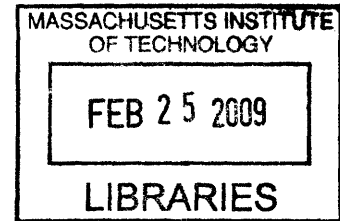# Freedom and Order:
How Democratic Governments Abridge Civil Liberties after Terrorist Attacks—and Why Sometimes They Don't

by

Gabriel Rubin

B.A., Political Science and Journalism
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SUBMITTED TO THE DEPARTMENT OF POLITICAL SCIENCE IN PARTIAL
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Signature of Author:_____

Department of Political Science
May 13, 2008

Certified by:_____

Roger Petersen
Professor of Political Science
Thesis Supervisor

Accepted by:__

Edward Steinfeld
Associate Professor of Political Science
Chair, Graduate Program Committee

Freedom and Order:
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ABSTRACT

This dissertation is driven by the following question: "What explains the variation in governments' civil liberty-abridging responses to terrorist attacks?" In the United States, it was not until a year after the 1995 Oklahoma City bombing—and three years after the 1993 World Trade Center bombing—that Bill Clinton signed major civil liberty-limiting, counter-terror legislation in the form of the 1996 Antiterrorism and Effective Death Penalty Act. By contrast, George W. Bush passed the much more comprehensive and repressive Patriot Act through a divided Congress in a month-and-a-half after the September 11, 2001 attacks. In Great Britain, Tony Blair's own party blocked clauses in his anti-terrorism legislation that would have created national ID cards and extended the duration terror suspects could be held without charge to 90 days after the July 7, 2005 London bombings. Yet liberty-reducing counter-terror laws were easily passed time and again after IRA terror attacks in the 1970s, 1980s and 1990s. In Israel, Yitzchak Rabin's government largely forewent abridging liberties during the Oslo peace process, but Ariel Sharon passed numerous liberty-abridging laws such as one prohibiting the granting of citizenship to Palestinians that marry Israelis during the second intifada.

This work forwards the theory that chief executives in government, be they presidents or prime ministers, drive civil liberty-abridging responses to terrorist attacks, but that they are constrained by public opinion and institutional factors. Spikes in public fear levels after terror attacks, along with other factors, create a window of opportunity for executive action that can lead to the passage of civil liberty-reducing counterterror legislation. This work looks at cases where such legislation is passed, blocked and not pursued in order to decipher the factors that best explain the variation in passage of liberty-abridging legislation after terror attacks.

Thesis Supervisor: Roger Petersen
Title: Professor of Political Science

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ולדור הבא

Acknowledgements

On September 11, 2001 I woke up at 9 a.m. and took the subway to Temple University in North Philadelphia. As I jaunted toward campus, I noticed that students had gathered around radios that were blaring the news from food trucks. I saw a girl that I knew from class and asked her what was going on. She told me that apparently two planes had crashed into the World Trade Center in New York City. I smirked and stated, "That can't be a coincidence."

I made my way to class that morning and paid attention to the professor's lecture like I would have on any other day. A tall black girl who was very active in the political science department was buzzing in and out of the room. She said she was curious about what was happening in New York. The professor tolerated her in a friendly manner. No one yet knew the magnitude of what had happened.

When class ended, I joined a group of students that had gathered in the hall in front of an old TV that broadcast a black-and-white, fuzzy image of the quivering towers. Rumors were flying. Had the people evacuated? How many were dead? No one knew. All we had was hyperbole and speculation.

As the towers began to fall, I could hear audible gasps. "Oh my God!" I turned my head and saw a woman in a headscarf smiling from ear to ear. "It's happening, it's finally happening," she beamed. Everyone was saying 100,000 dead. I could see the woman mouthing with delight: "100,000 dead." There were reports that planes were attacking us in Cleveland and Washington, DC. The fabric of society was fraying.

I was still spectating. I couldn't make sense of what was going on. I went to my next class. Only a few students were there. It was a political theory course taught by the chair of the department. He joked about how the Liberty Bell had been cordoned off in Philadelphia. The head of the Muslim Student's Association asked rhetorically whether the perpetrators were terrorists or freedom fighters. The prevailing wisdom now was that the Popular Front for the Liberation of Palestine had something to do with the attacks. Everyone assumed that what had happened was connected to the Israeli-Palestinian conflict. I sat in class contrite and confused. I simply didn't know what to make of what had happened.

Classes were cancelled in the afternoon. I went home and called my parents. My Dad asked if I'd seen what happened. I said yes. He didn't know what else to say. I talked to my younger brother, then 15. I asked him if he saw what happened. He said he hated Arabs. We didn't know the facts, but I was starting to get angry.

Anger enveloped me that evening. Over dinner with my future wife, I foamed at the mouth. As an Israeli-American, I had always felt closer to Israel than the US. But now for the first time I stated a desire to join the American armed forces. I wanted to defend my country. I wanted to get revenge on these terrorists. I wanted to make right what was wrong.

A few days later I ran into a Pakistani friend named Bilal. I greeted Bilal happily. As an Israeli desiring peace, and a North African Jew, I had learned to balance feelings of hostility toward and brotherhood with Muslims. I asked Bilal if he would join me for lunch, he accepted the invitation. Bilal was visibly shaken. He said that he was struck by the ignorance of Americans who thought that bombing Pakistan would be acceptable in

retaliation for the attacks. I asked him what he felt about the group that had done the bombings—now that we knew that they were Arab-Muslims. I will always remember his response.

"After the attacks," he said. "I wondered if I should renounce my faith. If Muslims could do something so terrible to innocents, then what good was it to be a Muslim? After a few days' reflection, I realize that Islam is a religion of peace. These people have twisted my faith."

I left our encounter understanding the other side more, but in the coming weeks and months the country was on war footing. Temple University, one of the most diverse campuses in America, was split between a large group of students that were hungry for war and revenge and a smaller group, many of them international students, who repeated in my political science classes that, "the chickens had come to roost." In other words, they contended that it was American foreign policy that led to this catastrophe.

To this day I cannot forgive the people who say that we deserved what happened on 9/11 or that we had it coming to us. First, I cannot forgive them because no one deserves to die. I don't rejoice when people of any skin color or nationality are killed, and others shouldn't rejoice when Americans are killed. Second, their convictions are misplaced. The United States has never done anything to personally provoke Osama bin-Laden. Those who said that the US' "backward policies" in Central America or the Middle East led to the attacks had a perverted method of concluding causality. US foreign policy surely bred hate, but we also had to attribute agency to our attackers. Further, the victims of the attacks had nothing to do with US foreign policy. They were just doing their jobs. To say that they deserved to die is ugly and inhumane.

The events of September 11, 2001 contributed greatly to my desire to become a

Ph.D. in political science. At first, I came to the subject wanting to study terrorism. My

connections to Israel made me all too familiar with the phenomenon. However, as I

surveyed the topics available for a dissertation, I was drawn to cover the reaction to terror

attacks and their effect on civil liberties for a number of reasons. First, a strong literature

already existed on explaining the terrorist mind. Second, I was passionately interested in

those first few days after the attack on the effect of fear and of anger on Americans.

Finally, I recalled my conversation with Bilal and my youthful desires for peace in Israel.

I remembered the lowest point of my 1997 year-long Israel trip. A terror bombing had

occurred in Jerusalem, where I was residing, and my group was called to meet to check

on everyone's safety. After the meeting, the TV blared images of Orthodox Jews

chanting "Mavet La'Aravim" meaning "Death to the Arabs." I slumped in my chair and

cried. The fact that a few extremists could have such a large, disastrous effect on Israeli-

Palestinian relations overwhelmed me. To this end, I present this dissertation as a

potential bridge between communities. I also present it as a project that can potentially

help when, God forbid, future terrorist attacks occur.

I have many people to thank for this project. Roger Petersen taught me

everything I know in political science and single-handedly made me into a political

scientist. He gave me the methodological tools I needed to properly analyze the

phenomena I sought to explore. His gregariousness, joviality, and sense of humor made

him the ideal dissertation advisor.

Sarah Song provided me with more confidence than a graduate student deserves

to have. Her unwavering support and loyalty, and her kindness and caring, were

indispensable. Her sharp analytic skills and amazing ability to deliver pointed criticism in a constructive and kind manner are second to none.

Nazli Choucri gave me the emotional support that I needed as a graduate student from day one. She sparred with me over my direction, made sure that I stayed interested and engaged, and reassured me when I was down on myself. She was an unparalleled advisor.

Finally, Adam Berinsky, a late addition to my dissertation committee, has proven to be a fantastic resource. His no-nonsense style and sharp knowledge of the public opinion field have aided me substantially. His support has been greatly appreciated.

My friends both in school and outside of it deserve great thanks. At MIT, Chris Wendt, Adam Ziegfeld, Neil Ruiz, Sarah Sled, Paul Staniland, Austin Long, Brendan Green, Caitlin Talmadge, Keren Fraiman, Paul Staniland, Ben Friedman, Erik Freeman, Jonathan Rose, and especially Will "the Swedish" Norris challenged me, inspired me, and mainly made my graduate experience a fun and memorable time. At home, Adam Finkelstein, Oran Ebel, Ariel Ahram, Andrew Lichtman, Judd Schlossberg, Dave Yankelewitz, and Jay Katsir have and will always be life-long friends. Their intelligence and drive was critical in inspiring me to make something of myself. Alex Feldman, Elliot Leffler, Isaac Feder, Gary Ashwal, Adam Wasser, Ari Levine, Ari Haas, Jesse Fox, Gabe Landes, Leia Grossman, and Sam Grobard are the best group of friends a guy could ever ask for, I hope I've given you all 1/10th of what you've given me.

Finally, the most important people: my *mishpacha*. Ema and Abba, thanks for the effervescent and unconditional support and love. I could not have asked for kinder, wiser, funnier, more passionate, more decent, more generous parents. Ben, you've taught

me so much about passion, idealism, and how to live. The fire that burns within you is an inspiration to everyone you encounter. Tanti, I can't do anything but admire someone whose surpassed me in every field possible. You've got big hands, big nose, big feet and a humongous heart. Good luck to both of you in life, love and the pursuit of world domination. Ariel, you are the light that dances inside me. I could not have made it through this without you. You kept me motivated when I was down, helped me piece together charts and data, and made sure I was always having a good time. I am lucky to have met you and I love you with all my heart.

Thank you all.

Chapter One

Theory

On the night of September 11, 2001 in the wake of the ruin of the World Trade Center towers and the deliberate suicide hijackings of four US airliners, the first mission the world had seen where civilian airliners were used as missiles, President George W. Bush appeared on television before Americans for the first time since the tragedy. To say that the country was shocked by what had transpired that day would be a gross understatement. Americans had experienced unprecedented prosperity in the preceding years via the explosion of the World Wide Web and the erosion of trade barriers. A sleepy summer, dubbed "the summer of the shark" by a news media grasping at straws[1], had passed uneventfully. A year earlier the USS Cole had been bombed off the coast of Yemen, eight years before the World Trade Center in New York suffered a truck bombing and the 1980s and 1990s experienced their share of airline hijackings, hostage takings, and terrorist bombings committed against Americans. Yet terrorism was a distant reality to an America just gaining its legs in an age of unipolarity and computerized globalization.

Bush sat behind a mahogany desk that night. Watching him was a country stunned, a country yearning for leadership. The words that he selected that night and in the proceeding weeks would shape the response of a nation. Yes, the nation was scared

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[1] See http://www.time.com/time/2001/sharks/.

and, yes, Americans wanted revenge[2] and to feel secure again. But polls showed that, more than anything, Americans were willing to give their leaders the tools necessary to make things right again. After all, Bush's approval rating skyrocketed after 9/11 from 52% to 88%[3], the percentage of Americans' willing to cede liberties for security after the attacks was 55%[4], and the number of Americans fearful of becoming terror victims jumped from 34% in May 2001 to 58%[5].

Though individuals in the public may have been willing to evict Arab-Americans or enact a police state, their elected representatives were the ones who would have to fashion policy. The chief executive now had the opportunity to choose the domestic and international response to the events of that terrible day. He would get to choose whether the attacks meant that the privacy of Americans was a thing of the past, whether Arab-Americans would all be deported, whether new legislation was needed to deal with the threat or whether stricter enforcement of existing laws would suffice. In fact, difficult as it may be to believe, he would get to choose whether to respond to the attacks at all. Indeed, Osama bin-Laden's previous attacks on American interests yielded measured military responses from the Clinton Administration and no significant changes in legislation.

Bush's words, thus, would not only shape the response, but also shape the perception of the threat that Americans faced. Was this a threat that required war? Was it a one-time event? Was Islam a religion of barbarians that needed to be extinguished?

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[2] One telling example of this was the "Nuke 'em till they glow" sign prominently displayed behind the dugout by a Yankee fan at the 2001 World Series.
[3] Harris Poll, comparison of August 2001 and October 2001 data. No survey was taken in September 2001.
[4] The Pew Research Center for the People and the Press, September 2001.
[5] Comparison of CNN/*USA Today*/Gallup polls taken on May 2001 and 9/11/2001. Figures are aggregates of "very worried" and "somewhat worried" categories.

Domestically, did Muslims represent a fifth column? The smoke billowing from what was now dubbed Ground Zero presented the President with an opportunity to shape the threat, to determine the response. It would be facile to say that "he did what he had to do," when in fact those in similar situations chose different courses.

Why Protecting Liberal Democratic Practices is Important

Liberal democracies are special due to their commitment to government by the people and to a set of negative rights that allow citizens to live their lives free of heavy-handed government interference[6]. As Michael Ignatieff writes, "Thanks to the rights they entrench, the due process rules they observe, the separation of powers they seek to enforce, and the requirement of democratic consent, liberal democracies are all guided by a constitutional commitment to minimize the use of dubious means—violence, force, coercion, and deception—in the government of citizens"[7]. The fact that liberal democracies espouse rights that their citizens and governments value presents a particular dilemma in times of crisis: balancing national security against civil liberties. This point is not just an "academic" one since a strong body of theory provides the backbone for why liberal democracies are structured the way they are. Works such as *The Federalist Papers*, the US Constitution, John Locke's *Second Treatise on Government*, and Montesquieu's *The Spirit of the Laws* detail the careful logic behind the institutions of government in liberal democracies. In all of these writings, it is emphasized that democratic government should be constructed with the people's rights as its main focus.

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[6] On negative and positive liberty see Berlin, Isaiah. "Two Concepts of Liberty" in *Four Essays on Liberty* (New York: Oxford University Press 1969).
[7] Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton, NJ: Princeton University Press 2004), pg. 15.

Much ink has been spilled in the field of political science about the value of good institutions[8]. The argument goes that if only democracies are created with the right electoral mechanisms, the right veto powers and the right balance of power between the branches of government, everything else will take care of itself. That is, with the right institutional mechanisms, peace can take hold and the rule of law can be maintained even in the most divided of nations. Crises challenge this belief to its core. As will be seen in the chapter comparing counter-terrorist reactions by presidential and parliamentary governments, it is not at all clear that institutions matter in the face of great calamities. If institutions cannot protect the people from government in times of crises, then what is their real value? This dissertation will look into how institutions affect the outcomes of domestic counterterrorism reactions and show why these reactions vary so greatly over time and between cases.

Research Question and Theory

Cass Sunstein avers that, "Simply because of fear, the public and its leaders will favor precautionary measures that do little to protect security but that compromise important forms of freedom"[9]. Sunstein's insight is central to my theory. This dissertation is driven by the following question: "What explains the variation in governments' civil liberty-abridging responses to terrorist attacks?" In the United States, it was not until a year after the 1995 Oklahoma City bombing—and three years after the 1993 World Trade Center bombing—that Bill Clinton signed major civil liberty-limiting,

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[8] See, for example, Lijphart, Arend ed. *Parliamentary versus Presidential Government*. (Oxford, UK: Oxford University Press 1992) and Horowitz, Donald L. *A Democratic South Africa?: Constitutional Engineering in a Divided Society*. (Berkeley, CA: University of California Press 1992).
[9] Sunstein, Cass. *Laws of Fear: Beyond the Precautionary Principle*. (Cambridge, UK: Cambridge University Press 2005), pg. 204.

counter-terror legislation in the form of the 1996 Antiterrorism and Effective Death

Penalty Act[10]. By contrast, George W. Bush passed the much more comprehensive and

repressive Patriot Act through a divided Congress in a month-and-a-half after the

September 11, 2001 attacks. In Great Britain, Tony Blair's own party blocked clauses in

his anti-terrorism legislation that would have created national ID cards and extended the

duration terror suspects could be held without charge to 90 days after the July 7, 2005

London bombings[11]. Yet liberty-reducing counter-terror laws were easily passed time

and again after IRA terror attacks in the 1970s, 1980s and 1990s[12]. In Israel, Yitzchak

Rabin's government largely forewent abridging liberties during the Oslo peace process,

but Ariel Sharon passed numerous liberty-abridging laws such as one prohibiting the

granting of citizenship to Palestinians that marry Israelis during the second intifada[13].

This study systematically compares liberal democratic governments' domestic,

legislative responses to terrorism. The goal of this study is to create a theoretical

framework from which all domestic responses to terrorism can be compared. I do this by

showing that the main determinants for domestic terrorism reactions are *executive*

response, how the chief executive decides legislatively to respond to the attack, and

executive threat-shaping, how the executive molds the perception of the terrorist threat

and of the government's subsequent reaction through public pronouncements. Indeed,

domestic, civil liberties-reducing reactions to terrorist attacks vary widely from case-to-

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[10] Cole, David and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. (New York: The New Press 2006), study 8.
[11] See, for example, Morris, Nigel and Ben Russell. "90 Days: Plans to lock up terror suspects without charge provoke outcry," 13 October 2005, *The Independent Online*, http://news.independent.co.uk/uk/politics/article319167.ece; Jones, Matthew. "Blair braces for rocky week on key votes," 13 February 2005, Reuters, www.theepochtimes.com/news/6-2-13/38100.html.
[12] See Donohue, Laura K., *Counter-Terrorist Law and Emergency Powers in the United Kingdom, 1922-2000*. (Dublin, Ireland: Irish Academic Press 2001).
[13] See, for instance, Adalah: the Legal Center for Arab Minority Rights in Israel, "Ban on Family Unification," http://www.adalah.org/eng/famunif.php.

case and from leader-to-leader. I will show here that the determinant for this variation is how the head of government, regardless of whether the government system is presidential or parliamentary, shapes the threat.

This study works as a test and as a synthesis of the three main causal stories used to explain why liberal democracies react the ways they do after terror attacks[14]. First, it is argued by authors such as Cass Sunstein and Paul Slovic that *public opinion or mass fear* determine the government's reaction[15]. That is, that a swell of fear pushes the government from the bottom-up to pass civil liberty-reducing law. Public opinion scholars, such as John Mueller and Richard Sobel, also hold that government approval ratings and a rally 'round the executive are important factors in determining whether or not counter-terror legislation will be passed[16]. Proponents of the second theory for why governments react the ways they do after terror attacks hold that a government's *institutional structures* determine policy outcomes. This causal story is rooted in the works of Arend Lijphart, Matthew Shugart and John Carey, John Locke, Montesquieu, and in *The Federalist Papers*. These works contend that the checks-and-balances inherent in liberal democratic institutions and the differences between presidential and parliamentary governments determine whether or not liberties will be abridged after terror attacks. Finally, *executive response and threat-shaping* is argued to be the main causal factor behind liberty reductions. This theory, supported by authors such as Geoffrey Stone and Harold Laski, holds that prime ministers and presidents through their

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[14] In this study I refer frequently to reactions "after terror attacks" when many times these reactions come within terror campaigns. To be clear, all of the reactions here covered come after major terror attacks even though they may be categorized as reactions to campaigns.

[15] See Slovic, Paul. *The Perception of Risk*. (London: Earthscan Publications Ltd. 2000) and Sunstein, Cass R. *Risk and Reason: Safety, Law, and the Environment*. (Chicago: University of Chicago Press 2002).

[16] See Mueller, John E. *War, Presidents and Public Opinion*. (New York: John Wiley & Sons, Inc. 1973) and Sobel, Richard. *The Impact of Public Opinion on US Foreign Policy Since Vietnam: Constraining the Colossus*. (Oxford, UK: Oxford University Press 2001).

"bully pulpit" are able to shape what the public and the legislature view as a threat[17]. They thus are able to push civil liberty reducing legislation when they see fit.

This chapter will be organized in the following manner. First, the dissertation's overarching theory will be explained. Next, the logic of my case selection will be covered. Third, the methods used in this study and definitions for the concepts employed here will be touched on. Fourth, the main findings of the dissertation will be elaborated on. It ends with a chapter-by-chapter outline of the study.

Description of Theory

After a terrorist attack occurs, the government seems to convulse in a quick and forceful reaction. But the theory that is forwarded and supported here shows that the process of reaction is much more complex and that reactions vary much more greatly than public perception holds. The theory here proposed begins with the terrorist attack. That attack is viewed as an exogenous variable, that is, something that occurs outside of the governmental process. It gets the process going, but doesn't determine how that process will transpire. This may sound like a risky statement to make right off the bat. After all, wouldn't the nature of the attack determine the government's response in a sort of tit-for-tat or eye-for-an-eye dynamic? The answer, which will be supported by the findings of later chapters, is: no. The reaction to 9/11 was not typical of reactions to terror attacks. An important point made by this study is that the nature of legislative responses to terror attacks cannot be predicted by the nature of the attack or by the

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[17] See Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime From the Sedition Act of 1798 to the War on Terrorism.* (New York: WW Norton & Co. 2004) and Laski, Harold J. "The President and Congress" in Lijphart, Arend ed. *Parliamentary versus Presidential Government.* (Oxford, UK: Oxford University Press 1992). Though these authors focus on presidents, it will be shown that prime ministers abridge rights just as frequently as do presidents.

number of fatalities. The limited reaction to the 7/7 bombings in London, the 2004

bombings in Madrid, and numerous other attacks are testament to that fact[18].

Depiction of Theory Chart.
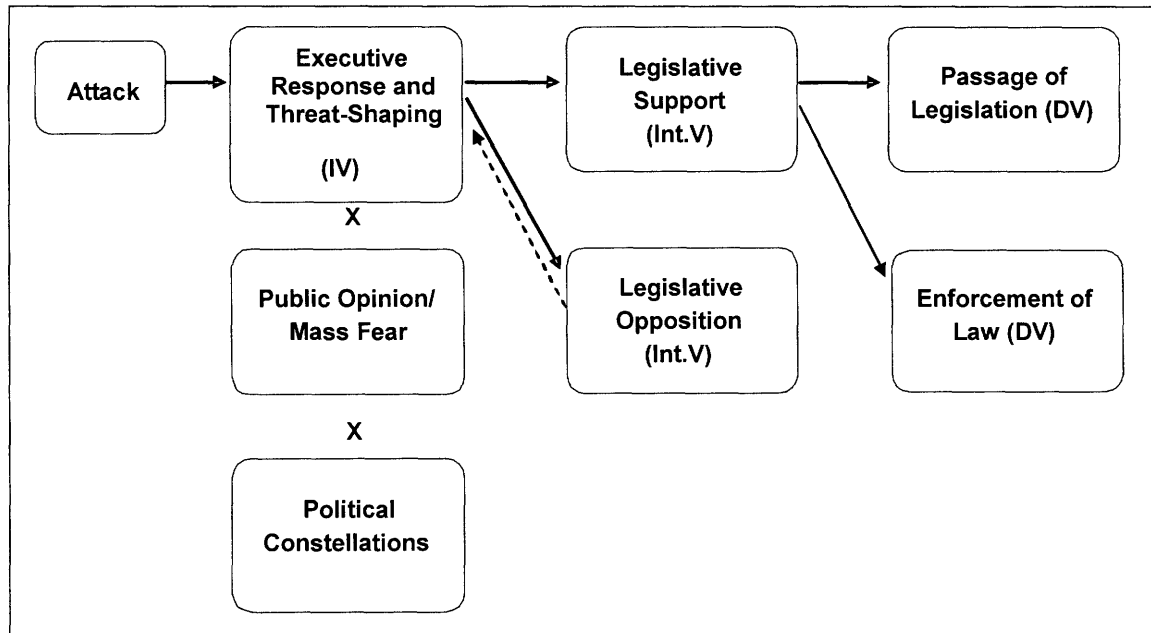
The above chart depicts the theory tested and honed in this dissertation. The

terror attack creates an *opportunity* for the chief executive to pass legislation or enforce

legislation that will abridge civil liberties in the name of national security. In this study,

the executive's response and the threat-shaping he employs to forward this response act

as the independent variable. However, in formulating his response to the attacks, the

executive is also *constrained* by both the public and by the legislature.

The executive's role, the independent variable in this study, has two components.

First is what I call the **executive response.** At this stage the executive decides generally

how to respond to the attack. He could try to seek new legislation, seek to deport

immigrants (among other options) or not seek to respond at all. The executive forwards

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[18] On this point, see Chapter Six.

his plan by employing the second component of the independent variable: **executive threat-shaping.** Executive threat-shaping is the mechanism by which the executive pushes his counter-terrorist agenda. Though this study is focused solely on the civil implications of this strategy, the way that executives attempt to shape the terror threat colors the state's international response to terror as well. I codify executive threat-shaping strategies by organizing them into themes such as threat magnitude and conflict framing. These themes are recovered from careful analysis of executive speeches. A further discussion of threat-shaping themes appears below.

The executive's response and threat-shaping strategies are constrained by two broad factors. First is **public opinion/mass fear**. In this study, mass fear levels, public willingness to forego liberties and executive approval ratings as well as other factors are measured using public opinion trend analysis. These factors work either to constrain or enable executive action. The second constraint variable I dub **political constellations**. This variable encapsulates the following three factors: political institutions, party competition and government composition/party in power. Though all of these constraint variables will be looked at, two will be shown to have especially strong explanatory power: approval of the executive and the government's partisan composition.

The **legislature**, the theory's intervening variable, enters the picture in the next stage of the process. It can either **support** or **block** the executive's proposed legislation. If it attempts to block the new counter-terror laws, an interplay between the executive and legislature may occur wherein the executive tries to push the legislature to pass new legislation by shaping the threat accordingly. This give-and-take is depicted by the dashed line in the above chart. The final stage is **passage of civil liberty-abridging**

legislation and **enforcement of civil liberty-abridging legislation.** These two outcomes are the dependent variables of this dissertation.

Case Selection

The cases herein are organized as a typology of the differing executive threat-shaping and legislative outcomes that can occur. The executive can either maximize or minimize the importance of the terrorist threat. As a proxy for this process, maximal threat-shaping is categorized as "threat shaped as war" and minimal threat-shaping is dubbed "threat shaped as crime." Then, the legislature can support or oppose the executive's legislative agenda. The cases that will be covered in this study are illustrated in the 2 x 2 chart below. Other corollary cases will be touched on in the conclusion.

Case Selection Chart.

	Threat Shaped as War	*Threat Shaped as Crime*
Legislation Quickly Passed	George W. Bush, 9/11 Ariel Sharon, second intifada Harold Wilson, 1974 Birmingham bombing	Yitzchak Rabin, first intifada
Legislation Substantially Blocked or Not Pursued	Tony Blair, 7/7/05	Bill Clinton-1995 Oklahoma City bombing Bill Clinton-1993 World Trade Center bombing

These cases were chosen for two main reasons. First, they all occurred in three countries, the US, UK and Israel, whose similarities outweigh their differences. These countries exhibit high-income levels, common law governance, robust immigration levels, strong democratic traditions, and multiethnic societies. What differs between them, among other things, is their geographic size, their population levels, the nature and

duration of the threats they face, and their government type. By comparing multiple cases from each country, the importance of executive threat-shaping after terror attacks occur will be exhibited. Second, the typology above, though clearly not exhaustive, is representative of the universe of terror attack cases that led to proposed legislation. For instance, when threats are shaped as war, legislation is almost always passed. Thus, the Tony Blair 2005 case is a particularly interesting outlier.

Methods and Definitions

Now that the variables and theory have been spelled out, it is essential to show how these variables will be measured and defined. This section covers the methods used in the dissertation, defines terms, and thus also serves to circumscribe the scope of the project.

<u>Executive Response and Threat-shaping (Independent Variable)</u>: The executive threat-shaping variable means to measure how chief executives in government, be they prime ministers or presidents, shape the magnitude of a threat through public pronouncements. As Jeffrey Simon writes, "Through their actions and statements, presidents can either help fuel a crisis atmosphere over terrorism or they can help defuse it"[19]. He notes that President Clinton urged caution after the explosion of TWA flight 800 in July 1996. Clinton at the time stated that, "I want to remind you that when we had the terrible tragedy in Oklahoma City, a lot of people immediately concluded that this must have been done by some force outside our country, and it appears that that was not the case now. So let's wait until we see the evidence"[20]. Contrast this with President Bush's call

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[19] Simon, Jeffrey D. *The Terrorist Trap: America's Experience with Terrorism*, 2nd edition. (Bloomington, IN: Indiana University Press 2001), pg. xviii.
[20] Simon, *The Terrorist Trap*, pg. xix.

to war on September 11, 2001, stating that, "A great people has been moved to defend a great nation" and that "We will make no distinction between the terrorists who committed these acts and those who harbor them"[21]. Certainly the crises varied greatly in degree, but the responses could not have been more different.

The independent variable here has two components. First, is executive response, which consists of the executive deciding how to act after a terror attack. The executive's response could include pursuing legislation, seeking to bring terrorists to justice, or not doing anything at all. The executive tries to get the legislature and public on board with his response plan by using the second component of the independent variable: threat-shaping. If the executive tries to tamp down the threat and seeks not to respond, this too is seen as threat-shaping. Executive threat-shaping will be measured by looking at *themes* that the chief executive pushes in speeches made after the terrorist attack. These themes will be gleaned by categorizing executive statements into the following eight categories. The first three themes deal with threat and conflict framing, and are the most important ones for this study.

- Statement of Threat and Threat Specificity—these executive statements underline the existence of a threat to the populace and define, with varying degrees of specificity, what that threat entails. In the extreme, these statements may emphasize that a *"new normal"* exists in the country. For example, after 9/11, statements that "oceans no longer protect us" point to a new reality facing the nation[22].

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[21] George W. Bush, "Statement by the President in His Address to the Nation," 11 September 2001, http://www.whitehouse.gov/news/releases/2001/09/print/20010911-16.html.
[22] This concept comes from Davis, Darren W. *Negative Liberty: Public Opinion and the Terrorist Attacks on America.* (New York: Russell Sage Foundation 2007).

- Threat Magnitude—these statements speak to the caliber of the terrorist threat. Most important here is whether the executive views the threat as war or crime, that is, whether he maximizes or minimizes the threat. A subset of threat magnitude statements are *nightmare scenarios*: these statements depict a nightmare scenario for the country that terrorists pose. They may or may not realistically depict threat magnitude, but they definitely are meant to ratchet up mass fear levels. For example, an executive stating that, "we are at war with terrorists" maximizes the terror threat. Whereas an executive that declares that "the terrorists that attacked us are part of a small, inconsequential group that can be prosecuted using available law enforcement methods" minimizes the magnitude of the terror threat.

- Conflict Framing—these statements specifically frame the conflict with the terrorists and what it entails. They define who the country is fighting and why. For example, executives can frame the conflict as a war with jihadists over who should rule the Middle East. When threat magnitudes are minimized, however, conflict framing is less important.

The next five themes have to do with how the populace should act in response to the threat and how it should feel about the government. These threats are touched on in some cases but are not as central to the study.

- Call to Arms/Rally 'Round the Flag—these statements are meant to conjure feelings of patriotism in the population and also rally it for the coming fight.

- Liberty-Security Tradeoffs—these statements refer to the liberty-security tradeoffs that need to be made in light of the terrorist attacks.

- Tolerance—these are statements made about tolerating minority populations in the country, specifically those whose co-ethnics committed the terrorist attacks in question.

- Government Protection—these executive statements refer to the government as a protector of the people that either has or will make them safer. These statements are meant to give the populace the feeling of protection or safety.

- Government Successes—these statements refer to government successes made against the terrorists.

Before turning to the next variables, it is important to note why I choose to use themes in determining how the executive shapes the terrorist threat. Alternative methods could have been used, such as coding statements by looking for particular words like "terror" and "fear" or looking at executive actions rather than statements to show how threats are shaped. Though executive actions will be taken into account, statements are important because they express to the public who they are fighting against, what the government (says it) is doing, and how the government wants the public to feel. I did not choose to look for specific words within speeches because such a method, though advantaged by the veneer of quantification, would not produce good results in this case. Words such as "terror," "fear," and "war" could be just as easily used to strike fear in the public ("we are at war with terrorists") as they could to assuage the public ("this is decidedly not a war against terror, we should not live in fear"). Executive threat-shaping themes, to this end, will provide a much better proxy of how the executive views and seeks to shape the threat.

Role of the Legislature (Intervening Variable): Legislative support or opposition will be measured by looking at legislative debates and votes regarding domestic counter-terror legislation. Legislative statements will be codified using the same themes used to study the executive.

Mass Fear and Public Opinion (Constraint): Public opinion polls will be used to measure mass fear levels, approval of the executive, and willingness of the public to forego civil liberties, among other factors. Though approval of the executive is a straightforward concept, mass fear is not. Opinion polls will be used here to track how fearful the public is of terrorism and the dynamic interaction between executive statements and public fear levels.

Defining mass fear, a term rarely operationalized in political science, proves a thornier issue than it would at first seem. Jeffrey Simon contends that, "Terrorism's unique characteristic is that just a single major incident can shatter all perceptions of progress in the battle against the terrorist threat"[23]. Terrorism achieves this reality by inducing mass fears. After all, terrorist attacks seek to make an entire populace feel unsafe by engaging in seemingly random violent acts. We know that terrorism causes fear, but what is mass fear?

In their article, "Threat, Anxiety, and Support of Antiterrorism Policies," Huddy, Feldman, Taber and Lahav find that, "anxiety leads to an overestimation of risk and risk-averse behavior … whereas external and perceived threat increase support for outwardly focused retaliatory action"[24]. They see threat and anxiety as being two distinct responses to terrorism. The authors use the term anxiety as "an umbrella term for fear, anxiety,

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[23] Simon, *The Terrorist Trap*, pg. 383.
[24] Huddy, Leonie, Stanley Feldman, Charles Taber, Gallya Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," *American Journal of Political Science* 49: 3 (July 2005), pg. 593, pg. 1 of printout.

worry, and related states in keeping with the broad definition of anxiety in neuroscience" and psychology[25]. On the one hand, social science research has consistently shown that those who feel threatened are led to feelings of intolerance and support "punitive action against threatening groups"[26]. Thus, it is when people feel that they are under threat that they are most willing to cede the civil liberties of the minority, to protect the majority[27]. Anxiety, on the other hand, leads individuals to view risk where there is none and to seek to reduce their anxiety by becoming overly risk averse. Therefore, individuals who perceive threat will want governments to act against the threat, while anxious individuals will see action as risky and may want to submit to terrorists' demands[28]. The authors contend that, "A major function of terrorist violence is to instill anxiety in a target population," which then places a great deal of pressure on political leaders "to negotiate and make concessions with terrorists in order to mollify their frightened citizens"[29].

Frank Clemente and Michael Kleiman write that, "the cost of crime goes far beyond the economic and physical losses imposed by criminals. It extends to the forced alteration of daily living habits as well as to the negative psychological effects of living in a state of constant anxiety." Further, as with other fears, "Most commentators have noted an important element of irrationality in the public's fear of crime: fear of crime is far out of proportion to the objective probability of being victimized"[30]. Still, in 1977, a staggering 61% of women in the United States feared walking within a one-mile radius of

[25] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 14 of printout, footnote 1.
[26] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 2.
[27] It will be shown below, and later in the dissertation, that even when the public is willing to cede civil liberties in exchange for greater security, it is almost always the security of some (normally the threatening minority) that is curbed in exchange for the majority's concerns being assuaged.
[28] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 3.
[29] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 1.
[30] Clemente, Frank and Michael B. Kleiman. "Fear of Crime in the United States: A Multivariate Analysis," *Social Forces*, 56: 2 (December 1977), pg. 520.

their homes at night (compared to 22% of men)[31]. Thus, as WI Thomas noted, "what people define as real is real in its consequences"[32]. In sum, the purpose of Clemente and Kleiman's article was to show that *fear* of crime rather than any demonstrable *threat* was having a deleterious effect on American society. *People thought that they were in danger and behaved accordingly.*

As Clemente and Kleiman show, fear can be an irrational emotion that is wholly divorced from rational calculations of threat. Indeed, a study by Sivak and Flannagan found that 1,000 motorists died in auto accidents between September 11 and December 31, 2001 because they avoided air travel[33]. Clearly, these motorists chose a less safe form of transportation out of arguably irrational fears.

Mass fear will, thus, be defined here as a combination of Huddy, et al.'s concepts of threat and anxiety. By fear I mean a feeling that implies that one is not safe, that one is under threat. Fear guides the individual, as will be seen, to seek guidance from his leaders. As Clemente and Kleiman underline, fear need not be based upon any real threat, making the perception of danger fomented by seemingly random terrorist attacks so inimical to democracy. The anxiety portion of fear may make the individual averse to certain situations, however the threat portion forces the individual to recognize that the crisis must be addressed if he is ever to feel safe again.

Mass fear, as contrasted with individual fear, simply means a large public or society's fear. Terrorism touches off mass fear by making large publics feel anxious and

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[31] Clemente and Kleiman, "Fear of Crime in the United States, pg. 527. This, despite the fact, that men were more likely to be victimized by criminal acts.
[32] Clemente and Kleiman, "Fear of Crime in the United States, pg. 521.
[33] Sivak, Micahel and Michael J. Flannagan. "Flying and Driving after the September 11 Attacks," *American Scientist* 91: 1 (Jan.-Feb. 2003) cited in Mueller, John. "Terrorism and Bumps in the Night." Chapter presented at the 2006 Annual Meeting of the American Political Science Assoication, August 31-September 3, 2006, Philadelphia, pg. 6.

under threat even though they are probably safe[34]. Here the concept of mass fear will be

measured by looking at the percentage of people in a given country fearful of terrorism.

Thus, it is not the presence of mass fear that will be important but what the *level* of mass

fear is, that is the percentage of people fearful of terrorism, in a given society[35]. Since

this study is concerned with domestic policy reactions to terrorism, the anxiety portion of

fear is significant because it yields the desire for increased security. The perceived

external threat component of fear directs the government and populace's response toward

minorities.

Political Constellations (Constraint): The three political constellations variables will be

measured in the following manner. The *political institutions* I focus on are presidential

versus parliamentary governments. *Party competition* will be measured by looking at

election poll tracking data, which serves as a proxy for the probability that the party in

power will be ousted[36]. *Government partisan composition* and *party in power* are

straightforward enough, by looking at these factors I mean to measure the effects of a

particular party being power and of divided government.

Passage and Enforcement of Legislation (Dependent Variables): The dependent variables,

passage of legislation and enforcement of legislation, will be measured by looking at the

content of domestic, counter-terror legislation and the enforcement of such legislation.

The *enforcement* variable will focus on deportations and detentions carried out in

response to terror attacks. The *passage of legislation* variable will examine and compare

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[34] See Mueller, John. *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them.* (New York: Free Press 2006).
[35] More specifically, fear trends will be looked at, so that the *change in mass fear levels* after terrorist attacks will be of utmost importance.
[36] In Chapter Six, this variable will be refined into a new "political competition" variable that encompasses the party competition variable's definition while adding two factors. The political competition variable looks at temporal proximity to an election and general inter-party or legislative-executive tensions in addition to examining the probability that the party in power will be ousted.

government centralization, abridgements of free speech rights, erosion of due process rights, and reductions of privacy across the cases.

This study is concerned primarily with the rights of citizens. However, after terror attacks, it is evident that legal permanent residents and other non-citizens frequently face the stiffest penalties, such as deportation and detention without charge. Thus, though it will be seen here as a greater abridgment for the government to curtail the liberties of citizens, the rights of legal permanent residents will also be covered.

For the British and American cases, it will be obvious who is a citizen and who is a resident, but the Israeli case presents a more difficult issue. On the one hand, Palestinians control some of their own territory, live in proscribed areas, and see themselves as a distinct people. Yet, on the other, Israel legally controls the occupied territories. In this study, I have chosen to focus on the rights of Israelis and Israeli Arabs because it is the rights of these groups that the Israeli government feels a responsibility over. The liberties of Palestinians, though technically in the hands of the Israeli government, are also in the hands of the Palestinian Authority. Reductions in the rights of Israeli Jews and Israeli Arabs, thus, can be seen as directly indicative of the attenuation of Israeli democracy.

As mentioned above, the liberties focused on in the enforcement variable are strictly deportations and detentions. That said, liberties such as habeas corpus, privacy rights, due process rights, and other general freedoms will be covered in the legislation variable. Government centralization, though not having to do specifically with civil liberties, will also be looked at due to its potential effect on liberties. That is, since democracy is predicated upon the protection of rights through pluralism and checks-and-

balances, the centralization of the government around the executive marks the loss (or, at least, potential loss) of rights by diluting democracy.

Terrorism: The final concept that needs to be defined is terrorism, a term frequently used in common parlance but without a good, agreed-upon definition. Jeffrey Simon writes that there is no point to forwarding a formal definition to terrorism. He believes that "Definitions of terrorism ... lend themselves to contradictions, since they are usually influenced by ideological and political perceptions of the terrorist threat"[37]. Lori Hocking contends that, "Despite the view that terrorism is an objectively definable crime, 'Western nations ... have in practice adopted a relativist stance towards it. Terrorism exists only in the eye of the official Western beholder; it has no independent reality'"[38]. It is true that terrorism is a pejorative term frequently placed on one's enemies and never on one's friends. As Bruce Hoffman puts it, "virtually any especially abhorrent act of violence perceived as against society ... is often labeled 'terrorism'"[39]. The accusations volleyed between Israelis and Palestinians, the one calling the other "terrorist," and the other responding that it engages in "state terror," are a case in point. Still, I think that terrorists do have certain goals and behave in certain ways that can be pinned down. Forwarding a definition of who is and is not a terrorist surely will cut out some people and events that others would deem terrorism, but defining our terms is an essential component of social science.

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[37] Simon, *The Terrorist Trap*, pg. 384.
[38] Hocking, *Terror Laws*, pg. 4.
[39] Hoffman, Bruce. *Inside Terrorism*, Revised and Expanded Edition. (New York: Columbia University Press 2006), pg. 1. Indeed, the recent fires in Greece have brought the government there to look into bringing terror charges against arsonists (http://www.cnn.com/2007/WORLD/europe/08/27/greece.fires.ap/index.html).

Bruce Hoffman goes through an entire chapter of his book seeking a definition for terrorism. He lists numerous definitions before finally coming up with the following: terrorism is "the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change"[40]. A key component of terrorism, further, is Carlo Pisacane's concept of propaganda by deed. Pisacane wrote that, "Ideas result from deeds, not the latter from the former, and the people will not be free when they are educated, but educated when they are free"[41]. A second important factor of terrorism is that the exploitation of fear is meant to affect the opinion of a large group of people. As Brigitte Nacos writes, "terrorists try to exploit the linkages between the news media, public opinion, and presidential decision making"[42].

This study requires a narrower definition than Hoffman's because it does not look at state terrorism. It is true that the renditions that the Bush Administration ordered after 9/11, the house demolitions of the Israeli Defense Forces, and the frequent government-sanctioned torture in response to terror all over the world could, and perhaps should, all count as terrorism. I do not deny that states employ tactics that can be labeled "terrorism." However, I do not use cases of state terror because this study is concerned with how liberal democratic states react in the sphere of civil liberties to non-state actors attacking them. Thus, the terrorists I am speaking of are those that attack states and I seek to measure how states respond to these actors.

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[40] Hoffman, *Inside Terrorism*, pg. 40.
[41] Hoffman, *Inside Terrorism*, pg. 5.
[42] Nacos, Brigitte L. *Terrorism and the Media: From the Iran Hostage Crisis to the World Trade Center Bombing*. (New York: Columbia University Press 1994), pg. xxvii.

For the purposes of this dissertation, terrorist attacks are those carried out by non-state actors against non-combatants[43] that seek to instill mass fear in a state's population for political purposes. The attacks are a form of "propaganda by deed" in that they replace peaceful propaganda with violence. They are employed to affect the public opinion of the target country either to bring attention to a given issue, such as an ethno-nationalist struggle, or to otherwise change or protest the policies of the targeted government[44]. Thus, I define terrorism here as the intentional creation of mass fear in a given populace through violence or the threat of violence against non-combatants committed by non-state actors for political purposes.

Main Findings

The following main findings are borne out of comparison of the cases contained in this work. In order to better exhibit the contribution of this work to the study of counterterror legislation, before summarizing this work's findings I would like to highlight how some of these findings differ from those of previous works. First, the much bandied, but rarely theoretically buttressed, contention that a rally 'round the president occurs after a crisis event is debunked[45]. Rallies of public approval for executives sometimes occur after terror attacks, and they sometimes do not. The logic behind why they should occur, further, is dubious to begin with since crisis events could theoretically just as easily lead to rallies of public distrust of, rather than approval for, the executive. Second, institutional configurations do not affect the passage of counterterror legislation as much as the political science literature would have us believe. A vast

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[43] By "non-combatants" I mean civilians who are not affiliated with the military.
[44] Obviously the precise goals of terrorists cannot always be determined.
[45] See Mueller, *War, Presidents and Public Opinion*, pg. 208.

literature has gone into why certain institutional arrangements should be chosen over others, but it is shown here that whether a country chooses a presidential or parliamentary form of government does not affect the passage of counterterror law after terror attacks. The simple occurrence of elections and the number of checks on government have greater bearing on whether liberty-abridging laws will be passed after terror attacks or not. That said, even these institutional checks only work after terror attacks when presidential or prime ministerial approval ratings are markedly low and tensions between the executive and legislature are high.

Now let us turn to the main findings of this dissertation. First, the role of the executive is critical in post-terror attack legislative reactions. How the executive chooses to respond to terror attacks is the main factor behind legislative reactions to these attacks. Second, the executive's plans can be blocked under special circumstances. This will be shown in the Oklahoma City bombing and London 7/7 bombings cases (Chapter Six). These cases show that low executive approval ratings and an emboldened legislature can block executive power even in times of crisis. In sum, the executive's mandate is important. If his approval ratings are low, or if the opposition—due to recent electoral victories—has a mandate of its own, counter-terror law will not be passed despite high fear levels. Third, executive threat-shaping can raise mass fear levels and, thus, overtake institutional checks-and-balances.

Relatedly, fourth, neither presidential nor parliamentary systems were able to adequately or consistently hold back executive power in post-terror attack periods of increased mass fear. Thus, institutional arrangements did not matter in determining legislative responses to terror attacks. This was a particularly important finding because

much of the political science literature posits that presidential systems, due to the powers they grant the chief executive, should be faster to pass counterterror legislation and harsher in their treatment of civil liberties[46]. A much more extensive argument for why we should see differences in how presidential and parliamentary governments act after terror attacks can be found in Chapter Five.

Fifth, government centralization around the executive and the targeting of minorities with civil liberty-abridging legislation were the most common outcomes of terror attacks. Typically the minorities that were targeted were the co-ethnics of the perpetrators of the attack as well as other minorities deemed "dangerous" by the victim government. Finally, temporary emergency laws, despite sunset provisions, frequently became permanent. Therefore, the danger to civil liberties of post-terror attack responses is not as fleeting as some might contend.

Many important findings were also derived on how public opinion dynamics work after terror attacks through comparisons of public opinion data made in Chapter Three. In general, public opinion polls show that after terrorist attacks, a window of opportunity for executive action is created by a public demand for action, the public's willingness to cede liberties, and heightened mass fear levels. Further, and more specifically, these findings included, first, that the public does not necessarily rally 'round the executive after attacks as is posited by Mueller[47]. In other words, the chief executive does not always get a boost in his approval ratings after terror attacks. This is supported by Richard A. Brody's conclusion that, "the rally phenomenon is far from automatic" and

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[46] See Cheibub, Jose Antonio and Fernando Limongi. "Democratic Institutions and Regime Survival: Parliamentary and Presidential Democracies Reconsidered," *Annual Review of Political Science* 5 (2002); Federalist No. 70, in Rossiter, Clinton ed. *The Federalist Papers*. (New York: Mentor Books 1961), pg. 391.
[47] Mueller, *War, Presidents and Public Opinion*, pg. 208.

that "the fact of different responses to similar international crises makes it unsatisfying to

hypothesize that the rally is caused by an upwelling of patriotism in the face of some

international threat"[48]. The following chart shows Tony Blair's approval ratings. It

starkly shows that though after 9/11 Blair saw a bump in his approval rating, the 7/7

bombing did not provide a similar bump. Due to these data and other similar findings,

the theory that the public always rallies around the executive after terror attacks falls

flat[49].

Chart One.

Blair: Approval Rating 1997-2007
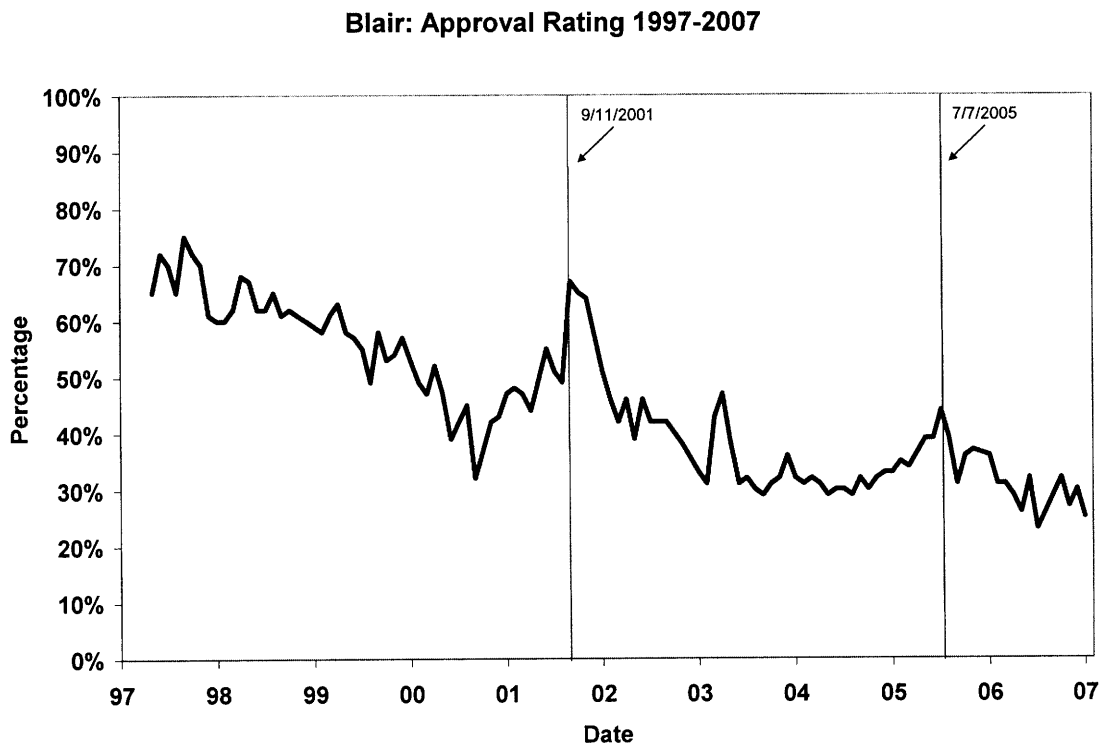
Second, the public is generally willing to trade civil liberties of the minority group

that they believed perpetrated the attack for the general public's (i.e., the majority's)

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[48] Brody, Richard A., *Assessing the President: The Media, Elite Opinion, and Public Support.* (Stanford, CA: Stanford University Press 1991), pg. 77.

[49] Blair's approval ratings come from the Ipsos MORI polls (See http://www.ipsos-mori.com/polls/trends/satisfac.shtml#1983).

security. In other words, when liberties and publics are broken down, the general public is typically not willing to sacrifice its own liberties, but rather those of the minority whose co-ethnics committed the attack. This public opinion finding manifests itself in the way legislation is enforced. Third, mass fear dynamics are hard to get a hold on. Fear levels jump up after terror attacks but in different and unpredictable ways. Further, though post-attack fear levels recede over time, new attacks can bring fear levels right back up to where they were before. Also, there is no linear relationship between presidential approval ratings and mass fear levels. Finally, it is hard to tell the effect of casualty rates on mass fear levels. There is some evidence from the Israeli case showing that society adapts to higher casualty rates, though there is not enough evidence to prove this largely because of the small sample size of terror cases.

Map of Dissertation

The dissertation is organized in the following manner. Chapter Two looks at the role of fear in politics and serves to show the general theoretical logic behind the theory here proposed. In chapter two, the question of whether the post-terror attack dynamic is driven by mass fear or by the machinations of government elites will be looked at extensively. Chapter Three analyzes the dynamics of public opinion after terror attacks. Chapter Four takes a deep dive into the US 9/11 case and focuses strongly on executive threat-shaping. It also extensively examines the dynamic post-terror attack relationship between the executive and legislature as well as the enforcement of legislation dependent variable. Chapter Five compares the reactions of Israel during the second intifada, the UK dealing with the IRA from 1969- 1974, and the US after 9/11 to try to decipher whether the institutions of presidentialism or parliamentarism have any important effects

on the legislative reactions of governments to terror attacks. Chapter Six looks at how

Tony Blair and Bill Clinton dealt with the London and Oklahoma City bombings,

respectively. This chapter will show why the legislature sometimes blocks the executive

from passing civil liberty-abridging legislation and it will also show that not all reactions

to terror attacks follow the reactionary arc that followed 9/11. Chapter Seven will tie up

all of the findings and look at the roles of Bill Clinton after the first World Trade Center

bombing and Yitzchak Rabin during the first intifada. This final chapter will also touch

on other cases—such as those of India, France, Canada, and Japan—that support the

overarching theory.

Chapter Two

Fear and Politics

"To conquer fear, you must become fear."
-*Ras al-Ghul, Batman Begins*

The purpose of this chapter is to help construct a theory of how mass fears lead to reductions in civil liberties after terrorist attacks by exploring the role of fear in the political process. In achieving this purpose, the chapter covers two major topics. First, it defines what mass fear actually is and how it should be conceptualized. Second, it establishes the role of leaders in politically shaping mass fear. This dissertation is about how governments react in the face of high mass fear levels. It contends that government executives have the leeway to shape mass fears since their actions are not entirely controlled by societal fear levels.

The chapter begins with a summary of the definition of fear employed in this study that will both be elaborated on and further explained in the later sections. The chapter next surveys how fear has been operationalized in the social science literature. This second section will examine three types of fear: one based on rationality, one on norms or heuristics, and one, fear of the other, based on human psychology. The mass fear that arises after terror attacks is only partially explained by these definitions of fear, so I forward my own definition in the third section of this chapter. The third section proffers a definition of terrorism-inspired fear that is characterized by bounded rationality, action bias, dreaded risks, media dynamics and elite-mass dynamics, and political manipulation. The fourth section will then provide a philosophical foundation for the characterization of terrorism-inspired fears that is provided in section three. In the

end, I will construct a theoretical model for how fear permeates a society leading to reductions in civil liberties based upon the findings of this chapter.

Defining Fear

Let us begin this chapter on defining fear by introducing a quick definition of terrorism-inspired mass fears. This definition will be refined and elaborated upon in later sections, but its basic components hold true. In their article, "Threat, Anxiety, and Support of Antiterrorism Policies," Huddy, Feldman, Taber and Lahav break down fear into the concepts of anxiety and threat. The authors find that, "anxiety leads to an overestimation of risk and risk-averse behavior … whereas external and perceived threat increase support for outwardly focused retaliatory action"[50]. My conception of fear includes both threat and anxiety. *Fear as defined here, is characterized by an aversion to the activity or object of fear, a desire to defer to those one sees as experts or authority figures be they adults or elites, and a desire to address the object of fear through action that will make the individual feel safe again.*

Roger Petersen writes that, "Fear prepares the individual to satisfy safety concerns"[51]. By fear I mean a feeling that implies that one is not safe, that one is under threat. Fear guides the individual, as will be seen, to seek guidance from his leaders. The anxiety portion of fear may make the individual averse to certain situations, however the threat portion forces the individual to recognize that the crisis must be addressed if he is ever to feel safe again.

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[50] Huddy, Leonie, Stanley Feldman, Charles Taber, Gallya Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," *American Journal of Political Science* 49: 3 (July 2005), pg. 593, pg. 1 of printout.
[51] Petersen, *Understanding Ethnic Violence*, pg. 19.

Social Science Definitions of Fear: Rationality, Heuristics, and Fear of the Other

This section will look at three types of fear. The first looks at fear from a rational-choice perspective, the second looks at fear from the perspective of norms, or heuristics, and the third looks at fear from the perspective of one aspect of human psychology. These social science definitions of fear will provide a backdrop for the discussion of terrorism-inspired mass fears.

Fear and (Bounded) Rationality

Today's psychologists and decision analysts link fear to the perception of risk. This field of knowledge is critical to understanding how the mass public and government officials react after terrorist attacks. The main thinkers in this medium are Paul Slovic and Cass Sunstein. First, Paul Slovic's findings in *The Perception of Risk*, a compendium of studies he and his colleagues have administered on fear, will be examined. This will be followed by a look at Sunstein's work. Other authors will be treated along the way.

Slovic, along with co-writers Howard Kunreuther and Gilbert White, lays out the cognitive processes behind risk assessment in an article entitled, "Decision Processes, Rationality and Adjustment to Natural Hazards." The first theory he outlines for how people make decisions under risk is that they, "try to choose according to the 'best bet.'" They do this by trying to maximize their expected utility of a given decision. The expected utility of a given event is measured using Bernoulli's equation, which follows:

$$EU\ (A) = \overset{n}{\underset{i=1}{\Sigma}}\ P(E_i)U(X_i)$$

Here EU (A) stands for the "expected utility of a course of action which has consequences X_1, X_2, ...X_n depending on events E_1, E_2, ...E_n, $P(E_i)$ represents the probability of the ith outcome of that action, and $U(X_i)$ represents the subjective value or utility of that outcome"[52].

> HA Simon, in criticizing utility maximization theory, observed that:
>
> "The classical theory is a theory of a man choosing among fixed and known alternatives, to each of which is attached known consequences. But when perception and cognition intervene between the decision-maker and his objective environment, this model no longer proves adequate. We need a description of the choice process that recognizes that alternatives are not given but must be sought; and a description that takes into account the arduous task of determining what consequences will follow on each alternative"[53].

Thus Simon introduced the theory of *bounded rationality*, "which asserts that the cognitive limitations of the decision-maker force him to construct a simplified model of the world to deal with it. The key principle of bounded rationality is the notion of 'satisficing', whereby an organism strives to attain some satisfactory, though not necessarily, maximal level of achievement"[54]. Slovic summarizes the differences between the two theories, stating that, "Utility theory is concerned with probabilities,

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[52] Slovic, Paul. *The Perception of Risk.* (London: Earthscan Publications Ltd. 2000), pg. 3.
[53] Simon, HA. "Theories of decision making in economics and behavorial science," *American Economic Review* 49, pg. 272. Found in Slovic, *The Perception of Risk*, pg. 5.
[54] Slovic, *The Perception of Risk*, pg. 5.

payoffs and the merger of these factors—expectation." Whereas, "the theory of bounded

rationality … postulates that decision-makers do not think probabilistically and that they

try to avoid the necessity of facing uncertainty directly."

Next, Slovic notes that misfortune has typically been a "stimulus to action"[55]. To

this end, he quotes GF White (one of his co-authors), who wrote that, "National

catastrophes have led to insistent demands for national action, and the timing of the

legislative process has been set by the tempo of destructive floods"[56]. This statement

dovetails with Slovic's conclusion that decision-makers from business firms to political

policy-makers all "exhibit a short-run crisis-oriented approach to adaptation"[57].

Supporting the bounded rationality thesis, Slovic reports that, "Perhaps the most

widespread conclusion [in studies on the matter] is that people do not follow the

principles of probability theory in judging the likelihood of uncertain events. Indeed, the

distortions of subjective probabilities are often, large, consistent and difficult to

eliminate"[58]. An important finding from a 1969 study by Chapman and Chapman, which

studied "illusory correlation," found that, "one's prior expectations of probabilistic

relationships can lead an individual to perceive relationships in data where they do not

really exist"[59].

There are also cultural factors that affect risk perception. Slovic highlights a

study by Englander et al., which found drastically different risk perceptions between

American and Hungarian students. Not only did the Hungarians perceive much lower

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[55] Slovic, *The Perception of Risk*, pg. 7.
[56] White, Gilbert F. *Human adjustment to floods: A geographical approach to the flood problem in the United States* (Department of Geography Research Paper No. 29). (Chicago: University of Chicago Press 1945), pg. 24. Found in Slovic, *The Perception of Risk*, pg. 7.
[57] Slovic, *The Perception of Risk*, pg. 8.
[58] Slovic, *The Perception of Risk*, pg. 9.
[59] Slovic, *The Perception of Risk*, pg. 12.

risks from 84 of the 90 activities they were polled on, but they ordered the risks

differently as well. "Hungarians saw relatively greater risks from common hazards such

as railroads, boating, home appliances and mushroom hunting, whereas the Americans

were relatively more concerned with technological hazards pertaining to radiation and

chemical technologies"[60]. Further, risk assessment differs between the genders and races.

The majority of studies have found that males "seem to be less concerned about hazards

than are women." White males in particular shrug in the face of most risks[61].

One strong finding of Slovic's is that laypeople and experts differ in their

perceptions of risk. "When experts judged risk, their responses correlated highly with

technical estimates of annual fatalities," Slovic writes. Though laypeople could assess

these technical estimates if asked, "their judgments of 'risk' were sensitive to other

factors as well (e.g., catastrophic potential, controllability, threat to future generations)

and, as a result, differed considerably from their own (and experts') estimates of annual

fatalities"[62]. Indeed, Slovic highlights that, "the public seems willing to accept voluntary

risks roughly 1000 times greater than involuntary risks at a given level of benefit"[63].

In a chapter entitled "Perceived Risk, Trust and Democracy," Slovic laments the

fact that despite our society becoming healthier and safer on average over the past twenty

years, the American public has actually become increasingly risk averse[64]. He believes

that the reason for this lack of risk-taking in society is that negative (trust-destroying)

events are both more visible and carry greater weight in our decision-making than

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[60] Slovic, *The Perception of Risk*, pg. xxv.
[61] Slovic, *The Perception of Risk*, pg. xxiv.
[62] Slovic, *The Perception of Risk*, pg. xxiii.
[63] Slovic, *The Perception of Risk*, pg. 26.
[64] Slovic, *The Perception of Risk*, pg. 316.

corresponding positive (trust-building) events[65]. One bad experience, after all, has the

potential to drastically change behavior. For example, imagine seeing a mouse at your

favorite restaurant—would you go there again? Slovic further cites distrust in

government and the media's relentless coverage of "bad news" as underlying factors[66].

Fear and Heuristics

Bolstering the Chapman and Chapman study, Tversky and Kahneman hold that

people estimate risk by using heuristics, or mental strategies or shortcuts, "which allow

them to reduce these difficult tasks to simpler judgments[67]. One such heuristic is

described by Cass Sunstein: *the availability heuristic* comes into play when a salient and

familiar incident leads people to exaggerate a threat[68]. Slovic describes the availability

heuristic thusly, this heuristic causes one to judge "the probability of an event (e.g., snow

in November) by the ease with which relevant instances are imagined or by the number

of such instances that are readily retrieved by memory"[69]. Though it is true that we can

more readily access events that occur with greater frequency, other factors—such as

recency and emotional saliency—affect our ability to retrieve memories[70].

Cass Sunstein draws from and builds on Slovic's work in his books *Laws of Fear*

and *Risk and Reason*. In the latter, Sunstein, like Slovic, emphasizes that, "salient, vivid

examples can make people overreact to small risks." Further, after a fear-inducing

incident occurs, people relay their emotions to one another "creating a kind of cascade of

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[65] Slovic, *The Perception of Risk*, pg. 320.
[66] Slovic, *The Perception of Risk*, pgs. 323-4.
[67] Slovic, *The Perception of Risk*, pg. 13.
[68] Sunstein, Cass. *Laws of Fear: Beyond the Precautionary Principle*. (Cambridge, UK: Cambridge University Press 2005), pgs. 36, 206.
[69] Slovic, *The Perception of Risk*, pg. 13.
[70] Slovic, *The Perception of Risk*, pg. 14.

concern" regarding the incident[71]. Sunstein echoes Slovic in stating that, "people's intuitions about risks are highly unreliable"[72]. The author cites the availability heuristic in making his case[73]. He also discerns that "many people believe that risk is an 'all or nothing' matter," in other words, an activity is either risky or it isn't. Further, people "are committed to a belief in the benevolence of nature," believing that man-made, "artificial" activities and processes are more dangerous than natural ones[74]. Sunstein additionally notes that typically, "a judgment of low risk accompanies a judgment of high benefits" and vice versa[75]. This is due to the fact that typically either an activities' risks or the activities' benefits are salient in people's minds[76]. Further, Sunstein asserts that, "People tend to be loss averse, which means that a loss from the status quo is seen as more undesirable than a gain is seen as desirable"[77].

Next, Sunstein, citing Slovic, introduces the role of *the affect heuristic*, "by which people have an emotional, all-things-considered reaction to certain processes and products, and that heuristic operates as a mental shortcut for a more careful evaluation"[78]. The affect heuristic is a method of decision-making that uses one's emotional attitude towards a given risk. Sunstein writes that, "When presented with a risk people have a general emotional attitude to it—hence an 'affect'—and this general attitude operates as a heuristic, much affecting people's judgments about both benefits and dangers." Interestingly, if one likes a product she will see high benefits and low risks associated

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[71] Sunstein, Cass R. *Risk and Reason: Safety, Law, and the Environment.* (Chicago: University of Chicago Press 2002), pg. 2.
[72] Sunstein, *Risk and Reason*, pg. 29.
[73] Sunstein, *Risk and Reason*, pg. 33.
[74] Sunstein, *Risk and Reason*, pg. 36.
[75] Sunstein, *Risk and Reason*, pgs. 40-1.
[76] Sunstein, *Risk and Reason*, pg. 41.
[77] Sunstein, *Risk and Reason*, pg. 42.
[78] Sunstein, *Risk and Reason*, pg. 43.

with it, whereas disliking a product produces the opposite effect. For those who take issue with emotion and cognition being elided in this way, Sunstein, citing Jon Elster's *Alchemies of the Mind* and Martha Nussbaum's *Upheavals of Thought*, proposes that, "Emotions are generally the products of beliefs, and hence an emotional reaction to risk—terror, for example—is generally mediated by judgments"[79].

Sunstein further argues that perhaps our mental heuristics are not products of cognitive error, but rather judgments of value. For example, we particularly value avoiding risks associated with terrorism because they "seem new, unfamiliar, and apparently hard to control"[80]. Populists, such as James Surowiecki, tout the wisdom of the masses' characterization of risks[81]. Slovic, for one, writes that, "people's 'basic conceptualization of risk is much richer than that of experts and reflects legitimate concerns that are typically omitted from expert risk assessments'"[82]. The issue of whether technical assessments alone can account for the risks involved in a given scenario will be discussed further below. It will be argued here that risk evaluations based on fatality likelihoods are valuable, but that they do not tell the whole story.

Tipping and Cascade Models

Tipping, or cascade, models of fear are built on conceptions of norms and perceptions of others' fears. These models have been used extensively in the social science literature to explain how fears build in a society, particularly fears that lead to

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[79] Sunstein, *Risk and Reason*, pg. 44.
[80] Sunstein, *Risk and Reason*, pgs. 50-1.
[81] Surowiecki, James. *The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies and Nations* (New York: Random House 2004); Sunstein, *Risk and Reason*, pg. 54.
[82] Sunstein, *Risk and Reason*, pgs. 58-9.

ethnic strife. This section explains tipping models, but it is important to note at the outset that these models *do not* do a good job of explaining how mass fears build after terror attacks. The goal of the section here is to explain tipping models sufficiently and offer an explanation for how they might work in a post-terror attack context. In the end, however, I find the internal logic of cascade models to be insufficient in explaining how fears evolve in societies after terrorist attacks.

Tipping and cascade models for explaining mass political behavior have been forwarded by authors such as Timur Kuran, Murat Somer and Roger Petersen. In this section, I will go over some of the major works on these models. The basic argument of tipping models is that a given action's utility is suddenly changed when a certain amount of people take that action. That is, once a certain mass of people react in a given way, a tipping point or threshold will have been reached in society after which an ever-increasing number of people will take on the same reaction producing a snowball effect.

All tipping models turn on reference points or thresholds that determine when the model "tips." For instance, imagine a situation where the people of a city in state X can either cooperate with the state or defect from it and join an insurgent group. At low levels of defection, most people will cooperate with the state. But, if a reference point is reached, and a certain amount of people begin to defect, then defection will become the optimal strategy and most people will choose to defect. An individual can, thus, decide whether to join the insurgency and defect or to cooperate with the state based on how many people in the city are following each strategy. Looking at figure one below, an individual could find himself in a situation where more people choose option C (cooperate) and, thus, he will most likely do the same. However, as the percentage of

people moves up the solid D (defect) line, the defect strategy becomes more and more

appealing to him, until it becomes the far better strategy to select. The below graph

charts how an individual can determine whether or not to cooperate with the government

based upon the percentage of people pursuing the C and D strategies.

Figure 1: Cooperation vs. Defection in a Tipping Model

Percentage of People
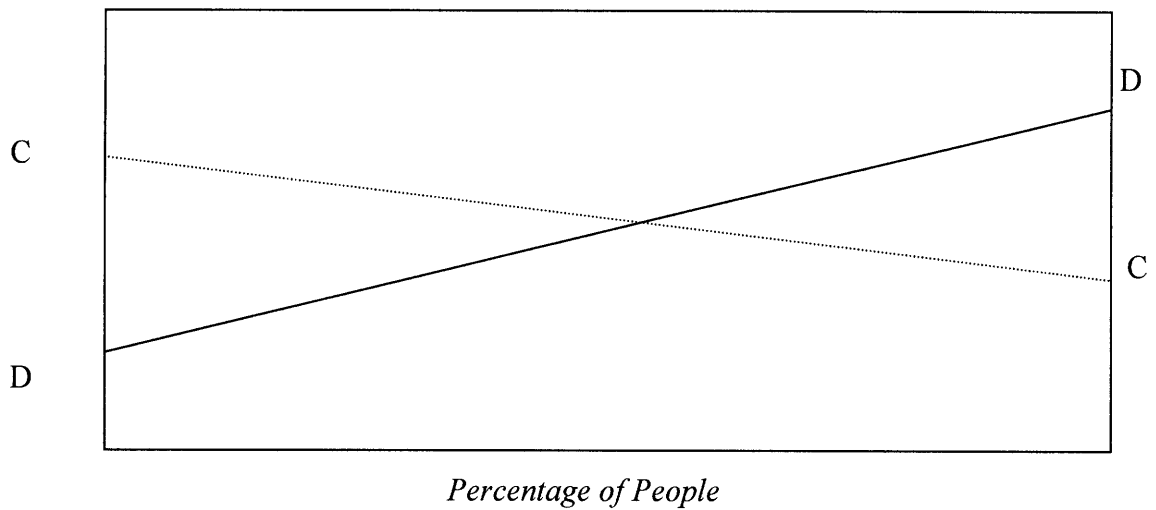
For purposes of this study, one can imagine a similar tipping model relating mass

fear to government action. At certain levels of public fear, the government pays little

heed and, thus, does not act. But, as fear levels reach the reference point and eventually

pass it, the government's optimal strategy is to act. In figure two below, as fear levels

(signified by the fear curve F) rise, the government's incentive becomes increasingly

greater to act by, say, passing legislation or detaining illegal immigrants. Further, as

fears recede, government's incentive to act recedes with them. However, the government

action line A has a slight negative slope to signify that once government gets involved it

takes fear levels going down to below previous levels to give it an incentive to stop

acting.

Figure 2: Mass Fear vs. Government Action in a Tipping Model

Percentage of People
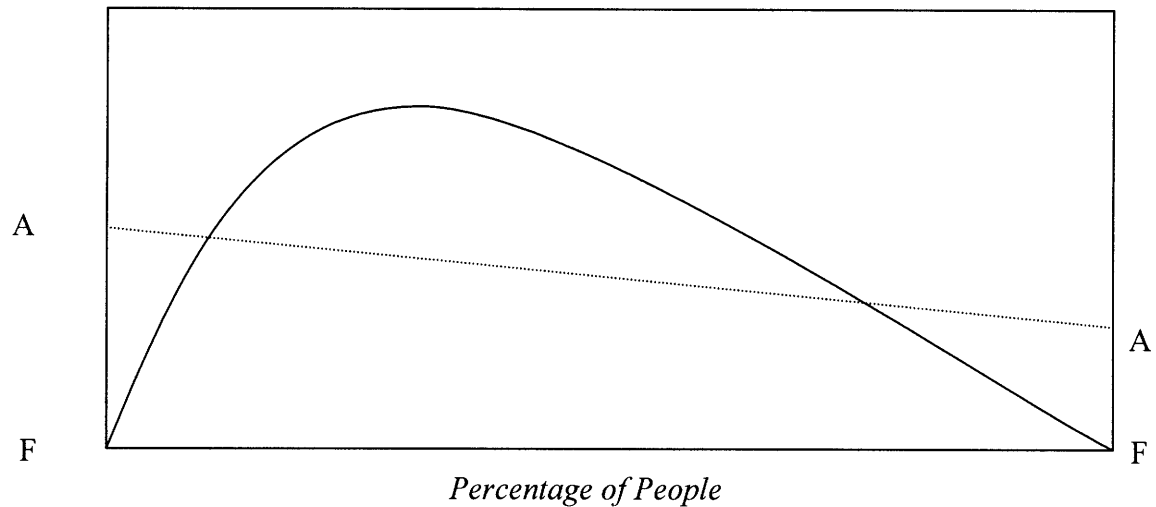
The remainder of this section will review tipping models before evaluating

whether they will be useful for this study. Russell Hardin and Roger Petersen both

employ tipping models in their work. Hardin contends that "violence is commonly a

tipping phenomenon." By this he means that, once violence reaches a certain level,

"mechanisms for maintaining order may break down enough that violence can flare out

of control and fuel itself." He notes that this could occur through an accumulation of

violent incidents or through a random shock[83]. Petersen employs a tipping model in

"Rationality, Ethnicity, and Military Enlistment" to surmise what level of military

participation is needed for members from a particular ethnic group, for example the

Druze in Israel, to all rationally participate in the military[84]. He contends that when the

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[83] Hardin, Russell. *One For All: The Logic of Group Conflict.* (Princeton, NJ: Princeton University Press 1995), pg. 155.
[84] Petersen, Roger. "Rationality, Ethnicity, and Military Enlistment," *Social Science Information*, 28: 3 (Fall 1989), pg. 582. Also see Petersen, Roger. *Resistance and Rebellion: Lessons from Eastern Europe.* (Cambridge, UK: Cambridge University Press 2001).

number of people from your group reaches a certain tipping point of military participation, it, all at once, becomes rational for all group members to participate.

In a nod to the work of Timur Kuran (Sunstein coauthors a chapter with Kuran), Sunstein highlights the role of cascade effects in group polarization. Group polarization explains why people in some communities are very fearful of certain risks, while those in other communities pay those risks no heed. The author gives the following example: "People who tend to think that global warming is a nonexistent problem, fabricated by environmentalists to promote their own parochial ends, are likely to think, after discussion with one another, that this is entirely true"[85].

In the chapter by Kuran and Sunstein, the authors highlight the role of *availability cascades* in risk assessment. Availability cascades "occur when people's expressions of fear trigger chains of individual responses, which make these perceptions appear increasingly plausible through their rising availability in public discourse." The authors believe that these cascades are to blame for the "risk of the month" syndrome that "afflicts the laws in many nations"[86]. Next, they note that informational cascades occur "when people with little personal information about a particular matter base their own beliefs on the apparent beliefs of others"[87]. These informational cascades can further be exacerbated by reputation cascades, which describe what happens when individuals silence their opposing viewpoints due to the fact that they believe others know better or because they seek to avoid social disapproval[88]. The informational and reputation

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[85] Sunstein, *Risk and Reason*, pg. 39.
[86] Sunstein, *Risk and Reason*, pg. 79.
[87] Sunstein, *Risk and Reason*, pg. 86.
[88] Sunstein, *Risk and Reason*, pg. 87.

cascades combine, leading to group polarization[89]. Breaking these cascades is tough: the

only solution Kuran and Sunstein proffer is the effect of learning[90].

Particularly interesting to this study is the role of public officials in availability

cascades. Sunstein and Kuran note that, "the public pronouncements of public officials

are especially important, partly because those pronouncements are made to many people

at the same time." Further, "Public officials know that they might be severely punished

for downplaying a risk that is perceived as serious. … To avoid charges of insensitivity,

even to avoid having to justify an unpopular position, [an official] may make speeches

and promote policies that convey deep concern about the very waste spill that he actually

considers harmless"[91]. Further, interest groups act as availability entrepreneurs "by

fixing people's attention on specific problems"[92]. Interest groups—and I would add

politicians as well—"seize on selected incidents and publicize them to make them

generally salient to the public. They play on people's emotions, activating the affect

heuristic"[93].

Kuran and Sunstein's use of a tipping/cascade model helps explain why

government officials follow the will of the masses after events that cause mass fear.

Tipping models also show how fear can come to grip an entire society. These models,

like Sunstein and Slovic's assessments of heuristics above, place a lot of agency at the

level of the masses. It is the masses' quick-and-dirty assessments of events that build and

eventually reach a critical apex, forcing change upon society. I think that this conclusion

puts too little agency on the government. The Sunstein and Kuran chapter alludes to the

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[89] Sunstein, *Risk and Reason*, pg. 88.
[90] Sunstein, *Risk and Reason*, pg. 95.
[91] Sunstein, *Risk and Reason*, pg. 90.
[92] Sunstein, *Risk and Reason*, pg. 92.
[93] Sunstein, *Risk and Reason*, pg. 93.

fact that government has a role in drawing people's attention to certain aspects of a crisis. Government, indeed, can frame or shape an event as it sees fit. The power of government will be dealt with further in the sections below.

Problems with Tipping Models

Tipping models involve cascades that rely on individual and local-level beliefs and interactions, but terrorism fears do not work in this way. Rather, these fears are transmitted nationally via the media and reach a large portion of the population very quickly. Fear of terrorism in modern societies are not likely to follow tipping models, contagion models (wherein people "infect" one another with fear) or individual agent-based models (which are "simulations based on the global consequences of local interactions of members of a population")[94], because terrorism represents a salient event that is covered heavily by the media. Whereas Walter Lippmann contended that, "what people know about the world around them is mostly the result of second-hand knowledge acquired by reading newspapers," today's mass media reaches millions of people with an immediacy and level of saturation never before seen[95]. We hear about terrorist attacks not from neighbors, but from news anchors. Not only that, terrorist attacks are reported widely and with great frequency. Indeed, according to Shanto Iyengar, "Between 1981 and 1986, more news stories were broadcast [by the three TV networks ABC, CBS, and

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[94] Reynolds, Craig. "Individual-based Models," http://www.red3d.com/cwr/ibm.html.
[95] Nacos, Brigitte L., Yaeli Bloch-Elkon and Robert Y. Shapiro. "The Threat of International Terrorism after 9/11: News Coverage and Public Perception." 17 August 2006. Working Paper prepared for the Annual Meeting of the American Political Science Association (APSA), August 31-September 3, 2006, Philadelphia, pg. 5. See also Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism.* Revised Edition. (New York, NY: Verso 1991).

NBC] on terrorism than on poverty, unemployment, racial inequality, and crime combined"[96].

Terrorism fears, thus, do not originate locally, but are transmitted globally and reach the population via public pronouncements from public officials that reach the people through the news. Terrorist attacks, unlike local crime stories, are treated as national events by the news media and by politicians. A large portion of the national populace can quickly become fearful of terrorism for this reason. Since these events are disseminated to the public so quickly, there need not be an interim step in the model between crises and executive response and threat-shaping. Public pronouncements about terrorism are forwarded through the media almost immediately, thus tipping points or thresholds of fear are not necessary to spur reactions to terrorist events.

Though a tipping point of fear may exist that forces the government into action and determines the level of agency the chief executive has to shape the threat, there are problems with both measuring and including such a concept. The first and foremost is the endogeneity involved in measuring this concept through public opinion polls. After all, once polls are taken, the media has already had a chance to frame an event. Indeed, the poll itself may frame an event in the public's mind. Being asked whether the bombing of the World Trade Center in 1993 was "the worst attack in American history" clearly would have an effect on how the public perceives the event. Further, if opinion charges the dynamic that leads to executive threat-shaping, then it would stand as the independent variable not simply a constraint. This is because the executive's agency would be determined from the outset by public opinion—and, then, as the model above goes, still remain an important constraint on the executive. As will be seen later in this

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[96] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 8.

chapter, as well as in chapters 4, 6 and the conclusion, executives frequently act

independently of mass fear levels and can actually manipulate these fear levels. Thus, for

reasons further elaborated in the section on fear and public opinion, this study employs

public opinion as a constraint on the executive, but does not employ a tipping model.

Fear of the Other

In the previous section, Sunstein and Kuran's account of how group polarization

occurs was touched on. Group polarization describes what happens when people choose

sides, form groups, and come to hate and/or fear one another. This concept underlies a

common thread in the social science literature: fear of the other. This type of fear is

important to my study because it explains why mass-level fears end up yielding

reductions in the rights of minority or alien groups. The common human tendency it

seems is to scapegoat a group we dub "other" in times of crisis. This section recounts

studies that have been done on fear of the other and group polarization.

In "The Psychology of Group Conflict and the Dynamics of Oppression: A Social

Dominance Perspective," James Sidanius builds on Henri Tajfel's theories of group

conflict to construct his theory of social dominance. Henri Tajfel found that

discrimination occurred between groups that had just been composed and the same result

occurred even when the groups were composed randomly[97]. Indeed, the most disturbing

finding of Tajfel's study was that, "the very cognition of 'in-group' and 'out-group' was

a sufficient condition in and of itself to generate ethnocentric and discriminative

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[97] Sidanius, James. "The Psychology of Group Conflict and the Dynamics of Oppression: A Social Dominance Perspective" in Iyengar, Shanto and William J. McGuire eds. *Explorations in Political Psychology.* (Durham, NC: Duke University Press 1993), pg. 190.

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behaviors"[98]. Tajfel explained this behavior by, like Slovic and Sunstein, pointing to heuristics that simplify a complex world. He believed that people organize the world into categories such as social groups in order to make sense of their environment. He also believed that people need to feel a positive social identity, which is hard to argue with, and that they will feel good about themselves when their in-group is viewed favorably[99]. They can also, and here is the rub, feel good about themselves by comparing their group to other groups. In other words, discriminating against out-groups is one way that people derive a positive social identity[100].

