

Unintentional Effects of Counter-Terroristic Legislation*

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Abstract

The paper demonstrates how a creation of high power incentives in Russian police in 2011 led to the misuse of counter terroristic legislation of 2002.

Keywords: .

*The foremost gratitude goes to...

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Structure

1	Introduction	2
2	Literature review	4
2.1	Economics of terrorism	4
2.2	Economics of deterrence	6
3	Institutional background	6
3.1	Counter-terroristic legislation in Russia	6
3.2	The law enforcement authorities reform of 2011-2012	8
4	Conceptual framework and predictions	8
5	Empirics	8
5.1	Data	8
5.2	Descriptive statistics	8
5.3	Empirical Strategy	8
6	Results	8

*“Those who would give up
essential Liberty, to purchase a
little temporary Safety, deserve
neither Liberty nor Safety.”*

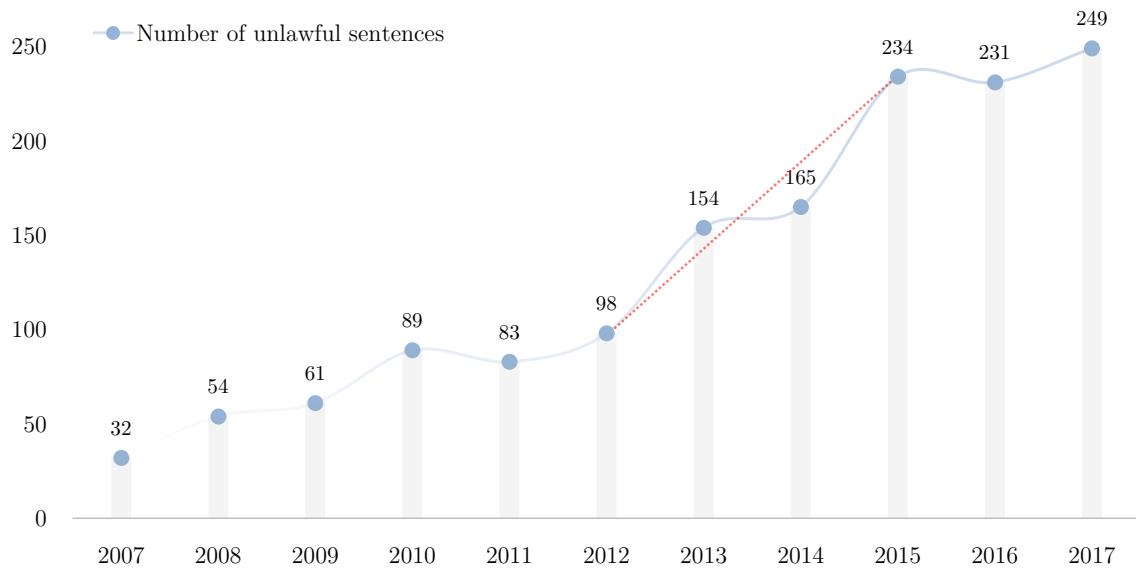
— Benjamin Franklin (1755)

1 Introduction

In May 2015 a teenager wrote *“I hate”* on a popular Russia social network service. As a result of that a young man has been accused of extremism. The juvenile was lucky. The court sentenced him to five months of correctional social work and a penalty of a 10% of yearly salary, even though a possible punishment for such crime is five years in prison (SOVA 2015). In April 2018 a nurse received a two year sentence for a joke that she posted on-line (Svoboda 2018). Same year later a recent college graduate got under an investigation for several posts that she “liked” in 2014 and 2015 (Prova 2018).

These three absurd cases and hundreds of others like them (Figure 1 and 2 visualizes information from a human right watch organization) are investigated in accordance with article 282 of Russian criminal code. The article was one of many legislative initiatives introduced in 2002 after a series of gruesome terrorists acts. The article was meant to give the authorities enough freedom to act on extremism in its first stage. A decade later the criminal justice system, put the article to a better use. Because of vague definition of extremism, the police, prosecutors and the judges started to use the article as a safe and easy way to advance their career.

