

# CHAPTER 1

## INTRODUCTION

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In examining the political consequences of government countermeasures designed to combat terrorism and the policy outcomes that change democratic institutions, processes, and values, this volume addresses two important but often-neglected questions: What are the political consequences of counterterrorism measures taken by liberal democracies and the international institutions that link them? And how severe are the negative effects of counterterrorism on civil liberties, the rule of law, and patterns of democratic governance?

We focus here on advanced liberal democracies other than the United States in order to provide historical and comparative perspective.<sup>1</sup> The effects of the American global war on terrorism have been studied extensively, but the discussion is not always situated in a broader international context.<sup>2</sup> This volume does not deal specifically with the United States, but several of the chapters consider the American case within a comparative framework. Many of the discussions are also concerned with the divisions between the United States and Europe in dealing with contemporary terrorism. Also, since the shock of the 9/11 attacks, legal scholars have addressed the effects of counterterrorism much more energetically and thoroughly than have political scientists. This volume is the beginning of an effort to fill the gap

in our understanding of the political as well as the legal impact of democratic responses to terrorism.<sup>3</sup>

Counterterrorism policy is controversial, and it is almost certain to become more so if governments continue to strengthen their response to terrorism. Democratic governments do not initiate counterterrorism policy with the express intent of undermining democracy, but they may be too ready to accept the idea of an inevitable trade-off between security and liberty; to think that because terrorists might exploit democracy, attractive “loopholes” must be closed; or to deny the real costs of counterterrorism. Fears of failing to prevent a disastrous terrorist attack causing a large loss of civilian lives may lead policymakers to take a shortsighted and overconfident view of the ability of robust security measures to prevent terrorism.

The contributors to this volume agree that the effects of the response to terrorism have been costly to democracy in many ways, but that within certain broad outlines, policy consequences have differed in nature and severity. In general, policy changes since 2001 have been much more damaging to democracy than earlier counterterrorism measures, even as responses to the threat of Al Qaeda and its associated groups have usually not departed radically from counterterrorism policies of the past.

A key consideration in analyzing these issues is the possibility that a government’s response to terrorism will diminish democracy more than the acts of terrorism themselves. Liberal democracies confront painful policy choices: terrorism is a threat that must be confronted in order to preserve the safety and security of the nation, but counterterrorist policies can diminish individual civil liberties and alter patterns of governance to the detriment of democracy. Measures designed to prevent terrorism often limit the basic rights and freedoms of citizens, invade their privacy, strengthen executive power, centralize police and intelligence bureaucracies, blur the distinction between domestic intelligence and law enforcement functions, expand the influence of the military in decisionmaking, cloak decision-making processes in secrecy, and encourage undemocratic shifts in public attitudes and political values (such as intolerance toward minorities or unquestioning acceptance of erosions of civil liberties).<sup>4</sup> In fact, as John E. Finn’s chapter notes, it is not a simple matter even to determine what national counterterrorism policies are. Their scope goes well beyond specifically labeled antiterrorism legislation, and counterterrorism regimes are constantly changing. Internationally, common strategies against terrorism can lead to closed borders and reliance on military force over criminal justice, as well as infringements of individual rights. Disagreements over how to deal with terrorism spark controversy and partisanship within and

between nations. The Bush administration's pursuit of a global war on terror frustrated many allies—and where governments were supportive of the United States, their publics often were not. Risk perceptions and conceptions of “homeland security” diverge (Föhrenbach 2006).

Many of the political consequences of counterterrorism efforts are unintended or secondary, although some cynical observers might suspect that governments, particularly officials of the executive branch, manipulate the threat of terrorism to expand their powers. The effects discussed here, however, seem frequently to have been unanticipated. In the heat of the moment of crisis, governments tend to act in haste without fully considering either the full scope of the alternative actions that are open to them or the consequences of that range of options. Lack of forethought and preparation produces decisions that are less than optimally rational, and publics have little chance to weigh in even if they have the inclination, expertise, and information to do so. There is insufficient check on what the government does. The question then is how enduring such changes are and whether they can be reversed if their effects are later judged harmful to democracy. This is a key element of the concept of proportionality of response to threat.

Experiences and perceptions of the threat of terrorism vary considerably among countries, not just between the United States and the rest of the world, and responses differ according to the threat and according to context. Before the 9/11 attacks, the consensus was that democracies confronting internal threats or “domestic terrorism” were more likely to adopt policies that undermine democratic principles than were democracies facing terrorism originating from outside, or “international terrorism” (Charters 1994, 213–14). That is, states presumably react more harshly to civil violence from groups composed of their own citizens acting within their borders than to violence organized by foreigners or occurring outside the country. The implications of violent dissent from within seemed much more serious than the external threat of terrorist attack, which before 9/11 was considered minor and was in fact extremely rare. In general, terrorism was not a national security issue, although the Reagan administration took international terrorism quite seriously, blamed Soviet “state sponsorship” of terrorism as part of the Cold War rivalry, and bombed Libya in 1986 in retaliation for Libyan complicity in terrorism directed against American targets in West Germany. Since the American declaration of a war on terror, however, the argument that internal terrorism is most provocative can certainly no longer be sustained. It is also interesting to note that the European Union (EU) list of terrorist organizations makes a distinction between domestic groups and those with foreign affiliations

or transnational ambitions, and that the two types are subject to different levels of sanctions (see chapter 3).

Complicating matters, as we have come to recognize in the period since the 9/11 attacks, is the fact that many terrorist conspiracies are mixed in origin rather than exclusively internal or external, a point that Dirk Haubrich stresses in his chapter on the United Kingdom. Terrorist plots often involve a combination of citizens of the state and noncitizens or local operatives with external direction, resources, or inspiration.<sup>5</sup> Many such plots are rooted in social and family networks that are transnational. These groups are not directed by states, although their leaders may seek refuge in lawless areas, ally themselves with weak regimes such as the Taliban, or seek support from diasporas located abroad. National borders are increasingly blurred and permeable, especially as electronic communications make it easier to organize underground conspiracies across continents and to publicize a group's ambitions worldwide to mobilize support and inspire imitation.

Because some terror plots now emanate from sources formerly considered benign or inconsequential, expressions of religious faith or identity can seem alarming. Germany and Japan, for example, have removed protected religious status from some opposition groups charged with using or advocating terrorism. Britain also cracked down on mosques led by radical Islamist clerics who preached support for anti-Western terrorism, such as Abu Qatada, although Britain was relatively slow to act even after the 9/11 attacks. It has become harder to obtain such privileged status, but the long-term effects are still uncertain. One possibility is that radical activity will shift from mosques or on other public religious establishments to underground venues or onto the Internet.

Today, regardless of its form or source, terrorism has become a part of both national and international security debates. Those debates inevitably touch on other sensitive issues as well, such as the assimilation of minorities and immigration, asylum, and citizenship; since 9/11, all of these issues have been transformed into security problems and made part of the expanded security domain (see chapter 4). The response to terrorism has thus broadened conceptions of what constitutes national security and sensitized the public to the pervasiveness of insecurity.

The problematic political consequences identified by the authors in this volume, as well as by many other observers, are often presented as the price that must be paid for security from terrorism. Restriction of democracy is seen as unavoidable if the central objective of counterterrorism policy is to be achieved: protecting society from harm by preventing terrorist attacks.

Yet the assumption of an inevitable and necessary trade-off between safety and democracy may both underestimate the costs of the response to terrorism and overestimate its contribution to providing security (Donohue 2008; Zimmermann and Wenger 2006b). Citizens of democracies may be paying a high price for policies that fail to protect them from danger or that even put them at greater risk of terrorism. In the chapter on the use of terrorist designation lists, Chantal de Jonge Oudraat and Jean-Luc Marret make the important point that protecting democracy need not mean less security.

