Democracy under Attack?

*British Counter-Terrorism Measures and Liberal Democratic Values 2001-2006*

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Preface

Living and studying in London the fall semester of 2005 gave me a chance to get a close-up impression of the situation in the immediate aftermath of the bombing killing 52 innocent civilians in London, 7 July 2005. The debate surrounding the proposed incrimination of glorification of terrorism and the proposed 90-days pre-charge detention limit was a constant feature in the mass media throughout the whole period I spent in London, and sparked my interest for the British counter-terrorism policy, and the controversy that surrounded it.

First and foremost I would like to thank my tutors, Anders G. Romarheim and Knut Midgaard, for all their sound advice, interesting discussions, and for supporting and believing in throughout the whole project. Furthermore, I would like to thank Dag Einar Thorsen for all his useful advice on literature and theoretical issues.

Finally, I would like to thank my family - my parents Kari and Jon, my sister Helene, and my brother-in-law Frode - for their never-ending commitment and support. My fellow students deserve big thanks for all the intriguing discussions and for making my time at the University a memorable one.

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1. Introduction

*It cannot be right that the rights of an individual suspected terrorist be placed above the rights, life and limb of the British people. It’s wrong. Full stop. No ifs. No buts. It’s just plain wrong.*

Home Secretary John Reid

On the morning of 22 July 2005 Brazilian electrician Jean Charles de Menezes left his home in south-west London and entered the Number 2 bus. At Brixton he briefly got off the bus only to see that the station was closed. He re-entered the bus and continued to Stockwell. At this point he was already under surveillance of three surveillance officers, suspecting him of being a wanted terrorist. Menezes entered the Stockwell Tube Station not noticing that he was being followed. At this point the officers had been given the order that he should be detained as soon as possible (The Independent 2005). As Menezes entered the train the surveillance officers pinned his arms, and pushed him down into the seat. Already overpowered he was then shot eleven times in the head and one in the shoulder (Campbell, Cowan and Dodd 2005).

In the immediate aftermath of the shooting it was stated that Menezes was directly linked to the failed suicide bombings the previous day (BBC News 2005), stating that Menezes had refused to respond to police shouts and was dressed in a heavy winter coat. Later the Polices admitted these previous claims were wrong, and that they had shot an innocent man in a case of mistaken identity. Menezes was not at all linked to the failed bombings, and it has now emerged that Menezes never was properly identified, was unaware that he was being followed, was not wearing a heavy jacket, never ran from the police, and did not jump the ticket barrier (Campbell, Cowan and Dodd 2005).

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1 Home Secretary John Reid answering to the controversy regarding the lawfulness of British counter-terrorism measures acquired after 9/11 (Quoted in Leppard 2006).
This incident is clearly among the worst happening as a result of counter-terrorism operations in Britain in the wake of the events of 9/11 and 7/7. An innocent man was shot and killed as a result of the Police’s ‘shoot-to-kill-to-protect’ policy. There is always going to be some element of risk that an innocent person may be shot in error, but the risk should be reduced to an absolute minimum by precise and timely intelligence being passed to the officers on the spot (Wilkinson 2005:26). Sadly, in the case of Menezes this failed\(^2\). Incidents like the shooting of Menezes are unacceptable, and are undoubtedly the gravest possible derogation of a person’s civil liberties. However there is little doubt that the terror threat to Britain\(^3\) today is imminent. This was clearly exemplified by the death of 52 innocent civilians in London, 7 July 2005 (Wilkinson 2006:48).

The threat from international terrorism did not start with the bombings in London or with the attacks in New York and Washington. On 23 August 1996 Osama bin Laden published his first fatwa against the West. This was a declaration of jihad towards the Americans occupying the land of the two Holy Places (bin Laden 1996). The threat was further strengthened on 23 February 1998, when bin Laden issued another fatwa, announcing the setting up of the World Islamic Front for Jihad, and declaring (bin Laden 1998): *It is the duty of all Muslims to kill US citizens, civilian or military, and their allies, everywhere.* Al-Qaeda uses terrorism as a key part of their strategy to enhance their political agenda. They aim to do this by waging *holy war* to win control of a base area within the Muslim world. This will later serve as a platform for expansion. Al-Qaeda believe that Western societies are inherently corrupt and to cowardly to withstand their *jihad* (Wilkinson 2006:40). The fatwa from 1998 was the first time bin Laden explicitly called for both the killing of civilians and for the killing of US allies. This implicated Britain directly, as the US is their closest ally, and Britain, in the words of Tony Blair, is standing *shoulder to shoulder* with the US

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\(^2\) This is not the first time the police have shot a person in a case of mistaken identity. In 1983, Stephen Waldorf was shot and injured by, and in 1999 Harry Stanley was shot and killed.

\(^3\) The full name of the country is the United Kingdom of Great Britain and Northern Ireland. In the academic literature it is usually referred to as either the UK or simply as Britain (Haugevik 2005:1)
in their fight against terror, like we have seen in Afghanistan and Iraq in recent years. Since then several other statements, further underlining the threat have followed.

The view of the terrorists’ aim has shifted from the traditional view among scholars in the 70s and 80s, to a whole new understanding with the emergence of al-Qaeda. The traditional view of terrorists is that their primary aim is to get attention, not mass-murder. With al-Qaeda the aim has shifted to a much greater focus on mass-murder, and as Paul Wilkinson states (2006:58): *there are severe limits to what a democratic government can achieve by purely political means in countering terrorism.*

Terrorist violence has a long history in Britain, and the legal measures adopted to counter the threat are also long standing, even though in recent years they have been considerably expanded (Carpenter 2003:vii). Laws regulating political violence have been continuously refined since the Glorious Revolution and have served as a paradigm for other countries that derive their jurisprudence from that experience (Alexander and Brenner 2003: xii-xxviii). Much of the pre-9/11 British legislation designed to deal with terrorism, was focused on the situation in Northern Ireland. Some of the methods adopted by the British in attempting to combat terrorism in Northern Ireland have led to criticism on civil liberties grounds. As the events of 9/11 clearly demonstrated, Britain had to relocate its attention to the challenge of international terrorism. The legal process is essential in the long war against terrorism.

Since 9/11 Britain intensified its counter-terrorism efforts on all levels. Whatever steps have been undertaken by Britain to strengthen its defence and security against the growing challenge of political violence at home and abroad, it is important to recognise that Britain has had counter-terrorism experience over some four decades.

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4 As a result of these threats, and more, the Home Office (2005c) stated: *The Government believes that the recent history of indiscriminating attacks worldwide, the declared targeting by Al-Qaeda leaders of the UK, its citizens and interests, and the plots which have been uncovered to mount attacks in the UK itself amount to clear evidence of a real threat to British people and British interests.*
First, it has been a principal site for terrorist activities resulting from the conflict in Northern Ireland. Another challenge facing Britain, particularly in the past 30 years, relates to attacks in the country perpetrated by foreign terrorists. The Northern Ireland experience indicates that the British countermeasures, with some exceptions, generally struck a balance between maintaining democratic and legal rights and avoiding recourse to draconian responses (Ibid).

The 7/7 attacks have been confirmed to be the first case of suicide bombing being used in Western Europe, and according to Wilkinson (2006:184): this will have major implications for Europe's counter-terrorism strategy. There will also be implications for the individual European states, and not just for Europe as a whole. Suicide bombing is a type of attack that is particularly difficult to prevent in open societies (Ibid:208-209). The attacks of 9/11 are the most spectacular terrorist attack ever. In the eyes of bin Laden and al-Qaeda the attacks were a huge success, a blow struck right in the heart of US economy and the headquarters of the US military (Hoffman 2006:134). The suicide-hijacking tactic enabled al-Qaeda to carry their jihad into the heartland of the US, to kill thousands, and to gain unprecedented global publicity (Wilkinson 2006:122-123). The 9/11 attacks, along with those in London, Madrid and many more, demonstrated that al-Qaeda has no hesitation about killing hundreds – or even thousands – of innocent civilians, including fellow Muslims. All of this has resulted in a significant increase in the British government’s efforts to combat terrorism, like the passage of three new terrorism bills. These efforts will be analysed here.

1.1 Research Question

Britain has adapted several counter-terrorism measures as a response to the new threat of international terrorism. Some of these measures have been among the most discussed issues in British politics in recent years, especially the derogations of civil liberties. This is an important discussion as the essence of civil liberties, personal and political rights really are the foundation of the liberal democracy we cherish.
The first of these measures adopted, the Terrorism Act 2000 (the TACT 2000), was Britain’s primary piece of counter-terrorism legislation prior to 9/11. After the events on 9/11 Britain has adapted several new counter-terrorism measures in response to the increased threat, including three so-called terrorism bills, the Anti-Terrorism, Crime and Security Act from 2001 (the ATCSA), the Prevention of Terrorism Act from 2005 (the PTA), and the Terrorism Act from 2006 (the TACT 2006). The government has also introduced their counter-terrorism strategy titled Countering International Terrorism: the United Kingdom’s Strategy. The latest addition to the counter measures is Threat Levels: the System to Assess the Threat from International Terrorism, in which the government makes their assessment of the threat level publicly. Parts of the new terrorism bills have been controversial, and parts of them have been accused of violating basic liberal democratic principles. The question that arises here is whether this alleged derogation from the liberal democratic principles was defensible, and whether it still is. This thesis is meant as a contribution in this important debate on the relationship between individual liberties and national security in British counter-terrorism policy. The research question of this thesis will be as follows:

*To what extent has British counter-terrorism policy after 9/11 conflicted with and undermined principles of liberal democracy?*

On this background there are several important questions that need to be addressed. The first of these questions is concerns whether it is defensible to derogate from liberal democratic principles during terrorist emergencies. A second question that needs attention is why liberal democracies, like Britain, are willing to barter away some of their liberties. 9/11 was no more than three months away when the ATCSA, the most controversial feature of the British counter-terrorism measures adapted, was enacted. A third important question is: to what extent Britain can derogate from liberal democratic principles without threatening democracy itself? There is always a danger that too grave suspensions of individual liberties, ultimately will threaten the
foundation of democracy. Democracy is under attack, but is it only the terrorists who attack it?

1.2 Terrorism and Counter-Terrorism

To understand counter-terrorism policy, it is important to understand the meaning of terrorism, and the difference between counter-terrorism and anti-terrorism. When it comes to perception of terrorism, it is a fact that within the Member States of the United Nations there is still no consensus as to what exactly should be labelled ‘terrorism’ (Schmid 2005:224). According to Bruce Hoffman (2006:20), the meaning and usage of the term terrorism have changed over time to accommodate the political vernacular and discourse of each successive era. Walter Laqueur (1987:11) is of the opinion that no definition of terrorism can possibly cover all the varieties of violence that has been labelled terrorism throughout history. A further and more detailed discussion on how to define the term terrorism, as well as international terrorism will follow later, and the starting point will be Hoffman’s (2006:43) broad definition of the term:

_The deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change._

With this in mind we can now look at the terms counter-terrorism and anti-terrorism. The term _counter-terrorism_ must be distinguished from the term _anti-terrorism_. Counter-terrorism is usually referred to in the literature as apprehending and punishing, or combating, terrorists, and can be defined as active operations intended to pre-empt, neutralize, or destroy terrorists and their organizations. Anti-terrorism, by contrast, is referred to as changing or preventing terrorist behaviour as well as physical security measures. It compromises defensive measures taken at, for example, borders, ports and airports, designed to detect and stop terrorists (Hoffman & Morrison-Taw 2000:25, Naftali 2005:xiii-xiv, Selliaas 2005:3). Here it is considered fruitful to keep these two terms separated, although some of the measures applied may be labelled as both counter- and anti-terrorism.
1.3 Early Experiences

Throughout the history of modern terrorism campaigns, terrorism as a weapon has rarely been a success, in that sense that the terrorist fully achieved their strategic goal, such as overthrow of governments and their replacement by the terrorists (Wilkinson 2006: 49). Though there are a few exceptions to be found in connection with the anti-colonial struggles against the British and the French in the period after the Second World War. The most notable of these are the ending of British Mandate control in Palestine in 1948 (Ibid:22). However, it is important to notice these so-called successful terrorist-campaigns were clear-cut examples of de-colonisation and resistance to occupation, and it remains doubtful that neither Britain nor France really had a burning passion to keep these colonies. In the case of Palestine, Britain was under intense pressure from the US to give admission to Palestine for tens of thousands of Jewish displaced persons. In the end the costs of future British control over Palestine seemed too high for the government to bear, and on 15 May 1948 Britain’s rule over Palestine ended (Hoffman 2006:52-53). In addition the British government had no real desire of a continued occupation, or to sacrifice the lives of their soldiers, whereas the anti-colonial movements’ had massive support among their own population. In the post-colonial period there is not a single case of a terrorist movement seizing control in any country, apart from the British and French de-colonisation (Wilkinson 2006:6). The anti-colonial movements serve as Britain’s first experiences with terrorism.

Britain’s first experience with terrorism on the mainland is connected with the question whether Northern Ireland should remain part of Britain or should rather be detached to form part of an all-Irish republic. This is clearly the principle terrorist threat which has shaped Britain’s response since 1968. This terrorism was perpetrated by paramilitary groups of both sides of a sectarian divide, in a context in which religious affiliation and political loyalties coincide (Bonner 2000:33-34). In Britain, the overall political responsibility for anti-terrorist legislation and policy rests mainly with the Home Secretary. The day-to-day operational deployment of anti-terrorism
measures rests with the heads of the various provincial police forces (Bonner 1993:195-196).

Spectacular terrorist-actions, like the attacks on 9/11, close to always lead to changes in counter- and anti-terrorism policies. Hoffman (2006:67-69) describes the attacks carried out by the PLO associated group Black September on the Israeli athletes during the Olympic Games in Munich in 1972. The West German police mounted a rescue operation, which ended up as a total failure. All nine hostages were killed, along with a policeman. This attack in Munich led to severe changes in how the European countries have chosen to handle hostage rescue operations in the future. A direct result of the attack was the West Germans establishment of a special anti-terrorist detachment of their border police, known as Grenzschutzgruppe Neun (GSG-9). In Britain, the Special Air Services Regiment (SAS) established a Counter-Revolutionary Warfare detachment with a specific counter-terrorism mission (Ibid:68). It was this group that resolved the six day occupation of the Iranian Embassy in London in 1980 (Wilkinson 2006:108). Britain has a long history facing the threats of terrorism, a history which also have effects on the terrorism policy we see in Britain today. Britain has not forgotten the experiences from the past, both the successes and errors, and these experiences are crucial to have in mind while assessing Britain’s counter-terrorism measures today.

1.4 Outline

To understand today’s counter-terrorism policy we must understand their origins, hence there is a need for exploring the history. Chapter 2 will be a review of the British experience with handling major crises and with handling terrorism. The Second World War is important to show the impact and effect of terror, emergencies and crisis on British society, while the experience in Northern Ireland is important in

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5 There are 43 provincial police forces in England and Wales alone; eight in Scotland and one in Northern Ireland.
the way that it is Britain’s first experience with terrorism on the mainland. The ‘state of the art’ will also be presented here, with a briefing of the TACT 2000, Britain’s primary piece of anti-terrorism legislation before the events on 9/11. This will be important to understand the changes in the legislation that has come as a result of 9/11. Lastly, the relationship between Britain and the US will be presented. Britain has always supported the US in their fight against terrorism, which have led to Britain’s first exposure to international terrorism from al-Qaeda.

In chapter 3, the first part consists explains the methodological approach of this thesis. This is followed by a section about counter-terrorism, and the theory surrounding counter-terrorism. The third part of the chapter includes definitions of key terms like terrorism and international terrorism. In the final section of the chapter liberal-democratic principles will be operationalized. This will be followed by an account of the debate on the relationship between liberal democratic principles and national security. Then, a more specific review of the theoretical perspectives of the liberal democratic principles’ position during terrorist emergencies follows. Chapter 4 is a presentation of the empirical material used to analyse the changes in Britain’s counter-terrorism measures since 9/11. The empirical material and the measures examined will be the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, and the Terrorism Act 2006, in addition to Countering International Terrorism: the United Kingdom’s Strategy and the Threat Levels System. This will be an account of the new elements in the acts, and the other measures that are to be examined.

The analysis in chapter 5 will assess the extent of whether the British derogation of liberal democratic principles in their attempt to counter terrorism in the period after 9/11 is defendable. There will also be a discussion on why liberal democracies, like Britain, are willing to compromise their liberty in responding to terrorism. There will also be an attempt to bring the discussion one step further by assessing the extent to which Britain could derogate from liberal democratic principles without threatening
democracy itself. The role of liberal democratic principles in deciding public policy in Britain during a terrorist emergency will also be assessed and analysed.
2. The Origins of Britain’s Counter-Terrorism Measures

Context is, according to Wilkinson (2005:12), all in the analysis of political violence. Britain has gathered a lot of experience through the years in handling the effects and impact on society as a result of crises and terror. Through the Irish experience Britain has also gathered a wide range of experience with counter-terrorism policies and laws. There is therefore a need for a review of the origins of Britain’s counter-terrorism measures. This account will consist of four main parts. In the first, the Second World War will be used to clarify which aspects of the ‘British mentality’ that is relevant in this context. The main issue will be how Britain and the Britons with the social impacts and effects of major crises and a condition of terror, like the German terror-bombing during the Second World War. The second part addresses the Riots in Northern Ireland. This was the British mainland’s first experience with terrorism on the mainland, and the first time they had to apply counter-terrorism measures to protect British civilians on a large scale. Some of these efforts were successful and some not, but nonetheless, it gave the Government an important experience in handling the effects of terrorism. The third part of this chapter will give a short briefing of the main parts of the Terrorism Act 2000. This Act was the primary piece of counter-terrorism legislation before 9/11, and it is up against this baseline the subsequent legislation and its impact on liberal democracy must be compared. The fourth and final part will be about how Britain has been ‘shoulder to shoulder’ with the US since the US started their fight against terrorism, and still is in Afghanistan and Iraq today.
2.1 The Second World War

Never in the field of human conflict was so much, owed by so many to so few.


The British handling of the terror it experienced during the Second World War is an important experience that is worth remembering when assessing British counter-terrorism measures today. The present terrorist threat is not the first time the British have had to handle the effects of random bombing, and having to live in a state of chronic fear. An important notion here is whether people that have felt stark terror in the past are more capable to handle stark terror in the present? The British look at their own historical pride, and many will say they have good reasons to do so. The quote above is just underlining this point. The British are appreciating the effort by the RAF-pilots during the Battle of Britain and the Blitz. The Battle of Britain and the Blitz are often used to describe the British mentality and feeling of identity, due to how the British people reacted and handled the crisis and the German terror bombing. The Blitz falls in to the category which Wilkinson (2006:92) labels a terror war, were attacks on civilians become the norm. Vladimir Lenin once expressed (Harmon 2002:xv): the purpose of terror is to terrorize. But still terror is not an end in itself, but a means to political power and a way to hold political power. Alex P. Schmid and Albert J. Jongman (1988:2) describe terror as: the situation when members of a group or society are put in a state of chronic fear. This group or society is the targets of terror. During the Second World War, the air forces not only attacked their opponents’ military forces but also their war industries, thereby killing workers. Ultimately, whole cities, such as London were targeted by the Germans (Ibid:13-14).

