

Who will protect us from our protectors?



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Imagine that some intergalactic enemy attacks us. Nobody is safe. Ferocious green creatures land in stealth vessels, drill their ways into houses and, with their long, sharp fingernails, slaughter women who can't reach for their revolvers 'cause they are "safely stored" since the 1991 gun control law. The future of Canadiankind is at stake. The minister of justice introduces the KANADA bill ("Kanucks Against Nail And Drill Attacks"), granting the police new powers to protect us. Can we safely forecast that the new powers will soon be used against, say, drug dealers or cigarette smugglers? You bet.

A fascinating piece of reading published during the summer is the U.S. Department of Justice's *Report from the Field: The USA Patriot Act at Work*. The U.S. government tells us that its new powers (wiretappings, searches, et cetera) have stopped a few terrorist conspiracies. But the report also confirms that the new powers have been used to hunt fraudsters, computer hackers, "individuals operating unlicensed money transmitting businesses that sent money to . . . India," child pornographers and drug dealers.

The introduction, on page 2, tells the reader what to expect from the ostensibly anti-terrorist act: "Some of the examples in this report do not involve terrorism but instead detail how the Department has used certain provisions in the USA PATRIOT Act to combat serious criminal conduct . . ." As a brilliant PR coup, "USA PATRIOT" stands for "Uniting and Strengthening America by Providing

Appropriate Tools Required to Intercept and Obstruct Terrorism."

As usual—but with an unusually short time lag—the Canadian government has tried to plagiarize the American legislation. We don't have any official information about how the new powers assumed by the Canadian state were used against its non-terrorist subjects, but at least one case is known.

Give the state more power to control crime, and it will create more criminals

Instead of pursuing in this direction, though, let's consider a similar issue. James Watson is the Nobel Prize-winning discoverer of the structure of DNA. Now an old man, he explains that, several decades ago, he chose to teach at Harvard because it was a "girl-containing university," compared to "girl-less Caltech." At 39, he married a 19-year-old student (from another college). Although he is obviously not your typical stark, conservative, law-and-order type, Watson has been lately arguing for compulsory DNA fingerprinting: "If everyone's genetic fingerprint were taken," he says, "it would take away your liberty to commit crime."

It is easy to understand why one would be leery of new state powers that can be used against anybody, and not only against criminal Martians or barbarian terrorists. But why oppose new

state powers, like DNA fingerprinting, that can only fell the guilty (assuming there's no evidence tampering that results in the framing of an innocent)? If there are reasons to oppose the latter, they would *a fortiori* apply to the former.

Such reasons exist. Legal safeguards—that is, limitations of state power—are not meant to protect the guilty, but to prevent the innocent from being found guilty and to check the proliferation of the guilty and of peaceful criminals. The main consequence of DNA fingerprinting would not be to take away the liberty to commit crimes, but to give the state the capacity to create new enforceable prohibitions and obligations, to better enforce its maze of victimless crimes and to control its subjects more effectively.

The absence of ID papers and the unconstitutionality of searches without warrants are examples of traditional legal safeguards in Canada. If these safeguards had not been eroded over the past few decades, the 1991 and 1995 firearm controls could not have been enforced and, thus, would not have been adopted. How could the police follow a firearm owner during his whole life if there were no official, reliable ID papers to be required from a gun licence applicant? How could the cops check if guns are safely stored if they could not peep into bedrooms (for example, under the "inspection" excuses in the Firearms Act)?

The lessons of theory and experience are clear. Give Leviathan more power to control crime, and he will create more criminals. The abolition of legal safeguards may protect some individuals from some crimes, but this is in the same way as people are protected in a convent, an airport or a prison. **WS**

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New methods of fighting terrorists and monitoring criminals don't just threaten the guilty—they endanger the innocent, too