

5-2008

Confronting Jihad: Past Experience and Counterterrorism Since September 11

Michael Woolsey
College of William and Mary

Follow this and additional works at: <http://publish.wm.edu/honorsthesis>

Recommended Citation

Woolsey, Michael, "Confronting Jihad: Past Experience and Counterterrorism Since September 11" (2008). *Undergraduate Honors Theses*. Paper 800.
<http://publish.wm.edu/honorsthesis/800>

This Honors Thesis is brought to you for free and open access by the Theses, Dissertations, & Master Projects at W&M Publish. It has been accepted for inclusion in Undergraduate Honors Theses by an authorized administrator of W&M Publish. For more information, please contact wmpublish@wm.edu.

Confronting Jihad:
Past Experience and Counterterrorism Since September 11

A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelors of Arts in International Relations from
The College of William and Mary

By

Michael R. Woolslayer

Director: Clay Clemens, Professor
Department of Government

Williamsburg, VA
April 2008

Table of Contents

Section	Page
1. Introduction.....	1
2. Theoretical Framework.....	8
3. Literature Review.....	16
4. Case Study Overview.....	19
5. Part I: Extensive Previous Counterterrorism Experience	
a. The British Case.....	24
b. The Spanish Case.....	42
6. Part II: Little Previous Counterterrorism Experience	
a. The American Case.....	60
b. The Australian Case.....	75
7. Conclusion.....	91
8. Reference List.....	98

List of Tables and Figures

Tables	Page
1. Summary of data types used to test the hypothesis in each case study.....	21
2. Brief description of values assigned to describe the change in counterterrorism policy.....	22
3. Summary of conclusions by case study.....	23
4. Summary of conclusions by type of data.....	92

Figures	Page
1. Spectrum of Rights and Security.....	11

Introduction

Today, many liberal democracies face the menace of Islamic extremist violence. Extremists struck the United States. On 11 September 2001, the terrorist group Al-Qaeda attacked the United States, killing over 3,000 Americans. Australia, too, has been a target of violence. The next year, on 12 October 2002, more than 190 people, including over seventy Australians, were killed when the Islamic militant group Jemaah Islamiah detonated a bomb in Bali. Jihadi terrorists hit Spain. On 11 March 2004, three explosions rocked the Madrid commuter train system, resulting in the deaths of 173 people. The United Kingdom has also fallen victim to this new campaign. Fifty-two people died on 7 July 2005, when four suicide bombers blew themselves up at various points on the London transport system.

Jihadi terrorism is often portrayed as a threat to the fundamental principles of liberty and freedom upon which so many of the first world governments are based.¹ It is difficult to argue that this new menace does not challenge those beliefs. The very openness of liberal democracies, the rights to privacy and speedy trial and freedoms from search and seizure and unwarranted arrest, are tools that a terrorist could use against those societies to cause harm. Aside from being horrific acts of hatred and extremism, these attacks focused attention on the need for effective counterterrorism policies that deliver security while preserving liberal democratic values and rights.

Though liberal democracies share the threat of jihadi terrorism, they possess divergent histories of past experience with terrorism. Some, such as the United Kingdom

¹ Much debate exists in the academic community about the proper label to apply to the recent terrorist activity. "Jihadi terrorism" is just one of the proposed labels; while not accepted by everyone as the best term, it is more precise and accurate than the popular "Islamic terrorism." This study thus uses "jihadi terrorism" throughout.

or Spain, have waged long-term, extensive counterterrorism campaigns against domestic threats. Others, like the United States and Australia, never faced widespread, determined terrorist movements in the past. The goal of this study is to discover whether liberal democracies with extensive previous counterterrorism experience demonstrate greater restraint in their policy reaction to international jihadi terror following 11 September 2001 than those without such experience. Three questions encourage this study. First, have the governments of certain liberal democracies demonstrated greater restraint in their reaction to 9/11? Second, how has past experience with terrorism affected the degree to which government policies have been able to maintain the previous counterterrorism equilibrium in dealing with terrorism while confronting the threat of jihadi terror? Third, and most broadly, is past experience with counterterrorism directly applicable to combating future terrorism threats?

In an attempt to address these questions, four case studies are analyzed. The cases of the United Kingdom and Spain, countries with extensive previous experience with domestic terrorism, are compared with the cases of the United States and Australia, nations with little or no prior exposure to terrorism. This paper relies on five means of assessing the degree to which government policies have shifted from the pre-September 11 equilibrium in terms of counterterrorism measures. First, internal governmental oversight bodies, such as independent counterterrorism reviewers, are inspected. Second, the opinions of the judiciary in terrorist-related cases are evaluated. Third, content analyses of reports on counterterrorism by external watchdogs such as Amnesty International gauge a country's movement from the societal equilibrium. Fourth, the media perception of the policy movement is examined from articles on counterterrorism

in periodicals. Fifth, the academic counterterrorism literature is evaluated to determine how scholars view the post-9/11 counterterrorism policy of each country.

It is hypothesized at the outset of this study that, all else being equal, liberal democracies with extensive previous counterterrorism experience will be more constrained in their policy response to international jihadi terror following 11 September 2001 than those without such experience. Essentially, states are believed to undergo a trial and error procedure during the period of previous counterterrorism. Policymakers in countries that put counterterrorism regimes in place to combat past terrorism benefit from a process of “policy learning.” Successful policies are apt to be resurrected and reapplied, while failures are either discarded or reevaluated and tweaked before being used again. Those countries that have spent years undergoing this process, represented by the United Kingdom and Spain, should have better identified which counterterrorism policies are effective at simultaneously delivering security and preserving the fundamental rights of the society. Those countries for which jihadi terrorism is their first significant terrorist threat, like the United States and Australia, have not experienced such a process and thus are less able to identify effectual counterterrorism strategies.

It would be useful to take a brief look at the history of domestic terrorism in the United Kingdom and Spain, as well as a short overview of the jihadi threat. The United Kingdom faced terrorism from the Irish Republican Army (IRA), which practiced terrorism from about 1970 through the 1990s. At the heart of the troubles was the use of the British Army to support the Royal Ulster Constabulary (RUC) which, because of its activities toward Catholic protestors in 1969, was seen as a tool of the Protestant majority by the Catholics (Roy, 1991). This perception of bias on the part of the security forces

and the reestablished presence of the Army resulted in the resurrection of both Republican and Loyalist paramilitary organizations. The renewed period of violence that lasted from 1969 until the cessation of violent activity proclaimed by the IRA in July 2005 was marked by the employ of terrorist activity in Britain itself. While Ireland had seen revolutionary terrorism before, the scale was much greater after 1969. Between the years 1969 and 1984, approximately 100 deaths resulted from terrorist activity in Britain (Walker, 1986, p. 14). The spread of violence from Northern Ireland and the specific targeting of locations and persons in Britain had strategic motivation. It was believed that bloodshed in Britain would have more impact than that in Northern Ireland, and that “in a war of attrition, the British public [will] tire first” (Bell, 1976, p. 71).

Spain faced a similar separatist movement. The origin of the modern organization known as the *Euskadi ta Askatasuna* (ETA) can be traced to the development of contemporary Basque nationalism in the late nineteenth century. This nationalism led to the eventual establishment of the organization in the early 1960s, during the rule of the authoritarian dictator, General Francisco Franco. His brutal and ruthless regime officially outlawed the promotion of Basque nationalism, while, in reality, fertilizing the ground from which the ETA and its radical Basque patriotism sprang. The political climate in Spain changed dramatically after Franco’s death in November 1975, but these transformations failed to spell the end of the ETA. While many Basques were satisfied with the autonomy granted by the referendum on the subject in 1979, calls for full political independence still sounded. According to analysts, some nationalists advocate total independence, rejecting the Constitution’s previous insistence on “the indissoluble unity of the Spanish nation” (Woodworth, 2001, p. 20). This demand for sovereignty

over the entirety of the Basque region forms the core of the ETA's stated goals for engaging in domestic terrorism against the Spanish government.

All four of the selected countries confronted some level of threat from jihadi terrorism since 2001. Al-Qaeda, an Shi'a Islamic extremist organization masterminded by Osama bin Laden, is at the vanguard of this form of all-encompassing, religiously-motivated, international terrorism. The sophistication, dedication, worldwide reach of the jihadi terrorists was something that had never been seen before. Bruce Hoffman (2006) writes that bin Laden "has defined al Qaeda's fundamental *raison d'être* in terms of the 'clash of civilizations' religious typology" (p. 93). Bin Laden couches his terrorism in terms of a holy struggle of Islam versus the Infidel, faith versus heresy, virtue versus sin. According to this worldview, Islam is under assault from all nonbelievers, which encompasses the entirety of the Western world. Everyone within that world is a target of jihadi terrorism. Bin Laden himself has announced that his organization does "not differentiate between those dressed in military uniforms and civilians" and has proven this on multiple occasions (as cited in Hoffman, 2006, p. 97). The perceived menace of jihadi terror stems not only from Al-Qaeda itself, but from regional affiliates, copycat movements, and homegrown groups inspired by the actions and philosophies of the jihadists. Such is the nature of the threat confronting liberal democracies today.

The literature written on the subject of counterterrorism is primarily atheoretical. The vast majority of it consists of narrow studies of particular cases with little comparative applicability. To help fill that gap, this study posits that certain liberal democracies are better able to craft a counterterrorism regime that preserves fundamental rights, and bases that hypothesis on the premise that policymakers in liberal democracies

learn from their country's previous experience in dealing with analogous threats. The assumption that policymakers learn is in turn derived from previous scholarship on the concept of policy learning.

This study draws heavily upon what is known as "social learning," primarily applied to domestic economic policymaking previously, in order to formulate the theoretical framework (Hecló, 1974; Sacks, 1980; Skocpol, 1985; Weir & Skocpol, 1985; Hall, 1993). This literature states that policymakers do learn, and that the most important thing affecting current policy is past policy. They also identify policy administrators as the deciders of policy, rather than politicians, and stress the relative autonomy of such decision-makers from society. Such suppositions carry important implications for the study of counterterrorism policymaking. Policymakers will rely a great deal on past experience with terrorism while formulating future counterterrorism policy. Those countries that faced substantial domestic terror threats possess significantly more experience for their policymakers to draw upon. No previous studies have applied the theory of policy learning specifically to counterterrorism regimes in liberal democracies; in fact, Martha Crenshaw (2000) identified it as a facet of counterterrorism research requiring further study.

In the first section of the paper, the theoretical framework for the rest of the study will be developed in more depth. The second section will contain a review of the counterterrorism literature. The third and main part of the study opens with an overview of the case studies, as well as an explanation of why they were chosen and how they will be examined follow the literature review section. Then the case studies themselves are

presented. The paper concludes with a section in which the results of the study are analyzed and the implications on counterterrorism policymaking are examined.

Theoretical Framework

The basic hypothesis of this paper is that, all else being equal, one would expect liberal democracies with previous domestic counterterrorism experience to demonstrate greater restraint in their policy response to international jihadi terror following 11 September 2001 than those without that experience. The cases of two countries with significant prior struggles with domestic terrorism, the United Kingdom and Spain, as well as two countries with little experience with domestic terrorism, the United States and Australia, are examined to test this supposition. The hypothesis is derived from the theoretical arguments discussed in detail below.

Terrorism itself is a complicated definitional challenge.² For the purposes of this study, terrorism is broadly defined as the systematic employ of illegal violence by an actor or group of actors against noncombatants. Within each case study, terrorism will refer to the current definition accepted and used by the country being scrutinized. Within the larger context of terrorism, the particular subcategory of jihadi terrorism concerns this study. Jihadi terrorism is a specific type of international terrorism. The Palestinian Liberation Organization developed the first international terrorism in the late 1960s, inaugurating the travel of terrorists from country to country and the targeting of innocent civilians from nations that had little or nothing to do with their specific grievances (Hoffman, 2006, pp. 63-80). Jihadi terrorism grew out of this tradition. While religiously-motivated terrorism is nothing new, jihadi terrorism is a relatively recent and particularly virulent manifestation of the practice. It derives impetus from the perceived

² It has proven impossible to reach a consensus international definition of terrorism. Each individual country must define it within its own legislative or criminal framework. Some of the complexities of international counterterrorism cooperation stem from this lack. For discussions of this difficulty, see: Dugard, 1994; Badey, 1998; Annan, 2005.

“crimes and sins committed by the Americans” and their allies and is justified by religious-legal statements known as *fatwas* (Alexander & Swetnam, 2001, appendix 1B, pp. 1-2). First entering the world stage with the 1993 bombing of the World Trade Center and the embassy bombings in 1998, the most prominent jihadi terrorist network, Osama bin Laden’s al-Qaeda, demonstrated their reach and aims with the bloody attacks in the United States in 2001, Spain in 2003, and the United Kingdom in 2005. Though al-Qaeda was responsible for just over 0.1% of terrorist incidents between 1998 and December 2007, the organization accounted for 8.0% of terrorism fatalities in the same period.³ The four countries examined below face this jihadi terrorism, and their attempts to combat its threat motivate this study.

Discussions of counterterrorism policy and its ramifications on human rights and civil liberties are also fraught with difficulties. This study characterizes the similar but slightly different bundle of rights and liberties in each of the four liberal democracies mentioned above as fundamental rights. The term fundamental rights encompasses both the human rights, identified in domestic law or through the country’s participation in international instruments, and civil liberties, enshrined in constitutions, legal codes, or precedents, that are traditionally enjoyed in the country. Difficulties arise in exploring the complex relationship between these fundamental rights and security in liberal democracies. Policymakers in most liberal democracies generally assume that they must sacrifice certain rights in order to effectively combat terrorism (Schlagheck & Walker, 1992; Chalk, 1995; Donohue, 2001, 2005; Tsoukala, 2006). Many governments in liberal

³ Source: The Rand Corporation Terrorist Incident Database. According to the database, there were 26,071 terrorist incidents resulting in 43,381 fatalities between 1998 and December 2007. Al-Qaeda was responsible for 31 attacks and 3,457 deaths. <http://www.tkb.org/RandSummary.jsp?page=about>, accessed 15 December 2007.

democracies operate under the presumption that constitutional guarantees must be curbed to protect individual security because they obstruct the realization of efficient counter-terrorism policies. David Blunkett, for example, the former Home Secretary of the United Kingdom, suggested that “democratic governments have always had to strike a balance between the powers of the state and the rights of individuals” (Blunkett, 2004, p. i). In spite of the numerous academic critiques of the assumption that security and rights are necessarily diametrically opposed (Bonner, 1992; Della Porta, 1992; Chalk, 1995; Donohue, 2001; Payne, 2002; Waldron, 2003; Tsoukala, 2004; Meisels, 2005), the trade-off between rights and security has come to dominate debates over counter-terrorism policy in liberal democracies.

It is not the purpose or intention of this study to become embroiled in the debate raging in political theory about the relationship between rights and security. Having acknowledged the existence of the dispute, this study is primarily concerned with the fact that most policymakers and politicians in liberal democracies see trade-offs between fundamental rights and security. This paper seeks to measure the impact of this presupposition on respect for fundamental rights. As Figure 1 below shows, the relationship between fundamental rights and security can be represented as existing on a spectrum. On the far left side, a theoretical society that values only individual rights and completely neglects security could be labeled anarchy. On the other hand, a society that concerns itself solely with security to the detriment of rights might be considered a totalitarian police state. Liberal democratic societies, by their very nature, have chosen to maintain a certain degree of both rights and security. Due to this, liberal democracies are constrained to the central area of the spectrum, well within both extremes. Each liberal

democracy determines its location on the continuum, within the limitation, through a process of trial and error and societal debate. Policymakers internalize this debate through the process of social learning discussed later in the section. Liberal democracies are assumed to have been at some sort of counterterrorism policy equilibrium prior to the 11 September 2001 attacks in the United States. Following this event, liberal democracies awoke to the threat of jihadi terrorism and have been pursuing policies intended to increase security.

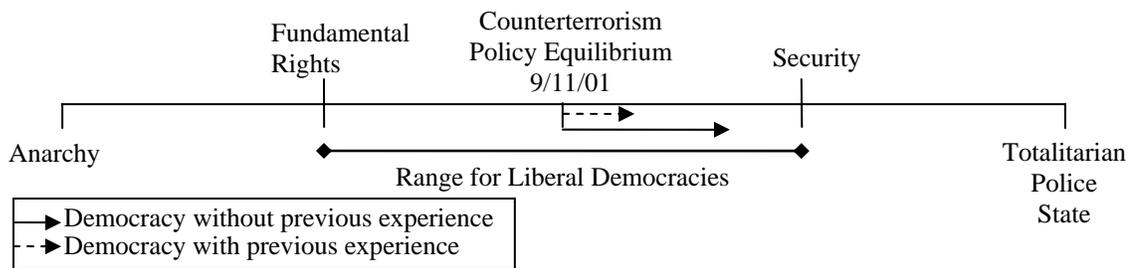


Figure 1: Spectrum of Rights and Security

This study hypothesizes that those liberal democracies that faced a sustained campaign of terrorism in the past have experienced this societal debate. Those countries' policymakers and policymaking organizations have internalized the results of the process. Due to this internalization, those liberal democracies with extensive previous experience with terrorism will see a smaller deviation from the previous equilibrium than those countries that lack such a history.

The general theory of policy learning provides a sound theoretical footing for this comparative study of counterterrorism in liberal democracies. Significant literature addresses the process of policy learning, chiefly from historical examples, but has primarily been applied to the field of foreign policy (May, 1973; Jervis, 1976; Long,

1981; Breslauer & Tetlock, 1991; Levy, 1994). Jack S. Levy (1994) writes that “historical learning often occurs,” but the challenge is “to specify when certain actors learn what types of lessons from what events, and under what conditions this leads to policy change” (p. 280). Conceptually, learning is defined as “a change of beliefs (or the degree of confidence in one’s beliefs) or the development of new beliefs, skills, or procedures as a result of the observation and interpretation of experience” (Levy, 1994, p. 283).

Ernest May (1973) produced one of the first studies of historical learning by policymakers. He writes that “framers of foreign policy are often influenced by beliefs about what history teaches or portends” (May, 1973, p.iv). Jervis (1976) identifies the impact of learning from history. Similar prior episodes “provide the statesman with a range of imaginable situations and allow him to detect patterns and causal links that can help him understand his world” (Jervis, 1976, p.217). Later studies looked at different aspects of the policy learning process, including how governments learn (Etheredge, 1981; Etheredge 1983). Breslauer and Tetlock (1991) advance a much more nuanced conception of learning. For them, the policymaker can exhibit a form of “*learning that*,” which “refers to a change in the probability of a response in the face of changing reward contingencies” (Breslauer & Tetlock, 1991, 8). He or she can also “*learn how*,” which implies that the enhancement in “performance in relation to the attainment of certain goals...happened as a result of behavioral change that is preceded and driven by improvement in the actor’s understanding of his environment” (Breslauer & Tetlock, 1991, 6). A researcher guarantees two conditions when reporting that policymakers learned how: that actions characterized as negative were not repeated, and the change was

a consequence of internalizing new behavioral patterns based upon disapproving feedback. Breslauer and Tetlock (1991) also make a distinction between simply altering behavior and changing beliefs (pp. 10-11). They rightly point out that a study of modifications in beliefs represents a significant empirical challenge and requires extensive psychological knowledge that is rarely available. Only perceptible alterations of behavior concern this study.

Some investigation has been undertaken of learning in the area of domestic policy (Hecló, 1974; Sacks, 1980; Skocpol, 1985; Weir & Skocpol, 1985; Hall, 1993). The most significant contribution has been made in the study of social learning. Social learning is defined as “a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information,” where learning is signified by policy modifications due to that process (Hall, 1993, p. 278). This study uses the above definition of learning. The idea of social learning suggests ways to consider independent state contributions to policymaking, even in constitutional democracies ostensibly directed by legislatures and political parties. The most prominent proponents of the theory present three primary characteristics. First, a general consensus exists that the key factor affecting current policy is past policy (Hecló, 1974, p. 315; Weir & Skocpol, 1985, p. 119; Hall, 1993, p. 277). Decision-making is a process of learning, and “the most important influence on that learning is previous policy itself” (Sacks, 1980, p. 356).⁴ Where this previous policy was devised and implemented in another country under directly relatable circumstances, policymakers’ learning sometimes “consisted in perceiving and transmitting foreign experience” (Hecló, 1974, p. 310). Second, the most

⁴ Some scholars debate, however, whether policymakers learn better from policy failures (see Hecló, 1974, p. 303) or policy successes (see Weir & Skocpol, 1985, p. 120).

important agents for carrying out the learning process are policy administrators, rather than politicians. Heclo (1974) reports that “[f]orced to choose one group among all the separate political factors as most consistently important...the bureaucracies of Britain and Sweden loom predominant in the policies studied” (p. 308). Third, the concept of social learning accentuates the ability of the state to act separately from societal demands. Heclo (1974) discards the idea that socioeconomic development, elections, political parties, and special interest groups play a decisive role in policy formation, and cautiously suggests that policymaking is elite-driven rather than pluralistic (p. 318). Sacks (1980) goes a bit farther, claiming that social learning exposes “the substantial autonomy of the state from societal pressures in its formulation of policy goals” (p. 356).

The three broad characteristics of the social learning paradigm possess major implications for the study of counterterrorism policy in liberal democracies. First, the assumption that previous policy is influential in the formation of new policy reinforces the hypothesis that the policymaking process will be affected by a country’s prior experience in combating terrorism. Additionally, based upon a close reading of the social learning literature, one would expect that policy experts will maintain continuity and internalize the lessons learned from application of counterterrorism policies in the past, despite political shifts or changes in socioeconomic situations. These policy experts need not necessarily be the same individuals to continue previous policies; as Weir and Skocpol (1985) point out, “policy intellectuals,” whether or not personally involved in the formulation of the previous policy, will all “consciously build on and/or react against previous governmental efforts for dealing with the same (or similar) problems” (p.119). Governments persist with policies they perceive as effective, despite pressure to remove

it, due to the autonomy of the state in terms of policy formation. An application of the social learning paradigm to counterterrorism policymaking suggests that those countries which previously formulated counterterrorism policies in the face of terror threats will internalize the lessons of their experience and learn from them. Yet the autonomy of the state desensitizes policymakers to society's preferences regarding rights, which might result in counterterrorism policies that are inconsistent with public opinion.