The Battle of Britain had no formal beginning and no formal end, but it lasted roughly from mid-July to mid-September 1940 (Robbins 1994:186). In the summer

⁶ Speech made in the House of Commons as the Battle of Britain peaked (Lloyd 2002:193).
of 1940 the Germans opened their campaign against the Royal Air Force (RAF). The struggle between the RAF and the Luftwaffe was among the most dramatic battle of the war. The combatants were closely matched: the Germans had the advantage in number of aircraft, but the British fought over their own territory. Furthermore the British had radar, which allowed them to detect incoming German planes (Heyck 2002:197). The biggest German mistake was the decision to bomb London at a time when the RAF had already taken heavy punishment. At first this new thrust was successful, but the German losses mounted to an unacceptable level. Hitler turned to more interesting projects in the East (Robbins 1994:186). On 15 September 1940, the German air assault reached its climax, but the RAF beat it back. Hitler then abandoned the possibility of an invasion of Britain (Heyck 2002:197).

The Battle of Britain was a turning point in the war in two senses. First, it guaranteed Britain’s survival: had Britain lost it, the war would have been over in the west. Second, it forced the Germans to back off, and this enabled Britain to do what she had always been best at, carry on the war at a distance, or on the periphery of Europe. Britain’s survival was seen as the first step in the eventual decline of Hitler’s Reich (Lee 1996:167-168). The Battle of Britain, however, was followed by a massive German bombing of British cities, above all on London. On 7 September 1940 German bombers struck at targets in all over London, and over the next twelve months 190,000 bombs rained down on British cities, seriously injuring 50,000 and killing 43,000. Streets and homes were ‘front line’ (Colls 2002:125). In Britain this period became known as the Blitz, an abbreviation for the German term blitzkrieg, which indicated a quick end to the war. But there was no quick end to the war in sight. The night-time bombing offered no hope of a quick end (Lloyd 2002:194). Night after night German bombers appeared over London and other cities. The Blitz destroyed or damaged over three million homes (Heyck 2002:198). The Blitz
continued until the German invasion of the Soviet Union in June of the following year.\footnote{See Childs (1995:50) for a full account.}

The British Government had prior to the war estimated that national morale would reach a low-point, if Britain were to be in a situation of war at the British mainland. This proved to be wrong, and according to Colls (2002:125): \textit{the bombing was borne with some courage and a lot of resource.} In spite of the dire predictions made in the 1920s and 1930s, British morale was not broken, nor was production seriously damaged. Most Britons each day went about their business despite the nightly air raid, fires, and retreats to air raid shelters (Heyck 2002:198). Only a small percentage of the targeted population could find room in public shelters. In night-time London, the Underground was commandeered by the people for the people, in an attempt to shelter themselves as good as possible from the German terror-bombing (Colls 2002:125). The experience of sharing the misery created a spirit of social unity between people of all social classes. London was terror-bombed because it was thought that bombing would destroy civilian morale and industrial production. The bombing had been expected to destroy cities and to frighten civilians so much that they would surrender at once, but instead The Blitz was the strongest unifier of all (Lloyd 2002:194). Its worst period was from September 1940 through the summer of 1941, but German air raids went on throughout the war. In 1944, just when the British began to think they might be free from sky borne terror, the Germans launched pilot-less rockets on Britain. Altogether, the Germans dropped more than 74,000 tons of bombs on Britain, causing 300,000 civilian casualties. About two out of every seven houses were destroyed, along with two out of every ten school. The people felt stark terror, and the repeated nightly raids and scurrying to bomb shelters, back-garden dugouts, or the tube station deprived people of sleep (Heyck 2002:203).

Even more than the First World War, the Second World War was a total war, a war that includes and affects all parts of the society, not just the soldiers at the battlefield.
It is safe to say that in one way or another, all Britons became involved in the war. Mobilization of the adult population was in theory complete, and the civilian casualties were high (Ibid:202). In an attempt to describe how the British people handled the Second World War and the feeling they showed of a common mentality, Robert Colls (2002:314) describes Britain with the following words: *a royal heart, a common territory, a big sky, a costal bulwark with a hard-working regional people fast inside and ready to fight*. In a way Colls romanticises the way the British peoples’ handling of the Second World War, but such heroic narratives may give an indication of how the British today still look at the way the crisis was handled as heroic. During the Second World War there was nothing like the split that opened during the First World War between those who served at the front and those who stayed home. Everyone was seen as pulling his or her weight and as sharing the misery caused by German arms. In Britain there was little opposition to the war, which was universally regarded as the most just of all conflicts. The high degree of participation in the war eventually produced a strong sense of unity and a consensus favouring social reform (Heyck 2002:203).

### 2.2 The Riots in Northern Ireland

*It has been said that most revolutions are not caused by revolutionaries in the first place, but by the stupidity and brutality of governments. Well, you had that to start with in the North all right.*

Sean MacStiofain.

The experience in Northern Ireland is important in the way that it is Britain’s first experience with terrorism on the mainland. It also represents Britain’s first
introduction to counter-terrorism policy and the measures than comes with it. The sectarian divide was, and still is clear, and the Protestant two-thirds of the population of Northern Ireland were committed to remaining united with Britain while the Catholic one-third was committed to joining the Irish Republic. The official British interpretation was that if the British army and police could eliminate the nationalist terrorists, then, over time, good sense and mutual trust between Protestants and Catholics would develop (Heyck 2002:275-276). The problems and disturbance in Northern Ireland have existed in one form or another since the British withdrawal in 1922 from what today is known as the Republic of Ireland (Bell 1978:201). The IRA had from 1921 refused to accept the British legitimacy of Northern Ireland, and in 1969, the IRA split into two groups, the ‘officials’ who were willing to participate in the protest movement and the Provisional-IRA (PIRA) who were committed to a military campaign. The latter became increasingly active and, in trying to deal with them, the British Army found its good name in the Catholic community increasingly jeopardized (Robbins 1994:280). It was the PIRA, which in 1972 declared war against the British Government and the system of law.

In 1969, the Catholic minority in Northern Ireland were suffering considerable discrimination at the hands of the Protestant majority and the situation in Northern Ireland was sliding toward continual unbridled violence. In August 1969, events came to a head as serious riots erupted. Catholic crowds stoned the marchers, and were then attacked themselves in a violent counter-reaction from the Royal Ulster Constabulary (RUC), the largely Protestant police force (Silke 2005:242-243). The British Government sent the British Army into Northern Ireland to restore peace and to keep apart the Protestants and the Catholics, most of all to protect the Catholic population (Bell 1978:215). This was the first major incident where the British government had to bring in the military, and according to Tom Williamson (2006:9) this is usually one of the first responses to terrorism, made by governments all over the world. The saviour of 1969 by the British Army was transformed into the problem, rather than the solution, by the IRA (Bell 2000:224). Deaths through bombs
or bullets became almost a daily occurrence in Northern Ireland in the 1970s. Table 2.1 contains an overview of the killed during the 1970s:

<table>
<thead>
<tr>
<th>Year</th>
<th>Royal Ulster Constabulary (RUC) + RUC Reserve</th>
<th>British Army (BA)</th>
<th>Ulster Defence Regiment (UDR)+ Royal Irish Regiment (RIR)</th>
<th>Civilians</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>23</td>
<td>25</td>
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<td>Total</td>
<td>130</td>
<td>327</td>
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The numbers from 1972 are the most notable. Not only is this the single year with far the most casualties, but it is also worth noticing that as many as 146 soldiers and policemen were killed. This is just over 1/4 of the total of 555 soldiers and policemen killed in Northern Ireland during the 1970s. Wilkinson (2006:95) argues that although there have been mistakes and misconduct by a handful of serving soldiers, this fact should not blind us to the fact that the British Army and the police have made a colossal achievement in preventing the conflict from escalating into civil war.

As violence mounted, so did calls for the internment of known IRA sympathisers. In an attempt to control the growth of PIRA, internment without trial was introduced by the Stormont government in August 1971. Theoretically internment was meant to allow the imprisonment of PIRA activists quickly and efficiently, but it seemed to make the situation worse. The reality was that internment was the biggest miscalculation made in the attempt to end the violence (Silke 2005:244).

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10 The number of casualties per year can vary between different sources. Keogh (2003:204), for example, say that 174 persons were killed in 1971, while (Childs 1995:181) says 173.

11 255 British Service in the Falklands War men were killed, and 47 during the first Gulf War.
The failure of the British policy of military containment was most clearly exposed on 30 January 1972. British paratroopers shot dead thirteen unarmed civilians during a banned but peaceful civil rights march in Derry, on what has later been called ‘Bloody Sunday’ (Bell 1978:217)\textsuperscript{12}. The deaths meant the end of Stormont, and contributed to the PIRA shifting from a campaign of defence to a campaign of provocation in 1972. The London government felt that a radical new departure was required (Bell 2000:23). Direct rule from London was imposed on in response to mounting violence. Westminster suspended the Unionist-dominated Northern Ireland parliament in an attempt to restore credibility with the Catholics (Childs 1992:228). No immediate improvement followed; the process of increased separation of the two communities went grimly forward, and there were signs that the IRA proposed to widen the conflict by exploding bombs in Britain (Lloyd 2002:374). Through the Secretary of State for the Northern Ireland, the Westminster government could attempt to be fair to both communities. At the same time, with increased parliamentary representation from Northern Ireland at Westminster, the clear wish of the majority to remain ‘British’ would be safeguarded. However, by definition, such integration would not recognise the ‘Irish dimension’ of the North, let alone an aspiration to Irish unity. For its part, the IRA could only hope that the continuing level of casualties sustained by the British army in Ulster and the terrorist activity in Britain, would lead the rest of the United Kingdom to abandon Ulster (Robbins 1994:281).

By 1971 the scale of the violence grew beyond the capabilities of the RUC; the army became the primary security force and legislation was passed permitting detention without trial. These emergency powers led to the ill-treatment of detainees and lethal confrontations between the army and civilian population which directly contributed to the continuation of terrorist activity (Williamson 2006:9). By using detention without trial (1971-1975), juryless courts for terrorist offences, and finally by passing

\textsuperscript{12} For a further account of Bloody Sunday see Keogh (2003:204-205).
the Prevention of Terrorism Act in 1974 the sharpening of communal hostilities continued inexorably. The Act authorized the police to arrest people without warrant if they were suspected of any of the offences covered by the Act. These offences included membership of the PIRA, and involvement in the commission, preparation or instigation of acts of terrorism. (Turner 2003:55). Even after policies such as internment without trial were abandoned, there were many who continued to argue their benefits. The counter-productive elements of such policies were ignored or dismissed (Silke 2005:246-247).

PIRA got bolder in 1972 and subjected mainland Britain to a sustained campaign of violence, hoping to force the British public to decide that keeping Northern Ireland was not worth the effort. It culminated in the worst terrorist attack, up to then, in British history, when 21 people died in explosions at two Birmingham pubs in November 1974. As a result, the British Government introduced the Prevention of Terrorism Bill, which made the IRA illegal, gave the Home Secretary power to exclude from Britain persons suspected of involvement with terrorism, and gave the police power to hold a suspect up to seven days, without guaranteed access by lawyer (Childs 1995:179). When the Prevention of Terrorism Act was reviewed in 1989, it differed from its predecessors in that it did not automatically expire after five years, so conveying the sombre message that the problem of terrorism is no longer considered a temporary one (Anderson 2000:237).

Within Britain, the various police forces had traditionally constituted the anti-terrorist force. Still the role of the intelligence services grew in importance in the 1990s. In October 1992 the Government gave the MI5 the lead role in intelligence operations against the IRA on the British mainland, as well as other anti-terrorist intelligence (Bonner 1993:196). This was done on practical grounds, although the Scotland Yard, which had traditionally performed this task, protested (Wilkinson 2006:73). In Northern Ireland, its police force, the RUC in charge of operations, assisted by British Army units (Bonner 2000:32).
Evidence gathered by the MI5 led to several trials against key IRA members, and eventually to the ceasefire between the IRA and the British Government in August 1994. Sadly it has been speculated that this newfound process devotion to the IRA, led the MI5 to neglect the emergence of the new global terrorism, and especially the al-Qaeda network (Wilkinson 2006:73-74). In 1996, the IRA returned to their terrorist campaign on the British mainland, mirroring their frustration over the ongoing peace negotiations (Bell 2000:267). This was only a short setback in the peace process, and in 1997 the IRA unconditionally renewed the ceasefire. Due to continued talks, and extensive mediation by US Senator George Mitchell, the inter-party talks ended in what is known as the Good Friday Agreement (Wilkinson 2006:56-57). The Agreement is founded firmly on the principle that there can be no change in the status of Northern Ireland as part of Britain without the consent of the majority of the people of Northern Ireland and presents a unique opportunity for a lasting peace in Northern Ireland (Bonner 2000:63). The conflict had for decades seemed almost unsolvable. The strength of this agreement is that it recognises and protects the identities of both groups of the sectarian divine, and the equality of rights and status in a genuine power-sharing system of government (Wilkinson 2006:57). The political and security efforts have worked together hand in hand. The Good Friday Agreement and the Northern Ireland peace process showed that great progress can be made. Between 1966 and 1999 there were 3,636 deaths in Northern Ireland from political violence, and hopefully the agreement will prevent that from happening in the future (Williamson 2006:9).

Apart from Bloody Sunday and the detention without trial, the British managed to keep their anti-terrorist campaign within the bounds on constitutional propriety (Ignatieff 2004:72). In general, the British government struck a balance between maintaining democratic and legal rights and avoiding recourse to excessive military responses (Alexander and Brenner 2003:xxviii). The determination to preserve constitutional normality proved crucial to keep political control of the province. Without careful control of military and police powers, the British might well have lost the battle for the moderate nationalist opinion in Ulster. The British have
managed to maintain non-violent democratic politics in the two troubled regions, but the democratic process remains vulnerable to the threat of political violence by armed nationalist groups (Ignatieff 2004:72-73). These are important lessons that Britain needs to take into account forming their counter-terrorism policy and measures today.

2.3 Terrorism Act 2000

The Terrorism Act 2000 (the TACT 2000) was enacted on 20 July 2000. It came into force in response to the changing threat from international terrorism, and replaced the previous temporary anti-terrorism legislation that dealt primarily with Northern Ireland. The laws in Britain and Northern Ireland were now largely harmonised, and that measures previously confined to Northern Ireland are now extended to Britain. The TACT 2000 stands out as an instance of clearer thinking rather than new thinking (Walker 2002:30). The TACT 2000 was Britain’s main source of law relating to terrorist activity taking place within Britain, including actions or conspiracies within any part of Britain to commit acts abroad, prior to 9/11, and still contains the most vital counter-terrorism measures. The Act was meant to be a comprehensive and a permanent code, responding to a permanent threat to national security and the right to life of individuals (Home Office 2000b). Hence it is important with a review of the TACT 2000 to show the starting point of the changes that have subsequently followed in the British counter-terrorism measures.

Britain has had so-called temporary provisions on the statute book for 25 years. The time had come to face the fact of terrorism and be ready to deal with it for the foreseeable future. There was a need to make the powers permanently available, although the fact that those powers are available does not mean that they have to be used (Walker 2002:267). The TACT 2000 was designed to be. The purpose of the TACT 2000 was to reform and extend previous counter-terrorism legislation13, and

make it applicable to all forms of terrorism: Irish, international, and domestic (Home Office 2000a). The measures fall into three broad categories. The first is a power for the Secretary of State to proscribe terrorist organisations\textsuperscript{14}. The second category of measures includes specific offences connected with terrorism, amongst them fundraising and training in the use of firearms. The last category includes a range of special police powers, like powers of investigation, arrest, stop and search, and detention (Ibid). The passage of the act was also the occasion to drop some measures. A notable absence is the power of internment without trial. This power had always been controversial, even though it had not been in use since 1975 (Walker 2002:31-32). The TACT 2000 also includes a requirement for annual report on the operation of the Act to be provided to the Parliament by an independent reviewer (Home Office 2005c).

The TACT 2000 is unlike its predecessors not subject to a requirement of annual renewal by Parliament, although Part VII of the Act continues to provide temporary measures for Northern Ireland, which are subject to annual renewal and are time-limited to 5 years. The reasoning for this is that it is meant to be a comprehensive and a permanent code, responding to a permanent threat to national (Walker 2002:267). From the Government’s point of view there had to be in place a comprehensive approach to the protection of democracy and the securing of society’s ordered and peaceful existence. For them the TACT 2000 was the measure to achieve this. Opponents of the Act are viewing a number of them as infringement of human and civil rights (Whittaker 2001:243).

Unlike the legislation of the past, which had too often been hastily drafted in circumstances of crisis and has remained fragmented as between the legislation applying to the Great Britain and Northern Ireland, a new law could offer a more considered code constructed in a more considered, principled and comprehensive

\textsuperscript{14} A list of international organisations proscribed under the regulations of TACT 2000 can be found on: http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups
fashion. Still, the TACT 2000 is only a partial success for three reasons (Walker 2002:4-7): Firstly, it cannot be said to be a clean break with the past, since it contents mainly are traceable to the legislation which it replaces, including the measures against terrorist finances and aspects of the police investigative powers. Secondly, it is even more disappointing that the TACT 2000 does not provide for the kind of structure to ensure the future democratic accountability for the operation of this type of law. The third shortcoming of the TACT 2000 is that it was not successful in averting the passage of the Anti-Terrorism, Crime and Security Act 2001. However, the TACT 2000 still represents a worthwhile attempt to fulfil the role of a modern code against terrorism, though it fails to meet the desired standards in many respects (Ibid:289).

2.4 Shoulder to Shoulder with the US in Their War Against Terrorism

The fact that Britain always has been standing ‘shoulder to shoulder’ with the US has probably led to their first exposure to terrorism in the spirit of al-Qaeda. As the relationship between the US and Britain has developed, this has contributed to a changed threat towards Britain. Despite Britain’s diminishing global importance in the post-war years, they have retained a “special relationship” with the US. Britain does enjoy an unusually close intelligence relationship with the US, a legacy of World War II and the Cold War (Rachman 2001:8) This close relationship have also benefited both parties in countering terrorism in recent years (Gregory and Wilkinson 2005:2). Clear examples of this can be seen today in the War on Terror, where Britain is probably the US’ closest ally. Britain has supported the US in its time of crisis, in the hope, one day, that the US would do the same for them (Booth and Dunne 2002:2).

