Tortured Relations: Human Rights Abuses and Counterterrorism Cooperation

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Two big assumptions fuel current mobilization against and policy discussions about the U.S. war on terror and its implications for human rights and international cooperation. First, terrorism creates strong pressures on governments—especially democracies—to restrict human rights. Second, these restrictions are not only immoral and illegal, but also counterproductive to curbing terrorism. If these two assumptions are correct, then democracies face a vicious circle: terrorist attacks provoke a reaction that makes it harder to defeat terrorist organizations.

The U.S. government adopted a wide range of actions to curtail civil liberties and political freedoms after September 11, 2001. At the time, the Bush administration explained that these actions would help protect the United States and its citizens from further attacks. The current understanding is that Bush administration policies—including the mistreatment of prisoners at Abu Ghraib, the use of torture in interrogations at Guantanamo Bay and other secret sites, and the rendition of captured terrorist suspects to states that torture—have backfired. The consequences of these deliberate policy choices, including the deaths of multiple detainees in Iraq and Afghanistan and the massive procedural challenges to prosecuting captured terrorist suspects in the United States, have degraded America's standing as a world leader in the protection of human rights and deterred other governments from cooperation in the war on terror. All of this, according to Amnesty International, is "destroying the human rights of ordinary people" (Amnesty International 2004) and has "made the world a more dangerous place" (BBC 2004).

Motivated by both moral and practical concerns, the Obama administration is now investigating allegations of torture by Central Intelligence Agency (CIA) operatives and making strong promises to shut Guantanamo Bay. Although few concrete public steps have been taken, policymakers see the renovation of America's human rights policy as a big part of the counterterrorism effort (Szewczyk 2009). Obama's director of national intelligence, retired Admiral Dennis Blair, told Congress in January 2009 that Guantanamo "is a rallying cry for terrorist recruitment and harmful to our national security, so closing it is important for our national security" (Boston.com 2009). Matthew Waxman, a former Bush administration official, argues that "the United States has a strategic interest, a national security interest in promoting certain rule-of-law principles and in demonstrating the durability and legal consistency—. . . legitimacy of its counterterrorism policies in order to garner greater international cooperation in continuing counterterrorism operations" (Council on Foreign Relations 2009). To more effectively fight the global war on terror, the general belief is that the United States needs to modify its behavior and once again protect human rights. Our contribution to this symposium explores the evidence for this point of view.

PROOF

Evidence in support of the first assumption—that terrorism creates strong pressures on democratic governments to restrict human rights—is weaker than public conviction. U.S.-specific studies by the 9/11 Commission and scholars have concluded that the U.S. government adopted a wide range of actions to curtail civil liberties and political freedoms after September 11, just as they have done during previous involvement in episodes of international political violence (Brinkley 2003). Global studies conclude that terrorist attacks have led states to place some restrictions on certain human rights but not others, although there is disagreement about which rights have been curtailed.

Much of the media coverage has focused on terror and interrogation techniques, but, in one of the most sophisticated studies to date, Piazza and Walsh (2009) conclude from their statistical analysis that attacks have led to more government killings and disappearances but have had no effect on whether governments use torture or political imprisonment or curb freedom of speech, assembly, or religion. Stone (2004), meanwhile, concludes that attacks have led to more restrictions on free speech, while Charters (1994) concludes that domestic terrorist activities have led governments to use counterterror measures to repress civil liberties, but transnational terrorism has not. Callaway and Harrelson-Stephens (2004) find that there is a greater likelihood of terrorism at low levels of repression, but this likelihood increases as repression increases, until a certain threshold is reached.

The evidence for this assumption that terrorism leads governments to restrict human rights is thus not only mixed but also difficult to interpret. Even the best statistical work suffers from endogeneity and measurement issues that call the results into question. Case studies, meanwhile, show that counterterrorism efforts can lead to both restrictions and expansions of civil liberties.

A prominent example is the British government campaign against the Provisional Irish Republican Army (IRA). In 1971,

the British responded to increasing IRA terrorism by arresting large numbers of suspected IRA members in a series of sweep operations and placing them in indefinite detention (Donohue 2008). The campaign riled up IRA supporters and removed the moderate leaders; the more aggressive leaders, taking greater security precautions and so escaping the British sweeps, were left to ramp up terrorist activities. When these repressive tactics failed to curb terrorism, the British government switched approaches and began to provide more rights to suspected terrorists. In 1973, the United Kingdom implemented the Diplock court system for Northern Ireland, which limited pretrial detentions and made confessions derived from the mistreatment of prisoners under European standards inadmissible. In 1974, even these restrictions were eased when the new Labour government formally ended the policy of indefinite detention in the belief that "the use of detention . . . fan [s] a widespread sense of grievance and injustice, and obstructs those elements in Northern Ireland society which could lead to reconciliation" (Donohue 2008, 47).

