

**Assessing the Real Impact of September 11th 2001 on Western
Societies: Shifting from Risk Society to Prevention Society**

Yan St-Pierre
University of Geneva
Yman@gmx.de

Petersburgerstrasse 38
Berlin, 10249
Germany

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ABSTRACT

In the wake of the September 11th 2001 terrorist attacks, it was widely believed that everything in western political behaviour and policies changed. The aim of this paper is to argue that the unquestionable shift in national security approaches occurred in the shift from risk management society to risk prevention society. First, we will examine the evolution of the risk society and the consequential over-reliance on states for risk assessment and security. Consequently, this over-reliance has led to an increase in state responsibilities, forcing reliance on preventive measures. It will be further argued that the basic presumption of innocence is replaced by a presumption of guilt and that the mass development of identity and surveillance technologies became crucial after 9/11. Finally, we will observe possible consequences on human rights abuse and suggest that any reversal of the situation must stem from a renewed sense a citizen responsibility.

A common theme to dystopian literature, beyond its apocalyptic nature, is the omnipresence of the security paradigm brought about by or the potential for mass destruction. In fact, it is central to the socio-political structure of the imagined world: In Aldous Huxley's *Brave New World*, peace and stability are ensured through total behavioural conditioning; In Orwell's *1984*, an absolute surveillance society is in place to uphold preventive policies and ensure total obedience to the domestic system in place while in the worlds depicted by Alan Moore, in both *The Watchmen* and *V for Vendetta*, fascist systems are entirely justified by an obsession for national security, on both domestic and international levels.

Although one must remain cautious not to overstretch the comparisons, parallels between these worlds and the one slowly taking shape in this first decade of the 21st century can definitely be made. Data mining, biometric profiling, the proliferation of massive electronic surveillance capabilities and powers, DNA databases and a wide array of preventive powers are no longer fantasies. The fusion of private and public spheres dreamed by totalitarian doctrines is slowly becoming a reality in the western world while the actual political discourse describes the state as the sole guarantor of our safety against

potential dangers and thus requests our full compliance and trust. In the name of security against non-measurable threats – terrorism above all – the foundation for a total preventive system is being laid.

But was this process actually ignited by 9/11? What domestic processes facilitated the implementation of a preventive approach? Is this the logical evolution of the Risk Society and the role of the State? How does this redefine the western approach towards security and justice, and more importantly its perception of the legal person?

This article is not about the advent of a dystopian reality but rather an assessment of what I consider to be perhaps the only real change in a post 9/11 world, the shift from Risk Society to a full Prevention State. I, like many others, do not believe that there is an actual before/after September 11, 2001 in terms of policies and measures, both in terms of threat and response. It is my opinion that the current shift in security policies throughout the western world is linked to a change in the role of the state, not brought about by the “new” terrorism, but rather by the excessive reliance on the state as risk insurer, thereby creating an excessive need for states to reduce risk potential through prevention. I will examine this hypothesis by first looking at the components of the post-war risk society and its impact on citizen expectations and behaviour towards the state. I will then argue that an over-reliance on the state has massively increased its responsibilities and therefore required the implementation of strong preventive measures in order to reduce the risk potential and the extent of its consequences. It will be further argued that the most damaging consequence of this approach is a “legal perception reversal” of the citizen by the state, switching from a presumption of innocence to a presumption of guilt, a phenomenon strongly reinforced by and not consequential to, the terrorists attacks perpetrated in New York and Washington. Finally, I will shortly examine the impact on human rights and reflect on the citizen’s role as counterweight to prevailing political attitudes.

I. The Evolution of Risk Society and the Over- Reliance on State Intervention

Developed in the mid-1980's by German sociologist Ulrich Beck and later expanded upon in by British sociologist Anthony Giddens, the concept of Risk Society describes a system where the expansion of risk potential brought about by modernization – defined as an increase of risks consequential to the increase in capital thus means for production¹ – must be constantly assessed and managed. In his analysis, Beck describes modernization as reflexive, self-producing phenomenon whose ensuing risks – the modern risks that is – are both global in their nature and proportional to scientific/technological developments². These risks/dangers are what build, consolidate and define the risk society to an extent where Beck actually calls it a “Catastrophe Society”, where the society's structure is grounded in a catastrophe's political potential, consequently prompting a mass reorganization of both state power and responsibilities³. Hence, the western socio-political system has morphed – is morphing – into a total risk management system where, as we will see later, Risk has become an object of power.

The speed of this reflexive process and the ensuing reorganization of the political rapport, leave the Risk's intensity open to manipulation, both subjectively and politically. Subjectively, by the quantity of information possessed on one given problem or risk, where ignorance or complete knowledge provide more insurance when assessing the danger while partial knowledge creates gaps that generate insecurity and thus increases risk interpretation⁴. As the success of Wikipedia shows, the instantaneous and unlimited access to knowledge brought about by the Information Age widens superficial knowledge thus exacerbating insecurity and vulnerability to expert opinion. And because risk or threat potential can be politically, and even economically, called upon at will, its ensuing intensity will vary according to both the projected image/fantasy and knowledge⁵, a phenomenon that can be observed through the regular use of the threat level colour

¹ BECK, Ulrich (1986). *Risikogesellschaft: Auf dem Weg in eine andere Moderne*. Suhrkamp: Frankfurt am Main, page 25

² Ibid. 26-29

³ Ibid. 31

⁴ Ibid. 69-71

⁵ Ibid. 68

scheme by western powers. The popular interpretation of the threat is then either reinforced or reduced through social interactions. Therefore, risk potential may be instrumented for various goals and purposes, liable to become an instrument of political power.