Since 9/11 the US and British, supported by other troops, have fought al-Qaeda militants in Afghanistan and Iraq (Wilkinson 2006:90). It is stressed that this is not a war against Islam, but a war against al-Qaeda and the Taliban-regime, as underlined
by Tony Blair soon after 9/11. Blair attempted to limit intercultural hostility by showing sensitivity to cultural particularities while at the same time underlining common values (Booth and Dunne 2002:4). When it comes to the so-called Operation Enduring Freedom in Afghanistan, Hoffman (2006:282) concludes that: the loss of Afghanistan does not appear to have affected al-Qaeda’s ability to mount terrorist attacks to the extent that the US and Britain had hoped to achieve when the operation began. Nevertheless the US led operation in Afghanistan still continues, strongly supported by British troops.

However, the military intervention in 2003 by the US and Britain in Iraq was not a necessary part of the campaign against al-Qaeda. No evidence was presented of an alliance, or link, between Saddam Hussein and bin Laden. The earlier military intervention to topple the Taliban regime in Afghanistan can, on the other hand, be argued to be a vital part of the effort to suppress al-Qaeda (Wilkinson 2006:96-97). Just as in Afghanistan, the battle in Iraq is far from over and British and American troops are still struggling to get the situation under control. Although the intervention in Afghanistan was seen as legitimate by the international community, the intervention in Iraq caused deep division. The intervention was strongly opposed by permanent members of the UN Security Council; France, Russia and China. Britain stood by the US, arguing for the need of democratisation in Iraq and the necessity of preventing Iraq from acquiring weapons of mass destruction (WMD). It later emerged that the regime in Iraq did not possess WMD, and the justification of the military action turned out to be wrong (Wilkinson 2006:97). Since the occupation of Iraq, the allied forces have been faced with a campaign of terrorist attacks and the campaign still continuing in the spring of 2007 (Ibid:97-98). Wilkinson (2006:99) compares the counter-terrorism campaign in Afghanistan and Iraq with the British experience in Northern Ireland from 1970 to 1998. He focuses on the need for any successful counter-insurgency campaign to succeed in winning the support and trust of the majority of the civilian population, and the fact that military force must be used against the insurgents/terrorists and not against the civilians. When the British realized this in Northern Ireland, the situation changed radically.
3. Theoretical Framework and Method

This chapter consists of four parts. The first of these parts concerns the methodological approach of this thesis. This is followed by a part about counter-terrorism, and the theory surrounding counter-terrorism, including strategies, tactics and response options. How counter-terrorism may contribute to an escalation of the threat level is also briefly reviewed. The third part of the chapter includes definitions of key terms in this thesis, and discussions surrounding these. The terms are first and foremost terrorism, but also international terrorism. In the final part of this chapter liberal-democratic principles will be operationalized. This will be followed by an account of the debate on the relationship between liberal democratic principles and national security. Then, a more specific review of the theoretical perspectives of the liberal democratic principles’ position during terrorist campaigns follows. Reading this thesis, it is important to keep in mind that the method and the theory are closely interrelated, and must be seen in close connection.

3.1 Methodological Approach

Only after the research question is formulated can a method be chosen or designed to facilitate the systematic ordering and ranking of information, permitting a base for assessment. Then the researcher can focus on the relevant data, its acquisition, application, and relationship to the structure of the thesis (Schulze 2004:164). The base of the assessment in thesis will be what Magnus Rantorp (2007:14) describes as: More normative aspects of terrorism within the confines of legal norms and the balance between security and civil liberties. This is something that has been extensively and thoroughly examined by key scholars within the terrorism studies field. Among the foremost and widely recognised contributors here has been Paul Wilkinson (Ibid). This thesis is heavily influenced by his pioneering works Terrorism and the Liberal States and Terrorism versus Democracy, the Liberal State Response. These normative aspects, developed by Wilkinson and other key scholars, will be
used to operationalize liberal-democratic principles, and most notably seven ground rules for liberal democracies’ attempts to counter terrorism. These ground rules are basic obligations of what a democratic government should, and should not, do in their attempts to counter the threat from terrorism.

The seven ground rules will in turn be used to analyse distinct aspects of British counter-terrorism policy. These distinct aspects will give important answers to what extent that British counter-terrorism policy after 9/11 has conflicted with and undermined principles of liberal democracy. There are no universally accepted operationalizations of principles of liberal democracy. Other approaches, such as using classical political philosophy like John Stuart Mill or classical texts on rights like Habeas Corpus, could also have been fruitful. However, for the purpose of this thesis, using the framework developed by the key scholars on the relationship between terrorism and the liberal state.

When assessing the British counter-terrorism policy, it is important to keep in mind that it is a snare and a delusion for any democratic government to assume that there is some quick-fix solution to the whole problem of modern terrorism; what is really dealt with is a hydra (Wilkinson 2005:12). Silke also compares terrorism with the Hydra, from the ancient legends (2005:242): *When one of its heads was knocked off, two more grew swiftly in place.*

Most terrorism research in the pre-9/11 period relied exclusively on secondary sources (Ranstor 2007:14). Good theoretically grounded studies, aiming for an in-depth analysis of primary source material of terrorists, governments, and other principal actors, are, according to Schulze (2004:184) badly needed in the field of terrorism research. Both primary and secondary source material will be used in the assessment of the British counter-terrorism after 9/11 in this thesis. The primary source material in this thesis have been the three counter-terrorism acts enacted by the British Parliament since 9/11, *the Anti-Terrorist, Crime and Security Act* from 2001, the *Prevention of Terrorism Act* from 2005, and the *Terrorism Act* from 2006, in addition to *Countering International Terrorism: The United Kingdom’s Strategy*
and Threat Level: The System to Assess the Threat from International Terrorism. These documents are primary source material that is directly linked to the phenomenon this thesis seeks to analyse.

In addition to the primary source material, secondary source material has also been used in this thesis. This could be useful to explore whether or not the actual British counter-terrorist policy have been in line with the policies outlined in the laws and strategies. Using other source material than the ones that are to be assessed and analysed, like for instance secondary source material, will according to Ottar Dahl (2002:61) be a strength. The secondary source material in this thesis has mainly been the scholarly literature in the field, although some newspaper articles have also been used. The secondary source material has been used analytically together with the primary source material to develop as good an understanding of the British counter-terrorist policy as possible. Using both primary and secondary source material is useful, as the theme of this thesis is highly sensitive, and might contribute to increased objectivity. In analyzing the data material in this thesis analyst triangulation (also known as investigator triangulation) will be employed. Investigator triangulation means employing other scholarly literature in the field to reduce the potential bias that comes from examining only the primary source material. People analyzing the same set of data (in effect the British counter-terrorism policy) reduce chances of selective perception and blind interpretive bias (Patton 1999:1196). Converging conclusions from the scholarly literature in the field with my own findings gives higher validity for the arguments put forward. A common misunderstanding about triangulation is that the point is to demonstrate that different data sources or inquiry approaches yield essentially the same result (Ibid:1193). The point is rather to test the consistency of these sources and examine if they correspond with my own findings.

When one explores the enormous diversity of groups and aims involved, generalisations and evaluations covering the whole field of modern terrorism should be treated with considerable reservations. There is always a risk that an over-
simplified analysis of phenomena induces simplistic and dangerous proposals (Ibid). This thesis focuses on analysing the British counter-terrorism policy’s effect on civil liberties in Britain today. There is, however, fruitful to see the counter-terrorism policy in present day Britain in a historic context. The terrorist threat in Britain is nothing new, and it will be important to be aware of the connection between today’s policy, and what has happened in the past, as there might be similarities between previous experiences and current policies.

According to Louise Richardson and Leonard Weinberg (2004:138) the study of political terrorism has been a-historical, but also largely an a-theoretical undertaking. Still, this thesis is an attempt to put the British counter-terrorism policy after 9/11 in its historical context, and use normative theoretical aspects to answer the research question.

3.2 Counter-Terrorism

According to Schmid (2005:223) an effective counter-terrorism strategy ought to be comprehensive, with full coordination between the parts and the parties concerned. What is the optimal strategy of a democratic regime depends entirely on the specific challenge it confronts (Laqueur 1987:308). The strategies and tactics used by governments to counter terrorism have varied widely, from such highly visible actions as declarations of states of siege or martial law, enactment of anti-terrorism legislations, and strengthening of judicial powers on the one hand, to less visible measures such as the establishment of computerized data banks, enhanced intelligence capabilities and covert operations (Hoffman & Morrison-Taw 2000:3).

The debate on how to counter terrorism is complex; there is no simple and single solution to terrorism, just as there is no simple and single cause. The appropriate response in a specific situation can be one or more of a number of different responses. There are several ways of classifying the different response options to the threat of terrorism (Silke 2005:242). Ronald D. Crelinstin and Alex Schmid (1993:309-310)
differentiate between the criminal justice model and the war model. The criminal justice model of counter-terrorism policy adheres to the rule of law while treating terrorism as crime. The war model of counter-terrorism adheres to the rules of war while treating terrorism as a special form of war or low-intensity conflict. Counter-terrorism policy in the West has consistently emphasized the rule of law, yet calls for a military approach to counter-terrorism became louder and more insistent during the 1980s (Ibid:314). However, after 9/11 the US has chosen to abandoned the criminal justice model, and adapted a war model approach to counter-terrorism.

When one wants to prevent terrorism, there is really no way that one can disregard the conditions that enable terrorism (Schmid 2005:223). The conditions that enable terrorism are in the literature known as ‘root causes’. Louise Richardson (2006:1) pinpoints that one can: *by understanding the forces leading to the emergence of terrorism – the root causes – hope to devise a successful long-term counter-terrorist strategy*. But the search for the causes of terrorism is not going to yield a single solution (Ibid). Identifying the root causes is a complex task, and there may be just as many root causes to terrorism as there are terrorist groups all over the world, be it poverty, the Israeli-Palestine conflict, state sponsorship of terrorism and so on (Bjørgo 2005:1). But in order to prevent future attacks it is still extremely important to understand the underlying causes that enable terrorism. As one can understand, the debate regarding root causes of terrorism is enormous and complex, and may be a theme for a whole thesis on its own.\(^\text{15}\)

There is though one aspect of the so-called root causes debate that needs to be presented in the context of this thesis, the notion that counter-terrorism in some cases may contribute to an escalation of terrorism. According to Silke (2005:242) there already exists some appreciation in the literature on terrorism that counter-terrorism

can inadvertently play a major role in causing, intensifying and sustaining terrorism. He states (Ibid) that:

*If one look at the case of Northern Ireland, one could say that a major factor in the growth of the IRA was not the skill and acumen of its leaders and members, but more the manner in which the state chose to subdue it.*

Britain’s short lived policy of internment without trial for terrorist suspects in Northern Ireland during the 1970s is an example this. The failed measures alienated the public from the authorities, and contributed to a further polarising of an already fractured political environment (Hoffman & Morrison-Taw 2000:3). To fight terrorism with terror often spawns new terrorists and provides new justification for violence that are more likely to escalate terrorism than to diminish it (Whittaker 2001:253-254). One example of how counter-terrorism can be a part in producing more terrorism often cited in the literature, in addition to the one of Northern Ireland, is that of the US retaliation against Libya.

On 5 April 1986, a bomb was detonated at La Belle discothèque in West Berlin, a popular venue with off-duty American soldiers, killing three people and wounding more than 200 others. Two of the dead and some 80 of the injured were American servicemen. Intelligence indicated that the Libyan government had been involved in the attack. In retaliation, the Reagan administration authorized a direct military strike on Libya. Ten days later, US warplanes bombed several targets inside Libya (Freedman 2002:52). Colonel Qadhafi was embittered with the British who had allowed the American military planes to fly from their bases to attack Tripoli in an anti-terrorist foray (Bell 2000:185). The attacks were at first seen as being immediately effective in fighting terrorism and Libya became quiet for some time thereafter. However, the bombing of Pan Am flight 103 over Lockerbie followed in December 1988, as did an increase in Libyan arms supplies to the IRA (Silke 2005:248). Hoffman (2006:263-264) commented that contrary to many earlier claims, Libyan involvement in terrorism detectably increased in the immediate years after the American bombing of Libya. The retaliation strike led to a significant short-term
increase in terrorism directed against the USA and its close ally Britain. Terrorist bombing and assassinations against the US and Britain nearly doubled in the three months after the bombing of Libya. Libya was far from being cowed into submission, but actually increased its commitment to terrorism (Silke 2005:248). All of this clearly exemplifies how acts of counter-terrorism can backfire, and sometimes even lead to a significant increase of acts of terrorism.

3.3 Definitions

A key aspect of the theoretical approach of this thesis is to find academically fruitful content and operationalizations of the key concepts. These terms are first, and foremost, terrorism, and international terrorism. When it comes to defining the term terrorism the options are numerous. According to Wilkinson (2006:3) the US Department of State has used the same definition of the term terrorism since 1983. In 2004 it was reiterated in their annual report Patterns of Global Terrorism (US Department of State 2004:xii):

Premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience.

US Department of Defense, on the other hand, uses a slightly different definition of the term. They define it as (Hoffman 2006:31):

the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological objectives.

The main difference between these two definitions of the term is that Department of Defense’s definition includes both fear and the threatened use of violence and damage to property, while the Department of State’s definition does not. The key statutory definition of terrorism in the British legislation is to be found in Section 1 of
the TACT 2000\textsuperscript{16}. This definition is very law-based, and may seem practically impossible to use in a scientific analysis. None the less it includes fear, purpose and violence, which are common and important features of a solid definition of terrorism (Schmid & Jongman 1988:4). In his book Silke (2004:4) sums up this definition in a way that makes it more suitable to use in an analysis:

\textit{The use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public, or any section of the public for political, religious or ideological ends.}

If one compares this to the list of frequencies of definitional elements outlined by Schmid and Jongman (1988:5-6), the British governments definition include at least six of the features presented, including, three of the top four; violence, force, political, and threat. Evidently it includes all the key factors a definition of terrorism should include, and is also a variant of the one used by the British Government in the counter-terrorism legislation that is to be examined. According to David J. Whittaker (2001:4) some have argued that: \textit{the British definition is too wide and that it may lead to the government restricting or denying legitimate rights of a wide range of protest groups.} Still this definition describes the phenomenon as it is seen by British policy makers, and should be understood in the context of the anti-terrorist laws. Hence it should also be applied when giving an assessment of Britain’s counter-terrorism policy. For these reasons the definition of terrorism, given in the TACT 2000, in the following analysis of this thesis.

The term “international terrorism” covers a number of different issues in the contemporary world, from state sponsored terrorism against foreign countries to cooperation between various terrorist groups. It also frequently refers to attacks against foreign nationals or property in the terrorist’s own country or anywhere else (Laqueur 1987:266). As for the definition of terrorism, the US Government has used the same definitions of the terms “international terrorism” since 1983 (Wilkinson 2006:3). They define the term international terrorism as (US Department of State 2004:xii):

\textsuperscript{16} For the full definition see Section 1 of the Terrorism Act 2000.
Terrorism involving citizens or the territory of more than one country. At first this definition of international terrorism may seem difficult to apply directly to the so-called ‘London Bombers’. They were British citizens, attacking British citizens on British soil. However, the 7/7 bombers had an international agenda, and in that way they can be placed in the category of international terrorism. If one look deeper, there is clear evidence that at least one of the bombers had ties to militant Islamic groups in Pakistan, and had visited them at least twice (Jenkins et al 2005, Harding & MacAskill 2005), and there is no doubt that the terrorist attacks in London on 7 July 2005 were conducted in the spirit of al-Qaeda. Wilkinson (2005:7) also points to the links to the al-Qaeda network when he labels the ‘London-bombers’ as international terrorists. This point is made clear by M.S. Khan, one of the 7/7 bombers, in a video released to the media shortly after the attacks17. Khan also presents himself as a member of the nation of Islam, fighting against the suppression of the West.

3.4 Liberal Democracy

The choice is not between order and liberty. It is between liberty with order and anarchy without either.

Supreme Court Justice Robert Jackson, 194918.

According to Wilkinson (2006:20): liberal democracy is a fairly recent development that in theory provides ample scope for political opposition and participation within the law. Liberal democracies have been remarkably resilient against terrorism, because they have constitutional legitimacy in the eyes of the majority of their citizens. However they are not immune, as the British experience with the IRA is a clear example of. Wilkinson (2006:49) argues further that: liberal democracies have the key advantage that they enjoy legitimacy in the eyes of the overwhelming majority

17 The video is available at: http://www.youtube.com/watch?v=NQU740rlCzY

18 Comment made in the United States Supreme Court in 1949 (United States Supreme Court 1949).
of the population and can mobilise them and depend on their sustained support in their efforts to suppress terrorism. But there is always a catch with the freedoms that we look upon as obvious in Western liberal democracies. Liberal freedoms such as an easy movement in and out of the country, free travel within the country, the right of free speech and the free media, may also make the terrorists working conditions easier. These freedoms that we take for granted, make the task of terrorist propaganda, recruitment, organisation and the mounting of operations easier, relatively speaking (Ibid:20). Terrorists are parasiting on the freedoms that the people of a liberal democracy take for granted.

If one looks at history, it is clear that even long-established liberal democracies become more vulnerable when weakened by prolonged ethnic or religious conflict, like one could see with the British experience with Northern Ireland, by military defeat, by major economic crisis or by an erosion of popular support of democratic institutions and values (Ibid). Goldstone (2005:161) argues that the tension between protecting the state and upholding civil liberties is nothing new. States have grappled with this for centuries, and the problem is a peculiar one for liberal democracies. This is due to the fact that oppressive societies by definition do not respect the civil rights and liberties of their citizens. Hence the oppressive societies have all the necessary tools to put down attacks, regardless of these attacks comes from within or from outside their borders.

Richard A. Posner (2006:4-5) describes the core meaning of civil liberties as:

\[
\text{Freedom from coercive or otherwise intrusive governmental actions designed to secure the nation against real or, sometimes, imagined internal and external enemies.}
\]

He further expresses that one way of thinking about civil liberties, is as a weapon of national security, since the government with its enormous force, is, just like a foreign state, a potential enemy of the people. The concern is that such actions may get out of hand, creating a climate of fear, oppressing the innocent, stifling independent thought, and endangering democracy. Civil liberties are also means of bringing the judiciary into the national security conversation, with a perspective that challenges
that of the national security experts. Wilkinson (1986:12-17) highlights what he calls the major foundations of a liberal democratic state. The first and primary foundation is the political obligation and support willed by the citizens. The rule of law is highlighted as the second major foundation of any liberal state. A liberal state ought to have supremacy in its rule of law. The last of the major foundations of a liberal democracy is presented as the right use of the state’s monopoly of legitimate force in order to preserve internal peace and order. The monopoly of the legitimate use of force is also evident when it comes to enforcing the law and defending the community against external enemies.

3.4.1 Liberal Democratic Principles during a National Emergency

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

John Stuart Mill\(^\text{19}\).

