THE CANADIAN NO FLY LIST:
A Sociological Analysis of its Supposed Distinctiveness

By

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Abstract

Since the events of 9-11, aviation security has become a mounting concern for both the American and Canadian government. Because of the alleged “threats to security,” the Canadian government has followed in American footsteps and enacted the Passenger Protect Program, otherwise known as the “no fly list.” This thesis will examine the emergence of the Canadian version of the no fly list in the context of the U.S. “Secure Flight” program in order to analyze the claim that the Canadian list is unique and distinct from the American version. Drawing from the literature on surveillance and risk, this thesis suggests that both lists are operating on the precautionary principle and are thus not distinct in purpose, process or overall outcome, and that a “made in Canada” approach is a misleading notion. In fact, this thesis will show that the Canadian and U.S. governments continue to share no fly lists, use the same criteria and sources for placing an individual’s name on the list, and handle redress issues in the same manner. Most importantly, the consequences for ordinary citizens are the same regardless of whether one finds themselves on the Canadian or the American list. This thesis will (a) describe the origins of the no fly list in Canada and the USA, (b) examine the ways in which personal data are obtained from the Passenger Name Record (PNR), how these are used to construct the list(s) and how they are mined for further purposes and (c) what the consequences are for specific classes of persons, especially minorities, refugee and asylum claimants, civil libertarians, peace activists and others.
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Chapter One

Introduction

Although passengers have been prevented from flying for many years for specific reasons, usually to do with security risks, members of the public have only come to hear of the idea of a “no fly list” during the twenty-first century. The no fly list, officially known as Secure Flight in the United States or Passenger Protect in Canada, is a list of persons who are not permitted to board an aircraft as they are considered a “threat to aviation security.” This initiative was developed in response to the attacks of September 11th and was introduced in August 2004 in the U.S. and June 2007 in Canada. The criteria for placing an individual on the Canadian list are three fold: the individual must be currently or formerly involved in a terrorist group and suspected of being capable of endangering airline security; convicted of a prior life-threatening crime involving aviation security; and/or convicted of any life threatening offences where it is suspected they may harm aviation carriers (www.dfait-maeci.gc.ca/anti-terrorism/canadaactions-en.asp).

Since the events of September 11th 2001, terrorism has been the subject of intense media interest, political dialogue and public scrutiny. With the successive introduction of anti-terror legislation, the question that seems to be at the forefront is “when will this happen again?” Elmer and Opel (2007:477) suggest that the ability to accurately answer “what if” questions relies upon the stability of data- the more unstable, abstract, and variable the data, the less likely one can predict the future. Since
the events of 9/11, and especially after the report ([www.9-11commission.gov/](http://www.9-11commission.gov/)) on the attacks was published, predicting future terrorist attacks begins by identifying and attempting to eliminate risky or suspicious individuals, behaviours and scenarios. The no fly list, designed to identify and prevent specified individuals from boarding an aircraft is intended to act as such a measure of risk aversion in order to prevent future terrorist events.

Drawing from the literature on surveillance and risk, this thesis provides an analysis of the no fly list and attempts to contextualize it in terms of risk aversion and the precautionary principle. Precautionary logic implies that action is taken precisely on the basis of uncertainty- “decisions are made not in a context of certainty, nor even of available knowledge, but of doubt, premonition, foreboding, mistrust, fear and anxiety” (Amoore 2007:221). Specifically, in the contemporary “War on Terror” “what if” scenarios are being reconstructed as “when, then” scenarios, such as “when the terrorists strike again then we can mitigate the effects” (Elmer & Opel 2007:477).

According to Michel Foucault, risk can be seen as a way to govern social problems (Aradau and Van Munster 2007:97). The precautionary principle asks us to “take regulatory action on the basis of possible unmanageable risks, even after tests have been conducted that find no evidence of harm” (Aradau and Van Munster 2007:102). In this framework, the no fly list can be seen as a measure of precaution by attempting to isolate (by methods of social sorting) those individuals deemed to be a threat to aviation security. Using this precautionary principle, the no fly list is
expanding infinitely as there is no telling who may be considered a threat. Furthermore, while Canada and the U.S. both utilize a no fly list, the Canadian government claims that they are distinct and unique from one another. Analyzing the lists from a risk perspective will show that, in fact, both lists are operating on the precautionary principle and are thus not distinct in purpose, process or overall outcome, and that a “made in Canada” approach is a misleading notion. In fact, this thesis will show that the Canadian and U.S. governments continue to share no fly lists, use the same criteria and sources for placing an individual’s name on the list, and handle redress issues in the same manner. Most importantly, the consequences for ordinary citizens are the same regardless of whether one finds themselves on the Canadian or the American list.

Since the no fly list is still a relatively new phenomenon, particularly in Canada, the amount of scholarly literature in this area is quite limited. The literature that has been written on the no fly list specifically, by individuals such as Justin Florence (2006) and Colin Bennett (2008), has provided insight into the basic mechanics behind the list. Specifically this literature has discussed the developments leading up to the no fly list and examine how the list operates in terms of how an individual gets placed on the list, methods of recourse to get one’s name off the list, as well as the parties that handle the administrative duties behind the scenes in both Canada and the United States. This literature has been particularly useful for the second and third chapters of this thesis in providing an explanatory framework from which to base the discussion.
Organizations such as the Canadian Labour Congress (2007) and the American Civil Liberties Union (2003) also provide the public with information regarding the no fly list and show how the program operates, criteria used to place individuals on the list, procedures used at the airport, and methods of recourse for listed individuals. The literature provided by these organizations also sheds light into the ways in which the no fly list infringes upon human rights as well as reports of individuals who have found themselves listed without any reasonable grounds (Canadian Labour Congress 2007 & ACLU 2003).

Government related documents, such as those provided by the Office of the Privacy Commissioner and the Department of Justice - Office of the Inspector General, also provide comprehensive discussions of the implications of the list and potential flaws in the system that require immediate attention. Used in conjunction with one another, these documents provide useful information for the fourth chapter of this thesis in terms of the consequences of the no fly list. Since the names on the list are kept completely confidential, the only option one has to study the immediate consequences is to look at the stories of those who have found themselves on the list, which is discussed in chapter four.

Lacking in the existing literature however, is an analysis of the claim that Passenger Protect is “made in Canada” and that the list is unique from our neighbours in the United States. So, is the Canadian program unique and distinct from the American? Specifically, what sense can sociology make of this list and what kind of theoretical
toolkit will help us come to the clearest understanding of current developments? This
thesis attempts to fill this gap by answering this question specifically by looking at
literature that discusses risk and contextualizing the discussion in terms of the
precautionary principle. Simply put, if the precautionary principle is operating in both
Canada and the United States it will guide and shape the direction of the list, so we
hypothesize on this basis that the Canadian and American lists are little different from
one another.

The process of listing the population through social sorting is not a new
phenomenon. It was dramatically visible under the Apartheid regime in South Africa but
there are many other instances available. Chapter one explores the historical process of
sorting through listing and attempts to draw parallels between apartheid and our most
current form of listing, the no fly list. As will be shown, classification systems have
served a number of purposes throughout history, one of which has been to organize
social life and behaviour. Geoffrey Bowker and Susan Star (1999:137) highlight the
importance of lists in this statement: “the material culture of bureaucracy and empire is
not found in pomp and circumstance, nor even in the first instance at the point of a gun,
but rather at the point of a list.” Zygmunt Bauman has described a process, now in
relation to travel opportunities, in terms of the contrasting situations of “global tourists”
and “global vagabonds” (Wilson & Weber 2008:125). Specifically, social sorting in this
context serves to divide the population into two tiers, what he calls the global elite and
the forced territoriality of the rest, otherwise known as the “mobility rich” and the
“mobility poor.” As Bauman suggests, “like all other known societies, the post-modern, consumer society is a stratified one...the dimension along which those ‘high up’ and ‘low down’ are plotted in a society of consumers, is their degree of mobility- their freedom to choose where to be” (Weber and Bowling 2008:371). This process however, can easily be translated into the situation of the no fly list in which the population is also divided into two tiers: those who are permitted to travel without suspicion or hassle and those who are not. The heightened regulation and surveillance at airports occurs within a political context in which social problems are increasingly reconfigured as problems of security (Wilson & Weber 2008:125). Specifically, those deemed “not to belong” are subject to exclusionary tactics, namely immobilization. As such, chapter one provides an important departure for this thesis in order to reflect upon the very nature of lists and why they are created.

There are a number of initiatives that have been implemented since 9/11 that seem to suggest a sort of preventative approach to the “War on Terror.” Chapter two provides an overview of such developments leading up to the no fly list in both Canada and the United States. When analyzing these developments from a risk aversion/precaution perspective, it is suggested that perhaps the no fly list was a natural, yet somewhat unjustified progression under the risk approach that both the Canadian and American governments seem to have adopted.

Chapter three looks at how the lists are constructed, how personal data are obtained from the Passenger Name Record, and how they are mined for further
purposes. The ways in which both Canada and the U.S construct and utilize the list are extremely precautionary, and as such, the literature that discusses the shift that has occurred from a risk based orientation to a precautionary perspective provides insight into why this is so.

Chapter four discusses the numerous consequences that have resulted from the implementation of the no fly list. As the U.S. list is approaching one million names, and the Canadian version not far behind, privacy issues, human rights implications, and mistaken identities should be a great cause for concern. As such, chapter four provides a look into who has been specifically affected by the no fly list and how this has violated basic human rights.

**Literature Review**

There is much to be discovered from the risk literature that contributes an understanding of the no fly list. For Ulrich Beck who coined the concept of a risk society, risk is the defining characteristic of a post-modern society (Beck 1992:23). In his view, risk is defined as “a systematic way of dealing with hazards and insecurities induced and introduced by modernisation” (Beck 1992:18). As such, Beck characterizes modern society in terms of risk and distinguishes it from other eras by the idea that risks today are human constructions and global in reach. Specifically, while humans have sought to gain control over nature, they have put the universe at risk of total destruction. Moreover, social crises begin to appear as problems that were once perceived as social
are now increasingly perceived as individual, to be dealt with on an individual basis rather than by larger social institutions (Beck 1992).

Beck (1992) also identifies a fundamental shift in the mode of socialization. Simply put, in a risk society the fundamental goal is to survive, there is an enormous push for security and stability, and managing risk is as much a personal dilemma as it is a social one. In order to survive, individuals must learn how to manage and evaluate risk and take responsibility for their own actions. As such, risk requires “decisions and attempts to render the unpredictable consequences of civil decisions predictable and controllable” (Beck 1992:50). From a political standpoint, risk must be managed through demands of rationality and legitimizations through reality checks because political institutions claim their legitimacy through the “declared mastery of danger” (Beck 1992). In other words, the global nature of the risk society has two opposing sides: it creates new forms for a political risk society and at the same time regional inconsistencies and inequalities to those affected by the pending danger. As such, the influence of a terrorist threat arises with a series of conditions, including, the vulnerability of a civilization, the global mass media informed presence of a terrorist risk, and with the assessment by the government announcing that civilization is under threat (Beck 1992).

Since the events of September 11th, 2001, a pendulum shift has dramatically altered the way in which risk is seen by criminal justice officials; that is from risk management to risk control (Mythen & Walklate 2005:389). In other words, rather than assessing events in terms of risk as was done in the past, governments are now using the
precautionary principle to determine the likelihood of future events. In fact, Lucia Zedner (2007:262) suggests that we are on the cusp of a shift from a post to a pre-crime society in which the possibility of forestalling risks has taken precedence over responding to wrongs done. In a pre-crime society, calculation, risk, uncertainty, surveillance, precaution, prevention and the pursuit of security all flourish (Zedner 2007:262). David Garland (1996:446) points to the ways in which the re-definition of crime as an “everyday risk to be managed in much the same way that we deal with road traffic” has added to the salience of preventative strategies. Moreover, the emphasis on security aspects of surveillance has certain ideological consequences, one of which is that despite the general increase in surveillance, the debate around its imposition shifts from an argument of convenience/exploitation to one of public good (Bassett 2007:84). At this point the precautionary principle becomes salient.

In an attempt to follow a precautionary model in order to avert risk, Canada’s own no fly list has yielded many individuals who have been socially sorted and labelled “terrorist” by the government. However, as we will see in the case of Maher Arar, with human judgment (such as the process of listing the population according to level of perceived dangerousness), comes human fallibility. The advent of the no fly list, along with numerous other post-9/11 responses can be seen as part of the growing “surveillance society” and “safety state” (Lyon 2006:398). Here, surveillance has become a feature not of specific monitoring of suspects but of generalized social sorting of populations, in this case in relation to their perceived levels of dangerousness (Lyon
2006:398). David Lyon (2007:163) suggests that new electronic infrastructures for risk management, deployed in the cause of security, often reflect particular priorities and long term social, economic and cultural divisions. Moreover, such surveillance technologies that facilitate risk management do so by sorting the population into categories of risk, such as terrorist. In many countries however, the definition of “terrorism” used to create lists is so vague that it could quite easily include behaviour that doesn’t even remotely resemble terrorism (Webb 2007:180). These categories in turn become central to an individual’s life chances and may infringe upon basic human rights. Maureen Webb (2007:75) states that: “For most governments, the excuse of fighting terrorism has given them, like the Bush administration, new license to embrace initiatives that did not succeed nor did they dare adopt in earlier periods.” And these initiatives serve agendas that go far beyond security from terrorism; namely, the suppression of dissent, harsh immigration and refugee policies, increased law enforcement power, increased control over access to state benefits, the concentration of power in the executive branch of government, re-election, political advantage over one’s opponents, and the securing of greater control generally over one’s population. In this sense, the government had successfully “sold” their security initiatives to the public and told that they should be willing to sacrifice a little privacy in the sake of greater security. “Those who have nothing to hide, we are told, have nothing to fear” (Webb 2007:75).
Bennett furthers this idea, and notes that it is now quite commonplace to understand surveillance practices in terms of the structural conditions of post-modern societies. In this sense, airports can be seen as sites of discipline in which passengers are the bearers of discipline and compliance; the war on terror a further extension of the normalizing gaze of the panopticon; while the no-fly list represents a manifestation of authorities attempt to marginalize and sort the abnormal from the innocent and “normal” (Bennett 2008). Put more simply, the airport has become an extension of the growing surveillance state in which travellers are being watched, sorted and permitted to board an aircraft based upon their perceived level of dangerousness by those in power.

