# AFF

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I value justice, defined as giving each their due.

#### Civil liberties is defined by Oxford Dictionaries as “A person's rights to be subject only to laws established for the good of the community.”

#### In order for a government to be just, it must maintain the power of the people by serving the common good and not threatening rights.

Prues, [Jim Prues(Jim Prues is the Founder of World 5.0. He recognizes that to heal the world we must heal ourselves, and that 'democracy is not a spectator sport.'), Issue Position: A Just Government, 1-1-2014, 14, https://votesmart.org/public-statement/846878/issue-position-a-just-government#.WUbuNOjyu01, 6-18-2017. SK]

The United States was created as a democracy, with the idea that citizens have certain rights and responsibilities, among them being "life, liberty and the pursuit of happiness." Our responsibilities include taking care of ourselves and our families, engaging with our neighbors and communities, and paying our taxes. Our rights include voting, and the above mentioned life, liberty and the pursuit of happiness. A fair return on our tax investment [ROI] is our right as well. It is these **rights that have been threatened by** **[government]** this congress and this administration. **Every time a law is made that serves special interests instead of the common good, we have a dysfunctionality.** When we have repeated cases of dysfunctionality, we have corruption, systemic failure. And we see it play out every day in the halls of congress, where Republican obstructionism prevents the passage of almost anything. What the House of Representatives does pass is suspect as well, since their priorities are not serving the American people. No, we can't get a jobs bill through Congress, even though it's supported by huge numbers of us. Instead, we get over 35 attempts to repeal the Affordable Healthcare Act [Obamacare] while they know full well that such procedures are meaningless. Regardless of the topic area, congress displays a great ineptitude at best, and a terrible corruption at worst. Our issues with government, however, go much deeper than the current legislature. Government priorities have been askew for decades, at least since it's been so heavily influenced by the Military/Industrial Complex President Eisenhower warned us about in 1950. As corporate ownership has come to dominate every field of our lives, from banking to energy and media. we find governmental priorities to be ever more removed from citizen need and the common good. Finally, we have massive bureaucracy and red tape, so that even the best laws and policies are poorly executed or perverted from their original intent. And these issues hold as valid concern at the local, state and federal level. **Creating a just government, then, requires that we address all the above concerns a**long with many others. And **our** only **tool** **is** our voices, **the power of the people** to speak out to affect law and policy. This was the power of the Occupy Movement, the 1960s Protests and the precursor to every progressive change in our political history. To create a just government, we must rise up.SK

#### Thus, the value criterion is preserving the power of the people. As outlined, two conditions must be satisfied to meet this criterion.

#### First, the government has a constitutive obligation to support public values and the public interest – what this means is that they must commit to the wellbeing of the people for justice.

Amy, [Amy, Douglas J. Professor of Politics, "- Government as the Champion of Justice, Equality, Freedom, and Security." *Government Is Good*. CdeVision, 2007. Web. 21 Aug. 2014. <http://www.governmentisgood.com/articles.php?aid=12&p=1>.]

Do **[if] you believe** in justice? That our **civil liberties** **should be protected**? That all citizens should all be treated as equals? You would probably answer, “Of course!” But do you also realize that if [and] you are an avid supporter of public values like “justice,” “liberty” and “equality,” then you should also be an avid supporter of government? Government is often the only institution that can make these kinds of core political values a reality. In fact**,** without an active and healthy public sector, these kinds of public values would be in very short supply. Take justice, for instance. It is not usually something provided by the marketplace or created by the actions of individuals. More often it is something that [public values] can only be provided and sustained in the public sphere by the actions of government ;. If we want a just society**,** we must work through government to get it**.** This argument – that **government is an essential mechanism for realizing vital public values** – is an important one in making the case for government. Government is good not simply because it provides us as individuals with certain services and benefits (such as the ones described in another article on this site, “A Day in Your Life”) but also because it is the main way to promote important values that are good for us as a whole – values that are in the public interest. This view of government as the insurer of core democratic values is one that goes back to the very beginning of our national political institutions. Consider, for example, the political sentiments expressed by the founding fathers in the preamble to the U.S. Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. From the outset, the American government was primarily seen as an indispensable means of establishing and promoting certain universally recognized public values, such as justice, tranquility, and liberty. And today, as citizens, we need to recognize in government what the founding fathers saw in it: that it is the only institution we can rely on to nourish and protect these kinds of values in our society. Many people actually share this value-oriented vision of government. They get involved in politics and the governing process not because they want something for themselves but because they want to promote certain democratic values – such as equality or freedom – that they feel are important. They have a vision of what the good society is and they try to use government to make that vision a reality. They vote for candidates and lobby the government not simply to line their own pockets but in order to encourage government to do what is right for society as a whole. Many people participate in the democratic process because they want to promote principles and values that they believe are in the public interest. For many people in the National Rifle Association, for example, it is not just about owning their own shotgun, it is about liberty. And for many in the Civil Rights movement it was not about using the same restaurants as whites, it was about equality.SK

#### Second, the government cannot overstep its bounds by violating the rights of citizens to achieve its ends. If the government takes an action that violates a person’s agency or their property, they are overreaching.

Dorn, [Dorn, James A ( Dorn is vice president for monetary studies, editor of the Cato Journal, senior fellow, and director of Cato’s annual monetary conference. He has written widely on Federal Reserve policy and monetary reform and is an expert on China’s economic liberalization. He has edited more than 10 books, including The Search for Stable Money (with Anna J. Schwartz), The Future of Money in the Information Age, and China in the New Millennium. His articles have appeared in the Wall Street Journal, Financial Times, South China Morning Post, and scholarly journals. He writes regularly for Forbes.com. From 1984 to 1990, he served on the White House Commission on Presidential Scholars. Dorn has been a visiting scholar at the Central European University and Fudan University in Shanghai. He holds a Ph.D. in economics from the University of Virginia. ). "The scope of government in a free society." (2012). SK]

The purpose of this article is to delineate the legitimate functions of government in a free society. This exercise differs from determining the “optimal” size of government, which economists have estimated at 15 to 30 percent of gross domestic product. James Madison, the chief architect of the U.S. Constitution, was not primarily looking for an engine of economic growth; he was seeking an institutional design **to limit the powers of government and protect individual rights**. **People would then be free to pursue their happiness a**nd, in the process, create wealth. Eighteenth century liberals had no theory and no formal models to calculate the optimal size of government. They started from first principles and sought to discover the legitimate functions of government. Their emphasis was on liberty—not democracy; they sought to prevent injustice, not to use government power to obtain some vague concept of social justice. Classical liberals viewed economic development as an expansion of the range of choices open to individuals, not simply as growth in real GDP per capita (there were no GDP statistics). They understood that getting the rules right and allowing markets to expand would increase personal and Cato Journal, Vol. 32, No. 3 (Fall 2012). Copyright © Cato Institute. All rights reserved. James A. Dorn is Vice President for Academic Affairs at the Cato Institute and Professor of Economics at Towson University in Maryland. An earlier version of this article was presented at a conference on “The Economic Challenge: Fiscal, Monetary and Financial Sustainability, Entrepreneurship and the Common Good,” December 5–6, 2011, at Princeton University, sponsored by the Witherspoon Institute. The author thanks conference participants and also Eric Belgrad and Aaron Ross Powell for helpful comments. 37453\_Ch10\_Dorn:19016\_Cato 9/6/12 12:52 PM Page 629 630 Cato Journal economic freedom, thereby increasing the wealth of nations (Bauer 1957: 113; Dorn 2002). **There is no more important question than the scope of government in a free society.** **The legitimate functions of government help define the range of choices open to individuals and, hence, the boundaries between the individual and the state.** **Limiting the powers of government to the protection of persons and property**— broadly understood in the Lockean sense as “lives, liberties, and estates”—**provides a clear sense of justice and promotes a spontaneous** market **order, enhancing both personal and economic liberties. An overreaching government does the opposite**. SK

#### The focus in this condition is on the process rather than the outcome. For example, one could say that you could eliminate poverty by killing all the poor people, but that is a cruel and incredibly unjust *method* to eliminate poverty.

Dorn, [Dorn, James A ( Dorn is vice president for monetary studies, editor of the Cato Journal, senior fellow, and director of Cato’s annual monetary conference. He has written widely on Federal Reserve policy and monetary reform and is an expert on China’s economic liberalization. He has edited more than 10 books, including The Search for Stable Money (with Anna J. Schwartz), The Future of Money in the Information Age, and China in the New Millennium. His articles have appeared in the Wall Street Journal, Financial Times, South China Morning Post, and scholarly journals. He writes regularly for Forbes.com. From 1984 to 1990, he served on the White House Commission on Presidential Scholars. Dorn has been a visiting scholar at the Central European University and Fudan University in Shanghai. He holds a Ph.D. in economics from the University of Virginia. ). "The scope of government in a free society." (2012). SK]