But beyond its economic nature, the extent to which risk societies are developed is influenced by the nature of the political system in which it is implanted. Although the risk society is intrinsically based on raw capitalism, its actual political structure finds its roots in the advent of the post-World War II welfare state, where the systemic implementation of social safety nets by the state gradually labelled it as the main risk insurer. In his book *The Three Worlds of Welfare Capitalism*, Gosta Esping-Andersen describes three models of Welfare States, based on De-commodification scores: Conservative, Liberal and Socialist⁶. De-commodification measures the citizen's independence from pure market forces and is based on four criteria: Spending, equal distribution of chances, the degree of universality of state allowances and the relationship between the allowances and market revenues⁷. Under those criteria, conservative countries provide a minimal safety net, essentially aimed at the poor while in liberal states, the length of the safety net depends on the professional status. As for socialist states, the social safety net is universal⁸.

No matter the extent of the welfare state, minimum wages, social healthcare, unemployment and welfare revenue policies for example, combined with an already increasing basic protection duties, expanded the state's protective responsibilities and thus set new standards for post-war political management. From then on, the state became the main guarantor against risks, from crime and war to natural catastrophes and financial crises, therefore creating in the citizen even greater expectations. Hence, it is possible to understand that where the welfare state is well developed and firmly implanted, the expectations of the risk society will be higher and reliance on the state as risk insurer will increase while countries like the United States for example, where State involvement is limited, the reliance on the state for protection will be noticeably lower.

⁶ ESPING-ANDERSEN, Gosta (1990). *The Three Worlds of Welfare Capitalism*. Polit Press: Cambridge

⁷ Ibid.

⁸ Ibid.

Hence, the welfare state and the ensuing citizen over-reliance on the state could be called accelerators to the dynamic process of risk society, both exponentially expanding the expectations towards the state and its responsibilities. This, in turn, has led to a gradual relinquishing of personal risk insurance by the citizen thereby making the state entirely responsible for both risk assessment and protection. It is this evolution that has led to the advent of the *Risk Government*, a system where the citizen has relinquished all insurance responsibilities to the State⁹. However, it is possible to make the point that neo-liberal policies and a return to responsible financial management in western countries severely hindered the classical welfare state to an extent where some scholars declared it to be dead or on the verge of disappearance. What is crucial here are the standards that were set by the welfare state, no matter when it was implemented or how extensive its implementation may have been, because of the stronger expectations towards governments it fostered.

It is precisely this relinquishment that became the pivot in the transformation of the risk society into one of the prevention state or risk government. The citizen gradually delegated all insurance responsibilities to the state, allowing it to determine what are the risks and more importantly, the level of threat represented by the risk, thereby becoming dependant on the state's interpretations to make his/her own assessment. No longer self-relying, the citizen becomes over-reliant on the state for insurance, on the social safety net, in the process modifying, as Beck stated, its relationship to the state. Hence, the state becomes the all mighty, all knowing figure that, burdened by the popular increase in fear and expectations, must now essentially focus on its role as risk manager, constantly needing to evaluate risk potential, prevention and response¹⁰.

Another important consequence of this change in *rapport de force* is how government performance is now essentially assessed on risk management criteria,

⁹ EWALD, François. KESSLER, Denis (2000). Les noces du risque et de la politique. *Le Débat*, March-April 2000, number 109, p.69

¹⁰ Op Cit.

incidentally consolidating the Risk as an object of political power¹¹. The citizen, in accordance with its heightened expectations, now evaluates political behaviour and performance in terms of security, whether its environmental, financial, health, judiciary, judicial, military or social. This change in citizen political behaviour could be observed in the 2004 Spanish national elections where the horrendous political management of the March 11 terrorist attacks, evaporated the small lead held at the time by the *Partido Popular* (PP) and eventually caused its demise. Although the PP first tried to blame the terrorist group ETA for the attacks, it quickly became obvious that the attacks had been made by Al Qaida operatives in retaliation to the Spanish support of and involvement in the American-led invasion of Iraq¹². The government's response had increased Spain's terrorism-related risk potential and the government proved itself unable to adequately manage the increase in risk that came with such a decision. The electorate then voted on that basis and gave power to the opponents of Spanish involvement, Jose Luis Zapatero's *Partido Socialista Obrero Espanol* (PSOE)¹³.

The same could be said about the American political landscape since 9/11. Indeed, every election has focused on the theme of risk management, whether it concerns terrorism, emergency crisis management or the economy. And once again the electorate has voted based on its assessment of the government's ability to manage risks. The 2002 and 2004 campaigns were seen as a popular evaluation of the "War on Terror" while the 2006 campaign also focused on the government's capabilities in dealing with a very unstable and ailing U.S. economy. President George W. Bush was re-elected in 2004, while the Republican Party increased its majority in both the House of Representatives and the Senate in approval for the "War on Terror" policy¹⁴. However, the 2006 elections became an evaluation of president Bush's risk management has the economic weight of the national security issue created financial risks and the Katrina fiasco raised serious doubts as to his emergency crisis management. Hence, voter displeasure was

¹¹ EWALD, François. KESSLER, Denis (2000). Les noces du risque et de la politique. *Le Débat*, March-April 2000, number 109, p.69.

