# The War on Terror or the War on Civil Liberties: The State, Society and the Civil Liberties Since 2001

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## Abstract

*Democracies and civil liberties can only prosper within peaceful and nonviolent societies, and violent conflict and terror often harm the political and social atmosphere that they need to exist. Since the terror attacks on American soil in 2001 shocked the world, many states, especially Western democracies have started and fought an internal and external war on terror. It is unclear whether a definitive success against terrorism could have been achieved in the past, as much as it is the case for the future. On the other hand, the events including terrorism and counter-terrorism measures have had tremendous setbacks on civil liberties worldwide. These setbacks can largely be explained within, and as the result of, three correlated phenomena; rising statist tendencies in domestic and international politics, anti-terror legislation that has been made to endorse the former and manipulated society or supportive groups. Based on selected cases of academia and the press, this paper, therefore, concludes that the threats and setbacks to civil liberties come not only from terrorist networks, but also from the state and society.*

***Keywords:*** *State, War on Terror, Power Politics, Anti-terror Legislations, Civil Liberties*

## INTRODUCTION

By and large many post-9/11 political events may be highlighted as events that related to a single episode: the 'war on terror'. Since the terror attacks on the World Trade Center, the Pentagon and Pennsylvania shocked the world, the painful aftershocks in Bali, Madrid, Casablanca, London and Mumbai have once more revealed the weakness and fragility of democracies and civil liberties against sudden, indiscriminate and brutal attacks from terror organizations. In response, many states, especially Western democracies, started and fought an internal and external 'war on terror'. Unfortunately, events during the war on terror, especially gradual and selected harsh policies that were promoted and pursued by many governments have also had similar outcomes for the civil

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society and democratic life. It is also on the other hand unclear how decisive success can be achieved against terrorism, plus the fact that events including terrorism and counter-terrorism measures to date have led to tremendous setbacks for civil liberties.

   This argument was the most spoken conclusion of the post-September 11 events and politics. On this, this paper argues that these setbacks are largely attributable to new statist approaches and power politics that were adopted by governments during the war on terror, plus authoritarian tendencies that had been aroused and provoked within society by the impact of the events. The paper identifies that many states, including the major powers of international system, adopted state-centric power politics in international relations and gave prominence and precedence to strict domestic social control policies at home, while disregarding other means of coping with the crises at hand. Some academics go so far as to claim (with regards the US) that "under the guise of the 'war on terror,' the Bush administration had launched a war on civil liberties."[1] In this respect, one should recall the words of the US presidential spokesman of the time, Ari Fleischer, who has stated days after the September 11th that "all Americans need to watch what they say, watch what they do."[2] In addition to the message given to the domestic audience, the language was much tougher for the international society. In terms of the language used, there has not been any better modern manifestation of Thucydides' realist writings[3] than the dialogue that has taken place between the United States and international community.[4] In the atmosphere formed by the events of September 11 and the war on terror, the entire world was dragged into a somewhat modern era 'Melian Dialogue' by the Bush Administration. President Bush and other senior American politicians repeatedly and rather menacingly

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[1] For example: Marjorie Cohn, 'Spain, EU and US: War on Terror or War on Liberties?', *the Jurist*, March 16, 2004. http://jurist.law.pitt.edu/forum/cohn2.php (Retrieved March 10, 2008)

[2] Cited in: Kera Bolonik, 'Marian and Me', *Salon*, January 12, 2002. http://www.salon.com/books/feature/2002/01/07/moore/index.html (Retrieved December 10, 2004)

[3] In Thucydides' History of the Peloponnesian War, the war between Athens and Sparta at the end of the fifth century (416 BC), Athens seeks to add the neutral Melos Island to its empire, sends envoys to make the people of Melos surrender. Acknowledging their power and considering themselves wise men of world, the Athenians forbid the Melians from even talking about the rights and wrongs of what was requested. At the end, the people of Melos decide to fight for their independence and honor, whatever the costs. The Athenian siege succeeds, and the Melian men are killed, their women and children are sold in slavery, and a colony is sent from Athens to repopulate the Melian city. Thucydides (translated by Rex Warner), *The Peloponnesian War*, (Suffolk: Penguin Books, 1972), pp. 400-408. Also Jack Donnelly, *Realism and International Relations*, (Cambridge: Cambridge University Press, 2000), p. 23-24.

[4] In a manifestation of this modern day 'Melian Dialogue', a confession of the Pakistan's former President Pervaz Musarraf has unearthed the US policy of that character. According to press reports based on Musarraf's words, some top US officials had threatened Pakistan with a bombardment back to the Stone Age unless Islamabad fully cooperates with the US forces in their campaign in Afghanistan. See: 'We'll bomb you to Stone Age, US told Pakistan', *Times Online*, September 22, 2006. http://www.timesonline.co.uk/tol/news/world/middle_east/article647188.ece (Retrieved May 17, 2010) and 'Pakistani Leader Claims U.S. Threat After 9/11', *The New York Times*, September 22, 2006. http://www.nytimes.com/2006/09/22/world/asia/22pakistan.html (Retrieved May 17, 2010).

stated that there existed only two options for the rest of the world (both for states and societies) in the post-September 11 political and military framework: "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists". This rather blunt message was delivered by President Bush at a joint session of the Congress where then British Prime Minister Tony Blair was also among the crowd that have applauded him.[5] Bush again reiterated his message at the anti-terrorism summit in Warsaw on November 6, 2001, with a joint news conference with then French President Jack Chirac: "*there was no room for neutrality in this war… Over time it's going to be important for nations to know they will be held accountable for inactivity… You're either with us or against us in the fight against terror.*"[6] This and similar forthright statements may seem justifiable and reasonable at first given the magnitude of the terror events. However, the magnitude of the attacks, the pictures of unforeseen physical damage, the psychological impact that they had on the minds of the individual and society, have created an atmosphere of repression, fear and xenophobia that run through many societies, enhanced by the role of jingoistic media and wartime propaganda of state officials.

The United States has in the meantime formulated a new realist and pre-emptive vision of foreign policy, especially regarding the use of force based on the Bush Doctrine.[7] Accordingly, the United States started a massive military campaign on Afghanistan in the first month of the post-9/11 era, then propagated and campaigned for the occupation of Iraq, and occupied this country by mid-2003, plus gradually initiated many other open or disguised military campaigns around the globe under the umbrella of the 'global war on terror'. The United States and its close allies in the war on terror, especially Bush's European allies have also orchestrated simultaneous domestic campaigns in the war against the terrorism. These strategies, policies and military campaigns have caused a historic reversal for efforts for promoting democratic institutions and civil liberties at home and abroad. As Matthew Crosston argued, especially in relation to Central Asia and a wider Eurasia, "*the US' strategy for fighting terrorism* (*in the region*) *has inevitably collided with the long-term US objective of spreading democracy. In this collision the fighting terrorism and national security concerns have gained prominence over other issues of* US *foreign and domestic policy since* 2001 *and these have overruled the pre-September* 11 US *foreign policy objectives of supporting democratic institutions, civil society and human rights.*"[8]

In this paper, I aim to highlight the setbacks in civil liberties in the post-September 11 episodes era. The paper shall be developed upon both theory (theories on state-society relations) and observations at the recent and present

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[5]   George W. Bush, *Address to a Joint Session of Congress and the American People*, September 20, 2001. http://www.whitehouse.gov/news/releases/2001/09/print/20010920-8.html (Retrieved December 12, 2006)

[6]   CNN USA, November 6, 2001. http://archives.cnn.com/2001/US/11/06/gen.attack.on.terror/

[7]   Richard Falk, 'the New Bush Doctrine', *the Nation*, July 15, 2002. (Retrieved December 12, 2004)

[8]   Matthew D. Crosston, 'Building New Democrats or New Bin Ladens? The US Illusion of Spreading Democracy and Fighting Terrorism', *Democracy and Security*, Volume 3, Issue 3, September 2007 , pp. 323-342

time relevant to the subject of discussion. Hence, in the following pages, the paper shall demonstrate how post-September 11 events have been at the expense of civil liberties worldwide. In the first part, a brief introduction on the context and emergence of civil liberties shall be given, and a concise theoretical foundation will be included to explain the re-emergence of statism in the post-September 11 world. Then, the major post-9/11 developments shall be outlined to illustrate how the civil liberties have been downgraded and somehow declined in the past decade. In this regard, the anti-terror legislations that have been introduced in the world (particularly by the Western democracies) shall particularly be presented. Later, the abuses and violations by state and society against the freedom of academia and the news media, both of which represent unique areas where civil liberties generally ascend and prevail, shall be studied as separate cases within the limits of a journal paper. These cases are specifically chosen and examined in order to exemplify the ramifications on civil liberties of the power policies and anti democratic approaches that were adopted by states and societies in the post-September 11 world.