Sidanius draws on Tajfel's theory to create what he terms social dominance theory. Sidanius holds that, "Social dominance theory begins with the observation that all human societies are inherently group-based hierarchies and inherently oppressive"[101]. Further, in their book, *Social Dominance*, James Sidanius and Felicia Pratto contend that, "Most forms of group conflict and oppression ... can be regarded as different manifestations of the same basic human predisposition to form group-based social hierarchies." They go on to state that, "Human social systems are subject to the counterbalancing influences of hierarchy-enhancing forces, producing and maintaining ever higher levels of group-based social inequality, and hierarchy-attenuating forces, producing greater levels of group-based social equality"[102]. In sum, Sidanius' answer to group conflict and discrimination is that both are rooted in natural human predispositions. Fear or hatred of the other, thus, is a natural human response.

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[98] Sidanius, "The Psychology of Group Conflict and the Dynamics of Oppression," pg. 188.
[99] Sidanius, "The Psychology of Group Conflict and the Dynamics of Oppression," pg. 190.
[100] Sidanius, "The Psychology of Group Conflict and the Dynamics of Oppression," pg. 191.
[101] Sidanius, "The Psychology of Group Conflict and the Dynamics of Oppression," pg. 196.
[102] Sidanius, Jim and Felicia Pratto, *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression.* (Cambridge: Cambridge University Press 1999), pg. 38.

Johan van der Dennen echoes much of what Sidanius captured in a literature review entitled, "Ethnocentrism and In-group/Out-group Differentiation." He writes that studies by Konrad Lorenz, included in his seminal work *On Aggression*, found that "bonds between members of the same group are intensified by aggression directed towards individuals outside the group"[103]. William Graham Sumner, who coined the term ethnocentrism, bolsters these conclusions. Sumner contends that people are good to those in their group and hostile to those outside it, "because any group, in order to be strong against an outside enemy, must be well disciplined, harmonious, and peaceful inside; in other words, because discords inside would cause defeat in battle with another group. Therefore the same conditions which made men warlike against outsiders made them yield to the control of chiefs, submit to discipline, obey law, cultivate peace, and create institutions inside"[104]. On ethnocentrism, Robert Bigelow writes in *The Dawn Warriors*, "Each group requires something intimate, unique to itself, around which its members can cohere"[105]. These suppositions are bolstered by Darren Davis who found that, when "people experience a heightened sense of threat, they are likely to gravitate toward members of their in-group"[106].

Next, van der Dennen goes over some of the theories of ethnocentrism. He begins with realistic group conflict theory, a theory also touched on by Sidanius, which holds that "groups have incompatible goals and are in competition over scarce resources"[107].

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[103] Van der Dennen, Johan MG. "Ethnocentrism and In-group/Out-group Differentiation. A Review and Interpretation of the Literature" in Reynolds, Vernon, Vincent Fagler and Ian Vine eds. *The Sociobiology of Ethnocentrism: Evolutionary Dimensions of Xenophobia, Discrimination, Racism and Nationalism.* (Athens, GA: The University of Georgia Press 1986), pgs. 1-2.

[104] Van der Dennen, "Ethnocentrism," pg. 4.

[105] Van der Dennen, "Ethnocentrism," pg. 6.

[106] Davis, Darren. *Negative Liberty: Public Opinion and the Terrorist Attacks on America*, working draft, 9 June 2006, Chapter 9, pg. 2.

[107] Van der Dennen, "Ethnocentrism," pg. 10.

He then touches on evolutionary theories, which hold that group conflict can be explained by adaptive mechanisms. Frustration-Aggression-Displacement theory comes next. This theory, which has Freudian ties, holds that males in "matrilocal societies" must hold in their aggressions in order to maintain societal stability and calm. They, thus, displace their aggression "onto a more remote target": the Other[108].

Van der Dennen moves on to dealing with xenophobia, which he notes "is a widespread trait throughout the animal kingdom"[109]. He writes that xenophobia involves "an aggressive response towards a complete social stranger." Paraphrasing the work of CH Southwick, et al. he notes that:

> "When it occurs in natural settings, xenophobia is a functional and adaptive trait in that it maintains the integrity of the social group. It ensures that group members will be socially familiar. ... Xenophobia has apparently arisen in the course of natural selection and social evolution in those species and populations where discrete social groups are adaptively favoured"[110].

The brunt of van der Dennen's literature review points to the conclusion that "All the field experiments verify the hypothesis that conflict between two groups tend to produce an increase in solidarity within groups"[111]. In sum, the external conflict/internal cohesion hypothesis is bolstered by much of the social science literature including the works of Georg Simmel, AA Stein, and Muzafer Sherif. Donald Horowitz adds the role

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[108] Van der Dennen, "Ethnocentrism," pg. 11.
[109] Van der Dennen, "Ethnocentrism," pg. 20.
[110] Van der Dennen, "Ethnocentrism," pg. 21.
[111] Van der Dennen, "Ethnocentrism," pg. 30.

of the colonizer to this conclusion about group polarization. The colonizer can reify

group divisions by dividing ethnic groups into "backward" and "advanced" categories[112].

In-group/out-group hatred and differentiation has certainly been touched on at

length at this point, but what of fear of out-groups? Van der Dennen writes that, "From

his protohominid past, early man must have inherited a great susceptibility to fear, which

must have been amplified by his primordial intellectual and symbolizing capacities." He

notes that fear of the stranger has always been common among men, this fear

encompassed what the stranger represents: "the strange, the unknown, the out-of-control,

the potential chaos, the potential evil, the potential impurity, contamination and pollution,

the potential threat and danger"[113].

Fear or hatred of the other is central to group cohesion during crisis. Demonizing

the outsider reinforces in-group bonds, making it easier to mobilize one's group to action.

Fear of the other is a common human emotion and when, during a crisis, it is combined

with the natural tendency to desire action (action bias) and to look for simple solutions

via heuristics, it can manifest itself into discrimination and violence against a target

group. As will be seen in the case studies, fear of the other is crucial to the reduction of

rights that is disproportionately exacted against minorities and non-citizens.

Defining Terrorism-Inspired Mass Fears

We have now examined the concept of fear from a number of different

perspectives. We have looked at definitions of fear that rely on risk assessment and

rationality, definitions that are based on norms (tipping models), and definitions that are

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[112] Horowitz, Donald L., *Ethnic Groups in Conflict.* (University of California Press: Berkeley, CA 1985), pgs. 147-8.
[113] Van der Dennen, "Ethnocentrism," pg. 39.

rooted in human psychology (fear of the other). Now it is time to proffer a definition of how mass fears expand after terror attacks. This section will touch on the following aspects of post-terror attack fears: bounded rationality, dreaded risks and action bias. It will then use these concepts to construct a model for the micro-foudnations of societal fear. After this model is proposed, three very important components of terrorism-inspired fear will be examined: the political manipulation of fear, elite-mass dynamics, and media dynamics. The latter two concepts are interrelated.

In *Laws of Fear*, Sunstein aims to discredit the Precautionary Principle. In arguing against the Precautionary Principle, which states "that regulators should take steps to protect against potential harms, even if causal chains are unclear and even if we do not know that those harms will come to fruition," Sunstein aims to show that people's fears are subjective. To Sunstein, such a Principle "is literally incoherent, and for one reason: There are risks on all sides of social situations. [The Principle] is therefore paralyzing ... [b]ecause risks are on all sides, the Precautionary Principle forbids action, inaction, and everything in between"[114]. Providing a window into how terrorist fears can engulf societies, Sunstein notes that people "do not like to run a small risk of a large loss"[115]. Sunstein notes that, "news sources do a great deal to trigger fear, simply by offering examples in which the 'worst case' has actually come to fruition"[116]. Terrorists exploit both the news media and basic human fears by "using high-visibility attacks to convince people that 'they cannot be safe anywhere'"[117].

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[114] Sunstein, *Laws of Fear*, pg. 4.
[115] Sunstein, *Laws of Fear*, pg. 26.
[116] Sunstein, *Laws of Fear*, pg. 87.
[117] Sunstein, *Laws of Fear*, pg. 103.

Moreover, Sunstein notes that, "Simply because of fear, the public and its leaders will favor precautionary measures that do little to protect security but that compromise important forms of freedom"[118]. This is because, "In democratic nations, the law responds to people's fears. As a result the law can be led in unfortunate and even dangerous directions"[119]. This is an important statement for my theory. In democracies, governments are not the only actors that control reactions to events, the people also play a role in government reactions by protesting, writing to their senators, voting, and making their opinions known through polls. Fear can quickly engulf a society because of the availability heuristic and probability neglect. As mentioned above, the availability heuristic comes into play when a salient and familiar incident leads people to exaggerate a threat[120]. *Probability neglect* occurs when people ignore the probability of events occurring and instead rely solely on emotions. When fear overtakes a society, people will neglect the probability of a terrorist attack actually affecting them personally and instead focus on the worst-case scenario even when it is highly improbable[121].

This leads us to Jessica Stern's discussion of *dreaded risks*. Stern emphasizes that terrorist attacks, such as 9/11, fall into the category of "dreaded risks" for most people. She writes that psychologists and risk analysts have found that "fear is disproportionately evoked by certain characteristics of risks, including: involuntary exposure, unfamiliarity, and invisibility" as well as "when long-term effects or the number of people likely to be effected is difficult to predict"[122]. Further, as Diego Gambetta rightly underlines, it is

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[118] Sunstein, *Laws of Fear*, pg. 204.
[119] Sunstein, *Laws of Fear*, pg. 1.
[120] Sunstein, *Laws of Fear*, pgs. 36, 206.
[121] Sunstein, *Laws of Fear*, pgs. 35, 39.
[122] Stern, Jessica. "Dreaded Risks and the Control of Biological Weapons," *International Security*, vol. 27, no. 3 (Winter 2002/03), pg. 102.

nearly impossible to accurately assess what level of terrorist threat we are under at any given moment, especially given human nature's tendency to overblow one-time, outlier occurrences[123].

Stern defines dreaded risks as risks that "evoke disproportionate fears and are likely to be maximally" salient[124]. She notes that though 100 Americans a day die in auto accidents, people view driving as voluntary and thus do not "dread" it[125]. Yet terrorism, and biological terror in particular, though both exceedingly unlikely events, evoke feelings of dread. Since biological agents are "mysterious, unfamiliar, indiscriminate, uncontrollable, inequitable, and invisible" people view them as dreaded risks[126]. Sunstein takes issue with Stern's terminology, however, stating that, "to say that a risk is dreaded seems to say that people fear it, which suggests the idea of dread is just a synonym for perception of risk, not an explanation for it." Though, he does admit that, "there is a kind of 'pain and suffering premium'" associated with some risks[127]. Though Sunstein's point is valid, here I side with Stern in holding that terrorist acts in particular inspire mass fear because of the dreaded risks, or aggravating factors, associated with terrorism.

In addition to her discussion of dreaded risks, Stern adds one more human bias to the mix: *action bias*. She notes that there is a tendency on the part of policymakers to respond quickly to crises[128]. Stern, then, defines action bias, a term coined by Anthony

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[123] Gambetta, Diego. "Reason and Terror: Has 9/11 made it hard to think straight?" *Boston Review*, February/March 2004.
[124] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 92.
[125] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 102.
[126] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 121. Also, see Sunstein's list of aggravating factors in risk assessment in Sunstein, *Risk and Reason*, pg. 59.
[127] Sunstein, *Risk and Reason*, pg. 65.
[128] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 90.

Patt and Richard Zeckhauser[129], as "decisionmakers' penchant for taking action without necessarily considering its long-term effects, coupled with the tendency to choose those actions for which they are likely to receive the most credit"[130]. The existence of action bias is corroborated by Thomas Downes-Le Guin and Bruce Hoffman who conducted a survey of the American public's views on terrorism from 1988-89. They found that a strong majority supported government acting in response to terrorism "even if it is not very effective." Interestingly, the public generally preferred diplomatic to military solutions[131].

It seems that due to the many mental shortcuts, or heuristics, we laypeople use in our everyday lives, we are not very good at assessing the risks borne from acts such as terrorism. Diego Gambetta summarizes why we should not fear terrorism as much as we do. He believes that we should not become alarmists, even after 9/11, because, for one, 9/11 was "a wild outlier among terrorist acts"[132]. Gambetta very quickly admits, however, that it is difficult to actually assess "how threatening the terrorists really are." Still, establishing the size of the threat is of the utmost importance in deciding how to deal with that threat and in "avoiding overreactions"[133]. Our cognitive biases, outlined by the authors above, make us particularly susceptible to overblowing the threat from high-casualty, low-probability events[134]. Gambetta believes that the cognitive dissonance that reigned after 9/11 led the public to attribute special powers to our enemies and to over-

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[129] See Patt, Anthony and Richard Zeckhauser, "Behavioral Perceptions and Policies toward the Environment," in Rajeev Gowda and Jeffrey C. Fox, eds., *Judgments, Decisions, and Public Policy* (Cambridge, UK: Cambridge University Press 2002), pgs. 265-302.
[130] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 91.
[131] Downes-Le Guin, Thomas and Bruce Hoffman, *The Impact of Terrorism on Public Opinion, 1988 to 1989.* (Santa Monica, CA: RAND 1993), pg. 19.
[132] Gambetta, "Reason and Terror," pg. 2. Pages correspond to print-out from *Boston Review* web site.
[133] Gambetta, "Reason and Terror," pg. 3.
[134] Gambetta, "Reason and Terror," pg. 4.

aggressively seek out culprits, a point echoed by John Mueller[135]. Former US Defense

Secretary Donald Rumsfeld's talk of "unknown unknowns" and the Bush Doctrine's

focus on preemptive war have led to a war plan based on no "clear cassus belli"[136].

Gambetta would probably agree with Sunstein's promotion of cost-benefit analysis and

emphasis on tradeoffs "in thinking about risks"[137].

Still, looking at costs and benefits should not be mistaken for minimizing or

ignoring risks. John Mueller, exaggerating a point made by Gambetta, writes that, "it is

worth remembering that the total number of people killed since 9/11 by al Qaeda or al

Qaeda-like operatives outside of Afghanistan and Iraq is not much higher than the

number who drown in bathtubs in the United States in a single year, and that the lifetime

chance of an American being killed by international terrorism is about one in 80,000—

about the same chance of being killed by a comet or a meteor. Even if there were a 9/11-

scale attack every three months for the next five years, the likelihood that an individual

American would number among the dead would be two hundredths of a percent (or one

in 5,000)"[138]. This point skips over cost-benefit analysis and simply asks people to look

at cold probability. But, there are attendant risks to terrorism that such a point ignores.

For one, this formulation completely ignores the economic ramifications of an attack on

property and on families of the victims. Further, if thousands died of terrorist attacks in

America every season, there would be widespread panic—and rightfully so. Though it

may be "irrational" to fear a threat that probability says is unlikely, people in this instance

are right to follow their common sense and emotions. If one were told that 1 in 5,000

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[135] Mueller, John. "Is There Still a Terrorist Threat?: The Myth of the Omnipresent Enemy." *Foreign Affairs* 85: 5 (September/October 2006), pgs. 2-8.
[136] Gambetta, "Reason and Terror," pg. 6.
[137] Sunstein, *Risk and Reason*; Sunstein, *Laws of Fear*, pg. 129.
[138] Mueller, "Is There Still a Terrorist Threat?," pg. 8.

people at a football game would be randomly murdered (ten people in a stadium of 50,000), I doubt that many would brave the odds. It is one thing to ask of us to weigh risks, it is another to ask people to replace their emotions and common sense heuristics with the cold comfort of a series of calculated odds. Indeed, teenagers may view risk through too rational a prism. According to Maia Szalavitz, "Brain-scan research shows that when teens contemplate things like playing Russian roulette or drinking and driving, they primarily use rational regions of the brain—certain regions of the cortex—while adults use emotional regions like the insula. When risky decisions are weighed in a rational calculus, benefits like fitting in and feeling good now can outweigh real risks." To this end, psychologist Valerie Reyna suggests that teenagers—whose abilities to accurately assess risks are generally poor—be taught to rule out risks based on emotional responses[139]. Since humans suffer from bounded rationality and lean heavily on mental heuristics, selecting risks by weighing only rationality or emotion may prove foolish.

The general findings of Slovic and Sunstein hold that normal laypeople approach fear with bounded rationality. Bounded rationality entails having a limited view of all of the costs and benefits of a given situation, and of the available options. Due to our bounded rationality, we employ mental heuristics, such as the availability and affect heuristics, as shortcuts to measure risk in our everyday lives. Further, due to our common sense approach to measuring risk, we particularly fear activities or events that we view as new, uncontrollable, involuntary, irreversible, manmade and low-probability, high casualty[140]. When fear overtakes a society, the public will rely on heuristics such as the affect heuristic and fall prey to probability neglect, and decisionmakers will fall into

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[139] Szalavitz, Maia. "10 Ways We Get the Odds Wrong," *Psychology Today*, January-February 2008, http://psychologytoday.com/articles/pto-20071228-000005.xml.
[140] Gambetta, "Reason and Terror"; Sunstein, *Risk and Reason*, pg. 59.

the trap of action bias. Though Sunstein and Gambetta call for a more sober assessment

of risks and rewards on the part of decisionmakers and the public, Gambetta himself

admits that it is hard to decipher the level of threat after an event such as 9/11. Were

more terrorists on the way? This sounds like a naïve question given the history of the

past seven years, but it was a legitimate concern of people after the attacks in 2001.

Indeed, the arrests in London on August 10, 2006 speak to the continued desire of

jihadists to carry out mass-casualty terrorist events. Further, a sober approach to risk is

easier proposed than implemented given the information asymmetries regarding the

terrorist threat that divide the government and the public. In addition, though terrorist

events are, particularly in the West, few and far in between, the aggravating factors

inherent in terrorism make it a hard phenomenon to ignore. That said, the government

must guard itself from taking action without carefully assessing the ramifications. The

main lesson of the rational choice scholars of risk and fear is that all actions have

consequences, all benefits have costs.

It is important to note here that fear is not necessarily a rational response to a

situation. Driving on America's highways is far and away more dangerous and

potentially fatal than flying on a US commercial airline[141], yet more people fear air travel

than driving on the highway[142]. There are myriad qualitative explanations for this

phenomenon: people fly less than they drive, you're 30,000 feet up in the air in a plane

but "safe" on the ground in a car, and so on. But, these responses all may be deemed

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[141] See statistics on the US National Transportation Safety Board's web site, www.ntsb.gov. For example, before the August 2006 airliner accident in Kentucky that killed 49 people, no passengers had been killed in a "U.S.-registered airline jet accident in more than 4½ years" (Levin, Alan. "Airways in USA are the safest ever," 30 June 2006, *USA Today*, http://www.usatoday.com/news/nation/2006-06-29-air-safety-cover_x.htm). Whereas 16,885 people are estimated to have died in 2005 due to auto accidents caused by drunk driving alone according to the NTSB (http://www.ntsb.gov/alerts/SA_004.pdf).
[142] The behavior of Americans after 9/11 is testament to this fact. Also see http://thestatsblog.wordpress.com/2008/01/16/fear-of-flying-after-911-led-to-increase-in-auto-deaths/.

"irrational" because the fearful reaction does not fit the facts. This is because rationality involves fitting responses to quantitative facts whereas emotional responses appeal to more qualitative factors such as pride, love, comfort, and anger[143]. Fear can be rational, but many times it is not.

Combining the above biological and rational action approaches to fear, a model of how people and governments react to crises can now be constructed. First, due to their bounded rationality, people understand crises via mental heuristics such as the availability heuristic. These heuristics do not take into account all of the costs-and-benefits of a given response. Second, there are aggravating circumstances, including unfamiliarity, involuntariness and newness, that make people more fearful of certain events. Terrorism falls within the category of these so-called "dreaded risks." Third, fear of the other is crucial in the reaction of populaces after terrorist attacks, especially when ethnic minorities or foreigners commit these attacks. Fear of the other is a natural human reaction and one that is triggered during crises in order to create greater internal cohesion. Fourth, fear of terrorism is projected to mass publics via the media. Fifth, action bias dictates that people will desire that actions be taken to quell the crisis quickly even when these actions may not solve the problem. Finally, the role of politicians is crucial in expressing people's fears. Decision makers, particularly government executives, can have very large effects on how crises will be dealt with and how people react especially due to their access to media sources and status as leaders.

In this study, it will be shown that government executives can either tamp down or ratchet up fears through their public pronouncements. Here it is contended that

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[143] On this point see Petersen, Roger. *Understanding Ethnic Violence: Fear, Hatred and Resentment in Twentieth-Century Eastern Europe.* (Cambridge, UK: Cambridge University Press 2002).

executives do not simply need to echo how the masses are feeling. Thus, the central focus of this dissertation is on the *agency that executives have in shaping fears*, which eventually leads to abridgements of civil liberties. Below, I map a choice model of how crises lead to government action. It is important here to note which parts of this chain of reaction are variables and which are simply given heuristics that are part of the causal chain, to this end, the variables have been placed in bold.

A choice model of the micro-foundations of fear leading to fear overtaking society and government's response:

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┌─────────┐
│ Crisis  │
└─────────┘
     │
     ▼
┌──────────┐    ┌──────────┐    ┌──────────┐    ┌─────────────────┐
│ Use of   │───▶│ Fear of  │───▶│ Action   │───▶│ Executive Threat│
│ Heuristics│    │ the Other│    │ Bias     │    │ Shaping: Echoing│
└──────────┘    └──────────┘    └──────────┘    │ or Allaying Mass│
                                                 │ Fears           │
     x                                           └─────────────────┘

┌──────────┐
│Aggravating│
│Factors   │
└──────────┘
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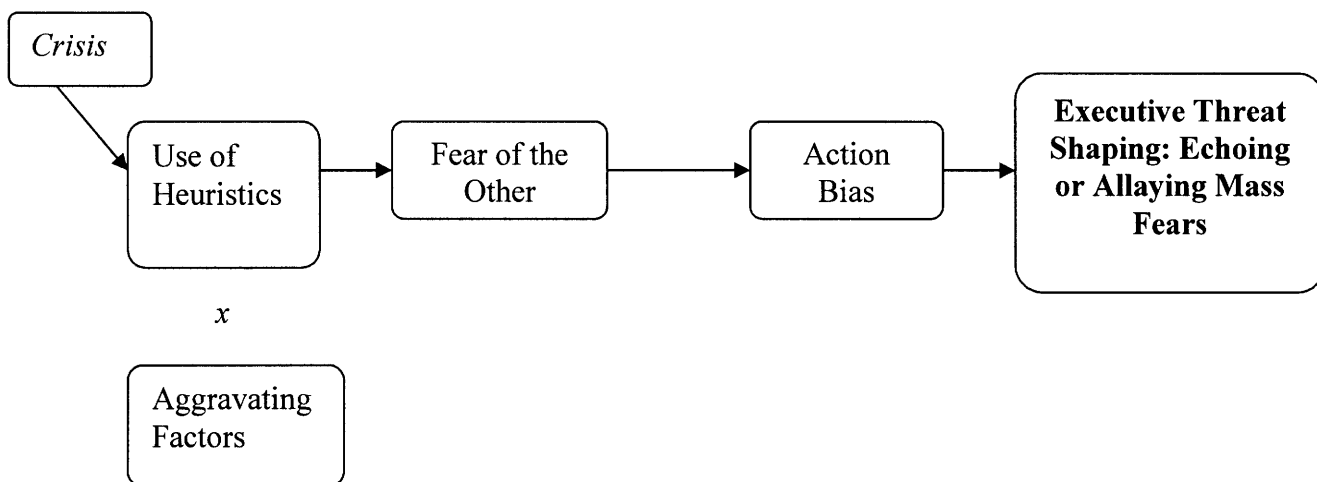
<u>*Political Fear and Government Threat-Shaping*</u>

After reviewing the social science literature's take on fear, we have finally arrived at a point where the role of government can be further scrutinized. Corey Robin contends that government frequently uses fear as a political tool and calls this employment

"political fear." In this section, I introduce the concept of political fear and look at how other scholars have conceived of the government's role in fomenting fear.

Robin defines political fear as "a political tool, an instrument of elite rule or insurgent advance, created and sustained by political leaders or activists who stand to gain something from it, either because fear helps them pursue a specific policy goal, or because it reflects or lends support to their moral and political beliefs—or both." Robin describes a type of fear whereby "leaders or militants define what is or ought to be the public's chief object of fear." He goes on to state that, "Political fear of this sort almost always preys upon some real threat—it seldom, if ever, is created out of nothing—but since the harms of life are as various as its pleasures, politicians and other leaders have much leeway in deciding which threats are worthy of political attention and which are not"[144]. He emphasizes that, "It is no accident that this mode of fear is common during wartime, for its primary constituency is the nation or some other presumably cohesive community, and its primary object a foreign enemy or some other approximation of the alien"[145].

So, how might we incorporate political fear into the model of how individuals react to crises/fear? First of all, the government has the ability to push the public to take on the government's perspective by making certain information available. Since people use the availability heuristic widely in determining risk, the government, by making images or arguments of certain things available, can adjust how people view a threat. Further, the government could use emotional pleas to manipulate the use of the affect heuristic. Also, by highlighting the aggravating factors of an event—invisibility,

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[144] Robin, *Fear*, pg. 16.
[145] Robin, *Fear*, pg. 18.

newness, uncontrollability, etc.—the government can ratchet up the public's fear

levels[146]. Finally, the government could easily induce fear of the other by drawing the

populace's attention to the specific group that it says is at fault for the terrorist attack.

The government would, thus, both create internal cohesion and external hostility: perfect

conditions for a war effort.

The general political science literature holds that government has a strong role in

shaping threats and a wide agency to shape those threats. In *Understanding Ethnic*

Violence, Roger Petersen posits that a society could be overtaken by fear when,

"Structural changes such as the collapse or weakening of the political center eliminate

institutional constraints and guarantees to produce a situation characterized as anarchy or

emerging anarchy. Fear heightens the desire for security"[147]. He next reviews a number

of security dilemma accounts of how fear pervades society. For example, Russell Hardin

in *One For All: The Logic of Group Conflict* argues that, "the perception of threat

motivates individual action." To Hardin, however, political elites are necessary to

overcome the collective action problem and mobilize the masses[148]. Petersen categorizes

three dynamics for how fear dictates the elite-mass dynamic:

> "In one, the fears of the mass and the political elites are similar and both respond to
>
> an existing anarchic structure that has unfolded through processes outside the agency
>
> of actors. In a second, the fears of the population are manipulated and artificially
>
> heightened by a political elite for their own ends. A third version, a modification of
>
> the second, primarily focuses on a political struggle between elite factions. One

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[146] See list in Sunstein, *Risk and Reason*, pg. 59.

[147] Petersen, Roger. *Understanding Ethnic Violence: Fear, Hatred and Resentment in Twentieth-Century Eastern Europe*. (Cambridge, UK: Cambridge University Press 2002), pg. 68.

[148] Petersen, *Understanding Ethnic Violence*, pg. 73.

faction creates fear, and possibly a security dilemma as an effective mobilization strategy against the other"[149].

The competition between elite factions strand is further taken up by VP Gagnon. Gagnon writes that, "violent conflict along ethnic cleavages is provoked by elites in order to create a domestic political context where ethnicity is the only politically relevant identity." This is how "endangered elites can fend off domestic challengers who seek to mobilize the population against the status quo, and can better position themselves for future challenges"[150]. Gagnon holds a starkly elite-driven view of conflict, writing that, "The challenge for elites is ... to define the interest of the collective in a way that coincides with their power interests"[151].

Petersen's rubric provides a good starting point for discussing whether the masses or the government drive societal fear. As will be established in a later section, the major Western political philosophers have generally stated that the government pushes fear. The risk analysis literature, since it is based upon the actions of individuals, places the foundations of fearful behavior in the individual and then the masses. However, that literature certainly leaves ample room for the role of governments driving fear. Finally, Robin's conception of political fear and Petersen's review of how fear drives conflict both provide a large role for government. Petersen, for instance, does not include in his discussion a model wherein the masses drive elites to actions that they may otherwise not want to take, such as the model composed by Kuran and Sunstein. Petersen's narrative with the most mass agency has the masses working with the government hand-in-hand.

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[149] Petersen, *Understanding Ethnic Violence*, pgs. 74-5.
[150] Gagnon, VP Jr. "Ethnic Nationalism and International Conflict: The Case of Serbia". *International Security*, 19: 3 (Winter 1994-95): pg. 132.
[151] Gagnon, "Ethnic Nationalism and International Conflict," pg. 135.

Since I aim to measure mass fears via public opinion, the next section will look at the theories on how mass opinion shapes government and vice versa.

Fear and Public Opinion

What remains, then, is a discussion of what public opinion's effect on government is in the literature. Public opinion is important to the study of fear's effect on politics because it is the metric that will be used in this study to approximate mass fears. In *The Impact of Public Opinion on US Foreign Policy Since Vietnam*, Richard Sobel provides a strong case for studying public opinion's effect on democratic governments:

> "A fundamental premise in our democracy is that government policy reflects the will of the people. In an ideal sense, what the government does should derive from citizen opinion. In actuality, what the government does derives only imperfectly from citizen preferences. Yet the public's beliefs and attitudes do guide and constrain public policy, in foreign as well as domestic affairs"[152].

He finds that, "public opinion constrains, but does not set, American foreign intervention policy. In other words, the public's attitudes set the limits within which policymakers may operate"[153]. This follows from VO Key's theory that public opinion works as a "system of dikes that channel the flow of public policy. Public opinion, in this model, does not set policy but instead is capable of setting the range or limits of policy."

Sobel, however, notes that whereas the term public opinion "implies a predominance … of sentiment among the entire population as revealed in polls," "the public is stratified and differing publics express their views through various forums."

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[152] Sobel, Richard. *The Impact of Public Opinion on US Foreign Policy Since Vietnam: Constraining the Colossus*. (Oxford, UK: Oxford University Press 2001), pg. 3.
[153] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 5.

Further, in a point Gagnon and Petersen also emphasize, Sobel stresses that elites are just as divided as the public, with political appointees being much more responsive to public opinion than non-politically appointed career officials[154]. Sobel notes that a view such as Gagnon's of simple elite manipulation of the public and of an elite that can draw public support for just about anything does not hold, at least in the foreign policy realm—and at least in democracies. Rather, it is important to note "climates of public opinion" and the "system of dikes" theory[155].

Here let us pause for a moment to consider the subject matter of most of the studies on public opinion presented in this section. These studies mainly focus on foreign policy. If elites are constrained in their agency regarding foreign policy: an arena in which they have vast information advantages and strong powers to change public attitudes due at least in part to lack of public knowledge, then I believe that these findings should be even more powerful with a study such as mine that looks at domestic policy. After all, the public is more knowledgeable of policies that affect it directly, such as those that affect civil liberties, and has many more opportunities, especially in America, to voice its views in the voting booth where domestic policy is concerned (i.e., with mayoral, state legislative elections, etc.).

Back to Sobel. Sobel next outlines two normative models of representation for how public opinion should affect the government. The first, the trustee model, "suggests that representatives should use their best judgment of issues and then vote in the interest of their constituents, not necessarily as the constituents prefer." The second, the delegate model holds that representatives "vote, and should vote, in response to constituents'

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[154] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 10.
[155] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 22.

wishes." Though the public's interests "are generally expected to prevail in a democracy," Sobel writes that, "What distinguishes democracy is not that every member of the public has equal influence in the formulation of policy, but that every member has potential access to power and that the political leadership is periodically subject to election"[156]. In a study of how House members perceived their relationship to public opinion, Serafino and Storrs found that 28 percent saw themselves as "trustees" in the above sense, 23 percent "delegates" in the above sense, and 46 percent said they were "politicos," which meant they "could shift between personal judgment and constituency opinion depending upon the circumstances"[157]. In Sobel's conclusion, he finds that actual government officials "saw themselves more typically as trustees of government than as delegates of the people"[158].

Presidential popularity also plays an important role in influencing policymakers. "Presidential popularity as political capital undergirds congressional support," Sobel writes. Further, support of the president colors the entire "climate of opinion that generally constrains policy"[159]. Still, Sobel notes that climates of opinion come in cycles. During some periods, for instance, Americans have been generally interventionist, in others they have been largely isolationist[160].

The President has enormous powers to shape opinion. As Theodore Roosevelt put it, "the presidency is a 'bully pulpit' for influencing opinion"[161]. The executive branch can influence opinion indirectly via the media and interest groups or it can directly speak to

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[156] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 11.
[157] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 21.
[158] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 234.
[159] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 15.
[160] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 18.
[161] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 19.

the public. As Page and Shapiro have found, "A popular president who makes repeated speeches may achieve a 5 to 10 percentage point change in popular opinion over several months[162]. Further, as John Mueller and others have found, the "rally 'round the flag" effect typically provides an increase in support of the government after important international events, "although this sometimes does not happen or is short-lived"[163]. Further, Page and Shapiro and others have found that public opinion, long thought to be fickle and easily manipulable, is, at least in America, relatively stable[164]. Sobel writes that whereas public opinion in the past was "considered, at maximum, to constrain policy," "today public opinion, at minimum constrains policy and, at maximum, sets policy"[165].

Peter Feaver and Christopher Gelpi build on Sobel's view of public opinion in *Choosing Your Battles*. They write that:

"Civilian policymakers are most attuned to elite public opinion, since this represents by definition the views of the people most active in public debates over policy and since the policymakers are themselves a part of the elite. But decision makers are also sensitive to what the mass voter thinks since that may determine whether they hold on to their positions of power. At the same time, policymakers seek to shape the

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[162] Page, Benjamin I. and Robert Y. Shapiro. *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences*. (Chicago: University of Chicago Press 1992), pg. 306; Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 21.

[163] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 21. This point will be highlighted in the chapter on public opinion.

[164] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 24; Page and Shapiro, *The Rational Public*.

[165] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pgs. 25, 239.

opinion of elites who themselves seek to shape mass opinion so as to influence

policymakers"[166].

Thus, the government is constrained both by the masses and by elite opinion leaders.

Policymakers can affect public opinion, but are also limited by it. The purpose of Feaver

and Gelpi's book is to show how civilian and military leaders view the military and

conflict differently, and to break down some myths about the public's perception of

military power (such as, that it is "casualty phobic")[167]. Their work stresses that neither

the elite nor the masses represent monoliths. Rather, both are segmented into different

factions, such as veteran and non-veteran and politically informed and uninformed.

Their findings are further bolstered by John Zaller's seminal work, *The Nature*

and Origins of Mass Opinion. Zaller writes that the aim of his book "is to show how

variations in the elite discourse affect both the direction and organization of mass

opinion"[168]. Zaller notes that the information the public receives about world

developments represents "a highly selective and stereotyped view of what has taken

place"[169]. This is because the public is reliant on political elites, which include not only

politicians and government officials but also journalists and activists, for its

information[170]. Zaller repeatedly finds that people who are more heavily exposed to elite

discourse—that is, the more highly educated and politically literate—are more likely to

agree with elite views[171]. However, the author, like Feaver and Gelpi, does not view the

elite as a monolith. He writes that, "Public opinion is sometimes formed by streams of a

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[166] Feaver, Peter D. and Christopher Gelpi. *Choosing Your Battles: American Civil-Military Relations and the Use of Force*. (Princeton, NJ: Princeton University Press 2004), pg. 14.
[167] Feaver and Gelpi, *Choosing Your Battles*, pgs. 2, 4-7.
[168] Zaller, John R. *The Nature and Origins of Mass Opinion*. (Cambridge, UK: Cambridge University Press 1992), pg. 14.
[169] Zaller, *The Nature and Origins of Mass Opinion*, pg. 7.
[170] Zaller, *The Nature and Origins of Mass Opinion*, pg. 6.
[171] Zaller, *The Nature and Origins of Mass Opinion*, pgs. 11, 98.

monolithically one-sided elite discourse, but, more often, it is shaped by multiple and

typically conflicting information flows, some which are more intense, or easier to learn

about, than others"[172].

After delving into many of the problems with measuring public opinion, Zaller

asserts that with an indecisive and fragmented public, "someone has got to play the role

of crystallizing issues in a way that can lead to action." Thus, he uses the term "issue

entrepreneurs" to describe officials that frame issues for public consumption. Zaller

states that:

> "Political leaders are seldom the passive instruments of majority opinion. Nor, as it
>
> seems to me, do they often attempt openly to challenge public opinion. But they do
>
> regularly attempt to play on the contradictory ideas that are always present in
>
> people's minds, elevating the salience of some and harnessing them to new initiatives
>
> while downplaying or ignoring other ideas—all of which is just another way of
>
> talking about issue framing"[173].

Thus, "a popular president backed by a unified Washington community can have a

powerful effect on public opinion, especially that part of the public that is most attentive

to politics"[174].

It is at this point that Zaller returns to the premise that the more politically aware a

person is, the more mainstream messages she receives and internalizes, and, therefore,

"the greater the person's level of expressed support for mainstream policy"[175]. Further,

the more aware a person is, the more likely they are to fill their head with ideas that fit

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[172] Zaller, *The Nature and Origins of Mass Opinion*, pg. 20.
[173] Zaller, *The Nature and Origins of Mass Opinion*, pg. 96.
[174] Zaller, *The Nature and Origins of Mass Opinion*, pg. 97.
[175] Zaller, *The Nature and Origins of Mass Opinion*, pg. 98.

with their political ideology. Hence, aware conservatives seek out conservative arguments and aware liberals do the same[176]. Zaller shows that whereas politically aware liberals and conservatives both supported the Vietnam War in 1964, by 1970 the two sides were polarized[177]. Further, while Republicans and Democrats both supported the first George Bush's Gulf War policies before members of Congress criticized them, after congressional criticism occurred the public's opinions of the policy diverged along partisan lines[178]. This speaks to a strong role for elites in shaping the opinions of their partisan supporters.

This leads Zaller to draw up a model showing how information flows "consist of both a dominant message pushing much of public opinion in one direction, and a less intense, countervalent message that partly counteracts the effects of the dominant message"[179]. He concludes that, "public attitudes toward major issues are a response to the relative intensity of competing political communications of those issues." Thus when elites are united behind an issue, "the public's response is relatively nonideological, with the most aware members of the public reflecting the elite consensus most strongly." However, "When elites come to disagree along partisan or ideological lines, the public's response will become ideological as well, with the most politically aware members of the public responding most ideologically"[180]. Opinion polls on the War in Iraq, which exhibit an American public more divergent than ever before, further bolster Zaller's findings[181].

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[176] Zaller, *The Nature and Origins of Mass Opinion*, pg. 101.
[177] Zaller, *The Nature and Origins of Mass Opinion*, pg. 103.
[178] Zaller, *The Nature and Origins of Mass Opinion*, pg. 104.
[179] Zaller, *The Nature and Origins of Mass Opinion*, pg. 185.
[180] Zaller, *The Nature and Origins of Mass Opinion*, pg. 210.
[181] See, for instance, Toner, Robin and Jim Rutenberg. "Partisan Divide on Iraq Exceeds Split on Vietnam," *The New York Times*, 30 July 2006, http://www.nytimes.com/2006/07/30/washington/30war.html.

We began this chapter by considering which way the flow of fear goes: from mass to government or government to masses. The purpose of the chapter has been to construct a theory of how mass fears interact with the legislative process resulting in civil liberties abridgments after terrorist attacks. Zaller's working assumption was "that elite communications shape mass opinion rather than vice versa"[182]. He supports this claim with numerous examples including the fact that while in August 1990 only a small portion of Americans knew that Kuwait existed, within two weeks over 80 percent of Americans supported a prevention of further Iraqi aggression against Kuwait[183]. Zaller writes that, "The general point here is that, however difficult it may be to resolve the direction of elite-mass influence in the abstract, it is often possible to make plausible judgments in particular cases"[184]. Zaller writes that, "elites act autonomously to shape public opinion, but only after they calculate that it is safe to do so"[185]. Zaller finally reiterates that the masses will go with the elites when elite unity exists, but when it does not, the masses will split along ideological lines[186]. Looking at particular cases, this dissertation will show that government executives do indeed control post-terror attack responses. It will also be shown that strong elite divisions can lead to counter-terror legislation being blocked.

Finally, Robert Entman in *Projections of Power* adds to the discussion by supplying a model of how information cascades downward from the presidential administration. He writes that, "The president and top advisors enjoy the most independent ability to decide

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[182] Zaller, *The Nature and Origins of Mass Opinion*, pg. 268.
[183] Zaller, *The Nature and Origins of Mass Opinion*, pg. 269; Mueller, John. *Policy and Opinion in the Gulf War*. (Chicago: University of Chicago Press 1994).
[184] Zaller, *The Nature and Origins of Mass Opinion*, pg. 269.
[185] Zaller, *The Nature and Origins of Mass Opinion*, pg. 272.
[186] Zaller, *The Nature and Origins of Mass Opinion*, pg. 327.

which mental associations to activate and the highest probability of having their thoughts become part of the general circulation of ideas, and congressional leaders enjoy more autonomy and influence than backbenchers"[187]. Entman forwards a model wherein the administration frames ideas and these ideas in turn cascade down to other elites and the media and reach the public via media news frames. Along the way, lesser elites affect the administration, news frames affect the lesser elites, and the public affects the media[188]. Entman writes that, "presidential control over the framing of foreign affairs can indeed look a lot like hegemonic domination—but only when there is clear congruence or obvious incongruence between the foreign event or issue and prominent cultural schemas." Thus, even after 9/11, the Bush Administration had to engage in strategic framing to get the public to support the War in Iraq since this was not an obvious response to the al-Qaeda terrorism[189].

Entman, building on Zaller, contends that when leaders respond to public opinion they can undermine their competitors; but when public opinion is split, elites will compete over how the issues should be framed[190]. However, he, again like Zaller, finds problems with how public opinion is measured[191]. Hence, he writes that, "Washington politicians are ... exquisitely sensitive to the imagined public, to their perceptions of public opinion"[192]. To Entman, it is how government *perceives* public opinion that matters. This finding is substantiated by Feaver and Gelpi, who write extensively on

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[187] Entman, Robert M. *Projections of Power: Framing News, Public Opinion, and US Foreign Policy.* (Chicago: University of Chicago Press 2004), pg. 9.
[188] Entman, *Projections of Power*, pg. 10.
[189] Entman, *Projections of Power*, pg. 148.
[190] Entman, *Projections of Power*, pg. 149.
[191] Zaller, *The Nature and Origins of Mass Opinion*; Entman, *Projections of Power*, pgs. 156-7.
[192] Entman, *Projections of Power*, pg. 158.

government's perceptions of what the public wants[193]. Entman leaves us with a messy picture. Though he concedes that the public is not as easily manipulable as previously thought, he still holds that due to citizens' "underdeveloped ideologies, uncertain motivations ..., and tenuous command of important facts," the public is highly susceptible to government appeals[194]. This further follows because the government controls information flows[195].

Philosophical Foundations of Fear

Now that we know what fear is, it is important to look back at the historical antecedents of the conception of fear we know today. Political thinkers have been describing fear and its effects for a very long time. This section will go over conceptions of fear from different time periods—from Hobbes' world that was ravaged by civil war to Machiavelli's world of princes to Isaiah Berlin's world dominated by nuclear-armed superpowers. Today, we live in an age of terrorism. In this final section, I will demonstrate how these previous treatments help us think about fear in the modern age.

The philosophical foundations of fear's effect on politics begin with the work of Thomas Hobbes, arguably the first liberal political thinker[196]. Hobbes embraced fear as the emotion that can link people both to each other within society and to the government, or as Hobbes called it: the Sovereign[197]. Hobbes' philosophy is based upon the doctrine of self-preservation. In Chapter XIV of *Leviathan*, Hobbes establishes man's Right of

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[193] Feaver and Gelpi, *Choosing Your Battles*.
[194] Entman, *Projections of Power*, pg. 163.
[195] Entman, *Projections of Power*, pg. 164.
[196] See Macpherson, C. B. *The Political Theory of Possessive Individualism: Hobbes to Locke*. (Oxford, UK: Oxford University Press 1964).
[197] Robin, Corey. *Fear: the History of a Political Idea*. (Oxford, UK: Oxford University Press 2004), pg. 32.

Nature: a right to use one's power to preserve one's own life. Hobbes writes that "the summe of the Right of Nature ... is, By all means we can, to defend our selves"[198]. Fear guides natural man to defend himself, and as such Hobbes establishes self-defense as a natural right since he views fear as such a strong foundational emotion.

Yet Hobbes had a problem: though people valued self-preservation on the grounds of reason, reason "often fell victim to passion, particularly the love of honor and glory"[199]. So Hobbes had to develop a way to bring primal fears back into society. He achieved this through the creation of a society whose moral and social infrastructure was based on fear. Re-instilling the fear of death and desire for self-preservation in people would be "a project of political and cultural reconstruction, requiring the creation of a new ethos and a new man"[200]. Unlike Machiavelli, who wrote extensively on how political fear could be skillfully employed by the prince, Hobbes believed that no ruler "could ever possess enough coercive power to generate sufficient fear among his subjects." He also did not "think that fear could compel obedience if people did not believe that submitting out of fear would somehow profit them"[201]. Hobbes, thus, set himself with the project of making the risks of the state of nature immediate to men and of making the Sovereign's might appear greater than it was in actuality[202].

To this end, Hobbes averred that the state of nature, that is: humankind's lot before the formation of the body politic, did not consist of a Rousseauian Utopia, but rather of a war of "every man against every man"[203]. This state of war was caused by the

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[198] Hobbes, *Leviathan*-Revised Student Edition, Tuck, Richard ed. (Cambridge, UK: Cambridge University Press 1996), pg. 92.
[199] Robin, *Fear*, pg. 35.
[200] Robin, *Fear*, pgs. 37-8.
[201] Robin, *Fear*, pg. 39.
[202] Robin, *Fear*, pgs. 42-3.
[203] Hobbes, *Leviathan*, pg. 88.

natural equality of people and their pursuit of honor and glory: a quest that separates

them from the naturally civil bees and ants[204]. Hence, in order to preserve their lives,

people must make a covenant with one another, ceding their "power and strength" to the

Sovereign, who will reign over them as a mortal god[205]. Yet, though Hobbes bequeaths

the Sovereign with many powers meant to maintain social stability and inspire fear in the

populace, man is still left with his right to self-preservation. Thus, for instance, one may

refuse to fight as a soldier in the Sovereign's army on the grounds of this natural right[206].

Hobbes attempts to clear up this apparent contradiction by stating that, "The end of

Obedience is Protection"[207], a statement that establishes the limits of the Sovereign

power. Since the end of protection is an issue up for interpretation, Hobbes' Sovereign's

powers may be far more limited than they at first appear.

Whereas Hobbes saw fear as essential to maintaining the body politic,

Machiavelli viewed fear as an instrument of rule that was not necessarily a good in and of

itself. In *The Prince*, Machiavelli famously uttered, "since men love at their own

pleasure and fear at the pleasure of the prince, a wise prince should build his foundation

upon that which belongs to him, not upon that which belongs to others: he must strive

only to avoid hatred"[208]. Machiavelli's handbook for shrewd rulership, advises the prince

further "to be a great hypocrite and liar"[209]. Though these select quotes make

Machiavelli out to be an immoral philosopher, Machiavelli simply was advising princes

on how to use skill (virtù) to maintain stable rule. Such skill involves taking fortune into

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[204] Hobbes, *Leviathan*, pgs. 86-7, 119.
[205] Hobbes, *Leviathan*, pg. 120.
[206] Hobbes, *Leviathan*, pg. 151.
[207] Hobbes, *Leviathan*, pg. 153.
[208] Machiavelli, *The Prince*, in Bondanella, Peter and Mark Musa translators and eds., *The Portable Machiavelli* (New York: Penguin Books 1979), pg. 133.
[209] Machiavelli, *The Prince*, pg. 134.

your own hands. As Machiavelli puts it, "Fortune is a woman, and it is necessary, in order to keep her down, to beat her and to struggle with her"[210]. Machiavelli praises skillful princes, but not those whose indiscriminate use of force could not be deemed shrewd. Thus, in his discussion of Agathocles the Sicilian he writes that, "it cannot be called skill to kill one's fellow citizens, to betray friends, to be without faith, without mercy, without religion; by these means one can acquire power but not glory"[211]. Machiavelli, thus, constructs a conception of fear as a necessary tool of leaders ("better to be feared than loved") that must be used shrewdly in order to maintain rule and stability. He does not, however, advise that fear be employed in such a way that it evokes hatred from the populace.

Montesquieu's conception of fear is wholly contrary to that of Hobbes and Machiavelli. To Montesquieu, "political fear was to be understood as despotic terror." Robin avers that, "Where Hobbesian fear was a tool of political order, serving ruler and ruled alike, Montesquieu believed that terror satisfied only the depraved needs of a savage despot"[212]. Thus, Montesquieu sought to limit government[213]. Montesquieu believed that freedom could only be enjoyed "when political power was fragmented and checked by multiple institutions, the rule of law, and a diverse society"[214]. Montesquieu, thus, would agree with Locke, who ridicules Hobbes' argument for a Sovereign stating: "to think, that men are so foolish, that they care to avoid what mischiefs may be done them by pole-cats, or foxes; but are content, nay, think it safety, to be devoured by

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[210] Machiavelli, *The Prince*, pg. 162.
[211] Machiavelli, *The Prince*, pg. 104.
[212] Robin, *Fear*, pg. 52.
[213] Robin, *Fear*, pg. 53.
[214] Robin, *Fear*, pg. 61

lions"[215]. Locke's statement mocks Hobbes' establishment of an all-mighty Sovereign by arguing that people would never trade a life of small risks from everyone for a life of a large risk from the government. In times of high fear, as will be seen, however, Locke's assumption proves incorrect.

Alexis de Tocqueville viewed fear not "as a tool of power," but rather as "a permanent psychic state of the mass" or mass anxiety[216]. Tocqueville, thus, sought to decentralize and limit government power and to encourage strong civic participation[217]. Tocqueville, like John Stuart Mill, viewed the tyranny of the majority as "the new agent of fear," which worked through "the social mechanisms of popular opinion and common belief"[218]. Compared with the rule of kings and aristocrats, then, democracy looked bleak. After all, the majority's tyranny, "leaves the body alone and goes straight for the soul"[219]. Tocqueville, thus, saw the potential for democratic societies to be ruled not by government-fomented fear, but by the fears of the masses. Due to the pervasive power of the majority, Tocqueville writes that, "I know of no country where there is generally less independence of thought and real freedom of debate than in America"[220].

Similarly, Hannah Arendt begins her discussion of totalitarianism by looking at the masses. She views the mass as "a pathological orientation of self" and states that, "mass man experienced a feeling of 'selflessness in the sense that oneself does not matter.'" The masses made such charged political fuel because of the individual's

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[215] Locke, John. *Second Treatise of Government*. (Indianapolis, IN: Hackett Publishing Company 1980), pg. 50.

[216] Robin, *Fear*, pg. 75.

[217] Robin, *Fear*, pg. 76.

[218] Robin, *Fear*, pg. 79.

[219] Tocqueville, Alexis, *Democracy in America and Two Essays on America*. (New York: Penguin Books 2003), pg. 298.

[220] Tocqueville, *Democracy in America*, pg. 297.

feelings of isolation and "'lack of normal social relationships'"[221]. She viewed the mass

movement as an unstructured phenomenon, directed by an ideology whose content did

not matter. Only the fact that ideology provided the masses with relief from their

anxieties mattered[222]. She writes that in totalitarian regimes, "each official was forced to

divine the wishes, never expressed, of the leader." This leader "was sure that he existed

through the mass, and they through him, which meant only that it was impossible to tell

the two apart. The totalitarian state was a discrete entity: proliferating offices, it merged

with the shadowy mass movement that propelled it"[223]. Arendt's works insured that,

"Whether they are talking about the reaction against globalization, the revival of

nationalism and ethnic identity, civil society, or the threat of radical Islam, intellectuals

worry about a dangerous anomie and its potential contributions to political extremism"[224].

The current philosophical work on fear's role in politics is centered on Judith

Shklar's liberalism of fear. Shklar defines the liberalism of fear as a political

commitment to the maintenance of institutions that protect individuals from undue

coercion and defend individual rights[225]. Shklar writes that, "What is to be feared is

every extralegal, secret, and unauthorized act by public agents or their deputies. And to

prevent such conduct requires a constant division and subdivision of political power"[226].

Thus Shklar groups herself with James Madison as both a skeptic (about the nature of

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[221] Robin, *Fear*, pg. 101.
[222] Robin, *Fear*, pg. 103.
[223] Robin, *Fear*, pg. 107.
[224] Robin, *Fear*, pg. 128. See, for example, Polanyi, Karl. *The Great Transformation: The Political and Economic Origins of Our Time*. (Boston: Beacon Press 1944).
[225] Shklar, Judith. "The Liberalism of Fear" in Rosenblum, Nancy ed. *Liberalism and the Moral Life*. (Cambridge, MA: Harvard University Press 1989), pgs. 23-5.
[226] Shklar, "The Liberalism of Fear," pg. 30.

people) and a liberal[227]. Shklar believes that people in power who do not exact cruelties upon their subjects are exceptional[228].

She notes that, "the liberalism of fear does not, to be sure, offer a *summmum bonum* toward which all political agents should strive, but it certainly does begin with a *summmum malum*, which all of us know and would avoid only if we could. That evil is cruelty and the fear it inspires, and the very fear of fear itself"[229]. Shklar further contends that, "What liberalism requires is the possibility of making the evil of cruelty and fear the basic norm of its political practices and prescriptions"[230]. By this, she means that liberal governments and societies must be structured with the avoidance of terror, despotism and fear as their central objectives. As Robin puts it, "Thus did Shklar, like Montesquieu and Tocqueville before her, use the language of terror to justify the rule of law, fragmented state power, tolerance, and social pluralism"[231].

It should be noted, that Isaiah Berlin's trumpeting of negative liberty is also based upon his conception of political fear. Berlin defines negative liberty as "the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree"[232]. He defines positive liberty as "freedom to" do things or "freedom as self-mastery"[233]. Berlin concludes his essay "Two Concepts of Liberty" with a defense of pluralism and negative liberty against positive liberty. He avers that, "Pluralism with the measure of 'negative' liberty that it entails, seems to me a truer and more humane ideal than the goals of those who seek in the great,

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[227] Shklar, "The Liberalism of Fear," pg. 25.
[228] Shklar, "The Liberalism of Fear," pg. 27.
[229] Shklar, "The Liberalism of Fear," pg. 29.
[230] Shklar, "The Liberalism of Fear," pg. 30.
[231] Robin, *Fear*, pg. 150.
[232] Berlin, Isaiah. "Two Concepts of Liberty" in *Four Essays on Liberty*. (New York: Oxford University Press 1969), pg. 122
[233] Berlin, "Two Concepts of Liberty," pgs. 131, 146.

disciplined, authoritarian structures the ideal of 'positive' self-mastery by classes, or peoples, or the whole of mankind"[234]. To Berlin, liberals should fear the paternalism of overarching ideologies and of governments, not the potential isolation brought by negative rights[235]. As Berlin puts it, "One belief more than any other, is responsible for the slaughter of individuals on the altars of the great historical ideals ... This is the belief that somewhere, in the past or in the future, in divine revelation or in the mind of an individual thinker, in the pronouncements of history or science, or in the simple heart of an uncorrupted good man, there exists a final solution"[236].

In sum, whereas Hobbes embraced fear as a necessary component of a stable society and Machiavelli viewed fear as an essential political tool, the Western political thinkers that came after these philosophers saw fear as something that should be minimized in society. The government was singled out by Tocqueville, Montesquieu, Arendt, Berlin, and Shklar as the locus of the populace's fear. The government at least had the potential to terrorize the people, and thus had to be decentralized, limited and fragmented.

One interesting strand not taken up by the above thinkers is the concept of instilling the people with basic rights, such as John Locke does with the inalienable right to property[237]. Perhaps the reason for this is that thinkers such as Berlin and Shklar believed that these positive rights could never be attained without the negative rights necessary to hold back the government. Though limiting the government is clearly the consensus solution to limiting fear, Tocqueville and John Stuart Mill raise the important

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[234] Berlin, "Two Concepts of Liberty," pg. 171.
[235] Berlin, "Two Concepts of Liberty," pgs. 132-4, 148, 154.
[236] Berlin, "Two Concepts of Liberty," pg. 167.
[237] Locke, *Second Treatise of Government*, pg. 19.

contention that the tyranny of the majority is just as important to guard against in democracies. Thus, it is important to insure the rights of minorities[238]. The philosophical works on fear clearly show that limiting government power and insuring the rights of minorities are of the utmost importance in creating a minimally fearful society.

The goal of this dissertation is to show why governments react the way they do after terrorist attacks with regard to civil liberties. After considering the philosophical foundations of fear, we can see why the question of how we can limit government and protect minorities in times of terrorist-induced crises is an important one. The power of the government to manipulate fear will be further exhibited in the case study chapters.

Public Opinion Findings and Theory Generation

The main goal of this chapter was to discover where the flow of fear stems from: does it come from the government or the masses? Just like the thinkers in the philosophical foundations section, public opinion scholars generally argue that the government holds the reins of public opinion. The government, thus, can foment fear generally as it sees fit. But, this statement comes with a few caveats. First, the masses, as Sobel shows, constrain government action. Democratic governments usually pay attention to mass opinion out of, in the least, a desire to stay in power. Therefore, the narrative of a monolithic government imposing its views on a simple-minded public does not pass muster. There is some interplay between the government and the masses. Second, as Feaver and Gelpi and others exhibit, neither elites nor the masses are monolithic. They are both divided into factions. This leads to the third point: Zaller's supposition that

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[238] See Mill's "On Liberty" in, for example, Mill, John Stuart, *On Liberty and Other Essays* (Oxford, UK: Oxford University Press 1991).

when elite consensus exists, the masses will follow. But, when elites are polarized, the masses will divide along ideological lines. Finally, though these scholars show that the government does care, sometimes deeply, about what the public thinks, the public's views are plagued by limited information and perhaps even disinformation.

So, what is the affect of these experts' views on the theory proposed in chapter one? First, as Zaller emphasizes, the causal arrows normally go from elite-to-mass. The public opinion and risk analysis literatures show fairly clearly that government shaping happens almost immediately after an event occurs. Thus, government shaping, particularly by the executive, drives the post-terror attack dynamic. However, the government is constrained by the level of mass fear and by other public opinion factors, which include both approval of the government and mass fears. This is why I write below: "Executive Shaping x Mass Fear/ Public Opinion." This formulation is meant to show that mass fear levels and public opinion both constrain and fuel government action due to the government's desire to follow public opinion and its need to have public support. Though public opinion can act as a fuel for government action, the executive is firmly in control of shaping where that fear is directed. Thus, executive threat-shaping stands as the independent variable.

Further, political constellations, meaning the party in power and democratic institutional structure (presidential or parliamentary), help determine how the threat will be shaped by the executive. The constellation variables will be studied more closely in the case-study chapters. Mass fear/public opinion and political constellations act as constraints, which help determine how executives will shape the threat. Next, ideological

opponents chime in as an intervening variable, trying to put brakes on the executive's framing scheme.

Ideological opponents can create counter-currents of information that serve to divide mass fears and public opinion generally, breaking down the "rally 'round the flag" effect that initially transpires. Their criticism of the executive leads him to adjust his threat shaping, push his claims more strongly, or appeal differently to the masses. I focus on the ideological opponents that exist within government and thus dub this variable "Legislative Opposition." Finally, legislation is passed and laws are enforced that abridge civil liberties. Absent legislative opposition, as we saw in the period immediately proceeding 9/11, these laws will be enacted much more easily.

In summary, the model below begins with a crisis: a terrorist attack. The executive, next, decides how (or if) to respond legislatively to the attack and chooses a threat-shaping strategy to forward his agenda. The executive is constrained, however, by a number of factors. Foremost is the legislature, which acts as the intervening variable. Legislative opposition can lead to more executive threat-shaping so as to garner legislative support. The executive is further constrained by public opinion and political constellations.

A Model of How Civil Liberties are Abridged after Terrorist Attacks:

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┌────────┐   ┌──────────────┐   ┌──────────────┐   ┌──────────────┐
│ Crisis │──▶│  Executive   │──▶│ Legislative  │──▶│ Passage of   │
└────────┘   │  Response &  │   │ Support      │   │ Legislation  │
             │  Threat      │   │ (Int. V)     │   │ (DV)         │
             │  Shaping     │   └──────────────┘   └──────────────┘
             │  (IV)        │
             └──────────────┘
                                ┌──────────────┐   ┌──────────────┐
                 x              │ Legislative  │   │ Enforcement  │
                                │ Opposition   │   │ of Previously│
             ┌──────────────┐   │ (Int. V)     │   │ Passed Law   │
             │  Mass        │   └──────────────┘   │ (DV)         │
             │  Fears/Public│                      └──────────────┘
             │  Opinion     │
             └──────────────┘

                 x

             ┌──────────────┐
             │  Political   │
             │  Constellations│
             └──────────────┘
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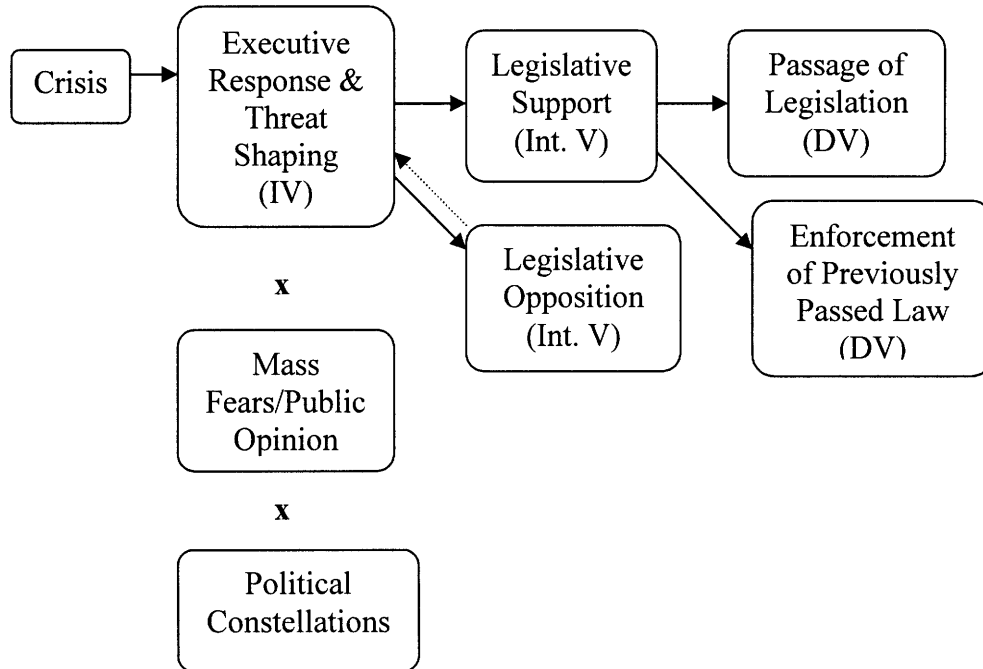
This dissertation will focus on testing and refining the above model, since the goal of this study is to decipher the determinants of the variation in how governments react to terrorism. In the next chapter, public opinion dynamics will be looked at more closely.

Conclusion

In this literature review, fear was looked at philosophically and logically, as rooted in the government and as rooted in the masses. The conclusions that I draw from this review follow. First, the political philosophy and public opinion literatures generally point to fear as being a top-down phenomenon. The power of the government to invade people's lives and shape their fears is generally seen to be much greater than the power of the masses to drive societal fear. Since the rational choice literature bases its explanations upon the behavior of individual actors, it provides a good window into the micro-foundations of fear. However, this literature does not do a good job of explaining

how terrorism-inspired fears envelope the masses. That said, though this study will be focused on fear at the macro-level, the insights of rational choice theorists will certainly prove helpful in explaining the roots of mass fear. Second, neither the government/elite nor the public/mass are monoliths. Both can be divided in various ways. For this reason, I present my model with the executive and legislature divided. I also argue that though the masses may be more or less unified immediately after terrorist attacks, they will split, as Zaller establishes, along partisan lines when elites do. Consequently, the third point is that political constellations—particularly, the composition of the legislature and the level of party competition[239]—are very important to explaining the behavior of both elites and the masses. They are important not only because partisan divides frequently map neatly over ideological ones, but also because different parties have different reputations and, I hypothesize, will react differently to threats[240]. Finally, fear of the other and group polarization help explain why minorities are frequently targeted after terrorist attacks and during wartime in general. In a study that seeks to find the roots of reductions in the civil liberties, fear of the other is an important psychological concept to bear in mind.

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[239] This point will be examined and buttressed in Chapters Four and Six.

[240] This hypothesis is proven false in later chapters as well as in Berinsky, Adam. *Beyond the Water's Edge?: American Public Opinion from World War II to Iraq*. (Chicago: University of Chicago Press, forthcoming 2008), see chapter 3 on partisan structure of war support. The discussion on the debates surrounding the decision to bomb Kosovo in 1999 is particularly telling.

Chapter Three

Shaping Fear: The Role of Mass Fear in Civil Liberties Reductions after Terrorist Attacks

This study seeks to explain variation in domestic, legislative responses to terrorist attacks. The previous chapter concluded that mass fears are driven mainly by the top-down machinations of elites. This chapter will examine the role of the public further. To this end, I have posited that terror attacks result in a wave of mass fear that can be shaped by shrewd government chief executives to pass civil liberty-reducing counterterror law. This supposition assumes that after terror attacks, executive approval ratings spike, mass fear levels rise, and public willingness to trade liberties-for-security grows. In this chapter, all of these assumptions will be tested.

How is the public affected by terrorist attacks? Numerous scholars have posited that the public typically overreacts to threats[241], others contend that the public is rational in its opinions[242]. In this chapter, public opinion's role in post-terror attack civil liberty abridgements will be uncovered. The chapter begins with a look at public opinion and mass fear's role in this study's overarching theory. The second section will discuss the value of opinion polls and the type of testing that will be useful for this study. The third

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[241] For example, see Mueller, John. *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them.* (New York: Free Press 2006) and Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime From the Sedition Act of 1798 to the War on Terrorism.* (New York: WW Norton & Co. 2004).

[242] For example, see Nacos, Brigitte L. *Terrorism and the Media: From the Iran Hostage Crisis to the World Trade Center Bombing.* (New York: Columbia University Press 1994) and Page, Benjamin I. and Robert Y. Shapiro. *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences.* (Chicago: University of Chicago Press 1992).

section will provide a model of how opinion affects government. Based on this model, I derive a few hypotheses about how public opinion should behave after terrorist attacks. The chapter will end with hypothesis testing using survey results followed by a conclusion.

The purpose of this chapter is threefold. First, it aims to construct a model for how public opinion constrains and fuels the chief executive's actions after terrorist attacks. This model will then be tested by looking at measures of trust in government, willingness to cede civil liberties, levels of mass fear after terrorist attacks, and approval of the executive from Israel, the United Kingdom, and the United States over time. Second, it seeks to display how opinion dynamics play out after terrorist attacks. Specifically, I am interested in whether higher fear levels provide the chief executive with a higher degree of agency, how fear levels decay over time, and whether larger attacks yield higher levels of fear as measured by public opinion polls. The same country cases will be used in testing these hypotheses. Finally, the chapter seeks to show that public opinion cannot fully explain post-terror attack legislative responses. This is because legislative responses and executive action do not always coincide with public demands for action. As established in chapter two, and buttressed in the case-study chapters, executives can also effectively manipulate public opinion.

In the end, it will be shown that public fear levels jump up after terrorist attacks and that this jump is concomitant with a demand for action. The public is also more willing to cede liberties after attacks. These factors create an opportunity for the executive to act. However, public fears and the willingness to trade liberties-for-security fade, or decay, over time, thus eventually constraining executive action. In general,

public opinion polls aggregated in this chapter will show that after terrorist attacks, a window of opportunity for executive action is created by a public demand for action, the public's willingness to cede liberties, and heightened mass fear levels. That said, as the charts below exhibit, rallies 'round the leader are not automatic, mass fear levels are hard to operationalize, and public willingness to trade liberties for security largely amounts to a willingness to curtail the rights of minorities. Further, spikes in all of these factors are short-lived, even in cases where legislation is not passed, thus making rapid executive action after terror attacks troubling.

Public Opinion's Role in the General Theory

This chapter focuses on the masses' role in the process that leads to civil liberty curtailments. Here the concept of mass fear will be measured by looking at the percentage of people in a given country fearful of terrorism. Thus, it is not the presence of mass fear that will be important but what the *level* of mass fear is, that is the percentage of people fearful of terrorism, in a given society. More specifically, fear trends will be looked at, so that the *change in mass fear levels* after terrorist attacks will be of utmost importance. Specific polls will get at mass fear in different ways, some look at individuals' fears of becoming terror victims while other polls examine the salience of terrorism in the public's mind by measuring individuals' perceptions of the likelihood of future terror attacks.

During a crisis or emergency, public fear rises to extremely high levels. People become afraid to engage in their normal daily activities. When anxiety and terror reach a

peak, the public looks to a leader to unite behind, thus creating an *opportunity* for

executive action[243]. Indeed, as John Mueller has found, the "rally 'round the flag" effect

typically provides an increase in support of the chief executive after important

international events[244]. Further, as Timur Kuran and Cass Sunstein write, "Public

officials know that they might be severely punished for downplaying a risk that is

perceived as serious. ... To avoid charges of insensitivity, even to avoid having to justify

an unpopular position, [an official] may make speeches and promote policies that convey

deep concern about the very waste spill that he actually considers harmless"[245].

Though mass fear is an important component of this theory, the masses cannot

actually forward policy. Thus, executive threat-shaping is the independent variable in

this study for executives have the opportunity to explicate policy directions after

emergency events. However, just as executives are given an opportunity by public fears,

they are also constrained by the feelings of the public. If the public does not feel that a

given threat still exists, then over time it will lose faith in an executive that continues to

prosecute that threat. Without public approval, the executive's power will be limited and

the potential for legislative opposition will increase.

Recall that the executive is constrained by two broad factors: political

constellations (which will be examined in future chapters) and public opinion. Once the

executive gets involved in threat-shaping, public fear levels and opinions both constrain

and fuel the executive's actions. I use the term public opinion rather than mass fear

because public opinion contains more aspects than simply mass fear. Specifically, it

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[243] This dissertation will argue that executives need not capitalize on this opportunity, further proof of executive action and response being the independent variable.
[244] Mueller, John E. *War, Presidents and Public Opinion*. (New York: John Wiley & Sons, Inc. 1973), pg. 208.
[245] Sunstein, *Risk and Reason*, pg. 90.

includes willingness to cede liberties and approval of the executive, both of which are essential to the executive passing curbs on liberties. The executive can be constrained by both the public's approval level of the job he is doing and by the public's feelings of threat. If the public does not feel threatened by terrorism and/or does not view the executive's counterterrorism practices as successful, then the executive's agency will be constrained. Why is this so? First of all, the public could vote out the executive's party or vote out the president. If elections are far away, then public support and fear levels are still important because public support provides a mandate for executive action. Further, the public's opposition to the executive could manifest itself in legislative opposition to the executive. In proportional-representation systems, votes of no-confidence and the holding of new elections are likely when the ruling party loses the public's favor. For these reasons, public opinion is an important constraint on executive action. Public opinion theory will be further discussed in a later section.

The chief executive is also fueled by positive opinions of his job performance and his government[246]. High fear levels, a willingness to trade liberties for security and high approval ratings after terrorist attacks grant the executive a great opportunity to act with wider agency than he is regularly afforded. Of course, as argued above, opinion is a two-way street, it can create opportunity but it also can act as a constraint.

The Value of Public Opinion Polling

The hypotheses proposed below will be tested using public opinion trend analysis. For all their warts, public opinion polls provide our best window into the feelings of mass

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[246] I use "his" here, rather than "her" because, for better or worse, the vast majority of executives in democracies have been male.

publics. Since this study looks at the reactions of national governments to terrorist

attacks, more micro-level or fine-grained methods would not suffice as metrics. In this

section, I will go over the theory behind public opinion polls. What can they measure?

How can they capture the fear of a given populace?

Why opinion polls? Opinion is essential to terrorism specifically because

terrorists' *modus operandi* is to draw attention to their cause via spectacular attacks[247].

Typically, terrorists seek to gain favorable world opinion by drawing attention to the

plight of their national or religious group. Conversely, they try to drain approval from

democratic governments in order to either affect democratic elections[248] or gain

concessions from the democratic country[249]. Opinion, thus, is a crucial component of the

interaction between democracies and terror groups.

The Value of Public Opinion

Ole Holsti divides the political science literature's views on the capacities of the

public into two camps: liberals and realists. Liberals, such as Jeremy Bentham, believe

that public opinion should strongly inform "legitimate and effective public policy"[250].

Immanuel Kant held that public opinion could act as a great restraint against unnecessary

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[247] As Brian Jenkins has proffered, "Terrorists want a lot of people watching, not a lot of people dead" (Jenkins, Brian Michael. "The Future Course of International Terrorism," *The Futurist*, July-August 1987, http://www.wfs.org/jenkins.htm).
[248] Examples include the election of Binyamin Netanyahu in 1996 and the Spanish election after the 2004 Madrid bombing.
[249] See Pape, Robert A. *Dying to Win: The Strategic Logic of Suicide Terrorism*. (New York: Random House 2005).
[250] Holsti, Ole R. *Public Opinion and American Foreign Policy*. (Ann Arbor, MI: University of Michigan Press 2004), pg. 3.

war-making, as a result making the republic form of government more peaceful[251].

Realists, with their pessimistic view on human nature, "usually describe public opinion as a barrier to any thoughtful and coherent foreign policy, hindering efforts to promote national interests that may transcend the moods and passions of the moment"[252]. To this end, the authors of *The Federalist Papers* believed that the Senate would be better suited to handling foreign affairs than the House of Representatives[253]. For his part, Alexis de Tocqueville contended that public opinion hindered effective policymaking in democracies because it led "'democracies to obey impulse rather than prudence'"[254].

Initial social science research on public opinion in the twentieth century sided strongly with the realists. As Ole Holsti writes, the consensus in the two decades after World War II described public opinion "not only as ignorant about international realities but also as volatile, reflecting unstable moods of the moment rather than an understanding of international realities as well as lacking structure of coherence"[255]. Indeed, Walter Lippmann asserted in *Public Opinion* that, "the common interests very largely elude public opinion entirely, and can be managed only by a specialized class whose personal interests reach beyond the locality"[256]. Lippmann would later write that, "When mass opinion dominates government, there is a morbid derangement of the true functions of power. The derangement brings about the enfeeblement, verging on paralysis, of the capacity to govern"[257]. Moreover, the American founders themselves in *The Federalist Papers* worried about that the "passions and 'temporary errors and

[251] Holsti, *Public Opinion and American Foreign Policy*, pg. 4.
[252] Holsti, *Public Opinion and American Foreign Policy*, pgs. 5-6.
[253] Holsti, *Public Opinion and American Foreign Policy*, pg. 6.
[254] Holsti, *Public Opinion and American Foreign Policy*, pg. 7.
[255] Holsti, *Public Opinion and American Foreign Policy*, pg. 22.
[256] Lippmann, Walter. *Public Opinion*. (New York: MacMillan 1922), pg. 310.
[257] Lippmann, Walter. *The Phantom Public*. (New York: Harcourt Brace 1925), pg. 15.

delusions'" of the public[258]. Philip Converse, in his 1964 article "The Nature of Belief

Systems in Mass Publics" further found that only about 17 percent of the people he

polled had "an accurate understanding of liberal-conservative distinctions"[259].

More recently, however, modern liberals have sought to reclaim the importance

and coherence of mass opinion. Benjamin Page and Robert Shapiro's *The Rational*

Public exhibits that public views are stable over time and that the public's opinions are

rational and events-driven[260]. Page and Shapiro, through an analysis of decades of US

public opinion research on myriad topics, show that the collective public is rational, its

opinions are stable and that it responds sensibly to events. The authors wrote their book

in an attempt to salvage democratic theory from scholars who have traditionally looked

down on the public as irrational and uninformed. After all, if such accusations are to be

taken seriously, then the public is not fit to govern. James Madison proposed the

formation of the US Senate in Federalist 63 because, "there are particular moments in

public affairs when the people, stimulated by some irregular passion, or some illicit

advantage, or misled by the artful misrepresentations of interested men, may call for

measures which they themselves will afterwards be the most ready to lament and

condemn"[261].

Page and Shapiro show that public opinion, far from being irrational and useless,

is largely stable when taken as a collective. That is, though individuals may be

misinformed about certain issues when surveyed and may in fact change their opinions

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[258] Page, Benjamin I. and Robert Y. Shapiro. *The Rational Public: Fifty Years of Trends in American's' Policy Preferences.* (Chicago: University of Chicago Press 1992), pg. 3.
[259] Converse, Philip E. "The Nature of Belief Systems in Mass Publics" in Apter, David E. ed., *Iideology and Discontent,* (New York: Free Press 1964), pg. 215.
[260] See Page and Shapiro, *The Rational Public.*
[261] Rossiter, Clinton ed. *The Federalist Chapters.* (New York: Mentor Books 1961), pgs. 350-8.

frequently, the public as a whole exhibits stable and rational opinions that are not random. This is an important point since this study largely looks at the collective public. One way that the authors show the stability of public opinion is simply by using graphs that chart opinion changes on a y-axis that ranges from 0-100, rather than the truncated y-axis used by many polling agencies and studies that exaggerates public opinion changes.

Page and Shapiro find that the one group of publics that typically show divergent changes in opinion are Democrats, Republicans and Independents. Bolstering my theory, Page and Shapiro believe that, "Such divergent partisan trends are undoubtedly related to party leadership of public opinion"[262]. Divergent opinion change means opinion change between two publics diverges over time, as one group sours on an issue the other continues to find it favorable. Divergent opinion change is strongly exhibited in studies on support for the Vietnam and Iraq Wars[263].

Liberals public opinion scholars hold that public opinion shifts have been due to situational changes that actually speak to an aware public. John Mueller supported the liberal position when he induced that, "increasing public opposition to [the Vietnam and Korean Wars] followed a pattern that matched a curve of rising battle deaths, suggesting that public used an understandable, if simple, heuristic to assess American policy"[264]. Further, as Brigitte Nacos argues, though "polls reveal frequent opinion changes with respect to American anti- and counterterrorist policies," "apparent fluctuations and reversals in Americans' collective opinions are rational responses to changing

[262] Page and Shapiro, *The Rational Public*, pg. 309.
[263] Zaller, John R. *The Nature and Origins of Mass Opinion.* (Cambridge, UK: Cambridge University Press 1992), pg. 103; Toner, Robin and Jim Rutenberg. "Partisan Divide on Iraq Exceeds Split On Vietnam," *The New York Times*, 30 July 2006.
[264] Holsti, *Public Opinion and American Foreign Policy*, pg. 46.

developments and information"[265]. Here I side with the revisionists liberals: I feel that

public opinion does change with changing circumstances and that it is a valuable tool.

The Role of Opinion in Government

So what is the importance of public opinion in this study? Richard Sobel finds

that, "public opinion constrains, but does not set, American foreign intervention policy.

In other words, the public's attitudes set the limits within which policymakers may

operate"[266]. This follows from VO Key's theory that public opinion works as a "system

of dikes that channel the flow of public policy. Public opinion, in this model, does not set

policy but instead is capable of setting the range or limits of policy"[267].

Further, presidential popularity also plays an important role in influencing

policymakers. "Presidential popularity as political capital undergirds congressional

support," Sobel writes. Further, support of the president colors the entire "climate of

opinion that generally constrains policy"[268]. Zaller agrees that, "a popular president

backed by a unified Washington community can have a powerful effect on public

opinion, especially that part of the public that is most attentive to politics"[269].

Zaller concludes that, "public attitudes toward major issues are a response to the

relative intensity of competing political communications of those issues." Thus when

elites are united behind an issue, "the public's response is relatively nonideological, with

the most aware members of the public reflecting the elite consensus most strongly."

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[265] Nacos, *Terrorism and the Media*, pg. 14.
[266] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 5.
[267] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 10.
[268] Sobel, *The Impact of Public Opinion on US Foreign Policy*, pg. 15.
[269] Zaller, *The Nature and Origins of Mass Opinion*, pg. 97.

However, "When elites come to disagree along partisan or ideological lines, the public's response will become ideological as well, with the most politically aware members of the public responding most ideologically"[270].

How Public Opinion Will Be Measured

The main method employed here for measuring public opinion dynamics is a more permissive version of trend analysis. Trend analysis seeks to make opinion comparisons over time, thus looking at opinion trends, by comparing responses to the same question asked at various time periods. Trend analysis "can work because, whatever problems there may be in the way a question is worded, these remain constant and, usually, one can reasonably discuss any changes over time in the response percentages"[271].

Such a method is necessary because survey respondents are "very sensitive" to question wording and context[272]. For example, "a question about political policy is more likely to get polarized reactions from Democrats and Republicans if a reference to a particular political personality or party is included in its wording"[273]. Further, a 1941 poll found that "46 percent of the population were in favor of 'forbidding' public speeches against democracy while 62 percent were in favor of 'not allowing' such speeches"[274]. There are two conclusions to draw from this: one, that it is nearly impossible to say with a great degree of certainty that one knows what the public's opinion on a subject really

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[270] Zaller, *The Nature and Origins of Mass Opinion*, pg. 210.
[271] Mueller, John. *Policy and Opinion in the Gulf War*. (Chicago: University of Chicago Press 1994), pg. 6; Page and Shapiro, *The Rational Public*, pg. 39.
[272] Mueller, *Policy and Opinion in the Gulf War*, pg. 1.
[273] Mueller, John E. *War, Presidents and Public Opinion*. (New York: John Wiley & Sons, Inc. 1973), pg. 11.
[274] Mueller, *Policy and Opinion in the Gulf War*, pg. 2.

is[275], and, two, that analyzing repeated questions that contain the exact wording is the best method for making substantive public opinion comparisons[276].

There are still problems with trend analysis. Polling agencies tend to flock to the hottest topic of the day, making good trend data rare[277]. Agencies change and drop questions frequently, many times in an effort to "improve" question wording[278]. Mueller also warns that one must be careful to check whether any of the words in the survey question have substantially changed in meaning, and I would add significance[279].

Given the problems of finding sufficient trend data, I will deviate from the ideal of using only studies that employ the same, exact-wording. Where possible, I will employ trend analysis strictly, but I will also use data from surveys with similar question wordings to fill in gaps in data where possible so as to create a fuller picture of public opinion trends. This practice is common among public opinion practitioners given the issues with trend analysis[280].

Modeling Fear

This chapter focuses on mass fears, which act as a continuing constraint on executive action. To begin this chapter, it is important to model how public fears yield executive action. After an attack occurs, the executive has the opportunity to shape the threat and act accordingly. He can minimize the threat or harp on it. Some executives change course drastically when faced with a crisis and others deal with it in due course.

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[275] Mueller, *Policy and Opinion in the Gulf War*, pg. 3.
[276] Mueller, *Policy and Opinion in the Gulf War*, pg. 6; Page and Shapiro, *The Rational Public*, pg. 39.
[277] Mueller, *Policy and Opinion in the Gulf War*, pg. 7; Page and Shapiro, *The Rational Public*, ch. 2.
[278] Mueller, *Policy and Opinion in the Gulf War*, pg. 7.
[279] Mueller, *War, Presidents and Public Opinion*, pg. 12.
[280] See, for example, Huddy, Leonie, Nadia Khatib, and Theresa Capelos. "The Polls—Trends: Reactions to the Terrorist Attacks of September 11, 2001," *Public Opinion Quarterly* 66 (2002), pgs. 418-450.

