



The Confiscation of Our Co-Citizens' Passports within the ISIS Context: Reflections on the State's Passport Regime, Past and Present

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Following the atrocities perpetrated by the advancing Islamic State in Iraq and Syria (ISIS) rebels, several European states, including France, Great Britain, and Denmark have approved and introduced a number of counter-terrorist measures which include the seizure of citizens' passports, at least temporarily. This specific directive is essentially a travel ban on those nationals who are suspected of leaving a country for the purpose of engaging in terrorist activities. As a legal measure, it is a response to recent concerns about hundreds of young European citizens who have departed for the Middle East, and it is by no means a typically European preventing provision, since it is also applied in many other countries beyond Europe, including the US, Australia, and Canada.

The confiscation of passports and the invention of this identification mechanism have a long and interesting history. This paper first details a number of contemporary cases in which a state has confiscated the passport of some of its citizens for safety reasons within the framework of the ISIS menace and the need for counter-terrorist action (Part I). Subsequently, in a second section, it outlines a short history of the passport regime with a view to understanding how the passport system has historically been at the center of official policies for the identification, registration, surveillance, and travel of people (Part II). The overall objective is to understand today's events by putting them into a wider historical perspective.

Part I. Today's Confiscation of Passports as a Counter-Terrorist Provision

A few months ago, in February 2015, the French interior minister, Bernard Cazeneuve, announced that the ministry had withdrawn the passports of six Frenchmen, and that it was preparing to apply the same strategy against some forty more people.¹ This was in line with French legislation, approved the previous November, which imposed a ban on travel for six months—an interdict to be renewed for up to two years, and also subject to appeal by the person concerned. The targets of this policy were highly motivated would-be ISIS fighters who held French citizenship. Danger, menace, safeguard were the key words underling the confiscation: "If French citizens leave to commit atrocities in Iraq and in Syria," said the French Minister,



N°3 | March 2016

“when they return, they represent an even bigger danger for the national territory and they are likely to commit terrorist acts on a major scale.”ⁱⁱ

On the other side of the Atlantic, the personal history of Canadian citizen Michael Hall, who took the name of Michael Zehaf Bibeau after his conversion to Islam, is also revealing. A thirty-two year old Canadian, born in Montreal, and son of a Libyan emigrant, he is the culprit of the notorious terrorist attack at the Parliament in Ottawa in October 2014. Already known to the police, Bibeau had previously had his Canadian passport revoked in July 2014. Authorities considered him to be a “dangerous element” and a “risky traveler” who was ready to unite with jihadist armed forces abroad. Inspired and indoctrinated by extremist fanatics, Bibeau personifies the profile of some eighty or ninety nationals, holding Canadian citizenship and being under the surveillance of law enforcement agencies for security motives.ⁱⁱⁱ Indeed, these events seem to share similarities with several other cases in Australia. In fact here as well passports have recently been withdrawn to stop radicalized citizens from going overseas. Seven confiscations were for instance reported last autumn in the cities of Sydney, Brisbane and Melbourne.^{iv}

In short, the taking away of a citizen’s passport is a state device belonging to those police practices and procedures over criminal identification and detection. In democratic countries, it has to be carried out against individual suspects or convicts, and not against entire groups of population; and under specific judicial guarantees that can prevent any arbitrary exercise of state power. This point is particularly important because the seizure of a passport would seem to be at odds with the debated “right to travel” (and the corollary “right to a passport”), enshrined in various international instruments of the United Nations and the Council of Europe.^v But what is the origin of the passport regime? When was the passport as we know it today introduced? And which functions does a passport have?

Part II. The Passport in Historical Perspective

Passports and other documentary controls on travel and identification have been essential to territorial state’s “monopolization of the legitimate means of movement” ever since the rise of absolutism in early modern Europe.^{vi} The introduction of passports, as well as of other identification cards of various kinds, has shaped the state process of tracking the movements of persons—citizens and aliens alike—at the physical borders but also among people within those borders. This monopolization of the exclusive right to authorize and regulate movement can be explained, historically, by making reference to extraction of military service, taxes, and labor; to control of brain drain; as well as to the prohibition of access to certain countries for security reasons. In the past and today, it can also be understood in connection to enforcement of law and prevention of crime; to the surveillance of “undesirable elements” on political, racial, and medical grounds; as



N°3 | March 2016

well as to mobility restrictions for the regulation of poor relief and vagrancy in olden times. The overall objective in all these cases has always been the same, namely: the state's goal to "embrace" ("grasp", "lay hold of") the society it seeks to rule, and for this purpose the need to identify unambiguously who belongs and who does not, who can come, stay, and go as members and non-members, as citizens and aliens.^{vii}

