

The Release of Jihadists from Prison: Unanswered Questions from the 2000s

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ABSTRACT

Questions about the potential impacts of releasing prisoners should have been asked back in the 2000s, when a number of freed jihadists went on to spread their deadly ideology, encouraging the desire to fight that we have seen demonstrated by today’s killers. The following tragic examples may help to clarify the consequences of these releases.

Keywords: prison, jihad, Chechen Network, radicalization, GIA

La liberación de los yihadistas de la prisión: preguntas sin respuesta

RESUMEN

Las preguntas sobre los posibles impactos de la liberación de prisioneros deberían haberse hecho en la década de 2000, cuando varios yihadistas liberados difundieron su ideología mortal, alentando el deseo de luchar que hemos visto demostrado por los asesinos de hoy. Los siguientes ejemplos trágicos pueden ayudar a aclarar las consecuencias de estos lanzamientos.

Palabras clave: prisión, yihad, red chechena, radicalización, GIA

将圣战分子从监狱中释放：2000 年代留下的未解答的疑问

摘要

有关因释放囚犯而造成的潜在影响的质疑本应在2000年初就被提出，彼时大量被释放的圣战分子继续散播极端意识形

态，鼓励为我们如今所看到的、因圣战造成的杀戮而战。以下悲剧实例可能会帮助阐明因释放这些囚犯而造成的后果。

关键词：监狱，圣战，车臣网络（Chechen Network），激进化，GIA

It comes as no surprise that, as this article is being written, another attack, this time in Liège, has plunged Europe once more into mourning. Since the defeat of the Islamic State in Syria and Iraq, the battlefield has moved closer than ever, to outside our school gates and our cafés, and the enemy, clearly identified, can be found within our own borders.

While the worst-case scenario is never certain to happen, the imminent release from jail of twenty radicalized prisoners is deeply worrying. Paris Prosecutor François Molins has warned the public that “we are running a serious risk of seeing the release from prison, as their sentences end, of people who have shown absolutely no remorse, and who may very well be further hardened to their cause by their time in jail.” The Minister of Justice, however, has sought to play down the risks, claiming that “while we are not able to retain in prison someone who has served their sentence, we certainly are in a position to track their movements extremely closely, such that the slightest lapse can lead to them being brought back before the courts.”

The Release of Radicalized Prisoners

Questions about the potential impacts of releasing prisoners should have been asked back in the 2000s, when a number of freed jihadists went on to spread their deadly ideology, encouraging the desire to fight that we have seen demonstrated by today’s killers. The following tragic examples may help to clarify the consequences of these releases.

The So-Called “Chechen” Networks

In 2006, twenty-five people were tried for belonging to a network based in France recruiting Islamist fighters for the Caucasus, and for preparing an attack involving the use of chemical weapons. Searches revealed a range of materials necessary for making dirty bombs. The actions of three of the main protagonists, M, B, and S, are worth exploring.

Because they were at risk of being tortured in Algeria, the European Court of Human Rights refused to allow the extradition of S and B. They were subsequently placed under house arrest in France.

S then continued to disseminate his ideology, giving interviews to the local press, most notably stating that “for Islamists, suicide attacks with an economic impact are the best way of continuing the fight.” Then, evading the controls imposed by the courts, he fled to Syria where he became a leader of Jund al-Aqsa, a jihadist group with close links to the Al-Nusra Front, the Syrian branch of Al-Qaeda. He was eventually killed in a US strike.

B requested asylum in Switzerland, a request that the Swiss authorities refused. Extradited to France, he was given a fourteen-month custodial sentence on June 27, 2017 for having broken the conditions of his house arrest. He will be released later this year.

Meanwhile, M took to preaching the Salafist doctrine, in particular via a blog and a series of videos posted on YouTube. His message, while never quite crossing the line into criminality, identified the numerous enemies of Islam: “Among Islam’s greatest enemies are the freemasons [...] the Crusaders, [...] the Jews [...], who have always employed sorcery as a way of diverting and harming believers.”