The chief executive has wide agency in determining what the public fears. That said, the public could be fearful of an issue that the executive has not yet considered, and the executive can push the public to fear things that it does not yet deem harmful. For example, the executive can foment fears about a given topic through speeches. The executive may believe that topic X is of great threat to the people. For sake of clarity, let's say that X is a fatal disease that could affect America soon but has not yet. The executive believes that X is an important issue, but it does not resonate with the public for whatever reason. The various publics that compose the electorate are concerned about their own pet fears be they global warming, nuclear arms, or frankenfoods. In order to raise awareness of X, the executive makes speeches to underline the importance of combating the new disease. In essence, he foments fear. He describes the disease to the public, introducing it to a horrible and terrifying new way to die. He tells the public that X may not be in America now, but it's arrival could be imminent. He announces that funding is needed to combat X.

Mass fear and executive-threat shaping, thus, work together. The executive needs the masses to fear a threatening issue sufficiently for them to demand action. When the masses fear X, they will demand that their legislators' vote for the funding that will purportedly eradicate X, or at least sufficiently reduce the risk involved with it.

A terrorist attack, however, works differently than an as-yet-unheard-of disease. The attack is meant to terrorize the public and, if it succeeds, the demands for action from

the government will be immediate. No one in government needs to tell the public that terrorism is to be feared: they already know about the attack from the media, word-of-mouth or personal experience. In turn, I hypothesize that the public will demand action for the crime committed, and thus provide the executive with a window of opportunity to make sometimes drastic change in the country through new legislation and enforcement of laws. The question that will be dealt with below is whether all attacks yield the same opportunity for the executive.

In sum, the executive draws power from the public while the public's opinions are informed by the chief executive. That is, when the public approves of the executive, he has greater latitude to act as he sees fit and thus greater agency to shape threats accordingly. The first chart here graphs how the executive draws power to shape threats from the public. The executive gains power to shape threats and execute his strategies as willingness to cede liberties, public fear levels, trust in government and approval of the executive rise.

Chart One. How The Chief Executive is Affected by Public Opinion.
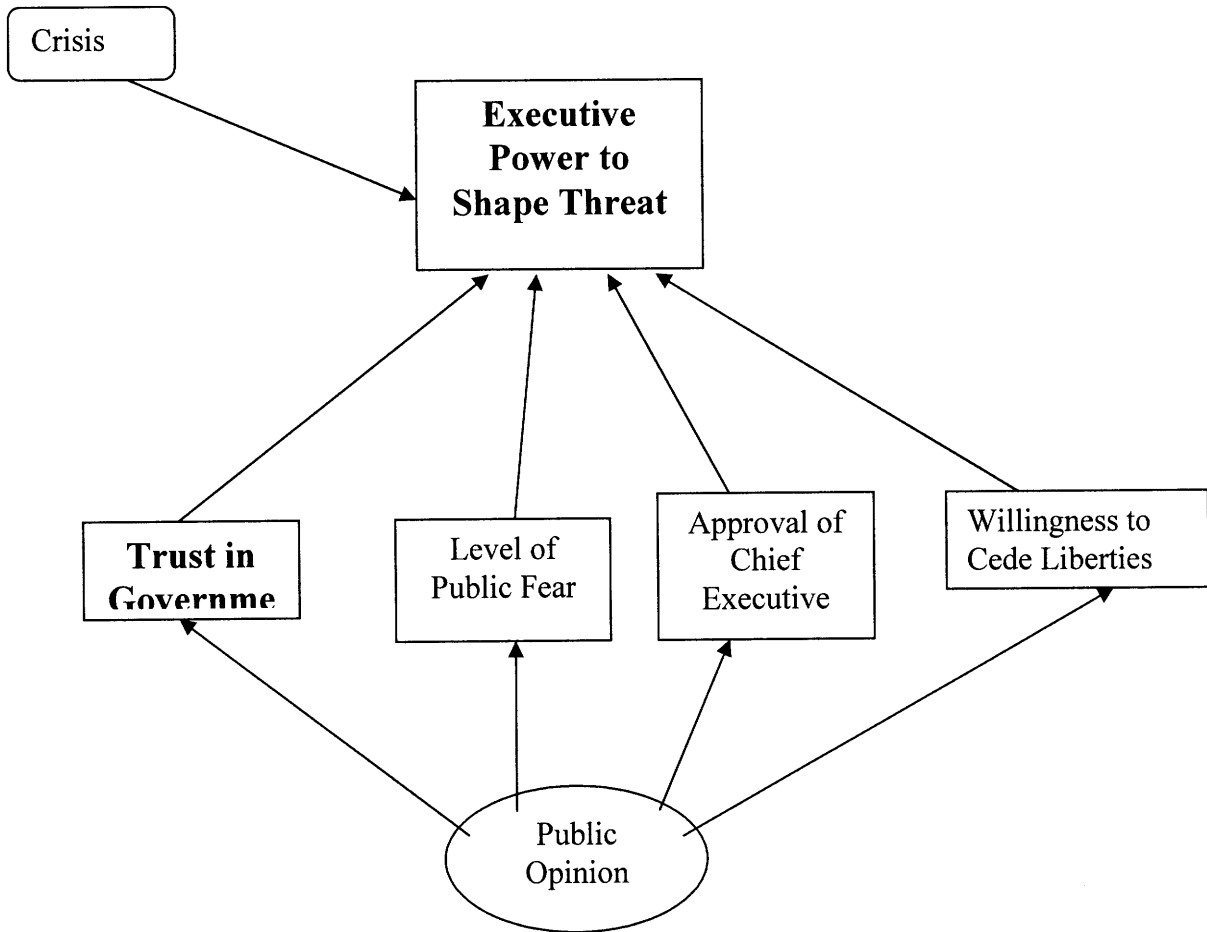
On the flip side, the chief executive has the power to move opinion through "threat-shaping," that is through making statements regarding the threat. These statements could include nightmare scenarios, statements about the magnitude of the threat, conflict framing, and even statements of what groups to tolerate. The executive's statements are filtered through the media so that the public only receives mass-mediated snippets from them. The public also receives competing statements from the terrorists themselves and from opposition forces in the legislature. All of these statements combine to affect the public's fear levels, trust in and approval of government, and willingness to cede liberties. However, the executive's statements have the most power in this dynamic. In

this study, though I look closely at opposing legislative statements, I do not look at statements from the terrorists themselves for two reasons. First, typically the executive or his opposition in government will cite these statements in making their appeals for action and so tracking these statements would be redundant. Second, this study seeks to decipher how the government reacts to terror and terrorist threats are cut out to maintain focus on the government's response, though as just stated they are frequently touched on by members of the government.

Chart Two. How the Chief Executive Effects Public Opinion.
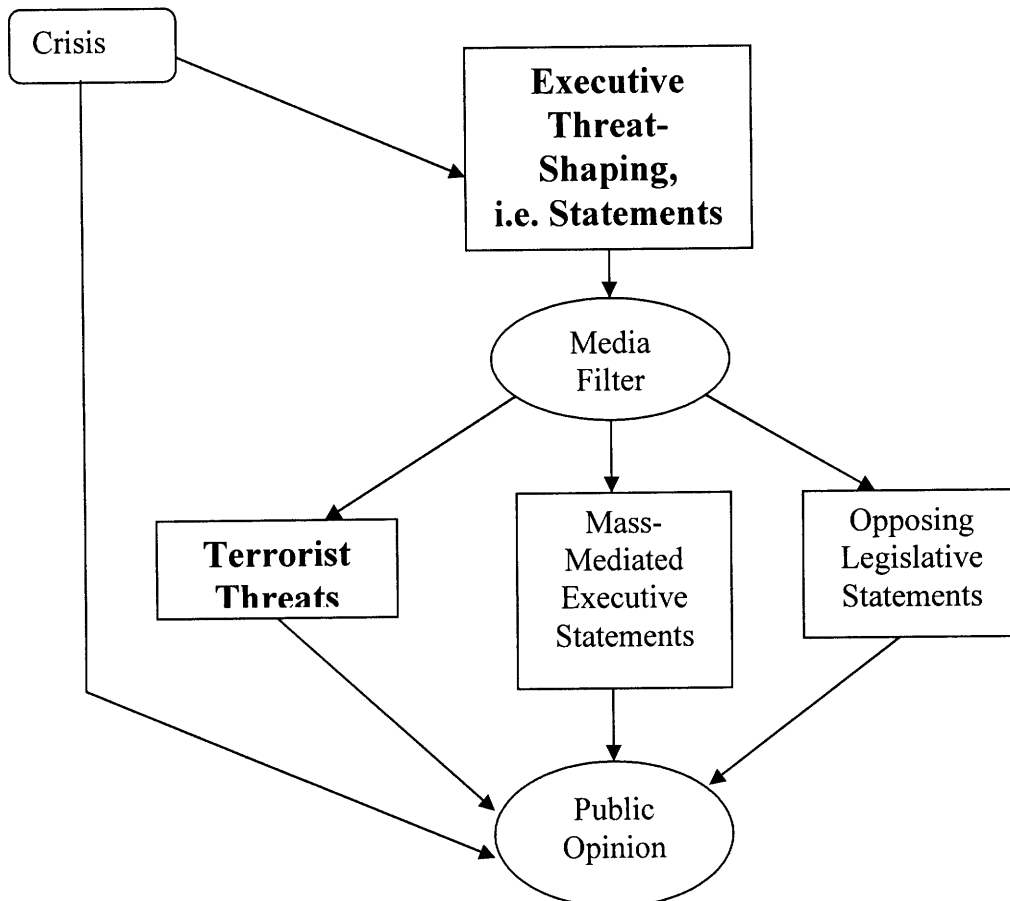
The following section models how mass fear levels should behave after terror attacks. Figure One below displays three curves representing public fear. The first represents high fear, the second medium, and the bottom curve represents low fear. These curves could represent reactions to iterated terrorist attacks, thus showing the decay, or decline, of mass fear levels over time. The first attack yields high fears, but every subsequent attack yields diminishing returns in terms of fear. Though, these attacks could take place within a campaign, they could also represent attacks that are years apart.

Figure One: Low, Medium and High Fear Curves
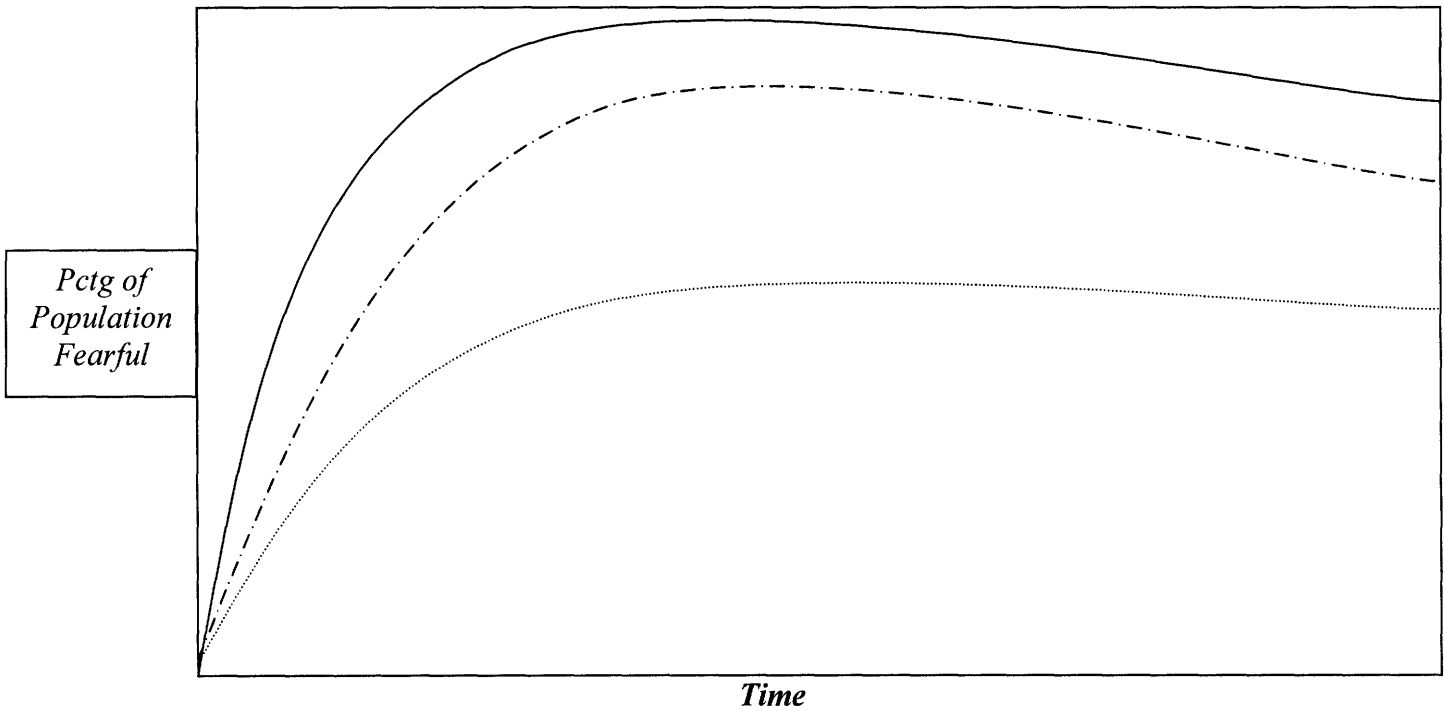
The higher the fear curve, that is the higher percentage of the population that is fearful after a given attack, the greater agency the government and the executive have to shape fear. However, the higher the curve, the more demands on the government for action. Chart Three below displays the level of agency the government acquires from low, medium and high fear curves.

Chart Three: Government Reactions to Low, Medium, and High Fear Curves

	Government Action	*Available Executive Strategies*
High fear curve	Very little constraint on government; action necessary	Shape fear as see fit, wide agency to change law
Medium fear curve	Some constraint on government; moderate public push for action	Some limits on shaping fear, some agency to change law
Low fear curve	Normal amount of constraint on government; action unnecessary	Little leeway to shape fear, normal constraints on changing law

Hypotheses

When a terrorist attack occurs, public fears can be pushed in a variety of directions. Normally, when fear levels are high individuals will look to leaders or experts for guidance. Obviously there are many experts with divergent opinions, but some are respected and listened to more than others. In government, no one has more power to shape public perceptions than the chief executive. I theorize that the executive is spurred by rallies of opinion in his favor and a demand for action. A main hypothesis of this study is that *the greater the opinion in his favor (along the four opinion dimensions graphed in chart one above), the greater agency the executive has to shape threats as he sees fit.* One of the main purposes of this chapter is to show that a window of opportunity opens via a rise in mass fear levels and public support for the executive that grants him greater agency after terror attacks. Though public opinion data show which threats spurred greater fear responses, case studies will be necessary to prove this first hypothesis.

Further, public responses to terror attacks are not uniform. For one, the public may adapt to attacks over time. To this end, I hypothesize that *fear levels decay over time not just within each case but also from case-to-case (H8 below)*. In other words, not only should fear levels drop from month-to-month after a given terrorist attack, but they should also drop faster after the next terrorist attack than they did after the first one. For terror campaigns, the same should happen. Fear levels should jump up between attacks within a campaign, but they should never jump as high as they did when the campaign began. Moreover, a second campaign should see lower fear levels even in the face of greater casualties. In other words, societies should be able to adapt to terror attacks and, thus, fear levels will decay over time. This decay of fear is similar to Roger Petersen's concept of an emotion's half-life. In a discussion of anger, Roger Petersen writes that, "As an event-based emotion it is likely to have a half-life, that is, it is likely to fade over time." He suggests that, "the emotional intensity of anger remains high for many years and then declines at an accelerating rate"[281]. By studying mass fears over time, I will be able to determine whether fear too has a half-life.

To this end, this chapter will also seek to answer the following question: Can an increased casualty-rate from an attack yield higher fear levels, thus reversing the inevitable decay of public fear levels? I posit that the answer is yes and no, a precipitous increase in the casualty-level derived by the attacks can stead the decay of fear levels, even yielding a jump above previously recorded mass fear levels, but fear's decay cannot be wholly reversed. In other words, the general trend will hold: fear levels will go down over time from attack to attack. An especially large attack may yield a significant jump

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[281] Petersen, Roger, "Justice, Anger, Punishment and Reconciliation," Working Chapter Draft, pg. 4.

in fear levels, but the decay of fear levels will continue afterward unabated as society adapts to terrorism.

The discussion has now evolved to the point that some hypotheses can be proffered about how mass fear levels and public opinion will behave and executive threat-shaping will occur after terror attacks. These hypotheses will be tested empirically using public opinion data in this chapter. Again, the goal of this chapter is to operationalize public opinion dynamics after terror attacks. The hypotheses below help organize the discussion, which will proceed in the following section in three parts: the chief executive, civil liberties, and the dynamics of fear.

Hypotheses:

The first two hypotheses, on the chief executive and government, seek to show that the public increases its support for the executive and demands action from him after terror attacks:

H1. After a terrorist attack, the public will demand that the government take responsive action.

H2. After a terrorist attack, the public will rally 'round the chief executive. Trust in government and approval of the president or prime minister should jump up.

The next two hypotheses, on civil liberties, seek to show two things. First, that public willingness to trade liberties-for-security rises after terror attacks. Second, that, in reality, the public wishes to trade the liberties of a chosen few for the security of the majority:

H3. After a terrorist attack, the public will be willing to cede civil liberties for increased security.

H4. When fear levels are high after terrorist attacks the people will say that they are willing to forego civil liberties in exchange for greater security in general. However, when the question is broken down into actual liberties given up, it will be shown that the masses would like to retain their own liberties while curbing the liberties of the minority group that shares the same ethnicity and/or ideology as the attacker(s).

The final five hypotheses seek to operationalize how mass fear levels behave after terror attacks. They seek to show that a spike in fear levels occurs after terror attacks. They also try to get at whether terrorism fears decay over time and whether societies can becoming inured to terrorism:

H5. After a terrorist attack, the public's fear levels will rise to high levels. In other words, there will be a jump in the level to which people feel threatened by terrorism and in how highly the public rates terrorism as an important threat.

H6. The more casualties a terror attack yields, the longer the public's fear levels will stay high and the longer it will approve of government and be willing to cede liberties.

H7. Terror attacks raise fear levels, but they don't all do so in the same manner.

H8. Fear decreases over time both within a terror campaign and from one campaign to the next as the public adapts to the threat level.

H9. However, a marked increase in the magnitude of attacks, measured by casualty-rates, can stead or temporarily reverse the decay of fear levels, but the general trend that fear levels decrease over time and between attacks will hold.

Testing the Hypotheses: The Role of Mass Fear in Responses to Terrorism

This final section tests the hypotheses laid out above using polling data mainly from the US, UK and Israel. The tests will be divided into three categories: the chief executive, civil liberties, and the dynamics of fear. As stated above, a more permissive version of trend analysis will be used to derive findings.

A note on data organization. So as not to break up the text too much and to make accessing charts easy, I include public opinion trend charts at the close of each section. Each chart will be preceded by a short explanation of its contents. Citations appear below each chart along with references to the data they are drawn from, which appears in the appendix. There are three data appendices which include a wealth of polling data on the subjects below and that bolster the findings herein. They are organized into the following categories: the executive and government, civil liberties, and fear and threat.

The Executive

This section tests H1 and H2, which predict that after a terrorist attack the public will demand action from the government (H1) and that it will rally 'round the president (H2). These tests will be conducted using opinion surveys that track demand for action, trust in government, and approval ratings.

John Mueller in *War, Presidents and Public Opinion* finds that presidential popularity ratings decline from year-to-year, yet rallies-'round-the-flag/president do happen "whenever an international crisis or similar event occurs." His study proves the

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rally-'round-the-flag variable to be "a sturdy one and suggest[s] a popular decline of about 5 or 6 percentage points for every year since the last 'rally point'"[282].

It is clear from multiple data sources that George W. Bush saw a huge bump in his popularity after 9/11, but Bill Clinton's approval rating did not jump after the Oklahoma City bombing[283]. In fact, Clinton's approval ratings were mired in the 40-percent range after the 1993 World Trade Center bombing as well as after Oklahoma City[284]. Tony Blair also saw no great jump in his popularity after the London attacks of 2005 (see chart six)[285]. Further, mass fear levels may have helped Bush's approval ratings more than Clinton's as seen by the charts below.

When we look at government confidence ratings (charts four and five), a similar pattern emerges. There is a jump in Americans who feel a great deal of confidence in government after 9/11, but after the '93 and '95 terror events confidence was at no great high. Israelis did not view government as performing any better during the Al-Aqsa intifada either.

A demand for action seems to occur after terror attacks, and this demand will be further bolstered by the civil liberties data in the next section. The existence of action bias is corroborated by Thomas Downes-Le Guin and Bruce Hoffman who conducted a survey of the public's views on terrorism from 1988-89. They found that a strong

[282] Mueller, *War, Presidents and Public Opinion*, pg. 240.
[283] Holland, Keating, "Clinton Approval Rating at All-time High," 17 Jan. 1997, http://www.cnn.com/ALLPOLITICS/1997/01/16/poll.clinton/.
[284] ABCNews, "Poll: Good Job by Bad Boy President," 17 Jan. 2001, http://abcnews.go.com/sections/politics/DailyNews/poll_clintonlegacy010117.html.
[285] For more on Bill Clinton and Tony Blair's experiences with trying to pass post-terror legislation see Chapter Six.

majority supported the government acting in response to terrorism "even if it is not very effective"[286].

The findings for the first two hypotheses are mixed. Previous works seem to prove a rally 'round the president and an increase in government trust after major crises, but perhaps terrorist crises are different in that they can undermine the public's confidence in government. It seems that a large event like 9/11 gives a boost to authority figures, but that smaller terrorism incidents do not. The charts below show that approval of government performance does not rise after all terror incidences, thus weakening the claim made in H1, but the charts in the civil liberties section bolster hypothesis 1 by showing that the public is willing to trade liberties for security after terror attacks. While the charts in this section show that the public provides the executive with an *opportunity* to act through (sometimes) increased approval or confidence ratings, the charts in the next section showing public willingness to cede liberties for security support the claim that the public demands executive action after terror attacks. Further, the findings in chapter two and in future chapters, as well as Downes-Le Guin and Hoffman data, supports this claim. My conclusions are that the public demands executive action after terror attacks happen (H1- true), which will be proven further in the next section, but that there is not necessarily a rally 'round the executive after attacks nor a jump in trust in government (H2-false). Other factors seem to be more determinative in whether or not the public trusts the government and approves of the executive.

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[286] Downes-Le Guin, Thomas and Bruce Hoffman, *The Impact of Terrorism on Public Opinion, 1988 to 1989.* (Santa Monica, CA: RAND 1993), pg. 19.

Chart Four:

This chart shows Israelis' evaluation of government performance. Government ratings are actually lower in the major years of the second intifada (2002 and 2003). Thus, a rally for the government during periods of terror is not supported by this chart.

Israelis' Evaluation of Government Performance
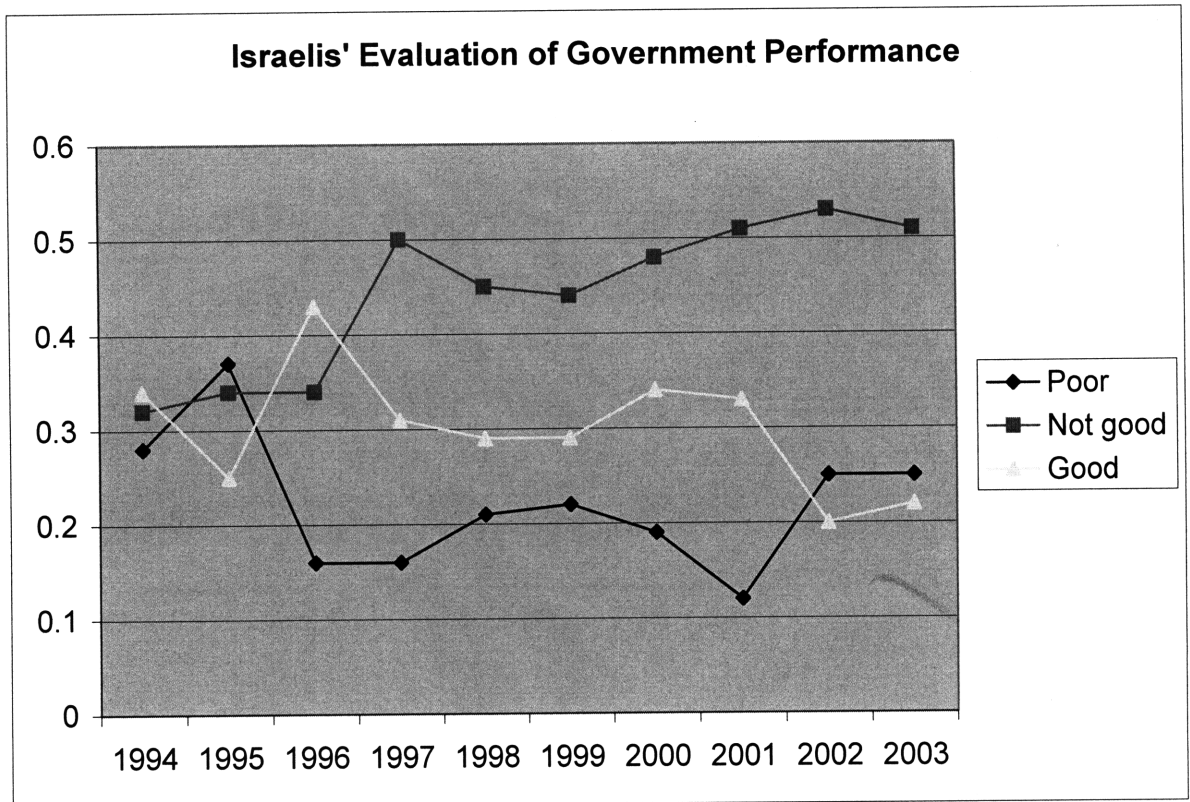
Citation: Data comes from polls by Asher Arian asking Israelis to evaluate their governments' performance. Data from these polls is published in the "Israeli Public Opinion on National Security 2003" (and other annual volumes) by the Jaffee Center for Strategic Studies at Tel Aviv University.

Chart Five:

This chart looks at Americans' confidence in government, which jumped after the 9/11 attacks (see the great amount figures) and after the first World Trade Center bombing in 1993 (see the bump in good amount figures). However, the Oklahoma City bombing did not produce a rise in confidence in government among Americans.

Americans' Confidence in the Government

Legend:
- a great deal
- a good amount
- only a fair amount
- none at all

X-axis: Mar-89, Apr-95, Jun-95, Jun-97, 11/5-6/01, 1/24-27/2002, May-02, Jul-02, 3-Sep, 9/8-11/05, 9/5-7/06
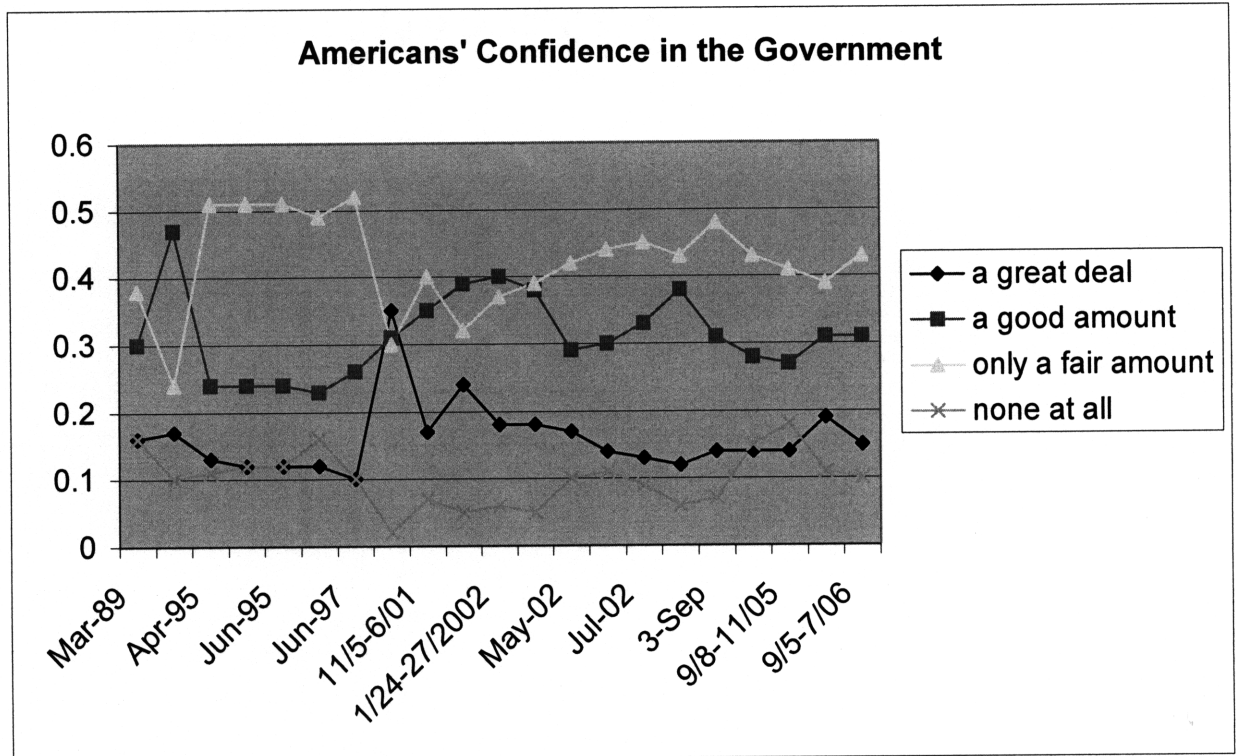
Citation: Data from mainly ABC News polls asking Americans, "How much confidence do you have in the US government to prevent further terrorist attacks against Americans in this country?" (See Question 9 in appendix on executive approval rating).

Here we see that Tony Blair's approval ratings spiked after the 9/11 terror attacks, but did

not after the July 7 London Bombings.

Blair: Approval Rating 1997-2007
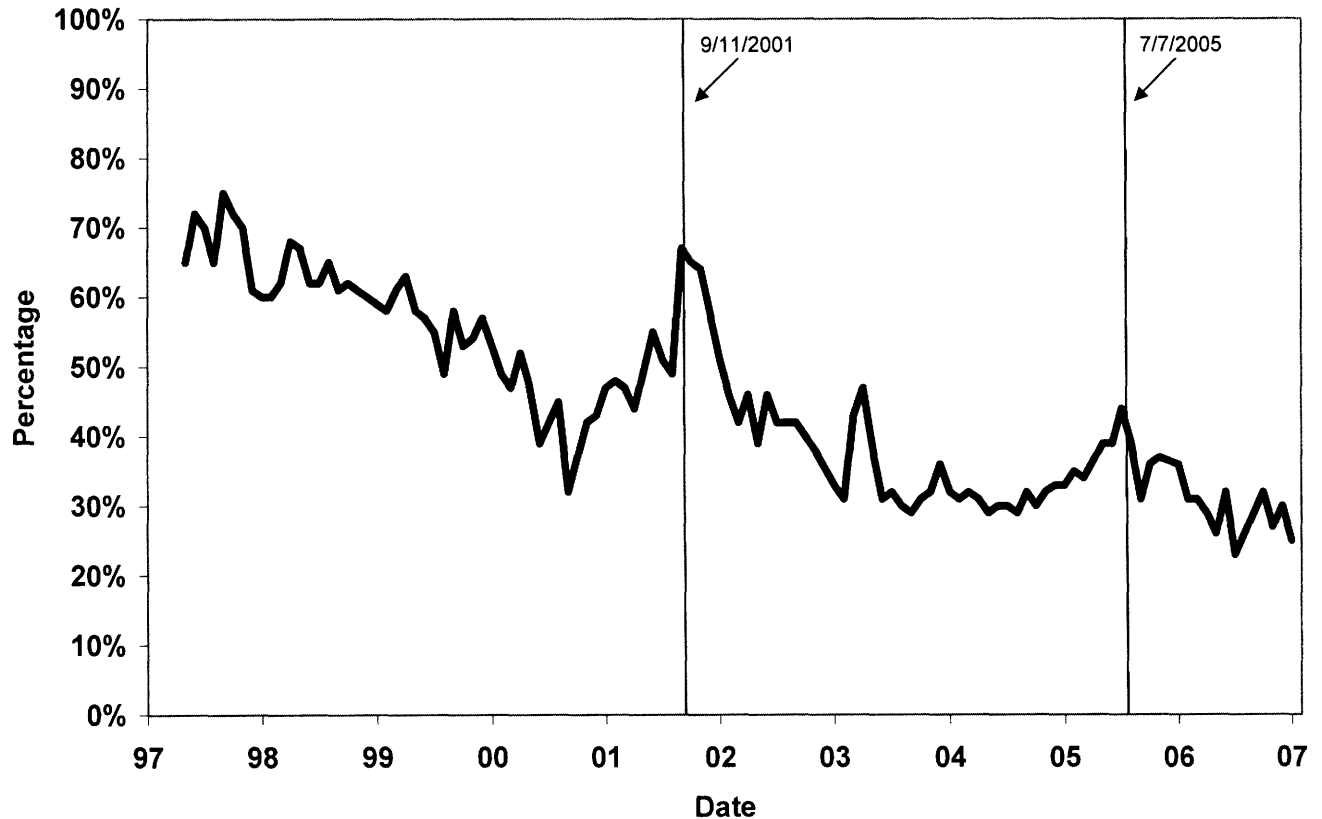
Citation: Data from IPSOS/MORI polls asking Britons whether they approve or
disapprove of the job Tony Blair was doing as prime minister. (See Question 17 in data
appendix on executive approval ratings).

Chart Seven:

Here mass fear levels are compared with Bill Clinton's presidential approval ratings. In some instances, his approval ratings rise with mass fear levels, but in most the two metrics diverge. The chart clearly shows that high fear levels do not necessarily yield high approval ratings.

Clinton Approval vs. Fear
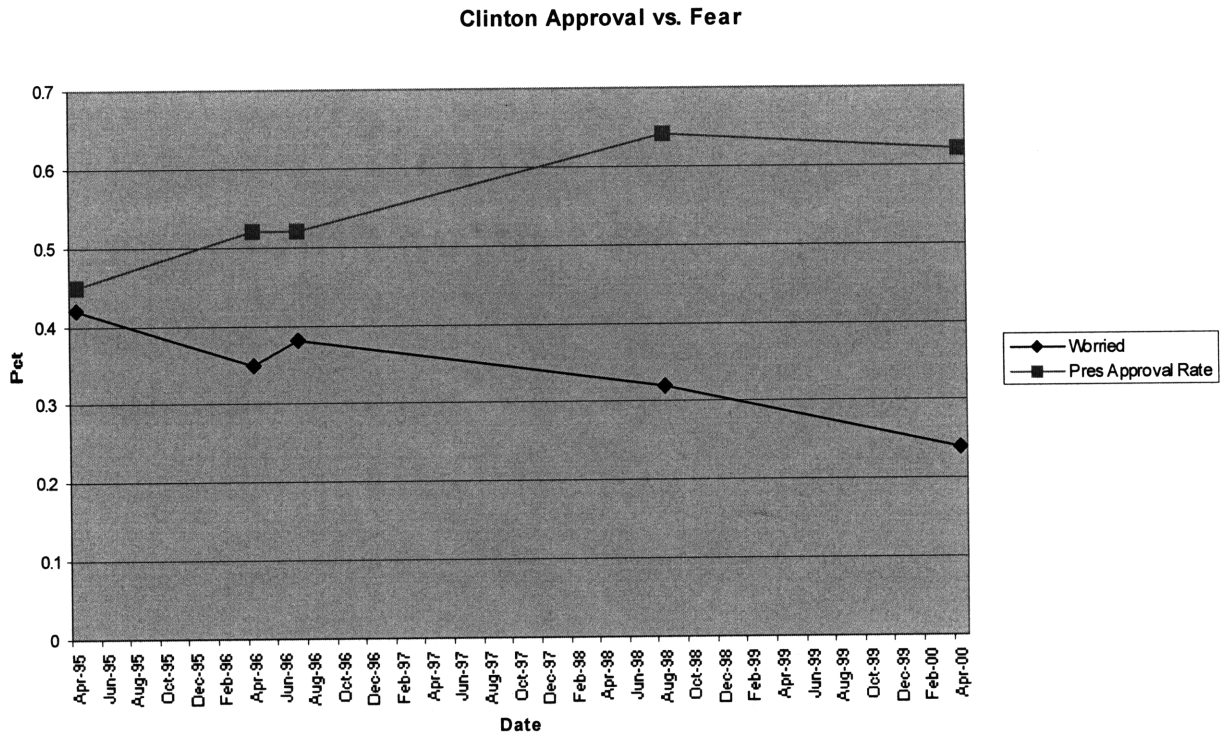
Citation: Harris Interactive polling data on President Bill Clinton's approval rating compared with CNN/Gallup/*USA Today* data on Americans' worried about becoming victims of terror attacks. (See Question 2 in appendix on executive approval ratings).

<u>Chart Eight:</u>

Here mass fear levels are compared with George W. Bush's approval ratings. In some

instances, his approval ratings rise with mass fear levels, in others the two metrics

diverge. High fear levels, thus, do not necessarily yield high approval ratings.

Bush Approval vs. Fear
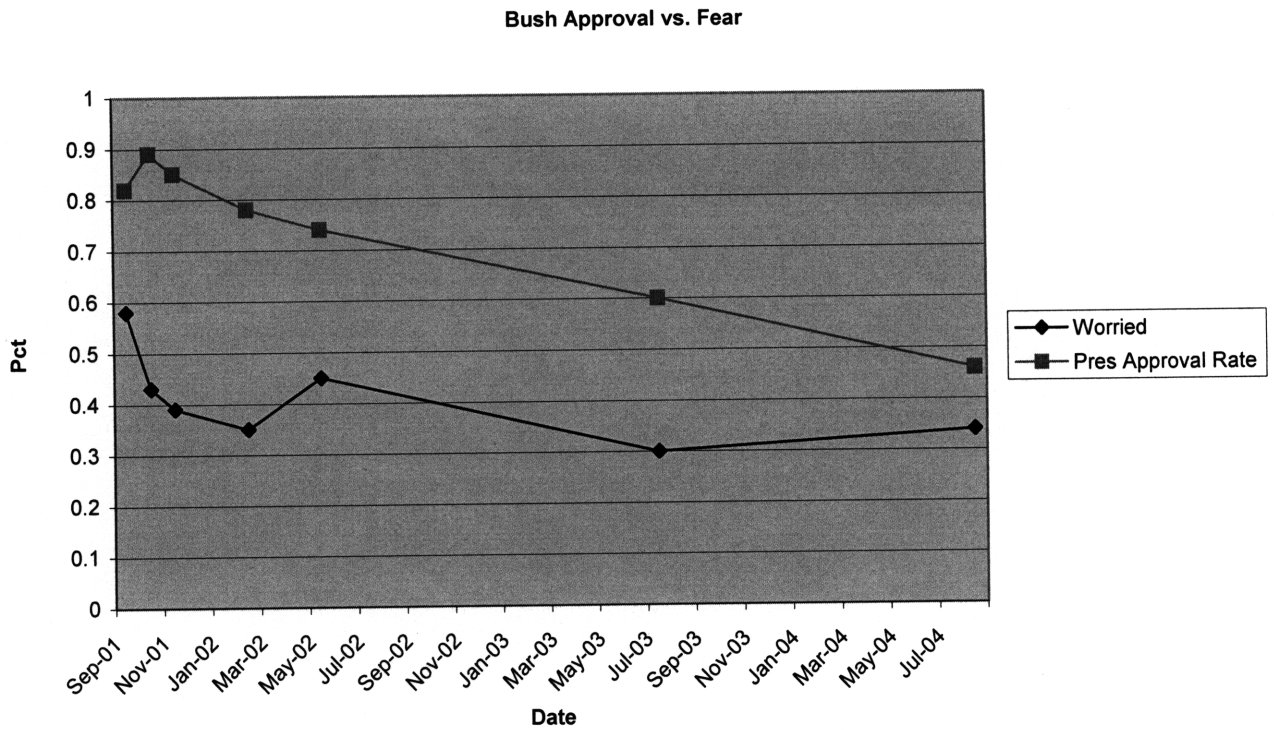
Citation: Data from CBS/*New York Times* polls on George W. Bush's approval ratings and CNN/Gallup/*USA Today* polls on Americans' worried about becoming victims of terror attacks. (See Question 3 in appendix on executive approval ratings).

Civil Liberties

This section tests the third and fourth hypotheses enumerated above. H3 predicts that after a terrorist attack, the public will be willing to trade liberties for increased security. H4 states that though the public may be willing to make this trade in the abstract, the public will be less willing to make this trade when the liberties given up are made more concrete. Further, it states that when liberties ceded are specified, it will be shown that it is truly the liberties of minority groups that the majority is willing to trade for its own security.

The first factor that the charts make evident is the public's willingness to cede liberties after terrorist attacks. Charts 9 and 11 below show that public willingness to sacrifice liberties spikes after terror attacks. A full 88% of Britons wanted to give the police extra powers to deport and/or detain terrorists after the July 7 London Bombings.

However, when civil liberties are broken down, the public is much more willing to forego some of these rights than others (see chart 9 and data appendix on civil liberties). Americans' and Britons' polled after 9/11 were very much in favor of instating a national ID card system. Britons were also largely in favor of detaining immigrants. Nonetheless, neither population supported eavesdropping and other measures that would erode privacy. The amount of Britons' willing to detain and/or deport those "posing a terror threat" makes up a large majority as well (chart 9). These findings point to a desire to curb *minority* liberties while maintaining those of the majority. The majority seems to want to maintain its privacy (not the most important of rights in a time of calamity) while allowing the police to deport and detain the threatening

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minority. Identity cards, it could be argued, are an intrusion for some but not for others. Throughout history such documentation has been used to weed out and harass minority groups (Jews in Germany, blacks in South Africa, Palestinians in Israel), while not affecting the majority. Identity cards have traditionally been used as the ultimate selective enforcement device. This conclusion is bolstered by Darren Davis who writes that, "Abstract support for democracy and civil liberties usually garner overwhelming support, but in applied contexts where citizens have to practice what they preach, democracy ... suffers"[287]. His data show that while 45% of Americans' abstractly supported security over civil liberties after 9/11, when the question was made more specific about the actual liberty being traded the numbers varied greatly. For instance, 72% of Americans supported guilt by association, 49% supported detaining non-citizens while only 18% backed racial profiling[288].

David Cole notes that a National Public Radio poll taken a year after the 9/11 attacks, "found that only 7 percent of Americans felt that they had personally had sacrificed any important rights or liberties in the war on terrorism." Cole asserts that this is because, "For the most part, the government's measures have been targeted not at Americans, but at foreign nationals both here and abroad"[289]. Further, the American public supported this ethnic profiling: 60 percent of Americans polled soon after 9/11 supported ethnic profiling as long as it targeted Arabs and Muslims[290].

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[287] Davis, Darren W. *Negative Liberty: Public Opinion and the Terrorist Attacks on America.* (New York: Russell Sage Foundation 2007), pg. 4.
[288] Davis, *Negative Liberty*, figure 3.1, pg. 50.
[289] Cole, David. *Enemy Aliens: Double Standards and Constitutional freedoms in the War on Terrorism.* (New York: The New Press 2003), pg. 18.
[290] Cole and Dempsey, *Terrorism and the Constitution*, pg. 220.

After terror attacks, fear of the minority group that perpetrated the attacks leads to

discrimination against that group. Brigitte Nacos and Oscar Torres-Reyna show that fear

of Muslims jumped after 9/11[291]. These high fear levels led to desires to curb the

liberties of Muslims in America. The authors point to polls that show a solid majority of

Americans favoring reducing the rights of Muslim or Arab foreign nationals in America

and that 20% of Americans favored reduced rights for Muslim or Arab-American

citizens[292]. Further, those Americans who were more fearful of terror supported more

restrictive and invasive measures against Muslims[293]. Interestingly, Nacos and Torres-

Reyna's data demonstrate that views of Muslims grew increasingly negative in post-9/11

America after an initial period of increased tolerance of Muslims, which was spurred by

executive speeches preaching tolerance[294]. This increased criticism of Muslims was due

in part to the fact that after a year of relatively positive stories about Muslims post-9/11,

the news media began to negatively portray Muslim and Arab communities in 2002[295].

The liberties of Muslims were not the only things targeted after terror attacks. Anti-

Muslim crimes spiked in the UK after the London bombings and in the US after 9/11[296].

Indeed, one in five British Muslims stated in an ICM/*Guardian* poll that "they or a family

member have faced abuse or hostility since" the 2005 London Bombings[297].

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[291] Nacos, Brigitte L. and Oscar Torres-Reyna. *Fueling Our Fears: Stereotyping, Media Coverage, and Public Opinion of Muslim Americans.* (Lanham, MD: Rowman & Littlefield Publishers 2007), pg. 56.

[292] Nacos and Torres-Reyna, *Fueling Our Fears*, pg. 62.

[293] Nacos and Torres-Reyna, *Fueling Our Fears*, pg. 63.

[294] Nacos and Torres-Reyna, *Fueling Our Fears*, pg. 61; on executive speeches of tolerance after 9/11 see Chapter Four.

[295] Nacos and Torres-Reyna, *Fueling Our Fears*, pg. 26.

[296] Nacos and Torres-Reyna, *Fueling Our Fears*, pg. 31. I will always remember a week or so after 9/11 watching a man become livid at a gas station attendant for giving him wrong change in Philadelphia. The man proceeded to pound on the plastic barrier separating them while calling the (dark-skinned, but by no means clearly Muslim or Arab) worker an "Afghanistan-ass motherfucker."

[297] Dodd, Vikram. "Two-thirds of Muslims consider leaving UK," *The Guardian*, 26 July 2005.

It appears that H3 and H4 are correct: the public is willing to cede liberties after terror attacks, but the majority desires to preserve its liberties at the expense of the minority. Chart Eleven plainly shows jumps in Americans' willingness to trade liberties for security after both the Oklahoma City bombing of 1995 and 9/11/2001. Moreover, as Huddy, et al. found, those survey respondents who perceived a high future terrorism threat "not only supported aggressive action against the enemy, they were also more likely to negatively stereotype Arabs and support restrictive immigration and intensified surveillance policies directed at Arabs and Arab-Americans." Eighty-five percent of the respondents favored tougher restrictions on visas for students and other foreigners and almost half of Americans (48%) thought that Arabs "should undergo more intensive security checks than people form other countries"[298]. These data also bolster H1 since a willingness to trade liberties and make change supports the hypothesis that a public demand for action exists after terrorist incidents.

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[298] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 7.

This chart shows that a staggering 88% of Britons wanted to give the police increased

powers to detain and/or deport terrorists after the 7/7 bombings.

UK Extra Police Powers Post July 7, 2005
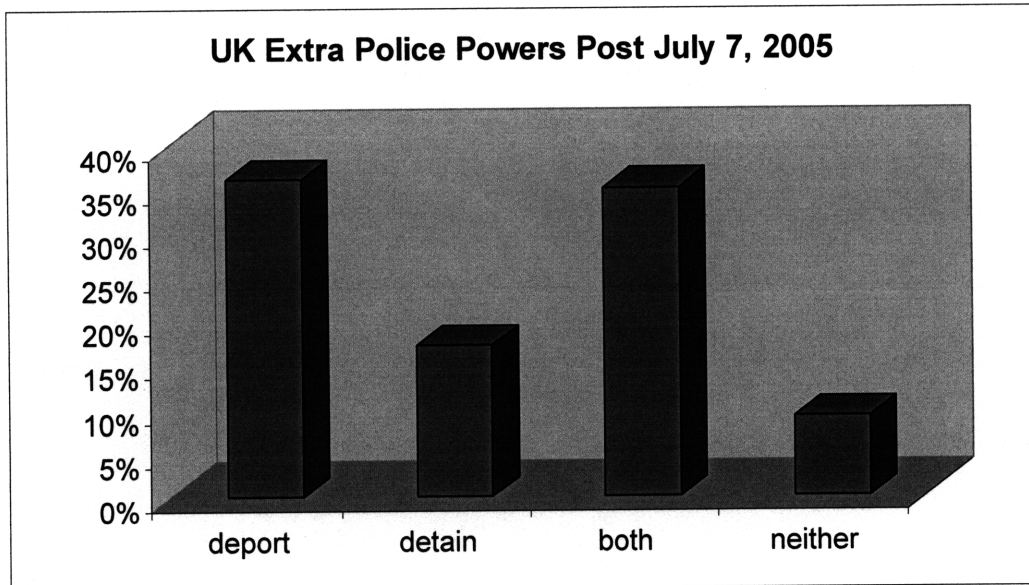
Citation: Data from ICM/News World poll asking Britons, "There are a number of people living in Britain who the authorities have identified as posing a potential terrorist threat. Do you think extra powers should or should not be made available to deport or detain them?" (See Question 14 in appendix on civil liberties).

Chart Ten:

This chart breaks down specific liberties that Americans could trade for increased

security. Americans supported installing national ID cards, but were against having their

telephone conversations and credit card purchases monitored.

American Willingness to Forego Specific Civil Liberties
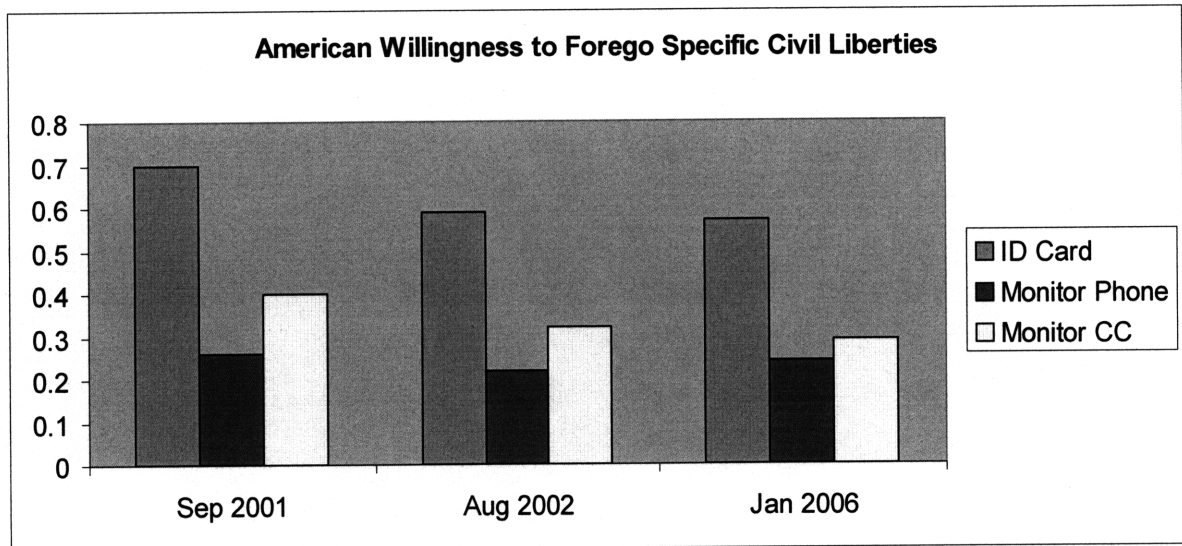
Citation: Data from Pew poll asking Americans "Would you favor the following measures to curb terrorism?: (1) Requiring that all citizens carry a national identity card at all times to show to a police officer on request; (2) Allowing the US government to monitor your personal telephone calls and emails; (3) Allowing the US government to monitor your credit card purchases?" Aggregate "in favor" positions shown above. (See Questions 4-7 in data appendix on civil liberties).

This chart measures Americans' willingness to trade civil liberties for increased security.

It demonstrates that after 9/11 and the Oklahoma City Bombing in 1995, Americans were

more willing to trade liberties for security.

Americans' Willingness to Forego Civil Liberties
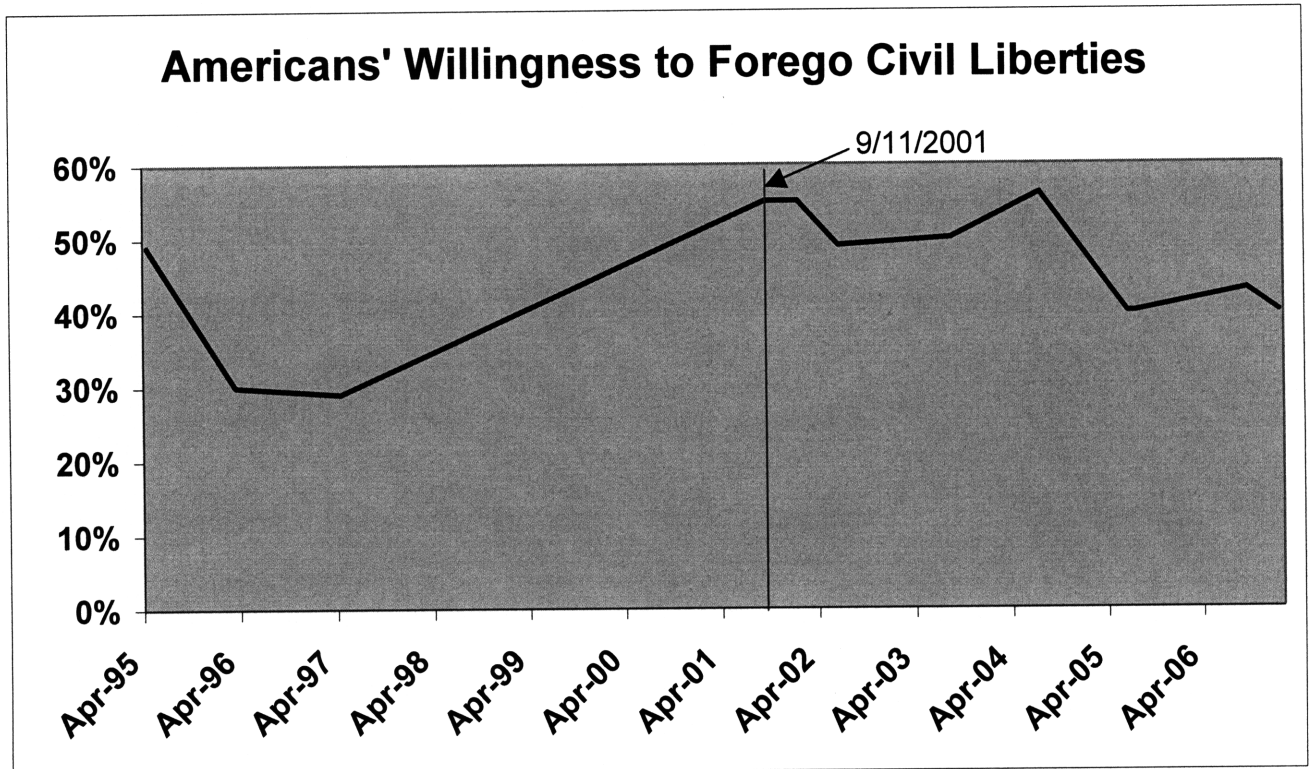
Citation: Data from Pew polls asking Americans whether or not it was necessary to give up some civil liberties to curb terrorism? Above chart shows "Yes" responses only. (See Question 1 in data appendix on civil liberties).

Dynamics of Mass Fear

This section tests the final five hypotheses. H5 simply looks for a jump in fear levels and importance of terrorism as rated by the public after terrorist attacks. H6 predicts that the more casualties a terror attack yields the higher fear levels will go and the longer the public will approve of civil liberties-security tradeoffs. H7, which will be proven by looking at H5, simply states that not all attacks will yield the same rise in mass fear levels. H8 asserts that mass fear levels will decrease over time both within a terror campaign and from one campaign to the next. Finally, H9 predicts that a significant increase in the magnitude of attacks—measured by casualty rates—can temporarily reverse the decay of mass fear levels, but that the general trend of decay should hold.

It is clear from the outset that H5 is correct. There is a spike in mass fear levels after terrorist attacks (see charts 12, 13, 16, 17, and 18). There is an evident bump in fear figures in Israel during the second intifada, in the US after 9/11 and, less so, in the US after the Oklahoma City Bombing. It is also clear that H7 is correct. Different attacks clearly yield different mass fear levels as the movement in the charts indicates. Indeed, in April 1995, after the Oklahoma City bombing, 89% of Americans viewed terrorism as a very or somewhat important issue. Only 63% of Americans fell in the same category in March 1993 after the first World Trade Center bombing[299].

The trickier hypotheses have to do with fear's decay and the magnitude of attacks. Chart fifteen clearly shows that Israeli society adapted to terrorism deaths to the point that increased terror deaths yielded diminishing returns in the number of Israelis' fearful of terrorism. Still, in Israel and the US mass fear levels rose higher after more recent

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[299] Lewis, Carol. "The Terror that Failed: Public Opinion in the Aftermath of the Bombing in Oklahoma City," *Public Administration Review*, 60:3 (May/June 2000), pg. 204.

attacks/campaigns than they did previously. Admittedly, this is also because terrorist

attacks have yielded greater casualties of late. Chart eighteen shows that in 1991 and

1995 Americans viewed a terrorist attack on the US as about as likely as they did in 2001.

On fear's decay, chart nineteen demonstrates that George W. Bush's approval rating for

his dealing of the war on terrorism gradually declined after 9/11.

Carol Lewis finds that terrorism and crime follow similar public fear patterns in

that, despite news accounts to the contrary, fears of both are relatively stable[300]. John

Mueller notes that, "Consistently since the end of 2001 some 40 percent [of Americans]

say they are very worried or somewhat worried about becoming a victim of terrorism.

Moreover, well over 50 percent hold the likelihood of a terrorist attack in the US over

'the next few months' to be very or somewhat likely while less than 10 percent have

chosen the option that has [so far] proved to be correct, 'not at all likely'"[301]. Yet terror

fears do decline. Chart sixteen shows that fear levels went down after 9/11, but there

were bumps along the way[302]. Huddy, et al. found "a slight decline in perceived threat

and anxiety over time, but the effect [was] nonlinear. Perceived threat and anxiety

declined more rapidly after 9/11 but showed little further decline after the New Year"[303].

Terrorism fears seem to recede over time, but there is no evidence that they go

down from case-to-case. Clearly, Israeli society adapted to terrorism fatalities but

terrorism is, thankfully, so rare that systematically comparing fatality figures versus mass

fear levels is difficult. CNN/Gallup/*USA Today* polls show that 42% of Americans were

worried about themselves or family members becoming terror attack victims after

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[300] Lewis, "The Terror that Failed," pg. 206.
[301] Mueller, "Terrorism and Bumps in the Night, pg. 10.
[302] These bumps, as I will show later, coincide with threat alerts.
[303] Huddy, Feldman, Taber, Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," pg. 5.

Oklahoma City, while 58% were worried about the same after 9/11. Does that mean that Americans were inured to terrorism after 9/11 given the much higher casualties of the 2001 attacks? Clearly, this is not the case.

There is, thus, insufficient data to prove that the more casualties an attack yields, the longer the public will approve of government and be willing to give up liberties. Even if there were sufficient data, it is hard to compare attacks. Some attacks yield 200 dead, but many yield two. While casualty rates can go into the thousands, public opinion percentages can only go up to 100%. Further, fear seems to decrease over time after terror attacks, but these effects do not carry over from campaign-to-campaign (H8). Marked increases in casualty levels, as well as heightened government-issued threat levels, can stop fear's decay within a campaign. But, there is insufficient evidence to show that the reason that we do not see a decay in fear levels between campaigns is due to higher magnitude attacks (H9). Fear levels can only rise so far, and, sadly, some of the terrorist attacks of the past decade have caused very many casualties—while others, still following the "many people watching, not many people dying" paradigm, yielded few.

Finally, H6 predicted that higher casualty attacks would yield longer spikes in mass fear levels, longer rallies of government approval, and more sustained rates of willingness to cede liberties. Chart Eleven showed that Americans were willing to cede liberties for longer after 9/11 than after previous attacks, though, importantly, data for previous attacks was not as extensive. Charts 14 and 16 show that fear levels were sustained for longer after the second intifada than after the first intifada and after 9/11 than after the Oklahoma City bombing. Charts 5 and 6 show that spikes in government approval ratings occurred after 9/11, but not after other attacks. These data support H6,

but the evidence is insufficient because data regarding 9/11 is much more exhaustive than data on previous cases. The Israeli data on fear levels remaining high well after the second intifada is most telling. In sum, the data here points to H6 being true, but more research needs to be done on this phenomenon. Higher casualty terror attacks or campaigns seem to yield larger windows of opportunity for executive action, but, as will be seen in Chapter Six, this is not always the case.

Chart Twelve:

This chart maps the percentage of Israelis worried about themselves or a family member

becoming a victim of terror. At the height of the second intifada, in 2002, mass fear

levels spiked in Israel.

Israelis Worried about Personal Safety due to Terror
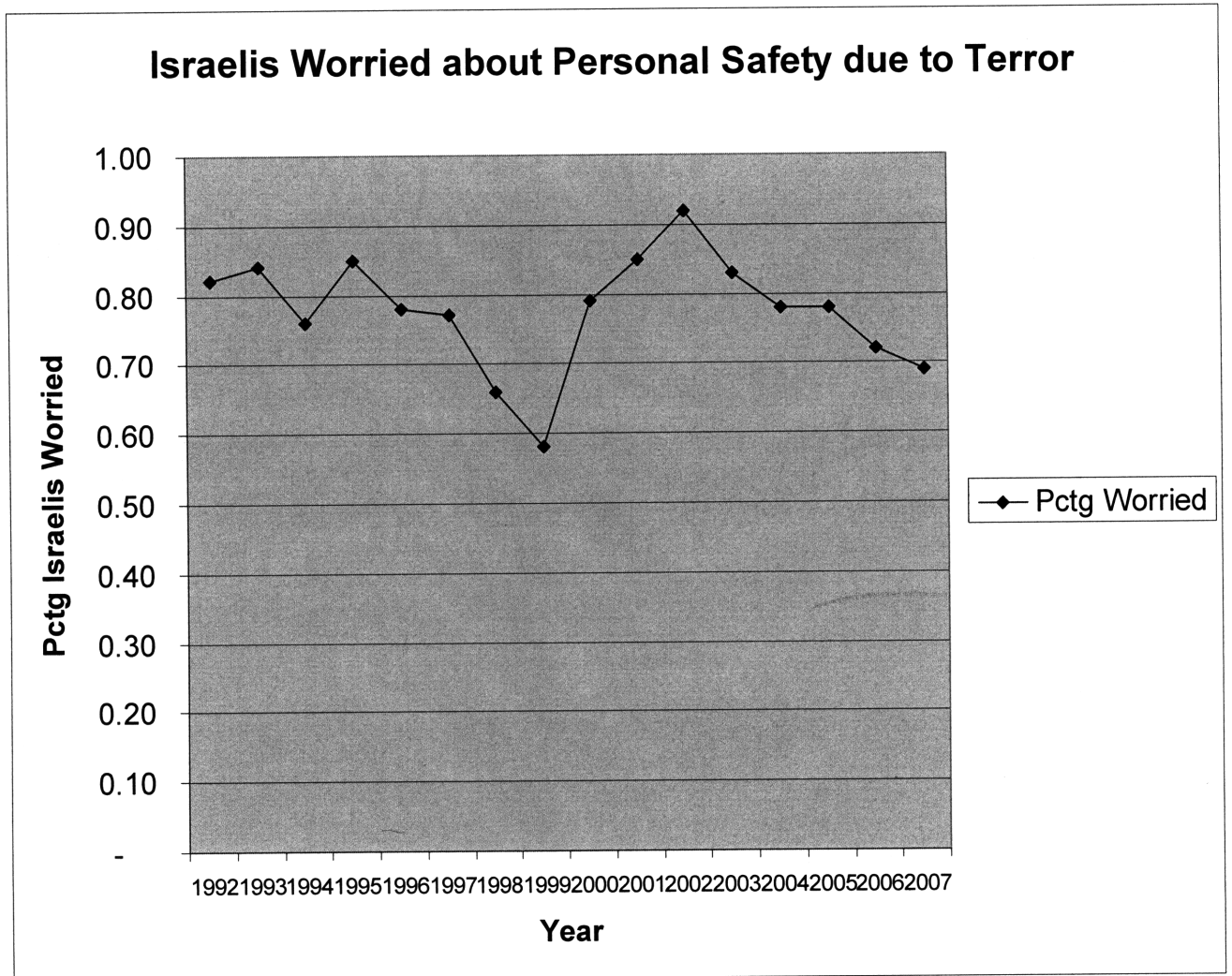
Citation: Data from 1999 and 2003 published polls by Asher Arian as well as a "Israeli
Public Opinion on National Security 2007" poll by Yehuda Ben-Meir and Dafna Shaked
published by the Jaffee Center for Strategic Studies at Tel Aviv University. All polls
asked Israelis if they are worried that themselves or a family member might become a
victim of a terrorist attack. Very and somewhat worried responses aggregated. (See
Question 1 in appendix on mass fear levels).

<u>Chart Thirteen:</u>

This chart maps Israelis' concerns about personal safety and shows the same spike in

mass fear levels as the previous chart.

Israeli Terrorism Fears 1993-2003
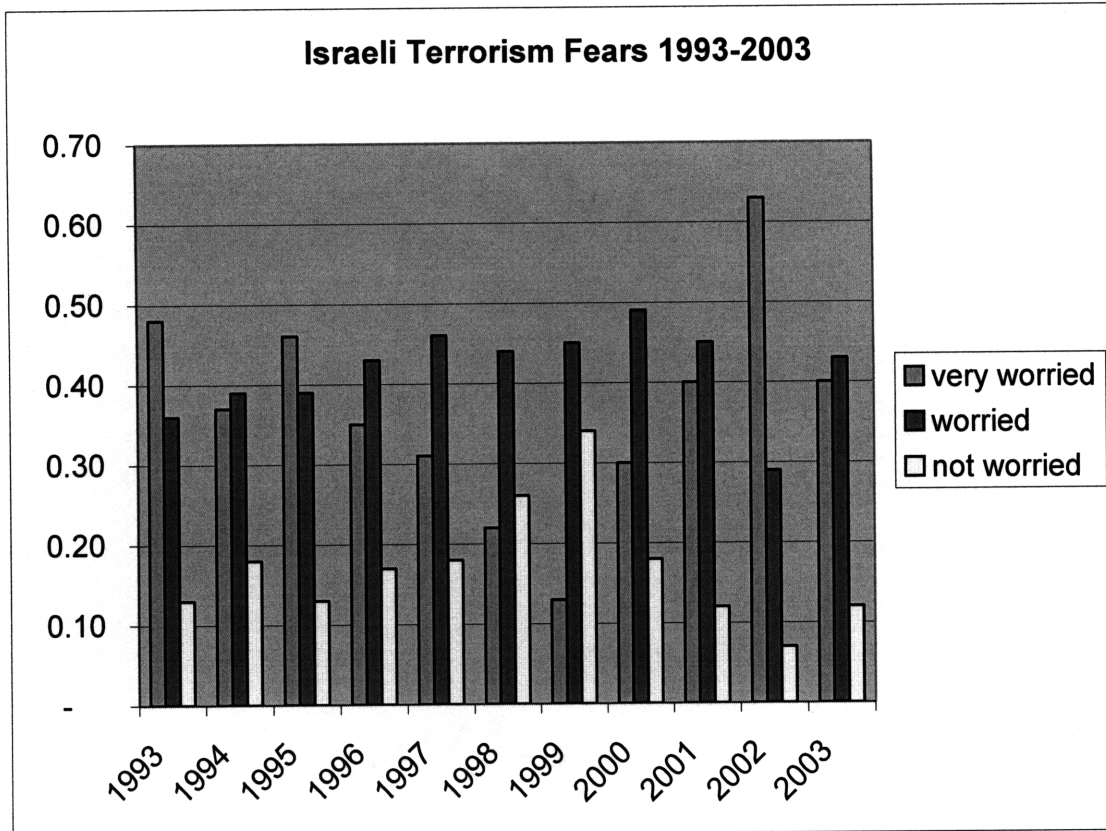
Citation: Data from annual polls taken by Asher Arian on Israelis' concern about
personal safety due to the threat of terrorism (See Question 3 in appendix on mass fear
levels).

Chart Fourteen:

This chart combines chart thirteen above with a graph of Israeli terror fatalities from

1992- 2007. Mass fear levels here generally rise with terror fatalities.

Israel: Percent Worried vs. Fatalities
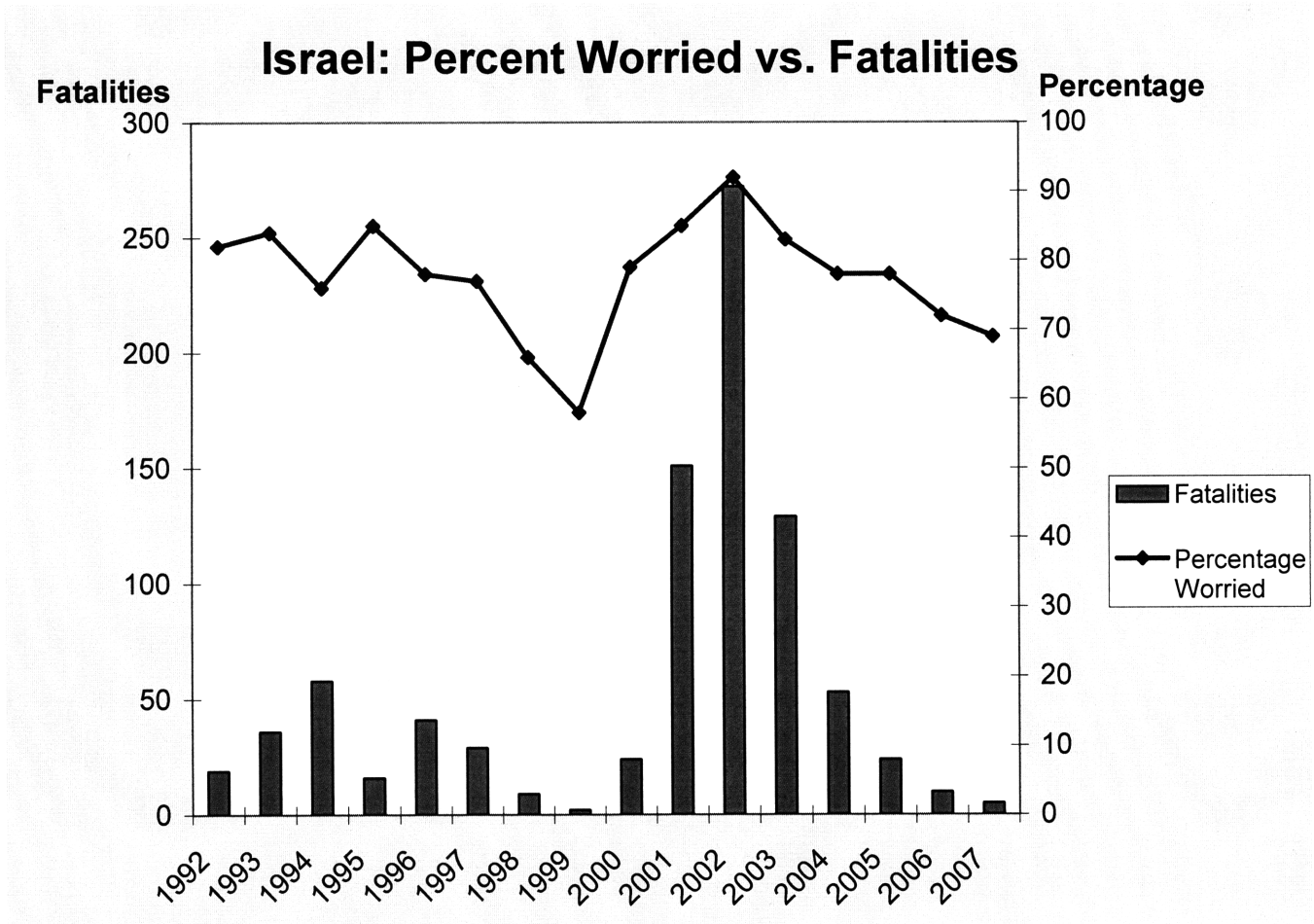
Citation: Btselem human rights group figures on fatalities of Israeli civilians and data
from Arian and Ben-Meir/Shaked polls.

This chart displays a simple calculation made using the data from the previous chart (chart 14). Here I simply divided the percentage of Israelis' fearful of terror by the number of terror fatalities to see the connection between the two figures. As is evident, the jump in fear levels per fatality rises as fatalities recede (1999 provides a rather stark example). The chart shows that higher terror fatalities yield lower responses to each fatality. Though perhaps a certain percentage of society (see 1999) will be fearful of even a few fatalities and a certain percentage of society (see 2002) will never be fearful no matter how many fatalities there are.

Adaptation of Israeli Society: Tolerance of Terror Fatalities
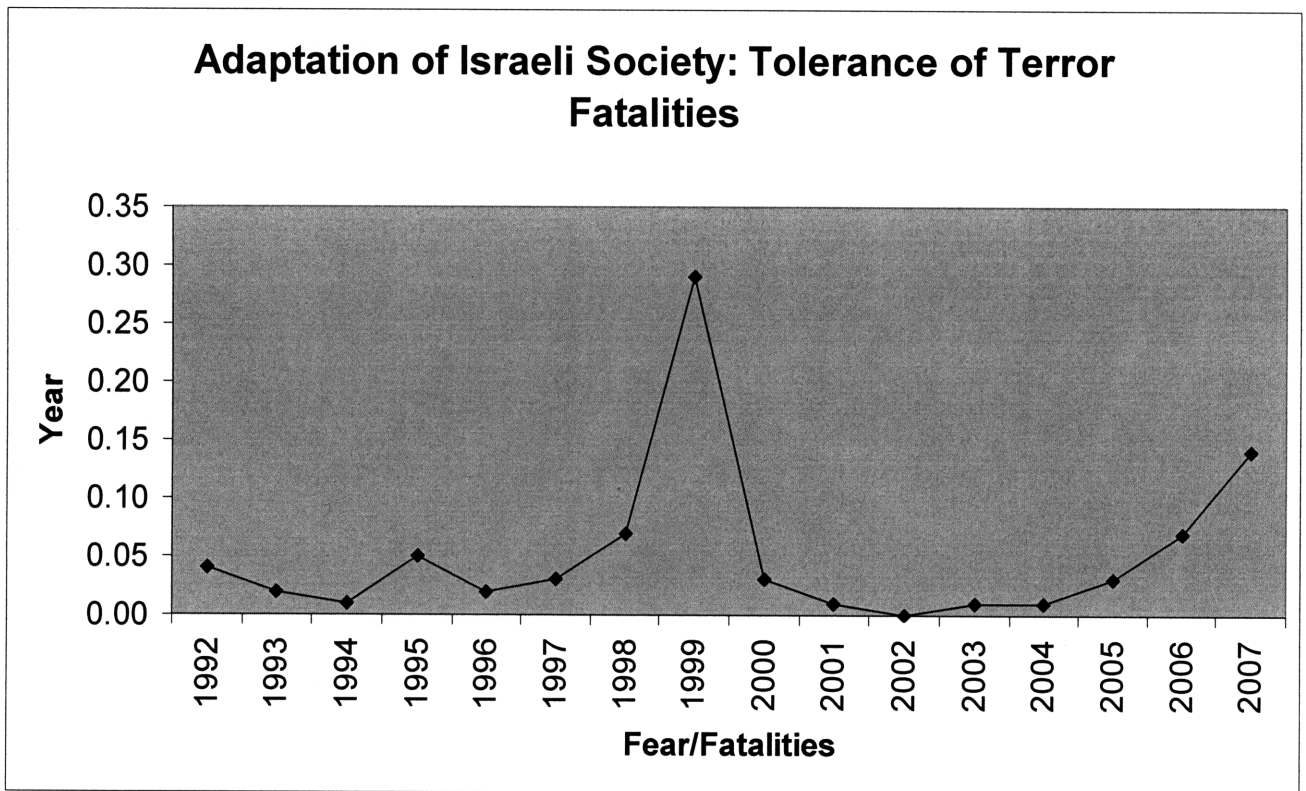
Citation: Same as above.

This chart tracks mass fear levels in America. The very worried line on the bottom of the

chart spikes after the 9/11 attacks and appeared to be high after the 1995 Oklahoma City

Bombing. Mass fear levels quickly recede after 9/11, but there are bumps along the way.

Mass Fear in America 1995-2006
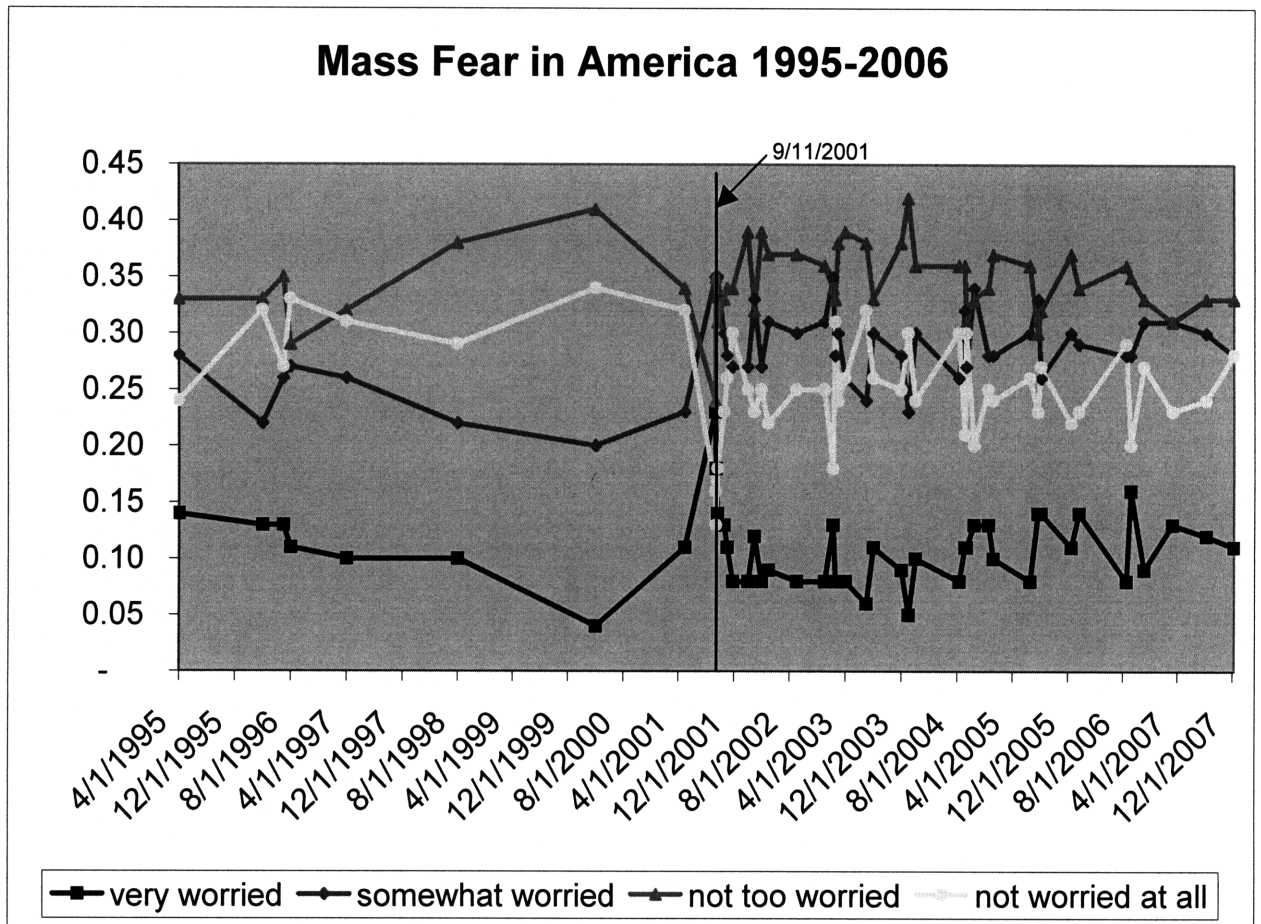
Citation: Data from series of polls asking "How worried are you that someone in your
family might become a victim of a terrorist attack?" (for polls see Question 7 in appendix
on mass fear levels).

Chart Seventeen:

This chart more plainly displays Americans' personal terrorism fears from 1993- 2002.

Mass fear levels in the US were higher after the Oklahoma City Bombing than after the

first World Trade Center bombing in 1993. Mass fear levels leapt after the 9/11 attacks,

but rather quickly receded to a stable, moderately high level.

American Personal Terrorism Fears
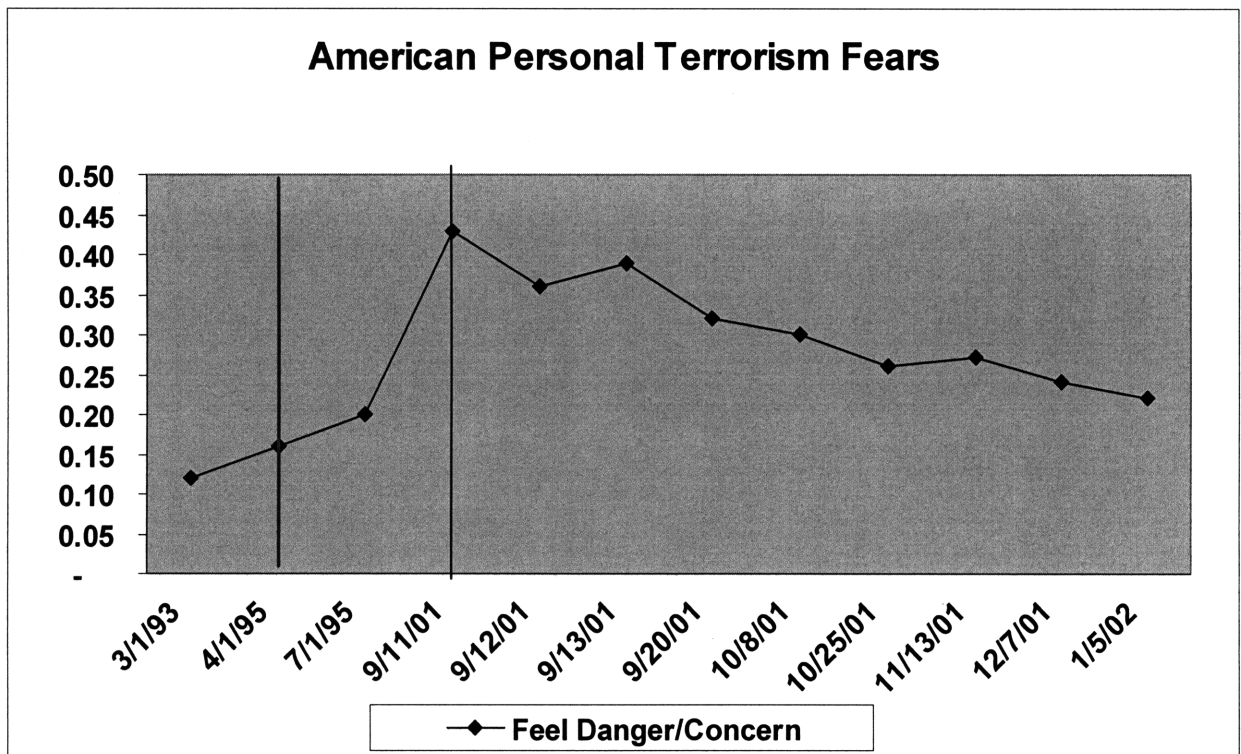
Citation: Data mostly from CBS and CBS/*New York Times* polls asking "Would you say you personally are very concerned about a terrorist attack in the area where you live, or not?" Some data from other polls asking similar question. (See Question 6 in appendix on mass fear levels).

