Protecting Whose Security?: Anti-Terrorism Legislation and the Criminalization of Dissent

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This paper provides a critical evaluation of some of the rarely-considered impacts of legislation that is passed in the name of 'security,' particularly the anti-terrorism legislation that has been passed throughout northern industrialized countries and beyond since September 11, 2001. Since September 11, a growing body of literature has developed examining the impact of anti-terrorism legislation on civil liberties, but very little addresses the impact of the legislation specifically on social movements or on dissent to the current configuration of power in our society more generally. This paper seeks to open space for such a debate. It offers a preliminary analysis of the impact and potential impact of anti-terrorism legislation on social movements and community organizing, focusing on the possible political rationale behind such impacts. The analysis pushes us to ask the question, "Whose security are these acts designed to protect?" and presents us with a disturbing answer: the beneficiaries of contemporary capitalist relations.[1]

Due to the difficulty of analyzing the more indirect and long-term impacts of recent legislation, and in an effort to begin to set the stage for future analysis, the paper takes a historical approach, comparing Canada's *Anti-Terrorism Act* (formerly Bill C-36) with the invocation of the *War Measures Act* in 1970. The paper looks at the terrorist acts in each case (the kidnappings of government officials by the Front de liberation du Québec in 1970 and the bombings of the World Trade Centre and the Pentagon in 2001) in the context of the perceived injustices each sought to rectify (English-Canadian imperialism in 1970 and American/Western imperialism in 2001). It looks at the respective legal responses to these actions (invoking the *War Measures Act* in 1970 and creating the *Anti-Terrorism Act* in 2001) in the context of major social movements perceived to be challenging established power relations at each time (the Québec sovereigntist movement in 1970 and the anti-globalization movement in 2001). Throughout the discussion of each act and its context, I will make five key points which, when considered together, suggest that the rhetoric of security concealed the criminalization of dissent which had begun to threaten dominant interests.

The first point is that a 'state of exception' is created to justify use of coercive force against dissent. The significance of dissent and its restriction in this paper is grounded in a theoretical understanding of the importance, as outlined by Gramsci (1971), of consent of the dominated to their domination and of recourse to coercion by the dominated power when this domination is threatened. I add to Gramsci's analysis the possible role of a 'state of exception,' as understood by Agamben (2005), in reconfiguring and extending the possibilities for consent. I suggest that in both cases examined here, a hegemonic economic project was being threatened by a social movement that contested consent to this project. Coercive means could not be used to respond to this challenge due to the values of the concurrent hegemonic *political* project of liberal democracy. A terrorist attack was used to justify the creation of a 'state of exception,' which permitted the state to use coercive means to eliminate the threat of the social movement without risking the political project.

[1] I would like to thank an anonymous reviewer for very constructive criticism of an earlier draft of this paper.

The second point is that the legislation is underpinned by a very limited conception of security. Much scholarship in critical security studies has investigated the ways in which state security is not necessarily synonymous with human security (see Booth 1991). My analysis juxtaposes what I call a *capital-centered model* of security, which is concerned primarily with the financial security (or stability) of the capitalist state and its projects of economic domination, with what I call a *citizen-centred model*, which is concerned primarily with the economic, social, cultural, and political security (or freedom from want) of all peoples. It seems from the analysis that increased security following one model corresponds with decreased security following the other: for example, the citizen-centred model includes security for dissent to the projects and reproduction of the capitalist state, while the capital-centred model includes security for the exploitation or violation of security in the sense of the citizen-centred model. By extension, the analysis also politicizes the concept of military security. This is the type of security most commonly referred to in mainstream public and political discourse. While it is portrayed as neutral and as representative of the interests of all, this paper highlights its political nature, particularly the political expediency of the fact that it contains elements of two very different conceptions of security: the protection of state borders and state systems (corresponding to the reproduction of the capitalist state), and the protection of citizens from bodily harm (corresponding to the citizen-centred model). Recognizing these two components highlights the possibility that their fusion is political, or perhaps that emphasis on this fused concept is political in that it facilitates appeals to the consent of proponents of each model (e.g., what human rights activist will argue that military security is irrelevant?). This paper suggests that Canadian emergency legislation in response to terrorist threats is designed to protect capital centred security at the expense of citizen-centred security. It suggests that the emphasis on military security masks and depoliticizes this, facilitating consent.

The third point is that the anti-terrorist legislation is unable to enhance even military security, its stated goal. I argue that the adequacy of existing law prior to these acts, the ineffectiveness of these acts, and the lack of proportionality between these acts (the 'solution') and the terrorist threat ('the problem') all suggest that there is an alternative purpose for the legislation.

The fourth point is that certain features of the anti-terrorism legislation enable it to be used instead to restrict social movements. These include a broad definition of terrorism or "unlawful" activity, widespread related offences, severe punishment for infractions, and the ability to hold "suspects" in prison without charge. My analysis suggests that these can constrain and harm a social movement by taking its key activists out of commission, by intimidating these activists and others, and by equating the actions of the movement with criminal activity, thereby limiting future support for the movement.

Finally, there are important differences, mainly in scope, between the two cases. In the case of the *Anti-Terrorism Act* (2001), the scope of the terrorist attack, the social movement, and the legislation created is

much broader. The enforcement of the legislation, too, seems to be on a broader scale in the sense that it extends into the realm of self-regulation and self-censorship.

This paper proceeds first by outlining the theoretical underpinnings of the discussion, followed by analysis of the broader political-economic context and the nature of each act. Comparisons will be highlighted throughout these sections and gathered in the concluding section as per the five themes outlined above. I will also identify some tendencies and possibilities for future study.

Theoretical Underpinnings

Before proceeding further, the significance of dissent (particularly for a hegemonic project) must be clarified. Liberal democracies around the world prize themselves on civil liberties such as the freedom of association and democratic rights such as the right to free and contested elections. Why would these states and their decision-makers not welcome social movements and dissent of all kinds as a natural part of the rich fabric of citizen participation in decision-making? A brief outline of the impact of dissent on dominant forces, beginning from a Gramscian perspective, suggests that certain types of dissent are not welcome in liberal democracies and that certain tools are employed by these states, consciously and not consciously, to restrict dissent.