¹² ABC NEWS (2008). Spain holds Elections after killing halts Campaign.
<http://www.abc.net.au/news/stories/2008/03/09/2184506.htm>

¹³ Ibid.

¹⁴ <http://www.cnn.com/ELECTION/2004/>

expressed is the Republican Party's loss of its House and Senate majorities¹⁵. On a regional level, the governor of Louisiana and the mayor of New Orleans were ousted from office by popular discontent due to their incompetent handling of the Hurricane Katrina tragedy while four years earlier, New York mayor Rudy Giuliani became a national hero for his competent handling of the 9/11 aftermath. Had he been eligible for a third consecutive term in 2002, there is little doubt that he would have been re-elected.

Obviously, risk management is not the only criteria upon which citizens choose a candidate but it has become the main element, beyond party policies or ideology. And this appears to confirm the shift of the citizen's perspective on the role of the state, where the latter is no longer seen as a leading, progressive force, but rather as a risk insurer, a guardian against exponentially evolving risk potential which, as we have seen, is a reflexive, dynamic process. But if risk, through the augmentation of popular expectations, is now an object of power and the main performance assessment criteria, how does the state respond and how does that increasing burden of responsibilities affect its approach?

II. The Burden of Over-Reliance: Reducing Risks through a Preventive Approach

Historically and philosophically, the utmost function of the State is to provide security to a given population and in most cases, be the only legitimate counterweight or guardian against omnipresent dangers. The triad of threat levels, citizen expectations and State responsibilities have always been proportional to one another, today with the fear of terrorism, crime and social unrest brought about by globalization or during the Cold War and its nuclear fears. However, the dynamic of modernization, including risk society, as described by Ulrich Beck seems to have disrupted the equilibrium of the process, whereas the State appears overwhelmed by the expectancies generated by increasing risk potential and the citizen's lack of self-reliance.

¹⁵ <http://www.cnn.com/ELECTION/2006/>

The dangerous aspect of such a reflexive structure like the risk society is, as was previously examined, that the evolution of risk factors rapidly overtakes the capacity for understanding, often creating over-hyped discourses and interpretations that in turn, stimulate fear fantasies and increase security expectations. For example, the issue of WMD threats has become a household theme yet the actual understanding of the threat and its actual potential is limited, thus increasing concern. This anxiety grew ten-fold upon seeing the striking images of the terrorist attacks on New York and Washington, where numerous scholars, security experts and other pundits – our risk evaluators – “confirmed” the advent of an era where a new, mass destruction terrorism or *hyper-terrorism* is the norm, a time where biological, chemical and nuclear weaponry is supposedly within hand’s reach of every terrorist, turning everyone into a potential, indiscriminate victim. Consequently, this has raised the citizen’s expectations towards the State when dealing with the issue of national security and terrorism in particular.

Accordingly, the expectations expand the responsibilities of the state in its role as risk insurer because the citizen feels overwhelmed by the extent of the risk potential, leading him to nearly blindly rely on its protector, which in this case is both risk multiplier and the one with the most security resources. This over-reliance on the state for protection increases the pressure on the latter to adequately fulfill its duties, a pressure inflated by the fact that risk is now an instrument of power. As the responsibilities grow, the state’s margin for error becomes narrower and measures must now be found to mitigate the risk and its consequences. Hence the heightened focus on prevention rather than contingency.

It is not to say that prevention was never part of governance. Quite the contrary, foresight as always been a quintessential part of appropriate political management but since the attacks of September 11, 2001, it appears to have become policy rather than principle, especially with regards to security.

Despite having often argued¹⁶ that the vast majority of counter-terrorism measures enacted by western countries in the wake of 9/11 had no particular novelty, that they are nothing but slight updates to already pre-existing legislation thereby arguing in favour of continuity rather than abrupt change, I cannot deny that the way the prevention paradigm has come front and centre when security issues are weighed and debated in political circles, is an attitude that appears to contrast with prevailing attitudes prior to 9/11. In this case, the Al Qaïda attacks are indeed the trigger for a more aggressive discourse and method.

The *de facto* application of this shift in attitude can be observed in the massive increase in the use of both surveillance technology and preventive judiciary powers in numerous western countries such as France, Germany, Great-Britain, the Netherlands or the United States. In Great-Britain, this can be observed through the massive use of CCTV cameras, increased arbitrary stop and search powers, lengthy detention period in cases related to terrorism and control orders. Indeed, the country has a staggering 4,2 million CCTV cameras – 1 for each 14 inhabitants – that film each person upwards to 300 times a day¹⁷; using the article 41 of the *Terrorism Act 2000* that stipulates in terrorism related cases that “a constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist” for whom “provisions of Schedule 8 (detention: treatment, review and extension) shall apply”¹⁸, the British government’s impending security package looks to expand stop and search powers beyond the scope of terrorism to a point where individuals may be stopped without grounds for suspicion¹⁹. In addition to this, there is currently a debate concerning an extension of the maximum period for

¹⁶ See ST-PIERRE, Yan, *Le 11 septembre et la reinterprétation du paradigme terroriste : l'événement comme falsificateur de rupture* (Université Paris 7, 2004) and *Caught in the Storm : Canada and the Netherlands as Barometers for the West's changing Attitude towards Security and Human Rights*, written for *The International Human Rights Regime since 9/11: Trans-Atlantic Perspectives*, conference held at the University of Pittsburgh in April 2008. Publication pending.