Literature Review

The literature surrounding the study of counterterrorism measures reflects the nature of the subject itself. It is a rapidly evolving, primarily atheoretical body of work. Martha Crenshaw (2000) notes that “both the study of terrorism and counterterrorism policy have been event-driven” (p. 415) and lack empirical evidence and theoretical grounding. She goes on to inquire “how do governments learn from past experiences in dealing with terrorism?” (Crenshaw, 2000, p. 417), and identify it as a question requiring further study.

Currently, the vast majority of studies on terrorism are occupied with one of two goals: illuminating the history and development of particular groups, or discussing terrorism in general terms. Few comparative studies of counterterrorism policies across different nations exist. Among those that have been undertaken, many focus on a single aspect of counterterrorism policy. A popular topic recently has been the international and national legal frameworks for counterterrorism, including treatment of emergency legislation and of penal codes (Walter, Vöneky, Röben, & Schorkopf, 2004; Ramraj, Hor, & Roach, 2005; Gross & Aoláin, 2006).⁵ Some studies have focused on counterterrorist campaigns conducted by liberal democracies. Among the best are those edited by Alex Schmid and Ronald Crelinsten (1993), David Charters (1994), Fernando Reinares (2000), Yonah Alexander (2006), and Robert J. Art and Louise Richardson (2007).

The Schmid and Crelinsten volume contains seven case studies, but is confined to Europe and includes three nations that have little experience with terrorism—the Netherlands, Switzerland, and Austria. Charters examines six case studies, but looks

⁵ Legislation and other legal mechanisms for the prevention of terrorism are often referred to as anti-terrorism in the literature. Counterterrorism, in the context of this paper, refers to the comprehensive regime to combat terrorism, including legal mechanisms.

only at the impact of international terrorism on the nexus between security and civil liberties prior to 1994. The study states that liberal democracies can learn from each other's successes and failures in counterterrorism to limit repressive reaction to new terrorist threats (Charters, 1994, pp.223-226). Reinares's compilation presents case studies of the United Kingdom, Spain, France, and Italy, but focuses on the potential for European intergovernmental cooperation to combat terrorism. Alexander's book analyzes the success of counterterrorism policies in a large number of cases (the United States, Argentina, Peru, Colombia, Spain, the United Kingdom, Israel, Turkey, India, and Japan), but does not draw lessons from the cases to apply to jihadi terrorism.

Art and Richardson's work examines the cases of Italy, the United Kingdom, Spain, France, Venezuela, Peru, Colombia, Israel, Turkey, Russia, India, Sri Lanka, and Japan. The explicit goal of the study is to analyze democratic counterterrorism strategies and draw lessons from those experiences to be applied to present and future confrontations with terrorism (Art & Richardson, 2007). The implication is that previous experience with terrorism produces lessons that are directly applicable to the current jihadi threat. The book makes little indication, however, of the extent to which the governments that faced this threat internalized these lessons themselves and adjusted their own counterterrorism policies accordingly.

The literature on counterterrorism is exceedingly thin in its discussion of policymaker learning. For the most part, this discourse consists of pithy allusions to familiarity with terrorism. For example, Louise Richardson (2007) mentions in her chapter on Britain and the IRA that the prime minister's reaction to the 7 July bombings "bespoke his experience in dealing with terrorism" (p. 99). Other authors reference

learning in a confined counterterrorism environment, primarily in discussions of military activities. Bruce Hoffman and Jennifer Morrison-Taw (2000) refer to the lack of learning by the British from counterterrorism campaigns in Malaya, Kenya, and Cyprus, where “the same mistakes in organization and intelligence were repeated, with the lessons of the earlier conflict seemingly ignored” (p. 8). This indication is of limited applicability to this study, as it encompasses primarily military responses in a colonial setting, with decision-making concentrated in the hands of a military leadership rather than a civilian government and bureaucracy.

Case Study Overview

In order to test the hypothesis that, all else being equal, one should expect liberal democracies with extensive previous counterterrorism experience to demonstrate greater restraint in their policy response to jihadi terrorism following 9/11 than those without experience, four case studies were examined in this study. The cases were scrutinized to ascertain the degree to which government policies in each country shifted away from the particular equilibrium in place on 11 September 2001.

All four case studies fulfilled two criteria. First, those countries chosen needed to be established, stable liberal democratic states. The hypothesis only extends to liberal democratic countries, as policymaking is qualitatively different in other governmental types. Second, the nations had to face a high level of threat—real or perceived—from jihadi terrorism. The purpose of this study is to evaluate the change in counterterrorism policy among the countries following 11 September 2001, when the perceived reach and destructive capability of jihadi terrorism truly entered the consciousness of Western liberal democratic governments. In addition to these two general criteria, the study necessitated two countries with extensive previous counterterrorism experience, while the other two needed to lack this experience. This was done in order to compare the effect of the independent variable of extensive previous counterterrorism experience on liberal democracies' responses to 9/11.

The United Kingdom and Spain were selected as the two cases with extensive previous experience with counterterrorism. The United Kingdom faced a sustained terrorism campaign by the Irish Republican Army (IRA) for thirty years, from 1969 until the Good Friday Agreement in 1998. The nation also made troop contributions to both

Iraq and Afghanistan, which have made it a target of jihadi terrorists. Reinforcing the high level of threat from jihadi terrorism, terrorists attacked the London transit system on 7 July 2005. Democratic Spain has faced ETA terrorism since the late 1970s. Spain also maintains a military contingent in Afghanistan and had contributed soldiers to the invasion of Iraq. Terrorists targeted the country on 11 March 2004, killing 192 people with bombs on Madrid commuter trains. Both countries have both long experience with counterterrorism and a high level of threat from jihadi terrorism.

The United States and Australia were chosen to represent countries with little previous experience with counterterrorism. The United States possesses an entrenched liberal democratic government. The country's leadership of the invasions of Iraq and Afghanistan has particularly inflamed jihadists, but it was a target prior to those conflicts. On 11 September 2001, terrorists killed over 3,000 people in the World Trade Center and the Pentagon. The nation had little experience with terrorism before then, a familiarity generally limited to isolated domestic extremists. Australia maintains a parliamentary democracy patterned along the lines of the United Kingdom. Its support of and troop contributions to the invasions of Afghanistan and Iraq have made it a target of jihadi terrorism. Terrorists struck Australian citizens at a nightclub in Bali in 2002, as well as the Australian embassy in Indonesia in 2004. The country had almost no history of exposure to terrorism before the bombings. The United States and Australia both represent nations with little previous counterterrorism experience and high threat level from jihadi terrorism.

Five different methods were used to analyze the degree to which government policies in each of the four countries shifted from away the previous societal equilibrium

Table 1: Summary of data types used to test the hypothesis in each case study

Type of Data	Description
Internal Governmental Scrutiny	Reports by legislative oversight bodies, independent counterterrorism policy reviewers, law reform commission
Judicial Opinions	The opinions of judges in cases relating to counterterrorism policy after 9/11
External Watchdogs	Reports on counterterrorism policy by national or international human rights or civil liberties organizations
Media Perception	Articles in a range of national and international periodicals commenting on counterterrorism
Academic Assessment	Books, book chapters, and articles by scholars on a country's counterterrorism regime

after 11 September 2001. Table 1 outlines the types of data examined in this study. First, Internal Governmental Scrutiny referred to reports by legislative oversight bodies, independent counterterrorism reviewers, and law reform commissions. Examples included the Joint Committee on Human Rights in the United Kingdom, Lord Carlile in the United Kingdom, and the Australian Law Reform Commission. The second, Judicial Opinions, were written judgments of justices in case relating to counterterrorism. These generally came from the highest courts with jurisdiction over terrorism cases in each country. Third, External Watchdogs consisted of reports on counterterrorism policy by outside interest groups. The organizations issuing the papers evaluated in this study were both national, like the American Civil Liberties Union, and international, such as Human Rights Watch. Fourth, Media Perception was derived from a sampling of articles on counterterrorism from a wide cross-section of periodicals. The newspapers tended to be primarily national, although international papers were included in the initial search, and represented a spectrum of political ideologies in the country. Fifth, the works of scholars on counterterrorism were scrutinized in order to find the Academic Assessment. The

academics were both national and international, and their findings were taken from books, book chapters, and articles in scholarly journals.

Each method was applied in order to help assess the extent to which the four countries' policies shifted away from approaches based on the previous counterterrorism equilibrium. It was assigned one of the following values to describe the movement: significant, moderate, and small. Table 2 summarizes these values. The country's change was considered "significant" if there was much greater policy emphasis on security, substantial augmentation of governmental counterterrorism powers, and some major encroachments on fundamental rights that were enjoyed prior to 11 September 2001. This growth could take the form of legislation, extraordinary policing powers, revisions of criminal procedure, disruption of normal judicial process, or a combination thereof. A "moderate" shift occurred when there was increased policy emphasis on security, some growth of governmental counterterrorism powers, and minor curtailments of previous fundamental rights. A country was said to have made a "small" movement if there was slightly more policy emphasis on security, little or no change in governmental counterterrorism powers following 11 September 2001, and that those examined expressed few fundamental rights concerns. The values assigned to each method of

Table 2: Brief description of values assigned to describe the change in counterterrorism policy

Value	Description
Significant	Much greater policy emphasis on security, substantial augmentation of governmental counterterrorism powers; some encroachment on fundamental rights
Moderate	Increased policy emphasis on security, some growth of governmental counterterrorism powers; minor fundamental rights curtailments
Small	Slightly more policy emphasis on security, little change in governmental counterterrorism powers; few fundamental rights concerns

examination were then averaged, and a general value was given to the entire post-9/11 counterterrorism regime of each case. Table 3 previews the results of each case study.

The case studies themselves will now be presented. Part I consists of the two countries with extensive previous counterterrorism experience, the United Kingdom and Spain. Part II is the two case studies without extensive previous experience, the United States and Australia.

	United Kingdom	Spain	United States	Australia
<i>Conclusion</i>	<i>Significant</i>	<i>Small</i>	<i>Significant</i>	<i>Significant</i>

Table 3: Summary of conclusions by case study

Part I: Extensive Previous Counterterrorism Experience

The British Case

The United Kingdom is a mature liberal democracy with lengthy experience in combating an organized, sustained terrorist threat. The Irish Republican Army (IRA) made Britain the number one target in its terror campaign, beginning in the early 1970s. Based upon this high level of previous experience with combating terrorism, one would expect the United Kingdom to possess a clearly defined, extensively tested, and widely accepted counterterrorism regime. The British developed a sophisticated counterterrorism scheme throughout the period, but many of the more extreme provisions applied only to Northern Ireland. The Labour Government under Prime Minister Tony Blair, recognizing the changing nature of the terrorist menace to the country, formulated the Terrorism Act 2000. The 2000 Act permanently enshrined and extended the provisions of the previous counterterrorism acts designed to primarily counter Northern Ireland-related terror to international terrorism. A number of countries, particularly former British possessions, adopted the broad legal definition of terrorism contained within the Act (Roach, 2007, p. 228). The United Kingdom is also at a high risk of terrorist attack from jihadi practitioners. Al Qaeda operatives struck the London transport system on 7 July 2005, killing fifty-two and underscoring the deadly earnestness of the new threat. Follow up attacks failed on 21 July 2005, and authorities in the United States and the United Kingdom foiled a plot in August 2006 to hijack airliners crossing the Atlantic Ocean. One would expect the United Kingdom, with its high level of experience and sophisticated counterterrorism regime, to limit the extent to

which government policy shifted away from the previously established equilibrium between security and fundamental rights in responding to terrorism.

Previous Terrorism Experience

The United Kingdom faced a sustained thirty-year terrorism campaign born out of the centuries-old conflicts between Catholics and Protestants in Northern Ireland. The conflict between the different identities, as well as “alleged discrimination of Nationalists under the Stormont government (1920-72),” resulted in “a long-running conflict known as the Troubles” (Akinyeye, 2005, p. 3). It exploded into its most violent phase between 1969 and 1994. The IRA primarily undertook the campaigns of terrorism in the 1970s and 1980s. The renewed period of violence that lasted from 1969 until the cessation of violent activity proclaimed by the IRA in July 2005 was marked by the employ of terrorist activity in Britain itself. Between the years 1969 and 1984, approximately 100 deaths resulted from terrorist activity in Britain (Walker, 1986, p. 14). The spread of violence from Northern Ireland and the specific targeting of locations and persons in Britain had strategic motivation. It was believed that bloodshed in Britain would have more impact than that in Northern Ireland, and that “in a war of attrition, the British public [will] tire first” (Bell, 1976, p. 71).

Confronted by a situation in which terrorists began attacking urban centers, the government responded to increased IRA activity in the early 1970s with “extended powers of arrest, search and seizure; widespread detention; increased surveillance capabilities; and the creation of a special court to try terrorist suspects” (Donahue, 2003). The first dedicated anti-terrorism act was the Northern Ireland (Emergency Provisions) Act of 1973 (“the 1973 Act”). It applied only in Northern Ireland, and was designed as a

temporary measure, subject to review and renewal every six months. The 1973 Act provided so-called Diplock courts, which acted without a jury to combat the problem of juror intimidation by paramilitaries and gave unique powers to the police and armed forces in Northern Ireland to stop, to search and to enter premises.

As the violence spread, so, too, did the legislative response of the government of the UK. On Thursday, 21 November 1974, the reality of the terrorism threat facing Britain became apparent when twenty-one people were killed in Birmingham. Explosions rocked two pubs in the center of the city, injuring a total of 182 people. The Birmingham bombings represented by far the worst incident to have occurred up to that point in Britain itself. Westminster swiftly reacted with the passage of the Prevention of Terrorism (Temporary Provisions) Act 1974 (“the 1974 Act”).

The 1974 Act codified a number of provisions in order to combat the growing threat of terrorism in Britain. It was directed against Irish nationalist terrorism, and it applied to the entirety of the United Kingdom. Declared “an Act to proscribe organisations concerned in terrorism, and to give power to exclude certain persons from Great Britain or the United Kingdom in order to prevent acts of terrorism, and for connected purposes,” the 1974 Act embraced a variety of harsh measures (Parliament, 1974). The Home Secretary himself, introducing the Act on 25 November 1974, warned that “the powers...are Draconian. In combination they are unprecedented in peacetime. I believe they are fully justified to meet the clear and present danger” (Walker, 1986, p. 22). The Bill passed by 29 November, with almost no amendment or dissent.

The Act introduced a number of new powers to the Government. Part I of the Act referred to proscribed organizations and listing the penalties for aiding and abetting them,

whilst giving the Secretary of State the power to add any organization to the list if he deemed it appropriate. Part II of the 1974 Act awarded the Secretary of State the ability to put out an exclusion order, keeping a person from entering the United Kingdom, on any person, including citizens. Part III of the Act extended the powers of a constable to arrest and search suspects without a warrant under a reasonable suspicion of engaging in the activities described in the previous parts. Regarding the detention of persons arrested under this suspicion, the 1974 Act also provides that “Secretary of State may, in any particular case, extend the period of 48 hours by a further period not exceeding 5 days” (Parliament, 1974). Thus, in addition to allowing vast scope for the restriction of movement in or out of the United Kingdom by the Government, the Act also extends the period a person may be held without charge.

The Northern Ireland (Emergency Provisions) Act 1973 and the Prevention of Terrorism (Temporary Provisions) Act 1974 were the primary reactions of the Government of the United Kingdom to Irish terrorism. The supposedly emergency, short-term legislation of the 1973 Act was subsequently “was amended in 1976, re-enacted in 1978, amended again in 1987 and re-enacted once again in 1991” (“Northern Ireland,” n.d.). The non-jury Diplock courts, which were set up under the 1973 Act are still in use in Northern Ireland to this day. The temporary 1974 Act, which applied throughout the United Kingdom, was amended in 1976 and 1984 and was re-enacted in 1989 (“Northern Ireland,” n.d.). Both remained in use until the passage of the Terrorism Act 2000, which had the stated purpose of updating and rationalizing the previous anti-terrorism Acts. The two pieces of legislation formed the basic building block for the current counterterrorism strategy of the United Kingdom.

Jihadi Terrorism and Response

Britain, following the Good Friday peace agreements in 1997, decided to revamp its counterterrorism regime. The resulting legislation, the Terrorism Act 2000, reflected recognition of the evolution of the major terrorism threat to the United Kingdom from Irish irredentist violence to international jihadi terrorism. It permanently enshrined most of the provisions of the previous “temporary” and “emergency” counterterrorism laws.

Her Majesty’s Government (HMG) intended that the Act would serve as the basis for all future British counterterrorism. The formulators hoped that it would prove versatile enough to remove the impetus behind the British tradition of rushing through controversial emergency counterterrorism laws. HMG’s consultation paper published in 1998 reported the intention of creating “legislation which is both effective and proportionate to the threat which the United Kingdom faces from all forms of terrorism...which is sufficiently flexible to respond to a changing threat, which ensures that individual rights are protected and which fulfils the United Kingdom's international commitments” (Home Office, 1998a, para. 8). Despite significant reservations among the respondents to the Home Office consultation paper, the Act was signed into law on 20 July 2000, came into force on 19 February 2001, and became the basis for the U.K.’s counterterrorism regime.⁶

The United Kingdom passed three major pieces of legislation dedicated solely to counterterrorism, with significant portions of other major acts containing provisions against terrorism, between September 11, 2001 and January 2008. Immediately following the 9/11 attacks in the United States, the government pushed through the Anti-

⁶ For example, of 57 respondents on the proposed new definition of “terrorism,” 28 supported the Government’s proposal, 28 possessed significant concerns, and 1 had no comments (Home Office, 1998b).

terrorism, Crime and Security Act 2001, which introduced a wide variety of new measures intended to promote public security. The propensity of the United Kingdom's governing bodies to react with legislation to terrorist violence was shown again in 2005, as the government presented the Terrorism Act 2006 in the aftermath of the 7/7 terrorist bombings in London.

The purpose of the Terrorism Act 2000 was to define terrorism and establish a set of powers that would be available to authorities in combating violence that fell under that definition. Less than a year after the Act came into force, the government of the United Kingdom responded to the events of 9/11 in the United States with the passage of the Anti-terrorism, Crime and Security Act 2001. The Act augments and extends the powers of the Terrorism Act 2000. Its additional powers "concern the investigation and freezing of funds which could be used to finance terrorism, the detention and deportation of suspected international terrorists, measures designed to enhance the security of the nuclear and aviation industries and the extended government control over dangerous substances that may be targeted or used by terrorists" (Walter et al, 2004, p. 594). By far the most controversial aspects of the 2001 Act are those regarding deportation and asylum seekers. Non-nationals may be detained indefinitely under the powers afforded by this Act on the Home Secretary's reasonable belief and suspicion that the individual is connected to terrorism.

Her Majesty's Government soon augmented the 2000 and 2001 Acts with further legislation. With the Prevention of Terrorism Act 2005, the government introduced the power to make a "non-derogating" control order over an individual. A control order places obligations upon an individual to prevent, restrict or disrupt involvement in

activity related to terrorism. The Secretary of State for the Home Office may introduce such an order against any person who “he has reasonable grounds for suspecting is involved in terrorism-related activity and where he considers it necessary for the protection of the public” (Home Office, 2006). It is a last ditch measure, when prosecution is not possible and where it is not possible to deport them if they are a foreign national.

The Terrorism Act 2006, which received royal assent on 30 March 2006, has introduced further powers to the government to combat terrorism. It was made clear that the Act was not a direct response to the 7/7 bombings, as new counterterrorism legislation had already been planned. Those security and emergency services that responded to the attacks were consulted in the formulation of the law. The Act made it a criminal offence to directly or indirectly encourage the commission, preparation, or instigation of acts of terrorism or to disseminate terrorist publications. (Parliament, 2006). It extends to statements or publications that glorify terrorism. Included in the provisions of the 2006 Act was an extension of the maximum period for which a suspect terrorist could be detained before being charged with an offence from fourteen to twenty-eight days (Parliament, 2006).

Another piece of legislation with important counterterrorism ramifications is the Immigration, Asylum and Nationality Act 2006, which received royal assent on the same day as the Terrorism Act 2006, 30 March 2006. Deportation has always been one of the primary tools available to the government to combat terrorism. The Immigration, Asylum and Nationality Act 2006 introduced a range of additional measures which are relevant in the counter-terrorism context (Home Office, 2006). The Act allows the

government to “deprive a person of their right of abode (a provision allowing certain Commonwealth citizens to enter the UK as if they were British citizens)” (Home Office, 2006). Immigration has become an important issue in the United Kingdom, and the government increasingly uses the rhetoric of national security to justify the tightening of immigration provisions.

A significant amount of counterterrorism legislation has entered the books in the seven years since 11 September 2001. The Anti-terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, the Terrorism Act 2006, and the Immigration, Asylum and Nationality Act 2006 compose the framework within which the British conduct their counterterrorism campaign.

The Acts described above are the main facets of the United Kingdom’s response to 11 September 2001. The extent to which government policy shifted away from the previously established equilibrium between security and fundamental rights in responding to terrorism after 9/11 is evaluated below using the five methods of testing.

Internal Governmental Scrutiny

The United Kingdom maintains a well-developed system of parliamentary oversight and independent policy reviews. These mechanisms of review and critique especially apply to the country’s counterterrorism policies. Parliamentary bodies such as the Joint Committee on Human Rights and the House of Commons Home Affairs Committee have issued numerous reports on the operation of the counterterrorism regime and its impact on fundamental rights. Her Majesty’s Government also employs the independent reviewer Lord Carlile to issue commentary on the operation of the counterterrorism legislation. It was found that a majority of the reports highlighted a

considerable movement away from fundamental rights toward security in the post-9/11 counterterrorism strategy of the United Kingdom.⁷

The Joint Committee on Human Rights (JCHR) has been particularly critical of changes in the counterterrorism regime. The group reported serious reservations about the course of policies in all nine of the reports dealing directly with counterterrorism issued since 9/11. In the 2004 *Review of Counter-terrorism Powers*, the Committee questioned the necessity of certain provisions, such as indefinite detention and derogation from certain articles of the European Convention on Human Rights. The JCHR stated that the members were convinced that “if the threat from international terrorism is to continue for the foreseeable future,” then there needed to be a different method “to deal with that threat without derogating indefinitely from important human rights obligations” (Joint Committee on Human Rights, 2004, p. 3). They argued in early 2007 that “there should not be exceptions to the rule of law and that certain fundamental principles are non-negotiable in the interest of fairness,” referring to the system of control orders introduced in the Prevention of Terrorism Act 2005 (JCHR, 2007a, p. 3). The JCHR found those aspects of the counterterrorism regime that meddled with due process of law particularly troublesome. The use of Special Advocates, who are not informed of even the gist of the case against the defendant, to defend a person subject to a control order “does not afford the individual the fair hearing, or the substantial measure of procedural justice, to which he or she is entitled under both the common law and human rights law” (JCHR, 2007b, p. 55). The Committee insists that counterterrorism measures must stay

⁷ Of the fifteen reports analyzed by this study, ten cited significant concerns over changes in the counterterrorism regime that adversely affected fundamental rights, while five felt that there was some movement toward increased security, but that it was constrained and well within constitutional boundaries given the nature of the threat.