Gramsci's definition of hegemony is somewhat elusive (Ransome 1992: 7), but it is generally understood to represent the process by which a class or group in society attempts to establish its domination/power over subordinate classes or groups through a combination of consent and coercion (R. Simon 1982: 21; Jesson *et al* 1988: 5). A class or group builds hegemony through the creation of what Gramsci (1971) calls a "historic bloc": a network of alliances beyond those who share its particular interests (77). Once the network grows and stabilizes, legitimacy is crucial to maintain and extend the hegemony. Both consensual and coercive means are used to accomplish this, with consensual control being more efficient and favoured when the hegemony is not in crisis (R. Simon 1982: 21).

Consent depends on belief in (and internalization of) certain claims to legitimacy. Substantively, the hegemonic project must appear (1) to benefit the dominated and (2) to be the only option. Procedurally, the hegemonic project must appear to be neutral. Thus, the construction of substantive legitimacy must not appear to be so lest it violate the procedural claim (Wade 2002: 203). It is here that we begin to see the inherent fragility of hegemony. Hegemony is also fragile in the sense that it is impermanent. It cannot be attained once and for all; rather, it must constantly adapt to political-economic and socio-cultural changes in order that the above claims remain legitimate and that belief in them be maintained (Abercrombie 1980: 118; Adamson 1980: 174; Parkland 2000: 11).

A challenge or threat could take the form of opposing groups waging a 'war of movement' (based on concentrated power at a particular historical point) or a 'war of position' (based on diffused power among a range of allied groups sharing a world view and expanding power gradually) (R. Simon 1982: 28). Bienefeld (2002) has argued that the most effective resistance to a hegemonic project is to develop a counter-hegemonic project which delegitimizes the legitimating claims of the hegemonic project. If the changes create a system substantially different from that in the previous compromise, legitimation is increasingly important and difficult and may become more aggressive and obvious (221).

When the hegemony is faced with a "crisis of legitimacy" due to a serious threat, coercive mechanisms (Robinson 1996a: 638; Wade 2002: 202, 217), and indeed all available resources, are employed including (importantly) instruments of the state apparatus such as budgets, communications campaigns, public consultations (Habermas 1975: 70; McBride 1992: 106-16), and, I would like to suggest, laws. Dissent is thus permitted in a liberal democracy, but only until it truly threatens the dominant hegemonic project. At this point, however, the hegemonic nature of liberal democratic values themselves can restrict to some degree the coercion a state can exercise to restrict this dissent.[2]

It is in the context of a hegemony which must use coercive force to respond to a threat to its dominance (but is restricted from fully doing so) that Agamben's (2005) concept of the 'state of exception' is useful. Agamben has drawn attention to analysis of the state of exception, a term which extends the concepts we know as martial law or emergency powers. "The state of exception," he writes, "is not a special kind of law (like the law of war)." Rather, it is "a suspension of the juridical order itself" (4). The construction of the state of exception is marked by a gradual erosion of democratic and legislative powers in the name of a perceived emergency. While justified as an exceptional measure for an exceptional time, Agamben argues that "the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics" (Ibid.: 2) and "increasingly as a technique of government rather than an exceptional measure" (Ibid.: 6). The state of exception, I would like to suggest, is a potential tool that can be invoked by a hegemonic power to justify a suspension of the current consensus – for example, so that it might employ coercive means without compromising a consensus which prevents such means.

Context: The *Anti-Terrorism Act*

In light of this theoretical background, I will now examine the *Anti-Terrorism Act* (*ATA*) and the invocation of the *War Measures Act* (*WMA*) in a broader historic political-economic context than is usually considered. This context facilitates analysis of dominant hegemonies and strong social movements during each time period. In both cases, a major social movement at the time opposed the dominant economic project, and, in

[2] This is based on Robinson's (1996; 2004) work on polyarchy. Robinson (2004: 81) argues that a political hegemonic project such as a limited form of democracy (e.g., liberal democracy or polyarchy) is often present in conjunction with an economic project (e.g., neoliberalism).

both cases, the terrorist act leading to the legislation was a response to conditions similar to those opposed by this major social movement.

In the case of the *ATA*, neoliberal hegemony and the so-called anti-globalization movement resisting it are significant. In the 1980s, the hegemony of Keynesian welfare state ideals was replaced around the world by a hegemony of neoliberalism headed by some form of a US-led transnational elite (Panitch & Gindin, 2003; Black 2002; Robinson 1996; Gill 1992). Neoliberalism successfully gained widespread consent for, and naturalized, a particular economic project characterized by a lack of social regulation of markets, reductions of the social capacity of states, pervasive privatization, internationalization of production, opening of financial markets, increased mobility of capital, trade liberalization, an overall deepening of the global market mechanism, and ultimately the supremacy of capital (Coleman & Skogstad 2000; Laxer 1995). This project was imperialist (Chilcote 2002; Pérez & Vilas 2002), in very general terms creating and enforcing divisions of labour and other mechanisms for exploiting the resources, indigenous peoples, women, people of colour, and others of the South for the benefit of the North (Pérez & Vilas 2002), and also within countries (Hoogvelt 2001). Moreover, the project was underpinned by conceptions of an 'other' in the form of racialized prejudices and justifications (Said 1978).[3] Neoliberalism was legitimized through the claims (1) that the supremacy of the market and of capital will be good for all and (2) that it is the only option.

By the end of the 1990s, however, the consensus was showing signs of stress due to "deep social contradictions generated by the model" (Robinson 2004: 81). The opposition movement to neoliberalism is often called "the anti-globalization movement," a phrase which obscures both the diversity of the movement and the phenomena these activists oppose. When I speak here of the anti-globalization movement, I am speaking in broad terms of the protests, community organizing (including in immigrant communities), and local alternatives to neoliberalism and neoliberal globalization which had all been growing around the world in the years leading up to September 11, 2001 (Giuffo 2001; Broad *et al* 2000; Philips 2000).