¹⁷ THISISLONDON.CO.UK (2007). *UK has 1% of World's Population but 20% of its CCTV Cameras*. [http://www.thisislondon.co.uk/news/article-23390407-](http://www.thisislondon.co.uk/news/article-23390407-details/UK+has+1%25+of+world's+population+but+20%25+of+its+CCTV+cameras/article.do)

[details/UK+has+1%25+of+world's+population+but+20%25+of+its+CCTV+cameras/article.do](http://www.thisislondon.co.uk/news/article-23390407-details/UK+has+1%25+of+world's+population+but+20%25+of+its+CCTV+cameras/article.do)

¹⁸ TERRORISM ACT 2000. §41 (1-2). <http://www.opsi.gov.uk/ACTS/acts2000/00011--i.htm>

¹⁹ BBC NEWS (2008). *Stop and search changes planned*. http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/politics/7216815.stm

detention without charge in terrorism cases – actually set at 28 days²⁰ - to 56 days²¹, a change justified by the need to gather information in order to prevent attacks. Another preventive measure pertaining to terrorism is the *Control Orders*, which are emitted “{...} against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism.”²². Therefore, despite release, the suspect remains under surveillance and this, for a period of twelve months²³. Although these control orders were later ruled to violate human rights, similar projects remain under consideration at Whitehall and Westminster²⁴.

In France, the use of preventive powers is standard procedure when it comes to terrorism. The 1986 *Pasqua* law, named after the then Interior minister, created the *14^e section spéciale du parquet de Paris*, a special judicial branch composed of six anti-terror judges that handle all terrorism related cases²⁵. This law states that anyone suspected of terrorism may be arrested and held without charge for four days, with a possible extension of 48 hours if a terrorist act is deemed imminent²⁶. However, if the judge states *intent* to prosecute, the suspect may be held indefinitely, in some cases numerous years²⁷. On the surveillance front, the French government deemed necessary to triple its number of CCTV cameras, in particular in Paris, in light of the British successes due to the cameras²⁸. Ironically, a recent report actually dismissed British CCTV camera success

²⁰ TERRORISM ACT 2006. §23 (7)(3). §23 (2)(1).

²¹ BBC NEWS (2007). *Terror detention announcement due*. http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/politics/7130072.stm

²² PREVENTION OF TERRORISM ACT 2005. §1 (1).
<http://www.opsi.gov.uk/acts/acts2005/20050002.htm>

²³ Ibid. §2 (4)(a)

²⁴ JONES, George. ROZENBERG, Joshua (29/06/2006). Human rights ruling leaves anti-terror law in tatters. *Telegraph online*. www.telegraph.co.uk

²⁵ FRANCE. LOI 86-1020 (1986). §17-19.

²⁶ CODE PÉNAL (2008). §706-88. It must be specified that the original detention period (1986) was 48 hours with two possible extensions of 24 hours each. This was amended early 2006 with the Sarkozy law that granted a six-day detention period.

²⁷ LEROUGETEL, Antoine (2006). *France: Le juge Bruguière – de l’utilisation de l’anti-terrorisme comme instrument politique*.
www.wsns.org/francais/News/2006/janvier06/260106_JugeBruguiereprn.shtml

²⁸ RODDIER, Mélanie (2007). *La France bientôt sous surveillance?*
http://www.lejdd.fr/cmc/societe/200727/la-france-bientot-sous-surveillance_35419.html

because people don't believe they are actually working, a perception leading to an abysmal 3 percent deterrence success rate²⁹

Perhaps the most revealing case of this shift in domestic preventive approach comes from an unexpected source: the Netherlands, which recently enacted the *Expansion of Competencies in Criminal Investigations and Prosecution of Terrorist Crimes Act*. This is a very aggressive law granting judicial and judiciary personnel a myriad of powers that sometimes dwarf those of their western colleagues. This law states that instigating surveillance and data collection for a criminal investigation no longer requires a "reasonable doubt" but merely the *indication* of terrorist activities³⁰. This approach is only comparable to the one used *de facto* by French anti-terror judges, and is nowhere to be found in American, British, Canadian, German or Spanish counter-terrorism laws, all of which require reasonable doubt in order to proceed. In other words, you need not be a suspect to be subject to those investigative measures, the latter being of course applied *in extenso* to anyone in contact with the target.

The law also provides prosecutors the power to authorize preventive searches, including "stop and search" powers, again based on indications rather than actual suspicion³¹. As we have seen, the United Kingdom is only now discussing giving law enforcement personnel arbitrary "stop and search" powers, capacity granted until now only to the personnel – including military – based in Northern Ireland, a region still technically under a state of exception. Further in line with new preventive policy, a terrorist suspect may be detained for 90 days and, should the investigation reveal "serious grounds" for preventive detention, the detention period may be extended upwards to two years, without charge³². Again, this policy is comparable to French detention policy with presumed terrorists and prevailing immigration laws in the UK and the United States.