In the United States, the Obama administration repudiated most of the policies of George W. Bush's government and characterized what had been posed as a stark dilemma as a false choice between safety and democracy. The new administration distanced itself from the practices of its predecessor, particularly those that damaged the American reputation for upholding the rule of law. Enhanced interrogation techniques and preventative detention were particularly at issue. The Obama administration also promoted greater transparency with regard to the policymaking process and promised to set institutional limitations on executive power. Defenders of the necessity of the war on terror, led by former Vice President Richard B. Cheney, continued to insist that the measures that critics see as anti-democratic are required for American national security. They also contended that greater transparency only increases society's vulnerability by disclosing useful information to the enemy.

Many of the energetic efforts to prevent terrorism have led democratic governments to reach further and further back in the causal chain of the commission of acts of violence on their territories. Thus, governments try to interdict "precursor" activity, such as association or speech, which might indicate a willingness to support terrorism or preparation to engage in it. The perceived danger seems to lie as much in attitudes and beliefs as in behavior. In the pursuit of effective prevention, governments necessarily cast a broad net of suspicion. Dissent that was tolerable becomes intolerable if it appeals to violence and appears to be the first step down the path of a terrorist conspiracy. Surveillance becomes ever more intrusive as governments try to detect the early stages of planning for terrorist attacks. Governments collect more and more information on their citizens and on anyone who crosses their borders, whether immigrants or ordinary travelers. The information is gathered in centralized data banks and made available to a growing array of government institutions. Security and intelligence services are reformed to become more streamlined and efficient, with expanded powers of apprehension and arrest. The coercive capacity of states

is strengthened at home and sometimes abroad. Domestic policing may be increasingly militarized.

A corollary is that the drive to prevent terrorism well in advance of the execution of the act can also prompt democracies to proceed with trials of suspected terrorists with weak evidence that was gathered at early stages of a plot and does not always stand up well in court. At the other extreme, the complicated nature of contemporary terrorist conspiracies and the desire to secure convictions often push security services to seek lengthened periods of preventive detention so that they have time to pursue investigations and bring charges that will in fact hold up in court. In addition to the United States, nations such as Britain, Spain, France, Italy, the Netherlands, Germany, and Denmark (among others) have tried many such cases since the 9/11 attacks. Advocates of democracy may think of a fair trial in a civilian court as the epitome of the application of the rule of law. The outcomes of these trials have been politically problematic, however, and their long-term effects on public opinion, regardless of whether they resulted in acquittal or conviction of the defendants, are as yet unknown. In addition, terrorism-related trials may result in loss of trust and confidence in the government and in the judicial system.

On the other hand, we should not automatically assume that all effects of counterterrorism measures are negative. Certainly some policies that are successful in reducing terrorism have decidedly adverse effects on political life, such as the stifling of dissent or increased surveillance of individuals. Other responses may have beneficial side effects, however, such as the recognition of genuine grievances and the need for socioeconomic reform and deeper cultural integration. Thus, the debates over radicalization in Europe following the bombings in London and Madrid may produce changes that will benefit society in the long run, despite their tragic origins. It is not necessarily bad that security institutions are reformed, that information gathering is coordinated, or that law enforcement is made more efficient.

Another complicating factor in analyzing the political consequences of counterterrorism policies is that it is often difficult to distinguish the effects of counterterrorism measures from the effects of terrorism itself. For example, are hardening public attitudes toward immigrants or toward religious or ethnic minorities the consequence of government actions and statements or of the fact that a number of post-9/11 terrorist plots were traced to small groups located in these communities? If publics are excessively fearful of terrorism, is it because of the actual danger or because of the government's framing of the threat?<sup>26</sup> Despite the catastrophic losses in the 9/11

attacks, terrorism causes far fewer casualties than other sources of death and injury, such as highway accidents. Do governments wittingly or unwittingly contribute to an exaggerated public perception of acute risk? How can governments respond to terrorism without stoking public apprehension and raising the salience of terrorism and the groups that practice it?

## **SETTING THE STAGE**

Before outlining the project presented in this volume, I want to sketch briefly the complex threat faced by European democracies, Japan, and Israel—the countries in question here—before the disastrous events of 9/11. This quick summary should aid readers in understanding the historical basis of the arguments proposed in the case studies, the different contexts within which terrorism occurs, and the connections between different experiences of the threat. This discussion accepts governments' identification of threats as "terrorism" rather than imposing an independent definition because it is governments' responses to perceived threat and the effects of those responses that interest us. Moreover, as Chantal de Jonge Oudraat and Jean-Luc Marret explain in chapter 3, national and international definitions of terrorism differ. Even within countries, definitions may vary. In fact, the United Nations has no definition of terrorism at all. De Jonge Oudraat and Marret suggest that official terrorist designation lists are actually a practical form of defining terrorism. In scholarly terms, terrorism is usually defined as involving deliberate attacks on civilians by nonstate actors with political objectives. The aim of such conspiratorial violence is not to destroy an adversary but to shift the attitudes of a watching audience. The aim may be to strike fear in the heart of the enemy, but also to mobilize support in sympathetic audiences. Targets are chosen for symbolic rather than utilitarian reasons. The use of force by governments to suppress resistance can also be called terror or terrorism, but this is not an issue we can address within the confines of this volume.

The short history outlined here shows that since the 1950s terrorism has consistently posed a serious security problem rooted in both domestic and international politics. Much about pre-9/11 terrorism is familiar. For example, attacks on the homeland of a great power in response to its foreign policy engagements, particularly military involvements, are not new. The Algerian national liberation movement mounted attacks in Paris in the 1950s, as did Iranian sympathizers in the 1980s and Algerian Islamist groups in the 1990s. Nor is it new to see terrorism by groups that are local in origin and composition but inspired by shared universalist ideologies;

the left revolutionary groups that emerged across Europe in the 1970s often acted in conscious imitation of “Third World” revolutionary movements, and cross-national collaboration among such groups was an early feature of the terrorist threat. Apparently autonomous national threats were often interconnected. International events consistently affected domestic developments. The reinvigoration of the Irish Republican Army (initially known as the Provisional IRA, in contrast to the older “official” IRA) in Northern Ireland in the early 1970s owed much to the spark of the Catholic civil rights movement, which in turn was inspired by the American civil rights movement. In an odd marriage of convenience, the IRA was later the recipient of weapons shipped from Libya.

Like most other groups accused of terrorism by governments, the IRA did not by any means consider itself a terrorist organization. Rather, it saw itself as an army fighting an unconventional war, or insurgency, against a foreign occupying power. The U.S. Department of State never listed the IRA as a “foreign terrorist organization,” although it did list the Continuity Irish Republican Army and the Real IRA, which were breakaway factions that rejected the peace process that eventually ended the conflict in Northern Ireland.

In reviewing this history, which is only a partial one, I am struck by the proliferation and diversity of terrorist organizations in the pre-9/11 period. Organizations differed in size, ideology, structure, and consequentiality. It is clear that very small groups can pose large security problems for democracies. Impact has not been proportional to material resources or the extent of popular support. The sensitivity of the targeted polity to terrorism is critical.