The labeling and stigmatizing of Muslims as enemy conspirators acts as a powerful recruiting tool for the Salafists, who also leverage unemployment, dilapidated neighborhoods, and the Palestinian cause. Immersed in medieval beliefs in sorcery and a life of religious discipline that is unsustainable in Western society, the new recruit becomes convinced, for example, that if he speaks to an unbeliever or looks at a woman, he may be reincarnated as a pig or condemned to burn in hellfire for all eternity.

Having been an active jihadist, M became a kind of recruiting officer for the cause. For his followers, his past actions and the numerous articles written about him confirmed the purity and strength of his commitment. His reputation could only grow. A belief in sorcery and in the physical incarnation of Evil in the twenty-first century might seem somewhat amusing until we remember that it is the promise of salvation from Hell, earned by carrying out attacks on the enemies of Islam, that drives all those who put themselves forward to be martyrs. It is undoubtedly that very promise that motivated the murderers who carried out the attacks on the Bataclan theatre and in the streets of Nice.

From the 1995 Attacks to Ansar al-Fath

SB was tried and sentenced to ten years in prison for his involvement in the 1995 attacks in Paris. Notably, he appears to have been responsible for the recruitment of Khaled Kelkal, and he was behind the introduction of the Armed Islamic Group (GIA) networks into Europe.

Following his release from prison in 2003 after a reduction in his sentence, his network, made up of his former prison mates, went on to help finance the Islamist cause, particularly the war in Iraq. His Ansar al-Fath (Partisans of Victory)

network systematically robbed prostitutes operating in the Bois de Boulogne park in Paris. Arrested and tried, he received a fifteen-year prison sentence for financing terrorism and for planning terror attacks in France, notably on the metro and at Orly Airport. He will be released in 2020 ...

Chérif Kouachi

Chérif Kouachi's Algerian parents died when he was very young, and he was brought up in a children's home. In the early 2000s, he was indoctrinated by FB, the leader of a Salafist group. When arrested shortly before setting off to Iraq to wage jihad, he thanked investigators for saving his life by preventing his departure. His remorse at the time seems to have been genuine.

In prison, Kouachi came to know DB, an Algerian who had been stripped of his French nationality and detained in France since his return from Afghanistan, where Al-Qaeda appears to have tasked him with setting up operational cells in France and across Europe. Kouachi's psychological weakness made him easy prey and a good candidate for martyrdom. Tragically, the consequences of this are all too well known. As for DB, he is due for release this summer and will be deported to Algeria.

Larossi Abballa

At the time of his arrest in 2011, investigators found a diary with a list of police stations and tourist sites around the Yvelines department near Paris, all potential targets. The investigation brought to light some disturbing exchanges: "Do you really think they need us over there in Pakistan? By the will of Allah, we shall be given the means to raise the flag here in France"; "It's time to get to work"; "I want blood, as Allah is my witness." It has also been established that he took part, from late 2010 to early 2011, in religious and physical training activities in parks in Val d'Oise and Seine-Saint-Denis. In a more discreet episode, which took place in the woods of Cormeilles-en-Parisis (Val d'Oise), the group's training consisted of slitting the throats of rabbits.

At a time when France was still reeling from the attacks carried out by Mohamed Mehra, Abballa's actions were punished by a mere three-year sentence, six months of which were suspended. Abballa left court a free man, having already served all of his sentence on remand. What happened next? He murdered two police officers in their own home, in front of their little boy.

The Treatment of Radicalized Individuals upon Release from Prison

While the use of preventive detention for the most radicalized individuals is a legal no-go area, we should also guard against believing that the blanket surveillance of freed prisoners is a miracle solution.

Preventive Detention

Constitutional concerns and the ratification of a number of international treaties prevent us from using preventive detention for radicalized individuals when their prison sentences come to an end. There are also several reasons to doubt the effectiveness of such a measure.

In order to determine the degree of danger posed by each freed prisoner, their profiles are assessed. This task is carried out by a judicial officer who, in the absence of formal proof of their threat, would never dare to apply preventive detention. We already know the practical limitations we are up against from our experience with minimum sentences. Sold as a response to the challenge of petty crime and delinquency, they have been barely used by magistrates, who are sometimes reluctant to pronounce custodial sentences. However, the biggest problem is a legal system and a prison system that are on their last legs. It is difficult for the courts to incarcerate people—even with the necessary legal changes—when the government has not created enough prison places.

