

American Islamic Charities in an Age of Terrorism: The Holy Land Foundation as a Case Study

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Abstract

The American government targeting of US-based Islamic charities came as response to the shock of the 9/11 attacks, especially its devastating effects on the self-esteem of the American people and their sense of national pride. Actually, they came as part of the “War on Terror”, a phrase used for the first time by President Bush in his famous September 20, 2001 speech.

But cracking down on US-based Islamic relief groups meant, first and foremost, keeping them under a tight scrutiny in an attempt to thwart the financing of terrorism, after the government discovered that al-Qaeda and other militant groups had abused charities to fund attacks across the globe.

This paper takes the Texas-based Holy Land Foundation as a case study, not only because it was the first of its kind to come under the spotlight of law enforcement officials, but also because it had been the largest Muslim charitable organization before it was shut by the Bush administration in December 2001. More importantly, it explores the controversy over civil rights, especially the unwavering contention opposing advocates of unrestricted governmental powers to preserve national security, to individual liberties champions, more concerned about the consequential erosion of such constitutional rights, and staunchly committed to defend them.

Keywords

Islamic charities, national security, civil liberties, U.S. Constitution, Islamism, terrorism

1. Introduction

“Arab Americans are racially profiled in what’s called secret evidence. People are stopped in airports on suspicion and we’ve got to do something about that” (Note 1).

This was George W. Bush’s response, in 2004, to a question about racial discrimination during his second presidential debate with Al Gore, the Democratic candidate. He pointedly alluded to a tactic wielded by Clinton’s administration, which consists of keeping evidence secret both from people suspected of terrorist activity and their lawyers. Bush even mentioned his support for a legislation sponsored by his future Secretary of Energy, Michigan Senator Spencer Abraham, to repeal the Secret

Evidence Act (Note 2).

George W. Bush ended up securing seventy-two percent of the American Muslims' vote (against only eight percent who voted for Gore and nineteen percent for the Lebanese-American Ralph Nader, the Green Party candidate), a historic record which Arab and Muslim activists attributed to their massive rally behind the Republican candidate in Florida. Bush won this state by slightly more than 500 votes in the final recount after a three-week suspense (ninety percent of the state's 40,000 Muslim voters cast ballots for him) in a crucial battle that opened the doors of the White House wide for him (Note 3).

But the honeymoon period was soon to come to an end. American Muslims were now oriented towards the Republican candidate who openly acknowledged such issues as abortion, school vouchers, and government funding for faith-based charities. Accordingly, Bush's views were more in line with the beliefs of American Muslims than were those of his Democratic rival (Note 4). In a single stroke, the September 11, 2001 terrorist attacks on the twin towers of the World Trade Center and the Pentagon shattered any hope to blunt the negative image conveyed about them. Muslims were utterly viewed as the members of a cult based on hatred of the American society and associated with terrorist networks.

Worse, the terrorist attacks not only sparked anti-Islamic sentiments across the nation and stirred up prejudice and bigotry against those "mainstream Americans" associated with Islam, but also laid bare the vulnerability of Arabs and Muslims who started to fear for their future as U.S. citizens. Expectedly, suspicion of Muslims skyrocketed across the country, the incidence of hate crimes reached unprecedented heights, the Federal Bureau of Investigation (FBI) and Justice Department detained and interrogated hundreds of Arab and Muslim immigrants suspected of having terrorist ties, and law enforcement officials cracked down on Muslim charities.

The study under consideration delves into the quandary of U.S Islamic charities in the wake of 9/11. It seeks to examine the role of the federal government in a nationwide campaign to target Muslim relief groups which it accuses of ties to terrorist networks. It takes the Texas-based Holy Land Foundation as a case study, not only because it was the first of its kind to come under the spotlight of law enforcement officials, but also because it had been the largest Muslim charitable organization before it was shut down by the Bush administration in December 2001. More importantly, this study raises the issue of civil liberties, especially the on-going debate between the advocates of expanded governmental powers to preserve national security, and their detractors who, in the name of higher values enshrined in the American Constitution, are more concerned about the consequential erosion of fundamental individual rights.

Departing from the argument that striking a flawless balance between the national security and civil liberties would be beyond reach, the present work raises the question of "exceptionalism", as many started to apprehend that in the process of defending Americans' freedoms, the federal authority may wipe out the very "freedoms" it is presumed to shield.

This paper is articulated around three broad questions:

First, presupposing the relation between liberty and security as one of balance, and therefore increasing one means reducing the other, should a liberal nation, like the United States, ever act “illiberally” and sacrifice one of its widely cherished values to defend its national security? In other words, what exceptional circumstances could justify exceptional measures and legitimize illiberal practices, especially the violation of civil liberties?

Second, assuming that “liberty” and “security” are intrinsically intertwined, with, on the one hand, civil liberties campaigners claiming to defend liberty against the government, and, on the other hand, the government, firmly resolute to guarantee the security necessary for that liberty to persist, how is it possible for both sides to engage in critical questioning of the core meaning of the two concepts and reach some common grounds on that level? To put it differently, is liberty the embodiment of all the political rights enshrined in the Bill of Rights and the American Constitution, or is it simply the sovereign right of the federal government to lay security ahead of liberty as a *sine qua non* to preserve and guarantee that constitutional right?