The question of when it is defendable to suspend the civil liberties of an individual or the liberal democratic principles of the collective in order to preserve the collective security is difficult. According to John Stuart Mill (1956:13) a person’s own good, either physical or moral, is not a sufficient warrant to exercise power over a member of a civilized community. But in contradiction to this Mill (1956:15) also states that: *a person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury.* Finding a balance between the protection of civil liberties and when to suspend them, either for individuals or for the whole collective, in order to preserve the collective security is a key issue. The aim is to discover to what end state institutions should be directed, and what limits that should be set to their activity. Wilkinson (2006:92) emphasises that:

\(^{19}\) John Stuart Mill speaks about individual liberties in his book *On Liberty* (1956:13)
Liberal democratic governments (...) should at all times be conscious of their obligations under the Geneva Convention to avoid deliberate attacks on civilians and to treat captured combatants and those injured in battle humanely. Adoption of the methods of terror leads the democracies into a moral and legal quagmire in which they will no longer be perceived by world opinion to be acting in accord with their self-proclaimed democratic values.

Both in academic and governmental circles there seem to be a consensus that all means within the law must be used to prevent terrorism, and during national emergencies. The problem facing governments in liberal democracies today relates more to the legitimacy of the means adapted. One question in particular stands out: to what extent can civil liberties be curtailed and normal legal processes circumvented (Goldstone 2005:157). Governments often claim that derogations of civil liberties are necessary, due to national emergencies and security threats, threatening the life and limbs of the citizens of the nation. The governments in liberal democracies face a dilemma. They have to choose between two competing values in their attempts to handle national emergencies and security threats; freedom and order. The more freedom civil society enjoys, the closer it is to anarchy, as it allows room for predators to victimize others. Conversely, if civil society wishes to restrain predators’ behaviour, it runs the risk of sacrificing the very freedoms that justify its existence in the first place (Tesón 2005:58-59). This dilemma is just as important now as ever, with the current threat facing liberal democracies; the threat from international terrorism.

3.4.2 Suspending Liberties during a Terrorist Emergency

Terrorism is according to Wilkinson (1986:34) clearly one of the many possible types of political violence that can erupt in a liberal democratic state. It is one of the forms which sometimes quite tiny groups may use to attack even the most stable liberal

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20 According to Fernando R. Tesón (2005:57) article 15 of the ‘European Convention of Human Rights’ defines a national emergency as: war or other public emergency threatening the life of the nation. A security threat is defined (Ibid:59) as: actual or foreseeable acts of massive violence against the lives or liberties of citizens of a democratic state.
democracies, the ones enjoying a high degree of popular support and legitimacy. Terrorists make it their business to threaten the most basic of human rights, the right to life (Wilkinson 2006:122). Hoffman (2002:314) argues that:

*All democratic countries that value personal freedom and fundamental civil liberties will remain vulnerable to terrorism. The fundamental asymmetry of the inability to protect all targets all the time against all possible attacks ensure that terrorism will continue to remain attractive to our enemies.*

State-leaders have struggled to find appropriate policies to deal with the new reality that the level of terrorism emerging after 9/11 presents, but this challenge is not a new problem and has been in many countries, like Britain, for many years. Governments combating terrorism in liberal democracies have the additional burden of balancing efficient law enforcement with respect for the civil liberties of their citizens (Goldstone 2005:157). There is no common wisdom on how a liberal democracy should respond to terrorism. Very few Western Governments have managed to implement a coherent strategic response. Instead they have generally opted for ad hoc responses within certain gradually accepted guidelines. Some have been aggressive and adamant, others flexible, and a few swift to concede (Bell 1978:77). The democratic response to terrorism has been characterized by different traditions, predilections, possibilities, and more often than not by isolation (Ibid:ix). The main dilemma facing democracies confronted with terrorism is the one between *acceptability* and *effectiveness*. Anti- and counter-terrorism measures have to be acceptable to a democratic society. On the other hand they have to be effective against a particularly unsavoury type of attack. Presented with a cruel choice the government can either sacrifice some democratic substance in order to be effective against terrorism, or they can tolerate a certain level of terrorism for the sake of maintaining civil liberties (Schmid 1993:15).

There has been a lengthy debate within democracies as to the approach to take in responding to terrorism. The debate dates at least back to the late 1970s. The main concern has been the capacity of the state to withstand the threat from the terrorists. The central figures in this debate in the late 70s and early 80s were Paul Wilkinson...
and J. Bowyer Bell. They represented two competing tensions within the liberal approach to politics; law and order. Whereas Bell was seeking order through established law, Wilkinson argued that the law was established by an initial establishment of order (Stohl 2006:61). According to Wilkinson (1986:162): the government surely had a duty to invoke special powers to protect the community, restore order, and re-establish the rule of law. Bell (1978:279), on the other hand, states: if we cannot tolerate the exaggerated horror flashed on the evening news or random bomb without recourse to the tyrant’s manual – then we do not deserve to be free. Bell clearly believed that a democratic society’s refuge was in the rule of law, and a scrupulous reliance upon it. Taking care not to overreact nor to violate or to dispense with civil liberties, stands out as the way to do this. Wilkinson on the other hand clearly argued that the threat to order presented by terrorists necessitated strong measures that would protect the rule of law and the social order (Stohl 2006:61). This debate is as present today as it was in the late 1970s, and concerned with many of the same issues as in the 70s. In the American debate surrounding this scholars and law-professionals like Philip Heymann and Alan Dershowitz stand out as the protagonists (Ibid:61-62). In today’s debate it has become a kind of mantra to express support for both the duty on the governments to take every reasonable step to protect the lives of their citizens, and at the same time prevent and punish breaches and abuse of civil liberties, especially by terrorists (Goldstone 2005:161). According to Richard Goldstone (2005:159) civil liberties, generally speaking, are not in much danger in secure times. It is in times of threat and fear that governments tend to take actions subversive of these liberties.

Wilkinson (2005:38-40) presents a list of 14 basic ground rules, which in his opinion should be followed by liberal democracies taking a tough line in their attempts to counter terrorism. These are broad principles, built on the major lessons from the anti-terrorist campaigns of the past. There will always be disagreements on the

21 Also to be found in Wilkinson, Paul (1977), Terrorism & the Liberal State, London:MacMillan, pp. 156.
applicability to particular contexts of principles like these. Rather than being able to resolve controversies, the principles should be a framework in which rational discussion can take place, and reduce the danger or arbitrary exercise of power. For the purpose of this thesis the 14 ground rules have been reduced to seven. The ones most similar have been merged together to make the list more fruitful for further assessment and analysis in this thesis.

The first of these ground rules states that the democratically elected government must proclaim its determination to uphold the rule of law and constitutional authority. Further the government must also demonstrate this political will in its actions. It is equally important that the government and the security forces conduct all counter- and anti-terrorist operations within the law. The government should do all in their power to ensure that the normal legal processes are maintained and that those charged with terrorist offences are brought to trial before the courts of law (Ibid: 38-39). There are some universally accepted principles, at least among liberal democracies, regarding the rule of law, all equally important here. One principle is that a man only can be punished for a breach of the law, and nothing else. The presumption of innocence in all criminal prosecutions is another principle in the basic understanding of the rule of law. Guilty by association and collective guilt are inconsistent with a free and democratic society. A third basic principle is the right of trial before an independent court (Goldstone 2005:161-162). In addition to these principles, the non-negotiable fundamentals of the rule of law, and free trials can be summed up as at least seven rights; open justice, judges independent of the prosecuting authority, right to counsel, to have prosecution prove the charge beyond reasonable doubt, and refinements of due process (Robertson 2005:172).

The second ground rule is that there must be no resort to general indiscriminating repression. The government must show that its measures against terrorism are solely directed at quelling the terrorists and their active collaborators, and by that defend the society against the terrorists (Wilkinson 2005:38). One should not overreact in a time of fear, a mistake that has been made all too often in the past (Cole 2003:35). Any
liberal response to terrorism is a limited, well defined strategy that does not go beyond what is demanded by the exigencies of the situation and which is directed only against the terrorists themselves (Chalk 2000:186). There should be the minimum derogation necessary from existing civil rights and freedoms in domestic and international law, and absolute respect for those rights and freedoms which are non-derogable (Bonner 1993:199). A slide into general repression would destroy individual liberties and political democracy and may indeed bring about ruthless dictatorship even more implacable than the terrorism and repression it was supposed to destroy (Wilkinson 2005:38). One should not succumb to the temptation to trade a vulnerable minority’s liberties, namely, for the security of the rest of the population (Cole 2003:35).

The third ground rule is that the government must be seen doing all in its power to protect the life and limb of citizens (Wilkinson 2005:38). Any liberal democratic response to terrorism must be credible. The general populace has to be convinced that action initiated is both necessary and effective in producing results (Chalk 2000:190). In order to so, and to establish a relationship of trust with the public, democratic governments must be willing to share more and more accurate information about terrorist organizations, their aims and their capabilities. Only then can the public realistically assess what is possible and impossible for a government to do (Crelinstin and Schmid 1993:325). This is a vital prerequisite for public confidence and cooperation (Wilkinson 2005:38).

The fourth is that there must be a clear-cut and consistent policy of refusing to make any concessions to terrorist blackmail. Nor should the government engage in dialogue and negotiation with groups which are actively engaged in promoting, committing or supporting terrorism (Ibid:38-39). Engaging in negotiations with terrorists or terrorist associated groups only lends the terrorists publicity, status, and, worst of all, a spurious respectability. If the terrorist weapon can be shown to pay off against a particular government then that government and its political moderates will find their power and authority undermined. There is abundant evidence that weakness and
concessions provoke a rapid emulation of terrorism by other groups and a dramatic escalation in the price of blackmail demands. The base of this policy of no compromise is simple; concessions only lead to further demands. To save a few lives now would put more lives in jeopardy in the future (Bell 1978:173).

The fifth ground rule is that all aspects of the anti-terrorist policy and operations should be under the overall control of the civil authorities and, hence democratic accountable (Wilkinson 2005:39). Any liberal democratic response to terrorism requires constant parliamentary supervision and judicial oversight (Chalk 2000:196). It is important that those conducting this judicial oversight are an independent judiciary, and not themselves members of those they are to control (Bonner 1993:199). Visible and workable structures of accountability are absolutely essential to ensure that those engaged in countering terrorism are held publicly accountable for their actions and, hence, prevented from carrying out arbitrary, unexpected and unlicensed acts of force (Chalk 2000:196).

The sixth is that special powers, which may become necessary to deal with a terrorist emergency, should be approved by the legislature only for a fixed and limited period (Wilkinson 2003:39). Resort should only be done where it can be shown to be absolutely necessary, and the powers to special powers should not be prolonged further than is absolutely necessary (Bonner 1993:199). The maximum should be six months, subject to the legislature’s right to revoke or renew the special powers should circumstances require (Wilkinson 2005:39). It must be abundantly clear both in terms of the general situation and their application to individual cases, that the powers, and their application to individual cases, are only invoked when the powers in the ordinary laws are inadequate to deal with the threat (Whittaker 2001:262).

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22 Special powers are defined as (Bonner 1993:199): powers over and above those applicable in respect of non-terrorist criminal activity.
The seventh and last ground rule is that sudden vacillations in security policy should be avoided. These sudden vacillations tend to undermine public confidence and encourage the terrorists to exploit rifts in the government and its security forces (Ibid). The focus should be on finding long term solutions to the underlying causes of terrorism. This approach involves a decision to acknowledge that there are remediable inequities in society which may provide objective causes of terrorism (Whittaker 2001:261). It is a vital principle that liberal democratic governments should not allow their concern with countering terrorism, even in a serious emergency, to deflect them from their responsibilities for the social and economic welfare of the community. Liberal democratic governments must, by definition, be grounded upon the broad consent of the governed (Wilkinson 2005:40).
4. The Counter-Terrorism measures to be examined

This chapter will be a short review of the main governmental initiatives used in this thesis, mainly the three counter-terrorism acts: Anti-Terrorism, Crime and Security Act 2001 (the ATCSA), Prevention of Terrorism Act 2005 (the PTA), and Terrorism Act 2006 (the TACT 2006). The empirical evidence concerning ‘Countering International Terrorism: The United Kingdom’s Strategy’ and ‘Threat Level: The System to Assess the Threat from International Terrorism’ will also be reviewed here. In addition to these three laws, one new governmental strategy and the system of threat levels, there are several new laws that could have been included in the empirical material. Amongst these are the Immigration, Asylum and Nationality Act from 2006, and the Terrorism (Northern Ireland) Act from 2006.

These measures have been excluded because of the extent of this thesis, but also on relevance grounds. The Terrorism (Northern Ireland) Act 2006 is the continuance of part 7 of the Terrorism Act 2000, that is up for renewal every fifth year. In addition this act concerns what is labelled ‘Irish terrorism’ by the British Government, and is therefore not relevant as this thesis is concerned about the measures taken to counter international terrorism. The Immigrations, Asylum and Nationality Act 2006 include some important notions about deportation of persons on grounds of national security, but its relevant sections are just amendments and minor adjustments to the notions already found in the terrorism legislation

4.1 The Anti-Terrorism, Crime and Security Act 2001

The first signal that the government intended to introduce additional counter-terrorism legislation was given by the Home Secretary in Parliament on the 4 October. The Act was outlined on 15 October, and enacted on 14 December 2001 (Walker 2002:4). The purpose was to build on legislations in a number of areas to
ensure that the Government, in the light of the new situation arising from 9/11, had the necessary powers to counter the threat to Britain (Home Office 2001a). It contains further provisions of freezing of terrorist property, disclosure of information, immigration and asylum. The Act also re-introduces the offence of failing to disclose information about acts of terrorism. Such an offence was introduced in the Prevention of Terrorism (Temporary Provisions) Act 1989 and applied only in Northern Ireland. The new provision applies generally throughout Britain (Carpenter 2003:viii). The TACT 2000 extended to the whole of Britain as a general rule. Indeed this consolidation of the two partly overlapping codes, the Prevention of Terrorism (Temporary Provisions) Act and the Northern Ireland (Emergency Provisions) Acts, represented one of the undoubted benefits of the new TACT 2000. The gain of consolidation has now been largely lost with the passage of the Anti-Terrorism, Crime and Security Act 2001 (Walker 2002:287).

Part 4 addresses immigration and asylum matters pertaining to terrorism, and is the most central part of the ATCSA. There are three important elements in this part. The most controversial is the detention without trial of foreign persons denied asylum on national security grounds or because of their international crimes. These powers have later been ruled unlawful by the House of Lords. In addition, there is an attempt to short-circuit any claim to asylum by making the tribunal focus upon the Secretary of State’s reasons for denying the claim. Thirdly, Part 4 deals with the retention of fingerprints in asylum and immigration case (Ibid:32-33). To summarise, the measures included in these 14 Parts are intended to (Home Office 2001b):

- Cut off terrorist funding;
- Ensure that government department and agencies could collect and share information required for countering the terrorist threat;
- Streamline relevant immigration procedures;
- Ensure the security of the nuclear and aviation industries;
- Improve the security of dangerous substances that may be targeted or used by terrorists;
- Extend police powers available to relevant forces;
- Ensure that Britain could meet their European obligations in the area of police and judicial cooperation and their international obligations to counter bribery and corruption;
• Update parts of Britain’s anti-terrorist powers.

4.2 Prevention of Terrorism Act 2005

On 16 December 2004 the Law Lords ruled that the detention without trial of nine foreigners under Part 4 of the ATCSA was unlawful, being incompatible with European, and thus domestic, Human Rights Laws. This was mainly done because the powers only extended to foreign nationals. The Government repealed the Part 4 powers under the ATCSA and replaced them with a system of control orders under the PTA. The control orders are preventative orders which are designed to restrict or prevent the further involvement by individuals in such activity. The PTA was enacted on 11 March 2005, and allows control orders to be made against any suspected terrorist (Home Office 2005a).

The PTA is the least extensive of the anti-terrorist laws introduced after 9/11. The first part relates to the circumstances in which control orders may be made. Part 2 deals with appeals and other proceedings. A person subject to a non-derogating control order may appeal to the court against the decisions of the Secretary of State if the control order has been renewed or modified, or if the Secretary of State has decided not to revoke or modify the control order on an application from the controlled person. The last part of the act deals with supplemental issues, such as provisions for the general oversight of the operations of the Act. This include independent annual review, quarterly reports to Parliament on the exercise of his control order powers by the Secretary of State, and annual renewal of the provisions (Home Office 2005b). To summarise, the measures included in the Act are intended to (Ibid):

• Ensure supervision by the courts of the making of non-derogating control orders;
• Give the court power to make derogating control orders on application from the Secretary of State;
• Establish control orders proceedings involving the hearing of evidence in open and closed session with special Advocates representing the interests of the individuals concerned in the latter;
• Make room for the application of a judicial review test in hearings relating to non-derogating control orders;
• Make room for the application of the civil standard of proof on the question of involvement in terrorism-related activity in hearings relating to derogating control orders;
• Establish an independent review of the operations of the Act, with the first review to be carried out after the Act has been in operation for nine months and subsequent reviews annually there after;
• Give the Secretary of State an obligation to report to Parliament every three months on his exercise of the control order powers during that period;
• Ensure that where a derogation which has been approved by parliament is in place, the need for further annual Parliamentary approval of the continuing need to rely on the derogation to make derogating control orders.

4.3 Terrorism Act 2006

Following the incidents of 7/7 and 21/7 the calls for a further extension of the anti-terrorist laws got stronger. The TACT 2006 was enacted on 30 March 2006. The purpose was to reform and extend previous counter-terrorism legislation to ensure that the police, intelligence agencies and courts had the necessary powers and tools to counter the threat to Britain posed by terrorism. The intent of the Act was to penalize conduct which was thought to fall outside existing statutes and common law (Bowers, Jones and Lodge 2006:1).

The act consists of three extensive parts, whereas the first provides for new offences, amendments to existing offences, and makes incidental provisions about terrorism offences. These new offences include making encouragement of acts of terrorism and dissemination of terrorist publications unlawful. Lastly, the first part of the Act sets out new procedures to be followed in the preparation of terrorist cases for trial. The second part consists mainly of amendments to previous legislation. The first of these are amendments to the grounds of which the Secretary of State is empowered to proscribe organisations, a process through which a proscribed organisation may be identified by another name. This part also includes substantial amendments to police and investigatory powers. Amongst these are the provisions extending the maximum length of time a person can be detained under Schedule 8 of the TACT 2000 from 14 to 28 days. Lastly, Part 3 provides for the oversight of the operations of Part 1 of the
Act and the TACT 2000 through an independent annual review to Parliament (Home Office 2006b). To summarise, the measures included in the Act are intended to (Ibid):

- Extend the powers currently available to the Secretary of State relating to proscription, to allow proscription of groups which glorify terrorism or the activities of which associate it with acts that glorify terrorism, and to deal with proscribed organisations that change their names;
- Extend police and investigatory powers to terrorism, such as allowing the extension of detention of terrorist suspects with judicial approval for up to 28 days;
- Introduce warrants to enable the police to search any property owned or controlled by a terrorist suspect;
- Extend terrorism stop and search powers to cover bays and estuaries.