While this opposition began in the 1980s in the South, by November 1999, opposition to many facets of the neoliberal project had came to the streets of the US, most notably in the form of a massive street protest in Seattle against the World Trade Organization. This was the first in a series around the world in subsequent months reaching up to 100,000, including in Prague, Quebec City, and Gothenburg, and one planned for Kananaskis, Alberta in June 2002 (Giuffo 2001). Immigrant and refugee communities had also been bringing

[3] Sharma (2006), Razack (2004), and Harvey (2003), among others, have written about the disproportionate exploitative effects of the neoliberal economic project on people of colour around the world and about the economic and ideological necessity of this exploitation for the success of the project. For one example, Sharma details the use of non-status migrant workers as live-in caregivers and farm workers in Canada as a source of cheap and compliant labour due to their precarious status. Similar situations have been documented around the world. Harvey describes how a rhetoric of racism has been integral to constructing and maintaining these economic relations. He argues that ideas of racial superiority have provided a justification for this exploitation which has helped to make it politically feasible.

their opposition to the streets of the US (and Canada) by their mere presence, questioning the international division of labour and the racialized justifications for it, and by organizing their communities to resist the racialized oppression within the US and Canada on which the neoliberal project is based.

The organized opposition to neoliberalism was very diverse and took different forms in different places and among different groups. It has been described as as a 'movement of movements' (Mertes 2004): diverse groups such as peasants, trade unionists, media activists, environmentalists, church members, indigenous peoples, women's groups, and anarchists (Giuffo 2001) united under a shared world view based on a common realization (1) that neoliberalism was *not* good for all and (2) that alternatives *were* possible (Mertes 2004).[4] This grew into a war of position according to Gramsci's criteria and was counter-hegemonic, according to Bienefeld, since it delegitimated neoliberalism's all-important claims to legitimacy.

While beyond this broad world view the groups often diverged in their strategies, analysis, and even goals, they were also united by their broad values, and specifically by what could be considered their conception of security. Many groups in the movement notably framed their struggles for their own jobs, health care, clean water, and public electricity less as isolated parts of a zero-sum game and more in terms of interlinked rights for all. But beyond rights to a necessity, many groups also demanded freedom from want of that necessity – implying deeper, more complete, more long-term change (George 2005). By moving, for example, beyond the right to food to the right to be free from hunger they were in effect demanding security: similar to what the UNDP (1994 in Booth 2005) calls human security or what Buzan (1983) has identified as political, economic, societal, and ecological security.[5]

The movement threatened the neoliberal project by withdrawing consent to its legitimating claims, by developing this war of position, by making its demands felt in an escalated fashion at the centres of capital, and likely also by creating its own independent media with which to disseminate information and calls to action in real time (Giuffo 2001). This was a fast growing movement which many felt was about to mushroom (Galati 2002). Evidence of the threat posed by the movement was widespread. As just one example, coercive measures were resorted to against the demonstrators in Seattle and at other protests. Importantly, however, this led to public outcry which suggests that overt coercion violated the liberal

[4] After two decades of neoliberalism marked by the fiascos of structural adjustment, financial crises, and others, it become clear to many that the project exacerbated existing inequalities between countries, classes, genders, and races, as well as deterioration of the environment.

[5] The World Social Forum is a good example of this solidarity and these demands. In January 2001, the first World Social Forum, which was organized to link social movements from around the world, was held in Porto Alegre in direct opposition both to the World Economic Forum in Davos and perhaps most importantly to the isolation of the movements, interests, and peoples opposed to neoliberal globalization. The slogan of the forums is "Another world is possible". The Forum encourages participants "to situate their actions as issues of planetary citizenship."

democratic consensus (Giuffo 2001). The meetings being protested were soon moved to obscure or non-liberal-democratic locations such as Qatar and Kananaskis, Alberta, where protest would be curbed.

In the Middle East, in some cases opposition to neoliberal hegemony took on a religious fundamentalist character. The Middle East, though quite diverse, was in general experiencing a split between pro-American groups and those who opposed US-led hegemony in the region and who often made their criticism in the name of the Koran (Caffentzis 2001:1). Opposition to the US was not so much formulated in the rights-based security language of opposition elsewhere, but it was based on opposition to the *in*security perceived to be created by the US presence there. Opposition had been building to the corrupt and repressive regimes in the Middle East, to US support for Israel's occupation of Palestine, to the American-British assault on Iraq, to impoverishment enhanced by structural adjustment programs and import liberalization, and to the US's proprietary engagements in the region's oil industry including a "NAFTA-like" foreign investment law enacted and put into practice by the Saudi government in early 2001 (Caffentzis 2001; Chomsky 2001:18). Not only military insecurity, but also economic, social, cultural, and political insecurity were key issues. These are among the conditions out of which a group of terrorists emerged who would commit the attacks of September 11, 2001, against the US (Caffentzis 2001). While this has been described in racist terms as the "dark side of the anti-globalization movement" (K. Berger 2004: 2), and bombings and hijackings are not tactics popular in the movement, it is connected to the movement no less.

At the time that the American state and the US-led transnational capitalist class began to feel this threat from abroad and the threat of the protestors and organizers from within, the possibility of direct coercive American intervention abroad was still restricted by the stigma of the Vietman conflict and the 1991 Gulf War (Augelli and Murphy 1988: 141; Gill 1988: 204). The hegemonic power could not utilize its full coercive capacity – what would be its usual response to such a threat – due to its desire to maintain the legitimacy of its political project: liberal democracy. Instead, as McBride suggested, it would have to utilize all other tools and elements of the state apparatus available.

Context: The *War Measures Act*

The Front de libération du Québec likewise grew out of similar conditions to, and was to some degree a part of a major social movement that opposed the dominant economic project of the time. Much like the neoliberal economic project was underpinned by conceptions of a racialized 'other,' the economic project of English Canada in Québec was underpinned by a conception of an 'other' in the form of cultural (including linguistic) domination of the Québécois. This project, too, was hegemonic, internalized and legitimized by the claims (1) that the survival of French culture and language in Québec depended on commerce and on the Catholic church and (2) that this was the natural social order. The dominance of English Canada in Québec was not only cultural and linguistic but also tightly intertwined with class (Ryerson 1972: 221; Monière 1977: 346, 369). Ryerson (1972: 224) writes that the concepts of class and

nation in Québec in the lead-up to the October crisis were "two interactive realities" due to "the fused power structure of US-Anglo-Canadian imperialism" in Québec (225). From 1769 to 1969, both English Canada and the US pursued an imperial project in Québec. English Canadians inside and outside Québec, as well as Americans, joined interests to form a historic bloc that was hegemonic during this period.[6]

Beginning in the 1950s, however, the Québec working class began to form a collective identity and workers began to self-organize as consumers, in trade unions, and in electoral politics. This laid the groundwork for the Quiet Revolution of the 1960s. From 1948 to 1968, the province was plagued with strikes and demonstrations protesting government disrespect of (and business refusal to use) the French language, massive unemployment, slums, treatment as a pool of cheap labour, and American-owned mining companies exporting domestic products (T. Berger 1981: 161; *Labor Challenge* 19 October 1970; Denis 1979: 550-64). While Québécois nationalism had begun as a conservative force of the church led by the St-Jean Baptiste Society, by 1968 it had largely become intertwined with Québec working-class struggle (Denis 1979: 563). Workers recognized that "Poverty speaks French and Privilege speaks English" (Gans 1970) and sought to change this.