Taken as a whole, the current body of research suggests that terrorism does create incentives for democracies to restrict human rights, but those incentives are not consistent—or not consistently acted upon—for all democracies or all manner of human rights. But it is the second assumption—that human rights restrictions have generally backfired by reducing international counterterrorism cooperation and thus fueling more terror—that creates a vicious circle.

BREAKING DOWN COUNTERTERRORISM COOPERATION

In our view, the second assumption that U.S. restrictions on human rights since September 11 have fueled more terrorism urgently needs unpacking. U.S. human rights restrictions since September 11 have affected counterterrorism cooperation at three different levels: with other important democracies, with authoritarian governments whose cooperation is required to fight the war on terror, and within the U.S. government between agencies responsible for different aspects of stopping terrorism. The effects at each level have not been obviously positive or negative, and scholars have not yet harnessed the evidence and research strategies required to study these complexities at each level.

Cooperation with Other Democracies

How has the U.S. government's curtailment of certain civil liberties and political freedoms after September 11 shaped U.S. cooperation with other major democratic powers, such as Great Britain, France, Germany, and Australia? One plausible answer is that U.S. crackdowns on human rights provide both potential and actual terrorists with more grievances and thus more motivations for terror, alienate people and popular opinion everywhere from the U.S. government, and make it harder for the United States and its allies to collect the intelligence necessary to prevent further attacks.

More important, the U.S. government needs the support of the international community and their cooperation in counterterrorism efforts. To obtain and keep this cooperation, the Obama administration needs global public opinion on its side.

The now widely held understanding is that U.S. human rights abuses and restrictions enacted to shore up national security after September 11 soured public opinion worldwide on U.S. counterterrorism policies. America's closest democratic allies in the war on terror—countries like the United Kingdom and Australia—are being pressured by their own citizens to keep their distance from American counterterrorism methods and practices (Fogarty 2005). Italian courts even convicted 22 American CIA agents for the kidnapping of Muslim cleric Hassan Mustafa Osama Nasr, who was sent to Egypt for interrogation, where he was allegedly tortured (BBC 2009).

There is limited evidence of policy change in response to such pressures. Poland, Lithuania, and Romania all allegedly provided prison facilities for CIA use, but the last of these locations in Lithuania was apparently closed in November 2005 after initial press reports on the prisons in Poland (Cole 2009; Donadio 2009; Goetz and Sandberg 2009). Cooperation from a few states in actions that involved egregious human rights violations decreased over time as those violations became more politically salient, but a more rigorous analysis is required to establish a clear link between public opinion in democracies and cooperation with the United States.

Cooperation from intelligence sources is another interesting issue. Several prominent European intelligence professionals have spoken in on-the-record forums about how American human rights violations make it harder for other Western intelligence services to recruit agents (Aldrich 2009). Once again, the documentary evidence is less than compelling, and Aldrich (2009) reports that cooperation between U.S. and European intelligence agencies has not, in fact, been substantially hampered by political or legal concerns arising from American human rights abuses. In the future, documentary evidence from decision-making processes may help scholars distinguish how large these concerns actually loomed.

There is also some evidence that European intelligence officials view harsh interrogation and other techniques as counterproductive because of the difficulty they add to the process of developing human intelligence sources. These techniques create layers of additional legal review before operatives can conduct operations with American intelligence services, because they fear legal jeopardy if they adopt some American tactics that are considered illegal in Europe. And, ironically, they create the additional risk of exposure as a result of strong interest by journalists with U.S. free press protections in breaking stories about mistreatment (De Vries 2006; Aldrich 2009).

Cooperation with Autocracies

How has the U.S. government's curtailment of certain civil liberties and political freedoms after September 11 shaped U.S. cooperation with the important authoritarian governments accused of outsourcing terrorists, such as Pakistan, Syria, and Saudi Arabia? The common wisdom is that the U.S.-led war on terror has alienated Muslim countries and stymied attempts at counterterrorism cooperation. Many of the Bush administration's policies on torture and detention have understandably soured public opinion in the Muslim world regarding cooperation with the U.S. government.