It is also worth noting that, other than Israel, democracies have not commonly resorted to the use of military force to combat terrorism, especially outside national boundaries. Although the French attempted to crush the Algerian resistance by force, the British employed the military against the IRA in Northern Ireland, the United States launched retaliatory bombing raids against Libya, Iraq, the Sudan, and Afghanistan, and even West Germany used elite military units to rescue hostages abroad, these efforts were time-bound, and the dominant approach was law enforcement. The idea of launching a war against terrorism “of global reach,” including overthrowing regimes that supported or were suspected of supporting terrorism, was new with the Bush administration.<sup>7</sup>

The story begins with the colonial period. In the 1950s and early 1960s, France faced urban terrorism in Algeria as well as terrorism in metropolitan France as part of the Algerian war for independence. Terrorism

was an adjunct to a national liberation strategy that also involved guerrilla warfare and unconventional military combat. However, terrorist attacks were organized by both the resistance to French rule (Front de Libération Nationale, or FLN) and the opponents of Algerian independence, who appeared on the scene late in the war when France began to negotiate with the FLN. This “secret army” was the Organization de l’Armée Secrète (OAS), composed of Algerian settlers and renegade elements in the French military. Bombs exploded in the streets of Paris, and President Charles de Gaulle narrowly escaped multiple assassination attempts. The FLN even planned to bomb the Eiffel Tower. In the war zone, the “Battle of Algiers” in 1956–57 drew international attention to urban terrorism, particularly bombings of cafés and restaurants with large losses of life, attacks often carried out by women. The French army responded by using torture to break up the terrorist networks, sparking domestic controversy that has lasted over fifty years. The history of the Battle of Algiers served as the basis of the 1966 film by the same name, directed by Gillo Pontecorvo and starring none other than the chief terrorist of Algiers himself, Yacéf Saadi. After the invasion of Iraq in 2003, the film was screened at the Pentagon.

The French may have won the war on the ground through the use of overwhelming military force against widespread insurgency, but Algeria gained independence in 1962. The FLN’s victory inspired revolutionaries worldwide, especially in Latin America. The almost simultaneous Cuban revolution reinforced the expectation that revolutions of the weak and oppressed against a much stronger imperialist power could succeed. Many revolutionaries pitted themselves against military dictatorships supported by the United States, further bolstering the idea of a global struggle against Western hegemony. Revolutionary movements convinced of the prophetic quality of Marxist-Leninist ideologies, and sometimes aided by the Soviet Union or Cuba, emerged almost everywhere across Europe in the 1960s. Their relevance to the story of this volume lies in their influence on western European leftists, who were moved by sympathy for groups such as the Uruguayan Tupamaros to launch their own violent campaigns in the late 1960s and early 1970s. In fact, a German group designated itself the “Tupamaros West Berlin.” Student opposition to the war in Vietnam as it escalated sharply in 1965 fed into an anti-imperialist movement that produced the Red Army Faction (Rote Armee Fraktion, RAF, established in 1970) and its various offshoots and successor generations in Germany, as well as the Red Brigades (Brigate Rosse) in Italy. In the United States, the Weathermen, or Weather Underground, similarly attempted to strike imperialism at its heart through “urban guerrilla” tactics.

The RAF and its companion, the June 2 Movement, were much more violent than their small numbers and lack of popular support would indicate. For example, in 1977 the original RAF leaders were sentenced to life imprisonment for four murders and twenty-seven attempted murders, and by late 1978 a total of twenty-eight deaths had been attributed to left-wing violence (Varon 2004, 197–98). The RAF was also remarkably persistent. Although overall probably only about one hundred people were involved, the organization lasted through three generations; its remaining members formally abandoned violence only in 1998, well after the end of the Cold War, although the 1970s were its most destructive years. Victims included a political candidate, a judge, a federal prosecutor, a bank chairman, and an industrialist, all of whom were seen as symbols of oppression and the Nazi past. As representatives of the imperial power, American military personnel were also favored targets. A notably brutal episode was the hijacking of a Lufthansa airliner and the killing of its pilot in 1977. The rescue of the passengers in Mogadishu, Somalia, was the first deployment of German military forces outside German borders since World War II.

The hijacking was carried out in collaboration with a small left-wing Palestinian faction. The RAF was notoriously sympathetic to the Palestinian cause, received military training in Palestinian camps in Jordan and Lebanon, and collaborated with Palestinians in several terrorist operations. This pattern of cooperation was part of the aftermath of the 1967 Arab-Israeli War; the Israeli occupation of the West Bank, Gaza Strip, Golan Heights, and Sinai Peninsula; and the organization of an external Palestinian resistance to Israel. It was not possible for Palestinian nationalist organizations to act effectively within Israel or the newly occupied territories, and since they were headquartered outside of the conflict zone in the surrounding Arab states, their international campaign was in many ways a matter of practical necessity as much as a deliberate strategy to widen the conflict (although not every Palestinian group favored international operations). International operations in the West or against Western interests in the Middle East were also a way of gaining the world's attention and forging a specifically Palestinian identity. In 1972 RAF leaders praised the murder of Israeli athletes at the Munich Olympics by the Black September organization, an offshoot of Yasir Arafat's Fatah, the central component of the Palestine Liberation Organization (PLO). In 1975 German leftists joined Palestinians to kidnap OPEC oil ministers meeting in Vienna. In 1976 they hijacked an El Al airliner to Entebbe, Uganda, where Israel subsequently succeeded in a spectacular military rescue of the passengers. Israel's first campaign of targeted assassina-

tions was directed against Black September, in retaliation for the Munich Olympics attack, and Europe was the battleground for much of the campaign. Palestinian factions maintained a tolerated clandestine presence in France into the 1980s.

Attacks on civil aviation were an early part of the Palestinian international strategy. They began in 1968, when the Popular Front for the Liberation of Palestine (PFLP) hijacked an El Al jet and forced it to land in Algiers. Targets quickly expanded from Israeli planes to include American and European air carriers with service to Israel. In September 1970 the PFLP organized the first multiple hijacking, diverting three airliners to Jordan and one to Egypt. Terrorism against civil aviation also included armed assaults on passengers in airports, including a 1972 attack by the Japanese Red Army (JRA) at Lod airport in Israel. The attackers killed twenty-eight people and wounded seventy-eight, many of them Puerto Rican pilgrims traveling to the Holy Land.<sup>8</sup> Airport attacks spread to Europe and continued into the 1980s. For example, in 1983 an Armenian group bombed the Turkish Airlines ticket counter at Orly Airport near Paris. On December 27, 1985, in an early instance of the coordination of two geographically separated attacks, the Abu Nidal Organization, a Palestinian faction opposed to the PLO, used assault rifles and grenades to assault passengers waiting in line at both the Rome and Vienna airports.

The joint JRA-PFLP operation is another case of networking between leftist and Palestinian groups, especially the smaller organizations with a Marxist-Leninist orientation. Their collaboration also presents another strand of the history of terrorism: the appearance of a small underground revolutionary organization in Japan, parallel to those in Europe. The JRA was actually founded in Lebanon in 1970; it immediately adopted an international strategy, including cooperation with Palestinian groups. By 1972, it had been driven out of Japan and had effectively relocated to the Middle East, where it continued hijackings, embassy takeovers, and other armed assaults. Some of its members also fled to North Korea. In a similar pattern, some members of the RAF's successor generations fled to East Germany, under West German police pressure. The JRA was active into the 1980s, and some of its leaders were arrested in Lebanon as late as 1997.

Other strains of terrorism erupted in this critical historical juncture. In the 1970s, the United Kingdom and Spain faced campaigns of separatist or ethno-nationalist terrorism.<sup>9</sup> The IRA's campaign lasted until 1998 and the Good Friday Accords, and the Basque Freedom and Homeland Organization (ETA) has remained active at low levels into the twenty-first

century. Splinters from the IRA continued sporadic terrorism even after the main body of the IRA had renounced violence. Both the IRA and ETA had deep local roots and particularistic territorial ambitions rather than universal grievances, but at the outset they too were moved by the revolutionary zeitgeist of the times. They cultivated an anticolonialist image and flirted with socialist ideas.