Chart Eighteen:

This chart examines American's perceived likelihood of a future terror attack on the US.

The numbers spike after 9/11 and after the 1995 Oklahoma City Bombing.

Americans' Perceived Likelihood of Terror Attack on US 1991-2007
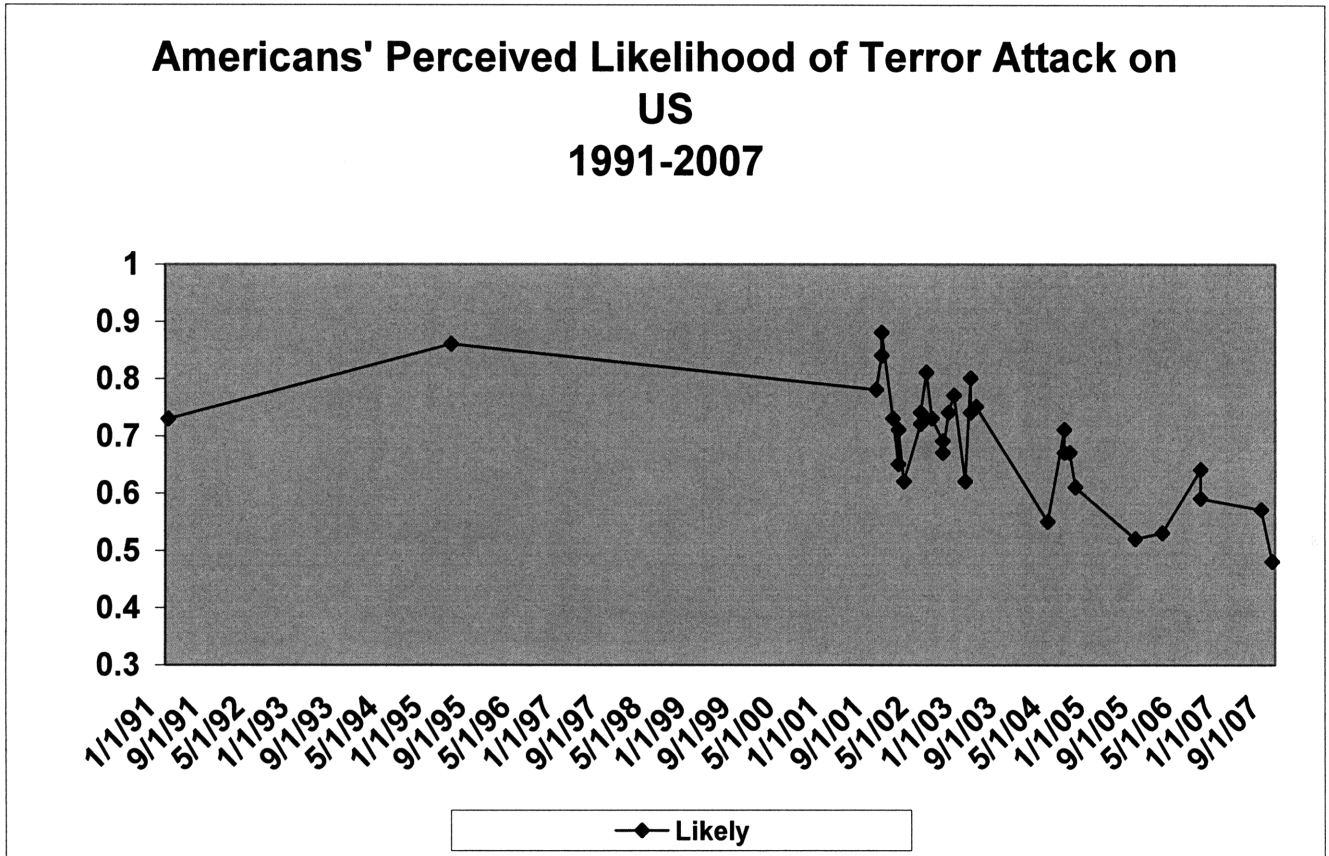
Citation: Data from polling asking Americans their view of the likelihood of a future terrorist attack. Polls were taken by CBS/*New York Times*, except in 4/95, where the poll was taken by Yankelovich/Time/CNN (See Question 11 in the data appendix on mass fear levels).

Here President George W. Bush's approval rating for his handling of the war on terror is tracked. A comparison of this chart with charts 16- 18 shows that approval of Bush's handling of terrorism spiked when mass fear levels were high and receded when mass fear levels eroded. As mass fear levels declined after the 9/11 terror attacks, Bush's terror approval rating dropped.

President Bush's Terrorism Approval Rating
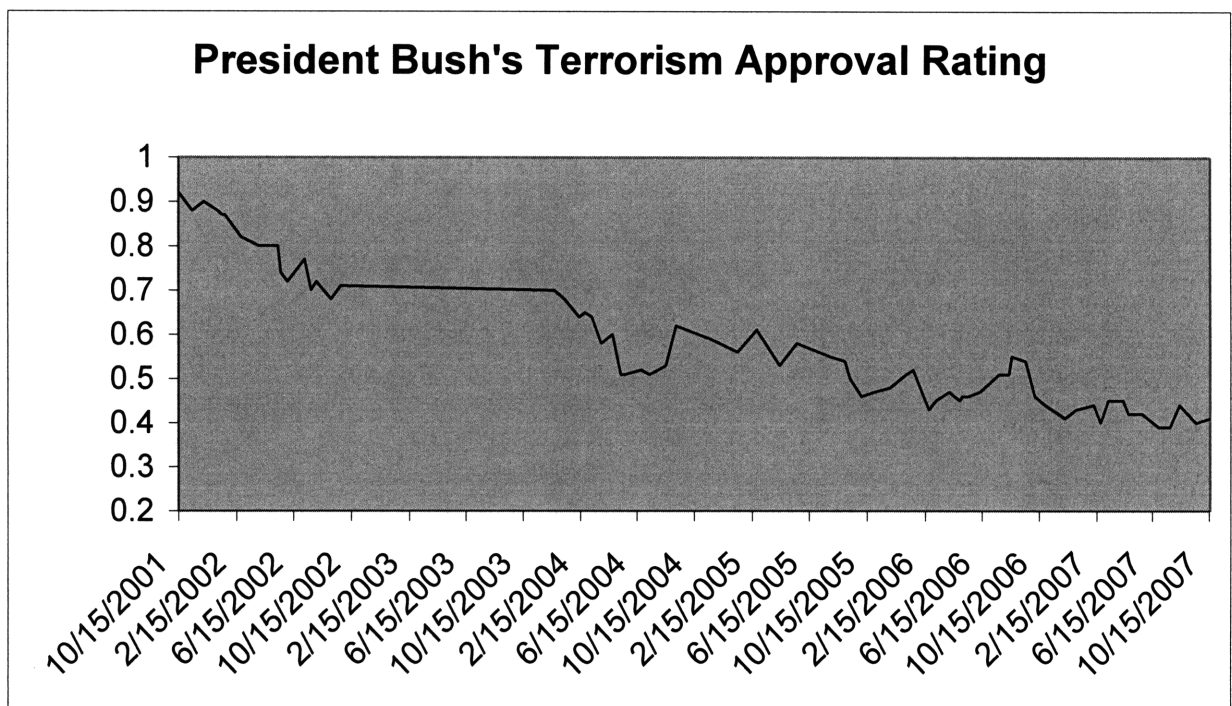
Citation: Data from CBS/*New York Times* poll asking "Do you approve or disapprove of the way George W. Bush is handling the campaign against terrorism?" (See Question 16b in data appendix on executive approval ratings).

Conclusion

The following findings were derived from the analysis in this chapter. The section on executive action showed that a window of opportunity for executive action opens after terror attacks (H1), but that rallies 'round the chief executive do not always occur (H2). The stronger claim in H1 that a demand for executive action occurs after terror attacks is proven by the analysis in chapter two as well as in the civil liberties section here. The civil liberties section showed that the public is willing to cede liberties for increased security after terror attacks (H3), but that it mainly desires to trade the liberties of the group whose co-ethnics perpetrated the attack for the security of the majority[304] (H4). Further, when liberties are broken down, public support for trading liberties for security is mixed. Finally, the mass fear section clearly showed that mass fear levels jump after terror attacks (H5) and that they do not do so in predictable, uniform ways (H7). Fears did decay over time after terror attacks, but not between terror attacks or campaigns (H8 and H9). Further, the Israeli case showed that increased terror fatalities can yield reduced terrorism fears per fatality, but this finding is flawed due to the rudimentary comparison between public opinion percentages (which only go up to 100%) and fatality figures. Finally, there was some evidence that higher casualty attacks or campaigns yielded more sustained levels of mass fear, approval for government, and willingness to trade liberty-for-security (H6). But, that evidence is based on especially high casualty terror events (the second intifada and 9/11), and does not travel to other high casualty attacks like the Oklahoma City Bombing or the 2005 London Bombings. Why this is so will be explored in Chapter Six.

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[304] More correctly, the public wishes to trade the security of those it *perceives* to have perpetrated the attack for the security of the majority.

In sum, this section proves that *a window of opportunity for executive action is created by high mass fear levels, a willingness to cede liberties of the minority for majority security, and public demand for action* after terror attacks. Sometimes, rallies of executive approval can be added to this mix. Generally, higher casualty terror attacks or campaigns yielded greater mass fear levels, but all of the terror attacks examined in this study presented executives with windows of opportunity of varying size. Interestingly, terror fears recede rather quickly to stable, but only moderately high levels after terror attacks (see Charts 14 and 18).

Darren Davis contends that, "Sustained perceptions of threat were not so much a response to the terrorist attacks themselves as to the vents and policies intended to make people safe." As a study by Landau, et al. shows, and as I will show in great deal in the next chapter, simply reminding people of the threat of terrorism increased support for the Bush administration[305]. Yet, Americans do not tolerate restrictions on their liberties, over time they "became more protective of civil liberties than concerned about their security"[306].

In sum, this chapter found that there is a demand for action after terrorist attacks, but not necessarily a rally 'round the executive. Fear jumps up, but not in predictable ways that can be neatly linked to casualty rates or the intensity of the attack. Mass fear levels go down over time after attacks, but societies do not necessarily adapt to terror in the same ways—though, Israeli society was able to adapt. The public generally is willing

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[305] Landau, Mark J. Sheldon Solomon, Jeff Greenberg, Florette Cohen, Tom Pyszczynski, Jamie Arndt, Claude H. Miller, Daniel M. Ogilvie, and Alison Cook. "Deliver Us From Evil: The Effects of Mortality Salience and Reminders of 9/11 on Support for President George W. Bush," *Personality and Social Psychology* Bulletin 30: 9 (2004).
[306] Davis, *Negative Liberty*, pg. 219.

to forego liberties after attacks, but not all liberties and not the type of liberties that are more likely to affect the majority.

Ole Holsti writes that, "debates about the proper role of public opinion on … policy ought not be framed in terms that posit, on the one hand, a bottom-up, direct democracy model in which public officials are merely the agents for carrying out whatever public preferences emerge from the latest Gallup poll and, on the other hand, a vision of skilled and knowledgeable elites, shielded from the television-aroused passions of an ill-informed public, carefully deliberating the great … issues of the day"[307]. In this study, public opinion will be shown to be an important constraint on executive action, but not the driver of the post-terror attack legislative dynamic. Indeed, as John Mueller contends the first President Bush was able to lead the country to war in the Gulf in 1990 not because he was able to swing public opinion polls toward war, but rather because "as President, … he could unilaterally commit the country to a path that dramatically increased a sense of fatalism about war[,] … he could promise a short, beneficial and relatively painless war[,] … [and] because he and his top aides enjoyed a fair amount of trust in matters of foreign policy at the time"[308].

Whereas opinion polls can show that the public grants, or does not grant, the executive a window of opportunity to act after terror attacks, they cannot show what the chief executive does with that opportunity. Indeed, high mass fear levels seem to exist uniformly after terror attacks, but domestic, legislative responses to these attacks are varied. Thus, I turn to case studies in the next few chapters to further explicate democracies' domestic, legislative reactions to terror attacks.

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[307] Holsit, *Public Opinion and American Foreign Policy*, pg. 317. This quote deals with foreign policy in particular, but I believe that it applies to domestic matters as well.
[308] Mueller, *Policy and Opinion in the Gulf War*, pg. 58.

Chapter Four

Case Study: The United States

This chapter exhaustively collects data on the legislative reaction to the attacks on the United States on September 11, 2001. The chapter is divided into three time periods marking three separate cases, which each work to test the theory laid out below, the three time periods are: the immediate response to the attacks ranging from the day of the attack to one year afterward, executive action in the run-up to the 2004 elections, and the battle over the renewal of portions of the PATRIOT Act. The first time period will explore mainly how the executive shaped the terror threat and how the PATRIOT Act legislation was initially passed. The second time period will explore how the president acted when inter-party competition was high during a crucial election season and also examine the effect of presidential threats and government-released threat alerts on public fear levels. Finally, the third section surveys what happens when mass fear levels have receded years after a major terror attack and civil liberty-abridging, counterterror legislation is about to partially expire. For each time period, legislative debate, executive statements and the opinion environment will be covered.

This chapter provides a wealth of empirical evidence and testing for the variables explored in this study. The executive response and threat-shaping variable, the independent variable, is looked at most closely. Further, the government composition and party competition variable, both folded into the political constellations constraint variable, will be substantially tested. Recall that the government composition variable

looks at the partisan division of power in the government and that the party competition variable looks at temporal proximity to an election. Opinion variables, most prominently mass fear levels and executive approval ratings will also be covered. Finally, both dependent variables will be examined extensively here, the one dependent variable looking at passage of counterterror legislation and the other looking at enforcement of counterterror legislation. This case will be recapped for the purpose of studying more closely inter-country institutional comparisons in chapter 5. Thus, the institutional portion of the political constellations variable will not be covered here.

In addition to looking at these three time periods and exploring a multitude of variables, two hypotheses that can be gleaned from the dissertation's theory will be tested here. They are:

H1. When party competition is high, that is when an election is near, the incumbent executive will employ fear as a strategy

H2. Executive-legislative antagonism will be more likely when the government is closely divided along partisan lines.

The will be organized in the following manner. First, the theory that guides this study will be quickly summarized. Second, the independent variable and executive threat-shaping themes will be recalled since these components of the study will be focused on in this chapter. Third, a modern history of the United States' curtailment of civil liberties will be recounted. Fourth, the three time periods of the 9/11 case study will be examined. Fifth, the enforcement of counterterror legislation after 9/11 will be surveyed. Finally, the chapter will conclude.

Theory

The theory tested in this chapter follows:

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│                                                                                   │
│  ┌─────────┐    ┌──────────────┐      ┌──────────────┐      ┌──────────────┐      │
│  │         │    │  Executive   │      │ Legislative  │      │  Passage of  │      │
│  │ Attack  │───▶│ Response and │─────▶│   Support    │─────▶│ Legislation  │      │
│  │         │    │Threat-Shaping│      │   (Int.V)    │      │    (DV)      │      │
│  └─────────┘    │     (IV)     │      └──────────────┘      └──────────────┘      │
│                 └──────────────┘            ▲                                      │
│                        X                     ╲                                     │
│                 ┌──────────────┐      ┌──────────────┐      ┌──────────────┐      │
│                 │Public Opinion/│      │ Legislative  │      │Enforcement of│      │
│                 │  Mass Fear   │      │  Opposition  │      │  Law (DV)    │      │
│                 │              │      │   (Int.V)    │      │              │      │
│                 └──────────────┘      └──────────────┘      └──────────────┘      │
│                        X                                                          │
│                 ┌──────────────┐                                                  │
│                 │  Political   │                                                  │
│                 │Constellations│                                                  │
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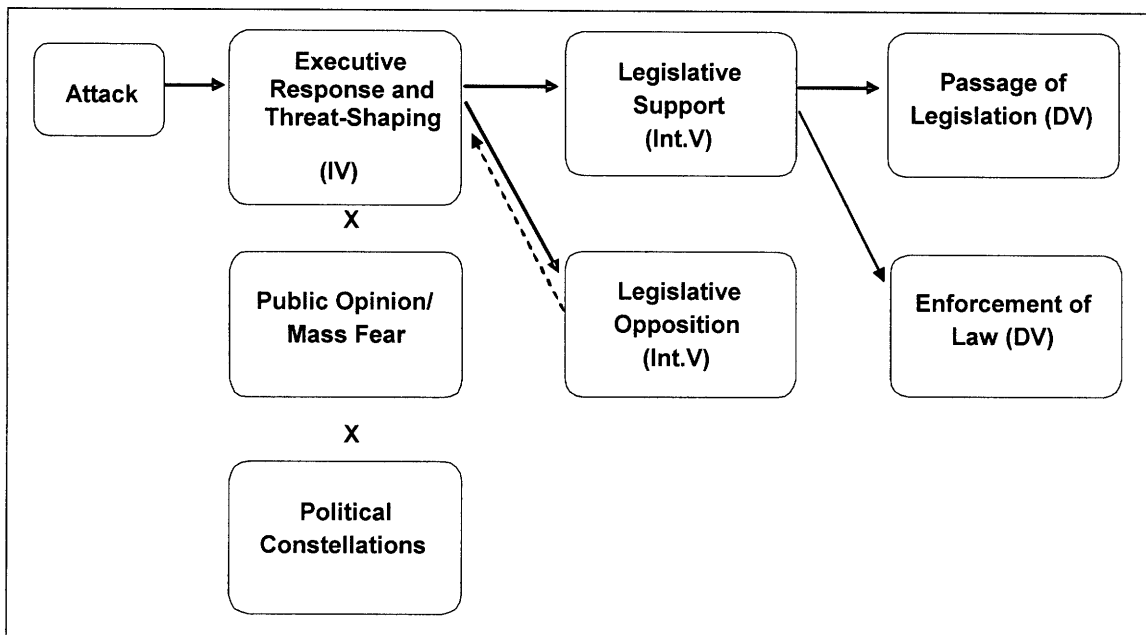
The theory proposes that executive response and threat shaping drive the dynamic that leads to enforcement of counterterror law and the passage of civil liberty-reducing legislation. Executive threat shaping is constrained by mass fear, which is measured here by public opinion surveys. The executive is also constrained by political constellations, by which I mean the government's partisan composition, party competition, and institutional arrangements. In this case study, I look at party competition and government's composition but leave institutional comparisons for a separate chapter. The legislature, in this case: Congress, acts as the intervening variable. When it supports the President's threat shaping, legislation and enforcement of law follow. When

Congress opposes the President, the causal chain either ends or the President can work to win congressional support.

Variable Measurement

In this chapter, I test almost all of the variables explicit in the theory above. The only variables not covered here in full are the political institutions portion of the political constellations variable and mass fear, which both have chapters dedicated to their study. The variables for this study are all defined in chapter one, but here is a brief recap of the executive threat-shaping variable and the threat-shaping themes that executives can employ. These variables are summarized here since they are extensively covered in this chapter.

Executive Threat Shaping (IV)—I focus strongly on executive, that is, presidential, statements in measuring this variable. Rather than doing a content analysis that searches for certain words or phrases that may take them out of context to attempt to show how the president is projecting his influence, here we instead look at speeches from each period more in-depth with an eye toward themes. To this end, I have reviewed all of the president's public speeches for each given time period pertaining to homeland security and the war on terror[309]. These speeches do not include interviews. For each period I will highlight presidential speeches that forward the main themes that the president

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[309] These can be found, for instance, on http://whitehouse.gov/news and http://www.c-span.org.

desired to emphasize in that time period. If the speeches within a given period diverge greatly, I will note differences between speeches.

This method was selected because it qualitatively shows the messages that the executive was trying to convey. Quantifying the president's speeches into codified categories was deemed not worthwhile because the act of quantifying statements would create a barrier between what the executive actually said and the codes attributed to his statements. Thus, the method of highlighting themes and including actual quotes from the executive was chosen for its transparency and because it retains vital qualitative information that would be lost in the process of codification.

Two other indicators that measure executive threat shaping will also be examined. One is the raising of terrorism threat alerts or releases of vital information. The second is statements by administration officials other than the president.

Executive Threat-Shaping Themes—When evaluating executive statements I look for eight threat-shaping themes. The first three themes deal with threat and conflict framing.

- Statement of Threat and Threat Specificity—these executive statements underline the existence of a threat to the populace and define, with varying degrees of specificity, what that threat entails. A major subset of this theme are statements that a "new normal" exists in the country. For example, after 9/11, statements that "oceans no longer protect us" point to a new reality facing the nation[310].

- Threat Magnitude—these statements speak to the caliber of the terrorist threat.

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[310] This concept comes from Davis, Darren. *Negative Liberty: Public Opinion and the Terrorist Attacks on America*, working draft, 9 June 2006,

- Conflict Framing—these statements specifically frame the conflict with the terrorists and what it entails. They define who the country is fighting and why. In the extreme, these statements can depict a *nightmare scenario* for the country that terrorists pose. They may or may not realistically depict threat magnitude, but they definitely are meant to ratchet up mass fear levels.

The next five themes have to do with how the populace should act in response to the threat and how it should feel about the government.

- Call to Arms/Rally 'Round the Flag—these statements are meant to conjure feelings of patriotism in the population and also rally it for the coming fight.

- Tolerance—these are statements made about tolerating minority populations in the country, specifically those whose co-ethnics committed the terrorist attacks in question.

- Government Protection—these executive statements refer to the government as a protector of the people that either has or will make them safer. These statements are meant to give the populace the feeling of protection or safety.

- Government Successes—these statements refer to government successes made against the terrorists.

- Liberty-Security Tradeoffs—these statements refer to the liberty-security tradeoffs that need to be made in light of the terrorist attacks.

The US Case: History of Civil Liberties

It is important to recognize that, "The growth of civil liberties in [the U.S.] is not a story of linear progress or simply a series of Supreme Court decisions, but a highly uneven and bitterly contested part of the story of American freedom"[311]. Eric Foner notes that previous to the twentieth century, "Free speech claims rarely came to court, and when they did, judges generally allowed authorities wide latitude in determining which speech had a 'bad tendency' and therefore could be suppressed"[312]. Indeed, it was not until the twentieth century that the Supreme Court required the states to abide by the provisions set forth by the Bill of Rights[313]. It wasn't until World War I, when America employed "democracy" and "freedom" as "ideological war weapons" that civil liberties began to be demanded. The American government mobilized the public to join the war effort, through actions such as the purchase liberty bonds, by impressing upon citizens that America was a land of freedom and liberty[314]. This energized the women's suffrage and civil rights movements, as well as the labor movement[315].

Yet, this was also a time where dissent was suppressed by the government in the form of the Espionage Act of 1917, which "prohibited not only spying and interfering with the draft but also 'false statements' that might impede military success." President Woodrow Wilson desired that the law also allow him to censor the press, but Congress instead gave the Postmaster General broad powers "to bar antiwar publications form the

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[311] Foner, Eric. *The Story of American Freedom*. (New York: WW Norton & Co. 1998), pg. xvii.
[312] Foner, *The Story of American Freedom*, pgs. 170-1.
[313] Foner, *The Story of American Freedom*, pgs. 163-4.
[314] Foner, *The Story of American Freedom*, pg. 177.
[315] Foner, *The Story of American Freedom*, pgs. 171-6.

mails." The next year, the Sedition Act was passed, which "criminalized spoken or printed statements intended to cast 'contempt, scorn, contumely, or disrepute' on the 'form of government' or that advocated interference with the war effort." Next, Congress passed a bill authorizing the deportation of aliens deemed to be anarchists. Foner notes that, "More than two thousand persons were charged with violating these statutes and over one thousand were convicted"[316].

The arrest of antiwar dissenter under the Espionage and Sedition Acts led to the creation in 1917 of the Civil Liberties Bureau, which in 1920 became the American Civil Liberties Bureau (ACLU). The ACLU, over the next few decades, "would take part in most of the landmark cases that precipitated a 'rights revolution' that gave substantive meaning to traditional civil liberties, such as freedom of speech and the press, and invented new ones, like the right to privacy"[317]. It was in the judgment of cases in the post-war period that Oliver Wendell Holmes employed the "marketplace of ideas" metaphor in his 1919 dissent in *Abrams v. United States*. He stated in the dissent that, "the best test of truth is the power of the thought to get itself accepted in the competition of the market"[318].

Geoffrey Stone writes that, "the United States has a long and unfortunate history of overreacting to the perceived dangers of wartime." He contends that, "Time and again, Americans have allowed fear and fury to get the better of them. Time and again, Americans have suppressed dissent, imprisoned and deported dissenters and then—

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[316] Foner, *The Story of American Freedom*, pg. 177.
[317] Foner, *The Story of American Freedom*, pg. 183.
[318] Foner, *The Story of American Freedom*, pg. 184; Smolla, Rodney, "Speech: Overview," First Amendment Center, http://www.fac.org/Speech/overview.aspx.

later—regretted their actions"[319]. Even though the notion of civil liberties was not yet established as law, Geoffrey Stone counts, rightfully so, the Sedition Acts of 1798 and Abraham Lincoln's suspension of habeas corpus during the Civil War as the first two major reductions of rights in American history. In addition, to the World War I Espionage and Sedition Acts, Stone also covers the internment of 120,000 Japanese during World War II and the Cold War period, which was colored by Senator Joseph McCarthy and the House Un-American Activities Committee[320]. Most recently, the FBI's COINTELPRO (counter-intelligence programs) sought "to 'expose, disrupt and otherwise neutralize' dissident political activities" during the Vietnam War[321].

In his book, *Enemy Aliens* David Cole shows that when liberty and security have been exchanged for one another, it is typically the security of Americans that is purportedly gained at the expense of the liberty of foreign nationals. Cole writes that, "we all too often strike the balance between liberty and security by trading *their* liberty for *our* security, by treating some—foreign nationals, and especially in the present crisis, Arabs and Muslims—as less deserving of liberty, less *human*, than the rest of us"[322]. Cole finds that, "the United States government has responded to virtually every security crisis by adopting measures that selectively target noncitizens' rights"[323]. Cole comes to this conclusion by studying the cases of the Japanese internment during World War II, The Palmer Raids of 1919-20, the McCarthy-era Red Scare, and the FBI's COINTELPRO.

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[319] Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime From the Sedition Act of 1798 to the War on Terrorism.* (New York: WW Norton & Co. 2004), pg. 5.
[320] Stone, *Perilous Times*, pgs. 12-3; Cole, *Enemy Aliens*, pg. 90. Cole contends that 110,000 Japanese were interned.
[321] Stone, *Perilous Times*, pg. 13.
[322] Cole, *Enemy Aliens*, pg. xv.
[323] Cole, *Enemy Aliens*, pg. 85.

The most egregious restriction of civil liberties in the modern era was the
Japanese internment during the Second World War. The roots of the Japanese internment
stemmed from the Alien and Sedition Acts passed in 1798. The Alien Act allowed the
president "to deport any noncitizen he deemed dangerous without judicial review." The
Sedition Act made criticizing government officials a crime[324]. At the same time, the less
well-known, Enemy Alien Act was passed, which allowed the president "during a
declared war to detain, expel or otherwise restrict the freedom of any citizen fourteen
years or older of the country with which we are at war"[325]. Immediately after the Pearl
Harbor bombing, President Franklin Delano Roosevelt, using powers bestowed upon him
by the Enemy Alien Act, declared that all Japanese, German and Italian citizens "were
required to register and carry an alien registration certificate at all times. In addition,
they were prohibited from traveling more than five miles from their homes without
permission [and] subjected to a dusk-to-dawn curfew" among other restrictions[326]. In the
1944 case, *Korematsu v. United States*, the Supreme Court upheld the imposition of both
a curfew and internment of the Japanese "based on racial identity alone"[327]. David Cole
believes that the US government has learned from its mistakes: Congress renounced
preventive detentions in 1971 and reparations were paid to Japanese detainees in 1988[328].
Still, it is troubling that former Chief Justice Rehnquist believed that the only thing illegal
about the Japanese internment was that it targeted citizens[329].

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[324] Cole, *Enemy Aliens*, pg. 91.
[325] Cole, *Enemy Aliens*, pg. 92.
[326] Cole, *Enemy Aliens*, pg. 93.
[327] Cole, *Enemy Aliens*, pg. 98.
[328] Cole, *Enemy Aliens*, pg. 103.
[329] Cole, *Enemy Aliens*, pg. 99.

In other periods, citizens have largely been left alone when civil liberties were restricted. The Palmer Raids of 1919-20 were spurred by a series of bombings that began with mail bombs targeting government officials and culminated in the coordinated bombing of eight different cities. One of the targets was Attorney-General A. Mitchell Palmer's house. The Palmer raids that proceeded targeted non-citizens not because they were suspected of the crimes, but rather because "the law made it easier to round them up"[330]. The first set of raids in November 1919, led to the deportation of 249 individuals dubbed Communists and anarchists[331]. In January 1920, "federal agents obtained arrest warrants for nearly 3,000 noncitizens in preparation for the January raids, but in the end, most people were arrested without warrants ... Two-thirds of the warrants were never executed at all, yet officials arrested between 4,000 and 10,000 persons"[332]. During the Red Scare of the 1940s and 1950s, citizen and non-citizen alike were targeted by the Alien Registration Act, otherwise known as the Smith Act, which "made it a federal crime for anyone to advocate the overthrow of the government by force and violence, to organize a group to so advocate, or to belong to such a group with knowledge of its ends"[333]. Still, aliens felt the brunt of civil liberty abridgements once again via immigration laws. For instance, "From December 1948 to July 1952 alone, approximately 2,000 foreigners were temporarily excluded from the United States based on secret evidence that they never had a chance to confront or rebut, and roughly 500 were permanently excluded"[334].

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[330] Cole, *Enemy Aliens*, pg. 118.
[331] Cole, *Enemy Aliens*, pg. 119.
[332] Cole, *Enemy Aliens*, pg. 120.
[333] Cole, *Enemy Aliens*, pg. 130.
[334] Cole, *Enemy Aliens*, pg. 136.

Cole makes the point that immigration law has repeatedly been used to compromise the civil liberties of aliens while maintaining those of citizens. In the US case that follows, the same pattern follows. The civil liberties of a particular group, in this case Arabs and Muslims, and of non-citizens are curtailed to a much larger extent than are the liberties of anyone else. For all of the heat about liberties being eroded to preserve security, it is really the liberty of some that is being traded for the supposed security of others. This state of affairs is troubling from both civil libertarian and egalitarian perspectives.

September 11

After 9/11, American fear levels were abnormally high for three main reasons. First, the attack was much larger in terms of casualty and property damage than any previous terrorist attack in the world. Second, the United States has rarely been attacked by foreign forces on its own soil. The last major attack by foreigners on the US had been the bombing of Pearl Harbor in 1941, nearly a full sixty years earlier. Third, Americans, at least the American public, to a large extent were not aware that they were being targeted by a terrorist organization based in Afghanistan that was capable of hitting the US. It is true that al-Qaeda had almost a year earlier bombed the USS Cole, and in 1998 bombed US embassies in Kenya and Tanzania, but the feeling of being at war or being targeted by terrorists was not felt by the public until 9/11. Opinion data provided here bears out this fact. These reasons contributed to make this attack extremely unexpected.

Consequently, 9/11 caused a groundswell of fear that makes this case a critical

one for theory-testing. Stating that a case is a critical one, of course, implies that if the

theory does not work in this case, then it probably won't work in others. The September

11 case is critical not only because fear levels were very high, but also because the office

of the president allows for fast action against threats. As Harold Laski states, in a crisis

situation, "the President's position is so overwhelming that it is, broadly, imperative for

Congress to follow where he chooses to lead." Laski goes on to state that, "In a crisis [in

America]... public opinion compels the abrogation of the separation of powers"[335].

Further, scholarship that bolsters my theory has already been done on this case.

Brigitte Nacos, Yaeli Boch-Elkon and Robert Shapiro find that, "announced threat alerts

and threat assessments by US administration officials had a significant impact on the

American public's perceptions of threat in the post-9/11 era"[336]. Nacos, Bloch-Elkon and

Shapiro continue, "The president, in particular, is in the best position to influence the

public's perceptions of terrorist threats"[337]. Nacos, et al. track the effect of public

pronouncements on the public's fears in the US post-9/11 environment. They find that a

peak in public opinion signifying that 27% of the public thought a terrorist attack was

"very likely" in October-November 2002, "coincided with two actual statements by

officials in October followed by six such pronouncements in November"[338]. Nacos, et

al.'s data show that, "as long as the administration appeared to plant fear in the public,

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[335] Laski, Harold. "The President and Congress" in Lijphart, Arend ed. *Parliamentary versus Presidential Government*. (Oxford, UK: Oxford University Press 1992), pg. 75.
[336] Nacos, Brigitte L., Yaeli Bloch-Elkon and Robert Y. Shapiro. "The Threat of International Terrorism after 9/11: News Coverage and Public Perception." 17 August 2006. Working Paper prepared for the Annual Meeting of the American Political Science Association (APSA), August 31-September 3, 2006, Philadelphia, pg. 2.
[337] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 41.
[338] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 33.

the President's approval ratings benefited"[339]. Moreover, Darren Davis and Brian Silver write that, "The higher the level of concern about another terrorist attack on the United States, the more people prefer order and security over civil liberties"[340].

As a report by the Transitional Records Access Clearinghouse of Syracuse University states:

"The impact of the events of 9/11/01 on the United States is hard to exaggerate. Within months, for example, the largest single re-organization of the federal government in more than forty years was underway as the Bush Administration and Congress began shaping the Department of Homeland Security. In the same period, the government and the airline industry agreed to a new program where federal agents would begin screening all passengers for weapons and certain kinds of explosives before they boarded their planes. And under then-secret orders from President Bush, the administration initiated or expanded new surveillance programs by the National Security Agency and the Treasury Department. Meanwhile, Congress began a long struggle to adopt a new body of law intended to profoundly alter the flow of legal and illegal migrants into the U.S. That struggle continues today"[341].

This case will proceed in the following manner. First, I will recount what happened on September 11, 2001. Then, three time periods will be tracked. First, the period immediately after the attack tracks the initial signing of the PATRIOT Act into

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[339] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 36.
[340] Davis, Darren W. and Brian Silver, "Civil Liberties vs. Security: Public Opinion in the Context of the Terrorist Attacks on America." *American Journal of Political Science*, vol. 48, no. 1 (January 2004), pg. 35.
[341] TRAC Reports, "Criminal Terrorism Enforcement in the United States During the Five Years Since the 9/11/01 Attacks," http://trac.syr.edu/tracreports/terrorism/169/.

law on October 26, 2001. This period will run until the one-year anniversary of

September 11th. Second, the run-up to the 2004 presidential and congressional elections,

beginning in February 2004 when electoral polling began and ending on November 2,

2004 the day the elections were held. Third, the period involving the re-passage of the

PATRIOT Act, which began with debates in July 2005 and ends with the signing of the

renewed bill into law on March 9, 2006. Within each case, I will look at executive

statements, the legislative debate, the opinion environment, and the legislation passed. I

leave a discussion of terror alerts for the second period and a look at enforcement of civil

liberty-abridging law for the end.

What happened in terms of attack?

On the morning of September 11, 2001, four teams of al-Qaeda operatives hijacked

four American commercial airplanes, all originating on the East Coast and en route to

California. Two of the planes hit the World Trade Center in New York City destroying

both towers, one crashed into the Pentagon in Washington, DC, and the last crash-landed

into a field in Shanksville, Pennsylvania[342]. Over 2,500 people were killed in the attacks,

including 343 firefighters and paramedics who fought to save those trapped in the World

Trade Center towers[343]. The nation suffered billions of dollars worth of damage[344].

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[342] *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: WW Norton & Co. 2004), pgs. 32-3.
[343] 9/11 By the Numbers, http://www.newyorkmetro.com/news/articles/wtc/1year/numbers.htm, "New York Reduces Death Toll By 40," 29 October 2003, http://www.cnn.com/2003/US/Northeast/10/29/wtc.deaths.
[344] 9/11 By the Numbers, http://www.newyorkmetro.com/news/articles/wtc/1year/numbers.htm

Though al-Qaeda had previously attacked US interests, most recently with the USS Cole attack on October 12, 2000, these attacks were an absolute shock to Americans for two main reasons. First, this was the first foreign attack on US soil since the Japanese bombing of Pearl Harbor in World War II. Americans had grown accustomed to political violence occurring elsewhere due to the oceans separating the United States from Europe, Asia, and Africa. As such, when Osama bin-Laden declared war on America in 1998, stating in an ABC-TV interview that "it was more important for Muslims to kill Americans than to kill other infidels," it was hard to know how seriously to take his declaration given the paucity of foreign attacks on US soil[345]. The second reason that Americans were shocked is that they viewed the attacks as largely unprovoked. The attacks seemed to come out of nowhere and Americans, including the President, were left asking, "Why do they hate us?"[346] The President surmised that they "hate our freedoms," but due to the fear that pervaded American society he had already begun curtailing these very freedoms[347]. For "[a]fraid that September 11 brought merely the first of a wave of terrorist attacks, Americans expected and, indeed, demanded that their government take immediate and decisive steps to protect the nation"[348].

Finally, it was not just the economic damage and lives lost that shook the American public after September 11th, but also the powerful symbolism of the attack. The two tallest buildings in New York City had been ground to dust. These buildings had housed some of the world's most successful corporations. They thus symbolized

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[345] *The 9/11 Commission Report*, pg. 47.

[346] Jessica Stern notes that, "Terrorists rarely make their capabilities and intentions known. Their motivations and intentions also change over time in ways that are hard for analysts to predict" (Stern, "Dreaded Risks," 100).

[347] Ford, Peter. "Why do they hate us?" 27 September 2001, *The Christian Science Monitor*, http://www.csmonitor.com/2001/0927/p1s1-wogi.html.

[348] Stone, *Perilous Times*, pg. 550.

American economic prosperity and might. The Pentagon, a symbol of US military strength, was left smoldering. The symbolic weight of an attack on these targets is missed by looking at numbers alone. Had no one died in the attacks, the destruction of these structures alone would still have shaken Americans to their core.

SECTION ONE: THE IMMEDIATE POST-9/11 PERIOD

Government Composition and Party Competition

In the immediate post-9/11 period, President Bush presided over a nearly evenly divided House and Senate. He had also come off of one of the most contentious and closest presidential elections in American history. The Senate was evenly divided between Democrats and Republicans and the House held 221 Republicans, 212 Democrats, and 2 independents. The Republicans had just lost 4 Senate seats and 2 House seats in the 2000 election[349]. Though the country was divided nearly half red-half blue, the stakes in the 2000 election were not as high as they would be in the coming years when the war on terrorism and Iraq war would be in full swing. It is interesting to note, still, that President George W. Bush in the immediate post-9/11 period headed a country and a government that before the attacks was split down the middle along partisan lines.

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[349] CNN.com/allpolitics.com, "Election 2000 archive," http://www.cnn.com/ELECTION/2000/.

On September 11ᵗʰ, 2001 at 8:30 PM, President George W. Bush made an initial,

brief statement addressing the nation. He stated outright that, "Today, our fellow

citizens, our way of life, our very freedom came under attack in a series of deliberate and

deadly terrorist attacks." Two sentences later, he conjured the government protection

theme stating that, "These acts of mass murder were intended to frighten our nation into

chaos and retreat. But they have failed; our country is strong." He then made a call to

arms saying that, "A great people has been moved to defend a great nation," already

putting the mobilization of America and the run to war in the past tense. He also framed

the conflict for the first time, threatening that, "We will make no distinction between the

terrorists who committed these acts and those who harbor them"[350]. A few days later, in

a radio address, President Bush further framed the conflict again, saying that, "This is a

conflict without battlefields or beachheads, a conflict with opponents who believe they

are invisible."[351] Tellingly, he declared that, "We are planning a broad and sustained

campaign to secure our country and eradicate the evil of terrorism."[352] Eradicating the

evil of terrorism is a very broad goal since terrorism is a tactic used by many groups

around the world for many different reasons. Bush could have stated that the country

would bring the criminal organization behind the attack, and perhaps its allies, to their

knees. Instead, he took on a tactic whose definition is highly contestable and

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[350] George W. Bush, "Statement by the President in His Address to the Nation," 11 September 2001, http://www.whitehouse.gov/news/releases/2001/09/print/20010911-16.html.
[351] Recall here that invisibility ranks as a "dreaded risk" or aggravating risk factor for most people.
[352] George W. Bush, "Radio Address of the President to the Nation," 15 September 2001, http://www.whitehouse.gov/news/releases/2001/09/print/20010915.html.

malleable[353]. Thus, he framed the threat and the coming conflict as generally and ambiguously as he possibly could.

The secrecy of the Bush Administration was evident in the first days after the attack. On September 16, 2001 on NBC's *Meet the Press*, Vice President Dick Cheney stated that, in response to the terrorist threat "We have to work the dark side, if you will. Spend time in the shadows of the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion."[354] The reductions on liberties that would follow the September 11th attacks certainly run in line with Cheney's comments.

On September 17, 2001, less than one week after the attacks, President Bush made a major tolerance-themed speech in which he declared that, "Islam is peace." He announced that the world's Muslims were just as "appalled" by the 9/11 attacks as were Americans. He then quoted a Koranic verse, which states, "In the long run, evil in the extreme will be the end of those who do evil. For that they rejected the signs of Allah and held them up to ridicule." He said that Islam "is a faith that brings comfort to a billion people around the world" and that "Muslims make an incredibly valuable contribution to our country." President Bush ended with a cautionary note: "Those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior"[355]. Though, as will be seen at the end of this case, the Bush Administration was at the same time detaining and deporting Muslims en masse, Bush deserves credit for making this extensive tolerance-themed statement. In previous crisis

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[353] See discussion of the definition of terrorism in theory section.
[354] Frontline, "The Dark Side: Analysis,"
http://www.pbs.org/wgbh/pages/frontline/darkside/themes/darkside.html.
[355] George W. Bush, "'Islam is Peace' Says President," 17 September 2001,
http://www.whitehouse.gov/news/releases/2001/09/print/20010917-11.html.

periods in American history, executives have not restrained the public in their fervor for getting revenge on "enemies within": be they Germans, Japanese, Frenchmen, or Communists[356]. That Bush, a president much maligned for his antagonism to Muslims, would call on Americans to restrain themselves and to respect Islam as a religion of peace in the first week after 9/11 is significant. That said, actions speak louder than words, and as will be seen below with the enforcement and passage of legislation dependent variables, the Bush Administration's actions against Arabs and Muslims largely superceded positive statements made about Islam.

In his first major speech to the nation after 9/11, an "Address to a Joint Session of Congress and the American People" delivered on September 20, 2001, President George W. Bush focused on the following five themes. First, he underlined the nation's unity (rally 'round the flag). Second, he named the enemy and stated what they had done (conflict framing and threat magnitude). Third, he demanded that the Taliban deliver the leaders of al Qaeda to the United States. Fourth, he promoted Islam as an honorable religion (tolerance). And finally, he framed the coming fight (call to arms and conflict framing). Generally, he tried to assuage the public's fears and gear it up for the war effort.

The President first underlined America's unity as a nation, a clear call to rally 'round the flag. He said that, "We have seen the unfurling of flags, the lighting of candles, the giving of blood, the saying of prayers—in English, Hebrew and Arabic." He emphasized the diversity of the victims of the 9/11 attacks: "dozens of Pakistanis; more than 130 Israelis; more than 250 citizens of India; men and women from El Salvador,

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[356] Cole, *Enemy Aliens*.

Iran, Mexico, and Japan; and hundreds of British citizens." Then, he touted Great

Britain, saying that, "America has no truer friend."

Next, he named the enemy, thus framing the conflict. Bush declared that, "On

September the 11th, enemies of freedom committed an act of war against our country."

He emphasized that a new normal existed in the nation, asserting that, "night fell on a

different world [that day], a world where freedom itself is under attack." He then named

"loosely affiliated terrorist organizations known as al Qaeda" as the perpetrators of the

attacks. Bush stated that al Qaeda's "goal is remaking the world—and imposing its

radical beliefs on people everywhere." This was a much more specific statement of the

threat than Bush had made in previous statements, and he would be loath to name al-

Qaeda in future statements.

He then made a clear statement of tolerance separating al Qaeda from other

Muslims. Bush called al Qaeda, "a fringe movement that perverts the peaceful teachings

of Islam." After demanding that the Taliban deliver all al Qaeda leaders to the US, he

returned to this pro-Islam theme. He said: "I also want to speak tonight directly to

Muslims throughout the world. We respect your faith." He called the terrorists "traitors

to their own faith, trying, in effect, to hijack Islam itself." Bush also made clear that,

"The enemy of America is not our many Muslim friends, it is not our many Arab

friends." Bush also emphasized that, "We are in a fight for our principles, and our first

responsibility is to live by them. No one should be singled out for unfair treatment or

unkind words because of their ethnic background or religious faith."

He next framed the coming fight as one of global reach that could last for years on

end. He said that our enemy is not only "a radical network of terrorists," but also "every

government that supports them." Bush announced that, "our war on terror ... will not end until every terrorist group of global reach has been found, stopped and defeated." This fight, thus, would not be one of al Qaeda versus the United States, but rather "civilization's fight ... the fight of all who believe in progress and pluralism, tolerance and freedom." The magnitude of the threat could not have been greater.

He ended by framing the battle as one of freedom versus fear, thus making a call to arms. Bush said that, "freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them." He concluded that, "we'll meet violence with patient justice—assured of the rightness of our cause, and confident of the victories to come"[357]. As will be shown below, after September 11, there existed a great disconnect between the government's words and deeds[358].

On October 7, 2001, the US military began its war against the Taliban and al-Qaeda forces in Afghanistan. The President's address that day reiterated previously established themes. Bush stated the action against Afghanistan was foisted against Americans. He said that "America is a peaceful nation," but that "there can be no peace in a world of sudden terror." He also made sure to highlight that the war in Afghanistan was just one node in a war on terror that had already affected 38 countries[359]. Once again, the conflict was framed as broadly as possible and it was stressed that the threat was global and far-reaching.

One month later, on November 8, 2001, President Bush addressed the nation at length, and this time described the threat faced in the starkest terms yet. The speech had

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[357] George W. Bush, "Address to a Joint Session of Congress and the American People," 20 September 2001, http://www.whitehouse.gov/news/releases/2001/09/print/20010920-8.html.
[358] Cole, *Enemy Aliens*, pg. 197.
[359] George W. Bush, "The President's Address to the Nation on the Use of Force in Afghanistan," 7 October 2001, http://www.c-span.org/executive/bush_war.asp?Cat=Current_Event&Code=Bush_Admin.

two conflicting goals: hammering home to the public that the nation was at threat and assuaging the public's fears. These statements mixed the government protection and statement of threat themes, a strategy that Bush would frequently use in the proceeding years. Bush declared that, "we are a nation awake to danger." He uttered that our enemies want to "kill all Americans, kill all Jews, and kill all Christians" and the that the threat to Americans' freedoms that international terrorists posed "could not be higher." After two sentences of tolerance on how the terrorists "hide behind a peaceful faith" and in actuality "have no religion," Bush continued to frame the threat. The President declared that a new normal existed in the world, saying that, "This is a different war from any our nation has ever faced, a war on many fronts, against terrorists who operate in more than 60 countries." Speaking directly to the issue of liberty-security tradeoffs, he asserted that, "we will always value freedom—yet we will not allow those who plot against our country to abuse our freedoms and our protections."

Bush next spoke about terror alerts. He framed them within the government protection theme, but also emphasized that they signified the existence of a threat. He said that, "A terrorism alert is not a signal to stop your life. It is a call to be vigilant—to know that your government is on high alert, and to add your eyes and ears to our efforts." Bush, thus, sounded as if he were assuaging fears while simultaneously signaling to the public that serious threats are out there and that they should be fearful of them. He went on to demand of the public that they not be fearful, saying that "we have refused to live in a state of panic" and that, "We will not give in to exaggerated fears." He also declared that, "We will not judge fellow Americans by appearance, ethnic background, or

religious faith"[360]. Six months later, in a speech about the new Department of Homeland Security, President Bush was drumming on the same themes. He spoke again on the threat assessments and warnings he received daily, saying, "These warnings are a new reality in American life." He reiterated that, "The first and best way to secure the homeland is to attack the enemy where he hides and plans." Finally, he stated that the purpose of the new department was to make government more focused and effective[361].

President Bush culminated these themes in a speech on the day after the first anniversary of the September 11th attacks. He had reiterated time and again that the enemy had to be attacked in his home, rather than in America. He had said that America was a nation under imminent threat and that the war on terrorism was a global campaign. He also had emphasized that regimes that harbored terrorists would be targeted. He thus framed the conflict as a global war that pitted civilization against terror, which both ushered in a new normal in the world and stressed that the magnitude of the threat could not be higher. On September 12, 2002, in a speech to the United Nations, George W. Bush said, "In the attacks on America a year ago, we saw the destructive intentions of our enemies. ... [O]ur greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale." Bush then attempted to link the war on terror and the UN's mission to the overthrow of a regime that he described as a lethal and aggressive threat: Saddam Hussein's government in Iraq. Bush laid out a list of accusations he held against the Hussein regime: invading Kuwait, repressing minorities, violating human rights, attempted assassinations of world

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[360] George W. Bush, "Progress Report on the War Against Terrorism," 8 November 2001, http://www.c-span.org/executive/bush_progress.asp?Cat=Current_Event&Code=Bush_Admin.
[361] George W. Bush, "Remarks by the President in Address to the Nation," 6 June 2002, http://www.c-span.org/executive/dhs.asp?Cat=Current_Event&Code=Bush_Admin.

leaders, and harboring and supporting terrorists. He said that assuming that Saddam

Hussein's government was not pursuing weapons of mass destruction was "to hope

against the evidence." He then warned that "lives of millions and the peace of the world"

were at stake if the United Nations did not act against Hussein soon[362]. A year of post-

terrorism speeches had culminated in a speech that would be the beginning of a

mobilization to war against Iraq. Bush's conflict framing and his hammering on the

theme that a new normal existed in the world led him to push for imminent action against

Iraq.

To summarize, this section captured the themes that the President forwarded in

the first year after September 11, 2001. Notably, President Bush made broad statements

of tolerance, promoting Islam as a religion of peace and even devoting a full speech to

the subject within the first week after the attacks. Generally Bush stuck to three

messages. The first types of messages involved calls to arms and rally 'round the flag

type statements meant to mobilize the nation for war. He emphasized Americans' unity,

that America represented freedom while the terrorists embodied fear, and that justice

would be brought to the terrorists behind the attacks. The second category of messages

framed the conflict and what the coming war would look like. Bush tellingly said that he

would not make a distinction between the terrorists being fought and those that harbored

them. He emphasized repeatedly that international terrorists posed a grave threat. He

finally framed the war as one against all terrorism, not just al-Qaeda, Islamists, or any

particular group. These messages allowed the President to shape the threat, and he

framed it about as widely as he could. Finally, the President tried to assuage the public's

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[362] George W. Bush, "Remarks by the President in Address to the United Nations General Assembly, " 12 September 2002, http://www.c-span.org/executive/BushUN.asp?Cat=Current_Event&Code=Bush_Admin.

fears, while also emphasizing that America was under threat. He repeatedly stated that Americans should not live their lives in fear, while also constantly harping on the fact that serious threats to Americans' lives existed. These statements mixed the government protection and statement of threat themes, a strategy that the President would continually employ. On the one hand, one could argue that the President was simply relaying the truth to the public: there was a threat, but there was no use in panicking. But, one could also argue that Bush sought to keep the semblance of threat high and define the war on terror as widely as possible in order to grant himself as much freedom of action as possible. This latter theory is bolstered by Bush's choice to attack Iraq first presented one year after the attacks.

Going theme-by-theme, Bush did emphasize repeatedly that a new normal existed in the country, one in which a high threat magnitude existed, and categorized the threat specificity as broad and nebulous. He framed the conflict as one between America and all terrorists and terrorist sympathizers in the world. In this period, nightmare scenarios were not employed with very much frequency. Bush made numerous calls to arms and leaned on the government protection theme. He also tellingly preached tolerance. However, liberty-security tradeoffs and government successes were as yet not a big part of the President's statements.

Legislative debate

This section recounts the legislative debate regarding the USA Patriot Act. The USA PATRIOT Act passed the Senate with a 98-1 vote on October 25, 2001 with little

debate. Russ Feingold cast the lone dissenting vote[363]. The House vote of the previous

day was more divided: 357-66[364]. Obviously, only a month and a half had elapsed after

the September 11 attacks when this legislation passed. This allowed little time for

debate. But, though there was little debate, there were dissenting voices.

Feingold spoke at length on the day the Senate passed the PATRIOT Act. He

invoked Benjamin Franklin, who said that, "a nation that would trade its liberties for

security deserves neither." He said that we must "respect our Constitution" by preserving

checks and balances. Feingold then emphasized what he found wrong with the bill,

stating, "it is one thing to shortcut the legislative process in order to get Federal financial

aid to the cities hit by terrorism. We did that, and no one complained that we moved too

quickly. It is quite another to press for the enactment of sweeping new powers for law

enforcement that directly affect the civil liberties of the American people without due

deliberation by the peoples' elected representatives." The lack of deliberation has been

particularly worrisome to opponents of the PATRIOT Act[365]. Feingold next pointed out

that he did not have a problem with the whole act. Feingold concluded, however, that

provisions that expanded search-and-seizure powers and increased surveillance powers,

particularly those enumerated in the Foreign Intelligence Surveillance Act, were

particularly troublesome to him[366]. No other Senator expressed disagreement with the

Act.

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[363] Congressional Record—Senate, S 11059, October 25, 2001, http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2001_record&page=S11059&position=all. For more information on the content of the USA PATRIOT Act and the passage of the legislation see http://thomas.loc.gov/cgi-bin/bdquery/z?d107:h.r.03162:.
[364] Congressional Record—House, H 7224, October 24, 2001, http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2001_record&page=H7224&position=all
[365] See Cole, *Enemy Aliens.*
[366] USA PATRIOT ACT OF 2001 -- (Senate - October 25, 2001), S11019-S11022, http://thomas.loc.gov.

In the House, there was more dissent probably because House seats are less contested. The comparatively greater dissent in the House of Representatives was due to relative safety of most House seats. That is, the majority of congressmen and women hold seats in districts that are non-competitive because of gerrymandered districts. Due to the lack of competition, congressmen and women are able to play more to the extremes than their colleagues in the Senate[367].

In the House, Earl Blumenauer of Oregon made the following statement: "I voted against H.R. 3162 because there are still problems regarding freedom of speech; four years is too long a period before mandatory Congressional review, and because there was no opportunity for the House to offer reasonable amendments to further refine the legislation. When we are dealing with the fundamental freedoms of every American there is no excuse not to take the appropriate time to do the best we can"[368]. Others, like Rep. Patsy Mink of Hawaii plainly stated that, "The measures included in the USA PATRIOT Act go too far". A major concern of legislators was that, in the words of Rep. Mink, "We tossed away the bipartisan compromise painstakingly passed unanimously by the House Judiciary Committee. We were denied legislative due process. The Committee decision was trashed"[369]. Representative Diana DeGette of Colorado, echoing Mink's statements, summarized the concerns of many of her fellow representatives in the following speech on October 12, 2001:

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[367] On the lack of competitive elections in the House of Representatives and gerrymandering see The Economist, "How to Rig an Election," 25 April 2002, http://www.economist.com/world/na/PrinterFriendly.cfm?Story_ID=1099030.
[368] UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT) ACT OF 2001 -- (Extensions of Remarks - October 24, 2001), E1922, Speech of Hon. Earl Blumenauer made on October 23, 2001, http://thomas.loc.gov.
[369] PATRIOT ACT OF 2001 -- (Extensions of Remarks - October 16, 2001), E1896, Speech of Patsy T. Mink made on October 12, 2001, http://thomas.loc.gov/.

"After careful deliberation, House Judiciary Committee on October 11, 2001 passed H.R. 2975, the 'Provide Appropriate Tools Required to Implement and Obstruct Terrorism (PATRIOT) Act.' In fact, the committee recognized the importance of the subject matter and the potential consequences of the bill and passed H.R. 2975 unanimously. This bill enjoyed broad bipartisan support from the Judiciary Committee and members of the full House.

However, in an end run around bipartisanship and the committee process, the House majority leadership brought a different and controversial bill to the floor without allowing time for committee consideration and without even giving Members time to figure out what the bill does. Actually, this new bill was being written at the same time that the House was supposed to be debating the bipartisan PATRIOT Act.

The new 187-page bill contained some very distressing provisions. Under current law, search warrants must include very specific information including what is to be searched, who must cooperate, and who is the target of the search. A provision in the new bill would allow federal investigators to obtain search warrants without specifically naming each person who is involved. Another provision would allow federal authorities to obtain information like credit card numbers and bank account numbers with a subpoena, not a court order, as is the case under current law. Also, many of the provisions that expand the government's search and surveillance powers would not allow Congress to review the new powers until 2006.

Yet, instead of bringing up a bipartisan bill that has worked its way through the committee process, the House Majority hastily brought a very large and complicated bill to the floor that could have serious consequences for the liberties of the American public. Congress must update its anti-terrorism laws for the 21st century, however, we must not sacrifice our civil liberties in a rush to vote on potentially dangerous legislation that has not been adequately reviewed by lawmakers"[370].

Reps. Martin Meehan of Massachussetts and Carolyn Maloney of New York shared Degette's reservations[371]. However, Meehan maintained that, "Nonetheless, I rise in support of the antiterrorism legislation before us. While the bill is not perfect, it does maintain an acceptable balance between bolstering law enforcement powers and protecting our civil liberties. In fact, when I read the Senate bill, I see much of the House Judiciary Committee's work reflected in that product"[372]. Meehan voted for the bill.

It is important to note that Congresspeople who supported the bill were cognizant of the security-liberty tradeoffs. As Rep. John McHugh of New York stated: "The horrific events of September 11th have demonstrated that more needs to be done to protect Americans from terrorism. At the same time, my colleagues and I are quite cognizant of our responsibilities in safeguarding the fundamental constitutional rights of

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[370] PATRIOT ACT OF 2001 -- (Extensions of Remarks - October 16, 2001), E1897, Speech of Hon. Diana DeGette made on October 12, 2001, http://thomas.loc.gov/.
[371] On Mahoney, see PATRIOT ACT OF 2001 -- (Extensions of Remarks - October 17, 2001), E 1916, Speech of Hon. Carolyn B. Maloney made on October 12, 2001, http://thomas.loc.gov/.
[372] PATRIOT ACT OF 2001 -- (Extensions of Remarks - October 16, 2001), E1893, Speech of Hon. Martin T. Meehan made on October 12, 2001, http://thomas.loc.gov/.

the American people. The PATRIOT Act recognizes these concerns and strikes a balance between security enhancements and tools for law enforcement and civil liberties"[373].

In sum, the PATRIOT Act passed easily due to the threat felt by congress members and, as will be elaborated below, due to the high fear levels of the public. The Congress felt that it needed to act. Finally, due to the high fear and threat levels, hypothesis two from above, which stated that legislative antagonism will be more likely when the government is divided, did not bear out in this case.

The Opinion environment: An Overview

Before going into the details of the USA PATRIOT Act, it is important to touch on the opinion environment in the post-9/11 period. The immediate aftermath of 9/11 saw a dramatic uptick in mass fear and a general willingness to sacrifice civil liberties for security among the public. Gallup/CNN/*USA Today* polls found that those worried or somewhat worried about terrorism more than doubled from the previous time the question was asked, and were significantly higher than the level of those fearful after the Oklahoma City bombing in April 1995. Indeed, 23% of people were very worried about terrorism after 9/11, whereas the highest previous figure, after Oklahoma City, was 14%. Further, 30-35% of people were somewhat worried about terrorism after 9/11 in polls taken up to October 21, 2001[374]. The highest "somewhat worried" figure previous to this,

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[373] PERSONAL EXPLANATION -- HON. JOHN M. McHUGH (Extensions of Remarks - October 16, 2001), E1901, remarks of Hon. John M. McHugh made on October 16, 2001, http://thomas.loc.gov/.
[374] The poll referred to was taken from October 19 to 21, 2001. In the data appendix and in future references to polls here, the convention will be to cite a poll taken on multiple dates using the first date the poll was administered. For example, a poll taken from August 1 to 8, 1995 would be referred to as an August 1, 1995 poll.

in recent history, was in April 1995 when 28% of Americans were "somewhat worried" of future terrorist attacks after the Oklahoma City bombing[375]. The Pew Research Council for the People & The Press found that over half of Americans were willing to trade liberties for security after 9/11, nearly doubling the total from April 1997[376]. However, the number of Americans willing to swap liberty for security was similarly high after Oklahoma City[377].

The Gallup/CNN/*USA Today*[378] question wording noticeably changes. On all of the polls before 9/11, Gallup asked, "How worried are you that you or someone in your family will become a victim of a terrorist attack similar to the bombing in Oklahoma City—very worried, somewhat worried, not too worried, or not worried at all?" Post-September 11, the question wording drops the reference to Oklahoma City, asking the public, "How worried are you that you or someone in your family will become a victim of a terrorist attack—very worried, somewhat worried, not too worried, or not worried at all?"[379] Clearly, the reference to the Oklahoma City bombing could have had a strong effect on how people responded to the pre-9/11 questions on terrorism. It could have made people less worried as memories of the Oklahoma City bombing receded, or it could have made people respond that they were more worried since it linked terrorism to a salient event that could be quickly conjured.

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[375] Huddy, Leonie, Nadia Khatib, Theresa Capelos. "The Polls—Trends: Reactions to the Terrorist Attacks of September 11, 2001." *Public Opinion Quarterly* Vol. 66 (Fall 2002), pgs. 435-6.

[376] The Pew poll asks, "In order, to curb terrorism in this country, do you think it will be necessary to curb some civil liberties or not?" (The Pew Research Council for the People & the Press, "American Psyche Reeling from Terror Attacks," pg. 11 of printout).

[377] The Pew Research Council for the People & the Press, "American Psyche Reeling from Terror Attacks," 19 September 2001, http://people-press.org/reports.

[378] This poll was administered by Gallup alone on 8/98 and 10/11/01.

[379] I include here an April 1997 poll by Yankelovich/Time/CNN and an April 2001 poll by AP/ICR that had the exact same wording (Huddy, et al. "The Polls—Trends: Reactions to the Terrorist Attacks of September 11, 2001," pgs. 435-6).

When we turn to the likelihood of attacks, Americans' perceptions that another terrorist attack in the near future was likely jumped substantially after 9/11, then tapered off as time went on. The fears of a future attack after the 2001 attacks are similar to the fears to a future attack after the Oklahoma City bombings. Note the bumps in survey respondents claiming that a terrorist attack was likely in June and November of 2002, July 2004 and then in August 2006—all around election seasons. Here, again, it is important to note differences in question wording. In 1991, the CBS/*New York Times* poll asked, "In your opinion, how likely is a major terrorist attack in the United States itself in the near future?" In 1995, the Yankelovich/*Time*/CNN poll asked, "How likely do you think it is that an act of terrorism will occur somewhere in the United States in the next 12 months?" After 9/11, CBS/*New York Times* polls asked respondents their opinions about the likelihood of an attack occurring "within the next few months"[380].

To summarize, fear levels were extremely high after 9/11. As the graphs below indicate, 58% of Americans were worried for the safety of themselves or family members due to terrorist attacks, 55% were willing to trade liberties for security, and 78% believed that another attack was likely. However, while, in the initial period after the attack, the latter two figures remained relatively stable, the number of Americans worried about themselves or family members becoming terror victims dropped precipitously. By Thanksgiving time, a mere three-and-a-half months after the attacks, 35% of Americans feared that they or their family members would become terror victims. In other words, according to this one metric, in three-and-a-half months, fear levels had dropped almost 40%.

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[380] Huddy, et al. "The Polls—Trends: Reactions to the Terrorist Attacks of September 11, 2001," pg. 431.

To provide a global perspective of fear levels and attitudes toward civil liberties over the entire period covered, I provide some data and charts below. Note that I have aggregated the worried and somewhat worried survey responses. More in-depth public opinion data and analysis is available in chapter three, which covers post-terror attack opinion dynamics.

Chart One:

Americans Worried about Selves or Family Becoming Terror Victims
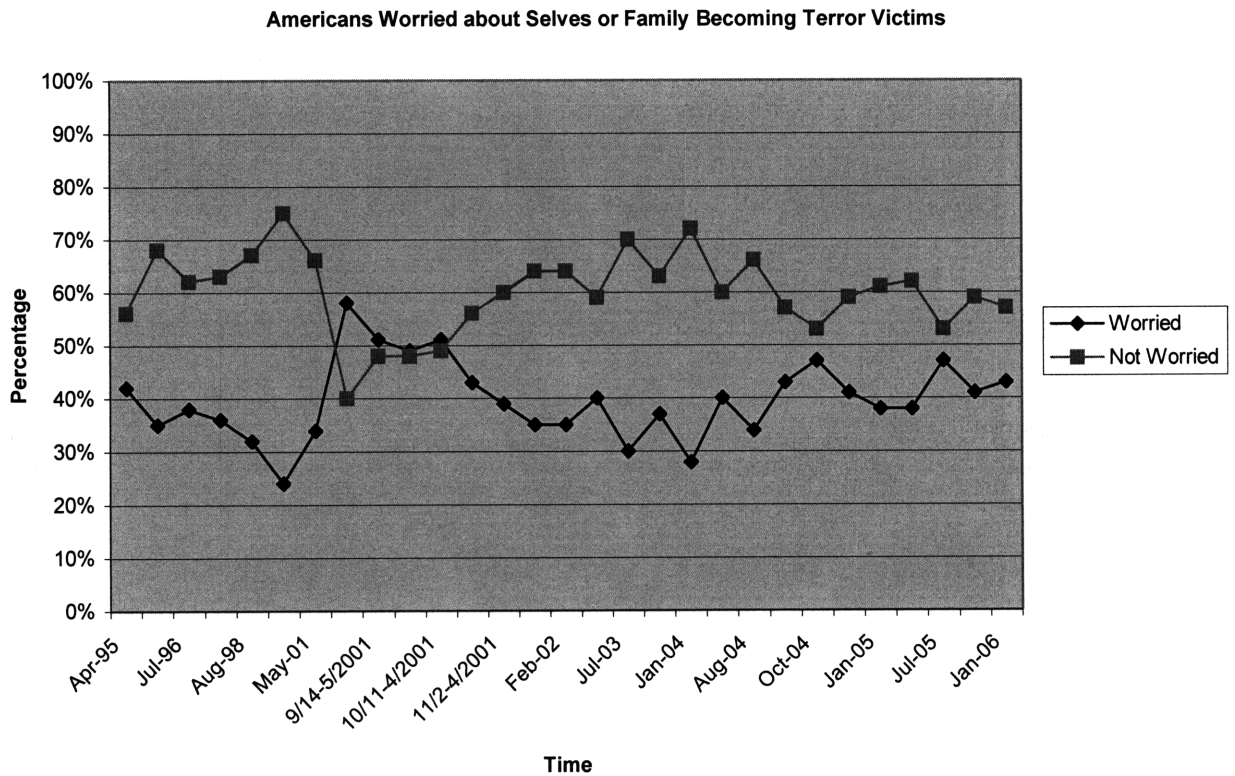
Need to Sacrifice Liberties to Fight Terrorism

Percentage

Time

Legend: Yes, No

Chart Three:

Likelihood of a Terrorist Attack on US
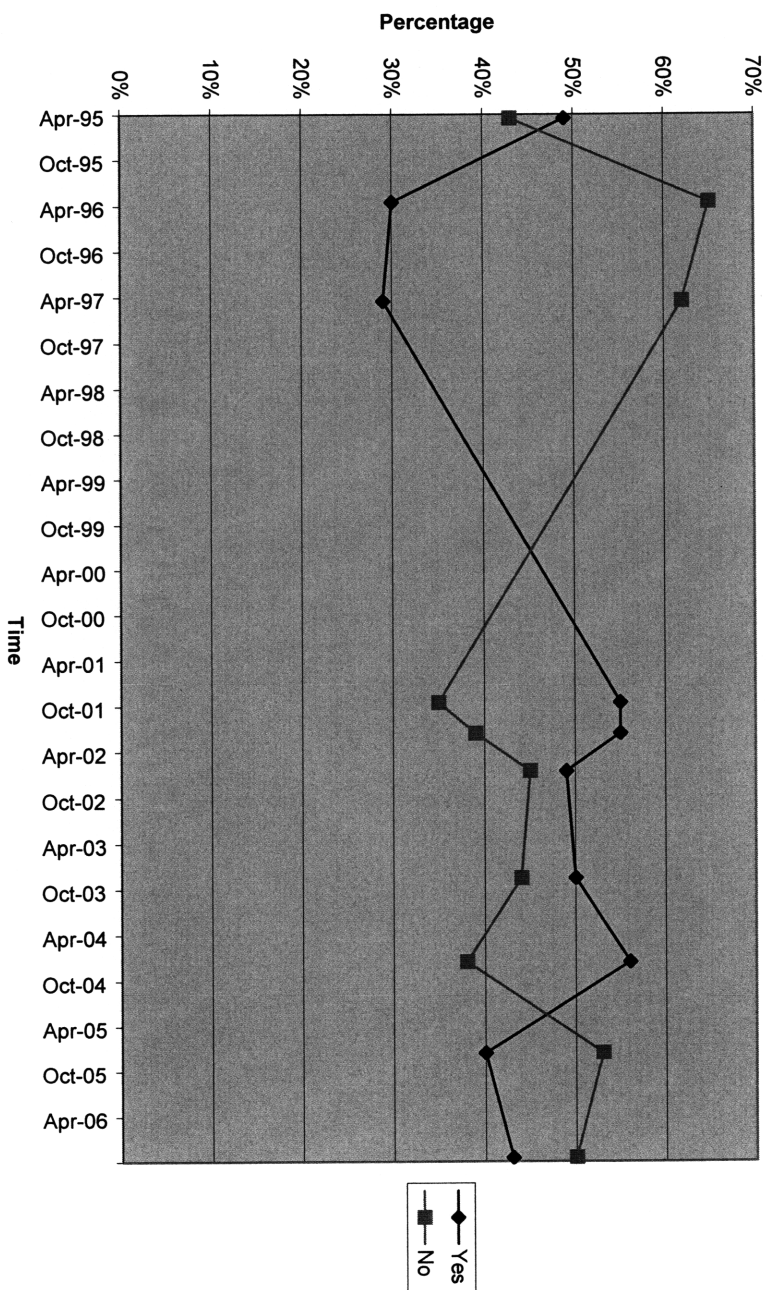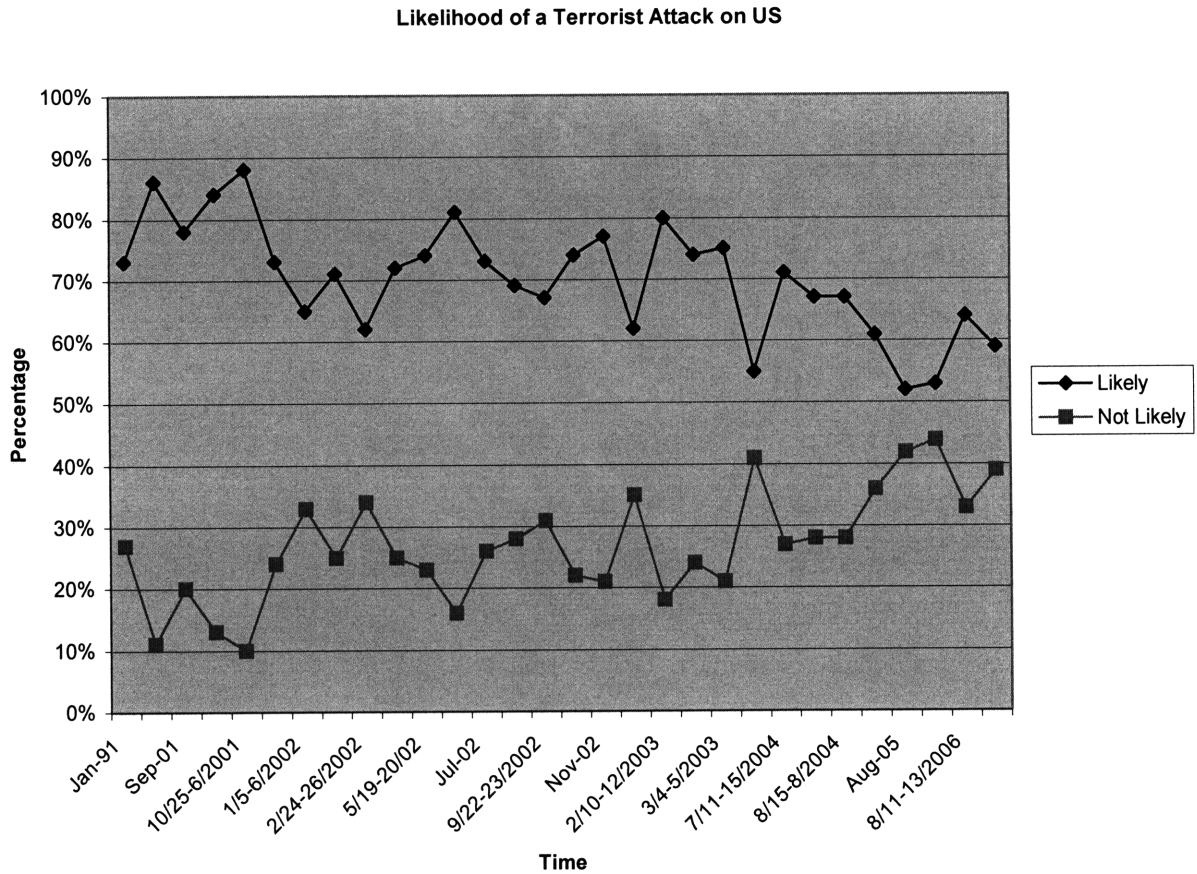
WHAT WAS PASSED: PATRIOT ACT

The centerpiece of the Bush Administration's domestic legislative response to 9/11

was the USA PATRIOT Act[381]. This section tracks the legislation passed in 2001. David

Cole and James Dempsey write that the Act allowed the Bush Administration to "cast a

cloak of secrecy over the exercise of government power." It did so by "removing

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[381] The USA PATRIOT Act is an acronym for the <u>Uniting and Strengthening America by Providing
Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001</u>.

limitations and judicial controls on investigative authorities," "rendering immigrants deportable for their political association and excludable for pure speech," and "authorized the government to freeze property on the basis of secret evidence[382]. The PATRIOT Act made aliens deportable for any material support to terrorist groups[383]. Cole and Dempsey note that such groups could engage in both violent and nonviolent activities, but all donations to these groups were banned[384]. The Act gave the attorney general the ability to arrest a foreign national suspected of terrorism for seven days without charge[385]. The new law "allows the government to detain foreign nationals indefinitely, even where they have prevailed in their removal hearings" even when these aliens have never been convicted of any crime[386]. Cole and Dempsey do note, however, that this provision has yet to be invoked[387].

The PATRIOT Act expanded the Foreign Intelligence Surveillance Act allowing the government to secretly conduct surveillance on any individuals dubbed "agents of a foreign power"[388]. These government searches require no probable cause and subjects of these searches and wiretaps may only discover that they were searched if they are prosecuted[389]. As has been widely reported, the Bush Administration apparently did not think that FISA was enough and authorized the National Security Agency to conduct its own secret, warrantless wiretapping investigations that circumvented the FISA courts[390].

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[382] Cole and Dempsey, *Terrorism and the Constitution*, pg. 197.
[383] Cole and Dempsey, *Terrorism and the Constitution*, pg. 198.
[384] Cole and Dempsey, *Terrorism and the Constitution*, pg. 200.
[385] Cole and Dempsey, *Terrorism and the Constitution*, pg. 201.
[386] Cole and Dempsey, *Terrorism and the Constitution*, pg. 202.
[387] Cole and Dempsey, *Terrorism and the Constitution*, pg. 203.
[388] Cole and Dempsey, *Terrorism and the Constitution*, pgs. 206-7.
[389] Cole and Dempsey, *Terrorism and the Constitution*, pg. 207.
[390] Risen, James and Eric Lichtblau. "Bush Lets US Spy on Callers Without Courts," 16 December 2005, *The New York Times*, http://www.nytimes.com/2005/12/16/politics/16program.html?ei=5090&en=e32072d786623ac1&ex=1292

The PATRIOT Act gave the FBI the power to conduct "sneak and peek searches" in which "FBI agents can secretly enter an apartment or home while the owner is asleep or away, take, alter, or copy things, and not tell the owner that they were there for a 'reasonable period thereafter.'" The Justice Department has asserted that a "reasonable period" consists of ninety days[391].

Section 203 of the PATRIOT Act allows grand jury-obtained information to be used by intelligence agencies without a judge's approval. Dempsey and Cole aver that, "In effect, CIA agents working with law enforcement officers can now jointly draw up subpoenas, obtain the fruits of the grand jury's power, and never have to appear in open court or explain how they used the information"[392]. Section 215 of the PATRIOT Act gives the government the power to "secretly seize 'any tangible things (including books, records, papers, documents, and other items)' where those items are sought for an investigation" that relates to international terrorism or "clandestine intelligence activities"[393]. The PATRIOT Act permits the government to employ "roving wiretaps" against terrorism targets. Thus, wiretaps can be used against any phone an individual uses rather than against specific numbers[394].

Perhaps the strongest power the government granted itself after September 11 was the power to declare individuals "enemy combatants." As Cole asserts, "Attaching that label takes an individual out of the civilian justice system altogether and places him in military custody, potentially for the duration of the 'war on terrorism'"[395]. The standards

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389200; Cole, David. "Are We Safer?," 9 March 2006, *The New York Review of Books*, vol. 53, no. 4, pg. 5 of printout.
[391] Cole and Dempsey, *Terrorism and the Constitution*, pg. 209.
[392] Cole and Dempsey, *Terrorism and the Constitution*, pg. 213.
[393] Cole and Dempsey, *Terrorism and the Constitution*, pg. 214.
[394] Cole, *Enemy Aliens*, pg. 57.
[395] Cole, *Enemy Aliens*, pg. 39.

used for determining who is an enemy combatant, according to Attorney-General Alberto

Gonzales, changes from case-to-case. Therefore, only executive officials know who will

be determined an enemy combatant and who will be charged as a common criminal[396].

The prosecution of major terrorism cases has followed varied courses. For example, John

Walker Lindh, an American who fought with the Taliban in Afghanistan, Richard Reid,

the British shoe bomber, and Zacarias Moussaoui, a French citizen who co-conspired

with the 9/11 hijackers, were all tried in federal court and convicted of terrorism-related

crimes. Reid and Moussaoui were given life sentences[397]. However, Jose Padilla, the

alleged dirty bomber, Ali Saleh Kahlah al-Marri, and Yaser Esam Hamdi were designated

enemy combatants. Charges were dismissed for the latter two and Jose Padilla was

convicted of terrorism conspiracy charged in the summer of 2007 and later sentenced to

17 years in prison[398]. The power to detain was also expanded to immigration cases. The

PATRIOT Act makes it so that the attorney general "need only certify that he has

'reasonable grounds to believe' that a person is 'described in' the antiterrorism provisions

of the immigration law, and the individual is then subject to potentially indefinite

detention"[399].

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[396] Liptak, Adam. "In Terror Cases, Administration Sets Own Rules," 27 November 2005, *The New York Times*,
http://www.nytimes.com/2005/11/27/national/nationalspecial3/27enemy.html?ex=1290747600&en=c146af
7e24592cd8&ei=5088&partner=rssnyt&emc=rss.
[397] CNN.com, "Exchange between Reid, judge follows life sentence," CNN.com, 6 December 2003,
http://www.cnn.com/2003/LAW/01/30/shoebomber.sentencing/; CNN.com, "Jury spares 9/11 plotter
Moussaoui," CNN.com, 3 May 2006,
http://www.cnn.com/2006/LAW/05/03/moussaoui.verdict/index.html.
[398] "Six High-Profile Terrorism Cases," 26 November 2005, *The New York Times*,
http://www.nytimes.com/imagepages/2005/11/26/national/20051127_ENEM_GRAPHIC.html; Whoriskey,
Peter. "Jury Convicts Jose Padilla of Terror Charges," *The Washington Post*, 17 August 2007,
http://www.washingtonpost.com/wp-dyn/content/article/2007/08/16/AR2007081601009.html; Semple,
Kirk and Carmen Gentile. "Padilla Sentenced to More Than 17 Years in Prison," *The New York Times*, 22
January 2008.
[399] Cole, *Enemy Aliens*, pg. 65.

Included in the voluminous 342-page bill, were increased government abilities to search citizens' transactional records[400]. These new powers have yielded a hundredfold increase in the amount of national security letters over historical norms. These letters have allowed the FBI to track a person's spending habits, where they live, what they buy online, where they travel, what they read on the Web, and who telephones and e-mails them. Remarkably, the 30,000 national security letters the FBI issues a year can be collected "about people who are not suspected of any wrongdoing." As former congressman Robert L. Barr put it, "The beef with the NSLs is that they don't have even a pretense of judicial or impartial scrutiny … There's no checks and balances whatever on them. It is simply some bureaucrat's decision that they want information, and they can basically just go and get it. … The abuse is in the power itself"[401]. Indeed, as Cole and Dempsey write, "Previously, the FBI could get the credit card records of anyone suspected of being an international terrorist or other foreign agent. Under the Patriot Act, the FBI can get the entire database of the credit card company"[402]. Further, both Section 215 and NSLs are "subject to a gag order barring the recipient from disclosing the existence of the letter or letter in public." A federal court deemed the gag order unconstitutional in September 2004, however this provision remained part of the law until the PATRIOT Act was revisited in 2006[403]. It is important to note that the PATRIOT Act was created with a sunset requirement for sixteen of its provisions, which expired at the end of 2005[404]. The debate around the renewal of these provisions will be

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[400] Cole, *Enemy Aliens*, pg. 57.
[401] Gellman, Barton. "The FBI's Secret Scrutiny," *The Washington Post*, 6 November 2005, pg. A01.
[402] Cole and Dempsey, *Terrorism and the Constitution*, pg. 215.
[403] Cole and Dempsey, *Terrorism and the Constitution*, pg. 216.
[404] Stone, *Perilous Times*, pg. 540.

dealt with at length below. In summary, The PATRIOT Act makes "it easier to search property as well as detain individuals"[405].

