

Upholding Civil Liberties in a Paranoid State: Some Insights from the Philippines¹

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Introduction

The revival of the debate between civil liberties and national security is brought about by developments both at home (national) and abroad (global). The “dilemma” of protecting individual freedoms and securing the state is a *problematique* that could be as old as politics itself.³ Time and again, governments and societies have painstakingly balanced these two concerns – security from all kinds of threats and the enjoyment of human rights. This balancing act has had its success in some and failure in others.

The current global environment has placed the debate between security and liberty at the forefront of world politics. States are now feeling tremendous pressure stemming from the perceived mutual exclusivity of these two values. In a post-Cold War, post-9/11 world, the pendulum has swung to favor the imperatives of national security which in turn have produced negative repercussions for civil liberties. However, unlike in other periods in human history, this “pendulum swing” is juxtaposed with a transnational human rights regime, a more informed (and assertive) citizenry, and weak state capacities.

This paper is an attempt to offer some insights on the current clash between civil liberties and national security using the case of the Philippines. It argues that unlike most states, the preferential treatment of security concerns does not merely come from the threat of terrorism but is also influenced by other political factors that are closer to home. These include the presence of “democratic deficits” in its political institutions, a government that continues to struggle for its political survival, and nontraditional security threats (food, energy, environment). The paper also claims that a framework on security forged by both state, civil society, and the public is one of the best ways to avoid a “zero-sum” situation between civil liberty and national security. By way of conclusion, it offers some suggestions on how to avoid falling into the trap of sacrificing liberties in the name of national security.

Civil Liberties in an Age of Terror

Considered as fundamental freedoms of citizens from political authority, civil liberties mostly comprise of the freedom of association, assembly, religion, speech, due process, fair trial, property, and privacy (Smith and Levine 1988). Most, if not, all states accede or purport to provide these rights, although there is great divergence in their actual observance. In theory, these liberties are to be observed irrespective of time and space as provided in the international human rights regime. Not only is there an international covenant on civil rights (known as the ICCPR) that legally binds states that have ratified it, there is a Universal Declaration of Human Rights as well as the United Nations Charter which to a great extent

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³ Perhaps the most salient discussion of this dilemma could be found in the modern political theory of the social contract with Hobbes, Locke, and Rousseau at the forefront of this discourse.

binds all of its members to observe and promote human rights anytime and anywhere in the world.

As compared to other human rights, civil liberties do not require a lot of effort from governments except restraint in their exercise of power and the existence of institutions to protect them. According to scholars, civil liberties could be considered as a significant set of human rights. Their primary distinction lies on the idea that the exercise of other rights must come from their proper observance (Shue 1996). Moreover, they also are functionally interdependent on one another. This means that they belong to a single package – one cannot simply select respect one or another while dismissing others.

Civil liberties, considered as a necessary component of human rights, are often jeopardized when governments step up their drive to make the nation more secure, particularly against the threat of terrorism. Needless to say, the most plausible explanation for the curtailment of civil liberties is the penchant of governments to view security in traditional terms (Hayden 2004). While some have gradually accepted some of the features of broadened conceptions of security, the so-called “war on terror” has allowed states to have renewed affinity to the paradigm of national security. For other countries, international terrorism has unfortunately made them resistant to embrace alternative approaches to security. By “bringing back the state” at the zenith of current security discourses, terrorism has not made it difficult for most democratic governments to create frameworks, devise programs, and implement policies that may undermine previously enjoyed civil liberties. Whereas for nondemocratic regimes, invoking national security has replenished their otherwise eroding legitimacy and public confidence.