A broad array of interests was joining under a banner of Québec sovereignty and was directly challenging the claims that the economic project was natural and beneficial, thus presenting a counter-hegemonic force and war of position. In the fall of 1970, the sovereigntist and left-wing *Front d'Action Politique* (FRAP) was poised to sweep the Montréal municipal elections, including unseating long-time Mayor Jean Drapeau, while the sovereigntist Parti Québécois was a potential challenge to the Québec Liberal Party provincially (Lovick 1979: 298; Denis 1979: 553). Like the anti-globalization movement, this movement too was varied in its strategies, goals, and analysis (particularly in its weighting of national vs. class issues, as some were not interested in ending capitalist domination so much as getting a piece of it) (Monière 1977: 367-70 details this diversity). Yet, members' demands (particularly those on the social-democratic and socialist left) were united in their call for economic, social, and cultural security for the Québec people (Monière 1977).

The Québec provincial government responded to the challenge of Québec workers with laws to break strikes, arrests of union organizers, attempts to integrate unions with the state, bans on demonstrations, and the creation of the anti-riot squad (Denis 1979: 561, 562). Activists and active workers who criticized the middle class and called for an independent Québec were targeted as a threat to Québec business and government (essentially, hegemonic) interests. The federal government responded with the 1965 Royal Commission on Bilingualism and Biculturalism (Ibid.: 560) and several language laws, none of which altered the structural

[6] Imperialism was both internal between (a) the English-Canadian capitalist middle and upper classes and (b) the Québécois working class and lower management, and external between (a) the capitalist classes in English Canada and the US and (b) English- and French-speaking people of Québec (although English Canadians in Québec were more than intermediaries) (Van Schendel in Ryerson 1972: 222; also Lovick 1979: 232).

issues (Monière, 1977; *LC* 19 October 1970). Yet, the political hegemony of liberal democracy in Québec and in English Canada at the time prevented full employment of coercive force against this challenge. Even while liberal rights and freedoms were fragile in Québec (Denis 1979: 561), an entire movement could not be put in jail under the current consensus.

The FLQ emerged from these circumstances. By 1968, its targets shifted from symbols of the federal government to symbols of English-Canadian domination in Québec (Tarnoposky 1975: 341). Its main goal was independence for Québec. While most of the sovereigntist movement disagreed with its military means (as the movement valued security of person as well), they did support its demands. The FLQ was considered a more impatient, frustrated, and desperate wing of the movement (*LC* 19 October 1970).

The Acts: The *War Measures Act*

On 5 October 1970, the FLQ abducted James Cross, the British Trade Commissioner in Montreal, and later Pierre Laporte, Québec Minister of Labour and Immigration. The FLQ's manifesto, which addressed the above issues of imperialism, was broadcast and received a positive response from many sovereigntists, even if they disagreed with the FLQ's strategy (*LC* 19 October 1970). Dumont (1970) reported that "[t]rade unionists passed motions supporting the FLQ manifesto. Students voted in mass rallies to strike their universities and schools until the FLQ's demands were met. Prominent personalities petitioned the governments … to … release … 23 political prisoners." In the early hours of 16 October, after receiving letters from the Premier, the Mayor of Montréal, and the Director of Montréal Police requesting help against the "apprehended insurrection" and "overthrow of the state," Prime Minister Pierre Trudeau invoked the *War Measures Act* of 1914 (Tarnopolsky 1975: 338).

An examination of the powers the government gave the police under the *WMA* offers a precedent for what can happen 'even in Canada' with broad and harsh emergency legislation. Although the authorities were faced with a serious problem, the broad definitions and severe punishments included in the *Act*; the implementation of the *Act* in practice; the security and hegemonic interests reflected in the *Act*; and the inability of the *Act* to protect against the FLQ threat – when seen against the background of the sovereigntist threat to English-Canadian hegemony in Québec – suggest that an unofficial objective of the *Act* was the criminalization of the sovereigntist movement.

a) Broad Definitions, Harsh Punishments

The *WMA* was enacted on 22 August 1914, to give the federal government total authority, during war or invasion, to mobilize Canadian society for the war effort. However, the *Act* has also been abused to intern "enemy aliens" (e.g., Japanese-Canadians) and to outlaw opposing political parties (i.e., the Communist Party of Canada) – to marginalize or criminalize communities with reason and or will to dissent. Its use in 1970 for the first time during peace time was consistent with this history (*LC* 1998: 2; McMenemy 2001: 310;

Department of Justice 2000:1). The *WMA* gave the government the "authority to pass whatever regulations it deemed necessary for the security, defence, peace, order, and welfare" of Canada, including censorship, arrest, detention, and deportation.

The federal government issued the Public Order Regulations, the broad definitions and implications of which included new offences; new powers of arrest, search, and seizure; and detention (Tarnopolsky 1975: 331, 342). The definition of "unlawful association" was the basis for illegal activity under the *Act* Section 4 made it an indictable offence to be a member of an unlawful association; to advocate or promote unlawful acts or means to accomplish the association's goals; or to contribute anything to the unlawful association (Roach 2001: 169). This unlawful association was defined in s.3 as *Le Front de Libération du Québec* or its successor "or any group of persons or association that advocates the use of force or the commission of crime as a means of or an aid in accomplishing governmental change in Canada." This vague definition could make illegal legitimate forms of dissent, such as nonviolent civil disobedience that promoted governmental change (Tarnopolsky 1975: 242-3). Furthermore, based on this wide definition, the related offences in the *Act* could also apply to legitimate dissent and could be subject to the same detention without charge or punishment if charged.[7]