The whole constitutional enterprise, of course, is based on the “consent of the governed.” Thus, the powers of the federal government are delegated and are “few and defined,” as Madison wrote in Federalist No. 46. In his Farewell Address in 1796, President George Washington reiterated the principles of freedom and limited government, noting that the American constitutional republic was to be “a government of as much vigor as is consistent with the perfect security of liberty. . . . to maintain all in the secure and tranquil enjoyment of the rights of person and property.” If laws are just, liberty and property are secure. **The most certain test of justice is negative—that is, justice occurs when injustice** (the violation of natural rights to life, liberty, and property) **is prevented**. **The emphasis here is on** what Hayek (1967) called “**just rules of conduct,” not on the fairness of outcomes**. No one has stated the negative concept of justice better than the 19th century French classical liberal Frederic Bastiat ([1850] 1964: 65): When law and force confine a man within the bounds of justice, they do not impose anything on him but a mere negation. They impose on him only the obligation to refrain from injuring others. They do not infringe on his personality, or his liberty or his property. They merely safeguard the personality, the liberty, and the property of others. They stand on the defensive; they defend the equal rights of all. They fulfill a mission whose harmlessness is evident, whose utility is palpable, and whose legitimacy is uncontested. In short, the purpose of a just government is not to do good with other people’s money, but to prevent injustice by protecting property and securing liberty. The negative concept of justice goes back to Adam Smith’s distinction between perfect and imperfect rights. In his lecture “Of Jurisprudence,” Smith ([1762] 1982: 9) argued that “perfect rights” 37453\_Ch10\_Dorn:19016\_Cato 9/6/12 12:52 PM Page 633 634 Cato Journal refer to “those which we have a title to demand and if refused to compel another to perform,” while “imperfect rights” pertain to “those which correspond to those duties which ought to be performed to us by others but which we have not title to compel them to perform.” Perfect rights are consistent with the principle of freedom and with justice because they are impartial and safeguard property. They can be extended to everyone without violating anyone’s natural rights. Imperfect rights are rights only in a “metaphorical sense.” They favor special interest groups at the expense of the general welfare, refer to distributive not commutative justice, and violate property rights. An individual may be said to have a moral duty to help others— and ought to do so—but one cannot be said to have a legal obligation to help others. **Virtue depends on voluntary action, not** on **coercion** (Pilon 1979a: 1194). SK

#### Coercion by manipulating people’s civil liberties goes against a just government’s principles, as it threatens people’s freedoms by manipulating them under the threat of catastrophe.

#### The thesis of the affirmative case is simple: States simply open the door to look for monsters to destroy, rather than confronting the skeletons in their own closet.

### Contention 1 is In the Defense of Minorities

#### The government uses “national security” to justify any action, especially because its definition is so vague. This gives leeway for the government to restrict civil liberties by scaring people.

Eric K. Yamamoto, Korematsu Revisited - Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties, 26 Santa Clara L. Rev. 1 (1986). Available at: http://digitalcommons.law.scu.edu/lawreview/vol26/iss1/1

This apparent judicial value judgment, although not formally cast as constitutional doctrine, has contributed to the prospect of considerable government excess under the mantle of national security."' "National security" is an ill-defined concept with elastic limits. 5 Government definitions tend to be self-justifying.' Crisis government is no longer unusual as United States involvement in international hostilities increases and as developing despotic governments cast threats at American security at home and abroad.17 These crises and the apparent revival of Cold War tensions have generated, quite appropriately, governmental concern about and reaction to threats to national security. They have also, however, laid fertile ground for government overreaction to unsubstantiated threats in the form of far-reaching restrictions on the liberties of American civilians.' This potential for overreaction arises at a time when the political branches' system of checks and balances in the area of national security and military affairs is showing definite signs of strain.'

#### When people get scared because of threats, they lash out against unpopular minorities; as they don’t have as much say in the political process, its harder for them to speak out.

Kevin R. Johnson & Bernard Trujillo, Immigration Reform, National Security After September 11, and the Future of North American Integration, 91 Minn. L. Rev. 1369 (2007).

Unfortunately, throughout U.S. history, harsh measures with the stated aim of bolstering national security often have been directed at unpopular racial minorities.60 The internment of persons of Japanese ancestry during World War II is perhaps the most well-known example.61 Building on previous security oriented measures, the U.S. government’s response to the events of September 11, 2001, proved to be no different, focusing on a discrete and insular minority that lacked meaningful power in the political process.62

#### There are many examples in history of this happening – Hitler and the Jews, Japanese Internment, etc. Minority rights are sacrificed for the perception of majority safety.

Yevgenia S. Kleiner, Racial Profiling in the Name of National Security: Protecting Minority Travlers' Civil Liberties in the Age of Terrorism, 30 B.C. Third World L.J. 103 (2010), http://lawdigitalcommons.bc.edu/twlj/vol30/iss1/5

As Figure 8 [the study] also shows, war decreases the probability that the Court will find a violation of a litigant’s civil rights (including claims of race and gender discrimination). This calls into question the assertions of some scholars that international crises lead to enhanced protection for minorities.320 The effect of war on criminal procedure is slightly smaller, though still significant such that the likelihood of the Court ruling in favor of defendants drops by eight percent… This brings mixed news to normative adherents of executive unilateralism and civil libertarianism alike. On the one hand, strong unilateral executive powers are still checked by the ebb and flow of congressional will. Nonetheless, majoritarian preferences are thereby left to prevail, often at the sacrifice of minority rights, when collective security appears most at risk. And areas to which civil libertarians have paid the least attention are vulnerable to infringement during wartime (indeed, perhaps because of this lacuna of attention).

#### This story, told by Saburo Matsuda, vividly illustrates the thesis of the affirmative case.

Real-Mckeighan , [Tammy Real-Mckeighan(), Couple shares story of living in Japanese internment camps, Fremont Tribune, 4-24-2012, 12, http://fremonttribune.com/news/local/couple-shares-story-of-living-in-japanese-internment-camps/article\_f917df1e-8e20-11e1-bbc4-001a4bcf887a.html, 6-18-2017. SK]

Like other Americans, Saburo Masada vividly remembers Dec. 7, 1941. He and his family were working on a newly purchased farm in California. While taking a break, they turned on the radio to listen to a program. That program was interrupted by a news flash: Japan had bombed Pearl Harbor. “I still remember saying, ‘What a stupid thing Japan is doing. Who do they think they are bombing our country?’” Masada said. But within a short time, rumors circulated that Japanese Americans had something to do with the bombing — that they were loyal to Japan. Soon, Masada would never forget another date: March 16, 1942. That day, a U.S. Army truck drove into the front yard of the Masadas’ farm. All nine family members were loaded into it and taken to the Fresno fairgrounds. Once a fun place, the fairgrounds now was surrounded with barbed wire fences and guard towers with soldiers manning guns pointed at Saburo and other Japanese Americans. It was only the beginning. During World War II, some 120,000 Japanese Americans and loyal permanent residents of Japanese ancestry were forcibly removed from their homes on the West Coast and taken to camps where they were imprisoned for up to four years. On Monday, Masada and his wife, Marion, shared their experiences in the camps with students at Wahoo High School. Students from other schools throughout the state watched via a live video feed. The Masadas, born in California, served 43 years in the Presbyterian pastorate before retiring 17 years ago. They have spoken to clubs, churches and at schools. They were eager to speak to students in Wahoo. “I want them to be aware of an important part of American history which has been left out of the history books,” Saburo told the Tribune. “Most people don’t know how it could have happened or what did happen.” **Anti-Japanese sentiment actually emerged decades before the war**. Saburo cited a May 1905 gathering of organizations in San Francisco to form the Asian Exclusion League to promote the anti-Japanese movement. In 1924, Congress passed the Asian Exclusion Act which prevented any further immigration from Japan to America. Saburo attributes the forced incarceration to various factors, which included economic competition because Japanese Americans dominated the vegetable and fruit market in California. He also said there were bigots who only wanted Caucasian people in the United States. These were but a few voices, but **Japan’s bombing of Pearl Harbor provided them an opportune time to exploit fear.** “**The government said it was for national security reasons. We were a danger to the national security because we were Japanese** — the face of our enemy, but it was all based on lies, rumors and propaganda and the newspapers just didn’t print what the intelligence agencies were saying — that there was no truth to the rumors.” **Saburo said** the public was duped and politicians — wanting to be elected or re-elected — backed the mass incarceration. President Franklin D. Roosevelt signed Executive Order 9066, which authorized the incarceration, on Feb. 19, 1942. “The government tried to say in the propaganda that it was to protect us, but **the towers and the guns were pointed at us**,” he said. “And **you don’t protect innocent people by imprisoning them**.” Raised to obey authority, Saburo said people didn’t try to escape. Pause Current Time 0:00 / Duration Time 0:00 Stream TypeLIVE Loaded: 0%Progress: 0%0:00 Fullscreen 00:00 Unmute He cited an instance when **a hearing impaired man was shot to death**. **The man, who had befriended a stray dog, was trying to retrieve the animal which had gotten past the fence**. **A boy trying to get a ball that had rolled away and went to the fence was shot to death** as well. While he said the camps in which Japanese Americans were held were nothing like the German ones — those were death camps — he still calls them concentration camps. To Masada and other children, the incarceration was traumatic. **Two-thirds of the prisoners were children under age 15**. Marion was just 9 when she and her family were uprooted from their home and business. Her parents were successful truck farmers in Salinas. Marion had five siblings. They and other Japanese Americans were kept on a rodeo grounds for five months, before being transported in old, rickety trains to an Arizona camp. They got to take two duffel bags of belongings per person. They were given tags with numbers. “**My mother drummed it into us that we were to remember our number because ‘they will not know you by your name from now on. You are a number**.’ It was a way of dehumanizing us,” she said. She remembered the thick dust storms in Arizona. The family of eight lived in one room with no partitions. Beds were side by side. There was a community bathroom with showers for women and for men. There was one mess hall; her father was a cook and her mother a dietitian. Marion washed all the family’s clothes by hand and did the ironing. She had little time to play. Get news headlines sent daily to your inbox Email Sign Up! One day, a friend invited Marion and her sister to stay overnight in her barracks. In the night, that girl’s father molested Marion, who kept the incident to herself for many years. “**My whole experience in camp was a traumatic one I was made to feel that I started the war. I felt being Japanese was bad. … I felt a hurt I couldn’t explain. I didn’t know how to fight back**, I would be so angry I would take it out on others,” she said. After the war, the family discovered that their valuables, left with a landlord, had been looted. “Even our car was an empty shell,” she said. The family had difficult time finding housing. No one wanted to rent to them. She did make friends with a girl in high school, who invited her home on weekends. Marion fought tears as she told how she was loved like a member of that family. After their talks, the Masadas answered questions from the audience, which gave them a standing ovation. Wahoo junior Zach Groppe thanked the couple for coming and said they amazed him. “Most people I know would not be able to do that. It’s really enlightening to know that there are people who are brave enough to share their stories,” he said. Zach said he plans to become a teacher. **“Teach our stories. Please tell our stories, OK?”** Marion asked Zach**. “Don’t let our stories die.”** Zach agreed that even thought he was going to become a math teacher, he would tell their stories. SK

### Contention 2 is the Prevention of Arms Race

#### If governments justify bolstering national security by repressing civil liberties, it leads to unbridled expansion in the military and other national security apparatus’ as the people cannot check the government expansion.