Finally, considering the 9/11 tragedy as, first and foremost, an attack on liberty, and that it is the role of the government to protect that right even if that meant its exceptional suspension, should the latter perceive this prerogative as a blank check to proceed with unchecked powers and operate outside the confines of the American Constitution? The cracking down on the Holy Land Foundation, in this respect, is a case in point.

2. “Countering Terrorism”

Government targeting of U.S. Islamic charities was the net result of the shock of the 9/11 attacks, particularly their destructive repercussions on the self-esteem of the American people and their sense of national pride. The government’s action was part of the “war on terror”, a phrase used for the first time by President Bush in his September 20, 2001 speech before a joint session of Congress, when he declared: “*Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated*” (Note 5).

But cracking down on U.S.-based Islamic relief groups meant first keeping them under a tight scrutiny. To this end, a battery of both executive and legislative decisions have been put forward to make sure that the money donated to charitable organizations does not end in the hands of evil-doers. The new policy came, in fact, as an attempt to thwart the financing of terrorism, after the government discovered that al-Qaeda and other militant groups had used charities to fund attacks across the globe.

On September 24, 2001, less than two weeks after the attacks, President George W. Bush issued Executive Order 13224 (Note 6), an integral component of his counterterrorism program which mandates that “*no U.S. company shall do business with any person that is subject to the prohibitions of the Executive Order. Such persons include those who have been determined to have committed, or pose a risk of committing or supporting terrorist acts, and those identified on the list of ‘Specially*

Designated Nationals' (SDNs) (and Blocked Persons), generated by the Office of Foreign Assets Control (OFAC." (Note 7). (OFAC operates under the auspices of the U.S. Department of the Treasury). On October 26 of the same year, subsequent to Executive Order 13224, the USA Patriot Act (Note 8) was signed into law. Both measures aimed to combat terrorist activities by disrupting the financial support network for terrorists and terrorist organizations and restricting their access to financial resources in the USA. Both decisions also gave sweeping authority to the Treasury Department and its Office of Foreign Assets Control (OFAC), to administer and enforce sanctions against foreign countries blacklisted as terrorism sponsors (strictly prohibiting American companies to do business with them). The USA Patriot Act conspicuously gave the government predominantly unchecked power to designate any group, be it charitable, as a terrorist organization. Once blacklisted, the Treasury immediately confiscates its files and computers, and seizes its assets. Ergo, the group under investigation faces a number of challenges, namely: hiring lawyers and mounting a defence since of course it lacks the required resources to do so. The suspected group also finds itself legally barred from accessing the government's classified evidence to understand the basis of the charges. In a word, the government can target any charity, seize or freeze its assets, shut it down, arrest its leaders, launch legal proceedings against it, including criminal prosecutions, and delay the trial indefinitely, since the charity in question has only limited rights to appeal to the courts.

In almost the same period, the government launched another U.S. multi-agency task force: Operation Green Quest (OGQ). Consistent with its unyielding line of conduct, its preeminent purpose was "*to augment existing counter-terrorist efforts by bringing the full scope of the government's financial expertise to bear against systems, individuals, and organizations that serve as sources of terrorist funding*" (Note 9). OGQ would act as the investigative arm of the Treasury's Office and operate to identify, infiltrate, and dismantle organizations that function covertly as financial backers of al-Qaeda and its regional chapters across the world. Its task consisted primarily in tracking underground financial operations, especially dubious money transactions where a charity may be a link. Said Assistant Attorney General, Michael Chertoff, Head of the Justice Department's criminal division, "*The lifeblood of terrorism is money, and if we cut the money we cut the blood supply*" (Note 10).

Operation Green Quest was equally expected to investigate and uncover suspected ties between money laundering and terrorism financing. Security experts refer to this process as the "crime-terror nexus points". In effect, often linked in legislation and regulation, both fraudulent activities do not even intersect. As a matter of fact, while money laundering reintroduces illicit cash into the financial system, terrorism financing funnels it to terrorist networks to mount terrorist attacks. In June 2003, due in essence to the paucity of seemingly delineated roles and coordination procedures, but also because of the limited success it produced, OGQ was plainly disbanded.

3. “Guilty by Association”

Following the 9/11 attacks, the government’s hunt for terrorist funds which targeted Islamic charities and relief organizations had disastrous effects, not only on charities fundraisers who have been charged with channelling donations to terrorists, but also on Muslim donors themselves who started to fear ending up in some government database of suspected supporters of terrorism. As the “war on terror” intensified, the government tightened its grip around individuals, groups, and entities, which it suspected of financially supporting terrorism. Federal prosecutors continued to target Islamic charities with the firm belief that at least some of them, while promoting humanitarian causes, work secretly to channel torrents of cash to Islamist rebel groups across the Middle-East.

The first in a line of Islamic charities that came under the spotlight of the American government, especially its Treasury Department, was the Holy Land Foundation for Relief and Development. It inaugurated a long trail of cases in which the federal prosecutors sought to suppress groups based on either or both counts: logistical support to terrorism and violation of embargos on Iran or Iraq. Some relief organizations have been shut down on mere allegations of re-routing funds to terrorist causes.