Greg Elmer and Andy Opel (2007:477) suggest that in the contemporary “War on Terror” risk is being assessed on a “what if” premeditative basis in the sense that a pre-planning strategy is put in place that attempts to surveil, locate and isolate significant relationships and their effects in an attempt to subtract the variable from the equation. Specifically, assessing risk in this manner puts the state on the offensive and in the driver’s seat. In fact, contemporary political discourse informs the public that “the future is inevitable,” specifically that national security will be breached (Elmer & Opel 2007:479). In such an environment where decisions are made in “response” to inevitable events, public deliberation and debate are placed at the sidelines.

A central characteristic of precaution, which often leads to pre-emptive actions, occurs when a government views the future as a series of inevitable events that requires
immediate political intervention (Elmer & Opel 2007:480). For instance, the power of this concept does not lie in the fact that something is happening, rather, that something might be happening (Mythen & Walklate 2005:381). The trajectory toward anticipation, risk assessment and intelligence gathering is increasing at a fast pace. Moreover, the term pre-emption is not limited to striking an enemy as it prepares to attack, but also includes striking an enemy in the absence of specific evidence of a coming attack. For example, according to the White House’s National Security Strategy “in the new world we have entered, the only path to peace and security is the path of action” (Elmer & Opel 2007:480). In one of the most significant elaborations on this topic, Robert Castel writes that the primary aim in a pre-emptive society is not to confront a concrete dangerous situation, but to anticipate all the possible forms of danger (Yesil 2007:409).

Ironically, in such a pre-emptive society, inevitable attacks and potential threats are invisible to the public (who are expected to trust their leaders) because evidence of such things has been consistently concealed in classified documents that are not expected to be called into question. In essence, as citizens are called upon to place increasing trust in the hands of government initiatives, intelligence becomes increasingly inaccessible as freedom of information is constrained in the name of national security. “What we are left with is a call to embrace a ...system that is driven, not by rational judgment and intelligence, but rather fueled by the emotion of fear” (Elmer & Opel 2007:488).

Accordingly, there has been a transformation away from the individualized category of dangerousness toward the collectivized logic of risk (Mythen & Walklate 2005:385). Through the implementation of various initiatives, such as the monitoring of specific
individuals and placing them on the no fly list, risk precaution provides a way of organizing time/space and, it is believed, ordering the future.

Gabe Mythen and Sandra Walklate (2005:379) make two suggestions in regards to the risk society. The first is, that “terrorism” is socially constructed and that Beck’s risk society thesis can be used to examine the novel features of the “new terrorism.” Second, is the notion of risk, which is rendered thinkable through the concept of governmentality. More specifically, since the events of 9/11, the meaning of terrorism has been reconfigured in the West, rendering the word more powerful, shadowy and dangerous, it serves to reinforce the media amplified idea that “we are living in risky times” (Mythen & Walklate 2005:379). The geographical mapping of the terrorist threat dovetails nicely with Beck’s claims regarding the universality of manufactured risks. Part of our understanding of and reaction to terrorism lies in its link to what is considered legal and illegal. In the case of the no fly list, one need not look far to understand that the “criminal” in this context is labelled “terrorist” and the “victim” is the national security of citizens. In fact, using the precautionary principle, there seem to be mechanisms of control operating to surveil the “risky” individuals deemed a “threat” in which intelligence agencies can be expected to collect data and information regarding terrorist groups (Mythen & Walklate 2005:389). It is also evident that understandings of terrorism are being discursively shaped by the agencies involved in risk definition, such as the state, politicians, security experts, and the media, who manufacture and distribute forms of knowledge via an institutional matrix. As such, it seems important to
ask ourselves what exactly is “new” about this terrorism and whether it justifies the formation of new law and order policies.

Regardless of the type of policies conjured up by government(s), it seems reasonable to argue that terrorism cannot be insured against. Due to uncertainty about the nature and location of future attacks, it would be very difficult to perform a dependable risk assessment. “The unpredictable topography of terrorism evades the span of regulatory institutions, forcing governments to concede that they cannot guarantee public safety” (Mythen & Walklate 2005:387). Although few would rally against improving procedures for identifying terrorists, “suspect populations” are being dreamt up, marginalized, and placed under suspicion (Mythen & Walklate 2005:390). As such, the point of the matter here is not so much about the risk itself, but rather, who or what risk gets attached to whom. In this regard, evidence points to the fact that many ethnic minority groups are finding themselves marginalized and incriminated when they or their friends and family members are placed on the no fly list. Criteria for such inclusion (or exclusion) is based on the possession of an ascribed set of ethnic, religious and cultural traits, rendering innocent people a “risk” by virtue of sharing some or other of the characteristics of the “typical” terrorist (Mythen & Walklate 2005:391).

From the risk and precaution literature, one can observe how discourses of risk work to construct a terrorist other (those who are labelled as dangerous and excluded from the rest of society), promoting the unwarranted attachment of blame and invoking intensified strategies of surveillance. “Now, as in previous eras, risk is being wielded as
an instrument of disciplinary power through which populations are governed” (Mythen & Walklate 2005:393). In the following chapters, this thesis will elaborate on risk and the precautionary principle in order to examine how the no fly list works to govern mobility in an effort to thwart future terrorist attacks in Canada and the United States.
The Historical Context of Social Sorting

“How impracticable it is to try to classify human beings, for all time, into
definite categories, and how much suffering has resulted from the efforts
made to do this” (Horrell 1958:77).

David Lyon (2003:19) argues that “everyday surveillance is a vital means of
sorting populations for discriminatory treatment.” In the context of border controls and
airports, social sorting can be understood as an organizational strategy enforced by
bureaucratic institutions in an effort to essentially sort the population into distinctive
categories of high or low risk. This selection process has increasingly become mediated
via electronic information databases and influenced by nationality, the effect of which is
to reproduce inequalities based on race and religion (Weber and Bowling 2008:361).
This sorting mechanism has become normalized through various security regimes
throughout history and particularly since September 11th. For example, national
registries have been installed for the processing of personal data using biometric
identification cards (Lyon 2007). These registries encourage “less inclusive notions of
citizenship and facilitate the sorting of desirable and undesirable mobilities based on the
criteria of identity management” (Lyon 2007). For Lyon, it is not necessarily the large
quantities of data that are gathered, but rather, the tendency for large corporations to
store, sort and manipulate the data in ways that “assign worth and risk, in ways that
have real effects on life chances” (Lyon 2006).

Looking back pre-9/11, one can observe crude examples of such sorting practices
already becoming normalized. Although we are not suggesting that the no fly list
portends the start of a similar regime in Canada, South Africa under the apartheid regime had a long history of such sorting practices that had dramatic discriminatory effects. How does this compare with a more recent form of social sorting, the advent of the no fly list? I argue in this chapter that similar to apartheid, though lacking the explicit legally sanctioned racist doctrine that accompanied it, the no fly list is integral to strategies of social sorting. “In a world in motion, governments impose enforced mobility on groups whose spontaneous mobility is considered suspect” (Weber and Bowling 2008:361). Specifically, the focus of this chapter will be to draw upon a historical example of social sorting using the case of apartheid in order to better understand and contextualize a more contemporary form such as the no fly list. Since the process of categorizing and sorting the population (particularly through security enhancing measures) is not a new phenomenon, it is imperative to consider how social sorting can re-emerge in different historical contexts in such a shifting yet essentially similarly functioning manner.

Looking back historically, one is able to find many examples of the use of classification systems, which when applied in human contexts usually operate as a form of social sorting. In fact, the process of list making has frequently been seen as one of the foundational activities of advanced human society (Bowker & Star 1999:137). Although there are some benefits of list making for the individuals who make use of it, such as when it is used as a basic organizational tool, there are also many important lessons to learn from our historical past. History can serve as a striking reminder of
ignorance, intolerance and governance through listing gone terribly wrong. The comparator that will be used in this chapter is apartheid in South Africa. This example was chosen because as will be shown throughout this chapter, there are many parallels between the apartheid regime and the no fly list. There are several other examples of social sorting that can be seen throughout history, however, apartheid was chosen as the example for this thesis based on its extreme and appalling nature. Although this may seem like an extreme case, it is nevertheless valuable for reflecting upon the ethics and politics of current forms of social sorting. Lyon (2007:162) suggests that “the surveillance dimensions of (inter)national security arrangements have everything to do with social sorting.” More specifically, personal data are coded and categorized such that people from suspect countries of origin or with suspect ethnicities can expect different treatment from others. As such, many striking parallels can be drawn between apartheid and one prominent form of social sorting; the no fly list. Specifically, as will be shown in the following chapters, similar to apartheid, the no fly list is a means of precaution used by the government in an effort to manage risk.

In order to use the case of apartheid as an example to reflect upon current forms of sorting inherent in the no fly list, it is important to first identify the main characteristics of social sorting practices. There are perhaps two co-existent modes of risk management, both of which act as sorting mechanisms: those that regulate within an inclusionary zone and those that seek to work on pathologies through tactics of exclusion (Mythen & Walklate 2005:390). The latter pertains more closely to the
discussion of this thesis and can be seen as a process of social sorting through exclusion in which those deemed to be outside dominant social groupings are deemed to be “outsiders.” Race and ethnicity have long been associated with problems of mobility and has been integral to the process of sorting the “mobility rich” from the “mobility poor” (Weber and Bowling 2008:362). In order to procure security, a state attempts to identify “us” and delineate “us” from the untrustworthy aliens (Amoore 2007:218). Understood in these terms, we cannot truly understand or know who “we” are until “we” have distinguished ourselves from the “other.” Evidently, those who are seen as “different” and not belonging have long been the first targets of exclusion. In fact, such exclusionary tactics can be observed as far back as apartheid and continue to operate with the no fly list. In the case of the no fly list, individuals are labelled and excluded based on their level of perceived dangerousness (which in many cases relates to race) and are denied their right to mobility, whereas in the case of apartheid, individuals are labelled and are excluded from the rest of the population (and fundamental rights) on the basis of their race.¹

Regardless of the time period, social sorting serves the precautionary impulse by identifying potential “risk” and preventing this “risk” from threatening the social order. Also, in any sort of sorting practice there seems to be a process of labelling made by a dominant group based on some dimension such as race, religion, dangerousness, etc. Profiling as a technology of social sorting “depends on the categorization of social

¹ The concept of race is problematized here on the basis that it is a social rather than a biological or genetic construction.
groups their profiling and statistical computation of risk” (Aradau and Van Munster
2007:103). This act of labelling is usually based on ambiguous judgments and can
severely negatively affect the life chances of those involved. Moreover, social sorting
can usually be found in a particular climate of governance in which undesired acts,
individuals or groups that do not conform to the dominant ideology are rendered visible
or invisible, usually through various modes of surveillance technologies. In fact, once
“suspects” (in the case of the no fly list- suspected “terrorists”) can no longer be
identified through methods of profiling, there becomes a renewed panopticism, a form
of surveillance that targets everyone, on the assumption that the potential terrorist
could be any individual. With this in mind, we can now turn to the case of apartheid in
order to examine the extent and the nature of the sorting practices that prevailed during
that time.

In the early 1950’s in South Africa, The Population Registration Act and the
Group Areas Act were passed, giving rise to the birth of apartheid as a practical doctrine
(Bowker & Star 1999:196). These key pieces of legislation required people to be
classified according to their racial group. In turn, this determined where individuals were
able to live and work as well as other basic rights, such as political rights, voting,
freedom of movement and settlement, property rights, profession type, education,
criminal law and use of public services (Bowker & Star 1999:197). Individuals were
classified into four basic groups: Europeans, Asiatics, persons of mixed race or colour,
and “natives” or “pure blooded individuals of the Bantu race” (Bowker & Star 1999:197).
These laws were in effect for over four decades, resulting in millions of people being dislocated, imprisoned, murdered and exiled. The euphemism used to justify the apartheid system was that of “separate development” (Bowker & Star 1999:197). More specifically, inter-racial interaction was seen as unnatural and each race must develop separately along its “natural pathway.”

Black-on-black violence and crime in black populated areas remained invisible, unreported and neglected by the apartheid police. While policing in the “White” areas largely followed the model of law enforcement in Europe and the United States, policing in “Black” areas focused on political or administrative type offences (Hentschel 2007:292). In fact, during apartheid, Black townships and homelands were supposed to be self governed and forms of informal justice through community courts and gangs were common practice. Hentschel (2007:292) observes that “the changing definitions of crime and of making certain crimes visible or invisible was a political strategy of governance and social sorting under South African political regimes.”

One of the numerous requirements for black South Africans under apartheid included a legal responsibility to carry a pass book; a compilation of documents attesting to birth, education, employment history, marriage and other events (Bowker & Star 1999:198). Since blacks were the main targets of scrutiny, they were all required to carry their pass book, which allowed for comprehensive surveillance of their actions. “The whole system has been extended and rationalized over the years by widening the categories of officials who can formally demand the production of passes, and by linking
this up with sophisticated computer technology centred on the reference book bureau of the Department of Plural Relations in Pretoria” (Frankel 1979:207). These data were then entered into a centralized database that was cross referenced across different domains.