Turpin, Jennifer E., and Lois Ann Lorentzen. The Gendered New World Order: Militarism, Development, and the Environment. New York: Routledge, 1996. Print.

With the arms race came an erosion of the fragile trends toward human liberation and the fulfillment of fundamental rights and freedoms that seemed so vigorous at the end of World War II. Indeed the tragic truth is that within a few short years of the promulgation of the Universal Declaration of Human Rights, the trend toward its realization was reversed, and an alarming increase in its violation has been documented annually by intergovernmental and non-governmental organizations. During the 1970s and 1980s especially, gross violations were on the increase. Often committed in the name of national security, repression of civil liberties, disappearances, and torture still infected politics and almost invariably accompanied the exertion of the power of the military and the imposition of military rule and militarist values. The militarization of the world also strengthened institutionalized commercial prostitution and other forms of sexual slavery.

#### We do not live in isolation in this world, and must consider that other countries exist. By prioritizing national security, or even balancing it at the expense of civil liberties, we ensure that countries will continuously compete to make their military better than other countries. This leads to cyclical violations of human rights and civil liberties – its an unending cycle of violence harming the power of the people.

Larsen, 2002, "Arms Control: Cooperative Security in a Changing Environemnet" Rienner, <https://www.rienner.com/uploads/47d6f750a53eb.pdf>

In a system of sovereign states with the capability to build and maintain sizable armed forces, states cannot ensure that rival states will not attempt to achieve influence by pursuing military superiority. Trust often does not exist. States, therefore, interpret incoming information about the military capabilities of rival states in the worst light. Evidence of a new military program or spending by one state requires other states to respond in kind to prevent the other side from achieving superiority. This security dilemma can produce an arms race, thereby increasing political tension among states, raising the probability and severity of crises, and possibly causing war. Arms control tries to address the negative effects of this security dilemma.3.

#### Its not just the people that suffer, but the environment as well – the negative is slowly eroding this world.

Geneva, 2002, "The Military’s impact on the environment" Geneva, http://www.ipb.org/wp-content/uploads/2017/03/briefing-paper.pdf

The world's military forces are responsible for the release of more than two thirds of CFC- 113 into the ozone layer. During the Cold War, the US and Soviet armed forces produced enormous amounts of hazardous wastes. As a result of naval accidents there are at least 50 nuclear warheads and 11 nuclear reactors littering the ocean floor. There are more nuclear reactors at sea than on land. The Pentagon generates five times more toxins than the five major US chemical companies combined. The US military is the largest single source of US environmental pollution. The cost of clean-up of military related sites is estimated to be upwards of $500 billion. This is in addition to the bill for clean-up of former Soviet military activities – a bill still largely unpaid.

### Contention 3 is the Fight for Rights

#### If we violate civil liberties for national security threats, we violate the fundamental value behind fighting threats to our *people*. It puts us on the level of the same terrorists we try to fight.

Michaelson, [Michaelsen, Christopher. "Balancing Civil Liberties against National Security-A Critique of Counterterrorism Rhetoric." UNSWLJ 29 (2006): SK]

On the other side, commentators maintain that **it is particularly in times of crisis that the liberal democratic state must adhere strictly to its defining principles**.4 **Rights would lose all effect if they were easily revocable in situations of crisis.**5 Besides, **to believe that depriving citizens of their individual rights and freedoms was necessary to maintain security is to put oneself on the same moral plane as the terrorists, for whom the end justifies the means**. Indeed, **sacrificing fundamental liberal values such as the respect for the rule of law, civil liberties and human rights would amount to losing the ‘war on terrorism without firing a single shot’**. What both sides have in common is that they then turn to history to seek vindication for their claims. In the US, commentators who support draconian domestic measures against terrorism often refer to President Lincoln’s suspension of habeas corpus during the Civil War and argue that democracies have survived precisely because they have occasionally suspended traditional rights and guarantees.7 The constitutional Bill of Rights, after all, does not constitute a ‘suicide pact’.8 The opponents of repressive measures, on the other hand, point to the arbitrary and unjust internment of Japanese Americans during World War II and instead prefer to quote Benjamin Franklin who reminded his fellow colonists in 1759 that ‘they that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety’. SK

#### In conjunction, a meta-analysis of public opinion accounting for variables such as race, region, etc concludes that people on average support civil liberties over national security.

Davis and Silver, [Davis, Darren W., and Brian D. Silver. "Civil liberties vs. security: Public opinion in the context of the terrorist attacks on America." American Journal of Political Science 48.1 (2004): 28-46.]

Civil Liberties vs. Security. Panel A in Table 1 reports the distributions of responses to the nine items used initially to assess the public’s willingness to trade off civil liberties for greater personal security (complete question wording given in the appendix). As expected from the tolerance and civil liberties literature, American citizens are more in favor of protecting civil liberties over personal security in the abstract than in actual situations. **In response to a general question of giving up some civil liberties in order to curb terrorism in this country, 55% favored protecting civil liberties**. As Huddy, Khatib, and Capelos (2002) show in their analysis of public opinion polls conducted after the terrorist attacks, however, this level of support for civil liberties breaks down when applied to specific situations. In our Civil Liberties Survey, when the value trade-off is framed as the need to be safe and secure against judging people guilty by association—“people who belong to or associate with terrorist organizations should be considered a terrorist”—71% support treating people as guilty based on their associations. Although people’s willingness to judge people guilty by association reflects an extreme position, other applications of the value trade-offs reveal a similar but lesser willingness to concede civil liberties for personal security. In a trade-off of values involving support for freedom of speech, 60% think that schoolteachers should not criticize U.S. antiterrorism policy but should promote loyalty to the country. In a trade-off involving the right to privacy, 54% support requiring national identity cards. At the same time that a majority of Americans are willing to concede some civil liberties and freedoms, majorities also favor safeguarding certain liberties. In a habeas 2See the American Association for Public Opinion Research’s (AAPOR’s) “standard definitions” at http://www.aapor.org/default. asp?page=survey methods/standards and best practices. 3One weight (USAWT) is used when the entire sample is included in the analysis. Others are designed for analysis of the African American subsample (RACEWT) and the Hispanic/Latino subsample (HISPWT). CIVIL LIBERTIES VS. SECURITY 33 TABLE 1 Civil Liberties vs. Security Responses Panel A. Percentage of Prosecurity or Pro-Civil Liberties Responses to Each Item Questions Prefer Security Protect Civil Liberties 1. Give up some civil liberties 45 55 2. Investigate protestors 8 92 3. Racial Profiling 18 82 4. Warrantless searches on suspicion 23 77 5. Monitor telephone and e-mail 34 66 6. Detain non-citizens indefinitely 47 53 7. Require national ID cards 54 46 8. Teachers criticize antiterrorist policies 60 40 9. Crime to belong to terrorist organization 71 29 Panel B. Distribution of Total Number of Pro-Civil Liberties Responses Number of Pro-Civil Liberties Responses Whites African Americans Latinos All 0 1% 0% 1% 1% 1 4 0 13 2 8 4 12 8 3 13 12 15 13 4 16 15 17 16 5 21 25 22 22 6 18 17 18 18 7 12 16 10 12 8 7 12 4 7 Total Percent 100.0% 100.0% 100.0% 100.0% corpus issue framed as the ability to detain noncitizens suspected of belonging to a terrorist organization indefinitely without formally charging them with a crime, 53% support the civil libertarian position. In a tradeoff of the right to privacy by allowing the monitoring of telephone conversations and e-mail communications, 66% take the pro-civil liberties position. In a trade-off of Fourth Amendment rights by allowing law enforcement to conduct a warrantless search of a residence on suspicion that terrorist acts are being planned there, 77% give a procivil liberties response. **When the right to privacy issue is framed as racial profiling—the ability to stop and detain people of certain racial or ethnic backgrounds because they are thought to be more like to commit crimes—82% prefer civil liberties to security** . The least support for security at the expense of civil liberties—8%—is given when the exchange involves freedom of speech and assembly, framed as whether nonviolent protesters against the U.S. government should be investigated. Following Weissberg’s (1976) position that the level of consistency across survey items, as opposed to just their associational relationships, is an important element in determining attitude coherence, Panel B in Table 1 shows the consistency of pro-civil liberties responses across the eight value trade-off items.4 The preference for civil liberties over personal security is not a matter of individuals agreeing with only a few items, but rather a matter of supporting a wide range of elements of civil liberties. Whereas fewer than 1% endorse a pro-personal security position across all of the items, and only 7.6% consistently prefer a civil liberties position, 61% of American citizens take a pro-civil liberties position on at least five (out of eight) trade-off questions. Similar overall distributions are found for different racial and ethnic groups, though as we shall see, the groups differ in their willingness to trade civil liberties for greater security. **Given the high level of consistency of pro-civil liberties responses, which is suggestive of a coherent measure** 4We omitted the abstract item a priori because it taps a more general civil liberties trade-off rather than referring to specific civil liberties. However, including the item would not have altered any of our substantive conclusions. 34 DARREN W. DAVIS AND BRIAN D. SILVER tapping into democratic norms, we put these items to a more rigorous test. In a principal components factor analysis, the value trade-off approach appears to do quite well in producing a one-dimensional structure of support for civil liberties (eigenvalue of 1.97, 33% explained variance), but one item—investigate protestors—has a low correlation with the first factor. We used Confirmatory Factor Analysis (CFA) to specify and test a firstorder structure of the data. Although the analysis indicates that the first-order structure is not perfect (X2 15 = 44.64, p = .001), the first-order structure adequately fits the data. The normed fit index (.94) and comparative fit index (.95) reflect a good fit. The average covariance residuals and average standardized residuals are low. The average offdiagonal standardized residual is .032, which also reflects a fairly good fit. All residuals fall between −.10 and +.10. Taken together, the information based on the EFA and CFA data shows a good fit of the model. While the use of factor scores would be appropriate to construct a civil liberties value trade-off scale, for ease of interpretation and to recapture missing cases our measure of support for civil liberties is the percentage of pro-civil liberty responses out of the seven trade-off items.5 Correlated at .98, a factor score and our summary measure capture an essentially identical underlying civil liberties dimension. Although individuals do differ in the levels of support in predictable ways, what is most notable about demographic differences in support for civil liberties is their small magnitude (see Table 2). Few groups differ much from the overall mean of 56% (s.d. = 25). The exceptional categories with somewhat higher than average levels of support for civil liberties are African Americans (66%), those age 18–24 (69%), urban residents (62%), and college graduates (62%); but not persons with an advanced degree. One group with distinctly low support for civil liberties is persons age 60 and over (50%). **Even regions of the country hardly differ from one another in the average level of support for civil liberties**. SK