Most governments have seen the problem of improving national security at the expense of human rights norms. This “black and white” viewpoint is the stuff of government policy, presidential speeches, and anti-terror legislation. The fight against the “war on terror” became a rallying cry or a point of unity amongst societies and states. The adoption of special laws⁴, creation of new institutions, and the enforcement of tighter security arrangements are all directed in addressing terrorism as a highly unstructured and indirect form of violence (Joyner 2004). Despite the legal assurance that such new practices to curb terrorism will not undermine civil liberties, there is a great deal between what is said as rhetoric from reality. As the saying goes, “the proof of the pudding is in the eating”, and unfortunately it is in the implementation of new security or anti-terrorism policies that violations of civil rights take place.⁵

However, it must be argued that terrorism pose also as one of the greatest violation of human rights. Terrorist acts not only affect direct victims of its violence but their success lie more on the fear, paranoia, and restlessness that they are able conjure. Causing harm to innocent populations is only the manifest impact of terrorism (Abbott *et al.* 2007). One of their latent effects is to cause political instability and destabilize legitimate governments. Moreover, the restriction of civil liberties has become the “collateral damage” of terrorism. The repressive acts of governments toward any perceived threat has caused undue damage to the human rights regime in various countries. By casting a “fine net” to catch possible terrorists, states

⁴ For example, the US Patriot Act is an acronym for the United and Strengthening America by **Providing Appropriate Tools Required to Intercept and Obstruct Terrorism**. Also, the anti-terrorism law in the Philippines is euphemistically entitled “Human Security Act”.

⁵ For example, special protocol and procedures for security are implemented by nature of an individual’s association with a specific religion, race, or ethnicity (Joyner 2004: 244).

have stifled political dissent, enforced a crackdown on its opponents, and commanded its security forces to defeat insurgents all in the name of counterterrorism. This is an example of “*the mobilization of bias*” conveniently enacted by governments under the veneer of improving national security (Joyner 2004; Foot 2005a; Foot 2005b).

To a great extent, the defense offered by the state on possible violation of civil rights relies on the extraordinary and peculiar context of the post-9/11 world. Governments often tell its people that sacrificing liberties in the short run will deliver national security in the long run. Scholars and human rights activists have observed the ability of states to persuade its people to accept this “bargain” without question in order to fight the “war on terror”. Such a war is unique in the history of civilization as the enemy remains evasive and covert, with no agreed protocols between combatants, and the absence of clear directions on how victory could be achieved (Hoffman 2004: 940). Furthermore, one must also consider the implications of such compromise in the long run states’ processes of political development or democratic deepening (McEldowney 2005). Instances where liberty could be pitted against security will likely to happen in the future and states that have previously renounced freedom are very much predisposed to do it again.

While often a battle fought at home, terrorism is a transnational security threat that does not respect territorial boundaries. This does not only make interstate cooperation of the essence but by being at the top of the agenda of world politics, states have deemed it vital to ensure that they are doing their role to curb terrorism. International relations scholars have argued that such delivery provides positive incentives such as reputation of being a successful terrorist fighter (Foot 2005b) and not to mention the assistance package in the form of military and economic aid offered to mostly poor countries. The existing global political power structure celebrates the anti-terrorist crusader but not the human rights defender. Just like in the Cold War era, foreign policies of major powers have struck dangerous pacts with illiberal and repressive regimes with notorious human rights records because of their strategic value on the war on terror (Foot 2005a: 413). Moreover, human rights advocates are often labeled as “irritants” hindering counterterrorist efforts.⁶

As the only global superpower to date, the US not only is the leader of the current war on terror, it is also the “poster boy” of an effective and capacitated state worthy of emulation worldwide. Somehow, state strength no longer means being able to exert sovereign responsibility but on “effectiveness” in the antiterrorist campaign which have dire implications on the observance of civil liberties (Foot 2005b: 302).⁷

The Retreat of Freedom in the Philippines: Issues and Challenges

The Philippines is a good case to illustrate the dilemma between civil liberties and national security in a post Cold War and post 9/11 era. It is a country that has been an active player in the promotion of the international human rights regime being a signatory to more than a dozen human rights treaties, conventions, protocols, etc. Furthermore, this is also manifested in its current constitution and national laws which generally upholds civil liberties and defends individual freedoms. From a formal standpoint, the Philippines could pose as a model of a state that commits itself to protect human rights worthy of emulation.