4.4 Countering International Terrorism: The United Kingdom’s Strategy

Since early 2003, Britain has had a long-term strategy for countering international terrorism. Within the Government this strategy is known as CONTEST. This strategy was presented publicly, for the first time in July 2006, in *Countering International Terrorism: the United Kingdom’s Strategy*. According to the Home Office (2006c) this strategy aims to:

> Reduce the risk from international terrorism, so that people can go about their daily lives freely and with confidence. This grand strategy is divided into four principle strands, prevent, pursue, protect and prepare.

The main concern of the first two of the principles, prevent and pursue, is to reduce the threat of international terrorism. The last two, protect and prepare, are designed to enhance Britain’s ability to withstand a terrorist attack (Home Office 2005c). According to the Home Office (2006c), this strategy and Britain’s counter-terrorism policy must have respect for international law and human rights standards as an integral part. The promotion of good governance, not just in line with Human Rights, but also promote Human Rights, is also a key element in Britain’s wider effort to combat terrorism and extremism (Home Office 2006c).
The first principle strand of this counter-terrorism strategy is Prevent. It is concerned with tackling the radicalisation of individuals. In order to do this Britain has to take action to tackle the factors which encourage and facilitate recruitment of new possible terrorists. This is done by addressing the structural problems in Britain and overseas. Engaging in the battle of ideas, challenging the ideologies that extremists believe can justify the use of violence and helping Muslims who wish to dispute these ideas to do so, is also an important factor. Secondly Britain wishes to Pursue terrorists and those that sponsor them. The way to do this is to develop a better understanding of terrorist networks, in order to track and disrupt the terrorists and their sponsors, and where they can, bring them to justice (Ibid). Gathering intelligence and thereby improving their ability to identify and understand the terrorist threat will be a key objective in order to obtain this aim. In disrupting terrorist activity, action needs to be taken to frustrate terrorist attacks and to bring terrorists to justice. This includes strengthening the legal framework against terrorism by (Ibid): introducing legislation to deport those who are judged to be not conductive to the public good.

Protect is the third strand, and aims to protect the public, key national services and British interests at home and overseas as well as possible. A strengthening of border security is a key objective in order to better protect Britain against a terrorist attack. In addition to strengthening the border security, the Government must also work together with the private sector to protect key utilities. People need to be protected in crowded places so that they can go about their daily lives. The final strand is Prepare. Britain needs to be prepared for the consequences of a terrorist attack, by thoroughly preparing to respond to any attack, so that the consequences if a terrorist attack was to occur can be reduced (Home Office 2005c). One of the key elements in preparing the nation for the consequences of a terrorist attack is to identify the potential risks Britain faces from terrorism and to assess their potential impact. Britain is frequently

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23 Muslims are mentioned explicitly, as the primary threat from international terrorism today comes from radical Islamic groups.
exercising to improve their response to incidents and learning lessons from incidents that have already taken place (Home Office 2006c).

4.5 The Threat Level System

Joint Terrorism Analysis Centre (JTAC) 24 has the responsibility to assess the threat level in Britain from international terrorism. They have developed a system of five different threat levels that are intended to keep the public informed about the level of threat to Britain from terrorism 25. The system is also designed to help the police and other law enforcement agencies to determine how they should respond to, and prepare for a terrorist incident, and the level of security needed to protect Britain’s Critical National Infrastructure (CNI) (Home Office 2006d). This is critical, if the police and other law enforcement agencies are going to be able to impose the adequate security measures needed. Informing the public about the threat is a new policy by the Government. Previously, the Government has not made public the way in which this system works or the national threat that emerges from it. According to Home Secretary John Reid, the Government, following a review, decided to inform the general public about the process and the national threat level, which applies to Britain as a whole. The information about the national threat level was made available on the MI5 and Home Office websites from August 2006 (Ibid). Threat levels give a broad indication of the likelihood of a terrorist attack, and are based on the analysis and assessment of a range of different factors, including current intelligence, recent events and what is known about terrorist intentions and capabilities. This information may be incomplete, and JTAC makes its decisions

24 JTAC, which was created in June 2003, has the responsibility to analyse and assess all intelligence relating to international terrorism (Home Office 2006e).

25 The system is as follows: 1. Low, which indicates that an attack is unlikely to happen. 2. Moderate, which indicates that an attack is possible, but not likely. 3. Substantial that indicates that an attack is a strong possibility. 4. Severe, indicates that an attack is highly likely. 5. Critical, whereas an attack is expected imminently (Home Office 2006d). The British system has many similarities to the US Threat Level System. The US system also consists of five levels (U.S. Department of Homeland Security 2002): Low Risk; Guarded Risk; Elevated Risk; High Risk; and Severe Risk.
about the appropriate security response with this in mind. Together with the detailed assessment, this analysis of the current threat level informs the security practitioners in key sectors of the police of the potential threats. When analysing the terrorists’ intentions and capability, JTAC uses intelligence and publicly available information to examine the overall aims of the terrorists in question and the ways they may achieve these aims. This includes what sort of targets they would consider attacking.

In regard to the timescale, the threat level expresses the likelihood of an attack in the near term. From past incidents, it is known that some terrorist attacks take years to plan, while others are put together more quickly. In the absence of specific intelligence, JTAC will need to make a judgement about how close an attack might be in fruition. The threat levels do not have any set expiry date, but are regularly reviewed by JTAC in order to ensure that they remain current (Ibid).

In the same way as they produce a judgement on the current threat level, the Government also assesses the current response level needed. The response levels are supposed to provide a broad indication of the protective security measures that should be applied at any particular moment. The main difference between response levels and threat levels are that response levels mainly relate to sites, whereas the threat levels usually relate to broad areas of activity. The response level will not produce the same security measures at every location, and many of the measures produced will not be obvious or visible to the public (Ibid). There are three levels of response. These broadly equate to the threat levels produced by JTAC. The security measures taken are not announced publicly by the Government. They are kept secret to avoid informing terrorists about what the intelligence services know, and what they are doing about it, and thereby giving the terrorists a tactical advantage (Ibid).

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26 The first response level, normal, relates to the threat levels low and moderate, and requires routine protective security measures. The next response level, heightened, is equivalent to the threat levels substantial and severe. It requires a need for additional and substantial protective security measures. The highest response level is exceptional, and is closely linked to a critical threat level. With an exceptional response level maximum protective security measures is needed (Home Office 2006d).
5. Liberal Democracy and Counter-Terrorism Policy

Liberal democratic countries such as the United Kingdom (...), which have played a significant role in the development of human rights standards, bear a particular burden to uphold these rights even during the gravest of emergencies.


Liberal democracies like Britain must protect the liberties of individual terrorist suspects, even if there is a threat to the national security. Compared to the US, Britain is lacking an overriding Bill of Rights limiting legislative power of a parliament dominated by the executive. As supervision of legislative power is important, the European Commission and Court of Human Rights, plays an important role in maintaining that the British Government acts in accordance with the European Convention on Human Rights (ECHR). The British courts have only recently accepted this supremacy (Bonner 2000:31). The 1998 Human Rights Act (HRA) integrated the language of ECHR, and incorporated it in the broad goals of British public policy. In the future this convention may prove to become the same for Britain as the Bill of Rights are for the US (Wallach 2005:109).

There is no universally applicable counter-terrorism policy for democracies. Every conflict involving terrorism has its own unique characteristics. In each specific case the governments have to balance between the risk of under-reacting, and thereby tolerating terrorism, on the one hand, and overreacting on the other, leading to serious infringement of civil liberties and possibly an aggravation of the problem (Wilkinson 2006:203). The impact of a counter-terror campaign on political rights need to be distinguished from the impact on private rights, since democracy might succeed in keeping its political system functioning while failing to preserve the full range of private rights. The British Government kept the democratic system functioning in Northern Ireland, but only through abridgements of private rights such as internment
The following analysis is structured by the seven ground rules set out in section 3.4.2.

5.1 Upholding the Rule of Law and Constitutional Authority

Historically, anti-terror legislation in Britain was often driven in response to the latest terrorist attack in relations to the conflict in the Northern Ireland. In a review of the legislation in 1996, Lord Lloyd set out four principles which the anti-terror legislation should be judged against (Williamson 2006:9-10):

1. Legislation against terrorism should approximate as closely as possible to the ordinary criminal law and procedure.

2. Additional statutory and powers may be justified, but only if they are necessary to meet the anticipated threat. They must then strike the right balance between the needs of security and the rights and liberties of the individual.

3. The need for additional safeguards should be considered alongside additional powers.

4. The law should comply with Britain’s obligations in international law.

He concluded that the British emergency powers often fail to meet these principles. This was taken into account as the Home Office started the process of developing a new set of anti-terrorist laws, the TACT 2000. However, 9/11 altered this approach, and to deal with the new situation the British Government hastily passed the ATCSA (Ibid:10). Once more the Government went back to its old pattern of hastily presenting a new law in response to a terrorist attack, the very thing the TACT 2000 was supposed to prevent. The purpose had been to establish a comprehensive and a permanent code, limiting the need for hastily passed laws in the future.

Contemporary non-state terrorism creates its terror predominately through counter-value targeting, and the protection of all possible targets in open societies is impossible without turning them into draconian police states. This would be an unacceptable solution for a liberal democracy, leading to the conclusion there is no complete effectiveness against terrorism. The common scenario in democratic states has been when the government feel that traditional methods of policing or criminal justice are not sufficient to deal with a threat, or that procedural safeguards built into
the rule of law actually undermine effectiveness, they call for a variety of special measures that undermine to a greater or lesser extent the rule of law (Crelinstin and Schmid 1993:330-331).

Democratic states must act within the rule of law, otherwise the liberal state, in dealing with terrorism, is not remaining true to its own ideals and its own fundamental values. It is accordingly preferable to deal with suspected terrorists in a proper criminal process, as little modified as possible, were the terrorists can be proved guilty of a specific criminal offence and can challenge the evidence against them. An alternative such as internment without trial, attractive in terms of effectiveness and expediency, confines terrorists without clearly demonstrating to the public that they are terrorists (Bonner 1993:201). Democratic states are facing an inescapable dilemma. They have to deal effectively with the terrorist threat, without at the same time destroying basic civil rights, the democratic process, and the rule of law. If the balance is to be maintained, the liberal democratic state should seek at all times to counter terrorism using its criminal justice and law enforcement mechanisms (Wilkinson 2006:189).

5.1.1 Maintaining a Normal Legal Process

For more than thirty-five years, policy makers, and academics have been preoccupied with developing efficient counter-terrorism models, and there seems to be a consensus that if a campaign against terrorism is to be successful; it has to adhere strictly to liberal democratic principles and the rule of law (Michaelsen 131-132). There are always some who would destroy democracy to save it; by declaring a state of siege, narrowly restricting civil liberties and greatly extending the powers of law enforcement agencies (Bell 1978:109). The primary objective of counter-terrorist policy should, and must, be protection and maintenance of liberal democracy and the rule of law. The investigation, trial, and punishment of the perpetrators of these offences are unequivocally a matter of the wider criminal justice system. The criminal justice system is the heart of Britain’s counter-terrorism strategy, and the work of the
police, intelligence agencies, and the military is closely integrated (Cronin 2004a:8). To the extent that the rights of law need to be limited during a national emergency, if at all, the limitation should be only to the extent absolutely necessary. Terrorism succeeds if it tempts the government to abandon the core values of a democratic society and the rule of law (Robertson 2005:170).

The anti-terrorism laws have led to some of the worst human rights abuse in Britain over the past 25 years, contributing to miscarriages of justice and unnecessary detention of thousands of innocent people (Whittaker 2001:246). According to Geoffrey Robertson (2005:169) Britain has: been trying terrorists unfairly for centuries, but at least these terrorists have been tried in court. The Diplock Courts for Northern Ireland are perhaps the most famous of the special anti-terrorism courts that have been in operation. Although they were a far less serious departure from normal criminal procedures than we can see in for instance the US today, these modified courts, lacking a normal jury and other protections, still generated substantial sympathy for the terrorist cause in Northern Ireland (Heymann 2003:94-95).

The British Government has an outspoken goal of maintaining the rule of law and a normal legal process, even during times of emergency. As a result, there has been much development when in comes to developing a comprehensive legislation capable of handling the threat from terrorism. In addition to having a goal of maintaining British rule of law and legal process, the Government has also stated in their counter-terrorism strategy that respect for international law and human rights standards must be an integral part of the efforts to counter terrorism (Home Office 2006c). An important step in achieving this was the integration of the ECHR in the 1998 HRA. However, how this integration will function in practice strikes an important and interesting theoretical notion, the relationship between the vision behind a strategic goal, how this is meant to function in theory, and how it is really functioning in practice.
According to the Counter-Terrorism Strategy (Ibid) a successful prosecution in the courts, based on gathering the necessary evidence and apprehending those involved in planning acts of terrorism before they can carry out their intentions, is of course the Government's preferred way of disrupting terrorist activity. However, where prosecution is not possible, the government make effective security measures designed to make Britain a more hostile environment for terrorists to operate in (Ibid). Even in emergency, even if some liberties must be suspended, a democracy must remain answerable to the higher law, a set of standards that the dignity of every person. In Britain, the legality of the government’s suspension of civil liberties after 9/11 has gone to the House of Lords for review and will probably go on to the European Court. The House of Lords have also ruled that Part 4 of the ATCSA is not compatible with the ECHR.

Tom R. Hickman (2005:661) addresses an important point in this context, the difference between the British Government’s policy toward derogation before and after 9/11. Prior to 9/11 the notion was that undermining the essential freedoms and rule of law, the bedrock of the British democracy, would be to hand the terrorists the victory. The enactment of the TACT 2000 was an important step in that respect. However, nine months later, following 9/11, the government once again sought to derogate from the ECHR by enacting the ATCSA. Since 9/11 the Government has portrayed derogation as if it were mere limitation on right, and just a legal technicality. The argument is that derogation does not require denial of traditional liberties but merely are about achieving a balance maintaining those rights (Ibid:661-662). It is interesting to see how one incident, like 9/11, can lead to such a shift in the Government’s policy, moving away from what they had sought to achieve with the enactment of the TACT 2000. The argument was that the ATCSA was enacted to ensure that the Government, in the light of the new situation, had the necessary powers to counter the threat to Britain, a threat that quite different from anything that Britain has previously faced. To a significant extent, the betterments of the TACT 2000 have now been compromised by the ATCSA, which is neither wholly permanent nor comprehensive and, since it in part amends the TACT 2000.
The counter-terrorism acts embody two main approaches. There is first the strategy of criminalisation. Consequently, the Acts set out special offences. The second purpose is not simply to sustain convictions but to prevent, disrupt and counter, and in this way engage in control (Walker 2005:387). Prosecution remains the preferred way of responding to persons involved in terrorist activity, but other options for taking disruptive action including deportation, control orders, freezing and seizing financial assets, and proscription of organisations have been introduced (Home Office 2006c). The measures to proscribe organisation were originally set out in the TACT 2000, but was amended through the TACT 2006 to include organisations that has changed name, and organisations that glorify terrorism. The proscription of terrorist organisations makes a substantial contribution towards making Britain a hostile environment for terrorists. Proscription may only be considered a though power, as it outlaws previously lawful activity. Gabe Mythen and Sandra Walklate (2006:379) states: *It may very well be that law and order institutions in the United Kingdom and the United States are responding to the current threat through a clumsy combination of hands-up admission and forceful retaliation.* The events of the post 9/11 period have undoubtedly extend state power domestically, both in Britain and the US, in ways which just a few years ago would have been inconceivable. Powers of stop, search, arrest, detention and charge have all been strengthened or extended. The anti-terrorist legislation enacted after 9/11 all represents important extensions of state power, but the changes have at least been kept within the judicial system.

While Britain initially suspended basic legal rights of suspected terrorists in the 1970s, and interned suspected terrorists without trial, these measures were abandoned when it became apparent that many innocents had been detained (Wilson 2005:32). Britain has a well-developed legislation, and systems to deal with crime. Consequently, the criminal justice system should be at heart of the British counter-terrorism efforts. But there are still those that advocate that the threat terrorism poses to society today, is such that the response to it must extend beyond the core of the judicial system and engage the intelligence services, the military, and even the individual citizen. Britain’s counter-terrorism policy is unequivocally underpinned by
the criminal justice system and how the police, intelligence agencies, and military act together in a cooperative and coordinated way to implement it (Clutterbuck 2004:141). Despite the claims that they are suspending basic legal rights of suspected terrorists, and ushering in unnecessary emergency powers, the British government are still doing their best to keep their counter-terrorism within what can be perceived as a criminal justice model.

5.1.2 Detention and Control Orders

The detention powers introduced in the ATCSA is an authority similar to that exercised by Britain against the IRA (Kmiec 2003:47-48). However, there is one striking difference. The detention orders in the 1970s were solely aimed at British citizens, while the detention orders presented in the ATCSA only applied to foreign nationals, primarily those foreign nationals that could not be deported due to international obligations. Internment without trial in Northern Ireland was eventually abolished because only a tiny percentage of those detained had been charged, and almost without exception they could have been detained under ordinary criminal laws (Whittaker 2001:246). It could even be said that the detention in Northern Ireland worked counter-productive, increasing the hatred along the sectarian divide. There is a danger that the detention today will contribute to a radicalising of Muslim communities, and thereby also work as counter-productive as it did 30 years ago.

It was a major reversal of policy when detention without trial was resurrected by Part 4 of the ATCSA. That measure was attributable to the shock of 9/11. Though some suspects could be subject to criminal process, prevention as well as prosecution and punishment had to be part of the agenda. One result was the dilemma of detention without trial for those terrorist suspects whose fate cannot be settled through conviction and imprisonment (Walker 2005:400). In order for the law to meet the country’s international treaty obligations on human rights, Britain was required to proclaim a case of ‘public emergency’ following the attacks of 9/11. That enabled them to derogate from Article 5 of the ECHR, which prohibits imprisonment without
a fair trial. The Government did so, despite repeated confirmations that there was no indication of an immediate threat to the British public, and Britain was the only country that found is necessary to derogate from the ECHR in this way (Haubrich 2006:409).

The Secretary of State was given the power to certify non-British nationals, believed to be a risk to national security and suspected of being international terrorists. If they could not be returned to their home country due to a real risk that they could face torture, they could be detained. Competence to review the Secretary of State’s use of these powers was given to the Special Immigration Appeals Commission (SIAC) (Shah 2005:404-405). SIAC is a judicial body dealing with evidence considered too sensitive to be revealed to the appellant or his legal advisers. Instead, security-cleared ‘special advisers’ could argue on behalf of appellants in relation to such closed evidence. Still it was the legal challenges to the detention regime itself that were of present concern. Since that regime was enshrined in an act of Parliament, it could not be, due to sovereign status of the Parliament, be struck down (Elliot 2006:554). In notifying the Council of Europe of the derogation from the provisions of Article 5 of the ECHR (which deal with the right to liberty and security), the Government illustrated the significance of the ECHR as a factor in the legal context in which counter-terrorism measures operate in Britain (Carpenter 2003:viii-ix). The protection of human rights is a fundamental value of a democratic society, but society itself requires protection from terrorist attack and this may necessitate some of those rights being abridged.