In order for apartheid to function effectively, people had to be unambiguously categorizable by race, which posed numerous problems. Many people did not conform to the typologies constructed under the law, particularly individuals whose appearance differed from their assigned category, or who lived with those of another race, spoke a different language from the assigned group, or had some other deviation from the pure type (Bowker & Star 1999:201). As such, although formal legal categories separating race existed, a much more informal approach, using judgments of physical appearance to perform the sorting process prevailed.

Social sorting extends far beyond one point in history and in fact re-emerges in different contexts throughout history, varying according to circumstance, changing technologies and shifting political pressures. For example, similar to the social sorting of apartheid, Christine Hentschel (2007:289) comments on the ways in which human “watchers” (either professional or unprofessional) may be mobilized as “living cameras” within the context of a post-apartheid South Africa. Regardless of the type of watcher, both focus on the same figure: the intruder (Hentschel 2007:300). Hentschel demonstrates how social sorting is carried out in a complex and shifting manner and how surveillance is used to render individuals both visible and invisible. Similarly, only
those who are targeted for further inspection at the airport are made visible; those passengers who are not seen to pose a threat are made invisible by agents of surveillance and permitted to board the aircraft without question or hassle. By investigating different modes of observation, such as identifying “intruders,” it is shown that the “will to see” goes hand in hand with a tendency to force from view and push to the shadows (2007:289). Moreover, the interaction between making visible and invisible can give important insights into the practice of inclusion in the New South Africa. It shows that although social sorting in previous political regimes aimed at excluding racially defined non-citizens through a legally enforced structure of discrimination, today’s modes of social sorting are more informal, hybrid and dependent on the respective agent of surveillance (Hentschel 2007:300).

The case of apartheid may seem extreme and crude, but it serves as a powerful reminder of the ambiguity, complexity and lack of morality involved when designating human beings to categorical sorting. The underlying implications beg the question whether apartheid is really a part of North American past. Bowker and Star (1999:223) suggest that “in some ways the South African stance is a mirror image of the current American dilemma.” This remark was made in reference to the mid-1990’s when a group of Americans held a march protesting the “other” category on the U.S. census. Specifically, during this period the U.S. census contained specific racial categories one was expected to identify with, including American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, and “Other” race. Since October 1997 however, the Office
of Management and Budget has allowed respondents to select one or more races when they self identify on the census (U.S. Census Bureau). Nevertheless, stark reminders of social sorting abound at present in both Canada and the United States with the Passenger Protect program and Secure Flight as testaments to this phenomenon. In the case of the no fly list, individuals are classified and sorted according to “perceived level of dangerousness” and labelled as “terrorist,” while the apartheid system also sorts individuals into groups, such as race, which in turn affects basic living and life chances. Being placed on the no fly list will prevent any individual on the list from boarding an aircraft, potentially publicly humiliated, and stigmatized as an outsider and a threat. Similarly, being classified under the apartheid regime negatively affected basic human rights, allowed for surveillance of actions, and entailed a different form of justice for those in the area. It seems then, that historical forms of social sorting, such as apartheid, are re-emerging in different forms post 9/11 in the form of “security measures.”

The treatment of Maher Arar sheds light upon the eerily similar manner in which post 9/11 “security measures” relate to the discriminatory measures elsewhere. Maher Arar’s case is a contemporary example of the types of social sorting that continue to occur in the post 9/11 context. On September 26, 2002, Arar was forced to endure prolonged hours of interrogation at a Montreal airport where he was denied even basic rights such as access to a lawyer and was then detained without cause (Webb 2007:14). On October 8, 2002, Arar’s situation became much worse when he was notified that he
would be deported back to Syria due to his suspected (yet false and unwarranted) involvement with Al Qaeda. Once there, he endured ten months of torture and questioning regardless of the fact that neither Canada, the United States, nor Syria ever had any evidence that Arar was involved in terrorism or any other crime (Webb 2007:17). In fact, in a letter from the Canadian government calling for Arar’s return, CSIS objected to the inclusion of a sentence saying “the government of Canada has no evidence that Mr. Arar was involved in terrorist activity, nor is there any impediment to his return to Canada” (Webb 2007:17). Instead, CSIS proposed the wording be changed to “Mr. Arar is currently the subject of a National Security Investigation in Canada. Although there is not sufficient evidence at this time to warrant criminal code charges, he remains a subject of interest” (Webb 2007:17). After being coerced into signing a confession stating he had been to Afghanistan, he was flown back to Canada. After many months of testimony and negotiation with the government over what could be disclosed to the public, Justice O’Connor released his report on September 18, 2006 confirming Arar’s innocence (Webb 2007:41).

Ahmad Abou El Maati was also detained in Syria in November 2001, when he travelled there to marry his Syrian bride (Webb 2007:24). In fact, he was held in the same prison as Maher Arar until his transfer to an Egyptian prison and his eventual release on January 11, 2004. Abdullah Almalki was the main target of the Project A-O Canada investigation. Almalki was detained approximately six months after Ahmad El Maati, while visiting Syria on May 3, 2002, and was released on December 11, 2003
(Webb 2007:30). Muayyed Nurredin was the third Canadian to be detained in a Syrian prison and was released after Maher Arar. He was detained in Syria on December 11, 2003, held and tortured until his eventual release on January 14, 2004 (Webb 2007:38). Although there are sadly many more similar stories of detainment, deportment and torture they are beyond the scope of this chapter.

Arar’s case and the many others like his, serve as a cautionary tale of contemporary social sorting and of the new precautionary principle being used by the Canadian and American governments since September 11th: that of disrupting terrorist plots before they occur. In fact, Arar’s case is just the tip of the iceberg in terms of policy changes since 9/11 that focus on the pre-emption of risk and preventative policing, which the no fly list has become a part. As Amoore (2007:216) suggests, “contemporary modes of watchful politics are particularly geared to the anticipation of events, deploying a kind of precautionary principle that governs through the suspicion of a possible future threat.” Evidence of pre-emptive policing was quite evident in Canada during the testimony of an RCMP officer at the Arar Commission of Inquiry when he spoke about having a mandate of prevention and a zero tolerance approach to the risk of future attacks (Webb 2007:60). Pre-emption is also evident in the U.S. when the Bush administration released the National Security Strategy in 2002: “America will act against...emerging threats before they are fully formed...even if uncertainty remains as to the time and place of the enemy’s attack” (Webb 2007:65).
It becomes apparent when looking at all of these cases that branding persons as potential “terrorists” has numerous human rights implications. Among others, while getting on the terrorist list is easy, getting off is next to impossible (Koring 2008). In fact, all United Nations member states are obliged to seize all assets of those on the terrorist list, prevent them from travelling, and prosecute anyone who provides them with any funds beyond what is required for basic subsistence (Koring 2008). Canadian Abousfian Abdelrazik is on the “terrorist” list and as such, has been held in Sudan for nearly five years. The Canadian government refuses to issue him a new passport. Once your name is on such a list it seems bad enough, however, as will be shown in the third chapter, lists get passed around to many places resulting in a number of negative consequences.

This chapter has attempted to illustrate how elements of the kind of social sorting practiced under the apartheid regime in South Africa may in fact have re-emerged in the post 9/11 context in the form of precautionary security measures such as the no fly list. Although from different time periods, both involve social sorting (based on racialized categories in many cases and/or dangerousness), involve the process of being labelled (as a “terrorist” in the case of the no fly list and as an “outsider” in the case of apartheid), both negatively affect basic human rights, and both render the individual a target for surveillance measures. Maher Arar’s case specifically is evidence of this crude and discriminatory form of sorting legitimated by the government in the name of national security. The focus of the next chapter will be to explore the no
fly list in a Canadian context. Specifically, is the no fly list genuinely “made in Canada” or have we become a part of the American version of “sorting” through exclusion?
Chapter Two: Origins of the No Fly List in Canada and the United States

National security requirements have become a mounting concern of governments and are becoming the number one priority in nation states around the world following the terrorist attacks of 9/11 (Lyon 2007:161). In fact, the American government is one of the main consumers of security products in the “fear economy” (Wilson & Weber 2008:129). As such, the challenge facing those who deal with airport security is one of keeping airports as open as possible to legitimate travellers while at the same time restricting it to illegitimate ones (Lyon 2006:401). A list of persons banned from boarding aircrafts, otherwise known as Secure Flight, is one of the measures implemented in the United States following the attacks of September 11th. On June 18th 2007, the Canadian government created its own version of the no fly list, calling the overall initiative the Passenger Protect Program, and the list itself the Specified Persons List (SPL). Since the advent of the no fly list, the number of names has grown dramatically, with estimates as high as 325,000 names (Florence 2006). Between the periods of September 11 until 2003, approximately 339 air passengers have been stopped and questioned by police at the airport because their names were believed to match names on the no fly list (Srikantiah 2003).

Chapter two traces the developments leading up to the most recent initiative, the “no fly list,” in both Canada and the United States. Also, an analysis of the no fly list in its most current form is provided in order to shed light upon Canadian government claims that its version is truly distinct from its American counterpart. If one observes
government policy pre-9/11 in both Canada and the U.S., one may also speculate that the no fly list was not a surprising development from an outsiders perspective. Specifically, in times of turmoil, such as the devastating aftermath of 9/11, the control of borders and mobility has tended to substitute for the production of genuine and universal human security (Weber and Bowling 2008:360). As Bauman suggests, “bouts of insecurity are in no sense novel; neither are the typical responses to them. Both are known to appear throughout history in the aftermath of wars, violent revolutions, the collapse of empires, or as concomitants of social departures too vast or too fast to be assimilated by the extant policing agencies” (cited in Weber and Bowling 2008:360). Tracing the initiatives since 9/11 clearly illustrates the precautionary direction of national security and attempts of risk aversion. While the United States paved the way on this by implementing numerous initiatives including the no fly list, it will be shown that the Canadian government followed very closely behind with its own. In fact, the geographical proximity of Canada and the United States as well as Canada’s economic dependence upon the U.S. has many implications for the development of security measures. These implications, affecting every Canadian, beg the question: just how closely does Canada follow in the footsteps of the U.S.A?

Although there is little literature on this topic, particularly in the Canadian context, some valuable insights can be found nevertheless. The following several sections summarize the initiatives that have led (quite predictably in the context of the precautionary principle) to the eventual development of the no fly list. The rationale of
the precautionary principle, when applied to national security, is seen by critics as extremely dangerous because it seems to justify almost anything, as can be seen in the following section.

**Tracing the Developments**

On September 11\textsuperscript{th} 2001, 19 hijackers were screened prior to boarding their flights using the Computer Assisted Passenger Profiling System (CAPPS) which had been implemented in the early 1990’s. While more than half of these individuals were identified for further inspection, the only further measure taken was a bag check. Specifically, civil rights concerns at that time prevented the U.S. government from listing all potential terrorist suspects and providing that list to airlines. The result of this, which was regarded as a "security failure," sheds light upon the subsequent responses in both Canada and the U.S. following this major attack.

Canada responded swiftly to the devastation of September 11\textsuperscript{th} with the Anti-Terrorism Act introduced on October 15 2001. It was intended to keep the Canada-U.S. border secure and open to legitimate trade; increase front end screening for refugee claimants; improve both detention and deportation processes; increase security staff hiring; and upgrade technology, integration, and training practices (Lyon 2006:399). The Anti-Terrorism plan has five key objectives, including preventing terrorists from getting into Canada; to protect Canadians from terrorist attacks; to bring forward tools to identify, prosecute, convict and punish terrorists; and to address the root causes of terrorism (www.dfait-macci.gc.ca). Some significant measures under this Act include
making it easier to use electronic surveillance against terrorist groups and allowing the arrest and detention of suspected terrorists in order to “prevent terrorist acts and save lives” (www.dfait-macci.gc.ca). In fact, the precautionary principle has been used by the government, as illustrated here, to justify the idea that surveillance should be ever more pervasive and that everyone should be watched all the time (Webb 2007:69).

While Canada was implementing anti-terror measures, the U.S. was making strides of its own. In January 2003, the Transportation Security Authority (TSA) published a proposal for CAPPS-II and a new Aviation Security Screening Records (ASSR) database. This proposal described a system that would allow the government access to financial and transactional data as well as virtually unlimited amounts of data from other proprietary and public sources. Individuals would be assigned a colour coded score indicating their level of security risk (Electronic Frontier Foundation n.d). Based on the assigned colour score, an individual could be detained, interrogated, subject to additional searches or prohibited from flying. TSA also indicated that a variety of public and private entities might gain access to the personal information in the ASSR database. This new version of CAPPS was to be managed through the TSA and apply to all flights to, from, and within the United States.

In response to a great deal of criticism from a variety of groups, TSA verified that CAPPS II would only collect information included in the Passenger Name Record (PNR), which is collected at the time of passenger reservation and includes full name, home address, home telephone number, date of birth, and passenger’s itinerary. This
information would then be checked against credit records and other data held by various private corporations that maintain files on the commercial activities of American citizens, in attempt to verify the traveller’s identity. Subsequently, CAPPS II would then conduct a check against government databases in order to assign the passenger a risk assessment score including green for minimal, yellow for heightened security procedures, and red for “high risk” passengers who are thought to pose a danger to security. However, Webb (2007:71) suggests that governments are not just collecting individual’s personal information and checking it against information about known terrorists, but are using the information to assess and pre-emptively eliminate the risk that an individual may pose to the state. The TSA did acknowledge that they would delete all travel records for all U.S. citizens upon completion of their travel itinerary though they did not specify the same protocol for non U.S. citizens. The Electronic Frontier Foundation (EFF) noted that “the good news is TSA does not plan to retain data on individuals. The bad news is that CAPPS II puts the riskiest element of the program-the determination of risk and the construction of rules for conducting background checks- into the realm of the more secretive intelligence and law enforcement programs and databases” (Bennett 2008:5).