In January of 2003, the Justice Department revealed plans for the Domestic Security Enhancement Act, popularly known as PATRIOT Act II. The legislation, which was stamped "Confidential" and dated January 9, 2003, was leaked by the Center for Public Integrity in February 2003. The DSEA would have given the executive the ability to strip anyone "who supports even the lawful activities of an organization the executive branch deems terrorist" of their citizenship[406]. It would have revived the powers of the 1798 Alien Act, which gave the executive the power to deport any non-citizen without having to show that the individual had done anything illegal. It even would have allowed for secret arrests[407]. In sum, the DSEA "would have reduced judicial oversight over surveillance, created a DNA database resting on unchecked executive 'suspicion,' lifted existing judicial restraints on local police spying on religious and political organizations, authorized the federal government to obtain library and credit card records without a judicial warrant, and permitted the federal government to keep secret the identity of *anyone* detained in a terror investigation." The proposed legislation was so badly received, that "the administration buried the proposal"[408].

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[405] Howitt, Arnold M. and Robyn L. Pangi. "Intergovernmental Challenges of Combating Terrorism" in Howitt and Pangi ed, *Countering Terrorism*, pg. 49.
[406] Cole, *Enemy Aliens*, pg. 69.
[407] Cole, *Enemy Aliens*, pg. 70.
[408] Stone, *Perilous Times*, pgs. 553-4. For a rundown on the provisions of Patriot Act II see American Civil Liberties Union, "ACLU Fact Sheet on Patriot Act II," 28 March 2003, http://www.aclu.org/safefree/general/17383leg20030328.html.

SECTION TWO: THE LEAD UP TO 2004 ELECTIONS

Government Composition and Party Competition

In the 2002 elections, Republicans gained eight House seats and two Senate seats. Thus, previous to the 2004 election, Republicans held a 51-48 majority in the Senate and a 229-204 majority in the House of Representatives. The 2004 elections would be fiercely contested with the war in Iraq and homeland security emerging as prominent issues. In the end, the Republicans would win once again. George W. Bush would earn a second term as president after defeating John Kerry and the Republicans would gain three additional House seats and four new Senate seats[409]. Since no new civil liberty-abridging legislation was passed in this period and since law enforcement will be left to the end of this case, the study of the 2004 election period will focus on executive statements, terror threat alerts and the general environment of fear. In this section, hypothesis one above— which states that when party competition is high, the incumbent will employ fear as a strategy—will be bolstered.

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[409] CNN.com Election Results, "America Votes 2004," http://www.cnn.com/ELECTION/2004/pages/results/bop/; Office of the Clerk, US House of Representatives, "Election Statistics," http://clerk.house.gov/members/electionInfo/elections.html.

Executive statements in this time period were part of an ongoing presidential election, thus I hypothesize that these statements were affected by where the president stood in the polling. First, the pre-election polling will be covered to find key points where George W. Bush lagged. Then, after isolating the periods where President Bush was most vulnerable, I review executive statements during these key periods in the next section.

To track polling, I looked at two major polling surveys: the CNN/*USA Today*/Gallup poll and the Fox News/Opinion Dynamics poll[410]. I chose the Fox News poll in particular because it is probably the one that the Bush Administration looked at most closely and, thus, would affect Bush's campaign strategy. After all, Dick Cheney requests that Fox News be turned on in his hotel rooms when he arrives and Fox News is the news channel of choice on Air Force One[411]. The polling trends appear below:

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[410] For Fox News, all of the polling data from May-October 2004, with the exception of the 9/7- 9/8 poll, was conducted by Fox News alone. Data for both polls was retrieved from http://www.realclearpolitics.com/bush_vs_kerry.html.

[411] See "White house scribe asks for remote," 28 April 2006, http://www.cnn.com/2006/POLITICS/04/27/whitehouse.fox/index.html.

Chart Four:

2004 Presidential Election Polls CNN/USA Today/Gallup

Chart Five:

2004 Presidential Election Polls Fox News/Opinion Dynamics
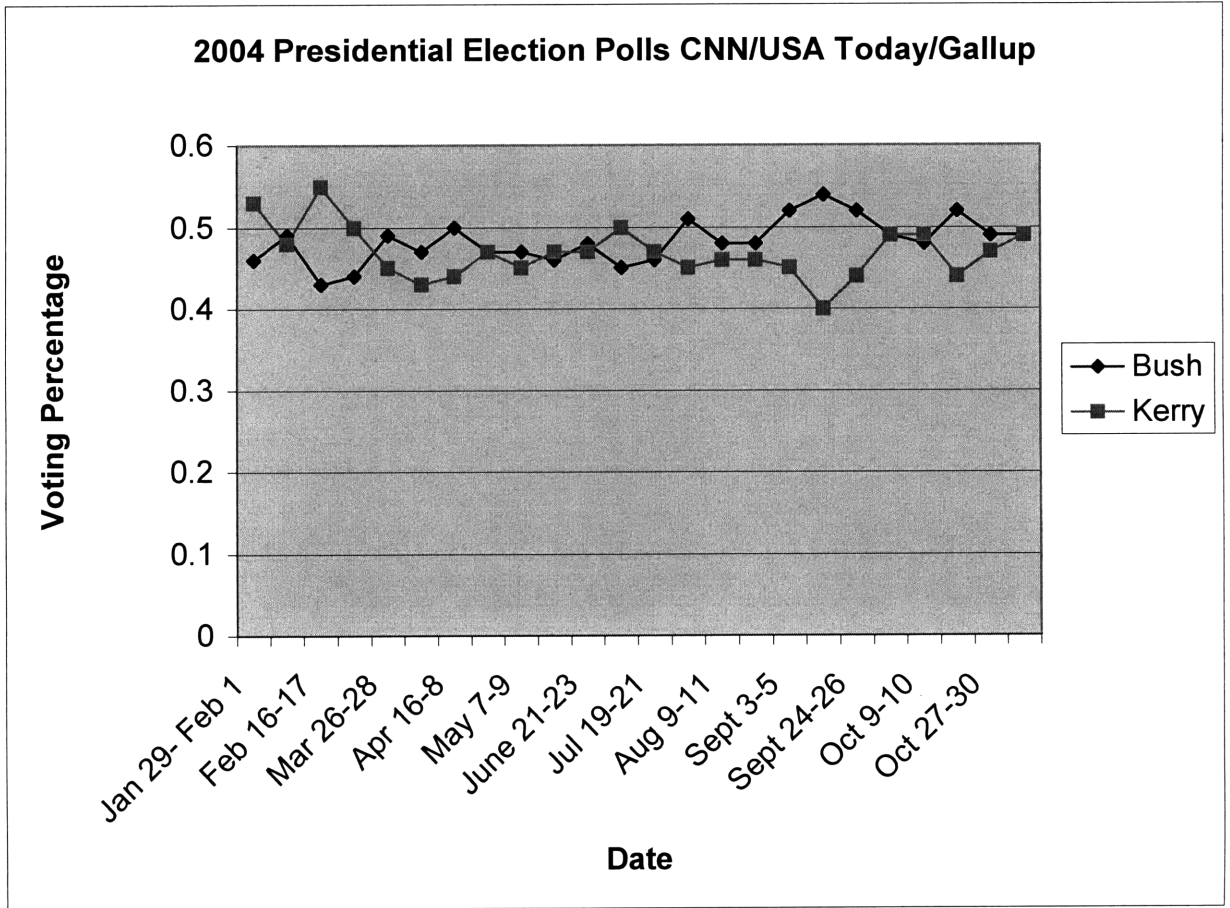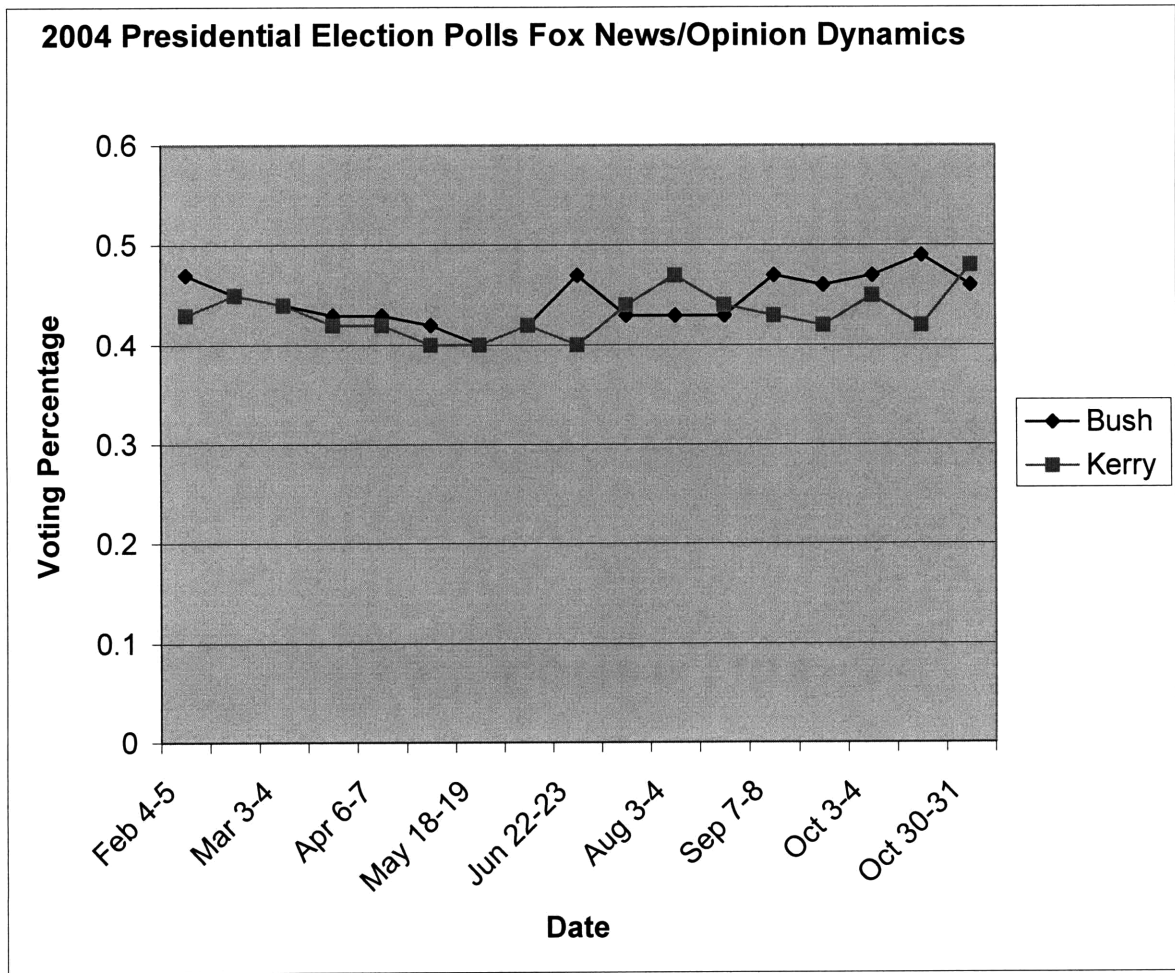
Both polls show three main periods where Kerry seriously threatened Bush. The CNN/*USA Today*/Gallup showed Kerry having a wide lead over Bush in the mid-February to March polls, then Kerry made a jump over Bush in July, and finally Kerry ran neck-and-neck with Bush in October. The Fox News/Opinion Dynamics poll showed similar results. Bear in mind that the Fox News polls were taken on different dates than the CNN polls so that exact results are not possible. The Fox News poll showed Kerry running even with Bush in mid-February to March and then in June, Kerry then took the

lead from Bush in July and August, and though Bush held a decent lead for most of October, the Fox poll shows Kerry overtaking him in the very end of the election cycle. In sum, both polls show Bush vulnerable in the beginning of the race (February to March), in the middle of the summer (July to August), and at the end of the race (October). Thus, I will review executive statements in these periods looking particularly for how Bush and Cheney shaped threats.

Important external events also may have affected how Bush perceived his candidacy. For instance, on March 11, a series of train bombings left 191 dead and over 1,500 wounded in Madrid, Spain. On July 22, the *9/11 Commission Report* was released, which detailed instances where the Bush Administration failed to "connect the dots." Finally, on October 29, 2004, Osama bin-Laden released a videotape in which he threatened the United States. President Bush admitted that the bin-Laden tape issued the Friday before the election helped him in his victory, stating that, "I thought it would help remind people that if bin Laden doesn't want Bush to be the president, something must be right with Bush."[412] Campaign events also contributed to Kerry gaining over Bush. For instance, Kerry won the Democratic nomination on March 2, 2004 and announced John Edwards as his running mate on July 6. Further, the presidential and vice presidential debates occurred from late September to mid-October. These dates all largely coincide with the dates of contestation chosen for scrutiny above.

In the next section, I will look at George W. Bush and his running mate Dick Cheney's statements in the periods earmarked: mid-February to March, July to August, and late September to the end of October. Statements made by President Bush and his

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[412] Reuters, "Report: Bush says bin-Laden helped in election," 28 February 2006, http://www.msnbc.msn.com/id/11604530/.

administration regarding homeland security, civil liberties and the war on terror will be highlighted. For this section, I reviewed all of Bush, Cheney and Condoleeza Rice's statements and campaign speeches pertaining to homeland security, the war in Iraq, and the war on terror from February 14 to March 31, July 1- August 31, and September 24 (the date the first presidential debate took place)- October 31. Since not every speech was only about these issues, I reviewed all of Bush's campaign speeches and included those that touched on the war on terror in my study[413]. Obviously, not all speeches will be touched on below, instead I select key speeches that highlight recurrent or new themes.

Executive statements

Period One: Mid-February and March

On February 28, 2004, National Security Advisor Condoleeza Rice made a speech in the Reagan Library and Museum outlining the history of the Bush Administration's dealings with the war on terror. Rice's statements would shape the threat magnitude as extremely high and also touch on a nightmare scenario that would repeated throughout the election cycle. She connected the terrorist threat to the Cold War, saying that, "The terrorist ideology is the direct heir to communism, and Nazism, and facism—the murderous ideologies of the 20th century." She also plainly stated a fear that President Bush and Vice President Cheney would harp on repeatedly in the coming months. Rice said, "we … face every day the possibility of our worst nightmare: the possibility of

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[413] All speeches were found at http://www.whitehouse.gov.

sudden, secret attack by chemical, biological, radiological, or nuclear weapons, the coming together of the terrorist threat with the world's most dangerous weapons."[414]

On the very day that John Kerry won the Democratic nomination, President Bush made a speech commemorating the Department of Homeland Security's one-year anniversary. Once again, he mixed threatening messages with messages meant to rally the public. Bush declared that, "The goal of the terrorists is to kill our citizens—that's their goal—and to make Americans live in fear. This nation refuses to live in fear." In an apparent dig at his opponent, Bush said that is was "vital" for our nation to "speak with a clear voice" and that we not be "a nation of empty words." Next, Bush moved on to another mixed message that he would repeat with great frequency over the campaign season: we're safer, but we're not safe. This mixed the statement of threat with the government protection themes. Next, he gave a mixed message about whether or not a new normal existed in the nation. He said: "Life in America, in many ways has returned to normal, and that's positive. ... But life will really never return to normal so long as there's an enemy that lurks in the shadows, that aims to destroy and kill." He described America's enemies as "wounded, but ... not broken" and then emphasized the threat, saying that, "vast oceans no longer protect us." He then detailed a laundry list of security measures that his administration had implemented, but ended the list by saying that, "Even with all these measures, there's no such thing as perfect security in a vast and free country."[415] This statement mixed government success and statement of threat themes.

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[414] Condoleeza Rice, "National Security Advisor Dr. Condoleeza Rice Discusses War on Terror at Reagan Library and Museum," 28 February 2004,
http://www.whitehouse.gov/news/realses/2004/02/print/20040228-1.html.
[415] George W. Bush, "President Marks Homeland Security's Accomplishments at Year One," 2 March 2004, http://www.whitehouse.gov/news/releases/2004/03/print/20040302-2.html.

On March 12, 2004, the President, in response to the bombings of commuter trains in Madrid, stated that the recent attacks served as "a grim reminder that there are evil people in the world who are willing to kill innocent life" and referred to the United States' enemies as "killers." Bush stated, "Killers try to shake our will, try to shake our confidence in the future."[416] Bush's statements once again emphasized the threat and framed the conflict as one between nation-states and an inchoate group of "killers" akin to barbarians. On March 19, 2004, President Bush made a speech in defense of his strategies in the war on terror and the war in Iraq. Emphasizing on the threat and framing the conflict, he recanted the list of nations that had recently been attacked by international terrorists. Bush said that, "It is in the interest of every country, and the duty of every government, to fight and destroy this threat to our people." He then emphasized that, "There is no neutral ground—no neutral ground—in the fight between civilization and terror, because there is no neutral ground between good and evil." He declared that diplomacy was not an option with the terrorists because, "No concession will appease their hatred."[417]

In sum, during this period, Bush and his administration laid out tried and tested themes. The threat specificity, from "terrorists" to "killers," was shaped as widely as possible. The conflict was framed as one between states and killers, an ambiguous and broad battle between good and evil. The threat magnitude, according to the administration, was extremely high. After all, al-Qaeda was equated to Communism and Nazism. Specific terror groups were rarely named. Instead, the threat was framed as an

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[416] George W. Bush, "President Bush Honors Victims of Bombings in Spain," 12 March 2004, http://www.whitehouse.gov/news/releases/2004/03/print/20040312-3.html.
[417] George W. Bush. "President Bush Reaffirms Resolve to War on Terror, Iraq and Afghanistan," 19 March 2004, http://www.whitehouse.gov/news/releases/2004/03/print/20040319-3.html.

evil cabal that "lurks in the shadows." Condoleeza Rice in full detail described the "nightmare" of a terrorist wielding a weapon of mass destruction against the United States. President Bush made it clear that he had made us safer (government success/protection), but that we were not yet safe (statement of threat).

<center>*Period Two: July and August*</center>

In July, President Bush found himself once again trailing John Kerry in the polls. On July 6, John Kerry announced John Edwards as his running mate. Then, on July 22, the 9/11 Commission Report was released, and George W. Bush made a speech regarding homeland security. He said once again that, "Our country faces new and unprecedented threats" and that oceans could not protect us anymore. After harping on the new normal, he underlined the government's successes. He said that his administration had killed or captured "about two-thirds" of al-Qaeda's leadership—he would start saying that 75 percent of al-Qaeda's leaders fell in this category in the coming months. He explicitly stated that, "the American people are safer. But this does not mean that our nation is fully secure"[418].

One week later, on July 30, 2004, a day after the Democratic National Convention had ended, Vice President Cheney made a speech at a campaign rally in Oregon. Cheney described the war on terror in stark terms. He said, "This election could not come at a more crucial time in our history. Today we face an enemy every bit as intent on destroying us as were the Axis powers in World War II, or the Soviet Union during the

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[418] George W. Bush, "President Bush Discusses Progress in Homeland Security in Illinois," 22 July 2004, http://www.whitehouse.gov/news/releases/2004/07/print/20040722-12.html

Cold War." Cheney described the terrorists as people that we could neither "reason with," nor "negotiate with," nor "appease." He said, "This is, to put it simply, an enemy that we must vanquish. And with President George W. Bush as Commander-in-Chief, that is exactly what we're going to do." He finally repeated a theme frequently used by the Bush Administration: we're attacking them there, so we don't have to face them here in America[419].

During this period in campaign speeches across the country, Bush repeated the following five themes. One, our enemies cannot be reasoned (call to arms) with and, two, we live in a new world defined by terrorism (new normal). Three, our enemies are out to hurt us (threat) and, four, we are safer but we are not yet safe (government success/protection and threat). Finally, he emphasized that we must be committed and stay the course with our current terrorism strategies (government protection)[420]. It was not until the final period, where the presidential and vice presidential debates took place and the end of the election was in sight, that the Bush administration began significantly ratcheting up its rhetoric.

Period Three: September and October

This period began with an explosive statement by the Vice President. Dick Cheney on September 7, 2004 told a crowd in Des Moines that, "It's absolutely essential

[419] Richard Cheney, "Vice President Remarks at a Bush-Cheney '04 Rally," 30 July 2004, http://www.whitehouse.gov/news/releeases/2004/07/print/20040730-15.html.
[420] See, for example, George W. Bush, "President's Remarks in Pittsburgh, Pennsylvania," 31 July 2004, http://www.whitehouse.gov/news/releases/2004/07/20040731-11.html; George W. Bush, "President's Remarks at Wheeling, West Virginia Rally," 29 August 2004, http://www.whitehouse.gov/news/releases/2004/08/20040829.html.

that eight weeks from today, on Nov. 2, we make the right choice because if we make the

wrong choice then the danger is that we'll get hit again and we'll be hit in a way that will

be devastating from the standpoint of the United States." He explained that this was

because John Kerry suffered from a "pre-9/11 mindset."[421] Basically, the vice president

in no uncertain terms had just announced that if John Kerry were to win the election, the

United States would be attacked by terrorists again. This statement basically relayed to

the public a highly specific threat of an attack conditional on a Democratic Presidential

victory. Here Cheney was clearly playing with the public's fears, stating that a major

threat existed and that the only government that could protect the people was George

Bush's.

Three days later, President Bush declared that every September 11th would from

then on be known as Patriot Day[422]. The next day, on the three-year anniversary of 9/11,

President Bush delivered a radio address to the nation. Bush stated that the attacks had

been a "turning point" for America (new normal) and that al-Qaeda's goals were, "to

expand the scale of their murder, and force America to retreat from the world" (conflict

framing). He said that the US was "determined to stay on the offensive" (call to arms).

He now claimed that, "More than three-quarters of al Qaeda's key members and

associates have been detained or killed" (government successes). He ended by

emphasizing that, "The war on terror goes on. The resolve of our nation is still being

tested."[423]

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[421] Sanger, David E. and David M. Halfbinger, "Cheney Warns of Terror Risk if Kerry Wins," *The New York Times*, 8 September 2004, http://www.nytimes.com/2004/09/08/politics/campaign/08bush.html.
[422] George W. Bush, "President Proclaims Patriot Day," 10 September 2004, http://www.whitehouse.gov/news/releases/2004/09/20040910-19.html.
[423] George W. Bush, "President's Radio Address," 11 September 2004, http://www.whitehouse.gov/news/releases/2004/09/20040911-3.html.

On October 1, 2004, the first presidential debate was held between John Kerry and George W. Bush. Kerry began the debate by stating that he could, "make America safer than President Bush has made us." Bush, in response to a question about whether electing Kerry would increase the US' chances of being hit by a terrorist attack, stated that he didn't think Kerry would win. He went on to say that America, "has got a solemn duty to defeat this ideology of hate." The debate then turned to the Iraq war, which Kerry called a "colossal error of judgment." Bush said that the way to win in Iraq was to be, "steadfast and resolved." He then underlined that America "has to stay on the offensive," and that, "We have to be right 100 percent of the time, and the enemy only has to be right once—to hurt us." Later, in responding to a Kerry comment that Osama bin-Laden was using the Iraq war for recruitment, Bush said, "Osama bin-Laden isn't going to determine how we defend ourselves. ... The American people decide. I decided." At the end of the debate, both candidates were asked what they believed was the single most serious threat to American security. Kerry said loose nuclear materials, Bush said nuclear weapons in the hands of terrorists[424]. In this first debate, Bush made a call to arms, stated that the threat magnitude was extremely high, and described a nightmare scenario.

Five days later, the only vice presidential debate was held in Cleveland. Dick Cheney began the debate by laying out the Bush Administration's overall strategy in the war on terror: "after 9/11, it became clear that we had to do several things to have a successful strategy to win the global war on terror, specifically that we had to go after the terrorists wherever we might find them, that we also had to go after state sponsors of terror -- those who might provide sanctuary or safe harbor for terror. And we also then,

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[424] "Remarks by President Bush and John Kerry in First 2004 Presidential Debate," 1 October 2004, http://www.whitehouse.gov/news/releases/2004/10/20041001.html.

finally, had to stand up democracies in their stead afterwards because that was the only way to guarantee that these states would not again become safe harbors for terror, for the development of deadly weapons." Cheney's statement assumed that a "global war on terror" had to be prosecuted after 9/11. He, thus, framed the conflict as broadly as possible, and did not feel the need to defend such a global framing. Cheney soon after accused the Kerry-Edwards ticket of not being "prepared to deal with states that sponsor terror." Later, Cheney was asked to clarify his comment of a month before in which he stated that it would be dangerous to elect John Kerry. Cheney responded thusly, "I'm saying specifically that I don't believe [Kerry] has the qualities we need in a Commander-in-Chief, because I don't think, based on his record, that he would pursue the kind of aggressive policies that need to be pursued if we're going to defeat these terrorists. We need to battle them overseas so we don't have to battle them here at home." Cheney ended by once again stoking public fears about voting for the "wrong" candidate. He did so by evoking a nightmare scenario. He said, "we find ourselves in the midst of a conflict unlike any we've ever known, faced with a possibility that terrorists could smuggle a deadly biological agent or nuclear weapon into the middle of one of our own cities. That threat, and the Presidential leadership needed to deal with it, is placing a special responsibility on all of you who will decide on November 2nd who will be our next Commander-in-Chief."[425]

The second presidential debate took place on October 9, 2004 in St. Louis. In it, President Bush defined the war on terror as he saw it. He said, "it's a fundamental misunderstanding to say that the war on terror is only about Osama bin-Laden. The war

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[425] "Remarks olf Vice President Cheney and Senator Edwards in Vice Presidential Debate," 6 October 2004, http://www.whitehouse.gov/news/releases/2004/10/20041006.html.

on terror is to make sure that these terrorist organizations do not end up with weapons of mass destruction." This comment came in response to numerous previous statements by John Kerry that the Iraq war had been a mistake, and that it diverted America from the war on al-Qaeda. Here Bush tried to move the bar from a specific threat: al-Qaeda to a broader threat: terror. He also emphasized that in doing so, he was attempting to prevent a nightmare scenario. Along the same lines, Bush later stated that, "This war is a long, long war, and it requires steadfast determination, and it requires a complete understanding that we not only chase down al Qaeda, but we disrupt terrorists' safe havens, as well as people who could provide the terrorists with support." Previous to this statement, he said that Kerry did not have the "right view about the world to make us safe" and that the Patriot Act was "vital." Bush went on to reiterate a theme that he'd pushed for years: America had to spread democracy in the world in order to stop extremist ideologies from proliferating. This strategy would show government success and protect the American people. On the Patriot Act and liberty-security tradeoffs, Bush said, "I really don't think your rights are being watered down ... I don't think the Patriot Act abridges your rights at all." He backed this up by saying that, "Every action being taken against terrorists requires a court order, requires scrutiny." In light of the treatment of Arabs and Muslims in America after 9/11 that will be dealt with below and Bush's secret wiretapping program, this statement does not ring true. Bush ended by citing the 9/11 Commission as having found that, "America is safer, but not yet safe."[426]

The third and final presidential debate took place five days later, on October 14, on the campus of Arizona State University. Bush began his comments by calling Kerry's

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[426] "Remarks by President Bush and Senator Kerry in Second Presidential Debate," 9 October 2004, http://www.whitehouse.gov/news/releases/2004/10/20041009-2.html.

depiction of terrorism as a law enforcement issue that "could be reduced to a nuisance," a "dangerous" point of view. In other words, Kerry, according to Bush, did not understand the magnitude of the threat and thus was framing the conflict incorrectly. In the end of the debate Bush reiterated his confidence that the US would win the war on terror against "these ideologies of hate": a very broad and amorphous opponent[427].

In the stretch run to the election, Bush continued to push on the war on terror and similar themes during campaign speeches. On October 18, 2004 in New Jersey he said, "we face an enemy that is determined to kill the innocent and make our country into a battlefield. In the war on terror, there is no place for confusion and no substitute for victory." He went on to describe the 1990s as a time of seeming peace where under the surface, terrorists were preparing to hit America. This painted previous American leaders as oblivious to threats, and Bush as an aware protector of the people. He said that then, "Most Americans still felt that terrorism was something distant, and something that would not strike on a large scale in America. That is the time that my opponent wants to go back to." On liberty-security tradeoffs, Bush went on to declare that, "The danger to America is not the Patriot Act, or the good people who use it; the danger to America is the terrorists." He repeatedly claimed that John Kerry was unchanged by 9/11 and that he did not understand the threat that America now faced. Bush said that Kerry's "September the 10th attitude" was dangerous to America. Bush continued that, "In an era of weapons of mass destruction, waiting for threats to arrive at our doorsteps is to invite disaster." Bush reiterated that, "if violence and fanaticism are not opposed at their source, they will find us where we live." He then bluntly stated that, "my opponent's views would make

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[427] "Remarks by President Bush and Senator Kerry in Third Presidential Debate, 14 October 2004, http://www.whitehouse.gov/news/releases/2004/10/20041014-1.html.

America less secure and the world more dangerous."[428] In the president's next two

weekly radio addresses, Bush reiterated the same themes, particularly that he could

defend America and that Kerry's views were dangerous[429].

Finally, on October 31, Bush stumped in Cincinnati. He said that, "in a time of

great consequence … America will need strong, determined, optimistic leadership." He

said that it was "crucial" that the President lead with steadfastness in his views and not

waver. After touching on domestic issues, Bush then said that the most essential issue

was "the security of your family" (government protection). After all, he said, "all

progress on every other issue depends on the safety of our citizens." He said that the

president's duty was to protect the people, and then bluntly stated that, "If America

shows uncertainty or weakness during these troubled times, this world will drift toward

tragedy." He thus implied that the threat magnitude was high, that Americans were under

threat, and that his administration was the only one that could protect the people. He

ended by saying, "If you believe that America should fight the war on terror with all our

might, and lead with unwavering confidence in our ideals, I ask you to come stand with

me."[430]

During the 2004 campaign President Bush and his administration went from first

widely and ambiguously defining the terrorist threat to underlining that Bush had made

the country safer but that it was not yet safe to finally explicitly stating that a vote for

John Kerry would put America in danger. Thus, the administration was able to mix the

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[428] George W. Bush, "President's Remarks on Homeland Security in New Jersey," 18 October 2004,
http://www.whitehouse.gov/news/releases/2004/10/20041018-11.html.
[429] George W. Bush, "President's Radio Address," 23 October 2004,
http://www.whitehouse.gov/news/releases/2004/10/20041023.html; George W. Bush, "President's Radio
Address," 30 October 2004, http://www.whitehouse.gov/news/releases/2004/10/20041030.html.
[430] George W. Bush, "President's Remarks in Cincinnati, Ohio," 31 October 2004,
http://www.whitehouse.gov/news/releases/2004/10/20041031-9.html.

government protection and success themes with the threat magnitude themes. Specifically, they were saying that they had protected the American people and had made notable successes against the terrorists and that not only would a Kerry administration not have the same success, but that such an administration's misunderstanding of the threat magnitude would be disastrous. Arguably, Bush and Cheney framed a Kerry win as a nightmare scenario. Speaking of such scenarios, the nightmare scenario of terrorists with nuclear weapons attacking America's cities was emphasized repeatedly and was treated as a very real threat. Bush's use of fear during the campaign has also been tracked in a paper by Sarah Oates and Monica Postelnicu. They found that Bush's campaign ads used "fear appeals" in 35 percent of their messages, whereas Kerry's campaign used these appeals in only 6 percent of theirs[431]. They also found that Bush spoke about terrorism in 44.4 percent of the nightly news stories in which he appeared, while Kerry mentioned terrorism in exactly half that number (22.2 percent) of his appearances[432]. The authors conclude that in discussing terrorism there is little discussion of actual policies but "a great deal of rhetoric about strength, firmness and pursuit of enemies"[433]. Those findings are reinforced by this study.

Going theme-by-theme, Bush did not preach tolerance in this period. However, he did push both the government success and government protection themes heavily. He made some calls to arms, but not as many as in the previous period. He did touch on the liberty-security tradeoff theme, but only to deny that liberties were abridged and to play up the importance of the threat. The administration framed the conflict as a large, global

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[431] Oates, Sarah and Monica Postelnicu. "Citizen or Comrade?: Terrorist Threat in Election Campaigns in Russia and the U.S.," September 2005. Working Paper prepared for the Annual Meeting of the American Political Science Association (APSA), September 2005, Washington, D.C., pg. 11.
[432] Oates and Postelnicu, "Citizen or Comrade?," pg. 13.
[433] Oates and Postelnicu, "Citizen or Comrade?," pg. 17

battle. It continued to highlight that a new normal existed in America and that the threat magnitude was extremely high. Officials even went so far as equating the terrorist threat to the threat of Nazism and Communism. Bush continuously played up the threat theme and shaped the threat specificity as ambiguously as he could, even while John Kerry attempted to pin him down on the threat's specific origins. Finally, the most important theme that was harped on in this period was the nightmare scenario. Terrorists wielding weapons of mass destruction against Americans was time and again stated to be a real possibility. This nightmare scenario was evoked to defend both the war on terror broadly and the Iraq war specifically.

The review of executive statements here clearly bolsters hypothesis one above. As the election competition got fiercer, and as the election neared, the executive branch's statements involved increasingly threatening statements. In the end, the opponent was colored not only as weak, but also as dangerous to the safety of Americans. In the next section, I look at some of the bills relating to the PATRIOT Act that were forwarded in the legislature in the period leading up to the election. As will be shown, a number of bills seeking to loosen restrictions on civil liberties were forwarded, but none became legislation. Though Republicans had gained a greater share of the Congress, legislative opposition to the PATRIOT Act began in this period.

Legislative Debate

Even though no movement occurred on the PATRIOT Act in this period, both houses of Congress still introduced legislation regarding the Act. In the run-up to the election,

Congress members attempted to put the PATRIOT Act and counter-terrorism back on the agenda. A year before the election, Democratic Senator Patrick Leahy of Vermont on October 1, 2003 introduced a bill entitled the PATRIOT Act Oversight Restoration Act of 2003. The Bill would introduce sunset provisions for sixteen additional sections of the PATRIOT Act including those that authorized delayed notification searches, gave law enforcement access to citizen records through National Security Letters, and allowed the Attorney General to "'certify' that an alien is engaged in activity that endangers the national security, and to take such an alien into custody," among others. Leahy noted that, "To date, anti-PATRIOT resolutions have been passed by 178 communities in 32 States including Idaho, New Hampshire, and Illinois." He also noted Attorney-General John Ashcroft's negative view of local anti-PATRIOT Act bills. Leahy stated: "In one of his rare appearances before the Senate Judiciary Committee, Attorney General Ashcroft charged that 'fear mongers'--those who were raising concern about the loss of civil liberties--were only aiding the terrorists. More recently, a Justice Department official dismissed the many local government resolutions condemning the PATRIOT Act by saying, 'half are either in cities in Vermont, very small population, or in college towns in California'"[434].

Similar acts aiming to limit the PATRIOT Act were introduced around the same period. Independent Representative Bernie Sanders of Vermont introduced the Freedom to Read Protection Act of 2003, which attempted to exempt libraries and bookstores from a wide range of foreign intelligence searches. Senator Russell Feingold (Democrat) of Wisconsin introduced a similar bill in the Senate four months later. Representative

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[434] Patrick Leahy, "Statements on Introduced Bills and Joint Resolutions—Senate-October 1, 2003," S12284, on bill S. 1695, http://www.thomas.loc.gov.

Dennis Kucinich (Democrat) of Ohio introduced The Benjamin Franklin True Patriot Act on September 24, 2003, which sought to rescind many of the same portions of the PATRIOT Act that Leahy's bill targeted. Finally, the day after Leahy introduced his bill, Republican Senator Larry Craig of Idaho introduced the Security and Freedom Ensured Act of 2003. This act sought to limit the government's ability to authorize roving wiretaps and search warrants. Also, like some of the other bills, it sought to limit the government's ability to retrieve personal records about individuals from libraries and bookstores under the Foreign Intelligence Surveillance Act of 1978[435].

On May 21, 2004, Republican Senator Jon Kyl of Arizona introduced a bill to repeal the sunset provisions of the PATRIOT Act that were set to expire in 2005. Kyl made a long speech in defense of the Act. He quoted Thomas Kean, one of the heads of the 9/11 Commission, as saying that, "witness after witness tell[s] us that the Patriot Act has been very, very helpful, and if the Patriot Act, or portions of it, had been in place before 9/11, that would have been very helpful." Former Attorney-General Janet Reno also called the bill "helpful" and FBI Director Robert Mueller dubbed it, "extraordinarily beneficial in the war on terrorism," Kyl said. Kyl emphasized the increased information-sharing between intelligence and law enforcement officials that the PATRIOT Act allowed. Hedefended the much maligned section 215, which allows the government access to one's library records, saying that the section was both necessary and misunderstood.

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[435] Hudson, David L. Jr., "Patriot Act: Overview," First Amendment Center, http://www.firstamendmentcenter.org/speech/libraries/topic.aspx?topic=Patriot_act; http://www.thomas.loc.gov.

Kyl also maintained that the Act "respects important congressional oversight" and

"preserves the historic role of courts by ensuring that the vital role of judicial oversight is

not diminished."[436]

Terror Alerts

The power of terror alert changes is difficult to overstate. The Department of

Homeland Security's Homeland Security Advisory System, which produces terror alerts,

was created by presidential directive and unveiled in March 2002. The purpose of the

system, according to the directive, is "to provide a comprehensive and effective means to

disseminate information regarding the risk of terrorist acts to Federal, State, and local

authorities and to the American people." The advisory system ranks the likelihood of a

terrorist attack on a five-color scale ranging from low/green to severe/red. The interim

stages are guarded/blue, elevated/yellow and high/orange[437].

Nacos, et al. find that 100% of the time that the terror alert was raised by the Bush

administration, it ran as the lead story on all three of the major evening news

broadcasts[438]. Nacos, et al. note that, "In June 2002 the peak in the public's threat

perception followed several terrorism alerts the previous months, when administration

officials initiated a heightened state of alert for railroads and other transit systems and

warned of a special threat against the Statue of Liberty and the Brooklyn Bridge." The

portion of the public that saw terrorism as a major problem, thus, rose from 22% in May

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[436] Jon Kyle, "Statements on Introduced Bills and Joint Resolutions—Senate-May 21, 2004," S6096-9, on bill S. 2476, http://www.thomas.loc.gov.
[437] The White House, "Homeland Security Presidential Directive-3," 12 March 2002, http://www.whitehouse.gov/news/releases/2002/03/20020312-5.html.
[438] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 45.

2002 to 33% in June 2002[439]. Interestingly, Ron Susskind notes that "the sudden slew of alerts in the spring and summer of 2002" may have been due to the "brutal" interrogation of the (literally) insane al-Qaeda operative Abu Zubaydah[440]. The summer of 2002 was also a key period for the mid-term elections of that year.

Further, Nacos, et al. found that, "When pollsters mentioned a particular time frame asking respondents whether they worried that another terrorist attack would occur 'soon,' ... the actual statements by US administration officials alerting the public to specific terrorist threats or speaking in more general terms about the threat had the strongest impact on public opinion ($r=0.49$, $p<.05$; $b=1.64$ $p<=.1$)"[441]. Nacos and her colleagues found that "emphasizing the terrorist threat and official alerts tended to buoy the President's approval ratings—both his terrorism-specific rating and his overall approval"[442].

During the 2004 election period, there was only one heightened terror alert. It's timing was telling, however. The terror alert was raised from yellow to orange from August 1, 2004 to November 10, 2004. *Thus, it was heightened during a period where President Bush was vulnerable according to polling and lowered just after his election victory.* The threat alert was focused on the financial service sectors of New York, New Jersey, and Washington, DC[443]. Making the alert even more dubious was the fact that officials said that the intelligence backing the threat to financial institutions was "three or

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[439] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 30.
[440] Susskind, Ron. "The Unofficial Story of the al-Qaeda 14," *Time*, 18 September 2006, pg. 35. According to Susskind, Zubaydah was literally incoherent and proved to be a practically useless detainee from the interrogators' perspective.
[441] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 32.
[442] Nacos, Bloch-Elkon and Shapiro, "The Threat of International Terrorism after 9/11," pg. 37.
[443] US Department of Homeland Security, "DHS Organization: History: Chronology of Changes to the Homeland Security Advisory System," http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0844.xml.

four years old"[444]. The timing was also suspicious given that on July 29, just two days earlier, the Democratic National Convention had ended. In sum, all of the evidence of this particular elevation of the terror alert point to it being motivated by the executive for political, electoral gain.

Indeed, in May of 2005, former Department of Homeland Security Secretary Tom Ridge admitted that the Bush administration raised terror alerts against his wishes. He stated that the administration raised the alerts on "flimsy" evidence. Ridge stated that, "More often than not we [i.e., the Department of Homeland Security] were the least inclined to raise it, sometimes we disagreed with the intelligence assessment. Sometimes we thought even if the intelligence was good, you don't necessarily put the country on (alert). ... There were times when some people were really aggressive about raising it, and we said, 'For that?'"[445]

Opinion Environment

During this period, the percentage of Americans worried about being a victim of terrorist attacks, measured by Gallup/CNN/*USA Today* polling, showed a marked increase as the 2004 election wore on. In January 2004, only 28% of Americans were worried about becoming terror victims, but in February, a critical period for Bush in the polling, this figure jumped to 40%. By August, with Bush's polling numbers down

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[444] Jehl, Douglas and David Johnston. "Reports that Led to Terror Alert were Years Old, Officials Say," 3 August 2004, *The New York Times*,
http://www.nytimes.com/2004/08/03/politics/03intel.html?ei=5088&en=e061516bea792668&ex=1249272
000&partner=rssnyt&pagewanted=print&position=.
[445] Hall, Mimi. "Ridge reveals clashes on alerts," 10 May 2005, *USA Today*,
http://www.usatoday.com/news/washington/2005-05-10-ridge-alerts_x.htm.

again, relative to Kerry's, only 34% of Americans were worried about becoming terror

victims. *Yet, in the last two months of the election the figure rose by nearly 40%.* In

September 2004, 43% of Americans were worried about themselves or family members

dying at the hands of terrorists and by October 2004, as they readied themselves for the

polls a staggering 47% of Americans were now scared of being terrorists' victims.

Tellingly, this number dropped to 41% in the December 2004 post-election poll. Figures

above 40% had not been reached since October 2001, a mere month after the 9/11

attacks. Fear levels, thus, rose as the date of the election neared.

There was also a jump in this period in the number of Americans willing to trade

liberty for security. The number rose from 50% in August 2003 to 56% according to the

Pew Research Center for the People & the Press. The number of Americans who thought

a terrorist attack on the US was likely in the near future jumped up from a low of 55% in

April 2004 to 71% in mid-July 2004, according to polling done by CBS and the *New*

York Times. This number dropped to 61% by September 2004, still a sizeable majority of

Americans claiming that terrorist attacks were likely or very likely on American soil.

Clearly, as the election neared, given the Bush administration's threatening statements,

the raising of the terror alert and Bush's admission that bin-Laden's October 2004

statement aided his cause, fear was a contributing factor to Bush's success. Threatening

statements were made, terror alerts were raised, and the people responded with

heightened fear levels. By the end of the election, if these polls are to be believed, the

American public was as fearful about terrorist attacks as it had been a mere month after

9/11.

SECTION THREE: THE RENEWAL OF THE PATRIOT ACT

In this period, legislative opposition began to take hold even though Republicans won

the 2004 elections. The government composition was the same in this period, as it was at

the end of the previous one. Republicans held 55 Senate seats to 44 for Democrats and

they held 232 seats in the House to 202 held by Democrats. There was one independent

in each branch of Congress. George W. Bush was president.

Legislative Debate and a renewed PATRIOT Act

The PATRIOT Act provisions set to sunset were sent to Congress for renewal in the

summer of 2005. The renewed legislation was introduced in the House on July 11, 2005.

In late July, congressmen and women were already fighting to make the PATRIOT Act

into more civil liberty-friendly legislation. Congressman Michael Capuano of

Massachusetts and Congresswoman Janice Schakowsky of Illinois (both Democrats)

made speeches expressing their concern about the civil liberty reductions that the

PATRIOT Act allowed. Though both had voted against the PATRIOT Act in 2001, this

time they stood on firmer ground in their opposition—even though the president's party

still held a majority in the House[446]. Schakowsky, for one, noted that according to a

recent CBS poll, "52 percent of Americans were either 'very concerned' or 'somewhat

concerned' about losing civil liberties as a result of the PATRIOT Act. According to a

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[446] Rep. Janice D. Schakowsky, "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005—Extension of Remarks (July 25, 2005)," speech made on 21 July 2005, http://www.thomas.loc.gov; Rep. Michael E. Capuano, "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005—Extension of Remarks (July 25, 2005)," speech made on 21 July 2005, http://www.thomas.loc.gov.

CNN/Gallup poll, 64 percent believe the government should take steps to protect additional acts of terrorism but not if those steps would violate our civil liberties."[447] Indeed, as early as October 2002, 62% of Americans stated in the CNN/Gallup/*USA Today* poll that they would not trade liberty for security[448]. Democrat Brian Higgins of New York summed up what the PATRIOT Act had come to represent: "a much-debated issue, symbolizing a Federal Government abusing its power and violating civil liberties for some, and a necessary bulwark against the barbarity of terrorists for others." He, however, made sure to note that everyone agreed that the government needed to combat terrorism, even making mention of the attacks in London of two weeks earlier. He thus called that the bill be amended, not "ended."[449]

Republican Congresswoman Thelma Drake of Virginia tried to assuage the public's concerns about civil liberties. She defended the Act by saying that, "What Americans are not being told is that the same provisions that exist in this act have been in place for many years in regards to criminal cases." Her speech showed that she had clearly internalized the framing that the PATRIOT Act was a drag on liberties, rather than the framing of the Act when it first passed as: a necessary act to combat terrorism[450].

In September the same arguments were going back and forth. In the House of Representatives, Congressman Dennis Moore said, "It is not a good idea to make permanent policy for the United States concerning our fundamental rights and freedoms during extraordinary times of war. We must never allow the terrorists to alter the

[447] Schakowsky, "USA PATRIOT Remarks," 21 July 2005 speech.
[448] Biskupic, Joan. "Attention turns back to liberties," 31 October 2002, *USA Today,* http://www.usatoday.com/news/politicselections/2002-10-31-liberties-usat_x.htm.
[449] Higgins, Bob. "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005—Extension of Remarks (July 27, 2005)," speech made on 21 July 2005, http://www.thomas.loc.gov.
[450] Drake, Thelma. "PATRIOT Act Protects Rights of Americans—(House of Representatives--July 26, 2005)," H6434-5, http://www.thomas.loc.gov.

freedoms that define our country and make us the greatest Nation in the world."[451] In the

Senate, Senator Dick Durbin of Illinois made a short speech against the provisions in the

PATRIOT Act that allowed the federal government to use national security letters (NSLs)

to glean information about Americans. Durbin was not content with the Bush

administration and FBI's contention that they did not spy on innocent Americans, he

wanted to know how many NSLs had been authorized since 9/11. He said, "In our

democracy, the government is supposed to be open and accountable to the people and the

people have a right to keep their personal lives private, This Justice Department seems to

want to reverse this order, keeping their activity secret and prying into the private lives of

innocent American citizens."[452]

Clearly, the legislature was showing more backbone now that four years had passed

since the September 11 attacks. Even with a Congress that was less divided along

partisan lines than the 2000 one was, the PATRIOT Act legislation faced far greater

opposition in 2005 and 2006 than it did in 2001. This clearly disproves hypothesis 2

above, which asserted that the more divided the legislature, the less likely civil liberty-

abridging legislation was to pass. *Here, the critical variable was not the composition of*

the government, but rather the temporal proximity to the crisis. As the years went by and

the immediate memory of the attacks faded, opposition to the PATRIOT Act grew.

On November 16, 2005 the Associated Press reported that a tentative deal had been

struck between House and Senate negotiators on the PATRIOT Act that, "would curb

FBI subpoena power and require the Justice Department to more fully report its secret

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[451] Moore, Dennis. "Congressional Oversight of the PATRIOT Act is Essential-(Extension of Remarks--September 2, 2005)," 2 September 2005, http://www.thomas.loc.gov.
[452] Durbin, Richard. "National Security Letters and PATRIOT Act Reauthorization—Senate-September 28, 2005," 28 September 2005, http://www.thomas.loc.gov.

requests for information about ordinary people."[453] However, the Senate blocked the

renewed PATRIOT Act from becoming legislation. Concerns about civil liberties from

members of both parties prevented the bill from receiving the 60 senatorial votes

necessary to break a filibuster. The vote ended up being 52 to 47 in favor of ending the

filibuster with four Republicans aiding the all but two Democrats against[454]. The bill was

blocked on the day a *New York Times* report was released stating that, according to

government officials, "Under a presidential order signed in 2002, the intelligence agency

has monitored the international telephone calls and international e-mail messages of

hundreds, perhaps thousands, of people inside the United States without warrants over the

past three years"[455]. The news story prompted Vice President Cheney to rush to the

Capitol to support the domestic spying program in the face of accusations of its illegality.

At least one Senator's decision, Charles Schumer of New York, to support the filibuster

was swayed by the new information on eavesdropping. It was a tumultuous week for the

Bush Administration's war on terror. The PATRIOT Act was blocked on a Friday. Two

days earlier, "Senate Democrats and Republicans agreed on a measure to require the

director of national intelligence to provide regular, detailed updates about secret detention

sites maintained by the United States overseas. On Thursday, after weeks of resisting

Senator John McCain's effort to pass a measure banning cruel, inhumane and degrading

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[453] Associated Press, "Congress Reportedly Nears Tentative Deal on Patriot Act," 16 November 2005, *The New York Times,* http://www.nytimes.com/aponline/national/AP-Patriot-Act.html?ei=5094&en=6a03342514ffbc4d&hp=&ex=1132203600&partner=homepage&pagewanted=print
[454] Stolberg, Sheryl Gay and Eric Lichtblau. "Senators Thwart Bush Bid to Renew Law on Terrorism," 17 December 2005, *The New York Times,* http://www.nytimes.com/2005/12/17/politics/17Patriot.html?ex=1292475600&en=9ad51ea5cdcf08eb&ei=5088&partner=rssnyt&emc=rss.
[455] Risen, James and Eric Lichtblau. "Bush Lets US Spy on Callers Without Courts," 16 December 2005, *The New York Times,* http://www.nytimes.com/2005/12/16/politics/16program.html?ei=5090&en=e32072d786623ac1&ex=1292389200.

treatment of prisoners in American custody, [President] Bush reversed course and embraced the plan." In response to the filibuster, President Bush stated that, "The terrorists want to attack America again and kill the innocent and inflict even greater damage than they did on September 11 ... The Senators who are filibustering the Patriot Act must stop their delaying tactics so that we are not without this critical law for even a single moment."[456] Clearly, however, the legislature was acting up and Bush's window of free reign opened by September 11 was closing abruptly.

A week later, Congress extended the deadline for the sixteen sunset provisions by five weeks. The Provisions of the PATRIOT Act would thus expire on February 3, 2006, rather than on December 31, 2005. The House had already passed legislation making 14 of the 16 sunsetting provisions permanent and adding new civil liberties protections, but the Senate's filibuster blocked the bill[457]. The bill's deadline had to be extended again from February 3 to March 10, 2006[458]. On February 9, 2006, it was reported that four key Republican Senators, later joined by two Democrats, had agreed on language for the amended PATRIOT Act with the White House. The Democrats response was split. Senators Dick Durban of Illinois and Dianne Feinstein of California expressed that they were pleased with the changes and that they would support the bill[459]. But Senator Russell Feingold said he was "gravely disappointed in this so-called deal." Feingold said that the deal "did not fix what he described as major problems" with the PATRIOT

[456] Stolberg and Lichtblau, "Senators Thwart Bush Bid to Renew Law on Terrorism."
[457] Stolberg, Sheryl Gay. "Postponing Debate, Congress Extends Terror Law 5 Weeks," 23 December 2005, *The New York Times*, http://www.nytimes.com/2005/12/23/politics/23cong.html?ex=1292994000&en=3c500898de7a4415&ei=5088&partner=rssnyt&emc=rss.
[458] HR 4659, "To amend the USA Patriot Act to extend the sunset provisions of such act," 3 February 2006, http://www.thomas.loc.gov.
[459] Espo, David. "Agreement Reached on Patriot Act Changes," 9 February 2006, *The Washington Post*, http://www.washingtonpost.com/wp-dyn/content/article/2006/02/09/AR2006020901224.html

Act[460]. The compromise brought about three changes to the Act: first, it gave recipients of court-ordered subpoenas for information in terrorism investigations the right to challenge their "gag orders." These gag orders previously prevented subpoenaed individuals from telling anyone about the fact they were being investigated. Second, the compromise eliminated "a requirement that an individual provide the FBI with the name of a lawyer consulted about a National Security Letter, which is a demand for records issued by investigators." Finally, the compromise made it clear in the text of the PATRIOT Act that most libraries were not subject to the demands of NSLs for information[461]. These changes are in addition to the "30 additional civil liberties safeguards" that had already been put into the bill[462].

Thus, on March 1, the Senate voted to accept the changes to the PATRIOT Act by a vote of 95 to 4. The four dissenters were Russ Feingold, independent James Jeffords of Vermont, Tom Harkin of Iowa, and Robert Byrd of West Virginia. Feingold declared that, "No one has the right to turn this body into a rubber stamp"[463]. Still, after some delaying tactics by Feingold, the bill passed the Senate 89-10 the next day[464]. The legislation passed the house on a 280-138 vote[465].

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[460] BBC News, "Bush wins deal on anti-terror law," 11 February 2006, http://news.bbc.co.uk/2/hi/americas/4699564.stm.
[461] Espo, "Agreement Reached on Patriot Act Changes."
[462] Jim Sensenbrenner, "USA PATRIOT Act 1-Month Extension—(House of Representatives-December 22, 2005)," H13179, 22 December 2005, http://www.thomas.loc.gov.
[463] Stout, David. "Senate Approves Curbs on Some Patriot Act Powers," 1 March 2006, *The New York Times*, http://www.nytimes.com/2006/03/01/politics/01cnd-Patriot.html?ex=1298869200&en=0e5ccfa458022ca5&ei=5090&partner=rssuserland&emc=rss.
[464] Stout, David. "Senate Approves Renewal of Antiterrorism Bill," 2 March 2006, *The New York Times*, http://www.nytimes.com/2006/03/02/politics/02cnd-Patriot.html?ex=1298955600&en=e7f13bab9c2b82e2&ei=5088&partner=rssnyt&emc=rss.
[465] Kellman, Laurie. "Bush to Sign Patriot Act Renewal," 8 March 2006, Yahoo! News, http://news.yahoo.com/s/ap/20060308/ap_on_go_co/Patriot_act.

The PATRIOT Act[466] was passed for the second time with small, but substantive

changes. As stated above, gag orders regarding terrorism subpoenas could now be

challenged and NSLs could no longer target libraries "on their traditional functions of

lending books and providing Internet access to reference materials." In addition,

"Provisions allowing roving wiretaps, eavesdropping on 'lone-wolf' terrorists and FBI

demands for business records" would sunset in four years[467]. Specifically, sections 206

(relating to roving wiretaps) and 215 (only the part relating to business records orders)

were the two of the sixteen sunset provisions that were not made permanent. Though the

bill also requires additional reporting to Congress when PATRIOT Act powers are used,

it also extended government power to infringe on civil liberties in some important ways.

For instance, the act "specifies that notice of 'sneak and peek' searches can be delayed

for 30 days" and "increases the duration of FISA surveillance orders and FISA pen

register and trap and trace orders for non-US persons from 90 days to up to one year"[468].

Pen register and trap and trace orders relate to surveillance devices that capture the

numbers of outgoing and incoming telephone calls respectively[469]. Sneak and peek

searches, authorized by section 213 of the PATRIOT Act, are basically searches that law

enforcement officials can make on a property without obtaining a warrant, and without

notifying the property owner.

In sum, this period saw a marked increase in opposition to the PATRIOT Act in the

legislature. Even Congressman Sensenbrenner who pushed a version of the renewed bill

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[466] The new legislation was named the USA PATRIOT Improvement and Reauthorization Act of 2005.
[467] Bloomberg.com, "US Senate Approves Extension of USA Patriot Act Law (Update 1)," 2 March 2006, http://www.bloomberg.com/apps/news?pid=10000087&sid=aHxwbmK64WGI&refer=top_world_news.
[468] Center for Democracy & Technology, "President Signs PATRIOT Act Reauthorization Bill Lacking Civil Liberties Protections," 17 March 2006, http://www.cdt.org/publications/policyposts/2006/6.
[469] Center for Democracy & Technology, "CDT's Analysis of S. 2092: Amending the Pen Register and Trap and Trace Statute in Response to Recent Internet Denial of Service Attacks and to Establish Meaningful Privacy Protections," 4 April 2000, http://www.cdt.org/security/000404amending.shtml.

that was more security-focused than the final bill, framed his comments in civil liberties terms. He was careful to note that his version of the bill, which was produced by a conference of representatives and senators, contained thirty new provisions that protected civil liberties. Further, the Act was renewed only after having the deadline extended twice and four moderate Republicans in the Senate would not vote for the bill until an agreement was brokered with the White House that ostensibly provided for more liberties. Still, though the legislature fought the PATRIOT Act this time around, the bill still passed with most of its powers intact. NSLs were limited somewhat and two provisions were given four more years before expiration, but still fourteen of the sixteen provisions set to sunset were made permanent with only some leeway given to liberties around the edges. Here legislative opposition was notable in its presence, but only made a slight difference in affecting the abridgment of civil liberties.

Opinion Environment

This period saw the President's job approval ratings reach record-lows. According to the Harris Poll, President Bush had a 34% job approval rating in November 2005, which then went up to 40% and 43% in January and February before dropping to 36% again in March 2006. According to the CNN/Gallup/USA Today poll[470], Americans were moderately fearful of terrorism during this period. Fear levels were high (47%) in July 2005 following the July 7 bombings in London, but these levels went down to 41% in December 2005 and back up to 43% in January 2006. August 2005 and January 2006 presented new lows (52% and 53% respectively) in the amount of Americans who

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[470] This poll asked, "How worried are you that you or someone in your family will become a victim of a terrorist attack—very worried, somewhat worried, not too worried, or not worried at all?"

believed that terrorist attacks were likely on the US according to CBS/New York Times polling. These poll numbers may have to do with Bush's comments on Americans "forgetting" about terrorism, which are covered below. According to the Pew polls, the number of Americans willing to sacrifice liberties for securities also dropped to new lows in the 2005-06 period. In general, Americans during this period did not think that attacks were likely, were not willing to forego liberties and did not approve of George W. Bush's performance as president, but still were worried about themselves or family members becoming terror victims.

Executive Statements and Conclusion

During this period President Bush continued to make statements stressing that the country was at war (call to arms/threat), emphasizing over and over the threat to Americans (threat/threat magnitude), and highlighting that the PATRIOT Act was a necessary tool in fighting terrorists (liberty-security tradeoff). On October 6, 2005, in a speech the White House dubbed "a major policy address," President Bush spoke about the war on terror. The timing of the speech placed it about three months before the PATRIOT Act was set to expire. Bush framed the conflict as one of good versus evil and emphasized that the threat to the US could not be greater. He said that America faced "a radical ideology with an unalterable objective, to enslave whole nations and intimidate the whole world." Bush also highlighted government successes. He said that the US and its allies had foiled 10 al-Qaeda terrorism plots since 9/11[471].

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[471] CNN.com, "Bush: Iraq crucial in war on terror," 6 October 2005, http://www.cnn.com/2005/POLITICS/10/06/bush.iraq/index.html.

On November 30, 2005, Bush made a speech on the war on terror at the US Naval

Academy. Notably, according to a CBS News poll, the President's job approval rating

had hit a low of 35% in November[472]. In the speech he stated that the international

terrorists led by Abu Musab al-Zarqawi in Iraq desired to create a power vacuum in Iraq

so that they could form a base, "from which to launch attacks against America and

overthrow moderate governments in the Middle East and try to establish a totalitarian

Islamic empire that reaches from Indonesia to Spain." He connected the Iraqi terrorists to

those that attacked the United States by saying that both shared "the same ideology."

Here the President provided a specific threat: Islamist terrorists and stated that the

magnitude of the threat was great. He next framed the conflict as a broad, global battle.

Bush likened the terrorists' ideology to communism and fascism, and said that freedom

would defeat terror like it once did those ideologies. Finally, he underlined that the

country faced an enemy that "cannot be appeased."[473] During this speech, Bush outlined

his plans for the Iraq war and tried to rally the troops to its favor in light of recent polls

that showed the public was souring on the war effort (call to arms)[474].

In January, with his approval ratings down (most polls had his ratings in the low-

to-mid 40s)[475] and the PATRIOT Act still in limbo, the president discussed the war on

terror at Kansas State University. In the speech he described himself as "a decision-

maker" and emphasized that he did not ask for the September 11 attacks, but still had to

[472] CBS Evening News, "President's Job Approval Hits New Low," 3 November 2005,
http://www.cbsnews.com/stories/2005/11/02/eveningnews/main1005982.shtml.
[473] "Transcript: President Bush's Speech on the War on Terrorism," 30 November 2005, *The Washington Post*, http://www.washingtonpost.com/wp-dyn/content/article/2005/11/30/AR2005113000667.html.
[474] See, for instance, Milbank, Dana and Claudia Deane. "Poll Finds Dimmer View of Iraq War," 8 June 2005, *The Washington Post*, http://www.washingtonpost.com/wp-dyn/content/article/2005/06/07/AR2005060700296.html.
[475] See Pollingreport.com, "President Bush: Overall job rating," http://www.pollingreport.com/BushJob.htm.

react to them. Bush tellingly said, "I knew right about September the 11th, though, that

the attacks would begin to fade in people's memories." He then "assured" the audience

that even though "it's human nature to forget," "The threat to the United States is

forefront in my mind." This statement conjured the government protection theme. Bush

then averred that his ability to protect the public "rests upon this fact: that there is an

enemy which is relentless and desirous to bring harm to the American people."

Describing the enemy he said, "they have no heart, no conscience." Bush emphasized

that his job was "to educate the American people about the threats we face" and that the

four years since September 11th were just a "lull in the action," a statement that clearly

spoke to a new normal existing in the country. Once again, he recanted on the messages

that geography no longer could protect the US, that the terrorists could not be appeased,

and that terrorists wielding WMDs was the country's greatest threat: a nightmare

scenario. After saying that it was acceptable to disagree with him, Bush stated explicitly

that he does not listen to polls or focus groups. On the PATRIOT Act he pushed the need

to make civil liberty-security tradeoffs, "the Patriot Act may be set to expire, but the

threats to the United States haven't expired." He then repeatedly said that the threat to

the US from terrorists still exists. Bush defended his wiretapping program by once again

harping on the threat that America faced[476].

Finally, when the PATRIOT Act was renewed on March 9, 2006, Bush stated that

the bill would, "improve our nation's security while we safeguard the civil liberties of our

people." Again, Bush maintained that, "America remains a nation at war." The President

said that the PATRIOT Act, "was passed with overwhelming bipartisan support." He

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[476] George W. Bush, "President Discusses Global War on Terror at Kansas State University," 23 January 2006, http://www.whitehouse.gov/news/releases/2006/01/print/20060123-4.html.

said that the bill had done what it was meant to do by helping law enforcement officials pursue terrorists "with the same tools they use against other criminals"[477].

During this period, the President was clearly on the defensive. His polling numbers were low due to the Iraq war losing support and the mismanaged response to Hurricane Katrina. Further, Congress was opposing the president on the PATRIOT Act, even though Republicans still held majorities in both chambers. In his speech at Kansas State, Bush hammered on the message that the country was at threat and that the threat magnitude was great. He noted that people might "forget" about terrorism, but that it still remained a grave threat to the US. He declared that the government would continue to protect the people from terrorism and also made a call to arms. In other words, four-plus years after 9/11, with no aftershock attacks on the US and little new, significant terrorism detentions or convictions, the President was attempting to drum up terrorism fears. By this point, the war in Iraq had taken center stage away from the war on terror. Yet, still the President explained that America was at war with amorphous enemies that wanted badly to kill Americans because of who they were. In fact, his threat specificity statements made it clear that the country was at war with an ideology, not an organization. This nebulous "terrorist" ideology could be placed on any Muslim group and basically served as a proxy for any group that hated the US and was not a state. In sum, Bush during this period continued to underline that the public should be fearful of terrorists and continued to cite 9/11 as round one in an ongoing war between the US and terror. He also continued to emphasize that a new normal existed in the country, one wherein the nightmare scenario of terrorists wielding WMDs could take place. In

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[477] George W. Bush, "President Signs USA PATRIOT Improvement and Reauthorization Act," 9 March 2006, http://www.whitehouse.gov/news/releases/2006/03/20060309-4.html.

pushing the renewal of the Patriot Act, the President underlined government successes in

combating terrorism that were ostensibly aided by the Act. There were no significant

statements of tolerance made in this period.

Whereas the President continued to assert that security needed to be traded for

liberties, in July 2005, the Pew poll showed that only 40% of Americans were willing to

trade liberty for security, a figure well below polling numbers earlier obtained on this

topic. In all, these numbers bolstered the legislature's ability to oppose the President

since Congress could act knowing that the public was behind them. It is important to

note that here instead of directly constraining the President's ability to shape threats, the

lull in mass fears indirectly constrained the President by bolstering Congress' ability, or

at least willingness, to oppose him. As stated above, though the Republican-led Congress

fought the President on the renewal of the Patriot Act and low mass fear levels

constrained his action, the PATRIOT Act was renewed with few changes.

Before concluding this chapter with general findings, we will now look at the

enforcement variable. This next section will look at deportations, detentions,

convictions, and referrals after 9/11.

ANTI-CIVIL LIBERTY ENFORCEMENT OF LAW

David Cole notes that a National Public Radio poll taken a year after the 9/11

attacks, "found that only 7 percent of Americans felt that they had personally had

sacrificed any important rights or liberties in the war on terrorism." Cole asserts that this

is because, "For the most part, the government's measures have been targeted not at

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Americans, but at foreign nationals both here and abroad"[478]. Still, American citizens

Jose Padilla and Yaser Esam Hamdi were each held for three years without being

charged. Padilla was recently indicted on three counts and Hamdi was released to Saudi

Arabia after the Supreme Court ruled that he could challenge his detention[479]. *The New*

York Times recently reported that the upshot of the Administration's approach to the

Padilla and other terror-related cases "is that no one outside the administration knows just

how the determination is made whether to handle a terror suspect as an enemy combatant

or a as a common criminal, to hold him indefinitely without charges in a military court or

to charge him in court"[480].

Terrorism Prosecutions and Convictions.

According to a report commissioned by the Social Science Research Council that

compiled information on post-9/11 terror prosecutions, "federal investigators have

referred 6400 individuals for prosecution because they have either committed terrorist

acts or should be charged for anti terror purposes. Of these, approximately 1554 referrals

were declined for prosecution, and prosecution was filed against 2001 individuals, of

which 879 were convicted." Of those convicted, according to the data retrieved from

Syracuse University's Transitional Records Access Clearinghouse (TRAC), "506

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[478] Cole, David. *Enemy Aliens: Double Standards and Constitutional freedoms in the War on Terrorism.* (New York: The New Press 2003), pg. 18.

[479] "Six High-Profile Terrorism Cases," *The New York Times*, 26 November 2005. Also on Padilla see Jehl, Douglas and Eric Lichtblau. "Shift on Suspect Is Linked to Role of Qaeda Figures," *The New York Times*, 24 November 2005.

[480] Liptak, Adam. "In Terror Cases, Administration Sets Own Rules," *The New York Times*, 27 November 2005.

received no prison sentence and only five persons received 20 years or more in prison"[481].

The Bush Administration, via the US Department of Justice's web site lifeandliberty.gov, claims that since September 11, 2001, 401 people have been prosecuted in terrorism related crimes with 212 convicted[482]. Indeed, a list maintained by the Department of Justice's Criminal Division current as of April 28, 2004 records 310 people charged in terror or anti-terror cases since September 11, 2001. Of these 310 individuals, 179 have been convicted of crimes relating to terrorism. These crimes include, "material support, hostage taking, violation of the International Emergency Economic Powers Act, ... money laundering, terrorism transcending national borders, and false statements." Of the group of 179, only sixteen convicted offenders received jail sentences of 10 years or greater[483]. This finding points to the fact that the government has largely been convicting people whose connections to terrorist activities are minor, and who do not greatly threaten national security. It is important here to note the loose categorization of "terrorism or anti-terrorism cases" employed by the DOJ's Criminal Division. It is hard to glean from these designations exactly what sort of cases are being measured, or if the brunt of these cases have to do with terrorism at all. Further, the DOJ clearly has an interest in promoting its ability to prosecute and convict terrorists. Thus, these cases could have been chosen to highlight the 57.7% conviction rate obtained.

The TRAC data confirms these suspicions. In a report focusing on criminal terrorism enforcement from September 11, 2001 to September 30, 2003, TRAC shows

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[481] Social Science Research Council: a commissioned report, "DOJ Terror and Anti Terror Case List," SSRC, September 19, 2004.
[482] US Department of Justice, "Waging the War on Terror," accessed 1 October 2006, http://www.lifeandliberty.gov/subs/a_terr.htm.
[483] SSRC, "DOJ Terror and Anti Terror Case List.".

that the vast majority of persons the government has processed or convicted of terrorism

offenses pose very little if any threat to the United States. As stated above, TRAC

records 6,400 people were recommended for prosecution by federal investigators "on the

grounds that charging them with some crime might 'prevent or disrupt actual terrorist

threats.'" Based on these government recommendations, TRAC finds that 2,681

individuals were subjected to investigative referrals. However, as established above, by

analyzing Justice Department data on a case-by-case basis, TRAC discovered that only

five of those convicted of crimes involving terrorism received prison terms of twenty

years or more. Only one person, the attempted shoe bomber Richard Reid, received a life

sentence[484]. *Further, the median prison term for those convicted of international*

terrorism was fourteen days[485].

TRAC notes that the high number of referrals made in the two years after 9/11

had to do with a change in the Justice Department's definition of terrorism cases.

Specifically, the Justice Department expanded the crime categories it places under the

heading "terrorism," including a new grouping of crimes it dubs "anti-terrorism." "Anti-

terrorism," according to the Justice Department's data manual, "covers immigration,

identity theft, drug and other such cases brought by prosecutors that were '*intended to*

prevent or disrupt potential or actual terrorist threats where the offense conduct is not

obviously a federal crime of terrorism'"[486]. Of the 6,400 "terrorism" and "anti-terrorism"

cases referred to prosecutors, 3,500 involved acts of international terrorism, domestic

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[484] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," 8 December 2003,
http://trac.syr.edu/tracreports/terrorism/report031208.html, pages 4-5 of printout.
[485] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 1 of printout.
[486] Italics from TRAC document.

terrorism, or financial terrorism[487]. The misuse of the "terrorism" label is troubling and points to the government's desire to show it is doing something quantitatively even though when the individual cases are peeled back they don't relate to the kind of terrorism Americans think the government is fighting. For instance, an April 2002 case involving the Ku Klux Klan was categorized by the government as domestic terrorism. Further, the case of an Arab-American sending money to Yemen via an unlicensed money-transfer business was dubbed financial terrorism[488].

Thus, in a comparison of data from the two years prior to 9/11 to that from the two years after 9/11, TRAC finds a six-fold increase in terrorism cases either prosecuted or declined in the later period: "594 such actions before to 3,555 after." TRAC also finds "an eight-fold jump in convictions, 110 to 879." When the new anti-terrorism grouping is separated from terrorism the jump is less severe, though still substantial. Without the anti-terrorism cases, cases prosecuted or declined went from 544 to 1,778 and convictions grew from 96 before 9/11 to 341 after[489].

Importantly, TRAC finds that, "despite the three-and-a-half fold increase in terrorism convictions, the number who were sentenced to five years or more in prison has not grown at all from pre-9/11 levels. In fact, the number actually declined, dropping from 24 individuals whose cases began before the attacks to 16 after." The individuals causing the jump in convictions were the hundreds of people convicted for less than a year in prison or no time at all. Even when TRAC focused on international terrorism, it found the same pattern: "Out of the 184 convictions under international terrorism, 171

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[487] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 2 of printout.
[488] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 6 of printout.
[489] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 2 of printout.

have received either no prison time (80) or sentences of less than a year (91)"[490]. In fact,

the median sentence for "international terrorists" in the two years after 9/11 was 14

days[491]. TRAC does caution that in the end of 2003 when this document was published,

600 cases were pending at the referral stage and 82 at the court stage. Further, it notes

that since more serious cases typically take more time, the number of long-term prison

convictions of those deemed terrorists could show a marked increase[492]. Indeed, both

Zacarias Moussaoui (life term) and Jose Padilla (17 years) would be convicted to long

prison terms after this data was published. Further, formal charges were brought against

six Guantanamo Bay detainees accused of central roles in the 9/11 attacks in 2008[493].

Over the period studied here, the number of terrorism referrals month-to-month

surged in the period after 9/11. TRAC data from June 2002 shows a dramatic jump in

both domestic and international terrorism case referrals after 9/11. Domestic terrorism

case referrals jumped from 14 in August 2001 to 50 in September and 90 in October

2001. Domestic terrorism referrals then fell until early 2002 when they jumped from 46

in February 2002 to 118 in March 2002[494]. International terrorism case referrals followed

a similar pattern, going from 15 in August 2001 to 85 after 9/11, then tapering down to

57 in December 2001 and then jumping back up to 83 in January 2002[495]. The TRAC

data is summarized in Chart Six below.

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[490] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 3 of printout.
[491] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 4 of printout.
[492] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 3 of printout.
[493] Glaberson, William. "US Presents Charges Against 6 in Sept. 11 Case," *The New York Times*, 11 February 2008.
[494] TRAC Reports, "National Profile and Enforcement Trends Over Time: Domestic Terrorism Referrals for Criminal Prosecution Fiscal Years 2001- 2002,"
http://trac.syr.edu/tracreports/terrorism/supp/domter_refmonth.html.
[495] TRAC Reports, "National Profile and Enforcement Trends Over Time: International Terrorism Referrals for Criminal Prosecution Fiscal Years 2001- 2002,"
http://trac.syr.edu/tracreports/terrorism/supp/intter_refmonth.html.

Chart Six:

Terrorism Referrals for Criminal Prosecution, US 10/200-3/2002
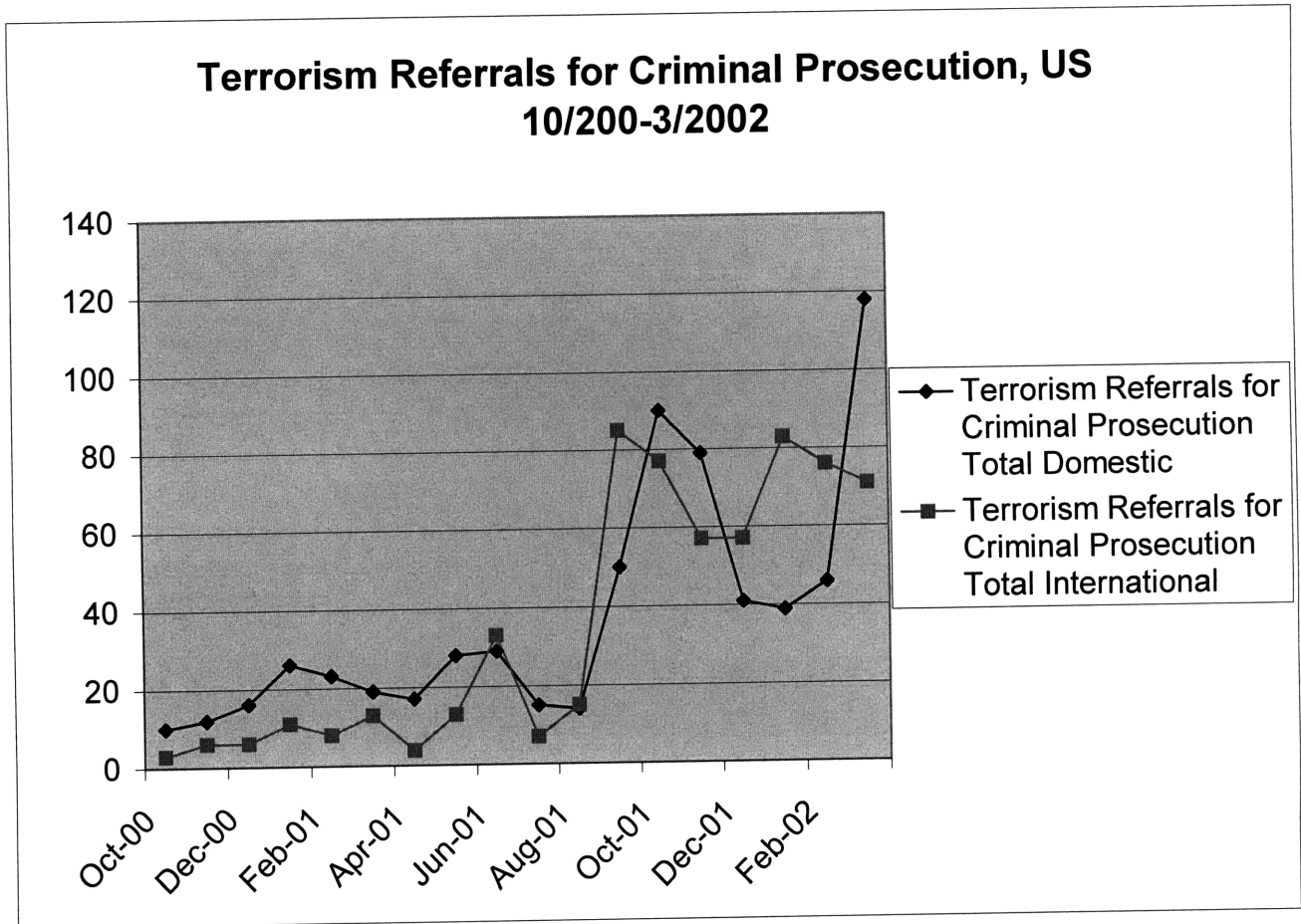
TRAC data that runs through August 2006, confirms that the trends in terrorism prosecutions and convictions that followed September 11th continues through 2006. The number of prosecutions continues to dwindle as the number of cases declined shoots up substantially. As we see in chart two below, the number of cases declined goes up to 82% in fiscal year 2005 and, as of August, stood at a staggering 90% for fiscal year 2006. Chart Two plainly shows that terrorism prosecutions have returned basically to pre-9/11 levels[496].

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[496] TRAC Reports, "Federal Criminal Prosecutions and Declinations under Justice Department Program of International Terrorism," http://trac.syr.edu/tracreports/terrorism/169/include/time.html.

Chart Seven:
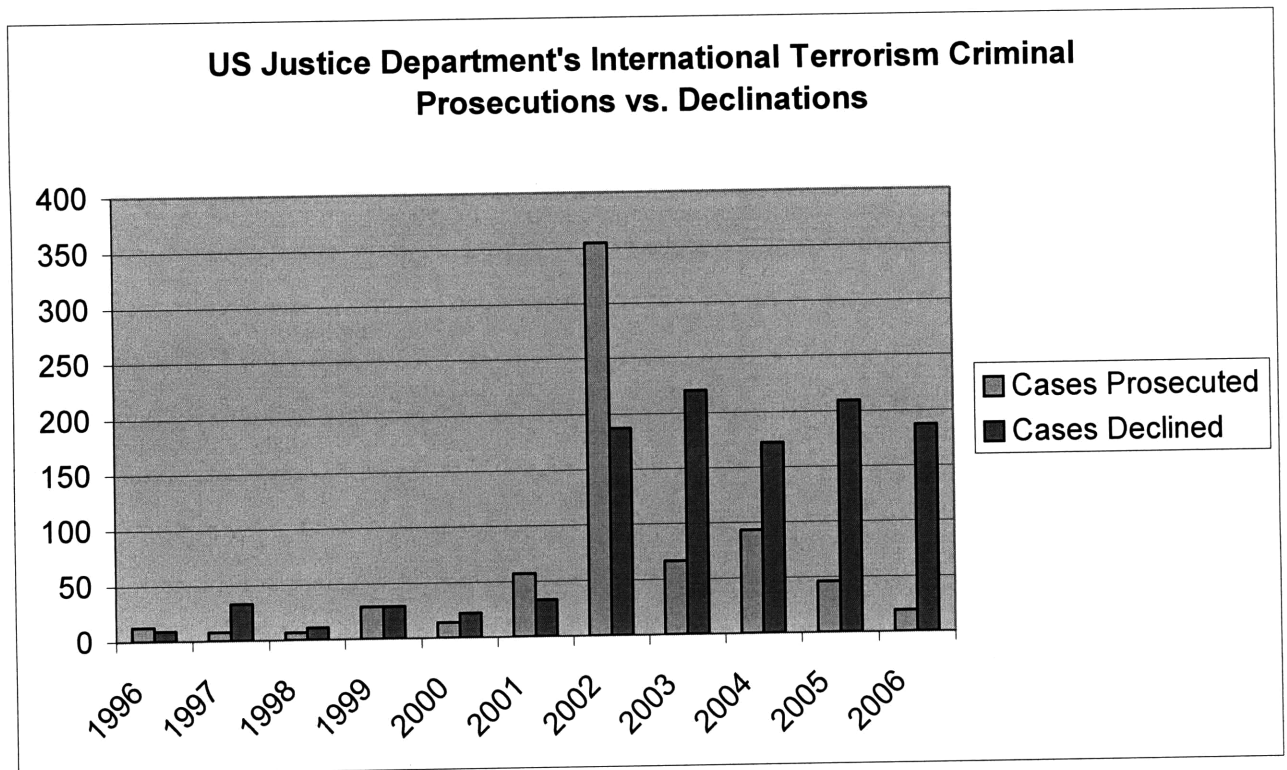
The median sentences for those convicted of international terrorism crimes actually went down even further in the period between October 1, 2003 and May 31, 2006. Whereas the median sentence for international terrorism stood at 28 days for the period between September 11, 2001 and September 30, 2003, the median sentence in the most recent period researched by TRAC stands at just 20 days. When compared to the 41 months served by the median international terrorist convicted in the period between October 1, 1999 and September 10, 2001, this dramatic drop in sentences reaffirms the conclusion that the Bush Administration's international terrorism prosecutions have largely led to small-value convictions[497].

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[497] TRAC Reports, "International Terrorism: Ultimate Outcome of Referrals/Criminal Prosecutions 1999-2006," http://trac.syr.edu/tracreports/terrorism/169/include/graph3.html.

The new data reveals 6,472 cases referred for terrorism prosecutions in the period from 9/11/01 to May 30, 2006. Convictions were obtained in 1,329 of these cases, but still only one percent of these convictions (14 cases) resulted in convictions of twenty years or longer. On the flip side, 704 of the convictions were for no prison time and an additional 327 for prison time of one day or less. The small sentences for those convicted of terrorism is due to the fact that many had little to do with the type of terrorism most Americans envision[498]. The most common lead charge for convicted international terrorists by far was that of fraud or false statements (121 convictions), with other cases of identity and visa fraud totaling in 22 convictions and material support for terrorists next in line with 8[499].