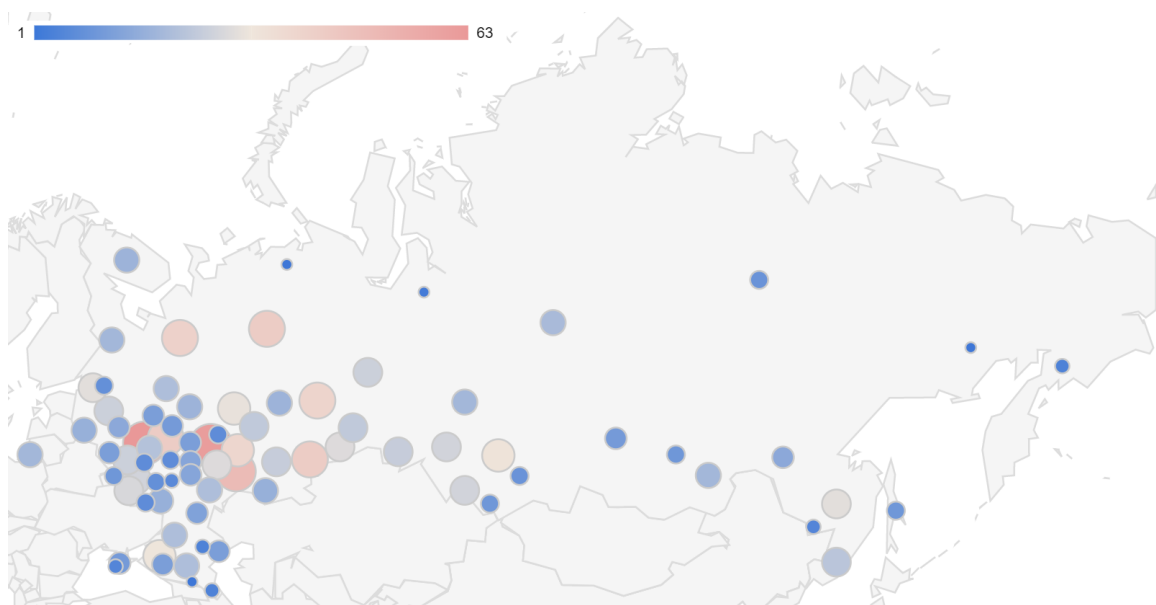
Figure 1: Misuse of counter-terrorism in Russia



Notes: Dots visualize the number of unlawful sentences in Russia. Red line indicates an unusual growth during 2011-2015.

Source: SOVA Center for Information and Analysis.

Figure 2: The misuse of counter-terrorism in Russian regions



Notes: The total number of unlawful convicts in different Russian regions from 2007 till 2018.3.

Source: SOVA Center for Information and Analysis.

2 Literature review

2.1 Economics of terrorism

While the first incidence on the terrorism – a violence and intimidation, especially against civilians, in the pursuit of political aims – was reported in 1 BC, the economics of the terrorism has a shorter history.¹ The literature has primarily concentrated on two areas: the microfoundations – understanding why organizations employ terrorist tactics – and the macroeconomic causes and consequences of these tactics. A separate stream literature focuses on the relationship between terrorism, globalization and democratization. All three areas are considered in turn.

Even though terrorism might at first appear as futile, non-organized acts of destitute and oppressed men, terrorist organizations behave rationally (De Mesquita 2005). It is a rational choice of employment. The terrorist organizations tend to consist of educated, middle class member. Terrorism acts are usually performed by competent, well-socialized young men (Krueger and Malečková 2003).

It might seem that scholars have studied terrorism from a wide variety of perspectives. Guerra-Pujol (2012) notes that terrorism has been studied from the prospects of law (e.g., Baker and Kavanagh 2005), game theory (e.g., Berman et al. 2011), history (Astore 2011), probability theory (e.g., Sunstein 2003), story-telling (e.g., Frakt 2011), and even marine biology (Wade 2012). However, the attention of scientific community is entirely concentrated on the "bad guys", while the "good guy", the ones who fight the terrorism on daily bases, are ignored.