Originally known as the Occupied Land Fund, the Holy Land Foundation was established first in California in 1989 as a tax-exempt charity (Note 11). In 1992, it relocated to Richmond, Texas, where—with an annual budget that reached \$14 million—it became incontestably the largest U.S.-based Islamic charity. In 2001, it was charged with channelling money to charity organizations known as “*Zakat* committees” that operated in the Palestinian territories, under the control of Hamas, blacklisted since 1995 as a terrorist organization.

Similar to the Christian tithe, *Zakat* is the third and most important of the five pillars of Islam (Note 12), and to fulfil this central obligation of their religion, Muslims donate 2.5 percent of their savings on an annual basis. According to Islamic law, this money is not supposed to go to anyone who is not a Muslim. As a matter of fact, there are two types of charities in Islam: *Sadaqa* which is voluntary and can be given anytime, and *Zakat* which is mandatory. *Zakat* ought to be given to the most deserving among the poor and destitute. Money can also be donated to mosques and charitable organizations, including relief foundations for widows, orphans, war displaced persons, victims of natural disasters, refugees, etc.

On December 4, 2001, pursuant to its designation by the federal authorities as a terrorist organization, the Holy Land Foundation’s assets were frozen by the FBI and Treasury agents on the account that the charity provided logistic support to Hamas activists, through direct cash transfer to its Islamic charity committees (“*Zakat* Committees”) in the West Bank and Gaza Strip. Transferred funds were supposedly utilized by Hamas to support Koranic schools (“*madrasah*”) operated by the group, and to recruit suicide bombers offering financial aid to their families (Note 13).

On July 27, 2004, a decisive step was taken to crack down on the suspected charity, when the Justice Department obtained an indictment against the Human Life Foundation. It accused the charity of

conspiracy to provide aid to a terrorist organization, alleging that the group wired \$12.4 million to Hamas militants from 1995 to 2001, the year the government decided to freeze its assets. In addition, the group was indicted on the charge of having raised a total of \$57 million, since its incorporation in 1992, but only reported \$36.2 million to the Internal Revenue Service (IRS) (Note 14). Prosecutors acknowledged that the Holy Land Foundation did not carry out terrorist attacks, but acted as the “*social wing*” of Hamas, “*much like a social welfare agency... to win the hearts and minds of the Palestinian population and solidify loyalty to Hamas*” (Note 15).

To corroborate their charges with proof against the charity, the federal prosecutors declared having received 21 binders of documents from the Israeli government, containing an estimated 8,000 pages of gathered intelligence the contents of which—in compliance with the secrecy provisions of Executive Order 13224 and the Patriot Act—have never been disclosed to provide evidence of conspiracy against U.S. security (Note 16).

Plausibly the first of its kind in American judicial history, the pending case (based on copious reliance on foreign-sourced intelligence) posed abysmal questions as to the independence and integrity of the American legal system. To defence lawyers, allegations against the Human Life Foundation were simply unwarranted and influenced by political pressure from the Hebrew state (Note 17), a stance largely shared by Georgetown University law Professor, Jonathan Turley, who called the case “*one of the most troubling since 9/11*”, the evidence was simply unreliable as it could have been tainted by the long-standing tensions between the state of Israel and Hamas. He contended: “*It is always dangerous to rely on intelligence from (a country) that is at ground zero in a dispute*” (Note 18).

Unsurprisingly, charges retained against the Holy Land Foundation and its leaders ranged from conspiracy, providing material support to a foreign terrorist organization, tax evasion, and money laundering. The indictment also named specific officers of the charity: President Shukri Abu Baker, Chairman Ghassen Elashi, Executive Director Haitham Maghawi, and four others. Five were arrested and two were considered fugitives. To Attorney General John Ashcroft, the message was clear, “*The United States will ensure that both terrorists and their financiers meet the same, certain justice.*” He warned: “*To those who exploit good hearts to secretly fund violence and murder, this prosecution sends a clear message: There is no distinction between those who carry out terrorist attacks and those who knowingly finance terrorist attacks*” (Note 19).

By October 2007, because of lack of convincing evidence, the indictment subsequently led to a first trial which immediately ended in a mistrial when the jurors failed to come to a unanimous decision on most of the accounts. During the trial, lawyers of the Holy Land Foundation indicated the weakness of provided evidence, especially the testimonies of two anonymous witnesses called by the government for that purpose: the first, an Israeli Security Agency legal advisor known to the jury and defence as “*Avi*”, and an Israeli Defence Forces officer, nicknamed “*Major Lior*”. After nineteen days of deliberations, the case ended in a mistrial after the jury declared its inability to reach a unanimous

verdict on any of the charges against defendants (Note 20). To defence attorneys, in addition to the “*faulty translations*” and “*questionable foreign intelligence*” (Note 21) on which prosecution heavily depended, U.S. Agency for International Development (USAID), United Nations, Red Cross, CARE, European Commission and many NGOs were other groups that donated to “*zakat committees*”, but none of these has ever been singled out as a purveyor of funds for any terrorist group (Note 22).