Public opinion polls overseas show a generally negative attitude of Muslim populations abroad toward the U.S.-led war on terror. A February 2009 poll conducted by World Public Opinion in Egypt, Pakistan, Indonesia, Jordan, Turkey, the Palestinian territories, Azerbaijan, and Nigeria found that "the U.S. is widely seen as hypocritically failing to abide by international law … and using its power in a coercive and unfair fashion" (Krull et al. 2009). Steven Krull, director of the polling organization, put it bluntly when he said that "U.S. efforts to fight terrorism with an expanded military presence in Muslim countries appear to have elicited a backlash and to have bred some sympathy for Al-Qaeda, even as most reject its terrorist methods" (WorldPublicOpinion.org 2009).

Yet the public opinion backlash by Muslims abroad has not stalled their governments from cooperating with U.S. counterterrorism policies. Many authoritarian governments still allow U.S. rendition for intelligence purposes. When American officials arrested terrorist suspect Maher Arar, a Canadian engineer who was born in Syria, they sent him back to Syria, where he was tortured and subjected to brutal interro-

in U.S. interrogation of al-Qaeda suspects reveal that the use of torture hindered cooperation between the Federal Bureau of Investigation (FBI) and both the CIA and the U.S. military (Central Intelligence Agency, Office of the Inspector General 2004; Department of Justice, Office of the Inspector General 2008; Soufan 2009). FBI reluctance to engage in or require agents to observe some interrogation practices meant that key interrogations were conducted by less experienced personnel who knew little about the operational and personal histories of the subjects being questioned (Office of the Inspector General 2008). Moreover, from a practical standpoint, there are few, if any, well-documented instances in which torture produced substantial intelligence, and a host of cases in which traditional law enforcement did so. This pattern is especially probative given the substantial legal jeopardy that advocates of torture face, which would provide strong incentives to declassify any and all evidence of its efficacy.

Thus, we are left with the conclusion that the vicious circle—when terrorism prompts democratic governments to curtail human rights and these curtailments subsequently stymie international counterterrorism cooperation and hinder their

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gation by the government (Mayer 2005). And some—like Pakistan—have been key allies in the war on terror. After September 11, President Musharraf severed ties with the Taliban regime in Afghanistan, and the government has since contributed to U.S. efforts to find and detain al-Qaeda forces hiding inside Pakistan (Kronstadt 2003).

Cooperation within Democracies

How has the U.S. government's curtailment of certain civil liberties and political freedoms after September 11 shaped cooperation between intelligence agencies within the U.S. government? There is no common wisdom on this question circulating in public debate, probably because most of the discussion and media coverage has focused on cooperation with other governments. Yet it is precisely here—among U.S. intelligence agencies—that cooperation has taken the biggest hit as a result of U.S. human rights restrictions.

Law enforcement and intelligence agencies within Western governments vary in their institutional relationships and their willingness to tolerate deviations from standard criminal investigative procedures in terrorism investigations. Official reports and testimony by investigators who participated

own security bureaucracies—is not as clear-cut as it is made out to be. More than ever, careful empirical research is needed.

EMPIRICAL CHALLENGES AND STRATEGIES

Challenges

Three empirical challenges make studying the link between repression and counterterrorism cooperation particularly difficult. First, observed changes in counterterrorism policies can result from many causes—the familiar issue of equifinality that plagues many fields in our discipline. Consider the increase in U.S. drone strikes in Pakistan since President Obama took office (Roggio and Mayer 2009). The increase could result from Pakistan's allowance of more strikes after the Obama administration's protestations about honoring human rights made cooperation more politically palatable. Alternatively, the increase could reflect a greater sense of threat by the Pakistan government. A third possibility is that President Obama is simply more willing to tolerate collateral damage in the pursuit of terrorists than his predecessor was. Without deep knowledge of decision-making processes, it is impossible to decisively say which is the real cause.