## THE CONTEXT AND THE RISE OF CIVIL LIBERTIES

Civil liberties are defined as "*those freedoms which are, or should be, guaranteed to persons to protect an area of non-interference from others, particularly power holders and legal authorities.*"[9] *Civil liberties often embrace freedom from arbitrary arrest or detention, 'habeas corpus', freedom of speech, freedom of lawful assembly, freedom of association and of movement, and the right not to incriminate oneself. They are "invoked to limit the justifiable coercive power of the state*".[10] Civil liberties are often intermingled with civil rights, as the latter largely refer to "the rights of the individual in law"[11] and involve 'the freedom of individuals to live where they choose; freedom of speech and religion; the right to own property; and the right to equal justice before the law.'[12] Civil rights are normally associated with political rights and social rights, and they have been developed with the growth of citizenship rights.[13] However, among these, 'freedom of speech and religion' and the 'right to equal justice before the law' have largely been enjoyed by all, while 'the right to own property' and 'the freedom of individuals to live where they choose' has mostly been regarded as a matter of citizenship or nationality.

It took centuries for the full establishment of civil rights and civil liberties in most of Europe and America. The events that took place especially from the eighteenth century to the end of the twentieth century are of a special regard in this process. In modern history, the 1787 US Constitution with its first amendments, which are known as the Bill of Rights of 1791, and the 1789 French Declaration of the Rights of Man and the Citizens guaranteed the citizen

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9   Andrew Reeve, 'Civil Liberties', in Iain McLean, *Oxford Concise Dictionary of Politics*, Oxford University Press, Oxford, 1996, p. 70.
10   I*bid*.
11   Anthony Giddens, *Sociology*, (Oxford: Polity Press-Blackwell Publishers, 1989), p. 304.
12   Giddens, *Sociology*, p. 304.
13   T. H Marshall, *Class, Citizenship and Social Development*, (Westport: Greenwood Press, 1973). (Cited in Giddens, p. 304).

freedom of speech, assembly, religion, fair trials, and fair taxation.[14] With the end of the American Civil War, the rights that citizens were given against the Federal State by the US Constitution were also guaranteed against the local states with the Fourteenth Amendment, while the Thirteenth Amendment of 1865 outlawed the slavery, and in 1870 the Fifteenth Amendment guaranteed all citizens voting rights regardless of color, race and religion. These three amendments are often understood to be the foundation of the civil rights in the United States.[15] Meanwhile, in 1948, the Universal Declaration of Human Rights was adopted by the United Nations to identify the basics of human rights and freedoms and to establish a benchmark for states in the development of human rights and liberties.

Even after these rights were achieved, some groups were still denied basic rights in Europe and America until the second half of the twentieth century, (as in the case of Blacks in America,[16] for example). In the United States, those rights for Blacks essentially existed only on the paper, until the Civil Rights Act 1964 and the Voting Rights Act 1965 were adopted and passed. However, as civil rights and liberties were established mostly in the West, millions of people were excluded from even basic fundamental human rights, behind the curtain of oppressive political systems and authoritarian regimes. For example, a large proportion of the world population was denied even basic rights during the Soviet era until the fall of communism in the early 1990s. It is a characteristic of the late twentieth century, especially the 1990s, that virtually all ethnic, religious and other minority groups had enjoyed these rights in Europe and America and other states which took them as model.

The problem is that the course of promoting democracy and civil liberties as the underlying principle for state-civil society relations has been somehow reversed since 9/11 events. This is especially so with regards certain state-centric political approaches, power politics with military measures, and anti-terror legislations adopted by governments under the pretext of the 'War on Terror'. In the negative atmosphere that the September 11 events created in social, cultural, public and political life, many states, especially those which had been faced with a domestic crisis or were struggling with an international conflict, such as the United States, Russia, and the major EU states, adopted the state-centric power politics of the realist paradigm in formulation of both domestic and international politics, while downgrading pluralist and liberal approaches in both. As Bacık identifies the case, "*the post-September 11 atmosphere was a lucrative context for the nation-state to defend itself against the challenging non-state actors.*"[17] *It was not only the nation-state which sought to defend itself, the state as an entity in all forms, in what Buzan's terms "as the ambiguous component in world politics, reflecting*

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[14]   Iain McLean, *Oxford Concise Dictionary of Politics*, (Oxford: Oxford University Press, 1996), p. 71.
[15]   *Ibid.*
[16]   Giddens, *Sociology*, p. 304.
[17]   Gökhan Bacık, 'The Resistance of the Westphalian System', in Gökhan Bacık and Bulent Aras, *September 11 and World Politics*, (Istanbul: Fatih University Publications, 2004), p. 26.

*a variety of forces and processes*"[18], have aimed to defend themselves. For instance; the United States in securing the homeland from possible and further terror attacks, and in eliminating the threats it conceives or receives from the rogue elements of the international society, Russia in crushing groups which seek to secede from the Federation as in the case of Chechnya, later attacking neighbors which caused trouble in its 'near abroad' in the case of Georgia, the entire EU in resolving their collective immigration and asylum dilemma by undemocratic and harsh homeland and border policies, have all attempted to exploit the impact that 9/11 episodes and the post-9/11 events generated in international and internal politics. Other states such as India (frequently referred as the world's most populous democracy), Israel and Turkey (known as the sole democracies in the whole Middle East) have followed suit against the domestic and international political challenges they faced. These examples have so far signified lucid shifts in states' formulation of domestic and international policies, namely distancing them from pluralist and idealist approaches (if and where they existed), and adopting a state-centric, high politics-oriented, namely realist policy-making approach. Therefore, the years from 9/11 may be named as a new heyday of realism in international relations, while domestic politics was formulated mostly on something akin to a new authoritarianism. The paper, therefore, proposes that the threats to democracies and civil liberties have not only come from terrorist networks, but also from legitimate groups within society and especially from the state itself.

## THEORETICAL BACKGROUND AND RE-EMERGENCE OF THE STATE AFTER SEPTEMBER 11

In order to clarify the impact of statism in states' post-9/11 formulation of domestic and international politics, a study of how state-society relations is perceived and regulated by decision-makers becomes necessary. It can be argued that the re-emergence of state-centric approaches in the post 9/11 environment have been fed by classical realist thinking which in most cases disregards civil society and liberties for the sake of the security and survival of the state. Also, it has been evident that in many states which moved towards realism and power politics within the last decade, the constitutional arrangements in favor of the executive over the other branches of government were in place and ready in order to allow conducting policies on security and foreign affairs. These constitutional instruments at the hands of governments were largely exploited by state officials in major democracies in the direction of a new authoritarianism in domestic politics, and for a new statism in foreign policy areas in the post-9/11 world. Furthermore, when states needed more constitutional power and instruments to deal with the post-9/11 agenda with realist means, they used every possible ways to obtain it. Therefore the post-9/11 anti-terror legislations have been an important part of states' realist strategies in their fight against terrorism. While constitutional instruments were

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[18]  Barry Buzan, 'the Idea of the State and National Security', in Richard Little and Michael Smith (ed.), *Perspectives on World Politics*, (London: Routledge, 1991), p. 36.

ready for policy makers, the theoretical foundations for policy changes in dealing with the post-September 11 agenda were also well established within Western political thought. A brief summary of this philosophical basis is given below in order to emphasize a theoretical and historical background.

## The State, Power and the Law

One of the complicated issues that states have faced in the war on terror has been the choice between state power (with the use of power) and stronger society with individuals endowed with civil liberties and rights based on the pre-9/11 laws. In this regard, the policies that were adopted by states often disregarded or downgraded the laws that were in place to protect and guarantee the civil society and civil liberties. On the surface, the events that have dominated state and societies' agenda since 9/11 may have been seen as the substantial cause of statist and authoritarian policy-making. However; in the meantime, the theoretical background was long set in Western political thought for statist and power politics both in international and domestic domains. On the subject of the state and power, and their relationship with society especially with the law, Nicholo Machiavelli should be credited first and foremost as he has established the modern political science on power.[19] Machiavelli argued that "*to accomplish anything good -such as unification of Italy and expulsion of foreigners who ruined it- the Prince had to be rational and thorough in exercise of power*".[20] For Machiavelli, "*all the armed prophets conquered and the unarmed were ruined" and therefore "let a prince win and maintain his state: the means will always be judged honorable, and will be praised by everyone*".[21]

Again on maintaining statism in domestic and international politics at the expense of the law, the classical political theorists developed the concept of "sovereign" as someone immune to law. In order to shed light to the post-September 11 era in this regard, the writings of Bodin and Hobbes may be are helpful and sufficient. Before the emergence of the modern European political system on the concept of sovereignty with the Treaty of Westphalia in 1648, Jean Bodin at the time of a civil war in France, pointed out in 1576 that *order* was the crucial goal of a state, and it can be established by a supreme authority within a unitary body, and only with the integrity of rulers and ruled within it.[22] Bodin pointed out that "sovereignty must reside in a single individual and that sovereign was only bound by natural and divine law, as no human law could judge or appeal to it".[23] Furthermore, the English philosopher Thomas Hobbes, who also wrote during a time of civil war (in England), also proposed the notion of sovereignty as a solution and the sovereign as being above the law. For Hobbes, the sovereign authority, the Leviathan, represents the people and all of

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[19]  M. G. Roskin et.al. *Political Science*: *An Introduction*, (New Jersey: Pearson Education, 2008), p. 21.