b) Implementation in Practice

Many arrests were not based on reasonable suspicion of support for the FLQ (Hotchkiss 1984: 17). Of the 497 Quebeckers arrested, most were intellectuals, singers, editors, unionists, students, and members of the *Parti Québécois* and other sovereigntist organizations (Haggart & Golden "War Measures" 1971: 21; Haggart & Golden *Rumours of War* 1971: 70, 171; Hotchkiss 1984: 18). Police conducted over 1600 raids (*LC* 19 October 1970). Lawyers of the arrested were held incommunicado and had confidential files seized by police (*LC* 21October 1970). The only thing most of the arrested had in common was sovereigntist views (Golden 1971: 31). Some merely had relatives in the PQ or in FRAP (Haggart & Golden *WM* 1971: 23). The media and government had portrayed the sovereigntist movement in such a way that the roundup and internment of Quebeckers aroused almost no opposition among English Canadians because they did not see the suppression of a legitimate political movement but rather that of an inherently violent and criminal one (Golden 1971: 31). An article in *Canadian Forum* stated that "the authorities, free from legal constraint,

[7] Subsequent offenses included detention without charge for a prolonged period of time which could contain political organizers and restrict opposition (Tarnopolsky 1975: 245). Section 8 provided that evidence that a person attended meetings of an unlawful association, spoke publicly in advocacy for the unlawful association "in the absence of evidence to the contrary, [was] proof" of membership in the unlawful association (*War Measures Act*, R.S., c. 206). This attendance could have included a curious person or a news reporter, without whom a legitimate association would lose new membership and publicity. Section 10 diverged from Criminal Code requirements, requiring that a peace officer have only "reason to suspect" and not "reasonable and probable grounds," (s. 450) that an offence is being committed in order to search without warrant (Tarnopolsky 1975: 344). The Act permitted Cabinet to make any orders or regulations it deemed necessary or advisable. These powers could be invoked arbitrarily by the Prime Minister and Cabinet without parliamentary approval or independent check (*War Measures Act*; Hotchkiss 1984: 17).

could now act on their dislike of French Canadians, hippies, and radicals and could discredit all sovereigntist and radical movements" (*Canadian Forum* 1970: 258). Haggart & Golden (*RW* 1971 :249) described the democratic left as being "assassinated."[8] *Labor Challenge* (19 October 1970) wrote that war had been declared on the soverneigntist movement.

This had a particularly immediate and significant effect on the Montréal civic elections. FRAP campaign offices were raided repeatedly and some candidates and key campaign workers were arrested (Haggart & Golden 1971: 70, 171; *LC* 19 October 1970). A week before the elections, police used the *WMA* to ban all political literature (*LC* 19 October 1970). On the eve of the election, the Minister of Regional and Economic Expansion announced that FRAP was a front for the FLQ (Hotchkiss 1984: 17; Lovick 1979: 238). The election proceeded amid soldiers with guns and with opposition candidates still in jail. FRAP lost every seat to Drapeau (Haggart & Golden *RW* 1970: 250; "WM" 1970: 24).

c) Security and Hegemonic Interests

The approach to security emboddied in the invocation of the *WMA* was one of law and order, not hesitating to protect financial interests (capital-centred security) while ignoring the economic, political, social, and cultural insecurity at the root of the conflict, not to mention the political insecurity *caused* by the the *Act* (citizen-centred security). According to Lovick (1979), the real adversary in Trudeau's mind was not a danger to public safety, but rather Québec sovereignty; Trudeau saw the kidnappings as a chance to crush the sovereigntist movement (298).

I extend this idea to suggest that Trudeau (and other authorities) saw the terrorist action of the FLQ as an opportunity to create a state of exception through which they could justify using coercion as an 'exceptional measure' to respond to the threat the sovereigntist movement posed to the economic hegemonic project. Trudeau helped to produce a state of panic against the sovereigntist movement in Québec (Haggart & Golden 1971: 273). Then he used the anti-terrorism legislation to intimidate and to take key activists out of commission through fear and arrest (265). Everything to do with their opposition was rendered illegal – with the threat of severe punishment.[9]

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[8] The *WMA* was also imposed in this way in other parts of the country, far from the threat of the FLQ. Vancouver's mayor Thomas Campbell stated on 17 October that he would use against drug pushers and hippies. On 19 October, 12 activists from the environmental organization which would form Greenpeace were confronted by police in riot gear during a demonstration in Vancouver for a pedestrian mall (Enright 1985: 12f). University student newspapers were censored and prominent activists were harassed in other provinces (*LC*, 21 October 1970: 1).

[9] This is not of course to say that Trudeau did not have genuine concern for his colleagues who had been kidnaped nor to suggest some kind of conspiracy; it is merely to suggest that Trudeau's interests may have been complex and to reasonably examine power relations and the interests of dominant powers.

d) Inability to Protect Military Security

In the end, the need for these broad offences has yet to be proven. Those who support the government actions of 1970 under the *WMA* would claim it was justified in that only two lives were lost, and the terrorism of the FLQ ended (Tarnopolsky 1984: 245). However, the adequacy of existing measures, the ineffectiveness of the *Act*, and its lack of proportion to the problem suggest that the *WMA* exceeded its official intention. Legal experts believe ordinary criminal law adequately covered dangerous actions by insurgents (Roach 2001: 154; Lovick 1979: 229). The Montréal police had an excellent record of solving FLQ crimes (Golden 1971: 31). To deal with two small amateur bands of terrorists, the government invoked laws designed for civil war and military not police action, and allowed the arrest of eight times as many people as were charged (Gellner 1970: 4; Haggart & Golden 1979: i, iii, 101).[10] In the end, both kidnappings were solved by the RCMP without the use of the emergency powers (Golden 1971: 31).[11]

When combined with the threat posed to the interests of English Canada, including these governments, by the sovereigntist movement (Monière 1979: 367) and these governments' history of pushing the bounds of coercive repression of the movement, the severe repression of the movement under the *WMA* suggests that restricting the movement was an aim of invoking the *Act*.