#### Judicial precedence sets up that the court has shifted to maintaining civil liberties, and as a consequence, national security has been protected better.

Stone ’07, [Stone, Geoffrey R. "National security v. civil liberties." Cal. L. Rev. 95 (2007): 2203. SK]

More recently, the Supreme Court has addressed and sternly rejected the Bush administration's claims of executive authority in the war on terrorism. In three decisions, **the Court has refused to grant deference of the sort that led to the results in Schenck, Korematsu, and Dennis**. In Rasul v. Bush,39 the Court held that federal courts have habeas corpus jurisdiction to review the legality of the confinement of the Guantanamo Bay detainees. In Hamdi v. Rumsfeld,40 decided on the same day as Rasul in 2004, the Court went even further in its refusal to grant undue deference to the military and executive officials in the war on terrorism. Yaser Hamdi, an American citizen, was seized in Afghanistan by the Northern Alliance (an American ally) 41 and turned over to the U.S. military. In April 2002, Hamdi was covertly shipped to a naval brig in Virginia. The Bush administration maintained that Hamdi was an "enemy combatant" and that it could therefore detain him indefinitely, without access to counsel, and without any formal charge or proceeding.42 In an eight-to-one decision, the Court held that this violated Hamdi's right to due process of law. In her plurality opinion, Justice O'Connor declared that "a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertion before a neutral decisionmaker."43 O'Connor explained that it "is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad."44 In rejecting the government's contention that the Court should play "a heavily circumscribed role" in reviewing the actions of the executive in wartime, O'Connor pointedly observed that "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."45 46 In Hamdan v. Rumsfeld, as in Pentagon Papers, Keith, Rasul and Hamdi, the Court declined to grant broad deference to the executive, instead making its own independent determination of the legality of the President's action. In this case, decided in June 2006, the Court held that the procedures adopted by President Bush for military commissions violated the basic tenets of 38. See id. at 324. 39. 542 U.S. 466 (2004). 40. 542 U.S. 507 (2004). 4L M at 510. 42. Id. at 510-11. 43. Id. at 533. 44. Id. at 532. 45. Id. at 536. 46. 126 S. Ct. 2749 (2006). This content downloaded from 134.210.1.16 on Sun, 18 Jun 2017 17:38:56 UTC All use subject to http://about.jstor.org/terms 2212 CALIFORNIA LA WREVIEW [Vol. 95:2203 military and international law. In a five-to-three decision, the Court held the military commissions established by President Bush's executive order violated both the Uniform Code of Military Justice and the 1949 Geneva Conventions. **The Court emphatically rejected the** **President's** **assertion that, as commander in-chief** of the Army and Navy, **he could constitutionally impose procedures that were incompatible with traditional practice even though they violated both federal and international law**. **In terms of judicial review of conflicts between civil liberties and the national security, the twenty-first century has gotten off to a rather good start.** Having learned from the mistakes of the past, **the Court**-or at least majority of the Justices-**has jettisoned the "logical" presumption** evidenced in Schenck, Korematsu, and Dennis **and replaced it with the "pragmatic" presumption** of close judicial scrutiny evidenced in Rasul, Hamdi, and Hamdan. This is a fundamental step forward in American constitutional history. Justice Brennan would be pleased. SK

## 1AR

### 1AR Opening

#### “Leaders must live the ideal of liberty and not just mouth the words” – Raffi Piliero

### AT: Being Alive

#### Being alive is great but if the cost of being alive is that you spend your life in an 8 by 8 cell against your will, its really not worth living.

#### Every American has the right not to be detained unless if they break the law. We put people in prison because the just punishment for hurting other people is a loss of life which is to have a life that is not worth living.

#### There are other things as worse as death, such as oppression

#### The only way you could choose to die is whether you have agency – you can only choose what you do with your life if you have the agency to do so.

#### Safety is not the same as the power of the people – living doesn’t guarantee that you have the power to choose action

### 1AR Nat Sec Def

#### National Securities are that which preserves an ethnic group or a culture – proves contention 1

Naidu, [From the Editor's Desk: NATIONAL SECURITY & CIVIL LIBERTIES: DEFINITIONS & DELIMITATIONS IN THEORY AND PRACTICE Author(s): M.V. Naidu Source: Peace Research, Vol. 23, No. 2/3 (May 1991), pp. 1-16 Published by: Canadian Mennonite University Stable URL: http://www.jstor.org/stable/23609913 Accessed: 20-06-2017 01:28 UTC. SK]

 As a human collectivity**, a nation is a sociological entity** with economic ties and shared political experiences. A nation may or may not be identified with a certain territory or region, and may not enjoy political independence. In comparison to the nation, the term state refers to a collectivity or people living within a defined territory, under an effective government, and possessing sovereignty, i.e., absolute and supreme power of decision making and management over domestic and foreign affairs. Thus, the state is a political-legal entity. In spite of their etymological and conceptual differences, in common usage the terms nation and state are used as interchangeable synonyms or as a compound word - - the nation-state. For the present analysis on security issues, however, **the distinction between the nation and the state is relevant**. In a strict sense, **the term national security should mean the physical preservation of a race or an ethnic group, or a culture**. But in common usage the term **national security has come to mean state security**, i.e., the military protection of the lives of a particular citizenry, of a defined territory and of the economic resources on that territory, all of which are being destroyed or being threatened by military actions. SK

### OV – Safety =/= Power (0:37)

#### Prioritizing safety does not mean preserving the power of the people. We can all be locked in cages, or in Japanese Internment camps, and be safe, but that does not mean we have the ability to exercise our agency as people, which is what constitutes our power. The thesis of the affirmative concerns itself both with the end of our actions – maintaining the wellbeing of the people, and the way in which we conduct it – without having government overreach by violating our agency. What this means is that we ought to prioritize civil liberties over national security, because to preserve the power of the people, the government must make sure not to violate the ability of people to make decisions, and for societal wellbeing, people need to have rights that the government won’t infringe upon. Even if it is good to have national security, we have to find a way to do it without violating civil libeties.

### OV - Thesis (0:20)

#### The affirmative is a universal truth. The government, if it is just, must preserve the power of the people, as otherwise it does not govern “people” but rather objects without a will. To do so, they must maximize societal wellbeing, and cannot infringe upon people’s rights through overreach. To this end, civil liberties must be prioritized over national security as liberties are protections from government intervention which ensure societal wellbeing, which is the highest value in the round.

### OV – Contentions

#### The overview to the contention level answers three questions.

#### Does violating civil liberties in favor of national security harm the power of the people?

#### The first contention answers this – the negative disproportionately hurts minorities. Remember the story of Saburo. The negative justifies shooting a man chasing after a dog, a boy chasing after a ball, and people like you and me chasing the American Dream.

#### Does violating civil liberties in favor of national security help national security?

#### No – the second contention proves that if we prioritize national security without the check of civil liberties, unbridled competition will lead to a breakdown of domestic security as people’s rights will be threatened and we constantly will be expending resources to bolster a military to a point of conflict

#### Is it just to prioritize civil liberties over national security?

#### The ends do not justify the means. If we violate civil liberties to look to national security, we break down the will of the people, and further justify the same logic that justifies terrorism – what differs just governments from radical terrorism is one very important factor: our moral compass which looks to the rights of all.

VOTING ISSUES

1. Story of Saburo Matsuda
2. Framework – preserve the power of the people
3. Safety =/= Power
4. Polls
5. Means > Ends
6. Violating civil liberties doesn’t lead to national security

### XT – Framework

#### (1:15)

#### Extend the Framework – Justice is the highest value for the round as the resolution asks what actions the government must take to be “just” or give each their due. To this end, as the value criterion states, they must preserve the power of the people. Only if the people have power can the government exist, as the power of the government originates from the ability of the people to choose actions, that’s the Prues evidence. There are two facets to this framework. First, the government has a positive obligation to preserve social good, which means preserving the ability of people to choose public values & pursue their own interests. Second, the government has an obligation to not interfere to the maximum extent possible in an individual’s agency; they cannot violate persons or their ability to enact their will through the state. This is the means based side constraint on a government’s actions.

