if it was and denouncing bad theology*”<sup>232</sup> Moreover to the arguments of specific group targeted by the act, McGhee grade the targeted group into two section. According to McGhee, along with the Muslims it is Muslim asylum seekers in UK whose human rights are most in jeopardy. “*It is not only Muslims who are at the head of the queue when it comes to the potential violations of human rights: it is Muslim foreign nationals who are the clear front runners...the Muslim foreign nationals who are being targeted by this legislation, that is, those individuals who are repeatedly represented as the primary threat to the UK*”<sup>233</sup> Moreover, the policies of government, the Terrorism Act of 2006 together with Immigration, Asylum and Nationality Act of 2006 is damaging society by further alienation of Muslims and foreign nationals looking to asylum to UK<sup>234</sup>. According to McGhee, those groups alienated by the Acts passed in UK are needed for a sounded counter terrorism.<sup>235</sup> The acts and politics are counterproductive as they damage the flow of intelligence could come from Muslim communities.<sup>236</sup>

In addition, Cram argues that the definitions in the act are so vogue and broad that, it could used for further political contexts. “*The reach of the incitement, glorification offences is made considerably broader by the fact that it does not appear*

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<sup>231</sup> Gearty, Terrorism and Human Rights, p.358

<sup>232</sup> Klausen, British Counter Terrorism, p.417

<sup>233</sup> Derek McGhee, Deportation, Detention & Torture by Proxy: Foreign National Terror Suspects in the UK, Liverpool Law Review, Vol. 99, 2008, 102-3

<sup>234</sup> Ibid, p. 112

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.



*limited to current political struggles but may extend back in time to historical conflicts.*"<sup>237</sup> Cram criticizes the act of being both too wide and discriminatory, in the sense of targeting Muslims not only in United Kingdom but also in extraterritorial usage and makes a comparison with an example. *"...in the context of a current conflict involving Muslims, whilst a speaker would remain free to argue that the Russian authorities should murder more Chechen rebels, it would be an offence to give encouragement to Chechen resistance fighters."*<sup>238</sup> Cram further argues that the act causes obstacles for televisions to publish news around the world, for example showing bombings against coalition forces in Iraq war.<sup>239</sup> Moreover according to Cram offense of dissemination of material will be troubling for news broadcast organizations, academic institutions and libraries.<sup>240</sup>

Together with the criticisms on the challenge to freedom of expression, there are also criticisms on the challenges posed by the Terrorism Act of 2006 to freedom of association or assembly. As in the act the phrase of 'direct or indirect encouragement' was used, it is quite unclear, what the exact offenses are. According to Parker *"the unclear meaning of "indirect" encouragement of terrorism may apply to many forms of behavior, including foreign resistance movements that involve both peaceful and violent components."*<sup>241</sup> Because of the indefinite content even political protests can be subject to the offenses created in the Terrorism Act 2006.<sup>242</sup> Parker quoted from the Mayor of London criticizing the act as discriminative and subjective. *"The Mayor of London argues that the Act is discriminating and subjective because its definition of terrorism is broad enough to encompass almost any form of legitimate protest; therefore, the*

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<sup>237</sup> Ian Cram, *Regulating the Media: Some Neglected Freedom of Expression Issues in the United Kingdom's Counter-Terrorism Strategy*, *Terrorism and Political Violence*, Vol. 18 Issue.2, 2006, p.344

<sup>238</sup> Ibid.

<sup>239</sup> Ibid p.345

<sup>240</sup> Cram, p. 344

<sup>241</sup> Parker, p. 750

<sup>242</sup> Ibid.

government may use it as a political tool on whomever it chooses.”<sup>243</sup> Along with criticisms on the freedom of association, Beckman argues that “*three provisions (glorification of terrorism prohibition, the prohibition on distributing literature regarding terrorism, and the unlawful attendance at a location where terrorism skills are taught) collectively enable law enforcement to go after radical clerical leaders in Great Britain.*”<sup>244</sup> The religious places and communities are therefore threatened by the provisions in the act.<sup>245</sup>

### 3.3.1.3. Expansion in the State and Police Power

Another side of the debates on the counter terrorism issues is the expansion of state power taken further with the acts. An interesting point concerning the expansion of state powers is that contrasting to USA or Europe, United Kingdom had expanded its counter terrorism powers before September 11.<sup>246</sup> Starting with the Terrorism Act of 2000, United Kingdom broadened its definition of terrorism, terrorist organization, measures on financial terrorism and police powers. Since 2000, the detention process had been raised from 7 days to 28 days.<sup>247</sup> Russel Hardin argues that “*the majoritarian response to crisis seems to be to countenance the use of state power to handle the crisis.*”<sup>248</sup> The state authorities tend to enlarge the powers when facing with terrorism.<sup>249</sup> However, the powers given to counter crises in homeland may be produced to cover other areas, criticizing Hardin. “*Normally we face the problem that giving the state power to do anything gives it the power to do many other things, even things contrary to*

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<sup>243</sup> Parker, p.751

<sup>244</sup>James Beckman, *Comparative Legal Approaches to Homeland Security and Anti-Terrorism*. Abingdon, Oxon, GBR: Ashgate Publishing, Limited, 2007. p 98

<sup>245</sup> Ibid.

<sup>246</sup> Moran, *State Power on the War on Terror*, p.343

<sup>247</sup> By the Counter Terrorism Act of 2008, the detention period was increased from 28 to 42 days.

<sup>248</sup> Hardin, *Civil Liberties in the Era of Mass Terrorism*, p.90

<sup>249</sup> Ibid.

*the purpose of the grant of power. For example, giving it the power to protect civil liberties probably gives it power that might be used to violate civil liberties.*"<sup>250</sup>

Also Moran argues the same point of criticism on the expansion of state power caused by the counter terrorism acts. Considering the draft of the Terrorism Act of 2006 "*government campaign...to extend pre-charge detention for those suspected of terrorist offences to 90 days was an example of the state accruing power to itself without specifying how this would actually facilitate an increase in terrorism convictions.*"<sup>251</sup> Even if the 90 days proposal was rejected, 28 days of detention process was still too long according to Moran and the fundamental change was not taken through public consultation.<sup>252</sup> Moreover to the detention processes debate, the surveillance is another point of the expansion of state power according to Moran.

The CCTV coverage in London, further excessive than any other city in Europe or North America, creates an important extension on state power and constriction in individual autonomy.<sup>253</sup> Alongside the surveillance arguments on state power challenging individual liberties. Wade argues another interesting point. According to Wade CCTV systems in London was used after the 7/7 bombing retrospectively to identify terrorists. According to Wade, "*It is interesting to note that such measures are presented as crime prevention measures and brought into discussion particularly in relation to terrorist offences in spite of their exclusive use in that context to deliver information post facto.*"<sup>254</sup> The state enlarging its powers in the name of prevention of terrorism, however uses those powers retroactively to analyze the incidents according to Wade.<sup>255</sup>

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<sup>250</sup> Hardin, p.90

<sup>251</sup> Moran, p. 344

<sup>252</sup> Ibid.

<sup>253</sup> Ibid, p. 347-351

<sup>254</sup> Marianne L. Wade, Fear vs Freedom Post 9/11: A European Debate: Introduction, European Journal on Criminal Policy and Research, Vol.13, 2007, p.10

<sup>255</sup> Ibid.

The counter terrorism acts also lead an expansion in the police powers. Starting from 2000, the police powers of stop and search, detention, asset seizure had dramatically increased.<sup>256</sup> The demand of the 90 days of detention without charge, drafted in the proposal of the Terrorism Act 2006 was demanded by the Metropolitan Police. Wade quoted from the statement of Metropolitan Police arguing that the expansion in police powers is necessary on counter terrorism measures by giving the example of detention processes. *“The 28-day detention [is] possible...which the Chief Commissioner of the Metropolitan Police justifies by explaining that the police must now intervene very early when they hear of a potential terrorist plot and are faced with having to sift through huge amounts of information before sufficient evidence can be found to formulate a charge, raises further questions.”*<sup>257</sup>

The criticisms of Wade is based on the question that what at the first point trigger the police to intervene.<sup>258</sup> According to the criticism, it was an evidence at first to deprive a person’s liberty.<sup>259</sup> According to Wade, the foundation of the criminal law is challenged with the power given to the police of detention without charge. Alongside with the debates on detention powers, critics also argue about the surveillance procedures and the dataveillance<sup>260</sup> on private life. According to Moran, UK has experiencing an advanced state power concerning the CCTV systems and further proposals of DNA databases and ID cards. <sup>261</sup> According to Moran, even regular citizens are increasing brought into state monitoring and circles of data are collected, which represents a great expansion of state and police powers.<sup>262</sup>

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<sup>256</sup> Moran, p.343

<sup>257</sup> Wade, p.9

<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> Moran, p.345

A term used for gathering and processing of data to monitor individual’s activities.