The Acts: The *Anti-Terrorism Act*

In reaction to the attacks of September 11, Canada introduced an anti-terrorism bill on 15 October 2001. The *ATA*, passed into law on 24 December 2001 – an unusually fast process – and was the federal government's parallel solution to the invocation of the *WMA*. As was the case with the *WMA*, the *ATA*'s definition of terrorism, its widespread related offences, its severe punishments, and its provisions for detaining people without laying charges leave significant leeway for the criminalization of dissent. The *ATA* does so, however, to a deeper degree.[12] This is evidenced in (i) the attempt to define terrorism and the inclusion in the definition of (ii) political and religious motive, as well as (iii) property and economic damage and acts committed inside or outside Canada. As in the *WMA*, related offences also become wide reaching by extension (Schneiderman & Cossman 2001: 174), although the scope of these is extended further by the *ATA*. As with the *WMA*, the ability of these measures to protect against terrorist threats is questionable. And, more so than the *WMA*, the very law itself (and not only its interpretation) appears to reflect hegemonic interests and conceptions of

[10] 497 people were arrested, less than a third charged, and only two charged under the *WMA* (Tarnopolsky 1984: 246; Wolfe 1980: 13).

[11] Tommy Douglas, Leader of the New Democratic Party at the time, commented on this lack of proportion saying, "The government, I submit, is using a sledge-hammer to crack a peanut" (Lovick 1979: 230).

[12] Reid Morden (in Morden 2002: 48), a former director of CSIS, has expressed apprehensions that the *ATA* risks "catching legal dissent" more greatly "than the regime which existed under the *War Measures Act*.

security.[13] The implementation to date and potential implementation of the *Act*, while tentative, seem to underscore the possibility that a purpose of the *Act* was to restrict the anti-globalization movement.

a) Broad Definitions, Harsh Punishments

(i) Definition of Terrorism

The *WMA* avoided defining terrorism by instead defining groups which promoted the use of force or commission of crime to bring about governmental change as "unlawful associations" and then linking the FLQ to this definition. In contrast, the *ATA* focuses more on individual terrorists and terrorist acts, and not only defines terrorism but does so in a much broader way — such that the definition will outlive the specific terrorist threat at hand. The *ATA* defines terrorism as an act or omission "committed in whole or in part for a political, religious or ideological purpose, objective or cause" and "with the intention of intimidating the public… with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization is inside or outside Canada" (s. 83.01).

(ii) Inclusion of Religious or Political Motive

The *ATA* requires proof beyond a reasonable doubt that a terrorist activity was committed "in whole or in part for a political, religious or ideological purpose, objective or cause" (s. 83.01(1)(*b*)(i)(A)), essentially demanding that motive be an essential part of a crime (Roach 2003: 26). This marks an important break from traditional principles of criminal law which are based solely on knowledge and intent. Traditionally, motive is legally irrelevant; however, it is politically important. Roach suggests that this change "undercuts the notion of a liberal criminal law" and risks alienating the Canadian citizenry. I would further suggest that this type of challenge to liberal principles would have been less politically feasible were it not enacted in a 'state of exception' (Ibid:. 27, 28).

This said, the inclusion of motive did meet with significant opposition by those concerned that the law would be used to target those with extreme or uncommon political or religious views. As a result, an amendment was made specifying that expressing "political, religious or ideological thought, belief or opinion" would not be considered terrorism unless it was encompassed by one of the other categories in the definition of terrorism (s. 83.01(1.1)). Roach writes that this likely protects it from challenges under the *Charter*, but this "does not mean it was necessary or wise" (Ibid.: 26).

Roach identifies this as part of the trend in the past ten years toward law reform which is legally unnecessary but politically useful, responding in a "reactive and ad hoc" manner to specific crimes (Ibid.: 23). R. Simon (1997) uses the term "govern[ing] through crime" to reflect the increasing importance of changes to the

[13] Roach (2003) is one of few scholars who have written critically and cogently on this subject; his analysis is highly relevant and is referred to extensively here.

Criminal Code as strategy in Canadian politics (174). This reminds us of Agamben's claim that a state of exception involves an increasing blur between legal and political.[14] R. Simon says this leads to the "criminalization of politics."

The *ATA* clearly contributes to the legitimate and overt politicization of law and law enforcement through the inclusion of motive.[15] Roach (2003) argues that "[t]errorism trials in Canada will be political and religious trials" (27). Police investigations will also be increasingly politicized, and in a more obligatory way than during the October Crisis. Police now are legally required to gather evidence on the political and religious beliefs of those *suspected* to *potentially* commit crimes *related to* terrorism, the ambiguity of which reminds us of the potential for misunderstanding and abuse witnessed under the *WMA*. Additionally, police do not necessarily possess a background in politics and religion sufficient to distinguish extreme beliefs and stereotypes from beliefs potentially connected to terrorism (Ibid.). Roach writes that we have "criminalized political and religious motives" (Ibid.: 28).

Roach proposes that the unusual inclusion of motive suggests a broader aim of the legislation, which is important for our analysis here. He suggests this move could have been an attempt "to denounce not only the crimes of the September 11 terrorists but also their anti-Western political and religious motives" (27). The inclusion of motive condemns such beliefs as "extreme and criminal."

(iii) Inclusion of Property Damage and Economic Security, and Acts In or Outside Canada

After establishing political or religious motive, an act must be shown to have been performed with intent to intimidate the public by threatening its security or to induce persons, organizations, or governments inside or outside Canada to commit or not commit any act (Ibid.: 33). This part of the definition of terrorism is broader than past definitions on three points which highlight the conception of security emboddied in the *Act*.

First, it includes acts committed outside Canada. This reflects the broader scope of the terrorist threat in this case and of global terrorism and globalization more broadly (Ibid.: 29, 31).[16] Roach points out that this could include support for revolutions against unjust regimes (Ibid.: 31) – legitimate dissent. Sharryn Aiken (2001) of the Canadian Council for Refugees suggests that conflicts outside Canada are not always understood in Canada and that the *ATA* risks unnecessarily criminalizing refugees and immigrants. Second, the *ATA* includes property damage and threats to economic security, including the security of corporations. Third, this

[14] This is not to say that lawmaking and law enforcement have not always been intrinsically political but rather to point out the increasing, overt, and (critically) legitimate nature of current politicization.

[15] Please see Note 14.