Critics of CAPPS I and II argued that the system is a violation of one’s right to privacy and an unwarranted restriction on the fundamental right to travel and summed up seven reasons why CAPPS II should be abandoned (Electronic Frontier Foundation n.d). The first reason is that it generates a risk score based on information and sources
that are not disclosed to the public and analyzes that information using criteria that are
also not disclosed nor subject to public oversight (American Civil Liberties Union 2004).
The second reason is that the system does not make citizens any safer considering that
any terrorist could use false identification and pass through without any hassle. In turn,
given the high numbers of Americans who fly, this could lead to a large number of false
positives and make it extremely hard to find only a handful of terrorists amid this mass
of travellers (American Civil Liberties Union 2004). The third is that the whole system
will likely expand to gather more and more information about the public, to begin
including a larger variety of criminals beyond its original intention of terrorists and
violent criminals, and the use of this system beyond airports to include other
transportation hubs. The fourth concern is that travellers would receive no notification,
correction or appeal. Specifically, individuals would have no way of knowing why they
were targeted nor would they have any means to contest or seek amendment of their
records. The fifth concern is that CAPPS II would enable the compilation of a lifetime
travel dossier tracking everyone who flies anywhere in the world. In fact, there are no
U.S. privacy laws to restrict the collection, storing and distribution of such dossiers. The
sixth problem is the cost to build CAPPS, which would cost an estimated 2 billion; yet the
TSA has never explained who will bear this expense (American Civil Liberties Union
2004). The final concern is the potential for systematic unequal treatment based on
race, religion and ethnic origin (American Civil Liberties Union 2004).
While CAPPS II in the U.S. was busy collecting passenger information in 2003, Canada developed its own version that same year. CATSA, launched in 2003, was originally designed to teach effective pre-board screening to 3000 new security personnel (Lyon 2006:400). Shortly following its emergence CATSA began building comprehensive data sets of all travellers, as well as 4000 employees from all 89 Canadian airports in order to compile data reports. Canada also invested $280 million in immediate measures, such as enhanced policing, security and intelligence following 9/11 (www.dfait-macci.gc.ca). Key initiatives included: fast tracking a fraud resistant resident card for new immigrants; more front end security screening for refugee claimants; increased detention capacity; increased deportation activity; hiring of new staff to enforce upgraded security at entry ports; redeployment of over 2000 federal police officers to national security duties; technology upgrades in order to: prevent, detect, and respond to existing and emerging threats to national security, share information among criminal justice and other agencies, and to undertake co-ordinated domestic and international law enforcement responses and target cross border criminal activity.

CAPPS II in the U.S. however, was officially abandoned in July 2004 as a result of an enormous amount of pressure from Congress, who declared that TSA failed to address most of the issues originally of concern, as well as from the American Civil Liberties Union (ACLU) who summed up seven reasons why CAPPS II should be abandoned. At the same time however, the Report of the 9/11 Commission was advocating for a centrally coordinated screening system. Following this report, Congress passed the Intelligence Reform and Terrorism Prevention Act which directed the
Department of Homeland Security (DHS) to “commence testing of an advanced passenger pre-screening system that will allow the Department of Homeland Security to assume the performance of comparing passenger information...to the automatic selectee and no fly lists” (Bennett 2008).

**Secure Flight and Passenger Protect**

In August 2004, TSA announced that the successor of CAPPS II would be Secure Flight and would set up a new system of records in accord with the Privacy Act in order to create this program (Bennett 2008). Secure Flight is defined as “an airline passenger screening program under development by the Transportation Security Administration. It compares passenger information from Passenger Name Records, containing information given by passengers when booking their flights, against watch lists maintained by the federal government” (Wikipedia). According to TSA officials, Secure Flight had a number of objectives including identifying in advance of flight, passengers known or suspected to be engaged in terrorist activity; moving passengers through airport screening more quickly; reducing the number of individuals unnecessarily selected for secondary screening; and fully protecting passengers privacy and civil liberties (Bennett 2008:7). Furthermore, PNR data collected would be compared against the existing Terrorist Screening Database, maintained by the Terrorist Screening Center.

Following shortly after the development of Secure Flight in the U.S. was the Canadian no fly list, introduced in March 2007 for domestic flights and June 2007 for international flights. Passenger Protect, commonly referred to as the Canadian no fly
list, is defined as the “Canadian government initiative to identify individuals who may be an ‘immediate threat to aviation security’ and prevent them from boarding a flight” (Wikipedia). The program consists of two main components: a "Specified Persons List" which includes the name, birth date, and gender of individuals believed to pose a security threat, and a set of "Identity Screening Regulations" requiring all passengers who appear to be 12 years of age or older to present valid government-issued ID before they are allowed to board a flight.

Canadian policy on airline and passenger security has been very closely tied with that of the United States because a large proportion of flights to and from Canadian destinations intrude upon U.S. airspace (Bennett 2008). In fact, the U.S. government has required all airlines flying over American soil either to turn over all the names of passengers on board within fifteen minutes of take off or to check those names against U.S. government watch lists in attempt to prevent terrorists from entering U.S. airspace (Bennett 2008). The Canadian government found both of these options undesirable, and decided that checking names against a Canadian list was a much better alternative. This decision shows that in some ways the Canadian no fly approach is (or should be) somewhat distinctive from the United States. Specifically, using the American list was found undesirable by the Canadian government, which in itself suggests that the Canadian list would be different otherwise it would be appropriate to share. However, as will be discussed below, the Canadian government continues to use the American list,
which seems contradictory given its claim that the Canadian version is distinct and unique from that of the United States.

The Canadian version of the no fly list originated with the Public Safety Act, which made changes to the Aeronautics Act under which the government of Canada has the authority to request and evaluate information regarding airline passengers (Bennett 2008). Specifically, Section 4.82 of the Aeronautics Act requires airlines to gather and share the full legal name, date of birth, citizenship or nationality and gender of all passengers (Butler 2007). Moreover, the program will enable the RCMP and CSIS to receive and analyze Advance Passenger Information (API) and Passenger Name Record (PNR) data from air carriers and operators of aviation reservation systems without a warrant (Butler 2007). Put simply, several sections combined grant Transport Canada the authority to create a list of individuals who pose “an immediate threat to aviation security” (Bennett 2008).

In both Canada and the U.S., API data is collected at check-in and include name, date of birth, gender, citizenship or nationality and travel document information. PNR data is collected at the time of booking and includes information relating to a traveller’s reservation and itinerary. Moreover, under section 4.82, the Royal Canadian Mounted Police (RCMP) and Canadian Security Intelligence Service (CSIS) have the authority to access air passenger information and match it against information in their possession in order to identify threats to transportation and national security (Bennett 2008). In the
United States, API data is matched with information in the Terrorist Screening Database in much the same way as it is in Canada.

The intended difference between Secure Flight and its predecessors was the exclusion of predictive computer algorithms designed to profile travel behaviour that might be linked to suspicions of terrorism (i.e. purchasing a one way ticket in cash) (Bennett 2008). Furthermore, the new system was only to look for known or suspected terrorists rather than other law enforcement violators. In both countries, a form of redress was also to be implemented for individuals who believed they had been unfairly or incorrectly selected for additional screening (Kitchin & Dodge 2006).

**The Verdict**

Despite these numerous initiatives developed in the name of “national security,” critical questions have been posed regarding the adequacy of these new measures. For instance, in December 2004 the Senate Committee on National Security and Defence reported on inadequate mail and cargo screening, unsatisfactory background checks on airport personnel, a lack of control over access to restricted areas, and insufficient training of part time customs staff (Lyon 2006:400). As well, in March 2005 Canada’s Auditor General, Sheila Fraser, reported on unsatisfactory Passport Office practices, including inadequate watch lists, outdated technology, and poor record checking to verify identification (Lyon 2006:401).

Although Secure Flight was originally intended to be implemented in September 2005, it was subject to criticisms claiming it failed to protect security and privacy and not
meeting its stated goals (Bennett 2008). Consequently, the head of TSA, Kip Hawley announced that the Secure Flight program would be suspended pending a comprehensive security audit. A year later, it was reported that the implementation of Secure Flight would be delayed until 2010 (Bennett 2008). In fact, to this day, Secure Flight and Passenger Protect are simply a regulation and do not have any parliamentary approval.

Similarly, when the official notification came in August 2005, that a Canadian version was being developed, it was met with numerous criticisms and significant resistance. The Federal Privacy Commissioner sent a list of 24 questions to Transport Canada regarding the operation of the program and stated in a press release that the no fly list “represents a serious incursion into the rights of travellers in Canada, rights of privacy and rights of freedom of movement” (Bennett 2008). A further development that sparked criticism was the release of the report into the wrongful apprehension and deportation of Maher Arar and the role that terrorist watch lists played in his detention in New York and deportation to Syria.

In June 2007, the office of the Privacy Commissioner of Canada prescribed a list of concerns and recommendations regarding the no fly list, several are worth noting here. Transport Canada has not provided assurances that the no fly list will not be shared with foreign governments or their agents; that the Passenger Protect Program involves the collection, use and disclosure of excessive and sensitive personal information of travellers; the program creates real risk of harm to individuals as a result of inaccurate or unreliable information; the program involves the secretive use of this information in
arriving at determinations regarding individual rights and freedoms; Transport Canada has indicated that aircrafts operating in Canada are using and may use the no fly lists of other unspecified countries, as well as the no fly list of the U.S. (Privacy Commissioner 2007). In fact, although Canada’s no fly list was introduced on June 18, 2007, airlines continue to use the U.S. no fly list even when they fly domestically (News Release 2008). In fact, although the government has neither confirmed nor denied this, the Smart Border Declaration and the Security and Prosperity Partnership of North America, as well as intelligence agreements, make it certain that the list will cross fertilize with the U.S., and perhaps even other nations’ lists (Kutty 2007). Fred Gaspar, vice president of policy and planning with the Air Transport Association of Canada, refused to discuss specific methods, but claimed that air carriers have been known to check names against the U.S. no fly list even for flights between Canadian cities (Globe & Mail 2007). This means that a traveller flying from Calgary to Toronto could still be delayed at the airport or prevented from boarding even though the individual’s name does not appear on the Canadian no fly list. Moreover, Micheal Vonn, policy director of the B.C Civil Liberties Association, noted that her group had written Transport Canada to inquire if the release of the Canadian no fly list would mean that Canadian air carriers would stop using a U.S. compiled list. Vonn received a letter back from Transport Canada essentially stating that “there’s nothing we can do” implying that we will now have the worst of both worlds (Pablo 2007). Foreign airlines that fly to and from Canada will also have access to the names on the Canadian list (Globe & Mail 2007).
Lastly, the Automated Targeting System (ATS) came to the attention of the media and civil liberties advocates in 2007. While the ATS was originally designed for screening of cargo entering the United States, the existing screening programs and risk assessment procedures were cleverly used to screen passengers as well. The existence of ATS was met with great suspicion and outrage as it is unclear when this screening started or how many individuals have been affected. The risk assessment and links to information upon which the assessment is based, which are stored in the ATS, are created from a number of sources including the traveling public through information submitted by their carrier to the Advance Passenger Information System, persons crossing the United States border by foot or automobile, or law enforcement information that pertain to persons, goods or conveyances (Bennett 2008). In response, the DHS published a Privacy Impact Assessment (PIA) which described the impact of the planned system and confirmed that “every traveller and all shipments are processed through ATS, and are subject to a real-time rule based evaluation. ATS provides equitable treatment for all individuals in developing any individual’s risk assessment score” (Bennett 2008). These risk assessments are to be maintained for up to 40 years.

These announcements raised suspicions that ATS had been in existence for a number of years, without appropriate Congressional approval, and that CAPPS and Secure Flight were perhaps distractions from the real surveillance that was occurring. This was met with a number of FOIA suits against DHS to extract more details on the program. EFF claimed that the ATS will “create and assign risk assessments to tens of millions of citizens as they enter and leave the country. Individuals will have no way to
access information about their risk assessment scores or to correct any false information about them. But once the risk assessment is made, the government will retain the information for 40 years as well as make it available to untold numbers of federal, state, local, and foreign agencies in addition to contractors, grantees, consultants and others” (Bennett 2008). Moreover, EPIC, writing on behalf of 30 organizations and 16 experts, regarded ATS as a secret government program in clear violation of the Privacy Act, and another example of “mission creep” (Bennett 2008). ACLU concluded that ATS “subverts the Fourth Amendment by allowing DHS to create a dossier on every American traveller. In short, this program turns every American traveller into a criminal and terrorist suspect” (Bennett 2008).

It is clear that both the American and Canadian governments have created a risk reducing portfolio of initiatives since September 11th in attempt to heighten security, immobilize potentially violent or dangerous persons and pre-empt future terrorist attacks. Although there is no compelling evidence of a threat, nor evidence to deem each individual on the list a “threat to aviation security,” the no fly list is justified on the grounds that certain events may happen again. Foucault’s work on techniques of normalization and their incorporation into expert knowledge and judicial power suggest that in a pre-emptive climate, the individual already resembles their crime before they have committed it (Amoore 2007). Here, calculative practices are put in place before an event occurs, in order to effectively see and envision the individual as a criminal. In the context of the no fly list, an individual is socially sorted, placed on the list and essentially excluded and labelled as a criminal before they have committed an offence. The
challenge for Canadian citizens, it seems, is to initiate a dialogue to determine whether this is sufficient to warrant our cherished civil and human rights being violated.