The suspected terrorists appealed to the SIAC, claiming that the derogations were invalid for three reasons (Shah 2005:406): Firstly, they argued that there was no emergency threatening the life of the nation and therefore such a derogation was not required; and secondly, that even if there was such an emergency the measures, indefinite detention of non-British nationals without trial, were not strictly required by the exigencies of the situation. Finally, it was argued that the section 23 powers were discriminatory and as such violated Article 14 of the ECHR. Article 15, ECHR
permits states to validly derogate from a provision of the ECHR when faced with a public emergency threatening the life of the nation, provided that any measures taken are strictly required. Despite the detainees arguing that the emergency was not actual or imminent, and that no other European state had entered derogation from the ECHR, all but one of the judges accept that ‘an emergency threatening the life of the nation’ actually existed within Britain. (Ibid:407).

Having established that, for the purposes of Article 15, ECHR, the judges moved to look at whether the measures taken were ‘strictly required by the exigencies of the situation’, essentially whether the measures were proportionate. The essential issue was whether an alternative course of action could have been taken, making derogation from its obligations under the ECHR unnecessary (Ibid:409). The majority opinions agreed with the appellants that the Part 4 powers could not be considered proportionate. The reasoning was that although the threat to Britain’s national security was thought to come predominantly from non-British nationals, there was still a significant threat posed by British nationals who were suspected international terrorists and as such these individuals also formed part of the emergency threatening the life of the nation. However, the measure which necessitated derogation was only aimed at non-British nationals and as such did not address a significant part of the emergency. Therefore it was argued that if the threat from British nationals could be dealt with in a particular manner, then this scheme could also be used for dealing with non-British nationals (Ibid:410-411). The judges found that the provisions were discriminatory and as such incompatible with Article 14, ECHR. A determination that a process is discriminatory reflects the fact that two comparable groups have been treated differently, without reasonable justification. The majority of the House of Lords upheld the appeal, reasoning that compared to suspected terrorists who are British nationals, the appellants were found to have been discriminated against Article 5 rights on this point (Ibid:413).

At a general level, this sheds light on the status of human rights in Britain. British courts are not able, constitutionally, to strike down acts of Parliament that is
incompatible with the ECHR. Against this background, the fact that the Government appeared to feel morally, or at least politically, bound to jettison the detention without trial regime, in view of the Law Lords’ finding of incompatibility, is highly significant (Elliot 2006:560). Orthodoxy long held that courts in Britain could not set aside administrative decisions even where they were aberrant or totally unreasonable. The extent to which the HRA frees British courts from these shackles by encouraging the use of the more intensive proportionality test favoured by the European Court of Human Rights has been the subject of considerable controversy (Ibid:561). The Law Lords’ decision shifts the focus to the balance between judicial and legislative power in cases where a breach of human rights is found. The significance of this is considerable. Still, it might be asked whether the ECHR reasoning would have been followed if section 23 of the ATCSA had been drafted as to apply to both non-British suspected terrorists and British National who were suspected terrorists, although only selectively applied to non-British nationals.

On 26 January 2005, the Home Secretary repealed Part 4 of the ATCSA. The repeated legal drubbings by alleged dangerous terrorists prompted the replacement of Part 4 with the PTA (Walker 2005:407). The PTA’s passage through Parliament was remarkably swift. Time was of the essence because, because under section 29 of the ATCSA the detention-without-trial provisions remained in force only if renewed annually. If the detainees were not to be released unconditionally the new legislation had to be in place before the old provisions lapsed on March 14, 2005. Against this background, the PTA was introduced into the House of Commons on February 22 and approved six days later (Elliot 2006:562). The PTA provides for control orders which differ from Part 4 in a number of important respects, most notably in the level of judicial intervention. Control orders which derogate from Article 5 of the ECHR can only be made by the courts, while non-derogating orders still must be confirmed by the courts. But the processes by which review is undertaken very much resembles the SIAC model (Walker 2005:407). All proceedings under the PTA take place according to special court rules that provide for sensitive closed material to be withheld from the individual concerned and his legal representatives, and for his
interests to be represented, where necessary, by a security-cleared special advocate. Still, concerns have been expressed concerning the standard of proof applying to decisions to impose control orders, the extent to which the judiciary should be involved in the making or reviewing of such decisions, and the duration for which the legislation should remain in force (Elliot 2006:562-564).

Legislation such as the PTA has provided the state with remarkable powers. In addition the Government, after 7/7, campaigned to extend pre-charge detention for those suspected of terrorism to 90 days. This was done without specifying why this would lead to an increase in terrorism convictions. Whilst the 90 day limit was rejected, a 28 days limit was secured in the TACT 2006. A fundamental change in terms of policing was apparently taken without any rigorous public consultation (Moran 2005:344). Parliament played an important role in blocking proposals for 90 days’ detention for persons detained for suspected terrorist offences. The defeats in Parliament on the 90-days proposal may be seen as a result of Labour’s reduced majority since the 2005 election, and was a personal defeat for Tony Blair. The reduced majority proved credible following the defeats on the TACT 2006 in November the same year (Whitaker 2006:350-351). Reviewing the process surrounding the passage of the TACT 2006, it remains a question if Tony Blair did really want a 90-day detention without charge clause, or merely proposed the 90-day clause to get what he really wanted, for example a 60-day detention without clause. Nonetheless, the 28-day detention without charge clause he ended up with may only be seen as a severe defeat for the Blair-administration and for Tony Blair personally.

The reason given for the need of long pre-charge detention periods in Britain are simply the fact that in Britain, a suspect, once he has been charged, is normally not re-interviewed by the police (Home Affairs Committee 2006:33). However, Phillip Heymann (2003:108-109) has presents an alternative to preventive and pre-trial detention. He advocates a continued requirement of proof beyond reasonable doubt, but at the same time to make the crime one that is far easier to prove. This has been presented as an alternative to an increased pre-trial detention limits by several
sources, including people inside the Metropolitan Police. Other measures proposed has been changes that open up for interrogation of people after they have been charged, and to lesser the evidence burden in terrorist cases.

5.2 General Repression

Liberal democracies seek to limit the use of force necessary to their maintenance (Ignatieff 2004:18). The point that people can go about their lives freely is a core principle in a liberal democracy. However, preserving both the feel and the reality of freedom, when confronted with serious threats to security, is the true test of a democracy committed to the rule of law. One of the goals of terrorism can be to frighten citizens into surrendering their civil liberties and welcoming a police state and a condition of general repression, either for the whole population or for certain part of the population such as a minority group. This goal is often achieved because many citizens prefer security to liberty, and many governments are all too willing to use the fear of terrorism as a justification for asserting more control over their citizens (Dershowitz 2002:190-191). Repressive action to counter terrorism in Britain is nothing new that have emerged after 9/11. Britain had enacted wide-ranging measures to counter terrorism long before 9/11. These measures were adopted predominately to counter the threat from IRA terrorist activities from the 1970s onwards (Goldstone 2005:165). However it has still been, and should be in the future, a goal for the British government to balance their efforts to counter the threat from terrorism in such a way that they do not fall into the trap of adopting measures that can be perceived as repressive. Since 9/11 there have been especially two measures that have been controversial and by some perceived as repressive. These are Part 4 of the ATCSA, which opened for unlimited detention of foreign nationals suspected of terrorism, and the proposal to extend pre-trial detention for suspected terrorists to 90 days, which eventually ended up as 28 day, in the TACT 2006. Both of these measures bears a resemblance with the previously mentioned internment without trial policy conducted in Northern Ireland in the first half of the 1970s.
5.2.1 Limiting Civil Liberties

J. Bowyer Bell (1978:104) concludes that: *It is agreed that while nothing can really be done about terrorism in an open society, something must. The problem is that there is no solution.* Clearly, what is acceptable democratically depends on the nature of a society on the defensive. When the threat is persistent and severe, the willingness to accept limits to democratic principles is greater (Crelinstin and Schmid 1993:332). However, it is important to keep in mind that repression and the denial of human rights will only harm the counter-terrorist struggle. Democracy and democratic process must be the core components of a successful counter-terrorism strategy and policy. Paul Wilkinson (2006:61) directs the dangers of overreacting or under-reacting when attempting counter terrorism. An overreaction and general repression could destroy democracy far more rapidly and effectively than any terrorism campaign. Indeed, some terrorist activities are designed precisely to provoke curtailment of personal liberties and other domestic repressive measures that might breed public disaffection with the system. Extreme counter-measures can, thus, play into the hands of terrorists (Whittaker 2001:254).

The very effectiveness of any democratic solution to the terrorist problem must include a determination of the political dimension and the impact of the solution on democratic political life. If terrorism is eliminated at the expense of democracy, through either too much repression or too much accommodation, one could ask if such a solution really is effective (Crelinstin and Schmid 1993:332). States faced with a terrorist crisis can suspend democratic rights, provided that the means of repression used to put down the challenge do not result in violations of the bodily integrity of the detained suspects (Ignatieff 2004:47). Even if preventive or investigative detention can be justified as a lesser evil, it should not entail suspension of habeas corpus rights. Liberties cannot be suspended simply to provide a public with a feeling that they are more secure or to gratify their anger at a terrorist outrage. The Government have to prove – to a legislature, a judiciary, and public opinion – that abridging a particular constitutional liberty will actually enhance the liberty and
security of the law-abiding (Ibid:49). People tend to be willing to sacrifice freedom when their security seems to be seriously threatened, even when a democratic tradition is strong. Scapegoating and indiscriminate labelling are two of the most pernicious anti-democratic symptoms of generalized public fear and insecurity (Crelinstin and Schmid 1993:324).

The various international human rights conventions to which Britain is a party constitute yardsticks against which one can assess the acceptability of anti-terrorist legislation and policy. With its enforcement machinery and its individual petition, the ECHR represents the most pertinent and practical yardstick (Bonner 1993:198-199). The challenge of governments in the era of modern terrorism is to re-strike the balance between the interest in liberty from government restraint and the interest in public safety, in recognition of the grave threat terrorism poses to the nation’s security. This balance shift continuously, as threats to liberty and safety wax and wane (Posner 2006:31). It is next to impossible to prevent terrorists from exploiting the very freedoms of a democracy, unless asserting to repressive measures. The British Government can impose some measures to make the terrorists’ exploitation of our freedoms more difficult. Amongst these measures are the freezing of terrorist finances, and measures to cut of terrorist funding. Regrettably the fight against terrorism today seems to have provided a multipurpose rationale for a variety of authoritarian measures, including punitive restrictions for non-citizens, and illegal detention.

5.2.2 Minority Rights

It would appear that a kind of policing that relies on the identification of dangerous classes of people has a great potential for impinging on the rights of large numbers of completely innocent people (Crelinstin and Özkut 2000:260). By reserving its harshest measures for immigrants – in the immediately foreseeable future, Arab and Muslim immigrants – the government sacrifices commitments to equality by trading a minority group’s liberty for the majority’s security. Painting with a broad brush is not
a good law enforcement approach. It wastes resources on innocents, alienates the very communities one need to be working with, and makes it all the more difficult to distinguish the true threat from the innocent bystander. While today’s response to terrorism does not yet match the one seen for instance in Northern Ireland, it is characterized by many of the same mistakes, namely, targeting vulnerable groups not for illegal conduct because of their group identity or political affiliation (Cole 2003:36-37). Democracies do not just serve majority interests, they accord individuals intrinsic respect. This respect is expressed in the form of rights that guarantee certain freedom. The essential constraint of democratic government is that it must serve majority interests without sacrificing the freedom and dignity of the individuals who compromise the political community to begin with and who on occasion oppose how it is governed. A democracy does not exist without rights, and rights cannot be secure unless there is a democracy. But in terrorist emergencies, their relation breaks apart. What makes security appear to trump liberty in terrorist emergencies is the idea that the liberty of the majority is utterly dependent upon their security. A people living in fear are no free (Ignatieff 2004:5).

There are two types of harms a government can commit in their attempts to protect their citizens: abandoning those constraints on executive actions that are necessary to a feeling of public confidence that one is not threatened by his own government; and a focusing on one group within the population for far more than ordinary levels of suspicion because its members share religion, ethnicity, or racial background with the terrorists (Heymann 2003:88). The easiest first step governments can take is to curtail the civil liberties of its enemies and its non-citizens. It is far less controversial to go after ‘them’ than ‘us’ (Dershowitz 2002:192). The suspension of civil liberties and the detention of aliens might be allowed, as a last resort, if the life of the state were in danger (Ignatieff 2004:1). Preventive detention to withdraw suspicious aliens from the general population might disrupt terrorist networks, but it might also enrage innocent groups that they would cease to cooperate with the police (Ibid:19-20).
The trade-off is not between our security and our liberty in times of a terrorist threat, but between our security and their liberty, meaning a small suspect group, like adult male Muslims. These competing claims need to be balanced, and this should be done on the assumption that pre-commitments made in times of safety should be maintained, as far as possible, in times of danger (Ibid:32). Civil liberties and human rights are the rights of everybody, but an important part of their justification is to protect unpopular minorities from unjust treatment. The unequal distribution of liberty and security that has been justified by supposed need to balance these two values, may have been aggravated ethnic prejudice and may even prove to be counter-productive, as it alienates Muslim citizens from the rest of the society, and increases sympathy for terrorists, if only a small minority (Freeman 2005:48). Still it is a paradox that it is perceived as racism when thugs menace someone because he looks Arabic, while it is something else when airport security officials single out Arabic-looking men for a more intrusive inspection (Kinsley 2003:53).

In a speech three weeks after 9/11, Tony Blair stressed the need to distinguish terrorism from Islam, and the need for ‘greater understanding between nations and between faiths’ (Linklater 2002:307). In response to 9/11, the British Government has left democratic rights for the majority unaltered, while subjecting aliens to investigative detention and deportation. This tactic trade-off, to maintain majority rights while restraining minority rights, has proven to be successful politically, since it has muted any criticism of the costs of the measures undertaken since 9/11. The fact that rights of the majority have not been harmed and democracy itself has continued to function through recent emergencies, like 9/11, does not mean that these emergencies do not do long-term institutional harm. Terrorism is one of the pressures that have led to more secretive government, more police powers, and increasing executive authority at the expense of other branches of government. In all these respects, it is the response to terrorism, rather than terrorism itself, that does democracy most harm (Ignatieff 2004:61).
After 9/11 the ATCSA was enacted as an amendment to the existing TACT 2000. It’s most controversial provision, the Part 4 powers, provided for detention of a suspected international terrorist. If the person was not a British citizen, he may be detained for an unspecific period of time without charge or trial. There was no appeal opportunity to the ordinary courts, but only to a government appointed commission. This provision led Britain, and the Part 4 powers of the ATCSA, to derogate from the human rights provisions of the ECHR (Goldstone 2005:165). In terms of the legislation employed, section 44 of the TACT 2000 provides wider grounds for stop and search. The rate for the Black/Asian population was two to three times higher than whites. However, numerically the figures show that 3,668 Asians were stopped and searched across Britain in 2003-04\(^{27}\) falling to 3,494 in 2004-05. Black people were still more likely to be disproportionately stopped/searched (Moran 2005:343). However, the stop and search of individuals of Asian appearance increased in percentage. These are still not insignificant figures. British citizens may not come into contact with intrusive state power on a regular basis, but there has certainly been a net widening. However, in terms of non-citizens, not only do the numbers affected increase but so does the intensity (Ibid:351-352).

The Prime Minister set out a twelve point action plan on 5 August 2005 principally focused on strengthening powers to tackle those committed to facilitating and promoting terrorism, and on strengthening community integration. A widespread consultation exercise was launched with the Muslim community. The principle current threat is from radicalised individuals who are using a distorted and unrepresentative version of the Islamic faith to justify violence. They are, however, a tiny minority within the Muslim communities, both in Britain and abroad (Home Office 2006c). In so far as stringent policing may be a plausible response to security fears, the concern is that certain populations are classified as dangerous. The point at issue here is not so much about the risk itself, but to who or what risk gets attached.

\(^{27}\) This is out of around 30,000 stopped overall (Moran 2005:351)
In Britain, the number of Asian people stopped and searched quadrupled in a single year, from 2001-02 to 2002-2003 (Mythen and Walklate 2006:390-391). This has resulted in many ethnic minority groups finding themselves marginalized and incriminated.

5.3 Protecting the Life and Limbs of the Citizens

The terrorists are indiscriminate, often aiming to cause as much death and destruction as they can, regardless of age, nationality, or religion. The distinctive feature is that it is deliberative strikes on ordinary people going about their lives (Home Office 2006c). The Protect strand of the counter-terrorism strategy is particularly important when it comes to protecting the life and limbs of the citizens, as the primary concern is reduce the vulnerability of Britain and British interests overseas to a terrorist attack. It is natural to see classical anti-terrorism measures, such as improving border security, and protection of the critical infrastructure and crowded places, as a part of this. The Strategy (Ibid) states that: *Risk is assessed and identified through a national process which considers the probability of the event and especially its impact on the UK*. This is done to help identifying the priorities for protection, the aims of which is to reduce the vulnerability to and likelihood of a terrorist attack through proportionate security measures. Given the vast range of potential terrorist attack scenarios, with a wide range of potential consequences, it is neither practicable nor prudent to plan for every scenario. Instead, planning seeks to build generic capabilities and plans, able to be drawn on flexibly in the response to a wide range of terrorist events (Ibid).

The Strategy (Ibid) clearly states that public safety is the top priority of all governmental agencies involved in countering terrorism. The Government fully supports the police and Security Service in the difficult decisions they must make when faced with the current terrorist threat. This is due to the fact that operational decisions whether and how to conduct counter terrorist operations are a matter of the police. There may be situations where the police believe they have no choice but to take action on basis of the specific intelligence they have received.
5.3.1 A Credible Response

Counter-terrorism actions must always address not simply the treatment of and response to actions that have taken place and the prevention of future acts of terrorism, but also the reactions of the audience to the acts or threats. Countering terrorism potentially involves the use of all the security forces within the context of a political process. When shaping counter-terrorism policy, states must remember that the reactions of the audience are as important as their short-term elimination of particular terrorists or their capacities to act (Stohl 2006:60). The Government’s response to the terrorist threat must appear to the general public as a credible one. Following the events of 9/11 the Home Secretary declared (Walker 2002:7): *on 11 September, families lost their loved ones, and the threat of terrorism touched us all. If we fail now to take the necessary action to protect our people, future generations will never forgive us.* This statement can only be interpreted as the Government are prepared to do what it takes to respond to the emerging threat from international terrorism.