The TRAC data clearly show that the government's pursuit of terrorists has yielded few significant convictions. As David Cole writes, though "the administration boasts that it has obtained more than four hundred criminal indictments and over two hundred convictions in 'terrorism-related cases,'" it does not mention that most of these cases are for minor offenses. Further, a June 2005 *Washington Post* study, which looked at all the cases that the government categorized as related to terrorism, "found that only thirty-nine involved any convictions on charges related to terrorism"[500].

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[498] TRAC Reports, "Criminal Terrorism Enforcement in the United States During the Five Years Since the 9/11/01 Attacks," http://trac.syr.edu/tracreports/terrorism/169/.
[499] TRAC Reports, "Lead Charge for International Terrorism Convictions," http://trac.syr.edu/tracreports/terrorism/169/include/lead_charge_gui.html.
[500] Cole, "Are We Safer?," pg. 6 of printout.

Terrorism Detentions and Deportations.

      While the SSRC report focuses on terrorism prosecutions and convictions, James Dempsey and David Cole look more closely at terrorism detentions and deportations. Cole and Dempsey count over 5,000 foreign nationals detained by the federal government after September 11. Four years later, not one of these detainees stood "convicted of a terrorist crime"[501]. Cole arrives at this figure using the following logic. First, he notes that, the Justice Department's central response to the 9/11 attacks was a new program of "mass preventive detention"[502]. At first, the Justice Department and John Ashcroft provided totals of how many individuals had been detained. However, "The last publicly acknowledged total, on November 5, 2001, was 1,182. The Justice Department has refused to give a number of detainees ever since"[503].

> Cole goes on to employ the following logic to arrive at his 5,000 detainees figure: "As noted, the government admits that there were 1,182 detentions in the first seven weeks of the campaign. As of May 2003, it had also detained some 1,100 more foreign nationals under the Absconder Apprehension Initiative, which expressly targets for prioritized deportations the 6,000 Arabs and Muslims among the more than 300,000 foreign nationals living here with outstanding deportation orders. As of May 2003, another 2,747 noncitizens had been detained in connection with a Special Registration program also directed at Arab and Muslim

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[501] Cole, David and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security.* (New York: The New Press 2006), pg. 178;Cole, *Enemy Aliens*, pg. xxiii.
[502] Cole, *Enemy Aliens*, pg. 22.
[503] Cole, *Enemy Aliens*, pg. 25.

noncitizens. A conservative estimate would therefore place the number of

domestic detentions in the war on terrorism as of May 2003 at over 5,000"[504].

The focus on deportations is important. For whereas the Department of Homeland

Security was established as an agency to counter terrorist threats, the vast majority of its

criminal case workload applies to immigration. This is because "most DHS investigators

work for agencies like the INS and Customs that were transferred to the department on

March 1 [of 2003]"[505]. The Bush Administration, via the US Department of Justice's

web site lifeandliberty.gov, claims that since September 11, 2001, 515 foreign nationals

with ties to the 9/11 investigation have been deported[506].

David Cole has written extensively on the fact that non-citizen Arabs and

Muslims, not the general public, have suffered from dramatically reduced liberties after

9/11. Fear of the other pushes citizens to view post-crisis situations as "us versus them"

scenarios. As Cole writes, "crises often inspire the demonization of 'aliens' as the nation

seeks unity by emphasizing differences between 'us' and 'them'"[507]. Cole in a 2006

piece for the *New York Review of Books* wrote that since September 11, 2001, "the

[Bush] administration subjected 80,000 Arab and Muslim immigrants to fingerprinting

and registration, sought out 8,000 Arab and Muslim men for FBI interviews, and

imprisoned over 5,000 foreign nationals in antiterrorism preventive detention

initiatives"[508]. According to Cole of these 93,000 individuals interviewed, made to

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[504] Cole, *Enemy Aliens*, pg. 25.
[505] TRAC Reports, "Criminal Terrorism Enforcement Since the 9/11/01 Attacks," pg. 7 of printout.
[506] US DOJ, "Waging the War on Terror," http://www.lifeandliberty.gov/subs/a_terr.htm.
[507] Cole, *Enemy Aliens*, pg. 5.
[508] Cole, "Are We Safer?," pg. 5 of printout.

register with the government, or detained "not one stands convicted of a terrorist crime"[509].

Cole found that, "As of May 2003, only three of the 1,200 'suspected terrorists' arrested in the first seven weeks [after 9/11], and none of the nearly 4,000 more foreign nationals arrested since under related antiterrorism initiatives, turned out to warrant even a *charge* of terrorist-related criminal activity"[510]. Further, the American public supported this ethnic profiling: 60 percent of Americans polled soon after 9/11 supported ethnic profiling as long as it targeted Arabs and Muslims[511]. Even with all of this ethnic profiling the only terrorist incident in the US since 9/11 involved shoe bomber Richard Reid who was foiled not by intelligence gathering but because of an alert flight staff[512]. However, government actions against non-citizens soon started infringing on citizen rights with the detentions of Yaser Hamdi and Jose Padilla[513].

The government has used the Immigration and Naturalization Service (INS) as a means of detaining alleged terrorists[514]. Cole finds that, "by employing immigration procedures, the Justice Department [after 9/11] was able to avoid those constitutional rights and procedures that accompany the criminal process but that do not apply in the immigration setting"[515]. For example, on September 20, 2001, Attorney-General John Ashcroft changed the rule regarding immigration arrests. The old rule forced the INS to file charges against a detainee within 24 hours of his arrest, Ashcroft changed the rule to state that in times of emergency the government could hold immigration detainees

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[509] Cole, "Are We Safer?," pg. 6 of printout.
[510] Cole, *Enemy Aliens*, pg. 188.
[511] Cole and Dempsey, *Terrorism and the Constitution*, pg. 220.
[512] Cole and Dempsey, *Terrorism and the Constitution*, pg. 234.
[513] Cole, *Enemy Aliens*, pg. 3.
[514] Cole, *Enemy Aliens*, pg. 19.
[515] Cole, *Enemy Aliens*, pg. 34.

without charging them for a "reasonable" amount of time[516]. In January 2002, the Justice

Department prioritized the deportation of 6,000 Arab and Muslim noncitizens[517].

Further, the definition of "terrorist activity," a definition used to prosecute immigration

offenses, was far more expansive than "domestic terrorism" according to the PATRIOT

Act. Whereas domestic terrorism was defined as, "acts dangerous to human life tha are a

violation of the criminal laws" that appear to have the intent of influencing government

policy or of intimidation or coercion. "Terrorist activity," for immigration law purposes,

encompassed support for "virtually any group that has used violence, and any use or

threat to use a weapon against person or property" that is not for personal, monetary

gain[518].

Further detentions were achieved using the previously rarely used material

witness authority of the government. The material witness law "permits the government

to lock up a person if it can be shown that he or she has information material to a trial or

grand jury proceeding but would flee before testifying"[519]. The Aschcroft Justice

Department used its material witness powers "as an end run around the Fourth

Amendment rule barring arrest and detention without probable cause for criminal

activity"[520].

As of March 2003, the US government had designated 650 foreign nationals held

at Guantanamo Bay as enemy combatants[521]. American citizens, not just foreign

nationals, namely Yaser Hamdi and Jose Padilla, have been declared enemy combatants

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[516] Cole, *Enemy Aliens*, pg. 31.
[517] Cole, *Enemy Aliens*, pg. 50.
[518] Cole, *Enemy Aliens*, pg. 58.
[519] Cole and Dempsey, *Terrorism and the Constitution*, pg. 181.
[520] Cole, *Enemy Aliens*, pg. 37.
[521] Cole, *Enemy Aliens*, pg. 39.

by the government and "placed in indefinite incommunicado military custody." The

Supreme Court in *Hamdi v. Rumsfeld* declared that the government had to afford Hamdi

due process and the opportunity to appear before a neutral decision-maker[522]. After the

Court's ruling that Hamdi had a right to a hearing, "the administration simply let him go,

on the condition that he return to Saudi Arabia and renounce his citizenship." Padilla was

transferred from military to civilian custody when his lawyers challenged his detention in

the Supreme Court[523]. This action by the Bush Administration led the Supreme Court to

reject Padilla's detention appeal, since they believed his case was moot. Yet, Justice

Ruth Bader Ginsburg said that it was about time the Administration's "enemy combatant"

powers were ruled on by the Court, saying that the issues in the Padilla case were "of

profound importance to our nation"[524].

Despite the President's pro-Islam statements, in November 2001, the State

Department installed a twenty-day waiting period for visas for men from 26 mostly Arab

and Muslim countries[525]. On the one year anniversary of 9/11, the Justice Department

began a program requiring foreign nationals from select mostly Arab and Muslim

countries to "register and submit to fingerprinting and photographs at entry, thirty days

after entry, at one-year intervals thereafter, and at exit" from the United States.

Soonafter, the Justice Department made it a requirement of all foreign nationals

(excluding legal permanent residents) from a list of 25 mostly Arab and Muslim countries

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[522] Cole and Dempsey, *Terrorism and the Constitution*, pg. 187.
[523] Cole, "Are We Safer?," pg. 8 of printout.
[524] Stout, David. "Justices, 6-3, Sidestep Ruling on Padilla Case," 3 April 2006, *The New York Times*,
http://www.nytimes.com/2006/04/03/us/03cnd-
scotus.html?ex=1301716800&en=a70622472a4a3ba9&ei=5088&partner=rssnyt&emc=rss.
[525] Butterfield, Jeanne A. "Executive Branch Actions," American Immigration Lawyers' Foundation,
http://www.ailf.org/lac/lac_otherresources_execbranchactions.asp.

who were already residing in the US to register with the government[526]. Yet, still, in 2005, "more people from Muslim countries became legal permanent United States residents—nearly 96,000 than in any year in the previous two decades." Further, 40,000 Muslims were admitted into the US in 2005, more than in any year since the terror attacks[527].

Conclusions on Executive, Legislature and Opinion Roles in 9/11 Period

As Professor Oren Gross, and more recently James Fallows, have argued, the power of terrorists resides not in the damage that they can inflict, but in what they can make us do to ourselves[528]. In other words, it is the civil liberty-abridging reactions and the wars that terrorism has spawned that have caused greater damage to the United States than the attack in 2001. I would like to conclude this chapter with six major findings that were deciphered from reviewing the empirical data above. First, however, let us recall the outcomes of the two hypotheses above. Hypothesis one, which stated that when party competition is high the incumbent will employ fear as a strategy, was supported by the treatment of the 2004 election period. Hypothesis two, which held that executive-legislative antagonism will be more likely when the government is closely divided along partisan lines, was proven false. The American legislature was evenly divided after 9/11

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[526] Cole, *Enemy Aliens*, pg. 50.
[527] Elliott, Andrea. "More Muslims Arrive in US, After 9/11 Dip," 10 September 2006, *The New York Times*, http://www.nytimes.com/2006/09/10/nyregion/10muslims.html?ex=1315540800&en=4e065bac797a38b1& ei=5088&partner=rssn.
[528] Gross, Oren. "Cutting Down Trees: Law-Making Under the Shadow of great Calamities," in Daniels, Ronald, Patrick Macklem, and Kent Roach eds., *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill.* (Toronto: University of Toronto Press 2001); Fallows, James. THE ATLANTIC CITE.

but was cowed, while a few months later the legislature grew a backbone though its partisan composition favored President Bush.

Now to the major findings of this chapter. First, the chief executive can affect mass fear levels, so he does have agency. This is an important finding because one may argue that public opinion and societal fears are driving the post-terror legislative dynamic. The President's effect on the public and his use of statements to clearly ratchet up fear levels proves that the causal arrow goes from executive-to-public opinion and not vice-versa. The President was able to move public opinion on terrorism through raising terror alerts and making fear-inducing statements. The clear connection between the raising of the terror alert level and rises in mass fear levels proves this point. That said, the second major finding is that public opinion and mass fear levels do constrain executive action. When mass fear levels and approval ratings for President Bush were high, the President had carte blanche to set whatever agenda he desired. When mass fear levels receded and Bush's approval rating dwindled, the executive's sphere of agency shrank. Third, relatedly, the closer the public is temporally to the terror attack, the higher will be mass fear levels. This finding certainly needs to be honed by looking at cases of terrorist campaigns as well as other one-off terror attack cases, but it appeared from this case at least that mass fear levels rose with temporal proximity to the attack.

Fourth, party competition proved to be a critical variable in determining executive threat-shaping strategies. The terror threat was repeatedly hammered on and the threat magnitude was expanded as the 2004 election neared. Fifth, legislative opposition to the chief executive rose as mass fear levels receded. Congress' rubber stamp approval of Bush's war on terror began to fade slightly in the 2004 election period and frayed

significantly in the renewal of the Patriot Act period. That said, the legislature made little changes to the PATRIOT Act legislation. Finally, aliens and small-timers were targeted with new terror laws. Indicative of this, David Cole writes that, "As of May 29, 2002, the government stated that it had subjected 611 noncitizens … to secret hearings"[529]. Foreigners have typically borne the brunt of counterterror legislation in America as the liberty of the minority has been time and again traded for the security of the majority.

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[529] Cole, *Enemy Aliens*, pg. 27.

Chapter Five

Institutional Comparison

TIME MAGAZINE: What issue has provided the biggest challenge for you in terms of balancing competing tensions?

Alberto Gonzales: Most of the hard decisions relate to the war on terror. We're fighting this new kind of enemy before an American population that has not seen the US really engaged in this kind of fight for a generation. They don't remember that, say, in World War II we captured a lot of people. We didn't provide them lawyers. We didn't read them their rights. We simply held them because under the laws of war, we're entitled to do that[530].

What explanatory power do institutions alone have in determining government legislative reactions to terror attacks? In this chapter, I demonstrate that democracies, regardless of their institutional set-up, act very similarly in compromising civil liberties while under terrorist threat. This thesis goes against the prevailing wisdom of the political science field, as will be established below, because most of the literature theorizes that presidential and parliamentary governments will react differently in times of crisis. Though the rest of this dissertation proves the effect of executive threat-shaping in driving reactions to terror attacks, here the role of institutions, and to a lesser extent mass fear, will be examined closely. By comparatively testing the role of presidential versus parliamentary institutions it will be shown that this variable is not very useful in explaining why democratic governments react differently to terror attacks. In times when

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[530] Novak, Viveca. "10 Questions for Alberto Gonzales," *Time Magazine*, 10 October 2005, pg. 8.

fear is heightened, democratic institutions under all regimes do not work as they should and civil liberties are curtailed.

Liberal democracies are special due to their commitment to government by the people and to a set of negative rights that allow citizens to live their lives free of heavy-handed government interference[531]. As Michael Ignatieff writes, "Thanks to the rights they entrench, the due process rules they observe, the separation of powers they seek to enforce, and the requirement of democratic consent, liberal democracies are all guided by a constitutional commitment to minimize the use of dubious means—violence, force, coercion, and deception—in the government of citizens"[532]. After September 11, 2001, the anger, hatred and fear that many Americans' felt toward the terrorist perpetrators superceded their concern for civil liberties[533]. Today, almost seven years later, scholars and experts, not to mention regular citizens, are worried that America has overreacted to the terrorist threat. Geoffrey Stone writes that the tendency to overreact to threats by strongly compromising civil liberties is a consistent theme in American history[534]. Lori Hocking and Laura K. Donohue writing on the British and Australian cases respectively come to similar conclusions[535]. Further, in a 1994 study of six democracies' responses to

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[531] On negative and positive liberty see Berlin, Isaiah. "Two Concepts of Liberty" in *Four Essays on Liberty* (New York: Oxford University Press 1969).

[532] Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton, NJ: Princeton University Press 2004), pg. 15.

[533] See Posner, Richard A. "Security versus Civil Liberties". *The Atlantic Monthly*, Dec. 2001 and Gambetta, Diego. "Reason and Terror: Has 9/11 made it hard to think straight?" *Boston Review*, February/March 2004.

[534] Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime From the Sedition Act of 1798 to the War on Terrorism*. (New York: WW Norton & Co. 2004), pg. 5.

[535] Hocking, Lori. *Terror Laws: ASIO, Counter-Terrorism and The Threat to Democracy* (Sydney: University of New South Wales Press 2004). Donohue, Laura K. "Temporary Permanence: The Constitutional Entrenchment of Emergency Legislation," *Stanford Journal of Legal Studies*, vol. 1, no. 1, December 1999. Also, Donohue, Laura K. "Civil Liberties, Terrorism and Liberal Democracy: Lessons from the United Kingdom" in Howitt, Arnold M. and Pangi, Robyn L. eds. *Countering Terrorism: Dimensions of Preparedness* (Cambridge, MA: The MIT Press 2003), pgs. 411-46.

international terrorism, David Charters found that though none gave in to terrorism, "the democracies did not survive unscathed"[536].

As Ignatieff highlights, if these countries were tyrannies rather than liberal democracies, the question of civil liberties would be a moot one[537]. The fact that liberal democracies espouse rights that their citizens and governments value presents a particular dilemma in times of crisis: balancing national security against civil liberties. This point is not just an "academic" one since a strong body of theory provides the backbone for why liberal democracies are structured the way they are. Works such as *The Federalist Papers*, the US Constitution, John Locke's *Second Treatise on Government*, and Montesquieu's *The Spirit of the Laws* detail the careful logic behind the institutions of government in liberal democracies. In all of these writings, it is emphasized that democratic government should be constructed with the people's rights as its main focus.

This chapter tests the ability of democratic institutions to maintain civil rights in the face of terrorist threat. EE Schattschneider "observed that political institutions are not neutral, but in fact bias government actions in favor of particular interests, ideas, and policy alternatives"[538]. To this end, this chapter asks the question: When mass fear is dramatically enhanced after terrorist attacks, do presidential and parliamentary systems react differently or similarly with regard to protecting civil liberties? This chapter looks specifically at terrorist threats that spur mass fear. A vast political science literature, which I will detail below, discusses the various advantages and disadvantages of presidentialist versus parliamentary governments. Crisis periods serve as great tests of all

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[536] Charters, David. "Introduction" in Charters, David ed. *The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries*. (Westport, CT: Greenwood Press 1994), pg. 1.
[537] Ignatieff, *The Lesser Evil*, pg. 2.
[538] Tichenor, Daniel J. *Dividing Lines: The Politics of Immigration Control in America*. (Princeton, NJ: Princeton University Press 2002), pg. 29.

governments, but especially liberal democratic ones because these governments are constructed with the specific aim of maintaining the rights of the people. Indeed, the checks and balances structured into liberal democratic government institutions are meant to limit the ability of government to overstep its bounds in compromising liberties.

However, as Carl Schmitt, suggests "liberal constitutionalism leaves itself especially susceptible to emergencies." This is because "Its blind faith in the technical apparatus of its standing constitutions ... encourages liberalism to believe that it needs no technique for the extraordinary occurrence because the regular constitutional techniques are assumed to be appropriate"[539]. As Schmitt famously wrote, "Sovereign is he who decides the exception"[540]. Still, Supreme Court Justice John Marshall would disagree with Schmitt, he believed that the Constitution must be viewed as "adapt[able] to the various *crises* of human affairs"[541].

I have chosen to study the threat of terrorism because it poses a particularly difficult menace for liberal democracies to contend with. As Diego Gambetta argues terrorism is particularly pernicious to democracies' commitment to liberal rights because the terrorist threat is so vulnerable to political manipulation[542]. This is because, "Terrorists rarely make their capabilities and intentions known [and] [t]heir motivations and intentions also change over time in ways that are hard for analysts to predict"[543]. Further, a major goal of terrorism, implied in the word itself, is to raise mass fear. This

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[539] McCormick, John P. "The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers," *Canadian Journal of Law and Jurisprudence*, vol. 10, no. 1, January 1997.
[540] Ignatieff, *The Lesser Evil*, pg. 41.
[541] Fallon, Richad H, Jr. *The Dynamic Constitution: An Introduction to American Constitutional Law.* (Cambridge, UK: Cambridge University Press 2004), pg. 17.
[542] Gambetta, "Reason and Terror".
[543] Stern, Jessica. "Dreaded Risks and the Control of Biological Weapons," *International Security*, vol. 27, no. 3 (Winter 2002/03), pg. 100.

fear, then, feeds into government power. Indeed, "the majority of recent investigations have found a positive fear-persuasion relationship"[544].

The conclusions of this chapter provide for many interesting findings about the field. If presidential and parliamentary governments react differently to crises in their protection of liberty, then the literature on the differences between the two sorts of governments is bolstered. However, if the two sorts of government react the same to crises, then the perceived differences between them may not be as great as previously hypothesized. Indeed, if terrorism fears yield similar reactions from both types of democracy, then these threats may have greater weight—at least while they remain threats—than the great edifice of democratic institutions. Further, this chapter serves as a test of the school of new institutionalism, which, according to Bernard Grofman, holds that, "preferences can be understood only in the context of the institutionally generated incentives and institutionally available options that structure choice"[545].

In this chapter, the variables that I look at are slightly different than what is explored in the rest of the study. Here, institutions are presupposed to be the independent variable that leads to the dependent variable of passage and enforcement of new legislation. Differing institutional structures should lead to varied results on the dependent variable. The primary focus of the dependent variable will be on the rights of citizens and of minorities. Each case study will also touch on free speech rights within the country studied as part of the dependent variable[546]. Mass fear is put forward as the

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[544] Sternhal, Brian and C. Samuel Craig. "Fear Appeals: Revisited and Revised." *The Journal of Consumer Research*, vol. 1, no. 3 (Dec. 1974), pg. 22.
[545] Shugart, Matthew Soberg and John M. Carey. *Presidents and Assemblies : Constitutional Design and Electoral Dynamics*. (Cambridge, UK: Cambridge University Press 1992), pg. 14.
[546] The addition of free speech to the independent variable here is meant to further measure erosions of democratic pluralism. As Richard Fallon writes, "Vivid, passionate, occasionally hyperbolic speech about moral and political matters is vital to public debate in a political democracy" (Fallon, *The Dynamic*

intervening variable since heightened mass fear after terror attacks is posited here to be the reason that civil liberty-abridging legislation is forwarded. As will be further elaborated below, presidential and parliamentary governments should behave differently in these crisis situations wherein mass fear levels are high. Though this study will show that institutions do not determine the reactions to terror attacks, the chapter is set up in this way to test the causal story that institutional arrangements determine legislative responses after terror attacks.

The dynamic tested here is presented below.

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Institutions-------→Mass Fear------------→Passage and Enforcement of

                                          Civil Liberty-Abridging Legislation

   IV                 Int.V                         DV
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It is important to note that in all three cases surveyed here, the executive shaped the terror threat as a war[547]. Whether the executive shapes the threat as a crime or war will prove to be particularly important in the next chapter. Before entering into a discussion of the literature and of hypotheses, I would like to discuss my three cases and what has guided me to select them.

Constitution, pg. 36). By measuring free speech rights as well as the rights of minorities, this chapter aims to show the extent to which negative liberty (as defined by Isaiah Berlin) has been eroded in each case.
[547] Ariel Sharon stated that "the state of Israel is in a war, a war against terrorism" in 2002 ("Sharon Addresses Nation at a Crossroads," BBC News, 31 March 2002, http://news.bbc.co.uk/1/hi/world/middle_east/1904592.stm). George W. Bush framed 9/11 as an act of war (see chapter four). Finally, British PM Howard Wilson stated that the UK was at war with the Irish Republican Army after the 1972 Birmingham pub bombings (Donohue, Laura K. *Counter-Terrorist Law and Emergency Powers in the United Kingdom 1922- 2000.* (Dublin, Ireland: Irish Academic Press 2001), pg. 218; also see chapter six).

All three cases are liberal democracies, differing on the independent variable, which is government type. One is a parliamentary government, one is presidential and one, Israel, switches between parliamentarism and a presidential-parliamentary mix over the period studied[548]. In all three, though the nature of the terrorist threat differs, mass fear was dramatically enhanced during or after a series of terrorist events. The dramatic increase of fear put stress on government commitments to maintain civil liberties while some people and government officials clamored for some liberties to be thrown out in favor of national security. The first case, then, is that of the United States after September 11, 2001. This case provided the original motivation for my study as I saw first-hand the way that the government and the polity in America moved to limit some liberties after the tragedy. I want to stress here that the US has seen a series of terrorist attacks perpetrated by jihadists with the September 11, 2001 being the most prevalent, if not the culmination[549]. The second case is that of the United Kingdom's encounter with Northern Irish terrorism from 1969- 1974, focusing on the passage of emergency legislation during this period of numerous high-casualty terror attacks. The third and final case is that of Israel during the period of the second intifada, which is also referred to as the Al-Aqsa intifada. Though the 9/11 case was dealt with extensively in chapter four it appears again here because of its centrality to this study and in order to see

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[548] Hazan, Reuven Y. "Executive- Legislative Relations in an Era of Accelerated Reform: Reshaping Government in Israel". *Legislative Studies Quarterly* vol. 22, issue 3 (August 1997).

[549] Though the US case appears to have only one terrorist attack counting against it, one must remember the attacks on the US embassies in Kenya and Tanzania on August 7, 1998 which killed 220 people; the attack on the USS Cole on October 12, 2000 which killed 17 US servicemen; the attempted "shoe bombing" on a December 23, 2002 flight from Paris to Miami; and most recently, the August 17, 2005 attempted missile attack on a US naval ship at port in Jordan (Timeline: Al-Qaeda, 22 April 2005, http://news.bbc.co.uk/1/hi/world/3618762.stm; "Jordan rockets miss US Navy Ship," 19 August 2005, http://news.bbc.co.uk/2/hi/middle_east/4165190.stm). In addition, al-Qaeda has claimed to attack US "interests" repeatedly, most recently with the triple bomb attack in Amman, Jordan ("'Al-Qaeda' claims Jordan attacks," 10 November 2005, http://news.bbc.co.uk/2/hi/middle_east/4423714.stm).

whether the liberty abridgments that occurred after 9/11 could have been prevented by a different form of government. In sum, including the September 11, 2001 case here will complete the case study from chapter four.

These countries were chosen for their similarities as well as their differences. All three of these countries exhibit high-income levels, common law governance, robust immigration levels, strong democratic traditions, and multiethnic societies. What differs between them, among other things, is their geographic size, their population levels, the nature and duration of the threat they face, and their government type[550].

The case study method was chosen due to the difficulty of quantifying occurrences of civil liberty abridgments and because of the nuance that the case study method provides. Indeed, in an e-mail correspondence Professor Laura Donohue wrote me that, "I do not have a central database that summarizes all of the research [on the subject of civil liberties in times of crisis/emergency/terrorism], primarily because there are so many nuances that matter in comparing the different regions"[551]. In the conclusion of this dissertation, I will bolster the findings derived here with corollary cases in the hopes that doing so will subvert some of the shortcomings of the case study method[552].

This chapter will be organized in the following fashion. First, we will turn to a discussion of the literature comparing presidentialist and parliamentary governments. In this section, I will forward three hypotheses that will be tested by this study. Next, case

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[550] It is important to note here that these countries deviate from the many Latin American cases, which have been used to show the weakness of presidential democracies. The reason for not choosing Latin American cases is that many of these countries never were truly able to establish democratic traditions before their democracies fell. For this reason, Israel, the UK, and America are good cases for showing what happens to entrenched democratic institutions when crisis arises.

[551] E-mail correspondence with Laura K. Donohue, message dated 8 September 2005.

[552] These shortcomings being, for instance, that three cases do not prove a universal rule.

studies of the US, UK and Israel will be expounded. Lastly, I will conclude with the study's findings.

Presidentialist vs. Parliamentary Government

A. Definitions

Before going into the literature on presidential and parliamentary government, it is necessary that I forward a definition of each regime type. Arend Lijphart lays out the three major distinctions between these types of government. First, in parliamentary governments, "the head of government ... and his or her cabinet are dependent on the confidence of the legislature and can be dismissed from office by a legislative vote of no confidence or censure." By contrast, in presidential governments, "the head of government—almost always called the president—is elected for a fixed, constitutionally prescribed term and in normal circumstances cannot be forced to resign by the legislature." Second, presidents are both popularly elected and elected directly or by an electoral college. Prime ministers, on the other hand, are "selected by the legislature." Finally, "parliamentary systems have collective or collegial executives whereas presidential systems have one-person, non-collegial executives"[553]. To this end, as George Tsebelis writes, "In parliamentary systems the executive (government) controls the agenda, and the legislature (parliament) accepts or rejects proposals, while in presidential systems the legislature makes the proposal and the executive (the president) signs or vetoes them"[554].

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[553] Lijphart, Arend. "Introduction" in Lijphart, Arend ed. *Parliamentary versus Presidential Government.* (Oxford, UK: Oxford University Press 1992), pgs. 2-3.
[554] Tsebelis, George. "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism, and Multipartism." *British Journal of Political Science* 25 (3), pg. 325.

According to these definitions, the United Kingdom and the US fall respectively

in the parliamentary and presidential camps. But, Israel provides an interesting case.

Beginning with the election of the 14th Knesset (Israeli Parliament) in 1996, Israel

became "the first country to directly and popularly elect its prime minister, concurrent

with [parliamentary] elections". As Reuven Hazan notes, the direct election of the Israeli

prime minister placed Israel outside the category of pure parliamentary democracies.

However, this law was rescinded and Israel returned to a strict PR system in the 2003

Knesset elections. Under the system that reigned from 1996-2003, the prime ministerial

election created "a second pole of popular legitimacy," which formed a buffer between

the executive and the legislature reminiscent of presidentialism[555]. Israel, thus, stood in

the category of what Shugart and Carey call a president-parliamentary regime. However,

as will be seen below, the hybrid system was actually changed back to a pure

parliamentary system due to the fragmentation of government that it engendered coupled

with the Al-Aqsa intifada. Israel, thus, provides an especially interesting case for testing

the power of institutions in maintaining civil liberties since it changed institutional

structures over the period that is being studied.

B. Hypotheses:

The general consensus in the literature on presidentialist versus parliamentary

government is that presidentialism is the lesser form of government[556]. Important to a

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[555] Hazan, "Executive- Legislative Relations in an Era of Accelerated Reform," pg. 332.

[556] Shugart and Carey write that, "Most of the scholarly literature on the subject comes out squarely behind parliamentarism as the preferred alternative" (2). However, while the disadvantages of presidentialism have been more prevalent in the political science literature, there are also theoretical advantages of the regime type. Shugart and Carey posit the four main advantages of presidentialism as: accountability, identifiability, mutual checks, and an arbiter. Accountability and identifiability refer to the fact that a president provides a face for a regime, one that, in theory at least, provides greater accountability of the

study on the effects of crisis on institutions is the hypothesis that presidential systems are

fragile and can lead to authoritarian regimes. As Shugart and Carey write, "Mainwaring

(1992a) provides a list of stable democracies, where stability is defined in terms of

longevity, that appears to be a clear vindication of the argument that presidential systems

are inimical to the continued functioning of democracy"[557]. Alfred Stepan and Cindy

Skach gather data showing a correlation between parliamentarism and stable democracy

and between presidentialism and democratic breakdown. They note that presidentialism

is correlated with a small effective number of parties and that a small effective number of

parties is correlated with democratic breakdown. Stephan and Skach argue that, "From

the defining condition [of parliamentarism] a series of incentives and decision rules for

creating and maintaining single-party or coalitional majorities, minimizing legislative

impasses, inhibiting the executive from flouting the constitution, and discouraging

political society's support for military coups predictably flows"[558]. They contend that

presidentialism provides the opposite incentives and decision rules. This popular

hypothesis is also forwarded by Jose Antonio Cheibub and Fernando Limongi who state

that, "Between 1946 and 1999, one in every twenty-three presidential regimes died (that

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executive to the citizenry and identifiability of who will rule than a parliamentary system. Presidentialism also provides mutual checks on government, created by the division of the legislative and the executive branches (Shugart and Carey 46). Fourthly, the president can work as "an above-partisan arbiter of political conflict" (Shugart and Carey 48).

[557] Shugart and Carey, *Presidents and Assemblies*, pg. 38. Though the authors recant this hypothesis, they do not adhere to it. Shugart and Carey, in fact, aim to refute the criticisms leveled at presidentialism (E.g., see Shugart and Carey 40-1).

[558] Stepan, Alfred and Cindy Skach. "Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism." *World Politics* 46 (1993), pg. 17.

is, became a dictatorship), whereas only one in every fifty –eight parliamentary regimes died" [559].

Another reason for the supposed inferiority of presidentialism is temporal rigidity. As Walter Bagehot states, "under a presidential system, a nation has, except at the electing moment, no influence; it has not the ballot-box before it; its virtue is gone, and it must wait till its instant of despotism again returns"[560]. Bagehot goes on to argue that due to this lack of everyday control by the people, presidential government stifles political debate. Bagehot argues that the fixed terms given to elected officials in presidential systems, especially in light of the inability of the parliament to dissolve the government, make the government unduly rigid and slow to adjust to public opinion or crisis[561]. Thus an element of despotism is inherent in presidential governments since after the election the people are stuck with the government they elected, and they have almost no way of changing it. To this end, I submit the first hypothesis:

H1. Due to its temporal rigidity and strong executive, presidential democracy is more prone to breakdown than parliamentary democracy, and in some instances, even leads to authoritarian government[562]. Therefore, in times of crisis, presidentialism should show more abuse of emergency powers and centralize government more than parliamentarism[563].

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[559] Cheibub, Jose Antonio and Fernando Limongi. "Democratic Institutions and Regime Survival: Parliamentary and Presidential Democracies Reconsidered," *Annual Review of Political Science* 5 (2002), pg. 1. (Note page numbers come from version downloaded from Cheibub's web site).
[560] Bagehot, Walter. "The English Constitution: The Cabinet" in Lijphart, Arend ed. *Parliamentary versus Presidential Government.* (Oxford, UK: Oxford University Press 1992), pg. 68.
[561] Bagehot, "The English Constitution," pg. 71.
[562] Cheibub and Limongi, "Democratic Institutions and Regime Survival."
[563] I would be remiss here if I did not note that Cheibub and Limongi write that, "the United States is exceptional [among presidentialist regimes] in that it grants little or no legislative and agenda power to the executive and hence is by no means representative of what presidents can do" (Cheibub 10). This may be why the United States' government has not fallen to dictatorship, but I believe the case still remains to be

Supporting presidentialism, the Federalist No. 70 submits that, "Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks ..."[564]. This statement construes presidentialism as faster and more effective in dealing with crises than parliamentary governance. The thought behind having a separate executive lead government, then, is that this individual could more easily take the reins of power and get things done in a crisis. To this end, I forward the second hypothesis:

H2. Presidentialism should be more effective, at least at first, in dealing with crises. That is, it should be faster to act and pass legislation.

Juan Linz criticizes the fact that presidentialist systems are "winner-take-all." He writes that, "Presidentialism is ineluctably problematic because it operates according to the rule of 'winner take all'—an arrangement that tends to make democratic politics a zero-sum game, with all the potential for conflict such games portend"[565]. Arendt Lijphart concurs with this opinion. Shugart and Carey write that, "Lijphart's primary criticism of presidentialism is that it is inherently majoritarian, providing poor representation for minorities"[566]. Since presidentialism is a "zero-sum game," people who vote for the losing candidate, no matter how small the margin of victory, are disenfranchised and their vote "does not count." This is why Lijphart and Rogowski argue that, "minority representation in presidential cabinet is characterized by tokenism

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made that the office of the president has curtailed civil liberties particularly in times of crisis. Further, it is important to note that what I look for in this study is not full democratic breakdown, but a compromising of civil liberties.

[564] Federalist No. 70 in Rossiter, Clinton ed., *The Federalist Papers*. (New York: Mentor Books 1961), pg. 391.

[565] Linz, Juan J. "The Perils of Presidentialism," in Lijphart, *Parliamentary versus Presidential Government*, pg. 123.

[566] Shugart and Carey, *Presidents and Assemblies*, pg. 21.

or 'descriptive representation'"[567]. As we see, presidentialism is generally hypothesized as a system that is less representative than parliamentarism. Therefore, the third hypothesis that I espouse about the differences between parliamentary and presidential regimes is:

H3. In times of crisis presidential regimes should be less sensitive to the rights of minorities than parliamentary ones. Note here that the UK employs a first-past-the-post system of voting, so it too should suffer the same problems with the rights of minorities as presidentialism.

H4. Finally, on the issue of free speech, I hypothesize that the checks and balances of a presidential system, replete with many veto points (more on this in the US section), legislative-executive antagonism[568], and an independent judiciary, should do a better job of protecting free speech than the parliamentary model.

Case Study: United States

A. Background

The United States stands as the first instance of a presidentialist democracy. It is also the "first instance of either type of regime's [parliamentary or presidential] having been consciously 'engineered'"[569]. The US presidential system "is rather unique in that the president only has 'reactive legislative power'"[570]. That is, the president cannot produce legislation. As has been recounted many times, the United States' federal government is

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[567] Shugart and Carey, *Presidents and Assemblies*, pg. 31.
[568] On legislative-executive antagonism see Bagehot, "The English Constitution."
[569] Shugart and Carey, *Presidents and Assemblies*, pg. 4.
[570] Mainwaring, Scott and Matthew S. Shugart, eds., *Presidentialism and Democracy in Latin America.* (Cambridge, UK: Cambridge University Press 1997); Cheibub and Limongi, "Democratic Institutions and Regime Survival," pg. 16.

organized into three branches: an executive (president), a bicameral legislature (the

Senate and House of Representatives) and a judiciary (the US Supreme Court). The

federal government is elected in majoritarian, i.e. first-past-the-post, elections. The

country's two main parties are the Democrats and Republicans.

An important distinction between the US and the other two cases is that America is

governed by a Constitution. Article VI of the Constitution establishes the document as

the "supreme Law of the Land"[571]. As Richard Fallon notes, the Constitution serves two

main functions: "First, it creates and structures the government of the United States.

Second, it guarantees individual rights against the government"[572].

Both Schattschneider and Tsebelis underline the role of veto points in determining

whether policy will change[573]. Daniel Tichenor writes that, "The separation of powers,

checks and balances, federalism, and bicameralism unquestionably produced a US

political system exceptionally replete with veto points"[574]. Yet, Fallon declares that,

"Over the sweep of American history, power has almost steadily flowed to the

President"[575]. So which is it? Is the US system one where policy is difficult to enact or

one where the president increasingly wields the brunt of the power?[576]

Article I of the Constitution provides the Congress with the power to declare war[577].

Importantly, Geoffrey Stone notes that the First Amendment limits only Congress from

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[571] Fallon, *The Dynamic Constitution*, pg. 6.
[572] Fallon, *The Dynamic Constitution*, pg. 26.
[573] Tichenor, *Dividing Lines*, pg. 30; Tsebelis, "Decision Making in Political Systems."
[574] Tichenor, *Dividing Lines*, pg. 30.
[575] Fallon, *The Dynamic Constitution*, pg. 173.
[576] The findings from this dissertation show that when mass fear levels are high and executives are popular, the number of veto points (or checks) entrenched in a system do not affect the passage of counter-terror legislation.

[577] Fallon, *The Dynamic Constitution*, pg. 237.

"abridging the freedom of speech, or of the press"[578]. Thus, the executive branch could constitutionally stifle these freedoms. That said, during war and emergency situations the Congress and President usually are in agreement, a situation where "the powers of the national government are at their zenith." Richard Fallon notes that he is "not aware of any wartime emergency measure, voted by Congress and signed by the President, that the Supreme Court has ever found to lie beyond national regulatory power"[579]. For example, "In the case of both the Gulf War and the war in Iraq, the President ultimately found it politically indefensible to begin a war without first obtaining congressional authorization. When the President sought such authorization, Congress followed determined presidential leadership and went along"[580]. A balanced summary opinion comes, naturally, from William Rehnquist who surmises that, "Although wartime has been bad for constitutional liberties, there have tended to be fewer, or less serious, abuses in each war than in those that preceded it"[581].

Yet, Geoffrey Stone is not heartened by this perceived progress. He further does not agree with Rehnquist that in times of war "the balance between freedom and ordered must shift 'in favor of order'"[582]. In an account of free speech in wartime, Stone writes that:

> "the United States has a long and unfortunate history of overreacting to the
> perceived dangers of wartime. Time and again, Americans have allowed fear and
> fury to get the better of them. Time and again, Americans have suppressed

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[578] Stone, *Perilous Times*, pgs. 5-6.
[579] Fallon, *The Dynamic Constitution*, pg. 243.
[580] Fallon, *The Dynamic Constitution*, pg. 242.
[581] Fallon, *The Dynamic Constitution*, pg. 246.
[582] Stone, *Perilous Times*, pg. 9.

dissent, imprisoned and deported dissenters, and then—later—regretted their actions"[583].

Stone establishes the premise that in times of great fear or crisis, the American government has not hesitated in abridging liberties. He also believes that in doing so, the government consistently overreacted. This case study tests Stone's premise by looking at America after the attacks of September 11, 2001. First, I will deal with the context of the attack, i.e. what happened. Then, the reaction will be reviewed.

B. The Terrorist Context: The Rise of Fear after 9/11

On the morning of September 11, 2001, four teams of al-Qaeda operatives hijacked four American commercial airplanes, all originating on the East Coast and en route to California. Two of the planes hit the World Trade Center in New York City destroying both towers, one crashed into the Pentagon in Washington, DC, and the last crash-landed into a field in Shanksville, Pennsylvania[584]. Over 2,500 people were killed in the attacks, including 343 firefighters and paramedics who fought to save those trapped in the World Trade Center towers[585]. The nation suffered billions of dollars worth of damage[586].

Though al-Qaeda had previously attacked US interests, most recently with the USS Cole attack on October 12, 2000, these new attacks were an absolute shock to Americans for two main reasons. First, this was the first foreign attack on US soil since the Japanese bombing of Pearl Harbor in World War II. Americans had grown accustomed to political

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[583] Stone, *Perilous Times*, pg. 5.
[584] *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: WW Norton & Co. 2004), pgs. 32-3.
[585] 9/11 By the Numbers, http://www.newyorkmetro.com/news/articles/wtc/1year/numbers.htm, "New York Reduces Death Toll By 40," 29 October 2003, http://www.cnn.com/2003/US/Northeast/10/29/wtc.deaths.
[586] 9/11 By the Numbers, http://www.newyorkmetro.com/news/articles/wtc/1year/numbers.htm

violence occurring elsewhere due to the oceans separating the United States from Europe, Asia, and Africa. As such, when Osama bin-Laden declared war on America in 1998, stating in an ABC-TV interview that "it was more important for Muslims to kill Americans than to kill other infidels," it was hard to know how seriously to take his declaration given the paucity of foreign attacks on US soil[587]. The second reason that Americans were shocked is that they viewed the attacks as largely unprovoked. The attacks seemed to come out of nowhere and Americans, including the President, were left asking, "Why do they hate us?"[588] The President surmised that they "hate our freedoms," but due to the fear that pervaded American society he had already begun curtailing these very freedoms[589]. For "[a]fraid that September 11 brought merely the first of a wave of terrorist attacks, Americans expected and, indeed, demanded that their government take immediate and decisive steps to protect the nation"[590].

The high-damage, low-probability nature of the attack made it very difficult to assess the level of threat that the nation faced[591]. Further, as Diego Gambetta makes clear, "the cognitive dissonance experienced by someone who, feeling strong and safe, is suddenly hit by an attack of the scale of 9/11 is extremely intense." By June 2002, the Bush Administration had assessed the threat as "unprecedented, very large, and ridden with unknown unknowns"[592]. Such an amorphous, potentially massive threat is replete with the potential for manipulation by politicians due to the amount of fear it strikes in the

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[587] *The 9/11 Commission Report*, pg. 47.
[588] Jessica Stern notes that, "Terrorists rarely make their capabilities and intentions known. Their motivations and intentions also change over time in ways that are hard for analysts to predict" (Stern, "Dreaded Risks," 100).
[589] Ford, Peter. "Why do they hate us?" 27 September 2001, *The Christian Science Monitor*, http://www.csmonitor.com/2001/0927/p1s1-wogi.html.
[590] Stone, *Perilous Times*, pg. 550.
[591] Gambetta, "Reason and Terror," pg. 3 of print-out from *Boston Review* web site.
[592] Gambetta, "Reason and Terror," pg. 6.

hearts of the populace. Indeed, Jessica Stern emphasizes that terrorist attacks, such as

9/11, fall into the category of "dreaded risks" for most people. She writes that

psychologists and risk analysts have found that "fear is disproportionately evoked by

certain characteristics of risks, including: involuntary exposure, unfamiliarity, and

invisibility" as well as "when long-term effects or the number of people likely to be

effected is difficult to predict"[593]. The uncertainty of what would happen next and the

people's demands for action on the part of their government, led to compromises of civil

liberties that, in retrospect, probably were not justified. In Jon Elster's words,

"Traditionally, liberties could be overridden only in the case of a 'clear and present

danger.' Now it seems as if they can be overridden if the danger, although far from clear,

is sufficiently large"[594]. The following sections deal with the responses of the US

government to these attacks.

C. Reaction

As Richard Fallon underlines, the Constitution provides a variety of rights to fair

procedures for those accused of crimes. Guarantees of fair procedures serve two

purposes. The first is "to promote accurate decision-making" and the second "involves

the dignity of those subject to adverse government action"[595]. In November 2001,

President Bush "issued an executive order authorizing the trial of alleged terrorists who

are not United States citizens before ... military tribunals, without right to trial by jury,

rather than in the civilian courts normally used for criminal trials." The Justice

Department has further taken the position that if the President designates an individual as

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[593] Stern, "Dreaded Risks and the Control of Biological Weapons," pg. 102.
[594] Gambetta, "Reason and Terror," pg. 12.
[595] Fallon, *The Dynamic Constitution*, pg. 91.

a terrorist, "the government can hold that person in jail for as long as it thinks necessary without providing any kind of trial at all." Emergency powers after 9/11 included the indefinitely long detention of over a thousand non-citizens with no judicial review and no access to an attorney. Further, the scope of the Freedom of Information Act was markedly limited[596].

The Bush Administration not only worked to centralize government power in the executive but also did so in secret. Tim Golden writes that in early November 2001 "a small group of White House officials worked in great secrecy to devise a new system of justice for the new war they had declared on terrorism." He notes that some of the officials involved, which included secretary of state Colin Powell, Vice President Dick Cheney, and national security advisor Condoleeza Rice, "hardly thought of consulting Congress." The Administration set out to claim the authority to create military tribunals for prosecuting terrorists out of a "desire to strengthen executive power." The military commissions "would give the government wide latitude to hold, interrogate and prosecute the sort of suspects who might be silenced by lawyers in criminal courts." More importantly, these commissions would "put the control over prosecutions squarely" in the President's hands. Further, the military tribunals would allow for lower standards of proof, more secrecy provisions and heightened use of the death penalty[597].

Clearly, here the Bush Administration sought to subvert power from the judiciary. They have further subverted the judiciary with the creation of secret CIA detention facilities abroad[598], and with the prolonged detention of prisoners at Guantanamo Bay[599]

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[596] Fallon, *The Dynamic Constitution*, pg. 248.
[597] Golden, Tim. "After Terror, a Secret Rewriting of Military Law," *The New York Times*, 24 October 2004.
[598] Allen, Joanne. "CIA uses secret prisons abroad: report," 2 November 2005. http://www.reuters.co.uk.

and of those who are declared enemy combatants without charges being brought against them. Indeed, the Bush Administration still does not have a clear notion of what they want to do with some of these enemy combatants. Yet, what is known is that the government reserves the right to declare any American an enemy combatant and hold them without charge for years on end[600].

The centerpiece of the Bush Administration's response in terms of liberties was the USA PATRIOT Act[601], which Geoffrey Stone observes was passed "in an atmosphere of urgency and alarm that precluded serious deliberation"[602]. Chapter four contains a much more extensive account of the USA Patriot Act and the response of the Bush Administration to 9/11 than the one contained here. Included in the voluminous 132-page act, were increased government abilities to search citizens' "transactional records." These new powers have yielded a hundredfold increase in the amount of national security letters over historical norms. These letters allow the FBI to track a person's spending habits, where they live, what they buy online, where they travel, what they read on the Web, and who telephones and e-mails them. Remarkably, the 30,000 national security letters the FBI issues a year can be collected "about people who are not suspected of any wrongdoing." As former congressman Robert L. Barr put it, "The beef with the NSLs is that they don't have even a pretense of judicial or impartial scrutiny ... There's no checks and balances whatever on them. It is simply some bureaucrat's decision that they want

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[599] Laura Donohue writes that, "A year and a half after attacking Afghanistan, America continues to hold more than 600 men from 43 countries at Guantanamo Bay" (Donohue, Laura K. "The British Traded Rights For Security, Too," *The Washington Post*, 6 April 2003).
[600] Liptak, Adam. "Still Searching for a Strategy Four Years After Sept. 11 Attacks," *The New York Times*, 23 November 2005. Also see "Hamdi v. Rumsfeld,"
http://www.law.duke.edu/publiclaw/supremecourtonline/commentary/hamvrum.html.
[601] The USA PATRIOT Act is an acronym for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.
[602] Stone, *Perilous Times*, pg. 553.

information, and they can basically just go and get it. ... The abuse is in the power itself"[603]. In summary, The PATRIOT Act makes "it easier to search property as well as detain individuals"[604]. Still, It is important to note that the PATRIOT Act was created with a sunset requirement for some of its provisions, which expired at the end of 2005[605].

In January of 2003, the Justice Department revealed plans for PATRIOT Act II, which "would have reduced judicial oversight over surveillance, created a DNA database resting on unchecked executive 'suspicion,' lifted existing judicial restraints on local police spying on religious and political organizations, authorized the federal government to obtain library and credit card records without a judicial warrant, and permitted the federal government to keep secret the identity of *anyone* detained in a terror investigation." The proposed legislation was so badly received, that "the administration buried the proposal"[606].

James Dempsey and David Cole, through a close examination of post-9/11 detentions, found that 5,000 foreign nationals were detained by the federal government after September 11. Four years later, not one of these detainees "[stood] convicted of a terrorist crime"[607]. Cole in a 2006 piece for the *New York Review of Books* writes that since September 11, 2001, "the [Bush] administration subjected 80,000 Arab and Muslim immigrants to fingerprinting and registration, sought out 8,000 Arab and Muslim men for FBI interviews, and imprisoned over 5,000 foreign nationals in antiterrorism preventive

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[603] Gellman, Barton. "The FBI's Secret Scrutiny," *The Washington Post*, 6 November 2005, pg. A01.
[604] Howitt, Arnold M. and Robyn L. Pangi. "Intergovernmental Challenges of Combating Terrorism" in Howitt and Pangi ed, *Countering Terrorism*, pg. 49.
[605] Stone, *Perilous Times*, pg. 540; see chapter four for a discussion of what occurred when provisions of the PATRIOT Act expired.
[606] Stone, *Perilous Times*, pgs. 553-4.
[607] Cole, David and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. (New York: The New Press 2006), pg. 178;Cole, *Enemy Aliens*, pg. xxiii.

detention initiatives[608]. According to Cole of these 93,000 individuals interviewed, made to register with the government, or detained "not one stands convicted of a terrorist crime"[609]. Michael Ignatieff notes that though "Hundreds of illegal aliens, mostly of Islamic of Arabic origin, have been targeted for detention and deportation," these measures are less severe than American actions against minority immigrants in 1919 and 1942[610]. Still, "Muslims and persons from the Middle East have increasingly become suspect communities" in America[611].

In the US, speech guarantees are taken very seriously. The Supreme Court case *Brandenburg v. Ohio* (1969) establishes near categorical protection to "even loosely political speech" and "recognizes no wartime exception"[612]. Though the Bush administration did not make speech illegal, it did create an atmosphere where free speech was stifled by stating shortly after September 11 that, "You are either with us or with the terrorists" and by "tarr[ing] their opponents as 'disloyal'"[613]. For example, Attorney-General John Ashcroft made the following statement rebuking civil libertarians: "To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies"[614]. A telling sign that the Administration stoked public fear was that Congressional opposition to the establishment

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[608] Cole, David. "Are We Safer?," 9 March 2006, *The New York Review of Books*, vol. 53, no. 4, pg. 5 of printout.
[609] Cole, "Are We Safer?," pg. 6 of printout.
[610] Ignatieff, *The Lesser Evil*, pg. 76.
[611] Lutz, James M. and Lutz, Brenda J. *Global Terrorism* (London: Routledge 2004), pg. 240.
[612] Fallon, *The Dynamic Constitution*, pg. 246.
[613] Stone, *Perilous Times*, pg. 551.
[614] Stone, *Perilous Times*, pgs. 551-2.

of military tribunals "melted in the face of opinion polls showing strong support for the president's measures against terrorism"[615].

The Administration's obsession with secrecy also is troubling to free speech advocates. For, as Dennis Thompson notes, "the less that citizens know about a policy, the less accountable the government is for the policy"[616]. Stone writes that the Administration has limited the Freedom of Information Act, closed deportation hearings and marked "tens of thousands of government documents and Web Sites" as "sensitive"[617]. Laura Donohue observes that after the 9/11 attacks, the US government "immediately took steps to ensure that 'sensitive but not classified' information under its control … be removed from public scrutiny." The State Department, thus, "withdrew some 20 million pages of previously unclassified information and put the brakes on another 20 million pages already declassified and due to be released. The new review system created a five year backlog"[618]. Indeed, the 9/11 Commission judged that too many documents were being held from the public, "and that this undermined the state's ability to respond effectively to growing national security threats"[619]. Further, among the Patriot Act's provisions, "the act overrides laws in forty-eight states that made library records private"[620].

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[615] Golden, "After Terror, a Secret Rewriting of Military Law."
[616] Thompson, Dennis F. "Democratic secrecy," *Political Science Quarterly*, Summer 1999, pgs. 181-94.
[617] Stone, *Perilous Times*, pg. 557.
[618] Donohue, Laura K. "Terrorist Speech and the Future of Free Expression," *Cardozo Law Review*, vol. 27, issue 1 (October 2005) pg. 50. Note: page numbers correspond to draft e-mailed to me by the author.
[619] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 87.
[620] Stern, "Dreaded Risks and the Control of Biological Weapons," pgs. 89-90.

D. Case Findings

It is clear that the Bush Administration used the 9/11 attacks to stoke public fears,

Bush claimed for instance that "the war against terrorism will never end," thus creating

an atmosphere where emergency legislation could more easily pass[621]. Further, by using

the roundly panned threat assessment color scheme, the Bush Administration was able to

keep fear high by frequently switching threat levels[622]. By doing so, the Administration

was able to push through both the PATRIOT Act and the creation of a Department of

Homeland Security, both of which centralized government power under the executive[623].

As Michael Ignatieff summarizes, terrorism in the US has led to "more secretive

government, more police powers, and increasing executive authority at the expense of the

other branches of government"[624]. Indeed, after the 9/11 attacks, Congress did not fulfill

its oversight role. Yet, the judiciary, though circumvented, has played a large role in

maintaining liberties as seen in the *Hamdi v. Rumsfeld* case and the Administration's

cutting their losses in dealing with Jose Padilla. Still, the very fact that the

Administration was able to detain each of these citizens without pressing charges for

years on end is testament to the compromising of liberties[625]. In sum, the US case shows

much government centralization under the executive and some erosion of the rights of

minorities. The response to al-Qaeda terrorism was certainly severe, but it also can be

overblown. After all, the US is still a free country, dissent is still ubiquitous, and the

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[621] Stone, *Perilous Times*, pg. 554.
[622] Howitt and Pangi, "Intergovernmental Challenges of Combating Terrorism," pg. 49.
[623] Howitt and Pangi, "Intergovernmental Challenges of Combating Terrorism," pgs. 47-8.
[624] Ignatieff, *The Lesser Evil*, pg. 61.
[625] See chapter four for a fuller review of the effect of the PATRIOT Act on American citizens and foreign aliens.

rights of minorities, though curtailed, were certainly not as severely abridged as they were in previous episodes.

Case Study: the United Kingdom

A. Background

Great Britain is a parliamentary democracy that functions with no written constitution. The country today has three main parties: Labour, the Conservatives, and the Liberal Democrats. The voting procedure is "first-past-the-post," that is, the candidate with the majority or plurality vote wins[626]. Arend Lijphart uses the British system of government as a major model of democracy, dubbing it the Westminster Model. He attributes the following characteristics to the Westminster Model in the UK: concentration of executive power in one-party and bare-majority cabinets, cabinet dominance, a two-party system[627], a majoritarian system of elections, a unitary and centralized government, concentration of legislative power in a unicameral legislature[628], constitutional flexibility, and the absence of judicial review[629]. Cheibub and Limongi see the cabinet as being the main lever of power in Great Britain. They state that, "the English parliament is ... characterized by the complete control of the cabinet over the legislative agenda" and "is marked by a high rate of success for the executive's initiatives"[630].

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[626] Lijphart, Arend. *Patterns of Democracy: Government Forsm and Perfromcnace in Thirty-Six Countries.* (New Haven, CT: Yale University Press 1999), pgs. 14-5.
[627] Lijphart writes that though the Liberal Democrats are a major party, "they are not large enough to be overall victors" (Lijphart, *Patterns*, 13).
[628] "[A]lmost all legislative power belongs to the House of Commons" (Lijphart g 18).
[629] Lijphart, *Patterns of Democracy*, pgs. 10-20.
[630] Freeman, *Freedom or Security*, pg. 56; Cheibub and Limongi, "Democratic Institutions and Regime Survival," pg. 15.

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Since it has no written constitution and civil liberties are not protected by a bill of rights[631], rights in the UK are derived "from a mixture of historical precedents, legislation, common (i.e., case) law, custom and tradition." Bruce Warner notes that though the UK has a bicameral parliament (the House of Commons and the House of Lords), "the real power lies in the office of the prime minister, the leader of the governing party in the House of Commons. The prime minister exercises authority through several influential channels: the cabinet ministers, drawn from the elected party members and sometimes from the House of Lords; the Cabinet Office, staffed by appointed advisors; and a complex array of committees, managed by senior civil servants, which transmit executive branch decisions to the departments and agencies of government"[632]. Further, the prime minister has great freedom in the realm of internal security due, for example, to her control of the MI5: the domestic security service[633]. So though the UK is a parliamentary democracy, the executive still holds a great deal of power. Indeed, Michael Freeman writes that *because* it is a parliamentary system, Britain's government is "susceptible to tyranny of the majority." This is because "the Cabinet, as the representative of the majority party in Parliament, is the central legislative and executive organ in the British political system" and parliament does not, as in the US, face an executive veto[634].

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[631] Freeman, Michael. *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror*. (Westport, CT: Praeger 2003), pg. 57.
[632] Warner, Bruce W. "Great Britain and the Response to International Terrorism" in Charters ed. *The Deadly Sin of Terrorism*, pg. 17.
[633] Warner, "Great Britain and the Response to International Terrorism," pg. 18.
[634] Freeman, *Freedom or Security*, pg. 56.

B. The Terrorist Context: Northern Ireland Terrorism 1969- 1974

The conflict in Northern Ireland has existed in some form since the 1600s when Scottish Protestants settled in the Northern Irish provinces of Ulster[635]. On December 23, 1920, almost two years after the Irish government declared independence, Britain separated Ireland into two regions: the independent south became the Republic of Ireland while the six counties of Ulster became Northern Ireland and remained under British rule. The Irish Republican Army (1RA) fought a bloody civil war against Unionist forces from independence until 1922[636].

The round of violence studied here began on October 5, 1968 when the loyalist Royal Ulster Constabulary (RUC) attacked peaceful marchers in Londonderry with batons. This set off a period of rioting and violence in 1968 and 1969[637]. The IRA, however, stayed out of the conflict during this period. In August 1969, the British army arrived in Ireland to separate the sides. Michael Freeman writes that, "the brutality and violence of British actions drove many Irish Catholics into the arms of the IRA." This was especially so due to the fact that the British army was in Northern Ireland to protect the union with Britain and discriminated against Catholics. In January 1970, the IRA split into two groups: the Official IRA and the Provisional IRA (PIRA). Since its inception, PIRA has been "the largest and most active guerilla and terrorist group in Northern Ireland." PIRA killed its first British soldier in February 1971 after the British

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[635] Freeman, *Freedom or Security*, pg. 51.
[636] Freeman, *Freedom or Security*, pg. 52.
[637] Freeman, *Freedom or Security*, pg. 53.

army's brutal searches led to a number of deaths in the Lower Falls area of Belfast[638].

This set off a series of terrorist attacks and British reprisals.

Since violence erupted in 1969, over 3,600 people on both sides have been killed.

In January 1972 alone, there were over 100 IRA bombings and the bombing campaign

between August 1971 and January 1972 killed 231 people[639]. On October 5, 1974,

terrorism from Ireland reached the British mainland when "the IRA bombed two pubs in

Guildford, killing seven and injuring hundreds"[640]. This attack was followed by a

November 21, 1974 bombing in Birmingham that yielded twenty-one dead and 160

injured[641]. After these bombings, fears of terrorism reached a high in Great Britain.

Indeed, Donohue writes that the bombing campaign "reached a climax" in 1974, a year

that saw ninety-nine terrorist incidents yielding seventeen deaths and 145 injuries in its

first ten months[642]. The actions of the government in the face of terrorism are recounted

in the following section. Important to note here is that though the IRA was only

responsible for eleven deaths in Great Britain from 1990 to 1994[643], much of the

emergency legislation that compromised civil liberties remains on the books in some

form today[644]. Donohue notes that "the vast majority" of emergency legislation against

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[638] Freeman, *Freedom or Security*, pg. 56; Though authors sometimes fail to distinguish between the Official IRA and the Provisional IRA, Freeman notes that most violence in this period was carried out by the PIRA, which even he calls the IRA throughout his book (Freeman 53). Most of the acts recounted here were committed by PIRA, but since many sources do not distinguish between the two groups—referring to both as the IRA—I will use the term "IRA" where the groups are not distinguished.

[639] Council on Foreign Relations, "Terrorism Q & A: Irish Loyalist Paramilitary Groups," http://cfrterrorism.org/groups/uvf.html; Donohue, "The British Traded Rights For Security, Too."

[640] Freeman, *Freedom or Security*, pg. 59. "On this Day: Four Dead in Guildford Bomb Blasts," http://news.bbc.co.uk/onthisday/hi/dates/stories/october/5/newsid_2492000/2492543.stm. Note: Freeman actually had the incorrect date in the page cited.

[641] Donohue, Laura K., *Counter-Terrorist Law and Emergency Powers in the United Kingdom 1922-2000*, (Dublin: Irish Academic Press 2001), pg. 207; Freeman, *Freedom or Security*, pg. 59.

[642] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pgs. 207, 255.

[643] This is not to say that the IRA did nothing in the 1990s, over 200 people were injured in 1996 when the IRA set off a 3,300 lb. bomb in Manchester city center (Donohue, bk, 268).

[644] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 255.

terrorists was introduced "in a panic mode" and characterized by "being rushed through Parliament at an unbelievable pace"[645].

C. Reaction: Centralization and Emergency Powers

On January 30, 1972, on what came to be known as "Bloody Sunday," British soldiers killed thirteen civilian protesters in Londonderry[646]. After this incident, "Westminster suspended the Northern Ireland Parliament and took direct control of the Province"[647]. Ignatieff writes that one reason Great Britain "suspended local self-rule in Northern Ireland" was because it feared that "the political wing of the IRA might have passed security-sensitive information to terrorists"[648]. The fact that Britain had to change the way its institutions were structured, taking direct rule over Northern Ireland, to deal with terrorism, clearly shows that the democratic institutions presently available to the British government were insufficient in dealing with the fear that Irish terrorism fomented. These institutions also proved not good enough to protect liberties. After all, direct rule "did little to eliminate the continued use of emergency legislation" by Westminster[649].

After the inception of direct rule, Great Britain instituted emergency laws to deal with Irish terrorism. As will be seen below, these laws were basically facsimiles of emergency laws used by the Northern Irish government decades earlier[650]. The first of these was the 1973 Northern Ireland (Emergency Powers) Act (EPA). Part of the basis of the EPA

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[645] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pgs. 304, 345.
[646] Freeman, *Freedom or Security*, pg. 54.
[647] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 20.
[648] Ignatieff, *The Lesser Evil*, pg. 73.
[649] Donohue, "Temporary Permanence," pg. 2.
[650] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 304.

came from the findings of the Parliament-ordered commission headed by Lord Diplock.

Diplock recommended the temporary continuance of internment without trial for Irish

terrorists as well as suspending trial by jury for terrorists "in favor of courts (later known

as Diplock courts) where a tribunal of judges would decide the guilt of the accused

suspect"[651]. In addition to suspending trial by jury and allowing the government to intern

prisoners for 72 hours (previous legislation allowed 48 hour internment), the 1973 EPA

"relaxed evidentiary requirements to allow confessions obtained under interrogation to be

sufficient for conviction"[652]. Donohue writes that the EPA, "retained extensive powers of

detention, proscription, entry, search and seizure, vehicle restriction, the stopping of

roads, the closing of licensed premises, and the collection of information by security

forces. The statute established certain crimes as 'scheduled' offenses, regardless of their

motivation, and eliminated juries from the process of adjudicating those offenses"[653].

Donohue estimates that the EPA was applied an average of 2,000 times each year, even

though just a quarter of those arrested by it had charges brought against them[654].

More emergency powers came in 1974, with the Prevention of Terrorism Act (PTA),

which "introduced extended powers of arrest and detention, forcible removal (exclusion)

of suspected terrorists from Great Britain, proscription of organizations, and several new

offenses relating to support for terrorists"[655]. Michael Freeman writes that the EPA and

PTA allowed, "the police to arrest suspects without warrant, allowed prisoners to be

detained without an arrest, gave police broad authority for search and seizure, and denied

prisoners the right to trial by jury." Still, Freeman emphasizes that, "The emergency

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[651] Freeman, *Freedom or Security*, pgs. 58-9.
[652] Freeman, *Freedom or Security*, pg. 59.
[653] Donohue, "Temporary Permanence," pg. 2.
[654] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 240.
[655] Warner, "Great Britain and the Response to International Terrorism," pg. 19.

powers used by Britain were limited in duration because they had to be renewed yearly by Parliament, and in scope because free speech, the right to vote, and other such freedoms were unaffected"[656]. Yet, though the PTA was set to expire six months after its passage, it was renewed repeatedly with minor changes in 1976, 1984, 1989, and 1996[657].

Donohue notes the reluctance of courts to "assume the responsibilities of the executive when national security issues are at stake"[658]. The UK case clearly shows government centralization in the inception of direct rule of Northern Ireland and the narrowing of the judiciary's role in favor of detentions and internments. Further, Hadden, Boyle, and Campbell write that during this period, "There [had] been repeated allegations of unlawful killings by the security forces, of torture during interrogation, of widespread and random arrests, of 'assembly line' justice and show trials, of mass detentions without trial and of systematic ill-treatment of prisoners"[659].

Not only did the UK establish numerous emergency laws, but these laws remained on the books for decades. Freeman surmises that the emergency powers were maintained for much longer than intended because of their symbolic effect: they showed the British people that the government was fighting terrorism. Revoking these powers, then, would have been akin to giving up the fight on terror[660]. Laura Donohue, who has written extensively on the seeming permanence of the UK's "temporary" emergency powers, maps a genealogy of today's emergency powers. She shows that they began with the 1914 Defence of the Realm Acts and the 1920 Restoration of Order in Ireland Acts,

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[656] Freeman, *Freedom or Security*, pg. 7.
[657] Freeman, *Freedom or Security*, pg. 59.
[658] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 31.
[659] Hadden, Tom, Kevin Boyle, and Colm Campbell. "Emergency Law in Northern Ireland: The Context." In Jennings, Anthony ed. *Justice under Fire: the Abuse of Civil Liberties in Northern Ireland* (London: Pluto Press 1990), pg. 1.
[660] Freeman, *Freedom or Security*, pgs. 68-9.

which were incorporated into the 1922-43 Civil Authorities (Special Powers) Acts (SPAs). The SPAs[661] were "later subsumed" into the 1973 EPA and the 1974 PTA[662]. What were meant to be emergency powers, remain on the books in some form today[663]. In fact, even though the EPA and PTA were meant to be temporary[664], the powers this emergency legislation provided were actually expanded over time[665]. By 1996, the emergency laws had been amended to include "the removal of juries, changes in rules governing admissibility and new measures for young offenders"[666].

On the free speech front, in 1971, "unionists ... amended the [1922-43 Special Powers Acts] to make it illegal to print, publish, circulate, distribute, sell, offer or expose for sale, or have in possession for purposes of publication, circulation, distribution or sale, *any* document advocating: (a) an alteration to the constitution or laws of Northern Ireland by some unlawful means, (b) the raising or maintaining of a military force, (c) the obstruction or interference with the administration of justice or the enforcement of law, or (d) support for any organization which participates in any of the above"[667]. Donohue writes that though informal censorship of Northern Irish nationalist organizations had occurred for some time, a six-year formal ban against these groups (specifically against Sinn Fein, Republican Sinn Fein, and the Ulster Defence Association) was passed after the home of the head of the Northern Ireland Civil Service was bombed in October,

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[661] Donohue goes further than just making statements. She places portions of the laws side-by-side to show how the 1973 EPA was tailored sometimes verbatim using the SPAs (Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, 135-54).

[662] Donohue, "Temporary Permanence," pg. 1.

[663] Donohue, "Temporary Permanence," pg. 2. Amnesty International, "UK: Human Rights Under Sustained Attack in 'War on Terror,'" http://news.amnesty.org/index/ENGEUR450502005.

[664] One reason that the legislation may have become entrenched is that it worked to curb deaths. Donohue records that while the conflict yielded 467 deaths in 1972, "the numbers dropped to 250 in 1973 and to 216 in 1974" (Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 155).

[665] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 22.

[666] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 206.

[667] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 26.

1988[668]. This ban went so far as prohibiting the song *Streets of Sorrow* by the Pogues because "it expressed sympathy for the Birmingham Six"[669]. Yet, Bruce Warner writes that the ban "does not appear to have inhibited routine reporting on the Northern Ireland conflict or coverage of non-Irish international terrorism in the UK or overseas." That said, he does underline that the ban had a chilling effect on "democratic discourse"[670].

The rights of the Irish were clearly compromised. When the United Kingdom placed limits on civil liberties, "The Irish became a suspect community ... because of the IRA and its activities"[671]. After the 1973 Birmingham bombing, which *The Times* declared an "act of war," Parliament passed the 1974 Prevention of Terrorism (Temporary Provisions) Act. The PTA "proscribed specific terrorist organizations, excluded suspected terrorists from entering Great Britain, allowed the police to search and make arrests without warrant, and extended the time prisoners could be detained to seven days"[672]. Under the EPA and PTA provisions, thousands of suspects were arrested and hundreds of thousands of houses searched. Freeman writes that, "For example, over 2,000 suspects were arrested under the provisions of the PTA or EPA in 1981, while 75,000 houses were searched in 1973"[673]. Donohue holds that special powers were "inequitably applied to the two communities in Northern Ireland," in that they were "levied almost exclusively against the Catholic population," since the inception of the SPAs[674]. Donohue emphasizes that, "of particular concern was the way in which the powers were being used to 'trawl' for potential terrorists, resulting in the curtailment of

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[668] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 28.
[669] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 29.
[670] Warner, "Great Britain and the Response to International Terrorism," pg. 21.
[671] Lutz and Lutz, *Global Terrorism*, pg. 240.
[672] Freeman, *Freedom or Security*, pg. 59.
[673] Freeman, *Freedom or Security*, pg. 62.
[674] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pgs. 16, 39.

the freedom of the population and the construction of an enormous database on the

Northern Irish population in the North and Irish subjects in Great Britain"[675].

D. Case Findings

Bruce Warner concludes that the British response to "the Irish dimension," "changed

the face of British society … to a marked, if unquantifiable degree"[676]. He writes that the

brutality of terrorist acts led the public to support changes such as the rise of an armed

police force, the restriction on media coverage of terrorism and the return of the death

penalty for terrorists. He believes that infringements on civil liberties brought about by

the PTA and the media ban are "incompatible with democracy"[677]. Indeed, Donohue

notes that, "What began as a way to stop attacks became a way to 'preserve peace'"[678].

Some measures granted by emergency legislation, even "seeped their way into ordinary

criminal law"[679]. As Donohue astutely observes, "Reason of state degenerated into a

technique of domination and became a device to consolidate power—not to defend the

body politic against clear attack"[680]. The reaction to Northern Irish terrorism in the UK

certainly led to government centralization, the entrenchment of emergency powers that

curtailed civil liberties, some limits on speech and expression, and the erosion of the

rights of minorities. The fact that the UK government differs in how it is structured from

the US government seems to have made little difference in how it reacted to terrorism.

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[675] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 304.
[676] Warner, "Great Britain and the Response to International Terrorism," pg. 36.
[677] Warner, "Great Britain and the Response to International Terrorism," pg. 37.
[678] Donohue, Laura K. "The British Traded Rights For Security, Too."
[679] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pgs. 256, 258.
[680] Donohue, *Counter-Terrorist Law and Emergency Powers in the United Kingdom*, pg. 353.

Case Study: Israel and the Al-Aqsa Intifada

A. Background

Israel has a parliamentary government. Its members are voted into the Knesset by a

system of single-district, proportional representation. The Israeli political system of

nation-wide proportional representation was installed at the inception of the state.

Elections in Israel are supposed to take place regularly every four years, but the Knesset

can decide to dissolve the government at any point during its tenure. Government

dissolution, of course, results in new elections. Since Israel like the UK has no

Constitution, major governmental changes are made through the passage of Basic Laws.

Further, Israel has adopted remnants of the Ottoman Laws and those that operated under

the British mandate's legal code[681].

The extremely fragmented nature of the Israeli political system in the 1980s, led to

intense difficulties in the formation and maintenance of coalitions[682]. As Reuven Hazan

writes, "Weak governments, and frequent crises, came to be perceived as extremely

disruptive to the stability of Israel's democracy by both the electorate and politicians"[683].

The Knesset, thus, decided that beginning with the 1996 election, the prime minister

would be elected directly (and separately) while the Knesset would continue to be elected

by list PR[684]. The 1.5% threshold for attaining a Knesset seat was retained. The new

electoral institution came with a clause that was intended to force the stability of the

government. Both the prime minister and the Knesset were given the power to dissolve

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[681] Gal-Or, Noemi. "Countering Terrorism in Israel" in Charters ed., *The Deadly Sin of Terrorism*, pg. 149.
[682] Hazan, "Executive- Legislative Relations in an Era of Accelerated Reform," pg. 331.
[683] Hazan, "Executive- Legislative Relations in an Era of Accelerated Reform," pgs. 331- 2.
[684] List PR (proportional representation) means that voters vote for a party and parties designate ranked lists of their candidates. By going down the list, candidates come to power based upon the number of seats their party wins. For example, if Shas wins six seats, its six highest-ranking candidates will be elected to the Knesset.

the government, but doing so did not protect either. The Knesset could move for new prime ministerial elections, but these would have to come with new Knesset elections, and vice versa for the prime minister[685]. Thus, Israel "cease[d] to be a parliamentary democracy and became an institutionally unique and hybrid type of regime, one which grants both the executive and the legislature a double-edged sword—the power to oust the other without much difficulty while simultaneously incurring its own downfall"[686]. The idea was that by linking the fates of the executive and the legislative bodies, the two would be more apt to work together.

B. The Terrorist Context: the Al-Aqsa intifada

Like the United Kingdom, Israel also changed its democratic institutions largely due to terrorism. The Palestinian intifada, or popular uprising, played a major role in the move to change the electoral system in Israel. On December 9, 1987 the popular uprising began and one month later, the Palestinian Liberation Organization called for an independent Palestinian state alongside Israel[687]. The fits and starts in the peace process between Israel and the Palestinians that ensued and the immediate and constant security threat created by Palestinian bombings in Israel made the need for stability in the Knesset urgent. The "political and psychological earthquake" that ripped through Israel after the signing of the Oslo Accords with the PLO in 1993 made political institutions in Israel even tougher to govern for the prime minister than they ever had been[688]. The need for a

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[685] Hazan, "Executive- Legislative Relations in an Era of Accelerated Reform," pg. 332.
[686] Hazan, "Executive- Legislative Relations in an Era of Accelerated Reform," pg. 334.
[687] Smith, Charles D. *Palestine and the Arab-Israeli Conflict: A History with Documents.* (Boston: St. Martin's Press 2001), pg. 421
[688] Kimmerling, Baruch. "On Elections in Israel". *Middle East Report,* volume 10, issue 201 (Oct.- Dec. 1996): pg. 14

unitary actor to boldly make peace with the Palestinians led to the notion that the prime minister needed to more tightly hold the reins of power.

Further, at the time, the Israeli public was more deeply divided than ever about the peace process. Baruch Kimmerling asserts that the notions of accepting Palestine as a neighbor state on formerly Israeli land was not a "commonly accepted" idea for "most of [Israel's] Jewish population". The assassination of Prime Minister Yitzhak Rabin by an Israeli right-wing radical on November 4, 1995 was testament to the passions underlying the political decision to recognize the Palestinians. Under such conditions, it was thought that direct elections for the prime minister would "bring political stability to the country and give leaders commanding majorities in order to lead Israel decisively through the challenges of the Middle East peace process"[689]. Thus, in 1996, Israel moved to a system of directly electing its prime minister.

The period studied here, the second or Al-Aqsa Intifada, saw another institutional change occur in the face of mounting terrorism. The Al-Aqsa Intifada was much more violent and caused many more deaths than the first uprising. In fact, though Noemi Gal-Or holds that politicians had overblown reactions to the first intifada[690], it is harder to make this case for the second intifada. The violence that the Palestinian terrorist organizations wrought exacted a heavy price in Israeli lives and created an atmosphere of intense fear. As Ariel Merari notes, the Palestinian organizations, which include Hamas

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[689] Ottolenghi, Emanuele. "Analysis: Hawkish doves: Israelis want a rightwing leader with leftwing policies". *The Guardian* (London), 24 January 2003, pg. 21

[690] Gal-Or, Noemi, "Countering Terrorism in Israel" in Charters ed., *The Deadly Sin of Terrorism*, pgs. 164-5.

and the Palestinian Islamic Jihad, are among the largest insurgent groups in the world, and rival Afghanistan's Mujahideen in size and military capability[691].

The second intifada began after Ariel Sharon visited the Temple Mount/Haram al-Sharif on September 28, 2000. The next day, Israeli police killed four Palestinians and injured 160 at the Temple Mount and the intifada began. On October 12, two Israeli soldiers were lynched in Ramallah by a Palestinian mob[692]. In the first two years of the Al-Aqsa intifada more than 600 Israelis were killed[693]. Charles Enderlin writes that between October 2001 and March 2002, repeated suicide attacks in Israel created "an atmosphere of deep anguish and insecurity"[694]. The Middle East Policy Council records that the Al-Aqsa intifada, through September 21, 2005, claimed 974 Israeli lives, while Israeli reprisals in the same period left 3,679 Palestinian dead. The height of the Israeli deaths came between March and May of 2002, when hundreds of Israelis were killed[695]. Among these attacks was a March 27, 2002 Hamas suicide bombing of a Passover Seder in Netanya that killed twenty-nine Jews[696]. The Ha'aretz newspaper charts the number of Palestinian suicide attacks that yielded deaths versus those that were thwarted. The data paint a picture of a country flooded with suicide bombers. For example, in 2003 while twenty-four suicide bombers caused deaths, a staggering 184 were stopped[697]. Under

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[691] Merari, Ariel. "Israel's Preparedness for High Consequence Terrorism" in Howitt and Pangi eds., *Countering Terrorism*, pg. 346.
[692] Enderlin, Charles. *Shattered Dreams: the Failure of the Peace Process in the Middle East, 1995- 2002.* Translated by Susan Fairfield (New York: Other Press 2003), pg. 368.
[693] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 347. Though Merari does not make this distinction, the figure of 13,000 attacks must include attempted attacks.
[694] Enderlin, *Shattered Dreams*, pg. 371.
[695] Middle East Policy Council, Conflict Statistics: Israelis and Palestinians Killed during Al-Aqsa Intifada," http://www.mepc.org/public_asp/resources/mrates.asp.
[696] Enderlin, *Shattered Dreams*, pg. 372.
[697] *Ha'aretz*, "Pigooyeh Hitabdut Shemomshu L'omet ela Shesochlu (Suicide Attacks that Resulted in Deaths versus Those Thwarted)," http://www.haaretz.co.il/hasite/images/printed/PO80404/zza.jpg.

such conditions, in an atmosphere where tension was already present between Israelis and Palestinians, fear rose to unprecedented levels.

C. Reaction

The Israeli electoral system changed during the Al-Aqsa intifada, just like it had during the first intifada. This time, it changed back to strict list PR with no direct election of the prime minister. This second institutional change signaled Israel's lack of a clear strategy for dealing with terrorism. Merari observes that, "Israel has never formally devised a comprehensive doctrine or strategy for dealing with Palestinian political violence," nor has it evaluated its *ad hoc* approach to counter-terrorism[698]. In short, "In practically all cases, Israeli investment in anti-terrorist measures came only after" an attack[699]. This is a markedly different approach than that of the UK and US, countries which passed much legislation following terror attacks. Israel's tit-for-tat response to the second intifada was encapsulated by Operation Journey of Colors (February 28- March 15, 2002) and Operation Defensive Shield (March 29-April 28, 2002), both of which entailed a military reoccupation of Palestinian Authority land[700]. Operation Defensive Shield, which included a siege of PA President Yasir Arafat's compound, was especially brutal[701].

Israel did not have to install emergency powers because a state of emergency rule has been in effect in Israel since 1945[702]. Israel, having dealt with terrorism, since its

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[698] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 349.
[699] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 351.
[700] Rubenberg, Cheryl. *The Palestinians: In Search of a Just Peace*. (Boulder, CO: Lynne Rienner Publishers 2003), pgs. 347-50.
[701] Enderlin, *Shattered Dreams*, pg. 372.
[702] Gal-Or, "Countering Terrorism in Israel," pg. 149.

inception, has been drawing from old laws to counter attacks for decades. As Ariel

Merari underlines, "Israeli's antiterrorist measures are legally based on the 1945 British

Defense Regulations," which were designed to tamp down internal strife in British

Palestine[703]. This regulation puts offenses such as possession of weapons or explosive

devices and wearing of unauthorized police or military uniforms under the jurisdiction of

military courts. It also makes these offenses punishable by life imprisonment[704]. The

Prevention of Terrorism Decree, passed in 1948, prohibits terrorist groups completely

and also prohibits individuals from aiding terror groups. In 1986 this law was amended

to allow the police "to close down any place serving a terrorist organization" without

judicial approval[705]. Also in 1986, in accordance with the 1948 Decree, 21 Palestinian

groups, including the PLO, were declared terrorist organizations[706]. Further, Israel treats

many Arab prisoners as "security prisoners," which is a similar categorization to the US'

"enemy combatant." Security prisoners do not have the rights of a regular prisoner, but

they are afforded Geneva Convention protections[707]. That said, Israel does use tactics

such as sleep deprivation and stress positions on Palestinian prisoners, which arguably

can be dubbed "torture"[708]. Finally, Israel uses a Decree of Security Regulations, based

on the British mandate's emergency powers, to govern the Palestinian territories and to

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[703] Merari, "Israel's Preparedness for High Consequence Terrorism," pgs. 352-3.
[704] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 353.
[705] Gal-Or, "Countering Terrorism in Israel," pg. 149.
[706] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 353.
[707] Gal-Or, "Countering Terrorism in Israel," pg. 150.
[708] See Gross, Emanuel. *The Struggle of Democracy Against Terrorism: Lessons from the United States, the United Kingdom, and Israel.* (Charlottesville, VA: University of Virginia Press 2006), pgs. 76-80; Also see the B'tselem human rights group joint report with HaMoked, "Absolute Prohibition: The Torture and Detention of Palestinian Detainees," May 2007, http://www.btselem.org/english/Publications/Summaries/200705_Utterly_Forbidden.asp.

empower its security forces there to deport, demolish houses, set up roadblocks, and generally react with force to the local populace[709].