**Government only exists if it fulfills these conditions because otherwise it is not a legitimate government which can set ends for the people.**

#### C1 - Defense of minorities – when there is a threat if we violate civil liberties because of fear the majority will always overshadow the minority which means the minorities will be subjugated. Look to the story of Saburo Matsuda a 7 year old child who was thrown in prison and told that her identity was a threat to the nation.

#### C2 – Arms race extension – if we violate civil liberites, no check on government expansion of security means they will continue to expand and compete with other countries escalating to bigger threats which hurt national security which turns the NC

#### C3 – (Michaelson) if we violate civil liberties for national security we violate our own moral principles and degrade our value as nations as governments’ cannot be legitimate without civil liberties. The people do not want this, as a consensus of polls shows they want us to prioritize civil liberties.

#### National security is not a prerequisite.

Michaelson, [Michaelsen, Christopher. "Balancing Civil Liberties against National Security-A Critique of Counterterrorism Rhetoric." UNSWLJ 29 (2006): SK]

The German philosophers Immanuel Kant and Georg Wilhelm Friedrich Hegel also placed individual liberty at the heart of the State. See, eg, Leonard Krieger, The German Idea of Freedom: History of a Political Tradition from the Reformation to 1871 (1957) 86–138. 2006 Balancing Civil Liberties Against National Security? 5 democracies.20 For example, in the Basic Law for the Federal Republic of Germany, Articles 1 and 2 declare (autonomous) human beings to be the legitimating subjects of the constitution. In this way, individual liberty is taken to be a prerequisite for the constitutional order since the constitution declares (autonomous) human beings to be the legitimating subjects of the constitution.21 **The constitutional protection of liberty not only aims at the protection of the individual, but also constitutes a command of the democratic constitutional order, which needs free individuals to form the democratic community.** It supports individual development and enhances democratic participation, which leads to the existence of a plural and open society. Nevertheless, the constitution does not solely protect the autonomy of the individual out of respect for human individuality. Individual freedom constitutes a prerequisite for a democratic polity. What is more, **it is a precondition for serving as a constitutional source of legitimation**.22 As this very brief historical review of the development of the idea of liberalism reveals, liberty can be conceived as a precondition of security. At the same time, it has been argued that a certain degree of security and personal safety is indispensable for the realisation of personal freedom. In the current political discourse on counter-terrorism and civil liberties, however, the interrelationship between liberty and security is often portrayed one-sidedly. **Government ministers and other commentators over-emphasise the aspect of personal safety and national security as a precondition of liberty and tend to ignore the fact that** **individual freedom legitimises the existence of the State in the first place.** In light of the threat of terrorism, so the argument runs, the citizen’s full enjoyment of civil liberties depends upon a ‘secure environment’ in which human rights and fundamental freedoms can be realised. This state of security is to be achieved through the expansion of the investigative powers of government and through other intrusive features of special anti-terrorism legislation. SK

### “Good of Community”

#### Not tautologically true because we define what the “good of the community” is – protecting agency.

### OV – Legitimate Threat

#### Extend Johnson – the government over-exaggerates national security threats in order to subjugate the people.

This means two things:

1. We don’t know whether the security threats that the negative claims are actually as pressing as they say they are, so there is no way to test the truth of the negative.
2. We need civil liberties to even know whether these national security threats are legitimate.

Kevin Clements, 1990, "TOWARD A SOCIOLOGY OF SECURITY," University of Colorado, http://www.colorado.edu/conflict/peace/example/90-4.htm

This is not to substitute a utopian idealist conception of security although the definition is clearly in an idealist and transformative tradition.[17] There will always be struggles to attain and maintain reasonable levels of security and it is not possible to ignore the continuing role and importance of state in situations or force and coercion nationally and internationally. What is being proposed is that the narrow, exclusive [However,] military views of security as depicted by national security managers have tended to undermine the ability of individuals and social movements to determine for themselves whether or not particular individual, national (state) or international actions really advance security. In the final analysis individuals are the only actors able to determine whether or not government and corporate actions intended to advance security really do so. In most [other] national security discussions such individual concerns are not considered as important as those of the security professionals.

#### Remember the story of Matsuda told in contention 1. This proves this thesis. The government justified Japanese internment using the justification of “national security,” which made 7 year old Matsuda feel guilty for being Japanese. The anti-Japan sentiment had already existed, and the government over-exaggerated the threat to subjugate the people they didn’t like.

### OV – Social Movements

#### Social movements sustain themselves through the protections of civil liberties. What creates change that advances society is not the “fear of terrorism” but rather social movements. We must prioritize civil liberties over national security to protect social movements. Only social movements can even determine what national security threats are.

Kevin Clements, 1990, "TOWARD A SOCIOLOGY OF SECURITY," University of Colorado, http://www.colorado.edu/conflict/peace/example/90-4.htm

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#### This is proven empirically – the government uses national security to shut down protests.

The ACLU 1 notes: ACLU [American Civil Liberties Union]. “A Call to Courage: Reclaiming Our Liberties Ten Years After 9/11.” New York: American Civil Liberties Union, 2011. CH

**Too often, post-9/11 government surveillance has targeted people for expressing political opinions or protesting government policies**. The ACLU has documented examples of political spying, monitoring, and harassment of Americans based on their First Amendment-protected activities by federal, state, and local officials in at least 33 states and the District of Columbia.62 **The government has spied on racial and religious minority groups and community organizations, college groups, military reservists calling home to their families, journalists, aid workers, political activists, and many others. 63 It is not too late to strengthen our laws, to take back our data, and to ensure that government surveillance is conducted under effective and reasonable constraints, subject to meaningful oversight. But we have to speak up now, before our surveillance society is irrevocably entrenched and we find that we have permanently sacrificed our essential values. Otherwise, we risk changing our national character and surrendering one of the key freedoms we strive to protect—our right to privacy and our ability to speak, dissent, exchange ideas, and engage in political activity without the chilling fear of unwarranted government intrusion.**

### Idk what this says

The idea that security constitutes an individual right is all the more problematic in the context of the threat of international terrorism. While civil liberties are quite precisely defined, the public good of security is generally rather unspecific. Indeed, normatively speaking, security cannot be positively defined; only negatively defined as the defence against dangers.60 As a consequence, the definition of these dangers requires great specificity. The definition of these dangers, and their individual assignment, might have been possible in previous terrorism crises. In the cases of left-wing terrorism in Europe in the 1970s and 80s, as well in the case of separatist terrorism in Spain and elsewhere, the threats arose from a limited number of individuals operating in a confined and restricted local environment. As far as the threat of international terrorism is concerned, however, this is no longer possible. Dangers can no longer be individualised. They arise from diffuse transnational organisations and networks without any single sponsor or home base. If the dangers arising from terrorism cannot be sufficiently defined and/or individually assigned, then it is imperative to consider security as a ‘state purpose’ rather than as an individual right of legal subjects. However, if security is to be understood primarily as a ‘state purpose’ rather than as an individual right, then it no longer constitutes a weighable good. Talk 59 See also Gerhard Robbers, Sicherheit als Menschenrecht: Aspekte der Geschichte, Begründung und Wirkung einer Grundrechtsfunktion (1987) 15. 60 A similar definitional approach has been used by several scholars of political science. Arnold Wolfers, for instance, characterised security as ‘the absence of threats to acquired values’; Arnold Wolfers, ‘“National Security” as an Ambiguous Symbol’ (1952) 67(1) Political Science Quarterly 481, 485. Likewise, David Baldwin defined it as ‘a low probability of damage to acquired values’; David A. Baldwin, ‘The Concept of Security’ (1997) 23 Review of International Studies 5, 13. 14 UNSW Law Journal Volume 29(2) of ‘balancing’ security against liberty is thus misleading. Security has become vague in its meaning: as an empowering objective it constitutes a ‘state purpose’, as a legal term it describes a legal good. But, as Oliver Lepsius has pointed out, these two meanings must be strictly separated.61 The positive ‘state purpose’ of guaranteeing security must not be confounded with the negative, legally protected, right of defence against danger. To confuse the two may either lead to security demands the State is not able to fulfil or indicate the failure of the legal system. Lepsius rightly argues that security constitutes an objective that stands above positive law. It must not be used as argumentative tool on the level of positive law. In that case, a situation is created in which positive law can always be trumped by the hyper-positive idea.

### AT: Balance

#### Balancing is nonsensical. The resolution is a question of instances where there are conflicts between national security and civil liberties, because most of the time they are mutually reinforcing.