<sup>261</sup> Moran, p. 345

<sup>262</sup> Ibid, p.351

Besides all these criticisms, the police operations with the authority given by the parliamentary acts had also constitute a great title in the debates of expansion of state power. This thesis mostly emphasize on one of these operations regulated after 7/7 bombings and 21 July incidents in London. The criticisms on the Operation Kratos will be analyzed in the next subheading because it leads a major debate in the public after the incident of Charles de Menezes.

### **3.3.2. THE CRITICISMS ON THE OPERATION KRATOS**

The existence of state roots to the protection of its citizen. Therefore, according to Kennison and Loumansky, “*Individuals have the right to expect the state to do all in its power to ensure that they do not fall victim of terrorists; just as they have the right to expect that they will not become victims of the state itself.*”<sup>263</sup> As the police are the agents of state, they are the instruments of the criminal justice system, which seeks for justice.<sup>264</sup> However, according to Kennison and Loumansky the protection of rule of law for all citizens have to be based on impartiality, integrity and professionalism.<sup>265</sup> However, the threat posed by international terrorism has changed the traditional police routine, mostly by introducing strategies to prevent possible terrorist attacks. Operation Kratos was composed to deal with terrorist threats on different levels. The publicity of the strategy however was acquired after the shooting of Jean Charles de Menezes, a Brazilian national, wrongly.

The day after the 21 July incidents, the police was searching the four suspects responsible for the failed attacks. An intelligence on the possible perpetrators was received together with an associated address information. The surveillance started at the early morning on the received address, where the police come across with Menezes. As Menezes was thought to be Hussain Osman, the surveillance continued through his

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<sup>263</sup> Kennison and Loumansky, *Shoot to Kill*, p. 151-2

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.* p. 153

journey. First, Menezes took a bus to metro station and then get into metro station, whole this processes he was watched by a team of police officers. By the time Menezes get into train, he was shoot to death by two police officers with eight total shots, specifically seven on the head.<sup>266</sup> The police officers wrongly assume that Jean Charles de Menezes was Hussein Osman, one of the perpetrators of the 21 July incidents. Also, it was thought that Menezes was about to detonate a bomb in the Stockwell subway station. After, the killing of Menezes, the mistake was accepted and a trial was formulated between Menezes family and the Metropolitan Police. At the end, the Metropolitan Police was found guilty on the offenses of failing to protect the health and safety of Jean Charles de Menezes and was to fined compensations of 385.000 £. However, the shooting of Menezes was not declared as “unlawful”. The inquest on the death of Menezes was ended up with an open verdict<sup>267</sup> by the decision of the jury.<sup>268</sup> Even if an open verdict was decided it was interpreted as a criticism to the police.

The criticisms, specific to the incident, are based on three points. The first was the usage of the hollow point bullets.<sup>269</sup> Second, the aim of the police was criticized as it was never intended to take the suspect Menezes into custody even before he entered into metro station in comparison to traditional methods.<sup>270</sup> And third criticism based on the identification process, that a positive identification was never made clear enough before shooting Menezes.<sup>271</sup>

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<sup>266</sup> The details of the incident was taken from the report of the Coroner, “The Coroner’s Inquest into the Death of Jean Charles de Menezes” [http://www.stockwellinquest.org.uk/directions\\_decs/ruling%20on%20verdicts%20and%20inquisition.pdf](http://www.stockwellinquest.org.uk/directions_decs/ruling%20on%20verdicts%20and%20inquisition.pdf)

Also a detailed animated video was published by BBC, starting from the early morning of the police operation till the shooting of Menezes. [http://news.bbc.co.uk/2/hi/in\\_depth/629/629/7073125.stm](http://news.bbc.co.uk/2/hi/in_depth/629/629/7073125.stm)

<sup>267</sup> Open verdict in this case means that the death is suspicious but there are not enough evidence to prove.

<sup>268</sup> Coroner’s Inquest

<sup>269</sup> Kennison and Loumansky, p.155

The hollow points are the bullets designed to cause more damage to the target while minimizing damage possible to bystanders of the target. Their usage in warfare is also banned by the Hague Convention on 1899.

<sup>270</sup> Kennison and Loumansky, p.156

<sup>271</sup> Ibid.

The criticisms, however considering the Operation Kratos is much diverse and profound in the challenge posed to civil liberties. In the legal reports published by Metropolitan Police, the Operation Kratos was introduced with aims to incapacitate the suicide bomber. According to the report: *“there is clear evidence that suicide bombers will spontaneously detonate their devices if they believe they have been identified. Therefore, any tactics deployed have to involve officers acting covertly to retain the element of surprise. Also, the tactics had to ensure immediate incapacitation to eradicate any opportunity for the bomber to cause the device to function.”*<sup>272</sup>

The shoot to incapacitate strategy was criticized as being nothing but a “shoot to kill” policy. Shoot to kill policy is a clear violation of civil rights, as without any trial or proven crime, punishment is executed. According to Kennison and Loumansky *“if police admit to having a ‘shoot to kill’ policy under Operation Kratos rather than one designed to incapacitate it breaches our civil rights, since it would amount to an execution by the state without trial and conviction.”*<sup>273</sup> The killing of Menezes rises the criticisms over the jurisdictional execution. Guelke also criticized the same point.

*“Since under any circumstances in any country the use of lethal force is permitted to protect members of the public where there is an imminent threat to life, either the ‘shoot to kill’ policy is meaningless posturing or, more disturbingly, as the circumstances in which the Brazilian was shot, on the face of it, might suggest, constitutes the entirely illegal adoption of a policy of extrajudicial execution under the guise of protecting the public”.*<sup>274</sup>

The execution without any trial or a proven criminality was one of the most criticized points of the Operation Kratos.

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<sup>272</sup> Metropolitan Police Authority report on Suicide Terrorism, Vol. 13, 27 October 2005 <http://www.mpa.gov.uk/committees/mpa/2005/051027/13/?qu=operation%20kratos&sc=2&ht=1> (accessed 17 September 2009)

<sup>273</sup> Kennison and Loumansky, p.165

<sup>274</sup> Adrian Guelke, *Terrorism and Global Disorder*, (I.B.Tauris&Company, Limited, London, 2006), p.208

In addition, there is another point in the Police strategy of Operation Kratos. The second aspect of the criticisms place on the discriminative nature in the police strategy. After 9/11 and 7/7 terrorist attacks, Muslims in the society together with migrants become an open target. However, according to Kennison and Loumansky, methods of the police seem disproportional and could lead to social division within the state in minority groups. *“All these methods appear to impact disproportionately on diverse sections of the population, like the Muslim community, and if these practices fail or are wrong, social divisions will be undermined further by alienating the minority group.”*<sup>275</sup>

Gregory also discusses the same point and criticizes that strategies of preemption and disruption can cause aggravating of radicalization in an ethnic minority group.<sup>276</sup> While discriminatory policies can cause public distrust to authorities, it is also harming police accountability according to Kennison and Loumansky.<sup>277</sup> Guelke stated that discriminatory policies and racial profiling lead a wider distrust in the public. *“increase in racial attacks since 7 July and reaction to the shooting of the Brazilian has already created a situation in London where some travellers on the underground have stated that they fear being the victim of a racial attack or being shot at by the police more than they fear being caught up in a suicide bomb attack, because of the possibility of their being mistaken for suicide bombers due to their age and appearance.”*<sup>278</sup>

The killing of Jean Charles de Menezes, while creating public awareness on the Operation Kratos, deepened up the discussion of civil liberties versus counter terrorism strategies in United Kingdom. Kennison and Loumansky argues that *“Operation Kratos has compromised our civil liberties, a matter which, because of the nature of proactive policing, is divisive, distrustful, exclusive rather than inclusive, and possibly at some*

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<sup>275</sup> Kennison and Loumansky, p. 166

<sup>276</sup> Frank Gregory, “Police and Counter Terrorism in UK” in *Homeland Security in the UK: Future Preparedness for Terrorist Attack since 9/11* ed. Paul Wilkinson (Routledge, 2007) pp.203-247

<sup>277</sup> Kennison and Loumansky, p. 165

<sup>278</sup> Guelke, p.208



*point may lead to social disharmony, division and conflict.”*<sup>279</sup> Alongside with the criticisms of the nature of the Operation Kratos and consequences caused by the usage of Operation Kratos, it is remarkable that the strategy of the operation was put into implementation after the terrorist attack on September 11, 2001. However, the strategy failed to prevent the terrorist attacks in London metro station on 7 July 2005. Moreover, it had also failed in the prevention of 21 July incidents, in which the bombs do not detonate because of the mechanical problems. In contrast, the usage of the Operation Kratos was stick in the mind of public with the killing of Jean Charles de Menezes, an innocent 27 year old Brazilian.