During the second intifada, Israel centralized its governing structure. Decision-making during terrorist episodes lasting days or weeks has been done at the cabinet-level. Ariel Merari notes that during crises, policy decisions have been made among a small group of top officials[710]. Further, the cancellation of direct prime ministerial elections proved a successful attempt to centralize power as small parties' share of seats dwindled[711].

Even though, given existing emergency laws, Israel's legislative actions did not need to be as drastic as in the UK or US cases, there have been numerous new laws passed in the face of the second intifada. In 2002, the Israeli Supreme Court "upheld the new law allowing for the forcible relocation of the relatives of Palestinians involved in violent acts. Another recently adopted law legalizes the indefinite detention of 'illegal combatants' who are suspected of 'taking part in hostile activity against Israel, directly or indirectly'"[712]. On October 9, 2005 a bill entitled "Criminal Law Procedures Bill (Powers of Implementation—Special Directives for Investigating Security Violations Perpetrated by Non-Residents)" was proposed to the Knesset. The bill would allow Israel to detain non-residents for 96 hours, up from 48 hours for citizens and residents, and would also lengthen the amount of time a court could extend a detention for non-residents. Adalah, the legal center for Israeli Arabs' rights, believes that this bill "would

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[709] Gal-Or, "Countering Terrorism in Israel," pg. 151.
[710] Merari, "Israel's Preparedness for High Consequence Terrorism," pg. 357.
[711] When prime ministers were directly elected, voters tended to cast their votes for PMs from the major parties (Labor or Likud) and then vote for a smaller party (such as Meretz or Shas) for Knesset.
[712] Merari, "Israel's Preparedness for High Consequence Terrorism," pgs. 353-4.

create a two-track criminal procedure law governing investigation, interrogation and detention—one for Israelis and one for Palestinians"[713].

Further, on July 31, 2003, the Knesset passed the Nationality and Entry into Israel Law (Temporary Order) – 2003, which "prohibits the granting of any residency or citizenship status to Palestinians from the 1967 Occupied Palestinian Territories … who are married to Israeli citizens. The Law affects thousands of families comprised of tens of thousands of individuals." Though it was originally slated to last just one year, Knesset has extended this law repeatedly and, as of now, it will last until July 2008[714]. Yet another new law prevented West Bank residents from carrying Israeli citizens in their cars[715].

Moreover, a staggering number of Palestinians are being held in Israeli jails. Btselem statistics estimated in 2006 that 8,085 Palestinians were being imprisoned in Israeli civilian jails, 2,384 of them without charge[716]. Further, over 800 Palestinians (the figure differs over time) are being held by Israel under "administrative detention"[717]. According to Btselem, "Administrative detention is detention without charge or trial, authorized by administrative order rather than by judicial decree." Much like America's "enemy combatants," Israel has held Palestinians, "in prolonged detention without trying

[713] Adalah: the Legal Center for Arab Minority Rights in Israel, "Adalah to PM Sharon: Bill Imposing Harsher Investigation, Interrogation and Detention Laws on Palestinians Based Solely on their Nationality Must be Cancelled," 19 October 2005.
[714] Adalah: the Legal Center for Arab Minority Rights in Israel, "Ban on Family Unification," http://www.adalah.org/eng/famunif.php; Ilan, Shahar, "Knesset extends law banning Israeli-Palestinian family unification," *Haaretz*, 21 March 2007.
[715] Harel, Amos. "IDF freezes ban on Israelis carrying West Bank residents in their cars," *Haaretz*, 17 January 2007.
[716] BBC News, "Who are the Mid-East prisoners?," BBC News, 26 July 2006, http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/5211930.stm.
[717] Btselem human rights group, "Statistics on Administrative Detention," http://www.btselem.org/english/Administrative_Detention/Statistics.asp.

them and without informing them of the suspicions against them. While detainees may

appeal the detention, neither they nor their attorneys are allowed to see the evidence"[718].

Most egregious on the rights of minorities front were the events of October 2000.

In the October 2000 riots, Israeli police killed thirteen Arab citizens. Remarkably, the

case was initially closed with no convictions. But after Arab Israelis protested, the case

was reopened[719]. In the end, were offered monetary compensation for their family

members' death, yet none of the Israeli police involved in the incident were indicted[720].

As'ad Ghanem describes the October 2000 incident as one where "security forces opened

fire with live ammunition on citizens attempting to express their distress concerning Al-

Haram A-Sherif … after Sharon's visit there"[721]. As seen by the bloodless, non-violent

treatment of Gazan settlers during the Gaza evacuation, the Israeli army and police are

clearly capable of dealing with its citizenry in an extremely dignified and professional

manner. That security forces simply opened fire on Arab citizens speaks volumes both to

the discrimination of Arabs in Israel and to the level of fear and distrust that terrorism has

sown in the country.

Speech rights have, to Israel's credit, largely been maintained. Minority rights groups

such as Adalah and human right's groups such as B'tselem have been largely allowed to

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[718] Btselem human rights group, "Administrative Detention,"
http://www.btselem.org/English/Administrative%5FDetention/.
[719] Yoaz, Yuval, Jack Khoury, and Yoav Stern. "Arab MKs, families of October riot victims rally in
Sakhnin," *Haaretz*, 1 October 2005. "October 2000 case to be reopened for review," 29 September 2005,
http://web.israelinsider.com/Articles/Briefs/6728.htm.
[720] Yoaz, Yuval and Yoav Stern, "AG: No cops will be indicted for involvement in October 2000 riot
deaths," *Haaretz*, 28 January 2008, http://www.haaretz.com/hasen/spages/948535.html; Stern, Yoav and
Jack Khoury, "Eight families of October 2000 riot victims reject payout deal," *Haaretz*, 20 November
2006, http://www.haaretz.com/hasen/spages/790350.html.
[721] Ghanem, As'ad. "The Israeli Regime and the Political Distress of the Palestinian Arab Minority in
Israel," A Position Paper submitted to the "Or Commission": "The commission of Inquiry into the
Disturbances between the Security Forces and Israeli Citizens Commencing on 29 September 2000," June
2001, pg. 20.

say what they want. While speech has been protected, the rights of minorities largely have not.

D. Case Findings

Noemi Gal-Or believes that terrorism has yielded stringently anti-democratic attitudes in Israel, due to the treatment of Palestinians in the country and in the occupied territories, though Jewish civil rights have generally not been curbed[722]. The shooting of Arab civilians in Israel and the explicitly discriminatory treatment of the Arab minority speak to this fact. The government did centralize in its actions against terrorism in this case as decision-making occurred among a select group of individuals. Still, little centralizing legislation was passed. Israel already had been acting under a state of emergency so additional emergency powers were unnecessary. This is similar to the UK case where emergency powers simply became entrenched over time. Importantly, and also like the UK, Israel actually changed its institutional structure in the face of terrorism when it revoked direct prime ministerial elections due to the difficulty PM's had with ruling under this system.

Conclusion

This study bears out the following conclusions. Emergency legislation was consistently passed and arguably abused across all three cases. Interestingly, the two parliamentary regimes actually changed their institutional structures in the direction of centralization to deal with terrorism. That said, all three regimes acted similarly with

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[722] Gal-Or, "Countering Terrorism in Israel," pg. 162.

regard to centralizing and attempting to centralize the government and in bolstering executive control. For this reason, I conclude that presidentialism had little to no effect on government centralization or the passage of emergency legislation (H1). Most interesting was the finding that parliamentary governments had to *further centralize power around the prime minister* to deal with the terrorist threat in the Israeli and British cases. Perhaps, then, presidential governments already have built within them the strong executive necessary to deal with existential threats. As for the passage of legislation, the US did act quickly to pass legislation after the 9/11 attacks but the UK also passed legislation quickly after terrorist attacks, and Israel did not have the need to pass much additional legislation. In sum, presidentialism proved no quicker to act under duress (H2).

The rights of minorities were consistently compromised among the three cases. Minorities were actually treated worse in the parliamentary cases than in the US case, thus hypothesis three, that presidentialism should do a worse job than parliamentarism in protecting the rights of minorities, is proved false (H3). As for speech, in a study of speech in terrorist times in the US and UK, Laura Donohue concludes that, "As states overreact, the history of both countries demonstrates that strictures on persuasive speech end up being applied to political opponents" and that "In both states, the judiciary demonstrates great deference to the executive"[723]. Still, I believe that the cases bear out that speech in all three states was largely maintained. There was some censorship in the UK case and some tamping of dissent in the US case, but by and large no government stood out as a particular protector or inhibitor of speech (H4).

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[723] Donohue, "Terrorist Speech and the Future of Free Expression," pg. 89.

These cases show that government centralization is rampant, and perhaps necessary, after terror attacks. The seeming need for parliamentary governments to consolidate power during times of great threat points to a weakness of these sorts of government. This weakness is not balanced by a concurrent strength in protecting civil rights, as all governments curtailed rights in the cases studied. Parliamentary governments, due to the government coalitions that run them, have fewer checks in place to block the passage of liberty-reducing legislation and suffer sometimes from particularly weak executives. Thus, they may be doubly vulnerable to terror attacks: they can be weak in protecting liberties and weak in bolstering security. More comparison of parliamentary cases needs to be done to support these findings.

In the words of Justice John Marshall Harlan, "liberty is not a series of isolated points pricked out in terms of ... freedom of speech, press, and religion ... and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints"[724]. The findings of this study exhibit that institutions have little effect on whether or how democracies will protect liberties under terrorist threat. This finding supports the main theory of this dissertation that executive threat-shaping determines legislative responses to terror attacks. Further, as shown in chapter three, public opinion, though important as a constraint, cannot in and of itself explain reactions to terror attacks either. In the next chapter, however, institutional arrangements will be shown to have some bearing on legislative reactions to terrorist attacks under certain conditions.

I would like to end here with some proposed solutions to the problem of balancing rights and security. Grant Wardlaw proposes four principles for guiding state's counter-

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[724] Fallon, *The Dynamic Constitution*, pg. 138.

terrorist actions: commit to the rule of law, settle on a definition of terrorism, do not inflate political language, and realize that there is no simple solution to terrorism[725]. To these proposals I would add one: make protecting the rights of minorities a priority.

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[725] Wardlaw, Grant. "The Democratic Framework" in Charters, *The Deadly Sin of Terrorism*, pgs. 8-9.

Chapter Six

Balancing Fear: Why Counter-Terror Legislation was Blocked after the Oklahoma City and London Bombings

In previous chapters, executive response and threat-shaping proved to be the independent variable in determining legislative responses to terror attacks. But what happens when legislation forwarded by the executive gets blocked by the legislature? Recall that the theory supported here holds that the executive is presented with an *opportunity* by the crisis created by a terrorist attack, but that he is *constrained* by levels of mass fear, public satisfaction ratings, and political constellations. This chapter exhibits the importance of my theory by showing how it explains both situations where legislation is summarily passed after terror attacks and situations where the legislature blocks the executive after these attacks. This chapter will be organized in the following manner. First, previous findings will be summarized. Second, why the passage of counter-terror legislation should be expected in the UK Blair case will be examined. Third, the case of Tony Blair's own Labor Party blocking his counter-terror legislation after the July 7, 2005 London bombings will be investigated. Fourth, the case of the Oklahoma City bombing, where the Republican Party blocked Bill Clinton's counter-terror legislation for over a year, will be examined. The Oklahoma City case will bolster findings from the Tony Blair case. Next, the two cases will be compared to gather findings. Finally, conclusions about why we see variation in the passage of civil liberty-abridging legislation, the central question of this study, will be stated.

Summary of Previous Findings

Before summarizing the findings, let us briefly review the study's theory. The theory begins with a terrorist attack, which presents an opportunity for the executive to respond to the threat as he sees fit and to shape the threat accordingly. The executive is constrained by mass fear levels, public opinion and an array of institutional and political variables called political constellations. In the first scenario, mapped by following the straight lines below, executive threat-shaping leads to legislative support and the passage of counter-terror legislation and enforcement of that law. In the second scenario, the one looked at closely in this chapter, the legislature opposes the executive, which can either end the legislative process or yield further threat-shaping by the executive in an attempt to gain legislative support. Of course, this back-and-forth between the executive and legislature, as with all legislation, can lead to compromise legislation. Note that the theory depicted below will be honed by the findings made in this chapter.

Depiction of Theory.
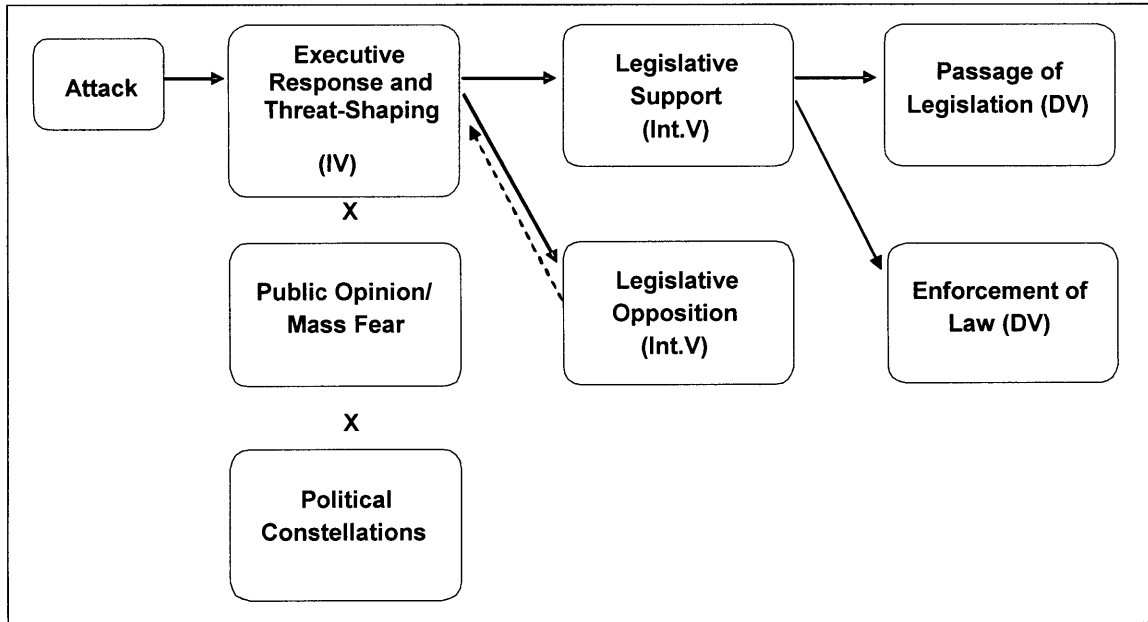
This work began by posing the question: "What explains the variation in governments' civil liberty-abridging responses to terrorist attacks?" So far, this dissertation has focused strongly on those cases that lead to abridgements of civil liberties. The fear and politics chapters (chapter two) looked at how mass fear can envelope populations and allow elites to push forward liberty-reducing law. Chapter Four, on the U.S. 9/11 case, showed how this fear took hold of Americans after the worst terror attack in American history. Chapter Five, which compared the U.S. reaction to 9/11 to Israel's reaction to the second intifada and Britain's response to IRA terror in the early 1970s, further emphasized the role of fear and political manipulation in post-terror attack civil liberty abridgements. This chapter showed that institutional differences did not determine the outcomes of post-terror legislative responses. Only Chapter 3, on public opinion, strongly exhibited the variation in terror reactions. This chapter found

that approval of the government, rallies around the executive and sustained levels of mass fear have not been constants after terror attacks.

The focus so far has been on what does not cause the variation in legislative reactions to terror. To this end, the entirety of this study can be seen as a test of three prevailing theories: one holding that mass fear drives the post-terror attack dynamic, one viewing institutional arrangements as doing the work, and the final holding that executive threat-shaping drives the dynamic. I would now like to summarize the findings of the previous chapters by grouping them into these three prevailing theories: institutional arrangement theory, executive response and threat-shaping theory, and mass fear/public opinion theory, respectively.

In chapter five, the difference between presidential and parliamentary institutions proved to have little power in explaining post-terror attack variation. In chapter four, however, the party competition variable, measuring proximity to elections, proved to be an important determinant in calibrating executive threat-shaping. Temporal proximity to an election made the Bush Administration ratchet up the terror threat and highlight the importance of that threat to the public. This political constellation variable clearly exacerbated executive threat-shaping. Further, though the composition of the government did not matter in the extreme 9/11 case, perhaps it might matter in a case where the terror attack was markedly less deadly and dramatic. In this chapter, the value of political competition in explaining post-terror attack liberty-abridging responses will be shown to be vital[726].

The thesis of this work is that executive response and threat-shaping drives the post-terror attack dynamic that leads to the abridgements of civil liberties. In chapter

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[726] More on the concept of political competition at the end of the chapter.

four, the strong effects of executive threat-shaping were made explicit. While in chapter five, the expansion of executive powers and reduction in the rights of minorities in all three cases showed the importance of executive response and threat-shaping in both presidential and parliamentary governments. In this chapter, executive threat-shaping will again be looked at closely to see why it did not produce the same speedy passage of legislation as it did in the cases explored in chapter five. Recall that the theory proposed here does not hold that executive response and threat-shaping always yields counter-terror legislation. Instead, I contend that executive threat-shaping is the primary factor behind these outcomes, but that it is constrained by political constellations (i.e., institutional arrangements, government composition and party competition) and mass fear levels and other public opinion metrics. This chapter will conclude by showing which of these broad constraint factors have the most power in actually restraining executive action after terror attacks.

Finally, on mass fear and public opinion the following conclusions were reached from chapter three. First, typically a window for executive opportunity was created by a heightening of mass fear levels, a public demand for government action and the willingness of the public to surrender liberties in exchange for security. Second, mass fear levels did not consistently go up or down in a predictable fashion. Finally, and very importantly, rallies around the executive were not constant after terror attacks. Further, in chapter four, executive approval ratings had an effect on the Bush Administration and Congress' conduct after the attack. High approval ratings led to an emboldened executive and a passive Congress. Lower presidential approval ratings yielded a more diffident legislature, even though this diffidence did not yield strong results. As will be

seen in this chapter, executive approval ratings and rallies around the executive are centrally important to determining whether counter-terror legislation will swiftly pass or not.

Why Should We Expect Legislation to Pass in the London Bombings Case?

Why should we expect counter-terror legislation to have been passed after the July 7, 2005 London bombings? There are myriad reasons why we should expect legislation to have passed in this case. First, in the British system the prime minister controls government. That means that as long as the prime minister is head of government, all legislation that he proposes should pass parliament. Indeed, Tony Blair's counter-terror legislation after the London Bombings that sought to prolong detentions for terror suspects from 14 days to 90 days, was *the first legislation that had been blocked by parliament in Blair's eight-plus years in power to that date*.

Second, the US, a system replete with checks-and-balances, passed extensive counter-terror law after 9/11. If a system that has many more checks on executive power than does the British system could pass legislation after a major terror attack, then why couldn't the UK do the same? Third, the United Kingdom has a much more extremist Muslim population than does the United States. For one, recall the August 10, 2006 arrests of 24 suspected terrorists who allegedly were plotting to blow up ten airliners flying from London to the United States[727]. Further, a 2006 poll in the London *Telegraph*

[727] Anderson, John Ward and Karen DeYoung. "Plot to Bomb U.S.-bound Jets is Foiled," *The Washington Post*, 11 August 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/08/10/AR2006081000152.html. For more on the August 10, 2006 bomb plot see *The Washington Post's* archive on this story at http://www.washingtonpost.com/wp-dyn/content/linkset/2006/08/10/LI2006081000789.html. On militant Islam and the terror threat in Britain see Sciolino, Elaine and Stephen Grey, "British Terror Trial Traces a Path to Militant Islam," *The New York Times*, 26 November 2006, http://www.nytimes.com/2006/11/26/world/europe/26crevice.html and

found that 4 in 10 British Muslims wanted Islamic Law implemented in the United

Kingdom; that same year a poll in the *Sunday Times* found that 1 in 5 British Muslims

sympathized with the London bombers[728]. Fourth, the UK has passed counter-terror

legislation many times before as seen in chapter five, for instance. Fifth, Britain was at

war with terrorists in Iraq and Afghanistan already, making the case for more domestic

strictures on terrorists, thus, should not have been difficult.

Finally, consider the case selection chart below. As is evident, most threats that

are shaped as war lead to the quick passage of civil liberty-abridging legislation. To

these, we could add many cases, including, for instance, AB Vajpayee's passage of the

Prevention of Terrorism Act (PTA) after the 2001 Parliament bombing in India[729], as well

as anti-terror laws passed in Canada, Australia, New Zealand, and Japan after 9/11[730].

Tony Blair was the only executive who both shaped the terror threat as war and was

substantially blocked in his attempt to pass anti-terror law, making his case a critically

important one.

"1,166 anti-terror arrests net 40 convictions," *The Guardian*, 5 March 2007, http://www.guardian.co.uk/print/0,,329735333-111274,00.html.

[728] Byman, Daniel. *The Five Front War: The Better Way to Fight Global Jihad.* (Hoboken, NJ: John Wiley & Sons 2007), pg. 8.

[729] Singh, Ujjwal Kumar. *The State, Democracy and Anti-Terror Laws in India.* (Thousand Oaks, CA: Sage Publications 2007), pg. 14; In.Rediff.com, "It is goodbye to PoTA," 18 September 2004, http://in.rediff.com/news/2004/sep/18spec1.htm; For full text of the Prevention of Terrorism Act see http://www.satp.org/satporgtp/countries/india/document/actandordinances/POTA.htm.

[730] See Singh, *The State, Democracy and Anti-Terror Laws in India,* pgs. 22-6; for text of Japan's Anti-terrorism Special Measures Law see http://www.kantei.go.jp/foreign/policy/2001/anti-terrorism/1029terohougaiyou_e.html.

Case Selection Chart.

	Threat Shaped as War	**Threat Shaped as Crime**
Legislation Quickly Passed	George W. Bush, 9/11 Ariel Sharon, second intifada Harold Wilson, 1974 Birmingham bombing	Yitzchak Rabin, first intifada
Legislation Substantially Blocked or Not Pursued	Tony Blair, 7/7/05	Bill Clinton-1995 Oklahoma City bombing Bill Clinton-1993 World Trade Center bombing

1974 Prevention of Terrorism Act

Now let us turn to a capsule review of how counter-terror law has typically been

passed in the UK. The 1974 Prevention of Terrorism Act was passed through Parliament

and became statute *eight days* after the November 21, 1974 Birmingham pub bombings,

which killed 21 people and wounded 160[731]. The executive at the time, Harold Wilson,

plainly stated that the attacks meant that the country was in a state of war against the

IRA[732]. The bill passed through the House of Commons and House of Lords with

remarkable speed despite the small majority that Harold Wilson's Labor Party enjoyed.

Indeed, the previous month's election had given the Labor Party a slim three-seat

majority[733].

The speedy passage of the Prevention of Terrorism Act did not preclude the

legislation from vocal dissent in Parliament. Sir Keith Joseph, of the Opposition

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[731] Donohue, Laura K. *Counter-Terrorist Law and Emergency Powers in the United Kingdom 1922- 2000.* (Dublin, Ireland: Irish Academic Press 2001), pg. 207, 217.
[732] Donohue, *Counter-Terrorist Law and Emergency Powers*, pg. 218.
[733] BBC News, "1974 October: Wilson makes it four," http://news.bbc.co.uk/hi/english/static/vote2001/in_depth/election_battles/1974o_over.stm.

Conservative Party, called the bill "distasteful," but "necessary"[734]. Leo Abse, a Labor

Party member, pointed to the fact that previous supposedly temporary counterterror

legislation, passed in 1939, remained on the books for fifteen years and stated that the

new legislation under review would greatly erode the rights of minorities[735].

Conservative parliamentarian J. Enoch Powell emphasized that, "both haste and anger are

ill counselors, especially when one is legislating for the rights of the subject"[736]. Still,

voices pushing for speedy action prevailed. As Liberal Democrat AJ Beith declared, "I

do not think the public would retain much confidence in us if we were prepared simply to

defer provisions which it could be shown were needed for the exercise of authority in a

situation as desperate as present"[737].

The PTA outlawed the Irish Republican Army, extended powers of arrest and

detention, and limited the movement of people into and within the United Kingdom. The

PTA allowed the police to arrest suspected terrorists without warrant for an initial 48

hours and for an additional five days with permission of the Secretary of State[738].

Though the bill was subject to biannual reviews, parts of it remain on the books to this

day[739].

The case, and others like it from Britain's history of dealing with the IRA, shows

that even divided UK governments have quickly passed emergency counter terror

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[734] "Prevention of Terrorism (Temporary Provisions) Bill," *House of Commons Debates*, 28 November 1974, vol. 882 (London: Her Majesty's Stationery Office 1974), col. 643.
[735] *House of Commons Debates*, 28 November 1974, col. 657.
[736] *House of Commons Debates*, 28 November 1974, col. 667.
[737] *House of Commons Debates*, 28 November 1974, col. 676.
[738] Donohue, *Counter-Terrorist Law and Emergency Legislation*, pg. 224.
[739] See Donohue, *Counter-Terrorist Law and Emergency Legislation*; Donohue, Laura K. "Temporary Permanence: The Constitutional Entrenchment of Emergency Legislation," *Stanford Journal of Legal Studies*, vol. 1, no. 1, December 1999; Donohue, Laura K. "Civil Liberties, Terrorism and Liberal Democracy: Lessons from the United Kingdom" in Howitt, Arnold M. and Pangi, Robyn L. eds. *Countering Terrorism: Dimensions of Preparedness* (Cambridge, MA: The MIT Press 2003), pgs. 411-46.

legislation. When compared to the 2005 London Bombings, we can conclude that the 1974 Act came after a similarly devastating attack and the law proposed was similarly repressive. In fact, the passage of the 1974 bill makes the blocking of Blair's post-London Bombings bill even more curious since Blair enjoyed a greater majority in Parliament, the London Bombings killed significantly more people, and the new laws Blair proposed would not have been much different from laws that had already been passed time and again in the United Kingdom. One further cannot argue that the UK was not at war in 2005 and was in 1974. Both Tony Blair, as will be seen below, and Harold Wilson shaped the terrorist threat as a war, and British forces are today still at war in Iraq and Afghanistan with Islamist extremists.

The July 7, 2005 London Bombings

So what happened in the Blair case? Let us go through the theory point by point to find out.

I. The Attacks

On the morning of July 7, 2005, as rush hour was drawing to a close, a series of explosions carried out by radical jihadist suicide bombers hit the London public transportation system. At 8:50 a.m. a bomb exploded on a subway train leaving Edgware Road station killing seven people and wounding 40. At the same time, a bomb exploded on a train traveling between Liverpool Street and Aldgate Station killing ten people and wounding over a hundred. In the deadliest attack of the day, also on the tube and also at 8:50 a.m., 27 people were killed and dozens injured when a bomb exploded on the Picaddilly line train near King's Cross station. About an hour later, at 9:47 a.m., a bomb

exploded on the upper deck of the No. 30 bus as it traveled through Tavistock Square; fourteen people were killed and dozens wounded[740]. All told, 56 people, including the four bombers, were killed and over 700 wounded due to the attacks on July 7, 2005[741]. Two weeks later to the day, on July 21, 2005, four more bombers failed to carry out an identical attack targeting three underground stations and a bus. The bombers were thwarted by the failure of their bombs to fully explode[742].

The first reports about the bombings held that the attackers were Britons of Pakistani origin who were born, raised and radicalized in the UK[743]. But whereas three of the bombers were British nationals of Pakistani origin who lived in West Yorkshire (the fourth was a Jamaican-born British national), their radicalization had strong foreign connections[744]. Two of the bombers visited Pakistan in 2004. Further, an al-Qaeda member that had entered England via a Channel port two weeks before the blasts, left the UK a few hours before the bombings. Moreover, the explosives used in the bombings were similar to those used by al-Qaeda[745]. A year after the bombings, al-Qaeda's spiritual leader Ayman al-Zawahiri claimed that two of the bombers had been trained for suicide operations at an al-Qaeda camp[746].

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[740] For detailed descriptions of each bombing and a subway map of the attacks see http://www.guardian.co.uk/flash/0,,1538819,00.html.

[741] See CNN's report on the London bombings at http://www.cnn.com/SPECIALS/2005/london.bombing/ as well as The Guardian Online's report at http://www.guardian.co.uk/uk/july7 for more details.

[742] See http://www.guardian.co.uk/flash/0,,1544853,00.html.

[743] See, for instance, Chance, Matthew, "Britain's Home-grown Terrorists," CNN.com, 14 July 2005, http://www.cnn.com/2005/WORLD/europe/07/14/homegrown.terror/.

[744] For a full report on the bombings and on the possible foreign connections of the bombers see the House of Commons' "Report of the Official Account of the Bombings in London on 7th July 2005," (London: The Stationery Office, May 2006). Pages 20-21 deal with foreign connections of the bombers.

[745] On the bombers, see BBC News, "The London Bombers: Key Facts," 21 July 2005, http://news.bbc.co.uk/2/hi/uk_news/4676861.stm.

[746] CBS News, "Video: 2 London Bombers were al-Qaeda," 7 July 2006, http://www.cbsnews.com/stories/2006/07/07/terror/main1784741.shtml.

Though there were clearly tensions between Britain's Muslim and Christian populations, the attacks were not as "home-grown" as initially reported. Indeed, terrorism analyst Peter Bergen stated a year after the bombings that, "the London attacks were a classic al-Qaeda operation and not the work of self-starting terrorists as has been repeatedly suggested in the media"[747]. It turns out, then, that this was one case of international terrorism that was framed by the media as an attack by local elements. The response to the London attacks, thus, may have been more muted due to this local-framing by the media (as opposed to the media framing the attack as perpetrated by foreign forces and part of a larger war)[748]. As will be seen below, this media framing had little to do with how Tony Blair sought to shape the threat.

II. Executive Response

At the time of the bombings, Tony Blair was hosting the G-8 meetings in Scotland. That day, he made a statement framing the threat of terrorism as war, stating that, "It is important ... that those engaged in terrorism realize that our determination to defend our values and our way of life is greater than their determination to cause death and destruction to innocent people in a desire to impose extremism on the world. Whatever they do, it is our determination that they will never succeed in destroying what we hold dear in this country and in other civilized nations throughout the world"[749]. Blair's statement framed the conflict against terror as a worldwide one. He implied that the world was entangled in a war between civilized nations and extremist terrorists. The

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[747] CNN.com, "Horror of 7/7 Attacks Remembered," 7 July 2006, http://www.cnn.com/2006/WORLD/europe/07/07/london.bombings/index.html.
[748] I would like to thank Norma Connolly of Montclair State University for making this point.
[749] Blair, Tony, "PM's Statement on London explosions," 7 July 2005, http://www.number-10.gov.uk/output/Page7853.asp.

threat magnitude was thus large, but, Blair suggested, the government would protect its people.

Three days later Blair made a speech wherein he spoke of his "revulsion" at the terrorist attacks. Blair outlined what had transpired during the attacks and framed the conflict by naming the probable perpetrators as "Islamic extremist terrorists, of the kind who over recent years have been responsible for many innocent deaths in Madrid, Bali, Saudi Arabia, Russia, Kenya, Tanzania, Pakistan, Yemen, Turkey, Egypt[,] Morocco" and on September 11th. Blair asked for additional anti-terror legislation, noting that Parliament had already pledged to pass further counter-terror legislation earlier in the year. He also set the tone for future statements when he stated that, "If, as the fuller picture about these incidents emerges and the investigation proceeds, it becomes clear that there are powers which the police and intelligence agencies need immediately to combat terrorism, it is plainly sensible to reserve the right to return to Parliament with an accelerated timetable." He closed with a statement of tolerance, lauding the British Muslim community by saying that, "We will work with you to make the moderate and true voice of Islam heard as it should be"[750]. Blair's statements framed the conflict as one between innocent civilians and Islamic extremists, he stated that liberty-security tradeoffs would have to be made, and that Muslims in England should be tolerated. Blair's linking of the 7/7 attacks to 9/11 and other terror attacks from around the world, implied a high magnitude of threat.

Two weeks after the London bombings, on July 26, 2005, Blair stated that he would not give "one inch" to terrorists and that he sought to confront them on "every

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[750] Blair, Tony. "Statement to Parliament on the London Bombings," 11 July 2005, http://www.number-10.gov.uk/output/Page7903.asp.

level." He also stated that, "September 11 for me was a wake up call. Do you know what I think the problem is? That a lot of the world woke up for a short time and then turned over and went back to sleep again." Meanwhile, Conservative Party leader, and head of Blair's opposition, stated that, "One of the principle objectives of the terrorists is to divide us, one from another. So far … they have failed in that objective. … [W]e believe it is so important that we approach these difficult issues in a spirit of consensus, with the objective of reaching agreement wherever we possibly can"[751]. This speech was Blair's most urgent yet and it framed the threat as an alarming issue that could not be ignored. It is important to note that at this stage, Tory rhetoric supported Blair.

Three and a half months after the London bombings, on October 13, 2005, Tony Blair unveiled new counterterror legislation that would allow the British government to detain terror suspects for three months without charge, make the glorification or encouragement of terrorism an offense, and outlaw attending terror training camps in the UK or abroad. The proposed bill would have greatly affected free speech in Britain. According to *Guardian* columnist Seamus Milne, "under the terms of the bill, anyone who voices support for armed resistance to any state or occupation, however repressive or illegitimate, will be committing a criminal offense carrying a seven-year prison sentence"[752]. The legislation was introduced about one month after a video of one of the July 7, 2005 bombers was released that linked him to al-Qaeda[753].

[751] "Blair: World slept after 9/11," CNN.com, 26 July 2005,
http://www.cnn.com/2005/WORLD/europe/07/26/london.politicians/index.html.
[752] Regan, Tom. "Britain unveils new antiterrorism legislation," *The Christian Science Monitor*, 13 October 2005.
[753] Reynolds, Paul. "Bomber video 'points to al-Qaeda,'" BBC News, 2 September 2005,
http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/4208250.stm.

III. Legislative Opposition

In this section, Prime Minister Tony Blair's attempts to pass a 90-day detention will be focused on. Blair felt strong opposition to his legislation almost immediately after he presented it. On November 3, 2005, Blair made the case for his legislation by stating that, "We have got to decide whether the civil liberties of people who are terrorism suspects should come before the civil liberties of the vast majority of people in this country. I say the civil liberties of those law abiding people should come first." Blair's legislation was already struggling to pass due to a coalition between ministers of parliament on the right and the left that were fed up with Tony Blair's rule[754]. These parliamentarians represented the large group of Britons who opposed the unpopular Iraq War. Indeed, Britain's participation in Iraq was opposed from the start by 3/5 of Britain's citizens[755]. Still, the Conservatives, Liberal Democrats, and Labor rebels that opposed Blair's legislation proffered a compromise: a 28-day detention period[756].

Blair convinced Labor MP David Winnick to re-table the "rebel" Terrorism Bill amendment that would have set the detention limit at 28 days. Still, ministers in Blair's own party were disappointed with the legislation the PM sought and criticized him by saying that his politics were not in line with those of the Labor Party[757]. By November 6, 2005, Blair was convinced that his legislation would not pass. He withdrew negotiations on the 90-day limit and told the Home Secretary, Charles Clarke, to seek a compromise

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[754] MacLeod, Catherine. "Blair holds firm on 90-day detentions," *The Herald* (Glasgow), 4 November 2005.
[755] BBC News, "Third 'think Iraq was right'," 20 March 2007, http://news.bbc.co.uk/2/hi/uk_news/6467147.stm; The Harris Poll, "New Harris Poll Finds Big Differences Among American, British and Canadian Attitudes on Attacking Iraq," *The Harris Poll* #13, 6 March 2003.
[756] BBC News, "Blair facing crunch terror vote," 9 November 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4419970.stm.
[757] Brown, Colin and Andy McSmith, "Blair to face his MPs head on to shore up faltering authority," *The Independent* (London), 5 November 2005.

over the detention issue, as well as over separate plans to criminalize religious hatred and outlaw the glorification of terrorism[758].

After attempts to magnify the terrorist threat once again backfired—Blair called the potential blocking of the 90-day detention, a "defeat for the security of the country" and accused Parliament of "woeful complacency"—the Prime Minister finally accepted that his bill would not pass[759]. Yet the very next day, on November 8, 2005, Blair once again tried to push through the 90-day detention limit, this time with a sunset clause. The Prime Minister stated that, "If we are forced to compromise, it will be a compromise with this nation's security." Blair pointed to a *Times* (of London) poll that found that 64% of the British public supported the 90-day rule. The head of the Conservative Party, Michael Howard countered that, "if you want to look for a precedent for 90 days, I suggest you find it in the apartheid regime in South Africa when the 90-day rule was one of the most notorious aspects of that regime"[760].

It is important to note here that Blair's strategy for passing his terrorism legislation included repeatedly pointing to the fact that the police requested the 90-day detention limit. In essence, Blair was arguing that it was not he who desired this law, but rather heads of police that had asked for it. This strategy was ineffective as it shifted the process from one of an executive demanding legislation from the legislature to one of the executive asking the legislature, on behalf of experts, for legislation. Further, Parliament

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[758] Hinsliff, Gaby and Ned Temko. "Blair prepares to surrender on terror laws," *The Observer*, 6 November 2005.

[759] Brown, Colin. "Blair Faces Angry Rebel MPs with an offer of Terror Bill Compromise," *The Independent*, 7 November 2005.

[760] Wintour, Patrick and Tania Branigan. "Ministers stay firm on 90-day detention plan," *The Guardian*, 8 November 2005.

never fully understood why the police "required" the 90-day detention limit[761]. This

tactic proved weak, as it was easier for ministers of parliament to oppose the police than

it was to oppose Blair and the public he purportedly represented. The reasoning behind

Blair's bill was hidden in a letter from Andy Hayman, the assistant commissioner for the

Metropolitan Police, rather than pronounced publicly and repeatedly by the Prime

Minister[762].

As expected, Blair's counter-terror legislation was blocked—the first legislation

Blair had proposed in eight-plus years of power to be blocked—when 49 members of his

own party joined the opposition to defeat the bill. In its stead, Parliament passed the 28

day detention limit proposal[763]. Statements such as those of one Tory MP who shouted,

"We aren't a police state" trumped Blair's calls that the 90-day limit was necessary to

protect the country from terrorism[764]. The fallout from the blocked passage of Blair's

anti-terror bill eventually led to Tony Blair's resignation, which he announced would

occur within a year on September 7, 2006[765].

IV. What Happened?

How did Tony Blair's own party block his anti-terror legislation? In order to

answer this question, we will now examine each variable described in the above theory

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[761] Summers, Deborah. "Why the police should have explained that 90-day demand," *The Herald*, 10 November 2005.
[762] "The 90 Days Battle," *The Independent*, 9 November 2005.
[763] VOA News, "British Parliament Rejects Blair's Anti-Terror Legislation," GlobalSecurity.org, 9 November 2005, http://www.globalsecurity.org/security/library/news/2005/11/sec-051109-voa04.htm; Grice, Andrew. "House of Commons 4:56PM: The Moment Tony Blair Lost his Authority," *The Independent*, 10 November 2005.
[764] Glover, Julian and Patrick Wintour. "terror defeat: How the vote was lost," *The Guardian*, 10 November 2005.
[765] CNN.com, "Blair: I will resign within a year," http://www.cnn.com/2006/WORLD/europe/09/07/birtian.blair/index.html, 7 September 2006.

chart to decipher the main cause behind Tony Blair's counterintuitive fate. As detailed above, the independent variable in this dissertation is executive response and threat-shaping. Blair clearly tried to push a civil liberty-reducing response and did so by shaping the terror threat as a broad and urgent one that was part of a larger war on terror. He framed the conflict as a fight between Western society and Islamic extremists and repeatedly stated that liberty-security tradeoffs would have to be made since the UK was under threat.

Blair continued to forward this response months after the 90-day detention period was turned down by parliament. For example, on March 21, 2006, Blair made a speech where he framed the battle between terrorists and democracies as "a clash about civilization." He stated that, "this is not a clash between civilizations. It is a clash about civilization. It is the age-old battle between progress and reaction, … between optimism and hope on the one hand; and pessimism and fear on the other"[766]. So, Blair did push counter-terror legislation and he did frame the terror threat as an urgent and large threat that required imminent action. Still, he faced strong legislative opposition, had to fall back on using the police as an excuse for his counterterror agenda, and finally was thwarted in his anti-terror efforts.

Could the institution of parliamentary government have been the cause of Blair's demise? As established above, and in chapter five, this cannot be the case. Parliamentary governments actually allow prime ministers to pass law much more easily than executives can in presidential governments. Moreover, the analysis in chapter five on the variant responses of presidential and parliamentary governments' reactions to terror attacks, showed few differences if any between the two systems' responses to

[766] Blair, Tony. "'Clash about civilisations' speech," http://www.number-10.gov.uk/output/Page9224.asp.

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terror. Further, counter-terror laws have been repeatedly passed in Britain and have

passed quite quickly, as seen in the above case on the 1974 Prevention of Terrorism Act.

The only way that prime ministers can have their legislation blocked is if they lose their

ruling coalitions. In this case, it appears that Blair lost his, despite the continuation of

Labor rule. But it was not due to institutional constraints.

Next let us turn to findings on public opinion and mass fear. First, did the public

desire that the government gain extra-police powers after the July 7, 2005 bombings?

The answer is yes. An ICM/ News World survey polled respondents using the following

prompt: "There are a number of people living in Britain who the authorities have

identified as posing a potential terrorist threat. Do you think extra powers should or

should not be made available to deport or detain them?" A full 88% of respondents to the

July 17, 2005 poll said that their government should have extra powers to deport or detain

terrorists, or to do both. In fact, a recent *Economist*/YouGov poll found that, "Britons are

more willing than Americans to curb civil liberties in pursuit of security"[767].

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[767] "Anglo-Saxon attitudes," *The Economist*, 4 April 2008, pg. 72.

Chart One:

UK Extra Police Powers Post July 7, 2005

A bar chart showing percentages for four categories: deport (~37%), detain (~18%), both (~37%), neither (~12%). The vertical axis ranges from 0% to 40% in 5% increments.
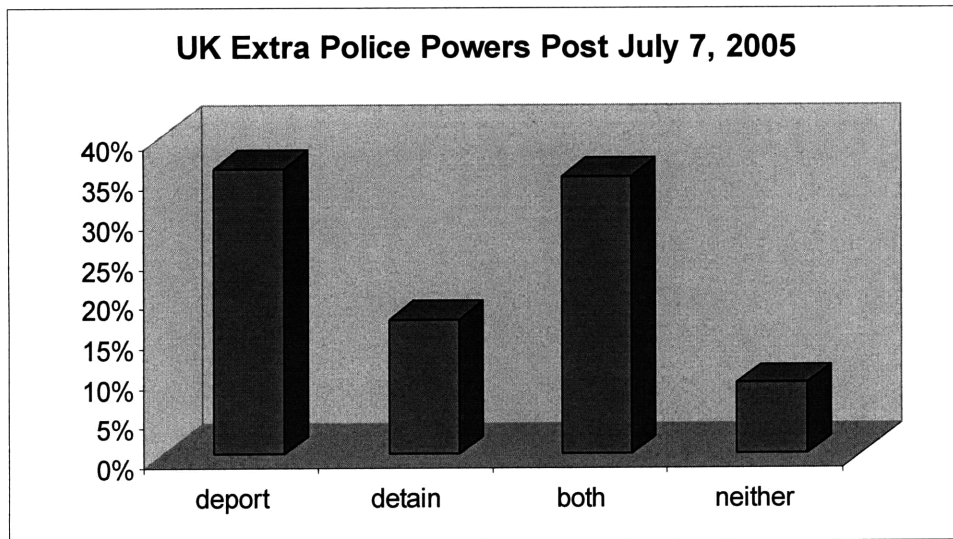
An alternate explanation for the blocked legislation may be that fear levels did not rise after the attacks. After all, many pundits have pointed to the famed "stiff upper lip" of Londoners and their stoic, balanced response to terrorism[768]. Yet, mass fear levels in Britain did rise after the London bombings by 20 percentage points[769]. Though fear levels receded precipitously within a year of the attacks, this drawdown of fear levels is a common occurrence. Mass fear levels after terror attacks occur generally spike, then recede. Therefore, Britons responded rather typically to this terror attack[770].

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[768] Philip Gordon describes Great Britain's typical response to terror as a "model" for restrained societal reactions to terrorism in Gordon, Philip H. "Can the War on Terror be Won?; How to Fight the Right War," *Foreign Affairs*, 86:6 (Nov./Dec. 2007).

[769] This data was compiled from polls from three different agencies on the likelihood of terror attacks occurring in Great Britain. These polls included a February 2004 Harris poll which asked Britons: "How likely do you think it is that there will be a major terrorist attack in this country in the next twelve months?"; three MORI polls taken between early July and late September 2005 which asked: "How likely do you think it is that London will experience another terrorist attack in the near future?"; and an ICM/Guardian poll taken in June 2006 which asked respondents about the likelihood that the UK will suffer another terrorist attack in the next 12 months at the hands of Muslim extremists.

[770] Here the public's perceptions of the likelihood of a major terror attack occurring in the near future are used as a proxy for mass fear levels. In this study, data on public perceptions of the likelihood of terror attacks occurring and of becoming victims of terror attacks are compiled and used as proxies of what I call "mass fear levels." The logic behind this methodology is that the salience of terror attacks in people's minds is an important component of the fear terrorists seek to inflict upon democratic publics. When

Chart Two:

Percent Fearful of Terrorism in UK, 2004-2006
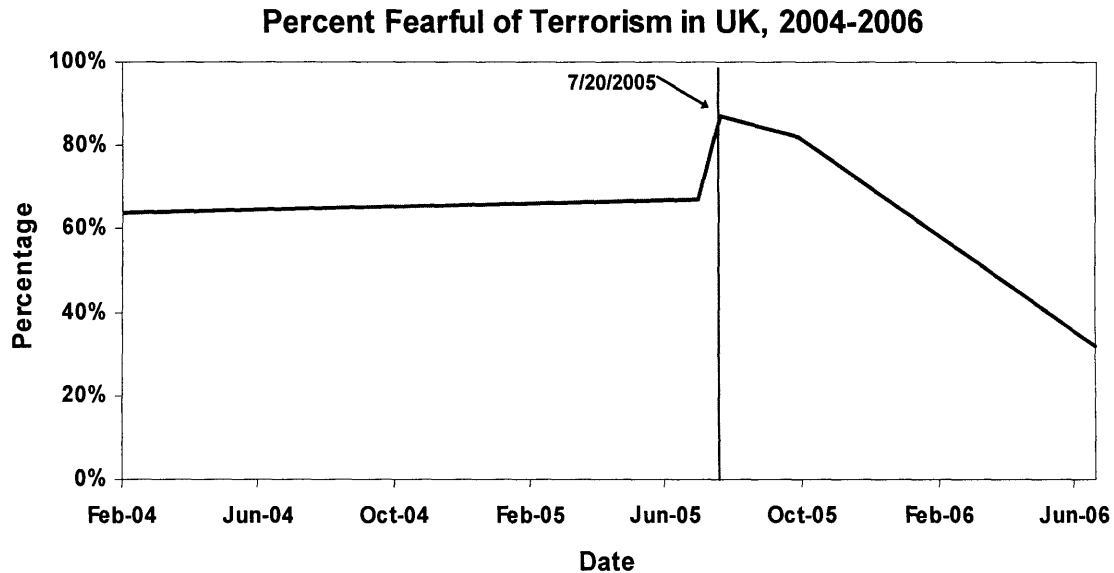
The important poll figure in explaining this case is Tony Blair's approval rating. As seen in the below chart, compiled from data acquired from the Ipsos-MORI Political Monitor approval rating polls, Tony Blair saw no rally 'round the leader effect after the July 7, 2005 bombings. His approval ratings, already at 39%, moved upward slightly due to the bombings but then dipped back down to 39% a month later. Without sufficient public support, Blair did not have a strong enough mandate to pass further civil liberty reductions in support of his counterterror effort. Notice in the below chart that Tony Blair *did* see a surge in his support after the September 11, 2001 attacks in America. As the chart on Blair's approval ratings clearly demonstrates not all terror attacks yield increased support of the executive. As will be exhibited in this chapter's conclusion, executive approval ratings are critical to the passage of counterterror legislation. This finding exhibits that the independent variable in this work, executive response and threat-

people feel safe, they believe that the likelihood of attacks is low. When people fear something, they exaggerate its likelihood for more on this argument see chapter 2.

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shaping, is constrained mainly by approval of the executive and that, in addition to mass

fear levels, executive approval ratings are the most important public opinion factors in

determining whether counterterror legislation will be passed or not.

Chart Three:

Blair: Approval Rating 1997-2007

Contributing Factors: Executive Mandate and Previous Legislation

There are two other contributing factors for the failure of Blair's post-London

bombings anti-terror legislation. The first is that in addition to Blair's low approval

ratings, he did not have a strong mandate. Though it is true that the partisan composition

of the House of Commons clearly favored Tony Blair, as Labor held the majority in

parliament, his party was not behind him. Statements like those above about Tony

Blair's actions not being indicative of the Labor Party's platform are testament to that

fact; so too, of course, is the fact that Blair's own ministers of parliament voted against

him on the anti-terror bill. Though Blair's approval ratings had been low for at least a

year, his party may have felt pressure from the opposition due to its recent electoral

gains. Indeed, Labor had recently lost 47 parliamentary seats in the 2005 election. The

election losses, coupled with the PM's low approval ratings, drove home the fact that the

British public was growing weary of Blair's rule of Labor. Blair's mandate, thus, was

weak and his party chose to stand against him for this reason.

A second reason why Blair's legislation was blocked is that anti-terror legislation

had just been contentiously passed in March 2005. The March legislation made house

arrests for terror suspects, without charge or trial, legal[771]. These house arrests, called

control orders, forbade a terror suspect from using the phone or Internet[772]. The control

order law came into effect only after raucous debate in the House of Commons and a rare

hold-up in the House of Lords[773].

Blair's leadership of the Labor Party had basically become synonymous with the

new "security state" that Great Britain had become. His parliament passed the 2005

Serious Organized Crime and Police Act, which prohibited protestors from demonstrating

within one kilometer of Parliament. He also spearheaded the creation of the national

system of license-plate recognition cameras and, in 2006, the national identity card

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[771] "Two British parties claim win as anti-terror law takes effect," *USA Today*, 11 March 2005, http://www.usatoday.com/news/world/2005-03-11-britain-terror-bill_x.htm.
[772] Porter, Henry. "Blair's Big Brother Legacy," *Vanity Fair*, July 2006, http://www.vanityfair.com/politics/features/2006/07/blair200607.
[773] "Angry clashes over terror plans," BBC News, 23 February 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk_politics/4289349.stm; Assinder, Nick, "Terror Bill faces more trouble," BBC News, 1 March 2005, http://news.bbc.co.uk/1/hi/uk_politics/4303869.stm.

system[774]. Under Blair, certainly due to the very real threat of terrorism, Britain has become a surveillance state, in which there is one closed-circuit TV camera for every 14 citizens[775]. Blair's rule had incrementally, but radically changed the nature of government in Britain; government was now more pervasive, intrusive and powerful. The public's distaste for this outcome was made clear in the debates over the 2005 pre-London bombings terror bill, and eventually led to the defection of Labor Party members and the ouster of Tony Blair. Blair's weak mandate, exhibited most obviously in his low approval ratings but also in Labor Party electoral losses, and previous legislative actions contributed to the blocked passage of his anti-terror legislation.

The Oklahoma City Bombing

Let us now turn to a second case of counterterror legislation being substantially blocked by a legislature in order to assess the results of the London Bombings case. The subsequent case examines the blocked passage of Bill Clinton's counterterror legislation after the April 19, 1995 Oklahoma City bombing. Like in the previous case, compromise legislation was eventually passed, in the form of the Antiterrorism and Effective Death Penalty Act of 1996. Still, the AEDP was not passed until a year after the Oklahoma City bombing—and three years after the first World Trade Center bombing. This section will examine the Oklahoma City bombing looking at executive threat-shaping after the bombing, the legislative debate that transpired, the content of the counterterror legislation proposed, and the reasons for the stalled passage of the post-terror attack legislation. The

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[774] Porter, "Blair's Big Brother Legacy"; UK Home Office, "ID Cards," http://www.homeoffice.gov.uk/passports-and-immigration/id-cards/.
[775] BBC News, "Britain is surveillance society," 2 November 2006, http://news.bbc.co.uk/1/hi/uk/6108496.stm.

case will be examined, once again, by going through the variables in the above theory

chart. First, executive threat-shaping will be surveyed, then legislative debates and the

content of the proposed legislation will be looked at, and finally public opinion and

institutional constraints on the executive will be evaluated. In the end it will be shown

that low presidential approval ratings, an unfavorable partisan composition of the

legislature, and the fact that Clinton shaped the terror threat as a crime all contributed to

the blocking of the post-Oklahoma City bombing legislation.

I. The Bombing

On the morning of April 19, 1995 at 9:03am, Timothy McVeigh, an anti-government

extremist, drove a rented Ryder truck full of homemade explosive into the Alfred P.

Murrah Federal Building in Oklahoma City, Oklahoma. The resulting explosion

destroyed half of the nine-story federal building and damaged twenty-five surrounding

buildings. It also took the lives of 168 people and wounded 674 more[776]. The Oklahoma

City bombing was the largest terrorist attack to date on US soil.

II. Executive Threat-Shaping: A Moving Target

In the immediate hours after the Oklahoma City bombing, Middle Eastern

terrorists were thought to have been the perpetrators of the attack. In fact, it was reported

on the CBS Evening News that a government source had stated that the bombing had,

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[776] Ballard, James David. *Terrorism, Media and Public Policy: The Oklahoma City Bombing.* (Cresskill, NJ: Hampton Press, Inc. 2005), pg. 36; CNN.com, "The Oklahoma City Bombing," http://www.cnn.com/US/OKC/bombing.html; CNN.com, "The worst terrorist attack on US soil: April 19, 1995," 30 December 1995, http://www.cnn.com/US/OKC/daily/9512/12-30/index.html.

"Middle Eastern terrorism written all over it"[777]. As will be shown below, the fact that a white, US-born, anti-government extremist was behind the attack drastically changed the way in which Bill Clinton framed the threat. Instead of calling for a war against terrorists, Clinton called for the crimes of a narrow group of anti-government extremists to be contained. Clinton's framing of the threat as a crime clearly did not make his proposed counterterror legislation appear urgent.

On April 21, 1995, President William Jefferson Clinton made broad threats against the potential bombers, calling the bombing, "an attack on the United States." He declared that he would consider military retaliation if the bombers turned out to be foreigners. "There is no place to hide," Clinton announced. "Nobody can hide any place in this country, nobody can hide any place in this world, from the terrible consequences of what has been done"[778]. Still, Clinton preached tolerance stating that, "This is not a question of anyone's country of origin. This is not a question of anybody's religion. This was murder, this was evil"[779]. Counterterror legislation had already been introduced in February 1995 under the Omnibus Counterterrorism Act, but the bill had stalled in Congress; now it appeared that passage of new counterterror legislation would be inevitable[780].

Four days after the bombing, with the news out that the perpetrator was not a Muslim but rather a right-wing extremist, President Clinton spoke in Oklahoma City at

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[777] Ballard, *Terrorism, Media and Public Policy*, pg. 91; Nacos, Brigitte L. and Oscar Torres-Reyna. *Fueling Our Fears: Stereotyping, Media Coverage, and Public Opinion of Muslim Americans*. (New York: Rowman & Littlefield Publishers 2007), pg. 1; Nacos, Brigitte and Oscar Torres-Reyna. *Fueling Our Fears: Stereotyping, Media Coverage, and Public Opinion of Muslim Americans*. (New York: Rowman & Littlefield Publishers 2007), pg. 1.
[778] "Clinton Orders Step-up of Security after Blast," *Omaha World Herald*, 21 April 1995.
[779] Ramirez, Debbie. "Muslims fear renewed prejudice as speculation centers on Mideast terrorism," *Fort Lauderdale Sun-Sentinel*, 21 April 1995.
[780] "Clinton Orders Step-up of Security after Blast," *Omaha World Herald*, 21 April 1995.

the post-bombing memorial prayer service. He tried to calm the families of the victims by recalling the words of a widow whose husband was murdered when Pan American flight 103 was bombed in 1988. She said that, "The hurt you feel must not be allowed to turn into hate, but instead into the search for justice." But only a few paragraphs later, Clinton asserted that, "one thing we owe those who have sacrificed [i.e., the victims] is the duty to purge ourselves of the dark forces which gave rise to this evil." Clinton continued to frame the conflict as one between regular Americans and members of irrational hate-groups. He was not attempting to shape the threat as a war, but rather as an important internal struggle between those Americans who followed the rule of law and those who believed it did not apply to them. Indicative of his even-keeled message, Clinton declared that, "we will stand against the forces of fear. When there is talk of hatred, let us stand up and talk against it"[781]. The magnitude of the threat seemed to recede as Clinton now assailed militia groups, right-wing extremists and even "the influence centers in our culture—the entertainment industry, the sports industry"[782].

Clinton ratcheted up his rhetoric in a May 5, 1995 speech at Michigan State University in which he defended the American government. The President said that Americans have more freedom than most people in the world, and recanted the limits on government that the Constitution imposes. He stated that, "Our founding fathers created a system of laws in which reason could prevail over fear"[783]. That said, he continued to state that Americans were vulnerable due to the existence of "evil" ultra-right paramilitary groups and pushed the terror threat as one with a great magnitude. He did

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[781] William J. Clinton, "Oklahoma Bombing Memorial Prayer Service Address," 23 April 1995, http://www.americanrhetoric.com/speeches/wjcoklahomabombingspeech.thm.
[782] "Clinton Assails Militias for Anti-American Stance," *Buffalo News*, 2 May 1995.
[783] William J. Clinton, "Remarks by President Clinton at Michigan State University," 5 May 1995, http://www.clintonfoundation.org/legacy/050595-speech-by-president-at-michigan-state.htm.

this by playing on Americans' worst fears, "No one is free in an America where parents have to worry when they drop off their children for day care, or when you are the target of assassination simply because you work for the government," he said[784]. Though hate speech and far-right paramilitary groups did not seem to be a rampant problem in America aside from this isolated case, the President pushed the threat as one of great magnitude; albeit one that did not amount to war.

Even with the threat shaped as a criminal matter that needed to be contained, the passage of liberty-abridging counterterror laws appeared certain after the bombing[785]. Yet, an April 24, 1995 *Irish Times* article that doubted the passage of Clinton's new law proved prescient. It stated that, "while the mood in the US can be compared to that in Britain in 1974 when parliament rushed through the Prevention of Terrorism Act in the wake of the Birmingham bombings, it is by no means certain the Republican majority in Congress will favor a curtailing of civil liberties, especially when targeted against groups that are more likely to have Republican sympathies"[786].

III. The Proposed Legislation and the 1996 Antiterrorism Act

Before delving into the year-long debate between the President and Congress over new antiterror legislation, let us first look at the content of the legislation that Clinton proposed, and that was eventually passed. Looking at the legislation here will provide context for the legislative debate that transpired. Clinton's proposed counter-terror legislation contained the following provisions that made it into the final legislation. The 1996 Antiterrorism Act, "established a special court that would use secret evidence to

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[784] Farrell, John Aloysius. "President Condemns Extremists," *The Boston Globe*, 6 May 1995.
[785] "Act of Terror Forces Nation to Focus on Tighter Security," *The Buffalo News*, 21 April 1995.
[786] O'Clery, Conor. "Clinton calls for tough new laws on terrorism," 24 April 1995, *The Irish Times*.

deport noncitizens accused of association with terrorist groups; it gave the executive

branch the power to criminalize fundraising for lawful activities conducted by

organizations labeled 'terrorist'; it repealed the Edwards amendment, which prohibited

the FBI from opening investigations based on First Amendment activities; and it

resurrected the discredited ideological visa denial provisions of the [1952] McCarran-

Walter Act to bar aliens based on their associations rather than their acts"[787]. The

legislation allowed the FBI to gather information more freely on paramilitary groups[788],

but increased wiretapping authority was blocked by Republicans in Congress who were

worried about the curtailment of civil liberties[789].

Basically, the Act allowed the Secretary of State to designate groups as "terrorist,"

which made granting visas to their members and providing these groups with

humanitarian aid or donations a crime[790]. US banks would also have to freeze the funds

of the members of any organization deemed a terrorist group[791]. Further, under the Act

the government could "invoke ... secret evidence provisions whenever the attorney

general determine[d] that public disclosure of the evidence against an alleged 'alien

terrorist' would 'pose a risk to the national security of the United States or the security of

any person'"[792]. The bill impacted mainly Muslims who were accused of association

with terrorist groups[793].

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[787] Cole, David and James X. Dempsey. *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security.* (New York: The New Press 2006), pg. 125.
[788] Lewis, Neil A. "Clinton Plan Would Broaden FBI Powers," *The New York Times,* 25 April 1995.
[789] "Republican relativism: wiretap flip-flop," http://www.tpmcafe.com/node/29838; Congressional Record, "Comprehensive Antiterrorism Act of 1995," 13 March 1996 (House), pgs. H2129-H2190; Dempsey and Cole, *Terrorism and the Constitution,* pg. 134.
[790] Dempsey and Cole, *Terrorism and the Constitution,* pgs. 136-7.
[791] Dempsey and Cole, *Terrorism and the Constitution,* pg. 139.
[792] Dempsey and Cole, *Terrorism and the Constitution,* pg. 144.
[793] Dempsey and Cole, *Terrorism and the Constitution,* chapter 10.

IV. The Debate: Republicans Defend Civil Liberties against Security-Minded Democrats

With the terror threat shaped as a marginal one, Clinton's antiterror legislation, originally proposed in February 1995, appeared out of place. The President was harping on the threat of hate speech and right-wing zealots[794], while forwarding legislation that made it easier to deport immigrants allegedly linked to terror groups[795]. Five days after the bombing, the Senate passed a symbolic resolution condemning the bombing and praising the President for the rapid aid he helped the victims receive. The resolution also vowed that the Senate would "expeditiously approve" new counterterrorism legislation[796]. On April 27, 1995, the Senate leaders of the majority Republican Party introduced an updated anti-terror bill to the judiciary committee. Amending the previously proposed counterterror bill, the new, proposed bill would add tags made of microscopic particles to raw materials that could be used for bomb making, allow the military to participate in domestic criminal cases, give the FBI more leeway in conducting electronic surveillance, and stiffen penalties for attacks on federal employees[797].

Though the American public was in a state of fear and Bill Clinton was pushing new legislation, Republican Senator Bob Dole, the majority leader in the Senate, counseled patience. Dole stated, on an ABC news program, his view that, "we better move slowly on the legislation we're considering, make certain we get it right so we can sit here a year form now ... and say we did the right thing ... instead of getting caught up

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[794] Kane, Mary. "Clinton Blames Rhetoric of the Ultra-Right," *Times-Picayune* (New Orleans), 26 April 1995.
[795] Sallee, Rad. "Anti-terrorism proposal spurs fears of attacks on civil liberties," *The Houston Chronicle*, 26 April 1995.
[796] Clayton Jr., William E. "Senate condemns 'heinous' attack," *The Houston Chronicle*, 26 April 1995.
[797] Freedland, Jonathan. "Oklahoma Suspect 'Seen in Bomb Truck,'" *The Guardian* (London), 28 April 1995.

in emotion and going too far and maybe end up trampling on" an innocent person or group's rights[798]. In response to the Republican Party's sense of calm, Clinton unleashed a fiery speech on May 2 in which he stated that America's open society was vulnerable "to the forces of organized evil," while US Treasury officials asked Congress for increased funding and legal authority to combat what they described as a war on the federal government[799]. On May 31, 1995, Clinton made a statement of threat declaring that, "Congress has a right to review this legislation to make sure the civil liberties of American citizens are not infringed ... but they should not go slow. Terrorists do not go slow, my fellow Americans. Their agenda is death and destruction on their own timetable"[800]. In response, Senator Dole threatened to "pull down" the counterterror bill if President Clinton did not rein in Democrats who had added 67 amendments to the bill[801].

Three days later, on June 7, 1995, seven weeks after the Oklahoma City bombing, the Senate overwhelmingly passed Bill Clinton's counterterror legislation in a 91-8 vote[802]. The bill contained a key provision fought for by Republicans that limited the appeals of death row inmates in Federal courts[803]. Two weeks later, the House Judiciary Committee approved the legislation[804], but it would rot in the House for a year before finally being

[798] LaBaton, Stephen. "Data Show Federal Agents Seldom Employ Surveillance Authority against Terrorists," *The New York Times*, 1 May 1995.

[799] Holland, S. "Clinton Condemns Ultra-Right Groups," *Herald Sun*, 3 May 1995.

[800] Harris, John F. "Clinton Criticizes Congress for Delay on Post-Bombing Anti-Terrorism Bill," *The Washington Post*, 1 June 1995.

[801] "Anti-terror legislation floundering, Dole says," *St. Petersburg Times*, 5 June 1995.

[802] Gray, Jerry. "Senate Approves Anti-terror Bill by a 91-to-8 Vote," *The New York Times*, 8 June 1995.

[803] "A Hasty Response to Terrorism," *The New York Times*, 9 June 1995.

[804] "Bill Builds Muscle to Fight Terrorists," *Herald Sun*, 22 June 1995.

passed. A coalition of far-right and far-left members of the House of Representatives stymied the bill on grounds of civil liberties and gun ownership rights[805].

Clinton's anti-terrorism bill had been heralded by House Democrats, such as Dick Gephardt, who stated on May 15, 1995 that,

> "We must do more than merely convicting those responsible for this horrific act of violence, and bringing them to swift and certain punishment. We must serve warning to all who would use extremist means to advance their extremist ideas: We will use the full force of our laws to find them, to punish them, and to rid our society of their hateful acts. And when those laws aren't enough, we'll write tough new laws to rein in their wanton bloodshed and terrorism"[806].

While House Republicans counseled patience, Democrats such as Representative Charles Schumer repeatedly stated that the passage of new counterterror legislation was both necessary and urgent[807].

Despite the Democrats' claims of urgency, an unlikely coalition of special interest groups made up of the American Civil Liberties Union (ACLU), the National Rifle Association (NRA), and Arab and Muslim groups, joined together to block the bill in the House. House Republicans were also uneasy about passing a bill aimed against anti-government libertarians and gun owners. Meanwhile, House Judiciary Committee chairman Henry Hyde (a Republican) excised the legislation of its roving wiretap provision and tucked into it Republican Party Contract with America crime provisions

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[805] McDonald, Greg. "Clinton exhorts foes to set aside ideology," *The Houston Chronicle*, 20 August 1995.
[806] Gephardt, Richard. "The Antiterrorism Act of 1995," Congressional Record (House of Representatives), 15 May 1995, pg. E1039.
[807] See, for example, Charles Schumer, "Bringing the Terrorism Bill to the Floor," Congressional Record (House of Representatives), 15 December 1995, Pg. E2417.

that relaxed laws on habeas corpus and allowed for speedier death penalties[808]. The Contract with America was a list of promises that Republican Party candidates ran on in the 1994 electoral campaign[809], it was credited with helping the Republicans gain control of the House of Representatives for the first time in 40 years.

On March 13, 1995, the Republican House majority voted 246- 171 to weaken Clinton's antiterrorism bill. House members said that they feared the federal government more than they feared terrorists[810]. Finally, the anti-terror legislation, now called the Anti-terrorism and Effective Death Penalty Act of 1996, was passed by the House on April 15, 1995. Democratic Representative Charles Schumer complained that, "this bill should be called the better-than-nothing anti-terrorism bill"[811]. The final contents of the bill can be seen in the above section. In his weekly radio address, the President bitterly complained that House Republicans had gutted the counterterror bill, largely by removing its provision for roving wiretaps "under pressure from the Washington gun lobby"[812]. The House gave its final approval for the bill in a bipartisan 293-133 vote on April 18. Rep. Henry Hyde stated that the compromise legislation, "maintains the delicate balance between freedom and order"[813]. Five days after the one-year anniversary of the Oklahoma City bombing, Bill Clinton signed the new counterterrorism legislation[814].

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[808] Marquand, Robert and Sam Walker. "Revised Antiterrorism Bill Rides Again," *The Christian Science Monitor*, 12 March 1996.
[809] See "Republican Contract with America," http://www.house.gov/house/Contract/CONTRACT.html.
[810] "House Guts Anti-terrorism Law; Members cite Fear of Government," *Plain Dealer* (Cleveland), 14 March 1996.
[811] "Anti-terrorism Law Expected to Pass this Week," *Newsday*, 16 April 1996.
[812] Editorial, "A Terrible Bill," *The Pittsburgh Post-Gazette*, 18 April 1996.
[813] Dewar, Helen. "Clinton to Sign Terrorism Bill Despite Lack of Enforcement Provisions, Aide Says," *The Washington Post*, 19 April 1996.
[814] Kuttler, Hillel. "Clinton signs bill aimed at dealing 'mighty blow' to terror," *The Jerusalem Post*, 25 April 1996.

V. Why Was Clinton's Anti-terror Legislation Blocked for One Year?

There are numerous reasons for why it took Bill Clinton's proposed anti-terror legislation over one year after the Oklahoma City bombing to pass through Congress. In this section, we will evaluate those reasons looking first at executive response and threat-shaping, then public opinion and mass fear, and finally institutional variables. The way in which President Clinton shaped the terror threat certainly hurt his legislation's cause. He shaped the threat as a crime and though he continually spoke to the urgency of the terror threat, his framing of the conflict as one between law-abiding Americans and anti-government hate groups and right-wing extremists did not resonate with Congress. One might argue that he had no choice in shaping the threat as such, but he could have pointed more often to the 1993 World Trade Center bombing, the original cause for the proposed legislation, as well as the 1993 siege of the Branch Davidians in Waco, Texas. Instead, the President pointed fingers at right-wing personalities such as Rush Limbaugh and at the right to bear arms, a strategy which alienated the majority Republican Congress.

On the public opinion front, mass fear levels were high after the Oklahoma City bombing, but the nature of public opinion surveys makes it difficult to tell whether or not there was a bump in mass fear levels. At best, available data allows us to surmise that there was a rise in fear levels after the bombing and conclusively state that fear levels were high. This is because polling on terrorism tends to occur after terror attacks occurs. That said, as Brigitte Nacos notes, terrorism rises and recedes very quickly as a salient issue in the mind of Americans. She notes that after the 1985 TWA hijacking, 13% of Americans saw terrorism as the most important problem facing their country according to a CBS/*New York Times* survey, whereas six months earlier terrorism had not been

mentioned at all as an important problem facing America and six months later, less than 1 percent of respondents mentioned terrorism when faced with the same query[815].

The below chart combines data from polls asking Americans about whether they *personally* feel danger from terrorism[816]. It clearly shows a rise in terror fears after Oklahoma City, though obviously not as high as the fear levels after 9/11. Evidently, even though President Clinton's threat-shaping strategy did not affect Congress, it resonated with the public as mass fear levels rose between April and July of 1995. Note that the first poll taken in the below chart comes from March 1993, after the first World Trade Center bombing transpired. In addition to this data, polls asking Americans how worried they were that they or someone in their family would become victims of terrorism found that 42% of Americans were very or somewhat worried about this scenario in April 1995, a figure which receded to 35% a year later and 27% two years later[817]. Moreover, in the days after the Oklahoma bombing, 84% of Massachusetts residents polled by *The Boston Herald* believed that is was "very likely" or "somewhat likely" that an incident similar to the Oklahoma City bombing would occur in the US in the next few years[818]. It is safe to say, then, that mass fear levels were high after the Oklahoma City bombing.

[815] Nacos, Brigitte L. *Terrorism & the Media: From the Iran Hostage Crisis to the Oklahoma City Bombing.* (New York: Columbia University Press 1994), pg. 70.
[816] The data comes from March 1993 and April 1995 Gallup/CNN/*USA Today* polls asking respondents, "Do you personally feel any sense of danger from terrorist acts where you live and work, or not?" and CBS/*New York Times* polls from 9/11/2001 to early January 2002 which asked Americans, "Would you say you personally are very concerned about a terrorist attack in the area where you live, or not?"
[817] Data comes from April 1995 and April 1996 Gallup/CNN/*USA Today* polls and an April 1997 Yankelovich/Time/CNN poll which asked respondents: "How worried are you that you or someone in your family will become a victim of a terrorist attack similar to the bombing in Oklahoma City?"
[818] Miga, Andrew. "Terror fears hit home," *The Boston Herald*, 30 April 1995.

Chart Four:

American Personal Terrorism Fears

Legend: Feel Danger/Concern

X-axis: 3/1/93, 4/1/95, 7/1/95, 9/11/01, 9/12/01, 9/13/01, 9/20/01, 10/8/01, 10/25/01, 11/13/01, 12/7/01, 1/5/02

Y-axis: 0% to 50%
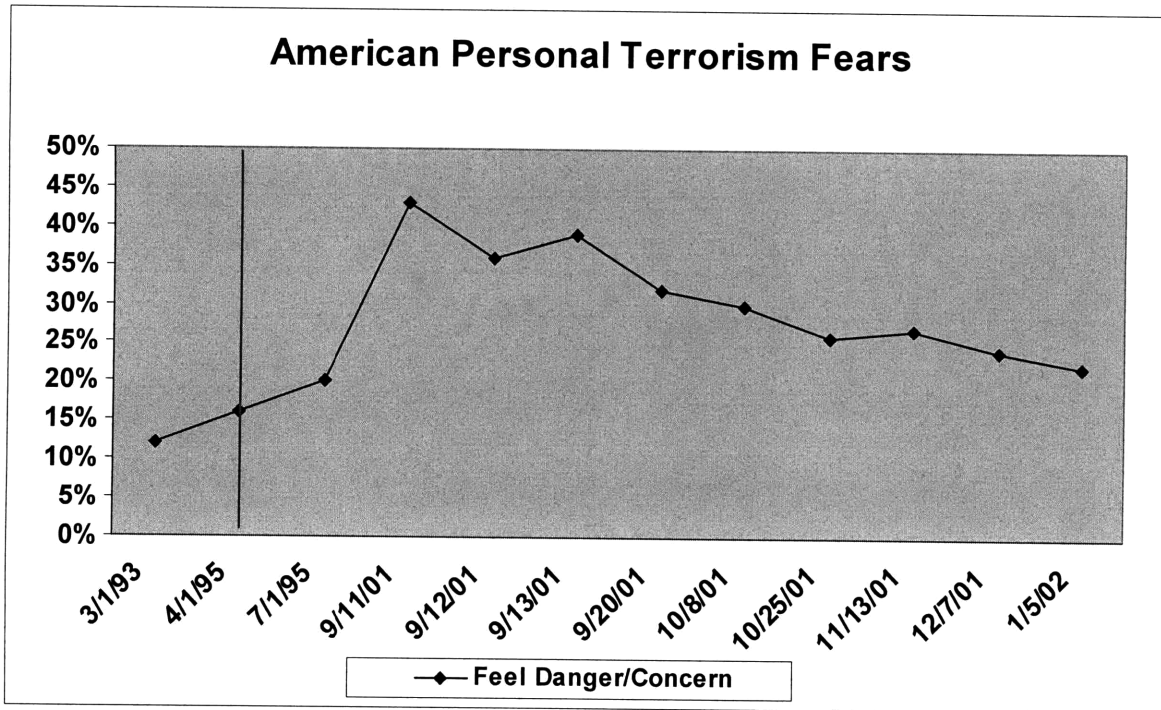
There was also a public demand for government action after the Oklahoma bombing. This is indicated by polls that show that Americans were willing to trade liberties for security after the Oklahoma City bombing. An April 1995 *Los Angeles Times* poll found that 49% of Americans thought that it was necessary for the average person to give up civil liberties in order to bolster security after the Oklahoma City bombing compared to 43% who thought that curbing liberties was unnecessary.

Just as in the previous case, however, approval ratings were not in the executive's favor. President Clinton's approval rating after the Oklahoma City bombing was a paltry 45% according to the Harris Interactive poll. Moreover, Clinton's approval ratings saw no rally after the terrorist incident in Oklahoma. Indeed, his average approval rating for

1995 was 47%, similar to his 46% average rating from the previous year[819]. Here it is important to emphasize that once again approval ratings seem to have played a big part in determining the fate of an executive's counterterror legislation.

All three political constellation variables contributed in explaining this case. Recall that these variables are legislative composition, party competition, and political institution. First let us look at the composition of the government. In 1994, President Clinton's party lost more seats than in any midterm election since 1946; Democrats lost 54 seats and control of House for first time in 40 years as well as nine Senate seats[820]. The historic shift of power emboldened the GOP to challenge Clinton, and also was indicative of a weak executive mandate.

Party competition, as measured by temporal proximity to an election, also had something to do with why the legislation was blocked as 1996 was a presidential election year and the head of Senate Republicans, Bob Dole, was running for president. Finally, the bicameral nature of the American legislature played a strong role in halting the quick passage of counterterror legislation. Though the Senate quickly passed Clinton's anti-terror bill after Oklahoma City, the House halted its passage for a full year. Though many scholars have posited that presidential systems are more likely to lead to abuses of power, due to the presence of a more powerful executive[821], here the legislative-executive antagonism inherent in the American system and particularly the existence of the bicameral legislature served as a strong check against executive power.

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[819] Holland, Keating. "Clinton Approval Rating at All-Time High," CNN.com, 16 January 1997, http://www.cnn.com/ALLPOLITICS/1997/01/16/poll.clinton/.
[820] Campbell, James E., "The Presidential Pulse and the 1994 Midterm Congressional Election," *The Journal of Politics*, Vol. 59, No. 3 (Aug., 1997), pp. 830-857.
[821] On this point, see the discussion in chapter 5.

<u>Case Comparison</u>

We now turn to a comparison of the two above cases to glean findings. Two main factors jump out as being behind the failed passage of legislation in these cases. The first is the timing of the attacks and the second is the lack of a rally 'round the executive, a factor which needs to be explained. In order to bolster the findings here, I will add data from the 2004 Madrid bombings case. On March 11, 2004, a series of ten bombs exploded within minutes of each other on four commuter trains in Madrid, Spain killing 191 people and injuring 1,841. It was the deadliest terror attack in Spanish history. Three days later, the Spanish Prime Minister Jose Maria Aznar's Popular Party lost power in a scheduled election[822]. In the Madrid case, Jose Maria Aznar "hastily tried to pin" the Madrid bombings on ETA, the Basque- nationalist separatist terrorist organization, but "[h]e failed miserably" and a few days later "an outraged electorate voted his party out of power"[823].

First, the timing of all three attacks was critical. All three executives, Blair, Clinton and Aznar, had low approval ratings before the attacks and inter- or intra-party competition was high. In the Spanish case, Aznar's participation in the Iraq War led to his approval rating falling to 31%[824]. In the British and Spanish cases, opposition legislators used the terror attacks to push out the incumbent prime minister. Therefore, *it is evident that when inter- or intra-party competition is high, especially before an election, opposition legislators use terror attacks for political gain.*

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[822] BBC News, "Madrid train attacks," http://news.bbc.co.uk/1/shared/spl/hi/guides/457000/457031/html/default.stm; BBC News, "Aznar says no regrets over poll," 23 March 2004, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/3560561.stm.
[823] Boin, Arjen, Paul 't Hart, Eric Stern, and Bengt Sundelius. *The Politics of Crisis Management: Public Leadership under Pressure.* (Cambridge, UK: Cambridge University Press 2005), pg. 13.
[824] BBC News, "Aznar boosted in Spain poll," 26 May 2003, http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/2937378.stm.

Second, the lack of rallies 'round the leader in these cases needs to be explained. Analyzing public opinion data after major international events, Richard Brody found that in 42 of the 65 situations "the president pick[ed] up support"[825]. Brody writes that, "the fact of different responses to similar international crises makes it unsatisfying to hypothesize that the rally [for the executive] is caused by an upwelling of patriotism in the face of some international threat." Instead, Brody submits that, "Opposition leaders in some crisis situations lose their incentive to criticize presidential performance, and when this happens, the public rallies"[826]. Rallies 'round the executive occur when opposition elites choose not to criticize executive action. In the post-crisis cases where opposition legislatures fulfill their usual critical role of executive policy-making, rallies of executive support do not occur. This finding clearly demonstrates the top-down nature of post-crisis responses to terror attacks. The presence of high political competition (more on this below) seems to explain why opposition legislators counter civil liberty-abridging legislation even after large, sometimes historic, terrorist attacks.

Conclusion

In the majority of cases where large terrorist attacks lead to executives pushing for broad counterterror legislation, the executives get their way. The cases in this chapter exhibited the value of the following five factors. First, executive threat-shaping was once again bolstered as the independent variable in pushing counterterror legislation. Though both Clinton and Blair were blocked in their initial pursuits of legislation, they both eventually got most of what they wanted from their respective legislatures though with a

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[825] Brody, Richard A. *Assessing the President: The Media, Elite Opinion, and Public Support.* (Stanford, CA: Stanford University Press 1991), pg. 56.
[826] Brody, *Assessing the President*, pgs. 77, 169-70.

time delay. Shaping the terror threat as a law enforcement issue, or a crime, proved to be a hindrance to passing anti-terror law. Both Clinton and, at times, Blair framed the terror threat as a criminal matter and this framing simply made the threat appear less urgent and important. Second, also bolstering the importance of the executive in pushing post-terror attack responses, executive approval ratings proved to be critical in determining whether or not anti-terror laws would be passed. Neither case saw a rally 'round the leader after the terror attack and both leaders examined had poor approval ratings both before and after the attacks. That said, mass fear levels, though a constant across cases, were clearly important in pushing the threat.

Third, the executive's mandate proved to be particularly important in these cases. Even with a favorable partisan composition of the government, Tony Blair's mandate was weak given poor election results and a poor approval rating. Clinton's mandate, also given poor election results and a poor approval rating, was also weak. This weak mandate allowed opposition legislators to capitalize on the terror attacks for political gain, an outcome that also occurred in the 2004 Madrid bombings case.

Fourth, party competition was heightened in the Clinton case, and arguably in the Blair case. For Clinton, impending elections emboldened opposition Republicans. For Blair, growing unrest within the Labor Party and calls for Gordon Brown to replace him as leader of the party created internal party competition. The most dramatic case of temporal proximity to elections hurting an executive after terror attacks came in the Madrid case. Finally, political institutions were critical in shaping the Oklahoma City

bombing case[827]. The bicameral nature of the American legislature, rather than the presence of an office of the president, created a strong and sufficient check on Bill Clinton's counterterror bill.