Both groups initially gained momentum because of a “democratic deficit,” but they kept up the struggle well beyond its remediation. ETA was founded in 1959 under the Franco dictatorship when Basque identity was ruthlessly suppressed. Yet when Spain transitioned to democracy and granted substantial autonomy to the Basque provinces, ETA escalated, rather than decreased, its violence (see Shabad and Llera Ramo 1995). Numerous efforts to negotiate a compromise have failed, and ETA endures today at minimal but still lethal levels of violence. Rival Basque politicians and local police forces are frequently targeted. Over its history ETA has been responsible for over eight hundred deaths. Its campaign also has an international dimension, since the Basque territory extends into France and ETA leaders have often sought shelter there. Many have been arrested there as well, owing to the expansion of cooperation between French and Spanish law enforcement authorities after Spain’s transition to democracy.

Few people other than terrorism experts know that in Spain a left revolutionary organization also emerged during the transition period. In 1976 the Grupos Armados Antifascistas Primero de Octubre (GRAPO) was established as a wing of the “reconstituted” Communist Party, with Maoist leanings; over its lifetime it killed eighty or ninety people (estimates vary), many in bank robberies. Spanish police arrested GRAPO members as late as 2007.

The IRA, whose history stretches back to the nineteenth-century resistance to British rule in Ireland, if not further, was resurrected in the context of Catholic protests against the inequities of the Protestant-dominated Stormont regime in Northern Ireland, which was instituted in 1920 when what is now the Republic of Ireland won independence from Britain. Britain instituted direct rule over the province of Northern Ireland, or Ulster, in 1972 and introduced significant reforms, but it took over twenty-five years and more than three thousand deaths before the IRA renounced violence. British military forces, introduced as a temporary measure to restore law and order in 1969, were withdrawn from an active role as the peace process was consolidated after 1998, and by 2008 only fifteen hundred nonoperational troops remained. British forces were at their peak strength of thirty thousand in the 1970s.

In both cases, democratic governments also had to contend with terrorism from supporters of the status quo who resisted change. In the Spanish case in the 1980s, this involved the complicity of some of the state security forces in an organization named Grupos Antiterroristas de Liberación (GAL). GAL activity between 1983 and 1987 involved death squads that targeted people who were thought to be ETA sympathizers, and at least twenty-eight people were killed. In 1998 two former senior government ministers were convicted of crimes in connection with GAL. In Northern Ireland, various Unionist or Loyalist terrorist groups nominally fought the IRA but mostly attacked Catholics at random. The Ulster Volunteer Force, for example, probably killed over four hundred people, most of them civilians.

France was largely spared internal violence in the 1970s, even though the May 1968 student uprising could well have been expected to spin off terrorist conspiracies.<sup>10</sup> Aspirant revolutionaries did not follow the examples of their peers in Germany and Italy. France's turn came in the 1980s. Left revolutionary terrorism appeared with the formation of the group Action Directe (AD), established in 1979, which frequently collaborated with other European groups of the times, such as the Belgian Cellules des Communistes Combatants. When François Mitterrand was elected president in 1981, he pardoned AD's leaders, who perversely reciprocated by returning to violence. In 1982 AD split into domestic and international branches. It was responsible for at least thirteen deaths, including the assassination of a prominent industrialist. On at least one occasion, AD cooperated with the RAF in attacking the American military in Germany. It also assisted Middle Eastern groups acting in France.

Despite its acceptance of a clandestine Palestinian presence, France was vulnerable to the spillover of Middle Eastern politics: a combination of the 1979 Iranian revolution, the Lebanese civil war (after 1976), the Israeli invasion of Lebanon (1982), and the Iran-Iraq War (1980 to 1988) brought terrorism to French territory.<sup>11</sup> France joined the multinational force deployed to keep peace in Lebanon, and in 1983 its troops, along with those of the United States and Israel, were the victims of suicide bombings by Shi'ite factions affiliated with Iran. These groups coalesced into the Hezbollah organization, which is today a major player in Lebanese politics. French nationals were kidnapped and killed in Lebanon during the 1980s. French support for Iraq in the Iran-Iraq War further angered Iran. Thus, French involvement in conflicts in the Middle East attracted terrorism to France, including deadly bombings in Paris linked to Lebanon and Iran. For example, the Lebanese Armed Revolutionary Fractions

(FARL) assassinated an Israeli diplomat, an attack in which AD was implicated, as part of a campaign against Israeli, Jewish, and American targets.

With the end of the Cold War, left-wing terrorism began to fade. However, violence inspired by radical interpretations of Islam took its place. In the 1990s, France was once again exposed to the spillover of conflict in Algeria. In 1992, when it appeared certain that an Islamist party, the Front Islamique du Salut (FIS), would win parliamentary elections and it seemed possible that the FIS would then impose a strict religious program, the Algerian regime canceled the elections, banned the opposition, and returned to one-party rule. The result was a prolonged civil war that left over eighty thousand dead. It was principally conducted by an extremely violent Islamist faction, the Groupe Islamique Armée (GIA, Islamic Armed Group), which blamed France for aiding the Algerian government. In 1994 the GIA hijacked a plane from Algiers to Marseille and threatened to have it flown into the Eiffel Tower. A French commando squad intervened before they could carry out the threat. Yet again, in 1995 and 1996, Paris saw bombings of public transportation and commercial venues. In 2006 the successor to the GIA, the Salafist Group for Preaching and Combat (known by its French acronym, GSPC), formally merged with Al Qaeda.

Israel also faced an alarming and unexpected resurgence of terrorism in the 1990s. This threat similarly came from factions associated with Islamist movements. The mainstream Palestinian nationalist organizations mostly accepted the negotiated compromise formalized in the 1993 Oslo Accords, with the long-run aim of an independent and secular Palestinian state in the West Bank and Gaza Strip. The PLO was outflanked, however, by the religious organizations that had emerged in the context of the 1987 Intifada—the Palestinian popular uprising against Israeli occupation that set the stage for the Oslo peace process. Hamas (a branch of the Muslim Brotherhood) and the smaller group Palestinian Islamic Jihad (PIJ) rejected the two-state solution finally accepted by the PLO. Beginning in 1993, these two groups launched successive campaigns of suicide terrorism against the inhabitants of Israeli cities within the Green Zone. After 2000—when the second Al-Aqsa Intifada was initiated—they were joined by an offshoot of Fatah, the Al-Aqsa Martyrs' Brigade, and the still-active Popular Front for the Liberation of Palestine. There have been approximately 150 suicide bombings in Israel, the majority after 2000. Israel's emphatic response in 2002 is described in Ami Pedahzur and Arie Perliger's chapter. After the peace process broke down, the proposed date for a permanent status agreement was postponed indefinitely. Israel reoccupied most of the Palestinian-controlled areas of the West Bank and began build-

ing a security barrier, or wall, between the homeland and the Palestinian territories from which most of the suicide attacks were launched. In 2005 Israel withdrew from the Gaza Strip, which was then sealed off after Hamas won elections in 2006 and refused to recognize Israel, accept the peace process, or abandon violence. Suicide attacks declined sharply, with only three against civilian targets from 2006 to 2008. Rocket attacks from Gaza against Israeli towns, however, escalated. A ceasefire agreed to in June 2008 did not last—Hamas continued firing rockets across the border into Israel—and at the end of the year, when a temporary truce expired, Israel launched a brief but intense military campaign against Hamas.