[16] Interestingly, the sole exception is for armed conflict and activities of the military when legal under international law.

definition includes threats to *economic* security, to essential services, facilities, or systems, and by extension to corporations since corporations are considered "persons" (s. 83.01) (Roach 2001: 33). Furthermore, a wider range of related offences than found under the *WMA* is based on this broader conception of terrorism.[17]

b) Security and Hegemonic Interests

These three inclusions highlight the concept of security espoused by the Canadian state: security of the capitalist system and, more specifically, security of profit. Roach (2003) observes that "politically motivated attempts to change corporate behaviour and threaten economic security could be classified as terrorism" (33). This includes perhaps protests of "the anti-corporate globalization movement" such as those in Seattle (1999) and Quebec City (2001) (Roach 2003: 33; Roach 2001: 157-9; Sherazee 2001) (and, I would suggest, the protest upcoming at the time against the G8 Summit in Kananaskis, Alberta in June 2002).[18] As in the case of the October Crisis, our analysis politicizes the concept of security, allowing us to identify a citizen-centred model (that of the anti-globalization movement) which is subordinated to a capital-centred model (that of the neoliberal projects). This is facilitated by invoking the discourse of military security, the stated goal of the legislation, which in fact is not enhanced by the legislation and possibly even harmed by it, for example through the broadening of the range of suspects and the requirement of political or religious motive.

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[17] Like the *WMA*, the *ATA* also makes it an offence to help a "terrorist." Participating in or contributing to a terrorist activity is illegal whether or not the contribution helped the activity or the accused knew the group was involved in terrorist activities (s.83.18) (s.83.01; Stuart 2001: 211). Criteria determining what constitutes a "contribution" include use of words or symbols associated with the group (e.g., possibly carrying a banner), frequent association with any member of the group (e.g., possibly attending meetings or protests), or repeated engagement in activities at the instruction of any member (Schneiderman 2001: 180). This provision also includes providing "a skill or an expertise for the benefit of" a terrorist group (s.83.18), which, like the similar provision in the *WMA*, could include lawyers, leaving them unwilling to risk representing alleged terrorists. Under the *WMA* in 1970, lawyers in some areas of Québec refused to represent alleged FLQ members (Makin 2001). While focusing mostly on individual terrorists and terrorist acts, the *ATA* does, in s.83.05, permit the Governor in Council to establish a public list of organizations which have participated in or facilitated terrorist activity; this comes "dangerously close" to making association with an unlawful organization a crime, as the *WMA* did (s.83.05). Citizens are then prohibited from donating to or dealing with these organizations. This provision may have included the anti-apartheid struggle in South Africa while the African National Congress engaged in violent resistance, the Sandanistas in Nicaragua, or those overthrowing the Pinochet regime in Chile (Leblanc 2001).

Given the wide definition of terrorist activity, it is possible that the Red Crescent Society, having helped a child the Act deems a terrorist, could be listed as a terrorist organization. This raises the same point as above about conflicts outside Canada being complex and potentially misunderstood, and this provision as a result targeting immigrant and refugee populations who are more likely to have strong connections to various organizations in their countries of origin.

[18] This might also include illegal nurses' strikes or road blockades by Aboriginal peoples (34).

c) Inability to Protect Military Security

Even if there was consensus that the stated goal of the legislation, military security, was actually its primary goal, as in the case of the *WMA* this legislation would fall short. Legal experts have argued that existing Canadian law would have been sufficient to capture the actions of September 11, including conspiracy to murder, attempted hijacking, or attempted murder – all before the planes took off (Roach 2003: 22, 23). Moreover, they have suggested that the inclusion of political and religious motive will make such crimes more difficult to prosecute since charges would necessarily be dropped if evidence clearly supported charges of murder, for example, but political or religious motive could not be proven beyond a reasonable doubt (Ibid.: 26). The inclusion of political and religious motive subjects the law to the problems of subjectivity encapsulated in the adage "One person's terrorist is another person's freedom fighter" (Makin 2001).

Concerns have been raised that The *ATA*, like the *WMA*, exploits public panic to enact unduly broad measures (Trotter 2001: 238). As in the case of the *WMA*, the broad definitions and harsh sentences (ss. 83.02, 04, 18, 23) of the *Act* (Russell 2001)[19] suggest that a goal of the *ATA* is to intimidate potential activists who participate in legitimate opposition activities and those such as lawyers who might help these activists, as well as to take key organizers out of circulation (M'Gonigle 2001; Trotter 2001: 243, 245). I suggest that whereas use of coercion against the anti-globalization movement prior to September 11 aroused public outcry, a greater degree of coercion is now possible since a 'state of exception' was created after September 11.[20] The impact of this can be seen in the two thirds of Canadians at the time the *Act* was created who believed that the fight against terrorism should have precedence over their rights and due process (Small 2001: 18).[21]

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[19] Unlike the *WMA*, The *ATA* limits detention without charge to 72 hours, but detainees can be released on condition, for example, that they won't associate with a particular organization (Hodge 2001). Compelled testimony at "investigative hearings," increased surveillance and other monitoring, and more severe punishment given to a regular offence that is considered a terrorist act are only a few examples (Austin 2001: 262; Galati 2001). There is also the stigma of being branded as unpatriotic or treasonous.

[20] The state of exception, following this idea, was created by politicians, citizens, and the media (though mostly the first and last), and even by laws such as the *ATA* which were also legitimized by it.

[21] Little has been written about Canada in this regard, but literature monitoring other countries can be suggestive. The US suggests that September 11 gave the Bush administration an opportunity to consolidate its power, as well as "the excuse" to go ahead with its hard right agenda. This agenda particularly targets opposition, either connected to al Qaeda or "just … people who oppose their [the US] state and its policies" (Herman 37, 38). It is not unrealistic to assume that a similar opportunity was presented to Canada and other states in the North which acted outside their usual boundaries in the name of "security." Authorities in the UK threatened to invoke British anti-terrorism legislation in the lead-up to the G-8 Summit in Edinburgh in 2005. Anti-terrorism legislation was also used by the FBI in a raid of an Independent Media Centre in 2004 on the pretext of an alleged act that "supported terrorism" having been committed there a year before. Almost 140 websites and radio stations were shut down as a result (Bowles 2004).

The *Anti-Terrorism Act* in Practice

The impact that the *ATA* has had on the anti-globalization movement in Canada is difficult to evaluate, and it was not the aim of this paper to provide conclusive analysis on this subject. That said, while the *ATA* has been used formally on only three occasions, this was not necessarily the intent of those who drafted it, and it seems nonetheless to have had some degree of impact on a more discreet level than that of the *WMA*.