The symptoms of this behaviors is very well demonstrated by Director of the National Center for the Study of Terrorism and Responses to Terrorism (START) and Professor in the Department of Criminology and Criminal Justice at the University of Maryland. LaFree and Dugan (2009) writes *"Although social science research on terrorism has expanded dramatically, especially since the 1970s, the number of studies based on systematic empirical analysis is surprisingly limited... ...theoretical work that incorporates terrorism and collection of valid data on it has lagged behind theoretical work on other criminological subjects."* The author complains that while terrorism is indeed studied extensively, it is still not enough and even more attention is required. In fact, almost all researchers are calling for interdisciplinary response

¹Laqueur (1977, pp. 7-8) describes Jewish terrorists, Zealots-Sicari, who incited a riot which led to a mass insurrection against the Roman Empire in 1 BC. Concurrently, Rapoport (2001), one of the founding figures of modern terrorism studies, notes terrorism in its current form first appeared in 19th century Russia, where young intellectuals, engage in a violent struggle against the Czar. *"The doctrine of Russian rebel terror involved extranormal acts of violence or acts designed to violate conventions that regulate violence, namely rules of war that enable one to distinguish between combatant and noncombatant. The Russians called themselves terrorists rather than guerrillas precisely because guerrilla targets were military and theirs were not. A new form of publicity was necessary because spontaneous mass uprisings had become impossible, and revolutionaries were known as "idle word-spillers". Terror would command the masses' attention, arouse latent political tensions, and provoke government to respond indiscriminately, undermining in the process its own credibility and legitimacy..."*

in understanding terrorism, effective calling for a new area of science that would be exclusively committed to terrorism.

However, while terrorists keep staying what they are, the fighters of the terrorism are getting more power and less supervision every year. Societies that prefer to think of themselves as the main fighters with terrorism tend to extend the capacity of law enforcement bodies without parliamentary debates or public discussion.² Nevertheless, without creating a new area of science it is already known enough about what non transparency, lack of supervision and unlimited power leads to (e.g. Acemoglu and Robinson 2012). One really does not need to be a specialist in game theory to know that an exorbitant power will be abused if one waits long enough. Yet there is only one 15 years old paper by Stuntz (2001) who discuss how redistributing police power from state to federal level in the US might lead to serious issues of misconduct. The author writes *"When it comes to minimizing misbehavior, local police departments have two large advantages. First, they are democratic. Second, they operate under severe resource constraints. The first characteristic means that local police are not likely to abuse people in ways most of the citizenry finds objectionable. (It also means they are likely to abuse people in ways most of the citizenry finds attractive). The second means that local police do not have time to harass people for fun or out of spite-these things can of course happen, but they are not likely to happen often. The FBI has neither characteristic and hence neither advantage. Shifting power to the FBI, while leaving the rest of the system untouched, might make law enforcement both less accountable and more prone to go off on abusive larks."*

Development of IT over 15 years added a flavor to the statements cited above. Essentially what some societies do today is they take young talented mathematically inclined students and turn them into professional hackers. They are taught to overcome security systems and steal private and public information; that effectively put them above both statute and common law and make them unafraid of any repercussion, The only constrain to their power is administrative supervision within the government, which in turn gradually becomes less transparent and less accountable. Put differently, we have young talented hackers who we know are capable of penetrating the most modern systems are accountable only to old school internal supervision, which were easily played by run-of-the-mill police officers. Before if an abuse of a minority if necessary could have been easily traced back to a police officer, and even in the presence of public control and reasonable level of transparency there still were many cases of misconduct. Modern special services operate in very different way. Now we have the smartest of us, working in complete shadow and their misconducts can not be traced. Think of Fancy Bear hacking the US elections (Baren 2016) or mysterious behavior or Lockheed stocks price few minute before Trump's verbal attack on the company (Axe 2016). And these are the ones we know of, yet how could

²A good recent example is a recently introduced Rule 41 that drastically increased the surveillance capacity of the FBI in the US (Orcutt 2016).

we know more if nothing is beyond the reach of those who misconducts and they can do practically anything in today's digital world and no trace of it will ever be found. Hacker also very often turn rouge. The case we know about, precisely because the hacker wanted it this way, is NSA's former employer Edward Snowden (Poitras 2014).

Simple ulcer kills much more people every year than terrorists³, but those deaths do not lead to creation of special forces with virtually unlimited power and budget, nor wars are declared. In this sense, a very unfortunate and natural conclusion comes to mind. The terrorists won. The societies that suffered the most are so scared that they lost the sense of proportion. If one wants to treat the society as a living being, a doctor would ascertain that this being is in a state of obsession (Rachman 1997)⁴.