In the post–Cold War world, Japan also confronted an indigenous “religious” group: Aum Shinrikyo, notorious for its 1995 sarin gas attack on the Tokyo subway system. Aum, founded in the 1980s by its charismatic leader, Shoko Asahara, was the first and so far the last terrorist group to develop and use so-called weapons of mass destruction (WMD). They experimented with anthrax as well as chemical weapons, which they employed on several occasions. Like Germany, Japan had permitted nominally “religious” organizations to operate with little official scrutiny; as a result, Aum’s intentions were not detected until late in the game despite its millenarian goals, vast resources, broad international connections, and large membership (probably several thousand in Japan, and others abroad). In 1989 the Japanese government had designated Aum a religious organization, a status it had sought in order to gain exemption from taxes. Apocalyptic movements are not without a pragmatic streak.

This short overview shows that terrorism in diverse forms has posed a problem in democracies for many years. The countries and international institutions that have dealt with the threat have built up a reservoir of policies. Thus, European, Japanese, and Israeli reactions to the threat from Al Qaeda and its cohorts were grounded in long experience with terrorism. Most of these governments have tended to reject the popular American argument that twenty-first-century terrorism is entirely “new” and that old methods and old understandings should be tossed out in favor of a global war on terror.

## **A GUIDE TO THE ARGUMENTS**

This volume focuses on the experiences of liberal democracies and the international institutions linking them. Part 1, “Governance, Civil Liberties, and Securitization,” opens with thematic comparative analyses of counterterrorism policies as they affect constitutions and judiciaries, the

creation of lists of designated terrorist organizations, and the relationship between counterterrorism and immigration policy in the European Union. In part 2, "National Counterterrorism Responses," we present case studies of Britain, France, Germany, Spain, Japan, and Israel. These analyses offer distinctive emphases on the political issues common to all democracies. The case studies stress both change and continuity in patterns of governance and the relationship between citizens and the state.

John E. Finn's overview chapter on the effects of counterterrorism policies on constitutional principles and norms introduces many of the themes that appear later. Finn explains that liberal democracies had much in common as they embarked on post-9/11 legislative packages. All responded not by starting from scratch to deal with an unprecedented "new" terrorism, but by revising existing antiterrorism legislation built up over their years of hard experience. They also borrowed freely from each other, although it is by no means certain that they learned anything in the process. Reactions were similar. Many governments were tempted to narrow freedom of expression and association, restrict privacy, and expand immigration law into the realm of criminal justice.

Finn contends that legislation adopted in haste and under crisis conditions undermines democratic norms of transparency and deliberation. A grave danger is that the possibility of informed and involved public debate is closed in the rush of an understandably urgent reaction to shocking violence against citizens. Secrecy becomes paramount, and an inclination to concentrate political and legal authority in the executive branch comes to the fore. (This consolidation of authority has occurred at the supranational level as well: the power of the European Union over its component national governments in the area of migration policy has been strengthened.) Finn notes that this tendency to concentrate executive power was not restricted to the United States (where it was taken to the extreme in the Bush administration). In some settings, the consolidation of authority has been countered more systematically than in others, but in general this development has shifted the balance of power between executive, legislative, and judicial branches. In Finn's view, the consequences have been more damaging for the rule of law than for civil liberties. Liberal governments are tempted to relax mechanisms for governmental accountability and to resist judicial oversight, which can provide a critical bulwark against the expansion of executive power and the dilution of civil liberties protections. Courts sometimes push back, but not always, and thus the record is mixed.

In Germany, Britain, and Israel, national courts took different positions that were effective in limiting the government in the first two cases, but

less effective in the last case. In the spring of 2008, for example, the U.K. Home Office suffered an embarrassing setback when courts first prevented the deportation of the radical cleric Abu Qatada to Jordan (where it was said he would face torture as well as lack of a fair trial) and subsequently ordered him released from prison on bail, albeit under very restrictive conditions. Abu Qatada, who had been granted asylum in Britain in 1994, was charged with having links to Al Qaeda, although he denied any connection. Human Rights Watch was strongly critical of the deportation proposal. In February 2009, the European Court of Human Rights granted Abu Qatada's request and ordered the U.K. government not to proceed with deportation until the court had given due consideration to the matter. (Increasingly reluctant to grant political asylum, countries often prefer deportation to unpredictable trials.)

In Germany, the division of power between the national and state levels of government has also constrained the expansion of executive authority in counterterrorism. Lack of coordination between national and state security institutions may lead to jurisdictional struggles and impede counterterrorism efficiency, but it also places a check on overreaching. Spain and France exhibit a different pattern: rather than limiting executive power, judicial authorities in those countries are autonomous drivers of counterterrorism policy in their own right. Specialized terrorism magistrates presiding over special courts have enormous independent powers to conduct investigations and make arrests and have close connections with security and intelligence services. Yet there appears to be little oversight or accountability (as Jeremy Shapiro notes in chapter 7).

Another risk of hastily constructed counterterrorism policy is that what is anticipated as a temporary emergency change in the administration of criminal justice becomes permanent. Counterterrorism provisions also tend to "bleed over" into ordinary criminal justice, as the chapter on the United Kingdom emphasizes, with effects that are difficult to reverse in part because they are so gradual and incremental. It is hard to contest something that is taken for granted. What was originally a crisis response becomes normalized and incorporated into routine practices.

In general, however, most publics seem not to resist the antidemocratic implications of counterterrorism policy in their willingness to countenance, and in some cases even demand, robust measures against terrorism. This supportive reaction is seen not just in Israel but also in Germany, Britain, France, and Japan. In France, in particular, it is noteworthy that what are the strictest counterterrorism measures among Western countries do not provoke public dissent.<sup>12</sup> In addition to the courts, including the European

Court of Human Rights, interest groups such as human rights organizations appear to be the main critics of counterterrorism measures, not the public at large. What appears to be popular apathy, however, is probably due to the complexity of the issues as well as the belief that restrictions on democracy are both necessary and effective.

Chantal de Jonge Oudraat and Jean-Luc Marret focus on the impact of counterterrorism on civil liberties in criticizing the rapidly proliferating use of terrorist designation lists; this counterterrorism measure with potentially long-term political consequences has been adopted by both international and regional institutions. In evaluating the use of these lists by the UN, the EU, the United States, the United Kingdom, Russia, and China, the authors note their serious drawbacks. The individuals and groups listed—including charitable organizations as well as opposition groups—are subject to sanctions and judicial prosecution, are put in a generally suspect category, and have little recourse or access to due process.<sup>13</sup> The process of making the lists is far from transparent, and once an individual or a group is on a list, it is very difficult to get off. In Britain, for example, it took the People's Mujahidin of Iran seven years of legal effort to appeal successfully its designation as a proscribed terrorist organization.<sup>14</sup> Some changes are being made in response to criticism from human rights organizations (for example, in the EU), but nevertheless, we know very little about the practical effects of being listed beyond the observation that charitable giving to Islamic organizations has decreased. Moreover, the effectiveness of the lists in reducing terrorism is mixed. De Jonge Oudraat and Marret argue that improved democratic safeguards, such as the transparency and accountability that John E. Finn advocates, would make terrorist designation lists a much more useful policy instrument in counterterrorism. Democratic due process and counterterrorism effectiveness can be compatible. There need not be a trade-off between values and security.