Another issue that should not be forgotten relating to the assessment of prisoner profiles is that these individuals can go from bad to worse very quickly. The practice of dissimulation and the inadequacy of the profiles make the evaluation process very uncertain and unreliable over time. Inevitably, mistakes will be made. Nobody is suggesting that imprisoning people without reference to a specific offense could be a viable long-term solution. A return to the days of “*lettres de cachet*” (royal prerogative) is unlikely any time soon.

Surveillance

On the question of tracking jihadists after their release, the French Minister of Justice has set her colleague at the Ministry of the Interior an impossible challenge. The prison intelligence service is simply required to hand a kind of “delivery note” to their counterparts at the DGSI (General Directorate for Internal Security), who are then responsible for finding 500 officers every year to follow the twenty jihadists released over the same time frame, and all set against the backdrop of a two trillion euro national debt ...

In addition to the logistical issues, the surveillance of these individuals runs into a number of practical problems: the volume of work, the simplicity of the modus operandi, and the surveillance techniques used.

- **Volume of Work**

Creating a priority ranking scale to enable the police to follow only those referred to in the press as “masterminds” is fanciful. Not even in North Korea can the intelligence services read people’s minds. Human nature is unpredictable, all the more so in the case of radicalized individuals who, in most cases, are highly suggestible.

The radical nature of their religious practice and the fear of death and of the hellfire that awaits them for the sins they have committed resonate with the notion of attaining salvation through death as a martyr. Mohammed Mehra set the alarm bells ringing when he told us: “I love death as you love life.” Taken together, these beliefs accelerate progression from words to deeds in a way that is difficult to predict.

- Simplicity of the modus operandi

The simplicity of the modus operandi in terror attacks (knives, cars, etc.) makes the detection of imminent action almost impossible. This is a very different scenario from the preparation of a bomb attack, a robbery, or a drug deal, all of which require a variety of observable actions constituting a criminal act. Most of the elements appear after the act is committed. But how does one “detect” an individual leaving his home with a knife or driving off in his car?

- Surveillance Techniques

There are two types of surveillance, technical and physical, which must be used together in order to be effective.

The surveillance of internet communications is made more difficult by the use of software like Tor (allowing anonymous browsing), which was recommended in *Dar Al-Islam*, the magazine produced by the Islamic State. Furthermore, it is possible to sign up for a telephone subscription in a Tabac without any form of identification. This allows ordinary data allowances to be used to surf the internet with complete anonymity. Gone are the days of easily traceable payments made in an official France Télécom outlet.

Some jihadists change telephones several times a week and borrow those of colleagues, friends, and family members when they make sensitive calls, in much the same way as drug traffickers and armed robbers. At the same time, writing up an application asking a magistrate for authorization to wiretap a suspect’s telephone line involves writing pages of justifications—it is not a fair fight. And it is only made worse by the proprietary encryption keys used in applications such as Telegram and WhatsApp, which make conversations inaudible for investigators.

Physical surveillance is no easier. Tailing a suspect in those neighborhoods rightly named “the Republic’s lost territories” is virtually impossible. Any outsider is spotted and sometimes even accompanied. This kind of surveillance inevitably appears to be a poor option, and every failure will be seen by the French public as an error of strategy on the part of the government.

How Can We Escape This Nightmare?

Systematic Deportation of Foreign Nationals and Dual Nationals

Legislators must be encouraged by the government to look again at the forfeiture of French nationality and the deportation of foreign nationals found guilty of terrorist acts. The question should be addressed dispassionately, but in the full awareness, based on recent events, that any individual released from prison could perpetrate another attack or, on a more passive level, recruit more individuals to the Salafist cause, the breeding ground of potential martyrs. Every attack carried out by a dual-national repeat offender will undermine the executive's position until the point that it becomes untenable. An attack with sufficient emotional impact on the public could trigger a huge reaction, possibly with serious consequences.