²⁹ BBC NEWS (2008). *CCTV boom "failing to cut crime"*. <http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/7384843.stm>

³⁰ <http://www.icj.org/IMG/DutchupdateJune.pdf>

³¹ Ibid.

³² Ibid.

Another example of the intensification of the preventive approach can be found in Germany where the use surveillance and detention powers have rapidly increased. For example, the use of telephone wiretaps have increased by 8,2 percent in 2007 in comparison to 2008³³. The augmentation of such measures and its uses have led to a bitter struggle between Interior Minister Wolfgang Schäuble and the German supreme court, the *Bundesverfassungsgericht*, sparking a debate as to the apparent role of the court as “legislator”, following a series of overturned surveillance laws and the release of suspects charged of inciting terrorist acts³⁴. The most controversial measures are the online searches, which would allow security forces to tap into one’s computer hard drive and the new *Telekommunikationsgesetz* (telecommunication law), that allows police to listen in on the conversation of suspected terrorist, including between an attorney and his client or a doctor and his patient, thereby breaching confidentiality principles³⁵.

Eavesdropping laws as security measures are also increasing in the United States, not only through the *United States Patriot Act* but also more recently with the adoption of the *Protect America Act*, a new law that allows for wiretaps to be used without any judicial oversight³⁶ as was the case since the enactment of the *Foreign Intelligence Surveillance Act* of 1978. This law in fact legalized an eavesdropping program in place since 2002 but when discovered, was termed illegal by U.S. courts. This demonstrate the extent to which states will actually push the envelope when using prevention as a domestic security strategy, even if it means breaching the right to privacy as inscribed in the fourth amendment of the *American Bill of Rights* and other human rights protecting documents.

The preventive approach obviously goes beyond the domestic circle as demonstrated by American/British invasion of Iraq, officially justified by the potential use CBN weaponry against the United States. However, the debate surrounding the use

³³ SÜDDEUTSCHE ZEITUNG (2008). *Abhör-Rate steigt um mehr als acht Prozent*. <http://www.sueddeutsche.de/deutschland/artikel/939/173424.html>

³⁴ SCHAÜBLE, Wolfgang (2007). *Dein Staat, dein Freund, dein Helfer*. HOFMANN, Gunter (2007). *Minister gegen Richter*. *Die Zeit*, number 47, November 15, 2007, pp. 4-5.

³⁵ KLINGST, Martin (2007). *Die Rote Linie*. *Die Zeit*, number 48, November 22, 2007, pp.18-19.

³⁶ LICHTBLAU, Eric. HULSE, Carle (2007). *U.S. democrats seem ready to extend wiretap powers*. *International Herald Tribune*. <http://www.iht.com/bin/print.php?id=7809364>

of the preventive paradigm in international and humanitarian law is centuries old and is part of a different security spectrum, although the blurring of security domains must be fully acknowledged and studied, in particular in a transnational, globalized world.

What the implementation of these measures reveals is that Risk, as a political instrument, is now impossible to appropriately assess, in particular when the declared main risk to the society's safety is a phenomenon as stealthy as terrorism. The use of risk as an object of power is a double-edged sword because if mishandled or excessive, the manipulation of a risk's intensity in order to sustain certain levels of fear and insecurity (due to only partial knowledge of a phenomenon) may, as we as previously seen, cause the citizen to feel overwhelmed by the risk's potential thereby causing popular expectations – the aforementioned over-reliance – towards the state to skyrocket, consequently increasing the pressure on governments to adequately manage the potential threat or else lose power. With risk potential and state responsibilities becoming symbiotic figures through the evolution of the risk society, the State must now enact strong preventive measures in order to reduce risk potential, and improve its management of the latter.

However, the real impact of this change in approach lies not in increased security or deterrence, but rather in the reversal of one of the fundamental principles of political modernity, the presumption of innocence.

III. The Real Consequence of the Advent of the Risk State: Presuming Guilt rather than Innocence

The basic right of *Habeas Corpus* is a legal concept initially codified in the *Magna Carta* of 1215 – in which the right to the presumption of innocence was set³⁷- and later restated in the Bill of Rights of 1679. It is described as “a prerogative writ securing the liberty of the subject, affording an effective means of securing release from

³⁷ GANDINI, Jean-Jacques (1998). *Les droits de l'Homme*. Paris : Librio, p.6.

unjustifiable custody”³⁸. This fundamental principle was reiterated in the 1789 French *Déclaration des droits de l'homme et du citoyen* that stipulates in article 9 that “As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law”, as well as in the United States Bill of Rights, where the fifth amendment stipulates that

“No person shall be held to answer for any capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”³⁹

These three texts defined the legal standards to which modern states are held accountable for when dealing with domestic security and it makes the presumption of innocence one of our oldest and strongest rights as humans.

And this is where the advent of the risk state, the perhaps “over-protective” state, changes things: by inherently focusing on prevention, the states now assumes that its citizens are all potential criminals rather than seeing crime as the exception, and therefore, that no chances should be taken because the risk potential is too great. In the name of security, the current preventive paradigm used by western states has shifted the burden of proof from the State to the citizen, who is now required to constantly prove his innocence rather than be judged for actual actions.