Second, overcoming selection and endogeneity biases are unusually hard in this arena. The challenge is nicely illustrated by the groundbreaking work of Walsh and Piazza, who find that respect for human rights of physical integrity—freedom from murder, torture, disappearance, or political imprisonment—is statistically associated with fewer terrorist attacks, and conclude that abuse of these rights therefore promotes terrorism (Walsh 2009; Walsh and Piazza forthcoming). The authors justify this interpretation by lagging their measure of respect for human rights, relying on the temporal difference between respect for human rights and subsequent terrorism to identify the causal impact. Because the variables on both sides of the regression are slow-changing and strategically determined, this technique works poorly in this arena. Applying a standard placebo test to Walsh and Piazza's model—regressing terrorism on the lead of respect for human rights instead of the lag—yields statistically indistinguishable coefficients from their results. In other words, future respect for human rights predicts current terrorism just as well as past abuses.[1] Thus, while statistical analysis can and does show a fairly robust negative correlation between terrorism and human rights, even the best existing research strategies do not identify which way causality runs.

secrecy and the legal jeopardy of government officials have often been eased. Studying internal cooperation between democracies' counterterrorism agencies will likely be easier for the United States and other countries with a strong tradition of legislative oversight and freedom of information protections. Studying these issues in places like France or the United Kingdom that have strong state secrets provisions will remain challenging, though Foley (2009) used interviews to conduct an excellent study on the impact of institutional reforms on French counterterrorism, suggesting that much more could be done.

A second solution is to look for natural experiments: situations in which there are changes in the level of human rights abuses for reasons unrelated to levels of terrorism. Surprise judicial rulings in democracies may provide such shifts. An alternative source is incidents in which an unusually liberal government in a parliamentary state was turned out as a result of the financial improprieties of senior leaders, which might lead to unexpected increases in repression. Another solution is to identify instances in which states reduced repression for strategic reasons while the terrorist threat remained static. Here, scholars could examine more closely the various periods in which the British government eased civil liberties restrictions in the Northern Ireland conflict, such as in 1974, when

The third challenge is that counterterrorism operations are secretive by their very nature, and the details of those approaches involving potential human rights violations are even more closely guarded. This problem has even more pronounced effects, because the twin incentives of publishing in top security journals and advising policymakers push many of the best terrorism scholars to focus on conflicts of current interest. There are massive amounts of data available on past terrorist conflicts that can yield invaluable information on both governments' and terrorists' decision making, yet relatively few scholars use them, because they are not concerned with the current threat.

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Strategies

Given the manifest challenges to studying the relationship between repression and counterterrorism cooperation, we believe that scholars have two options. The first is to engage in careful case studies and tracing of decisions about whether or not to cooperate in counterterrorism. Such studies are most likely to be feasible for past conflicts in which concerns about

they formally ended their internment policy. In our view, cross-national statistical research alone is unlikely to meet current challenges.

CONCLUSION

Is the U.S. government fueling a vicious circle, reacting to terrorism by repressing human rights that in turn diminish the prospects for international counterterrorism cooperation and the effectiveness of its own security agencies? The best evidence to date suggests that there probably are pressures for democracies—and, indeed, all countries—to curtail human rights in the face of terrorist threats. Those pressures, however, are felt and acted upon inconsistently across states and different types of human rights. Even if the research community could agree that a general tendency to abuse does exist—and more research needs to be done in this area—the real concern is the second argument that U.S. restrictions on human rights after September 11 have fueled increased terrorism, which is driving a lot of the public rhetoric and now policy on U.S. counterterrorism policies without clear evidence.

This article is not an ethical evaluation of U.S. counterterrorism policies, many of which we personally believe to be immoral and a betrayal of myriad officials' oaths to defend the Constitution. Rather, our claim is simply that the empirical evidence does not yet stack up to a simple answer one way or the other about whether the repressive policies have either worked or backfired. It appears that in some instances, restrictions on human rights have been counterproductive to international counterterrorism cooperation, and in others, they have had little effect. To know for sure, scholars need to break down current knowledge on cooperation, looking for evidence and theorizing about the effects on cooperation with other democracies, with autocracies, and between U.S. intelligence agencies. This task will require multimethod research strategies and recognition that the pressures may be cross-cutting. In our view, one of the best ways for scholars to understand current counterterrorism issues may be to return to the historical archives. ■

NOTES

1. In some respects, their results are quite robust. The international terrorism results remain largely unchanged with the addition of country fixed effects, enhancing our confidence that their estimate of the conditional correlation between terrorism and repression is unbiased, but telling us little about causality.

2. See, for example, the incredible volume of data on terrorism, repression, and counterterrorism in South Africa available through the records of the Truth and Reconciliation Commission and the efforts of scholars like Padraig O'Malley, whose Web site is an invaluable resource: http://www.nelsonmandela.org/omalley/index.php/site/q/03lv00000.htm.

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