“within the legal framework provided by...human rights obligations,” and that many aspects of the regime violate this basic principle (JCHR, 2006, p. 9).

Both the House of Commons Home Affairs Committee (HAC) and the independent reviewer Lord Carlile also reported a shift toward security in the United Kingdom’s counterterrorism policy. Unlike the rather critical stance taken by the JCHR, the three reports issued on the subject by the HAC and the three papers by Lord Carlile generally state that the U.K.’s response to terrorism has been proportional, necessary, and constitutional.⁸ The HAC’s (2006) *Terrorism Detention Powers* identifies that “an extension of the maximum period of pre-charge detention, as agreed by Parliament, is justified,” in light of the changing nature of the terrorist threat (p. 4). In its 2001 report, the group agrees to the necessity of the most controversial of the immediate provisions created in reaction to the 11 September attacks, such as indefinite detention and the removal of judicial review in Special Immigration Appeals Commission decisions (HAC, 2001). Lord Carlile also approves of the significant movement toward security. His approval is maintained, at least in part, by his belief that “national security is a civil liberty, to which every citizen is entitled” (Carlile, 2007, p. 75). He generally regards the counterterrorism regime of the U.K. as “continuing to be fit for purpose” and the extension of counterterrorism powers as necessary to preserve security (Carlile, 2007, p. 75).

Judicial Opinion

The United Kingdom maintains a strong tradition of an independent judiciary. Though nominally members of the House of Lords, the Law Lords who makeup the

⁸ Two reports issued by the Home Affairs Committee questioned the necessity of an extension of powers, but did not criticize those already in use (HAC, 2007; HAC, 2001).

highest court of appeal have long been celebrated as the most autonomous facet of the British government. The Law Lords possessed a negligible role in oversight during the period of Irish terrorism, but, with the passing of the Human Rights Act 1998 into law, the role of the judiciary in counterterrorism policy has increased. In two major decisions, one in 2004 and another in 2007, the Law Lords ruled against the Labour Government over two of the centerpieces of its counterterrorism regime.

The first judgment, issued on 16 December 2004, regarded the detention without charge in the United Kingdom of eight foreign nationals. The appellants challenged that their detention violated obligations under the European Convention on Human Rights, which had been given domestic effect by the Human Rights Act 1998. In the majority opinion, the indefinite detention Anti-terrorism, Crime and Security Act 2001 was considered “disproportionate and permit[ed] detention of suspected international terrorists in a way that discriminate[d] on the ground of nationality or immigration status” (UKHL 56, 2004, para. 73). The Law Lords view the long-term suspension of liberty without charge as anathema to a society based upon the rule of law, acceptable only in the most exceptional circumstances. The government, in the court’s opinion, failed to prove that the post-9/11 security situation fulfills the requirement of exceptional circumstance, by nature of the dissimilar handling of nationals and non-nationals (UKHL 56, 2004, paras. 74-76). Lord Hoffman delivered a particularly stinging opinion, arguing that the government had overstated the threat to the life of the nation in restricting fundamental rights in the United Kingdom. For him, the true danger to the “life of the nation,” a phrase encompassing customary laws and political values, “comes not from terrorism, but from laws such as these” (UKHL 56, 2004, para. 97). In [2004] UKHL 56,

the Law Lords decided, eight to one, that the government had made a significant departure from fundamental British rights in its pursuit of security. While the hunt for security was seen as necessary, dutiful and even admirable, the court cautioned the government to not stray too far in its search and reproached it for having already done so in the case of Part 4 of the Anti-terrorism, Crime and Security Act 2001.⁹

The Law Lords released a second judgment on the government's counterterrorism policies nearly three years later, on 31 October 2007. In [2007] UKHL 45, the Appellate Committee handed down a complex decision on the control order regime, which replaced indefinite detention in 2005. The Lords permitted the existence of the control order regime in general, though they commented that certain portions of the regime constituted abuses of the controlled persons' fundamental rights. They referenced, for example, that one appellant, identified as LL in the document, was allowed only six hours during the day to leave his home to visit an extremely restricted number of places. This, in the opinion of Lord Bingham of Cornwall, was the equivalent of "detention in an open prison" and constituted a violation of LL's right to liberty under Article 5 of the European Convention on Human Rights (UKHL 45, 2007, para. 24). The majority of the Lords allowed that control orders could exist, but limited the length of time per day that controlled persons could be restricted to their homes. They decided on the figure of sixteen hours, not the eighteen hours that the government argued for, beyond which "liberty is lost" (UKHL 45, 2007, para. 108). The Law Lords determined that, while

⁹ It is worth noting here that, as a result of this judgment, the government repealed Part 4 of the Anti-terrorism, Crime and Security Act 2001 which contained the provisions for indefinite detention of non-nationals. It was replaced by "control orders" in the Prevention of Terrorism Act 2005, a regime that has proven controversial enough to be the subject of UKHL 45 in 2007, the other House of Lords Judgment analyzed in this study.

control orders were acceptable in principle, the government had gone too far in application.

External Watchdogs

In addition to the judiciary and internal governmental bodies, the United Kingdom faces close scrutiny from a number of external organizations. Since the attacks on 11 September, groups such as Amnesty International (Amnesty), Human Rights Watch (HRW), and Liberty periodically report on perceived abuses in the counterterrorism regimes of countries worldwide. Their coverage of the United Kingdom reveals significant reservations about the consistent widening of counterterrorism powers since 9/11, and the perception of a significant movement toward security.

Each organization has explicitly condemned the counterterrorism regime of the country. Human Rights Watch (2003) offered a scathing assessment of HMG's record. The reaction of the government to the 11 September attacks "resulted in laws, policies, and practices that undermine fundamental human rights protections" (p. 20). They did not view this as an isolated incident, but rather felt that "subsequent government action and rhetoric signaled a further tendency to opt out of human rights obligations, with little effort to find accommodation between national security interests and the protection of human rights" (Human Rights Watch [HRW], 2003, p. 20). Liberty, too, identified the United Kingdom's movement away from fundamental rights in counterterrorism policy. In its 2004 report *Reconciling Security and Liberty in an Open Society: Liberty Response*, the group admonishes the government to remember that they should be "protecting rather than compromising fundamental human rights and rule of law standards" (Liberty, 2004, p. 6). Their website proclaims that many of the counterterrorism policies "undermine the

values that separate us from the terrorist,” as they “have done little to ensure that we are safe from terrorist attack, but much to infringe the human rights and civil liberties of those living in the UK” (Liberty, 2008a, paras. 2 and 9). Amnesty International, too, has criticized the British counterterrorism regime. In 2006, the organization reported that since 11 September 2001, “the UK authorities have passed a series of new laws, even though the UK had some of the toughest ‘anti-terrorism’ laws in Europe” (Amnesty International [AI], 2006, p. 4). They claimed that these laws contained wide provisions that have already led to severe human rights abuses.

The almost periodic extension of the time limit for a suspect to be held in pre-charge detention is a major concern for all of these organizations. As of 1 February 2008, the Government of the United Kingdom had introduced a draft terrorism bill into Parliament requesting, among other provisions, an extension of the twenty-eight day limit on pre-charge detention to fifty-six days. Liberty has instituted a campaign called “Charge or Release,” enlisting celebrities in an attempt to raise awareness to block a fourth increase in the upper-limit on pre-charge since 11 September 2001 (Liberty, 2008b). Human Rights Watch (2007) is “deeply concerned about the intention of the government to extend pre-charge detention beyond the current 28-day limit,” having resisted the increase to 28-days in the first place (p. 3). Amnesty International (2006) echoes these feelings, and “remains unreservedly opposed to *any* extension of the maximum time limit for which people detained under anti-terrorism legislation can be held without charge” (p. 45). The organizations consider the current twenty-eight-day limit to be more than long enough. Indeed, the United Kingdom’s current limit is four

times longer than that of any other liberal democracy, and fourteen times longer than that of the United States (Russell, 2007).

Media Perception

Far more penetrating and pervasive in British society than the relatively few dedicated human rights organizations is the media, particularly the newspapers. The power of the press is such that many a British citizen would cite media baron Rupert Murdoch's outspoken support for Tony Blair as one of the main reasons for the Labour Party's landslide victory in 1997. This large and influential segment of society, true to form, has not remained silent on the issue of counterterrorism powers since 11 September 2001. A selection of articles from both regional and national newspapers, as well as some international papers, on the subject of counterterrorism in the United Kingdom was analyzed.¹⁰ An overwhelming majority of the articles expressed concern over the major policy shift away from the previous counterterrorism equilibrium by the government.¹¹

The news stories, taken together, form an account of the steady augmentation of counterterrorism powers in the United Kingdom. On 14 December 2001, *The Times* Parliamentary Correspondent reported that "in an antiterrorism Bill rushed forward after the attacks on America," significant new provisions for security were made (Hurst, 2001). He also paraphrased the attorney general at the time, Lord Goldsmith, as saying that "the Government remained convinced that it was necessary to extend public order offences to deal with a rise in hatred offences since the attacks of September 11" (Hurst,

¹⁰ The newspapers were accessed on the LexisNexis database and are as follows: The Daily Mail, The Independent, The Mail on Sunday, The Evening Standard, The New York Times, The Sunday Herald, The International Herald Tribune, The Times, The Sunday Times, The Herald (Glasgow), and The Guardian.

¹¹ Of thirty-one articles on the U.K.'s counterterrorism analyzed, all identified a significant movement toward security, while twenty-five reported what they considered overly repressive policies, three called for more repressive measures, and three were neutral.

2001). A 2002 article reported that “human rights were at risk” because it was “almost inevitable that the Government will fail to protect human rights as it tries to combat terrorism” (Birmingham Post, 2002, p. 8). The counterterrorism regime continued to be challenged in the media. The Sunday Herald reported that the “draconian” counterterrorism laws derived support from law enforcement due to the fact that “it’s not so hard to put someone behind bars if evidence against them cannot be challenged” (Mackay, 2004, p. 13). Some news items identify both an expansion in counterterrorism powers and ineffectiveness. A 2004 article stated that “not only do all the new [counterterrorism] measures smack of an authoritarianism alien to our traditions; they won’t work” (Wilson, 2004, p. 15). Another reported that, although “vast resources have been spent on counterterrorism since the attacks of September 11, 2001,” a leaked policy paper acknowledged that “the government’s counterterrorism strategy is failing” (Leppard, 2005, p. 2).

Academic Assessment

The counterterrorism regime of the United Kingdom maintains the interest of academics, as well as the media. A variety of scholars researched the country’s responses to Irish terrorism, and a few, such as Conor Gearty and Clive Walker, continued their investigations following 11 September 2001. The general view among academics is of a significant repositioning of the United Kingdom’s counterterrorism policy toward security, often to the detriment of the respect for fundamental rights previously enjoyed in the country.

Those scholars who researched the earlier struggle with Irish terrorism have not been shy in reacting to the current counterterrorism environment in the United Kingdom.

Clive Walker, a lecturer and researcher at the University of Leeds who wrote extensively on emergency legislation in the context of Irish terrorism, identified intelligence reform as a necessity to preserve human rights while fulfilling security requirements. Since 11 September 2001, “the experience of exclusion and detention without trial” that, “at least in the context of executive orders based on intelligence, further regulation is desirable” (Walker, 2005, p. 410). Conor Gearty, director of the Centre for the Study of Human Rights and professor of law at the London School of Economics, has published prolifically on the human rights impact of the United Kingdom’s counterterrorism regime. He describes a march toward security, but with constitutional concerns slowing and even, in a few isolated incidents, reversing that movement. In a 2006 lecture, he identified the drift toward “administrative powers rooted in executive judgments about involvement in terrorism (very broadly defined) being used against individuals and groups without the safeguards that would be regarded as normal if the criminal justice model were being followed” (Gearty, 2003, p. 8). The human rights framework of the United Kingdom, for the most part, made room for these “security-oriented changes,” achieving a certain level of compliance with, rather than hostility toward human rights in doing so (Gearty, 2003, p. 8-9). The counterterrorism regime ushered in following 11 September 2001 challenged the commitment to legality of the British state. The condition that “all state actions be justified by law and that the punishment of individuals for wrongs done should only follow an independent process of adjudication” is being undermined (Gearty, 2007, p. 358).

Other scholars have expressed concerns about aspects of the United Kingdom’s counterterrorism regime. Kent Roach, professor of law at the University of Toronto,

highlighted the expansive definition of terrorism operating the UK as well as the tendency to build upon this definition in post-9/11 legislation (Roach, 2007, pp. 242-249). Lucia Zedner, Professor in Criminal Justice and Fellow of Corpus Christi College at the University of Oxford, questions the system of control orders (Zedner, 2007, pp. 263-264), especially as such restrictive measures were not viewed as necessary in the immediate aftermath of 9/11 (Fenwick, 2002; Lowe, 2005; Walker, 2004; Zedner, 2005). Academics identify what appears to them to be a considerable and inexorable movement that favors security in the British response to jihadi terrorism.

Conclusion

The United Kingdom has a long and complex history of combating terrorism. As the most prominent of the United States' allies in Iraq and Afghanistan, the country has found itself facing a high threat of jihadi terror. One might expect that the United Kingdom's previous experience combating domestic terrorism would prepare it well to face the menace of jihadi terrorism. Indeed, the United Kingdom possessed one of the most advanced and sophisticated counterterrorism framework among liberal democracies as of 11 September 2001. With this experience cataloged and this counterterrorism structure in place, it was expected that the UK would report a very limited response to the 9/11 attacks. Yet an evaluation of data collected from a variety of sources—internal governmental oversight, judicial opinion, external watchdogs, the media, and academics—suggested that the British government pursued policies that marked a significant deviation from the previous counterterrorism equilibrium of 11 September 2001.

The Spanish Case

Spain is a young liberal democracy with a long history of combating terrorism. *Euskadi ta Askatasuna* (ETA) conducted over thirty years of violent operations against the Spanish state, first that of General Francisco Franco and later the democratic government established by the 1978 Constitution. One would anticipate, due to this extensive experience with previous terrorism, that the Spanish state possessed a far-reaching, thoroughly examined counterterrorism regime that required little change in order to face the threat of jihadi terrorism. And indeed, the Spanish state does have a sophisticated counterterrorism policy based upon their experience with the ETA menace. The country eschews specific counterterrorism legislation, relying instead upon the treatment of terrorism as an aggravated crime. This approach is enshrined in the special provisions of the Penal Code and Code of Criminal Procedure which apply only to those suspected of involvement in terrorism. Responsibility for defining terrorism has fallen to the powerful Spanish judiciary. The Constitutional Court has developed a broad definition of terrorism based upon numerous judgments, almost entirely relating to ETA-related proceedings (Soria, 2004, p. 518).

Spain is also at a high risk from jihadi terrorism. On 11 March 2004, jihadi terrorists loosely affiliated with Al Qaeda attacked the Madrid commuter train system, killing 191 and wounding over 1,800. Although this triggered a major change in Madrid's foreign policy, scholars maintain that the risk to Spain from jihadi terrorism remains high (Jordán, 2005, pp. 79, 108-111). One would thus expect Spain, with its long history of combating ETA terrorism, to have made at most a small policy shift away from the previous counterterrorism equilibrium on 11 September 2001 toward security.

Previous Terrorism Experience

Spain has struggled with a sustained terrorism campaign for over thirty-years. ETA is a violent manifestation of the desire for self-rule in the Basque region of northern Spain. The transition period from authoritarian state to democracy marked the greatest increase in ETA violence. The group, along with a few other violent political organizations, caused close to 400 fatalities in the transition period between 1976 and 1980, at a rate of about seventy-five deaths per year (Reinares, 2000, p. 120). Since 1968, when the organization began using violence, ETA has been responsible for 821 fatalities (Ministry of the Interior, 2007).

The Constitution of 1978 recognized the presence of a terrorist threat to the state, although the only reference to terrorism in the Constitution of 1978 can be seen in Chapter V, Article 55. While the article mentions terrorist elements (*elementos terroristas*), it fails to define exactly what is encompassed under “terrorism” (Boletín Oficial del Estado [BOE], 1978). The Article does provide for conditions under which the rights granted in earlier sections of the Constitution might be suspended. Article 55(1) states that “the rights recognized in Articles 17, 18(2) and (3), 19, 20(1)(a) and (d) and (5), 21, 28(2), and Article 37(2) may be suspended when a state of emergency or siege is declared” (ICL, 1978). This gives the government the ability to violate fundamental liberties in the event of a state of emergency. Article 55(2) is directly concerned with the threat of terrorism. It asserts that “an organic law may determine the manner and the cases in which...the rights recognized in Article 17(2) and 18(2) and (3) may be suspended for certain persons with respect to investigations having to do with the activities of armed bands or terrorist elements” (ICL, 1978). Essentially, Article 55(2)

allows the government to suspend the fundamental liberties of an individual, if that person is suspected of engagement with a terrorist organization. The provisions of Title V, Article 116 limit the abuse of those in Article 55 by strictly outlining the proper procedure for and duration of states of emergency and siege. Neither may exceed thirty days, though it may be extended after a review by the Spanish government (ICL, 1978).

One of the first, shortest-lived and most controversial of the Spanish government's long term strategies to counter ETA terrorism was the GAL. The Antiterrorist Liberation Groups (*Grupos Antiterroristas de Liberación*) embodied the "Dirty War Strategy."¹² The group conducted paramilitary operations, primarily assassinations, on both sides of the border between Spain and France. Twenty-seven people fell victim to the GAL between 1983 and 1987, ten of whom had no connection to ETA.¹³ Yet the GAL was no ordinary terrorist group. The killing stopped after it was uncovered that "the GAL was an extralegal group, certainly started by the Spanish government itself" (Shepherd, 2002, p. 60).

The long-term Spanish counterterrorism strategy to combat ETA consists of four primary elements: a penitentiary policy, including reinsertion programs, more self-government and the national and international isolation of ETA.¹⁴ The penitentiary policy was intended to wipe out group cohesiveness and, in so doing, persuade prisoners to defect and accept social reinsertion. Social reinsertion is backed by Article 579 of the Penal Code, which gives courts the ability to reduce the sentence for any crimes of

¹² For a respected English language study of the organization, see Woodworth, 2001. In Spanish see Cerdán & Rubio, 1997.

¹³ For a chronology of the GAL's attacks, see Woodworth, 2001, p. 434.

¹⁴ For an excellent discussion of the four strategies, see Soria, 2004, pp. 526-32.

terrorism, provided the terrorists voluntarily assist authorities to stop new crimes (Soria, 2004, 528).

The second facet of the Spanish government's strategy has been self-government for the Basque country. The division of Spain into constituent regions is enshrined in the Constitution of 1978, with the competencies of both the "autonomous communities" and the "state" enumerated in Articles 148 and 149 (ICL, 1978). After the adoption of the 1978 Constitution, the Basque country, along with Catalonia, acquired extensive autonomy rights. The Statute of Autonomy of Euskadi (*Estatuto de Autonomía del País Vasco*), Organic Law No. 3/1979, was approved on 18 December 1979, and established the "Basque Country" as "an expression of [Basque] nationality" (Boletín Oficial del Estado, 1979). In so doing, the government wiped out much of the social support ETA had enjoyed during the Franco years. While an effective counter for ETA terrorism, there is no likely parallel in the case of jihadi terrorism.

Attempts to isolate ETA from its national base of support have represented the third pillar of the long-term strategy to fight terrorism. The participation of both the *Partido Popular* and the *Partido Socialista Obrero Española*, the two major Spanish political parties, in the Pact of Madrid (5 November 1987), the Pact of Ajuria Enea (12 January 1988), and the Pact of Navarra (7 October 1988) signified a rejection of politically motivated violence and a reiteration of the principle of no political negotiation with terrorists.¹⁵ The documents do leave the option open to a negotiated end to violence. In the most recent Agreement in Favor of Liberty and Against Terrorism (12 December 2000), the Popular Party (*Partido Popular*) and the Spanish Socialist Party

¹⁵ The text (in Spanish) of the three pacts are available on the Civil Guard website: <http://www.guardiacivil.org/terrorismo/documentos/pactos.jsp>.

(Partido Socialista Obrero Español) reinforced their unity against terrorism, denounced ETA's violence and described ETA as "a problem of the State" ("Acuerdo por las libertades," 2000). Both the Spanish government and the Basque autonomous government have attempted to isolate the political manifestations of ETA.

The fourth and final mainstay of the long-term strategy to combat ETA has been the pursuit of international isolation. The government has proven the presence of ETA in several close countries, like France and Germany, as well as in Belgium, Mexico, Venezuela or Uruguay (Soria, 2004, p. 531). The biggest obstructionists in Europe were forced to concede and assist Spanish counterterrorism efforts. The Presidency of the European Union in 2002 allowed Spain to focus on security, especially counterterrorism. In this endeavor, the "greatest success of Spain's policy was the elaboration of an EU Common Position on a list of international terrorist groups, which includes ETA and the political party Batasuna" (Soria, 2004, p. 532).

Jihadi Terrorism and Response

Unlike many nations in the world, such as the United Kingdom and France, Spain does not have specific antiterrorism laws, before or since 9/11. Terrorism is treated as an intensified form of crime. Terrorist crimes "are now included in the regular Criminal Code and special law enforcement and judicial powers to combat terrorism are incorporated into the Criminal Code of Procedure" (HRW, 2005, p. 14). In addition to not possessing particular antiterrorism legislation, another striking feature of Spain's counterterrorism regime is the complete lack of differentiation "between national and international terrorism" (Soria, 2004, p. 534). Only in the competencies of the police forces is there any measure of demarcation: regional authorities have jurisdiction over

regional terrorist activity, while the national police body (*Cuerpo Nacional de Policia*) or the Guardia Civil handle the combating of national or international terrorism.

The legal response of the Spanish government to terrorism is primarily represented by the broad range of criminal offences which provide protection from terrorism. Most of these offences are contained in Articles 571-580 of the Spanish Penal Code (Boletín Oficial del Estado, 1995). They are specifically defined and are subject to harsher punishments than similar offences committed without terrorist purposes.

The Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*) is another important facet to the Spanish counterterrorism regime. While there does not exist a specific criminal procedure for trials of suspected terrorists, the legal system “contains particular material provisions that may be applied when prosecuting and trying terrorist offences” (Gómez-Céspedes & Domínguez, 2006, p. 27). One of the most widely used and most controversial provisions is that of preventive detention. The normal deadline to be held in custody without charge, as established in Article 17 of the Constitution of 1978, is seventy-two hours. In cases of persons detained under suspicion of participation in a crime perpetrated by a terrorist organization, preventative detention maybe extended by a court ruling for another forty-eight hours, bringing the total time of detention to five days. A judge may also render a suspect *incommunicado*, which can be extended for a total of up to thirteen days, though it may not, under any circumstances, be extended past this time frame (Boletín Oficial del Estado, 2003).

Incommunicado detention is a severe situation that infringes upon the ordinary rights of a Spanish citizen. It consists of a number of conditions. The detainee has the

right to an assigned counsel, not one of their choice.¹⁶ Once a statement or identity has been recorded by the authorities, the accused loses his or her access to an attorney. The suspect has the right to be examined by a court-appointed physician while communication between the detainee and his next of kin is delayed. Oral communication by the detainee is not allowed, and all written communications are seized by a magistrate. The procedure governing *incommunicado* detention was modified most recently in November 2003 in Organic Law 15/2003, which allows a detainee to request a medical examination from a second physician (Boletín Oficial del Estado, 2003b). The law also gives judges the authority to order a suspect to be placed back in *incommunicado* detention for a period of up to three days, even after they have been reentered into communication (Boletín Oficial del Estado, 2003b). *Incommunicado* detention has proven the most controversial facet of Spain's counterterrorism regime.

Other provisions are unique to terrorism, but are less controversial than *incommunicado* detention. One of these is entry into and search of private dwellings. Under normal circumstances, the owner must give his or her consent, there must be an expressly motivated court ruling, or the crime must be occurring at the time in order for the authorities to be able to enter a premises. Article 533 of the Code of Criminal Procedure makes special provision for times when the persons concerned are suspected of terrorist activity (Boletín Oficial del Estado, 1882). Authorities are allowed to enter without a previously acquired warrant and investigate, as long as they contact a judge immediately following the action. Article 579(4) grants the authority to authorize the interception of communications for a period of up to seventy-two hours to the Minister of

¹⁶ The discussion of *Incommunicado* detention maybe found in Gómez-Céspedes and Domínguez, 2006, p. 27.

the Interior or the Secretary of State for Security if the procedure aims to uncover the activities of terrorists (Boletín Oficial del Estado, 1882). Combined with *incommunicado* detention, these provisions are potent tools to combat terrorism.

Spain does not rely upon emergency legislation as a main component of its antiterrorism regime. Article 55(2) of the Spanish Constitution, as discussed above, allows for special Organic Laws to be passed during a time of crisis or emergency with the ability to suspend certain rights enumerated in the document (ICL, 1978). No comparable emergency legislation exists in Spain, despite this power. Most special provisions in the fight against terrorism are contained within the Penal Code or the Code of Criminal Procedure. These stipulations are considered “concrete-individual emergency legislation,” as they are rarely used due to the narrow judicial interpretation of the conditions necessary for an “emergency” to be present (Soria, 2004, pp. 549-550).

The legislative response to 11 September 2001 and to the devastating Al Qaeda attacks of 11 March 2004 in Madrid has proven moderate. The government of Spain has seen little need for further legislation in order to combat the threat. As recently as January 2008, only two laws wholly concerned with terrorist activity have been passed. The first is Law No. 12/2003, on the prevention and freezing of terrorist financing (Boletín Oficial del Estado, 2003c). The law allows the government to freeze any financial flow or account in prevention of terrorist activity. It also grants the right to verify the true nature of the funds, of their origin and of the identity of the person responsible for the transactions (Gómez-Céspedes & Domínguez, 2006, p. 49). The second law is Organic Law No. 4/2005, regarding serious crimes caused by explosives (Boletín Oficial del Estado, 2005). This law was a direct result of 11 March 2004 and the

ruinous consequences of failures to control the storage of explosives. It provides stricter penalties both for the illegal possession of explosives and the failure of those responsible to safeguard it (Boletín Oficial del Estado, 2005). The two laws represent a moderate legislative response to a devastating terrorist attack.

The laws and codes described above are the main facets of Spain's counterterrorism policy since 11 September 2001. The extent to which these provisions and the counterterrorism regime as a whole marked a policy shift away from the previous counterterrorism equilibrium is evaluated below using the five methods of testing.

Internal Governmental Scrutiny

No in-depth internal governmental scrutiny of post-9/11 Spanish counterterrorism policy was available to the public at the time of this study. Brief mentions of specific facets of the government's policy toward terrorism were found in the annual Ombudsman's reports. The "Defender of the People," as the Ombudsman is officially known, exists to protect the rights and liberties of citizens from abuses by functionaries of the state. He or she only investigates specific complaints, however, rather than undertaking extensive oversight inquiries. For example, some suggestions were made in the 2004 report to help the Spanish government avoid racism in counterterrorism (Defensor del Pueblo, 2005, p. 580-584). In the same report, a few measures were suggested regarding the government's treatment of the victims of terrorism (Defensor del Pueblo, 2005, pp. 289-295). Yet no oversight reports, such as those issued by the Joint Committee on Human Rights in the United Kingdom or the various Congressional Committees in the United States, were available for Spain.

Judicial Opinions

Spain has an inquisitorial civil law system, which is unique among the countries examined in this study. All terrorism cases are referred to the jurisdiction of the *Audiencia Nacional* in Madrid, overseen by an official with the dual responsibilities of judge and investigator. The *Audiencia* maintains unique security features, the personnel are experienced in terrorist cases, and it has developed particular jurisprudence in terrorism proceedings. This jurisdiction was established in 1977 in response to the ETA menace, but, as Spain makes no distinction between national and international terrorism, the court has found itself responsible for jihadi terror cases as well. The judiciary, in the decision analyzed below, exhibited a belief that the counterterrorism framework that existed prior to 9/11 could effectively be applied to jihadi terrorism.

The trial of the twenty-nine jihadi terrorism suspects charged with aiding in the preparation and execution of the 11 March 2004 bombings in Madrid is the most important counterterrorism case heard since 9/11 by the *Audiencia Nacional*. On 11 April 2006, after two years of investigation, Juan del Olmo charged twenty-nine suspects with various offences pertaining to the 11 March bombings (Mercado, 2006). In a 1,471 page document, Olmo detailed the evidence and the case against each of the accused. Hundreds of pages documented electronic intercepts, mobile phone surveillance, interrogations, and transcripts of meetings between suspects and the deceased perpetrators (Audiencia Nacional, 2006). The judge used various laws and previous judgments in Spanish counterterrorism cases, dating from the early 1980s, in order to justify charging the twenty-nine people with terrorism-related crimes (Audiencia Nacional, 2006, pp. 1411-1428). He consciously applied the existing counterterrorism regime to jihadi terrorism. Olmo also wrote that in order to undertake “adequate criminal

prosecution,” one should understand the jihadi philosophy behind the violence (Audiencia Nacional, 2006, p. 1428). The Decree (*Auto*) set the stage for the later prosecution of the suspects.

The *Audiencia Nacional* announced judgment on the twenty-nine suspects on 31 October 2007. The majority were found guilty of membership in a terrorist organization, and sentenced to various prison sentences. The judges wrote in their decision that the defendants “are members of terrorist cells and groups of the jihadi type...that, through the use of violence in all of its manifestations, seek to overturn democratic regimes and eliminate the Western Christian cultural tradition” (Audiencia Nacional, 2007, pp. 172-173). The decisions disappointed many observers, as they delivered only three murder verdicts out of the twenty-nine defendants. For example, an American lawyer, resident in Madrid during the bombings, commented on the rulings, stating that they were not promising in terms of the prospects for prosecuting jihadi terrorists worldwide (Anderson, 2007, p. 1). In his opinion, the current Spanish criminal justice system, directly adapted from ETA terrorism, was “not necessarily capable either of ensuring public safety or even of doing justice in serious terrorism cases” (Anderson, 2007, p. 2). Yet despite this outside criticism, the general perception among the judiciary, as represented by their treatment of the 11 March case, was that little in the counterterrorism regime has changed since 9/11, and nothing really needed to.

External Watchdogs

Spain has also found its counterterrorism regime under examination by external watchdog organizations. Organizations such as Human Rights Watch, Amnesty International, and the Council of Europe Commissioner for Human Rights have all issued

reports on Spanish policies to combat terrorism, especially since 11 September 2001. Their treatment of the Spanish counterterrorism regime highlights little movement from pre-9/11 practices, but some express distaste over policies used to counter ETA being extended to jihadi terrorism without addressing underlying fundamental rights concerns.

Each organization identified only a small shift from the pre-9/11 equilibrium, emphasizing the application of previously existing powers to the new threat. Amnesty International wrote two reports on facets of Spanish counterterrorism since 11 September 2001. In a 2002 paper, the group strongly condemned the practice of *incommunicado* detention. The criticism was the repetition of one that had been made by AI in June 1999, however, when *incommunicado* detention was extended by an additional forty-eight hours for terrorism suspects (AI, 2002, p. 7). AI also mentioned *incommunicado* detention in a report on European Union-wide counterterrorism policies. It again repeated its desire that the procedure be reformed or abrogated, but noted once more that these were concerns dating well prior to 11 September 2001 (AI, 2005, section 3.3.2).

The Human Rights Watch (2005) report on counterterrorism measures in Spain was the most extensive examination since 11 September 2001. The organization wrote that “Spain’s extensive [counterterrorism] provisions, though developed in response to internal violence, placed that country at the forefront of international [counterterrorism] efforts in the wake of the September 11 attacks” (HRW, 2005, p. 15). The group also highlighted the fact that Spain did not tend to develop further policies in response to perceived threats. Though the country experimented with specific counterterrorism legislation in the past, “terrorist crimes” are “included in the regular Criminal Code and special law enforcement and judicial powers to combat terrorism are incorporated into the

Criminal Code of Procedure” since the early 1990s (HRW, 2005, p. 14). Even following the 11 March 2004 jihadi terrorist attacks on the country, the government did “not envision making any changes to Spain’s existing [counterterrorism] measures” (HRW, 2005, p. 8).

Other organizations have identified a similarly small movement from previous policy after 11 September 2001. Alvaro Gil-Robles (2005), the Council of Europe’s Commissioner for Human Rights, visited Spain from the 10 through 19 March 2005. The Commissioner, even though he recorded a few specific instances of abuse, described a situation of general respect for human rights that had not changed over time. In his report, Mr. Gil-Robles wrote that:

In spite of the persistent and violent terrorist attacks Spain has suffered since its transition to democracy nearly 30 years ago, and in spite of the dramatic escalation in the violence of terrorist attacks in general, visible in the attacks of 11 September 2001, the Madrid attacks of 11 March 2004 and the more recent events in London in July 2005, there has been no corresponding toughening of the legislation to curtail, restrict or limit the rights of people detained for terrorist activities. Nor has any exceptional legislation been introduced. (Gil-Robles, 2005, para. 7).

The above quotation sums up the universal recognition found in the external watchdogs’ reports of only a small policy shift away from the previous counterterrorism equilibrium since 11 September 2001.

Media Perception

Counterterrorism receives extensive media coverage in Spain. Perhaps reflecting the perceived level of threat in society, stories relating to ETA tend to be significantly more numerous than those dealing with jihadi terrorism. Despite this tendency, a number of articles on general counterterrorism and combating jihadi terrorism were examined for this study.¹⁷ All articles scrutinized recognized only a small movement toward security, while they were closely split on whether the counterterrorism policies created some fundamental rights concerns.¹⁸

The limited change in Spain's counterterrorism policy following the events of 9/11 is a consistent theme in periodicals. In an opinion piece in *El Pais*, Communist Party leader Santiago Carrillo traced the development of the jihadi terror threat in a country that had long experience with ETA terrorism (pp. 15-16). He argued that, despite the fact that, in his opinion, jihadi terrorism represented the greatest threat to Spain, the policies used to counter it remained essentially the same as those used to combat ETA throughout the 1980s and 1990s (Carrillo, 2007, p. 16). An *El Mundo* piece attributed the success of Spanish counterterrorism efforts in 2002 to the "legal and judicial" provisions "initiated years ago" that "had begun to bear fruit" (Escriva, 2002, pp. 8-9).¹⁹ In a 2007 article, the paper *20 minutos* quoted a motion to have terrorism charges dropped against a young man which highlighted the long pedigree of the Spanish counterterrorism regime. The power of the Audiencia Nacional to decree provisional incarceration for suspected members of a terrorist organization was traced by the legal team to the Tribunal of Public

¹⁷ The articles were accessed using either the LexisNexis Academic database or the search feature on the periodicals' websites. They came from the following newspapers: *El Pais*, *Expansion* (Madrid), *El Mundo*, *20 Minutos*, and the *International Herald Tribune*.

¹⁸ Of thirty articles evaluated, twelve felt that the policies were too repressive, thirteen wrote that the counterterrorism regime was either too liberal or had justified fundamental rights restrictions, while five were neutral.

¹⁹ "El acoso legal y judicial iniciado hace años ha comenzado a dar sus frutos."

Order under the dictator Francisco Franco (Europa Press, 2007). A 2001 article in *El Mundo* described the process of modifying the law in Spain to make it easier to freeze the assets of jihadi terrorists. Despite the fact that the “counterterrorism legislation in Spain is very advanced,” the United Nations and the Spanish government felt it was necessary to tighten legislation regarding disrupting the financing of terrorism (Europa Press, 2001).²⁰

To be sure, some articles did question whether the Spanish counterterrorism regime was equipped to confront the jihadi terrorism threat. Victoria Burnett (2007) reported on the surprise acquittal of suspected jihadi terrorists and the difficulty of convicting international terrorists. She quoted one counterterrorism expert as saying that “it is a point of pride to be able to try people in a courtroom, with full constitutional guarantees...but in Spain there is space for debate about whether we need to adapt our judicial legislation and culture to confront international Islamist terrorism” (Burnett, 2007, p. 1). Yet, in a 2002 article in *El Mundo*, the Spanish defense minister compared the Spanish experience with terrorism to the new jihadi terror threat at a European-wide security conference in Munich. At the meeting, the minister stated that Spain “will continue fighting against terrorism with the following principles: full respect for the law, the functioning of the legislative system and security forces, maximum social support and mobilization, and maximum international cooperation” (EFE, 2002).²¹ His words echoed the general sense in the media: the Spanish counterterrorism regime had undergone little modification in order to combat the jihadi threat and did not need to change.

²⁰ “La legislación antiterrorista en España está ya muy avanzada.”

²¹ “seguirá luchando contra el terrorismo con los siguientes principios: pleno respeto de la ley, funcionamiento del sistema legislativo y de las fuerzas de seguridad, máximo apoyo y movilización social y máxima cooperación internacional.”

Academic Assessment

Scholars have studied different dimensions of counterterrorism in Spain since the ETA campaigns of the late 1970s and early 1980s. Their inspection did not cease with the advent of the jihadi terror threat. The scholars have overwhelmingly identified a restrained response to both 9/11 and the 11 March 2004 bombings in Madrid. While some have questioned whether new measures are needed to combat the new threat, the general consensus has been of a perception amongst policymakers that the existing counterterrorism framework in the country was sufficient.

Many commentators have explicitly written of Spain's lack of movement toward policy based on greater emphasis on security in the aftermath of 11 September 2001. José Martínez Soria (2004) observed that "unlike other states, Spain has so far not enacted any anti-terror legislation after September 11th" (p. 521). Indeed, he argued, "there was no need to do so because of the existing Spanish anti-terror legislation triggered by the Basque terrorism" (Soria, 2004, p. 521). This conviction that the framework used to combat ETA terrorism was adequate to face the new jihadi terrorism, expressed by Soria, is a recurring theme in the literature about Spanish counterterrorism. Salvador Martí, Pilar Domingo, and Pedro Ibarra (2007) traced the development of counterterrorism policies in Spain, identifying little alteration following 11 September 2001 from previous practice. They wrote that "as regards existing antiterrorist legislation, there has been no significant change in law" (Martí, Domingo, & Ibarra, 2007, p. 134). Kristin Archik, Carl Ek, Paul Gallis, Francis T. Miko, and Steven Woehrel (2006), writing for the U.S. Congressional Research Service, also identified the lack of major change in the Spanish counterterrorism regime since 11 September 2001. They

noted that “Spain, unlike the United States, has rejected a wholesale reorganization of its homeland security institutions” largely due to the “decades-long struggle with the Basque terrorist movement Eta [sic]” (Archik, Ek, Gallis, Miko, & Woehrel, 2006, p. 32).

Some investigators have been critical of the limited Spanish response. Case Western Reserve University law professor and twenty-year veteran of the Israeli Defense Force Amos N. Guiora studied the post-9/11 responses of various countries. He wrote that since March 2004, “Spain has not enacted special or emergency legislation,” despite evidence that such action might prove necessary (Guiora, 2005, p. 47). He highlighted that “rather than implementing numerous measures intended to provide the law enforcement community additional powers or undertaking vigorous policy initiatives,” the government did little “in response both to 9/11 and March 2004” (Guiora, 2005, pp. 47-48). Guiora emphasized a belief amongst policymakers in the adequacy of the existing legislation as the primary reason little was done following the attacks. Enrique Álvarez Conde and Hortensia González (2006) prepared a report for the Real Instituto El Cano, a Spanish think tank, comparing responses to 9/11. Referring to Spain in their conclusion, they wrote that the much of the country’s counterterrorism legislation had been declared unconstitutional in the 1980s and 1990s, so there was little impetus to try to enact new legislation following 9/11 (Conde & González, 2006, pp. 9-10).

In sum, whether praising or criticizing Madrid’s response, all of these scholars share the view that Spain had little shift toward greater security in its counterterrorism policy since 11 September 2001.

Conclusion

Spain has extensive past experience combating terrorism. The country faces a high threat of jihadi terror as a former participant in the war in Iraq and a current troop contributor to Afghanistan. Based upon the hypothesis presented earlier in the study, one would suppose that Spain's previous experience combating domestic terrorism would have resulted in a set of policy instruments that were equipped to face the menace of jihadi terrorism. Spain possessed a sophisticated counterterrorism framework prior to 11 September 2001. With its experience and a broad counterterrorism structure in place, it was expected that the country would report a constrained response to the 9/11 attacks. Evaluating data collected from a variety of sources—including judicial opinion, external watchdogs, the media, and academics—suggested that Spain did indeed limit their response to 11 September 2001, making a small deviation from the counterterrorism equilibrium.

Part II: Little Previous Counterterrorism Experience

The American Case

The United States of America is one of the oldest and most stable liberal democracies in the world. The threat of wide-scale terrorist activity is new to the country. The U.S. lacks experience countering sustained terrorist violence; because of this, it had a limited counterterrorism framework prior to 11 September 2001. On that date, jihadi terrorists attacked the World Trade Center in New York and the Pentagon in Washington, D.C., killing over 3,000 people. The events of 9/11 triggered a wide-ranging response, including new dedicated counterterrorism legislation and military action. The U.S.-led invasions of Afghanistan and Iraq have made the country a lightning rod for jihadists around the globe. Terrorist attacks on allies, such as Spain in 2004 and the United Kingdom in 2005 have reinforced the high threat perception among policymakers in the U.S. The government of the United States has reacted to the new menace with increased counterterrorism powers. One would expect the United States, with its limited counterterrorism experience, to make a significant policy shift away from the previous counterterrorism equilibrium.

Previous Terrorism Experience

Until 11 September 2001, terrorism was primarily an international and foreign policy problem for the United States, and one which did not seem to pose a large threat (Norwitz, 2002; Perl, 2003, p. 2). This is not to say that the U.S. was never a target of terrorist violence. The Federal Bureau of Investigation (FBI) reported that between 1980 and 1999, there were 327 acts or suspected acts of terrorism in the United States, of

which 239 were labeled domestic and eighty-eight international (FBI, 1999, p. 16). The 327 attacks resulted in 205 persons killed and 2,037 persons injured, though just two incidents (the 1995 Oklahoma City bombing and the 1993 World Trade Center bombing) were responsible for 85 percent of the deaths and at least 80 percent of the injuries (FBI, 1999, p. 16). These figures need to be placed within the larger milieu of global terrorism. According to figures provided by the U.S. Department of State, 14,000 international terrorist incidents occurred between 1968 and 1999, resulting in over 10,000 deaths (Office of the Coordinator for Counterterrorism, 1999). The comparative familiarity of other countries, including some other liberal democracies, with terrorism on their soil is also an important context. The United Kingdom recorded over 3,000 fatalities between 1969 and 1999 in its struggle with the IRA, while Spain suffered 771 deaths in attacks by ETA between 1968 and 1999 (Ministry of the Interior, 2007). In light of the experience of these other countries, the U.S. possessed a limited occurrence of terrorism prior to 11 September 2001.

Jihadi Terrorism and Response

The United States experience with terrorism was limited before 9/11. The 1993 World Trade Center bombing, the 1998 embassy bombings in Kenya and Tanzania, and the attack on the USS Cole in Yemen in 2000 represented salvoes aimed at the United States by jihadi terrorists (McFadden, 2007). Yet only the events of 11 September 2001 truly underscored the fact that the threat of jihadi terrorism to the U.S. was a clearer and more present danger to the country than previously thought possible. The attacks spurred major changes in the nation's counterterrorism regime, adjustments that are ongoing as the United States continues to be confronted by the menace. Numerous changes and

additions were made to United States counterterrorism policy following 9/11. An in-depth description of all of those provisions would be impossible to provide in this study, but a discussion of the two pillars, the USA Patriot Act of 2001 and the 2001 Military Order, is presented below.²²

Officially dubbed the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism,” the USA Patriot Act of 2001 represents the key piece of legislation in the post-9/11 counterterrorism regime. The Act was passed on 26 October 2001, hardly six weeks after the attacks on the World Trade Center and the Pentagon. The bill became law with virtually no debate, during the midst of an anthrax scare in Congress and without an opportunity for most members to even read it (Osher, 2002, pp. 522-523; Minow, 2002). The Act was enacted to “deter and punish terrorist acts in the United States and around the world” and “to enhance law enforcement investigatory tools” (H.R. 3162, 2001). It grants extensive powers to the U.S. government to infringe on privacy rights during counterterrorism investigations.