In sum, this chapter has demonstrated the tightly orchestrated responses of Canada and the United States post 9/11 leading up to the development of the no fly list. It seems when the dominant country, the United States, acts and designs an initiative against the war on terror, Canada quickly follows suit. This has also proven true of the no fly list. The question remains however, what if anything makes the Canadian list unique from the U.S.? Both lists are used for the same purposes and are administratively handled in the same manner by similar departments. In fact, perhaps we should ask ourselves why the two countries even have separate lists, since it has been shown that Canada continues to use the U.S. list and that information sharing is common. Moreover, both countries are operating on the precautionary principle, and as such, the no fly list has the potential to grow infinitely. If both countries have no clear evidence to create such a list, no sound evidence to place an individual on the list, but are rather operating out of fear, then the Canadian no fly list cannot be distinct from that of the United States. It is clear that the U.S. began attempts to create their no fly list shortly after September 11th and that Canada quickly followed suit. Without any pending threats, these actions suggest a fear based reaction in attempt to prevent that which may never occur- future terrorist attacks. Moreover, as will be discussed in the next chapter, both Canada and the United States have the same criteria for placing individuals on the list, which includes any individual deemed to be a threat to aviation security. If both countries are operating on the precautionary principle as hypothesized,
this means that the list could grow infinitely and potential threats could become endless. In the next chapter, the procedures used to create the list are discussed, how personal data are obtained from the Passenger Name Record, and finally, it will be discussed how the data is mined for alternative purposes.
Chapter Three: How Lists are Constructed

“As some day it may happen that a victim must be found,
I’ve got a little list- I’ve got a little list
Of society offenders who might well be underground,
And who never would be missed- who never would be missed!...
The task of filling up the blanks I’d rather leave to you.
But it really doesn’t matter whom you put upon the list,
For they’d none of ‘em be missed- they’d none of ‘em be missed!” (Koko, The Mikado, cited in Bennett 2008)

In the context of an increasingly globalized world, mobility is cherished yet differentially distributed (Lyon 2007:163). Following the events of September 11th and with the advent of the no fly list, some argue that the right of mobility is being questioned and challenged. One of the primary goals in the fight against terrorism is to identify suspected terrorists and keep them from harming citizens both at home and abroad. According to the U.S. Administration, an important element of this motivation is the maintenance of a consolidated list containing the names of known and suspected terrorists (Dept. Of Justice 2007:2). As discussed in previous chapters, the no fly list is currently being used as a means to these ends. The no fly list is the most stringent of watch lists kept, and the criteria for inclusion in these lists, either in the U.S. or Canada are not published (Bennett 2008). How do such systems sort out who can move freely and whose mobility is restricted? Put differently, what criteria deems an individual a “threat to security” while others are allowed to travel without question? The focus of this chapter is an attempt to answer such questions with a specific look at the purpose of the no fly list, how it is enforced, and the procedures used when an individual is listed. With such a focus framing this chapter, particular attention will be paid to the contrasts
and similarities of Canada and the U.S. to better understand how distinctive the Canadian approach truly is.

**How the Lists Work**

The information that is available regarding how and why an individual is placed on the no fly list is scarce. Lawsuits in both Canada and the U.S., designed to compel the disclosure of such information, have been unsuccessful (Florence 2006). Nevertheless, some basic information is publicly available and suggests that these lists are largely compiled from classified evidence collected by confidential sources such as the Terrorist Screening Center and controversial surveillance programs (Florence 2006). A memo from then acting Associate Under-Secretary in Transportation Security Intelligence in October 16th, 2002, and obtained by EPIC under FOIA, concedes that there are two primary principles that guide the placement on the lists, but these principles have been withheld (Bennett 2008).

Prior to the establishment of the Terrorist Screening Center (TSC), the American federal government handled a dozen different terrorist watch lists maintained by different federal agencies (Dept. Of Justice 2007:1). The TSC, signed on September 16, 2003, was designed to integrate the existing U.S. government terrorist watch lists and provide 24 hour, 7 day a week responses for agencies that use the watch list process to screen individuals who, for instance, apply for a visa, attempt to enter the U.S. through a port of entry, attempt to travel on a commercial aircraft, or are stopped by a law enforcement officer for a traffic violation (Dept. Of Justice 2007:1). In effect, the TSC
was designed to provide “one stop shopping” so that every government screener is using the same terrorist watch list and can run name checks against the same comprehensive list with the most accurate, up to date information regarding known and suspected terrorists (Bennett 2008).

In the United States, when a law enforcement or intelligence agency has identified an individual as a potential terrorist threat and desires that individual to be watch-listed, the source agency must nominate that individual for inclusion on the list maintained by the Terrorist Screening Center (TSC). It is suggested here that this process itself is suspect due to the fact that, although the government is operating on the precautionary principle, it has the authority to nominate individuals to be included on the list. This does not seem to be a very objective process as everyone becomes suspect under the precautionary principle and therefore also poses a potential threat to national security. Within this frame, possible threats become endless and those individuals selected become “terrorists” in the eyes of the government. Persons on the list are coded with varying suspected threat levels, so simply being on the list does not necessarily prevent one from boarding an aircraft (Singel 2008). In addition, as new information becomes available that either solidifies the existing information or serves to refute the link to terrorism, the record is supposed to be either deleted or updated (Dept. Of Justice 2007:3). All nominations are filtered through the FBI or the National Counterterrorism Center (NCTC) who review the nomination and determine whether or not the individual is an appropriate candidate for inclusion on the list. This review includes an evaluation of the information supporting the nomination, the quality and
accuracy of the identifying information, and whether sufficient identifying information is available (Dept. Of Justice 2007:3). The TSC is then able to share the terrorist information contained in its database to other screening systems, such as Transportation Security Administration’s (TSA) no fly list [and selectee] list. A no fly “match” requires the TSA agent to notify a law enforcement officer who will detain and question the passenger, while someone on the selectee list has a special mark printed on his/her boarding pass and the person then receives additional screening at security (Bennett 2008). As of April 30, 2007, the number of suspected terrorists on the consolidated list totalled 724,442 people (Dept. of Justice 2007:7). This large number of records is indicative of a risk pre-emption model in which the information appetite of government is infinitely expandable, as officials increasingly orient themselves to the future and concern themselves with the predictive power of information gathered (Webb 2007:73). In fact, a recent update by the American Civil Liberties Union (ACLU) revealed that the consolidated list surpassed the 900,000 name mark on February 2008 (Singel 2008).

The process of placing an individual’s name on the list is much the same in the United States as it is in Canada. In Canada, the lead agency is Transport Canada, who compile the list based on information received from various security and intelligence agencies. Transport Canada is assisted by a Passenger Protect Advisory Group, including the Minister of Transportation, representatives from the Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service (CSIS) and the Justice Department to assess information on a case by case basis and make recommendations to the Minister.
concerning threats to aviation security (Canadian Labour Congress 2007). As such, in much the same way as the U.S., possible threats are endless and the no fly list will reflect this attempt at risk aversion. Specifically, operating under the precautionary principle implies that profiles are developed on travellers in attempt to anticipate an uncertain future (Amoore 2007:123). The assumption is that it is possible to build a complete picture of a person in order to see who they are before they board a plane and identifying their degree of deviance. Once an individual’s name is placed on the Canadian list, they will be prevented from boarding an aircraft departing from any Canadian airport (Canadian Labour Congress 2007).

Recall that the criteria for placing an individual on the Canadian no fly list are three-fold: the individual must be currently involved or have been involved in a terrorist group and suspected of being capable of endangering airline security; convicted of a prior life threatening crime involving aviation security; and/or convicted of any life threatening offences and suspected of endangering aviation carriers (www.dfait-maeci.gc.ca/anti-terrorism/canadaactions-en.asp). It is apparent, however, that these criteria are not exclusive. On one hand, the Canadian list is narrower than the U.S. version because the list should be confined to those who pose an “immediate threat” to aviation security, however, it is also broader because the list might also include many who have no link to terrorism (Bennett 2008). It is important to remember, however, that list making in a climate of risk pre-emption requires that everyone be evaluated as a potential suspect in order to eliminate risk as much as possible. As Webb (2007:73)
notes: “the screeners’ function is to separate the risky from the safe on the basis of the best information available from all sources. Whether the best information is complete or even accurate is not really their concern.”

**List “Hits”**

Currently, the both the American and Canadian government sends updated versions of the no fly list to airlines, which are then responsible for checking the names of passengers against the list. A law enforcement officer is notified when a passenger’s name matches the no fly list while that passenger is standing at the ticket counter. The government argues that individuals on the no fly list pose security threats and does not want them to avoid encounters with law enforcement by granting them advance notice of their status (Canadian Labour Congress 2007). Air carriers are obliged to check the names of all individuals who look twelve years of age or older (Canadian Labour Congress 2007). The airline officials must then call a Transport Canada officer who will then decide whether the person poses an immediate threat to aircraft security and should be prevented from boarding (Canadian Labour Congress 2007). Transport Canada will then inform the RCMP and the police force in the jurisdiction, who will take necessary measures if they are needed.

In order to manage “hits” or possible matches against the list, the TSC uses a software application called the Encounter Management Application (EMA), which includes a record of all matches since the inception of TSC (Dept. Of Justice 2007:6). This information includes the detail of all incoming calls, such as the inquiring law
enforcement agency, the databases the TSC staff searched and the information obtained; the status of the TSC’s efforts to confirm an identity match against the list (ie. positive, negative, or inconclusive); whether the call was forwarded for further action; and the final disposition of the call (Dept. Of Justice 2007:6).

**Listed Individuals**

Individuals who are detained as a result of a list match may be actual no fly list subjects, individuals misidentified with a terrorist identity, or someone mistakenly included on the list (e.g. similar names). An individual who wishes to appeal his or her status on the no fly list must apply to the Office of Reconsideration and submit a notarized document allowing the Office to verify the person’s identity (Canadian Labour Congress 2007). Individuals may also submit additional written information relevant to their case, however, they will not have access to the content of their file, making it difficult for them to assess what is relevant or refute any allegations (Canadian Labour Congress 2007). An advisor from outside the public service who has security clearance will examine the information provided by the applicant and submit a report to the Office of Reconsideration. The Office of Reconsideration will then make a recommendation to the Minister on the relevance of reconsidering the decision to put the name of the individual concerned on the list. If the applicant is not satisfied with the Minister’s decision, he or she will have the option of taking legal action, such as by challenging the decision in Federal Court, which of course, requires both time and financial resources (Canadian Labour Congress 2007).
However, using the Canadian appeal process to have your name removed from the Canadian no fly list, will not guarantee the removal of your name from lists maintained by other countries. In October 2006, the U.S. government stated that their program will screen all people who enter and leave the United States and create a terrorism risk profile of each individual, and retain that information for up to 40 years (Canadian Labour Congress 2007). This means that although residents of Canada wrongly placed on the no fly list can attempt to have their names removed via the Office of Reconsideration, there is no clarity on how or if they will be able to get their names removed from other countries’ lists such as the U.S., who keep their risk assessment profiles for decades (Canadian Labour Congress 2007).

The process for redress is similar in the United States. On February 20, 2007, the Department of Homeland Security implemented the Traveller Redress Inquiry Program (TRIP), established for individuals to file complaints regarding their inclusion on the list (Dept. of Justice 2007:47). The complainant must file redress inquiries with the frontline screening agencies, such as TRIP, who will then determine if the inquiry relates to a possible terrorist match. The screening agency will then refer to the TSC all redress inquiries determined to pertain to a possible list match. The TSC office must determine the relationship of the complainant to the terrorist watch list and place the individual in one of the following three categories: (1) non-related, (2) positive match, (3) misidentified (Dept. of Justice 2007:50). Upon review of this information, the analyst recommends the record (a) remain unchanged, (b) be modified, or (c) be removed from the list. The TSC will communicate its decision to the screening agency, who are
required to submit a formal reply to the complainant (Dept. of Justice 2007:51). Also, for individuals with names similar to those on the list, there is now a “TSA Passenger Identity Verification Form” through which these individuals provide a range of personal information to allow TSA to determine whether their check-in can be expedited. There is also an Ombudsman who is supposed to provide neutral and confidential services for employees and the public concerning TSA policies (Bennett 2008).

**Passenger Name Record and Data Mining**

Among the issues raised by the construction of the no fly list is the use of sophisticated data mining technologies intended to reduce risk. Data mining involves scrutinizing a large number of information records/files in search of patterns of communication involving a known terrorist. One element of this concerns the recording, retrieving, and analyzing of personal data to manage risks effectively (Lyon 2007:163). In this regard, safety is the new criterion of good policy within risk-management regimes (Lyon 2006:398). One significant initiative that accentuates such new technologies in Canadian and U.S. airports is a new emphasis on Advanced Passenger Information (API) and the Passenger Name Record (PNR) as the means of tracking travellers. API is the list of passengers on an airplane’s manifest (Webb 2007:103). PNR information is the data kept in air travel reservation systems and can include up to sixty fields of information, including the following: full legal name, gender, date of birth, nationality, trip itinerary, the date the ticket was purchased, credit card information, seat number, meal choices, medical information, frequent flyer information, how many beds requested in the hotel...
room, and travel document number. Business travel PNR’s reveal confidential internal corporate and other organization structures and show which people are involved in work together even if they travelled separately (Hasbrouck undated). On the aggregate level, PNR data reveal trade secret information, insider financial information, and information protected by attorney-client, journalistic and other privileges (Hasbrouck undated). Essentially, when an individual makes a reservation, a PNR is created, stored and accessible by the airline even if the reservation is cancelled (Hasbrouck undated).