[20]  Roskin et.al. p. 22.

[21]  Nicholo Machiavelli (trans. Harvey C. Mansfield), *the Prince*, (Chicago: Chicago University Press, 1985). (Cited in Donnelly, *Realism and International Relations*, p. 25.)

[22]  Cited in Stanford Encyclopedia of Philosophy (SEP), Sovereignty, May 31, 2003. http://plato.stanford.edu/entries/sovereignty/ (Retrieved 3 November 2009)

[23]  I*bid*.

their rights. Similar to *the sovereign* in Bodin's philosophy, *the Leviathan* or the sovereign Prince is not accountable to human law, but to God.[24] Hobbes also goes further to argue that "*we trade our liberty in return for a guarantee of security. Once security has been established, then civil society can flourish*".[25] He argued, "*life in 'the state of nature' before civil society was founded, must have been terrible. Every man would have been the enemy of every other man; a 'war of each against all.' Before establishing society, humans would live in savage squalor with no arts, no letters, no society, and which is worst of all, continual fear, and danger of violent death and the life of man, solitary, poor, nasty, brutish and short.*"[26] Therefore, according to classical realist thought, to get humans or society out of mayhem and bloodshed, order was to be established and secured at any expense by applying the power with the authority of the sovereign.

The problem for modern societies was how far a state could go in applying the power in a crisis which substantially involves social and domestic affairs, at a time no lone prince, sovereign, or Leviathan exists to hold power. Classical Western political thought was helpful once more. It can been claimed that a Weberian state, which is armed with the legitimated use of force against all including the society itself for the good of all, has been observed since the 9/11. Weber, in *Politics as a Vocation*, defined the state as an entity equipped with "a monopoly on the legitimate use of physical force" within a given territory.[27] This conception is clearly reminiscent of Westphalian term of sovereignty in which the 'state has supreme authority to make and enforce laws'.[28] This Weberian notion of the state has been so fundamental within Western political circles and society that states often exploit it when deemed necessary, as has happened since September 2001.[29] Bodin, Hobbes, and Weber's philosophies have strong influence among the realist decision makers today when they make decisions between power and the rule of law. In other words, with the justification of the use of power at hand from Weber's philosophy, the conceptualization proposed by Bodin and Hobbes to explain society and human life in state of nature, seemed to have been utilized by governments as foundation for their strategies during the war on terror. It is even argued that the Hobbesian philosophy alone "*continues to prevail as the presumption of political rule in states throughout the globe today, including ones where the sovereign body of law institutes limited government and civil rights for individuals.*"[30]

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[24] *Ibid.*

[25] Cited in Tim Dunne and Brian C. Smith, 'Realism', in John Baylis, Steve Smith and Patricia Owens, *the Globalization of World Politics*, (New York: Oxford University Press, 2008), p. 100.

[26] Jonathan Wolf, *An Introduction to Political Philosophy*, (Oxford: Oxford University Press, 1996), p. 8.

[27] H.H. Gerth and C. Wright Mills, *From Max Weber: Essays in Sociology*, (London: Routledge, 1948), p. 78; Daniel Warner, *An Ethic of Responsibility in International Relations*, (Boulder: Lynne Rienner Publishers, 1991), p.9 ; M. J. Smith, *Realist Thought from Weber to Kissinger*, (Baton Rouge: Louisiana State University Press, 1986), p. 23.

[28] Dunne and Smith, 'Realism', p. 100.

[29] Weber's formulation of the state is also somehow based on what Trotsky conceives the state in terms of use of power and maintaining order within a territory, as the concept was termed by the latter as 'Every state is founded on force'. Gerth and Mills, *From Max Weber*, p. 78.

[30] SEP, *op.cit*

**Ethics and the Use of Power**

Even if states set aside their acquired freedom from divine law that the Westphalian system had long provided, there was still another problem before the state officials that ensured the ethics of the use of force had to be justified. To accomplish this, the realist thought of international relations was developed upon the doctrine of *raison d'état* (reason of state), which provided the statesmen with the necessary 'set of maxims' to conduct foreign policy decisions on the sole purpose of the security of the state.[31] Realists generally do not recognize the existence or value of the ethics in international politics, and state leaders hence avoid the conduct of ethics in foreign policy area for the survival of the state. On the subject, Machiavelli argued that "*statesmen's ethical behavior and morality can be based on the political necessity and prudence, not on the religious virtues.*"[32] This approach is called as 'dual moral standards'. There are different moral standards; as the one for individual citizens living inside the state, and another one for the state in its external relations with other states. The conditions of international politics justify this duality and these conditions lead state leaders 'to act in a manner, like cheating, lying and killing.'[33]

On the moral side of international relations, realists also developed the concept of 'ethic of responsibility' as their guide.[34] It refers to the limits of ethics in international relations, and embraces the understanding that immoral actions may be needed to reach intended outcomes in foreign policy.[35] Realists consider the state as the ultimate and sole purpose of a society, that the state can only be established on power, and therefore the state or power is the main constituent in domestic and international politics. Contemporary realists, such as Hans Morgenthau, argue that power is the basic element of international relations, without which a state cannot survive and succeed in an anarchic world. Therefore states always seek power within the international system, and that "all politics is a struggle for power".[36] Another American and the late twentieth century realist, Henry Kissinger, also argued that "*a nation's survival is its first and ultimate responsibility; it cannot be compromised or put to risk.*"[37] Therefore, ethics becomes a secondary concept or even a subject of a lesser importance in international relations.

Given the fact that these theoretical justifications were at hand, states had no barriers but the necessary instruments to apply force and power against domestic and international crises in the post-September 11 world. This was especially the case in the area of international politics, where there was also

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[31] Dunne and Smith, 'Realism', p.92-3.
[32] I*bid*.
[33] I*bid*.
[34] Dunne and Schmidt, 'Realism', p. 102.
[35] John Baylis et.al. T*he Globalization of World Politics*, p.580.
[36] Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Alfred A. Knopf, 1948), p. 13.
[37] Henry A., Kissinger, *American Foreign Policy*, (New York: W.W. Norton and Company, 1977), p. 204.

more theory and instruments in conducting a foreign policy free of public control and legal challenges.

## The State and Foreign Policy

The dual moral standard approach, and the ethic of responsibility argument may therefore explain the move from the idealist and liberal policy approaches of the 1990s, to the power-based policy-making of the post-9/11 era, especially for the changes in domestic policy. With regards establishing foreign policy, which was distanced and isolated from moral grounds and solely based on power and realist philosophy, states have found more realist literature allied to their way of thinking. This is especially so with respect to pursuing a foreign policy immune to law and ethics. It had long been argued within international relations theory that starting and pursuing a war, (like the one we have been witnessing since October 2001, with tremendous violations of international law and infringements of civil and human rights), first necessitates patching up the deficiencies of democracy. This is to create a political system deemed an absolute necessity for the state. In this regard, Alexis de Tocqueville interestingly constructs the necessary theoretical foundation for imperial and aristocratic tendencies that states, especially the US and UK, have shown during the war on terror. Evans and Newnham assert that one of the propositions of conventional IR knowledge on democracy identifies democracies as deficient in the formulation and conduct of foreign policy, which is known as "*the de Tocqueville thesis*".[38] They argued that in Tocqueville's *Democracy in America*, democracy and foreign policy were enunciated as incompatible phenomena. Furthermore, democracies are 'decidedly inferior' to more centralized political systems in conduct of foreign policy. There are two certain things that democracies or a democratic people will always find difficult to start a war and to end it. [39] The advantage of authoritarian regimes in this respect comes from the fact that "*closed political systems facilitate quick and consistent decision-making not handicapped by the needs of a potentially critical public. Therefore, the concentration of power and the denial of public scrutiny and debate give centralized political systems decisive advantages in foreign affairs.*"[40] According to Tocqueville, "*foreign politics demand scarcely the qualities which a democracy possesses; and they require, on the contrary, the perfect use of almost all those faculties in which it is deficient.*"[41] Explaining this, Tocqueville claims that "*a democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It cannot combine its measures with secrecy, and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy…*"[42]

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[38] Graham Evans and Jeffrey Newnham, *the Penguin Dictionary of International Relations*, (London: Penguin Books, 1998), p. 119.
[39] Cited in Evans and Newnham, p. 119.
[40] Evans and Newnham, pp. 119-120.
[41] Alexis de Tocqueville (trans. Henry Reeve), *Democracy in America*, (New Jersey: the Lawbook Exchange Ltd., 2007), p. 215.
[42] Tocqueville, p. 216.