The direct impact of the *ATA* on social movements and community organizing is very difficult to gauge at this point, yet some tendencies toward a discreet influence have emerged. Anecdotal, qualitative differences in the anti-globalization movement should be explored more rigorously, particularly an apparent shift from emphasis on mass demonstrations at key meetings to community organizing and the construction of alternative ways of interacting.

The amendment to the *ATA*'s definition of terrorism has likely been a significant factor in reducing the overt impacts of the *Act*, as has opposition to use of the *Act* later on after September 11.[22] It is important to note that this opposition was not anticipated and that the provisions in the amendment did not appear in the original bill, which implies that the federal government did not intend to allow them. Importantly, nor will the provisions necessarily preclude official restrictions on activism and organizing in the future: the *Act* is ready and waiting – perhaps for another crisis so that the 'state of exception' can be deepened and renewed legitimacy gained for the *Act*.

Moreover, the amendment and the remaining broadness and ambiguity of the *Act* leave ample room for more discreet restrictions on social movement and community organizing. First, the stigma facing immigrant organizing after September 11 cannot be underestimated. The portrayal of organizers in immigrant and other communities has been altered in the media and in public discourse. Second, the broadness and ambiguity of the *Act* mean that its parameters are not always clear to activists and organizers themselves. In a 'state of exception,' it seems that the right to dissent can also be self-denied, either through feelings of patriotism and a need to unite behind the common cause "for now," or through feelings of uncertainty, not knowing what rights remain and what punishments are possible. Furthermore, the potential consequences of an infraction in an age of racialized "terrorism" – related deportations, secret trials, and security certificates can have serious debilitating effects on organizing in immigrant communities in particular but in others as well. Eric Foner (2001) wrote in *The Nation* on 19 September 2001, that '[s]elf-imposed silence is as debilitating to a democracy as censorship' (53).

[22] This is perhaps the result of a miscalculation on behalf of the federal government, pushing the legislation farther than would be accepted by public opinion, even in this degree of a 'state of exception.'

Conclusion

In this paper I have examined the invocation of the *War Measures Act* in 1970 and the creation of the *Anti-Terrorism Act* in 2001 in the historic political-economic contexts out of which they arose, paying particular attention to the major social movement which appeared to be threatening the hegemonic economic project at the time. In conclusion, I will return to the five key points of the paper as outlined in the introduction.

First, I have suggested that in both cases a terrorist attack provided the federal government with a reason to create a 'state of exception' through which it could justify use of coercive force to reassert its hegemony in the face of the threat posed by the social movement, without sacrificing consent.

Second, I have suggested that the Acts are underpinned by a very limited conception of security and that a broader politicization of the concept of security is necessary in order to understand complex situations such as these with conflicting interests. In both cases, the federal government, through its security legislation, imposed what I call a *capital-centred model* of security, at the expense of a *citizen-centred model* – which the social movements had been struggling for. Both cases also politicized the popular concept of military security, shining light on the difference between its two components: concern for state borders and systems (and the reproduction of the capitalist state) and concern for keeping citizens' bodies from harm (and the citizen-centred model). Also clear are the conflicts generated in public opinion when these two concepts are joined, as well as the political expediency of their fusion for facilitating consent.

Third, I have suggested that the anti-terrorist legislation is unable to enhance even this problematic conception of military security, its stated goal. In each case, the existing law prior to the *Act* was deemed adequate by legal experts; the *Act* was expected not to enhance effectiveness, or even to hinder it (which was the case in 1970); and the *Act* (the 'solution') was overly broad in comparison to the terrorist threat (the 'problem'). This supports the argument that there was an ulterior purpose for the *Acts*.

Fourth, I have identified certain features of the anti-terrorism legislation that facilitate its use in restricting social movements. In both the cases examined, a broad definition of terrorism (*ATA*) or "unlawful" activity (*WMA*) left ample room for including legitimate political actions, which occurred in the case of the *WMA*. In both cases, a range of related offences was connected to the broad definition which could implicate not only activists but also those helping them, such as lawyers, which happened in the case of the *WMA*. In both cases, severe punishment was stipulated for violations, which intimidated activists in the case of the *WMA*. In both cases, "suspects" could be imprisoned for a certain amount of time without charge, which kept activists away from their work in the case of the *WMA*. Furthermore, these features equate the actions of the movement with criminal activity, which could limit public support for the movement, which also occurred in the case of the *WMA*.

Fifth and finally I have suggested that, while these similarities are significant, important differences between the two cases also exist, mainly as concerns scope. First, the scope of the terrorist attack was broader in the case of the *ATA*. Perhaps most significantly, it was a threat from outside the jurisdiction of those potentially affected by it. Second, the scope of the social movement was also broader, creating a threat for the hegemonic power from both outside the country and within it. Third, the legislation is much broader, including most prominently a definition and within it political or religious motive, property and economic security, and groups outside the country. Finally, the enforcement of the *ATA*, too, seems broader in scope to the extent that it extends into the realm of self-regulation and self-censorship. It also seems to have different effects on different communities, for example creating more serious obstacles to organizing in immigrant and refugee communities.

Combining these points, the paper suggests that each piece of legislation has imposed a model of security which is ineffective at protecting against threats to military security or to a citizen-based conception of security, but potentially helpful for protecting a capital-centred model of security. In each case, a terrorist act enabled the federal government to suspend the usual social consensus by creating a 'state of exception.' This allowed it to justify exercising increased coercive force in its struggle to maintain its capitalist hegemonic project in the face of a social movement which advocated a citizen-based model of security and which had formed a war of position against the hegemonic project. This coercion was legislated and justified through anti-terrorism legislation centred around broad definitions of terrorism and a threat of severe punishment for it. While this legislation did not protect military or citizen-based security, it did have the potential – and indeed has – intimidated and restricted the threatening movement, thereby protecting the security of its capital. While there are significant differences in scope between the two cases, and while definitive conclusions cannot be drawn within the purview of this short paper, the evidence presented here seems clear: these acts, and likely anti-terrorism legislation like them elsewhere, are designed directly or indirectly to protect the dominant economic project by criminalizing the social movements and community organizing that threatens it – in short, to criminalize dissent.

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