Paradoxical as it might seem to certain legal experts who consider the case as a precedent in American legal history, reliance on classified information, inaccessible overall by defendants and their lawyers, runs counter the American higher values of justice and transparency. When allegations should be sustained by evidence, they stressed, but evidence could not be disclosed, on the basis that it may jeopardize efforts to crack down on terrorists, how can one prove that he or she is innocent? In the case of Muslim charities, they are guilty until proven innocent.

In September 2008, the second Holy Land Foundation trial by a federal court in Dallas began to last six weeks after which the jury handed down a guilty verdict on sixty-nine counts. The charity, now defunct, was sentenced to one year’s probation, but this proved to be inconsequential as it remained designated by the Office of Foreign Assets Control (OFAC), therefore unable to renew its activities. It was convicted on ten counts of conspiracy to provide material support to a designated foreign terrorist organization, eleven counts of conspiracy to provide funds, goods and services to a Specifically Designated Terrorist (SDT), and ten counts of conspiracy to commit money laundering. Its chieftains received sentences ranging from fifteen to sixty-five years in prison (Note 23). As the Department of Justice stated at the time:

The government presented evidence at trial that, as the U.S. began to scrutinize individuals and entities in the United States who were raising funds for terrorist groups in the mid-1990s, the HLF intentionally hid its financial support for Hamas behind the guise of charitable donations. HLF and these five defendants provided approximately \$12.4 million in support to Hamas and its goal of creating an Islamic Palestinian state by eliminating the State of Israel through violent jihad (Note 24).

In the same vein, commenting on the verdicts, Patrick Rowan, Assistant Attorney General for National Security observed:

Today’s verdicts are important milestones in America’s efforts against financiers of terrorism. For many years, the Holy Land Foundation used the guise of charity to raise and funnel millions of dollars to the infrastructure of the Hamas terror organization. This prosecution demonstrates our resolve to ensure that humanitarian relief efforts are not used as a mechanism to disguise and enable support for terrorist groups (Note 25).

Immediately after the proclaimed verdicts, the Holy Land Foundation attorneys filed an appeal with the U.S. Court of Appeal for the Fifth Circuit which, in a decision it issued on December 7, 2011 (“*United States v. El-Mezain et al.*”) (Note 26), upheld the sentences against the charity leaders. The Fifth Circuit noted that “*despite raising a myriad of issues, including numerous claims of erroneous evidentiary*

rulings, the defendants do not challenge the sufficiency of the evidence to support their convictions”, (Note 27) including wiretap evidence showing that Holy Life Foundation supported Hamas by channelling money to “*zakat* committees” in the West Bank and Gaza—which the defendants knew were controlled by Hamas.

Similarly, while recognizing that the district court which handed down the verdicts against the leaders of the charity—had erred in allowing two witnesses (“Avi” and “Major Lior”) to testify under a pseudonym despite their knowledge about Hamas financing and control of “*zakat* committees”—that error was “harmless” simply because there was sufficient evidence to support the jury’s verdict. Additionally, the Fifth Circuit contended, it was necessary to use pseudonyms to protect the safety of witnesses (Note 28).

The same predicament befell other national Islamic charities that have been shut down on allegations of re-routing funds to terrorist causes. Quite similar instances involved groups like the two Chicago-based Islamic charities, the Global Relief Foundation and the Benevolence International Foundation, the Islamic American Relief Agency, the Al-Haramain Islamic Foundation, and the KinderUSA (Toledo-Ohio-based), etc. that proved powerless countering the government action against them.

Expectedly, the crackdown on Muslim charities by the American government has not only complicated legitimate humanitarian relief efforts, creating a huge gap in the charity delivery service, but Muslim donors themselves started to suspect their donations being diverted from their appropriate recipients to the hands of terrorists. They mostly found themselves caught in the trap of how to fulfil one of the central tenets of their faith, which is *Zakat*, without inadvertently being linked to terrorism. For example, donating to the wrong charity, even unbeknownst to them, might put them on the wrong side of the war on terror.

Very often American Muslim leaders called on the federal government for guidelines on how to accomplish their religious duty of alms without being accused of terrorism, but very often their appeals fell upon deaf ears. In other words, they wanted the government to issue a “white list” of “approved” charities that are safe for people to contribute to, without fear of being interrogated by the FBI. But, for the federal authorities, a list of government-approved charities would open the door to more fraudulent practices, as safe or “clean” charities could be easily infiltrated by terrorists. To thwart the financial networks likely to channel funds to terrorist groups, the government has, by contrast, created lists of individuals and organizations it accused of funding terrorism (Note 29). At the same time, it issued general guidelines aiming to help charities maintain some degree of transparency, and encouraging them to practice “due diligence” to ensure that their assets are used for the right cause.

In sum, while it has complicated legitimate humanitarian efforts, the crackdown on Muslim charities, epitomized here by the Holy Land Foundation case, pressured some Muslim relief groups to seek alternative ways whereby they could channel aid to those in need without raising suspicion of ties to terrorist networks. Instead of sending cash, some started to forward actual relief supplies such as rice,

sugar and cooking oil, etc. Said Nihad Awad, active member of the Washington-based Council on American-Islamic Relations (CAIR), one of the country's largest Muslim organizations: *"If you send lentils, at least no one can accuse you of supporting terrorism"* (Note 30).