The government and the intelligence services need to uncover the activities not only of specified groups or states, but also of potential terrorists. Intelligence has an enormously important role in learning as much as possible about terrorists’ activities and in so doing reducing the number of terrorist incidents and lives lost. The role that intelligence most commonly is expected to perform is to discover the details of terrorist plots so that the plots can be rolled up before they are carried out. This is the most direct, most satisfying, and, when such incidents are made public, the most spectacularly successful way in which intelligence can help to curb terrorism (Pillar 2004:115-116). In Britain, police and intelligence services have disrupted many attacks since 9/11. The success in dealing with potential attacks has been significant. Not only has a number of credible plans to cause life have been disrupted, but in many cases the individuals involved have either been successfully prosecuted and imprisoned, or are awaiting trial. However, as the tragic events of 7/7 have shown, it is impossible to eliminate completely the threat in Britain. Despite the events of 7/7
and 21/7 the efforts of the government of the intelligence services to protect the lives of their citizens may be perceived as successful and highly credible.

In order to help the intelligence services in their response, there is a need for the Government to do their part, not only by making the work easier by introducing legislative measures, but also by increasing the resources available for intelligence. The Strategy (Home Office 2006c) clearly express that investment in counter-terrorism are a priority, and should be reflected in the resources made available. Prior to 9/11 the amount spent on homeland security in Britain was around £950 million. To compare, the spending is set to grow from £1.4 billion to £2.1 billion between 2004 and 2008\(^{28}\) (Mythen and Walklate 2006:389). As the British Governments knowledge of the effectiveness of counter-terrorism capabilities has increased, and as new threats and opportunities have emerged, they have allocated further resources to enable increased capacity. These increased resources have enabled the MI5 to double the size of its counter-terrorism capability (Home Office 2006c). The increased resources spent on homeland security, set to be double what it was prior to 9/11, leads to the conclusion that the Governments response to the threat exposed by 9/11 has been credible, at least when it comes to the financial part.

### 5.3.2 Informing the Public

The problem with emergencies is that only the executive has sufficient information to know whether they remain justified. It may not always be possible to know immediately: a government can be justified in withholding information on a sensitive operation if disclosure would actually jeopardize lives. But the justification for secrecy can only be temporary, not permanent. Secrecy becomes a danger to democracy itself when it is used to prevent the process on which constitutional liberty depends (Ignatieff 2004:51). Dahl (1989 108-115) highlights the need for information

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\(^{28}\) In the US, the resources allocated for the Department of Homeland Security for 2005 was $40.2 billion (Mythen and Walklate 2006:389).
in his five distinguishing features the democratic process. He advocates that each citizen ought to have adequate and equal opportunities for discovering and validating the choice on the matter to be decided that would best serve the citizens interests. Without full and open information of what the British government are doing in order to counter the threat from international terrorism, the British people will have no opportunity to decide whether the government are serving their interest or not.

In order to keep the public better informed, the Government chose to follow the American example, and made information about the current national threat level publicly available on the MI5 and Home Office websites from 1 August 2006. Previously, the Government has not made public the way this system works or the national threat level that emerges from it. Following a review after 7/7, the Home Office and the Security Services decided to inform the general public about the process. The Threat Levels are meant to be shorthand descriptions of the overall threat, either to Britain as a whole, or for a number of specific sectors such as Government estate or military facilities (Home Office 2006d). This is the Government’s main way of informing the public of the threat of terrorism, and what the Government are doing to protect its citizens. The decision to make the assessed threat level public is a major attempt to keep the public informed, and to establish a relationship of trust with the public. But while publishing the current threat level and the process surrounding it publicly is an important step along the way of keeping the public informed, it is still just a small step. According to Strategy (Home Office 2006c) the review simplified the system for security professionals, and even more important, to clarify the process for the general public without causing alarm.

There is still severe secrecy surrounding the government’s actions to counter the threat, and who is responsible for the threat. The responsibility put upon the Government is twofold. They are trying to comply with the public’s yearn for more information relating of the Government’s attempt to counter the threat, while at the

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same time trying to keep the level of secrecy needed in dealing with a threat from terrorism. Just as any other governmental effort based on intelligence, there is a need to protect sources, and not give the terrorists the advantage of letting them know what the Government really know about their organization, their aims and their capabilities. The Government are put in an impossible situation; on the one hand they face the public’s demand for more information, and on the other hand they are obliged to keep a high level of secrecy in order to be able to perform the task they have been set to do. As it is made clear in the Counter-Terrorism Strategy (Ibid):

*There are limits to what we can say about disruption activity. We cannot be public explicit about the detail of many of these operations because of the need to preserve operational security and our capability to conduct similar operations in the future.*

The need for secrecy does not only concern counter-terrorist operations but also parts of the government’s Strategy to counter terrorism. The Strategy compromises both open elements, which can be freely publicised, and classified elements, which are kept secret. There have to be such secret elements, in order to avoid alerting the terrorists themselves. The British Government states quite clearly that they have tried to explain as much to the public as they safely can, but they are still clear on the fact that the publicised Counter-Terrorism Strategy only is a partial account of their counter-terrorist strategy and omits those aspects which have to be kept secret (Ibid).

In addition to making the threat level system and parts of the Strategy public, the Government have also started making information public about planned terrorist attacks that have been prevented. Among the plots that have allegedly been foiled are according to Gabe Mythen and Sandra Walklate (2006:389) an aircraft attack on Canary Wharf Tower, explosive strikes in the Houses of Parliament and the detonation of a bomb at Old Trafford football stadium. The reasoning behind making these ‘success stories’ public can only be to show that the government are doing their best to assure the general public that the counter-terrorist measures are effective, and at the same time making it clear that they are making progress in the attempts to curb the threat from international terrorism.
5.4 A Policy of Not Negotiating with Terrorists

Terrorists must be hunted down, punished and incapacitated, without regards for the possible substantive justice of their cause. That is the only way to send the message that an act of terrorism should be the occasion only for punishment and incapacitation, not for negotiation (Dershowitz 2002:26-27). To negotiate is an act of recognition. It is impossible to negotiate with violent groups without according them this recognition and without running the risk that they will use this recognition to lure democratic states into damaging concessions (Ignatieff 2004:105-106). It is redemption they are after, and they seek death sure that they have attained it. The terrorists have nothing to negotiate for, and governments have nothing to gain by negotiating with them. They will take gestures of conciliation as weakness and our desire to replace violence with dialogue as contemptible naïveté (Ibid:131). Hence there are good reasons never to negotiate with terrorist groups. But most liberal democratic states, while refusing direct negotiation with men of violence, open channels of political dialogue with any group committed to non-violence who can drain away the terrorist’s constituency of support. The weak and oppressed must be given a peaceful political alternative that enable them to rise up against the violence exercised in their name. They must be given the chance to refuse to allow their sons and daughters to be recruited (Ibid:106).

The measures examined in this thesis give no indication whether or not the British government have a clear-cut policy of no-negotiation. This is probably a well designed policy to keep their options open, although there is nothing in the empirical material that indicates this. In connection with the sad incident when Ken Bigley was kidnapped and later beheaded by insurgents in Iraq, the British Government refused to negotiate and to give in to any demands. Still, Britain has with luck negotiated in the past, mainly the political wing of the IRA, Sinn Fein, and if the policy of having no policy when it comes to negotiation with terrorists is a conscious one, it might be an attempt to keep all options open. However, the negotiations with Sinn Fein, a political party, cannot be perceived as negotiating with terrorists. To negotiate or to
refuse to negotiate depends on the situation, and by keeping all options open the Government has a much wider scope.

5.5 Civilian Control and Democratic Accountability

It is clearly stated in the Strategy that (Home Office 2006c): *successful delivery of this counter-terrorism strategy depends upon all parts of Government; the public, private, and voluntary sectors, and all of us as individuals and as members of communities.* Developing and delivering the counter-terrorism strategy and policy should include all parts of Government acting together and taking a joined-up approach to dealing with the complex and wide-ranging threat. Britain has come a long way in achieving such a partnership. A partnership with the police and emergency services, local authorities, devolved administration, as well as the private sector has been evolved. An important step in this has been to develop the System of Response Levels, which helps both private and public sector know when to activate the adequate security measures needed at a particular moment. According to the counter-terrorism strategy (Ibid) public awareness of the threat, understanding of the measures needed to combat it, and active support and cooperation with the police, is critical to the success of both the strategy and the wider counter-terrorism policy (Ibid).

The counter-terrorism strategy and planning is overseen by a Cabinet committee chaired by the Prime Minister, with the Home Secretary as Deputy Chair. Operational counter-terrorist activity in Britain is conducted by the Security Service in close collaboration with police forces across the country and the Anti-Terrorist Branch of the Metropolitan Police. Intelligence in relation to possible terrorist threats at home and overseas is developed by the Security service, SIS, and GCHQ. Operations against potential terrorists are a police matter (Ibid).
5.5.1 Judicial Oversight and Parliamentary Control

The liberal state and its terrorist enemy stand under very different obligations to justify their actions. The agents of a liberal democracy are aware that they may be subpoenaed to defend and explain their actions in adversarial proceedings, possibly even in court. Terrorists do not stand in any institutional setting that holds them accountable for their actions (Ignatieff 2004:109). The terrorists know that the security forces in a liberal democracy are forced to operate at mid levels of coerciveness. Judicial restraints and, civil control and accountability, all of which are essential safeguards in a democracy, prevent the security forces from deploying their full strength firepower. These constraints are inevitable and desirable, but they do mean that the task of countering terrorism is an enormously complex and demanding task (Wilkinson 2006:205).

As for review, by section 28 of the ATCSA, the Secretary of State was required to appoint a person to review the operations of sections 21 to 23 (Home Office 2001a). The review had to take place no later than 14 months after the passage of the Act, and one month before the expiry of any revived period of operation. A copy of any report had to be laid before Parliament as soon as reasonably practicable, but there was no requirement for debate (Walker 2005:408-409). Alongside the annual review, section 122 required the Home Secretary to appoint a committee of Privy Counsellors to conduct a review within two years (Home Office 2001a). The Privy Counsellors viewed the system of detention under Part 4 as objectionable in principle because of the lack of safeguards against injustice and also because it provides no protection against British terrorists. They argued for either a more aggressive criminal prosecution stance or intrusive administrative restraint on movement and communications. Less intrusive executive-type alternatives to detention were also to be considered, including some measures not far short of the control orders eventually enacted (Walker 2005:409). The ATCSA (Home Office 2001b) also had built in procedures that prevent judicial review of decisions of the SIAC, the body that deals with suspected terrorists’ appeals against immigration decisions. This is stated in
Section 29(2) of the Act (Home Office 2001a): *No court or tribunal other than the Special Immigrant Appeals Commission may entertain proceeding for questioning an action of the Secretary of State.*

The Privy argued for the removal of the ‘internment provisions’ and purposed a more ‘proportionate response’ involving house arrest, intensive surveillance and other measures. A further review of the terrorism legislation is under way. The outcome of this will have serious implications for democracy in Britain. If the war on terrorism requires that all terrorism in the world be eradicated the war will go on for ever and therefore the emergency legislation will never be dismantled (Williamson 2006:18). The major contribution of the controversy surrounding Part 4 of the ATCSA has been that it has put focus on the relationship between the judicial and other branches of government. It questions the myth, fostered by centuries, of complacency regarding the virtues of an unwritten constitution and a sovereign parliament, that Britain is uniquely immune to the risks posed by a constitutional architecture in which the incomplete separation of powers could allow for domination by an omnicompetent legislature controlled by a powerful executive (Elliott 2006:565). If there ever was reason to doubt the value of an independent judiciary able to speak up for basic human rights and to challenge the worst excesses of majority rule, it is surely removed by this case and the dark episode in British history that prompted it.

However, it is a matter of some concern that various politicians in Britain have, with political impunity, been able to moot the possibility of amending and even repealing the HRA. This is a reminder that, under the present constitutional arrangements, the jurisdiction of British courts to review executive and legislative action for compatibility with human rights norms ultimately remains vulnerable to the majority rule. When the British government recently sought to procure the enactment of legislation abolishing judicial review of asylum and immigration decisions, the Lord Chief Justice speculated that, if implemented, it would be “so inconsistent with the spirit of mutual respect between different arms of government that it could be the catalyst for a campaign for a written constitution”. In a climate where politicians are
willing to enact legislation such as the ATCSA, which represent a gross infringement of the most fundamental rights, while at the same time countenancing the removal of the courts’ human rights jurisdiction, it might be thought that the time has come for just such a campaign to begin earnest and for the judiciary’s role as guardian of fundamental rights to be rendered constitutionally secure, rather than, as present, subject to the whims of a sovereign legislature (Ibid:566).

The PTA contains strong safeguards in Part 14, to protect the rights of the individual. The Act makes provisions for the general oversight of the operation of the Act including independent annual review, a report of the Secretary of State’s exercise of his control order powers, and an annual review of the provision (Home Office 2005b). An independent reviewer makes the annual report to Parliament on the operation of the control order powers (Home Office 2006c). However, in many cases, actions for deportation, or to impose control orders by law remain anonymous. They cannot be discussed in any detail, though regular information is provided to Parliament on the scale of such actions through the Secretary of State’s regular quarterly report to Parliament on the exercise of the control order powers (Ibid).

When it comes to judicial control and review of the TACT 2006, this is set out in Part 3, section 36. However the requirement for review is limited to Part 1 of the Act, in addition to the whole of the TACT 2000, as stated in section 36(1) (Home Office 2006a): the Secretary of State must appoint a person to review the operations of the provisions of the Terrorism Act 2000 and Part 1 of this Act. Section 36 further states that the first review of the Act must be performed by an independent reviewer within a year of the laying before Parliament of the last report under section 126 of the TACT 2000, and subsequently reviews must be carried out at least annually. The Secretary of State is obliged to present these reports and reviews to Parliament.

5.5.2 Intelligence and Civil Control

Intelligence is a vital part of the second principle strand, pursue, of Britain’s counter-terrorism strategy. This principle strand is concerned with reducing the threat to
Britain and to British interests overseas by disrupting terrorists and their operations. The Security Service (MI5), the Secret Intelligence Service (SIS), and Government Communications Headquarters (GCHQ), known collectively as the security and intelligence agencies, are therefore critical to the work to of this pursue strand, as is the work of the police, both the special branches and neighbourhood policing alike. Since 9/11 there has been a significant shift of Government resources into the business of gathering and analysing information on the threat and configure departments and agencies in the most effective way to address it (Home Office 2006c). The importance of intelligence has also been reflected in institutional terms, with the establishment, since 9/11, of bodies such as Joint Terrorism Analysis Centre (JTAC) within the Security Service and the development of regional offices by the Security Service (Walker 2005:387).

The *Modus Operandi* of the British intelligence agencies is that they must act in secret. If what they do is known to terrorists, they will not be able to gather information needed to prevent political violence. But allowing government activities to be secret means that rules and limits in jurisdiction and responsibility are likely to be ignored, unless they are carefully guarded by oversight (Heymann 2003:152). In Britain, democratic oversight of the intelligence- and security services did not occur meaningful until the 1990s, and still remains characterised by bureaucratic oversight. However, from the 1990s onwards, the British courts appear to have taken a more activist role, effectively hobbling certain parts of the government’s anti-terror policy and Parliament has also proved vigorous at points (Moran 2005:350). Traditionally, intelligence officials have obeyed rules either because of personal or organizational sanctions, or because they agree with the principles behind them. If the agency has embedded in its culture a belief that national security concerns trump more ‘remote’ worries about domestic freedoms, particularly the concerns of groups that are not themselves being investigated, rules will lack moral force as well (Heymann 2003:152). However, British counter-terrorism in the new millennium is subject to structures of accountability which vary in vigour, but still constrain the state in the sense that they require it to justify and rationalise its actions and provide scope for
civil society groups to critique state actions (Moran 2005:350). If the British public is to have confidence in the oversight and if the oversight is to be effective, the oversight body must not be loyal to, subservient to, or easily deceived by, the intelligence agency. The resolution of this dilemma, in most Western democracies, is to create an independent or legislative body whose purpose are generally shared with the intelligence agencies and thus can be expected to protect national security secrets, but is independent enough to, at the same time, enjoy public trust (Heymann 2003:153).

Wilkinson (2006:62) highlights the importance for the governments and the security forces to act within the law at all times. A failure to do this will contribute to an undermining of the government and the criminal justice system in the general public, and must thus be avoided. Winning the intelligence war are key for all governments trying to counter terrorism. It is also vital that the intelligence agencies that gather the intelligence is kept under strict government control. Enforcement of rules protecting democratic liberties and assuring an adequate measure of effectiveness and efficiency in gathering and processing intelligence depends upon creating an oversight agency that has the following capacities: knowing what the intelligence agency is doing; having the power to deter the agency from either illegal activities or ineffective, sloppy intelligence gathering; and the willingness and incentives of whoever has that power and knowledge to encourage effective, law-abiding behaviour. The central problem of designing an oversight body with full knowledge of intelligence activities, is that the needed strictness and discipline often requires an independent outside oversight body, while full knowledge and frankness requires an oversight body more closely connected to those responsible for intelligence-gathering (Heymann 2003:152). There is a base for control of the intelligence service in Britain. However, it is difficult to assess how genuine this control really is.
5.6 Special Powers

Special laws and powers against terrorism have provided a constant feature of political and legal life within Britain throughout most of the past century. Dangerous terrorism is likely to be around far longer than democratic freedoms safely can be suspended without the traditional separation of powers losing the habits and attitudes democracy depends upon. The dangers from well-armed terrorists will, unfortunately, outlast any single embodiment, such as al-Qaeda and its associates. So must Britain’s democratic traditions (Heymann 2003:179). Terrorism has managed to damage liberal democracies, but it has never succeeded in breaking their political system. Liberal states turn out to be much less weak than they perceive themselves to be; indeed, their chief weakness is to underestimate their strengths (Ignatieff 2004:73). Britons might find themselves living within a national security state on permanent alert, with sealed borders, constant identity checks, and permanent detention camps for suspicious aliens and recalcitrant citizens. As the threat of terrorism targets the political identity of free peoples, the essential resource has to be that identity itself. No strategy against terrorism is sustainable without public assistance and cooperation, without the eyes that detect risks, ears that hear threats, and the willingness to report them to the authorities (Ibid:154).