Michaelson, [Michaelsen, Christopher. "Balancing Civil Liberties against National Security-A Critique of Counterterrorism Rhetoric." UNSWLJ 29 (2006): SK]

**The image of balancing liberty and security in the context of countering terrorism is based on the false assumption that the two goods are mutually** 10 See, eg, Hans Josef Horchem, ‘The Lost Revolution of West Germany’s Terrorists’ (1989) 1(3) Terrorism and Political Violence 353–360. 11 See, eg, Heribert Prantl, Verdächtig: Der starke Staat und die Politik der inneren Unsicherheit [Suspicious: the Strong State and the Policy of Internal Insecurity] (2002) 24–51; Oliver Tolmein, Vom Deutschen Herbst zum 11 September[From the German Autumn to 11th September] (2002) 10–105. 12 The most prominent example is Prime Minister Menzies’ attempt to outlaw the Communist Party in the 1950s. See, eg, George Williams, ‘Australian Values and the War against Terrorism’ (2003) 26(1) University of New South Wales Law Journal 191; Jenny Hocking, ‘Counter-Terrorism and the Criminalisation of Politics: Australia’s New Security Powers of Detention, Proscription and Control’ (2003) 49(3) Australian Journal of Politics and History 355; Jenny Hocking, Terror Laws: ASIO, Counter-terrorism and the Threat to Democracy (2003). 13 Alan M Dershowitz, Why Terrorism Works: Understanding the Threat, Responding to the Challenge (2002) 165–222; The Human Rights and Equal Opportunity Commission, Submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD (23 May 2003) [22], <http://www.hreoc.gov.au/human\_rights/terrorism\_sub/asio\_asis\_dsd.html> at 9 June 2006; see also Prime Minister John Howard quoted in ‘PM announces tough anti-terror measures’, The Age (Melbourne) 8 September 2005. 4 UNSW Law Journal Volume 29(2) **exclusive**. **Liberty and security, however, are interrelated and mutually reinforcing; they cannot, logically, be ‘balanced’ against each other.** In order to illustrate the reciprocity between liberty and security it is helpful to briefly revisit some key underpinnings of the idea of liberalism. At the outset of his Two Treatises of Government, John Locke describes the state of nature as a state of liberty and equality between individuals. In this state of nature, individuals have two natural rights: the right to preserve themselves and the right to punish others for attempting to kill them or generally threatening their survival.14 They exercise those rights under the constraint of the law of nature, whereby they are forbidden to harm others. As Locke puts it, ‘though this be a state of liberty, yet it is not a state of license’. Although the state of nature is not by definition a Hobbesian state of war, it is also not stable enough for people to be altogether happy in it.15 Indeed, the state of liberty is likely to degenerate into a state of war not everybody is disposed to fulfil their duties. To prevent a state of war from ensuing, an impartial judge is needed to interpret the law and mediate between the parties, and a government is needed to enforce this law and provide stability and security.16 Locke specifically describes the reasons men have for abandoning the state of nature in favour of political society as ‘the mutual preservation of their lives, liberties, and estates, which I call by the general name “property”’.17 The notion of individual liberty as a precondition for public security was further developed by leading philosophers of the enlightenment and postenlightenment era. When Jean-Jacques Rousseau observed that ‘man is born free, and everywhere he is in chains’, he did not advocate a lawless state of nature, but a political system built on the free will of its citizens.18 Despite the strong emphasis on individual liberty, the State’s exclusive right to resort to force to ensure security and the rule of law – illustrated in Hobbes’ Leviathan – has been upheld throughout European constitutional history. On Rousseau’s view, however, this monopoly of violence must be controlled by the citizenry. The State is prohibited from interfering with the individual’s right to freedom and personal development except in order to prevent a threat to the order of the state or a violation of the rights of others.19 In the 20th century, the realisation of the classic notion of liberty has been further advanced and refined by the constitutions of several leading liberal 14 John Locke, The Second Treatise of Government, (first published 1690, Thomas P Peardon ed 1952) chs 2–3, especially [4], [16], [18]. 15 To Thomas Hobbes the state of nature in which man lived before the social contract was ‘a war of every Man against every Man’, a condition of internecine strife in which the life of man was ‘solitary, poor, nasty, brutish and short’. Thomas Hobbes, Leviathan, (first published 1660, Richard Tuck ed 1996) ch 13. 16 Locke, above n 14, ch 9, [124]–[126]. 17 Ibid [123]. 18 Jean-Jacques Rousseau, The Social Contract (M Cranston trans, 1975 ed) ch 1 [trans of Le Contrat Social]. 19 The German philosophers Immanuel Kant and Georg Wilhelm Friedrich Hegel also placed individual liberty at the heart of the State. See, eg, Leonard Krieger, The German Idea of Freedom: History of a Political Tradition from the Reformation to 1871 (1957) 86–138. 2006 Balancing Civil Liberties Against National Security? 5 democracies.20 For example, in the Basic Law for the Federal Republic of Germany, Articles 1 and 2 declare (autonomous) human beings to be the legitimating subjects of the constitution. In this way, individual liberty is taken to be a prerequisite for the constitutional order since the constitution declares (autonomous) human beings to be the legitimating subjects of the constitution.21 **The constitutional protection of liberty not only aims at the protection of the individual, but also constitutes a command of the democratic constitutional order, which needs free individuals to form the democratic community.** It supports individual development and enhances democratic participation, which leads to the existence of a plural and open society. Nevertheless, the constitution does not solely protect the autonomy of the individual out of respect for human individuality. Individual freedom constitutes a prerequisite for a democratic polity. 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In the current political discourse on counter-terrorism and civil liberties, however, the interrelationship between liberty and security is often portrayed one-sidedly. **Government ministers and other commentators over-emphasise the aspect of personal safety and national security as a precondition of liberty and tend to ignore the fact that** **individual freedom legitimises the existence of the State in the first place.** In light of the threat of terrorism, so the argument runs, the citizen’s full enjoyment of civil liberties depends upon a ‘secure environment’ in which human rights and fundamental freedoms can be realised. This state of security is to be achieved through the expansion of the investigative powers of government and through other intrusive features of special anti-terrorism legislation. SK

### AT: Nat Security prereq

#### National security is not a prerequisite.

Michaelson, [Michaelsen, Christopher. "Balancing Civil Liberties against National Security-A Critique of Counterterrorism Rhetoric." UNSWLJ 29 (2006): SK]

The German philosophers Immanuel Kant and Georg Wilhelm Friedrich Hegel also placed individual liberty at the heart of the State. See, eg, Leonard Krieger, The German Idea of Freedom: History of a Political Tradition from the Reformation to 1871 (1957) 86–138. 2006 Balancing Civil Liberties Against National Security? 5 democracies.20 For example, in the Basic Law for the Federal Republic of Germany, Articles 1 and 2 declare (autonomous) human beings to be the legitimating subjects of the constitution. In this way, individual liberty is taken to be a prerequisite for the constitutional order since the constitution declares (autonomous) human beings to be the legitimating subjects of the constitution.21 **The constitutional protection of liberty not only aims at the protection of the individual, but also constitutes a command of the democratic constitutional order, which needs free individuals to form the democratic community.** It supports individual development and enhances democratic participation, which leads to the existence of a plural and open society. Nevertheless, the constitution does not solely protect the autonomy of the individual out of respect for human individuality. Individual freedom constitutes a prerequisite for a democratic polity. What is more, **it is a precondition for serving as a constitutional source of legitimation**.22 As this very brief historical review of the development of the idea of liberalism reveals, liberty can be conceived as a precondition of security. At the same time, it has been argued that a certain degree of security and personal safety is indispensable for the realisation of personal freedom. In the current political discourse on counter-terrorism and civil liberties, however, the interrelationship between liberty and security is often portrayed one-sidedly. **Government ministers and other commentators over-emphasise the aspect of personal safety and national security as a precondition of liberty and tend to ignore the fact that** **individual freedom legitimises the existence of the State in the first place.** In light of the threat of terrorism, so the argument runs, the citizen’s full enjoyment of civil liberties depends upon a ‘secure environment’ in which human rights and fundamental freedoms can be realised. This state of security is to be achieved through the expansion of the investigative powers of government and through other intrusive features of special anti-terrorism legislation. SK

#### National security is not a prerequisite (2).

Michaelson,

**It is thus also misleading to suggest that it is only after the government has created a ‘secure environment’ that we can enjoy our civil liberties and human rights**. **This assertion would ultimately lead to security demands the government is not able to fulfil.** Besides, **it would effectively result in the contention that it is the State that ‘creates’ human rights in the pursuit of security and societal freedom**. **Such reasoning, however, is inconsistent with the very idea of modern liberal democracy.** As Burkhard Hirsch, a former German Justice Minister, has pointed out, ‘**there is no societal freedom without the freedom of the individual’.**27 Indeed, an approach that effectively attributes the creation of human rights and civil liberties to the State would eventually bring about the end of personal and political freedom. The respect for and protection of human rights would then be reduced to a mere variable in the government’s security policy. **Human rights and civil liberties would represent ‘luxury goods’ for enjoyment in times of peace, but would not constitute restraining yardsticks for government in times of perceived national danger. This line of reasoning strongly resembles the political authoritarianism formulated by the German** political and legal **theorist** Carl Schmitt **during the political turmoil of the Weimar Republic.** Schmitt claimed that the ‘existence of the State is undoubted proof of its superiority over the validity of the legal 24 Philip Ruddock, above n 2, [81]–[84]. 25 Ibid. 26 The interwoven structure of state obligations has been further refined by developments in international human rights law. The UN human rights treaty bodies, the Special Procedures of the UN Commission on Human Rights and other institutions have adopted a three-level typology outlining the obligations of states. This typology is now widely accepted and determines the state’s duties as ‘obligations to respect, protect and fulfil’ individual rights. It is applicable to civil and political rights as well as economic, social and cultural rights. The obligation to respect requires states to refrain from interfering with the enjoyment of human rights. The obligation to protect human rights entails the expanding responsibility of States to regulate the behaviour of third parties with respect to precluding the possibility that private persons, acting within the private domain, can violate these rights (so-called ‘horizontal effectiveness’ of human rights). Finally, the obligation to fulfil requires states to take action to achieve the full realisation of rights. These actions can include enacting laws, implementing budgetary and economic measures, or enhancing the functioning of judicial bodies and administrative agencies: see, eg, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht (1997) <http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\_.html> at 10 June 2006. 27 Burkhard Hirsch, ‘Der attackierte Rechtsstaat: Bürgerrechte und “innere Sicherheit” nach dem 11. September,’ (2002) 159 Vorgänge – Zeitschrift für Bürgerrechte und Gesellschaftspolitik 14. 2006 Balancing Civil Liberties Against National Security? 7 norm’.28 Because the norms of a legal system cannot govern a state of emergency, they cannot determine when such an exceptional state comes into existence, or what should be done to resolve it. Consequently, every legal order ultimately rests not upon norms, but rather on the decisions of the sovereign. The essence of sovereignty lies in the absolute authority to decide when the normal conditions presupposed by the legal authority exist29 For Schmitt, the respect and protection of human rights and civil liberties were thus subsidiary to the security considerations of the government (as sovereign). It is well known that several aspects of this political theory provided a defence of authoritarian dictatorship and, initially, to Schmitt’s own personal support of National Socialism and the Third Reich.