In the post-9/11 world, the regulation of migration and borders has become part of a new security framework, although the issues themselves are far from new. Gallya Lahav analyzes immigration policy as a tool of counterterrorism in the EU, where its incorporation into counterterrorism policy in turn has strengthened the EU's role as an actor in foreign and security policy. The impact of counterterrorism on migration control is "formidable," in Lahav's view. Migration is no longer "low politics" but "high politics." Securitization has also become "Europeanization," but as we see at the level of the nation-state (Japan is the exception), these developments are not departures from the past. A move to shift issues such as asylum and policing from the national to the EU level was already under way

before 9/11. Policing has now been “unhitched” from the nation-state. Lahav notes another surely unintended effect of counterterrorism in the deepening cooperation between the EU and the United States, despite the contrast between a general European view of terrorism as a problem for law enforcement and the American war model. The new security emphasis in the EU has provoked contentious debate over formerly narrow technical issues such as biometric identifiers. Lahav explains that EU policy linking migration to security accelerated, not in response to the 9/11 attacks, but after the 2004 assassination of Dutch filmmaker Theo van Gogh by an Islamist extremist who was a Dutch citizen. The EU’s risk perception, like that of most European national governments, differs substantially from the American perception. For the United States, the threat is still largely external, but to the EU internal controls are more important than protecting external borders.<sup>15</sup> The British experience with terrorism may confirm this judgment on the national level, although Dirk Haubrich sees the current threat as a mixed one, not exclusively internal. It is easier to implement internal controls within the EU, however, than to prevent travel and exchanges of ideas and information, especially in the age of the Internet. The end result is a retreat from core liberal values.

In the first of the country case studies, Dirk Haubrich identifies three types of threats that the United Kingdom has faced: domestic, transnational, and “compounded” terrorism. Haubrich employs social contract theory to explain differences in the willingness to compromise democratic principles evoked by each variety of threat. In his view, Britain’s early coercive policies toward the IRA were unsuccessful and counterproductive. The policy of internment, for example, was disastrous because it alienated Catholic opinion. The British government eventually learned that its response to the IRA undermined the state’s legitimacy because the state was competing with the IRA for the same public constituency in Northern Ireland. Thus, the government switched to the more conciliatory measures that eventually led the IRA to abandon violence—although the process was long and arduous. (Rogelio Alonso, in chapter 6, criticizes the British government’s leniency toward the IRA during this process.)

The 9/11 attacks on New York and Washington posed another challenge for the United Kingdom. Although the British homeland was not attacked, the government identified closely with the United States and felt similarly threatened, especially as the number of failed and foiled plots increased. The government responded accordingly, both at home and abroad.<sup>16</sup> The government’s fears were realized when suicide bombers struck public transportation targets in London in July 2005. The perpetrators of the attacks

were citizens, but their stated cause was transnational. It was suspected that some of the leadership benefited from training in Al Qaeda camps in Pakistan. This attack thus represented compounded terrorism. Social contract theory predicts that the state's reaction would be less repressive than in cases of transnational terrorism, but more severe than in cases of domestic terrorism. Such has not been the case. Lack of a clearly definable enemy has led the authorities to focus their counterterrorist operations against domestic targets. Based on data he collected, Dirk Haubrich notes skeptically that of 895 terrorist suspects arrested between 2001 and 2005, only twenty-three were eventually convicted. More than half of 130 terrorism-related trials did not lead to convictions. A U.K. Home Office report in 2009 stated that, as of March 31, 2008, 125 persons were in prison for terrorism-related offenses, most of them citizens of the United Kingdom.<sup>17</sup> It noted that 1,471 arrests had been made, with 35 percent resulting in a charge and a 60 percent conviction rate for those persons charged. Putting these figures into a contemporary European context, in 2009 Europol reported that in 2008 over one thousand individuals were arrested in thirteen European countries, with 359 of them brought to trial in 187 cases. Twenty-nine percent of these defendants were acquitted.<sup>18</sup>

Counterterrorism policy in Britain has been highly controversial. In June 2008, the debate in Britain over extending the period of preventive detention for terrorist suspects from twenty-eight to forty-two days was extremely polarized.<sup>19</sup> More than thirty Labor Party members voted against the government of Prime Minister Gordon Brown, for whom the vote was a test of leadership of the Labor Party. The Conservative and Liberal Democratic Parties, civil liberties groups, and organizations representing Britain's Muslim population all opposed the legislation. Although polls showed that the public supported the measure, the government won only because the nine Democratic Unionists in Parliament voted for the measure when concessions were made to them on local issues in Northern Ireland. Following the vote, the shadow home secretary resigned his seat in Parliament to seek reelection independently on an antidetention platform. He explained the extraordinary move as a protest against the government's "strangulation" of British freedoms.<sup>20</sup>

Rogelio Alonso focuses on ethno-nationalist challenges to democracy and approaches the security-versus-democracy puzzle from a new direction. He compares Spain's response to ETA to the campaigns against the IRA in the United Kingdom and the Republic of Ireland. Alonso's position is that banning political parties and censoring the news media are actually democratic responses when the "democratic deficit" that contributed to

the original formation of violent opposition movements has been made up. Governments that have provided violent oppositions with a democratic opening—that is, the opportunity to participate freely in the political process—should not condone continued violence. They should insist on disarmament and disbandment of the extremist organization before negotiating concessions such as prisoner releases. Doing otherwise undermines moderate nationalist parties and their supporters who are loyal to the state, accept majority rule, and favor nonviolence. Tolerance of terrorism during “peace processes” deprives citizens of their rights to political participation and equality before the law and legitimizes the resort to violence to influence the political process. The process of democratic representation is distorted. Coercion and intimidation by underground organizations, even if they claim to be committed to a peaceful transition, is undemocratic. Thus, Spain was right to proscribe Batasuna, the political wing of ETA, and Ireland and the United Kingdom were right to forbid the transmission on television or radio of interviews with members of illegal organizations, such as the IRA.

Spain’s decision to ban ETA was supported by both the executive and the courts. The Spanish government initially banned Batasuna in 2003. The courts then reaffirmed the decision in 2007, when Batasuna members tried to establish a new party to compete in municipal elections. Again in 2008 the courts cut off funding for parties associated with Batasuna and prevented them from presenting candidates in the general election.

What happens if parties are banned because they will not renounce violence? Tim Bale of the University of Sussex reviewed the experiences of Turkey, Spain, and Belgium (Bale 2007, 2008). He found few negative consequences, but noted that the European Court of Human Rights (ECtHR) agreed in December 2007 to hear Batasuna’s claim that the Spanish government had violated its rights to freedom of expression and association. In Bale’s view, however, banning Batasuna did not seem to make ETA more violent. In 2009, the ECtHR upheld the ban.

As in Britain, the Spanish government’s response to terrorism aroused dissent, but of a different sort, as Rogelio Alonso notes. Policy toward ETA was a major issue in the March 2008 elections that returned the Socialist Party and Prime Minister José Zapatero to power. (The other two key issues were the economy and immigration, the latter also a terrorism-related issue.) The salience of counterterrorism was reinforced when ETA assassinated a former Socialist local government official on the eve of the elections. Zapatero’s earlier policy of negotiations with ETA had been widely unpopular, particularly with the powerful Association of Victims of Terrorism,

and huge popular demonstrations opposed the initiative. The opposition People's Party constantly accused the government of being "soft on terrorism" and betraying ETA's victims. The policy became even more unpopular after ETA placed a bomb at the Madrid airport in December 2006 that killed two people, although the group was supposed to be observing a ceasefire. In March 2007, the government's decision to release an imprisoned ETA militant whose health had deteriorated because of a hunger strike unleashed what the *London Times* called a "storm of outrage" (March 2, 2007). When the Zapatero government finally broke off negotiations after ETA officially renounced the ceasefire in June, the Socialist Party's approval rating immediately went up, and the government then stuck to a hard line. It should be recalled that Zapatero was originally elected after the disastrous March 2004 Madrid bombings by an Islamist cell. His predecessor, People's Party leader José María Aznar, initially blamed ETA for the bombings, a blunder that may have cost him the election.