In line with this new perception of the citizen, universal data mining has become the norm through the implementation of biometric documents, the collection of personal data ranging from religious beliefs, credit rating and IP addresses to financial status and fingerprints. This information is deemed useful to facilitate profiling of groups that could be potentially dangerous, its extreme form being the flagging of individuals based on their countries of origin. Furthermore, it now appears that every attempt is made to

³⁸ SANDS, Philippe (2006). *Lawless World*. Londres: Penguin Books, p.357.

³⁹ *Constitution of the United States: Bill of Rights*. <http://www.yale.edu/lawweb/avalon/rights1.htm#5>

collect personal information, including DNA samples, from the citizen as infractions ranging from traffic violations⁴⁰ to theft or genocide⁴¹ warrant taking genetic data. Worse, there are now extreme cases where suspects are followed in order to obtain DNA samples without their knowledge⁴². In fact, the UK now has approximately 4 million⁴³ DNA samples while France's genetic database increase by 30,000 each month⁴⁴. The justification for all this is to increase the efficiency of an investigation when a crime is committed allowing the investigators to match the crime data to a file present in the database thereby facilitating suspect identification, or to prevent the entry of criminals into the country.

Within the Risk State, prevention is of course not all about collecting data but rather properly preventing the occurrence of risk, anticipating the criminal acts of its citizens. For example, the implementation of the *Mosquito*, an ultra-sound device aimed at deterring the gathering of youths in a given place, supposedly preventing the occurrence of any anti-social behaviour⁴⁵. Because the sound mostly affects teenagers, the mosquito is now being used across the western world, in restaurants chains and train stations to bars and parks⁴⁶, thereby labelling all teenagers as troublemakers in the name of prevention and security.

But perhaps the most compelling case for the reality of the Prevention State is that of 23 year old London resident Samina Malik, also known as the "Lyrical Terrorist", a

⁴⁰ BBC NEWS (2006). *Police to fingerprint on streets*. http://news.bbc.co.uk/2/hi/uk_news/politics/6170070.stm

⁴¹ FRANCE (2003). §29. *Loi n°2003-239 du 18 mars 2003 pour la sécurité intérieure*. http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=FFB10D99DC39A38337CC1D4D17DE673E.tpdjo08v_1?idArticle=JORFARTI000002016527&cidTexte=JORFTEXT000000412199&dateTexte=29990101

⁴² HARMON, Amy (2008). *Defence lawyers fight DNA sampling on the sly*. *International Herald Tribune*. <http://www.iht.com/articles/2008/04/03/america/dna.php>

⁴³ UK has 1% of World's Population but 20% of its CCTV Cameras. *Thisislondon.co.uk/Evening Standard*, March 27 2007. <http://www.thisislondon.co.uk/news/article-23390407-details/UK+has+1%+25+of+world's+population+but+20%+25+of+its+CCTV+cameras/article.do>

⁴⁴ LE MONDE (2008). *Le fichier des empreintes génétiques contient 717.000 profils*. <http://www.lemonde.fr/web/depeches/0,14-0,39-35190688@7-37,0.html>

⁴⁵ COMPOUND SECURITY SYSTEMS (2008). <http://www.compoundsecurity.co.uk/>

⁴⁶ BBC NEWS (2008). *Calls to ban "anti-teen" device*. http://news.bbc.co.uk/2/hi/uk_news/7240180.stm

nickname she used to describe herself because it sounded cool⁴⁷. On November 8 2007, she was found guilty of owning terrorist material, although she was found not guilty of terrorism support under §57 of the *Anti-Terrorism, Crime and Security Act 2001*. She possessed books on terrorism and wrote in her diary that she sometimes dreamed of being a martyr, although she had no ties to any terrorist organisation. The prosecutor described her as “an "unlikely" but "committed" Islamic extremist: "She had a library of material that she had collected for terrorist purposes. That collection would be extremely useful for someone planning terrorist activity.”⁴⁸. Although she received a 9 month suspended jail sentence⁴⁹, she was in essence convicted for a crime she did not commit but was deemed to have the potential for, in light of the subversive material in her possession.

These cases are emblematic of the State’s new perception of its citizens, a perception that shifted and is justified by the risk potential brought about by the three main terrorist attacks that occurred on western soil since 2001 in the US, Spain and the UK. Using technology, it is now possible to efficiently label all citizens as guilty until proven innocent, and that technology is politically legitimized through discourse and legally authorized by the expansion of measures or the enactment of new laws.

The real danger however lies in its use for profiling where certain social groups and behaviours will be deemed as safe while others will be seen as dangerous. It will dictate the required “appropriate” behaviour, which as previously stated is politically determined, in order not to be labelled part a “risk group” and thus be defined beforehand as guilty. This is an approach and an attitude that goes against our most fundamental rights as citizens and humans, and is truly the most dangerous and volatile consequence to security and State/Citizen relationship in the post-9/11 world.

This new “all potentially guilty until proven innocent” mentality is what increases the intensity to which the preventive paradigm is used. Profiling, tagging, the use of data mining or biometric technology were used prior to 2001. Most DNA databases were

⁴⁷ SIDDIQUE, Haroon (2007). “Lyrical Terrorist” convicted over hate records. *The Guardian*. <http://www.guardian.co.uk/uk/2007/nov/08/terrorism.world>

⁴⁸ Ibid.