### AT: No conflict

#### Civil liberties trade offs

Davis and Silver, [Davis, Darren W., and Brian D. Silver. "Civil liberties vs. security: Public opinion in the context of the terrorist attacks on America." American Journal of Political Science 48.1 (2004): 28-46.]

America’s response to the terrorist attacks reveals a “contestability of rights” (Sniderman et al. 1996) in which **the commitment to civil liberties collides with other cherished values**. This issue of the trade-offs between civil liberties and the threat to personal security not only parallels how individuals make normal civil liberties judgments, but it accounts for why people find it difficult to apply abstract democratic norms to practical situations. **We may sincerely believe in free speech and association, but we may also believe in protecting our society from those who use these freedoms to plan or carry out criminal acts**. As Gibson and Bingham have noted, **support for civil liberties** should not be regarded as an attitude in itself or as an abstract concept; instead it **should be treated as a construct that characterizes the priorities assigned in cases of value trade-offs.** “The exercise of rights generates costs, and these costs are sometimes so substantial that conflict ensues” (1985, 108–9). McClosky and Brill (1983) similarly suggest that **the choice of liberty is bedeviled by the need to strike a proper balance between freedom and control.** To the extent that the support for civil liberties is most reasonably understood as contingent on the relevance of other important values, as opposed to being unequivocal and absolute, measurement approaches need to consider the continual play of competing forces that impinge upon civil liberties judgments. Sniderman et al. maintain that **the exercise of liberty “unavoidably collides with other values”** (1996, 244). This **research maintains that no right can be exercised without limitations before it clashes with the rights of others and the maintenance of order, and one cannot support both liberty and order at the same time**. More precisely**, as support for civil liberties increases, support for order and security decreases, and vice versa.** In a similar vein, Peffley, Knigge, and Hurwitz (2001) argue that the way citizens rank competing values plays a major role in conditioning civil liberties judgments. Our civil liberties trade-off approach takes the form of counterposing individuals’ support for civil liberties against governmental efforts to provide for the safety and security from terrorism—two important values. **Although civil liberties and personal security are not necessarily at odds, the bases of contention that we identify rest on the efforts of government and law enforcement agencies to maintain order or provide security** in the post-9/11 era. **It is not order per se that clashes with individual rights, but rather the government’s methods of maintaining security that may challenge individual civil rights or liberties.** In much of the research that adopts a value trade-off approach in the study of civil liberties and tolerance, the struggle is between preserving individual security and tolerating the civil liberties of disliked or threatening groups. In the post-September 11 period, however, the civil liberties vs. security trade-off has mainly been framed as one of protecting individual rights or civil liberties from the government as the government seeks to defend the country against a largely external enemy, albeit one that has infiltrated American society and poses a domestic risk to public safety and security. The competing issues in the civil liberties vs. security trade-off are thus fundamental to the very idea of democracy as reflected in the Bill of Rights: that citizens should be protected from the government. Because it is the government’s actions that may clash with individual rights, we expect popular perceptions of government— trust in government, as well as patriotism—to play an important role in determining people’s willingness to trade off civil liberties for security. Using the contextual issues surrounding the trade-offs and the Patriot 30 DARREN W. DAVIS AND BRIAN D. SILVER Act legislation, we identify several dimensions of support for civil liberties. Each of these became an important public issue in the aftermath of the September 11 attacks. SK

#### National Security and Civil Liberties trade off. If you’re not focusing on one, you’re bolstering the other

Anthony Bergin, 9-19-2014, "Balance security and civil liberties," No Publication, http://www.theaustralian.com.au/business/balance-between-security-and-civil-liberties-is-crucial/news-story/6e4a0d1117be591180ac33407fe96c8a

Occasionally too we get political leaders trying to sell us the line that we can “have it all”: that we don’t need to trade off liberty and security, but rather can maximise both simultaneously. But in both law and policy, there will always be some degree of tension between these values. In a democratic society there’s no value that can be maximised: think here, for example, of the values of equality and freedom. In striking the appropriate balance in our legal measures for countering terrorism we should avoid excessively swinging the national security legal “car” from one side of the road to the other.

### 1AR Straight Turns

#### Limiting civil liberties often triggers violent backlash, jeopardizing security even more.

**Dr. Christopher Michaelsen 1 shows:** Michaelsen, Christopher. [Ph.D., Scholar at the Strategic & Defence Studies Centre, The Australian National University, Canberra] “Balancing Civil Liberties Against National Security? A Critique of Counterterrorism Rhetoric.” *UNSW Law Journal*, Volume 29, 2006. RP

The image of balancing civil liberties and human rights against security is also misleading for strategic reasons. It is in this context that it is crucial to examine the potential effects of counter–terrorism measures more closely. **While it is conceivable that certain repressive anti-terrorism measures may actually achieve some short-term security gains, they may simultaneously** increase **the threat of terrorism and diminish security in the long–**term. The assumption that increasing security inevitably requires a curtailment of liberty is, in this way, unfounded. This argument has both a domestic and an international dimension; at its heart lie the question of what motivates terrorists to engage in violence. Much of the terrorism literature focuses on the psychological and sociological aspects leading to individual engagement of terrorists.62 While terrorist behaviour is perhaps always determined by a combination of innate factors, two themes appear to dominate the debate among scholars: the role of personal grievances and the lack of alternative routes of expression and for bringing about change. Harvard scholar Jessica Stern concluded, for instance, that both alienation and humiliation play major roles in an individual’s decision to engage in terrorism or political violence.63 Similarly, other scholars have observed that social pressures, as well as personal and cultural humiliation, constitute major factors in the emergence of terrorism.64 These observations have also been confirmed by Abdul Aziz Rantisi, the late political leader of Hamas. **Addressing the motivation of Palestinian suicide bombers, Rantisi stated that ‘to die in this way is better than to die daily in frustration and humiliatio**n’. 65 **Likewise, hopelessly entrenched political impasses and [B]locked societies have been blamed for the rise of Islamic extremism in Egypt, Saudi Arabia** and Algeria.66 During the 1990s, Islamic radicals in these countries grew increasingly frustrated by their failure to change the status quo at home. As a consequence they began to turn their attention abroad. It was (and is) felt among Islamist extremists that striking at the Western sponsors of Arab regimes – the United States in particular – would be the best means to improve local conditions. This phenomenon is not limited to Islamic extremism. The lack of political and societal reforms also played a significant role in the emergence of left-wing extremism and terrorism in Europe in the 1970s and 80s.67 **In response to these movements, several governments introduced a wide array of repressive counter- measures, including special security [L]aws that curtailed civil liberties** and human rights to a significant extent. rather than leading to a decline of violence and civil unrest, however, the measures taken **often undermine**d **safety as the sense of personal injustice increase[s] and channels for expressing discontent and altering political, legal and social structures were** closed.68 A comparable development may also occur as a consequence of the domestic counter-measures introduced in the aftermath of the 9/11 attacks. Perceived as repressive and discriminatory, anti-terrorism laws may lead to an inflamed sense of grievance and injustice, especially among the Muslim community. This, in turn, could further alienate and isolate Muslims – even the so-called moderates – and foster sympathy and support for religious fanatics.

#### By forcing the state to adhere to objective standards before it violates rights, affirming creates more *personal* security for all.

**Dr. Michaelsen 2 writes:** Michaelsen, Christopher. [Ph.D., Scholar at the Strategic & Defence Studies Centre, The Australian National University, Canberra] “Balancing Civil Liberties Against National Security? A Critique of Counterterrorism Rhetoric.” *UNSW Law Journal*, Volume 29, 2006. RP

**Often referred to as ‘people–centred security’ or ‘security with a human face’, the idea of [H]uman security places human** being**s – rather than states – at the focal point of security considerations.** While the definition and scope of the concept have been debated extensively in recent years, most scholars seem to agree that human security involves more than the absence of violent conflict.30 As UN Secretary-General Kofi Annan has observed, **‘[I]t encompasses human rights, good governance, access to education and health care and ensuring that each ind**ividual has opportunities and choices to fulfil his or her own potential’.31 When Attorney-General Ruddock focuses on the more traditional notions of security in his invocation of the concept, in the sense of providing protection from physical harm, he is ignoring other, equally central aspects of human security which seek to ensure that every individual **has the same legal rights and is not at risk of arbitrary or oppressive state action.** As Miriam Gani has pointed out, to highlight one feature of human security at the expense of others is rather improper and misleading.