⁶ An extreme would be the case of the Philippines where human rights organizations are castigated as fronts of insurgent groups which are defined as terrorist organizations,

⁷ Foot (2005a) discusses the tensions between human rights and the war on terror on countries in the Asia-Pacific region,

Just like in the protection and promotion of human rights, the Philippines is also way ahead of its neighbors in terms of having experience with democratic rule. As one of the first liberated colonies in Asia, it was able to set up a republican and liberal government that is more than a century old. It also provided one of the best examples of nonviolent collective action in the name of democracy and liberation from the grip of political authoritarianism and abusive or corrupt leaders.

It is both sad and unfortunate that the real picture of the Philippines in terms of its human rights and democracy records are not at all rosy and nice. Human rights while formally (legally) provided are not fully observed given certain political, economic, and social obstacles. Democratization is also formally in place but there leaves much to be desired in terms of its quality. Based on its 2007 Report, *Freedom House*, an independent freedom and democracy watchdog, downgraded the Philippine standing from “free” to “partly free” for the past three years. Among others, what informed this assessment is the string of corruption scandals hurled against the current administration as well as the increasing trend of human rights violations (Puddington 2008). Given this, it should not be a surprise that the Philippines will fall into the prey of the ebb of human rights and democracy imposed by the imperatives of national security.

The retreat of freedom in the Philippines became more conspicuous after 2001. Whether this is mainly because of the post 9/11 context is debatable but most experts will agree that the decisions and actions incumbent government greatly contributes to the country’s present human rights record. For example, it is the Macapagal-Arroyo administration that declared an “all-out war” against the communist insurgents and some of the Moro separatist movements. This is very much related to the fact that both of them have been linked with terrorist groups. Like other countries, it was not difficult for the Philippines to equate insurgents that could be deemed to have legitimate issues or demands with terrorists that need to be crushed.

The greatest human rights problem in the Philippines has something to do with the spate of the so-called “extra-judicial killings” of left-leaning or militant activists, progressive civil society leaders, and journalists. This “crackdown” has caught international attention and even compelled the UN to send a special rapporteur (Mr. Philip Alston) to visit the country and conduct a fact-finding mission. Other transnational human rights nongovernmental organizations also followed suit (Human Rights Watch 2007; Human Rights Now 2008). Other international actors such as the European Union (EU) also expressed concern over the persecution of members of the press and civil society and the impunity that perpetrators seem to enjoy.

It was in the year 2006 that the height of extra-judicial killings or involuntary executions was witnessed. Depending on who is counting, the number could range from 250-835 people.⁸ Also, there are individuals that have been abducted or involuntarily disappeared while performing their line of work as activists or journalists. Both the report of the UN special rapporteur as well as the independent commission formed by the government⁹ all concluded that the government, particularly the military is responsible for the great number of these incidents. Not only was this welcomed with denial and discontent from the country’s armed

⁸ The lack of consensus on the actual number of victims is due to that limits posed by the definition provided by each group that provides the figure. Government accuses some civil society organizations of exaggerating the number of actual extrajudicial killings.

⁹ This was headed by former Supreme Court Justice Augusto Melo.

forces, the government is also being made accountable for its inability to bring the perpetrators of these deaths and disappearances under the fold of the law.

Not included in the extrajudicial killings is also a related trend in the Philippines that pertains to the murder of a large number of journalists and media personnel. Whether as news reporters or political commentators, members of the press have been killed in increasing frequency. Reports estimate that from 2003-2006, the number ranged from 7-10 each year.¹⁰ Similarly, perpetrators of these executions enjoy a great degree of impunity. In a recent study of the CPJ, the Philippines was ranked sixth in its Impunity Index which calculates the unsolved murders of journalists as a percentage of the country's population. Interestingly, the countries that received higher ranks are Sri Lanka, Colombia, Somalia, Sierra Leone, and Iraq (CPJ 2008).