⁴⁹ TRESKOTT, Claire (2007). “Lyrical Terrorist” sentenced over extremist poetry. *The Guardian*. <http://www.guardian.co.uk/uk/2007/dec/06/terrorism.books>

developed in the 1990s to log sexual offenders; the International Air Transport Association (IATA) was discussing the use of the biometric passport in 1996 while tagging and profiling has been regularly used for nearly thirty years by immigration agencies around the world to prevent the entry of criminals into their borders. But all of these methods and powers were designed for very specific cases, for particular targets. They are now essentially used for everything, with a marked increase after September 2001. Hence, it now becomes crucial to determine its effects on human rights.

IV. Does the Prevention State actually hinder the Respect for Human Rights in the West?

The main concern when assessing the impact of the emergence and consolidation of the Preventive State is how it affects our basic freedoms and liberties. As discussed above, the attitude towards security in the aftermath of 9/11 has led to the apparent replacement of the presumption of innocence for the presumption of guilt. But on wider scope, does this type of socio-political structure hinder the application human rights as we know them in the West? Using a brief overview of the case of the Netherlands, I wish to examine what could be some of the broader impacts on human rights by the use of the prevention paradigm as a security and political tool.

We have previously seen that the Netherlands enacted a crime prevention law that allows surveillance, search and detention without charge based solely on the presumption of intention to commit an act of terrorism. There is no doubt that this law is a direct application of the burden of proof shifting to the citizen, and could also be termed as a human rights violation. This tendency towards apparent human rights abuse translates itself statistically.

Table 1: Respect Level for Human Rights, Netherlands

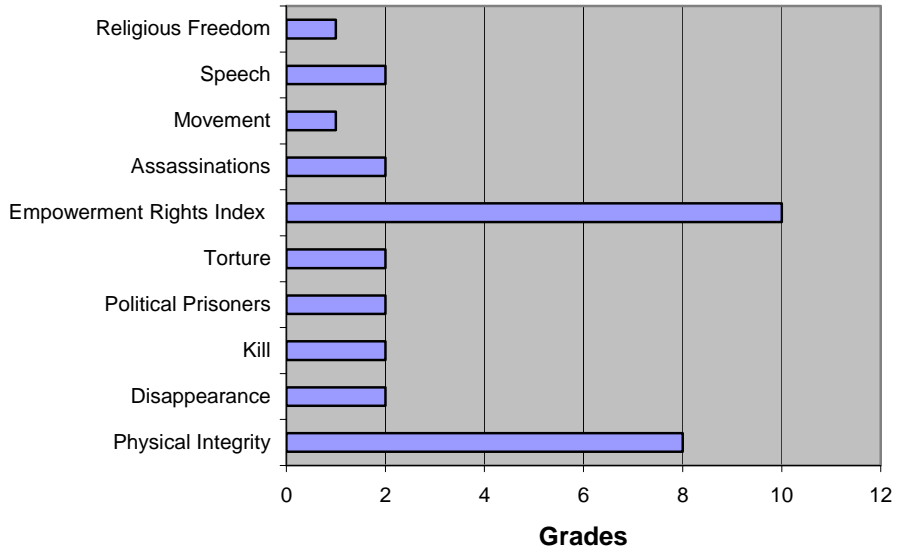
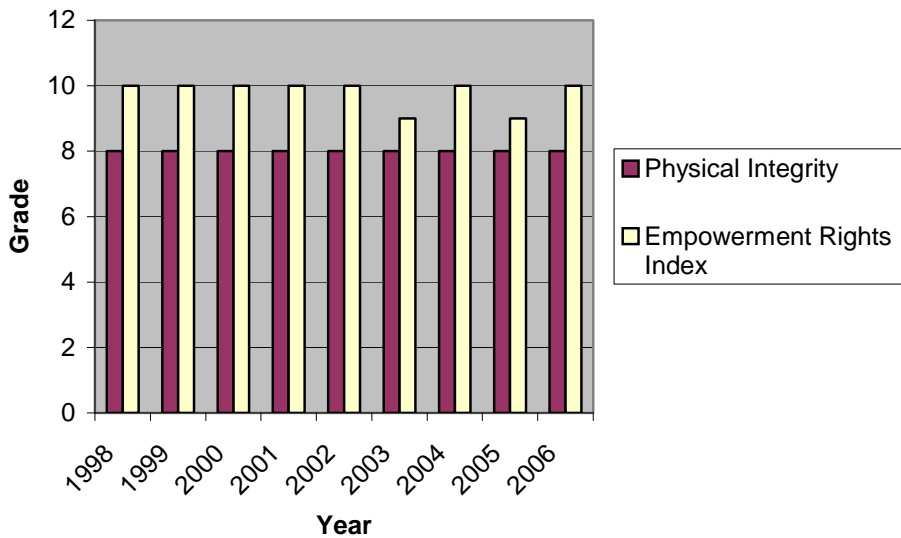


Table 2: Level of Respect for Human Rights, Netherlands (1998-2006)



Indeed, according to the statistical analysis provided by the *Cingranelli-Richards (CIRI) Human Rights Data Project*⁵⁰, the Netherlands have a perfect rating of 10 when it comes to its *Physical Integrity index*, an additive index comprised this of the Torture, Extrajudicial Killing, Political Imprisonment, and Disappearance indicators. However, despite granting a perfect 10 in 2006, CIRI granted a “9” for both 2003 and 2005 for the *Empowerment Rights Index*, an additive index comprised of the Freedom of Movement, Freedom of Speech, Workers’ Rights, Political Participation, and Freedom of Religion. This is in sharp contrast with its preceding scores (Table 1 and 2)⁵¹, but coherent with the implementation and application of tougher security measures, including preventive ones, after 2001.