Title II greatly increases the ability of the government to perform searches. For example, the standard procedure for field agents and officials is to knock and make known their identity prior to executing warrants. Section 213 of the Act authorizes “a delay of required notices of the execution of a warrant if immediate notice may have an adverse result and under other specified circumstances” (H.R. 3162, 2001). Other parts of the Act have far reaching consequences as well. Section 216 makes all electronic communications, including those on the internet, subject to a threshold lower than the usual probable cause for the application of pen register or trap and trace device

²² For a overviews of the United States post-9/11 counterterrorism policy, see Less, 2004, pp. 656-729; Minnerop, 2004, pp. 761-785; Perl, 2003.

surveillance techniques (H.R. 3162, 2001).²³ These new provisions also provide for national orders, which remove the requirement for each Court to authorize the order in their jurisdiction. Both sections exemplify those provisions of the Act that might be applied generally, not just to terrorism cases. Other facets of the Act address the financing of terrorism, border protection, the removal of obstacles to the investigation of terrorism, and the strengthening of criminal laws against terrorism (H.R. 3162, 2001). In order to protect the borders of the country, the Attorney General is permitted to detain an alien suspected of terrorism for up to seven days (Doyle, 2002, p. 51). The Act greatly increased the counterterrorism powers of the U.S. government.

The second pillar in the U.S. government's post-9/11 counterterrorism regime is the President's Military Order issued 13 November 2001 on Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism. The Order grew out of the decision to engage terrorists militarily, and to prepare for the inevitable situation that combatants would be captured by the U.S. It places all those detained under such circumstances outside of the jurisdiction of the normal district court system, to be tried by a military commission. President Bush writes that it is not feasible to employ the "principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts" (Military Order, 2001). The Order also gives the Secretary of Defense the right to detain suspects indefinitely, at any designated location, inside or outside of the United States.

The Patriot Act of 2001 and the President's Military Order of 2001 are the main facets of the U.S. response to 11 September 2001. the extent to which government policy

²³ Pen registers record the numbers and routing information of messages and calls sent from phones or computers. A trap and trace device records the same information sent to a phone or computer.

shifted away from the previously established counterterrorism equilibrium between security and fundamental rights in responding to terrorism is evaluated below using the five methods of testing.

Internal Governmental Scrutiny

The traditional checks and balances of the United States Government apply to its counterterrorism efforts. While the formulation and implementation of the nation's counterterrorism regime is left predominantly to the executive, the legislative branch actively oversees the various facets of the strategy. Congressional bodies such as the House and Senate Judiciary Committees and a special collaboration by the House and Senate Select Committees on Intelligence provide supervision of the Government's struggle against terrorism. These reports are very politically charged, often presenting two opposite opinions in the same document. It was found that the reports acknowledged significant policy movement toward security in the wake of 11 September 2001, with a slim majority feeling that the shift is justified and necessary to combat the threat.²⁴

The Congressional oversight of two of the most important, and controversial, facets of the counterterrorism regime in the United States, the USA Patriot Act of 2001 and the Military Commissions Act of 2006, is representative of the process since 11 September 2001. Policymakers see both as vastly increasing the powers of the government in terms of counterterrorism, and some members lamented the detriment to fundamental rights. The majority opinion in the House Judiciary Committee's report on

²⁴ Of eight reports analyzed, five felt the shift was justified and necessary, while the other three expressed concern over the extent of the movement. It should be noted that these differences generally appeared to be politically motivated, with the committees sharply divided along partisan lines. By and large, Democrats tended to voice serious concerns over increased security measures, while Republicans felt they were both vital and effective. The United States was the country reviewed in this study with the most politicized oversight of counterterrorism provisions.

the 2005 reauthorization of the USA Patriot Act recommended the extension of the Act's provisions past the sunset date. The supporters argued that the Act provided "the resources necessary to confront these modern threats," and did so "without a single substantiated allegation of civil liberties violations" (H. Rep. No. 109-174 Part. 1, 2005). The dissenting views in the same report offered a particularly scathing rebuke of the shift toward security it represented. According to them, several provisions of the Act "have little to do with combating terrorism, intrude on our privacy and civil liberties, and have been subject to repeated abuse and misuse by the Justice Department" (H. Rep. No. 109-174 Part. 1, 2005). The Permanent Committee on Intelligence's report on the reauthorization followed the same pattern. The majority opinion supported the reauthorization of the USA Patriot Act's powers which resulted in "clear and demonstrable" successes since its inception (H. Rep. No. 109-174 Part. 2, 2005). The opposition members of the Committee sought the modification of several provisions in order to better safeguard fundamental rights (H. Rep. No. 109-174 Part. 2, 2005). One of the few things the two viewpoints agreed upon in both reports was that the USA Patriot Act of 2001 represented a "broad expansion" of government powers relating to security (H. Rep. No. 109-174 Part. 1, 2005).

The contention that attended the reauthorization of the USA Patriot Act of 2001 in 2005 was repeated in 2006 over the Military Commissions Act of 2006. The House Judiciary Committee's majority opinion recommended the passage of the bill in its 2006 report. They saw the Act as a proper response to the necessity to prosecute alien unlawful enemy combatants in military commissions, especially as statutory habeas corpus was confined to U.S. soil (H. Rep. No. 109-664 Part. 2, 2006). The dissenting view

expressed concerns about the removal of habeas jurisdiction from federal courts, reducing Geneva Convention compliance, and perceived violations of due process within the commission procedures (H. Rep. No. 109-664 Part. 2, 2006). The two sides were reconciled only on the point that the Act represented a shift in favor of security, made necessary by the terrorism threat facing the country. The Armed Services Committee report on the same piece of legislation mirrored that of the House Judiciary Committee. Both supporters and dissenters agreed that the Act marked a significant movement toward security, though they differed on whether it was necessary or acceptable (H. Rep. No. 109-664 Part. 1, 2006).

The reports on the reauthorization of the USA Patriot Act of 2001 in 2005 and the Military Commissions Act of 2006 are representative of the general internal governmental scrutiny of the post-9/11 counterterrorism regime. Two preliminary conclusions are readily apparent from the above reports and others that have been analyzed. First, there is an overwhelming sense, even among those who differ over whether it is warranted, that there was a major policy shift toward security following 11 September 2001 that is still, to a lesser extent, underway today. Second, the oversight of the counterterrorism policies of the United States is an incredibly partisan task and must thus be examined within that context.

Judicial Opinion

The judiciary plays an important role in overseeing the counterterrorism regime of the United States. It is the branch of government most isolated from partisan politics, and thus is uniquely placed to review government policies. Since 11 September 2001, a number of challenges to counterterrorism laws and practices have been filed. Federal

courts have ruled on four significant cases. Three of them were decided by the Supreme Court, while one decision was handed down at the appellate level. Three of them were decided against the executive and one in favor. All four of the opinions acknowledge that the U.S. government expanded its counterterrorism powers in the wake of 9/11.

The appellate court case involved habeas corpus petitions brought by detainees against the U.S. government. In the 2003 decision in *Gherebi v. Bush*, the Ninth Circuit Court of Appeals established its jurisdiction in habeas petitions over Guantanamo Bay Naval Base and the detainees held there. At the heart of the case was the question of whether Congress provided, within the far-reaching Authorization for Use of Military Force in 2001, the power to “hold uncharged citizens of foreign nations in indefinite detention” (*Gherebi v. Bush*, 2003). Though a statement on that specific inquiry was outside of the range of the case, the court did decide that, despite the government’s arguments, Federal courts possessed the jurisdiction to hear habeas corpus petitions from detainees in the “war on terror.” This decision represented a judicial attempt to impose a check on one of the new counterterrorism powers that Congress initiated following 9/11.

Three cases brought against the government by detainees have been decided upon by the U.S. Supreme Court. In *Rumsfeld v. Padilla* (2004), the Court decided in favor of the government, dismissing Padilla’s habeas petition because Rumsfeld was not the proper respondent and he brought it before the wrong circuit. The broader question of the government’s power to detain civilians militarily in terrorism cases was not addressed because the judgment was reached based upon these procedural errors. *Hamdi v. Rumsfeld* (2004) marked a defeat for the U.S. government. Hamdi was a U.S. citizen captured while allegedly fighting U.S. forces in Afghanistan. With his petition, he sought

to gain the right to challenge the government's classification of him as an enemy combatant in a properly constituted tribunal. The Court ruled that Hamdi "was entitled to receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decision-maker" (*Hamdi v. Rumsfeld*, 2004). The decision constrained the government's ability to detain citizens without the ability to dispute that detention. In *Hamdan v. Rumsfeld* (2006), the petitioner, Hamdan, challenged the legality of trial by military commission, as they had been constituted by order of the President. The Supreme Court ruled that the President did not have the proper grant of authority from Congress to create military commissions. The ruling limited the ability of the President to setup a second-track legal procedure, similar to Diplock courts in the United Kingdom, specifically designed for terrorism-related offenses. The legal restraint was short-lived, however, as this power was granted to the President later that year by the Military Commissions Act of 2006.

In sum, what these cases share is recognition by the judiciary of the significant policy shift away from the previous counterterrorism equilibrium toward security in the post-9/11 legal framework of the United States, as well as of the need for judicial scrutiny of those expanded powers.

External Watchdogs

Especially since the events of 9/11 and the government's reactions to the attacks, external watchdogs have kept an eye on the counterterrorism regime of the United States. The organizations, such as Amnesty International, the American Civil Liberties Union (ACLU), and Human Rights Watch (HRW) have generally been critical of the policies of the U.S. All of the reports analyzed identified a significant policy shift away from the

previous counterterrorism equilibrium in the post-9/11 policy environment, along with serious concerns about the treatment of fundamental rights in the country.

The groups all have commented on increased governmental counterterrorism powers and questioned the necessity of certain provisions that violate fundamental rights. Amnesty International has been one of the most outspoken critics. In a pamphlet entitled *Terror and Counter-terror: Defending Our Human Rights*, the group claimed to have “repeatedly exposed and condemned human rights violations in the name of security” (Amnesty International [AI], 2006a, p. 2). An earlier AI (2005) report stated that the U.S. Government, specifically the executive branch, “has sought unchecked power throughout the ‘war on terror’ and shown a chilling disregard for international law” (p. 2). Since 11 September 2001, the government sought the extension of security measures without properly maintaining protections for fundamental rights. AI identified the pursuit of security while preserving fundamental rights as the challenge for governments facing terrorism, while reporting that the U.S. “views human dignity and the rule of law as far from non-negotiable when it comes to national security” (AI, 2004a, p. 4). The organization often has cited the policy of detention without charge of terrorism suspects at Guantanamo as an example of the movement toward security to the detriment of fundamental rights (AI, 2004b; AI, 2006b; AI, 2007a; AI, 2007b). Throughout the eleven AI publications on U.S. counterterrorism policy examined, the common thread was one of extensive security policies crowding out fundamental rights.

Both the ACLU and HRW have also disapproved of the counterterrorism regime of the United States. The ACLU has identified a range of violations of fundamental rights in the post-9/11 pursuit of national security. In a 2006 report, the group wrote that

“the U.S. government, in the aftermath of September 11, chose to fight terrorism by picking and choosing what principles of human rights and humanitarian law to apply” (American Civil Liberties Union [ACLU], 2006, p. 3). Expansive new counterterrorism provisions and authority are worrisome, as “excessive power will inevitably be used excessively” (ACLU, 2004, p. 2). The two organizations have also called attention to the use of pre-9/11 legal provisions for entirely new purposes in the “war on terror.” In 2005, the use of the material witness law for the purpose of holding terror suspects became the topic of an HRW and ACLU joint report. In their opinion, the U.S. struggle against terrorism “must include a vigorous affirmation of fundamental rights,” especially since the U.S. government is portrayed as repeatedly yielding “to the temptation to abuse their powers of arrest and incarceration” (Human Rights Watch [HRW] & ACLU, 2005, p. 6). HRW urged caution in granting new powers to the government and rolling back some of the most extensive. They cited historical precedents to show “how dangerous it is to allow government to claim unchecked power to protect national security,” while warning that the U.S. was on a similar trajectory (HRW, 2002, p. 5).

Thus, the overwhelming judgment in reports from both the ACLU and HRW is that there has been a massive increase in government powers in the name of counterterrorism. All internationally-recognized watchdogs evaluated in this study share this view.

Media Perception

The media in the United States have proven vibrant and outspoken commentators on the American counterterrorism regime since 11 September 2001. A representative

sample of articles from a broad selection of periodicals was examined for this study.²⁵

Every article identified a considerable policy movement away from the previous counterterrorism equilibrium toward greater security, while a majority expressed disquiet at the effect on fundamental rights of this movement.²⁶

The bulk of the analyzed articles found much to criticize in the counterterrorism policies of the United States since 9/11. As has been noted, all documented a major amplification of government counterterrorism powers during that period. The terms of the deliberation over counterterrorism in the country were elucidated by Philip Gailey in December 2001. He wrote that “the debate over the balance between security and civil liberties has been a healthy one” (Gailey, 2001, p. 1D). While “our liberty cannot rely on the good intentions and self-restraint of any president,” many of the new security provisions were necessities and not as “draconian” as often believed (Gailey, 2001, p. 1D). Some commentators pointed out that, despite the expansiveness of the powers and fundamental rights concerns, some policies worked to make the U.S. secure in the face of the terrorist threat. Michael O’Hanlon, a senior fellow at Brookings Institution, urged Democrats to preserve the useful, necessary aspects of the counterterrorism regime, despite “our government’s excesses” (O’Hanlon, 2007, p. A18).

The greatest commentary has been on specific counterterrorism policies. A 19 August 2003 story in the *New York Times*, for example, reported that the USA Patriot Act, the “sweeping legislation passed after 9/11,” had become “almost a dirty word”

²⁵ The articles were accessed using the LexisNexis database and came from the following newspapers: the Washington Times, the New York Times, the Los Angeles Times, the International Herald Tribune, the Washington Post, the Christian Science Monitor, the Boston Globe, USA Today, and the St. Petersburg (Florida) Times.

²⁶ Of thirty articles evaluated, all recognized a major shift toward security in U.S. counterterrorism policy, with twenty-two voicing concerns over fundamental rights, six called the provisions justified, and two were neutral on the question of fundamental rights.

among civil libertarians, who voiced “increasingly vitriolic concerns over the measure and its future” (Lichtblau, 2003, p. 1). A 2005 article also covered the USA Patriot Act. It stated that both liberals and some conservatives had found common ground in opposition to the Act, creating a coalition to fight the renewal of its expansive provisions (Lakely, 2005, p. A01). An *International Herald Tribune* story covered the renewal of the USA Patriot Act and the “effort by the Justice Department to further expand government powers” (Lichtblau, 2005, p. 4). *The Christian Science Monitor* published a piece in 2004 which asserted that, despite expansive provisions and widespread criticism, “the Patriot Act was absolutely vital to protect America’s security” (Rosenzweig, 2004, p. 09). A 2004 item in *The Washington Post* reported on an “Anti-Terror Database” which represented “one of the most far-reaching changes in response to the Sept. 11, 2001, terrorist attacks” (O’Harrow, 2004, p. A04). The development of a counterterrorism database in Florida occasioned comment, as it allowed officials to instantly access billions of records about ordinary citizens for the first time, a power described by one officer as “scary” (O’Harrow, 2003, p. A01). The newspapers, regardless of orientation, shared a perception of a significant increase in government counterterrorism powers following 11 September 2001.

Academic Assessment

Academics around the world scrutinize the counterterrorism regime of the United States, especially since 11 September 2001 and the country’s aggressive military response to the new threat. These investigators universally identify a significant movement of government policy in the United States toward greater and more restrictive security measures in the aftermath of the terrorist attacks. A number of scholars also

criticize various policies that, in their opinion, flout international law and impair fundamental rights.

Many researchers have unambiguously acknowledged the shift in counterterrorism policy toward security. Steven Less (2004) of the Max Planck Institute for Comparative Public Law and International Law reported that, following 9/11, the topic of terrorism produced a wave of government doings and legal action favoring one of two competing concerns: security over rights (pp. 635-642). For him, new counterterrorism policies and “legal developments in the United States after 9/11 are too wide-ranging to permit a conclusive assessment” (Less, 2004, p. 728). Liora Lazarus and Benjamin Goold (2007), tutors in Law at Oxford University, discussed the relationship between security and rights in a number of Western democracies (pp. 1-24). For them, the movement toward security by governments after 11 September 2001 is a manifestation of a preference that existed before that date and had been displayed during previous national crises. They point out that jihadi terrorism offered the United States “a novel opportunity to develop new and powerful rhetorical arguments...in favour of increased state power” (Lazarus & Goold, 2007, p. 5). In a comparative study of post-9/11 counterterrorism policies, Princeton’s Richard Falk (2007) characterized the response as one based on the premise that “it was permissible for the U.S. government to do whatever it took to make American and Americans as secure as possible” (p. 19). David P. Forsythe (2007) of the University of Nebraska-Lincoln criticized the expansive powers of indefinite detention and the use of harsh interrogations techniques (including some designated as torture by international law) that the government employed following 11 September 2001 (pp. 37-55). Harvard Law School professor and former Deputy

Attorney General Philip Heymann (2003) expounded a particularly scathing opinion of U.S. counterterrorism policy following 9/11. The U.S. government was, in his estimation, “demanding and justifying a radical shifting of our domestic and international priorities” which defied “traditional assumptions about our democratic freedoms” (Heymann, 2003, p. 13).

Scholars have isolated individual policies that, in their opinion, go too far in the direction of security. Kate Martin (2004) highlighted domestic intelligence practices that do not considerably increase safety, but violate fundamental rights. The U.S. government enlarged “domestic intelligence powers and shifted institutional responsibilities for intelligence gathering inside the United States,” and simultaneously augmented “the potential for serious abuses of power” (Martin, 2004, p. 7). Brookings Institution contributors Benjamin Wittes and Mark Gitenstein (2007) and others (Terry, 2008; Elsea & Thomas, 2007) discussed the need for a new detention policy for suspected terrorists and enemy combatants, as the current one has proven confusing and controversial. The academic community shares an overwhelming sense of a policy shift toward security in the U.S. counterterrorism regime following 9/11.

Conclusion

The United States has little past counterterrorism experience. The country faces a high threat of jihadi terror as the leader of the war in Iraq and the greatest contributor to the international presence in Afghanistan. Based upon the hypothesis presented earlier in the study, one would suppose that the United States limited previous experience combating domestic terrorism would not prepare it very well to combat the menace of jihadi terrorism. The United States did not possess extensive counterterrorism policies

prior to 11 September 2001. With little experience and a modest counterterrorism structure in place, it was expected that the country would report a significant response to the 9/11 attacks. An exploration of data collected from a variety of sources—including judicial opinion, external watchdogs, the media, and academics—suggested that the United States did make a considerable movement from the counterterrorism equilibrium on 11 September 2001, reacting to the new and imminent threat of terrorist violence.

The Australian Case

Australia is a stable liberal democracy with almost no past experience in combating terrorism. In fact, it is the country evaluated in this study with the least history of exposure to terrorism. This lack of experience meant that Australia had little counterterrorism policy on the books prior to 11 September 2001. Given the freedom from terrorism in the past, the events of 9/11 profoundly affected the country. Australian participation in the invasions of Afghanistan and Iraq placed the country on the jihadi terrorist radar. Attacks on Australians in Bali in 2002 and 2005 and on the Australian Embassy in Jakarta in 2004 reinforced the new perception of the existence and imminence of a direct terrorist threat. The Australian government has reacted to this threat by developing a new counterterrorism framework. This framework relies heavily on counterterrorism legislation. One would expect government policy in Australia, with its almost complete lack of experience with terrorism, to have shifted away from the previously established equilibrium between security and fundamental rights in responding to terrorism after 11 September 2001.

Previous Terrorism Experience

The Commonwealth of Australia had very little experience with terrorism or even the threat of terrorism prior to 11 September 2001. David Wright-Neville, writing for the Spanish think-tank *Real Instituto Elcano*, commented that, apart from some small, amateur attacks against Yugoslav and Turkish diplomatic installations in the 1970s, “until recently Australia has not had a direct experience of terrorism” (Wright-Neville, 2005, p. 3). A variety of other sources verified this Australian lack of previous experience with terrorism. Nathan Hancock (2002) noted that “Australia has had little or no experiences of terrorism,” thus “there is really no specific anti-terrorism statute in Australia.” Michael Head (2003) has also discussed the extent of Australian experience with terrorism. He concluded that the country had little familiarity. The last terrorist act in the Commonwealth was the 1978 bomb that exploded outside a meeting of British Commonwealth leaders at the Hilton Hotel in Sydney (Head, 2003, p. 670). The attack remains somewhat of a mystery to this day, as those originally accused of the bombing had their sentences subsequently overturned due to police malfeasance. The Australian experience with terrorism had been so limited prior to 11 September 2001 that the introduction of a legal conception of terrorism into the country was questioned by Australian legal experts (Commonwealth, 1979, as cited in Head, 2003, pp. 670-671). In the context of the United Kingdom and Spain, or even, to a lesser extent, the United States, Australia was truly a novice in the realm of counterterrorism as of 11 September 2001.

Jihadi Terrorism and Response

The Australian attitude toward terrorism, as a threat that would never come to the shores of the geographically remote and strategically unimportant country, altered

discernibly following the 9/11 attacks in the United States. Perception of the global reach of the menace grew and the Australian government took it to heart. In a 2006 paper entitled *Protecting Australia Against Terrorism*, the Government called terror “a serious threat to Australia and Australia’s interests overseas” (Australian Government, 2006a, p. 8). According to this report, the peril was “globally dispersed, constantly changing and evolving” (Australian Government, 2006a, p. 8). The greatest danger to the nation was seen to come from the amorphous, international terror organization of Al Qaeda, and those that bin Laden’s association fund, support, and train. However, South-East Asian regional groups also represented a great threat to Australia. In particular, Jemaah Islamiyah (JI) was responsible for the 2002 and 2005 Bali bombings that resulted in significant Australian casualties, as well as the 2004 attack on the Australian embassy in Jakarta. The 2006 report highlighted the continued threat from JI to Australians and Australian regional interests (Australian Government, 2006a, p. 9). The report sounded bleak, noting that “the terrorist threat will likely be with us for some time to come” (Australian Government, 2006a, p. 10).