4. National Security vs. Individual Liberties

Loss of civil liberties following the attacks of September 11, 2001, not only profoundly affected American Muslims who became the first target of a new policy which, amongst others, led to a tightening of the grip around them, but also alarmed a number of legal experts and civil rights activists who started to worry about the erosion of that community's constitutional rights. As the Bush administration put the nation on high alert in an effort to protect Americans from further terrorism, the crisis spawned unprecedented expansion of government powers.

Tellingly, the case of the Holy Life Foundation and other U.S.-based Muslim charities prompts more than a question about the status of American Muslims today, essentially the curtailing of their constitutionally protected civil liberties in the name of national security. Most civil rights advocates acknowledge that striking a balance between freedom and security has always been difficult for the very reason that liberty and security are not mutually exclusive. The advocates agree that waging a war on terrorism financing without clear parameters or goals against unspecified "evildoers", and targeting Muslim charities without due process, could produce but little tangible results.

The emergence of a new type of terrorism, triggered by the 9/11 attacks, produced a new type of reaction on the part of the government which, as the sovereign guarantor of national security, took exceptional measures to pre-empt further aggression. As a result, not only the legitimization of practices of exceptionalism gave the federal prosecutors almost unchecked powers to act outside clearly defined confines of the law, but has further problematized the relationship between liberty and security, and called into question the limits that operate upon political practices and sovereign decisions. As plainly stated by Andrew W. Neal (BBC journalist and author), in his famous book, *Exceptionalism and the Politics of Counter-Terrorism*, *"The attempt to legally codify a domain of exceptional prerogatives and practices regarding 'terrorism' and 'security threats' is fraught with difficulties. It becomes apparent that the designation of exceptions is itself extra-legal; it does not directly draw upon the law as its source of legitimacy, but upon more emotive claims about threat, civilization, security and so on"* (Note 31).

To Stephen J. Schulhofer (Professor of Law at New York University School of Law and one of America's most distinguished scholar of criminal justice), in his well-known book, *The Enemy Within* (Note 32), rather than reflecting America's mythical founding ideals that regard the U.S. Constitution as the *"sacrosanct work of genius representing the pinnacle of human justice and liberty,"* the anti-terrorist measures (epitomized by Executive Order 13224 and the USA Patriot Act) are direct consequences of what he calls *"bad compromises"* (Note 33) where civil liberties have been

circumvented in return for no significant anti-terrorism gains. Denouncing what he calls “*September 11 opportunism*,” (Note 34) Schulhofer considers that the government’s determination to make terrorism prosecutions into “exceptional” cases is counterproductive as this may undermine the due process needed for criminal convictions. A constitutional government, he contends, is an institutionalized system of checks and balances that serves to limit political power, so when the executive power goes unchecked, in the name of whatever state of emergency, arbitrary and prejudicial violent practices will prevail, giving way to the violation of the constitutionally protected civil liberties (Note 35).

Thereupon, what seems at stake for the supporters of individual fundamental rights is not so much the fact that U.S. government closed down a considerable number of national and local Islamic relief groups, but the reason that it has never been effective to document any *bona fide* trail showing how the money from the charities got into the actual hands of terrorists. Added to that, several Muslim charitable groups have been suppressed by the Executive without any checks and balances from Congress or the Judiciary. Some of them were not even on any government watch list.

From a strict legal standpoint and without a precise, stable and commonly agreed definition of terrorism, experts argue that the measures adopted to fight and defeat terrorism will be difficult to justify because they lack clear legal basis. This is of paramount importance if terrorist actions are to be demarcated from other criminal acts. Experts equally assert that the need for an authoritative definition of the concepts “liberty” and “security” would not only reduce intellectual contestation over what is “legal” and what is “arbitrary,” but would also help overcome the mounting difficulty of drawing sharp lines of distinction between “truth” and “judgement”. In this respect, Andrew W. Neal argues: “*From the perspective of the law, proper definitions are necessary if rights and freedoms are to be ‘fundamental’ and not simply precariously subject to political whims*” (Note 36). He adds: “*This discursive contestation at the institutional level serves to further undermine the possibility of stable distinctions between ‘here’ and ‘there’, ‘friends’ and ‘enemies’, ‘norm’ and ‘exception’*” (Note 37).

In the same vein, the use of secret evidence and other extrajudicial mechanisms under the pretext of national security pursuant the Patriot Act, according to supporters of civil liberties, is nothing more than an attempt by an “overzealous” government to hide behind the veil of its own laws which have questionable constitutional legitimacy. Worse, withholding evidence from suspected charities on the basis that disclosing official findings might benefit terrorists and their supporters, is another means to sidestep justice in an effort to supposedly prevent another 9/11 attack.