The quality of the country's institutions specifically those that perform functions related to law enforcement and the rule of law also is a factor on why some literally gets away with murder. As a country struggling to consolidate its democratic regime, it was palpable that democratic institutions in the Philippines were not able to perform adequately to ensure the protection of human rights. Scholars have observed that this "democratic recession" across a so-called "third wave democracies" is manifested by the struggle to secure freedom and uphold the rule of law. Countries where widespread human rights violations occur often are "blighted by multiple problems of bad governance – abusive security forces, corrupt and constrained judiciaries, and clientelistic parties. Most likely, the root of this phenomena lies on the deficits of its institutions of accountability and the rule of law (Diamond 2008).

This general observation was brought closer to home by political scientist Paul Hutchcroft who argued that the Philippines is disturbingly showing signs of democratic decay. He pointed the finger to the inability of the government to rule and to the several political scandals – allegations of electoral fraud, corruption, and violations of human rights – that has undermined whatever legitimacy it enjoys (2008: 8-9). Government critics also expressed their worry that this government has struck shady deals with and made political accommodations to the military just to ensure its political survival.

According to observers both domestic and international, this partnership with the armed forces could be the strongest explanation why they escape from accountability to the majority of extrajudicial killings and other human rights violations. Like a sacred cow, they remain untouched and untarnished by the deplorable executions of political dissidents and media personnel. Not only do they deny that they have a hand in them, they also propagate the belief that these killings are products of internal purges within the communist movement. For some analysts, this could also be attributed to the lack of reforms that will generate good security sector governance (Hernandez 2007).

The current policy on counterinsurgency of the Philippine government also illustrates how demands of national security receive priority. Not only is there no consistent policy in addressing the insurgency problem, most governments that came to power also has been responsive to the views and approaches of the military in dealing with these armed conflicts (Hernandez 2004: 21). This was recently validated by a report of the International Crisis Group (ICG) which expressed concern over the inability to differentiate between insurgents

¹⁰ Actual figures could be drawn from the websites of the Center for Media Freedom and Responsibility (CMFR), the National Union of Journalists in the Philippines (NJP), and the Committee to Protect Journalists (CPJ).

and terrorists. By not having enough sensitivity to the critical distinctions, it is likely that insurgent movements which have legitimate political demands are reduced to terrorists that must be crushed immediately. Not only would this approach fail, but it will also increase the “collateral damage” of such a policy by contributing to more violations of human rights in conflict-torn communities in the country.

Human Security Act (HAS): Civil Liberties under Threat

It was not a surprise that the government was able to pass an anti-terrorism law. As early as 2003, the Macapagal-Arroyo administration has promised to enact legislation that will help curb terrorism. What became a surprise is how Republic Act No. 9372 signed on 6 March 2007 was able to be named as the “Human Security Act of 2007”. By being an “An Act to Secure the State and Protect our People from Terrorism”, this law provides not only the weapons for the government in general and the security forces in particular in order to sanction acts of terrorism, it also allows the possible suppression of previously respect rights and intrusion into the lives and activities of the Filipino people. For civil society advocates and academics, the title of the law is not just a misnomer but also casts the concept of human security in a negative light.

With the exception of its title, this statute has never again used or mentioned the term “human security”. Furthermore, it conspicuously did not provide a definition of security. However, it is noteworthy that it stated some principles that are connected to the human security framework. For example, it recognizes that the terrorism “requires a comprehensive approach... including conflict management and post-conflict peace-building.” This even includes improving “state capacity and promoting equitable economic development.” Interestingly, the anti-terrorism law also categorically stated that it shall not “prejudice respect for human rights.”¹¹

For legal experts, the ambiguity of how terrorism was defined opens up the floodgates for possible violation of civil rights. The law also does not have its own implementing rules and regulations (IRR) atypical of most legislation in the country. This may confer “unbridled discretion” in its enforcement giving the security sector wide powers of interpretation and implementation (Bagayaua 2007). Other features of the law that possibly could jeopardize civil liberties include equal penalties to both executors and those engaged in acts of conspiracy to commit terrorism, and the extension of a person’s detention, surveillance, and confiscation of property once justifiable cause of committing terrorism has been proven.