Many airlines enter and store API separately from PNR data. API data is collected, stored and forwarded to governments (typically to the immigration authorities of the country the individual is travelling to) originally as a way to expedite customs and immigration processing by allowing the destination authorities to begin reviewing the passenger manifest while the flight is still in the air (Hasbrouck undated). Initially, API data was limited to the data that the destination authorities would be able to obtain upon inspection of the travellers passport, however, the U.S. and other governments have recently been demanding that airlines collect other information, such as passenger address and phone number (Hasbrouck undated). Interestingly, 17 of the 34 listed data elements could never be obtained from a traveller’s passport or other travel documents and in most cases, only 8 of the 34 fields could be determined from inspection of tickets (Hasbrouck undated). The collection, storage and forwarding of API data (unlike PNR data) are solely a means of passenger surveillance and immigration law
enforcement mechanism carried out by the airlines on behalf of the governments (Hasbrouck undated).

Under provisions of the Immigration and Refugee Protection Act that came into effect in 2002, commercial aircraft are required to provide Citizenship and Immigration Canada (CIC) with passenger and crew information for analysis, so that any who appear to pose concerns may be identified and intercepted (Lyon 2006:400). In June 2002, the Bush administration broadly re-interpreted their Aviation and Transportation Security Act requiring that air carriers give U.S. Customs direct access to their computer systems; that data be available for all flights, not just those destined for the U.S.; that once transferred, data be made available to federal agencies other than Customs for national security purposes or as authorized by law; and that the United States be permitted to store transferred data for fifty years (Webb 2007:104). Airlines were forced to comply with the demands of the United States government and the regulations prescribed by the Aviation and Transportation Security Act despite the fact that they would be in violation of the core principles of the privacy laws of their home countries, many of which generally require restriction on the disclosure of personal information to third parties; limits on the use of data to the purpose for which it is collected; restriction of data only as strictly required for a declared use; legal redress for individuals to correct inaccurate data or challenge misuse of data; and the maintenance of data security by the data holder (Webb 2007:105). In December 2001, Canada also acquiesced, agreeing to share PNR data in some way with the United States under the Smart Border Action
Plan (Webb 2007:105). This Act required Canadian carriers to disclose any passenger information in their possession to a foreign state if required by the law of that foreign state. To date, the United States, the European Union, the United Kingdom, Canada, and Australia have all passed legislation in order to allow PNR sharing systems and there are plans to expand this synchronized system to other forms of transportation (Webb 2007:107).

As Webb (2007:108) suggests, PNR data sharing schemes should carry the warning “buy a ticket, get a record” or equally “got a record? Don’t buy a ticket!”, since governments have begun using PNR information systems for ordinary law enforcement purposes. In countries that currently have legislation permitting PNR data sharing, the data are being stored and used to create data profiles on individuals so that they can be mined in order to identify “risk” (Webb 2007:108). The collection of such data is indicative of pre-emptive practices and share a number of features. They involve the massive collection and processing of data and, the use of data originally collected for other purposes, they create a category of suspicion through data mining, that is, processing data to define what is being looked for, and further processing to identify those matching the profile (Webb 2007:108). For a number of individuals, such as Maher Arar, the consequences of being flagged as a risk will be dire. In fact, it is now evident that the United States and other countries are acting aggressively on information they gather and share, seizing and detaining individuals without reasonable
grounds, and in some cases, sending them to another country for questioning (Webb 2007:73).

The data that are collected in this manner are also much sought by marketers for the purpose of consumer surveillance. Marketers seek records of consumer behaviour to target advertising and manage future preferences and purchases, as well as to privilege those behaviours profitable to the corporations concerned while discarding those whose profitability is minimal (Lyon 2006:404). Examples include a Treasury Department database that collects financial information reported to the government by financial institutions and a Department of Education database of educational records on individuals from primary school to higher levels of education (Srikantiah 2003). Also, particularly in the United States, the government has seized both foreign and domestic databases since 9/11 (Webb 2007:86). Some of this access has been granted through the U.S. Patriot Act, which gives the FBI authorization to access any business records held by American based companies and their subsidiaries. When seizure of these records is granted, a gag order is placed on the business involved, preventing that business from informing the public (Webb 2007:87). Access to private sector records can also be obtained through the Enhanced Border Security and Visa Entry Reform Act of 2002, which requires all airlines travelling to or through the U.S. to provide the U.S. authorities with access to their passenger databases (Webb 2007:87).

In addition to statutory access, U.S. government agencies are voluntarily being given access to individual’s personal information by the private sector. In fact “many
companies, institutions, and organizations have shown themselves... willing to simply hand over information about their customers and members” (Webb 2007:88). Some examples, taken from Webb (2007) include the following:

- In 2001, 195 universities and colleges voluntarily turned over personal information about their students to government agencies. Of these 195 educational institutions, 172 of them did not wait for a subpoena.

- In 2001, 64 percent of U.S. travel and transportation companies voluntarily turned over information about their customers and employees.

- Using a program called InfraGard, more than 10,000 private companies in the U.S. voluntarily exchange information with the government, checking out security alerts and monitoring the computer activity of customers and employees.

- The airline JetBlue voluntarily gave the Transportation Security Administration more than 5 million passenger itineraries, which were then handed over to the Pentagon and combined with data profiles on each passenger obtained from Acxicom, a large data aggregator company.

- Although Northwest Airlines denied sharing passenger records with the government when the JetBlue story was revealed, it was later discovered
that they had voluntarily given millions of passenger records to the National Aeronautics and Space Administration (NASA).

- In April 2004, American Airlines admitted to sharing 1.2 million records with the Transportation Security Administration and four research companies that were bidding for a government data mining contract.

- In May 2004, several of the largest airline companies in the United States, including American, United and Northwest, admitted to voluntarily handing over millions of passenger records to the FBI after the 9/11 attacks.

The most alarming aspect of the above incidents is that they occurred without the consent of the individuals whose records were involved, which is in direct violation of most organizational privacy policies. As stated in the “Fair Information Practices” Code, notice of some, or all of the following have been recognized as essential to ensuring that consumers are properly informed before divulging information: identification of the entity collecting the data; identification of the uses to which the data will be put; identification of any potential recipients of the data; the nature of the data collected and the means by which it is collected (if not obvious); whether the provision of the requested data is voluntary or required, and the consequences of a refusal to provide the requested information and the steps taken by the data collector to ensure the confidentiality, integrity and quality of the data (Fair Information Practice Principles).

Another alarming aspect is that the U.S. government has also been buying personal
information on Americans and citizens from other countries from commercial data aggregators (Webb 2007:89). Companies such as DoubleClick report that their data include information from more than 1,500 companies, which include information on 90 million households and records of 4.4 billion transactions.

Following 9/11 consumer data from airline passengers as well as data relating to consumption of many kinds became of central interest to government personnel. In fact, such data mining techniques were used by the Department of Homeland Security following the 9/11 attacks in an attempt to understand how they were perpetrated (Lyon 2006:404). Lyon (2006:404) suggests that “if personal data can be extracted, combined, and extrapolated in order to create profiles of potential consumers for targeted marketing purposes, then, by a similar logic, such data can be similarly processed in order to identify and isolate groups and persons that may be thought of as potential perpetrators of ‘terrorist’ acts.” Also, using the same logic, if someone was flagged because their name matched the no fly list, the situation would be far worse if this red flag was disseminated throughout the federal government causing problems from everything from traffic stops to job applications. The governments have also demonstrated the capability of combining biometric identification cards with terrorist watch lists (Florence 2006). With such practices in use, it is not hard to imagine a world in which individuals have their names checked against a watch list before swiping a Metrocard, entering an office building or taking money from an ATM machine. In many ways then, an analysis of the seemingly benign specified persons list reveals a darker,
more multi-faceted template for globalized, mass surveillance. Bruce Schneier, a security expert who served on the TSA appointed oversight panel for Secure Flight, commented that “the TSA has been operating with complete disregard for the law and Congress. It has lied to pretty much everyone. And it is turning Secure Flight from a simple program to match passengers against terrorist watch lists into a complex program that complies dossiers on passengers in order to give them some kind of score indicating the likelihood that they are a terrorist” (Webb 2007:154).

It is apparent that in many ways, the Canadian version of the no fly list is very similar to that of the United States. With both countries operating under the precautionary principle in attempt to manage risk effectively, both countries are essentially creating their lists with the same goals and principles in mind. In both countries individuals are placed on the list in the same way, the lists are managed in the same way so that individuals whose name matches the list are screened accordingly, and finally, the process for redress is very similar in both countries. With those similarities in mind, it is difficult to see any sort of “distinctive” nature of Canada’s no fly list. In fact, since the Canadian government has been cross fertilizing its list with the U.S., it appears that both lists are simply images of one another with the number of individuals listed rising daily. With so many individuals affected, it is important to consider how and to what extent. The next chapter looks at individuals who are affected by the no fly list as well as the consequences for these individuals.
Chapter Four: Consequences

The process of sorting the population and placing “at risk” individuals on the no fly list raises several questions of sociological interest, particularly pertinent to those who travel. For instance, what sort of assessment is made to deem an individual a “threat?” Once individuals are on the list, what sort of surveillance measures are taken (if any) outside of airport boundaries? How is personal traveller information used? What sort of theory can be used to explain the no fly list?

At the forefront of the myriad of public concerns are the following: “how effective is this surveillance measure in procuring security?” and “Does the no fly list actually make citizens safer?” as well as matters of governance, human rights and civil liberties. The difficulty with answering these questions lies in the fact that the public has access to very little information regarding the no fly list. For instance, in order to obtain more information regarding the no fly list, members of the American Civil Liberties Union filed requests under the Freedom of Information Act and the Privacy Act in December 2002 (Srikantiah 2003). Not surprisingly, the ACLU did not receive any information in response. Both the American and the Canadian version of the no fly list are filled with potential human rights and civil liberties violations; they threaten the privacy rights of individuals; obstruct freedom of movement across the country; and single out travellers without reasonable grounds. Ironically, there is little evidence to suggest that this initiative truly protects airline travellers. Indeed, common sense should make us wonder how someone can be too guilty to fly and yet too innocent to be charged (Kutty 2007).
While the no fly list makes sense according to the transportation authorities as a measure to protect travellers from the threat of terrorism (although no evidence has indicated that any terrorist has been apprehended using the no fly list), there are many troubling consequences: individuals may be listed by mistake and once on the list it is very difficult to get off. There are numerous cases (both American and Canadian) of individuals who have, to their dismay, found themselves on the no fly list for no reason they or anyone else can fathom. In fact, according to a report from the U.S. Accountability Office, more than 30,000 travellers have already been falsely associated with terrorism when they crossed the border, attempted to board a plane or were arrested for a traffic offence (Canadian Labour Congress 2007, Webb 2007:179). For instance, Democratic Senator Edward Kennedy of Massachusetts and Republican Congressman Donald Young of Alaska were both blocked from boarding an airplane in 2004 because their names appeared on the list (Florence 2006). Eventually Kennedy was permitted to fly home after several phone calls to high level officials in the Department of Homeland Security (DHS) but was stopped again on the return journey to Washington (Webb 2007:179). In reference to his experience, Senator Kennedy comments: “if the DHS has that kind of difficulty with a member of Congress, how in the world are average Americans...going to be treated fairly and not have their rights abused?” (Florence 2006). Although the Canadian government has attempted to draw lessons from the mistakes made by the U.S., this “made in Canada” program has not satisfied the critics (Bennett 2007:21). In fact, the B.C Civil Liberties Association is
requesting that Ottawa investigate why airlines in Canada are still using U.S. security
watch lists to screen passengers (Press Kit 2007).

The arguments against the no fly list are generally grouped into four categories,
including effectiveness; due process concerns; discrimination issues; and “unavoidable
security problems” (Bennett 2008). In terms of the effectiveness of the no fly list, it is
argued that civil liberties should not be jeopardized for a program that cannot be
demonstrated as effective (Bennett 2008). Bruce Schneier comments that even if
Secure Flight were perfect (no false identity matches), it still wouldn’t be “worth it”
because Secure Flight is a passive system (Bennett 2008). Rather, many have concluded
that the money spent on passenger pre-screening systems would be much better spent
on proactive investigative measures or emergency response systems. Moreover, the
ACLU suggests that such profiling systems are not as infallible as the developers may
suggest with common errors including typos and non-updates (Kitchin & Dodge 2006).

With respect to due process, concerns centre around the secrecy of the lists, the
fact that the criteria for being placed on the list are very vague, and the claim that there
will always be false identity matches are unavoidable (Bennett 2008). Specifically,
travellers are judged largely in secret with the findings non-disclosed, with a limited
process of notification, correction and appeal (Kitchin & Dodge 2006). Media reports
have offered stories of babies, lawyers, academics and famous pop singers all appearing
on the list. Other name errors that have appeared on the list include some of the dead
9/11 hijackers, and anyone with the common name David Nelson, which has prompted
an ACLU lawsuit on behalf of someone with that name (Bennett 2008). Roch Tasse, coordinator of the International Civil Liberties Monitoring Group (ICLMG), highlights the urgent need for greater transparency and accountability on the part of airlines and transport authorities as an increasing number of travellers are being listed as a result of mistaken identity and by the proliferation of U.S. watch lists and linked databases (Press Kit 2007).