Given these findings, the above theory can be revised to look as it does below. In the below revised theory chart, all of the variables remain the same with the exception of the constraint variables that appear below the executive response and threat-shaping independent variable. Instead of generally showing public opinion and mass fear levels constraining the executive, it has now been shown that executive approval ratings and mass fear levels constrain executive action. Further, the political constellations variable has exhibited that proximity to elections, composition of government, temporary right-left government coalitions, and bicameral legislatures can stymie the passage of anti-terror legislation. The political constellations variable is here revised as "political competition and number of checks on the executive." **Political competition**, as opposed to party competition, means both temporal proximity to an election and internal competition within a party that, in a parliamentary system of government, may lead to a leadership change or the calling of a new election. The political competition variable looks at temporal proximity to an election and general inter-party or legislative-executive tensions in addition to examining the probability that the party in power will be ousted in upcoming elections.

Checks on government can come in the form of a bicameral legislature, a temporary coalition, or an opposition party controlling the legislature. Other cases may show that other checks are important, but it is clear that the more checks on the executive,

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[827] In chapter five, whether the government in question was a presidential or parliamentary democracy made little difference in the domestic, legislative response to terrorism. That chapter did not specifically test the institution of a bicameral (versus unicameral) legislature.

the harder it will be for him to pass legislation. That said, these checks, such as the partisan composition of the legislature and temporary coalitions, are not necessarily etched into institutions. Rather some are institutional but many are borne out of the regular legislative process. By defining this constraint variable as "political competition and number of checks," I have taken account of the findings made here while allowing for future idiosyncratic outcomes in other cases.

Though stating that increased checks on government executives can stop civil liberty-abridging legislation sounds heartening, most of the time counterterror laws get quickly passed after major terror attacks. Weak executive mandates, exhibited by low executive approval ratings and poor recent election results for the executive's party, high levels of political competition, and shaping the terror threat as a crime, rather than an act of war[828], were the main factors behind the blocked passage of counterterror laws. These factors allowed existing checks to take effect and new checks—in the form of right-left coalitions—to form. After all, both the 1974 Birmingham bombings and the 9/11 attacks occurred recently after elections were held and led to quick passage of liberty-abridging legislation through divided legislatures. Thus, political competition and number of checks are really secondary constraints, while approval ratings and mass fear levels are the primary constraints on executive action. The order in which these constraints are listed reflects this reality.

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[828] Chapter seven will elaborate on the effect of shaping the threat as a crime.

Revised Theory Chart:
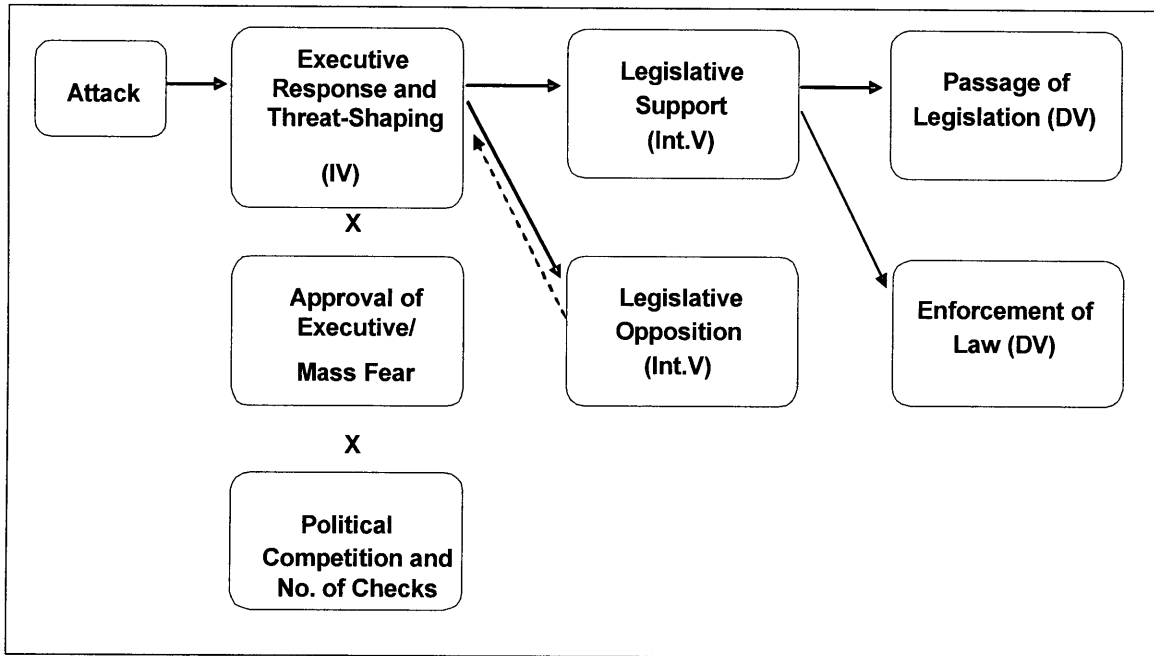
Chapter Seven

Conclusion

Jerrold Post contends that, "no matter what the political constraints, idiosyncratic personality features can play a determinant role" in policymaking[829]. Post contrasts the "great man theory of history" with "rational national actor analysis," to illustrate "[w]hen in the course of human events leader personality affects political behavior"[830]. There are two major topics with which this dissertation has struggled. One is the power of personalities to determine the course of events after crises. The other is the power of democratic institutions and public opinion to restrict executive action.

Political science, unlike history, attempts to understand social, political phenomena by using the scientific method. That means developing hypotheses, conducting tests, and trying to reach conclusions that are replicable and universal. But human behavior is frequently unpredictable. In a field that wants badly to be respected as hard science, rational choice theory has flourished. Rational choice holds that an individual's behavior can be explained and predicted if we know how he ranks his preferences, what his beliefs are, and what information is available to him. Gary Becker has done a remarkable job of fitting economic theory, through the study of utility/preference curves, into a wealth of human activities[831]. Rational choice has its values: it allows social scientists to create models of behavior that can then be tested in the real world. But too often that second step is passed over.

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[829] Post, Jerrold M. *Leaders and Their Followers in a Dangerous World: The Psychology of Political Behavior.* (Ithaca, NY: Cornell University Press 2004), pg. 21.

[830] Post, *Leaders and Their Followers in a Dangerous World*, pgs. 11, 15-6.

[831] Becker, Gary S. *The Economic Approach to Human Behavior.* (Chicago: University of Chicago Press 1976).

What's been lost is a study of personalities. In the quest to rationalize the world and compartmentalize it into rules, we lose the ability to appreciate the complexities and wonder of the human psyche[832]. Everyone has preferences, beliefs, and varying degrees of information, but people also have personalities. When crises occur, all the work of the rational-choice scholar many times flies out the window. As Peter Baehr and Gordon Wells emphasize, Max Weber "repeatedly noted that, from the standpoint of individual conduct, history is deeply *irrational*. Between action and consequence lies a chasm that no one can bridge, let alone control"[833]. Though many have decried George W. Bush's campaign promise not to nation-build, contrasting this with the Bush Doctrine[834], these pundits fail to realize the power of crises to change or reveal a person's preferences and intentions. When faced with a personal crisis do we forgive, do we run away, do we act self-destructively, or do we act constructively? These are important factors that even the deepest dive into our histories and past behaviors cannot answer. We cannot simply look at a preference ranking of an individual to see how he will react to future events that in many instances are presently unimaginable to him.

By looking at crisis and the reaction to crises, this study examined the personalities of leaders. But the results of this study do not amount to "different people, different things." Responses to terror attacks, and indeed all types of crises, vary. But terrorist attacks in particular are vulnerable to executive threat-shaping. After all, after terror attacks, it is frequently unclear who the enemy is, what their desires are, and, most

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[832] Max Weber explains the rationalization of human society in *The Protestant Ethic and the "Spirit" of Capitalism*. (See Weber, Max. *The Protestant Ethic and the "Spirit" of Capitalism and Other Writings*. (New York: Penguin Books 2002), pgs. 21- 2, 26- 28).

[833] Baehr, Peter and Gordon C. Wells, "Editors' Introduction" in Weber, Max. *The Protestant Ethic and the "Spirit" of Capitalism and Other Writings*. (New York: Penguin Books 2002).

[834] See, for example, Shapiro, Ian. *Containment: Rebuilding a Strategy against Global Terror*. (Princeton, NJ: Princeton University Press 2007), pg. 25.

importantly, why the attack happened and whether similar attacks will follow[835]. When the Bush Administration pushed through the Iraq War after 9/11, it was because some of its members had wanted to pursue these actions well before the catastrophe[836]. Yet Congress was also cowed. Compare this to Parliament blocking Tony Blair's antiterrorism legislation after the 7/7 attacks of 2005 or Congress sitting on Bill Clinton's legislation after the Oklahoma City bombing.

As this study showed, the power of the executive to push through legislation after terrorist attacks is limited by his mandate. With favorable public approval ratings, a fearful society and a governing coalition, almost any counter-terror legislation can be passed. But without these things, even in times of great calamity after terror attacks, the executive can be blocked in his quest to pass civil liberty-abridging legislation. Further, in times when political competition is high, especially when elections are near, opposition legislators have strong incentives to oppose the ruling executive after domestic acts of terrorism occur.

This final chapter seeks to bolster the findings of the previous chapters. First, the power of executive response, the first part of the independent variable, will be elucidated by examining the cases of Yitzchak Rabin's dealings with the first intifada in Israel and Bill Clinton's handling of the 1993 World Trade Center bombing. Next, corollary cases that bolster the theory forwarded in this dissertation will be covered and directions for future research will be suggested. Third, policy prescriptions will be submitted. Finally, I will end with concluding remarks.

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[835] Gambetta, Diego. "Reason and Terror: Has 9/11 made it hard to think straight?" *Boston Review*, February/March 2004.
[836] On Iraq, see Shapiro, *Containment*, pg. 23-4.

The Power of Executive Response: Yitzchak Rabin and Bill Clinton

The last two cases I wish to cover in this study are those of Prime Minister

Yitzchak Rabin's handling of the first intifada in Israel and President Bill Clinton's

response to the first World Trade Center bombing in New York City in 1993. Both of

these leaders exhibited remarkably restrained responses to the terror threat that they

faced. Both also largely forewent passing civil liberty-reducing legislation and, instead,

treated the terror threat as a law enforcement matter. To this end, both executives chose

to simply enforce law against terrorists rather than pass new legislation.

These cases clearly exhibit the power of *executive response*, the first component

of the independent variable in this study. Recall that executive response means the

executive's initial post-terror attack decision to seek the passage of liberty-reducing laws

or not. All of the cases covered to this point included leaders who sought to pass

counterterror legislation after attacks, thus executive response was not a major factor in

these cases. Here, the response of the executive will be highlighted to further bolster

previous findings about the centrality of chief executive actions and decisions in post-

terror attack domestic, legislative responses. Note that in the case selection chart in

chapter one these cases are categorized as "threat shaped as crime," with the Israel case in

the "legislation quickly passed" row and the U.S. case in the "legislation blocked or not

pursued" row. Though in both of the following cases civil liberty-abridging legislation is

largely not pursued, Yitzchak Rabin did pass some minor changes to counter-terror law in

response to the first intifada while Bill Clinton sought no legislative changes at all in

response to the first World Trade Center bombing.

The first intifada (or "throwing off") was a popular Palestinian uprising aimed at

helping Palestinians gain sovereignty over their land that began in 1987 with large

demonstrations, civil disobedience, and Palestinian youths hurling stones at Israeli

security forces and civilians. The uprising was touched off by "an otherwise

unremarkable collision involving an Israeli truck and some other vehicles," which

"resulted in the deaths of several Palestinian workers." The accident spurred "an

explosion of Palestinian rioting" that soon became the intifada[837]. Though the intifada

began as a series of largely nonviolent demonstrations, the uprising became increasingly

violent as time dragged on[838]. Most scholars place the end of the first intifada in

September 1993 with the signing of the Oslo Accords peace agreement between Israelis

and Palestinians, yet terror attacks and Israeli reprisals carried on throughout Yitzchak

Rabin's second term as prime minister of Israel, which spanned the years 1992 to 1996.

Btselem statistics show that between 1992 and 1994, 93 Israelis (44 of them members of

security forces) were killed, while "only" 34 Israelis were killed in the first five years of

the intifada, 1987-91. Meanwhile, 394 Palestinians were killed by Israeli security forces

between 1992 and 1994[839]. Rabin's response to terrorism here will thus focus on the

years 1992-94.

Yitzchak Rabin was elected Prime Minister in 1992 on a platform that emphasized his

ability to bring peace to the Middle East. On September 13, 1993, Rabin, and Palestinian

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[837] Hoffman, Bruce. *Inside Terrorism*, Revised and Expanded Edition. (New York: Columbia University Press 2006), pg. 146.
[838] "Intifada," Microsoft Encarta Online Encyclopedia 2007.
[839] Btselem human rights group, "Fatalities in the first intifada," http://www.btselem.org/english/Statistics/First_Intifada_Tables.asp.

leader Yasir Arafat, signed a historic interim peace agreement, known as the Oslo

Accords, between Israelis and Palestinians in Washington, DC[840]. About one year later,

on October 26, 1994, Rabin signed a peace treaty with Jordan[841]. Rabin's commitment to

the peace process presented him with a "difficult dilemma" as he sought to "strike the

right balance between advancing peace on the one hand and maintaining security on the

other"[842].

Despite the growing violence of the intifada, Rabin pushed forward and signed peace

accords with the Palestinians and Jordanians. Still, the Prime Minister did make minor

changes to Israeli counterterror law and, more importantly, he deported 415 Hamas

activists to southern Lebanon in December 1992[843]. This latter act came after five Israeli

soldiers and a member of the Border Police were slain by terrorists in late 1992[844]. Not

only did Rabin punish these individuals simply for their political affiliations[845], but the

deportations turned out to be a serious miscalculation. Rabin intended on deporting the

Hamas members to avoid cracking down collectively on Palestinians living in the

territories, but the deportations served to raise support for the Islamic extremists among

Palestinians while also leading to the contribution of Hezbollah's know-how to the

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[840] See text of document at "Declaration of Principles On Interim Self-Government Arrangements," http://www.jewishvirtuallibrary.org/jsource/Peace/dop.html.
[841] "Address by Israeli Prime Minister Yitzhak Rabin at the Signing Ceremony of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan," Israel Ministry of Foreign Affairs, 26 October 1994, http://www.mfa.gov.il/MFA/Archive/Speeches/PM+RABIN-+SIGNING+CEREMONY+OF+ISRAEL-JORDAN+PEACE.htm.
[842] Auerbach, Yehudith and Charles W. Greenbaum. "Assessing Leader Credibility during a Peace Process: Rabin's Private Polls," *Journal of Peace Research*, 37:1 (January 2000), pg. 35.
[843] On changes to counterterror law see "Prevention of Terrorism Ordinance No. 33 of 5708-1948," Israel Ministry of Foreign Affairs, http://www.mfa.gov.il/MFA/MFAArchive/1900_1949/Prevention%20of%20Terrorism%20Ordinance%20 No%2033%20of%205708-19. The small changes to the counterterror law appear at the bottom of the page. On the Hamas deportations see Haberman, Clyde. "The World: Israel's Deportations; Rabin Kicks the Mideast Peace Table," *The New York Times*, 20 December 1992; Hoffman, *Inside Terrorism*, pg. 148.
[844] Hoffman, *Inside Terrorism*, pg. 148.
[845] "Clinton, Israel and the Hamas Expulsion," *Middle East Report*, no. 181 (March-April 1993), pg. 37.

Hamas terror organization. In fact, Rabin's deportation of the 415 Hamas extremists was

critical in Hamas' decision to begin using car bombings and suicide attacks against

Israel[846]. Indeed, the first Hamas suicide car bombing occurred on April 6, 1994 and the

first suicide human bombing against Israel took place one week later on April 13, 1994.

Both suicide attacks hit Israel during Rabin's rule and after the signing of the Oslo

Accords[847].

Other than the deportations and the small differences made to terror legislation, Rabin

engaged in a ritual of post-terror attack responses that has become all too common in

Israel. The ritual involved the closure of the Occupied Territories and empty threats

made to the Palestinians, including threatening to end peace talks. The Palestinian

Liberation Organization (PLO) would make "a few demonstrative moves against terrorist

infrastructure" and Israel would drop its threats in a matter of "hours or days"[848].

Yitzchak Rabin tried to balance countering the terror threat in Israel with pushing the

peace process. For a while, he was successful in doing this. A 1995 speech was

indicative of the Prime Minister's statements; he said that there was "no other

alternative" to pursuing peace "for this is the solution for the long term, and to the

terrorism, even if it is difficult for us now. I am convinced that the path the government

has taken, is the path which will lead to the end of control over another people"[849].

Auerbach and Greenbaum demonstrate that Yitzchak Rabin was extremely concerned

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[846] Hoffman, *Inside Terrorism*, pg. 148.
[847] Hoffman, *Inside Terrorism*, pg. 150; "Main Events in Hamas' History," *USA Today*, http://www.usatoday.com/news/world/2004-03-22-hamas-timeline_x.htm.
[848] Ganor, Boaz. "Israel's Counter-Terrorism Policy: 1983-1999—Efficacy versus Liberal Democratic Values," International Institute for Counter-Terrorism brief based on Ganor's dissertation, 15 September 2002, http://www.ict.org.il/apage/5543.php.
[849] "Rabin's Remarks on Beit Lid Bombing," 23 January 1995 in "Speeches by Yitzhak Rabin," http://www.jafi.org.il/education/actual/rabin/speeches.html.

with the public's views of his actions during the peace process and show that Rabin's few

tough stands on terror helped maintain his credibility in the public's eyes[850].

In sum, this case shows the power of a popular leader who decided not to submit

to terrorism and, instead, responded with some enforcement measures against terrorists

while pursuing a peaceful solution to a terror-producing conflict. The case clearly

exhibits the power of the chief executive in government to decide whether or not to

pursue counterterror legislation. That said, once again, approval ratings were still critical

in this case. As Auerbach and Greenbaum show, without healthy approval ratings, Rabin

could not have pursued his bold strategy. Further, the support the late Prime Minister had

from his government coalition was also a necessary condition to the pursuit of his dovish

counterterror strategy. As is too frequently the case, Rabin's bold strategy ended

tragically. He was assassinated by a right-wing Israeli extremist on November 4, 1995.

As Paul Wilkinson writes,

> "There is no doubt that the loss of Prime Minister Rabin, a man widely admired
>
> and trusted by the public to protect Israel's vital interests, combined with the
>
> strong feelings of anger and insecurity engendered by the terrorists' [continued]
>
> suicide bombings, helped to ensure the defeat of Shimon Peres, Yitzhak Rabin's
>
> successor. The coming to power of Prime Minister [Binyamin] Netanyahu in
>
> 1996 and a right-wing-dominated government that for the most part was
>
> fundamentally opposed to the underlying principles of the Oslo Accords radically
>
> altered the prospects for peace. Hence terrorism from both Palestinian and Israeli

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[850] Auerbach and Greenbaum, "Assessing Leader Credibility during a Peace Process: Rabin's Private Polls," pgs. 47-9.

rejectionists and the outcome of the Israeli general election led to a situation

where the peace process was very nearly extinguished"[851].

Bill Clinton and the 1993 World Trade Center bombing

President Bill Clinton dealt with the 1993 World Trade Center bombing in a

similar manner to how Yitzchak Rabin dealt with the first intifada. Of course, Clinton

was not trying to balance a peace process with a terrorist threat, but he did deal with the

terror attack as a criminal matter and simply enforced existing law in response to the

bombing. This section will briefly recount the events of February 26, 1993 then

summarize Bill Clinton's response to the terrorist attack. Again, the purpose of this case

is to show the power of the chief executive in deciding how to respond to terror attacks.

Specifically, the Clinton and Rabin cases exhibit the executive's power to tamp down the

terror threat after an attack and quickly move on from it.

On February 26, 1993, a group of Islamic extremist terrorists drove a rental van

into the basement of the World Trade Center in New York City and "set a timer to

detonate the 1,500-pound urea-nitrate bomb" inside the van. At 12:18 local time, a

massive blast erupted "creat[ing] a cavernous crater 200 feet by 100 feet wide and seven

stories deep in the garage of the World Trade Center." The terror attack killed six people,

injured 1,042, and caused almost $300 million in damages[852].

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[851] Wilkinson, Paul. *Terrorism versus Democracy: The Liberal State Response*, Second Edition. (New York: Routledge 2006), pg. 54

[852] Parachini, John V., "The World Trade Center Bombers (1993)," Chapter 11 in Tucker, Jonathan B. ed., *Toxic Terror: Assessing Terroirst Use of Chemical and Biological Weapons*. (Cambridge, MA: MIT Press), pgs. 185- 206; BBC News, "1993: World Trade Center bomb terrorises New York," BBC News, http://news.bbc.co.uk/onthisday/hi/dates/stories/february/26/newsid_2516000/2516469.stm.

As Richard Miniter recalls, "On a Saturday morning, a day after the World Trade Center explosion, there was no sense of crisis in the White House." Clinton treated the bombing as, "a sideshow, a distraction from what the president really wanted to discuss—his economic agenda." After all, the World Trade Center bombing came 39 days into Bill Clinton's presidency and he had been elected on a platform of strengthening America's economy (his campaign's famous catchphrase was "it's the economy, stupid"). In Clinton's first and only speech about the bombing, he stated that the innocent victims of the attacks would be in his "thoughts and prayers" and he thanked the NYPD and the emergency response teams in New York for their crisis-response efforts. Clinton ended by explicitly framing the terror attack as a law enforcement issue and then segued into a discussion of economic matters. The President declared that, "Just this morning I spoke with FBI Director Sessions, who assured me that the FBI and the Treasury Department are working closely with the New York City police and fire departments. Working together we'll find out who was involved and why this happened. Americans should know we'll do everything in our power to keep them safe in their streets, their offices and their homes. Feeling safe is an essential part of being secure. And that's important to all of us." He, then, abruptly changed the subject, stating, "I also want to take this opportunity this morning to talk about another crucial aspect of our security, our economic security"[853]. In a 1995 interview with CBS' 60 Minutes news magazine, when asked about the 1993 attack, Clinton continued to frame it as a law enforcement issue. He stated that, "We have been working hard to try to get the legal

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[853] Miniter, Richard, "An Unheeded Warning: When al Qaeda attacked the Wrold Trade Center in 1993, Bill Clinton shrugged," *The Wall Street Journal*, 30 September 2003. Article provides an excerpt of Miniter's book, *Losing bin Laden: How Bill Clinton's Failures Unleashed Global Terror*. (Washington, DC: Regnery Publishing 2003).

support we need to move against terrorism, to try to make sure that we can find out who's doing these kind of things before they strike"[854].

In line with Clinton's statements minimizing the terror threat, the response to the 1993 bombing amounted to the proceedings of a simple law enforcement matter. The perpetrators of the attack were soon rounded up. Mohammed Salameh, a Palestinian fundamentalist, was captured after repeatedly trying to get back the $400 deposit he put down for the rental truck he blew up[855]. Soon after, more of his co-conspirators were rounded up. In October 1995, the Islamic extremist Sheikh Omar Abdul Rahman and nine others were found guilty of conspiracy to bomb the World Trade Center. The bombing's mastermind, Ramzi Yousef, was captured in early 1995 after he set fire to his Manila apartment while mixing bomb-making chemicals. At the time, Yousef was plotting to blow up eleven US airliners using liquid explosives that could pass through airport metal detectors. This same plan of attack was attempted, and thwarted, in London on August 10, 2006. Further, Yousef meant the World Trade Center bombing to topple New York City's largest tower onto its twin, thus causing catastrophic damage[856].

This case clearly shows the power of the chief executive to respond to a terror attack as he saw fit. Bill Clinton treated the first World Trade Center bombing as a law enforcement matter and went on with his economic agenda. Civil libertarians will certainly laud Clinton's stance on terrorism, but the facts of the case are troubling especially in light of the "second" World Trade Center bombing in 2001. As Peter

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[854] "Interview with "60 Minutes" on CBS - President Bill Clinton – Transcript," http://findarticles.com/p/articles/mi_m2889/is_n17_v31/ai_17041600/pg_4.
[855] "Salameh Detained," Globalsecurity.org, http://www.globalsecurity.org/security/profiles/salameh_detained.htm.
[856] Mylroie, Laura. "The World Trade Center Bomb: Who is Ramzi Yousef? And Why It Matters," *The National Interest*, Winter 1995/1996. Note that Mylroie has controversially tried to link Yousef and al-Qaeda to Iraq.

Katzenstein notes, "Al Qaeda… learned from its bungled 1993 attempt to bring down the World Trade Center"[857]. It is hard to argue that a more heavy-handed, civil liberty-reducing reaction to the 1993 attack would have prevented future catastrophes, but it is clear that this case and its links needed to be focused on much more thoroughly.

Corollary Cases and Suggestions for Future Research

The previous two cases exhibited the power of executive response, and the chief executive in general, in shaping liberal democracies' post-terror attack reactions. It also showed that terrorism can be shaped as a law enforcement matter but that this shaping is no panacea. Indeed, soon after Rabin and Clinton's terms of office, terrorism rocked both Israel and the United States like it never had before. It is chilling to think that both the second intifada and 9/11 had their antecedents in the terror attacks (and counterterror responses) of the early 1990s.

This section seeks to provide supporting evidence for the theory forwarded in this dissertation by highlighting cases where a terror attack led to the swift passage of civil liberty-abridging legislation. In Canada, Bill C-36 was passed about one month after the September 11, 2001 attacks in America. Bill C-36 expanded government wiretapping powers and allowed police to preventively arrest terror suspects. It also banned the existence and funding of terrorist groups in Canada[858]. France passed legislation

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[857] Katzenstein, Peter J. "Same War—Different Views: Germany, Japan, and Counterterrorism," *International Organization*, 57: 4 (Autumn 2003), pg. 732.
[858] Department of Justice Canada, "Backgrounder: Royal Assent of Bill C-36: The Anti-terrorism Act," http://www.justice.gc.ca/en/news/nr/2001/doc_28217.html.

expanding police search-and-seizure powers[859], and Australia and Japan also passed a

new anti-terror bills after 9/11[860]. Further, Germany, a country especially sensitive to the

passage of liberty-reducing laws that might erode "the foundation of the polity," passed

two new counterterrorism laws after 9/11[861]. The passage of these counterterror laws

speaks to the enormity and worldwide effect of the September 11 attacks.

Case studies from India and Russia also exhibit the quick passage of liberty-

abridging legislation after a window of opportunity for executive action opened due to

terror attacks. AB Vajpayee's passage of the repressive Prevention of Terrorism Act

(PTA) after the 2001 Parliament bombing in India is a case in point[862]. In Russia, by no

means a liberal democracy, President Vladimir Putin has used the threat of Chechen

terrorism to erode democratic rights in the country and centralize power in the office of

the presidency[863]. France's dealings with Algerian extremist terrorism, in the form of the

Armed Islamic Group (GIA) also fits the pattern of a terror campaign yielding greater

executive power and reduced civil liberties[864]. Of course all of these cases need further

study to elucidate the factors behind the passage of counterterror legislation. To this end,

I would now like to suggest directions for future research on this topic before concluding.

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[859] BBC News, "France adopts new terror law," BBC News, 31 October 2001,
http://news.bbc.co.uk/2/hi/europe/1630864.stm.
[860] Hocking, Jenny. *Terror Laws: ASIO, Counter-Terrorism and the Threat to Democracy*. (Sydney: UNSW Press 2004), pgs. 10-11; The Ministry of Foreign Affairs of Japan, "Statement by Prime Minister Junichiro Koizumi on the Passing of the Anti-Terrorism Special Measures Law by the Diet of Japan," 29 October 2001, http://www.mofa.go.jp/region/n-america/us/terro0109/speech/pm1029.html.
[861] Katzenstein, "Same War—Different Views: Germany, Japan, and Counterterrorism," pgs. 740, 749-50.
[862] Singh, Ujjwal Kumar. *The State, Democracy and Anti-Terror Laws in India*. (Thousand Oaks, CA: Sage Publications 2007), pg. 14; In.Rediff.com, "It is goodbye to PoTA," 18 September 2004, http://in.rediff.com/news/2004/sep/18spec1.htm; For full text of the Prevention of Terrorism Act see http://www.satp.org/satporgtp/countries/india/document/actandordinances/POTA.htm.
[863] Weir, Fred and Scott Peterson, "Russian Terrorism Prompts Power Grab," *The Christian Science Monitor*, 14 September 2004.
[864] See Shapiro, Jeremy. "France and the GIA" in Art, Robert J. and Louise Richardson eds., *Democracy and Counterterrorism: Lessons from the Past*. (Washington, DC: United States Institute of Peace Press 2007), chapter 5.

There is much future research to undertake on the topic of domestic, legislative responses to terrorist attacks. First, the efficacy of counterterror legislation needs to be evaluated. In this study, I examined the various domestic reactions of chief executives to terror attacks. Of special concern was the passage of civil liberty-abridging legislation and its enforcement. However, it is still unclear whether this legislation is effective in fighting terror or whether treating terror as a law enforcement matter is more effective. Deporting foreign aliens after the Oklahoma City bombing or calling for lengthy detentions after the 2005 London Bombings sound like quizzical, ad hoc responses to terror attacks that have more to do with action bias than anything else. That said, it is unclear whether Bill Clinton's muted response to the 1993 World Trade Center bombing was as effective as it could be. After George W. Bush's harsh domestic response to September 11th, civil libertarians shuddered. But would Americans all be living in constant fear if Bush had not acted strongly? Could the attacks have been averted by counterterror legislation such as the PATRIOT Act if it were on the books at the time or are counterterror laws largely symbolic and ineffective? Clearly, these laws erode liberties. The question is whether they serve their purpose in bolstering security. Evidence from the Israeli and British cases on terrorist attacks going down as detentions rose gives some credence to the argument that new laws can stall terrorism[865]. However,

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[865] On the UK see Donohue, Laura. *Counter-Terrorist Law and Emergency Powers in the United Kingdom, 1922- 2000.* (Dublin: Irish Academic Press 2001), pg. 228. Donohue writes that, "Following the enactment of the 1974 PTA violence in Great Britain plummeted." On Israel, note plummeting terror casualty statistics from 2002- 2006. Over 450 Israelis were killed in terror attacks in 2002, only 30 died in 2006.

it is unclear whether the PATRIOT Act, the 1996 Antiterrorism and Effective Death

Penalty Act, and numerous other counterterror laws have served their purported purposes.

Second, increased scrutiny of the rally 'round the leader phenomenon is needed.

Here it was concluded that opposition elites have incentives to use terror attacks to rest

power from the chief executive when his mandate is weak, thus rallies do not form in

these instances. However, more research needs to be done on both rallies and executive

approval ratings and the determinants of both. Specifically, regression analysis of the

determinants of executive approval ratings, using mass fear levels as a key variable,

should be undertaken to elucidate the correlation between mass fear levels and executive

approval ratings. Further, more work on the reasons why rallies occur in some instances

but not in others is necessary.

Third, more case studies are necessary to further test the theory forwarded here.

The cases listed above of Canada, Australia, France, and India along with other European

cases would help to refine my theory, especially on the point of differences between

presidential and parliamentary governments' responses to terrorism. Cases where terror

attacks yielded full erosion of democratic practices, such as Russia and other cases of

non-democracies dealing with terrorism, may also be instructive.

Finally, more good public opinion data needs to become available for future

cross-country terrorism studies. This study was not hindered by data availability issues,

but other countries do not have extensive public opinion data available on terrorism fears,

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The building of the security fence/wall and the detention of terrorist suspects (see chapter 5 on the thousands of Palestinians detained) contributed to this outcome. For Israeli terror fatality statistics see Israel Ministry of Foreign Affairs, "Victims of Palestinian Violence and Terrorism since September 2000," http://www.mfa.gov.il/MFA/Terrorism-%20Obstacle%20to%20Peace/Palestinian%20terror%20since%202000/Victims%20of%20Palestinian%20 Violence%20and%20Terrorism%20sinc.

executive approval ratings, and willingness to forego liberties. Without these metrics, the determinants of civil liberty-abridging legislation passed will not be fully known.

Policy Prescriptions

Before concluding, I would like to proffer a few policy prescriptions based on the findings of this study. First, it is critical for legislatures in liberal democratic countries to maintain a check on chief executives during the initial days and weeks after a terror attack occurs. This is because, as seen in chapter three, spikes in mass fear levels, executive approval ratings, and public willingness to forego civil liberties are short-lived, even in cases where legislation is not passed, thus making rapid executive action after terror attacks troubling. Second, all emergency legislation should sunset and require supermajorities to be passed again. Most emergency legislation is already passed with sunset clauses, but the additional need of supermajorities to re-pass civil liberty-reducing laws will provide a further check on government. This addition is necessary due to the permanence of seemingly temporary counterterror legislation. After all, it is very easy for governments to act in times of threat, it is much harder to decide when a threat has passed.

Third, enforcement of existing laws is usually sufficient in countering the threat of terrorism. This is especially true now that most liberal democracies have passed strong anti-terror legislation after 9/11. That said, as seen in the Clinton case, terrorist attacks, especially by Islamic extremists, should be taken very seriously. Law enforcement agencies should pay close attention to potential links between terrorists and

to tips on potential future attacks. False alarms surely frustrate and disenchant the public, but actual attacks are surely much worse. Finally, counterterror laws should be narrowly tailored to deal with the terror threat in question. Too often counterterror legislation is filled with provisions that previous governments tried, but failed, to pass. Directing the response to the Oklahoma City bombing at Muslims and death-row inmates seems foolish. Throwing myriad clauses into counterterror laws such as the PATRIOT Act needlessly restrains liberties. If governments need special powers, they should be narrowly tailored to deal with existing threats.

In sum, it remains to be seen whether a strong, well-liked executive can be blocked in his pursuit of liberty-reducing laws after a terror attack. Of course, such a case would be a critical one for my theory. The hope here is that increased awareness about the debate surrounding trades of liberty-for-security in response to terrorism will embolden both members of government legislatures and their publics to stop chief executives from passing liberty-abridging laws. But what may ultimately be necessary is the rise of government leaders who have the strength to counsel patience and emphasize the values of our liberties after terror attacks occur. After all, terror attacks are fleeting, though terrible and tragic, events. But, the loss of liberties they too frequently portend can be permanent.

Concluding Remarks

Much of the literature on the topic of reactions to terrorist attacks has fallen into two categories. The first defends the government. Scholars such as Richard Posner take pains to note that, "the Constitution is not a suicide pact"[866]. Posner and others who share his position[867] believe that a strong government is necessary in answering terror threats and that liberties should be preserved more stringently in times of peace than in times of war. They believe that losing our lives is worse than losing our liberties (a fair point), and that their opponents lose focus of the very real threats that exist in the world.

But these pro-security scholars are a tiny breed compared to the hordes of civil libertarians that tout the value of liberty at all costs and decry any government injunction against liberty as an overreaction[868]. These scholars believe that government reactions to threats are always too costly and too extreme. They support more balanced approaches such as containment[869], "off-shore balancing"[870], or a law enforcement approach to terrorism[871]. They are correct in stating that the terror threat has been greatly overrated in America, but they base this view on a perception that government inflates all threats. John Mueller, for instance, on a recent episode of *The Daily Show*, gloated that in his

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[866] Posner, Richard A. "Security versus Civil Liberties". *The Atlantic Monthly*, Dec. 2001.
[867] See, for example, Carafano, James J. "New Homeland Security Strategy Misses the Mark," http://www.humanevents.com/article.php?id=22807 and Dershowitz, Alan. *Preemption: A Knife That Cuts Both Ways.* (New York: WW Norton & Co. 2007).
[868] See Mueller, John. *Overblown: How Politicians and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them.* (New York: Free Press 2006); Lustick, Ian S. *Trapped in the War on Terror.* (Philadelphia: University of Pennsylvania Press 2006); Stone, Geoffrey R. *Perilous Times: Free Speech in Wartime From the Sedition Act of 1798 to the War on Terrorism.* (New York: WW Norton & Co. 2004).
[869] Shapiro, *Containment.*
[870] Pape, Robert. *Dying to Win: The Strategic Logic of Suicide Terrorism.* (New York: Random House 2005).
[871] Mueller, *Overblown*; Lustick, *Trapped in the War on Terror.*

next book he would write about how the Cold War was an even bigger sham than the war on terror[872].

These scholars are correct in their assessment of the threat of terror in America, but their views are not universalizable. Were America to deal with an ethno-nationalist terror threat like Israel or Britain has, how would or should it react? Would it be enough to treat the phenomenon as a "law enforcement problem"? These questions cannot be answered given the present perception that 9/11 was the end-all and be-all of terrorism— when, in fact, it was a colossal outlier. This is why this study systematically compared cases to find out how reactions really happen. In sum, it is much harder to tell an overreaction from an underreaction than some of the civil libertarian scholars concede.

By composing this work, I aspired to create a study that can be useful to both camps, and I do not have a bone to pick with the government nor with the ACLU. As a social scientist, I set up the study as a test of a theory[873] and employed hypotheses and tests to decipher why government reactions to terror attacks differ. The purpose of this study is not to condemn the government, but to make the post-crisis reaction process more transparent so that reactions can be better calibrated to events. Further, since few studies exist that compare responses to terror attacks between different governments[874], this study will be useful to institutional scholars as well as scholars of terrorism. The

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[872] "Interview with Ohio State Professor John Mueller," *The Daily Show with Jon Stewart*, Comedy Central, 31 October 2006.
[873] The theory is proposed in chapter one and refined in chapter six.
[874] Of those that do exist, the better ones include Freeman, Michael. *Freedom or Security: The Consequences for Democracies Using Emergency Powers to Fight Terror*. (Westport, CT: Praeger 2003); Art, Robert J. and Louise Richardson eds. *Democracy and Counterterrorism: Lessons from the Past*. (Washington, DC: United States Institute of Peace 2007); Charters, David A. ed., *The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries*. (Westport, CT: Greenwood Press 1994).

point here is to generate knowledge that can edify scholars, laypeople and leaders and not to foment a particular point of view.

As was shown, some governments react much differently to terror attacks than others. Some, as seen in Vladimir Putin's Russia and post-9/11 America, use terror as an excuse to curtail many freedoms. Others, as seen after terror episodes in the Bill Clinton or Yitzchak Rabin administrations, barely react at all. To say that one response is always good or the other always bad would be to fall victim to dogma. Governments need to maintain their democratic character in the face of terrorism, but this principle does not need to become an absolute edict. We must err on the side of rights, but we must also maintain our human capacity to make tough choices when difficult situations arise.

Data Appendix: The Executive and the Government

1 George W. Bush's Approval Ratings (Harris Polls)

Date	Positive
Feb-01	56%
Mar-01	49%
May-01	59%
Jun-01	50%
Jul-01	56%
Aug-01	52%
Oct-01	88%
Nov-01	86%
Dec-01	82%
Jan-02	79%
Feb-02	79%
Mar-02	77%
Apr-02	75%
May-02	74%
Jun-02	70%
Jul-02	62%
Aug-02	63%
Sep-02	68%
Oct-02	64%
Nov-02	65%
Dec-02	64%
Feb-03	52%
Apr-03	70%
Jun-03	61%
Aug-03	57%
Oct-03	59%
Dec-03	50%
Feb-04	51%
Apr-04	48%
Jun-04	50%
Aug-04	48%
Sep-04	45%
Oct-04	51%
Nov-04	50%
Feb-05	48%
Apr-05	44%
Jun-05	45%
Aug-05	40%
Nov-05	34%
Jan-06	43%
Feb-06	40%
Mar-06	36%
Apr-06	35%

2 Clinton: Approval Ratings vs. Americans Worried about Terrorism
Harris Data   Worried about safety of selves or family. Gallup/CNN/USA Today.
Bush: CBS/NYT

	4/1/95	**4/1/96**	**7/1/96**	**8/1/98**	**4/1/00**
Worried	0.42	0.35	0.39	0.32	0.24
Pres Approval Rate	0.45	0.52	0.52	0.64	0.62
Difference	0.03	0.17	0.13	0.32	0.38

3 Bush: Approval Ratings vs. Americans Worried about Terrorism

	9/11/01	**10/1/01**	**11/1/01**	**2/1/02**	**5/1/02**	**7/1/03**	**8/1/04**
Worried	0.58	0.43	0.39	0.35	0.45	0.3	0.34
Pres Approval Rate	0.82	0.89	0.85	0.78	0.74	0.6	0.46
Difference	0.24	0.46	0.46	0.43	0.29	0.3	0.12

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Data Appendix: The Executive and the Government

4 CNN/USA Today/Gallup 2004 Presidential Election polls
http //www realclearpolitics.com/bush_vs_kerry html

	1/29/04	2/6/04	2/16/04	3/5/04	3/26/04	4/5/04	4/16/04	5/2/04
Bush	0 46	0 49	0 43	0 44	0 49	0 47	0 5	0 47
Kerry	0 53	0.48	0 55	0 5	0.45	0 43	0 44	0.47

	5/7/04	5/21/04	6/21/04	7/8/04	7/19/04	7/30/04	8/9/04	8/23/04
Bush	0 47	0 46	0 48	0 45	0.46	0.51	0 48	0 48
Kerry	0 45	0 47	0 47	0 5	0 47	0 45	0 46	0 46

	9/3/04	9/13/04	9/24/04	10/1/04	10/9/04	10/14/04	10/27/04	10/29/04
Bush	0 52	0.54	0 52	0 49	0.48	0 52	0.49	0.49
Kerry	0 45	0.4	0 44	0 49	0.49	0 44	0 47	0 49

5 Fox News/Opinion Dynamics

	2/4/04	2/18/04	3/3/04	3/23/04	4/6/04	4/21/04	5/18/04	6/8/04	6/22/04
Bush	0 47	0 45	0 44	0 43	0 43	0 42	0.4	0 42	0 47
Kerry	0 43	0.45	0 44	0 42	0 42	0 4	0.4	0 42	0 4

	7/20/04	8/3/04	8/24/04	9/7/04	9/21/04	10/3/04	10/17/04	10/30/04
Bush	0.43	0 43	0 43	0 47	0 46	0 47	0.49	0 46
Kerry	0 44	0 47	0 44	0 43	0 42	0 45	0 42	0 48

6 So far, there has not been another terrorist attack in America since 2001. Is this mostly because the government is doing a good job protecting the country or America is a difficult target for terrorists or America has been lucky so far? (Pew)

	9/6/06
government good job	0 39
difficult target	0 13
lucky so far	0 4

7 How much confidence do you have in the ability of the US government to protect its citizens from future terrorist attacks? (CBS News)

	9/8/05			
	total	Rep	Dem	Indep
a great deal	0 19	0 33	0 08	0.19
a fair amount	0 4	0 47	0 35	0 39
not very much	0.3	0.18	0 39	0 31
none at all	0.1	0 01	0 18	0 08

8 How much confidence do you have in the federal government's ability to respond to future terrorist attacks? (CNN/USA Today/Gallup)

	Black	Non-Hispanic White
great deal	0 17	0 21
moderate amount	0 32	0 43
not much	0 29	0 25
none at all	0.2	0.11

9 How much confidence do you have in the US government to prevent further terrorist attacks against Americans in this country? (ABC News) (ABC/WP--3/89) (Princeton 6/93) (6/95--Hart & Teeter)

	3/1/89	6/1/93	4/1/95	5/1/95	6/1/95	8/1/96	6/1/97
a great deal	0 16	0 17	0 13	0 12	0.12	0.12	0 1
a good amount	0 3	0 47	0 24	0 24	0 24	0 23	0 26
only a fair amount	0 38	0 24	0 51	0 51	0 51	0 49	0 52
none at all	0 16	0.1	0 11	0 12	0 12	0 16	0 1

	9/11/01	11/5/01	11/27/01	1/24/02	3/1/02	5/2/02	6/2/02
a great deal	0 35	0.17	0 24	0 18	0 18	0 17	0 14
a good amount	0.31	0 35	0 39	0.4	0 38	0 29	0 3
only a fair amount	0 3	0 4	0 32	0 37	0 39	0 42	0 44
none at all	0 02	0 07	0 05	0 06	0 05	0 1	0 11

	7/2/02	9/2/02	9/3/03	8/18/05	9/8/05	1/23/06	9/5/06
a great deal	0.13	0 12	0 14	0 14	0.14	0 19	0 15
a good amount	0 33	0 38	0 31	0 28	0 27	0 31	0 31
only a fair amount	0.45	0 43	0 48	0.43	0 41	0 39	0 43
none at all	0 09	0 06	0 07	0 15	0 18	0 11	0.1

Data Appendix: The Executive and the Government

10 Who do you trust to do a better job handling the US campaign against terrorism:
   Bush or the Democrats in Congress? (ABC News/WP)
   Who would better handle the terrorist threat.
   George W. Bush or the Democrats in Congress? (GWU/Battleground--10/25/05)
   Please tell me whether you think George W. Bush or
   the Democratic Party would do a better job handling the war on terrorism? (NPR--12/23/05)

	4/27/03	1/15/04	10/25/05	12/23/05	12/7/06	1/16/07	2/22/07
Bush	0.72	0.6	0.55	0.53	0.41	0.4	0.39
Democrats	0.21	0.31	0 29	0.36	0.5	0.52	0.52
none			0.07	0.06			

11 UK: Irrespective of how you yourself will vote at the next election, which political party do you think is putting forward the best
   policies on the fight against terrorism? (ICM/Guardian)

	4/14/05
Labour	0.38
Conservative	0.26
Liberal Democrat	0.09
None	0.21

12 Do you think the government, the police and security forces are
   doing enough to protect Britain from a terrorist attack? (ICM/News of the World)

	3/25/04
yes	0 56
no	0.37

13 MUSLIMS: President Bush and Tony Blair have said war
   agianst terrorism is not a war against Islam. Do you agree or disagree? (ICM/Guardian)

	3/16/04
agree	0.2
disagree	0.68

14 Do you think the government, the police and security forces are
   doing enough to protect Britain from a terrorist attack? (ICM/News of the World)

	3/25/04
yes	0.56
no	0.37

15 ISRAEL: Evaluation of Government Performance (Arian, 2003)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Poor	0.28	0.37	0.16	0.16	0.21	0.22	0.19	0.12	0.25	0.25
Not good	0.32	0.34	0.34	0.5	0.45	0.44	0.48	0.51	0.53	0.51
Good	0.34	0 25	0.43	0 31	0.29	0 29	0.34	0.33	0.2	0.22

Data Appendix: The Executive and the Government

16 Do you approve or disapprove of the way George W Bush is handling the campaign against terrorism? (CBS/NYT)

Date	Approve	Disapprove
10/15/01	0 92	0 06
11/13/01	0 88	0 09
12/07/01	0 90	0 06
01/05/02	0 88	0 09
01/15/02	0.87	0 10
01/21/02	0 87	0 09
02/24/02	0.82	0 13
04/02/02	0 80	0 17
05/13/02	0 80	0.15
05/19/02	0 74	0 19
06/02/02	0.72	0 21
07/08/02	0 77	0 17
07/22/02	0.70	0 20
08/02/02	0 72	0 21
09/02/02	0 68	0 27
09/22/02	0 71	0.22
12/21/03	0 70	0 23
01/12/04	0 68	0 28
02/12/04	0 64	0 27
02/24/04	0 65	0 29
03/10/04	0 64	0 28
03/30/04	0 58	0.34
04/23/04	0 60	0.32
05/11/04	0 51	0 39
05/20/04	0 51	0.42
06/23/04	0 52	0.39
07/11/04	0.51	0 43
07/30/04	0 52	0 41
08/15/04	0 53	0 38
09/06/04	0 62	0.31
11/18/04	0 59	0 37
01/14/05	0 56	0 38
02/24/05	0 61	0 33
04/13/05	0.53	0 41
05/20/05	0 58	0 36
07/29/05	0 55	0 39
08/29/05	0.54	0.40
09/06/05	0 51	0 40
09/09/05	0 50	0 43
10/03/05	0 46	0 46
10/30/05	0.47	0 46
12/02/05	0 48	0 45
01/05/06	0 51	0.41
01/20/06	0 52	0 43
02/22/06	0 43	0 50
03/09/06	0 45	0 47
04/06/06	0 47	0.46
04/28/06	0.45	0 45
05/04/06	0 46	0 48
05/16/06	0 46	0 47
06/10/06	0 47	0 46
07/21/06	0 51	0 42
08/11/06	0 51	0 43
08/17/06	0 55	0 38
09/15/06	0 54	0 40
10/05/06	0 46	0 48
10/27/06	0 44	0 48
12/08/06	0 41	0 52
01/01/07	0 43	0 51
02/08/07	0 44	0 49
02/23/07	0 40	0 53
03/11/07	0 45	0 48
04/12/07	0 45	0 47
04/24/07	0 42	0 51
05/23/07	0 42	0 52
06/28/07	0 39	0 53
07/17/07	0 39	0 53
07/22/07	0 39	0.53
08/12/07	0 44	0 48
09/16/07	0 40	0 54
10/16/07	0.41	0 51

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Data Appendix: The Executive and the Government

17) Great Britain Approval Ratings
http://www.ipsos-mori.com/polls/trends/satisfac.shtml#1983

	Govt	Blair	Thatcher	Major		Govt	Blair	Thatcher	Major
Aug-79	0 34		0.45		Aug-84	0.35		0.41	
Sep-79	0.33		0.44		Sep-84	0.37		0.48	
Oct-79	0.35		0.44		Oct-84	0.36		0.44	
Nov-79	0.30		0.41		Nov-84	0.33		0.41	
Jan-80	0.30		0.39		Jan-85	0.33		0.44	
Feb-80	0.26		0.37		Feb-85	0.30		0.41	
Mar-80	0.28		0.37		Mar-85	0.29		0.37	
Apr-80	0.33		0.43		Apr-85	0 31		0.38	
May-80	0.32		0.42		May-85	0.26		0.35	
Jun-80	0.32		0.38		Jun-85	0.29		0.38	
Jul-80	0.30		0.37		Jul-85	0.28		0.38	
Aug-80	0.27		0.35		Aug-85	0 26		0.33	
Sep-80	0.27		0.34		Sep-85	0.28		0.35	
Oct-80	0.25		0.32		Oct-85	0.30		0.39	
Jan-81	0.26		0.33		Nov-85	0.31		0.39	
Feb-81	0.23		0.32		Dec-85	0.30		0.39	
Mar-81	0.16		0.29		Jan-86	0 28		0 34	
Apr-81	0.24		0.33		Feb-86	0.23		0.29	
Jun-81	0.25		0.34		Mar-86	0.27		0.32	
Jul-81	0.22		0.31		Apr-86	0.26		0.32	
Aug-81	0.22		0.29		May-86	0.23		0.29	
Sep-81	0.20		0.28		Jun-86	0.25		0.30	
Oct-81	0.22		0.30		Jul-86	0.26		0.30	
Nov-81	0.20		0.28		Aug-86	0 24		0.27	
Dec-81	0.18		0.25		Sep-86	0.26		0.32	
Jan-82	0.23		0.32		Oct-86	0.30		0.35	
Feb-82	0.23		0.30		Nov-86	0.32		0.37	
Mar-82	0.29		0.36		Dec-86	0.34		0.39	
Apr-82	0 34		0.41		Jan-87	0 32		0.37	
May-82	0.49		0.56		Feb-87	0 33		0.38	
Jun-82	0.51		0.59		Mar-87	0.37		0.44	
Jul-82	0.42		0.51		Apr-87	0.40		0.47	
Aug-82	0.40		0.49		Jun-87	0.48		0.51	
Sep-82	0.37		0.46		Jul-87	0.47		0.54	
Oct-82	0.38		0.46		Aug-87	0.44		0.48	
Nov-82	0.41		0.48		Sep-87	0.44		0.48	
Dec-82	0.38		0.47		Oct-87	0.45		0.49	
Jan-83	0.42		0.49		Nov-87	0.44		0.49	
Feb-83	0 41		0.49		Dec-87	0.43		0.48	
Mar-83	0.42		0.48		Jan-88	0.40		0.46	
Apr-83	0.41		0.49		Feb-88	0.37		0.45	
May-83	0.43		0.51		Mar-88	0.39		0.47	
Jun-83 -			0.54		Apr-88	0.38		0.43	
Jul-83	0.43		0.49		May-88	0 39		0.43	
Aug-83	0.46		0.53		Jun-88	0.42		0.49	
Sep-83	0.42		0.50		Jul-88	0.41		0.46	
Oct-83	0.39		0.47		Aug-88	0.44		0.50	
Jan-84	0.40		0 48		Sep-88	0.38		0.46	
Feb-84	0.38		0.47		Oct-88	0.40		0.46	
Mar-84	0 38		0.43		Nov-88	0.37		0.47	
May-84	0 36		0.43		Dec-88	0.41		0 48	
Jun-84	0.32		0.39		Jan-89	0.38		0.46	
Jul-84	0.32		0.41		Feb-89	0.34		0.44	
Aug-84	0.35		0 41		Mar-89	0.36		0.43	

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Data Appendix: The Executive and the Government

17) continued

     Great Britain Approval Ratings
     http://www.ipsos-mori com/polls/trends/satisfac shtml#1983

	Govt	Blair	Thatcher	Major		Govt	Blair	Thatcher	Major
Apr-89	0.32		0.41		Oct-93	0.11			0.23
May-89	0.33		0.40		Nov-93	0.13			0.21
Jun-89	0.28		0.34		Dec-93	0.13			0.24
Jul-89	0.28		0.34		Jan-94	0.13			0 21
Aug-89	0.31		0.38		Feb-94	0.11			0.22
Sep-89	0.30		0.41		Mar-94	0.12			0.20
Oct-89	0.27		0.35		Apr-94	0.11			0.19
Nov-89	0.28		0.33		May-94	0.12			0.22
Dec-89	0.28		0.33		Jun-94	0.11			0.20
Jan-90	0.25		0.31		Jul-94	0.10			0 20
Feb-90	0.19		0.29		Aug-94	0.11			0.17
Mar-90	0.16		0.20		Sep-94	0.12			0.24
Apr-90	0.17		0.21		Oct-94	0.14			0.27
May-90	0.23		0.26		Nov-94	0.12			0.23
Jun-90	0.24		0.30		Dec-94	0.08			0.18
Jul-90	0.24		0.30		Jan-95	0.10			0 20
Aug-90	0.25		0.33		Feb-95	0 09			0 20
Sep-90	0.25		0.36		Mar-95	0.11			0.22
Oct-90	0.22		0.29		Apr-95	0.09			0.22
Nov-90	0.22		0.25		May-95	0.10			0.21
Dec-90	0.31			0.37	Jun-95	0.14			0.28
Jan-91	0.41			0.61	Jul-95	0 11			0.25
Feb-91	0 34			0.63	Aug-95	0.13			0.26
Mar-91	0.30			0.58	Sep-95	0.14			0.28
Apr-91	0.32			0.59	Oct-95	0.15			0.28
May-91	0.27			0.49	Nov-95	0.15			0.25
Jun-91	0.27			0.50	Dec-95	0.14			0 28
Jul-91	0.26			0.53	Jan-96	0.14			0.25
Aug-91	0.32			0.57	Feb-96	0.13			0.26
Sep-91	0.31			0.57	Mar-96	0.14			0.26
Oct-91	0 30			0 54	Apr-96	0.15			0.29
Nov-91	0.29			0.52	May-96	0 14			0.26
Dec-91	0 26			0 51	Jun-96	0.18			0.29
Jan-92	0 28			0.51	Jul-96	0.15			0.28
Feb-92	0.25			0.48	Aug-96	0.16			0.28
Mar-92	0.29			0 48	Sep-96	0.17			0.29
Apr-92	0.40			0.55	Oct-96	0.18			0.30
May-92	0.41			0.56	Nov-96	0.22			0.36
Jun-92	0 34			0.51	Dec-96	0.18			0 30
Jul-92	0 27			0.50	Jan-97	0.21			0.31
Aug-92	0.25			0.47	Feb-97	0.21			0.34
Sep-92	0.18			0.33	Mar-97	0.23			0.32
Oct-92	0.10			0.21	May-97	0.46	0.65		
Nov-92	0.12			0.25	Jun-97	0.53	0.72		
Dec-92	0.14			0.28	Jul-97	0.53	0 70		
Jan-93	0.17			0.31	Aug-97	0.48	0.65		
Feb-93	0.14			0.28	Sep-97	0.57	0.75		
Mar-93	0.13			0.26	Oct-97	0.55	0.72		
Apr-93	0.17			0.27	Nov-97	0.52	0.70		
May-93	0.12			0.21	Dec-97	0.43	0.61		
Jun-93	0.10			0.19	Jan-98	0.46	0.60		
Jul-93	0.12			0.19	Feb-98	0.44	0.60		
Aug-93	0.12			0.21	Mar-98	0.46	0.62		
Sep-93	0.11			0.20	Apr-98	0.54	0.68		

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Data Appendix: The Executive and the Government

17) continued
Great Britain Approval Ratings
http://www.ipsos-mori.com/polls/trends/satisfac.shtml#1983

	Govt	Blair	Thatcher	Major		Govt	Blair	Thatcher	Major
May-98	0.52	0 67			Mar-03	0.35	0.43		
Jun-98	0.49	0.62			Apr-03	0.35	0.47		
Jul-98	0.50	0.62			May-03	0.30	0.38		
Aug-98	0.47	0.65			Jun-03	0.25	0.31		
Sep-98	0.45	0 61			Jul-03	0.26	0.32		
Oct-98	0.47	0.62			Aug-03	0.24	0.30		
Nov-98	0.49	0.61			Sep-03	0.27	0.29		
Dec-98	0.46	0.60			Oct-03	0.25	0.31		
Jan-99	0.45	0.59			Nov-03	0.27	0.32		
Feb-99	0.45	0.58			Dec-03	0.29	0.36		
Mar-99	0.47	0.61			Jan-04	0 25	0.32		
Apr-99	0.50	0.63			Feb-04	0.27	0.31		
May-99	0.46	0.58			Mar-04	0.25	0.32		
Jun-99	0.45	0.57			Apr-04	0.26	0.31		
Jul-99	0.43	0.55			May-04	0.26	0.29		
Aug-99	0.39	0.49			Jun-04	0.27	0.30		
Sep-99	0.47	0.58			Jul-04	0.27	0.30		
Oct-99	0.42	0 53			Aug-04	0.28	0.29		
Nov-99	0.44	0.54			Sep-04	0.29	0 32		
Dec-99	0.45	0.57			Oct-04	0.28	0.30		
Jan-00	0.37	0.53			Nov-04	0 28	0.32		
Feb-00	0.35	0.49			Dec-04	0.31	0.33		
Mar-00	0 37	0.47			Jan-05	0.32	0.33		
Apr-00	0.38	0.52			Feb-05	0.31	0.35		
May-00	0.36	0.47			Mar-05	0.31	0.34		
Jun-00	0.28	0.39			May-05	0.38	0.39		
Jul-00	0.29	0.42			Jun-05	0.34	0.39		
Aug-00	0.33	0.45			Jul-05	0.37	0.44		
Sep-00	0.26	0.32			Aug-05	0.36	0.39		
Oct-00	0.29	0.37			Sep-05	0.29	0.31		
Nov-00	0.35	0.42			Oct-05	0.35	0.36		
Dec-00	0.34	0.43			Nov-05	0.33	0.37		
Jan-01	0.37	0.47			Jan-06	0.32	0.36		
Feb-01	0.39	0.48			Feb-06	0.28	0.31		
Mar-01	0.40	0.47			Mar-06	0.27	0.31		
Apr-01	0.37	0.44			Apr-06	0.22	0.29		
Jun-01	0.45	0.55			May-06	0.22	0.26		
Jul-01	0.42	0.51			Jun-06	0.27	0.32		
Aug-01	0.40	0.49			Jul-06	0.23	0.23		
Sep-01	0.54	0 67			Aug-06	0.24	0.26		
Oct-01	0.50	0.65			Oct-06	0.27	0.32		
Nov-01	0.52	0.64			Nov-06	0 22	0.27		
Jan-02	0.43	0.51			Dec-06	0.26	0.30		
Feb-02	0.37	0.46			Jan-07	0.24	0.25		
Mar-02	0.33	0.42							
Apr-02	0.41	0.46							
May-02	0.33	0.39							
Jun-02	0.36	0.46							
Jul-02	0.34	0.42							
Sep-02	0.37	0.42							
Oct-02	0.32	0.40							
Nov-02	0.32	0.38							
Jan-03	0.26	0.33							
Feb-03	0.25	0.31							

Data Appendix: Mass Fear and Threat Levels

1) Israel % Worried and Very Worried about Personal Safety (they or a family member might become victim of terrorist attack) (Arian 1999 and 2003 pub-op surveys; Ben-Meir and Shaked 2007)

	Pctg Worried	Israeli civilian terror	Fatalities (Btselem)
1992	82%	1900%	4%
1993	84%	3600%	2%
1994	76%	5800%	1%
1995	85%	1600%	5%
1996	78%	4100%	2%
1997	77%	2900%	3%
1998	66%	900%	7%
1999	58%	200%	29%
2000	79%	2400%	3%
2001	85%	15100%	1%
2002	92%	27200%	0%
2003	83%	12900%	1%
2004	78%	5300%	1%
2005	78%	2400%	3%
2006	72%	1000%	7%
2007	69%	500%	14%

2) ISRAEL: Policy Statements (Arian, 2003)

	Trade land for peace	Stop peace talks
1996	43%	18%
1997	53%	13%
1998	44%	14%
1999	47%	20%
2000	49%	24%
2001	42%	28%
2002	37%	27%
2003	40%	18%

3) Israelis Concern about Personal Safety (Arian, 2003)

	very worried	worried	not worried
1993	48%	36%	13%
1994	37%	39%	18%
1995	46%	39%	13%
1996	35%	43%	17%
1997	31%	46%	18%
1998	22%	44%	26%
1999	13%	45%	34%
2000	30%	49%	18%
2001	40%	45%	12%
2002	63%	29%	7%
2003	40%	43%	12%

4) How worried are you that the United States will experience another major attack? (NBC News/WSJ--7/13/05) How worried are you that there will soon be another terrorist attack in the United States? (Pew)

	very worried	somewhat worried	not too worried	not at all worried
10/20/04	17%	43%	27%	12%
7/13/05	31%	27%	29%	12%
7/26/05	26%	42%	19%	12%
9/6/06	23%	44%	21%	10%

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Data Appendix: Mass Fear and Threat Levels

5) How concerned are you about the chance that you or your family might be the victim
   of a terrorist attack? (Ipsos-Public Affairs--9/9/04)
   How concerned are you about the chance that you personally might be the victim
   of a terrorist attack? (ABC News)

	a great deal	somewhat	not much	not at all
9/9/04	7%	31%	34%	28%
10/9/05	8%	24%	35%	32%
9/10/06	10%	25%	35%	29%

6 Do you personally feel any sense of danger from terrorist acts wher you live and work, or not?
   (Gallup/CNN/USA Today--3/93, 4/95), (CBS/NYT--7/95)
   Would you say you personally are very concerned about a terrorist attack in the area
   where you live, or not? (CBS and CBS/NYT)

	Feel Danger/Concern	No/Not Concerned
3/1/93	12%	87%
4/1/95	16%	84%
7/1/95	20%	79%
9/11/01	43%	56%
9/12/01	36%	62%
9/13/01	39%	59%
9/20/01	32%	66%
10/8/01	30%	68%
10/25/01	26%	71%
11/13/01	27%	72%
12/7/01	24%	75%
1/5/02	22%	77%

Data Appendix: Mass Fear and Threat Levels

7) How worried are you that you or someone in your family will become a victim of a terrorist
attack similar to the bombing in Oklahoma City? (Yankelovich/Time/CNN--4/97),
(Gallup--4/98), (AP--5/01), (CNN/USA Today/Gallup--all other pre-9/11/01 dates)
How worried are you that someone in your family might become a victim of a terrorist attack?
(Newsweek--9/11/04; 8/5/05)
How worried are you that you or someone in your family will become a victim of terrorism?
(CNN/USA Today/Gallup--all other dates 9/11/01 and beyond)
How worried are you that you or someone in your family might become a victim of a terrorist attack? (Pew--9/6/06)

	very worried	somewhat worried	not too worried	not worried at all
4/1/95	14%	28%	33%	24%
4/1/96	13%	22%	33%	32%
7/1/96	13%	26%	35%	27%
8/1/96	11%	27%	29%	33%
4/1/97	10%	26%	32%	31%
8/1/98	10%	22%	38%	29%
4/1/00	4%	20%	41%	34%
5/1/01	11%	23%	34%	32%
9/11/01	23%	35%	24%	16%
9/14/01	18%	33%	35%	13%
9/21/01	14%	35%	31%	18%
10/19/01	13%	30%	33%	23%
11/2/01	11%	28%	34%	26%
11/26/01	8%	27%	34%	30%
2/1/02	8%	27%	39%	25%
3/1/02	12%	33%	32%	23%
4/1/02	8%	27%	39%	25%
5/1/02	9%	31%	37%	22%
9/1/02	8%	30%	37%	25%
1/1/03	8%	31%	36%	25%
2/7/03	13%	35%	34%	18%
2/17/03	8%	28%	33%	31%
3/1/03	8%	30%	38%	24%
4/1/03	8%	26%	39%	26%
7/1/03	6%	24%	38%	32%
8/1/03	11%	30%	33%	26%
12/1/03	9%	28%	38%	25%
1/1/04	5%	23%	42%	30%
2/1/04	10%	30%	36%	24%
8/9/04	8%	26%	36%	30%
9/3/04	11%	32%	36%	21%
9/11/04	11%	27%	31%	30%
10/14/04	13%	34%	33%	20%
12/17/04	13%	28%	34%	25%
1/7/05	10%	28%	37%	24%
6/16/05	8%	30%	36%	26%
7/22/05	14%	33%	30%	23%
8/5/05	14%	26%	32%	27%
12/16/05	11%	30%	37%	22%
1/20/06	14%	29%	34%	23%
8/18/06	8%	28%	36%	29%
9/6/06	16%	28%	35%	20%
11/5/06	9%	31%	33%	27%
3/11/07	13%	31%	31%	23%
8/8/07	12%	30%	33%	24%
12/9/07	11%	28%	33%	28%

Data Appendix: Mass Fear and Threat Levels

8) How worried are you that you or someone in your family will become a victim of a terrorist attack similar to the bombing in Oklahoma City? (CNN/Gallup/USA Today--up until 9/11/01)
How worried are you that you or someone in your family will become a victim of a terrorist attack? (CNN/Gallup/USA Today--after 9/11/01)
Americans Worried About Themselves or Family Members Becoming Terror Victims (Gallup/CNN/USA Today)

	Worried	Not Worried
4/1/95	42%	56%
4/1/96	35%	68%
7/1/96	38%	62%
4/1/97	36%	63%
8/1/98	32%	67%
4/1/00	24%	75%
5/1/01	34%	66%
9/11/01	58%	40%
9/14/01	51%	48%
9/21/01	49%	48%
10/11/01	51%	49%
10/19/01	43%	56%
11/2/01	39%	60%
11/26/01	35%	64%
2/1/02	35%	64%
5/1/02	40%	59%
7/1/03	30%	70%
12/1/03	37%	63%
1/1/04	28%	72%
2/1/04	40%	60%
8/1/04	34%	66%
9/1/04	43%	57%
10/1/04	47%	53%
12/1/04	41%	59%
1/1/05	38%	61%
6/1/05	38%	62%
7/1/05	47%	53%
12/1/05	41%	59%
1/1/06	43%	57%

9) How concerned are you about the possibility there will be more major terrorist attacks in the United States? (ABC News)
How concerned are you about the United States suffering another terrorist attack? (Pace U.--9/10/06)

	a great deal	somewhat	not much	not at all
10/7/01	41%	40%	13%	4%
10/8/01	36%	46%	12%	6%
10/15/01	35%	43%	14%	9%
12/1/01	27%	43%	22%	8%
3/1/02	23%	47%	21%	9%
4/1/02	30%	43%	18%	9%
7/1/02	29%	44%	20%	7%
9/1/02	22%	52%	19%	7%
2/1/03	27%	45%	18%	9%
3/1/03	29%	47%	16%	8%
9/1/03	25%	46%	20%	9%
7/26/04	45%	40%	12%	3%
10/9/05	24%	42%	23%	10%
9/5/06	29%	45%	17%	8%
9/10/06	29%	45%	17%	8%

10) Americans' Views of Terrorist Capabilities to Strike U S Compared with 9/11 (Pew)

	Greater	Same	Less
8/1/02	22%	39%	34%
7/1/04	24%	39%	34%
7/1/05	28%	40%	29%
1/1/06	17%	39%	39%
12/1/06	23%	41%	31%
2/1/08	16%	41%	39%

Data Appendix: Mass Fear and Threat Levels

11) Americans on Likelihood of Future Attack (CBS/NYT, except 4/95, Yankelovich/Time/CNN)
http //www cbsnews com/stories/2004/07/16/opinion/polls/main630312 shtml

	Likely	Not Likely
1/1/91	73%	27%
4/1/95	86%	11%
9/1/01	78%	20%
10/8/01	84%	13%
10/25/01	88%	10%
12/1/01	73%	24%
1/5/02	65%	33%
1/21/02	71%	25%
2/24/02	62%	34%
5/13/02	72%	25%
5/19/02	74%	23%
6/1/02	81%	16%
7/1/02	73%	26%
9/2/02	69%	28%
9/22/02	67%	31%
10/1/02	74%	22%
11/1/02	77%	21%
1/1/03	62%	35%
2/10/03	80%	18%
2/24/03	74%	24%
3/4/03	75%	21%
4/1/04	55%	41%
7/11/04	71%	27%
7/30/04	67%	28%
8/15/04	67%	28%
9/1/04	61%	36%
8/1/05	52%	42%
1/1/06	53%	44%
8/11/06	64%	33%
8/17/06	59%	39%
7/20/07	57%	38%
9/4/07	48%	48%

12) How likely do you think it is that there will be another terrorist attack on the United States in the next few months? (CBS)

	total	Rep	Dem	Indep	total	Rep	Dem	Indep
very likely	19%	15%	22%	21%	17%	16%	18%	18%
somewhat likely	48%	52%	46%	45%	50%	52%	50%	49%
not very likely	23%	25%	22%	23%	20%	23%	21%	17%
not at all likely	5%	6%	5%	5%	8%	5%	8%	11%
Date	8/2/04				8/19/04			

	total	Rep	Dem	Indep	total	Rep	Dem	Indep
very likely	13%	12%	21%	20%	9%	6%	12%	9%
somewhat likely	46%	51%	46%	47%	43%	45%	41%	44%
not very likely	32%	27%	21%	20%	35%	40%	36%	32%
not at all likely	7%	9%	7%	9%	7%	7%	9%	6%
Date	9/21/04				9/10/05			

	total	Rep	Dem	Indep	total	Rep	Dem	Indep
very likely	10%	9%	12%	9%	17%	12%	17%	20%
somewhat likely	43%	37%	42%	48%	47%	48%	47%	46%
not very likely	33%	43%	31%	28%	27%	33%	27%	24%
not at all likely	11%	8%	12%	12%	6%	6%	5%	6%
Date	1/26/06				8/14/06			

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Data Appendix: Mass Fear and Threat Levels

13) How likely do you think it is that there will be another terrorist attack on the United States in the next few months? (CBS and CBS/NYT) (9/21/03-CBS/MTV)

	very likely	somewhat likely	not very likely	not at all likely
9/20/01	36%	42%	16%	4%
10/8/01	48%	36%	10%	3%
10/25/01	53%	35%	8%	2%
12/7/01	23%	50%	19%	3%
1/5/02	18%	47%	27%	2%
1/21/02	23%	48%	21%	3%
2/24/02	18%	44%	29%	4%
8/2/04	19%	48%	23%	5%
8/19/04	17%	50%	20%	8%
9/17/04	18%	48%	23%	8%
9/21/04	13%	46%	32%	7%
9/10/05	9%	43%	35%	7%
1/26/06	10%	43%	33%	11%
8/14/06	17%	47%	27%	6%

14) In your opinion, how likely is a major terrorist attack in the United States itself in 1986? (ABC News--4/86)
In your opinion, how likely is a major terrorist attack in the United States itself in the near future?
(ABC/WP--7/88, 3/89), (CBS/NYT--1/91), (Yankelovich/Time/CNN--4/95)
How likely do you think it is that there will be a major terrorist attack in this country in the next twelve months? (Harris)

	very likely	somewhat likely	not very likely	not likely at all
4/1/86	27%	53%		20%
7/1/88	28%	52%		19%
3/4/89	26%	54%		19%
1/1/91	23%	50%		21%
4/1/95	48%	38%	8%	3%
2/6/04	11%	52%	32%	6%
10/1/04	17%	50%	20%	8%
6/29/05	15%	40%	31%	12%
2/23/06	17%	49%	23%	10%

15) US: How important is the issue of terrorism to you personally? (AP/Ipsos)

	10/26/06
extremely importa	40%
very important	39%
moderately impor	14%
slightly important	5%
not at all importar	2%

16) Do you think that when average Americans think about terrorism they are more fearful or less fearful than you? (Program on International Policy Attitudes/Knowledge Networks)

October 20, 2006

	total	Rep	Dem	Indep
more	74%	74%	78%	69%
less	19%	22%	15%	23%

17) Is the following something you worry about a lot, is this something you worry about somewhat or is this something you do not worry about? There may be another terrorist attack against the US in the near future (Public Agenda).

	10/1/06
worry a lot	45%
somewhat	37%
do not worry	17%

Data Appendix: Mass Fear and Threat Levels

18) How often do you talk about terrorism (Pew)

	9/14/06
frequently	47%
occasionally	36%
hardly ever	12%
never	4%

19) What would you say is the single most important event that has happened in your lifetime, in terms of its importance to the United States and the world? (ABC News, open-ended, 9/5-7/06)

September 11, 2001   46%

20) UK: How likely do you think it is that there will be a major terrorist attack in this country in the next twelve months? (Harris--2/04)
How likely do you think it is that London will experience another terrorist attack in the near future? (MORI)

	2/1/04	7/1/05	9/1/05
very likely	11%	51%	43%
somewhat likely	53%	36%	39%
not very likely	31%	9%	9%
not at all likely	5%	3%	4%

21) Likelihood that UK will suffer another terrorist attack in next 12 months at hands of Muslim extremists (ICM/Guardian)

	6/21/06
Likely	32%
Not likely	51%

22) How likely do you think it is that there will be a major terrorist attack in Britain over the next year or so? (ICM/BBC)

	2/12/03
certain	7%
very likely	31%
fairly likely	42%
not very likely	10%
very unlikely	4%

23) Importance of the threat of international terrorism in Europe (German Marshall Fund)

	7/1/05
extremely important	0.58
important	0.35
not important	0.06

24) UK: How worried do you feel that you or your immediate family might be a victim of a terrorist attack here in Britain? (ICM/Guardian)
How worried are you about the threat of terrorism in your country? (Ipsos-Public Affairs)

	1/22/03	3/5/04
very worried	15%	21%
somewhat worried	37%	45%
not too worried	35%	26%
not worried at all	13%	7%

25) How would you evaluate the threat of terrorism in the United Kingdom today? (Eurobarometer)

	11/1/03
very strong	19%
quite strong	57%
quite weak	16%
very weak	4%

Data Appendix: Mass Fear and Threat Levels

26) UK: Here is a list of things that some people say they are afraid of. For each of these please tell me, if, personally, you are afraid of it, or not. International terrorism (Eurobarometer)

	2002	2003
afraid	85%	80%
not afraid	13%	18%

27) How serious do you feel terrorism is here (in your own country)?

	USA	Great Britain
Very serious	61%	30%
Only somewhat seriou	31%	40%
Hardly serious at all	7%	27%
Not sure/Don't know	2%	3%

USA data from 12/1977 Harris poll, GB data from 6/1978 SOC poll

Data Appendix: Civil Liberties

1) Necessary to Give up Some Civil Liberties to Curb Terrorism? (Pew)

	4/1/95	3/1/96	4/1/97	9/1/01	1/1/02	6/1/02
Yes	49%	30%	29%	55%	55%	49%
No	43%	65%	62%	35%	39%	45%

	8/1/03	7/1/04	6/1/05	7/1/05	9/10/06	1/9/07
Yes	50%	56%	40%	40%	43%	40%
No	44%	38%	53%	53%	50%	54%

2) In order to curb terrorism in this country, do you think it will be necessary
for the average person to give up civil liberties, or not? (LAT--4/95), (Princeton--4/97)
Do you think Americans will have to give up some of their personal freedoms
in order to make the country safe from terrorist attacks? (CBS--9/13/01, 9/20/01, 10/8/01)

	4/1/95	4/1/97	9/13/01	9/20/01	10/8/01
Yes	49%	29%	74%	79%	79%
No	43%	62%	21%	19%	17%

3) Would you favor or oppose the following measures to curb terrorism: requiring that all citizens carry a national
identity card at all times to show to a police officer on request (Princeton--9/13/01)
Here are some increased powers of investigation that law enfrocment agencies might use when dealing with
people suspected of terrorist activity, which would also affect our civil liberties.
For each say if you would favor or oppose it ...Adoption of a national ID system for all US citizens (Harris--9/19/01)
In order to reduce thre threat of terrorism, would you be willing or not willing for the government to require
everyone in the United States to carry a national electronic identification card, or "smart card,"
that would have detailed information about each person? (CBS/NYT--9/20/01, 2/24/02)

	9/13-17/01	9/19-24/01	9/20-23/01	2/24-26/02
Favor	70%	68%	56%	50%
Oppose	26%	28%	38%	44%

4) Would you favor the following measures to curb terrorism? (Pew)
Requiring that all citizens carry a national identity card at all times to show to a police officer on request

	9/1/01	8/1/02	1/4/06
Favor	70%	59%	57%
Oppose	26%	38%	38%

5) Allowing the US government to monitor your personal telephone calls and emails?

	9/1/01	8/1/02	1/4/06
Favor	26%	22%	24%
Oppose	70%	76%	73%

6) Allowing the US government to monitor your credit card purchases?

	9/1/01	8/1/02	1/4/06
Favor	40%	32%	29%
Oppose	55%	63%	68%

7) Summary of above pro positoins

	9/1/01	8/1/02	1/4/06
ID Card	70%	59%	57%
Monitor Phone	26%	22%	24%
Monitor CC	40%	32%	29%

8) Allowing airport personnel to do extra checks on passengers who appear to be of Middle Eastern descent?

	8/1/02	1/4/06
Favor	59%	57%
Oppose	38%	38%

9) Do you think most US Muslims are more loyal to the United States than they
are to Islam? (Fox News/Opinion Dynamics)

	7/12/07
More Loyal to US	9%
More Loyal to Islam	32%
Equally Loyal	40%

Data Appendix: Civil Liberties

10) Do you think US Muslims are unfairly singled out for scrutiny by law enforcement offficials? (Fox News/Opinion Dynamics)

	7/12/07
Yes	38%
No	52%

11) Do you think the FBI should or should not wiretap mosques to try to keep an eye out for radical preaching by Muslim clerics? (Fox News/Opinion Dynamics)

	7/12/07
Should	52%
Should Not	39%

12) Thinking about people you know, since the terrorist attacks in the USA do you think they are more hostile toward Muslims here in Britain, less hostile or do you think it has made no difference one way or the other? (ICM/BBC Panorama)

	9/29/01
more hostile	29%
no difference	62%
less hotile	2%

13) MUSLIMS: President Bush and Tony Blair have said war agianst terrorism is not a war against Islam. Do you agree or disagree? (ICM/Guardian)

	3/16/04
agree	20%
disagree	68%

14) There are a number of people living in Britain who the authorities have identified as posing a potential terrorist threat. Do you think extra powers should or should not be made available to deport or detain them? (ICM/News World)

	7/19/05
deport	36%
detain	17%
both	35%
neither	9%

15) UK Civil Liberties: Here are some things people have suggested should be done to counter the risks of terrorism. Others oppose them as they say they endanger the rights of everyone. Bearing these two things in mind, for each one please say whether you support or oppose the measure to counter terrorism … (ICM)

Make it law that everyone carries an identity card

	2/12/03
support	82%
oppose	15%

16) Make new immigrants swear an oath of allegiance to the UK

	2/12/03
support	62%
oppose	31%

17) Detain all immigrants and asylum seekers until they can be assessed as potential terrorist threats

	2/12/03
support	74%
oppose	20%

18) Ban all asylum seekers

	2/12/03
support	35%
oppose	60%

Data Appendix: Civil Liberties

19) Arm policemen

	2/12/03
support	59%
oppose	36%

20) Give police greater powers to eavesdrop on people (like listening to telephone conversations and e-mails)

	2/12/03
support	43%
oppose	52%

21) Bring in the death penalty for terrorist offences that kill people

	2/12/03
support	60%
oppose	34%

22) Summary Chart

	Support	**Oppose**
ID Card	82%	15%
Allegiance Oath	62%	31%
Detain Immigrants	74%	20%
Ban Asylum Seekers	35%	60%
Arm Police	59%	36%
Eavesdropping	43%	52%
Death Penalty	60%	34%

23) Curtailing civil rights in Israel to deal with internal dissension (Arian, 1997)

	1996	**1997**
Definitely	12%	13%
yes	39%	45%
no	29%	28%
Definitely not	19%	14%

24) ISRAELI JEWS: Israeli Arabs were recently involved in attempted terror attacks in Tiberias and Haifa. In your view, what portion of the Israeli Arab community supports carrying out such acts? (Tami Steinmetz Research Institute for Peace at TAU)

	9/1/99
only a few	28%
at least half	34%
a sizeable minority	32%

25) ISRAELI JEWS: In your opinion, are Israeli Arabs entitled to all political rights in Israel? (Tami Steinmetz Research Institute for Peace at TAU)

	9/1/99
Should have equal rights	46%
Jews should have more right	50%

26) In your opinion, were the people who flew planes into New York's World Trade Center ...? (PORI--9/2003)

	Israeli Jews	**Israeli Arabs**	**Palestinians**
Terrorists	96%	41%	37%
Martyrs	3%	8%	22%
Freedom Fighters		25%	14%

27) Terrorism is never justified under any circumstances. (PORI, 9/2003

	Israeli Jews	**Israeli Arabs**	**Palestinians**
Strongly agree	83%	58%	34%
Somewhat agree	10%	11%	32%
Somewhat disagree	4%	6%	18%
Strongly disagree	4%	22%	9%

Data Appendix: Civil Liberties

28) Hamas is a terrorist group (PORI, 9/2003)

	Israeli Jews	Israeli Arabs	Palestinians
Strongly agree	90%	16%	5%
Somewhat agree	8%	11%	8%
Somewhat disagree	1%	14%	14%
Strongly disagree		45%	67%

29) West Germany, Institut fur Demoskopie poll-*If the influence of the state and the police has to be strengthened in order to combat terrorism, would you go along with limitations of your personal rights by such measures as surveillance and house searches or would you reject this?*

	5/1/75	2/1/78
Accept	69%	62%
Reject	21%	26%
No opinion	10%	12%