Where this law is very clear is the substantial role given to the security sector in implementing the law and curbing terrorism. While it explicitly stated that it is the police that would be the main implementing institution, this is irreconcilable to existing realities in the Philippines. Internal security remains to be the purview of the military with the police often playing a secondary or supporting role as it continues to suffer from institutional and resource deficiencies. Analysts are also bothered on the power given to the government, particularly the executive branch, in labeling possible organizations as terrorist or conspiring with terrorists (Hilbay 2007). Such “labeling” is considered dangerous not only to human rights but it could be employed as a weapon to suppress the political opponents of government. Finally, while the law provides for a grievance mechanism and an oversight body in the implementation of the law, it is observed that there is a noteworthy absence of civil society

¹¹ Republic Act No. 9372, “Human Security Act of 2007”, Section 2.

participation or involvement. These functions are totally given to government institutions such as the Ombudsman and Congress.

In the end, the HSA is seen by many as a return of the anti-subversion law, a major instrument used by government as a weapon against communists and other insurgents. This law was effectively repealed in 1987 but most in civil society see the HAS as an anti-subversion law in an age of terror.

Balancing Press Freedom and Responsibility: The Case of the Manila Peninsula Siege

On November 2007, a former lieutenant turned Senator of the Republic and an army general charged with rebellion, walked out of a court hearing and proceeded to take a posh hotel in the country's premier business district hostage. Together with a group of soldiers and some civilians, they called for the ouster of President Gloria Macapagal-Arroyo and encouraged the public to support them. After the successful neutralization of the skirmish, the authorities arrested not only those who participated in the plot but as well as members of the media. After a few days, several journalists have filed a case against the Supreme Court arguing that such arrests are unlawful and violate press freedom.¹²

The case of the Manila Peninsula Siege is a good case where respecting press freedom has to be juxtaposed with interest of national security. There is disagreement on whether the press should have departed the scene when the authorities requested them to. According to the government, journalists were arrested because of police disobedience and obstruction of justice. On the other hand, members of media refused to heed to police instructions because of their duty to deliver the news and report the truth. The outcry of the media community is based from the arrests made by the police who on their defense argued that some of the military rebels were posing themselves as journalists. However, some journalists and media experts also accepted the fact that the rebellion could have been quelled earlier and the destruction of property could have been prevented if the media was not inside the hotel. Some of them also agree that the rebels that staged the siege of the Manila Peninsula may have used the journalists as "human shields" (Fonbuena 2007).

This incident has caused the government to issue guidelines for media coverage in similar situations. However, such guidelines may not be respected in the future given that there remains a huge tension between press freedom and national security in the Philippines.

Tipping to Balance: The Role of Effective Oversight and Social Accountability

How could one address the collateral damage caused by the inclination of countries toward national security to the detriment of civil liberties?

There is a question on whether congressional (or parliamentary) oversight could provide a better check against overweening acts and abuses of discretion made by the government. Some suggest that the legislature might be in a better position to perform oversight as the representative of the people (Lopach and Luckowski 2006). For the Philippines, it is the judiciary more than the legislature that proactively addressed the problems related to the violation of civil liberties. It is the Supreme Court that spearheaded the National Consultative Summit on Extrajudicial Killings. Moreover, it also made two amendments to the Rules of

¹² At the time of writing, the high tribunal has yet to make a final decision on this issue.

Court in the Philippines, paving the way for a more activist role for the judiciary in terms of policymaking. These are the writ of amparo and the writ of habeas data (Rufo 2008; Fonbuena 2008). The former provided certain rights to families of victims of involuntary disappearances while the latter empowers citizens to have access to helpful information to help them in their redress of possible human rights violations.

While having better legal protection is necessary to address the imbalance between national security and civil liberties, one must have a broadened perspective in order to find a lasting solution. In the Philippines, these related to two important processes that have been eschewed or resisted by the state – security sector reform (SSR) and democratic institution-building.