A third and related problem based on discrimination is that; the understandings of “terrorist” are socially constructed and no one knows how this informs the construction of the list. To what extent does the no fly list rely upon religious or racial profiling, or target those with unsympathetic or unfashionable political beliefs (Bennett 2008)? In fact, Mohamed Boudjenane, Executive Director of the Canadian Arab Federation, states that “without fail, no fly lists of any kind always demonstrate a pattern of racial profiling” (Press Kit 2007). Specifically, there is the possibility of mistakes getting compounded over and over again: someone gets profiled for racial reasons and placed on the no fly list, the list is shared with other countries and all of a sudden someone could be in trouble for no other reason other than that they are from the “wrong” community group (Pablo 2007). NDP Transport Critic Peter Julian comments that “what is at stake here is the respect, dignity, and rights of every Canadian, particularly those of Arab descent and Canadians of the Muslim faith in communities from coast to coast” (ndp.ca :2007). The risk of discrimination is compounded by the final concern, which rests upon the notion that no comprehensive
passenger pre-screening program can be free of security problems (Bennett 2008). It is well known that ID verification is subject to both human and technological error and the risk to the individual is direct and immediate. Mistakes, it seems, are inevitable and an individual listed on the no fly list by mistake may suffer a number of unintended consequences, such as public humiliation and being denied the basic right of mobility.

**Human Rights**

All of Canada’s provincial privacy officials commented in a joint statement on June 2007, that “the Passenger Protect Program involves the secretive use of personal information in a way that will profoundly impact privacy and other related human rights such as freedom of expression and association and the right to mobility” (Canadian Labour Congress 2007). The Privacy Commissioner of Canada, Jennifer Stoddart, maintained that the list “represents a serious incursion into the rights of travellers in Canada, rights of privacy and rights of freedom of movement” (Kutty 2007). Moreover, many opponents of the no fly list argue that it deprives individuals of liberty protected by the Canadian and American Constitution’s Due Process Clause. Under this clause, three interests are directly affected by the no fly list, including the liberty to travel; the liberty to pursue an occupation; and the liberty of maintaining one’s reputation in the community (Florence 2006). The court (Kent v. Dulles, U.S, 1958) has stated that the right to travel includes the right “to use the highways and other instrumentalities of interstate commerce in doing so, and to be uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement” (Florence 2006). Nevertheless,
restrictions on air travel, such as the no fly list, directly threaten this right. The fundamental right to travel includes the ability to travel by airplane and restriction on such mobility is the very definition of deprivation of liberty (Florence 2006). In fact, the Canadian government has yet to prove that this restriction on freedom of movement falls within “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, as stipulated by the Canadian Charter of Rights and Freedoms” (Canadian Labour Congress 2007). In terms of maintaining one’s reputation, passengers have been informed, in full view of others waiting in line, that their names are on the no fly list (Florence 2006). This may indeed result in significant embarrassment, humiliation and stigma attached to the individual thought of as a potential terrorist.

**Report Card**

In June 2005, the U.S Department of Justice (DOJ) Office of the Inspector General (OIG) issued an audit report that examined the operations of the Terrorist Screening Center (TSC) from the time of its inception. The results of the report suggest that “although the TSC had made significant strides in becoming the government’s single point of contact for law enforcement authorities requesting assistance in identifying individuals with possible ties to terrorism and had developed a consolidated terrorist watch list database, the TSC had not ensured that the information in that database was complete and accurate” (Dept. Of Justice 2007:1). Some of the reported inaccuracies included instances where the consolidated database did not contain names that should have been included on the list, and inaccurate or inconsistent information regarding
individuals included in the database. The report concluded with 40 recommendations to
the TSC addressing areas such as database improvement, data accuracy and
completeness, and staffing.

In 2007, the OIG conducted another audit. Its objectives were, to determine if
accurate and complete records are disseminated to and from the watch list database in
a timely fashion; review the TSC’s efforts to ensure the quality of the information in the
watch list database; and assess the TSC’s efforts to address complaints raised by
individuals who believe they have been incorrectly included on the list (Dept. of Justice
2007:10). The findings of this audit suggest that, as in 2005, the TSC does not have
consistent, accurate and complete terrorist information. For instance, approximately
2,000 watch list records did not belong in the database, while at least 8 records of
known offenders were missing from the database (Dept. of Justice 2007:12). Overall,
the OIG concluded that again, the TSC must improve its controls over their database to
help ensure the integrity and effectiveness of terrorist lists.

Review of the no fly list specifically was conducted by the TSC with the aid of 10
federal air marshals assigned by the U.S. Department of Homeland Security. The process
included a review of the available information for each individual listed on the no fly list
and a determination of whether the individual should remain on the no fly list. In
addition to this review, TSC conducted a quality assurance check of all records of
individuals on the no fly list. When the TSC began its review in July 2006, the list
contained 71,872 records (Dept. of Justice 2007:31). After the review was completed,
the TSC identified 22,412 records for removal from the list and placement on the TSA’s selectee list (Dept. of Justice 2007:31). A total of 5,086 records were determined to require neither inclusion on the no fly list or the selectee list. The OIG reviewed a sample of 15 records that had undergone a quality assurance review by the TSC and did not find any data inaccuracies or inconsistencies (Dept. of Justice 2007:32). There were however, problems with the implementation of status changes that the TSC identified during its review. Specifically, TSC officials claim that airlines can only process between 500 and 1,000 record changes a day, meaning that the status of many individuals was incorrectly shown on the no fly and selectee lists for a period of time (Dept. of Justice 2007:33). In order to improve TSC function, the OIG recommended that the TSC work more closely with watch listing agencies to better co-ordinate quality assurance efforts, which includes setting a standard for the timeliness of response to quality assurance matters and delineating roles the roles and responsibilities of the various agencies involved (Dept. of Justice 2007:37).

When the American watch list of terrorism suspects rose to over 1 million records (corresponding to approximately 400,000 people) the American Civil Liberties Union publicized the milestone with a news conference and release (Mikkelsen 2008). This release claimed the watch list is an impediment to travellers and called for changes, including tightening criteria for adding names, giving travellers a right to challenge their inclusion and improving procedures for taking mistaken names off the list (Mikkelsen 2008). ACLU technology director stated in the release that “America’s new million
record is a perfect symbol for what’s wrong with this administration’s approach to security: it’s unfair, out of control, a waste of resources (and) treats the rights of the innocent as an afterthought” (Mikkelsen 2008).

**Cases**

Shortly after the Passenger Protect Program began in Canada and the United States, numerous mistakes were reported. Specifically, the measures introduced by the government in the “fight against terrorism” have shown that Arab and Muslim communities have been the primary victims in this struggle (Canadian Labour Congress 2007). As such, there is every reason to suggest that this will be equally true of the no fly list. In fact, looking through the cases of individuals who have found themselves on the no fly list illustrates that inclusion on the list is not without bias and errors.

- Eva Morales (president of Bolivia), Nabih Berri (speaker of the Lebanese parliament) and the singer Yusuf Islam are all on the U.S. no fly list (Canadian Labour Congress 2007).

- The U.S. list contains names as common as “R. Johnson” and “T. Kennedy” that correspond to the names of dozens of individuals (Canadian Labour Congress 2007).

- In January 2006, an Air Transat flight to Mexico was intercepted by U.S. fighter planes because it was carrying a Canadian citizen of Lebanese origin who was on the U.S. no fly list (Canadian Labour Congress 2007).
• Maher Arar and his family are still unable to travel to the United States because they are on the U.S. no fly list (Canadian Labour Congress 2007). Moreover, in 2007 Arar was singled out for additional screening on a flight between Montreal and Edmonton (Press Kit 2007).

• Two boys, both unrelated and living in different provinces but with the same name, one 10 years old and the other 15 years, were each told that they could not board their flights along with their family because their names were on the no fly list (Canadian Labour Congress 2007). Most disturbingly, airline officials suggested to the parents they may want to consider changing their child’s name to avoid further problems. This case highlights the major flaws of the Passenger Protect Program.

• Ceccelia Beaman, a 57 year old middle school principal taking 37 children on a field trip to California was fined $500 and placed on the no fly list because of a bread knife found in her purse at the airport (Parks 2007:188).

• Jaspreet Singh, an Indo-Canadian author and playwright from Calgary cancelled scheduled appearances at two major cultural events in Toronto after failing to get assurances from Air Canada that he would not be subjected to intense security checks that occurred attempting to board previous flights to and from Calgary. After encountering a number of altercations at the airport, Mr. Singh was finally informed that his name is indeed on “a no fly list” (Adams 2008). As a result, Mr. Singh has chosen to drive (recently 13 hours to Vancouver) rather
than fly and has cancelled a number of events. He comments that: “I do not feel safe with my name on a list. Those lists are shared with other countries. You do not want to get into one of those worst case scenarios” (Adams 2008).

- Jan Adams and Rebecca Gordon were told they could not board their flight at the San Francisco airport because their names appeared on the U.S. list. The two women, who are peace activists and publish a newspaper called War Times were not told how their names got on the list or how they could have them removed. In fact, there appeared to be no reason for their inclusion on the list other than the fact that they had been exercising their right to disagree with the government (Webb 2007:178).

- An ACLU lawyer, a retired Presbyterian minister, a man who works for the American Friends Service Committee (a Quaker organization whose purpose is to promote peace and social justice), and an ACLU special projects co-ordinator have also been among the many passengers pulled aside on the U.S. no fly list (Webb 2007:178).

- John Dear, a 43 year old Jesuit priest, member of the Catholic peace group Pax Christi and former executive director of the Fellowship of Reconciliation has been taken aside at the boarding gate to be searched and questioned every time he has flown since 9/11 (Lindorff 2002). One particularly disturbing experience occurred when the flight was delayed while Dear was taken aside and searched while more than 100 passengers looked on nervously.
• Nalini Ghuman, an up-and-coming musicologist and expert on the British composer Edward Elgar, was stopped at the San Francisco airport and without explanation, was told that she was no longer allowed to enter the United States (Bernstein 2007).

• Green Party’s Nancy Oden, and others like her, have reported being detained by armed soldiers or questioned by Secret Service agents, sometimes at such length that they missed their flights (Lindorff 2002).

• According to the American Civil Liberties Union, the U.S. watch lists will grow to include one million names by July 2008. Meanwhile, one U.S. airline reports 9,000 false positives every day (News Release 2008).

• In Canada, Shaid Mahmood, a born Canadian citizen who is Muslim, and who has been critical of U.S. and Israeli foreign policies, was refused the right to buy a ticket by an Air Canada agent because his name appeared on the U.S. no fly list (Webb 2007:178). Meanwhile, Mahmood’s Chilean born wife was allowed to purchase a seat without incident (The Canadian Press 2007). At the time, Canada did not have an “official” no fly list, so it is likely that Air Canada was unofficially using U.S. data on potential security threats (Press Kit 2007) (The Canadian Press 2007). On November 27, 2007, a complaint was lodged with the Canadian Human Rights Commission against Air Canada for racial profiling with supporters such as the International Civil Liberties Monitoring Group (ICLMG), the Canadian Arab Federation (CAF), the Canadian Council on American-Islamic Relations
(CAIR-CAN) and Peggy Nash, and NDP Member of Parliament (Press Kit 2007)(The Canadian Press 2007). In response to his treatment, Mr. Mahmood comments:

“Over these past few years of searching for credible answers, I still do not know why I was not allowed to board flight AC8087. Am I on a ‘no-fly list’ because of active racial profiling or is this a case of mistaken identity? Or could it be because of my political views as an editorial, syndicated cartoonist? Air Canada needs to come forth with a credible explanation and apology. As a citizen of a democratic country I was not given a reason for not being allowed to fly. I was not provided any means of recourse” (Press Kit 2007).

Mr. Mahmood’s lawyer has also stated that:

“The cloak of secrecy surrounding the decision to refuse Mr. Mahmood’s entry onto the domestic flight compounds the impairment to his human dignity and must be removed” (Press Kit 2007).

Are these individuals indeed a “threat to aviation security?” It seems unlikely that this is the case, in fact, none of these individuals have any history of violence. What these people seem to have in common is their opposition to the Bush administration’s war policies and its attack on civil liberties (Lindorff 2002). Moreover, these cases are evidence of the broadened definition of “terrorist” that is being used to place individuals on the list. Specifically, even though these individuals may in fact oppose violence and pose no known threat to aviation security, they are being included on the list nonetheless. When asked if the TSA has a second list of political activists who are being singled out for intense scrutiny and interrogation, Steigman, spokesperson for TSA responded “I checked with our security people and they said there is no second list. Of course, that could mean one of two things: either there is no second list or there is a list and they’re not going to talk about it for security reasons” (Lindorff 2002).
Concern regarding the lack of transparency and due process of the no fly list has motivated a great deal of litigation. The most significant of these suits was filed by the ACLU in the U.S. in April 2004, and was the first national lawsuit to challenge any aspect of the no fly list system (Bennett 2008). *Green et al. v. TSA* was brought on behalf of false positive passengers who had no method of resolving problems even after they had been cleared for flight. The lawsuit and the resulting publicity led Congress in December 2004 to direct the TSA to maintain its lists in a manner that “will not produce a large number of false positives,” and to create an appeal system for persons wrongly placed on the lists (Bennett 2008).