In terms of privacy, the Netherlands is deemed to be a state with “systemic failure to uphold safeguards” according to Privacy International’s ratings, a label that has not changed in 2006 and 2007⁵². In this case, this not only appears to follow suit with the infringement indicated by the “Empowerment Rights Index”, but also to confirm the increasing tendency to use preventive tools to uphold the security within the state, despite infringement on human rights, a trend that current research shows to be observable throughout the western world. Naturally, this strand of data provides only partial insight into a much larger phenomenon but it nonetheless provides a small idea as to the direction of the current trend, or at the very it provides a good starting point for further research, especially when trying to evaluate the reach and the durability of the shift to strong prevention attitudes and measures in the West.

⁵⁰ In this study, there are four possible perfect scores: 10 for the *Empowerment Rights Index*; 8 for the *Physical Integrity Index*; 1 for the *Movement and Religious Freedom Indexes*; and 2 for the remaining indexes.

⁵¹ CINGRANELLI, DAVID L. RICHARDS, DAVID L (2007). *The Cingranelli-Richards Human Rights Dataset Version 2007.11.29*. <http://www.humanrightsdata.org>

⁵² PRIVACY INTERNATIONAL (2007). *National Privacy Ranking 2006/2007 - Leading Surveillance Societies Around the World*. www.privacyinternational.org

V. Conclusion

Years after the fact, we are still trying to determine the actual long-term effects of the terrorist attacks which occurred in the United States on September 11, 2001. We notice the most obvious ones, such as the war in Iraq, the increasing presence of surveillance technology or lengthier airport security searches and believe that all of these situations and measures are in response to one happening. Yet, as I have aimed to demonstrate throughout this article, the actual reasoning for the emergence of such a security focused State lies outside 9/11 and in the very fabric of modern western society itself. Indeed, the current emergence and consolidation of the Prevention State is directly linked to the evolution of the Risk society and its transformation into the Risk State, the main consequence of which is the changing of the citizen's status from one of presumed innocence to one of presumed guilt, sweeping an 800 year old principle in the process.

The very notion of Risk State, which in itself could still be defined as benign, relies on the proportionality of the threat/citizen expectations/state response triad. As the threats or their potential increase, so do the concerns and fears of the citizens who, in turn, expect the state to react appropriately and provide adequate protection against the risk. It implies that the State can manage the risks, first by anticipating them and second, by implementing adequate response measures. Conversely, it is symbiotic to the Risk Society where risks and risk levels increase proportionally to the production capabilities and whose main political consequence is the transformation of the Risk into an object of political power.

And therein lies one of the process' core factors: The role of Risk as power preservation element and performance evaluator. In this context, information becomes key because partial knowledge creates a doubt that is further enhanced by the evolutionary speed of both risks and their potential – the *Catastrophe Society* as Beck puts it – causing citizens entirely rely on the state for insurance. Consequently, both the State's responsibilities and the pressure to adequately manage the risk exponentially increase. Cornered by seemingly endless expectations, the former has now become

overwhelmed by the burden of risk management and needs to implement measures that will mitigate both the risks and their potential. Hence, the shift from a contingency paradigm to a preventive one in order to reduce threats before they manifest themselves.

This is a pivotal change in the mechanics of the Risk State. Empirically, the change it can be seen with the implementation and *use* of strong preventive measures such as electronic surveillance, data mining and preventive detention. Normatively – and this is the actual impact of 9/11 as a trigger to a latent process – the change can be observed in the State’s perception of the citizen where the latter is no longer presumed innocent, a status granted to it since the *Magna Carta* of 1215, but rather presumed to be guilty, formally switching the burden of proof to the accused. In essence, the excessive Risk State develops risk potential profiles that are applied as risk assessment grids thereby making citizens guilty beforehand, the latter’s degree varying according to the threat level of each grid. Again, the logic of such an approach is that the States believes it can no longer afford to react and must therefore fully anticipate risk potential, and the safest bet – the best defense always being a great offense – is to view everyone as a potential threat and manage accordingly. Even if its means changing 800 years of western liberal history.

This attitude may only be in its burgeoning phase but it is rapidly implanting itself firmly into western approaches towards risk/threat management, a trend that can be observed not only in major powers like the United States, Great Britain or France, but also in smaller powers like Canada and the Netherlands. The general use of the preventive paradigm may have its benefits – it is still too early to tell however – but it is vital that it be kept in check. The presumption of innocence has been reasserted time and time again since the Enlightenment and not without reason: In its role as protector, the State has often demonstrated a capacity for excessive zeal. If the excesses of the Risk Society and the Risk State are to be contained, it is imperative that citizens retake their place as political actors and reassert their value as citizens, not merely as performance evaluators, but as pro-active figures who attempt to influence State behavior beyond electoral periods.

And this is another common element of dystopian worlds, beyond their apocalyptic nature: An opportunity for choice and action. We may still be a while away from the fully oppressive natures of *1984* and *V for Vendetta*, but as their foundations are steadily being laid, the very real time for choice and action however, is truly upon us.