2.2 Economics of deterrence

3 Institutional background

3.1 Counter-terroristic legislation in Russia

The radical movements that engage in violent and illegal, or terroristic, activity, were historically first created in 19th century Tsarist Russia, where young intellectuals, mostly staunch positivists, began to engage in a violent struggle against the Czar. Even though the origin of the term "terrorism" is attributed to the settings of the French Revolution, the word was firstly used with its modern connotation by a Russian movement Narodnaya Volys (The People's Will). Rapoport (2001), one of the founding figures of terrorism studies, writes *"The doctrine of Russian rebel terror involved extranormal acts of violence or acts designed to violate conventions that regulate violence, namely rules of war that enable one to distinguish between combatant and noncombatant. The Russians called themselves terrorists rather than guerrillas precisely because guerrilla targets were military and theirs were not. A new form of publicity was necessary because spontaneous mass uprisings had become impossible, and revolutionaries were known as "idle word-spillers". Terror would command the masses' attention, arouse latent political tensions, and provoke government to respond indiscriminately, undermining in the process its own credibility and legitimacy..."* In other words, the idea of terrorists was that disproportional response by the government would incite the bigger movement against it. A sharp contrast to the world we live in today, where people welcome anti-terroristic responses and the bigger they are the better. In some sense, the Western world, with which we associate the ruling of law, transparency and balancing of the political power is transforming into something very different. Something that Russia has been for centuries.

³An average yearly death-toll from 1970-2015 is about 180 and half of it comes from Middle East (RAND 2015).

⁴In fact, "A cognitive theory of obsessions" is much better read than "Research on terrorism and countering terrorism" for understanding terrorism

Early 1990th was a time when Russians had the chance to form new truly participatory democracy. However, the collapse of the Soviet Union made the question of national borders a number one priority for newly emerged states. The identity of the citizen of the Soviet Union had to be substituted with new national identities within a short period of time. The problem was exacerbated by the fact that, on one hand, some newly emerged states had never historically been independent so that local national leaders never knew political responsibility, and on the other, the political structures within newly emerged states were still developing and unbalanced. There were no rules. All of it led to violent ethnic conflicts. Oppression of Turkish population in Ferghana (Uzbekistan), violence in Sumqayit (Azerbaijan), a conflict between Armenians and Azerbaijanians, and practically a civil war in Tajikistan. The conflicts were gradually moving up north to the Caucasus inciting at first the conflict between Ossetian and Ingushes and then two Chechen Wars (1994 – 1996 and 1999 – 2009), the bloodiest confrontation in Europe since World War II (Russell 2005).

Back then Russia's new political structure was still very young and susceptible to changes. Conflict in Chechnya and never ending acts of terror made Russians willing to exchange freedom for security much earlier than the Western societies had to. During the 1990s the government's priority was economy, macro stability and structural reforms. Army, special services and generally law enforcer were under financed and in disarray. Chechen wars within Russian border took the government by surprise. In 1999 when Mr. Putin took over the fist thing he did was asking for help from disinterested and self-satisfied "Leader of the Free World" by writing an article "Why We Must Act" in The New York Times (Putin 1999). Help never came.⁵ Eventually Russia won the war but price of that was a not only lives but something more subtle.

In 2002 two federal laws "*On Countering Extremists Activity*" and "*On amendments and additions to the legislative acts of the Russian Federation in connection with adoption of the Federal Law "On Countering Extremist Activity"*" were passed by the Parliament after a series of gruesome terrorists acts. It was the biggest counter-terroristic legislative initiative to the date. Representatives of 15 human rights organizations and High Commissioner for Human Rights in the Russian Federation were protesting against it, reasoning that the initiative oppose seven articles over the constitutional Russian Federation and the number of International Human Rights

⁵People in the West found very hard to understand the consequences of the collapse of socialistic bloc even in the Balkans and Central Europe. Understanding conflict in Chechnya would require comprehension of ethnic implications of the breakdown of the Soviet union and federative structure of Russia. Western readers gravitated to have deeply romanticized perception of Chechens and their fellow mountain peoples as they did, for example, of the native Indians. In reality Chechens was the first attempt to create worldwide caliphate in the modern time. Chechens terrorists were lavishly financed by foreign Islamic fundamentalist. Today the same forces created the ISIS. The West had no interest in helping Russians. The narrative where Chechens were fighting against "bad Russians" made more sense. For completeness, however, it has to be noted that Chechens did suffer oppression and even genocide by pre-Imperial, Imperial and Soviet Russia. However, general historical context matters. See, for example, Tolstoy (1912).