There are many lessons to learn from the alarming number of negative consequences stemming from the no fly list. One of these lessons is that security initiatives aimed at managing perceptions rather than addressing security concerns, such as the no fly list are not harmless. In fact, it is suggested that they cause a disproportionate amount of harm in return for very minor gains in terms of intelligence and law enforcement (Kutty 2007). Barry Prentice, director of the Transport Institute at the University of Manitoba in Winnipeg, said the list is a “sort of charade to make people feel like they have greater security” (CBC News 2007). Further, Prentice comments that “I don’t think it’s going to help one bit. What terrorist is going to travel with their own name and passport?” (CBC News 2007). Alarmingly, there is evidence that the most dangerous people have not been included on the no fly list in the United States. For example, the eleven British suspects facing charges in a plot to blow up U.S. airliners
were not on the U.S. list despite the fact that they were under surveillance for a year (Globe and Mail 2007). Apparently, the FBI and the CIA did not want these names circulating among airport workers in other countries in case information was leaked back to the suspects. So, the question becomes what good is a no fly list if the truly dangerous people are not even on it?

Another lesson that can be drawn from the consequences of the no fly list is that racial profiling is quickly becoming a reality for a number of Canada’s Muslim and Arab communities in regards to national security. As government initiatives are becoming more and more focused on security procedures, it must not be taken as a given that these measures truly make the public safer without sacrificing our fundamental values, liberties and human rights. This scepticism is necessary particularly in respect of the findings from Justice Dennis O’Connor in the Arar inquiry, the Canadian track record with watch lists to date as well as the experience with watch lists south of the border. Disturbingly, the information sharing protocols and mechanisms that were criticized by Justice O’Connor have not been improved, yet the government continues with the initiative (Kutty 2007).

This chapter has focused on the consequences of the no fly list and its impact on travellers, which include the potential loss of livelihood, public humiliation, the breach of basic civil liberties and fundamental freedoms, and the targeting of specific groups of people. As can be seen from the many cases in this chapter, it is evident that a disproportionate amount of harm has resulted from this list with little gained in return.
This serves to refute precautionary logic. As Amoore notes, “to act on the basis of what one thinks one sees in order to anticipate future threat is revealed to be intensely problematic (Amoore 2007:228). It is also clear that the U.S. was the first to introduce the list and as such, has served as a model for the Canadian version. Despite the claim that Canada’s list is unique and “made in Canada,” it seems that this has been proven false as it has been driven by the same precautionary rationale as the equivalent list in the U.S. Consequently, both lists continue to grow as everyone is considered a suspect in the era of precaution.
Chapter Five: Conclusion

Is the no fly list really “made in Canada?” This thesis has attempted to answer the question of the supposed Canadian distinctiveness of Passenger Protect, and has shown that despite minimal differences there are an overwhelming amount of similarities in terms of the operation, process and overall consequences of the no fly list. Above all, both the Canadian and U.S. governments are operating upon the precautionary principle, which is being used to justify measures such as the no fly list in the absence of a pending threat. As Zedner (2007:262) suggests, contemporary society has shifted from risk management to precaution in which there is an attempt by the government to anticipate that which has not yet occurred and may in fact never occur.

Precautionary logic implies that action is taken precisely on the basis of uncertainty: “decisions are made not in a context of certainty, nor even of available knowledge, but of doubt, premonition, foreboding, mistrust, fear and anxiety” (Amoore 2007:221). The main goal under the precautionary principle is the pursuit of security, which is where the no fly list comes into effect. This thesis has argued that the no fly list is an attempt to procure security in the absence of danger by socially sorting the population via listing the potentially dangerous travellers from those who are not seen to pose a threat. In this context, social sorting serves to divide the population into two tiers, what Bauman calls the global elite and the forced territoriality of the rest, otherwise known as the “mobility rich” and the “mobility poor” (Wilson & Weber 2008:125). In this sense, both the American and Canadian lists are similar, that is, both
are listing individuals based on “perceived” level of dangerousness (which has the potential to lead to an ever expanding list) in attempt to avert risk through exclusion.

Not only are both governments operating on the same precautionary principle, the Canadian government is in fact still using the American no fly list despite the fact that there is a Canadian version and that it is intended to be “distinct and unique” from the United States (News Release 2008). This means that a traveller could be prevented from boarding an aircraft if their name appears on the American list whether their name is included on the Canadian version or not. Moreover, the administrative details of the no fly list are handled in the same manner in both Canada and the U.S., such as the criteria for listing individuals, the sources and process used when compiling the lists, the collection, processing and sharing of API and PNR data, the procedures used when managing list matches, forms of redress available to listed individuals as well as the process used when handling redress issues.

Stemming from the similar manner in which the no fly list is constructed and managed in both the United States and Canada are the similar consequences experienced by ordinary people regardless of which list they may find themselves on. As discussed at length in chapter four, the no fly list inflicts a number of human rights and civil liberties violations; it threatens the privacy rights of individuals; obstructs freedom of movement; and singles out travellers without reasonable grounds. The most alarming part for the public, whom the no fly list is intended to protect, is that there is little evidence to show that the list has been an effective measure in ensuring the
security of travellers. In fact, no evidence exists to suggest that the no fly list has apprehended a single terrorist to date (Canadian Labour Congress 2007). Moreover, many individuals are listed by error as a result of mistaken identity and by the proliferation of U.S. watch lists and linked databases, and once a name is on the list it is very difficult to get off. Records show that more than 30,000 travellers have already been falsely associated with terrorism when they crossed the border, attempted to board a plane or were arrested for a traffic offence (Canadian Labour Congress 2007).

Another negative consequence of the no fly list involves the socially constructed notion of “terrorist” and how this helps to inform whose name gets placed on the list. In many countries the definition of “terrorism” used to create lists is so vague that it could quite easily include behaviour that doesn’t even remotely resemble terrorism (Webb 2007:180). These categories in turn become central to an individual’s life chances and may infringe upon basic human rights. As Campbell suggests, “not all risks are equal, and not all risks are interpreted as dangers...those events or factors that we identify as dangerous come to be ascribed as such only through an interpretation of their various dimensions of dangerousness” (cited in Salter 2008:248). Although it is unknown the extent to which inclusion on the no fly list is based on religious or racial profiling, or is targeting those with non-hegemonic political beliefs, it is clear that a large amount of minority groups are targeted for inclusion on the list and labelled as a threat (ndp.ca 2007). It is also evident that understandings of terrorism are being discursively shaped by the agencies involved in risk definition, such as the state, politicians, security experts,
and the media, who manufacture and distribute forms of knowledge via an institutional matrix. This point brings us back to the first chapter that discusses the risk involved when sorting populations based on racial dimensions. Although lacking the explicit racist doctrine of the apartheid regime, the no fly list is a contemporary example of sorting the population via list-making, labelling the designated group, excluding them from the rest of society, negatively affecting their life chances and denying them access to mobility. Maher Arar and many others like him are modern examples of how similar to apartheid, modern social sorting and listing based on race in the pursuit of precaution can have irrevocable ramifications. Moreover, using such a broad concept as “terrorist” as criteria for placement on the list means potential for broad interpretation. This means that one individual’s conception of terrorism may quite likely be different from the next individual. The ever changing and expanding definition of terrorism will contribute to the possibility of an infinitely expanding list of individuals prohibited from travelling as well as the likelihood that the exclusion of labelled “terrorists” will inflict specific groups of people, particularly minorities.

There are a number of contributions this thesis has to offer. Specifically, this thesis has analyzed the no fly list from a sociological perspective, which has both brought some issues to light as well as made some issues clearer. The first matter is the social significance of list-making and the likelihood of error and harm made as a result. As previously discussed, the process of listing is not a new phenomenon and has been used in different historical contexts. It is important to analyse and learn from these
different forms of list-making from a sociological perspective in order to make better sense of more current forms such as the no fly list. It is imperative that we reflect upon and have discourse regarding governmental initiatives rather than passively accept them in order to consider who is being targeted, how they are being excluded, and the harm being incurred.

The second contribution this thesis offers is the importance of being aware of the idea that the precautionary principle gives rise to surveillance tools that fuel initiatives such as the no fly list. The precautionary principle is being used to justify the need to surveil and isolate specific individuals and/or groups without a pending threat, which in turn gives rise to notions of rapidly expanding no fly lists and potential “threats.” At what point does surveillance no longer become justified and instead become a privacy concern? At what point does a “potential threat to aviation security” become actualized into “criminal” and/or placed on the no fly list? These questions carry a significant amount of relevance when we consider the likely future developments of the no fly list.

In conclusion, this thesis has shown that in contradiction to claims made by the Canadian government, the Canadian no fly list is not distinct and unique from the U.S. version. Both governments are socially sorting the population via exclusion and are adding names based on precautionary criteria in order to avert risk. As such, travellers are suffering a number of consequences, which include but are not limited to privacy and civil rights violations. In such a climate of risk aversion, there is potential for both
the Canadian and American lists to grow infinitely in unison. To date, evidence shows this to be the case as both lists are expanding at a rapid pace.
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Appendix

The Canadian no fly list was introduced on June 18th, 2007, following the introduction of the American version. Prior to its implementation, a number of initiatives were put in place that attempted to heighten security measures, which are outlined in chapter two. Since the introduction of the no fly list, a number of false identification matches have been made, minority groups have been targeted, and many travellers have suffered, yet the list continues to grow at a rapid pace.

The following is a list of individuals who have found themselves on the no fly list since its launch and have made their stories public. Some of these individuals have been forced to give up travel, while others have had their reputation damaged, have been obliged to change their names, or have even lost their livelihood (www.travelwatchlist.ca).

Hani Al Telbani-
Fifteen months after the launch of Canada’s no fly list, this 26 year old Master’s student from Montreal was not allowed past the check in when he attempted to board his flight at the Trudeau airport because he was considered a threat to aviation security. Mr. Telbani was the first person denied boarding since the creation of Canada’s no fly list (Khanna, Maclean’s).

Mario Labbe- 2004
This Quebec business man’s name appears on the U.S. no fly list and triggers a red alert on the computers every time he tries to board a flight to the U.S., which is about once a month for the past seven years. As a result, he has decided to change his name to avoid hassles at the airport (cbc.ca).
Andrew Feldmar- August 2006

A 67 year old well known psychotherapist was on his way to pick up a friend at a Seattle airport when he was stopped at the Peace Arch border station in Blaine, Washington. A U.S. Customs and Border protection guard “googled” his name, which turned up a 2001 article written by Fledmar about experimenting with LSD in the 1960’s (www.travelwatchlist.ca).

Ali SeifEnnasr- October 22, 2006

Ali travelled from Ottawa to Chicago to attend a two week training program for his new job in a business consulting firm. However, the Tunisia born Canadian was detained at the O’Hare airport by several FBI and Customs and Border Protection and Homeland Security officials, placed in a cell overnight and was sent back to Canada the next day allegedly because he was considered a threat to national security (www.travelwatchlist.ca).

Shaid Mahmood

A born Canadian citizen who is Muslim, and who has been critical of U.S. and Israeli foreign policies, was refused the right to buy a ticket by an Air Canada agent because his name appeared on the U.S. no fly list. Meanwhile, Mahmood’s Chilean born wife was allowed to purchase a seat without incident (The Canadian Press 2007). At the time, Canada did not have an “official” no fly list, so it is likely that Air Canada was unofficially using U.S. data on potential security threats (Press Kit 2007) (The Canadian Press 2007).
Dr. Munir El-Kassem- May 5, 2007

Dr. Munir El-Kassem was detained and fingerprinted during a stop-over at a Detroit airport on his way to give a lecture at an interfaith conference. The respected Muslim community leader, university chaplain and well known advocate for interfaith dialogue was questioned for four hours and asked whether he knew Osama Bin Laden and Saddam Hussein and whether he loved “God or Allah” (www.travelwatchlist.ca).

Medea Benjamin and Ann Wright- October 22, 2007

These two well known peace activists were denied entry into Canada because their names were on an FBI crime database meant to track potential terrorists, fugitives and violent criminals. Seven months later, after a New Democratic Party MP vouched for them they were allowed to speak at a peace conference in Vancouver (www.travelwatchlist.ca).

Maher Arar - 2007

Mr. Arar and his family are still unable to travel to the United States because they are on the U.S. no fly list. In 2007, Arar was singled out for additional screening on a flight between Montreal and Edmonton (Press Kit 2007).

Robert and James Kenny- June 16, 2008

The two sons of Senator Colin Kenny are both stuck on the no fly list. When their father asked the Transport Minister to help, he was referred to a U.S. website (www.travelwatchlist.ca).

Anonymous- June 4, 2008
A graduate student from Montreal was the first person denied permission to board an aircraft under Canada’s no fly list. The student was barred from boarding a flight at the Trudeau airport on his way to spend a month in Saudi Arabia.

Glenda Hutton- November 26, 2008

This 66 year old former school teacher from Vancouver Island has been forced to give up her retirement dream of travelling the world because her name appears on a secret no fly list. She does not have a criminal record nor has she ever had any problems with the law, yet she cannot get her name off the U.S. list (www.travelwatchlist.ca).

Alistair Butt

Alistair Butt is a name that appears on the list used by Canadian airlines. For at least two Canadian boys, one from Saskatchewan and one from Ontario who share that name, travelling by air has become a nightmare (www.travelwatchlist.ca).

Jaspreet Singh- 2008

An Indo-Canadian author and playwright from Calgary cancelled scheduled appearances at two major cultural events in Toronto after failing to get assurances from Air Canada that he would not be subjected to intense security checks that occurred attempting to board previous flights to and from Calgary. After encountering a number of altercations at the airport, Mr. Singh was finally informed that his name is indeed on “a no fly list”. As a result, Mr. Singh has chosen to drive (recently 13 hours to Vancouver) rather than fly and has cancelled a number of events (Adams 2008).
Sami Kahil- September 27, 2008

Mr. Kahil, a 39 year old Mississauga man had been fighting to get his name removed from the no fly list since he was detained on U.S. orders after flying from Toronto to Mexico with his family.

After nine months, he received a letter from the U.S. DHS stating his name had been cleared (www.cbcnews.ca.)