Jeremy Shapiro analyzes the French case. Like Dirk Haubrich, Shapiro sees the state as confronting a series of specific terrorist threats over time with correspondingly different countermeasures. France confronted no single terrorist threat and had no uniform counterterrorist policy; the government adapted to a shifting landscape. From the 1950s on, France moved sequentially from treating terrorism as an emergency (in the context of the Algerian war) to providing sanctuary for international terrorist groups (for example, some of the nationalist Palestinian factions) as long as they did not target France, to accommodating the demands of terrorist groups and their state patrons in the 1980s, to suppressing terrorism, and on to preventing it in the post-9/11 era. Having dealt with terrorism for over fifty years, France accepts it as an inevitable fact of modern life, not an existential threat. Shapiro argues that the French experience highlights the importance of responding to terrorism through normal channels, particularly judicial institutions, in order to preserve the legitimacy of the state. Unlike John E. Finn and Dirk Haubrich, Shapiro is optimistic that antiterrorist measures that lack public support will wither away when the threat has passed. He notes that France may be the exception among Western democracies: some well-established French counterterrorism measures, such as lengthy detention without charges and pervasive surveillance, would be unacceptable to other liberal states.<sup>21</sup> Although French political culture may easily tolerate such infringements on civil liberties, the Muslim and Arab population of France (the largest Muslim minority in Europe) suffers the brunt of the policy's repressive effects. France will eventually have to reckon with their frustration.

The case of France illustrates another general point: old debates do not fade away, and memories are long. The use of torture by French forces during the Algerian war reached the national political agenda yet again some forty years later when General Paul Aussaresses published his wartime memoirs in 2001, as Jeremy Shapiro recounts. The general and his publishers were subsequently fined by the courts for justifying torture. The year before the publication of Aussaresses's book, an Algerian woman accused other prominent French military figures of torture, a charge that generated a spate of press commentary on the various denials and admissions that followed. In 2005 and 2006, the *Ligue des Droits de l'Homme* vigorously protested public commemorations of OAS's forty-fifth-year anniversary. The United States may also find that controversy over enhanced interrogation after 9/11 will persist well into the future, even though the practices were halted by the Obama administration.

Like France, Germany may also be an exception in resisting deep change in counterterrorism policies and institutions, although its policies might shift if Germany experienced a major terrorist attack on its territory. So far all attempts have been foiled. Giovanni Capoccia argues that norms and institutions did not change in the 1970s, when the Federal Republic faced terrorism from the left, or after the shock of 9/11. Although the German state has adapted, it has done so incrementally and gradually. One important constraint is the federal system: the *Länder* and the judicial institutions have firmly resisted the growth of executive power. Second, for historical reasons, democracy is not taken for granted in Germany, and the principles of the Basic Law of 1949 are deeply respected. On the other hand, the German public is willing to countenance harsher policies than the government has advocated or implemented. Attitudes toward Muslims have hardened, although concerns about the protection of civil liberties remain paramount. It is also worth noting that a key German counterterrorist measure is the withdrawal of legal exemptions for religious organizations, a development resembling those in Japan after 1995 and in the United Kingdom in the wake of 9/11.

It is an understatement to say that Israel is an extreme case. Israel has faced terrorism throughout its existence, and terrorism has always been linked to the hostile intentions of neighboring states that were adversaries in major wars. One could say that Israel has been at war with terror since 1948. It is not surprising that Israel's response to terrorism has been much more consistently coercive than elsewhere (although some critics of U.S. policy may disagree). Ami Pedahzur and Arie Perliger argue that Israeli policy does not score high in terms of either effectiveness or democratic

acceptability. In their view, adopting a war model to deal with terrorism has completely failed. This approach is the result of the influence of the military elite on the institutions of the state, uncritical public support for the military establishment, and the reluctance of the Supreme Court to counter executive power. Severe policies such as house demolitions, targeted killings, restrictions on citizenship, and the building of the “security fence,” or wall, have not received the public scrutiny they should have, a finding that confirms John Finn’s warning about the undemocratic effects of lack of transparency in executive decisionmaking. The consequence, in the authors’ judgment, is a tragic decline in Israeli democracy, without a corresponding increase in security for its citizens. The war model, they conclude, is not one to be imitated.

Like Spain, Israel also considered disqualifying pro-Palestinian political parties, but unlike the Spanish courts the Israeli Supreme Court blocked the initiative. The victory of Hamas in the Gaza Strip raised another set of problems, as Israel and its allies, including the United States, refused to deal with Hamas until it renounced violence and recognized Israel’s right to exist. It is not clear how democracies should proceed when violent extremist parties are democratically elected. There is also an international dimension to the problem: as de Jonge Oudraat and Marret explain, Hamas is on the EU’s list of terrorist organizations as well as the U.S. list (although the latter does not include Hezbollah). Such designations, which are contested, can close off possibilities of negotiations or third-party involvement in peace processes because the designated parties are thereby stigmatized.

As in Ami Pedahzur and Arie Perliger’s analysis of Israel, the implications of counterterrorist policy for the role of the military are at the center of David Leheny’s analysis of Japan. Here too the response to terrorism has enhanced military institutions. Before 9/11, Japan considered terrorism a law enforcement issue, which was the dominant international framing at the time as well as the way in which Japan had traditionally approached internal threats such as the Japanese Red Army in the 1970s and Aum Shinrikyo in the 1990s. After the United States launched the war on terror, however, Japan came to agree with the American position that terrorism was a momentous threat to national security that justified a military response. Leheny regards the changes in Japanese security policy after 9/11 as “breathtaking.” He notes that before 9/11 the ideas of democracy and a restricted role for the military were inextricably linked. This linkage ensured that the use of force would always be an acutely contested domestic political issue. After 9/11, the threat of terrorism (typically conflated with the traditional security threat posed by North Korea) was used

to justify dramatic changes, including the first use of Japanese troops in support of combat operations since World War II. The boundaries between policing and military action are increasingly blurred in Japan.

In the post–World War II period, Japan and Germany have typically been regarded as similar “civilian” powers, for similar historical reasons, yet their reactions to post-9/11 security challenges differ considerably. In contrast to Japan, in Germany a restricted role for the military is still considered fundamental to democracy. All German military deployments must be individually approved by the Bundestag. The German Bundeswehr supported the NATO mission in Afghanistan, but agreed only to train Iraqi forces outside of Iraq.

## **COUNTERTERRORISM IN THE POST-9/11 WORLD**

Liberal democracies remain split between the criminal-justice or law-enforcement approach to terrorism and the war model, even though counterterrorism policing may be shifting in a military direction. Israel adopted a war model well before 2001, but it did not create an international precedent. Support for the American war model—the post-2001 global war on terror as it extended to intervention in Iraq—was deeply unpopular in both Britain and Spain, even though political elites favored it. The bombings in London and Madrid reinforced popular antagonism, since they were interpreted as reprisals against British and Spanish participation in the occupation of Iraq. Neither the French nor the German government, nor their citizens, supported the U.S. mission in Iraq. Other American counterterrorism actions—especially the prison at Guantánamo Bay, the secret prisons in Europe, the covert operations, and the extraordinary renditions—further troubled allied relationships. Nevertheless, disapproval of American actions and policies was far from universal. For instance, while there was public concern among Germans about the consequences of their country’s role in Afghanistan, Japan has seized the opportunity of the American war on terror to reframe conceptions of national security and build a role as a military power. Reactions to the Obama administration’s shift away from the war on terror model were generally positive, especially in western Europe, although the administration’s emphasis on the war in Afghanistan met with reservations. Israel remained suspicious of the new administration’s efforts to restrict settlements as part of a renewed peace process. The Israeli government also feared that the United States would not take a sufficiently hard line with Iran, a threat because of its nuclear aspirations as well as its support for both Hamas and Hezbollah.