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<sup>279</sup> Kennison and Loumansky, p. 168

#### **4. THE COMPARISON OF STATE RESPONSES: AMERICAN AND BRITISH EXPERIENCES**

Terrorist attacks in the soil of states lead dramatic changes in the political arena. United States and United Kingdom had different experiences while targeted by Al-Qaeda. Even if the scale, lethality and damage of attacks were different, some of the State responses were alike. There are also great differences considering the responses in American and British experiences. The comparison in this thesis will be made on the three headings, terrorists and terrorist attacks, war on terror versus war on extremism and legal actions. The contents of the headings will be analyzed in a manner of similarities and differences. The aim of the comparison is to state that both side of the Atlantic even if known to carry a special relationship, has its unique differences in responses to terrorism targeted homeland.

##### **4.1. TERRORISTS AND TERRORIST ATTACKS**

September 11 and July 7, terrorist attacks was perpetrated by Al-Qaeda. However, each of the terrorist attacks is different in its scale, lethality and devastation. Also attacks were different by its actuators and aims of the perpetrators. 9/11 had been a defining moment<sup>280</sup> in the world history by clear cutting the parties of the warfare. In contrast, 7/7 had happened while the warfare is enduring. There are also similarities in the terrorist attacks when the big picture is looked. It was the first time for both United States and United Kingdom had experienced suicide bombings in their own soils. Also attacks were carried out by Muslim men declaring their aims of attacking on religious terms.

First to start with the differences on the perpetrator terrorists, September 11 was carried out by 19 men. The attack was formed by 19 terrorists of Al-Qaeda, 15 of them were Saudi Arabian, 2 from United Arab Emirates, 1 from Egypt and 1 from

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<sup>280</sup> Cortright, Lopez, Millar and Gerber-Stellingwerf, *Friend not Foe*, p.24

Yemen.<sup>281</sup> The weapons of the terrorists were commercial airlines targeting commercial skyscrapers in Manhattan and military building in Pentagon. The terrorists, directly by Al-Qaeda, had declared jihad against enemies. Their aims were to obtain the withdrawal of the enemies<sup>282</sup> from the Arab peninsula. The targets of the attacks were World Trade Center and Pentagon building together with the airplanes. Concerning the casualties, almost 3000 people were dead, mostly civilians.<sup>283</sup> The loses belong to 90 different states in the world. Even if there is no consensus over the definition of terrorism and international terrorism in the academic circles, September 11 attacks were classified as a clear cut example of international terrorist attack. The economic damage attacks caused are almost incalculable, concerning the damage on the ground by destruction of the buildings, the influences on stock markets in USA and throughout the world, influence on the air trafficking, damage on business in Manhattan and damages on the insurance industry.<sup>284</sup>

In contrast, July 7 attacks were carried out by 4 men. All are British citizens, one Jamaica origin and three were second generation British citizens whose parents were Pakistani origin.<sup>285</sup> The weapons of terrorist were homemade bombs carried in rucksacks. On the contrary to clear relationship of the 9/11 terrorists to Al-Qaeda, the relationship with Al-Qaeda of the terrorists of the July 7 bombing were more indirectly established. It is believed that the leader of the group was Khan and the relationship with Al-Qaeda was formed in his visit to Pakistan. As Khan's martyrdom video was

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<sup>281</sup> FBI press releases on 19 hijackers <http://www.fbi.gov/pressrel/penttbom/penttbomb.htm> (accessed 12 August 2009)

<sup>282</sup> The target of the declaration was the United States, concerning American military forces in the Arab peninsula, also together with its allies including Israel.

<sup>283</sup> Numbers are taken from the official Public Report of National Commission on Terrorist Attacks upon the United States <http://www.9-11commission.gov/report/index.htm> (accessed 12 August 2009)

<sup>284</sup> American Stock Exchanges were closed on September 11 and did not open until 17 September. When reopened Dow Jones index for example had declined 7.1% in one day. Moreover, the replacing of damaged infrastructure took years and rebuilding of WTC is planned to be finished by the year of 2011. For more detailed information on the damages in Newyork: Patricia Grossi, "The Economic Impacts of the September 11, 2001 Terrorist Attacks", Peace Economics, Peace Science and Public Policy, Vol. 15, Issue. 2, 2009, pp. 1-16

<sup>285</sup> Names and numbers were taken from the "Report of the Official Account of the Bombings in London on 7th July 2005" published by the Stationary Office.

aired in Al-Jazeera on September 1, 2005. The targets of the terrorists were public transportation systems, four different stations, three in subway and one in bus. The coordinated attacks of suicide bombings cause 56 people to die and 700 to injure and all were civilians.<sup>286</sup> There were 16 different nationals died in the attacks, mostly British citizens. Moreover, the day of the attacks on 7 July, there held a G8 summit in Gleneagles Scotland hosted by United Kingdom.<sup>287</sup> The date chosen for the terrorist attack was therefore meaningful. In the martyrdom video of Khan, the aim of the bombings were stated as the course of action of the West to Muslims.

Even if the economic damage occurred in the London bombings is much lesser than the attack on 9/11, it is still too hard to calculate.<sup>288</sup> For comparison however, the examples of stock exchanges can be meaningful. London Stock Exchange did not closed after the attacks, through the day of the attack the decline, even if the panic selling's restricted, were approximately 2%, which recovered almost the next day.<sup>289</sup> The public transportation systems, specifically the stations where the bombs were detonated, were closed almost for a month, however restored afterwards. Moreover, United Kingdom faced another attempt of terrorist attacks just after two weeks of the 7/7 bombings. 21 July incidents, which also aimed to trigger bombs in three metro stations and a bus, did not became a terrorist attack because of the detonation problems in the bombs.<sup>290</sup>

Both United States and United Kingdom was attacked by the cells of Al-Qaeda. Each attack was carried out by Muslim men committing to suicide terrorism in the name of religion. Even if the exact start point of the warfare is not clear, whether

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<sup>286</sup> Stationary Office's report.

<sup>287</sup> The attendants were Canada, Germany, France, Japan, Italy, Russia, USA and UK.

<sup>288</sup> Stationary Office's report

<sup>289</sup> The numbers are taken from the First Coast News. <http://www.firstcoastnews.com/money/news-article.aspx?storyid=40058> (accessed 17 September 2009)

<sup>290</sup> For further information, BBC had a detailed coverage on what happened on 21 July 2005. [http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london\\_blasts/what\\_happened/html/21\\_07\\_05.stm](http://news.bbc.co.uk/2/shared/spl/hi/uk/05/london_blasts/what_happened/html/21_07_05.stm)

American existence in the Arab peninsula, allying with Israel, Iraq war, Afghanistan war or 9/11 terrorist attacks, the sides of the warfare is determined after the devastating attacks on USA in 9/11. London bombings, however, was a touchstone within the warfare. According to martyrdom videos of the one of the terrorists, London bombings were the result of the policies of United Kingdom allying with USA in the war on terror. Even if differences and similarities exist in the terrorist attacks and terrorists, the most remarkable difference, the origins of terrorists was the decisive subsidiary of the constitution of state responses.

#### **4.2. WAR ON TERROR versus WAR ON EXTREMISM**

After the devastating events on 9/11, investigators in USA as quick as possible<sup>291</sup> find out the perpetrators of the terrorist attacks. When the identities of the terrorists was discovered, it became public that terrorists were originated from 4 different states in Arab peninsula, Saudi Arabia, United Arab Emirates, Yemen and Egypt. In contrast, the perpetrators of the 7 July bombings were identified quite faster because of the existence of CCTV systems throughout the London. The acquired information points out that the terrorists of 7 July bombings were homegrown<sup>292</sup>, British citizens. Even if the origins of their parents were not British, three of the perpetrators were second generation British nationals.