Following 11 September 2001 and in the face of this perceived threat from jihadi terrorism, the Australian Government has built a new counterterrorism regime almost from scratch. Since September 2001, the Australian Government has enacted twenty-eight federal counterterrorism laws that address a wide variety of controversial issues.²⁷ The first, key wave of legislation was the five counterterrorism laws passed in June 2002. These laws established “sweeping definitions of terrorism and treason, both now punishable by life imprisonment” (Head, 2003, p. 667). They contained powers to ban

²⁷ See the Australian Government’s National Security website for a complete list of the legislation: <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument>.

political parties and arrest members, while they also reverse the burden of proof for some offences, thus requiring a defendant to prove his or her innocence (Head, 2003, p. 667). Over the course of the years following the passage of the five laws, the counterterrorism regime of the country has been steadily augmented. The nine laws that arguably represent the most important facets of the Australian counterterrorism regime are very briefly explored below.

The Anti-Terrorism Act (No. 2) 2005 is the most recent of the major additions to the Australian counterterrorism regime. The Act changes the Criminal Code to allow the listing of a group that advocates carrying out a terrorist attack as a terrorist organization. It also establishes procedures for preventative detention and control orders, and modernizes the offence of sedition and other measures (Australian Government, 2006b). Another important piece of legislation is the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003. The Act empowers the Australian Security Intelligence Organisation (ASIO) to obtain a warrant to detain and question any person who may have information significant to the gathering of intelligence in relation to terrorist activity (Renwick, 2007, p. 68). The Criminal Code Amendment (Offences Against Australians) Act 2002 amends the Criminal Code by making it an offence to murder, commit manslaughter, or intentionally or recklessly cause serious injury to an Australian outside of Australia (Australian Government, 2006b). This Act extends the jurisdiction of the Australian judiciary to include these offences.

The Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002 is another important piece of legislation in Australian counterterrorism policy. The Act

makes it a crime to place bombs or other lethal devices in specific locations with the intention of causing death or serious injury, or causing widespread damage which could cause considerable economic loss (Renwick, 2007, p. 68). The Security Legislation Amendment (Terrorism) Act 2002 is yet another piece of the Australian counterterrorism framework. The law changes the Criminal Code Act 1995 to create new terrorism offences and update treason offences. It also creates new offences relating to membership or other links to terrorist organizations and their initiatives (Australian Government, 2006b). The Suppression of the Financing of Terrorism Act 2002 created a new offence that targets persons who provide or collect funds and are inattentive as to whether that money will be used to aid a terrorist act (Australian Government, 2006b).

The Australian Government also passed into law the Telecommunications Interception Legislation Amendment Act 2002. This Act permits Australian law enforcement agencies to seek telecommunications interception warrants in connection with their investigation of terrorist offences (Renwick, 2007, p. 68). Another important piece of legislation is the Criminal Code Amendment (Terrorism) Act 2003 (Constitutional Reference of Power). The law attempts to remove any uncertainty regarding the constitutional status of counterterrorism legislation (Australian Government, 2006b). The final major Act looked at in this study is the National Security Information (Criminal and Civil Proceedings) Act 2004. The Act seeks to safeguard information from disclosure in federal criminal proceedings where the revelation would be likely to prejudice Australia's national security (Australian Government, 2006b).

While the above Acts represent only a fraction of the augmentation of the Australian Government's counterterrorism powers, they serve both as exemplars of the

counterterrorism regime and as the most important and controversial facets of it. The operation of the policies and the extent of the government policy shift toward security are examined below.

Internal Governmental Scrutiny

The Australian government is subject to an extensive system of oversight. Australia and the United Kingdom, with their similar parliamentary systems, have comparable mechanisms for examining counterterrorism policy. In Australia, this task has fallen primarily to the Security Legislation Review Committee within the office of the Attorney General, the Parliamentary Joint Committee on Intelligence and Security, and the Australian Law Reform Commission. Each of these organizations has issued reports on the counterterrorism regime of Australia since 11 September 2001. All reports analyzed identified a significant policy shift away from the previous counterterrorism equilibrium during this period.

Each of the major counterterrorism policy oversight bodies acknowledged a sharp increase in government counterterrorism powers over the past seven years. The Security Legislation Review Committee, established by the Security Legislation Amendment (Terrorism) Act 2002 as a public, independent evaluator of Australian security policy, issued its findings to the Attorney General in June 2006.²⁸ The report stated that “since terrorist attacks in other parts of the world, notably in September 2001, security legislation has been enacted with the prime object of preventing or discouraging further terrorist attacks” (Security Legislation Review Committee [SLRC], 2006, p. 3). Over the course of their investigations, the committee was “satisfied of the need for separate

²⁸ The body is often referred to in the literature as “the Sheller Committee,” after the chair of the committee, the Hon. Simon Sheller QC.

criminal legislation to deal with terrorism as defined by the expression ‘terrorist act,’” and did not advise “general repeal of the security legislation” (SLRC, 2006, p. 8). The Parliamentary Joint Committee on Intelligence and Security issued its own report on Australian counterterrorism policy on 4 December 2006. The inquiry was necessary due to the fact that “in mid 2002 the Commonwealth Parliament passed a package of security and counter terrorism legislation to strengthen Australia’s capacity to respond to the threat of international terrorism,” which was the first phase of the Commonwealth’s response to 9/11 (Parliamentary Joint Committee on Intelligence and Security [PJCIS], 2006, p. 1). The new legislation and provisions were necessary because “Australian criminal law was not salient on terrorist crimes before the events of 11 September 2001” (PJCIS, 2006, p. 11). The Committee also acknowledged that “it is uncontroversial that terrorism law has developed rapidly since September 11” (PJCIS, 2006, p. 52).

The Australian Law Reform Commission (ALRC) also issued a report on the counterterrorism regime in 2006. The ALRC’s investigation centered on the offense of “sedition” resurrected in the context of terrorism.²⁹ In general, the report identified an extension of the government’s power to regulate freedom of expression when it involves terrorism. The ALRC argued that “recent concerns about the national and international security environment” have made questions of restricting speech that aids terrorism incredibly relevant (Australian Law Reform Commission [ALRC], 2006, p. 29). Particularly following the 9/11 terrorist attacks, the Australian counterterrorism regime was expanded to include offenses like sedition (ALRC, 2006, pp. 30-32). All internal

²⁹ The revived “sedition” offense in Australia is similar to, though more narrow than, the criminal offense of encouraging or glorifying terrorism in the United Kingdom.

governmental scrutiny recognized a significant policy shift toward security away from the previous counterterrorism equilibrium in Australia following 11 September 2001.

Judicial Opinions

Australia has a federal system, with both state and federal courts. This federal system, and the lack of a federal bill of rights, severely constrains the ability of the judiciary to oversee and challenge counterterrorism legislation. Yet a number of criminal cases have been brought to trial, providing the judiciary with a limited platform for commentary on the counterterrorism policies. The counterterrorism cases that have gone through the system up to this point have been mostly confined to the individual states. In all of these cases, those involved discerned a moderate policy shift toward security.

The counterterrorism regime of Australia has rarely been tested since 11 September 2001. The first person charged under the new counterterrorism legislative package passed in 2002 was Zeky Mallah. He was charged with two counts of preparing or planning for a terrorist act and recklessly threatening a Commonwealth official with bodily harm (*R v. Mallah*, 2005, para. 1). Mallah was acquitted by a jury on the two counts relating to terrorism, as the jury did not feel his actions fell within the definition of “terrorist act” (*R v. Mallah*, 2005, para. 26). He pleaded guilty of threatening a Commonwealth officer, and was jailed for two and a half years. The case revealed the limitations of the criminal prosecution of terrorist offences, despite the changes in the criminal code and new counterterrorism powers granted in 2002.

The case of Joseph “Jihad Jack” Thomas marked the most significant challenge to the government’s counterterrorism policies since 9/11. Thomas was the first person convicted under the new counterterrorism laws for intentionally receiving funds from Al

Qaeda and holding a false passport, though his sentence was overturned on appeal based upon a legal technicality. On 28 August 2006, he was subject to the first control order. In *Thomas v. Mowbray* (2007), the control order regime in place against Joseph Thomas was upheld by the High Court of Australia. In the opinion of the court, Chief Justice Gleeson wrote that the “defence power” which the government claims in times of national security crisis applied to the control order regime. As long as the country remained under the threat of jihadi terrorism (what the Chief Justice called “terrorism of the kind proved here”), the Commonwealth demonstrated that “Div 104 of the [Criminal] Code...is within the defence power” (*Thomas v. Mowbray*, 2007, para. 590). According to Gleeson, the extraordinary circumstances of the threat justified the extensive reach of the counterterrorism provisions represented by the control orders.

Further terrorism-related cases have been brought before the Australian court system. For example, Faheem Khalid Lodhi became the first person convicted of preparing for a terrorist attack under the new legislation. Justice Whealy offered the opinion of the court, writing that the conviction came as part of the “package of legislation prepared in response to the changed security environment in existence, following the terrible events of September 11, 2001” (*R v. Lodhi*, 2006, para. 90). With the growing threat of terrorism, and the ease with which an open country like Australia might fall prey to such a threat, “the obligation of the Court is to denounce terrorism and voice its stern disapproval of activities such as those contemplated by the offender here” (*R v. Lodhi*, 2006, para. 92). In Lodhi’s failed appeal of his sentence, Chief Justice Spigelman argued that “a terrorism offence is an outrageous offence and greater weight is to be given to the protection of society, personal and general deterrence and retribution”

than the potential for rehabilitation on the part of the offender (*Lodhi v. Regina*, 2007, para. 274). The overwhelming majority of the judicial opinions evaluated both identified a moderate policy movement toward security after 9/11 and acknowledged the necessity of such a shift.

External Watchdogs

The counterterrorism regime of Australia is under close scrutiny by non-governmental organizations. Human Rights Watch, the Australian Human Rights Centre, and the New South Wales Council for Civil Liberties have all issued publications on Australian counterterrorism policies since 11 September 2001. All of the reports examined identified a significant movement toward security in the post-9/11 counterterrorism policymaking of the Australian government. The organizations have also been critical of the ramifications on fundamental rights of this movement.

A primary focus of all of the commentary by the groups has been the augmentation of government powers in the realm of counterterrorism in the past seven years. In a special “Anti-terrorism” issue of *Human Rights Defender*, the Australian Human Rights Centre evaluated the Australian counterterrorism regime. Luke Howie (2005), a contributor to the issue, wrote that “the most recent reforms to Australia anti-terrorism legislation represent an extraordinary escalation in attempts to prevent terrorism,” which have significant negative consequences on society (p. 22). Garth Nettheim (2005), writing in the same issue, highlighted the fact that “there have been a number of legislative changes over the past four years to enlarge the powers of the ASIO [Australian Security Intelligence Organization] and other agencies” (p. 6). He questioned the need for a further piece of counterterrorism legislation to be passed by the

government, and wondered “as to the extent to which the sweeping powers that it confers can be reconciled with Australia’s commitments to international human rights standards” (Nettheim, 2005, p. 8). Human Rights Watch (HRW) has also commented on the Australian counterterrorism regime. In a 2005 submission to the Australian Senate on the Anti-Terrorism Bill (No. 2) 2005, HRW expressed concern at the widening of counterterrorism powers to include a new sedition offense and the imposition of control orders similar to those in the United Kingdom (HRW, 2005).

The New South Wales Council for Civil Liberties (NSWCCL) has written a number of reports on Australian counterterrorism that echo the findings of the Human Rights Centre. In written evidence presented to the International Commission of Jurists on the subject of Australian counterterrorism, the NSWCCL emphasized the country’s movement toward security. They wrote that “Australia’s legislative response since 2001 is characterised by substantial increases in the powers of the security services, the police and the Federal Attorney General, and the over-ruling of important human rights with limited safeguards” (New South Wales Council for Civil Liberties [NSWCCL], 2006, p. 4). In a 2004 submission, the organization called attention to statements by policymakers in the government who stated that “there were adequate provisions in place to deal with the threats of terrorism” following both 9/11 and the Bali bombings in 2002 (NSWCCL, 2004, p. 1). The report then continued on to inquire as to the reason why, if this was the case, the government had enacted so much legislation and was attempting to do so again. All of the external non-governmental scrutiny examined in this study overwhelming identified a significant shift toward security in Australian counterterrorism policy after 11 September 2001.

Media Perception

The media has produced a wide and varied commentary on the Australian counterterrorism regime since 11 September 2001. Articles from a range of periodicals were examined.³⁰ All of the pieces recognized a major policy movement away from the previous counterterrorism equilibrium toward security, with two-thirds displaying this movement as unnecessarily large due to the nature of the terrorist threat to the country.³¹

Every analyzed article revealed an augmentation of government counterterrorism powers during the period since 9/11. Many are also critical of the shift. One 2004 article decried the growth as Australia found itself gripped by the fear of terrorism. The country's main response to the threat was "the creation of new, ever-increasing legal powers for counter-terrorism forces" (Ansley, 2004). Despite "the flood of new laws that followed the September 11 terror attacks in the US," other "drastic measures," such as allowing the detention of those suspected of associating with terrorists, continued to become law in Australia (Ansley, 2004). A similar opinion on Australia's counterterrorism regime pervaded another piece. Peter Hartcher (2005) wrote of the "counter-terrorism legislation that proposes a drastic increase in police powers over suspected terrorism" which was due to pass through Parliament soon after the article was published (p. 2). Another article reported that the 7 July 2005 bombings in London prompted policymakers to describe the counterterrorism proposals as "draconian" while insisting "they are necessary in these times of fear and uncertainty" ("Terror laws,"

³⁰ The articles were accessed using the LexisNexis Academic database and the web-based archives of the different periodicals, and represent the following newspapers: The Sydney Morning Herald, The Australian, The Courier Mail, The Age (Melbourne), Canberra Times, and The New Zealand Herald.

³¹ Of twenty-five articles evaluated, all identified some sort of shift toward security, while seventeen felt that there was unnecessary restriction of fundamental rights, seven viewed the provisions as justified or too weak, and one was neutral.

2005). A more recent article explored the necessity of these expanded counterterrorism powers in light of their application to a specific case. Andrew Lynch (2007) suggested that Australians “are used to a political insistence on ‘tough’ anti-terrorism laws,” yet “these can lead to executive overreach” and do “not make [Australians] safer.”

Some articles acknowledged the shift toward security and defended it as necessary in the face of the jihadi terror threat to Australia. In 2007, a piece in *The Australian* pointed out that the counterterrorism policies of the Aussies are hardly unique. Essayist Thane Rosenbaum (2007) wrote about a “counterterrorism club” of countries that have enacted extraordinary measures to combat the threat of terrorism, noting seven liberal democracies including Australia that have done so (p. 15). Another article criticized the inefficiency of the Australian detention law. It reported that the police ran into significant difficulties due to the requirement to apply for pre-charge detention in forty-eight hour blocks (Williams, 2007, p. 19). Former Australian Intelligence Corps officer Clive Williams suggested that the blanket twenty-eight day pre-charge detention currently employed by the British would be a much better system for Australia, despite the litany of concerns voiced about the current fourteen day detention limit (Williams, 2007, p. 19). In 2006, the counterterrorism laws were defended in a piece as they were put to their first legal test in the trial of Joseph Thomas, who the media dubbed “Jihad Jack.” According to the article, Thomas had enjoyed the full protections of the law throughout his trial, where he was convicted under new counterterrorism laws (Munro, 2006, p. 3). Whatever their view on the merits of these measures, journalists and commentators perceive a significant shift toward security in Australia following 11 September 2001.

Academic Assessment

The counterterrorism regime of Australia has just recently become an object of intense academic investigation. Very few serious scholarly studies were produced prior to 2003, and the number has remained modest relative to the other countries presented in this study. The academic evaluations that do exist have highlighted a significant government policy shift away from the previously established equilibrium between security and fundamental rights in responding to terrorism after 11 September 2001. Some possessed considerable fundamental rights concerns about the growing counterterrorism regime as well.

All of the scholars examined identified a major shift in Australian counterterrorism policy toward security. James Renwick, a barrister and lecturer at the University of Sydney, commented on the Australian counterterrorism regime. He wrote that “the remarkable range of counter-terrorism laws enacted since 2001” would have been unthinkable prior to 9/11 (Renwick, 2007, p. 67). He described “the extent of these laws” as extraordinary (Renwick, 2007, p. 67). The scope of counterterrorism legislation in the country also became the topic of an article by Gregory Rose and Diana Nestorovska of the University of Wollongong. They characterize the criminal and national security laws of Australia as having been “substantially reformed to combat terrorism at a furious pace since 11 September 2001” (Rose & Nestorovska, 2007, p. 20). The Australian Government took action “following the bombings of the 11 September 2001 across a range of approaches” (Rose & Nestorovska, 2007, p. 55). Strategic and Defense Studies Centre scholar Christopher Michaelsen compared the development of the counterterrorism frameworks of the United Kingdom and Australia following 9/11, while

noting that “in contrast to the United Kingdom, Australia has had little or no experience of terrorism” (Michaelsen, 2003). Michaelsen (2003) then described the passage of the five bill package of counterterrorism legislation which was introduced in the Australian parliament in March 2002. This legislative package represented a major increase in governmental security powers in terms of terrorism.

Some scholars of the Australian counterterrorism regime have revealed serious concerns about fundamental rights infringements since 9/11. Writing in 2005, Christopher Michaelsen expressed significant reservations about the augmentation of governmental powers to combat terrorism. He maintained that the “introduction of drastic domestic counterterrorism laws is a clear overreaction” (Michaelsen, 2005, p. 334). In this view, the new counterterrorism regime was not only ill-conceived, but represented a disproportionate reaction to the level of jihadi terrorism threat facing Australia. Michaelsen (2005) suggested that “many provisions of Canberra’s antiterrorism legislation were motivated by politicians wanting to appear resolute and virtuous rather than by legal principle” (p. 334). These vastly increased governmental powers were not likely to be repealed anytime soon, and showed a tendency to “function creep”—that is, extend emergency powers into areas of investigation not related to counterterrorism (Michaelsen, 2007, pp. 334-335). Michael Head of the University of Western Sydney also raised issues of fundamental rights. He wrote that, since 11 September 2001, “the government has introduced legislation and undertaken executive action that arguably undermine fundamental democratic rights” (Head, 2003, p. 667).

Scholarship thus concurs that there has been a significant shift in Australia toward security following 11 September 2001.

Conclusion

Australia has nearly no past experience in combating terrorism. The country faces a high threat of jihadi terror as a participant in the war in Iraq and a current troop contributor to Afghanistan. Based upon the hypothesis presented earlier in the study, one would suppose that Australia's lack of previous experience combating domestic terrorism would not prepare it to face the menace of jihadi terrorism. Australia did not possess much of a counterterrorism framework prior to 11 September 2001. With little experience and no counterterrorism structure to speak of in place, it was expected that the country would report a significant response to the 9/11 attacks. An investigation of data collected from a variety of sources—including judicial opinion, external watchdogs, the media, and academics—suggests that Australia did make a considerable movement from the societal equilibrium on 11 September 2001, reacting to the unfamiliar threat of terrorist violence.

Conclusion

Since 9/11, nations across the globe have struggled to come to terms with the danger of jihadi terrorism. Each country has formulated its own response, and those reactions continue to evolve. The examination of four cases—the United Kingdom, Spain, the United States, and Australia—revealed that countries had diverse reactions to the threat of jihadi terrorism following 11 September 2001, specifically in the degree to which their counter-terrorism policies shifted away from the previously accepted balance. On the other hand, the case studies at best only partially validated the hypothesis that countries with extensive previous counterterrorism experience would demonstrate greater restraint in their policy response to jihadi terrorism than those without that experience.

Spain, the United States, and Australia all generally behaved as predicted by the hypothesis. The United Kingdom, however, did not. Its policies were expected to remain largely in line with the balance previously struck in dealing with IRA activities. Yet instead they shifted very dramatically after 11 September 2001. The U.K. passed a number of new pieces of counterterrorism legislation, introduced new police powers, and tightened immigration laws. By contrast, Spain, as mentioned above, with a small shift in counterterrorism policy following 9/11, more closely fit the hypothesis. The United States had the largest movement from the societal equilibrium, a shift motivated by the fact that it was the target of the 9/11 attacks. The United Kingdom and Australia both had significant shifts from the societal equilibrium. Past experience with counterterrorism does not shape a country's response to later perceived threats, and does not preclude a radical shift in the orientation of its policies. It may be a considerable aid to combating the new threat—as in the case of Spain—or it could have little bearing on the country's reaction—as in the case of the United Kingdom.

Table 4: Summary of conclusions by type of data.

	United Kingdom	Spain	United States	Australia
Internal Governmental Scrutiny	Significant	Not Available	Significant	Significant
Judicial Opinions	Significant	Small	Significant	Moderate
External Watchdogs	Significant	Small	Significant	Significant
Media Perception	Significant	Small	Significant	Significant
Academic Assessment	Significant	Small	Significant	Significant
<i>Conclusion</i>	<i>Significant</i>	<i>Small</i>	<i>Significant</i>	<i>Significant</i>

This table summarizes the conclusions reached in the case studies. The results are displayed in terms of a small shift from the 9/11/01 counterterrorism policy equilibrium, a moderate shift, or a significant shift. The final row shows the general conclusion when all of the results were taken together.

There are several possible explanations for a different outcome than that predicted by the hypothesis. The first possible reason for the results is divergent perceptions of the nature of the jihadi terrorist threat within the countries. In Spain, for example, policymakers and the public connected specific foreign policy decisions to the high level of threat from jihadi terrorism. Many viewed the Spanish government's support for and troop contribution to the invasion of Iraq as the reason jihadists attacked Spain on 11 March 2004. In polls conducted in May 2004 and February 2005 by the Spanish think-tank *Real Instituto Elcano*, 64.2% and 62.7% of those polled believed the attacks would not have taken place if the country had not supported the U.S. on Iraq (Bermejo &

Reinares, 2007). The Socialist government that took office after the 2004 attacks withdrew Spanish troops from Iraq as a response to the 11 March 2004 bombings.