5.6.1 Sunset Clauses vs. Permanent, but not Active, Laws

In democratic societies special powers and emergency legislation have had a long and not always happy history. Even when the necessary legislation does not exist, democratic leaders have somehow found the authority to intern aliens. When legislation is passed in response to a spectacular provocation, there is a tendency to maintain it on the books after the emergency has disappeared, just in case. Yet such laws do not produce order. In the nineteenth century the number of British Coercion Acts passed to deal with the Irish was staggering, and yet the Irish kept on revolting (Bell 1978:164-165). If emergency laws are found to be needed in a particular serious terrorist conflict the laws must be temporary, subject to frequent review by
parliament, and subject to parliament’s approval before any renewal (Wilkinson 2006:62). Nonetheless, the ‘emergency’ steps taken today to combat terrorism, the ‘temporary’ compromises with essential liberties, are likely to become part of the permanent legal and political culture (Dershowitz 2002:11). Legislators invariably respond to attacks by giving police additional powers whether they need them or not (Ignatieff 2004:51). That is why sunset clauses, preset limitations on the duration, remain the legislature’s chief weapon in making sure that emergency exceptions do not become the rule. Yet even when sunset clauses are in place, emergency legislation remains problematic. Sunset provisions written into laws restricting essential freedoms will be less effective in the context of terrorism than in other contexts, because the sun will never set on terrorism and the fears it provokes (Dershowitz 2002:11).

In Britain, what was originally conceived as a temporary measure, the Prevention of Terrorism Act, eventually became permanent, despite periodic revision along the way in an attempt to adjust the balance between effectiveness and acceptability. The tension between effectiveness and acceptability of repressive models of counter-terrorism lies at the crux of the democratic response problem. Conventional wisdom seems to be that when the threat is sufficiently great, effectiveness must take precedence over democratic acceptability. This usually means that repressive models predominate because of their presumed effectiveness and that, the worse the threat, the more willingness to compromise on democratic acceptability. The effectiveness of repressive policies, such as military reprisals or indiscriminate legal repression, may therefore be questioned on purely operational grounds, regardless of the acceptability dimension (Crelinstin and Schmid 1993:331). Having permanent laws, that are not active, can reduce the dangers of the passage of badly designed and dangerous emergency laws, so long as it contains mechanisms for continued scrutiny. The panic surrounding the ATCSA was bad enough but at least it was confined by the existence of the TACT 2000. More positively, one can seek to build upon the experience of permanent legislation and to impose effective scrutiny (Walker 2002:17).
The main danger associated with the permanent availability of special laws is the inclination towards overuse. Therefore, three safeguards should be incorporated. The first feature is to make debates about the legislation more principled and informed, and less emotional. For each part of the special act there should be expressed criteria by which to judge its value or dispensability and its proportionality so that there can be a distinct vote on each part. The next safeguard is to enforce observance of these preconditions. This vigilance should be undertaken not simply by Parliament, but also by an independent permanent standing committee, which would investigate and report on any proposed institution of the legislation, its working while in force, its renewal and its compatibility with international obligations (Ibid). However, there is an alternative. The TACT 2000, together with the HRA 1998, demonstrated that it was possible to have workable legislation that enabled the police to deal with threats in an intelligence-led way rather than resort to preventive detention. The choice between a security state, where personal freedoms are inevitably eroded, and a democracy, achieving a proportionate balance between individual rights and threats to national security, is not a false dichotomy (Williamson 2006:18).

The TACT 2000 and the ATCSA underlines the fact that the British anti-terror legislation in the new millennium is permanent, and not temporary, laws. Though there are ‘sunset’ clauses in both Acts which ensure that parts of the legislation must terminate after a set period, this is only the reality for small part of the Acts. This fate applies to Part 7 of the TACT 2000 and to section 21 to 23 of the ATCSA (Walker 2002:11). Because of the extraordinary nature of detention without trial and the consequences reliance upon a derogation notice, Parliament insisted on limits on the duration of the powers plus an extra tier of scrutiny for these measures. The duration initially set was 15 months. Conversely, the Secretary of State could order continue in force and revive those sections for a period not exceeding one year, subject to affirmative resolution of Parliament. But any new lease of life was subject to a ‘sunset’ clause in section 29 (7): sections 21-23 shall by virtue of this subsection cease to have effect on 10 November 2006 (Walker 2005:408).
5.6.2 Avoiding Abuse of Special Powers

The need for special laws to prevent and deal with particular threats has long been recognised. One can conceive it to be justifiable for a liberal democracy to design and to employ special laws against groups engaged in political violence. This conclusion does not, however, entail allowing liberal democracies carte blanches in response to how they react. There must be an adherence to limiting principles which reflect the values of individual rights, constitutionalism and democratic accountability (Whittaker 2001:244). It follows that recent British governments have been correct to reject the call, inspired by events in Northern Ireland, ‘no emergency, no emergency law’. The main attractions of such a stance would be that it sends a clear political signal that the conflict is over, that reliance on military strength as the basis for non-conflict is unacceptable and that derogation under Article 15 is not to be tolerated (Walker 2002:15). It is therefore an interesting observation that Britain is the only country of Council of Europe member states that felt it was necessary to respond to 9/11 by bringing forward this kind of legislation (Williamson 2006:17-18). It is critical that the British Government, in their adaptation of such special laws, keep close attention to the disadvantages that such laws might bring along. It is a fact that special laws are often unnecessary, either because of the level of threat or the existence of other powers, and fear of abuse of the wide powers. Therefore the need for distinct anti-terrorist laws to be examined at the outset must be stressed.

5.7 Avoiding Sudden Vacillations in Security Policy

It is clearly stated in the British counter-terrorism strategy (Home Office 2006c) that the focus should be on addressing structural problems. This will naturally be to focus on the so-called root-causes of terrorism, and attempt to find long term solutions to these underlying causes. In doing so, the Government can keep up consistency in their counter-terrorism policy and avoid sudden vacillations in the security policy. Hopefully, such an approach will also help prevent the terrorist from having an impact on domestic politics. There is no doubt that the bombing in Madrid 11 March
2004, contributed to the result in the following Spanish election. The Popular Party was leading on all the polls prior to the bombing, but eventually lost to the opposing socialist party in the election held in the immediately aftermath of the bombing. The socialist party had prior to the attacks promised to withdraw Spanish forces from Iraq if they won. Allowing terrorists to ostensibly have such an impact on domestic politics is at best unfortunate.

It is also impossible not to let big terrorist attacks, such as 9/11 and 7/7, affect the counter-terrorism policy, but the key word in counter-terrorism policy has to be continuity. Sudden-shifts in the policy, may in a worst case scenario only contribute to more terrorism, following the thesis that counter-terrorism may breed terrorism. There is no doubt that some of the changes in British counter-terrorism policy in Northern Ireland, such as the sudden introduction of internment without trial, only lead to an increased conflict along the sectarian divide. It is therefore crucial that the British Government let the well-designed TACT 2000 serve as the basis for future counter-terrorism legislation. The counter-terrorism legislation enacted after 9/11, despite its faults and shortcomings, has done exactly that. The additions to the legislations have amended and strengthened it, but the basis and the direction of the policy, as cut out by the TACT 2000, are still intact. In addition, the British Government since early 2003 has (Ibid): been implementing a long-term strategy for countering international terrorism and the extremism that lies behind it.

### 5.7.1 Long-Term Solutions

According to Audrey Kurth Cronin (2004a:5) effective counter-terrorism is not possible without an accurate analysis of the sources of terrorism. Most people understand that the causes of terrorism are complex and that there is no single variable that leads inexorably to terrorist acts. Effective counter-terrorism is not possible without starting with an accurate and comprehensive analysis of the sources of terrorism (Cronin 2004b:20). Prevention is the first line of defence. Defence is more difficult once a terrorist group has been formed, since the internal dynamics
determine the group’s behaviour as much, if not more, than external facilitating or inhabiting factors (Schmid 1993:17). In order to prevent terrorism perpetrated against Britain the first principle strand of the counter-terrorism strategy has a particular focus on long term solutions. There is a clearly expressed goal to tackle disadvantages and supporting reform, by addressing structural problems that in the long-term may contribute to radicalisation. This must be combined with attempts to deter those who facilitate terrorism and those who encourage it (Home Office 2006c). An important step in deterring those who encourage terrorism have been the enactment of Part 1 of the TACT 2006, which has introduced a number of offences relating to encouragement of acts of terrorism, and to the dissemination of terrorist publications. This is what has become known as glorifying terrorism.

The Government are clear on the fact that there is a need for a particular focus and effort in the prevent strand of the Strategy. The Government plays an important role in what may be perceived as a battle of ideas; were success depends upon all parts of the community challenging the ideological motivations used to justify the use of violence. Britain must challenge the ideologies that the extremists believe can justify the use of violence. Governmental officials have taken an active role to counter what they perceive as the extremists’ false characterisation of Britain as being a place where Muslims are oppressed (Ibid). The prevent programme, as it is stated in the Strategy (Ibid): is by nature a long-term commitment, which will take time to show concrete results. The work done internationally, to prevent the growth of extremist ideologies, must be seen in close connection with the work done at home, in the local communities, to prevent alienation of British Muslims, obstructing both the growth of extremism and so-called islamophobia.

5.7.2 Sudden shifts and vacillations in the policy

The crucial difficulty is in balancing an overreaction that would erode Western liberties against an insufficient response that would erode public morale and, consequently, equally endanger Western democratic institutions. Bell (1978:77)
argued that: *an increasing number of those involved in policy decisions recognized that this was the vital dilemma, and that there was no single, simple solution*. He concluded that in essence the problem in the 1970s, just as the problem today, was that there was no solution to this vital dilemma. Democracy’s institutions may, however, provide a resolution, through a system of checks and balances, to ensure that no government’s answer has the power to lead Britain either straight to anarchy or to tyranny. Popular sovereignty, through elected representatives, has to be the final arbiter of what the Government can be allowed to get away with when it is trying to defend our freedoms and our lives (Ignatieff 2004:3). Any change in our fundamental civil liberties should be debated. A statement of the impact on civil liberties should accompany every compromise. New measures will not ensure our safety with absolute certainty. The balances we ultimately strike will contain trade-offs between our liberties and our safety that will not satisfy absolutists in either the law enforcement or the civil libertarian camps (Dershowitz 2002:222).

The events on 9/11 provoked a swift legislative response from the British Parliament. The ATCSA is a wide-ranging piece of legislation covering a diverse range of matters (Elliott 2006:553). In the US, the Patriot Act was put into force just six weeks after the attacks of 9/11. Britain followed suit and pushed its bill through the legislative process at similarly unprecedented speed (Haubrich 2006:408). With such a hasty passage, there is reason to doubt the effectiveness of the rights audit during the passage of the ATCSA. There was no time for considered or sustained review. The debate in the House of Commons was also severely curtailed by time-tabling motions (Walker 2002:7). The ATCSA was passed in two weeks after it was introduced to the Parliament on 12 November, with a mere three days set aside for debate (Tierney 2005:672). It built upon the anti-terrorist measures that had been enacted in the TACT 2000, and it was in fair part constructed around it, rather than striking out in new and alarming directions. Yet, the result of the passage of the ATCSA was once again a legislative morass. Though the ATCSA was in some ways an advance on the TACT 2000 by ensuring full and independent review, the overall result was, once again, measures spread across two pieces of legislation, with
inconsistent timetables and forms of review (Walker 2002:7). With the enactment of the PTA and the TACT 2006, the measures are now spread in four-pieces. However, any democracy, against which such attacks as the ones at 9/11 and 7/7 are perpetrated, may risk going down the same path. Democracies across the world run the risk of finding themselves choosing policy options that compromise civil liberties, not only for the emergency the policies were created to deal with, but for the indefinite future.
6. Conclusion

The aim of this thesis has been to analyse the extent to which British Counter-Terrorism policy after 9/11 has conflicted with and undermined principles of liberal democracy. The focus of this study has been both theoretical, on the debate of the balance between individual liberties and national security, and empirical, on the counter-terrorism policy enacted in Britain after the tragic events of 9/11. This combination has opened for some conclusions to be drawn on important questions.

In the introduction it was asked whether it is defendable to derogate from liberal democratic principles during terrorist emergencies. The answer to this question is complex and manifold. John Stuart Mill (1956:13) have argued that the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. Part of the risk in a liberal democracy is that some individuals may begin to use their liberties to plot acts of violence, like terrorism – this is inevitable, and impossible avoid. Protecting all targets at all times against all possible attacks is impossible. The key is to keep this risk as little as possible. However, every conflict involving terrorism has its own unique characteristics, and in each case the Government has to balance the risk of under-reacting, and thereby tolerate terrorism, with the risk of overreacting, and thereby risk severe infringements of civil rights.

Hence, liberal democracies like Britain must also protect the liberties of individual terrorist suspects, as well as the rest of the population, even if there is a threat to national security. In the period since 9/11 what appeared like archaic debates about state power, civil liberties and discourse and politics of national security are back on the agenda. British counter-terrorism policy is aimed at reducing the threat from terrorists, so that Britons can live their lives freely and with confidence. A natural consequence of this has been derogations of the liberal democratic principles of individual terrorist suspect. During a terrorist emergency, neither rights nor necessity should trump. A democracy must be committed to both the security of the majority

and the rights of the individual, including unpopular minorities. Dealing effectively with the terrorist, without undermining basic civil rights is an inescapable dilemma facing liberal democracies threatened by terrorists, and the focus of the response should be firmness and determination to uphold constitutional authority and the rule of law.

The various international human right conventions, including the ECHR, acts as a constitute yardstick against which one can assess the acceptability of the British Counter-Terrorism policy. The inclusion of the European Convention on Human Right in the Human Rights Act 1998 was an important step. This yardstick will hopefully assure that the Government keeps the right balance between fundamental freedoms and security, and does not overreact in times of emergency. Still, article 15 of the ECHR permits signatories to validly derogate from a provision of the ECHR when faced with a public emergency threatening the life of the nation. This enabled the British Government to lawfully derogate from liberal democratic principles after 9/11. However, the measures initially enacted in the ATCSA were still found to be unacceptable, simply because they only applied to non-citizens, and not to British nationals. The Government failed to give a reasonable and objective justification for this different treatment. The measures included in the PTA and the TACT 2006, on the other hand, applies to all suspects, regardless of nationality, and is therefore not conflicting with the ECHR.

Secondly it was asked why liberal democracies, like Britain, are willing to barter away some of their liberty. The liberal democratic response will depend on two aspects; first, the nature and seriousness of the threat, and second, the source of strength and weakness in a democratic society. The analysis has shown that the Government has adopted a safety first mentality, brought about by a combination of the events of 9/11 and 7/7, that have led to an increased focus on protecting the life and limbs of the British people. An important notion is that if a counter-terrorist campaign is to be successful, it should adhere strictly to liberal democratic principles and the rule of law. Responding to the threat from international terrorism, the
Government has done their best to maintain the rule of law, a normal legal process, and the criminal justice systems as the centerpiece of the British counter-terrorism policy. It is, thus, worrying that prior to 9/11 derogations were seen as undermining the essential freedoms and the rule of law, while after 9/11 they were just portrayed as mere limitations of rights.

Traditionally Britain has answered the threat from terrorism with special laws. Still, the British Government kept the democratic system in Northern Ireland functioning, but only through abridgement of private rights such as internment. The shock of 9/11 was no exception from the tradition of answering the threat with special laws, and lead to a sudden shift in British counter-terrorism policy. Britain left the idea of the TACT 2000 as a single and comprehensive legislation, capable of handling the threat of terrorism, behind, and introduced the controversial ATCSA, enacted a mere 3 months later. Since then two more pieces of legislation has followed. These pieces of legislation, enacted after 9/11, has included some derogations of civil liberties – the detention of non-citizens, the control orders, and the 28-days pre-charge detention limit. However, important steps have been taken along the way to secure, not only the liberties of the majority, but also the liberties of vulnerable minorities. Despite a swift legislative response from Parliament, the legislative pieces enacted after 9/11 have in fair part been constructed around the TACT 2000, which still serves as the base for British Counter-Terrorism policy.

Lastly, the question is to what extent Britain can derogate from liberal democratic principles without threatening democracy itself. There is always a danger that too grave suspensions of individual liberties, ultimately will threaten the foundation of a democracy like Britain. An important part in order to avoid threatening democracy itself when introducing legislation as a response to a sudden threat or emergency, must be to ensure that these special powers do not become a part of the permanent legal and political culture. Emergency legislation has historically had a tendency to be kept in the books after the emergency has disappeared, just in case. Both the
TACT 2000 and the ATCSA has underlined the notion that anti-terror legislation in Britain in the new millennium is permanent, and not temporary, laws.

Positively, the most controversial parts of the British legislation, such as Part 4 of the ATCSA, have built in sunset-clauses limiting the duration of the measures, an important safety mechanism in order to avoid abuse. In addition the counter-terrorism acts enacted after 9/11 have built in requirements for review, another important safety mechanism, either of the whole act, or more commonly of central parts. These reviews are to be conducted by an independent reviewer, and have contributed to an increased focus on the important relationship between the judicial and other parts of government. The worst case scenario is that the incomplete separation of powers in Britain could open for a powerful executive dominating the legislature, and in time threaten the very foundation of the British democracy.

The Governments response seems to have been two-fold. They have both aimed at reducing the threat here and now, through the strengthening of the counter-terrorism legislation, and at the same time aimed at finding long term solutions to the threat from terrorism, in order to avoid sudden vacillations in the counter-terrorism policy that in turn may undermine liberal principles. This long-term commitment has been clearly stated in the Counter-Terrorism Strategy, and requires efforts both domestically and abroad to obstruct the growth of extremism. The Strategy is a long-term strategy, aiming at long-term solutions for countering international terrorism and the extremism behind it, a key measure to reduce the threat in the future. There is no doubt that Britain has derogated from liberal democratic principles, but the analysis has shown that the response is far from threatening democracy itself.

British counter-terrorism policy is constantly evolving in an attempt to contain the sustained threat from international terrorism. It seems like the focus is more and more on protecting basic liberal rights, finding new solutions to avoid grave derogations. In light of recent events there is reason to believe that a change in the policy of detention is underway. On 18 April 2007 the British Attorney General, Lord Goldsmith, stated that the police are to be given new powers to continue questioning
suspects after they have been charged. This new proposal is expected to be included in the forthcoming terrorism bill, and is backed by police, prosecutors and the security services. Lord Goldsmith acknowledged the move may lessen pressure for an extension of the 28 day period for detention without charge. At the moment questioning of the suspects must stop once charges have been brought and suspects cannot be held for more than 28 days without charge (Dyer 2007). Such new measures could be an important step in redefining, not only the policy and use of pre-charge detention, but also the balance between individual liberties and security in Britain.

In a broader perspective there seems like the so-called criminal justice system contains the solutions for countering terrorism, without severely undermining principles of liberal democracy. The foremost principle should be to uphold the rule of law, without resorting to indiscriminating repressive measures. Terrorist legislation should be kept under democratic control, and be subject to frequent review, to avoid abuse of special powers, especially at the cost of the liberties of vulnerable minorities. A successful prosecution in the courts, based on gathering the necessary evidence and apprehending those involved in planning acts of terrorism before they can carry out their intentions, should always be liberal democracies’ preferred way of disrupting terrorist activity.
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