Also in Machiavellian philosophy, "*the realm of international politics is seen as based on different moral and political rules from those which apply in domestic politics. The task of understanding the real nature of international politics and the need to protect the state at all costs, (even if this may mean the sacrifice of one's own citizens), places a heavy burden on the shoulders of state leaders in Machiavellian philosophy.*"[43] To overcome the Tocqueville and Machiavellian concerns, therefore, states often prefer their decisions made in conduct of foreign policy be placed outside democracy and within authoritarianism. In other words, states tend to stay away from pluralism and liberalism in making foreign policy decisions as they move towards realism. This is because power is more determining, authoritative, and authoritarian than the preferences of a society or that of individuals. Hence, states choose power and realist politics, and when states adopt a realist approach in foreign policy to face the international challenges, the necessary constitutional power are made ready at the hands of the governments. For instance, to deal with the de Tocqueville syndrome in Western foreign policy making circles, some constitutional arrangements and measures had long been added to the system in order to overcome the deficiency of democracy. For instance, Evans and Newnham pointed out that 'in western democracies, especially in the US and UK, there have been some constitutional arrangements that have allocated the balance of advantage in foreign policy conduct to the executive over the other branches of government. In the US the President is almost always 'imperial' and in the UK, Parliament plays a decidedly inferior role to the Cabinet and the Foreign and Commonwealth Office.'[44] On the subject, De Tocqueville also observed in respect to the US that: "*the Federal Constitution entrusts the permanent direction of the external interests of the nation to the President and the Senate, which tends in some degree to detach the general foreign policy of the Union from the control of the people. It cannot therefore be asserted with truth that the external affairs of State are conducted by the democracy.*"[45]

Interestingly, these constitutional arrangements have been used in the past and recently in the United States and the United Kingdom, as an advantage to provide the state with the necessary power and speed in dealing with domestic and international crises. However, for the implementation and the use of power at home, states needed more instruments to use it with similar precision and speed. Therefore they have introduced new legislations and policies of same kind. In short, it can be argued that many governments applied these theories into practices in international relations in the post-9/11 world. Those theories have been read in the post-September 11 world as: protection of every state from terrorist attacks or from the acts of rogue elements of the international system necessitates force and the use of force at all forms against anyone that the state needs to and at any expense, even at the expense of civil rights and civil liberties. Consequently, during the post-9/11 wars and conflicts, many

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[43]  Dunne and Smith, 'Realism', p. 102.
[44]  Evans and Newnham, p. 120.
[45]  Tocqueville, *Democracy in America*, p. 213.

states somehow modified the democratic character of their regimes, even at the expense of civil life and society, and this has finally hurt the civil liberties.

## THE MAJOR DEVELOPMENTS DETERIORATING CIVIL LIBERTIES SINCE SEPTEMBER 11

### The post-9/11 Anti-Terror Legislations: Strengthening State, Undermining Civil Liberties

Strengthening the power and control of the government and executive above civil society during war and politically turbulent times at the expense of civil liberties is not new in Western societies. Anti-terrorism laws in Europe and in the United States were in place before September 11 attacks. In the UK, for example, there were previous experiences of anti-terror laws.[46] For example, the Prevention of Terrorism Act of 1984 may be the first of a series of laws introduced within or in addition to anti-terror policies. That law strictly restricted and banned membership of some Irish organizations. At the same time, it has extended period of arrest before suspects had to be brought before a court,[47] which is a clause that post-September 11 legislations notably copied. Indeed, after 2001 events, more of such legislations and anti-terror clauses were adopted worldwide. It has even been claimed that some governments in Europe, which were looking for ways to criminalize trade union activity, especially throughout the 1990s, took advantage of the September 11 attacks to pass laws for that purpose.[48]

In United States, shortly after the September 11[49], the government introduced the Patriot Act in October 2001 and established the Department of Homeland Security (DHS) in November 2002.[50] Given the size of DHS staff and budget[51], as well as the authority of its staff, main civil liberties are threatened and have even been nullified in practice. According to independent sources, the USA Patriot Act by and large abrogates the following basic rights and freedoms: freedom of expression, freedom of the press, right of assembly and association, right to privacy of postal and electronic communications, protection against unlawful searches and seizures and some individual property rights.[52] In effect, with the power that the Act has provided there have subsequently been many reported cases of abuse and harassment against innocent persons at US airports and cities. One of the prominent victims of the Act was the Foreign

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[46] For a brief history of measures taken in the UK aiming war time state control over society, see: Geoffrey Bindman, 'A War on Terror or A War on Justice? Terrorism, War and the Rule of Law', Bindman Lecture, London South Bank University, February 8, 2005. htpp://www.statewatch.org/news/2005/feb/bindman-lecture.pdf (Retrieved 15 April 2008)

[47] I*bid*.

[48] Marjorie Cohn, 'Spain, EU and US'.

[49] I*bid*.

[50] See: The Department of Homeland Security at: www.dhs.gov (Retrieved 15 April 2008)

[51] The DHS has 183.000 staff with $ 38 bn in 2005. See: The US Office of Management and Budget at: http://www.whitehouse.gov/omb/budget/fy2005/homeland.html (Retrieved 15 April 2008)

[52] Norman D. Livergood, 'Nazification of Germany vs. Nazification of America', *Infowars.com*, At: http://www.infowars.com/print/ps/nazification_of_america.htm (Retrieved 15 April 2008)

Minister of Venezuela, Nicholas Maduro, who was held at New York's JFK Airport on September 23, 2006,[53] possibly with no reason except the ideological hatred of DHS staff towards the people of their choice. In many other cases, serious travel and visa restrictions applied by the DHS staff and FBI upon many public figures (including academics, as will be examined later) were reminiscent of Cold War era policies that are perhaps best highlighted with the cases of novelist Gabriel Garcia Marquez and poet Pablo Neruda, both Nobel laureates, who were denied to entry to USA in 1962 and 1966 respectively.[54]

Beyond introducing legislations and restrictions targeting free and civil life in America, the US government has also pressured the European Union to enact a framework law on terrorism reminiscent of the repressive anti-terrorist legislation in the United States.[55] With pressure from Washington, the EU adopted and passed the Framework Decision on combating terrorism and the Framework Decision on a European arrest warrant.[56] The foremost problem was that the June 2002 framework decision on combating terrorism has a broad definition of "terrorism" that included many social, political and labour movements within or in relation to terror acts.[57] Although it contains a clause that aims to protect civil liberties, according to Cohn, a general strike or a large demonstration against the World Trade Organization or any government, where property is damaged and considerable expense is incurred to mobilize a police force, could be punished as terrorism under this definition.[58] Since September 11, at least six EU member states have enacted specific legislation to comply with this framework decision. All consider the destabilization of political or economic power an element of terrorist crime. According to Bunyan, the new measures, practices, databases and ad hoc unaccountable groups that were created in the EU and also in individual countries after September 11 have little to do with countering terrorism but rather concern crime in general, such as the targeting of refugees, asylum-seekers, the resident migrant population and protests and protestors; the creation of a "US-EU axis" for cooperation on border controls, immigration, extradition and other legal cooperation.[59]

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[53] BBC News Online, 'Chavez minister in spat with US ', BBC *News*, September 24, 2006. http://news.bbc.co.uk/2/hi/americas/5374954.stm (Retrieved 15 April 2008)

[54] Caroline Fredrickson, 'American Civil Liberties Union (ACLU) Testimony Before the Subcommittee on National Security, Emerging Threats, and International Relations', *Setting Post-9/11 Investigative Priorities at the Bureau of Immigration and Customs Enforcement*, The United States House of Representatives, March 28, 2006.

[55] Cohn, 'Spain, EU and US'.

[56] Tony Bunyan, 'The war on freedom and democracy: an analysis of the effects on civil liberties and democratic culture in the EU', *Statewatch*, September 6, 2002. http://www.statewatch.org/news/2002/sep/analysis13.htm (Retrieved 15 April 2008)

[57] It says that committing or threatening to (a) cause extensive damage to a government or public facility, transport system, infrastructure facility, or private property likely to result in major economic loss, which may damage a government or international organization, constitutes a terrorist offense, when committed with the intent either (a) to compel the organization to perform or abstain from any act, or (b) to seriously destabilize or destroy the fundamental political, constitutional, economic or social structure of a country or international organization. (Extracted from Cohn, 'Spain, EU and US'.)

[58] I*bid*.

[59] Bunyan, 'The war on freedom and democracy'.