With the exception of Japan, we see few abrupt post-9/11 changes in the national policies studied here, in the EU policy on immigration, or in the establishment of terrorist designation lists. In general what political scientists call “path dependency” is very much in evidence. The momentum toward adopting stricter measures has typically been gradual. Outside the United States, Britain has shown the most change. France had developed a robust counterterrorism stance earlier than other liberal democracies, and Germany has resisted the erosion of democratic norms. Given this solid and deep historical base and the steady accretion of counterterrorist policies, it is unlikely that there will be major reversals. European fears of domestic radicalization and the persistence of terrorist attacks and interrupted plots will encourage the maintenance in these countries of existing systems of prevention.

From our analysis of post-9/11 counterterrorism policy we can project a number of short-term consequences—for instance, lengthened periods of preventive detention will keep more people in jail before charges are brought against them, and increased surveillance and the establishment of large databases on individuals will reduce privacy. It is much harder, however, to foresee the long-term political effects or to understand variations among countries. There is much that we do not know. The chapters in this volume thus suggest a rich research agenda for an uncertain future. Terrorism will continue to present a variety of complex threats resulting from a mixture of local, national, and international politics. Creating disruption by killing civilians in surprise attacks is unfortunately all too easy. Governments and international institutions will respond according to their perceptions of the threat and their distinctive norms and institutions.

The analysis and arguments presented here should help inform public debate over counterterrorism policy in democracies. Accountability and transparency are as essential to democracy as the protection of civil liberties, democratic institutions, and processes of governance. Security policy inevitably requires some secrecy, but democratic governments have to explain and justify their actions to their constituencies. Government leaders must anticipate and be prepared for contingencies and surprises, but good judgment requires thinking beyond the immediate moment of crisis. This volume should assist these government decisionmakers as they identify and evaluate the potential consequences of a range of policy alternatives. The studies presented here should also encourage democratic governments to learn from one another, as well as from their own experiences, the ways in which they can better anticipate the political impact of

their policy choices and to take that potential impact into account in their decisionmaking.

## NOTES

1. Most comparative analyses of non-American counterterrorist policies describe the policies of different states, explain how they have changed, and evaluate their current effectiveness (see, for example, Von Hippel 2005; Alexander 2002; von Knop, Neisser, and van Creveld 2005; Jacobson 2006; Zimmermann and Wenger 2006a). Some analyses consider specifically the effectiveness of democracies in reducing terrorism (for example, Art and Richardson 2007, a volume that includes case studies of Britain, France, Japan, and Israel). European lessons for homeland security in the United States are considered in Hamilton, Sundelius, and Grönvall (2005), a volume that includes studies of European states not considered here: Sweden, Finland, Norway, Switzerland, and Austria.
2. For a small sample of the critical appraisals of American policies under the Bush administration, see Cole and Lobel (2007) and Goldsmith (2007).
3. On this need, see Krebs (2009).
4. Some authors (for example, Mueller 2006 and Lustick 2006) argue that it would be best for governments to do nothing, but passivity does not seem to be a politically acceptable option.
5. It is well to remember, however, that a number of ostensibly domestic left-wing groups in the 1960s and 1970s (such as the Red Army Faction in Germany and the Weather Underground in the United States) took their inspiration from revolutionary movements in the Third World, particularly Latin America. The Uruguayan Tupamaros were particularly influential, as I note later in this chapter.
6. The German Marshall Fund's *Transatlantic Trends 2007* public-opinion survey found that 66 percent of Europeans felt personally affected by international terrorism (versus 74 percent of Americans). This was a sixteen-percentage-point increase over 2005. Perceptions of Islamic fundamentalism and immigration as threats also increased. In 2008, however, attitudes shifted slightly: 62 percent of Europeans and 69 percent of Americans thought they would be personally affected by international terrorism in the next ten years. A little over 40 percent of Europeans and Americans agreed that international terrorism should be at the top of the policy agenda, along with economic issues. Interestingly enough, in 2009 European publics expressed more confidence in President Obama's counterterrorism policies than Americans did. See "Transatlantic Trends: Key Findings 2007," available at: <http://www.transatlantictrends.org/trends> (accessed September 14, 2009). Nevertheless, some experts point to divergent risk perceptions as a divisive factor in transatlantic relations (Föhrenbach 2006).

7. The case studies in Cohen (2008) deal with democracies engaged in military conflicts against armed groups defined as terrorist. They consider the difficulties of conducting such warfare without violating international law.
8. See U.S. Department of Homeland Security, National Consortium for the Study of Terrorism and Responses to Terrorism (START), "Global Terrorism Database," available at: <http://www.start.umd.edu> (accessed September 14, 2009).
9. Even in 2008, Europol was still reporting that separatist terrorism was the area of terrorism that most affected the European Union. See Europol, "European Union Terrorism Situation and Trend Report," TE-SAT 2009, available at: [http://www.europol.europa.eu/publications/EU\\_Terrorism\\_Situation\\_and\\_Trend\\_Report\\_TE-SAT/TESAT2009.pdf](http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2009.pdf) (accessed September 14, 2009).
10. This leaves aside the Breton National Liberation Movement and the much more serious Corsican National Liberation Front, founded in 1976 and still in existence. The latter has mainly been active in Corsica rather than on the French mainland, but there have been attacks in the south of France.
11. The provocative power of terrorism is evident in the fact that the Israeli invasion of Lebanon was ostensibly a reaction to a terrorist attack on the Israeli ambassador to the United Kingdom by the PFLP.
12. See Craig Whitlock, "French Push Limits in Fight on Terrorism: Wide Prosecutorial Powers Draw Scant Public Dissent," *Washington Post*, November 2, 2004.
13. See Molly Moore, "Panel Decries Terrorism Blacklist Process," *Washington Post*, November 13, 2007.
14. In January 2009 the EU also removed the group from its list of terrorist organizations. See John F. Burns, "Iranian Exiles Aren't Terrorist Group, British Court Says," *New York Times*, May 8, 2008, and Stephen Castle, "Europe Takes Terrorist Label Off Iranian Resistance Group," *New York Times*, January 26, 2009.
15. Similarly, Daniel Hamilton and his colleagues (2005) refer to a changing conception of security in Europe from defense of territory and borders to "societal security."
16. The cascading effect of counterterrorism measures is neatly illustrated as follows. One provision of the quickly enacted legislative package was to permit the detention without trial of suspected foreign terrorists who could not be deported to their home countries owing to the risk of torture. Since the European Convention on Human Rights prohibits imprisonment without trial, the United Kingdom had to declare a state of public emergency in order to meet its treaty obligations.
17. See U.K. Home Office, "Statistical Bulletin: Statistics on Terrorism Arrests and Outcomes in Great Britain, 11 September 2001 to 31 March 2008," May 13, 2009.

18. See Europol, "Situation and Trend Report" (see note 9); see also Jacobson (2006) on terrorist prosecutions in Europe.
19. See John F. Burns, "Vote Favors Terrorism Bill and Premier in Britain," *New York Times*, June 12, 2008.
20. See Philip Webster and David Byers, "Shadow Home Secretary David Davis Resigns to Force By-Election," *Times Online*, June 12, 2008. Available at: <http://www.timesonline.co.uk/tol/news/politics/article4120459.ece> (accessed September 14, 2009).
21. "France permits prosecution under a crime called association de malfaiteurs (criminal association), which allows charges to be brought when there is an 'understanding' between two or more people to carry out a crime and the group has taken at least one material step toward its goal. This resembles U.S. conspiracy law but is harsher because it allows charges to be lodged on the basis of information gained through interrogation without the presence of a lawyer—often supplemented by hearsay evidence—and a suspect can then be held in pretrial detention for more than three years. In terrorism cases, such detention has been common. France thus stays within a criminal justice paradigm but requires far less evidence before allowing the state to place a suspect in long-term detention" (Roth 2008, 2).

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