Agreements prohibiting the use of torture or capital punishment for those stripped of their French nationality and sent back to their countries of origin, or help in constructing specialized holding centers, could facilitate the execution of these deportations. These agreements could be validated at a supranational level by the ECHR (European Court of Human Rights). Furthermore, the majority of countries signing such agreements would be non-secular states and would therefore be far more suitable and have far greater legitimacy than France in attempting to deradicalize the individuals concerned.

The Treatment of Jihadists by the Courts and the Use of Individualized Sentencing

The *Arpaillange Report* in the 1980s stated that: "The purpose of criminal sanction is at one and the same time to punish, to intimidate, to eliminate or at least temporarily neutralize, and to reform and rehabilitate the offender, while simultaneously acting as a deterrent to their would-be imitators. In reality, these varied functions are hardly compatible; the courts impose measures which often neither intimidate nor rehabilitate. The courts no longer dare to punish, they lack the means to deal with offenders, with the result that these crossed purposes render the legal process equivocal, at times perverse, and ultimately ineffective ..."

The eminent criminal law expert, Jean-Claude Soyer, has pointed out that, with the new Code pénal introduced in the 1990s, "symbolically, minimum sentencing and attenuating circumstances no longer exist. A repressive judge is now constrained only by the legal and theoretical maximum; as these are often set very high, he is in effect allowed considerable discretionary powers. This conjures up—oh what irony!—an old adage from the Ancien Régime: 'In this realm, all punishment is arbitrary.'"

In terrorism cases, the individualization of sentences by judges must be brought under control. A person cannot be guilty of "slight" participation in a

terror attack. Direct or indirect participation in a terrorist enterprise that has previously murdered children in schools and killed entire families and passers-by in Nice makes one an accomplice and liable for any act claimed by those terrorist organizations. No degree of leniency can be allowed to influence sentencing. A minimum sentence must be set, with the judge retaining, naturally, the power to assess the individual's degree of guilt. A person whose goal is to terrorize the nation should not be able to leave prison after only three years.

Exceptional legal measures must be enabled specifically in the case of obviously dangerous international terror groups. These must be accompanied by new ways of ascertaining that a suspect poses no risk in the cases of those who have temporarily come under the influence of a recruiter. For them, a short prison sentence is counterproductive. However, building such a system faces severe restrictions when the state is two trillion euros in debt and when the dedication of court and prison staff is matched only by the paucity of their means.

The Development of New Means of Proof Derived from Common Law

If we wish to ensure that an exemplary sentence can be awarded, we must be able to provide irrefutable evidence of an individual's guilt. The pragmatism of the common law system allows investigators to make use of tools that are as effective as they are robust. Inciting a crime is prohibited in European and French law because this way of producing evidence is considered underhand, acting as an obstacle to a fair trial. As the great jurist Jean Carbonnier said: "Punches below the belt are banned; simple ruses of war are not."

The criminal division of the French court of appeal (the Cour de Cassation) recently recalled this principle when it deemed acceptable a method used by the police that was intended to enable the arrest of a particular offender. The investigators presented themselves as potential buyers of a vehicle in response to an advertisement, and arranged to meet the car thief in order to detain him; this was not considered a stratagem or a machination on the grounds that it was aimed not at inciting the individual to commit an offence but simply at arresting him. Indeed, the offence of receipt of stolen goods had already been committed before the police contacted the individual in possession of the stolen goods. This is clearly a long way from an undercover officer at the heart of a criminal network, manipulating the members into committing a crime.

By dint of the same principle of fairness in the production of evidence, total legal immunity for individuals who express remorse would allow the dismantling of terrorist structures active on French soil. The vulnerability and suggestibility of these individuals make it possible for them to be manipulated into becoming "martyrs." Why not use these weaknesses in defense of the nation?

Similarly, rewarding the passing on of information enabling charges to be brought against future perpetrators of terror attacks would be effective in the

housing projects where money doesn't just talk, it shouts. In this specific form of warfare, the use of strictly supervised ruses of war does not seem excessive if it allows us to prevent bloodbaths.