In the UK, the United States' most prominent ally in the war on terror, with the long anti-terror practices against IRA at hand, the British Parliament passed a series of anti-terror laws due to the political manipulation allowed by the September 11 attacks and the July 7, 2005 bombings in London. The Terrorism Act of 2000 was the first in a series of such laws,[60] though some provisions of this act were rejected at that time. After September 11, the government rushed through a new anti-terror law, the Anti-terrorism, Crime and Security Act 2001,[61] which also included the measures that were rejected in the 2000 Act. The most controversial side of the December 2001 Act was a clause in Part 4 that enables foreigners to be detained as terror suspects indefinitely. Parliament also passed another law, the Criminal Justice Act 2003,[62] which doubled the period of detention of terror suspects for questioning to two weeks. As of 2005, the 2001 Act was reviewed in 2003 and softened some controversial measures that the Act originally included, such as the detention time of terrorist suspects. In December 2004, the Law Lords ruled that the detention without trial of nine foreigners at Belmarsh Prison under Part 4 of the 2001 Act was unlawful and against the European Convention on Human Rights. In 2005, the Prevention of Terrorism Act was formulated partly based on the Law Lords' ruling in 2004 of the 2001 Act. The Prevention of Terrorism Act 2005 established the concept of the "control order" and allows the home Secretary to impose house arrest on the suspects of terrorism.[63] There have been many criticisms of the Act based on the restrictions that could be imposed upon innocent people with possible subjective judgments of politicians, the use of closed proceedings and special advocates to hear secret evidence against the detainee, and the possibility that evidence against detainees may include evidence obtained in other countries by torture. Based on these kinds of controversial clauses, many civil society organizations, such as Amnesty International, Human Rights Watch, JUSTICE and Liberty, have opposed the Act and criticized it of being incompatible with the European Convention on Human Rights. In April 2006, a High Court judge issued a declaration that the Section 3 of the Act was incompatible with the right to a fair trial. However, the July 2005 bombings provided the British government long-sought atmosphere to pass measures that meet its Global War on Terror aspirations at home. The Terrorism Act 2006 was drafted in the aftermath of the 7 July 2005 London bombings and introduced the parliament on October 12, 2005. The Act creates new offences related to terrorism and amends existing ones. Some terms in the Act have proven to be highly

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[60] The Office of Public Sector Information, *Terrorism Act 2000*, The Stationery Office Limited, 2000. http://www.opsi.gov.uk/Acts/acts2000/pdf/ukpga_20000011_en.pdf ((Retrieved December 14, 2009).

[61] The Office of Public Sector Information, *Anti-terrorism, Crime and Security Act 2001*, The Stationery Office Limited, 2000. http://www.opsi.gov.uk/Acts/acts2001/pdf/ukpga_20010024_en.pdf (Retrieved December 14, 2009).

[62] The Office of Public Sector Information, *Criminal Justice Act 2003*, The Stationery Office Limited, 2003. http://www.opsi.gov.uk/acts/acts2003/pdf/ukpga_20030044_en.pdf (Retrieved, December 14, 2009).

[63] The Office of Public Sector Information, *The Prevention of Terrorism Act 2005*, The Stationery Office Limited, 2005. http://www.opsi.gov.uk/acts/acts2005/pdf/ukpga_20050002_en.pdf (Retrieved, December 14, 2009).

controversial, as it has most strikingly introduced a clause that included "glorifying" terrorism as terror offence.[64] Also, even though the government had asked for 90 days for questioning terror suspects, and this was defeated in a historic vote in Parliament, the Act revised the period of detention of terrorist suspects for questioning from 14 days to 28 days.[65]

In the meantime, similar laws have been drafted, passed and introduced in many other countries from Turkey to South Africa, from Russia to Australia since the 9/11. Taken as a whole, one of the worldwide ramifications of these anti-terror laws was that they have in effect stopped the already slowly developing impetus of international human rights law and overridden resources that international society has gained in civil liberties.

## The War on Academia

The case of academia in the post-September 11 world can be portrayed as a severe example for epitomizing state and civil society relations. Governmental practices and private and independent campaigns against scholars and academics have taken several forms from individually targeting academics who have made unusual comments on 9/11 events, to common and broad propaganda against all academics who had or may criticize the US foreign policy.

The establishment of Campus Watch[66] and other advocacy groups of a similar nature, and the methods they applied are in particular worth mentioning in this regard. For example, the American Council of Trustees and Alumni

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[64] It is interesting that Cherie Blair, the wife of the former British Prime Minister Tony Blair, may have been accused and charged for glorifying terrorism for a comment she has made about the Palestinian suicide bombers, if a similar clause had been in place in 2002. Mrs. Blair stated in June 2002 that 'As long as young people feel they have got no hope but to blow them up you are never going to make progress.' See: 'PM's wife 'sorry' in suicide bomb row', BBC *News Online*, June 18, 2002. http://news.bbc.co.uk/2/hi/uk_news/politics/2051372.stm (Retrieved, December 14, 2009).... At the time Israeli lobbyists and officials categorized Mrs. Blair's comments as glorifying terrorism. The Israeli Embassy in London issued a statement stating: 'No political grievance or circumstance can justify the willful targeting of civilians for political gain, nor can those who glorify and encourage such atrocities, teaching and preaching hatred and violence, be absolved of their responsibility for this terrible phenomenon.' A senior official in Jerusalem even said: 'This is justification for terror.' See: George Jones and Anton la Guardia, 'Anger at Cherie 'sympathy' for suicide bombers', *The Telegraph*, June 19, 2002.

[65] See: The Office of Public Sector Information, *Terrorism Act* 2006, The Stationery Office Limited, 2006. http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060011_en.pdf (Retrieved December 14, 2009)

[66] Campus Watch, was founded in the United States by Daniel Pipes, who is a neo-conservative columnist and known for his harsh criticism of Islam and the Muslim world, with the claimed purpose of 'reviews and critiques Middle East studies in North America with an aim to improving them. However, this group has turn out to publicly list and intimidate by dossiers the scholars in the US colleges and universities who criticize the US Foreign Policy on the Middle East. See: Kristine McNeil, 'the War on Academic Freedom', *The Nation*, November 11, 2002. http://www.thenation.com/doc/20021125/mcneil (Retrieved December 14, 2009)
Also See: Campus Watch website: http://www.campus-watch.org/ (Retrieved December 14, 2009)

(ACTA),[67] published a controversial report, "Defending Civilization: How Our Universities Are Failing America and What Can Be Done About it"[68] in November 2001.[69] It classified many scholars, academic departments and schools as the "weak link" in the war on terror.[70] It stated, "*When a nation's intellectuals are unwilling to defend its civilization, they give comfort to its adversaries.*"[71] A list of 117 anti-American statements heard on college campuses, according the ACTA, was depicted in the report.[72] However, the report and the ACTA were accused of taking advantage of a national crisis for its long-sought ideological and conservative academic agenda by enforcing a particular party line on American campuses.[73] This was best described by Emily Akin as a conservative group committed to blocking and curbing liberal tendencies at colleges and universities.[74] The group has published additional reports on academic freedom in American colleges which are also highly controversial. In a further report published in May 2006, the ACTA used the case of Ward Churchill, a University of Colorado professor who had made unpopular comments with regards the September 11 victims, to pinpoint and counter other liberal academics at the US colleges. The report concluded that throughout American higher education, Ward Churchill was not alone and there were many professors using their positions to push their political agendas.[75]

In line with the activities of such advocacy groups and with the pressures, lobbying and support coming from them, the International Studies in Higher Education Act was introduced to the 108th US Congress.[76] It was passed unanimously by the House Subcommittee on Select Education on September 17, and by the House of Representatives on October 21, 2003.[77] The Act was

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[67] As a Washington-based pressure group, it was co-founded by Lynne Cheney, wife of the vice president, and Democratic Senator Joe Lieberman of Connecticut in 1995. Emilly Eakin, 'On the Lookout for Patriotic Incorrectness', *the New York Times*, November 24, 2001. For original report: www.goacta.org/Reports/defciv.pdf (Retrieved December 14, 2009)

[68] Paul Street, 'Defending Civilization and the Myth of Radical Academia', ZN*et*, July 15, 2002. http://www.zmag.org/content/print_article.cfm?itemID=2116&sectionID=1 (Retrieved December 14, 2009)

[69] For the full report: the American Council of Trustees and Alumni website: www.goacta.org/Reports/defciv.pdf (Retrieved December 14, 2009)

[70] Eakin, 'An Organization on the Lookout'.

[71] Cited in Matthew Rothschild, 'The New McCarthyism', T*he Progressive Magazine*, January, 2002. http://www.progressive.org/0901/roth0102.html (Retrieved September 12, 2007)

[72] Eakin, 'An Organization on the Lookout'.

[73] For example, Professor Eric Foner of the Colombia University. Cited in Eakin, 'An Organization on the Lookout'.

[74] Eakin, 'An Organization on the Lookout'.