In the United Kingdom, on the other hand, the policymaking establishment has viewed the threat through the lens of a conflict over society and culture. Tony Blair (2007), then Prime Minister of the United Kingdom, wrote that the struggle between terrorist and the West “is not a clash between civilizations; it is a clash about civilization” (p. 2). It is seen as a manifestation of “the age-old battle between progress and reaction, between those who embrace the modern world and those who reject its existence— between optimism and hope, on the one hand, and pessimism and fear on the other” (Blair, 2007, p. 2). In this conception of jihadi terrorism, the United Kingdom, with all Western liberal democracies, faces the threat of violence from jihadists despite any specific policy followed by that country. The United States and Australia share Britain’s notion of the nature of the terrorist threat. President George W. Bush (2001) stated that the terrorists sought “to disrupt and end a way of life,” while former Australian Prime Minister John Howard asserted that “Islamic fanaticism hates the way of life we have” (Neales, 2007). In this conception shared by the three countries, alterations in specific policies would not deflect the terrorist threat; thus, policymakers emphasize hardening targets and securing the country against an omnipresent menace. The different perceptions of the character of jihadi terrorism might account for the differing reactions by the countries to terrorist violence, and the different degrees to which they felt compelled to undertake a dramatic change in policies, often at the expense of fundamental rights.

Another reason for the different outcomes between Spain and the United Kingdom, the two countries with extensive previous experience with terrorism, could be the internalization of dissimilar lessons from their previous experience. Spanish policymakers see ETA and jihadi terrorism as two manifestations of the greater terrorism, with more similarities than differences. The Spanish government, with the rather successful counterterrorism campaign against ETA, maintains a sense that jihadi terrorism can be dealt with using like strategies. For example, Javier Jordán (2005) of the University of Granada, recommended the application of specialized penal policy designed to combat ETA to jihadi terrorism. He argued that the success of the procedure of separating and isolating convicted ETA members during incarceration could be duplicated if it was applied to jihadists (Jordán, 2005, p. 23). In short, the Spanish government has not perceived much need for expansive new counterterrorism policies because the old ones generally seem to work.

Policymakers in the United Kingdom, on the other hand, have a much different perception of the comparability of IRA terrorism and jihadi terrorism. The two movements are seen as completely distinct; the counterterrorism challenges posed by each are considered mostly unique. Tony Blair suggested in 2005 that “IRA political demands or their previous atrocities could not be directly compared to fundamentalists who carried out the 9/11 US attacks” (“IRA are not al-Qaeda,” 2005). Negotiation and political concessions—especially civil rights agenda for Northern Irish Catholics implemented during the 1980s—are given much of the credit for bringing an end to IRA violence.³² British policymakers view such negotiation with jihadists as impossible

³² The general effectiveness of many British counterterrorism measures is widely believed to have forced the IRA to the table in the first place, and strengthened the British negotiating position.

because jihadists strike “without any claim or pretence to be advancing a negotiable cause” (Home Office, 2004, p. 1). This belief may be traceable to a prevailing official conception of jihadi terrorism as a struggle against British core values and culture. While some counterterrorism lessons from Irish violence were applied to international terrorism in the Terrorism Act 2000, these were soon deemed insufficient to counter the new threat. Five dedicated pieces of counterterrorism legislation have been passed since, applying primarily to jihadi terrorism. Unlike the Spanish government, the British government has generally regarded the lessons of IRA terrorism as inapplicable in the struggle against jihadi terrorism.

Thirdly, responses to jihadi terrorism might also have differed due to distinctive legal traditions in Spain as compared to the United Kingdom, the United States, and Australia. These differences are readily apparent in the question of pre-charge detention, for example. Spain’s inquisitorial civil law system allows judges to continue to interrogate suspects for a period of years after they are charged with a crime (Home Office, 2005, p. 26). The Spanish government has little incentive to increase the length of pre-charge detention in the country because it has little bearing on the investigation of terrorist suspects. In the U.K., the U.S., and Australia, which share a common law tradition, investigators are no longer able to question a suspect after he or she is charged. This stipulation makes the pre-charge detention period extremely important in all crimes, but especially terrorism-related offenses, where interrogation might be the only way to uncover a cell or halt an attack. Such a stipulation provides great motivation to a government to extend pre-charge detention, which is done through legislation and often puts the government at loggerheads with fundamental rights groups. Pre-charge

detention is just one example of how a country's legal tradition can affect its counterterrorism regime.

A final possible explanation for different results than the hypothesis predicted is the continuity of leadership since 11 September 2001 in three of the four cases examined. In the United Kingdom, the Labour Party has held power since 1998, first under Tony Blair, and, after May 2007, under Gordon Brown. The Liberal Party under John Howard controlled the Australian Government continuously from 1996 until December 2007. Republican President George W. Bush has been in office since 2001, and will remain there until January 2008. Spain was the only country examined in this study which underwent a change in leadership during the period since 11 September 2001, when the Socialist Party defeated the Popular Party in the March 2004 election. As counterterrorism policy has become a highly politicized issue, especially in the United States, it will be interesting to see how changes in leadership affect the counterterrorism regimes of each country. There is also the question of how a leadership transition influences the lessons drawn from previous policy experience.

As this study has shown, the relationship between past counterterrorism experience and a country's reaction to future terrorist threats is an elusive one. So why study it? Two reasons advance themselves. First, as Art and Richardson (2007) wrote, liberal democracies dealing with old domestic terrorism and new jihadi terrorism both faced two basic challenges: "how to respond effectively to terrorism without compromising democratic liberties, and how to deal effectively with the current generation of terrorists without creating more in the process" (p. xiv). These challenges confronted liberal democracies who struggled against terrorism in the past, and continue

to dog those countering it today. Countries implemented policies that attempted to answer these challenges while effectively providing security from those earlier forms of terrorism. It would be foolish not to examine those past policies for lessons that could help current liberal democracies succeed in confronting those challenges. Yet, as this study has proven, governments must be careful in doing so, as a multitude of factors makes jihadi terrorism and the countering of it very different for each country. Indeed, the United Kingdom illustrated that a nation might even find little application against the new threat for its own extensive counterterrorism experience.

Second, the policies most effective at answering the two challenges will become the basis for an international counterterrorism regime. The global nature and reach of the new jihadi terrorist threat will, in the opinion of the author, eventually move threatened liberal democracies toward such transnational policies. Several events, like the arrest of 9/11-suspects in Germany and Spain and the foiling of a transatlantic terrorist plot by a combination of British and American police, have foreshadowed this movement. Jihadi terrorists are simply too mobile, their organizations too fluid, and their bases too widespread to render national strategies effective in the long-term at facing the two challenges. Analyses of each country's counterterrorism policies, where they come from, and how effectual they have been in the past will prove very useful to the establishment of an international counterterrorism policy. Granted, the international community has a long way to go before that becomes a reality; a consensus definition of terrorism does not yet even exist. One day, however, comparative examinations of national counterterrorism regimes like this study will aid the formulation of international counterterrorism policies necessary to counteract a threat like jihadi terrorism.

Reference List

Introduction

- Bell, J.B. (1976). Strategy, tactics and terror: An Irish perspective. In Y. Alexander (Ed.), *International terrorism*. New York: Praeger.
- Evans, P.B., Rueschemeyer, D., & Skocpol, T. (1985). *Bringing the state back in*. New York: Cambridge University Press.
- Hall, P. (1993). Policy paradigms, social learning, and the state: The case of economic policymaking in Britain. *Comparative Politics*, 25 (3), 275-296.
- Heclo, H. (1974). *Modern social politics in Britain and Sweden*. New Haven: Yale University Press.
- Hoffman, B. (2006). *Inside terrorism*. New York: Columbia University Press.
- Roy, Major A.C. (1991). *The roots of terrorism in Northern Ireland*. Retrieved <http://www.globalsecurity.org/military/library/report/1991/RAC.htm>.
- Sacks, P. (1980). State structure and the asymmetrical society. *Comparative Politics*, 12 (2), 349-376.
- Skocpol, T. (1985). Bringing the state back in: Strategies of analysis in current research. In P. Evans (Ed.), *Bringing the state back in*. New York: Cambridge University Press.
- Walker, C. (1986). *The prevention of terrorism in British law*. Manchester: Manchester University Press.
- Weir, M. & Skocpol, T. (1985). State structures and the possibilities for 'Keynesian' responses to the Great Depression in Sweden, Britain, and the United States. In P. Evans (Ed.), *Bringing the state back in*. New York: Cambridge University Press.
- Woodworth, P. (2001). *Dirty war, clean hands: ETA, the GAL and Spanish democracy*. Cork: Cork University Press.

Theoretical Framework

- Alexander, Y. & Swetnam, M.S. (Eds.). (2001). *Usama bin Laden's al-Qaida: Profile of a terrorist network*. Ardsley, N.Y.: Transnational.
- Annan, K. (2005). *A global strategy for fighting terrorism*. Retrieved December 10, 2006, from <http://www.un.org/apps/sg/sgstats.asp?nid=1345>.
- Art, R.J. and Richardson, L. (Eds.). (2007). *Democracy and counterterrorism: Lessons*

- from the past*. Washington, D.C.: United States Institute of Peace Press.
- Badey, T.J. (1998). Defining international terrorism: A pragmatic approach. *Terrorism and Political Violence*, 10(1), 90-107.
- Blunkett, D. (2004). *Counter-terrorism powers: Reconciling security and liberty in an open society: A discussion paper* (Cm 6147). London: Home Office.
- Bonner, D. (1992). The United Kingdom response to terrorism. *Terrorism and Political Violence*, 4, 171-205.
- Breslauer, G.W. & Tetlock, P.E. (Eds.). (1991). *Learning in U.S. and Soviet foreign policy*. Boulder: Westview Press.
- Chalk, P. (1995). The liberal democratic response to terrorism. *Terrorism and Political Violence*, 7(4), 10-44.
- Della Porta, D. (1992). Institutional responses to terrorism: The Italian case. *Terrorism and Political Violence*, 4, 151-170.
- Donohue, L.K. (2001). *Counter-terrorist law and emergency powers in the United Kingdom 1922-2000*. Dublin: Irish Academic Press.
- Donohue, L.K. (2005). Security and freedom on the fulcrum. *Terrorism and Political Violence*, 17, 69-87.
- Dugard, J. (1974). International terrorism: Problems of definition. *International Affairs*, 50(1), 67-81.
- Evans, P.B., Rueschemeyer, D., & Skocopol, T. (Eds.). (1985). *Bringing the state back in*. New York: Cambridge University Press.
- Hall, P. (1993). Policy paradigms, social learning, and the state: The case of economic policymaking in Britain. *Comparative Politics*, 25 (3), 275-296.
- Heclo, H. (1974). *Modern social politics in Britain and Sweden*. New Haven: Yale University Press.
- Jervis, R. (1976). *Perception and misperception in international politics*. Princeton, N.J.: Princeton University Press.
- Levy, J.S. (1994). Learning and foreign policy: Sweeping a conceptual minefield. *International Organization*, 48 (2), 279-312.
- May, E. (1973). *"Lessons" of the past: The use and misuse of history in American foreign policy*. New York: Oxford University Press.

- Meisels, T. (2005). How terrorism upsets liberty. *Political Studies*, 53, 162-181.
- Payne, S. (2002). Britain's new anti-terrorist legal framework. *RUSI*, June, 44-52.
- Sacks, P. (1980). State structure and the asymmetrical society. *Comparative Politics*, 12 (2), 349-376.
- Schlagheck, D. & Walker, J. (1992). Democratizing nations and terrorism: The effect of political violence on civil liberties. *Current World Leaders*, 2, 287-309.
- Skocpol, T. (1985). Bringing the state back in: Strategies of analysis in current research. In P. Evans (Ed.), *Bringing the state back in*. New York: Cambridge University Press.
- Tsoukala, A. (2004). Democracy against security: The debates about counter-terrorism in the European Parliament, September 2001-June 2003. *Alternatives*, 4, 417-39.
- Tsoukala, A. (2006). Democracy in the light of security: British and French political discourses on domestic counter-terrorism policies. *Political Studies*, 54, 607-627.
- Waldron, J. (2003). Security and liberty: The image of balance. *The Journal of Political Philosophy*, 11(2), 191-210.
- Weir, M. & Skocpol, T. (1985). State structures and the possibilities for 'Keynesian' responses to the Great Depression in Sweden, Britain, and the United States. In P. Evans (Ed.), *Bringing the state back in*. New York: Cambridge University Press.
- Literature Review**
- Alexander, Y. (Ed.). (2006). *Counterterrorism strategies: Successes and failures of six nations*. Washington, D.C.: Potomac Books.
- Art, R.J. and Richardson, L. (Eds.). (2007). *Democracy and counterterrorism: Lessons from the past*. Washington, D.C.: United States Institute of Peace Press.
- Charters, D. (Ed.). (1994). *The deadly sin of terrorism: Its effect of democracy and civil liberties in six countries*. London: Greenwood Press.
- Crenshaw, M. (2000). The psychology of terrorism: An agenda for the 21st century. *Political Psychology* 21 (2), 405-420.
- Gross, O. & Aoláin, F.N. (2006). *Law in times of crisis: Emergency powers in theory and practice*. Cambridge, England: Cambridge University Press.
- Hoffman, B & Morrison-Taw, J. (2000). A strategic framework for countering terrorism.

In F. Reinares (Ed.), *European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation* (3-29). Burlington: Ashgate.

Ramraj, V.V., Hor, M., & Roach, K. (Eds.). (2005). *Global anti-terrorism law and policy*. Cambridge: Cambridge University Press.

Reinares, F. (2000). *European democracies against terrorism: Governmental policies and intergovernmental cooperation*. Dartmouth: Ashgate.

Schmid, A.P. & Crelinsten, R.D. (Eds.). (1993). *Western responses to terrorism*. London: Frank Cass.

Walter, C., Vöneky, S., Röben, V., & Schorkopf, F. (Eds.). (2004). *Terrorism as a challenge for national and international law: Security versus liberty?* New York: Springer.

Case Study Overview

No references.

Part I

The British Case

Akinyeye, O. (2005). "Human rights: A comparison between Northern Ireland and Nigeria." Commonwealth Policy Studies Unit. Retrieved April 1, 2008, from http://www.cpsu.org.uk/downloads/northern_ireland_oa.pdf.

Amnesty International. (2006). *United Kingdom: Human rights: A broken promise*. London: Amnesty International Publications. Retrieved April 1, 2008, from <http://www.amnesty.org>.

Bell, J.B. (1976). Strategy, tactics and terror: an Irish perspective. In Y. Alexander (ed.), *International Terrorism: National, regional, and global perspectives*. New York: Praeger.

Birmingham Post. (2002, Oct. 17). War on terror: Why human rights will suffer. *The Birmingham Post*, p. 8. Retrieved January 29, 2008, from LexisNexis Academic.

Donahue, L.K. (2003, Apr. 6). The British traded rights for security, too. *The Washington Post*. Retrieved April 1, 2008, from LexisNexis Academic.

Fenwick, H. (2002). The Anti-terrorism, Crime and Security Act 2001: A proportionate response to 11 September? *Modern Law Review* 65, 724-62.

Gearty, C. (2006, October). Human rights in an age of counter-terrorism. *Oxford Amnesty Lectures, 2006*. Oxford, England. Retrieved December 5, 2007, from <http://www.lse.ac.uk/collections/humanRights/>.

- Gearity, C. (2007). Terrorism and human rights. *Government and Opposition* 42(3), 340-362.
- Home Office. (1998a). *Legislation against terrorism: A consultation paper (Cm 4178)*. London: HMSO. Retrieved January 21, 2008, from <http://www.archive.official-documents.co.uk/document/cm41/4178/4178.htm>.
- Home Office. (1998b). *Legislation against terrorism: An analysis of the responses to the Government's consultation paper (Cm 4178)*. London: HMSO. Retrieved January 21, 2008, from <http://www.nationalarchives.gov.uk/ERORecords/HO/415/1/oicd/terresp.htm>.
- Home Office. (2006). *Countering international terrorism: The United Kingdom's strategy (Cm 6888)*. London: HMSO. Retrieved April 1, 2008, from <http://www.intelligence.gov.uk/upload/assets/www.intelligence.gov.uk/countering.pdf>.
- Human Rights Watch. (2003). *In the name of counter-terrorism: Human rights abuses worldwide*. New York: HRW. Retrieved February 9, 2008, from <http://www.hrw.org>.
- Hurst, G. (2001, Dec. 14). Blunkett bows to the Lords on terror bill. *The Times* [Online]. Retrieved January 29, 2008, from LexisNexis Academic.
- Joint Committee on Human Rights. (2004). *Review of counter-terrorism powers (HL Paper 158, HC 173)*. London: The Stationary Office Limited.
- Joint Committee on Human Rights (2006). *Counter-terrorism policy and human rights: Prosecution and pre-charge detention (HL Paper 240, HC 1576)*. London: The Stationary Office Limited.
- Joint Committee on Human Rights. (2007a). *Counter-terrorism policy and human rights: Draft Prevention of Terrorism Act 2005 (continuance in force of sections 1 to 9) Order 2007 (HL Paper 60, HC 365)*. London: The Stationary Office Limited.
- Joint Committee on Human Rights. (2007b). *Counter-terrorism policy and human rights: 28 days, intercept and post-charge questioning (HL Paper 157, HC 394)*. London: The Stationary Office Limited.
- Leppard, D. (2005, Oct. 23). Labour's war on terror is failing, says leaked report. *Sunday Times*, p. 2. Retrieved January 29, 2008, from LexisNexis Academic.
- Liberty. (2008a). *Liberty – protecting civil liberties promoting civil rights: Terrorism*. Retrieved January 29, 2008, from <http://www.liberty-human-rights.org.uk/issues/2-terrorism/index.shtml>.

- Liberty. (2008b). *Liberty – protecting civil liberties promoting civil rights: Extension of pre-charge detention*. Retrieved January 29, 2008, from <http://www.liberty-human-rights.org.uk/issues/2-terrorism/extension-of-pre-charge-detention/index.shtml>.
- Lowe, V. (2005). “Clear and present danger”: Responses to terrorism. *International and Comparative Law Quarterly* 54, 185-96.
- Mackay, N. (2004, Dec. 19). Home Secretary Charles Clarke is already embroiled in a battle between law lords and the government. At stake is British democracy. *The Sunday Herald*, p. 13. Retrieved January 29, 2008, from LexisNexis Academic.
- “Northern Ireland.” (n.d.). Emergency Law Database, Queen’s University Belfast. Retrieved April 1, 2008, from <http://www.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/Resources/html/Fileupload,53157,en.htm>.
- Parliament. (1974). *Prevention of Terrorism (Temporary Provisions) Act 1974*. London: HMSO.
- Parliament. (2006). *Terrorism Act 2006*. London: HMSO. Retrieved April 1, 2008, from <http://www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act-2006>.
- Roach, K. (2007). *Security and human rights* (B.J. Goold & L. Lazarus, Eds.). Oxford: Hart Publishing.
- Russell, J. (2007). *Terrorism pre-charge detention comparative law study*. London: Liberty. Retrieved January 29, 2008, from <http://www.liberty-human-rights.org.uk>
- UKHL 45, *Secretary of State for the Home Department (Appellant) v. JJ and Others (FC) (Respondents)*. (2007). Retrieved January 29, 2008, from <http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd071031/homejj-1.htm>.
- UKHL 56, *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*. (2004). Retrieved January 30, 2008, from <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&oth-1.htm>.
- Walker, C. (1986). *The prevention of terrorism in British law*. Manchester: Manchester University Press.
- Walker, C. (2004). Terrorism and criminal justice: Past, present and future. *Criminal Law Review*, 311-27.
- Walker, C. (2005). Intelligence and anti-terrorism legislation in the United Kingdom.

Crime, Law & Social Change 44, 387-422.

- Walter, C., Vöneky, S., Röben, V., & Schorkpf, F. (Eds.). (2004). *Terrorism as a challenge for national and international law: Security versus liberty?* New York: Springer.
- Wilson, A.N. (2004, Nov. 26). Blunkett's climate of fear will suit the criminals fine. *The Evening Standard*, p. 15. Retrieved January 29, 2008, from LexisNexis Academic.
- Zedner, L. (2005). Securing liberty in the face of terror: Reflections from criminal justice. *Journal of Law and Society* 32, 507-33.
- Zedner, L. (2007). *Security and human rights* (B.J. Goold & L. Lazarus, Eds.). Oxford: Hart Publishing.
- The Spanish Case**
- "Acuerdo por las libertades y contra el terrorismo." (2000, Dec. 12). Madrid: La Guardia Civil. Retrieved December 10, 2006 from <http://www.guardiacivil.org/terrorismo/documentos/pactolibertds.jsp>.
- Amnesty International. (2002). *Spain: A briefing for the UN committee against torture*. London: Amnesty International Publications. Retrieved February 23, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2005). *Human rights dissolving at the borders? Counter-terrorism and criminal law in the EU*. London: Amnesty International Publications. Retrieved February 23, 2008, from <http://www.amnesty.org>.
- Archik, K., Ek, C., Gallis, P., Miko, F.T., and Woehrel, S. (2006). *European approaches to homeland security and counterterrorism* (CRS Report No. RL33573). Foreign Affairs, Defense, and Trade Division, Congressional Research Service, Library of Congress. Retrieved February 28, 2008, from <http://stinet.dtic.mil/cgi-bin/GetTRDoc?AD=ADA453727&Location=U2&doc=GetTRDoc.pdf>.
- Audiencia Nacional. (2006, Apr. 10). *Auto* (Sumario N° 20/2004). Madrid: Administración de Justicia. Retrieved February 29, 2008, from http://3dias.punto-informativo.net/3dm/archivo/Auto_procesamiento_11-M_texto.pdf.
- Audiencia Nacional. (2007, Oct. 31). *Sumario número 20/04 del juzgado central de instrucción núm.6. Rollo de Sala núm. 05/05*. (Sentencia número 65/2007). Madrid: Administración de Justicia. Retrieved February 29, 2008, from http://www.asociacion11m.org/sumario20_04.html.
- Boletín Oficial del Estado. (1882, Sept. 14, subsequently modified). "Ley de

Enjuiciamiento Criminal.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://noticias.juridicas.com/base_datos/Penal/lecr.l2t7.html.

Boletín Oficial del Estado. (1978, Dec. 29). “Constitución Española.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from <http://www.senado.es/constitu/index.html>.

Boletín Oficial del Estado. (1979, Dec. 22). “Ley Orgánica 3/1979, de 18 de diciembre, Estatuto de Autonomía del País Vasco.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://noticias.juridicas.com/base_datos/Admin/lo3-1979.tp.html.

Boletín Oficial del Estado. (1995, Nov. 24). “Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l2t22.html#c5s2.

Boletín Oficial del Estado. (2003a, Oct. 27). “Ley Orgánica 13/2003, de 24 de octubre, de reforma de la Ley de Enjuiciamiento Criminal en materia de prisión provisional.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2003/19748.