In her famous book, *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures threaten Our Civil Liberties* (Note 38), Nancy Chang, a well-known senior lawyer at the Centre for Constitutional Rights in New York, offers historical account of civil liberties abuses by U.S. governments, epitomized by the internment of Japanese-Americans, following the Pearl Harbor attack in 1941 (Note 39). Chang highlights the “inappropriateness”, “unconstitutionality” and “immorality” of the U.S.A Patriot Act (Note 40). To her, the legislation in question not only provides an ambiguous and

potentially arbitrary definition of terrorism, but also institutes guilt by association under the aegis of making an explicit distinction between full U.S. citizens and U.S. residents and foreigners when applying the law (Note 41).

The claim that the government is applying the law unevenly has not only been the concern of legal experts who warned against the erosion of the nation's widely cherished values, especially equal treatment under the law, but alarmed civil liberties advocates who firmly denounced what they dubbed the government's double talk and double standard policy. They especially cited the government's "velvet glove" treatment of Halliburton Corporation, a giant defence contractor once headed by Bush's vice president, Dick Cheney. Since 2001 Halliburton has been accused by the Treasury and Justice Departments for undertaking business with Iran; and it was at the time listed as terrorism sponsor. Instead of seizing and freezing its assets, in compliance with Executive Order 13224 and the USA PATRIOT Act, the Justice Department guilelessly sent an inquiry to Halliburton requesting "*information with regard to compliance*," something which was immediately provided by the company's board of directors, unequivocally stating that dealings with Iran had been done through its Cayman Islands subsidiary, not its U.S.-based entity (Note 42).

Furthermore, the degree of secrecy surrounding prosecution of targeted charities and the reliance on classified information, inaccessible by defence lawyers, according to OMB Watch (Note 43), a major government watchdog group, makes it more difficult for them to present their cases in court (Bush's Executive Order 13224 could even block them while they are under investigation). As a result, organizations and individuals suspected of supporting terrorism see little interest challenging government decisions. They know that however scant the evidence, or even nonexistent at all, in the eyes of government officials they are guilty until proven innocent. To OMB Watch activists, the intent is clear, "*Organizations and individuals suspected of supporting terrorism are guilty until proven innocent*" (Note 44).

All in all, the debate over civil liberties vs. national security is only the tip of a very large iceberg, as the question goes far beyond Islamic charities. It touches upon a wide array of issues ranging from wire-tapping, e-mails monitoring, surveillance cameras, cell phone access, through freedom of speech and self-defence, and poses formidable challenges across the Western world and other nations fighting against terrorism. What's more, the advent of the high tech revolution over the last few decades coupled with the rise of well-structured terrorist networks making use of highly sophisticated tools of communication, further complicated the task of how well threatened states could maintain security within their respective borders, without compromising fundamental individual freedoms. As clearly pointed out by President Obama: "*You can't have a 100 percent security, and also then have 100 percent privacy and inconvenience*" (Note 45).

As a matter of fact, the polemic triggered by NSA contractor Edward Snowden who, in June 2013, leaked top secret documents to the media, in the name of democratic transparency, is a case in point

(Note 46). Furthermore, the decision by Apple Inc., after the San Bernardino (California) terrorist attack in December 2015, not to unlock one of the perpetrator's cell phones, is another instance typifying the liberty security dilemma. The corporation even declined a request by the FBI to create a new version of the phone's iOS operating system that disables certain security features, contending that such an act might jeopardize privacy rights of its customers (Note 47).

On another hand, failure of some democratic states, such as France, Belgium, and recently Turkey, to protect their citizens against incessant terrorist attacks, especially granting extended prerogatives to law enforcement and intelligence agencies, reignited, as never before, the debate over the role of the government in assuring public security. It remains, however, that the most important question should not be how to secure public safety without infringing upon individual liberties, but rather how to contain the terrorist threat without denying basic freedoms to entire groups. To this regard, government officials ought probably to take lessons from what happened in Germany, in the 1930s and 1940s, when Adolph Hitler, subsequent to the Reichstag fire (which he attributed to the Communist conspirator), suspended all civil liberties including freedom of the press and political dissent.

5. Conclusion

By and large, while it remains challenging to painstakingly capture the ambivalence surrounding the security/liberty discourse, further problematized by the interplay of a multitude of factors (legal, political, religious, etc.), room for a constructive debate seems quite plausible. Added to that, to detractors on both extremes of the contest, it became clear that framing the problem of post-9/11 practices of exceptionalism, in the sole issue of liberty and security, means nothing more than acting within the stifling confines of a highly problematic dualism, incapable of properly addressing the crux of the problem.

Therefore, departing from the very fact that the relationship between liberty and security has been posed as one of balance, should we consider them as inversely proportional, that is securing the one means sacrificing the other? To civil liberties advocates who refute this either/or dualism, liberty and security are not stable referents, but "*highly mobile, contested and co-optable political discourses*" (Note 48). Similarly, they argue that the issue of exceptionalism should not be addressed through dualistic approaches with clear boundaries between liberty and security. Rather, the relation between the two poles should be a mutually constitutive dialectic where the protection of the one (liberty), on the contrary reinforces and improves the other (security).