Instruments (Stavitskay 2002). Those law were just the beginning.⁶

7

3.2 The law enforcement authorities reform of 2011-2012

4 Conceptual framework and predictions

5 Empirics

5.1 Data

The study uses cross regional variation during the period 2012–2015 to identify potential reasons for the police abuse. The database uses several publicly available sources. Federal Repository of Judicial Statistics provides information on regional legal literacy which is proxied byT

number of people convicted and cases considered on the article 282.

Russian Federal State Statistics Service – the governmental statistics agency – provides information on number of municipal servants, doctors, regional GDP

fVariables from :

5.2 Descriptive statistics

5.3 Empirical Strategy

6 Results

⁶Yusupova and Idrisov (2015) and Sobolev (2010) contain lists of federal laws, interested reader can take a look. Some laws got attention in the Western media, e.g. “Bloggers Law” (MacFarquhar 2014), “Big Brother law” (The Economist 2016). The reader have to keep in mind that Western media covers only materials that it can reasonable well explain to an average reader within the length of one article. It naturally creates misrepresentation; media always have to put news into a limited set of narratives. It is a loop. Media creates unrealistic narratives and then has to follow them. A curious phenomenon on its own. Let me label it “coverage distortions” and suggests the following. These distortions are uninternalized byproduct of deregulated media, just as air pollution is uninternalized byproduct of driving. It is privately optimal for small news producer to simplify news about foreign places to the point of distorting them, yet they disregard the “pollution” they impose on the rest of society. In aggregate, if everyone acts like this there is very little place for the objective exposition. Institution of reputation helps. Facebook’s newsfeed with hundreds of “small” news producers is a great example of the lack of reputation and described “tragedy of the commons” Put differently, news producers are not there to explain, so never build your understanding on it. Many people understand coverage distortions. Most do not. Special services use it to expand their budgets and authority. Terrorism is just an excuse for some people to get more power and for some to advance their careers

⁷Transition apart from very high economic costs and high social costs. Those born at the start of transition are 1 cm shorter than those born before or after, reflecting factors like stress or malnourishment, which is compatible to growing up in a war zone (European Bank for Reconstruction and Development 2016).