#### The opposite is true: civil liberties are key to effective national security.

*James Dempsey argues that violating rights sets the stage for conflict; the best way to protect lives is to have a system of civil liberties that ensures leaders make good decisions and are accountable.[[1]](#footnote-1)*

**Deputy Director James Dempsey writes:** Dempsey, James X. [Deputy Director, The Center for Democracy and Technology] “Civil Liberties in a Time of Crisis.” *Section of Civil Rights and Social Justice*,Volume 29. Winter 2002. RP

**The [D]ebate over terrorism is often framed as a trade-off between liberty and security.** This is a flawed calculus, **in several respects.** **First, many [C]ivil liberties, far from being at odds with security, actually** enhance **the ability of the government to defend the common good.** We guarantee the right to confront one’s accusers, for example, not only as an element of human dignity but also because cross-examination exposes lies and forces the government to continue looking until the truly guilty party is found. **Similarly, we subject government decisions to [P]ublic scrutiny** and judicial review not only to give voice to individuals but also because openness and **accountability can produce a fuller factual record, expose faulty assumptions, and slow the rash decision making of elected officials acting under pressure.** We protect freedom of speech not only because it allows room for personal self-expression, but also because it promotes the stability that comes from the availability of channels for dissent and peaceful change. For these and other reasons, **[S]urrender of freedom in the name of fighting terror is not only a constitutional tragedy, it is also likely to be ineffective and worse, counterproductive.**

### 1AR v Social Contract

#### 1. [Allen] The opposite is true: the Social Contract demands respect for privacy, not security.

Law Professor Anita Allen writes: Allen, Anita. [Professor, University of Pennsylvania School of Law] “Coercing Privacy.” *William and Mary Law Review*, Vol. 40, No. 3, March 1999. DD

In 1905, the Georgia Supreme Court, in Pavesich v. New England Life Insurance Co., became the first court expressly to affirm the existence of a legal right to privacy.6" In Pavesich, the emphasis was not on spiritual man, but political man, as the court made the case for privacy in political terms. The court reasoned that [T]he social contract surely must have a provision guaranteeing the protection of privacy. 6' If not, what citizen would agree to the social contract? The Georgia court's argument presupposed that [I]t is rational and natural to desire control over one’s personal likeness and identity. 62 Psychologists have long emphasized the unhealthy effects of depriving individuals of opportunities for socially defined modes of privacy. In the 1970s and 1980s, [S]ocial psychologists argued that opportunities for physical and informational privacy were important to mental well-being[,] and social exchange. Physical and informational privacy practices serve to limit observation and disclosure that are inimical to the well-being. Philosophers and legal theorists began urging in the 1970s that the great growth of privacy rights in tort law, the constitutional right to privacy, and state and federal privacy statutes serve the interests of human dignity and autonomy." Liberals explain the value of privacy and private choice in relation to their consequences for individuals and society, as well as in relation to dignitarian and deontic ends. Liberal moral philosophers maintain that respecting the many forms of privacy is paramount to respect for human dignity, personhood, moral autonomy, workable community life, and tolerant democratic political and legal institutions. 65 In a memorable essay, philosopher Jeffrey Reiman once closely linked privacy to the formation of individual personhood: ‘[P]rivacy is a social ritual by means of which an individual's moral title to his [their] existence is conferred.’ 66 Some theorists wrongly condemn privacy when privacy is construed in Reiman's terms.67 So construed, privacy can seem to serve the interests of selfishness or an exaggerated individualism. The formation of self-concept and intimate relationships on which workable family and community life depend, however, requires opportunities for privacy and private choice. Privacy is down time. Privacy allows me to rest, retool, and as a result, better prepare myself for my social responsibilities, whether they be familial, local, or global. Privacy has value as the con-text in which individuals work to make themselves better equipped for their familial, professional, and political roles. With privacy, I can try to become competent to perform and achieve up to my capacities, as well as to try out new ideas and practice developing skills.

#### 2. The opposite is true: people only want security as a means of protecting their liberties. If they were told that the state could control their rights as it saw fit, they wouldn’t agree to enter it, since it would be functionally no better than the state of nature.

#### 3. The opposite is true: letting the state violate civil liberties defeats the purpose of a Social Contract in the first place. We wanted to stop others from violating our rights in the state of nature, so it doesn’t make sense to let the *state*, the most powerful agent, do that whenever it wants.

## 1AR v Terrorism/Grave Threats

### (2AC) Masking Turn

#### Preoccupation with national security strategies creates a nebulous intelligence network that distracts us from real threats – turns the NC

ACLU ACLU Sep. 2011, ["A CALL TO COURAGE: Reclaiming Our Liberties Ten Years After 9/11", https://www.aclu.org/files/assets/acalltocourage.pdf] bcr 6-19-2017

There is thus little or no evidence of additional plots foiled, arrests made, or lives saved as a result of data mining and mass surveillance programs.61 The reality is that as governmental surveillance has become easier and less constrained, security agencies are flooded with junk data, generating thousands of false leads that distract from real threats. In the name of finding the terrorist needle in a haystack, our government has built the biggest haystack in history—and it is growing all the time.

### (2AC) Backlash Turn

#### Military occupation as a result of national security mandates is empirically the sole root cause of terrorism

PAPE Robert A. Pape, teaches at the University of Chicago and is co-author, with James K. Feldman, of Cutting the Fuse: The Explosion of Global Suicide Terrorism and How to Stop It.Foreign Policy, 10-18-2010, ["It’s the Occupation, Stupid", http://foreignpolicy.com/2010/10/18/its-the-occupation-stupid/] bcr 6-19-2017

New research provides strong evidence that suicide terrorism such as that of 9/11 is particularly sensitive to foreign military occupation, and not Islamic fundamentalism or any ideology independent of this crucial circumstance. Although this pattern began to emerge in the 1980s and 1990s, a wealth of new data presents a powerful picture. More than 95 percent of all suicide attacks are in response to foreign occupation, according to extensive research that we conducted at the University of Chicago’s Project on Security and Terrorism, where we examined every one of the over 2,200 suicide attacks across the world from 1980 to the present day. As the United States has occupied Afghanistan and Iraq, which have a combined population of about 60 million, total suicide attacks worldwide have risen dramatically — from about 300 from 1980 to 2003, to 1,800 from 2004 to 2009. Further, over 90 percent of suicide attacks worldwide are now anti-American. The vast majority of suicide terrorists hail from the local region threatened by foreign troops, which is why 90 percent of suicide attackers in Afghanistan are Afghans. Israelis have their own narrative about terrorism, which holds that Arab fanatics seek to destroy the Jewish state because of what it is, not what it does. But since Israel withdrew its army from Lebanon in May 2000, there has not been a single Lebanese suicide attack. Similarly, since Israel withdrew from Gaza and large parts of the West Bank, Palestinian suicide attacks are down over 90 percent. Some have disputed the causal link between foreign occupation and suicide terrorism, pointing out that some occupations by foreign powers have not resulted in suicide bombings — for example, critics often cite post-World War II Japan and Germany. Our research provides sufficient evidence to address these criticisms by outlining the two factors that determine the likelihood of suicide terrorism being employed against an occupying force. The first factor is social distance between the occupier and occupied. The wider the social distance, the more the occupied community may fear losing its way of life. Although other differences may matter, research shows that resistance to occupations is especially likely to escalate to suicide terrorism when there is a difference between the predominant religion of the occupier and the predominant religion of the occupied. Religious difference matters not because some religions are predisposed to suicide attacks. Indeed, there are religious differences even in purely secular suicide attack campaigns, such as the LTTE (Hindu) against the Sinhalese (Buddhists). Rather, religious difference matters because it enables terrorist leaders to claim that the occupier is motivated by a religious agenda that can scare both secular and religious members of a local community — this is why Osama bin Laden never misses an opportunity to describe U.S. occupiers as "crusaders" motivated by a Christian agenda to convert Muslims, steal their resources, and change the local population’s way of life. The second factor is prior rebellion. Suicide terrorism is typically a strategy of last resort, often used by weak actors when other, non-suicidal methods of resistance to occupation fail. This is why we see suicide attack campaigns so often evolve from ordinary terrorist or guerrilla campaigns, as in the cases of Israel and Palestine, the Kurdish rebellion in Turkey, or the LTTE in Sri Lanka.

### MPX Defense

#### This doesn’t matter: the war on terrorism isn’t winnable, so violating civil liberties creates a harm for no benefit.

*An ACLU study found that the war on terrorism is inevitable – despite a heavy focus on national security and the death of bin Laden, U.S. presence in the Middle East is still increasing.[[2]](#footnote-2)*

**The ACLU shows:** The American Civil Liberties Union. “A Call to Courage: Reclaiming Our Liberties Ten Years After 9/11.” ACLU, September 2011. RP

**The unique danger inherent in trying to articulate a war against terrorism, or even a war against Al-Qaeda, is that the “end” of such a conflict is a distant abstraction, not an actual** event. We may not have known when prior wars would end, but we knew how. With many of our leaders now claiming that we are in a war that takes place everywhere and lasts forever, can we share Justice Brennan’s confidence that constitutional equilibrium will be restored? Ten years have passed since the event that launched this “war”; Al Qaeda’s leader and many of his deputies have been killed; counter-terrorism experts report that Al Qaeda’s capabilities have been crippled. **At a time when the nation should be ratcheting down its war footing, many of our political leaders insist instead on doubling down: a majority of the House of Rep- resentatives recently voted to authorize a worldwide war without end**; if passed by the Senate, this legislation would effectively hand over unchecked war authority to any future President. In other words, there is a very real danger that this last decade will break the mold of Justice Brennan’s cycles, **and** that unless the American people object loudly and continuously, we will witness the enshrinement of a permanent national security state.

1. Dempsey, James X. [Deputy Director, The Center for Democracy and Technology] “Civil Liberties in a Time of Crisis.” *Section of Civil Rights and Social Justice*,Volume 29. Winter 2002. RP [↑](#footnote-ref-1)
2. he American Civil Liberties Union [Liberal Advocacy group that fights for rights for Americans] “A CALL TO COURAGE: Reclaiming Our Liberties Ten Years After 9/11.” September 2011. RP [↑](#footnote-ref-2)