In toto, despite President Obama's promise in his 2009 speech in Cairo (Note 49) to make life easier for American Muslims and secure their right to accomplish their religious obligation of *Zakat*, Muslim leaders claim that targeting their charities without due process, in the name of national security, is nothing more than a political manoeuvre to make American people believe that the government is thwarting terrorist financing. To them, the assault on their charities is not about safety, and surely not

about security, it is about politics.

To be on the safe side, American Muslim charities should be on guard on several fronts. Even if they contend that very often they receive cash from anonymous donors, leaders of Islamic relief groups should be vigilant as not accept funds from anyone identified as a suspected terrorist. They should equally demonstrate transparency and ensure that none of their employees or board members is affiliated in any way with terrorist networks.

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Notes.

Note 1. The second Gore-Bush presidential debate. (October 11, 2000). Wake Forest University, Winston-Salem, NC. Retrieved from <https://www.debates.org/index.php?page=debate-transcripts>

Note 2. After a bomb exploded in February 1993 beneath the New York City's World Trade Center killing six and injuring more than thousand, and after a powerful truck bomb destroyed in April 1995 a federal office building in Oklahoma City, killing 168 people (masterminded by Timothy McVeigh, an army veteran turned anti-government zealot, Congress responded to the growing threat of terrorism in 1996 by passing the Antiterrorism and Effective Death Penalty Act (Pub. L. No. 104-132, 110 Stat. 1214, also known as AEDPA). Among its provisions, the law allowed the government to block fund-raising by terrorist organizations and to deny visas to foreigners who belonged to such groups. Sanctioned by the above-mentioned legislation, Secret Evidence allows American Services "to arrest, detain, and deport non-citizens on the basis of evidence the source and the substance of which is not revealed to the potential deportees and their lawyers." The law also states: "information... collected for national security purposes shall not be authorized if disclosure would represent a risk to the national security of the United States." (Issue brief: Secret evidence." Retrieved from <https://www.aaiusa.org>).

Note 3. According to an exit poll taken by the Council on American-Islamic Relations (CAIR), the largest Muslim advocacy group in the United States. See Rose A. (Summer 2001). How did Muslims vote in 2000? *Middle East Quarterly*, 13-27. Retrieved from <https://www.meforum.org/13/how-did-muslims-vote-in-2000>

Note 4. *Ibid.*

Note 5. Full speech on <https://www.theguardian.com/world/2001/sep/21/september11.usa13>

Note 6. Because they take authority from power granted directly to the Executive by the Constitution, Executive Orders have the full force of law. Like statutes or regulations promulgated by government agencies, Executive Orders are subject to Judicial Review, and may be struck down by the courts if deemed unconstitutional. Critics have accused presidents of using them to make laws without Congressional approval.

Note 7. See <http://www.ustreas.gov/offices/enforcement/ofac/sanctions/terrorism.html>

Note 8. The USA PATRIOT Act (U.S. H.R. 3162, Public Law 107-56) stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” On May 26, 2001, President Barack Obama signed the Sunsets Extension Act which extends, for four years, three key provisions of the USA PATRIOT Act: the roving wiretaps, the “library records” (investigations of business records), and surveillance of “lone wolves” (individuals suspected of terrorist-related activities not linked to terrorist groups). See Mascaro L. (May 27, 2011). Congress votes in time to extend key Patriot Act provisions. *Los Angeles Times*.

Note 9. See <https://www.911review.org/Sept11Wiki/OperationGreenQuest.shtml>.

Note 10. CBS News. (October 25, 2001). Feds launches “Operation Green Quest”. Retrieved from <https://www.cbsnews.com/news/feds-launch-operation-green-quest/>

Note 11. Actually, a charitable organization is a non-profit organization (NPO). It differs from other types of NPOs in that it centers its activities on non-profit and philanthropic goals as well as social well-being. To qualify as tax-exempt under Section 501 (c) (3) of the Internal Revenue Code (IRC) and benefit from eligibility to receive tax-deductible charitable contributions, a charity must permanently and exclusively dedicate its assets to charitable purposes. See Internal Revenue Service (IRS), *Part 7. Rulings and Agreements; Chapter 25. Exempt Organizations Determinations Manual; Section 3. Religious, Charitable, Educational, Etc., Organizations*. (https://www.irs.gov/irm/part7/irm_07-025-003.html)

Note 12. *Shahada* (declaring there is no god except God, and Muhammad is God’s Messenger); *Salat* (ritual prayer five times a day); *Zakat* (giving 2.5 % of one’s savings to the poor and needy); *Sawm* (fasting during the holy month of Ramadan); *Hajj* (pilgrimage to Mecca at least once in a lifetime if one is able).

Note 13. See Additional background information on charities designated under Executive Order 13224. Available on <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/designationsum-.pdf>

Note 14. Attorney General John Ashcroft (July 27, 2004). Prepared remarks re: Holy Land Foundation indictment. United States Department of Justice. Retrieved from <https://www.justice.gov/archive/ag/speeches/2004/72704ag.htm>

Note 15. See Free the Holy Land five: Restore our freedom to give. Available on <https://www.freedomtogive.com/holy-land-five-case/holy-land-five-trial/>.

Note 16. Krikorian G. (June 18, 2006). Questions arise over a case against Islam charity. *Los Angeles Times*.