[75] ACTA, H*ow Many Ward Churchills?*, May 2006. https://www.goacta.org/publications/downloads/ChurchillFinal.pdf (Retrieved September 12, 2007)

[76] Benita Singh, 'New Bill Threatens Intellectual Freedom in Area Studies' Y*ale Daily News*, Novemver 6, 2003. http://www.yaledailynews.com/Article.aspx?ArticleID=23954 (Retrieved September 12, 2007) See also: GovTract.Us (database of federal legislation) at: http://www.govtrack.us/congress/bill.xpd?bill=h108-3077 (Retrieved September 12, 2007)

[77] The Bill was received in Senate on October 21, 2003 but could not become a law during the 108th Congress. It was again introduced to the 109th US Congress on February 2, 2005, and then forwarded to a subcommittee on February 16, 2005. See: GovTract.Us (database of federal

initially proposed to support international studies and international languages education at US colleges and universities, but it also created an advisory board that could result in increased government control over these programs.[78] However, if examined from another perspective, this Act could also oblige these international studies programs to get in line with American foreign policy on the Middle East or risk cuts in funding from the federal government.[79]

This pessimistic interpretation of the Act is unavoidable when the whole issue is taken with respect the efforts of the Campus Watch and other conservative groups and pro-Israeli lobbies,[80] because these activists have been blacklisting many intellectuals and academics in the name of the US' interests and national security. For example, one of those academics listed within the ACTA Report, the University of New Mexico (UNM), history professor Richard Berthold had made a comment to his class before September 11. Berthold said "A*nyone who can blow up the Pentagon gets my vote*." This joke later became the target of conservative and patriotic attacks. Perhaps due to public pressure, the UNM president pursued disciplinary action against Berthold as a result.[81] Another scholar, Robert Jensen, an associate professor of journalism of the University of Texas at Austin wrote immediately after September 11 that the "U.S. [*is*] *just as guilty of committing* [*its*] *own violent acts… The terrorist attacks of September 11 were no more despicable than the massive acts of terrorism--the deliberate killing of civilians for political purposes--that the* U.S. *government has committed during my lifetime*."[82] After having been publicly condemned by the school president, Larry R. Faulkner, Jensen stated, "I'*m a tenured white male professor at a major university*, I'*m so protected I have no fears. But an untenured brown professor is not so protected*"[83] By this, Jensen has described the level of the diluted academic freedom at a prominent US university, and also pointed out the pressures of ACTA, Campus Watch and other advocacy groups on students and academics at the US universities.[84]

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legislation) http://www.govtrack.us/congress/bill.xpd?bill=h109-509 (Retrieved September 12, 2007)

See also: Field hearing before the Subcommittee on Select education of the Committee on Education and Workforce, The U. S. House of Representatives, One Hundred Ninth Congress, First Session, April 22, 2002. Columbus, Ohio.
http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/28/07/20.pdf (Retrieved September 12, 2007)

[78] See Martin Kramer, 'H.R.3077: The Dean's Deception', *the Campus Watch*, January 21, 2004. http://www.campus-watch.org/article/id/951 (Retrieved December 14, 2009)

[79] Michael Collins Piper, 'New Bill in Congress Targets Teachers Who Dare to Question US Support for Israel', *American Free Press Net*, April 12, 2004.
www.americanfreepress.net/03_19_04/New_Bill_/new_bill_.html (Retrieved December 14, 2009)

[80] See American Jewish Committee, 'Memorandum in Support of the International Studies in Education Act (H.R.3077)', *the Campus Watch*, January 20, 2004. http://www.campus-watch.org/article/id/975 (Retrieved December 14, 2009)

[81] Extracted from Rothschild, 'The New McCarthyism'.

[82] The Houston Chronicle, September 14, 2001. Cited in Rothschild, 'The New McCarthyism'.

[83] Rothschild, 'The New McCarthyism'.

[84] In order to depict the wider picture at American campuses and the pressures that were applied on academics and students by Campus Watch and ACTA-like groups, it may be useful to include the cases of Professor Todd Gitlin of the New York University, Professor Hugh Gusterson of MIT, Professor Eric Foner of Colombia University, Joel Beinin of Stanford University, and many others,

While these developments were taking place at US campuses, another campaign was underway against the academics, public figures and intellectuals who live and work outside the US. As stated earlier many academics and prominent public figures have been denied entry to the USA at airports and borders. Among many cases of exclusion of individuals based on their views – mostly liberal, some have been more publicized than others. The Oxford University professor Tariq Ramadan, a prominent Swiss Muslim scholar, was denied to entry to USA in 2004 when he was offered a tenured position at the University of Notre Dame and invited to join the institution.[85] The US government revoked Ramadan's visa, citing the Patriot Act's "endorse and espouse" provision[86] but revealing no reason on his denial in 2004. Professor Ramadan was again denied to entry to the US in 2006 despite a court decision demanding the reasons of denial of 2004 or issuing him a visa.[87] Many more public figures and academics, such as Adam Habib of the Deputy Vice-Chancellor of Research, Innovation and Advancement at the University of Johannesburg, a distinguished South African scholar and human rights activist, Dora María Téllez, a Nicaraguan historian who was invited to teach at Harvard's Kennedy School in 2006, Yoannis Milios, a Greek professor of economics, M.I.A., an English hip-hop artist of Sri Lankan dissent, Iñaki Egaña, a Basque historian, has been excluded from the U.S. after 9/11 based on a biased accusation of engaging in terrorism.[88] Also, an Iraqi academic, Riyadh Lafta, who had studied the excess civilian deaths following the invasion of Iraq[89] was excluded from the United States, and denied a transit visa through Britain in order to speak at a meeting in Vancouver, Canada.[90] Among many other similar cases, the cases of a group of 61 Cuban academics who were refused to attend the Latin American Studies Association Congress in October 2004,[91] the refusal of another Cuban academic group in 2006,[92] and the denial of a group of Iranian

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who were included in a list of unpatriotically behaving American academics. See: Eakin, Eakin, 'An Organization on the Lookout'.

[85] Bruce Craig, 'Scholars Become Targets of the Patriot Act', *Perspectives on History*, American Historical Association, April 2006. http://www.historians.org/Perspectives/issues/2006/0604/0604 new1.cfm (Retrieved December 14, 2009)

[86] http://www.aaup.org/NR/rdonlyres/7554BB4F-5EF0-42C0-BEA2-FDDE2A4C07C2/0/IdeologicalExclusion2PageBrief.pdf (Retrieved December 14, 2009)

[87] Annie, Shuppy, 'Muslim Scholar Denied a U.S. Visa Again.' Chronicle of Higher Education, October 6, 2006, A41.

[88] http://www.aclu.org/safefree/general/26132prs20060712.html (Retrieved December 14, 2009)

[89] Professor Les Roberts of Colombia University and Dr. Riyadh Lafta of Al-Mustansiriya University College of Medicine in Baghdad published an article about Iraqi civilian deaths in a British medical journal, the Lancet, in October 2006. It challenged the official number of Iraqi civilian deaths by revealing that nearly 655,000 Iraqis have died since the U.S. invasion. See: Brad Wong, 'Iraqi doctor who disputes official death tolls is denied visa to visit UW' *Seattle Post-Intelligencer*, April 20, 2007. http://seattlepi.nwsource.com/local/312411_iraqvisa20.html?source=mypi (Retrieved December 14, 2009)

[90] Craig Smith, 'More Visa Tactics Used to Censor Free Exchange of Ideas,' *Free Exchange on Campus*, April 20, 2007. http://www.freeexchangeoncampus.org/index2.php?option=com_content&do_pd f=1&id=526 (Retrieved December 14, 2009)

[91] Fredrickson, 'ACLU Testimony'.

[92] Burton Bollag, 'U.S. Again Bars Cuban Scholars.' *Chronicle of Higher Education*, March 17, 2006, p. A53.

scholars in 2006[93] were seen to be particularly remarkable in order to highlight the Bush Administration's policy of blocking entry, on political and ideological grounds, of academics and other prominent intellectual figures who aim to attend academic programmes and platforms in the US. These cases seem to be only the tip of an iceberg. According to Caroline Fredrickson of ACLU, these are just a few of a growing number of examples and it will only be possible to learn of more such cases, when the State Department and other government agencies reveal the real records on the practice of excluding foreign scholars and other prominent intellectuals from the United States because of their political views.[94]

### September 11 Events, the War on Terror and the Press[95]

The September 11 events also noticeably led to a u-turn and opening of a new but an intricate era for the free press and freedom of expression in particular. During the years of the war on terror, there have been many cases of abuses of power against the press and media in many countries including the West. It is an irony that states and societies that once supported and promoted the free press ideology and liberal views have somehow made u-turns against press freedom and civil liberties from the early days of the war on terror. Psychological warfare can be said to have been employed on the free press, and state officials have implied publicly that limitations on publications and broadcasting will be a crucial part of the War on Terror.

