



## *Preface*

Sadly, terrorism is far from a new phenomenon. While the attacks of 9/11 caused many in America who had previously given very little thought to the subject of terrorism to become increasingly focused upon the issue, the reality is that terrorism has been a feature of society for centuries. In fact, the word “terrorism” is believed to have originated back sometime between 1793 and 1794 during the French Revolution’s “Reign of Terror” when Robespierre’s Jacobins was reported to have executed more than 12,000 people who were deemed to be enemies of the Revolution. Robespierre was unapologetic about the use of terrorism as a means of achieving political goals and is reported to have said about his actions: “Terror is nothing but justice, prompt, severe and inflexible.”<sup>1</sup>

Since its origins, various societies have had to deal with the plague of terrorism. Although specific types and phases of terrorism have arisen for a multitude of reasons, the essential challenge for societies confronting such threats has remained the same: that is finding a means to an end to the scourge of terrorism, while preserving the essential liberties and freedoms upon which modern democratic societies have been based.

Terrorism is not a recent creation; however, it is also undeniable that the current terrorist threat presents new and special challenges to our society. Indeed, the recent wave of terrorist activity has been particularly damaging and profound. The effects of the terrorism of the past few years have transformed and will long continue to influence the way we live for decades, if not centuries, to come. While many of these changes have occurred as a direct result of the acts of terrorists themselves, others have followed and will continue to grow out of our collective response to the acts of the terrorists.

History demonstrates adequately that caution must be exercised before undertaking a reactionary response to a new threat. Still, evidence suggests that all around

the world governments have been responding in a very rapid and extremely overbroad manner to the current perceived risk. Consider, for instance, the singular but incredibly significant example of the Patriot Act, fully titled, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). This very lengthy and extraordinarily detailed legislation was passed on October 26, 2001, only six short weeks after the terrorist attacks that devastated the country. The text of the USA PATRIOT Act exceeds 100 pages, making it the longest piece of emergency legislation passed in the shortest period, in all U.S. history. Such a rapid and utterly transformative response is sufficient cause to sound the alarm bells.

After the terrorist attacks, there was much speculation that many of the measures undertaken would be temporary in nature. However, all indications are that governmental powers continue to increase and expand in ways many of us never imagined would be possible just a few short years ago, while personal privacy rights and individual liberties continue to diminish. Now, more than five years after the attacks that devastated the country, it is time to take a step back and analyze whether the measures that have been taken in an effort to protect the country have truly been in the nation's best interest. If proper care is not taken and due consideration is not given now, it is more likely than not that the changes caused by our collective response to the terrorist acts will be largely negative.

In light of the foregoing, this book shall explore how the ongoing global war on terror has led to a global war on privacy. *Introduction* will introduce preliminary evidence supporting the notion that the war on terror has resulted in a war on privacy. It will examine the ways in which, led by the United States, various governments around the world have been responding to the threat of terrorism and will show how these responses have been eroding well-established privacy rights and individual liberties.

Chapter 1 will present a general overview of privacy rights in the United States before and immediately following September 11. Specifically, the chapter will present an in-depth examination of the trends in privacy regulation as they existed before September 11, 2001. The chapter will demonstrate how various factors, including the advent of new technologies, were leading to the enactment and enforcement of more stringent legislation concerning individual privacy rights. This chapter will explore some of the most prominent privacy rights laws that were passed in the United States during the 1990s and early 2000s. It will then show the general trends in privacy rights that had begun to develop just after September 11, 2001.

Having introduced the privacy regime, as it existed in the United States before September 11, Chapter 2 will move on to examining how the events of September 11 (and the legislation passed as a result thereof) have resulted in a startling and

significant erosion of privacy rights in the United States. Significant focus will be placed on the USA PATRIOT Act and similar legislation. This chapter will also highlight the government's data mining efforts and, in doing so, will show how corporations, educational institutions, and other private entities have been drafted into becoming foot soldiers in the government's war on privacy. Such draft has, of course, put many such entities in the impossible position of having to choose between responding to governmental demands for information on the one hand and honoring privacy commitments made to individuals and complying with privacy laws on the other.

Then, in Chapter 3 the discussion will shift to an analysis of privacy rights in the Middle East and Africa and will examine how such nascent rights have also been impacted by the global war on terror. While neither privacy rights nor Internet usage was very well developed before the attacks on America, generally in most countries in the region the slow march toward enhanced privacy protections was stalled considerably by the attacks against America and the governmental response that followed.

Chapter 4 will examine the impact that the war on terrorism had on privacy rights in Europe, with a particular focus on countries that are members of the European Union (EU). Privacy rights have long been respected in the Europe. In fact, in many European countries, privacy is considered as a fundamental human right. Member states of the EU have to implement in their local laws the requirements of the Data Protection Directive, a very comprehensive legislation that provides individuals with comprehensive privacy rights and places restrictions on the export of personal data outside the EU. At the same time, however, European countries have been battling terrorism for many years, and in the wake of the September 11 terrorist attacks against the United States and those that followed in United Kingdom, many European jurisdictions demonstrated a willingness to adopt tough new anti-terror measures, many of which had a palpable negative impact on privacy rights. The horrendous transit bombings that followed in Madrid and London only strengthened the resolve of many European countries to take all actions deemed necessary to reduce the likelihood of future terrorist attacks.

Chapter 5 will focus on our northern and southern neighbors: Canada and Mexico. As an important trading partner and close neighbor of the United States, Canada has been particularly impacted by US efforts to combat terrorism. Like the EU, Canada has comprehensive privacy legislation, enacted in advance of the 2001 attacks. Therefore, Canada has been trying to balance the need to collect, disclose, and use personal data with the need to protect the privacy rights of its citizenry. Mexico, as well, has been impacted in a dramatic way by the U.S.-led war on terror. Mexico has become a higher priority for law enforcement because of a growing

concern about the porous southern border and the potential for terrorists and/or dangerous materials to be smuggled into the United States.

Chapter 6 will focus upon Latin and South America. Privacy rights were somewhat slow in coming to the region of South America. Even today, there are many countries in South America that have not enacted any privacy laws and do not provide any constitutional protections to privacy rights. Nonetheless, in the late 1990s, a handful of South American countries did begin to consider and enact privacy and data protection laws. It is likely that such efforts were encouraged at least, in part, by the enactment of the European Data Protection Directive, which prohibits the export of personal data from the EU to third countries that do not provide adequate protection to personal data. For the most part, efforts to enact new privacy laws and strengthen existing legislation were diminished by the war on terrorism. At the same time, local governments found that they had a very clear basis for strengthening a wide range of anti-terror measures.

In Chapter 7, attention will shift to examining the privacy rights in the South Pacific and Asia. This chapter will demonstrate how the war on terrorism has been having a very negative impact on the privacy rights in many countries of the region. Like in many other regions examined in this book, privacy rights were largely under development at the time of the terrorist attacks in the United States. The growth and development of these privacy laws took an about-face in the wake of the terrorist attacks and in response to increasing demands for information from the U.S. and other governments. At the same time, many countries in the region engaged in increased surveillance and enacted various anti-terror measures, all of which had a negative impact on privacy rights.

The final chapter will argue that the erosion of privacy rights on a worldwide basis is fundamentally detrimental to a democratic society. While it is clear that efforts to prevent terrorism are essential, it is the position of this publication that such efforts can be carried out with greater respect for individual privacy rights. This chapter will also demonstrate why aggressively pursuing efforts to prevent terrorism and apprehend terrorists with little regard for privacy rights and civil liberties will lead to far-reaching negative consequences on a worldwide basis.

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