Therefore, the sources of the enemies differs in the comparison of the state policies after the attacks. United States declared war on terrorism, started with Afghanistan, where the bases of Al-Qaeda believed to be existed and further continues with Iraq, where weapons of mass destruction is believed to be existed. United States

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<sup>291</sup> According to the 9/11 Commission report, the priority was to crises management and the compensations of the victims. However, the FBI and the Immigration Services had started to following leads on the terrorists on the day of the attack.  
9/11 Commission Report, Chapter 10 “Wartime” p. 327

<sup>292</sup> Parker, 2006 Terrorism Act, p. 725

clearly demonstrated its enemy<sup>293</sup> and look for the enemy outside its territories. The war on terror was established against the evil-doer<sup>294</sup> terrorists of Al-Qaeda. On 7 October 2001, USA declared that together with its allies<sup>295</sup>, it will invoke its right to self defense<sup>296</sup> and will begun military action to Al-Qaeda bases in Taliban-led Afghanistan.<sup>297</sup>

In contrast, the terrorists carried the attack on 7 July bombings in London was British citizens. The weapons were home made bombs. Therefore, the enemy of the United Kingdom is quite different then what USA had faced.

*“The United States realizes that it does not have a homegrown terrorist problem like that of the United Kingdom and Europe, but many jihadists are citizens of France or Britain, and can enter the United States without visas. The United States realizes that Islamic terrorists targeting the United States less on domestic sleeper cells than on foreign infiltration; therefore, it focuses heavily on immigration and surveillance.”*<sup>298</sup>

In contrast, United Kingdom had to deal with domestic sleeper cells together with radical extremism. As Makarenko explains, different organizations<sup>299</sup> in UK “*manipulated social discrimination and poor job opportunities to pull vulnerable*

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<sup>293</sup> In his speech on 16 September 2001, President Bush declares the war on terror, together with the freedom loving people against the evil-doer terrorists and terrorism. <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html> (accessed 12 August 2009)

<sup>294</sup> The description of the enemy was made by the President Bush himself as the good against evil in the war on terrorism. <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html> (accessed 12 August 2009)

<sup>295</sup> Coalition Forces is formed on 20 December 2001, established by over 60 nations in the world. More detailed information can be found in the web site of the United States Central Command. <http://www.centcom.mil/en/countries/coalition/> (accessed 12 August 2009)

<sup>296</sup> The right of self defense was used under the article 51 in United Nations Charter.

<sup>297</sup> Elena Katselli and Sangeeta Shah, September 11 and the UK Response, *The International and Comparative Law Quarterly*, Vol. 52, No. 1, 2003, p. 246

<sup>298</sup> Parker, p. 734

<sup>299</sup> The example of the organizations given by Makarenko is Abu Hamza and Takfiris, whose assets were frozen by USA in 2002 because of the tight relationships with militant Islamic communities.

*individuals towards extremism.*<sup>300</sup> While Tony Blair introduced the Terrorism Act of 2006, he clearly stated in measures immediately to taken that Britain had to fight with radicalism and extremism and also citizens engaged in those.<sup>301</sup> The wars of the United States and United Kingdom, after suicide terrorist attacks stroke homeland, differ regarding the origins of the terrorists and the nature of the terrorist attacks as United Kingdom started War on Extremism, Unites States had started War on Terrorism.

### 4.3. LEGAL ACTIONS

In legal comparison of the state responses, probably the best start point would be to indicate the difference of an existing constitution in United States in contrast to United Kingdom. In United Kingdom, the legal system is based on common law with Anglo-Saxon<sup>302</sup> influence<sup>303</sup>, in which the laws are developed by judges and decisions of courts. There are no codification of laws. The judiciary interprets statutes passed by Parliament and follows its own precedence.<sup>304</sup> United States has also a common law system based on federal court system.<sup>305</sup> However, United States had a constitution adopted on 1787. Therefore, United States, even the executive branch is powerful, it is still bind by the constitution.

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<sup>300</sup> 3. Tamara Makarenko, "International Terrorism and the UK: Assessing the Threat", in *Homeland Security in the UK: Future Preparedness for Terrorist Attack since 9/11*, ed. Paul Wilkinson, (Oxon, Routledge, 2007), p. 49

<sup>301</sup> PM Press Conference; Speech of the Tony Blair on 5 August 2005, <http://edition.cnn.com/TRANSCRIPTS/0508/05/se.01.html> (accessed 17 September 2009)

<sup>302</sup> Anglo-Saxon law is the body of legal principles in England from the 6th century until the Norman Conquest in 1066. Anglo-Saxon law was made up of three components; the laws and collections promulgated by the king, statements of customs and private compilations of legal rules and enactments. Anglo-Saxon legal system rested on the fundamental opposition between folkright and privilege. Also, preservation of peace was an important feature of Anglo-Saxon law, as peace was thought of as the rule of an authority within a specific region.

<sup>303</sup> For further information <http://www.loc.gov/law/help/uk.php>

<sup>304</sup> Congress Library: Legal Research Guide: United Kingdom, <http://www.loc.gov/law/help/uk.php> (accessed 17 September 2009)

<sup>305</sup> World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (accessed 17 October 2009)

After terrorist attacks targeted the homeland of the USA and UK, the legal responses were formed to cope further threats posed by terrorism. After the 9/11 attacks, United States passed the Patriot Act on 26 October 2001. The act was considerably extensive with its ten titles of measures against the threat of terrorism. In contrast, United Kingdom passed a series of Terrorism acts starting in 2000, even before the September 11 attacks. By the Terrorism Act 2000, UK broadened the definition of terrorism, proscribed terrorist organizations together with associates of Northern Ireland and increased the detention processes to 7 days. Moreover, like many other states, United Kingdom also replied to attacks on September 11 with a new antiterrorist legislation. The Antiterrorism, Crime and Security Act of 2001 introduced indefinite detention process for non citizens as suspected terrorists, which constitute a very similar point of view to the Patriot Act. However, because of the discriminative nature, Law Lords<sup>306</sup> ruled against the part concerning indefinite detention of non-citizens.

Therefore, in 2005 Prevention of Terrorism Act was produced. The aim was to deal with the disputed circumstance occurred because of the withdrawal of the indefinite detention process for non citizens. The act introduced control orders for suspected terrorists. The act designed a kind of a house arrest together with some specific restrictions, for those of suspects of terrorism. Even if many legislative acts was produced to since 2000, the acts were not enough to prevent the terrorist attacks on 7 July 2005.

After the bombings in London, a new legislative act was introduced as a reaction to terrorist attacks, which gained Royal Ascent on 30 March 2006. In comparison to the reaction of United States to terrorist attacks in homeland, United Kingdom had a longer process to introduce an antiterrorism act regarding attacks in homeland. Moreover, the process of the passage of the Terrorism Act of 2006 was not easy to manage for Government and for Prime Minister Blair. The content of the Act of 2006 was rigorously debated, which lead to the first defeat of the Prime Minister Blair

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<sup>306</sup> Within the House of Lords, Law Lords in United Kingdom's legal system are the highest body of appeal.



in Parliament. The detention processes, the restrictions on freedom of speech was the most debated topic within the act. In comparison to the support USA Patriot Act gains in the Houses<sup>307</sup>, Terrorism Act of 2006 lead decrease in the support to the government.

#### **4.3.1. BASIC RIGHTS**

While considering the balance in a society between freedom and security, it is not an unexpected outcome that terrorism disrupt the balance in many sides. However, not only terrorism challenges the balance between freedom and security but counter terrorism efforts also does. Considering the Patriot Act of USA and the Terrorism Act of 2006 by UK, it will not be wrong to say that civil liberties had eroded seriously in both sides of the Atlantic.<sup>308</sup> To compare the challenges posed by anti terrorism laws to civil liberties in United States and United Kingdom, three basic headings are chosen. The influences of anti terrorism legislations on detention processes, surveillance procedures and freedom of speech will be compared in respect to Patriot Act and Terrorism Act of 2006.

##### **4.3.1.1. Detention Processes**

The detention processes was one of the most debated topics within the anti terrorism legislations both in United States and United Kingdom. After the perpetrators of the September 11 was revealed, as all were not USA citizens, anti terrorism legislation had targeted more of the non citizen population within the United States. By the passage of Patriot Act, there were almost an unanimous decision on the provisions the act introduced. In the Patriot Act, new detention provisions were introduced for

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<sup>307</sup> Patriot Act was passed almost unanimously in both houses, specifically gained in the Senate 98-1, and 357-66 in the House

<sup>308</sup> McGhee, *Deportation, Detention & Torture*, p.101.

