

Does Bill C-36 Give Police too Many Powers?

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Does Bill C-36 give police too many powers? Compared to what? There must be a framework to assess whether police were given too many powers as part of the Government's response to the terrorist attack on September 11. If we look at the issue only through the prism of the terrorist threat to national security, then it is tempting to maximize all available security apparatus. But if we were to examine policing as distinct from the military or CSIS which have the mandate for national security, that is, against external threats, then we have to consider the proper role of the civil police in a liberal democracy who are charged with keeping the peace among ourselves—with a domestic focus.

Civil policing is guided by fundamental principles which serve to protect our core democratic values—the rule of law, equality, transparency, accountability and respect, and the protection of human rights and civil liberties. The agitated discourse following September 11 would have us sacrifice these values on the alter of national security. The legislation, as finally passed by the Parliament, raises a series of questions.

Certainly, there is an expectation that civil policing will now serve the priorities of national security. Bill C-36 gave expanded powers to every domestic police agency not just to the RCMP or CSIS. Ward Elcock, the Director of CSIS, offered his opinion that CSIS expected to co-operate more with the domestic police now that they've been given new powers and could now pursue matters they could not before Bill C-36—perhaps suggesting that the civil police were now to be regarded as the enforcement arm of CSIS.

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If the civil police adopt the national security mandate in the exercise of their existing and expanded powers, what will happen? Do the potential advantages exceed the potential for harm? The terrorist threat is real but is this the answer?

What happens when the national security mindset—which looks at external [foreign] threats—is turned on the domestic arena? Will there be a greater level of targeting the so-called “outsiders” in our midst? The participants at the community forum were unanimous in their concerns about and experiences of racial profiling. Police academics frequently point to a police subculture that profiles non-mainstream groups as deviant and a threat. What will happen now with the added impetus of a terrorist threat?

Finally, what of oversight? The anxieties about national security increase our tolerance for expanded police powers and greater potential intrusion on our civil liberties. The possibility that the burden might fall more heavily on the racialized or marginalized members of the community has caused some discomfort, but it has not produced a successful challenge to the Bill. There should have been an equivalent increase in civilian oversight measures to balance the expanded police powers, but the opposite appears to be true. The municipal police forces have civilian governance bodies which may play a proactive role if they were adequately resourced, but the RCMP and OPP are balanced only by complaints-based oversight bodies. CSIS has a civilian oversight body, put in place precisely to deal with operational excesses by the RCMP when that agency had the sole national security mandate. The expanded powers flow to all these agencies, and especially in the case of the RCMP, without a commensurate increase in civilian accountability.

Perhaps the time has come for a more proactive process of police accountability—rather than waiting for civilian complaints or under resourced governors to discover the right questions to ask. Auditing of police practices against standards and stated goals may well provide the framework that will allow us to answer not whether Bill-36 gave police too many powers but whether all police powers are effectively and appropriately exercised.