The war against the free press or media freedom started with severe abuses of journalists in the days immediately after the September 11 events, especially in the United States. For example, a TV journalist Bill Maher and columnist Susan Sontag were condemned and censored in the weeks that immediately followed September 11 events.[96] *The Texas City Sun* has sacked Tom Gutting for criticizing President Bush for being out of Washington and in hiding on the day of the attacks.[97] *The Daily Courier of Oregon* followed the suit by firing columnist Dan Guthrie for his condemnation of President Bush for his poor performance as the leader during a day of national tragedy.[98] In another example, Jackie Anderson of *the Sun Advocate* in Utah was also forced to quit her job after writing a column about American state and public reaction to the events saying "*War is*

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[93]  Burton Bollag and Dan Canevale, 'Iranian Academics Are DeniedVisas,' *Chronicle of Higher Education*, September 1, 2006, p. A72.

[94]  Fredrickson, 'ACLU Testimony'.

[95]  This section was extracted from another piece of work of mine. Ahmet Öztürk, 'International Politics and the Media: The Case of the Press/Media in the War on Terror', *Alternatives: Turkish Journal of International Relations*, Vol. 8, No 3, Fall 2009. www.alternativesjournal.net/volume8/number3/ozturk.pdf (Retrieved May 17, 2010)

[96]  Susan Sontag's comments in The New Yorker's 'Talk of the Town' column was one of the few opinion pieces that appeared in American media in terms of dissent and that attracted official and public outrage. See: Susan Sontag, 'Talk of the Town', *the New Yorker*, September 24, 2001. http://www.newyorker.com/archive/2001/09/24/010924ta_talk_wtc_24_sept_2001 (Retrieved September 15, 2007)

[97]  Rothschild, 'The New McCarthyism'.

[98]  Adair Lara, 'This is No Time to Keep Your Mouth Shut', *San Francisco Chronicle*, October 4, 2001.

*not the only action available to us. Seeking justice is action. Making peace is action.*"[99] The pressures on the journalists and condemnation of liberal or alternative views on the events of 9/11 have come not only from superiors, but also from the manipulated masses. In one of many cases, Howard Rosenberg of *the Los Angeles Times* received hundreds of telephone and email messages questioning his patriotism because he had criticized the Bush Administration, as had been done by Gutting, Guthrie and Anderson.[100] 'Bombardment by e-mail' has been a common fate for the journalists and media professionals who have raised unpopular voices about the war on terror.

The more serious reactions towards the media have come from government officials who disliked the press' criticism of their war policy and strategies. The reaction from governments has somehow sometimes reached the level of applying disguised pressures. For example, in October 2001, the British Government summoned news editors to discuss the way they were covering the "war against terrorism" and the bombing campaign in Afghanistan.[101] In a later case, Italian PM Silvio Berlusconi told Italian television and radio networks not to broadcast news of and footage of Italian hostages in Iraq.[102] In another case, it was revealed that when the US news network CBS was about to broadcast the images of American soldiers and contractors abusing and torturing Iraqi inmates in the Abu Ghraib prison, CBS had faced considerable pressure from the Pentagon not to do so.[103] Likewise there have been various reports of the White House's anger and irritation against the news media for the broadcasting of footage of the coffins of US soldiers killed in Iraq and Afghanistan.

These are examples of the tense relations between governments and press at the national level. Besides these examples of local cases of abuses of journalists, there have been particular cases at the international level. The case of the Al-Jazeera News Network outlines the story for press freedom and freedom of expression, especially for the press and media institutions and professionals outside the Western world.

*The Al-Jazeera Case*

Qatar's Al-Jazeera Channel was once regarded as a sign of democracy in the Middle East,[104] and was even regarded as the 'CNN of the war in Afghanistan';

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[99]   Rothschild, 'The New McCarthyism'.
[100]  Howard Rosenberg, 'A New Kind of War of Words', *Los Angeles Times*, September 26, 2001. http://www.bluecorncomics.com/patriot.htm (Retrieved October 2, 2007)
[101]  'Analysis: Battle to Report the Conflict', BBC *News Online*, October 17, 2001. http://news.bbc.co.uk/2/hi/americas/1603109.stm (Retrieved September 12, 2007)
[102]  'Italian PM wants news blackout', *Al-Jazeera Net*, May 3, 2004. http://www.english.aljazeera.net/N R/exeres/81D8DB46-AE9B-45ED-9769-D432FAA32F6 (Retrieved May 4, 2004.)
[103]  Michael Hann, 'What the US papers do not say', *the Guardian Unlimited Online: the Special Report Iraq*, April 30, 2004. http://www.guardian.co.uk/Iraq/Story/0,2763,1207162,00.html (Retrieved May 4, 2004.)
[104]  Thomas Friedman, 'Glasnost in the Gulf,' *the New York Times*, February 27, 2001.

referring to the role that CNN had played in 1991 Gulf War.[105] From the start of the war on terror, from the channel's viewpoint, the channel was broadcasting all the news it received from the battlefields in Afghanistan, Iraq and elsewhere. However, the Bush Administration was not at all happy with Al-Jazeera even though it was using the channel to give its messages to the Arab world.[106] In the early months of the war on terror, the output of the Afghan office of Al-Jazeera was a major focus of US complaint. Faced with the problem of free and open broadcasting, the Bush Administration bought the issue to the Emir of Qatar and demanded the shutting down of the channel and the halt of any news that lacked American accreditation. With the broadcasting philosophy that it inherited from early western examples set by the BBC and CNN, the channel continued its reporting activities. Eventually, America's dislike of Al-Jazeera resulted in the deliberate bombing of its offices in Kabul around 3 am on November 13, 2001.[107] In a more openly deliberate insult towards the channel, the cameraman Sami Al Hajj was detained while on duty to Afghanistan as an "enemy combatant" in December 2001, and has been held without charge at Guantanamo Base for years.[108] According to Joel Simon of the New York-based Committee to Protect Journalists, Al-Hajj's detention for so many years without a trial was a grave injustice and also represents a threat to all journalists working in conflict areas.[109]

The US' highly distasteful campaign against the channel and journalists has gone even beyond the borders of Afghanistan. During the early months of the Iraq War, Al-Jazeera's Baghdad office was also bombed on April 8, 2003, killing the journalist Tarek Ayoub.[110] Later in the same month, Colin Powell who had used Al-Jazeera to deliver his messages to the Arab world at the start of the war on terror, complained about the channel to the foreign minister of Qatar during his visit to Washington in 2004 claiming: "*Al Jazeera's broadcasts had intruded on relations between the US and Qatar.*"[111] The US Defense Secretary Donald Rumsfeld has addressed the most honest and historic verdict on the channel before the Council on Foreign Relations in Chicago on August 6, 2004: "*the reporting by Arab media such as Al Jazeera and Al Arabiya has damaged US initiatives in the Middle East. They have persuaded an enormous fraction of people (in Iraq and the Middle East) that the United States is in Iraq as an occupying force.*"[112]

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[105] Muhammed El-Newawy and Adel Iskandar (trans. Arif Başaran), *El-Cezire : Ortadogu'yu Değiştiren Haber Kanalı*, (Istanbul: Gelenek Yayıncılık, 2004), p. 38-39-45.

[106] Michael C. Hudson, 'Washington vs. Al-Jazeera: Competing Constructions of Middle East Realities', *Transnational Broadcasting Studies*, Spring 2005. http://www.tbsjournal.com/Archives/archives.html (Retrieved March21, 2007)

[107] The Guardian, November 17, 2001.

[108] Sami Al-Hajj has been finally released after six and a half years of ordeal on May 1 2008. 'Sami al-Hajj freed from Guantanamo', *Al-Jazeera Net*, May 1, 2008. http://english.aljazeera.net/NR/exeres/87600A7C-F1CF-470D-A4D8-7B3904EF5BD7.htm  (Retrieved May 21, 2008)

[109] 'Freed Guantanamo Prisoner is Home', BBC *News*, May 2, 2008. http://news.bbc.co.uk/2/hi/americas/7378828.stm (Retrieved May 30, 2008)

[110] 'Al-Jazeera Hit by Missile', BBC *News Online*, April 8, 2003. http://news.bbc.co.uk/2/hi/middle_east/2927527.stm (Retrieved May 21, 2008)

[111] 'Colin Powell Register US Complaints about Al Jazeera,' *Los Angeles Times*, April 28, 2004.

[112] Hudson, 'Washington vs. Al-Jazeera.'

In March 2004 the deputy Head of US Military Operations in Iraq, Mark Kimmitt's opinion of the channel with regards American military action in Iraq, was also clearly stated and remarkable for with regards press freedom: "*My solution is to change the channel to a legitimate, authoritative, honest news station. The stations that are showing Americans intentionally killing women and children are not legitimate news sources.*"[113] In April 2004, during the siege and bombardment of Fallujah, General Kimmitt again accused the Al-Jazeera of biased reporting and inciting further violence.[114] The condemnation of the channel's reporting in Fallujah by the American forces during the siege was only one instance of the American dislike of factual reporting in the war on terror, particularly war in Iraq. The channel was merely reporting and showing pictures from hospitals, schools and graveyards in Fallujah, where 700 Iraqis were killed in a week to April 2004.[115] However, later in that year, Al-Jazeera was banned and its offices and facilities in Iraq were shut down by a decision imposed by the Iraqi PM following months of accusations by US authorities and the US pressure on the Iraqi authorities.[116] US officials have continued their campaign of hatred against the free and open broadcasting of the Al-Jazeera even further. In a leaked November 2005 document published later in the UK media, it was claimed that the US President Bush asked British Prime Minister about bombing Al-Jazeera's headquarters in Doha, Qatar during Blair's visit to the White House on April 16, 2004.[117]

As the insurgent groups in Iraq have lost their fight and strength, the battle between Al-Jazeera and the United States has become less popular and diminished from public and intellectual attention. However, the relations between Al-Jazeera journalists and US officials in Washington and around the world from September 2001 have displayed a remarkable case study to explain and demonstrate the effects of the war on terror on the freedom of expression and press freedom.