The same argument can also be found in the workings of Moran, Haque, Wade and Vlcek as anti-terrorist policies lead to gradual erosion of civil liberties within the liberal democracies.

aliens whom suspected to commit terrorist actions threatening United States national security. Moreover, the detention processes were indefinite for suspected alien terrorists, only the requirement of Attorney General's review is needed every six months.<sup>309</sup> Even if many criticisms were directed against the provision of indefinite detention of aliens, most of them emerge after the passage of the act. Also, the criticisms increased in time with the debates of Guantanamo Bay and continuation of War on terror.

The detention processes play a major role in the debates in the United Kingdom anti terrorist legislations. After the attacks on September 11, the United Kingdom passed the Anti-Terrorism, Crime and Security Act of 2001. The act also enabled the aliens, suspected to engage in terrorist activities, to be detained for indefinite periods. However, the Law Lords ruled against the discriminatory nature of the act and dismissed the parts introducing indefinite detention processes for non citizens. The Human Rights Act 1998 had also an important role in the withdrawal of the indefinite detention processes, which was produced to comply the European Convention on Human Rights. Even if the United Kingdom does not have a written constitution to clarify basic Human Rights, the Human Rights Act of 1998 had been binding in this process. According to Moran “[withdrawal] *decisions have relied not only on common law but heavily on the Human Rights Act 1998 and it is an interesting conjecture as to what the situation would have been in the absence of the Act.*”<sup>310</sup>

However, this was actually the starting point of the debate of detention processes in United Kingdom. The seven days of detention process without charge was first introduced in the Terrorism Act of 2000, however the process gradually has increased by the government efforts. Seven days was doubled to fourteen days in the Criminal Justice Act of 2003 and again doubled to twenty-eight days with the Terrorism Act of 2006. In addition, the debate of detention processes had reached its peak after the London bombings in 7 July 2005. The government proposed 90 days of detention according to the advise of the Metropolitan police. The proposal of the government lead

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<sup>309</sup> USA Department of Justice, Patriot Act of 2001 [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf) (accessed 12 August 2009)

<sup>310</sup> Moran, p. 347

to major debates in the Houses and the bill did not get consent until its third reading with the withdrawal of 90 days of detention period proposal.

The remarkable difference in my point of view is not the length of the detention processes in comparison but the implementation of the procedures. Whereas United States uses the indefinite detention processes for non citizens only, United Kingdom implements the 28 days of detention processes ex-charge without the distinction of citizen or non citizen. The difference roots in the nature and the perpetrators of the terrorist attacks and also roots to the ties of United Kingdom in European Union.

#### **4.3.1.2. Surveillance**

Surveillance procedures had also been an important topic in anti terrorism measures both in United States and United Kingdom. However, the contents of the debates differs concerning individual privacy. The basic topic in the criticisms of surveillance has been the erosion of individual privacy in United States. The phone companies for example have been keeping private phone records of the customers and provide those information to NSA.<sup>311</sup> As another example CCTV usage in public domains was criticized in United States as a challenge to individual privacy. According to Moran, even if innocent citizens do not directly realize the wide usage of surveillance technologies, dataveillance had increased in daily lives and individual autonomy is challenged therefore.<sup>312</sup>

In contrast, surveillance by CCTV cameras is much more widespread in United Kingdom. According to Beckman, in comparison to the criticism of the CCTV camera usage in the United States based upon rights of privacy while in public, the usage of CCTV cameras in the UK is mostly accepted by the British citizens as a necessary

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<sup>311</sup> Moran, p. 342

<sup>312</sup> Ibid. p. 351

sacrifice to the national security.<sup>313</sup> Moreover, according to Beckman in the U.K., however, there is common consensus over the usage of CCTV cameras and also consensus on that their usage does not violate any inherent right of privacy.<sup>314</sup> However, the debate in UK concentrates more on the ways of the usage in information gathered through the surveillance of CCTV cameras. *“Most of the controversy in the U.K. deals not with the government’s ability to capture an individual’s image in public, but rather how the government portrays or utilizes the data.”*<sup>315</sup> Moreover, the debates on surveillance in United Kingdom contains the effectiveness of the surveillance systems. As Wade argues the surveillance systems in London provide post facto information about the terrorist attack on 7 July, however the systems were introduced with the aim of prevention of terrorist engagements and crimes.<sup>316</sup>

While considered the history of terrorism in the United Kingdom with IRA, it will not be surprisal that the persuasion of the people living in the London on preventive features of the surveillance systems would be more successful then United States. As the start of the CCTV usage is triggered by an IRA attack on the Bishopgate in 1993, the debates on surveillance systems and procedures is not as new as it is in United States.

#### **4.3.1.3. Freedom of Speech**

Another aspect of the debates on anti terrorism laws has been the challenges put on the right of freedom of speech. As the ‘glorifying of terrorism’ became a crime in the Terrorism Act of 2006, it was highly criticized on damaging freedom of speech. Also, criticisms on damage done to freedom of speech by Patriot Act has articulated many times by civil society organizations. Even if the level of criticisms differ, it will not be

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<sup>313</sup> Beckman, Comparative Legal Approaches, p. 82

<sup>314</sup> Ibid.

<sup>315</sup> Beckman, p.82

<sup>316</sup> Wade, Fear versus Freedom, p. 10

wrong to state that civil liberties especially freedom of speech had been damaged by the anti terrorism legislations.

In United States, there is no definite restriction on freedom of speech in the antiterrorism laws, in contrast the right of freedom of speech is protected by the constitution, by the first amendment. However, there are criticisms on the implementation of Patriot Act that damages the freedom of speech. Mostly, the challenges on freedom of speech is criticized in USA on the objections of war in Iraq and anti-war criticisms.<sup>317</sup> American Civil Liberties Union criticizes the Patriot Act on damaging civil liberties and gives an example of a conference held in the University of Michigan. A conference on pro-Palestinian views had been tried to organized by Palestinian Solidarity Movement in Michigan university's Ann Arbor campus. However, the conference was tried to stop by some pro-Israeli students of the on the accusations of anti-Semitism and promoting terrorism.<sup>318</sup> Even a lawsuit was filled in state court to prevent the composition of the event, which was dismissed later.<sup>319</sup> However, the university defended the movement on the basis of university's policies on freedom of speech. Even criticisms exist on the challenges antiterrorism legislations posed, it do not reach the level of debate in United Kingdom.

In contrast to the legislation in United Kingdom, USA Patriot Act does not directly put restrictions on the glorification or incitement of terrorism, which also is a result of the features of the terrorists organizing the attacks. According to Parker, USA do not have the problem of homegrown terrorists like United Kingdom and Europe.<sup>320</sup> Moreover, United States has faced terrorism carried by foreign infiltration and this have

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<sup>317</sup> Many criticisms were executed on the war in Iraq as a part of war on terror, mostly after the falsification of the existence of weapons of mass distraction. However, this topic will not be a part of this theses and is given on informative basis.

<sup>318</sup> ACLU Report Freedom Under Fire: Dissent in Post-9/11 America May 2003 [www.aclu.org](http://www.aclu.org)

<sup>319</sup> Report of the AAUP Special Committee on Academic Freedom and National Security in a Time of Crisis, October, 2003 <http://www.aaup.org/AAUP/comm/rep/crisistime.htm> (accessed 17 September 2009)

<sup>320</sup> Parker, p.734

been the reason of the Anti-terror measures heavily focus on immigration and surveillance.<sup>321</sup> “Additionally, the United States does not have to address the problem of radical Muslims praising terrorists or glorifying terrorism.”<sup>322</sup> According to Parker, the Terrorism Act of 2006 was conceptualized on the glorification and indirect incitement of terrorism because of the problem of homegrown terrorists and further sleeper cells. Regardless of the reasons, the Terrorism Act of 2006 put direct restrictions on freedom of speech. In comparison of United Kingdom to United States on anti terrorism measures, according to Parker, “Despite similar legal backgrounds and similar stances on the war against terror, the United Kingdom's counterterrorism legislation has gone much farther than the United States' to restrict civil liberties, particularly the freedom of speech.”<sup>323</sup>

In addition, the restrictions on freedom of speech in Terrorism Act of 2006 are criticized by academics in the comparison of United States to violate the constitution. According to Cram, “The new provisions raise some acute issues in freedom of expression. At the out-set, absent a demonstrable and substantial threat of immediate violence, a similar proposal in the United States would be deemed to violate the First Amendment rights of speakers and listeners and be judged unconstitutional.”<sup>324</sup> Moreover, Parker criticizes the same point of the Terrorism Act of 2006 in comparison to USA as the act would be unconstitutional. “In the United States, circumventing the First Amendment's express protection of free speech...speech may not be restricted unless made to produce imminent lawless action and is likely to incite or produce such action; laws restricting content are also unconstitutional. Therefore, the Terrorism Act 2006 would be unconstitutional in the United States.”<sup>325</sup> Even if the debates are ongoing