The word "passport", though, needs clarification, as different types of identification have been introduced throughout history. More particularly, "external or international passports" are documents associated with the movement across international state boundaries. By contrast, so-called "internal passports or passes," as well as "identity cards," have had different development paths and administrative purposes, and so should not be confused.^{viii} Also, in looking at the origin of "external or international passports", one has to go back to the first period of the post-World War One settlement. In fact, this international-type paper was introduced by the League of Nations Passport Conference of 1920, and improved following the discussions at the league-sponsored 1926 Passport Conference, the United Nations 1947 Meeting of Experts on Passports, and the 1963 United Nations Conference on Travel and Tourism.^{ix} The aim of these international efforts was to achieve a universally recognized type of identification document which would help to prevent falsification, defy unauthorized alterations, contain a description of the bearer, as well as a clear definition of the person's national status.^x

Today, as in the past, this internationally valid document is fundamental for the holder not only in relation to the already mentioned freedom of movement but also for the right to assistance abroad through the services of embassies and consulates of the issuing state. A passport can also be used as a document of identity and nationality, although for the majority of courts, the paper is not, by itself, conclusive proof of nationality but only considered to be "some" evidence, or "corroborative" evidence, of nationality status.^{xi} Furthermore, passports entail the issuing state's duty to readmit the bearer—an essential international obligation since states want to make sure that an alien who is expelled or deported has a country to go to.^{xii} Finally, as underlined earlier, these documents have been used, and are being used, as instruments of state control not only to regulate the crossing of borders by citizens and foreigners in general but also to respond to the contemporary threat of (potential or current) ISIS fighters.

Bearing in mind these observations about origins, typology and functions, it is instructive to turn the attention to national developments as well, so as to grasp how passport registration practices have varied in different times and different countries, being rooted in diverse traditions of political culture, and shaped by national historical events. Indeed, by looking at domestic developments alongside international ones, it is possible to appreciate the multifaceted history of a document which has touched upon the lives of many travelers—famous as well as less



N°3 | March 2016

known or anonymous. This can be elucidated with a number of historical examples taken from revolutionary France and Nazi Germany.

For instance, it is from 1792 onwards that all French passports were to be issued to *individuals* rather than groups of people. This came to be the norm following the flight of the French King Louis XVI on 21 June 1791 to Varennes—an attempted escape that had been made possible because the monarch was traveling, undescribed, as a servant under a passport issued to someone else (the Baroness de Korff). In the French case, the practice of issuing passports for groups of persons or individuals was therefore revised during the revolutionary years.^{xiii} Clearly, between past and present, we can see that the primary purpose and rationale of this document (i.e. traversing international frontiers) has not changed. It was used by a fugitive monarch in the late eighteenth century to flee from revolutionary France and search refuge in neighboring monarchical states. It is used today by ISIS sympathizers to leave their country and join terrorist activities abroad. The context—in the past and today—is undoubtedly different. The function of the document—passing through borders and border checks—endures.

By moving to Nazi Germany, a further related point can be made. We know that in October 1938 the Third Reich required all German Jews to turn in their passport and have it returned to them stamped with a red “J”. This marking them as “Jews” was an additional humiliating policy as well as an immediate obstacle for those trying to flee persecution from Germany, annexed Austria, and later on, the other German-controlled territories. As a specific passport measure it was the result of Nazi anti-Semitic racism at home in conjunction with simultaneous immigration restrictions in other countries, and in particular with the contemporaneous visa requirements for entry into Switzerland, introduced to face major influx of Jewish refugees.^{xiv} Again, between the past and the present perspectives, we can appreciate how these travel documents represent not only the passage of international boundaries at all times, but also the personification of different political cultures in different countries and epochs. They have embodied the exclusionary and racist tenets of dictatorial regimes as in Nazi Germany. They symbolize today the right to travel for citizens in general but also the legitimate right of states to papers confiscation in cases concerning ISIS and other terrorist activists.