References

- Acemoglu, Daron and James Robinson (2012). *Why nations fail: The origins of power, prosperity, and poverty*. Crown Business.
- Astore, William J (2011). *Mark Moyar, A question of command: Counterinsurgency from the civil War to Iraq*.
- Axe, David (2016). *Someone Began Dumping Stock Before Trump Attacked Lockheed*. Online publishing platform "Medium".
- Baker, Stewart Abercrombie and John Kavanagh (2005). *Patriot debates: experts debate the USA Patriot Act*. Amer Bar Assn.
- Baren, Dale (2016). *A Truly Fancy Bear: Did Trump win because Russia hacked the election?* Online publishing platform "Medium".
- Benjamin Franklin (1755). "Pennsylvania Assembly: Reply to the Governor". In: *Votes and Proceedings of the House of Representatives 1756*. URL: <https://founders.archives.gov/documents/Franklin/01-06-02-0107>.
- Berman, Eli, Jacob N Shapiro, and Joseph H Felter (2011). "Can hearts and minds be bought? The economics of counterinsurgency in Iraq". In: *Journal of Political Economy* 119.4, pp. 766–819.
- De Mesquita, Ethan Bueno (2005). "The Quality of Terror". In: *American Journal of Political Science* 49.3, pp. 515–530. DOI: [10.1111/j.1540-5907.2005.00139.x](https://doi.org/10.1111/j.1540-5907.2005.00139.x). eprint: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1540-5907.2005.00139.x>. URL: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-5907.2005.00139.x>.
- European Bank for Reconstruction and Development (2016). "Transition report 2016 – 17. Transition for all: Equal opportunities in an unequal world". In:
- Frakt, David Jason Rankin (2011). "Mohammed Jawad and the Military Commissions of Guantanamo". In: *Duke Law Journal* 60, p. 1367.
- Guerra-Pujol, FE (2012). "Logic of Terrorism, The". In: *Barry L. Rev.* 18, p. 1.
- Krueger, Alan B. and Jitka Malečková (Dec. 2003). "Education, Poverty and Terrorism: Is There a Causal Connection?" In: *Journal of Economic Perspectives* 17.4, pp. 119–144. DOI: [10.1257/089533003772034925](https://doi.org/10.1257/089533003772034925). URL: <http://www.aeaweb.org/articles?id=10.1257/089533003772034925>.
- LaFree, Gary and Laura Dugan (2009). "Research on terrorism and countering terrorism". In: *Crime and Justice* 38.1, pp. 413–477.
- Laqueur, W (1977). "Terrorism. Weidenfeld & Nicolson. London. p, 231". In: *Hoffman, B.(2006) Inside Terrorism. Revised and Expanded Edition. Columbia Press. New York* 268.
- MacFarquhar, Neil (2014). "Russia Quietly Tightens Reins on Web With "Bloggers Law"". In: *The New York Times*. (Accessed on 12/27/2016).
- Orcutt, Mike (2016). "Congress Is About to Expand Government Hacking Powers". In: *MIT Technology Review*. (Accessed on 12/29/2016).

- Poitras, Laura (2014). *Citizenfour*.
- Prova (June 2018). “I finished high school with a gold medal, and college with an academic distinction. Now I’m a criminal” (in Russian language). <https://pravo.ru/news/205109/>.
- Putin, Vladimir (Nov. 1999). “Why We Must Act”. In: *The New York Times*.
- Rachman, Stanley (1997). “A cognitive theory of obsessions”. In: *Behaviour research and therapy* 35.9, pp. 793–802.
- RAND (2015). *RAND Database of Worldwide Terrorism Incidents*.
- Rapoport, David C (2001). “The fourth wave: September 11 in the history of terrorism”. In: *Current History – New York then Philadelphia* 100, pp. 419–424.
- Russell, John (2005). “Terrorists, bandits, spooks and thieves: Russian demonisation of the Chechens before and since 9/11”. In: *Third World Quarterly* 26.1, pp. 101–116.
- Sobolev, Valentin (2010). “Countacting Terrorism in 21st century (In Russian language)”. In: *Theoretical and Analytical Magazine “Obozrevatel’-Observer”*.
- SOVA (May 2015). *In the Nizhny Novgorod, a minor was convicted for the message “I hate”* (in Russia language). <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2015/05/d32040/>.
- Stavitskay, Anna (2002). “The law “On Counteracting Extremist Activity” / A comment (In Russian language)”. In: *Terrorism and response: analysis and morning. Agentura.ru Studies and Research Center*. (Accessed on 12/27/2016).
- Stuntz, William J (2001). “Terrorism, federalism, and police misconduct”. In: *Harv. JL & Pub. Pol’y* 25, p. 665.
- Sunstein, Cass R (2003). “Terrorism and probability neglect”. In: *Journal of Risk and Uncertainty* 26.2-3, pp. 121–136.
- Svoboda (Apr. 2018). *In Krasnoyarsk, a nurse received a suspended sentence for a joke in “VKontakte”* (in Russian language). <https://www.svoboda.org/a/29169992.html>.
- The Economist (2016). “The Economist explains: Why Russia’s anti-terrorism laws are controversial”. In: (Accessed on 12/27/2016).
- Tolstoy, Leo (1912). *Hadji Murat*.
- Wade, Jared (2012). “Learning from the Octopus: How Secrets from Nature Can Help Us Fight Terrorist Attacks, Natural Disasters, and Disease”. In: *Risk Management* 59.3, pp. 50–51.
- Yusupova, Guria and Ramazan Idrisov (2015). “Legal aspects of counter-terrorism: strategy and methods of efficiency improvement in Russia (In Russian language)”. In: *Theory and Practice of Social Development*.