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<sup>321</sup> Parker, p.734

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

<sup>324</sup> Cram, Regulating the Media, p. 345

<sup>325</sup> Parker, p. 722-745

on the restrictions of civil liberties especially on freedom of speech, United Kingdom and United States has different stands on the issue.<sup>326</sup>

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<sup>326</sup> Moreover on the debate of restrictions on freedom of speech, the continental Europe has the like vision of the United Kingdom. The European Court of Human Rights has declared a decision on the support of restriction on freedom of speech siding with the United Kingdom measures lately. In the case of Herri Batasuna and Batasuna versus Spain, the court declared that condemnation of terrorism is a necessity for the preservation of democracy and not to condemn a terrorist organization or a terrorist attack publicly is a passive support for terrorism. The part of the decision is followed: “In view of the situation that had existed in Spain for many years with regard to terrorist attacks, those links could objectively be considered as a threat for democracy. In the Court’s opinion, the Supreme Court’s findings had to be placed in the context of an international wish to condemn the public defense of terrorism. In consequence, the Court considered that the acts and speeches imputable to the applicant political parties, taken together, created a clear image of the social model that was envisaged and advocated by the parties, which was in contradiction with the concept of a democratic society.” For further information on the case and the court’s decision:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=25803/04&sessionid=42253504&skin=hudoc-pr-en> (Last access 24 December 2009)

## 5. CONCLUSION

Terrorism in the new millennium has further challenged the nature of the liberal states. The uncertainty in the nature of terrorism challenged basic understanding of societal security. The possible civil targets of the terrorism, the unidentifiable places of target and the indistinct features of the adversary causes states to further pursuit of the security. However, the cost of this pursuit mostly paid of with the liberties in the society. Tightening laws on liberties such as freedom of speech and assembly, detentions without charge for indefinite processes are the result of the various terrorist attacks in the new millennium. States, while by prerogative try to provide security, challenge the balance in a society between freedom and security.

The recruit of the special antiterrorism laws pose challenges to civil liberties. In the experience of the United States, the attack of September 11 lead a major changes in the society. Two wars, Afghanistan and Iraq are still fighting after the attacks. Thousands of people are dead, both in the attacks and in the wars. The budget had dramatically increased for the measures to counter terrorism. Within the society, civil liberties was damaged by the Patriot Act introducing new procedures in daily life. The basic human rights were also damaged as most of the noncitizen, specifically immigrants from Middle East face with discrimination. The basic right of Habeas Corpus was suspended in the seek of security from further terrorist attacks. The immigrants in the society suffer not only from detention processes but also from surveillance and dataveillance.

Moreover, hate crimes had also increased after the terrorist attacks. Also, the associations are affected from the changing procedures. Associations organized any form of political movements, protests or activism were seen suspicious. Donative associations also affected from the societal discriminative perspective. Moreover, considering the individual privacy, surveillance procedures are also challenging in the light of civil liberties. Electronic surveillance and secret physical searches are criticized



as possible to be abusive. In addition, by the financial surveillance procedures, record keeping become compulsory, which lead to increase of criticisms on intervention to individual privacy. By the new dataveillance procedures, another point of the debate was the usage of the data collected because every data collected is personal data for someone according to Müller.<sup>327</sup> In that sense, individual liberties in dataveillance procedures are challenged by the antiterrorism laws.

In the experience of United Kingdom, whom was familiar with terrorism because of the IRA problem, there still have a change in the society and state after July bombings but not as major in USA. Both the scale of attacks and lethality has had a role in the responses of states. However, 7 July bombings and 21 July incidents were the first time United Kingdom had ever faced with the suicide terrorism, which seek to kill masses in contrast to IRA. Moreover, the terrorists were British citizens, which causes a dramatic effect after the attacks. The cells within the state from citizens mostly shaped the state response of United Kingdom. From 2000, United Kingdom recruits special anti-terrorism laws, however the laws and precautions were not enough to prevent a terrorist attack in their homeland.

After the 7 July bombings and 21 July incidents, a new legislation was introduced in counter terrorism efforts. However, The Terrorism Act of 2006 lead to many debates in its passage as a law. The proposed 90 days of detention period without charge by government was challenged in the Houses and instead 28 days was approved, which was the first defeat of the Blair government in the office. Before the Terrorism Act of 2006, United Kingdom introduced four other anti-terrorism legislations in its pursuit of security, the Terrorism Act of 2000, the Anti-Terrorism, Crime and Security Act in 2001, the Criminal Justice Act in 2003, the Prevention of Terrorism Act in 2005. As the attacks in the London was carried out by British nationals, the anti-terrorism legislation in 2006 therefore try to fight against religious extremism. In the Act of 2006, the encouragement and glorifying of terrorism, preparation of terrorist acts and training

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<sup>327</sup> Müller, p.532

was banned, which led to one of the most debated topics in the society. The freedom of speech was challenged by the new offense of glorifying or encouraging terrorism. Therefore the balance between freedom and security in the United Kingdom is criticized to be damaged by the act.

In addition, the Operation Kratos is analyzed in the aspect that how further counter terrorism measures can be led in society. The existence of the state is realized in order to provide security to its citizens. However, the example of Menezes showed that to cope against suicide terrorism is not an easy task to realize and while trying to counter terrorism, the state may fail to provide its first reason to exist, protecting the life of its citizens. Moreover, Operation Kratos was criticized mostly in challenging civil liberties as there is an execution without trial or any proven criminality. Another remarkable point of criticisms show that the police strategy of Operation Kratos is too costly for civil liberties whereas ineffective in countering suicide terrorism. As the strategy was formulated after September 11 attacks, the operation did not prevent the 7 July bombings neither 21 July incidents, however is mostly remembered by the wrongful killing of Menezes instead.

To compare the state responses after terrorist attacks in their homeland, first the terrorists and attacks are compared. The most remarkable difference is the lethality of the attacks and the perpetrators. In both attacks the damage was incalculable however, in London the damage was restored almost within the month, whereas in Manhattan the collapsed buildings are still not renewed, even if the damage done to the Pentagon Building is restored. As another point, even if both of the attacks were perpetrated by Al-Qaeda; the United States was attacked by the enemy outside, whereas the United Kingdom was attacked from inside. Therefore while the United States is fighting the war against terrorism, the United Kingdom is fighting the war against extremism.

Moreover, while comparing the anti-terrorism legislations recruit after the attacks in homeland, it is important to note that even if both states are liberal democracies; United Kingdom does not have a constitution. United Kingdom survives over its common law based legal system, whereas United States had have a constitution since its establishment in 1787. Even if there is no constitution in UK to provide protection of human rights, in 1998, United Kingdom became party to European Convention on Human Rights, which has also a binding effect for United Kingdom to comply. However, it is always possible to withdraw from the convention, therefore it is not as binding as the constitution in United States. In addition, it is noteworthy that United States is executing indefinite detention processes without trial to non citizens according to the Patriot Act, whereas the indefinite detention processes for non citizens was not approved in United Kingdom because of the discriminatory nature but the 28 days of detention without trial is applicable to anybody suspected of terrorism in United Kingdom.

Another point in the comparison is the surveillance and dataveillance procedures in United States and United Kingdom. Surveillance and dataveillance in public domains meet with many criticisms in United States as challenging to individual privacy and liberties. In contrast, surveillance in public domains did not criticized as much in United Kingdom. As the surveillance with CCTV cameras started first because of an attack carried by IRA, it is seen as a necessary sacrifice for national security in United Kingdom.<sup>328</sup> Therefore, surveillance in public domains do not seem like any violation of individual privacy in UK. However, it is important to note that even if surveillance procedures are introduced as a preventive measure in counter terrorism policies and strategies, the images captured by cameras are only used post facto in the attacks in United Kingdom.