SSR seeks a comprehensive and simultaneous transformation of key institutions and groups in order for them to guarantee the physical security of the people but at the same time also respect democratic principles and human rights. What makes SSR a novel concept is its holistic character. It departs from the orthodox distinctions made between security, democracy, and development by integrating defense reform, police reform, intelligence reform, justice reform, legislative reform, etc. Seen as separate efforts in the past, SSR is the framework that could coordinate all these initiatives and programs into a cohesive whole. Its integrative approach and ability to group all of these tasks under one roof is the source of its appeal (Wulf 2003; Forman 2006). Thus, it is a process that requires a “whole-of-government” approach to be implemented by a multitude of institutions within the state and supported by civil society through a series of coordinated actions and programs.

Democratic institution-building also must also be undertaken in order to improve the country’s human rights record. In particular, the institutions that are affiliated with the judiciary, constitutionalism, and the rule of law need to be given adequate autonomy, political insulation, and resources to be able to perform their mandate with efficiency and effectiveness. This is an arduous process that would require more of a “principled” rather than an “instrumental” commitment to democracy. Moreover, the Philippine state must also improve institutions of representation in order to create the right political conditions which could integrate diverse and disparate groups into the political system.

Finally, civil society and the public sphere can play a big role in ensuring that civil liberties do not get to be sacrificed in the altar of national security. As intermediaries of the public interest, these nongovernmental groups that perform informal oversight, or “social accountability” in light of the institutional deficits faced by state agencies. However, there is a caveat. Effective influence of civil society is a function of the trust and confidence it enjoys with the state. If a cloud of distrust, paranoia, and suspicion pervades state-civil society relations, there is a doubt on whether civil society can be a successful champion of civil liberties.

Conclusions

There is wisdom when Benjamin Franklin said that those that are willing to exchange liberty for security do not deserve either. Thus, a first-order question needs to be asked. If indeed security is the goal of national policy, one must ask what is its ultimate end and who will benefit from its? To a great extent, the quality, contours, and trajectory of discourse will have a great say on how the pendulum between security and liberty could be balanced. Both theory and recent practice from countries demonstrate that those who conceive security in traditional, limited, elitist, and militarist ways are the ones that have no qualms about

curtailing civil liberties. On the other hand, if security discourse is to be described as unorthodox, comprehensive, holistic, and participatory, countries do not see the national security and civil liberties as a zero-sum situation.

The perceived mutual exclusivity between national security and civil liberties occurs when one adopts a myopic view. This easy (and lazy) approach is the reason why civil liberties are often jeopardized in the name of the security of the state (with the people). The discourse on human security does not suggest the obsolescence or eradication of national security. It merely reorients the focus of security to the individual human being from a comprehensive and holistic perspective. Finally, it does not simply seek to protect the life of the state's citizens but assures that individuals' well-being is secured and that they are embedded in just and equitable social institutions.

The impulse to abandon civil liberties in times of fear and paranoia is short-sighted and self-defeating. Failure to respect human rights not only undermines our shared values, it also sabotages international cooperation and public support to developing effective antiterrorism efforts (Hoffman 2004). Lastly, it must be accepted that most of those that bear the burden and pay the price of national security are not everyone but those that come from marginalized, underrepresented, and other minorities in society.

Throughout the decades, human rights norms have been guided with the principle of balancing liberty and security. One must remember that these standards were informed by harsh and violent experiences of societies that have easily forfeited their rights and gave states a blank pass to commit the gravest and most inhumane acts. Not doing so will not only be devoid of logic and intelligence, it is also abandoning a responsibility not only to the past but also the present and future generation.

Finally, balancing both national security and civil liberties is an issue of means and ends. Both of them could be construed as ends in themselves. However, an expanded view also suggests that being able to provide security and protect liberty ultimately contributes to the furtherance of a society's ends – which is to achieve its much cherished values. Throughout space and time, these values are justice, respect for the rights of others, respect for human dignity, and the rule of law. Only when states do not lose focus on this end goal could a zero-sum situation between national security and civil liberties be avoided.

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