Note 17. Actually, Bush's presidential order to close down the charity came on the eve of a White House visit by then-Israeli Prime Minister Ariel Sharon.

Note 18. Krikorian G. (June 18, 2006). *Los Angeles Times*. *Op. cit.*

Note 19. Department of Justice (Tuesday, July 27, 2004). Holy Land Foundation, leaders, accused of providing material support to Hamas terrorist organization. Retrieved from https://www.justice.gov/archive/opa/pr/2004/July/04_crm_514.htm

Note 20. See Eaton. Leslie. (October 2007). No convictions in trial against Muslim charity. *The New York Times*. Retrieved from <https://www.nytimes.com/2007/10/22/us/22cnd-holyland.htm>

Note 21. Free the Holy Land five. *Op. cit.*

Note 22. *Ibid.*

Note 23. Charity and Security Network. (December 20, 2011). Summary: The fifth circuit's Holy Land Foundation decision. Retrieved from https://www.charityandsecurity.org/background/Summary_Fifth_HLF_Decision

Note 24. The Holy Land trial: On the trail of the Muslim Brotherhood. Retrieved from <https://www.shariahthethreat.org/a-short-course-1-what-is-shariah/a-short-course-13-the-holy-land-trial-on-the-trail-of-the-muslim-brotherhood>

Note 25. *Ibid.*

Note 26. "*United States v. El-Mezain, et al*". (Dec. 7, 2011). (No. 09-10560, _ F.3d _, 2011 WL 6058592 – 5th Cir.).

Note 27. *Ibid.*

Note 28. *Ibid.*

Note 29. U.S. State Department. (November 15, 2002). Terrorist exclusion list. See List of charities accused of ties to terrorism. Available on https://www.en.wikipedia.org/wiki/List_of_charities_accused_of_ties_to_terrorism

Note 30. See Cooperman A. (August 9, 2006). Muslim charities say fear damming flow of money. *Washington Post*.

Note 31. Neal A.W. (2010). *Exceptionalism and the politics of counter-terrorism: Liberty, security and the war on terror*. New York: Routledge. 30.

Note 32. Schulhofer S.J. (2002). *The enemy within: Intelligence gathering, law enforcement, and civil liberties in the wake of September 11*. New York: Century Foundation Press.

Note 33. *Ibid.*, p. 65.

Note 34. *Ibid.*

Note 35. The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. The Due Process Clause of the Fifth Amendment, ratified in 1791, asserts that no person shall “*be deprived of life, liberty, or property, without due process of law.*” This amendment restricts the powers of the federal government and applies only to actions by it. The Due Process Clause of the Fourteenth Amendment, ratified in 1868, declares, “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.” This clause limits the power of states, rather than those of the federal government. (See <https://www.legal-dictionary.thefreedictionary.com/Due+Process+of+Law>).

Note 36. Neal, A.W. (2010). *Exceptionalism and the politics of counter-terrorism*. *Op. cit.*, p. 15.

Note 37. *Ibid.*, p. 24.

Note 38. Chang N. (2002). *Silencing political dissent: How post-September 11 anti-terrorism measures threaten our civil liberties*. New York: Seven Stories; London: Turnaround.

Note 39. On February 19, 1942, President F.D. Roosevelt issued Executive Order 9066 which delegated military authority to remove between 127,000 Americans of Japanese origin to internment camps, after the Imperial Japanese Navy attacked the U.S. Navy Base at Pearl Harbor, Hawaii, in 1941. See <https://www.ushistory.org/us/51e.asp>.

Note 40. Chang N. (2002). *Silencing Political Dissent*. *Op. cit.*, pp. 19-42.

Note 41. *Ibid.*, pp. 67-68.

Note 42. See Fisher W. (April 20, 2006). Patriot Act Muslim charities shut down, Halliburton goes free. *Inter Press Service*.

Note 43. OMB Watch (now the Center for Effective Government – CEG) was founded in 1983 with a primary focus on making the work of the executive branch agencies more transparent and open to citizen input. (See <https://www.foreffectivegov.org/ourhistory>).

Note 44. See Fisher W. (April 27, 2006). It’s guilty until proven innocent for U.S. Muslim charities. *The Daily Star*.

Note 45. See Hines P. (June 12, 2013). Civil liberties vs. national security debate: Where do you stand? Retrieved from <http://mic.com/articles/48291/civil-liberties-vs-national-security-debate-where-do-you-stand#.4L48oew3o>

Note 46. See Bicchierai L.F. (June 5, 2014). The 10 biggest revelations from Edward Snowden’s Leaks. Retrieved from <https://www.Mashable.com/2014/06/05/Edward-Snowden-revelations/#xSE5P3SvBpg>

Note 47. Yardon D. (February 19, 2016). Apple says the FBI is making access demands even China hasn’t asked for. *The Guardian*.

Note 48. Neal A.W. (2010). *Exceptionalism and the Politics of Counter-Terrorism*. *Op. cit.*, p. 9.

Note 49. *New York Times* (June 4, 2009). Text: Obama’s speech in Cairo. Retrieved from <https://www.nytimes.com/2009/06/04/us/politics/04obama.text.html>