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<sup>328</sup> Beckman, p.82

Anti-Terrorism legislations had also posed challenges on the freedom of speech. In United Kingdom, the Terrorism Act of 2006 created the new offense of glorifying terrorism. Any statement directly encourages or glorifies terrorism is banned according to the legislation. In United Kingdom the ban is a direct restriction of freedom of speech, in contrast; any legislation restricting freedom of speech in United States will be unconstitutional as it will be contradicting with the first amendment of the constitution protecting the freedom of speech. However, there were also criticisms on the Patriot Act arguing the legislation challenges the freedom of speech because of its implementations. The criticisms in United States on Patriot Act did not increased as much in the United Kingdom in the Terrorism Act of 2006. As a noteworthy point to compare the level of criticisms, Parker and Cram argues that a legislation like the Terrorism Act of 2006 putting direct ban on freedom of speech would be unconstitutional in United States and therefore could not be produced.<sup>329</sup>

As the modern terrorism, mostly after the millennium, changing its face and the phase in every attack, it became harder for liberal states to counter. Until September 11 attacks, the role of the commercial airlines in terrorist attacks was only hijacking; however after the attacks in 9/11, it is seen that civilian airplanes themselves could be used as weapons against specific targets. As the knowledge had changed, the counter terrorism measures and anti-terrorism legislations have changed therefore. While comparing state responses to terrorism after two major terrorist attacks in 9/11 and 7/7, it is notable that the first casualties of the attacks in state level are the civil liberties and freedom. The pursuit of further security from the enemy, considering the suicide terrorism, leads a dramatical change in the state reflexes. As the enemy had killed himself in the attack, it is outside from the ordinary crime and punishment procedures, therefore the countering measures circle around preventive and preemptive strategies. Prevention against any further attack, which nature is totally unpredictable contradicts with the nature of liberal states.

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<sup>329</sup> Parker, p.745; Cram, p.345

The unpredictability in any terrorist attack contradicts with the principles of liberal state, egalite, fraternite and liberte. The balance between freedom and security is therefore damaged by the unpredictable nature of the terrorism. The counter terrorism strategies, basing on prevention, challenges and damages the equilibrium on the side of freedom. As the anti-terrorism legislations try to overcome further unpredictable attacks, the circle of freedom is narrowed. Considering the state responses of United States and United Kingdom, they have their similarities in their anti-terrorism legislations. The extended time for detention processes, the extended surveillance procedures, extended dataveillance techniques, tightening of immigration laws are some of the examples. However, the spirit of the anti-terrorism legislations differs according to the attack faced.

As United States were attacked by the enemy from outside, the Patriot Act was formulated considering the enemy, as any outsiders has began to seen suspicious. Whereas, United Kingdom was attacked by its own citizens. Therefore, the Terrorism Act of 2006 is formulated considering the features of the terrorists. In the act of 2006, there is a direct ban on freedom of speech, as glorifying of terrorism became an offense, because it is believed that terrorism is spreading within the society through extremism within the religious communities. It is where prevention had to be started according to authorities; in contrast the danger in United States is coming from the outsiders, therefore non citizens are the starting point of the prevention.

As a conclusion, both the terrorist attacks and the anti-terrorism legislations damages the balance in a society between freedom and security. The terrorist attacks damages the security whereas anti-terrorism legislations damages the nature of the liberal states by overriding civil liberties and freedom. Therefore, the dilemma in the process for liberal states is endless as there would not be absolute security from terrorism and there would not be enough prevention.

## BIBLIOGRAPHY

"9/11." Press Releases. <http://www.fbi.gov> (accessed August 12, 2009).

"AAUP: Academic Freedom and National Security in a Time of Crisis ." American Association of University Professors. <http://www.aaup.org/AAUP/comm/rep/crisistime.htm> (accessed September 17, 2009).

"American Civil Liberties Union ." Press Releases. <http://www.aclu.org> (accessed August 12, 2009).

"Anti-Terrorism, Crime and Security Act 2001." Office of Public Sector Information. <http://www.opsi.gov.uk> (accessed September 17, 2009).

Ball, Howard. *Usa Patriot Act of 2001 Balancing Civil Liberties and National Security*. Santa Barbara, CA: ABC-CLIO, 2004.

Beckman, James. *Comparative Legal Approaches to Homeland Security and Anti-Terrorism* . Abingdon, Oxon, GBR: Ashgate Publishing, 2007.

Brysk, Allison, and Gershon Shafir. *National Insecurity and Human Rights: Democracies Debate Counterterrorism*. Berkeley: University of California Press, 2007.

Buzan, Barry. "Will the Global War on Terrorism Be the New Cold War." *International Affairs* 82, no. 6 (2006): 1101-1118.

Cainkar, Louise. "No Longer Invisible: Arab and Muslim Exclusion after September 11." *Middle East Report* 224 (2002): 22-29.

Clarke, Charles. "Terrorism Bill - The Government's Approach | Home Office." Press | Home Office. <http://press.homeoffice.gov.uk/Speeches/speeches-archive/12-05-sp-terrorism-bill> (accessed September 17, 2009).

Cole, David. "Enemy Aliens." *Stanford Law Review* 54, no. 5 (2002): 953-1004.

Conery, Ben . "Justice: Reauthorize 3 Patriot Act Tactics." *Washington Post*, September 15, 2009. <http://www.washingtontimes.com/news/2009/sep/15/justice-reauthorize-3-patriot-act-tactics/> (accessed December 22, 2009).

Cortright, David, George A. Lopez, Alistair Millar, and Linda Gerber-Stellingwerf. "Friend not Foe: Civil Society and the Struggle against Violent Extremism." *Report to Cordaid from the Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame* 1 (2008): 1-25.

Cram, Ian. "Regulating the Media: Some Neglected Freedom of Expression Issues in the United Kingdom's Counter-Terrorism Strategy, Terrorism and Political Violence." *Terrorism and Political Violence* 18, no. 2 (2006): 335-355.

Cram, Ian. *Contested Words: Legal Restrictions on Freedom of Speech in Liberal Democracies*. Abingdon, Oxon, GBR: Ashgate Publishing, 2006.

"Criminal Justice Act." Office of Public Sector Information. <http://www.opsi.gov.uk> (accessed September 17, 2009).

"Declaration of Human Rights." UN. <http://www.un.org> (accessed August 12, 2009).

"Declaration on Operation Kratos." Metropolitan Police Service . <http://www.met.police.uk/> (accessed September 17, 2009).

Doyle, Charles . "Congressional Research Center USA Patriot Act Reauthorization." Air University. [www.au.af.mil/au/awc/awcgate/crs/rs22216.pdf](http://www.au.af.mil/au/awc/awcgate/crs/rs22216.pdf) (accessed December 22, 2009).

Edkins, Jenny. "Forget Trauma? Responses to September 11." *International Relations* 16 (2002): 243-256.



Enders, Walter, and Todd Sandler. "September 11 and Its Aftermath." *The International Studies Review* 7, no. 1 (2005): 165-170.

"European Markets Sag After London Blasts." First Coast News. <http://www.firstcoastnews.com/money/news-article.aspx?storyid=40058> (accessed September 17, 2009).

"Federal Bureau of Investigation - About Us - 9/11 Investigation (PENTBOMB)." FBI. <http://www.fbi.gov/pressrel/penttbom/penttbomb.htm> (accessed September 17, 2009).

Frank, Andre Gunder. "Coup d'etat in Washington." *Economic and Political Weekly* 38, no. 32 (2003): 3356-3359.

Freeman, Michael. *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror*. Westford: Praeger, 2003.

Gearty, Conor. "Terrorism and Human Rights." *Government and Opposition* 42, no. 3 (2007): 340-362.

"Government Printing Office." Senate's Intelligence Report. <http://www.gpoaccess.gov> (accessed August 12, 2009).

Grossi, Patricia. "The Economic Impacts of the September 11, 2001 Terrorist Attacks."

*Peace Economics Peace Science and Public Policy* 15, no. 2 (2009): 1-16.

Guelke, Adrian. *Terrorism and Global Disorder*. London: I. B. Tauris, 2006.

"H.R. 3845." The Library of Congress. [thomas.loc.gov/cgi-bin/bdquery/z?](http://thomas.loc.gov/cgi-bin/bdquery/z?)

[d111:HR03845:@@@D&summ2=m&/bss/111search.html](http://d111:HR03845:@@@D&summ2=m&/bss/111search.html) | (accessed

December 21, 2009).

Haque, Shamsul . "Government Responses to Terrorism: Critical Views of Their Impact

on People and Public Administration." *Public Administration Review* 62, no.

Special Issue: Democratic Governance in the Aftermath of September 11

(2002): 170-180.

Hardin, Russell. "Civil Liberties in the Era of Mass Terrorism." *The Journal of Ethics* 8,

no. 1 (2001): 77-95.