**CONCLUSIONS**

Civil liberties are somehow an interface within a society between the state and the individual, where people create an area of freedom from the coercive power of the state. Throughout the history of the development of civil liberties and freedoms, the state or the ruling elites who represent the state, have always been in struggle with the society over the control of power and freedoms. In this struggle, it took centuries for the constitution of civil rights and civil liberties. The 1990s have shown a great hope for the further development for civil

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[113] Anthony Loewenstein 'Al Jazeera Awakens the Arab World,' *Counterpunch-Weekend Edition*, June 12/13, 2004. http://www.counterpunch.org/loewenstein06132004.html (Retrieved May 30, 2008)

[114] 'TV Interview with M. Kimmitt', CNN *International Live*, April 12, 2004.

[115] 'TV Interview with Ahmed Al-Sheik', CNN *International Live*, April 12, 2004.

[116] Lisa O'Carroll, 'Al-Jazeera closure 'a blow to freedom', *Media Guardian*, August 9, 2004. http://www.guardian.co.uk/media/2004/aug/09/Iraqandthemedia.broadcasting (Retrieved March 10, 2007)

[117] 'Arabic press anger at al-Jazeera 'plot'', BBC *News Online*, November 27, 2005. http://news.bbc.co.uk/2/hi/middle_east/4475594.stm (Retrieved March 10, 2007)

liberties and human rights at the most global level may be as the first time in human history, with the impact of the demise of the Communist Bloc. However, the state was not ready for this grand global change and, as 'the ambiguous component of world politics', states managed these transition years in a defensive position, until they will find a great opportunity in the chaos of the September 11 events for a rebound for authority.

The state's rebound for power was not new and this was not originally formulated in the early years of the 2000s. Classical realist thinking which disregards civil society and liberties for the sake of the security and survival of the state was long formulated. In the events of the early 2000s, many states moved towards realism and power politics at the expense of civil society and civil liberties. On the issue of the choice between a powerful state and a stronger society with individuals endowed with civil liberties and rights, many nations have opted the former. For a Machiavellian solution for the crisis, 'to accomplish the unification of a state and expulsion of foreigners who may ruin it', the exercise of power was the solution inside and outside. Modern princes, like Bush and Blair, have set off for the victory to maintain their states, although the means they used have not been praised by everyone.

In this world, the secular domestic laws and international law were not binding for Bodin's sovereigns or Hobbes' Leviathan, as they were placed themselves only accountable to the God. Eventually, as Hobbes had predicted, we, as individuals and as a whole society, have traded our liberty in return for a guarantee of our security, and at the same time, to avoid a solitary, poor, nasty, brutish, short life and the continual fear and danger of a violent death. As we have traded our liberty, the Weberian state, which has 'the monopoly on the legitimate use of physical force', has enforced itself as the supreme authority to make and enforce the law.

The post-September 11 crisis was largely an international one, therefore philosophy on the methods and measures for a solution necessitated the use of the realist writings of Machiavelli, Morgenthau, Kissinger and other realist scholars in international relations. Power was interpreted as the basic element of international relations for a state to survive and succeed in an anarchic world. Within these theoretical reasoning, states had no barriers to apply force and power against domestic and international crises in the post-September 11 world. States have done everything necessary to overcome the deficiencies of democracy, namely to deal with the de Tocqueville syndrome in the formulation and conduct of a successful foreign policy. For the implementation and the use of power at home, states have introduced new legislations and policies. During the post-9/11 wars and conflicts, many states somehow modified the democratic character of their regimes, even at the expense of civil life and society, and this has finally impaired the civil liberties.

As had been claimed immediately after the September 11 events, the world has changed dramatically since then. There have been strict and harsh restrictions placed upon every aspect of civil and liberal life from free press to academic freedoms, and upon every aspect of civil society, international and

domestic, from businesses to charities, from travelers to students. As discussed throughout the paper, after 9/11, many countries introduced anti-terror legislation and applied power policies that strictly control civil society and strongly impair civil liberties, from the United States to Europe and beyond. In this regard, some have even argued that the political system in the EU has not been within reach of liberal democracy since September 11. "We have, in effect, an EU 'democracy' built on sand" says Bunyan.[118] Concerning anti-terror legislations the overall situation in Europe was given as this: "Italian anti-terrorism laws are seen as reminiscent of the Fascist code on terrorism, similarly the Spanish definition of terrorism is interpreted as something close to that of the Franco's regime. Lawyers, magistrates and jurists in Europe point out that the European framework decision threatens democratic rights and freedoms. Anti-terror laws in Germany, Belgium and the United Kingdom provide excessive power to the executive branches of the state, and this imperils the separation of powers."[119] The new laws and legislations in the United States have been even worse with severe accompanying anti-terror measures.

Besides Europe and North America, the negative implications of the September 11th events and the post 9/11 policies have been obviously affected the cultural, religious, ethnic and ideological harmony of the entire global society. Beside Huntington's "clash of civilizations" theory or aspirations, which foresees a scenario of confrontation between the West and the other cultures in the coming decades, an actual "clash of civilizations" has already been taking place between a civil, liberal, free society and the authoritarian agenda of states and politicians since the 9/11. Regardless of whatever shape future developments may take, global political events since 2001 embodied a visible and hasty shift from the world of Yitzak Rabin, Bill Clinton, and Tony Blair of one of the European leftist and democratic political parties to the world of Ariel Sharon (later Olmert and Netanyahu), George W. Bush, and a new Blair who repositioned himself on the far right and sided with Bush until his final days in office. The picture does not appear very promising in light of Bunyan's presumption which indicates that "there was in place a democratic culture which was very poorly placed to resist the kind of attacks on liberties and rights we are now witnessing."[120]

Furthermore, there unfortunately seems to be no light visible so far in the tunnel into which the world entered in the autumn of 2001. The war on terror and the war on civil liberties are concurrently continuing. There are still reasons for being pessimistic about the future as well. For instance, as an example from history, when Kaiser Wilhelm II of Germany saluted his troops in Berlin in August of 1914, he said that he was expecting them all back in Berlin before the winter of that year with the falling autumn leaves. As mentioned earlier, Bush and Blair in 2001 did not mentioned an end date for the war they were starting and even promised a much longer course than Kaiser Wilhelm II mistakenly predicted in 1914. The leaves on the trees in Berlin fell during four more autumn seasons

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[118] Bunyan, 'The war on freedom and democracy'.
[119] Cohn, 'Spain, EU and US'.
[120] Bunyan, 'The war on freedom and democracy'.

until German troops came back to Berlin in 1918. The trees in Pennsylvania Boulevard have already seen nine autumn seasons since the autumn of 2001 when President Bush made the decision to commence the war in Afghanistan. Bush and Blair have generally departed the world political arena. Many welcomed their departure and arrival of their successors with hopes of change and optimism for peace. However, as President Bush had mentioned no time for the troops' return, there seem to be no sign for the ending of the war on terror and the war on civil liberties, given the fact that the new President at the White House will have no more a reason to win the Nobel Peace Price. He has already given the price for his broken campaign promises or compromises for continuing the war and policies he inherited from the previous Administration.

The relative recovery in social life and people's minds from the memories of the day of the 9/11 attacks may seem compelling for many who live in peace and comfort. However, there are millions who live in peril, turmoil, fear and ruins of the war on terror and the policies and measures which supported it. For those, at these times of turmoil, the real guidance for the future seems hidden in the haze of the direction given in the following phrases of a nineteenth century text, as long as we know our destination:

"A*lice*: W*ould you tell me, please, which way* I *ought to go from here*?

*Cheshire Cat*: T*hat depends a good deal on where you want to get to.*

*Alice*: I *don't much care where… so long as* I *get somewhere.*

*Cheshire Cat*: …O*h, you are sure to do that, if you only walk long enough…Lives a* H*atter in that direction, in that direction lives a* M*arch* H*are.* V*isit either you like*: *they are both mad.*

*Alice*: B*ut* I *don't want to go among mad people.*

*Cheshire Cat*: O*h you can't help that… we are all mad here.* I *am mad.* Y*ou are mad…*"**[121]**

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