Boletín Oficial del Estado. (2003b, Nov. 26). “Ley Orgánica 15/2003, de 25 de noviembre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2003/21538.

Boletín Oficial del Estado, (2003c, May 22). “Ley 12/2003, de 21 de mayo, de prevención y bloqueo de la financiación del terrorismo.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2003/10289.

Boletín Oficial del Estado. (2005, Oct. 11). “Ley Orgánica 4/2005, de 10 de octubre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de delitos de riesgo provocados por explosivos.” Madrid: Ministerio de la Presidencia. Retrieved December 10, 2006 from http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2005/16825.

Burnett, V. (2007, Nov. 1). Mixed verdict in '04 terror unsettles Spain; 3 are convicted of murder, but not the accused masterminds. *The International Herald Tribune*, p. 1. Retrieved February 24, 2008, from LexisNexis Academic.

Carrillo, S. (2007, Mar. 31). ¿De espaldas ante el más peligroso terrorismo? *El País*, pp.

- 15-16. Retrieved February 24, 2008, from LexisNexis Academic.
- Cerdán, M. and A. Rubio. (1997). *El origen del GAL: "Guerra sucia" y crimen de estado*. Madrid: Temas de Hoy.
- Conde, E.Á. and González, H. (2006). *Legislación antiterrorista comparada después de los atentados del 11 de septiembre y su incidencia en el ejercicio de los derechos fundamentales* (ARI No. 7/2006). Madrid: Real Instituto Elcano. Retrieved February 28, 2008, from <http://www.realinstitutoelcano.org>.
- Defensor del Pueblo. (2005). *Informe anual de 2004*. Madrid: El Defensor del Pueblo. Retrieved February 27, 2008, from <http://www.defensordelpueblo.es/index.asp?destino=informes1.asp>.
- EFE. (2002, Feb. 4). Trillo propone el modelo español para la lucha contra el terror. *El Mundo*. Retrieved February 27, 2008, from <http://www.elmundo.es>.
- Escriva, A. (2002, Dec. 31). Lucha antiterrorista / Este año han sido detenidos 191 terroristas / La banda conforma su cúpula con miembros que tienen un historial cada vez menor / El acoso legal y judicial iniciado hace años ha comenzado a dar sus frutos. *El Mundo*, pp. 8-9. Retrieved February 24, 2008, from LexisNexis Academic.
- Europa Press. (2001, Oct. 11). El Gobierno modificará la ley para poder congelar bienes de los terroristas. *El Mundo*. Retrieved February 24, 2008, from <http://www.elmundo.es>.
- Europa Press. (2007, Feb. 27). ERC pide que se derogue la Audiencia Nacional y la Ley Antiterrorista. *20 minutos*. Retrieved February 24, 2008, from <http://www.20minutos.es>.
- Gil-Robles, A. (2005). *Report by Alvaro Gil-Robles, Commissioner for human rights, on his visit to Spain 10 – 19 March 2005 for the attention of the committee of ministers and the parliamentary assembly*. Strasbourg: Council of Europe Commissioner for Human Rights. Retrieved February 24, 2008, from https://wcd.coe.int/ViewDoc.jsp?id=927685&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P97_1183.
- Gómez-Céspedes, A. and Domínguez, A.I.C. (2006, Jan. 31). *NCTB counterterrorism strategies in Spain* (Working Document 4). The Hague, Netherlands: National Coordinator for Counterterrorism (NTCb). Retrieved December 10, 2006 from http://www.wodc.nl/images/Werkdocument%204%20Spain_tcm11-124670.pdf.
- Guiora, A.N. (2005). *Legislative and policy responses to terrorism*. Cleveland, OH: Case

Research Paper Series in Legal Studies. Retrieved February 28, 2008, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=793344.

Human Rights Watch. (2005). *Setting an example? Counter-terrorism measures in Spain*. Washington, D.C.: HRW. Retrieved February 24, 2008, from <http://www.hrw.org>.

ICL. (1978, Dec. 29). "Spain – Constitution." Retrieved December 10, 2006 from http://www.oefre.unibe.ch/law/icl/sp00000_.html.

Jordán, J. (2005). El terrorismo islamista en España. In *Madrid 11-M: Un análisis del mal y sus consecuencias*, A. Blanco, R. Águila, and J.M. Sabucedo (Eds.). Madrid: Editorial Trotta.

Martí, S., Domingo, P., and Ibarra, P. (2007). Democracy, civil liberties, and counterterrorist measures in Spain. In A. Brysk and G. Shafir, *National insecurity and human rights* (pp. 118-136). Berkeley: University of California Press. Retrieved February 28, 2008, from http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1009&context=gaia/gaia_books.

Mercado, F. (2006, Apr. 11). La Audiencia Nacional juzgará a 29 personas por los atentados del 11-M. *El País*. Retrieved February 29, 2008, from <http://www.elpais.com>.

Ministry of the Interior, Spain. (2007). *Víctimas de ETA*. Retrieved February 11, 2008, from http://www.mir.es/DGRIS/Terrorismo_de_ETA/ultimas_victimas/p12b-esp.htm.

Reinares, F. (2000). *European democracies against terrorism: Governmental policies and intergovernmental cooperation*. Dartmouth: Ashgate.

Shepard, W.S. (2002). The ETA: Spain fights Europe's last active terrorist group. *Mediterranean Quarterly* 13(1), pp. 54-68.

Soria, J.M. (2004). Country report on Spain. In C. Walter, S. Vöneky, V. Röben, and F. Schorkopf (Eds.), *Terrorism as a challenge for national and international law: Security versus liberty?* (pp. 517-556). Berlin: Springer.

Woodworth, P. (2001). *Dirty war, clean hands: ETA, the GAL and Spanish democracy*. Cork: Cork University Press.

Part II

The American Case

American Civil Liberties Union. (2004). *Conduct unbecoming: Pitfalls in the president's military commissions*. Washington, D.C.: ACLU. Retrieved February 8, 2008, from <http://www.aclu.org>.

- American Civil Liberties Union. (2006). *Enduring abuse: Torture and cruel treatment by the United States at home and abroad*. Washington, D.C.: ACLU. Retrieved February 8, 2008, from <http://www.aclu.org>.
- Amnesty International. (2004a). *USA: Violations of human dignity, the rule of law and the national security strategy*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2004b). *Restoring the rule of law: The right of Guantanamo detainees to judicial review of the lawfulness of their detention*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2005). *United States of America: Guantanamo and beyond*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2006a). *Terror and counter-terror: Defending our human rights*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2006b). *Memorandum to the US government on the report of the UN committee against torture and the question of closing Guantanamo*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2007a). *AI's framework for ending illegal detention – parliamentary action*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Amnesty International. (2007b). *No substitute for habeas corpus: six years without judicial review in Guantanamo*. London: Amnesty International Publications. Retrieved February 9, 2008, from <http://www.amnesty.org>.
- Doyle, C. (2002). *The USA PATRIOT Act: A legal analysis* (CRS Report No. RL31377). American Law Division, Congressional Research Service, Library of Congress. Retrieved February 21, 2008, from LexisNexis Congressional.
- Elsa, J.K. and Thomas, K.R. (2007). *Enemy combatant detainees: Habeas corpus challenges in federal court* (CRS Report No. RL33180). American Law Division, Congressional Research Service, Library of Congress. Retrieved February 17, 2008, from <http://www.comw.org/tct/terrorism7.html>.
- Falk, R. (2007). *Encroaching on the rule of law: Post-9/11 policies within the United*

States. In A. Brysk and G. Shafir, *National insecurity and human rights* (pp. 14-36). Berkeley: University of California Press. Retrieved February 28, 2008, from http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1009&context=gaia/gaia_books

Federal Bureau of Investigation (FBI). (1999). *Terrorism in the United States: 30 years of terrorism – a special retrospective edition*. Washington, D.C.: U.S. Department of Justice Counterterrorism Threat Assessment and Warning Unit, Counterterrorism Division. Retrieved February 11, 2008, from <http://www.fbi.gov/publications/terror/terror99.pdf>.

Forsythe, D.P. (2007). The United States: Protecting human dignity in an era of insecurity. In A. Brysk and G. Shafir, *National insecurity and human rights* (pp. 37-55). Berkeley: University of California Press. Retrieved February 28, 2008, from http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1009&context=gaia/gaia_books.

Gailey, P. (2001, Dec. 16). Perspective on security vs. liberties. *St. Petersburg Times (Florida)*, p. 1D. Retrieved February 15, 2008, from LexisNexis Academic.

Gherebi v. Bush. 352 F.3d 1278 (9th Cir. 2003). Retrieved February 16, 2008, from LexisNexis Academic.

Hamdan v. Rumsfeld. 548 U.S. ____ (2006). Retrieved February 16, 2008, from LexisNexis Academic.

Hamdi v. Rumsfeld. 542 U.S. 507 (2004). Retrieved February 16, 2008, from LexisNexis Academic.

Heymann, P.B. (2003). *Terrorism, freedom, and security: Winning without war*. Cambridge, MA: The MIT Press.

H. Rep. No. 109-174 Part. 1. 109th Cong. (2005). Retrieved February 12, 2008, from Lexis/Nexis Congressional database.

H. Rep. No. 109-174 Part. 2. 109th Cong. (2005). Retrieved February 12, 2008, from Lexis/Nexis Congressional database.

H. Rep. No. 109-664 Part. 1. 109th Cong. (2006). Retrieved February 12, 2008, from Lexis/Nexis Congressional database.

H. Rep. No. 109-664 Part. 2. 109th Cong. (2006). Retrieved February 12, 2008, from Lexis/Nexis Congressional database.

Human Rights Watch and American Civil Liberties Union. (2005). *Witness to abuse:*

Human rights abuses under the material witness law since September 11.
Washington, D.C.: HRW. Retrieved February 8, 2008, from <http://www.aclu.org>.

Lakely, J. G. (2005, Jun. 14). Conservatives, liberals align against Patriot Act. *The Washington Times*, p. A01. Retrieved February 15, 2008, from LexisNexis Academic.

Lazarus, L. and Goold, B.J. (2007). *Security and human rights* (B.J. Goold & L. Lazarus, Eds.). Oxford: Hart Publishing.

Less, S. (2004). Country report on the USA. In C. Walter, S. Vöneky, V. Röben, & F. Schorkopf (Eds.), *Terrorism as a challenge for national and international law: Security versus liberty?* (pp. 633-732). Berlin: Springer.

Lichtblau, E. (2003, Aug. 19). Administration plans defense of terror law. *New York Times*, p. A1. Retrieved February 15, 2008, from LexisNexis Academic.

Lichtblau, E. (2005, Jul. 13). Sparring over power of the USA Patriot Act; Congress split over terrorism revisions. *The International Herald Tribune*, p. 4. Retrieved February 15, 2008, from LexisNexis Academic.

Martin, K. (2004). Domestic intelligence and civil liberties. *SAIS Review* 24(1), 7-21. Retrieved February 17, 2008, from <http://muse.jhu.edu>.

McFadden, G. (2007). Counterterrorism beyond shock and awe, part I. *Foreign Policy Forum*. Retrieved February 17, 2008, from http://www.foreignpolicyforum.com/view_article.php?aid=403.

Military order: Detention, treatment, and trial of certain non-citizens in the war against terrorism. 66 Fed. Reg. 578333 (November 13, 2001). Retrieved February 21, 2008, from LexisNexis Congressional.

Ministry of the Interior, Spain. (2007). *Víctimas de ETA*. Retrieved February 11, 2008, from http://www.mir.es/DGRIS/Terrorismo_de_ETA/ultimas_victimas/p12b-esp.htm.

Minnerop, P. (2004). Legal status of state sponsors of terrorism in US law. In C. Walter, S. Vöneky, V. Röben, & F. Schorkopf (Eds.), *Terrorism as a challenge for national and international law: Security versus liberty?* (pp. 733-786). Berlin: Springer.

Minow, M. (2002, Oct. 1). The USA patriot act: Three librarians explore the controversial act and how you can protect patron privacy without breaking the law. *Library Journal*. Retrieved February 20, 2008, from <http://www.libraryjournal.com>.

- Norwitz, J. H. (2002). Combating terrorism: With a helmet or a badge? *Journal of Homeland Security*. Retrieved February 11, 2008, from <http://www.homelandsecurity.org/journal/Articles/norwitz.html>.
- Office of the Coordinator for Counterterrorism (OCC). (1999). *Patterns of global terrorism – 1999*. Washington, D.C.: U.S. Department of State. Retrieved on February 11, 2008, from <http://www.state.gov/www/global/terrorism/1999report/patterns.pdf>.
- O'Hanlon, M. (2007, Dec. 7). Taps for liberties or security? *The Washington Times*, p. A18. Retrieved February 15, 2008, from LexisNexis Academic.
- O'Harrow, R. Jr. (2003, Aug. 6). U.S. backs Florida's new counterterrorism database; 'Matrix' offers law agencies faster access to Americans' personal records. *The Washington Post*, p. A01. Retrieved February 15, 2008, from LexisNexis Academic.
- O'Harrow, R. Jr. (2004, Sep. 28). Senate bill proposes anti-terror database; civil liberties groups express concern. *The Washington Post*, p. A04. Retrieved February 15, 2008, from LexisNexis Academic.
- Osher, S.A. (2002). Privacy, computers and the patriot act: The fourth amendment isn't dead, but no one will insure it. *Florida Law Review* 54(3), 521-547. Retrieved February 20, 2008, from <http://heinonline.org>.
- Perl, R. (2003). *Terrorism, the future, and U.S. foreign policy* (CRS Report No. IB95112). Foreign Affairs, Defense, and Trade Division, Congressional Research Service, Library of Congress. Retrieved February 11, 2008, from <http://www.fas.org/irp/crs/IB95112.pdf>.
- Rosenzweig, P. (2004, Jul. 29). Face facts: Patriot Act aids security, not abuse. *The Christian Science Monitor*, p. 09. Retrieved February 15, 2008, from LexisNexis Academic.
- Rumsfeld v. Padilla. 541 U.S. 984 (2004). Retrieved February 16, 2008, from LexisNexis Academic.
- Terry, J.P. (2008). Habeas corpus and the detention of enemy combatants in the war on terror. *Joint Forces Quarterly* 48, 14-18. Retrieved February 17, 2008, from <http://www.comw.org/tct/terrorism7.html>.
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, H.R. 3162, 107th Cong. (2001). Retrieved February 20, 2008, from LexisNexis Congressional.

Wittes, B. and Gitenstein, M. (2007). *A legal framework for detaining terrorists: Enact a law to end the clash over rights*. Washington, D.C.: The Brookings Institute. Retrieved February 17, 2008, from <http://www.comw.org/tct/terrorism7.html>.

The Australian Case

Ansley, G. (2004, Mar. 27). Fear threatens freedom in Australia. *The New Zealand Herald*. Retrieved March 13, 2008, from LexisNexis Academic.

Australian Government. (2006a). *Protecting Australia against terrorism 2006*. Canberra: The Department of the Prime Minister and Cabinet. Retrieved March 18, 2008, from <http://www.pmc.gov.au>.

Australian Government. (2006b). *Australian laws to combat terrorism*. Retrieved March 18, 2008, from <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument>.

Australian Law Reform Commission [ALRC]. (2006). *Fighting words: A review of sedition laws in Australia*, report 104. Canberra: Australian Law Reform Commission. Retrieved March 15, 2008, from <http://www.austlii.edu.au/au/other/alc/publications/reports/104/>.

Hancock, N. (2002). *Terrorism: Legislating for security* (Research Note No. 25, 2001-2002). Parliament of Australia, Parliamentary Library. Retrieved March 17, 2008, from <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn25.htm>.

Hartcher, P. (2005, Nov. 3). Howard deflects nation's gaze away from the ball. *Sydney Morning Herald*, p. 2. Retrieved March 13, 2008, from LexisNexis Academic.

Head, M. (2003). 'Counter-terrorism' laws: a threat to political freedom, civil liberties and constitutional rights. *Melbourne University Law Review* 26 (3), 666-689. Retrieved March 17, 2008, from <http://parlinfoweb.aph.gov.au/piweb/repository1/library/jrnart/jlz860.pdf>.

Howie, L. (2005). The threat of terrorism and social change. *Human Rights Defender*, Special Issue: The Anti-Terrorism Bill (No. 2) 2005. Retrieved March 13, 2008, from <http://www.ahrcentre.org>.

Human Rights Watch. (2005). *Submission from Human Rights Watch to Senate Legal and Constitutional Committee inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005*. New York: Human Rights Watch. Retrieved March 13, 2008, from <http://www.hrw.org>.

Lodhi v. Regina. (2007). NSWCCA 360. Retrieved March 16, 2008, from <http://www.austlii.edu.au/au/cases/nsw/NWCCA/2007/360.html>.

Lynch, A. (2007, Jul. 24). Sacrificing rights puts us at risk. *The Australian*. Retrieved

- March 13, 2008, from <http://theaustralian.news.com.au>.
- Michaelsen, C. (2003). International human rights on trial — The United Kingdom's and Australia's legal response to 9/11. *The Sydney Law Review* 13. Retrieved March 17, 2008, from <http://www.austlii.edu.au/au/journals/SydLRev/2003/13.html>.
- Michaelsen, C. (2005) Antiterrorism legislation in Australia: A proportionate response to the terrorist threat? *Studies in Conflict and Terrorism* 28(4), 321-339. Retrieved March 17, 2008, from <http://www.informaworld.com/smpp/content?content=10.1080/10576100590950138>.
- Munro, I. (2006, Apr. 1). Jihad Jack trial 'not for show.' *Sydney Morning Herald*, p. 3. Retrieved March 13, 2008, from LexisNexis Academic.
- Nettheim, G. (2005). Terror australis: The 'debate' to date. *Human Rights Defender*, Special Issue: The Anti-Terrorism Bill (No. 2) 2005. Retrieved March 13, 2008, from <http://www.ahrcentre.org>.
- Parliamentary Joint Committee on Intelligence and Security [PJCIS]. (2006). *Review of security and counter terrorism legislation*. Canberra: The Parliament of the Commonwealth of Australia. Retrieved March 15, 2008, from <http://www.aph.gov.au/house/committee/pjcis/securityleg/report.htm>.
- Renwick, J. (2007). Counter-terrorism and Australian law. *Security Challenges* 3 (3), 67-77. Retrieved March 17, 2008, from <http://www.aph.gov.au/library/intguide/law/terrorism.htm#terrpubs>.
- Rose, G. and Nestorovska, D. (2007). Australian counter-terrorism offences: Necessity and clarity in federal criminal law reforms. *Criminal Law Journal* 31(1), 20-55. Retrieved March 17, 2008, from <http://www.aph.gov.au/library/intguide/law/terrorism.htm#terrpubs>.
- Rosenbaum, T. (2007, Jul. 24). Our tough anti-terror laws merely reflect a global trend. *The Australian*, p. 15. Retrieved March 13, 2008, from LexisNexis Academic.
- R v. Mallah*. (2005). NSWSC 317. Retrieved March 16, 2008, from http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2005/317.html.
- R v. Lodhi*. (2006). NSWSC 691. Retrieved March 16, 2008, from http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2006/691.html.
- Security Legislation Review Committee [SLRC]. (2006). *Report of the Security Legislation Review Committee*. Canberra: Security Legislation Review Committee. Retrieved March 15, 2008, from http://www.ag.gov.au/www/agd/agd.nsf/Page/National_securityReviewsSecurity_Legislation_Review_Committee.

- Terror laws strike uneasy balance. (2005, Sep. 28). *The Courier Mail*, p. 16. Retrieved March 13, 2008, from LexisNexis Academic.
- The New South Wales Council for Civil Liberties [NSWCCL]. (2004). *RE: Inquiry into provisions of the Anti-Terrorism Bill 2004*. Glebe, Australia: New South Wales Council for Civil Liberties. Retrieved March 13, 2008, from <http://www.nswccl.org.au>.
- The New South Wales Council for Civil Liberties [NSWCCL]. (2006). *International Commission of Jurists, Eminent Jurists panel, Sydney public hearings: 14-15 March 2006, written outline of submissions*. Glebe, Australia: New South Wales Council for Civil Liberties. Retrieved March 13, 2008, from <http://www.nswccl.org.au>.
- Thomas v. Mowbray*. (2007). HCA 33. Retrieved March 16, 2008, from <http://www.austlii.edu.au/au/cases/cth/HCA/2007/33.html>.
- Williams, C. (2007, Jul. 17). British detention law one to follow. *Canberra Times*, p. 19. Retrieved March 13, 2008, from LexisNexis Academic.
- Wright-Neville, D. (2005). *Fear and loathing: Australia and counter-terrorism* (ARI No. 156/2005). Madrid: Real Instituto El Cano. Retrieved March 17, 2008, from <http://www.realinstitutoelcano.org>.

Conclusion

- Art, R.J. and Richardson, L. (Eds.). (2007). *Democracy and counterterrorism: Lessons from the past*. Washington, D.C.: United States Institute of Peace Press.
- Bermejo, R. and Reinares, F. (2007). *International terrorism and public opinion in Spain* (ARI No. 32/2007). Madrid: Real Instituto Elcano. Retrieved March 27, 2008, from http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/Elcano_in/Zonas_in/ARI%2032-2007.
- Blair, T. (2007). A battle for global values. *Foreign Affairs* 86 (1). Retrieved March 27, 2008, from <http://www.foreignaffairs.org/20070101faessay86106/tony-blair/a-battle-for-global-values.html>.
- Bush, G.W. (2001). *Address to a Joint Session of Congress and the American people*. Washington, D.C.: The White House. Retrieve March 27, 2008, from <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.
- Home Office. (2004). *Counter-terrorism powers: Reconciling security and liberty in an open society: A discussion paper*. London: HMSO. Retrieved April 1, 2008, from <http://security.homeoffice.gov.uk/news-publications/publication-search/general/ct-discussion?view=Standard&pubID=402302>.

“IRA are not al-Qaeda says Blair.” (2005, Jul. 26). BBC News Online. Retrieved April 1, 2008, from http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/4718223.stm.

Jordán, J. (2005). El terrorismo islamista en España. In *Madrid 11-M: Un análisis del mal y sus consecuencias*, A. Blanco, R. Águila, and J.M. Sabucedo (Eds.). Madrid: Editorial Trotta.

Neales, S. (2007, Jul. 14). Terrorism fight ‘will last for decades.’ *The Australian*. Retrieved March 27, 2008, from <http://www.theaustralian.news.com.au/story/0,25197,22072956-5006788,00.html>.