Conclusion

Today’s seizure of passports to apprehend criminal suspects in the framework of the ISIS menace has allowed us to reflect on the passport regime, past and present. The passport is a state invention, and so is its confiscation. Passports and other identification mechanisms have historically been “enabling” and “subordinating”: they have created rights as well as police and surveillance powers, they have been the instrument for the recognition of certain entitlements as well as having been used for the nefarious objectives of the Nazi ideology.^{xv} In reference to public security and crime prevention, the passport system has certainly been an important



N°3 | March 2016

tool, although not always an effective and successful one. In 1882, upon arriving at New York Customs, playwright Oscar Wilde is reported to have said to the authorities: “I have nothing to declare but my genius”.^{xvi} Unfortunately, in our day as in olden times international borders are crossed not only by talented writers but also by zealots. As the media currently remind us, many of these fanatics are not reluctant to join ISIS devastating acts, making the issues of international travel and passport confiscation a highly topical concern.

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Papiers d'actualité / Current Affairs in Perspective

N°3 | March 2016

ⁱ See the newspaper article by Alissa J. Rubin and Aurelien Breeden, "France Seizes Six Passports Under Antiterrorism Law," *The New York Times*, 23 February 2015, available from the official website <http://www.nytimes.com>, last accessed 30 September 2015.

ⁱⁱ As cited in *ibid.*, p. 1.

ⁱⁱⁱ See Guido Olimpio, "Bibeau, l'attentatore di Ottawa era un 'viaggiatore a rischio'," *Corriere della Sera*, 23 October 2014, available at <http://www.corriere.it>, last accessed 30 September 2015.

^{iv} Tom Allard, "Passports already Removed from Men Caught in Terrorism Raids," *The Sydney Morning Herald*, 25 September 2014, available from the newspaper website at <http://www.smh.com.au>, last accessed 30 September 2015.

^v See Daniel C. Turack, *The Passport in International Law* (Lexington, Mass. and London: D.C. Heath and Company, 1972), ch. 1. Also, Hurst Hannum, *The Right to Leave and Return in International Law and Practice* (Dordrecht: Martinus Nijhoff Publishers, 1987), pp. 3-16.

^{vi} John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000), ch. 1.

^{vii} *Ibid.*, pp. 6-19.

^{viii} We remind the reader that an "internal passport or pass" is usually designed to regulate movement *within* a state. An historical example is the "internal passport" in the Tsarist Empire and later on in Soviet Russia which governed residence and movement within the country on the basis of estate status, religious confession and ethnicity/nationality. "Identity cards", on the other hand, very common throughout the European continent, are mixed-type documents primarily used to establish the identity of the bearer for purposes of state administration. They are particularly important for the authorities in order to enforce intermittent checks on movement within a country, as well as for the citizen to get access to certain rights and privileges (i.e. voting, medical care, welfare benefits) or, in some cases, to travel abroad, as within the contemporary European Schengen area. For a history of the "internal passport" in Russia, see Charles Steinwedel, "Making Social Groups, One Person at a Time: The Identification of Individuals by Estate, Religious Confession, and Ethnicity in Late Imperial Russia," in Jane Caplan and John Torpey, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton and Oxford: Princeton University Press, 2001), pp. 67-82; as well as Marc Garcelon, "Colonizing the Subject: The Genealogy and Legacy of the Soviet Internal Passport," in *ibid.*, pp. 83-100. On identity cards see, among others, Jane Caplan, "'Ausweis Bitte!' Identity and Identification in Nazi Germany," in Ilse About, James Brown and Gayle Lonergan, eds., *Identification and Registration Practices in Transnational Perspective: People, Papers, and Practices* (Basingstoke: Palgrave Macmillan, 2013), pp. 224-242; as well as Pierre Piazza, *Histoire de la carte nationale d'identité* (Paris: Odile Jacob, 2004).

^{ix} Turack, *The Passport*, pp. 23-27 and pp. 247-248.

^x *Ibid.*

^{xi} *Ibid.*, p. 18 and pp. 230-232.



N°3 | March 2016

^{xii} Guy S. Goodwin-Gill, *International Law and the Movement of Persons between States* (Oxford: Oxford University Press, 1978), pp. 44-46.

^{xiii} Torpey, *Invention of the Passport*, pp. 38-39.

^{xiv} See Torpey, *Invention of the Passport*, pp. 135-138; as well as Saul Friedländer, *Nazi Germany and the Jews* (2 vols., New York: Harper Collins Publishers, 1997-2007), vol. 1. *The Years of Persecution, 1933-1939*, pp. 263-268.

^{xv} Caplan and Torpey, "Introduction," in Caplan and Torpey, eds., *Documenting Individual Identity*, pp. 5-6.

^{xvi} As cited in Mark B. Salter, *Rights of Passage: The Passport in International Relations* (London: Lynne Rienner Publishers, 2003), p. 121.