"Human Rights Watch." Report on Human Rights Abuses of Post-September 11. [http://](http://www.hrw.org)

[www.hrw.org](http://www.hrw.org) (accessed August 12, 2009).

Jervis, Robert. "An Interim Assessment of September 11: What Has Changed and What

Has Not?." *Political Science Quarterly* 117 (2002): 37-54.

Katselli, Elena, and Sangeeta Shah. "September 11 and UK Response." *The International and Comparative Law Quarterly* 52, no. 1 (2003): 245-255.

Kempf, Wilhelm F., and Samuel Peleg. *Fighting Terrorism in the Liberal State: An Integrated Model of Research, Intelligence and International Law (NATO Advanced Research Workshop on Fighting Terrorism in the Liberal State: Security Through Science Series. E: Human and Societal)*. Amsterdam: IOS Press, 2006.

Kennison, Peter , and Amanda Loumansky. "Shoot to Kill: Understanding Police Use of Force in Combatting Suicide Terrorism." *Crime Law and Social Change* 47 (2007): 151-168.

Klausen, Jytte. "British Counter-Terrorism After 7/7: Adopting Community Policing to the Fight Against Domestic Terrorism." *Journal of Ethnic and Migration Studies* 35, no. 3 (2009): 403-420.

"Legal Research Guide: United Kingdom - Law Library of Congress ." Library of Congress Home. <http://www.loc.gov/law/help/uk.php> (accessed September 17, 2009).

McGhee, Derek . "Deportation, Detention & Torture by Proxy: Foreign National Terror Suspects in the UK." *Liverpool Law Review* 99 (2008): 99-115.

- Messinger, Michael . "MPA: Committees: MPA reports - 23 Feb 06 (08)." MPA: Metropolitan Police Authority. <http://www.mpa.gov.uk/committees/mpa/2006/060223/08/> (accessed September 17, 2009).
- Moore, Kathleen . "A Part of US or Apart from US?: Post-September 11 Attitudes toward Muslims and Civil Liberties." *Middle East Report* 224 (2002): 32-35.
- Moran, Jon. "State Power in the War on Terror: A Comparative Analysis of the UK and USA." *Crime, Law and Social Change* 44 (2005): 335-359.
- Müller, Vincent C.. "Would you mind being watched by machines? Privacy concerns in data mining." *AI & SOCIETY* 23, no. 4 (2009): 529-544.
- "NATO ." News. <http://www.nato.int> (accessed August 12, 2009).
- "National Commission on Terrorist Attacks Upon the United States." National Commission on Terrorist Attacks Upon the United States. <http://www.9-11commission.gov/report/index.htm> (accessed September 17, 2009).
- Niskanen, William A.. "Several Costs of Responding to the Threat of Terrorism." *Public Choice* 128 (2006): 351-356.

"Official Documents." Report of the Official Account of the Bombings in London.

<http://www.official-documents.gov.uk> (accessed August 12, 2009).

Parker, Ellen. "Implementation of the UK Terrorism Act 2006 - The Relationship Between Counterterrorism Law, Free Speech and the Muslim Community in the United Kingdom versus the United States." *Emory International Law Review* 21 (2007): 711-757.

Posner, Eric A., and Adrian Vermeule. "Emergencies and Democratic Failure." *Virginia Law Review* 92, no. 6 (2006): 1091-1146.

Posner, Eric A., and Adrian Vermeule. *Terror in the Balance: Security, Liberty, and the Courts*. New York: Oxford University Press, USA, 2007.

"President: Today We Mourned, Tomorrow We Work." The White House. <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010916-2.html> (accessed September 17, 2009).

Review, The Harvard Law. "Responding to Terrorism: Crime, Punishment and War." *Harvard Law Review* 115, no. 4 (2002): 1217-1238.

"S.1692." The Library of Congress. [thomas.loc.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdURqC:@@@D&summ2=m&/bss/111search.html](http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdURqC:@@@D&summ2=m&/bss/111search.html) (accessed December 22, 2009).

Shephard, Mark. "Parliamentary Scrutiny and Oversight of the British War on Terror™: From Accretion of Executive Power and Evasion of Scrutiny to Embarrassment and Concessions." *The Journal of Legislative Studies* 15, no. 2 (2009): 191-218.

Simons, Steven. "The New Terrorism: Securing the Nation against a Messianic Foe." *The Brookings Review* 21, no. 1 (2003): 18-24.

Smith, A.T.H.. "Balancing Liberty and Security? A Legal Analysis of United Kingdom Anti-Terrorist Legislation." *European Journal on Criminal Policy and Research* 13 (2007): 73-83.

"Speeches and Statements." Home Office Press Office.

<http://press.homeoffice.gov.uk/Speeches/speeches-archive/12-05-sp-terrorism-bill.html> (accessed September 17, 2009).

"Statements 2009." *World Health Organization*. [www.who.int/mediacentre/news](http://www.who.int/mediacentre/news) (accessed 24 December 2009)

Swain, Steve. "MPA: Committees: MPA reports - 27 Oct 05 (13)." MPA: Metropolitan Police Authority. <http://www.mpa.gov.uk/committees/mpa/2005/051027/13/?qu=operation%20kratos&sc=2&ht=1> (accessed September 17, 2009).

"Terrorism Act of 2000." Office of Public Sector Information. <http://www.opsi.gov.uk/> (accessed September 17, 2009).

"The Prevention of Terrorism Act 2005." Office of Public Sector Information. <http://www.opsi.gov.uk> (accessed September 17, 2009).

"The Terrorism Act 2006." Office of Public Sector Information. <http://www.opsi.gov.uk> (accessed September 17, 2009).

"The World Factbook." CIA Library The World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (accessed October 17, 2009).

"Tony Blair Holds News Conference on London Terror Attacks." CNN.com International . <http://edition.cnn.com/> (accessed September 17, 2009).

"USA Patriot Act 2001." U.S. Government Printing Office. [frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf) (accessed December 22, 2009).

"USA Patriot Act 2001." USA Department of Justice. [frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ056.107.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ056.107.pdf) (accessed October 17, 2009).

"United States Central Command - Coalition Countries." United States Central Command. <http://www.centcom.mil/en/countries/coalition/> (accessed September 17, 2009).

"United States Senator Patrick Leahy of Vermont." Press Releases. <http://leahy.senate.gov> (accessed August 12, 2009).

Vermeule, Adrian. "Emergency Law Making after 9/11 and 7/7." *University of Chicago Law Review* 75, no. 3 (2008): 1155-1190.

Vlcek, William. "A Leviathan Rejuvenated: Surveillance, Money Laundering, and the War on Terror." *International Journal of Politics, Culture and Society* 20 (2008): 21-40.

Wade, Marianne L.. "Fear vs Freedom Post 9/11A European Debate: Introduction." *European Journal on Criminal Policy and Research* 13, no. 1-2 (2007): 3-12.

Walt, Stephen M.. "Beyond Bin Laden: Reshaping U.S. Foreign Policy." *International Security* 26, no. 3 (2001): 56-78.



"White House." Press Releases. <http://georgewbush-whitehouse.archives.gov> (accessed August 12, 2009).

Wilkins Newman, Deborah . "September 11: A Societal Reaction Perspective." *Crime, Law and Social Change* 39 (2003): 219-231.

Wilkins Newman, Deborah . "September 11: A Societal Reaction Perspective." *Crime, Law and Social Change* 39 (2003): 219-231.

Wilkinson, Paul . *Homeland Security in the UK: Future Preparedness for Terrorist Attack since 9/11*. New York: Routledge, 2007.

Wilkinson, Paul. *Terrorism Versus Democracy: The Liberal State Response (Cass Series: Political Violence)*. New York: Routledge, 2006.

Williams, Niskanen. "Several Costs of Responding to the Threat of Terrorism." *Public Choice* 128 (2006): 351-356.

Wright, Michael. "Coroner's Inquest into the death of Jean Charles de Menezes."

Coroner's Inquest into the death of Jean Charles de Menezes. <http://www.stockwellinquest.org.uk/> (accessed September 17, 2009).

Yeh, Brian T., and Charles Doyle. "CRS Report for Congress." Federation of American Scientists. [www.fas.org/sgp/crs/intel/RL33332.pdf](http://www.fas.org/sgp/crs/intel/RL33332.pdf) (accessed December 21, 2009).

*Report of the 7 July Review Committee.* London: Greater London Authority, 2006.

*Report of the Official Account of the Bombings in London on 7th July 2005.* London: Stationery Office Books (Tso), 2006.

*Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/11.* New York: Routledge, 2009.